

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 150 18 NOVEMBER 2013 PAGES 16711 TO 16913



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<p style="text-align: right;">Page 16711</p> <p>1 [PROCEEDINGS ON 18 NOVEMBER 2013] 2 [09:16] CHAIRPERSON: The Commission resumes. I 3 understand that there was a problem, Major-General, in 4 getting the documents to you in time, so you really, as I 5 understand, had to study them this morning. Is that 6 correct? The documents that were made available to you. 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. I just - 9 CHAIRPERSON: That's why we're starting 10 late. We were told that - 11 MAJOR-GENERAL MPEMBE: I did get the - 12 CHAIRPERSON: - we had to give you some 13 time. Are you satisfied you had enough time? 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson, I can go through them, but I got them this 16 morning. 17 CHAIRPERSON: And you studied them? 18 MAJOR-GENERAL MPEMBE: Yes. 19 CHAIRPERSON: Alright, well then I can 20 remind you, you're still under oath. 21 WILLIAM MPEMBE: Correct, Chairperson. 22 CHAIRPERSON: Mr Chaskalson. 23 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.): 24 Thank you, Chairperson. Major-General, before we get to 25 those documents, there are just two topics that I want to</p>	<p style="text-align: right;">Page 16713</p> <p>1 Chairperson. If we can go to the occurrence book, which is 2 JJJ180, and if we go to the entry at 8:30 on the 16th, next 3 page, down further, there we go, at 8:30 the occurrence 4 book has an entry, "Report Colonel Claassens from Phokeng 5 SAPS informed us (Phokeng Forensic Pathology Services) that 6 Colonel Madoda from National Office requested one backup 7 mortuary vehicle to be stationed at Marikana Police Station 8 for any disaster that can occur during the Marikana Lonmin 9 Mine strike. Ms Ngake then requested Forensic Pathology 10 offers Laaka and Tladinyane to station at Marikana Police 11 Station using vehicle," and then there's the registration 12 number. We now have a statement from Colonel Claassens. 13 That will be HHH67. 14 CHAIRPERSON: That's a new exhibit? 15 MR CHASKALSON SC: It is a new exhibit, 16 Chairperson. 17 CHAIRPERSON: Exhibit? 18 MR CHASKALSON SC: HHH67. 19 CHAIRPERSON: HHH67, statement by, is he 20 a full colonel? 21 MR CHASKALSON SC: Lieutenant-Colonel 22 Claassens. 23 CHAIRPERSON: Is he C or K? 24 MR CHASKALSON SC: C. 25 CHAIRPERSON: C-L-A-A, double S or single</p>
<p style="text-align: right;">Page 16712</p> <p>1 raise with you. The first relates to the SAPS request for 2 mortuary vehicles to be brought to Marikana on the 16th, and 3 in that regard I'd like to ask you to look at a series of 4 documents, or take you through a series of documents. The 5 first is the affidavit of Ms Ngake, that's JJJ183, and 6 there's you'll see, if we go down, "On Thursday, 16 August 7 2012 in the morning I was officially on duty at the 8 district office when I received a call from Colonel 9 Claassens of Phokeng SAPS. Colonel Claassens informed me 10 that they're going to close down the miners at the koppie 11 in Marikana and he requested four mortuary vehicles to be 12 sent at Marikana for standby." Then if we go to the 13 occurrence book of the mortuary, which is JJJ180 - sorry, 14 before we leave there, if I can just read a sentence 15 further. "In indicated that I can only send one vehicle." 16 So the request was for four, but only one was available. 17 JJJ180 - 18 CHAIRPERSON: Then it goes on to say, "I 19 further requested Claassens to send me a letter of request. 20 I then received an email from," I'm not sure that I can 21 read that - 22 MR CHASKALSON SC: I think it's Almarie - 23 CHAIRPERSON: Almarie of Phokeng SAPS for 24 the request. 25 MR CHASKALSON SC: Thank you,</p>	<p style="text-align: right;">Page 16714</p> <p>1 S? 2 MR CHASKALSON SC: Double S. 3 CHAIRPERSON: Double S, is it Claassen or 4 Claassens? 5 MR CHASKALSON SC: Plural. 6 CHAIRPERSON: Dated? 7 MR CHASKALSON SC: My copy doesn't have a 8 date on it. 9 CHAIRPERSON: Oh well, never mind. 10 MR CHASKALSON SC: If we can call up 11 HHH - 12 CHAIRPERSON: I take it, it's an 13 affidavit, is it? 14 MR CHASKALSON SC: It is an affidavit, 15 Chairperson, HHH67 will have the date on it. Can we go to 16 HHH67? 17 CHAIRPERSON: Yes, I see his name is not 18 correctly spelt then in the occurrence book, but it doesn't 19 matter, we've got the correct spelling now. 20 MR CHASKALSON SC: Yes, Chairperson. 21 Sorry, can we get HHH67 on screen? Chairperson, the date 22 is 29 October 2013. 23 CHAIRPERSON: So I've recorded exhibit 24 HHH67, affidavit by Lieutenant-Colonel PWJA Claassens, 25 spelt C-L-A-A-S-S-E-N-S, dated the 29th of October 2013.</p>

<p style="text-align: right;">Page 16715</p> <p>1 Before we carry on, can I just ask a question just to get 2 something off the table? There was discussion last week 3 about a possibility of an agreed transcript of the 4 discussion on the Tuesday, the 14th of August 2012, between 5 Lieutenant-General Mbombo and representatives of Lonmin. 6 Is it possible that progress can be reported in respect of 7 the discussions in respect of that transcript? 8 MR CHASKALSON SC: Chairperson, I'm told 9 that a draft has been circulated and we can have it by 10 Thursday, an agreed transcript. 11 CHAIRPERSON: I see, thank you. 12 COMMISSIONER HEMRAJ: Does it read more 13 intelligibly? Because we had huge difficulty with the last 14 one. 15 MR CHASKALSON SC: I'm told it's an 16 improvement on the old one. I can't say more than that. 17 Chairperson, there appears to be some difficulty getting 18 the document on screen, but the Major-General has a copy 19 and I merely want to refer to two paragraphs. I wonder if 20 I could read them out? 21 CHAIRPERSON: I think that will be 22 appropriate. The Major-General has a copy. 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MR CHASKALSON SC: Major-General, the</p>	<p style="text-align: right;">Page 16717</p> <p>1 presumably the provincial office for the North West 2 Province? Is that right? 3 MAJOR-GENERAL MPEMBE: He was from the 4 cluster working under Brigadier Van Zyl, who is from the 5 province. 6 CHAIRPERSON: Thank you. 7 MR CHASKALSON SC: Chairperson, I think 8 that the confusion in the occurrence book may stem from the 9 email that was sent, which was JJJ193, which recorded that 10 the request came from national office. 11 CHAIRPERSON: I see. 12 MR CHASKALSON SC: But if we go then to 13 Colonel Madoda's statement, HHH63, and if we can call up 14 HHH63 – 66, I beg your pardon, 66, not 63, and if we go 15 down to paragraph 3, "On the 16th of August 2012 I was on 16 duty at Marikana together with other detective members. 17 Then between 08h00 and 9:30 Brigadier Van Zyl arrived for 18 our daily briefings. He requested me to task Lieutenant- 19 Colonel Claassens, commander of Phokeng Detective Office, 20 to go to Phokeng Mortuary and to ask them to be on standby 21 for in case they would be needed at Marikana." So this 22 chain that ends up with an occurrence book entry in the 23 mortuary's occurrence book with an entry at 8:30 recording 24 the request for mortuary vehicles, seems to start with an 25 instruction issued by Brigadier Van Zyl in the morning of</p>
<p style="text-align: right;">Page 16716</p> <p>1 paragraphs to which I would like to refer, paragraphs 3 and 2 4, and in paragraph 3 Lieutenant-Colonel Claassens said, 3 "At 08h00 I attended the station Crime Combating Forum. 4 The meeting ended at about 09h00. During the meeting I 5 received a message via my official phone, 082 373 9831, 6 from Colonel Madoda, who is the cluster coordinator for the 7 Rustenburg cluster." Next paragraph 4, "Colonel Madoda 8 asked to arrange for four mortuary vehicles to be placed on 9 standby at Marikana Police Station." So the request for 10 the mortuary vehicles came to Lieutenant-Colonel Claassens 11 from Colonel Madoda, and then if we could move to Colonel 12 Madoda's affidavit, which will be – 13 CHAIRPERSON: I'm sorry, may I just a 14 question at this stage. In the occurrence book he was 15 described as from national office, that's Colonel Madoda. 16 Here he is described as the cluster coordinator for the 17 Rustenburg cluster. Does that mean that he was a member of 18 the police service stationed in the North West Province, or 19 does it, despite the fact that he was the cluster 20 coordinator of the Rustenburg cluster, does it mean he was 21 attached to national office? Can you help us? 22 MAJOR-GENERAL MPEMBE: Chairperson, even 23 by then he was still a cluster coordinator of detectives. 24 CHAIRPERSON: I understand, but does that 25 mean he wasn't from national office, he was from the,</p>	<p style="text-align: right;">Page 16718</p> <p>1 the 16th of August. That's what the various statements 2 suggest. Now Brigadier Van Zyl was at the JOC in the 3 morning of the 16th of August. Is that not correct? 4 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 5 MR CHASKALSON SC: Was anything relating 6 to the mortuary vehicles discussed in the JOC on the 7 morning of the 16th of August? 8 MAJOR-GENERAL MPEMBE: No, Chairperson. 9 MR CHASKALSON SC: You are certain about 10 that, or not that you can remember? 11 MAJOR-GENERAL MPEMBE: I am certain about 12 it, Chairperson. 13 MR CHASKALSON SC: So Brigadier Van Zyl 14 would at a time before 8:30, or what time did the JOC 15 meeting end on the 16th of August? What time do you recall 16 the JOC meeting ending on the 16th of August? 17 MAJOR-GENERAL MPEMBE: I'm not sure, but 18 it does also appear on the minutes. It didn't take longer, 19 the 6 o'clock meeting. 20 MR CHASKALSON SC: The minutes record 21 that it ended at 7:30. Would that correspond with what 22 your recollection of its duration was? 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 24 MR CHASKALSON SC: So some time between 25 the end of that meeting at 7:30 and when the OB entry is</p>

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1 made at 8:30, Brigadier Van Zyl speaks to Colonel Madoda,
 2 who in turn speaks to Lieutenant-Colonel Claassens, who
 3 then goes to the mortuary, and all of this happens within
 4 an hour of the JOCCOM meeting, and you're saying to us this
 5 was not a matter that was discussed at the JOC meeting at
 6 all?

7 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 8 MR CHASKALSON SC: So as far you are
 9 aware, this was an idea of Brigadier Van Zyl in his own
 10 right, not a broader SAPS request?

11 MAJOR-GENERAL MPEMBE: He is the better
 12 person to explain it, Chairperson.

13 CHAIRPERSON: Do we have a statement from
 14 Brigadier Van Zyl?

15 MR CHASKALSON SC: Not yet, Chairperson.
 16 CHAIRPERSON: You mean on the 18th of
 17 November 2013 we still haven't got a statement from the
 18 police from Brigadier Van Zyl? Can that be right? I'm not
 19 challenging what you're saying, Mr Chaskalson, but you
 20 know, the work of the Commission is impeded by the fact
 21 that there haven't been compliance with the requests for
 22 statements in time. I understand the task which the police
 23 had to deal with providing statements was an immense one.
 24 I understand that, and I don't want to be unreasonable, but
 25 I would urge the police please to make every effort to

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1 ensure that the outstanding statements are made available
 2 as soon as possible.

3 MR MATHIBEDI SC: Thanks, Mr Chairman,
 4 we'll do so.

5 MR CHASKALSON SC: Moving then to a
 6 different topic, Major-General, can I ask you to go back to
 7 the list of calls that you made, HHH65. There's one
 8 further call I want to discuss with you and if you go down
 9 on the 16th of August to 15:46, 15:46, it's the third-last
 10 entry there, you'll see that at 15:46 you were called by
 11 Major-General Naidoo. That was after the operation had
 12 commenced. Do you recall that call?

13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.

15 MR CHASKALSON SC: And do you recall what
 16 Major-General Naidoo said to you in that call?

17 MAJOR-GENERAL MPEMBE: There was a time
 18 where I requested that General, me, General Naidoo should
 19 check Mr Mathunjwa and by that time it was when he was
 20 giving me a feedback to say Mr Mathunjwa has already
 21 passed.

22 MR CHASKALSON SC: So Major-General
 23 Naidoo was reporting to you that Mr Mathunjwa had already
 24 left?

25 MAJOR-GENERAL MPEMBE: He has already

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1 passed at forward holding area 1.

2 MR CHASKALSON SC: And what was the
 3 purpose of that report?

4 MAJOR-GENERAL MPEMBE: Earlier on I did
 5 request that Mr Mathunjwa has left, so he wanted to speak
 6 to us and I did explain that, then I requested Major-
 7 General Annandale to ask General Naidoo to check and to
 8 communicate with Mr Mathunjwa and to find out what he
 9 wanted to tell us.

10 MR CHASKALSON SC: So you knew that Mr
 11 Mathunjwa wanted to speak to you and you were wanting to
 12 establish what it was that Mr Mathunjwa wanted to say. Is
 13 that correct?

14 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 15 it's already contained in the minute of the Commission.
 16 MR CHASKALSON SC: The minutes of the
 17 Commission?

18 MAJOR-GENERAL MPEMBE: Yes, I repeatedly
 19 said it. I think it was handled thoroughly by Mr Madlanga
 20 and also the Chairperson.

21 MR CHASKALSON SC: Sorry, Major-General,
 22 we're at cross purposes –

23 CHAIRPERSON: I think he's referring to
 24 the transcript of his evidence given a long time ago when
 25 Mr Madlanga was not yet at the Constitutional Court.

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1 MR CHASKALSON SC: Now my concern about
 2 this is what was the purpose of receiving a report from
 3 Major-General Naidoo? Why did you – sorry, let me reframe
 4 the question. What was the purpose of receiving a, or
 5 having a meeting with Mr Mathunjwa, or finding out what he
 6 wanted to say? What was the purpose of that?

7 MAJOR-GENERAL MPEMBE: Chairperson, there
 8 was no purpose at all. I only requested him that he should
 9 stop Mr Mathunjwa and find out what was it that he wanted
 10 to say to us. So he was just telling me to say no, I, he
 11 has already passed, as far as my recollection is concerned
 12 about that call of General Naidoo.

13 MR CHASKALSON SC: So can we just scroll
 14 one entry up on that list? You called Major-General Naidoo
 15 at 15:02:36. Is that when you would have said to him find
 16 out what Mr Mathunjwa wants to tell us?

17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson. That's the only time that I spoke with Major-
 19 General Naidoo on that day about, was about Mr Mathunjwa.

20 [09:35] MR CHASKALSON SC: And you had a
 21 conversation with him, it wasn't a voice mail message, you
 22 actually spoke to him and explained to him. It was one
 23 minute and 23 seconds long.

24 MAJOR-GENERAL MPEMBE: Yes, I had a
 25 conversation with him.

<p style="text-align: right;">Page 16723</p> <p>1 MR CHASKALSON SC: And you said find out 2 what Mr Mathunjwa wants to tell us. Is that correct? 3 MAJOR-GENERAL MPEMBE: I don't understand 4 the question, Chairperson, whether I should say what I told 5 General Naidoo or I don't understand the question. 6 CHAIRPERSON: I think Counsellor wants 7 you to tell us what you told General Naidoo. 8 MAJOR-GENERAL MPEMBE: Chairperson, what 9 I said before is that I explained to General Naidoo what 10 has happened at the JOC and thereafter then I said to him – 11 then when I came back Mr Mathunjwa has already left. Can 12 you find out what is that that he wanted to tell us and I 13 know that the Chairperson went in detail about this. 14 MR CHASKALSON SC: Why did you want to 15 know what Mr Mathunjwa had to tell you? 16 MAJOR-GENERAL MPEMBE: I said before he 17 wanted to see the Provincial Commissioner and when I phoned 18 the Provincial Commissioner, the Provincial Commissioner 19 said that let him tell you what he wanted to convey to me 20 and that's the reason why I wanted to know. 21 MR CHASKALSON SC: Did it have any 22 bearing in the operation? 23 MAJOR-GENERAL MPEMBE: I don't know, 24 Chairperson, but he wanted to convey something to the 25 Provincial Commissioner and at that time I didn't know.</p>	<p style="text-align: right;">Page 16725</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, maybe 2 – I say when it was when Mr Mathunjwa was coming from the 3 JOC for the second time. I'm not saying when he left the 4 koppie. 5 CHAIRPERSON: That's dealt with 6 differently in your statement, exhibit GGG12, paragraph 47 7 on page 21. You say – let's deals with an SMS that you 8 received from Mr Mathunjwa which you quote at the foot of 9 page 20 of the statement paragraph 47. You got that at 10 about 14:15, the SMS read "Since no person is available to 11 give feedback to, we are going back to the employees to 12 inform then no-one is available. We tried our best 13 without" I think that should be "co-operation from anyone, 14 let peace prevail." That dealt with the SMS. You then say 15 "When I showed Major-General Annandale the SMS he showed me 16 that he had received a similar SMS." And this is what you 17 say "I immediately tried to call Mr Mathunjwa two or three 18 times but he didn't answer the phone. Major-General 19 Annandale undertook to respond to that SMS and he typed a 20 message to Mr Mathunjwa in response." Then you say "I 21 requested Major-General Annandale to contact Major-General 22 Naidoo at forward holding area 1 and tell him of the SMS 23 and ask him to speak to Mr Mathunjwa before he addressed 24 the protesters. Major-General Annandale contacted Major- 25 General Naidoo but Major-General Naidoo advised that Mr</p>
<p style="text-align: right;">Page 16724</p> <p>1 And I did explain that after phoning the Provincial 2 Commissioner I found Mr Mathunjwa has already left. 3 MR CHASKALSON SC: So Major-General 4 Naidoo knew from just after 3 o'clock that you wanted to 5 find out what it was that Mr Mathunjwa had to say, is that 6 correct? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR CHASKALSON SC: And he came back to 10 you at what you say at 15:46 to say Mr Mathunjwa has gone, 11 he's passed forward holding area 1. 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson. That's the only communication that I had with 14 him on that day. 15 MR CHASKALSON SC: Right, now by the time 16 Mr Mathunjwa had passed forward holding area 1 the 17 operation had already started, were you aware of that? I 18 beg your pardon, I beg your pardon, let me go back a step. 19 Major-General Naidoo says he's passed forward holding area 20 1, is that what he reported to you? 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 22 MR CHASKALSON SC: Because Mr Mathunjwa 23 didn't pass forward holding area 1, he didn't go back via 24 forward holding area 1. He went back around the south side 25 of the koppie.</p>	<p style="text-align: right;">Page 16726</p> <p>1 Mathunjwa had already driven past FHA 1 by the time General 2 Annandale called." So it appear from what you told us 3 earlier that the discussion with General Naidoo about 4 contacting Mr Mathunjwa before he addressed the protesters 5 while he was on the way to the koppie, actually it took 6 place between Major Annandale contacting him at your 7 request and getting the answer that Mr Mathunjwa had 8 already driven past, which answer was then conveyed to 9 General Annandale as you say in Para 47. And that isn't 10 what you're telling us now and which of these two is 11 correct? 12 MAJOR-GENERAL MPEMBE: Chairperson, both 13 of them might have been correct because the only time on 14 that day that I communicated with Major-General Annandale 15 it's about Mr Mathunjwa. But I could have communicated 16 with Major-General Naidoo it's about Mr Mathunjwa, but I 17 did go to General Annandale. 18 MR CHASKALSON SC: I have a slight 19 difficulty here, Chairperson, because what should have been 20 on HHH65 but which was inadvertently removed because what 21 we've done on these cell phone records is we have removed 22 calls that we didn't – 23 CHAIRPERSON: Yes, I see. It's headed 24 Selection of Calls. 25 MR CHASKALSON SC: Yes.</p>

<p style="text-align: right;">Page 16727</p> <p>1 CHAIRPERSON: So are you suggesting to us 2 that there's another call or perhaps further calls which 3 were omitted from this exhibit because they were not 4 thought to be relevant? 5 MR CHASKALSON SC: Well, yes, but they 6 were omitted in error. There are three SMSs to Mr 7 Mathunjwa's phone that are sent at 14:25. The first is 8 sent by you, the first is sent by Major-General Mpeembe at 9 14:25:35. Then there's one from Major-General Annandale at 10 14:29:45 and another one at 14:29:56. So the SMSs, that 11 SMS exchange took place before half past two. These calls 12 that I am raising with you now took place an hour and 15 13 minutes later. 14 CHAIRPERSON: Mr Chaskalson, I take it 15 the calls that you're referring to were they successful 16 calls or are they which the witness describes, the Major- 17 General describes in lines 3 and 4 on page 21 of exhibit 18 GGG12 where he says, this is after this SMS about there 19 peace prevailing and so on, where he says "I immediately 20 tried to call Mr Mathunjwa." Now inasmuch as Mr 21 Mathunjwa's SMS is around about 2:15pm immediately means 22 sometime shortly thereafter. He says "I immediately tried 23 to Mr Mathunjwa two or three times. He didn't answer the 24 phone." Now these calls that you are referring to, which 25 were omitted from exhibit HHH65, are those possibly the</p>	<p style="text-align: right;">Page 16729</p> <p>1 us on that? 2 MAJOR-GENERAL MPEMBE: Chairperson, when 3 I communicated with the issue of Mr Mathunjwa passing I was 4 thinking that because when you go to the koppie you had to 5 pass from forward holding area 1 and the next person could 6 have been General Naidoo there. 7 MR CHASKALSON SC: But that would have 8 been at about half past two when you received the text from 9 Mr Mathunjwa. Is that not correct, when you would have 10 wanted to have asked Major-General Naidoo to intercept Mr 11 Mathunjwa? 12 MAJOR-GENERAL MPEMBE: I don't know, 13 Chairperson, at that time where was Mr Mathunjwa. But my 14 attempt was to communicate with General Naidoo to check 15 whether he has passed and if not and ask him why – what he 16 wanted to communicate to us. 17 MR CHASKALSON SC: But the first call 18 that you make to Major-General Naidoo is more than half an 19 hour after you received the text from Mr Mathunjwa. Why 20 did you wait half an hour before calling Major-General 21 Naidoo? 22 MAJOR-GENERAL MPEMBE: Chairperson, I 23 just wanted to find out whether he has found Mr Mathunjwa, 24 but there were also many other things that I could have 25 attended on that day.</p>
<p style="text-align: right;">Page 16728</p> <p>1 calls to which the witness refers in the passage I read? 2 MR CHASKALSON SC: Mr Chairperson, they 3 wouldn't be because they are SMSs, they are texts. If 4 Major-General Mpeembe tried to call Mr Mathunjwa and did not 5 get Mr Mathunjwa and the call was not referred to voice 6 mail then they wouldn't be reflected in the records that we 7 have at this stage because our records reflect only 8 completed calls. We will, hopefully, receive records from 9 Vodacom that would enable us to identify missed calls as 10 well. But at the moment we do not have those records. 11 CHAIRPERSON: So it's actually a 12 dwaalspoor that I'm busy with at the moment for which I 13 apologise, but you understand the thrust of the point, 14 Major-General, there is a passage that I read which deals 15 with exchanges or attempted exchanges with Mr Mathunjwa 16 sometime between, it looks like 2:15 and 2:30, around about 17 the time he sent that "let peace prevail" SMS. But what Mr 18 Chaskalson is now asking you about is things that took 19 place an hour or so later. Can you help us on that? You 20 see what you told us a few minutes ago was that what 21 General Naidoo had said was that it was too late to talk to 22 Mr Mathunjwa because he'd already passed FHA 1 and you've 23 explained that was while he was on the way to the koppie 24 because he didn't pass FHA 1 on the way back from the 25 koppie. So that's where the problem arises. Can you help</p>	<p style="text-align: right;">Page 16730</p> <p>1 MR CHASKALSON SC: You knew that SAPS was 2 about to embark on a tactical operation that was at least 3 one that held within at the risk of loss of life, is that 4 not correct? 5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson. 7 MR CHASKALSON SC: You knew that Mr 8 Mathunjwa wanted to get hold of SAPS. 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 10 MR CHASKALSON SC: Did you not think it 11 was worth finding out what Mathunjwa had to say before the 12 operation commenced? 13 MAJOR-GENERAL MPEMBE: Chairperson, I've 14 already said that I couldn't find Mr Mathunjwa that's why I 15 sent Major-General Naidoo. I've answered this question, I 16 think, five times now. 17 MR CHASKALSON SC: Did you explain to 18 Major-General Naidoo that you wanted to speak to Mr 19 Mathunjwa, or that you wanted to speak to Mr Mathunjwa 20 before the operation commenced? 21 MAJOR-GENERAL MPEMBE: As it happened we 22 wanted to know what it is that Mr Mathunjwa wants to 23 convey. Chairperson, I will take it that it was before the 24 operation commenced. 25 MR CHASKALSON SC: Would it not have been</p>

<p style="text-align: right;">Page 16731</p> <p>1 relevant to your decision to commence the operation to know 2 first what Mr Mathunjwa wanted to say? 3 MAJOR-GENERAL MPEMBE: Chairperson, I 4 also said that if there was any other thing that Mr 5 Mathunjwa could have conveyed it could have been conveyed 6 to Brigadier Calitz because he was always with him on the 7 ground. 8 MR CHASKALSON SC: You see what worries 9 me about the sequence of phone calls is that Major-General 10 Naidoo only gets back to you at 15:46 which is after the 11 operation has commenced. So the operation starts before 12 you are told, you as JOCCOM commander are told that Mr 13 Mathunjwa has gone. Do you have any response to that? 14 MAJOR-GENERAL MPEMBE: No, Chairperson, 15 because I've already indicated that General Naidoo has 16 indicated that Mr Mathunjwa has passed and if there was any 17 other thing Brigadier Calitz was always there. That could 18 also have been communicated to him. 19 MR CHASKALSON SC: All right, let's move 20 on then. And if we can now move to the topic that you have 21 received all of those documents, the topic that is dealt 22 with in those documents which is whether the tactical plan 23 for phase 3 was changed on the Tuesday or on the Thursday. 24 Now, Major-General, the evidence of Colonel Scott was 25 unambiguous that the JOC had not changed the tactical plan</p>	<p style="text-align: right;">Page 16733</p> <p>1 PDF file. Scroll down a little further, go one page 2 further up, further up sorry. Keep going up, ja that's the 3 page I want. These are notes taken of the JOCCOM on the 4 16th at 6:00am and there you'll see that phase 3 of the plan 5 is described as encirclement. Do you recall the JOCCOM 6 briefing at six in the morning on the 16th? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR CHASKALSON SC: Was there any 10 discussion of a plan to disperse and disarm the miners as 11 opposed to a plan for encirclement? 12 MAJOR-GENERAL MPEMBE: Disperse and 13 disarm. 14 MR CHASKALSON SC: But Advocate Moolman 15 who took notes of the discussion at the JOC recorded phase 16 3 as being encirclement, not disperse and disarm. Any 17 suggestion why this might be the case? 18 MAJOR-GENERAL MPEMBE: If it has 19 encirclement on the 16th meant that after you isolate the 20 people you should be encircled, not by a barbed wire but by 21 Nyalas. And I think I went in details in terms of how we 22 should go about pursuing the people from dispersing them. 23 So it didn't refer encirclement of the whole koppie with 24 the barbed wire. 25 MR CHASKALSON SC: Sorry, you say went in</p>
<p style="text-align: right;">Page 16732</p> <p>1 for phase 3 from encirclement to disperse and disarm before 2 16 August. When we raised this topic with you on Friday 3 you were adamant that it had happened earlier. Do you 4 still stand by that position? 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 6 MR CHASKALSON SC: Do you accept that 7 Colonel Scott was clear that the change happened only on 8 the 16th or do you want me to take you to the passages in 9 his evidence? 10 MAJOR-GENERAL MPEMBE: I don't dispute 11 that, what he said, what could be contained in the passage, 12 but I stood in terms of what I said before. 13 MR CHASKALSON SC: So you don't need me 14 to take you to Colonel Scott's specific evidence, you just 15 say that that evidence is wrong and your evidence is right. 16 MAJOR-GENERAL MPEMBE: I say my evidence 17 is right, Chairperson. 18 MR CHASKALSON SC: Well if your evidence 19 is right, Colonel Scott's has to be wrong because Colonel 20 Scott said the change came on the 16th. But, Major-General, 21 there is a great deal of evidence that supports Colonel 22 Scott's evidence as opposed to yours and evidence from 23 contemporaneous documents. So let's start possibly with 24 JJJ168 which are the notes of the JOC. And if we can call 25 up JJJ168 and if we can to down to the seventh page of the</p>	<p style="text-align: right;">Page 16734</p> <p>1 detail as to how we should go about – I forget your words – 2 encircling them after we, or pursuing the people after we 3 dispersed and disarmed them. Are you suggesting that's 4 something you did at the 16th in the JOC? 5 [09:55] MAJOR-GENERAL MPEMBE: No, Chairperson, I 6 said in the Commission I did explain that. 7 MR CHASKALSON SC: Well, let's test this 8 proposition. Let's go to JJJ50, which is a presentation 9 that Colonel Scott drew up on the night of the 16th when 10 everything was still very fresh in his mind. JJJ50, and if 11 we go to slide 9 to begin with, can we go through to slide 12 9? And there you'll see what Colonel Scott describes as 13 the operational overview for the operation. Now that's a 14 diagram of the original encirclement plan. Colonel Scott 15 has explained that; that's what he used to explain the 16 original encirclement plan. If we zoom in a little bit we 17 can see all of the features of the original encirclement 18 plan. Can we just zoom in to the icons up in the top left 19 of this diagram? We've got difficulty zooming in, but if 20 you look at – you have a copy of that diagram yourself, I 21 understand. You'll see that there is a barbed wire cordon 22 around the koppie. One half of it is orange, which 23 represents the one team of Nyalas. One half of it is blue, 24 which represents the other team of Nyalas that would roll 25 out the barbed wire, and then there is a pink area to the</p>

<p style="text-align: right;">Page 16735</p> <p>1 south, a pink shape to the south-west of the koppie, which 2 was going to be the processing zone where people who had 3 been encircled would be allowed to come out one by one and 4 be processed by the detectives. If we – 5 MAJOR-GENERAL MPEMBE: I'm sorry, 6 Chairperson, maybe if – I'm just requesting that if 7 Advocate can just maybe show me with a pointer so that I 8 should be able to follow what Colonel Scott said to the 9 Commission through this. 10 MR CHASKALSON SC: Major-General, I'm 11 identifying the orange – here is the koppie, and there is a 12 blue and orange circle around the koppie that represents 13 the barbed wire cordon. The one half of the circle is in 14 orange, which would be barbed wire taken out by one team of 15 Nyalas. The other half of the circle on the western side 16 is in blue, which would be barbed wire taken out by another 17 team of Nyalas. There is this pink shape to the south-west 18 of the koppie and that according to Colonel Scott was to be 19 a processing zone where detectives would process the 20 strikers as they were allowed out of a gap in the barbed 21 wire that would be open to lead them into the processing 22 zone for arrest. 23 CHAIRPERSON: Do you see that? 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p>	<p style="text-align: right;">Page 16737</p> <p>1 MR CHASKALSON SC: Indeed, Chairperson. 2 It was only on the 16th that the JOCCOM had approved a 3 change to disperse and disarm from the original 4 encirclement plan. Can you comment on that? 5 MAJOR-GENERAL MPEMBE: Chairperson, as 6 I've been seeing Advocate explaining to me, surely in terms 7 of what I said why we abandoned the plans, as Chairperson 8 said, I mustn't dwell too much on what I said before, we 9 could be seeing an extra Nyalas there with an extra barbed 10 wire, so that, if he said that it was still not abandoned 11 then we should be seeing extra Nyalas with the extra barbed 12 wire because the pre-position of the barbed wire, it is 13 already been explained to the Commission. So he should 14 have gone also in details in terms why the barbed wire was 15 not there as well as the Nyalas that could have unfolded, 16 or uncoiled the other barbed wire which I stated that we 17 abandoned it. There are so many reasons that I mentioned, 18 but one of them, it was that we do not have the enough 19 barbed wire. 20 MR CHASKALSON SC: Do you know how much 21 enough was? 22 MAJOR-GENERAL MPEMBE: Chairperson, by 23 that time I said to me as he indicated to the koppie, 24 because we were not even targeting one koppie, we were 25 targeting the whole koppie and the other koppie. We needed</p>
<p style="text-align: right;">Page 16736</p> <p>1 CHAIRPERSON: You see there's, it looks 2 like two blue vehicles – now it's being zoomed in – two 3 blue vehicles you see to the south-west of the koppie, and 4 then it looks like almost an arrow, a pink arrow from those 5 two vehicles towards the koppie. You see that? 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. 8 MR CHASKALSON SC: Now this slide is 9 placed under the heading "Operational overview" that 10 Colonel Scott prepared on the night of the 16th. So this 11 was describing what Colonel Scott said was the operational 12 overview, and he explained to us that why it was still on 13 his presentation on the 16th is that he had not changed that 14 presentation from when he presented it in the morning and 15 it was only in the morning that the plan changed from 16 encirclement to disperse and disarm. That was the tenor of 17 his evidence. 18 CHAIRPERSON: I think it would be fair to 19 say the plan changed insofar as it was approved by the JOC, 20 the JOCCOM – 21 MR CHASKALSON SC: Indeed, the first – 22 CHAIRPERSON: There were variations in 23 his evidence about other aspects, but what seemed to be 24 constant to the two versions was that the plan changed as 25 far as it was approved by the JOCCOM on the Thursday.</p>	<p style="text-align: right;">Page 16738</p> <p>1 one point, it's one kilometre, could be 1.5 kilometre that 2 we needed, and when we abandoned that, and that was not 3 there at the time. 4 MR CHASKALSON SC: You see, Colonel 5 Scott's evidence was that you could surround the koppie 6 with eight Nyalas; eight Nyalas and barbed wire was 7 sufficient to surround the koppie, although you would have 8 to go quite close to the koppie, so it would only be 9 suitable for an early morning deployment. That was his 10 evidence, and the minutes of the Wednesday show that there 11 were eight barbed wire Nyalas available. Do you have any 12 comment on that? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. On the encirclement of the koppie there were 15 times where there were 50 people that were being found 16 there. That is the number that we were speaking about and 17 I also go in detail that that small number, why it was not 18 – I don't know whether Colonel Scott was referring to that 19 number, but with regard to this one, it was the question of 20 we do not even want to antagonise the people. The barbed 21 wire should not even come closer. It must go as far as 22 possible from these people to encircle the whole koppie, 23 and that it was not the question of say we can use Nyalas. 24 It was very clear that we have to use the barbed wire, and 25 at that time we did not have sufficient barbed wire.</p>

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1 MR CHASKALSON SC: Well, Major-General,
 2 the evidence of Colonel Scott was that the encirclement
 3 plan had always been contemplated as a plan for
 4 implementation early in the morning when there were not
 5 many people on the koppie, and that it was never intended
 6 to encircle 3 000 people with barbed wire. Do you agree
 7 with that?
 8 MAJOR-GENERAL MPEMBE: There was a time
 9 when we were speaking about encirclement, and this is the
 10 one that I've already explained now, when it was 50 people,
 11 and I think in my evidence I said it like that, that there
 12 was a time when there were 50 people at the koppie, but not
 13 on Thursday.
 14 MR CHASKALSON SC: Well, not on Thursday
 15 after say 8 o'clock in the morning.
 16 MAJOR-GENERAL MPEMBE: Chairperson, we
 17 said that on Thursday we wanted to give Mr Mathunjwa a
 18 chance, so there was no time that we could speak about
 19 encircling the koppie when we knew that Mr Mathunjwa was
 20 still going to address the protesters at 9 o'clock.
 21 CHAIRPERSON: I think I would like to
 22 take the comfort break at this stage. We'll resume in
 23 about 10 minutes.
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]
 25 [10:16] CHAIRPERSON: The Commission resumes. You're

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1 still under oath, Major-General.
 2 MAJOR-GENERAL MPEMBE: Thanks,
 3 Chairperson.
 4 MAJOR-GENERAL MPEMBE: s.u.o.
 5 CHAIRPERSON: Mr Chaskalson?
 6 MR MATHEBEDI SC: Sorry, Mr Chairman, I
 7 just would like to put something on record.
 8 CHAIRPERSON: Of course.
 9 MR MATHEBEDI SC: With regard to the
 10 statement of Brigadier Van Zyl, Brigadier Van Zyl is not on
 11 the list of witnesses to be called by SAPS. It is on that
 12 basis that that statement was not made available to the
 13 Commission.
 14 CHAIRPERSON: I understand.
 15 MR MATHEBEDI SC: That's the first thing.
 16 Secondly, there was a request from the evidence leaders
 17 regarding the statement of Claassen and Madoda which were
 18 made available but in as far as Brigadier Van Zyl's
 19 statement is concerned, such a request was never made
 20 available to us hence that statement was not, you know,
 21 made available to the Commission.
 22 CHAIRPERSON: Yes.
 23 MR MATHEBEDI SC: It is not a situation
 24 wherein, you know, we are holding onto statements or we do
 25 not want to make them available, Mr Chairman.

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1 CHAIRPERSON: No, thank you for clarifying that.
 2 So what I said that was of a critical nature was
 3 unjustified and I withdraw it but it may not be necessary
 4 for Brigadier Van Zyl to come and give oral evidence here
 5 but I think in view of the matters that have been covered
 6 it would be helpful if we got an affidavit from him and it
 7 may well be that the affidavit on its mere production would
 8 be enough to assist us, but insofar as I said something
 9 critical of the Police Service in relation to the non-
 10 availability or non-provision of a statement by him, I
 11 withdraw what I said.
 12 MR MATHEBEDI SC: Thanks, Mr Chairman.
 13 CHAIRPERSON: And it must be clear that anything I
 14 said of a critical nature is no longer operative.
 15 MR MATHEBEDI SC: Thank you, Mr Chairman,
 16 we appreciate that. We will have a discussion with our
 17 colleagues to take this matter forward.
 18 CHAIRPERSON: Thank you.
 19 MR MPOFU: Chairperson, I'm sorry, I
 20 think I might as well speak now or forever remain silent on
 21 this issue. Do I understand that intervention to mean that
 22 SAPS views its duty as only giving us statements of those
 23 people that they intend to call or all the information
 24 which might assist the Commission? I'm not quite sure.
 25 CHAIRPERSON: Look, let's not waste time on it

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1 now. I suggest you, you've raised the question –
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: And I'm sure your learned friends
 4 will come back to you –
 5 MR MPOFU: Can come back –
 6 CHAIRPERSON: And if it's a matter of general
 7 import it can be shared before the Commission. Let's not –
 8 MR MPOFU: Ja.
 9 CHAIRPERSON: It can't be the issue, you see,
 10 because we've got lots of statements from other people who
 11 I don't think are on the list of witnesses to be called.
 12 MR MPOFU: Yes. That's why I'm –
 13 CHAIRPERSON: That's a matter that you and your
 14 learned friend can sort out. I'm sure it will be able to
 15 be done fairly easily but thank you for raising the point.
 16 Mr Chaskalson?
 17 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 18 Major-General, if we can now move on to exhibit JJJ43 and
 19 if we can call up JJJ43, it's a presentation that Colonel
 20 Scott saved on the 19th of August and if we go to slide 7,
 21 we start off on slide 7, you see the same operational
 22 overview with the encirclement plan. Go to slide 8. It
 23 says "Coordinating instructions for the 16th of August".
 24 It's the slide straight after, we've seen the encirclement
 25 plan and phase 3 deployment is described as encirclement.

<p style="text-align: right;">Page 16743</p> <p>1 Presumably if it was going to be something different from 2 what we've seen in the previous slide that would have been 3 pointed out to us by Colonel Scott. Then if we go to slide 4 12, slide 12, it's made absolutely clear, phase 3 5 deployment encirclement and there's a close-up of that 6 diagram. And then the key slide comes, slide 13 which says 7 the plan was revised at 14H00 on 16 August 2012. "Protect 8 SAPS and the media by deploying the barbed wire between the 9 protesters and the SAPS safe area. Proceed with the 10 dispersion action in accordance with the force continuum." 11 So what this presentation tells us is on the 19th of August 12 Colonel Scott remembered that the plan had been 13 encirclement up to the 16th and had only been revised at 14 14H00 on the 16th of August. Do you have any comment on 15 that?</p> <p>16 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 17 I do not remember the meeting that took place at 14H00. 18 The only one that I know is the one of 13:30 and on 13:30 19 we were still, we were talking about the dispersing. 20 MR CHASKALSON SC: Yes, I think 14H00 21 would possibly refer to the point at which, the point in 22 that 13:30 meeting at which the dispersal operation as put 23 forward by Colonel Scott was agreed by everyone. Any 24 response to that? 25 MAJOR-GENERAL MPEMBE: Chairperson, what</p>	<p style="text-align: right;">Page 16745</p> <p>1 koppie. 2 MR CHASKALSON SC: Yes, Major-General, 3 but you had only deployed for phase 2 with an instruction 4 according to the notes in the JOCCOM of the 16th of August 5 that everybody would be recalled to forward holding area 1 6 for further instructions if we were to move to a further 7 phase. So the deployment that you're describing is for 8 phase 2, which was a show of force and a prepositioning. 9 It wasn't for phase 3, in which case the Nyala deployment 10 would have been slightly different. 11 MAJOR-GENERAL MPEMBE: Chair, phase 2 12 should follow phase 3. There is no way that we could get a 13 barbed wire somewhere as quick as possible because even the 14 reasoning to put Nyalas in phase 2 for the preparation of 15 phase 3, it could have been there in the phase – this is 16 what I'm saying - if it was not abandoned. 17 COMMISSIONER HEMRAJ: You mean phase 3 18 would follow phase 2? You said phase 2 would follow phase 19 3. You actually meant phase 3 would follow upon 2. 20 MAJOR-GENERAL MPEMBE: Chairperson, I 21 don't know whether I understand Commissioner Hemraj well 22 but what I'm saying is that the prepositioning was already 23 preparing when we go to phase 3, let's say to the 24 dispersing. So we should have put the extra Nyalas, extra 25 personnel, extra barbed wire together with the other six</p>
<p style="text-align: right;">Page 16744</p> <p>1 I'm saying is that at 13:30 we were speaking about 2 dispersing. So I did not know about any other revising it 3 there, but at 13:30 we were already speaking about 4 dispersing and as I'm saying earlier on, Chairperson, is 5 that the encirclement of the koppie, it has been always 6 through the barbed wire. It was the first time that I hear 7 that there was also a suggestion of encircling the koppie 8 with Nyalas. I've never been party to that meeting. 9 MR CHASKALSON SC: No, Major-General. I 10 think you misunderstood what I was saying. The 11 encirclement was going to be with barbed wire but to take 12 the barbed wire out you need a Nyala to pull a barbed wire 13 trailer and so there were going to be, the plan was that 14 there were going to be two teams of Nyalas pulling out 15 barbed wire, one from the bottom of the koppie, one from 16 the top of the koppie to make a circle. Do you recall 17 that? 18 MAJOR-GENERAL MPEMBE: Hence I said it 19 was the first time to encircle the koppie but still what I 20 was saying is that there could have been extra Nyalas there 21 that could have uncoiled the other extra barbed wire, if 22 that could still be – if the abandonment was not there and 23 that is what I was saying, that there should have been 24 extra Nyalas, the second team, because even there we only 25 had one team which was not going to encircle the whole</p>	<p style="text-align: right;">Page 16746</p> <p>1 trailers at phase 2 so that when the time comes then we 2 couldn't put it, hide it somewhere and we bring it quickly 3 and that could not have been possible if the idea was not 4 abandoned. 5 MR CHASKALSON SC: Bear with me for a 6 moment, Major-General, I'm just looking for a passage in 7 the notes of the 6AM JOCCOM. 8 COMMISSIONER HEMRAJ: Can I ask you in 9 the interim, General, the idea of the dispersal and the 10 disarming and the arrest, when according to you and in what 11 circumstances was that first discussed? Was it discussed 12 at a meeting that was minuted, was it discussed in an 13 informal meeting, can you remember? 14 MAJOR-GENERAL MPEMBE: I said it is 15 either on the 14th or on the 15th but there were two 16 occasions where we discussed that and as I said, firstly it 17 was to encircle the 50 people, which we couldn't for the 18 reasons that I have given. I also spoke about the 19 filtering line and then we also spoke about encircling the 20 koppie and the other koppie and then putting it in such a 21 manner that it does not agitate them and that's where then 22 we have a shortage of the barbed wire. Nobody came to me 23 and said now the barbed wire was now available at that 24 time. That's why I'm saying it's between the 14th and the 25 15th of August last year, not on the 16th.</p>

<p style="text-align: right;">Page 16747</p> <p>1 COMMISSIONER HEMRAJ: And that's when you 2 say this new concept was discussed of the dispersing, 3 disarming and arresting. 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson, it was discussed because we did not have 6 enough barbed wire. 7 COMMISSIONER HEMRAJ: Do you remember the 8 circumstances of that discussion? Was it during a JOCCOM 9 meeting, was it a separate meeting somewhere else between a 10 couple of you that was not minuted? 11 MAJOR-GENERAL MPEMBE: It was in the 12 JOCCOM meeting. It was, however, discussed twice. It was 13 discussed where I chaired the meeting, it was also 14 discussed when Major-General Annandale came back from – 15 because he left us on Monday, it was also discussed when he 16 came back from head office. I remember vividly clear and 17 it was made clear that because we don't have the extra 18 barbed wire we are not going to encircle the whole koppies. 19 CHAIRPERSON: You know that Brigadier Calitz – 20 sorry, let me phrase the question in a more neutral 21 fashion. Do you know whether Brigadier Calitz asked Lonmin 22 if they could provide more barbed wire because there was a 23 shortage of barbed wire? 24 MAJOR-GENERAL MPEMBE: No, Chairperson, I 25 didn't know.</p>	<p style="text-align: right;">Page 16749</p> <p>1 by Saturday morning there was enough barbed wire to 2 encircle not just koppies 1 and 2 but also koppie 3 and in 3 fact to have barbed wire left over to create little 4 channels so that there would be channels for people to move 5 through between the two koppies. Do you have any comment 6 on that? 7 MAJOR-GENERAL MPEMBE: No, Chairperson, 8 because I have no knowledge of that because I was not a 9 party to that planning. I attended a funeral in Mpumalanga 10 of one of the members who died on Monday. 11 MR CHASKALSON SC: And you have no 12 knowledge about when all of this barbed wire became 13 available to SAPS? 14 MAJOR-GENERAL MPEMBE: As I said in 15 answering the Chairperson, I became aware when I was asked 16 by the Chairperson of this Commission. 17 MR CHASKALSON SC: Well, it's not just 18 JJJ43 that has this suggestion that the dispersal plan was 19 only formally adopted at around 2 o'clock at the JOCCOM 20 meeting that started at 1:30. It's also JJJ41 and JJJ41 21 has the identical slides that we've just seen but JJJ41 has 22 a file name that is called "President Zuma.pptx" and it was 23 saved on the 21st of August and it appears to be a 24 presentation that Colonel Scott prepared in anticipation of 25 the visit by President Zuma to Marikana on the 22nd of</p>
<p style="text-align: right;">Page 16748</p> <p>1 CHAIRPERSON: I see. And if he had asked them and 2 they'd said yes, we've got barbed wire which we can 3 provide, would you have any comment to make about that? 4 MAJOR-GENERAL MPEMBE: Chairperson, if it 5 was brought to my attention that the barbed wire was 6 available, that could have been a discussion further in 7 terms of encirclement but the issue of the barbed wire to 8 me, it was never being mentioned. The first time when I 9 heard the barbed wire, I was shocked when I heard it from 10 the Chairperson. 11 MR CHASKALSON SC: Major-General, are you 12 aware of the visit of Julius Malema to Marikana on the 13 Saturday, Saturday the 18th? 14 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 15 MR CHASKALSON SC: Are you aware of what 16 the SAPS plan to deal with that visit was? 17 MAJOR-GENERAL MPEMBE: No, Chairperson, I 18 was not there. I attended a funeral on that day. I was 19 not party to that planning and so on. 20 MR CHASKALSON SC: Well, we know from a 21 video of Brigadier Calitz's briefing to the SAPS troops at 22 the parade on Saturday that what the plan was, was to 23 encircle koppies 1 and koppie 2 with barbed wire and then 24 to take another set of Nyalas with barbed wire and encircle 25 the whole of koppie 3 as well and so on Saturday morning or</p>	<p style="text-align: right;">Page 16750</p> <p>1 August. Are you aware of that visit? 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 3 I'm aware of the visit. 4 MR CHASKALSON SC: Did you play any role 5 in deciding what was or wasn't going to be shown to 6 President Zuma at that visit? 7 MAJOR-GENERAL MPEMBE: Chairperson, I 8 could say I was, as far as what happened on Monday is 9 concerned because that, I also personally presented it to 10 the President, only the video that has already been shown – 11 MR CHASKALSON SC: And in relation to the 12 16th? 13 MAJOR-GENERAL MPEMBE: Nothing, 14 Chairperson. 15 MR CHASKALSON SC: But was the, were you 16 present during a presentation by Colonel Scott to the State 17 President in relation to what happened on the 16th? 18 CHAIRPERSON: Not the State President. The last 19 State President was President De Klerk. President Zuma, 20 like President Mandela and the others since '94, is simply 21 the President. 22 MR CHASKALSON SC: To the head of the 23 National Executive and the Head of State on the 22nd, which 24 would have been the Monday. 25 MAJOR-GENERAL MPEMBE: Chairperson, it</p>

<p style="text-align: right;">Page 16751</p> <p>1 happened in – I just want to explain it to the Commission 2 in this way, that there was a laptop that was placed in 3 front of the President and Colonel Scott sat next to the 4 President and he was presenting it from there. It was not 5 presented in big slides like these and I also did the same 6 because I followed first, then thereafter you would go and 7 stand on the other side and that's what happened on that 8 day.</p> <p>9 MR CHASKALSON SC: So you didn't see what 10 Colonel Scott would have shown the President?</p> <p>11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>12 CHAIRPERSON: I take it he also spoke to the 13 President when he – it wasn't a silent show that he 14 presented to the President just on slides, I presume he 15 talked the President through the slides, would that be 16 right?</p> <p>17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson.</p> <p>19 CHAIRPERSON: Did you hear what he said?</p> <p>20 MAJOR-GENERAL MPEMBE: I heard when he 21 said, Chairperson.</p> <p>22 MR CHASKALSON SC: And if we look at 23 these slides again that we'll find – in fact let's go to 24 JJJ41 because that is the printout of the presentation 25 called "President Zuma.pptx" JJJ41 and if we go down to</p>	<p style="text-align: right;">Page 16753</p> <p>1 MR CHASKALSON SC: No, about the revision 2 of the plan at 14H00 on 16 August 2012.</p> <p>3 MAJOR-GENERAL MPEMBE: No, Chairperson, I 4 didn't hear him speaking about a revised plan.</p> <p>5 CHAIRPERSON: May I ask you this then, as far as 6 you were concerned was there no revision at 2 o'clock on 7 the Thursday?</p> <p>8 MAJOR-GENERAL MPEMBE: Correct, Chair. 9 CHAIRPERSON: The plan that was explained in the 10 morning at 6 o'clock and the plan that was again the 11 subject of the briefing at 2 o'clock in the afternoon, that 12 wasn't revised, it was a plan that had been in existence 13 for some time, from previous days. Is that what you are 14 saying?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson. I just want to say at 13:30.</p> <p>17 CHAIRPERSON: Yes, well – ja. The meeting started 18 at 13:30. According to the evidence and if it's not 19 correct you must tell me but according to the evidence 20 Colonel Scott started speaking effectively at 2 o'clock, 21 explaining, giving the explanation to the JOCCOM as to how 22 the plan would be implemented. I think that's his 23 evidence, so that's where the 2 o'clock comes from. That's 24 what he says, you see, but let's not get entangled in that 25 particular barbed wire, let's concentrate on the point I'm</p>
<p style="text-align: right;">Page 16752</p> <p>1 page 13, there we see the same operational overview slide. 2 Did you hear Colonel Scott saying anything to the President 3 about what the operation was, describing an overview of the 4 operation as originally conceived?</p> <p>5 MAJOR-GENERAL MPEMBE: Yes, I heard, 6 Chairperson.</p> <p>7 [10:36] MR CHASKALSON SC: And what did you hear? 8 MAJOR-GENERAL MPEMBE: Chairperson, as 9 far as that is concerned, I heard about a dispersing, 10 dispersal, not about encirclement.</p> <p>11 MR CHASKALSON SC: So you're suggesting 12 that Colonel Scott spoke to the President about a dispersal 13 operation in the context of a slide that describes 14 something very different.</p> <p>15 MAJOR-GENERAL MPEMBE: He said to the 16 President in the sense of what happened on that day, so 17 whether he was using this slide I don't know but what he 18 was telling the President, that it was what has happened on 19 that day when a dispersing was taking place.</p> <p>20 MR CHASKALSON SC: Let's go down to page 21 19, the slide saying "Plan revised 14h00 on 16 August 22 2012." Did you hear Colonel Scott saying anything like 23 that to the President?</p> <p>24 MAJOR-GENERAL MPEMBE: About the 25 placement of the barbed wire?</p>	<p style="text-align: right;">Page 16754</p> <p>1 asking you and that is the plan that was discussed in the 2 morning at the 6 o'clock meeting and the plan that was 3 discussed in the afternoon at the meeting which commenced 4 at 1:30, that was the plan that had been in existence from 5 the Tuesday or the Wednesday – the Tuesday or the 6 Wednesday, which of the two?</p> <p>7 MAJOR-GENERAL MPEMBE: Chairperson, as 8 I'm saying it's over those two days.</p> <p>9 CHAIRPERSON: I see.</p> <p>10 MAJOR-GENERAL MPEMBE: As I've said 11 already, yes.</p> <p>12 CHAIRPERSON: So let's settle then for the 13 Wednesday. So it was a plan that was in existence on the 14 Wednesday.</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson.</p> <p>17 CHAIRPERSON: So to describe it as a revised plan 18 in relation to 2 o'clock on the Thursday afternoon would 19 not be accurate, am I correct in saying that?</p> <p>20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson, because it was already discounted then, the 22 barbed wire issue.</p> <p>23 MR CHASKALSON SC: Major-General, who 24 else was present on the 22nd when there was this 25 presentation to the President?</p>

<p style="text-align: right;">Page 16755</p> <p>1 MAJOR-GENERAL MPEMBE: I don't remember 2 who was because myself and Colonel Scott I know precisely 3 because we were going to talk. Maybe others they could 4 remember but I remember myself, I was going to talk of what 5 happened on Monday and I remember Colonel Scott. I don't 6 remember where others, whether General Naidoo was there or 7 General Annandale, I don't really remember. 8 MR CHASKALSON SC: Well, let's go to some 9 more contemporaneous documents. Can we go to JJJ114? 10 That's the operational diary of Captain Prinsloo. 11 CHAIRPERSON: Remind us who Captain Prinsloo was? 12 MR CHASKALSON SC: She was the commander 13 of Nyala 2, barbed wire Nyala 2 and – 14 CHAIRPERSON: She's a POP member, is she? 15 MR CHASKALSON SC: Indeed. 16 CHAIRPERSON: From Springs. 17 MR CHASKALSON SC: Indeed. And she 18 records what her, under item 12 of this, if we just go down 19 a little bit – "Specific instructions of operational 20 duties. To deploy wire on command of Lieutenant-Colonel 21 Mthimkulu to encircle protesters for purpose to disarm 22 protesters from dangerous weapons." 23 CHAIRPERSON: [Microphone off, inaudible] – time 24 of that notice? 25 MR CHASKALSON SC: If we go further up</p>	<p style="text-align: right;">Page 16757</p> <p>1 Chairperson, but she records in the morning as the 2 instructions on the operations to be, "To deploy barbed 3 wire on the command of Lieutenant-Colonel Mthimkulu to 4 encircle protesters for purpose of disarming, to disarm 5 protesters from dangerous weapons." Any comment on that? 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. As I've already said that the encircling of 8 the whole koppie was abandoned prior then. 9 CHAIRPERSON: She doesn't appear to have been told 10 that, you see, that's the thrust of the question that's 11 being put to you and the point stressed is that this is a 12 contemporaneous document, it is not a document that 13 emanated from Roots so thereafter. So when facts were 14 fresh in people's memories at the time, making notes, this 15 is what she wrote down. That's what you are being asked to 16 explain if you can. 17 COMMISSIONER HEMRAJ: Is there a 18 statement from Colonel Mthimkulu, Mr Chaskalson, or have I 19 missed it? 20 MR CHASKALSON SC: I'm not aware of a 21 statement from Lieutenant-Colonel Mthimkulu. I'm not 22 saying there isn't one, there may well be one. 23 COMMISSIONER HEMRAJ: Mr Mathibedi, is 24 there a statement from the Colonel? 25 MR MATHIBEDI SC: We're trying to look</p>
<p style="text-align: right;">Page 16756</p> <p>1 it's certainly, it's timed from 05:45 to, I think that's 2 13:30. 3 CHAIRPERSON: It looks like 13:30. 4 MR CHASKALSON SC: So it reflects what we 5 understand to be what her instructions were prior to the, 6 well, flowing from the JOCCOM meeting in the morning, the 6 7 o'clock JOCCOM. 8 CHAIRPERSON: Yes, prior to the 1:30 meeting. 9 MR CHASKALSON SC: Prior to the 1:30 10 meeting. 11 CHAIRPERSON: Subsequent to the note by her as to 12 the instructions, do you see her thereafter? 13 MR CHASKALSON SC: No, we don't see her, 14 a subsequent note. 15 CHAIRPERSON: Is she one of the people who would 16 have been standing by the Vito looking at Colonel Scott's 17 laptop? 18 MR CHASKALSON SC: No, not as far as we 19 know because I think it would have, I think she would then 20 have taken instructions from Lieutenant-Colonel Mthimkulu 21 who – 22 CHAIRPERSON: So he would have been one of the 23 commanders standing at the Vito looking at, into the Vito 24 at Lieutenant-Colonel Scott's laptop. 25 MR CHASKALSON SC: That's correct,</p>	<p style="text-align: right;">Page 16758</p> <p>1 that up at the moment. 2 COMMISSIONER HEMRAJ: Thank you. 3 MR MATHIBEDI SC: We'll come back to you. 4 CHAIRPERSON: When you find out you will let us 5 know. 6 MR MATHIBEDI SC: Thanks, Mr Chairman. 7 COMMISSIONER HEMRAJ: Because perhaps he 8 could tell us why he gave the Captain this instruction, 9 then that might assist as well. 10 MR CHASKALSON SC: But maybe if we can 11 move to another POPS commander, Colonel Makhubela, and if 12 I remember correctly when you testified on Friday you 13 suggested that Colonel Makhubela was one of the POPS 14 commanders who was involved in the design of the plan, do 15 you recall that, Major-General? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 MR CHASKALSON SC: And Colonel Makhubela 19 was also in charge of all of the barbed wire Nyalas, is 20 that correct? 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 22 MR CHASKALSON SC: His exhibit, his 23 statement is, his original statement is exhibit GGG9 and 24 that comes from a handwritten affidavit to which he deposed 25 on the 19th of August, three days after the tragedy. It's a</p>

<p style="text-align: right;">Page 16759</p> <p>1 typed copy of the handwritten affidavit and if we go down 2 to paragraph 2 where he describes what his role was, what 3 his task was, "During the said op my task was to surround 4 the said employers" – it should be employees – "with barbed 5 wire at the place they had gathered at a small hill near 6 Wonderkop village." So he describes, three days after the 7 event, that his task was to surround the employees with 8 barbed wire at the place they had gathered at a small hill 9 near Wonderkop village and if we go down to paragraph 6 he 10 describes another feature of the original encirclement 11 plan. "I also state that the aim to use barbed wire was to 12 can manage to control the said employees to be searched, as 13 only one entrance or exit was to be made for the weapons 14 they were having." And you recall that pink shape at the 15 south-west at the koppie which was going to be the 16 processing zone, that paragraph 6 seems to tie in with the 17 processing zone to the south-west of the koppie. Now if 18 Colonel Makhubela had been part of the design of a plan to 19 disperse and disarm protesters, how could he have got it so 20 wrong in an affidavit he signed three days after the event, 21 that he said his job was to encircle the protesters at the 22 koppie with barbed wire? 23 MAJOR-GENERAL MPEMBE: I don't know, 24 Chairperson, but what I said before is that the abandonment 25 was done before and in paragraph 6 he is speaking about the</p>	<p style="text-align: right;">Page 16761</p> <p>1 Chairperson. 2 CHAIRPERSON: That's really what Mr Chaskalson is 3 putting to you, I think, but you say that was abandoned and 4 – 5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson. 7 CHAIRPERSON: - the impression I get is you're not 8 quite sure whether it was on the Tuesday or the Wednesday 9 but certainly if it wasn't on the Tuesday it was the 10 Wednesday, that's what you told us. Am I right? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. 13 CHAIRPERSON: So by the time you spoke to the 14 trade union presidents on the Wednesday evening you knew 15 already, according to what you now tell us, what you tell 16 us, that the original plan had been abandoned. 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 CHAIRPERSON: And the disperse and disarm plan was 20 the one that was going to be implemented. 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 22 CHAIRPERSON: Ja, okay. 23 MR CHASKALSON SC: Did Colonel Makhubela 24 play a role in the design of the original plan? 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>
<p style="text-align: right;">Page 16760</p> <p>1 filtering line which was also discussed but not for the 2 16th. 3 MR CHASKALSON SC: Sorry, Major-General, 4 how does paragraph 6 relate to a filtering line? Where, in 5 terms of a filtering line, was only one entrance or exit to 6 be made for the weapons that the protesters were having? 7 MAJOR-GENERAL MPEMBE: Once he speaks 8 about one entrance or exit, so it's a channelling of the 9 protesters to one place where you will be able to – that's 10 the filtering line that I'm talking about. 11 MR CHASKALSON SC: But where in terms of 12 the ultimate disperse and disarm plan – 13 CHAIRPERSON: I understood you to say that that 14 wasn't part of what – am I right? The plan as it existed 15 on Thursday, the plan which was going to be implemented but 16 for what happened before that when there was the 17 disruption, that plan didn't include controlling the 18 entrance by strikers to a particular area, is that correct? 19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson. 21 CHAIRPERSON: So what you were saying is, if I 22 understand you correctly, is paragraph 6 isn't correct 23 insofar as the plan that was to be implemented on the 24 Thursday was concerned. That was part of the old plan. 25 MAJOR-GENERAL MPEMBE: Correct,</p>	<p style="text-align: right;">Page 16762</p> <p>1 MR CHASKALSON SC: Did he play any role 2 in the design of the revised plan? 3 MAJOR-GENERAL MPEMBE: I don't know 4 whether he was called at 14:30 but what I do know is that 5 the original plan, he was taking part and even when it was 6 abandoned, the issues of filtering line and the 7 encirclement of the whole koppie. 8 MR CHASKALSON SC: Sorry, you say – there 9 were several things that you said there. You didn't know 10 if he was called at 14:30. That would have been to the 11 briefing of the commanders at forward holding area 1 on the 12 16th. 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 14 MR CHASKALSON SC: Let's just put that to 15 one side for the meantime, but then you spoke also about 16 the abandonment of the barbed wire and the filtering line. 17 Do you know if he had anything to do with that? 18 MAJOR-GENERAL MPEMBE: Chairperson, I 19 already said that he was present when the previous plan was 20 discussed and when it was revised. 21 MR CHASKALSON SC: And did he make any 22 contributions in that regard? 23 MAJOR-GENERAL MPEMBE: Chairperson, 24 people were making contributions. I also said that 25 different people were making contributions but they were</p>

<p style="text-align: right;">Page 16763</p> <p>1 not recorded as it was this one and this one, but I do 2 remember the contributions that were made by the different 3 POP members. 4 MR CHASKALSON SC: Can you try to 5 remember which POP members played any role in the decision 6 to move away from the encirclement plan with barbed wire to 7 the disperse and disarm plan? 8 MAJOR-GENERAL MPEMBE: Chairperson, is 9 said those that were forming the JOCCOM. That will be 10 Brigadier Calitz, Brigadier Makhubela, it's Lieutenant- 11 Colonel Mere, there is quite a number of them that they 12 were forming part of the JOCCOM. 13 MR CHASKALSON SC: And can you remember 14 any specific contributions to this change in the tactical 15 plan that came from POPS commanders? 16 MAJOR-GENERAL MPEMBE: Chairperson, 17 already they mentioned reasons, they were coming, they were 18 as a result of that meeting but what I said and what I say 19 now is that I do not remember that who said it because that 20 was not recorded as such and the issue of the barbed wire 21 was a problem in terms of encircling the whole koppie. 22 MR CHASKALSON SC: You say that meeting, 23 is that a formal JOCCOM meeting? 24 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 25 MR CHASKALSON SC: Would it be a briefing</p>	<p style="text-align: right;">Page 16765</p> <p>1 in the JOC after the Wednesday JOCCOM meeting in the 2 morning, at which Lieutenant-Colonel Scott was explaining 3 the encirclement plan to him. Are you saying that he's got 4 it wrong as well? 5 MAJOR-GENERAL MPEMBE: Probably I was not 6 in that meeting if it was Wednesday morning but what I do 7 know, in all the meetings that I attended the encirclement 8 plan, as a result of the shortage of the barbed wire, was 9 not discussed and if it was discussed it was discussed in 10 relation to say how many barbed wire did we need. I 11 remember even Colonel Scott was encircling the koppies, 12 indicating how much barbed wire that we shall need. So I 13 don't know in what context Brigadier Engelbrecht was 14 speaking about. 15 CHAIRPERSON: From what you say, Brigadier 16 Engelbrecht's recollection can't be right because you say 17 that the – certainly by the morning meeting of the JOCCOM 18 on Wednesday, if it wasn't earlier it was certainly then 19 that the encirclement plan was abandoned. That's your 20 evidence, isn't it? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 CHAIRPERSON: So if Brigadier Engelbrecht says 24 that after the morning meeting at the JOCCOM on the 25 Wednesday Colonel Scott explained to him the encirclement</p>
<p style="text-align: right;">Page 16764</p> <p>1 meeting or a debriefing meeting? 2 MAJOR-GENERAL MPEMBE: It was a JOCCOM 3 meeting that took place. As I said, the JOCCOM meeting 4 that took place on the 14th and also the JOCCOM meeting that 5 took place on the 15th and as I have said that it was 6 finalised when Major-General Annandale was also back from 7 head office. 8 MR CHASKALSON SC: But there's more than 9 one JOCCOM meeting that takes place on the 14th and the 10 15th. There are briefing meetings and debriefing meetings. 11 Do you recall what kind of a meeting this was? Was an 12 early morning briefing meeting, was it an end of the day 13 debriefing meeting? 14 MAJOR-GENERAL MPEMBE: The one that I'm 15 referring, the morning JOCCOM meetings. 16 MR CHASKALSON SC: So that, so the latest 17 it would have been then would be the Wednesday morning 18 JOCCOM meeting. 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 20 as from Wednesday then we know that with regard to the 21 barbed wire was abandoned as a result of the shortage. 22 MR CHASKALSON SC: You see, Major- 23 General, we have a statement from Brigadier Engelbrecht who 24 speaks of a lengthy discussion – or not, he doesn't speak 25 of a lengthy discussion in the JOC, speaks of a discussion</p>	<p style="text-align: right;">Page 16766</p> <p>1 plan – by encirclement plan I mean encircling the koppie 2 with wire and so on – then Brigadier Engelbrecht's 3 recollection must be incorrect, on what you tell us. That 4 must be right, isn't it? I mean Colonel, Lieutenant- 5 Colonel Scott wouldn't have explained at some length, I'm 6 not quite sure how long but wouldn't have explained for 7 some time to Brigadier Engelbrecht a plan which had now 8 been abandoned, would he have? 9 [10:56] MAJOR-GENERAL MPEMBE: That one I don't 10 know, Chairperson. Whether there were both or there were – 11 because even after the JOCCOM plan there were people having 12 their own discussions – 13 CHAIRPERSON: Yes, no, no, no, I 14 understand that, but what I'm saying to you is – I'm trying 15 to get clarity on this point, you see. If it's correct 16 that the encirclement plan had been abandoned either some 17 time on the Tuesday or at the morning JOCCOM meeting on the 18 Wednesday, it can't be, it doesn't make sense that Colonel 19 Scott would have discussed the encirclement plan in any way 20 with Brigadier Engelbrecht because it was no longer a plan 21 to be discussed. You agree with that? 22 MAJOR-GENERAL MPEMBE: I agree, 23 Chairperson. 24 CHAIRPERSON: So therefore it follows 25 that if you are correct in what you tell us, what Brigadier</p>

<p style="text-align: right;">Page 16767</p> <p>1 Engelbrecht says in his statement must be wrong. 2 MAJOR-GENERAL MPEMBE: It must be wrong 3 relating the morning meeting, Chairperson. 4 COMMISSIONER HEMRAJ: Could we perhaps 5 get Brigadier Engelbrecht's statement up on the screen? 6 Paragraph 7 – 7 MR CHASKALSON SC: JJJ167. 8 COMMISSIONER HEMRAJ: Thank you. Go to 9 paragraph 7. 10 CHAIRPERSON: There's a long paragraph 7 11 which commences on page 4 and goes on to page 5, and the 12 lower part of what is said on page 5 reads as follows, this 13 is a discussion that was had apparently, and there's a 14 mention of a dispersal on page 4, at the foot of page 4, 15 but near the foot of page 5 – let's look at the foot of 16 page 4 first, just look at that. The third sentence of 17 para 7 says in line 3 and following, "The discussed that 18 ensued at this JOC meeting concerned whether SAPS should 19 effect the disarming and dispersal of protesters who 20 gathered at the koppie that afternoon. Everyone present 21 was asked to give input." Then on the next page near the 22 foot of page 5 in the same paragraph we have, "As explained 23 by Lieutenant-Colonel Scott," eight lines from the foot of 24 the page, "As explained by Lieutenant-Colonel Scott the 25 operation would include trying to encircle the protesters</p>	<p style="text-align: right;">Page 16769</p> <p>1 he did so by way of a PowerPoint presentation," and then 2 follows the passage I read with the explanation as to how 3 the disarming and dispersal would happen, was that the 4 operation would include trying to encircle the protesters 5 at the koppie with barbed wire, making an opening in the 6 cordoned-off area and processing the protesters through the 7 opening. So it does look, does it not, as if the 8 expression "disarming and dispersal" which he uses, if read 9 in the light of the sentence I've just read, that phrase 10 "disarming and dispersal" as used by Brigadier Engelbrecht 11 means disarming and dispersing where there has been an 12 encirclement with barbed wire, an opening in the cordoned- 13 off area, and the processing of the strikers. Anyway, I've 14 read the passage to you at some length in fairness to you 15 so that you can understand the full thrust of it and not 16 just a couple of sentences taken out of context. 17 So the point is it does look as if Brigadier 18 Engelbrecht understood the dispersal and disarming 19 discussion, or rather disarming and dispersal – that's the 20 order he uses – disarming and dispersal discussion that 21 took place on the Wednesday morning involved an 22 encirclement of the strikers at the koppie, the making of 23 an opening in the cordoned-off area, and the processing of 24 the strikers through the opening. Now from what you've 25 told us that doesn't coincide with your recollection.</p>
<p style="text-align: right;">Page 16768</p> <p>1 at the koppie with barbed wire, making an opening in the 2 cordoned-off area and then processing the protesters 3 through the opening." That's the passage there, you see. 4 So according to Brigadier Engelbrecht at that meeting, the 5 Wednesday meeting in the morning of the JOCCOM where you 6 say the encirclement plan was abandoned, if it hadn't been 7 abandoned the previous day. According to Brigadier 8 Engelbrecht at that very meeting Lieutenant-Colonel Scott 9 gave this exposition, which I've read. 10 There is a passage a few lines up, a few lines 11 higher than the passage I read, which is the second line on 12 the screen at the moment. It reads as follows, "After I 13 gave my input" – now he's talking about what was said at 14 the meeting, what he'd said, that there should, I think, be 15 negotiation, I think that's what he said earlier. He says 16 here, "After I gave my input," and also said that they'd 17 never hand over their weapons, he then says, "After I gave 18 my input the meeting continued." That's the sentence, and 19 then it goes on, "At the end of the meeting the decision 20 was that the SAPS would not proceed with the disarming and 21 dispersal operation that afternoon." And then he continues 22 with the passage that I have read, where Colonel Scott – 23 I'll just read it again, just so we can all follow it, "I 24 recall during this meeting Lieutenant-Colonel Scott 25 explained how the disarming and dispersal would happen, and</p>	<p style="text-align: right;">Page 16770</p> <p>1 That's so, isn't it? 2 MAJOR-GENERAL MPEMBE: Chairperson, I did 3 say that it was finalised when General Annandale was 4 present, but I don't know whether it was on Tuesday or 5 Wednesday. 6 CHAIRPERSON: No, I understand that, but 7 whether it's Tuesday or Wednesday is neither here nor 8 there. Whenever it was, even if it was on Wednesday and 9 not Tuesday, if it's Tuesday the point is even stronger, 10 but if it's not on Tuesday, if it's only on Wednesday, it's 11 not consistent with what Brigadier Engelbrecht says. So if 12 you are right, Brigadier Engelbrecht is wrong. That's the 13 point. I know you said that already, but I'm approaching 14 it now on the basis of all the relevant passages in his 15 statement, which seem to bear that out. But am I 16 understanding it correctly? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. If we look at Brigadier Engelbrecht, he says 19 that the decision was that the SAPS would not proceed with 20 the disarming and dispersal operation in that afternoon. 21 Chairperson will recall that on Wednesday we were supposed 22 to disperse and disarm on Wednesday. Already he spoke 23 about that, but when he continue about with the 24 encirclement, he speaks another language, which of course 25 to me it doesn't tally with what he said in the previous</p>

<p style="text-align: right;">Page 16771</p> <p>1 paragraph.</p> <p>2 CHAIRPERSON: But anyway, maybe that's a</p> <p>3 matter for a argument, but I just want to put one final</p> <p>4 point to you so you can, if you've got a relevant comment,</p> <p>5 you can make it. He does say that, he describes the manner</p> <p>6 in which the disarming and dispersal he's talking about</p> <p>7 would happen. He used the word "how" and the manner as</p> <p>8 explained by him is in that passage I read beginning, "As</p> <p>9 explained by Lieutenant-Colonel Scott, the operation would</p> <p>10 include trying to encircle the protesters with barbed</p> <p>11 wire." But anyway, I think we've debated the matter quite</p> <p>12 fully. I'm just giving you an opportunity to make any</p> <p>13 further comments which is necessary to enable us to</p> <p>14 understand this in the light of your understanding of the</p> <p>15 matter. Is there anything you want to add, or are you</p> <p>16 content with what you said so far?</p> <p>17 MAJOR-GENERAL MPEMBE: I stick with what</p> <p>18 I've said so far, Chairperson.</p> <p>19 CHAIRPERSON: Alright, okay. It's now 5</p> <p>20 past 11. It's appropriate for us, I think, to take the tea</p> <p>21 adjournment.</p> <p>22 MR CHASKALSON SC: Chairperson, I have</p> <p>23 maybe five minutes left, so I'm happy to do that after tea</p> <p>24 or –</p> <p>25 CHAIRPERSON: Well, we did have a break</p>	<p style="text-align: right;">Page 16773</p> <p>1 document, Mr Chaskalson?</p> <p>2 MR CHASKALSON SC: This is the aerial</p> <p>3 photograph on which Colonel Scott has drawn the blue line</p> <p>4 and the orange line –</p> <p>5 COMMISSIONER HEMRAJ: Thank you.</p> <p>6 MR CHASKALSON SC: And this is an</p> <p>7 annotated photograph that Lieutenant-Colonel Scott prepared</p> <p>8 at 4:38PM on Wednesday. So that's just before 20 to 5 on</p> <p>9 Wednesday in the evening, and you'll see he's still got his</p> <p>10 blue and orange barbed wire around the koppie at 4:38 in</p> <p>11 the evening of the 15th. Now if you are correct, that's –</p> <p>12 gosh, it's 10 hours after that plan was abandoned, at least</p> <p>13 10 hours after that plan was abandoned. Have you any</p> <p>14 comment to that?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson, what</p> <p>16 I say, even here he could have still shown the number of</p> <p>17 the Nyalas and the trailers, and where was the other barbed</p> <p>18 wire coming from, because to me it couldn't have been only</p> <p>19 six Nyalas there. There could have been much more Nyalas</p> <p>20 and the barbed wire that he has shown there, because we</p> <p>21 couldn't just get it from somewhere, we have to preposition</p> <p>22 it so that we should unfold it.</p> <p>23 CHAIRPERSON: Well, I've already told you</p> <p>24 that the evidence apparently will be that Brigadier Calitz</p> <p>25 asked Lonmin for some more barbed wire and they said they</p>
<p style="text-align: right;">Page 16772</p> <p>1 just after 10, so Mr Mathibedi?</p> <p>2 MR MATHIBEDI SC: Mr Chairman, the</p> <p>3 statement of Lieutenant-Colonel Mtimkulu is part of the</p> <p>4 IPID docket that was discussed and made available to the</p> <p>5 evidence leaders and other parties. We will make copies of</p> <p>6 that for the Commission.</p> <p>7 CHAIRPERSON: Thank you. I'm grateful to</p> <p>8 you for that. I thought you were going to give us your</p> <p>9 input in whether we should take tea now or give Mr</p> <p>10 Chaskalson five minutes.</p> <p>11 MR MATHIBEDI SC: We can –</p> <p>12 CHAIRPERSON: But I have a strong urging</p> <p>13 from my left side that we must let Adv Chaskalson finish,</p> <p>14 so we won't take the tea adjournment. I withdraw my</p> <p>15 comments about the adjournment, and if I made an order to</p> <p>16 that effect I cancel it, and Mr Chaskalson, you may</p> <p>17 proceed. Provided it's not a wild promise -</p> <p>18 MR CHASKALSON SC: It's not a wild</p> <p>19 promise. Five minutes I will stop. Major-General, the</p> <p>20 last document that I want to put to you is a slide from a</p> <p>21 plan that Colonel Scott was preparing. It's JJJ9.2, an</p> <p>22 annotated aerial photograph, JJJ9.2. I'm sorry, it's not</p> <p>23 in your bundle, but you'll be able to see it on screen.</p> <p>24 JJJ9.2.</p> <p>25 COMMISSIONER HEMRAJ: What is this</p>	<p style="text-align: right;">Page 16774</p> <p>1 could provide it. But we won't go there and you didn't</p> <p>2 know about that, so you can't comment on that. But can I</p> <p>3 ask you a question about this; did the plan that you say</p> <p>4 was agreed to on either the Tuesday or at the latest the</p> <p>5 Wednesday morning, did that include the barbed wire that we</p> <p>6 actually had, the barbed wire barricade, if one can call it</p> <p>7 that, or barrier, which we actually had on the Thursday?</p> <p>8 You know, the barbed wire barrier that was uncoiled to</p> <p>9 provide a protected neutral area for the police and the</p> <p>10 media, was that part of the plan as it was formulated on</p> <p>11 either the Tuesday or the Wednesday, the plan that replaced</p> <p>12 the encirclement plan?</p> <p>13 MAJOR-GENERAL MPEMBE: Correct,</p> <p>14 Chairperson, it was discussed, and particularly keeping in</p> <p>15 mind what has happened on Monday, that the barbed wire</p> <p>16 should be placed in order. It was not placed in terms of –</p> <p>17 what is it? – graphics, but it should be we start with the</p> <p>18 barbed wire so that we should create a safe area, avoiding</p> <p>19 what has happened on Monday.</p> <p>20 CHAIRPERSON: Now if that is so, I must</p> <p>21 tell you – and this is a view that may well be argued</p> <p>22 before us later, so I must give you the chance to deal with</p> <p>23 it. I take it, it may be contended that if that was</p> <p>24 already the plan that there should be a barbed wire barrier</p> <p>25 to demarcate and protect a neutral area, one would have</p>

<p style="text-align: right;">Page 16775</p> <p>1 expected that barrier to have been indicated on the plan 2 which was prepared by, or the diagram which was prepared by 3 Colonel Scott on the Wednesday afternoon, instead of 4 putting the old barbed wire encirclement, which was now a 5 matter of history. What would your answer be to that 6 contention, that that's what one would have expected 7 Colonel Scott to have put on the diagram on the Wednesday 8 afternoon in the light of what you've told us? 9 MAJOR-GENERAL MPEMBE: Chairperson, what 10 you say it could be correct, but what I do know about 11 Colonel Scott, immediately after we abandoned something he 12 didn't delete it at all, or maybe put it aside. He 13 continued developing as we have explained, and developing 14 another plan on top of that one. But maybe if he could 15 have put it, if we abandon the plan, if he could have put 16 it aside to say this is what it was abandoned with these 17 reasons, that could have been clearly seen. 18 CHAIRPERSON: What may well be argued in 19 response to that point is that that may be so, but you 20 would have expected him to put the new plan in as well. In 21 other words he may have left old things and not taken them 22 out, but it may be argued that you would have expected him 23 to put the new bits in, and the new bit was the new 24 barrier, wire barrier that you've described, to demarcate 25 the neutral area. What would your comment be if that point</p>	<p style="text-align: right;">Page 16777</p> <p>1 MR CHASKALSON SC: No, Chairperson, I 2 don't have further questions for this witness. 3 CHAIRPERSON: Well, on that basis we will 4 take the tea adjournment. 5 [COMMISSION ADJOURNS COMMISSION RESUMES] 6 [11:38] CHAIRPERSON: The Commission resumes, 7 Major-General, you're still under oath. Mr Mpofo, are you 8 ready to cross-examine? 9 MR MPOFU: Thank you, Chairperson. 10 Chairperson, there's, or rather I was informed that on 11 Friday there was in intimation about whether or not I would 12 be able to use Major-General Mpeembe's statement which is, I 13 don't if it was marked HHH – 14 COMMISSIONER HEMRAJ: 52. 15 MR MPOFU: 52? 16 COMMISSIONER HEMRAJ: Yes, the unsigned 17 statement. 18 MR MPOFU: Yes – 19 CHAIRPERSON: It's not really a 20 statement, it appears to be a draft - 21 MR MPOFU: Yes. 22 CHAIRPERSON: - which was prepared – 23 MR MPOFU: A draft statement. 24 CHAIRPERSON: - which he never signed. 25 MR MPOFU: Which he didn't sign, ja,</p>
<p style="text-align: right;">Page 16776</p> <p>1 were raised? 2 MAJOR-GENERAL MPEMBE: I didn't 3 understand the question, Chairperson. 4 CHAIRPERSON: Well you see, the 5 contention may be raised that it may be that sometimes 6 Colonel Scott doesn't delete old stuff from his diagrams, 7 but you'd expect him to put the new stuff in and the new 8 bit would be the barbed wire barrier protecting the neutral 9 area, which was in fact the barrier that was ultimately 10 there on the Thursday, and that's not on this diagram, you 11 see. So that may be the argument put up. Now what comment 12 would you have to that? You understand the point? 13 MAJOR-GENERAL MPEMBE: Correct, cp. 14 CHAIRPERSON: And what's your answer? 15 MAJOR-GENERAL MPEMBE: It is still the 16 same answer, Chairperson, that in terms of the light what 17 it has now happened, it might be argued in that way, but as 18 a person who was there, who knew that that was abandoned 19 with the reason of not having the barbed wire, unless 20 someone can say it was said in the meeting that the barbed 21 wire was found from Lonmin, Chairperson, I can assure you I 22 don't have any knowledge of barbed wire that was found. 23 CHAIRPERSON: No, I understand the 24 answer. Thank you. Mr Chaskalson, sorry, I interrupted 25 you. Forgive me.</p>	<p style="text-align: right;">Page 16778</p> <p>1 correct. 2 CHAIRPERSON: And there is a suggestion – 3 well I think you must get your learned friend to tell us 4 what his stance is. Perhaps we can get that note out of 5 the way at the beginning instead of interrupting – 6 MR MPOFU: Yes, because that's why I was 7 – 8 CHAIRPERSON: That's why you raised it, 9 very sensible of you. 10 COMMISSIONER HEMRAJ: Is this the 11 statement that you said that you were going to ask one 12 question about one line only? Is that the same one? 13 MR MPOFU: Yes, it is but I'm no longer 14 going to ask one question. 15 CHAIRPERSON: You may not ask any 16 questions at all depending on whether the objection raised 17 by SAPS's [inaudible] is upheld. Yes, Mr Mathibide. 18 MR MATHIBIDE SC: Thanks, Mr Chairman. 19 Our view is that this document is not the witness statement 20 because he has not signed it. It's a draft document and it 21 will be unfair for questions to be put to the witness as 22 if, you know, the contents therefore reflect the true 23 position. It is on that basis that we object to the usage 24 of the statement. 25 CHAIRPERSON: That's the only basis of</p>

<p style="text-align: right;">Page 16779</p> <p>1 your objection.</p> <p>2 MR MATHIBIDE SC: It contains notes that</p> <p>3 were made by, you know, the instructing attorney during a</p> <p>4 consultation with Mr Mpembe.</p> <p>5 CHAIRPERSON: Yes, yes, I understand</p> <p>6 that, but the reason I asked you the question is it was</p> <p>7 suggested on Friday that whatever he told, whatever the</p> <p>8 witness told the attorney would have been privileged and on</p> <p>9 that basis cross-examination also wouldn't be possible. I</p> <p>10 don't know whether you were taking that objection, I</p> <p>11 indicated at the time that I wasn't sure whether the</p> <p>12 doctrine of privilege would apply in respect of a statement</p> <p>13 made to an attorney, not for the purpose of obtaining legal</p> <p>14 advice or for the purposes of drafting a statement for use</p> <p>15 in litigation. But drafting a statement for the purposes</p> <p>16 of the Commission. And I thought we might win an argument</p> <p>17 on that, but if you're not raising any question of</p> <p>18 privilege then we don't have to go there. Am I to</p> <p>19 understand that the point that's going to be debated will</p> <p>20 not depend upon the applicability or otherwise on the</p> <p>21 doctrine of privilege but solely be on the basis – well</p> <p>22 it's not fair to cross-examine the witness on a draft</p> <p>23 statement which he hasn't signed? Is that the basis –</p> <p>24 MR MATHIBEDI SC: That's correct, Mr</p> <p>25 Chair.</p>	<p style="text-align: right;">Page 16781</p> <p>1 which may conflict with his earlier evidence and get an</p> <p>2 explanation or not get an explanation about that. In the</p> <p>3 very same way that we did with General Phiyega when if you</p> <p>4 remember, Chairperson, we had the series of drafts that she</p> <p>5 had prepared and merely not because we were saying this or</p> <p>6 that was the final statement but merely to get the sequence</p> <p>7 of how the final statement evolved. Actually we had asked</p> <p>8 SAPS and they kindly provided us with those earlier drafts.</p> <p>9 So it's only on that basis but not to suggest that it is</p> <p>10 something bigger than what it is. Thanks, Chairperson.</p> <p>11 COMMISSIONER HEMRAJ: But to do then, Mr</p> <p>12 Mpofu, may I enquire did you have all the subsequent draft</p> <p>13 statements before a statement was finally signed, to be</p> <p>14 able to trace all the changes, the amendments and the</p> <p>15 amendments that were made?</p> <p>16 MR MPOFU: Yes, no, if that was the – no</p> <p>17 but this time I'm just using that as an example. This time</p> <p>18 I don't even want to really trace the evolution or</p> <p>19 evolution of the particular statement. All I want to do is</p> <p>20 to say you have a statement that contradicts something that</p> <p>21 you've said under oath here and he may say well I changed</p> <p>22 my mind or whatever explanation and it's up to the</p> <p>23 Commission, rather accept that explanation or not.</p> <p>24 CHAIRPERSON: Yes, Mr Mathibedi.</p> <p>25 MR MATHIBEDI SC: Thanks, Mr Chairman.</p>
<p style="text-align: right;">Page 16780</p> <p>1 CHAIRPERSON: Thank you. Mr Mpofu, the</p> <p>2 battle lines are now drawn rather narrowly.</p> <p>3 MR MPOFU: Yes.</p> <p>4 CHAIRPERSON: The koppie is enclosed by a</p> <p>5 very small amount of barbed wire.</p> <p>6 MR MPOFU: Oh thank you, Chairperson,</p> <p>7 excuse my time, they're a little bit – I had prepared on</p> <p>8 the basis that there was an objection on privilege and</p> <p>9 brought some case law, but I'm not complaining.</p> <p>10 CHAIRPERSON: I'm sure that the work that</p> <p>11 you did will stand you in good stead at some subsequent</p> <p>12 stage in your career as an advocate.</p> <p>13 MR MPOFU: It might happen, thank you,</p> <p>14 Chairperson, particularly because one of the case I'd</p> <p>15 found, Judge, was by one Farlam, J, so –</p> <p>16 CHAIRPERSON: That dispenses with the</p> <p>17 possible obligation on my part to refuse to follow that</p> <p>18 case on the grounds that it was wrongly decided.</p> <p>19 MR MPOFU: Thank you, right. Well then,</p> <p>20 Chairperson, on that basis I will just make one or two</p> <p>21 quick submissions. One being that Mr Mathibedi is quite</p> <p>22 correct and I will in fairness make it clear to the General</p> <p>23 that the statement that I'm referring to is one that isn't</p> <p>24 signed by him but the only basis on which I want to raise</p> <p>25 it, Chair, is simply to find out portions of the statement</p>	<p style="text-align: right;">Page 16782</p> <p>1 The first point is that this document cannot be elevated to</p> <p>2 a status of a statement by the witness, that's the first</p> <p>3 thing. And secondly this cannot be compared with the case</p> <p>4 of the National Commissioner because with her case, I mean</p> <p>5 both the statements had been signed.</p> <p>6 CHAIRPERSON: I understand that, but I</p> <p>7 take it what Mr Mpofu would like to do is to say to the</p> <p>8 witness we have this document, it seems to indicate that</p> <p>9 you told your attorney this. What do you say about it?</p> <p>10 Now there are various answers that he says the witness can</p> <p>11 give, so it will be a question – but it's more a question</p> <p>12 of weight than admissibility. If privilege doesn't prevent</p> <p>13 the question being asked, I mean Counsel can always come</p> <p>14 along and say did you not tell Mr so and so who was</p> <p>15 standing by this? The witness will either say yes I did,</p> <p>16 but I made a mistake or I changed my mind. Or he misheard,</p> <p>17 you know, there are various things he can say. But I'm not</p> <p>18 sure there's a legal basis upon which I can refuse to allow</p> <p>19 the question to be asked. But anyway I just put that to</p> <p>20 you as a prima facie view, if there's something that you</p> <p>21 want to draw to my attention which will make me come down</p> <p>22 on your side then please do so.</p> <p>23 MR MATHIBEDI SC: Mr Chairman, I think</p> <p>24 probably let me allow my colleague to, you know, put</p> <p>25 questions and as and when he proceeds we will deal with</p>

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1 that and we'll reserve our right at this stage.
 2 CHAIRPERSON: Yes, all right, you can
 3 reserve your right. It also may depend – you know we don't
 4 know what the answer will be if the question is allowed and
 5 it may be that the point will turn out to be a non-event.
 6 But on the other hand there may be quite a material answer
 7 but I think we must give Mr Mpfu a chance to test the
 8 evidence on this. Mr Mpfu, I'm sure will do the talking
 9 but, Mr Mpfu, so for the moment I'm going to allow you to
 10 continue.
 11 MR MPOFU: Thank you –
 12 CHAIRPERSON: If it becomes clearer later
 13 that you want to ask questions and the SAPS wish to take
 14 strong objection then we'll have to deal with it. But
 15 anyway let's proceed.
 16 MR MPOFU: No, I don't know. Thank you
 17 very much, Chairperson.
 18 CHAIRPERSON: Mr Mpfu, can you give us
 19 an indication, is there a likelihood that you'll be
 20 finished by the end of the day? I ask that because it's
 21 relevant for the next witness. I also know about injury
 22 time and I also understand that you're the complete master
 23 of the length of cross-examination because there are other
 24 factors that operate. But subject to that do you hope to
 25 finish by the end of the day.

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1 MR MPOFU: Chairperson, I do hope, but to
 2 be realistic I don't think it's going to happen. I hope so
 3 for my own sake, Chairperson. I just don't want to be
 4 preparing anything tonight.
 5 CHAIRPERSON: All right, well let's not
 6 waste any more time, we'll give you as full an opportunity
 7 to finish by the end of the day as we can.
 8 MR MPOFU: Thank you, thank you,
 9 Chairperson. General, you remember the last question I
 10 asked you before the break, or rather before I stopped
 11 questioning you.
 12 CHAIRPERSON: I don't remember but you
 13 expect the witness to remember.
 14 MR MPOFU: Thank you. I'm about to
 15 remind you, General, the last question I asked you was
 16 whether or not you had attended the NUM caucus on the
 17 occasion of the 15th when the NUM was discussing whether or
 18 not it would go to the koppie. Remember that?
 19 MAJOR-GENERAL MPEMBE: I remember,
 20 Chairperson.
 21 MR MPOFU: Yes and your answer was that
 22 you did not attend such a meeting, correct?
 23 MAJOR-GENERAL MPEMBE: Correct,
 24 Chairperson.
 25 MR MPOFU: Now the statement or rather

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1 the draft statement, unsigned, HHH52, paragraph 20, in that
 2 statement you tried to illustrate how much effort you made
 3 to bring peace. Do you remember that?
 4 MAJOR-GENERAL MPEMBE: I remember,
 5 Chairperson.
 6 MR MPOFU: And then the last two
 7 sentences goes something like this "That emphasises," of
 8 paragraph 20 sorry, Chairperson. "That emphasises how
 9 important it was for us to have a peaceful resolution of
 10 this dangerous situation." Oh it's actually the last three
 11 sentences. "The two presidents of NUM and AMCU agreed to
 12 go to the mountain and speak to the people. I even
 13 attended NUM's caucus meeting to convince them." Do you
 14 remember saying that?
 15 MAJOR-GENERAL MPEMBE: I just want to get
 16 the clarity to that question. Remember saying it where?
 17 MR MPOFU: To anybody.
 18 CHAIRPERSON: You told us, I think, that
 19 you didn't attend the caucus meeting. What Mr Mpfu is now
 20 putting to you is the draft statement, apparently compiled
 21 by the attorney acting for the police which indicates or
 22 tends to indicate that you said to him I even attended
 23 NUM's caucus meeting to convince them. So he's effectively
 24 suggesting to you that that's what you appear to have told
 25 the police's attorney.

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1 Am I right, Mr Mpfu?
 2 MR MPOFU: Exactly, Chairperson.
 3 CHAIRPERSON: He's asking you to comment
 4 on that. Is that what you said to the police attorney?
 5 MAJOR-GENERAL MPEMBE: Chairperson, what
 6 I said to the police attorney, I said, through in the
 7 meeting I persuaded both unions. NUM indicated that they
 8 will not go there but inside the same meeting and later Mr
 9 Zokwana said that they will go and have a caucus. I did
 10 not go with them. So for having understood that to me I
 11 with them to the caucus, that's not what I said. And I
 12 also say what I said there to him is confirmed by 004 and
 13 by that time I did not even know that I was being recorded.
 14 MR MPOFU: Okay, fair enough. Now I'm
 15 going to ask you this. You've now had about five days to
 16 look at this statement, correct, since I gave it to you on
 17 Thursday last week or Wednesday?
 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 19 MR MPOFU: Yes, and I have no choice but
 20 to accept your answer on that point and we'll assume for
 21 now that it was the attorney's mistake for whatever reason.
 22 Now the question I want to ask you is this, having read the
 23 statement over the past five days apart from this mistake
 24 that was made by the attorney is there any other mistakes
 25 that you've picked up?

<p style="text-align: right;">Page 16787</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 2 MR MPOFU: Where? 3 MAJOR-GENERAL MPEMBE: There are so many 4 mistakes, Chairperson. Others is the quoting of the 5 minutes verbatim and which, of course, I could not have 6 said it to the attorney. 7 MR MPOFU: Yes, okay. Let me then take 8 you to one or two other passages and we'll see whether they 9 fall under the – and I assume that also found many places 10 where it reflected the truth of what you told the attorney. 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. 13 MR MPOFU: Okay, fine. So I'll then take 14 you to one or two passages to determine which category they 15 fall into. Okay? On paragraph 22 you say that "Our 16 concern was the safety of the people and we don't want to 17 be seen as a arm of the state that is at war with their own 18 citizens." Did you say that? 19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson. 21 MR MPOFU: Okay and then the next is 24, 22 the last sentence of 24. "AMCU President gave us the 23 assurance that the crowd will lay down their weapons on 24 Thursday at 9:00 and disperse peacefully." Did you say 25 that?</p>	<p style="text-align: right;">Page 16789</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 MR MPOFU: Okay, thank you. Now I just 4 want to ask you one or two questions regarding that. 5 Firstly let me just say, preface it by saying generally 6 what was – your relationship with General Annandale was 7 there any tension between the two of you? 8 MAJOR-GENERAL MPEMBE: Chairperson, I 9 don't understand the question. 10 MR MPOFU: Okay, was there any tension, 11 bad blood, whatever you call it between you and General 12 Annandale during the relevant period? 13 MAJOR-GENERAL MPEMBE: No, Chairperson, 14 it was also the first time that I worked with him. There 15 could not have been any bad blood between him and me. 16 MR MPOFU: Yes, so well but from this 17 passage it looks like he was frustrating you because you 18 said to his members "Guys you see he doesn't answer my 19 phone." That's a sign of – 20 MR MATHIBEDI SC: Mr Chairman – 21 CHAIRPERSON: Mr Mpofo, we have an 22 objection from your learned friend. 23 MR MPOFU: Yes. 24 CHAIRPERSON: We'll give him a chance. 25 MR MATHIBEDI SC: Sorry, Mr Chairman,</p>
<p style="text-align: right;">Page 16788</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 2 I could have said it, but not necessarily in the same 3 words. 4 MR MPOFU: Ja, okay and then can you go 5 to paragraph 27? General Annandale responded to that SMS 6 that's Mr Mathunjwa's SMS. "I heard from his members 7 because I called him three times, but he didn't answer the 8 phone. I was with his members then I said guys he doesn't 9 answer my phone. I then rushed to General Annandale and 10 requested him to contact General Naidoo and talk to him 11 before he speaks to the people. General Annandale did 12 that. General Naidoo got hold of him, he spoke to him, but 13 what he said to the General I do not know." That's correct 14 isn't it? 15 MAJOR-GENERAL MPEMBE: No, Chairperson. 16 MR MPOFU: Which part is incorrect? 17 MAJOR-GENERAL MPEMBE: Chairperson, the 18 part of the SMS is correct for the fact, but it does not 19 state the SMS that General Annandale sent which I also 20 spoke about. 21 CHAIRPERSON: Am I correct in saying that 22 what you're saying is this paragraph isn't necessarily 23 wrong but incomplete? It doesn't contain material which – 24 other material which is relevant. Is that what you're 25 saying?</p>	<p style="text-align: right;">Page 16790</p> <p>1 what is the basis of putting it to this witness that 2 General Annandale was frustrating him? 3 CHAIRPERSON: You dropped your voice, I 4 didn't hear the last part of the sentence. 5 MR MATHIBEDI SC: What's the basis of 6 putting this version to the witness that General Annandale 7 was frustrating him? 8 COMMISSIONER HEMRAJ: Now I understood 9 that he doesn't answer the phone to refer to Mr Mathunjwa. 10 MR MPOFU: Well but if I could just be 11 allowed to pursue the point, then if that is so the witness 12 will say so. 13 COMMISSIONER HEMRAJ: But it's been in 14 his other statement hasn't it? 15 MR MPOFU: Okay, who were Mr Mathunjwa's 16 members because you say I was with his members? So if 17 you're talking Mr Mathunjwa it would mean you were with 18 AMCU members, is that correct? 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 20 [11:58] CHAIRPERSON: I take it you weren't with 21 AMCU members were you? When you say I heard that - or 22 sorry, Annandale responded to this SMS, "I heard that from 23 his members." Is that now, you heard that Annandale 24 responded to the SMS, right. Is that correct? Did you 25 hear, were you told by somebody that General Annandale had</p>

<p style="text-align: right;">Page 16791</p> <p>1 responded to the SMS he received from Mr Mathunjwa?</p> <p>2 MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>3 at this, and at that, the whole sentence, I'm referring to</p> <p>4 what I was explaining the General Annandale that I went to</p> <p>5 the members, to the entourage of Mr Mathunjwa which was</p> <p>6 left behind. I said those words to that entourage, not</p> <p>7 that those words were said by General Annandale.</p> <p>8 CHAIRPERSON: Alright, thank you.</p> <p>9 MR MPOFU: Okay, thanks. Okay, now I</p> <p>10 understand. Alright, now if you go to paragraph 4 of 31, I</p> <p>11 suppose we can call it 31.4, and this is a matter that –</p> <p>12 it's going to be my next topic, so I'm just doing it for</p> <p>13 completion. You say that, "If the protesters should refuse</p> <p>14 to voluntarily lay down their weapons and leave the koppie,</p> <p>15 stage 3 of the operation should be implemented as a last</p> <p>16 resort." That you did say, yeah?</p> <p>17 MAJOR-GENERAL MPEMBE: Correct,</p> <p>18 Chairperson, but I wanted to add that if you can see the</p> <p>19 format from this page, it's not the same as the others, and</p> <p>20 all the words that are being said here, they are also</p> <p>21 quoted from the minutes and if it can be checked by the</p> <p>22 Commission, because this has already been handed to the</p> <p>23 Commission. That is already what has been said in the</p> <p>24 minutes.</p> <p>25 MR MPOFU: That may well be so, General.</p>	<p style="text-align: right;">Page 16793</p> <p>1 CHAIRPERSON: As far as I understand what</p> <p>2 is set out here is in the minutes.</p> <p>3 MAJOR-GENERAL MPEMBE: Correct,</p> <p>4 Chairperson, and this is what I say I didn't say to him.</p> <p>5 CHAIRPERSON: You say you didn't say that</p> <p>6 to the attorney who prepared your statement –</p> <p>7 MAJOR-GENERAL MPEMBE: Correct,</p> <p>8 Chairperson.</p> <p>9 CHAIRPERSON: What Mr Mpofu is busy with</p> <p>10 is something else. He says never mind what you told the</p> <p>11 attorney, never mind what's in the minutes; what he wants</p> <p>12 to know from you is can you remember from your own memory</p> <p>13 that that is what was said, or is that not something you</p> <p>14 can remember yourself, you would have to rely on the</p> <p>15 minutes to be able to say that? I think that's your</p> <p>16 question, Mr Mpofu?</p> <p>17 MR MPOFU: That's correct. In other</p> <p>18 words on the, now I'm talking about whether you remember</p> <p>19 this as reflecting what actually happened at the 13:30</p> <p>20 meeting, which is the EE that you wanted to refer us to.</p> <p>21 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>22 didn't say it as it is now.</p> <p>23 CHAIRPERSON: I understand you said that.</p> <p>24 The real question perhaps is this: are you able to confirm</p> <p>25 from your own knowledge that sentence or pair of sentences</p>
<p style="text-align: right;">Page 16792</p> <p>1 All I want now is that you did say it to Mr Pretorius, and</p> <p>2 then 5.3 of that same 31 –</p> <p>3 MAJOR-GENERAL MPEMBE: I'm sorry,</p> <p>4 Chairperson –</p> <p>5 MR MPOFU: Yes, General?</p> <p>6 MAJOR-GENERAL MPEMBE: I just want to say</p> <p>7 I did not say it to him. It is quoted as it is from the</p> <p>8 minutes, but what I'm saying is in this Commission I did</p> <p>9 also indicate that the dispersal process was a last resort.</p> <p>10 MR MPOFU: Okay, let's then jump to</p> <p>11 paragraph 7 of 31 –</p> <p>12 CHAIRPERSON: You mean subparagraph –</p> <p>13 MR MPOFU: Subparagraph 7, yes. There's</p> <p>14 a reference there to the Provincial Commissioner having</p> <p>15 communicated to the National Commissioner, who indicated</p> <p>16 that they had spoken to the Minister. Did you testify</p> <p>17 about that, or did you confirm that as it emanated from the</p> <p>18 minutes?</p> <p>19 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>20 will request to take the Commission to exhibit EE 16.11,</p> <p>21 page –</p> <p>22 MR MPOFU: No, I know, we all know it</p> <p>23 comes from, that it's the same thing that's in EE. I'm</p> <p>24 just saying, did you say that or did you confirm that</p> <p>25 portion of the minutes to Mr Pretorius or not?</p>	<p style="text-align: right;">Page 16794</p> <p>1 in the minutes, or is that something that you can't from</p> <p>2 your own knowledge say is correct? You understand the</p> <p>3 point?</p> <p>4 MAJOR-GENERAL MPEMBE: Yes, I do</p> <p>5 understand, Chairperson –</p> <p>6 CHAIRPERSON: You say you didn't say it</p> <p>7 to Mr Pretorius, but what Mr Mpofu wants to know is are you</p> <p>8 able from your own knowledge to confirm that what is said</p> <p>9 in the minutes in that regard is correct? Can you recall</p> <p>10 that being said?</p> <p>11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>12 MR MPOFU: Okay, thank you. And then if</p> <p>13 we just go to paragraph 32 then, now you say there, or at</p> <p>14 least you are supposed to have said, "I was not on the</p> <p>15 ground when the shooting took place as I was in the</p> <p>16 helicopter from Protea Coin with Brigadier Tsiloane of the</p> <p>17 NIU. I could see what happened from the helicopter. I</p> <p>18 could see that a big group of the crowd attacked the police</p> <p>19 members." That obviously doesn't come from any minutes.</p> <p>20 So did you say that?</p> <p>21 MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>22 what I said is on my signed statement.</p> <p>23 MR MPOFU: And then on paragraph 33 you</p> <p>24 say, "The crowd went around the barbed wire and passed the</p> <p>25 Nyalas and then attacked the police. I believe that when</p>

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1 they attacked the police, they were still using the same
2 tactics as they used on Monday when they attacked the
3 police members, although I could not see this as the
4 helicopter was flying too high. We flew at a height as we
5 know that they stole State firearms and that we could not
6 fly down as they can shoot at the helicopter." You said
7 that? Also did you say that, or did Mr –
8 CHAIRPERSON: [Microphone off, inaudible]
9 MR MPOFU: Fair enough, ja.
10 CHAIRPERSON: There are a number of
11 statements in the sentences you read.
12 MR MPOFU: Yes.
13 CHAIRPERSON: I think it might be easier
14 for the witness if you put it to him sentence by sentence.
15 MR MPOFU: Thank you, Chairperson. Okay,
16 so I'm just going to read statement by statement, and you
17 tell me if you said it or Mr Pretorius just made it up
18 himself. The first one is, "The crowd went around the
19 barbed wire and passed the Nyala vehicles and then attacked
20 the police." Remember saying that?
21 MAJOR-GENERAL MPEMBE: No, Chairperson.
22 MR MPOFU: The next one is, "I believe
23 that when they attacked the police they were still using
24 the same tactics as they used on Monday when they attacked
25 the police members, although I could not see this as the

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1 helicopter was flying too high." Did you say that or is it
2 Mr Pretorius's own?
3 MAJOR-GENERAL MPEMBE: No, Chairperson.
4 MR MPOFU: Next one, "We flew at a height
5 as we knew that they stole State firearms and that we could
6 not fly down as they can shoot at the helicopter." Yours
7 or Mr Pretorius?
8 MAJOR-GENERAL MPEMBE: No, Chairperson, I
9 didn't say that.
10 MR MPOFU: Thank you then very much.
11 Chairperson, Mr Shozi wants to say something.
12 MR SHOZI: Thank you, Chair. We see that
13 Mr Mpofo is now moving away from the statement. We didn't
14 want to enter the fray really between Mr Mpofo and Mr
15 Mathibedi, but just to place on record that in the case of
16 Lonmin we do claim privilege in respect of all our earlier
17 statements, so if they in future arise, we claim privilege,
18 the matter will be argued when it arises in future. Thank
19 you.
20 MR MPOFU: Well, there. Thank you –
21 CHAIRPERSON: Then if the issue arises
22 you'll have to persuade us that the doctrine of privilege
23 relates to statements made in connection with commissions.
24 MR SHOZI: Indeed, Chairperson.
25 CHAIRPERSON: We're not going to do it

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1 now, but if the need arises, we'll have to have that
2 debate.
3 MR SHOZI: Indeed, Chairperson.
4 CHAIRPERSON: So you've given us all
5 notice that we must prepare for that if it arises.
6 MR SHOZI: Indeed, Chairperson. Thank
7 you.
8 MR MPOFU: Thank you, Chairperson. Well,
9 it looks like my research won't go to waste then.
10 CHAIRPERSON: I told you, you wouldn't
11 regret having done it. I didn't realise you'd have to use
12 it so soon.
13 MR MPOFU: Thank you, Chairperson.
14 General, have you had any discussions with senior people in
15 SAPS regarding your giving evidence here today, or now?
16 MAJOR-GENERAL MPEMBE: I do not
17 understand, Chairperson, who are the senior SAPS members.
18 MR MPOFU: Well, let's start with the
19 National Commissioner. Have you had any discussions with
20 her regarding your testimony?
21 MAJOR-GENERAL MPEMBE: No, Chairperson.
22 I don't understand, Chairperson, still don't understand the
23 question, whether was there any time or maybe when having
24 consultation while I'm still testifying. So I just wanted
25 to understand.

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1 MR MPOFU: No, not while you're
2 testifying. While you're testifying, before you testified,
3 any time after the declaration of the Commission, have you
4 discussed what your evidence will entail with the National
5 Commissioner?
6 MAJOR-GENERAL MPEMBE: No, Chairperson,
7 the only thing that do I know where we met with the
8 National Commissioner, it's when she was addressing us,
9 then she will leave.
10 MR MPOFU: Okay.
11 MAJOR-GENERAL MPEMBE: And in different
12 meetings, but not discussing what I'm going to say in the
13 Commission.
14 MR MPOFU: Yes, no fair enough. With the
15 Provincial Commissioner?
16 MAJOR-GENERAL MPEMBE: No, Chairperson.
17 MR MPOFU: With General Annandale?
18 MAJOR-GENERAL MPEMBE: No, Chairperson.
19 MR MPOFU: With Colonel Scott?
20 MAJOR-GENERAL MPEMBE: Chairperson, the
21 time when we were discussing, and I did explain, it's at
22 the Roots and some of the information contained in Roots it
23 is in our statements. So by doing that, I don't know
24 whether I was discussing the evidence. So I just wanted
25 the clarity to say –

<p style="text-align: right;">Page 16799</p> <p>1 CHAIRPERSON: [Microphone off, inaudible] 2 that's a legitimate question he's addressed to you. When 3 you say "discussed your evidence," what exactly do you 4 mean? He told us that he told his story, as it were, at 5 Roots, the conference there, and to that extent he 6 discussed his evidence in the sense that he explained what 7 he was able to say at Roots, but I take it you're not 8 referring to that, you're referring to something else. 9 MR MPOFU: Yes. 10 CHAIRPERSON: So perhaps you should give 11 a little bit more particularity as to what you want him to 12 answer. 13 MR MPOFU: Yes, no fine, Chairperson, 14 I'll move to something else. There's just something that I 15 need to clarify with you, and please forgive me because 16 this might sound like repetition, because I dealt with it 17 with you and Mr Chaskalson also dealt with it, but you'll 18 understand the importance of this. Maybe I should just 19 start with that. You and I agreed last week that the, what 20 I'll call the trigger for the rollout of stage 3 was the 21 failure or collapse of negotiations. That was the green 22 light. In other words until that trigger occurred, you, 23 according to the plan at least, were not at liberty to roll 24 out stage 3. Are we understanding it correctly? 25 MAJOR-GENERAL MPEMBE: Chairperson, I</p>	<p style="text-align: right;">Page 16801</p> <p>1 MR MPOFU: We'll get to that, General. 2 Is the way it is explained in L78 wrong or right? 3 MAJOR-GENERAL MPEMBE: Chairperson, I 4 don't say it's right, but I don't understand when it's 5 meant by higher authorities. 6 MR MPOFU: Well, let's assume it's 7 somebody who has authority in SAPS who would determine that 8 trigger point. Obviously it wouldn't be a constable. 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 10 except that higher authorities. 11 MR MPOFU: Okay. 12 MAJOR-GENERAL MPEMBE: And also the word 13 "deemed," because the way in which I understand it, it 14 should be in accordance with the Standing Order 262. 15 MR MPOFU: Yes. 16 MAJOR-GENERAL MPEMBE: So the wording 17 actually should be - the way in which I interpret it, it 18 should be in accordance with Standing Order 262. 19 MR MPOFU: Yes, okay. 20 CHAIRPERSON: You referred in your 21 evidence - sorry, if you're going to deal with this point, 22 Mr Mpofo, please tell me then I won't proceed, but you 23 referred in your supplementary statement HHH3, paragraph 24 25, to the trigger, what you call the trigger for stage 3, 25 and there you said the reason was quite simply the failure</p>
<p style="text-align: right;">Page 16800</p> <p>1 will need clarity because when I discuss it with, when Adv 2 Chaskalson was asking me, he was talking about phase 3, so 3 are we now talking about phase 3 or stage 3? Second part 4 is the trigger, where it - because the trigger it was 5 mentioned in many documents. 6 MR MPOFU: Yes. 7 MAJOR-GENERAL MPEMBE: So I just wanted 8 to indicate which specific one was referred to so that I 9 should understand what was my answer by then. 10 MR MPOFU: Okay, let's maybe, just to 11 make it easier, let's go to exhibit L78. 12 MAJOR-GENERAL MPEMBE: I have it, 13 Chairperson. 14 MR MPOFU: Yes, and I'm now not dealing 15 with the question of the revision and so on. I'm simply 16 saying stage 3 in whatever guise was going to happen in 17 terms of the second bullet, this is where negotiations are 18 deemed unsuccessful or no longer feasible by higher 19 authorities and a tactical option needs to be employed. Is 20 that how you understood - that's what I mean when the 21 trigger would be a stage where negotiations are deemed 22 unsuccessful or no longer feasible. That was the trigger, 23 correct? 24 MAJOR-GENERAL MPEMBE: Chairperson, the 25 way I explain it is in HHH3 of my statement.</p>	<p style="text-align: right;">Page 16802</p> <p>1 of negotiations and the other factors listed in paragraph 2 23. They are negotiations by the SAPS had failed, 3 negotiations through the presidents of the unions had 4 failed, Papa1 had reported that the mood of the crowd had 5 changed for the worse. People were being attacked, maimed, 6 and killed, for going to work, and there were already 7 threats made against the police. So those, what you said 8 in 25 were the trigger. Is that right? Para 25. 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 10 CHAIRPERSON: Alright, now what Mr Mpofo 11 says to you, that the operational plan puts it slightly 12 differently. It talks about negotiations being deemed to 13 be unsuccessful. That's in line with what you've said in 14 para 25, but there's also this reference to higher 15 authorities deeming negotiations no longer feasible. Now 16 do you know anything about that at all? 17 MAJOR-GENERAL MPEMBE: No, Chairperson. 18 CHAIRPERSON: So who would higher 19 authorities be? I mean you were at Roots. You were 20 present when exhibit L was formulated. Is that right? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 CHAIRPERSON: Now I don't know whether 24 you were present when slide 78 came under discussion, but 25 as a senior police officer you can advise us as to who the</p>

<p style="text-align: right;">Page 16803</p> <p>1 higher authorities would have been. Now higher authorities 2 presumably means authorities higher than the JOCCOM. Would 3 that be right? 4 MAJOR-GENERAL MPEMBE: Chairperson, 5 according to me, and hence I have been saying, will be 6 those that they are responsible for the operational matters 7 and that is, as I have said, myself, Brigadier Calitz, and 8 the JOCCOM, but as Chairperson said, higher authority, I 9 don't really understand. It could also mean that above the 10 JOCCOM. 11 MR MPOFU: Yes, thank you, Major-General. 12 Ja, you see, one of the points that we have put in our 13 opening statement as a point that will have to be 14 determined is exactly how high is high. I mean, how high, 15 where did the order come from, and so if the higher 16 authorities could include people higher than you at least, 17 then I suppose we'll explore that with them. 18 CHAIRPERSON: [Microphone off, inaudible] 19 MR MPOFU: Yes. Ja, that's exactly why 20 I'm saying – 21 CHAIRPERSON: Sorry, I don't think what 22 I'd said was recorded. It's obvious that he can't help us 23 on that point. 24 MR MPOFU: He can't, no. Thank you, 25 Chairperson. But in any event, let's leave aside the issue</p>	<p style="text-align: right;">Page 16805</p> <p>1 MR MPOFU: No, I'm explaining my use of 2 the metaphor of the green light. I'm saying if one of 3 those triggers is not present then the robot is not green. 4 In other words it's not go to stage 3. 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 6 MR MPOFU: Thank you. Now I don't want 7 to belabour the robot point, but the reason why I'm asking 8 you about this is because it is such an important issue, 9 because the Commission has to understand at some stage, or 10 rather we will argue that the operation, or stage 3 was 11 rolled out when the robot was not yet green, if you 12 understand. So it's from that point of view that I'm 13 asking you the next question. Sorry, Chairperson – 14 CHAIRPERSON: I just want to say I take 15 it the witness understands the importance of the question. 16 You can now put it. 17 MR MPOFU: Yes, thank you, Chairperson. 18 Thank you very much. Ja, now given the importance of this, 19 which we all accept, can you just tell this Commission at 20 what stage, or when exactly according to you as the overall 21 commander did you declare the negotiations as having 22 failed? Because it's such an important trigger, it's when 23 the robot turns green. 24 MAJOR-GENERAL MPEMBE: Chairperson, I 25 know you requested me not to repeat what I have said. Am I</p>
<p style="text-align: right;">Page 16804</p> <p>1 of higher authorities and even exhibit L, and use the words 2 that you use yourself in HHH3, and as you correctly pointed 3 out, these words are reflected in the minutes. It's your 4 understanding that if the negotiations are not successful 5 and the protesters refuse to leave the koppie and lay down 6 their weapons, the police must be in a position to act 7 accordingly, and you say by the phrase "act accordingly" 8 was envisaged the dispersal and disarmament approach, which 9 is stage 3. That's your understanding, your own 10 understanding of the situation, correct? 11 [12:18] MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson, dispersal and the process. 13 MR MPOFU: Yes. In other words then you 14 agree with me that the trigger for the rolling out of stage 15 3 is the failure of the negotiations? 16 MAJOR-GENERAL MPEMBE: No, Chairperson, I 17 indicated the factors that I said there, not only the 18 failure. It's - 19 MR MPOFU: Okay, let's say – 20 MAJOR-GENERAL MPEMBE: It's one of them. 21 MR MPOFU: Yes, thank you. That's all, 22 and if the triggers are not present, then the green light, 23 the robot is not green, correct? 24 MAJOR-GENERAL MPEMBE: I don't understand 25 the question.</p>	<p style="text-align: right;">Page 16806</p> <p>1 expected to repeat – 2 CHAIRPERSON: On this occasion you'll 3 have to, but keep it short, if you can. 4 MAJOR-GENERAL MPEMBE: Chairperson, as 5 I've said in terms of my statement - I'll just be very 6 short – the negotiations that I'm referring there, it's 7 from myself with the protesters. Then from persuading the 8 unions and going there, the unions also going there, 9 talking to the protesters, and also including that the 10 unions themselves and the mine management did not 11 negotiate. It also includes the last address by Mr 12 Mathunjwa, and with other number of factors that I've 13 mentioned. 14 MR MPOFU: Right, and we know that that 15 last address by Mr Mathunjwa was at about 15:35, correct? 16 MAJOR-GENERAL MPEMBE: Chairperson, 17 according to what has been recorded, if that is the case I 18 will agree. 19 MR MPOFU: Yes, so just to cut this 20 short, so by the time you spoke to General Mbombo, which 21 was before the meeting at 13:30, that particular robot was 22 not yet green, correct? 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 24 MR MPOFU: Yes, and yet you advised at 25 that stage that stage 3 should be rolled out, correct?</p>

<p style="text-align: right;">Page 16807</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, I 2 should repeat again my evidence; I said according to what 3 Mr Mathunjwa told us yesterday, that will be on the 15th, it 4 was – and I said it was at 9 o'clock, and at that time, 5 Advocate he was not there, but I said I'm referring to 9 6 o'clock and then by the time Mr Mathunjwa went and go again 7 for the, for – I don't know, for the last time, Brigadier 8 Calitz was there, and I'm hammering on this position now 9 for the sixth time, that if there was any change, 10 protesters having listened to Mr Mathunjwa, Brigadier 11 Calitz could not have allowed the operation to go to stage 12 3. 13 MR MPOFU: Okay, fair enough. So what I 14 understand from you now is that – and I'm going to use the 15 same analogy – when you spoke to General Mbombo you thought 16 the robot was green because 9 o'clock meeting had not 17 materialised. You subsequently learned that the robot was 18 red again because Mr Mathunjwa was still going to go there, 19 and you are saying as to when and how it got green again, 20 Brigadier Calitz will have to answer for that. That's the 21 sum total of what you are saying? 22 MAJOR-GENERAL MPEMBE: The sum total of 23 what I'm saying is that when stage 3 was implemented, there 24 was no any other alternative. I don't understand the 25 robot's green, whether is it green to go or not.</p>	<p style="text-align: right;">Page 16809</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson, but I indicated that in any operation what has 3 been said, it could not be taken on the operational level 4 when the situation can change, because the situation could 5 have changed at any time. So the person who should take a 6 situational appropriateness is Brigadier Calitz, and he did 7 on the same date. 8 MR MPOFU: Okay, well we know that you 9 did not know that a decision, or endorsement, whatever it's 10 called, had been done on the previous day at the National 11 Management Forum meeting. I think you've already testified 12 you knew nothing about that. Nobody told you about that, 13 correct? 14 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 15 CHAIRPERSON: Okay, thank you. I just 16 want to move to another topic, which is also important in 17 the same magnitude. There's this whole issue about whether 18 or not Mr Mathunjwa made an undertaking and so on. You 19 remember that whole discussion you've had not just with me, 20 but with other people as well? 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 22 I remember the discussion. 23 MR MPOFU: Yes, now is it true that when 24 Mr Mathunjwa was speaking to the strikers on the 15th, you 25 were present?</p>
<p style="text-align: right;">Page 16808</p> <p>1 MR MPOFU: Ja, okay. Forget the robot. 2 Are you able to tell this Commission, as the overall 3 commander, at what point the trigger was set on in respect 4 of this one criterion, namely the failure of negotiations? 5 Are you able to tell the Commission or not? 6 MAJOR-GENERAL MPEMBE: Chairperson, I 7 said it is the last time when Mr Mathunjwa addressed the 8 protesters in the presence of where Brigadier Calitz was 9 there. That is the last factor. 10 MR MPOFU: And it would be, I suppose 11 logically that would be the outcome of that last time of Mr 12 Mathunjwa's intervention, correct? 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 14 MR MPOFU: Okay, thank you. So the 15 discussion therefore that you had had with General Mbombo 16 in the morning, or early afternoon, is irrelevant in that 17 it was overtaken by events. That discussion was premised 18 on the incorrect assumption which you had that the failure 19 had happened at 9 and you subsequently learned that Mr 20 Mathunjwa was still going to go, correct? 21 MAJOR-GENERAL MPEMBE: No, Chairperson. 22 MR MPOFU: Well, I thought you said that 23 when you uttered the words to General Mbombo that 24 negotiations had failed, you were referring to the 9 25 o'clock deadline.</p>	<p style="text-align: right;">Page 16810</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, I did say I 2 was present, but I was not nearer where he was addressing 3 them. 4 MR MPOFU: You didn't hear what he was 5 saying to them strikers? It seems like it was a short 6 discussion about it's getting dark, please come back 7 tomorrow, something like that. It wasn't a long speech. 8 Did you catch any of what he was saying? 9 MAJOR-GENERAL MPEMBE: I did indicate 10 that some one could catch, but where the crowd was making a 11 noise, one couldn't catch up what he was saying. But when 12 he arrived he made the slogans and so, what I could catch 13 up, but when he was addressing, because there was a time 14 where it was dark, that I couldn't hear what he was saying. 15 I only heard from him during the debriefing. 16 MR MPOFU: Sorry, what he was saying, was 17 it recorded by yourselves as the SAPS? 18 MAJOR-GENERAL MPEMBE: Clarity, 19 Chairperson, recorded at the debriefing or at the address? 20 MR MPOFU: No, at the address. Sorry, 21 General. 22 MAJOR-GENERAL MPEMBE: Chairperson, it 23 could be correct that it was recorded. I'm not sure about 24 that part, but it could be possible that he might have been 25 recorded.</p>

<p style="text-align: right;">Page 16811</p> <p>1 MR MPOFU: Chairperson, may I enquire 2 from my learned colleagues if, well, (a), whether it was 3 record and, if so, can we be given a copy, so that I can 4 move on? 5 MR MATHIBEDI SC: I cannot answer that 6 question at this stage. I need to take instructions. 7 CHAIRPERSON: You'll take instructions. 8 Mr Chaskalson, can you help us? 9 MR CHASKALSON SC: I'm not aware of a 10 recording. That doesn't mean there isn't one or even that 11 we aren't in possession of one, but we will investigate 12 and – 13 CHAIRPERSON: It certainly wasn't on the 14 police hard drive. 15 MR CHASKALSON SC: I can't even vouch for 16 that. I don't think it is, but I'll look specifically. 17 There are some audio files that we – you know, that we 18 haven't investigated as thoroughly as we might – 19 CHAIRPERSON: Ja anyway, you'll 20 investigate, your learned friend for the police will 21 investigate, and we'll have the information in due course. 22 MR MPOFU: Thank you. Okay, we'll follow 23 that up independently, Chairperson. Right, now when Mr 24 Mathunjwa made reference to the possible laying down of 25 arms, he made it clear to yourselves that that mission was</p>	<p style="text-align: right;">Page 16813</p> <p>1 Nyalas? 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 3 but I do understand that there was a time where some of the 4 delegates did come nearer to Mr Mathunjwa. 5 CHAIRPERSON: Yes, I see. So are you 6 telling us that you didn't hear everything that the 7 strikers who came to the Nyala, towards the Nyala when Mr 8 Mathunjwa was speaking, you didn't hear everything that 9 those strikers said? Is that correct? 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 11 including what Mr Mathunjwa said, because where I was, I 12 was not nearer where Mr Mathunjwa was speaking. It's true 13 that I followed them to a certain extent, and I think at 14 the mountain there you can see there was still a space 15 where I was standing where Mr Mathunjwa was and Mr Zokwana, 16 when they were addressing the strikers. 17 CHAIRPERSON: Presumably your colleagues 18 in the Nyala would have been able to have heard what was 19 said. You were behind the Nyala? 20 MAJOR-GENERAL MPEMBE: Definitely so, 21 Chairperson. I said Brigadier Calitz and Colonel McIntosh. 22 CHAIRPERSON: So they would have heard 23 what was said? 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p>
<p style="text-align: right;">Page 16812</p> <p>1 dependent on cooperation from management, Lonmin 2 management, correct? 3 MAJOR-GENERAL MPEMBE: Chairperson, I may 4 be – 5 CHAIRPERSON: Sorry, before you move on 6 with this question, I'd like to ask a question flowing from 7 the point you discussed a moment ago. Now we know from 8 your statement, exhibit GGG12, that on the Wednesday 9 evening when the leadership of the unions was conveyed to 10 the koppie, you also went on foot, as I understand it, you 11 followed the Nyala on foot, accompanied by police members. 12 That's what you say, and you say you were present when each 13 delegation addressed the protesters, right? 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson. 16 CHAIRPERSON: Now the members of the, I 17 take it President Zokwana and President Mathunjwa used 18 loudhailers, did they, when they addressed the strikers? 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 20 while – they were using loudhailers while in the Nyala, but 21 they – 22 CHAIRPERSON: Yes, they didn't get out of 23 the Nyalas, did they? 24 MAJOR-GENERAL MPEMBE: Chairperson – 25 CHAIRPERSON: They didn't get out of the</p>	<p style="text-align: right;">Page 16814</p> <p>1 CHAIRPERSON: Did you ask either of them 2 immediately afterwards when the discussion between the 3 strikers and Mr Mathunjwa was over what they had heard, 4 what was said? 5 MAJOR-GENERAL MPEMBE: I didn't ask them, 6 Chairperson, but relatively I was informed when we were 7 doing a briefing, when I was also giving them briefing, 8 that they also understand that tomorrow Mr Mathunjwa has to 9 return back to the koppie. 10 MR MPOFU: Yes, thank you, Chairperson. 11 The question I was now asking you was whether you 12 understood from Mr Mathunjwa both then and even on the 13 following day that the success of his peace mission, if you 14 can call it that, was dependent on the cooperation of 15 Lonmin management? 16 MAJOR-GENERAL MPEMBE: Chairperson, I 17 need to be apprised with the sentence and the paragraph in 18 terms of GGG4, but what I said previously to the 19 Commission, I went in thorough in terms of GGG4 to support 20 what I said. I don't know whether I should do the same 21 process. 22 MR MPOFU: No, General, can you just 23 please answer the question? I'm saying did you understand 24 or you did not understand that the success of Mr 25 Mathunjwa's peace mission of the following day was</p>

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1 dependent on Lonmin management's cooperation, or not?
 2 MAJOR-GENERAL MPEMBE: Chairperson,
 3 that's why I'm saying the transcripts will help, because in
 4 one paragraph he doesn't mention Lonmin, in other paragraph
 5 he mentioned that the strikers should undergo what we call,
 6 he mention, he use another name, that they –
 7 MR MPOFU: Safety training?
 8 MAJOR-GENERAL MPEMBE: Yes. So I didn't
 9 understand whether it depended on that -
 10 CHAIRPERSON: Sorry, I think "induction"
 11 was the word that was used, but –
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: The Lonmin representatives
 14 will correct us if we're wrong.
 15 MR MPOFU: That's correct, Chairperson.
 16 Yes, General, please, I'm not trying to trick you or for
 17 you to remember this or not exhibit. I'm asking you as a
 18 person, considering all those things that were said there,
 19 including induction or whatever, did you understand that
 20 part of the success of what Mr Mathunjwa was going to do
 21 depended on some cooperation which he expected from Lonmin
 22 management, or not?
 23 MAJOR-GENERAL MPEMBE: Chairperson, in my
 24 understanding the induction programme was a subsequent, but
 25 when he first says we are, they are going to lay down their

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1 weapons, he didn't mention Lonmin, but he even said on the
 2 same night to say then they will have already to plan with
 3 management that when strikers have laid down their weapons
 4 – that was my understanding – what will be now the
 5 induction process of them coming back. That was my
 6 understanding.
 7 MR MPOFU: And that's a matter that was
 8 going to have to be sorted out with management, correct?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 MR MPOFU: And the following day when
 12 General Mbombo was apparently scolding Mr Mathunjwa, did Mr
 13 Mathunjwa indicate that he was not receiving the necessary
 14 cooperation from Lonmin as one of the reasons why he had
 15 not gone to the mountain? Or rather, as the reason why he
 16 had not gone to the mountain.
 17 MAJOR-GENERAL MPEMBE: I don't understand
 18 the question, Chairperson, whether I should comment or
 19 what.
 20 CHAIRPERSON: It's never a good idea to
 21 answer a question you don't understand because it can only
 22 lead to confusion, but Mr Mpofo, I'm quite sure, will be
 23 able to rephrase the question –
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: - in a way so that you can

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1 understand it.
 2 MR MPOFU: Thank you. We've now covered
 3 that what you said management would have to do in the
 4 evening. I'm now moving to the morning. I'm saying in the
 5 morning on the occasion when General Mbombo was scolding,
 6 or taking Mr Mathunjwa to task for not having gone to the
 7 mountain, did he say that the reason for that was because
 8 he had not received the necessary cooperation from Lonmin
 9 management?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson, that's what Mr Mathunjwa said, and which was
 12 not the same concern of the Provincial Commissioner.
 13 [12:38] MR MPOFU: Yes. No, fair enough. The
 14 Provincial Commissioner brushed aside that reason, and
 15 basically ordered Mr Mathunjwa to go to the mountain
 16 anyway, correct?
 17 MAJOR-GENERAL MPEMBE: I didn't
 18 understand by "ordering," but he only said can you go back
 19 to your words and request the protesters to disperse, and
 20 to disarm and disperse, because the police were not so much
 21 concerned about the other part with regard to the labour
 22 relation issues.
 23 MR MPOFU: No, but that can't be so. If
 24 you knew that Mr Mathunjwa's success depended on something
 25 and that something was not happening, it means the part

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1 that you were interested in, which was the achievement of
 2 peace, was not going to happen. So the two were related.
 3 MAJOR-GENERAL MPEMBE: Chairperson, it
 4 was relating as far as management and as Mr Mathunjwa is
 5 concerned, and I said in my statement, Chairperson, that
 6 the failure of the unions and the management, and it's
 7 clear, so I don't know which one should I comment because
 8 it's already in my statement.
 9 MR MPOFU: No, General, I'm sure you
 10 understand what I'm asking you. I'm saying to you that in
 11 relation to this particular aspect you had a situation – I
 12 accept that your primary interest was peace, was the
 13 achievement of peace, but now you were being told for that
 14 peace mission, or rather something that is blocking the
 15 next stage in that peace mission is the lack of cooperation
 16 from management. So that should have been your concern not
 17 because you are concerned about labour relations, but
 18 because you are concerned about anything that's going to
 19 impede your main objective, which is peacemaking. Is that
 20 fair, or is that not fair?
 21 MAJOR-GENERAL MPEMBE: Chairperson, that
 22 we expected from the unions and the management to do, and I
 23 said it that we are not going to take part in that one.
 24 MR MPOFU: Yes. No, fair enough. Now
 25 the real question then I wanted to ask you is if Mr

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1 Mathunjwa says look, I'm still committed to the peace
2 mission that we jointly want to achieve, but the stumbling
3 block is management, why did you – because you said one of
4 your missions was to speak to these stakeholders – why did
5 you not then say okay, hang on, I'm now going to remove
6 that stumbling block by approaching management so that they
7 don't frustrate Mr Mathunjwa's peace mission?

8 MAJOR-GENERAL MPEMBE: Chairperson, I've
9 already answered that, that the management has already
10 given me the feedback already on Wednesday according to
11 OO4.

12 MR MPOFU: Ja, but that's now, now it's
13 Thursday, General. We have a new window of opportunity for
14 peace. So whatever they said on Wednesday is what was said
15 on Wednesday. This is now Thursday. You know that Mr
16 Mathunjwa had said to you the previous night yes, I'm going
17 to try and achieve peace; I need some cooperation from
18 management. You are now told that that cooperation is
19 being withheld, which is the only stumbling block to peace
20 now. Why don't you then seek to remove that stumbling
21 block to peace?

22 MAJOR-GENERAL MPEMBE: Chairperson, I
23 don't understand how should I have removed the stumbling
24 block.

25 MR MPOFU: Okay, can I make a suggestion?

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1 You could have gone to management and said you know
2 yesterday we were all doing high fives because we thought
3 peace was going to prevail; now I'm told that you,
4 management, are making it impossible for that peace to
5 prevail by doing whatever, or refusing to speak to Mr
6 Mathunjwa, and that's unreasonable. You could have said
7 that to them, couldn't you?

8 MAJOR-GENERAL MPEMBE: Chairperson, from
9 the beginning I did indicate that the police are not
10 involved with the labour dispute. We are only there for
11 safety and security, and I have already indicated that.

12 MR MPOFU: Ja, but according to your
13 evidence last week you made numerous appeals to management
14 to speak to the strikers, didn't you? Which were
15 frustratingly turned down.

16 MAJOR-GENERAL MPEMBE: Correct,
17 Chairperson.

18 MR MPOFU: Well, then in the same way
19 that you made those other numerous appeals to management,
20 that's what I'm asking you. This was one more such appeal
21 which you could, and I will suggest in argument should have
22 made in order to let peace prevail.

23 MAJOR-GENERAL MPEMBE: Chairperson,
24 according to me it was made on numerous occasions and we
25 did not want to involve ourselves in any other labour

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1 issues, but the only appeal that we wanted to do is that
2 the unions and the management should negotiate, should
3 first assist in terms of protesters, disarming and
4 dispersing, and thereafter immediately, or at any time, and
5 also give commitment to the strikers and to negotiate, but
6 how part, how it has to be done, the police did not want to
7 take part there, and at that time it was the thinking to
8 be, remain impartial.

9 MR MPOFU: One of the reasons that the
10 management had given you for refusing to speak to the
11 strikers was the fact that they were armed. We've
12 established that. Now you were now being told that they
13 were refusing to speak to Mr Mathunjwa. Mr Mathunjwa was
14 not armed, as far as you were concerned, correct?

15 MAJOR-GENERAL MPEMBE: Correct,
16 Chairperson.

17 MR MPOFU: And in any event, just a
18 related question, to go back to the previous night when you
19 went to the koppie with the union leaders, Lonmin
20 management was in the Nyala, correct? Members of Lonmin
21 management.

22 MAJOR-GENERAL MPEMBE: Mr Kwadi, yes,
23 Chairperson.

24 MR MPOFU: And Mr Kwadi, when you went
25 with him to the koppie in that Nyala, was happy with the

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1 security provided by the police to be able to go there,
2 correct? In other words, he went there assured that he
3 would be safe because of your presence.

4 MAJOR-GENERAL MPEMBE: He couldn't
5 indicate, but I take it that if he was not feeling safe he
6 could not have gone.

7 MR MPOFU: Yes, and when they had said
8 that they did not want, or when they had indicated maybe
9 that they were scared to go to the koppie, did you give
10 them the assurances that you would escort them and protect
11 them if need be?

12 MAJOR-GENERAL MPEMBE: Correct,
13 Chairperson. I said to all parties in the same meeting,
14 and I did do it with the unions in the presence of
15 management.

16 MR MPOFU: And you also did it to
17 management, or rather made the same offer to management?

18 MAJOR-GENERAL MPEMBE: I said correct,
19 Chairperson, in the same meeting.

20 MR MPOFU: Yes, yes –

21 MAJOR-GENERAL MPEMBE: In the same
22 meeting where, but not separately, not going then back
23 again.

24 MR MPOFU: Yes. No, no, I understand
25 that. So your evidence therefore is that only, when you

<p style="text-align: right;">Page 16823</p> <p>1 made the offer of offering security to those who might have 2 been scared to go to the koppie, only the unions accepted 3 that and the management did not accept it? 4 MAJOR-GENERAL MPEMBE: The management 5 position is stated in OO4, Chairperson. 6 MAJOR-GENERAL MPEMBE: Yes, yes but what 7 I'm questioning is the following, General; despite the fact 8 that the – you had to assure everyone that they could go to 9 the koppie because you were going to secure them. Actually 10 everyone did go to the koppie on the strength of that 11 assurance, but the only difference is that management was 12 not prepared to take the same loudhailer and speak to the 13 workers, correct? But to come physically, they did come. 14 MAJOR-GENERAL MPEMBE: Mr Kwadi, he went 15 there, Chairperson, correct. 16 MR MPOFU: Yes, thank you. Okay, I'll 17 take you very quickly through slide L174. 18 MAJOR-GENERAL MPEMBE: I have it, 19 Chairperson. 20 MR MPOFU: Yes, well firstly let me just 21 say that Colonel Scott and I agreed that that slide was – I 22 don't know the words that I used – that it would give the 23 wrong impression to the Commission about the real sequence 24 of events. For example that first bullet, insofar as it 25 relates to possible implementation of stage 3, it was</p>	<p style="text-align: right;">Page 16825</p> <p>1 National Commissioner had discussed this with the Minister, 2 there was still by the 13:30 meeting a chance in your view 3 that this was still a possible implementation, not an 4 actual implementation. Is that your evidence? 5 MAJOR-GENERAL MPEMBE: Chairperson, I 6 want a clarity because I didn't know other possible issues 7 that are included in the question, but to me it was these 8 others that Advocate is including, they were not there. I 9 didn't know. Let me say I, they were not there. I didn't 10 know about them. But what I know is about operationally 11 that could still be a possible one, and secondly is that 12 the last address by Mr Mathunjwa actually Brigadier Calitz 13 could have taken another decision. 14 MR MPOFU: Ja, and at that stage, this is 15 now 1:30, you knew that Mr Mathunjwa had already been sent 16 - I think when I said "instructed" you objected – he had 17 been requested by General Mbombo to go to the mountain, 18 correct? 19 MAJOR-GENERAL MPEMBE: Chairperson, if my 20 evidence and my recollection is clear, I think it was now 21 for the second time when we, when he went now. 22 MR MPOFU: Yeah, but the question is you 23 knew that. 24 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 25 I knew.</p>
<p style="text-align: right;">Page 16824</p> <p>1 incorrect because the decision had already been taken. 2 Would you agree? 3 MAJOR-GENERAL MPEMBE: I do not agree, 4 Chairperson. 5 MR MPOFU: So you think that by 13:30 the 6 discussion was still about a possible rather than a 7 definite implementation of stage 3? 8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson, because we didn't know which decisions were 10 taken by then. 11 MR MPOFU: No, but I'm just talking about 12 you now. You said at that stage you had already advised 13 General Mbombo that stage 3 must go ahead. So it couldn't 14 have been a possible implementation; the meeting must have 15 been about an implementation, an actual implementation. 16 MAJOR-GENERAL MPEMBE: Chairperson, it's 17 my evidence that when the JOCCOM go in to sit you have to 18 discuss it within the JOCCOM. If it's not accepted by 19 other JOCCOM members it could be deviated. It might have 20 gone either way, and that's my evidence. 21 MR MPOFU: I see. So you're saying that 22 despite the fact that you had advised General Mbombo that 23 the time had come for stage 3, despite the fact that she 24 had agreed with you, despite the fact that she had already 25 advised the National Commissioner, despite that the</p>	<p style="text-align: right;">Page 16826</p> <p>1 MR MPOFU: So when Lieutenant-General 2 Mbombo then gave the instruction to General Annandale to 3 roll out stage 3, why didn't you say hang on, we have to 4 wait for Mr Mathunjwa's second foray? 5 MAJOR-GENERAL MPEMBE: Chairperson, as 6 I'm saying, Brigadier Calitz as the operational commander 7 could have taken the situation into account and – 8 MR MPOFU: No, but – I'm sorry, sorry, 9 General. Sorry, finish up. 10 MAJOR-GENERAL MPEMBE: I was still 11 saying, a decision, it was also to brief the other members 12 and to other people, but it doesn't on its own stand that 13 it could have gone if the situation could have changed on 14 the ground. That's what I'm saying. 15 MR MPOFU: So are you now telling the 16 Commission that what General Mbombo was really saying was, 17 Major-General Annandale, roll out stage 3, but subject to 18 what Brigadier Calitz might say about Mr Mathunjwa's second 19 visit, and when General Annandale was saying I want the 20 thing to start at 15:30, he was saying I want you to start 21 at 15:30 subject to what Brigadier Calitz might say about 22 Mr Mathunjwa's second visit? 23 MAJOR-GENERAL MPEMBE: Chairperson, in 24 this instance I'm referring to situational appropriateness 25 that can only be taken by Brigadier Calitz.</p>

<p style="text-align: right;">Page 16827</p> <p>1 MR MPOFU: Okay. You are aware that 2 there's some kind of moratorium on taking any criminal 3 action or disciplinary action against members of SAPS 4 relating to this matter? 5 MAJOR-GENERAL MPEMBE: I don't understand 6 the moratorium. 7 MR MPOFU: Do you know that there's a 8 decision, Mr Mathibedi pointed it out to me that there's a 9 decision at the high levels that all disciplinary and 10 criminal actions which flow from these events are going to 11 be put in abeyance until the end of the Commission? 12 MAJOR-GENERAL MPEMBE: Chairperson, what 13 I do know is what the National Commissioner said to the 14 Commission to that effect. Whether it refers to both, I 15 don't know, but that's what the National Commissioner said. 16 MR MPOFU: Yes. So okay, well – 17 CHAIRPERSON: Sorry, of course the 18 National Commissioner wouldn't have any authority over the 19 Provincial Director of Public Prosecutions, and even I 20 assume that disciplinary matters, will those be matters for 21 IPID or for the National Commissioner? 22 MAJOR-GENERAL MPEMBE: Chairperson, it's 23 correct that IPID should recommend and raising out from the 24 investigations. 25 CHAIRPERSON: Anyway, what does appear to</p>	<p style="text-align: right;">Page 16829</p> <p>1 MAJOR-GENERAL MPEMBE: I don't know, I do 2 not understand, Chairperson, by "shortly after this event" 3 because I was arrested not immediately, but it was after 4 yes, but for something else. 5 MR MPOFU: Okay, anyway – 6 CHAIRPERSON: Hasn't this matter of his 7 arrest been canvassed already? 8 MR MPOFU: Not for the purposes that I'm 9 going to ask, Chairperson, I'm sure. In any event, what I 10 want to ask you really is can you give an explanation as to 11 then why you are the only member of SAPS in the country who 12 has been arrested for this matter – 13 CHAIRPERSON: No, no, no. No, I'm sorry, 14 Mr Mpofo, my understanding is that his arrest was on other 15 charges. They related to – if I'm wrong I'll be corrected 16 – to allegations that he assaulted – 17 MR MPOFU: My clients. 18 CHAIRPERSON: Sorry? 19 MR MPOFU: The people that I represent 20 here. 21 CHAIRPERSON: Yes, he assaulted some of 22 your clients while they were in custody after the events of 23 the 16th, and so forth. So he wasn't arrested in respect of 24 anything that happened on the 16th or in the run-up to the 25 16th. The allegations against him were based on what</p>
<p style="text-align: right;">Page 16828</p> <p>1 have happened is that these matters are being held in 2 abeyance. I mean the criminal prosecution is not 3 proceeding and the arrested people who are before the 4 court, their cases have been postponed from time to time. 5 It does seem to be common cause, I think – 6 MR MPOFU: That's correct, Chairperson. 7 CHAIRPERSON: - that everything is being 8 held in abeyance as far as proceeding with disciplinary 9 proceedings or criminal proceedings is concerned, until 10 after this Commission has reported. 11 MR MPOFU: Yes. Thank you, Chairperson. 12 Now – 13 CHAIRPERSON: But what I'm saying, I'm 14 not sure that that's necessarily due to a decision of the 15 National Commissioner, because she wouldn't have had power 16 over the DPP for example, but certainly whoever made the 17 decision, maybe the DPP made the decision himself on his 18 own initiative, but that certainly is the position, is it 19 not? 20 MR MPOFU: Yes. 21 CHAIRPERSON: Everything is being held in 22 abeyance. 23 MR MPOFU: That's correct. Thanks, 24 Chairperson. Now you were arrested shortly after this 25 event, correct?</p>	<p style="text-align: right;">Page 16830</p> <p>1 happened subsequently. I think that's correct, is it not? 2 So if that's so, the two cases are distinguishable, aren't 3 they? 4 MR MPOFU: Okay, well – 5 CHAIRPERSON: I don't know what the 6 factual position – 7 MR MPOFU: Okay, that's fine. 8 CHAIRPERSON: I'm putting it to you the 9 way I understand it. 10 MR MPOFU: No, I understand, Chairperson. 11 Well, okay, even with that – 12 CHAIRPERSON: Anyway, Mr Mathibedi turned 13 his light on. 14 MR MPOFU: Yes. 15 CHAIRPERSON: Perhaps he can throw light 16 on this matter. 17 [12:57] MR MATHIBEDI SC: - to say something at 18 this stage, Mr Chairman. 19 MR MPOFU: Yes, thank you. Okay is it on 20 the basis that the Chairperson has put it? Do you know of 21 anyone else who was arrested in relation to the torture of 22 my client? 23 CHAIRPERSON: I think you mean alleged 24 torture. There's an allegation against you that you 25 assaulted some of Mr Mpofo's clients and you were arrested</p>

<p style="text-align: right;">Page 16831</p> <p>1 on the strength of that. What Mr Mpofo now wants to know 2 from you do you know whether anybody else was arrested or 3 is a subject of any pending prosecution or disciplinary 4 proceedings relating to allegations that he - 5 MR MPOFU: Tortured. 6 CHAIRPERSON: Assaulted. Sorry. 7 MR MPOFU: I was saying tortured, 8 Chairperson. 9 CHAIRPERSON: Well yes, assaulted or 10 tortured is the word Mr Mpofo uses, Mr Mpofo's clients. 11 MR MATHIBEDI SC: Sorry, Mr Chairman, 12 before the witness answers. I respectfully submit that 13 this question, it's highly irrelevant for the terms of 14 references. It has got nothing to do with issues that has 15 to be determined this Commission. 16 CHAIRPERSON: I've ruled in the past that 17 this isn't in fact a relevant matter for us, it's certainly 18 not covered by the terms of reference and I can't see how 19 even some kind of collateral it could help us to answer the 20 questions as we've had put to us. So unless there's 21 something you wish to say, explain to me - 22 MR MPOFU: Yes, Chairperson, I accept 23 that the torture or no torture is irrelevant. I'm asking 24 this question for the simple relevant proposition namely, 25 that I have put up a theory that General Mpeembe whilst</p>	<p style="text-align: right;">Page 16833</p> <p>1 the information that you need. 2 MR MPOFU: I've got it, Chair. 3 CHAIRPERSON: Whether it will found the 4 argument you want to present is a matter you must decide 5 yourself. 6 MR MPOFU: Which we'll find out. 7 CHAIRPERSON: It's now 1 o'clock, before 8 you move onto the next point, would it be convenient if we 9 took the lunch adjournment? 10 MR MPOFU: Yes, Chairperson, thank you 11 very much. 12 CHAIRPERSON: We'll take the lunch 13 adjournment at this point. We'll try to resume at a 14 quarter to two. 15 [COMMISSION ADJOURNS COMMISSION RESUMES] 16 [13:50] CHAIRPERSON: The Commission resumes. Major- 17 General, you're still under oath, Major-General. 18 MAJOR-GENERAL MPEMBE: Thanks, 19 Chairperson. 20 ZONDASI WILLIAM MPEMBE: s.u.o. 21 CHAIRPERSON: Mr Mpofo, I believe you have some 22 more questions in cross-examination. Have you recovered 23 your mike? 24 MR MPOFU: I have, thank you Chairperson. 25 FURTHER CROSS-EXAMINATION BY MR MPOFU:</p>
<p style="text-align: right;">Page 16832</p> <p>1 being isolated, now if it is true that he is the only 2 policeman in the whole Republic who has been treated in a 3 particular way, it may or may not support the contention 4 that his colleagues - 5 CHAIRPERSON: Oh okay. Mr Mathibedi, I 6 can't see any problem in relation to this one question, 7 this question only namely, were you the only person who was 8 arrested or being charged in respect of alleged torture of 9 Mr Mpofo's clients or are there others? I'll allow that 10 question, but I'm not going to allow - 11 MR MPOFU: Thank you, Chairperson. 12 CHAIRPERSON: - much after that. I may 13 not allow anything at all. What's the answer to the 14 question? 15 MAJOR-GENERAL MPEMBE: No, Chairperson, 16 there were a number of them. If my recollection is well, 17 there were nine or ten. 18 CHAIRPERSON: Nine or ten members of the 19 service - 20 MAJOR-GENERAL MPEMBE: Including myself. 21 CHAIRPERSON: - including yourself. Were 22 you all arrested? 23 MAJOR-GENERAL MPEMBE: Chairperson, we 24 were arrested at Brits after the - 25 CHAIRPERSON: All right, you've now got</p>	<p style="text-align: right;">Page 16834</p> <p>1 General, you indicated that you went to, or rather, after 2 you landed back - we are back on the 16th now - you went on 3 the helicopter and then you came back and then you went to 4 make enquiries about the availability of cells for the 5 RSTs, correct? 6 MAJOR-GENERAL MPEMBE: Advocate, I just 7 want to check. Yes, it is in terms of my, it is how I said 8 it in terms of HHH12. 9 MR MPOFU: Yes. And, well, I am going to 10 criticise you at the end of the case so I need to give you 11 a chance to respond to that, for what I will call almost 12 actively avoiding going to the scene despite your level of 13 responsibility, that first you heard that there was an 14 attack, then when you came back you heard that there were 15 bodies down, whatever that meant at that stage and yet your 16 concern was to go and arrange for cells instead of going 17 down there. And this is the same general who, two or three 18 days ago, had decided to roll up his sleeves and be there 19 on the ground and now he is avoiding the battleground, so 20 to speak. Do you understand the nature of my criticism? 21 Comment please? 22 MAJOR-GENERAL MPEMBE: Chairperson, I did 23 say that the level of the experience of the commanders and 24 also the General was on the ground. I couldn't see it that 25 was there anything that I could do differently at that</p>

<p style="text-align: right;">Page 16835</p> <p>1 stage. And secondly, it is that I see IPID by then was 2 already been informed and many issues were already been 3 done. 4 MR MPOFU: Yes, well, so much so that 5 your reason for not going to the scene, which is to arrange 6 for the cells, is not one that holds any water because by 7 then the cells had already been arranged. Agreed? 8 MAJOR-GENERAL MPEMBE: Chairperson, it is 9 not only the cells that I've mentioned. There were also 10 other responsibilities that I needed to confirm, the 11 hospitals and the others. I understand that Advocate 12 mentions the cells, which is part of that but there were 13 also other responsibilities as I also illustrated. 14 MR MPOFU: Ja, so I want – I'm sorry, 15 Chairperson. 16 MR MATHIBEDI SC: Sorry, Mr Chairman, I 17 think in fairness it should be put to the witness as to 18 what is it that he was supposed to have done, gone and, and 19 do at the scene. 20 MR MPOFU: Oh okay, we will come to that 21 but do you accept that by the time that the tragedy 22 occurred, the issue of detention cells had been long sorted 23 out? So as far as that is a reason for not going to the 24 scene, that was not a valid reason. 25 MAJOR-GENERAL MPEMBE: Chairperson, it</p>	<p style="text-align: right;">Page 16837</p> <p>1 the middle of this major tragedy or massacre or whichever 2 one you call, to go, to rather prioritise something that 3 has been sorted out already is quite strange for a 4 commander, a person who is the overall commander, correct? 5 CHAIRPERSON: At what stage precisely in the 6 afternoon did you leave for the Marikana police station? 7 What had already happened by the time you left for the 8 Marikana police station? 9 MAJOR-GENERAL MPEMBE: Chairperson, I 10 don't recall except if I can check on my GGG12 but that's 11 what I say to the question, it is not so much a detention 12 facility because at that stage the processing, what we call 13 the processing place was not yet confirmed. We were also – 14 that's why I'm saying it's not only a detention facility 15 but the processing place, maybe I'll just have to check at 16 may GGG12. 17 CHAIRPERSON: No, I understand. You deal with 18 this in para 53 of GGG12 but what I was concerned with is 19 what had already happened. It was suggested to you that 20 just after the tragedy you went off to the police station, 21 but before you went to the police station what had you 22 done, if anything? 23 MAJOR-GENERAL MPEMBE: Chairperson, I did 24 ask the questions, the following questions which were 25 confirmed by the JOCCOM, about the medical people are being</p>
<p style="text-align: right;">Page 16836</p> <p>1 was not only the reason. There were also other reasons – 2 MR MPOFU: Yes and – sorry, sorry 3 General, I know there were other reasons but as far as that 4 reason is concerned it is invalid for the reason I have 5 just mentioned, correct? 6 MAJOR-GENERAL MPEMBE: To me, 7 Chairperson, it was not yet confirmed that the detention 8 facilities were confirmed. 9 MR MPOFU: Well, General, if you go to 10 JJJ168 which has been shown to you before, JJJ168 – okay, 11 can you please show it on the screen? Yes, I think go 12 down. The note that says "Cluster 170." Carry on. Page 13 3. Ja, there you are, thank you. You see, General, that 14 note was taken at the 6 o'clock meeting. We've gone 15 through this before with Mr Chaskalson, do you remember 16 that? 17 MAJOR-GENERAL MPEMBE: Yes, I remember, 18 Chairperson. 19 MR MPOFU: Yes, now that particular note 20 reads like this, "Cluster 170 cells individual detention 21 facilities spread over five stations, six trucks and one 22 cluster truck confirmed, plus potentially more to join." 23 So it means by the 6 o'clock meeting the issue of the 24 detention facilities and the five stations and so on had 25 already been confirmed. So for you to be coming down in</p>	<p style="text-align: right;">Page 16838</p> <p>1 called and I was told yes, they are being called. 2 Secondly, was the IPID informed? I was told it was 3 informed. I asked Brigadier Van Zyl about the processing 4 of the scene then he said, General, yes, there is somebody 5 coming from national who is going to process the scenes. 6 There were already some of the activities which were 7 already being confirmed before I can also attend these 8 other matters, which of course at that stage maybe I 9 thought that it was enough just to say at that stage there 10 was nothing really indeed that I could do that could have 11 change the situation. 12 MR MPOFU: Yes. General, I know there 13 were all these small things that needed to be done, 14 relatively, but I'm saying those things compared to a 15 situation where you are in charge of probably the biggest 16 operation in your life, you've just been told that it's 17 gone disastrous, for whatever reason without ascribing 18 fault to anybody. You've just been told that it's gone 19 major disastrous, many people have died, hundreds are 20 probably injured and you know, you think you must 21 prioritise the small little things about processing and, 22 you know – it's in that context that I'm raising this. I'm 23 not saying those other things, I'm just saying in relation 24 to a catastrophic event that has just occurred, shouldn't 25 you – or rather, I'm going to suggest at the end that you</p>

<p style="text-align: right;">Page 16839</p> <p>1 should have prioritised going to the scene and dealing with 2 your top management and being more hands on in the face of 3 this unexpected catastrophe. 4 MAJOR-GENERAL MPEMBE: Chairperson, I 5 know that you said I must be very short. I just want to 6 try to be very short. 7 CHAIRPERSON: I did say unless it's necessary for 8 you – 9 MAJOR-GENERAL MPEMBE: Yes. 10 CHAIRPERSON: - to expand, you can do so. I am 11 not, I don't want to put a halter on you which would 12 prevent you from saying anything at all that's meaningful. 13 I just want to say you don't have to repeat your previous 14 testimony at great length but if it's relevant for you to 15 answer the question to say something you've said before, 16 you can do so. 17 MAJOR-GENERAL MPEMBE: Chairperson, it's 18 my testimony before this Commission that whenever I felt 19 that my experience and my hands on management abilities 20 were required, I did demonstrate that and very clearly and 21 I did say that why I changed the cap and I did say the 22 interception at the koppie and all these other activities 23 of bringing together the unions, the management, talking 24 together, that is what I did but on the 16th at the stage 25 where I came back, really there was nothing that I could do</p>	<p style="text-align: right;">Page 16841</p> <p>1 MR MPOFU: Yes, well, again I'm going to 2 argue at the end that that alone is a sign of the fact that 3 after the 13th you were no longer playing the same role in 4 real life although you were left there as a figurehead, as 5 it were. I'm sure you disagree with that. 6 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 7 MR MPOFU: Okay. Now, it is also true 8 that the – oh, by the way, when you did slit those roles 9 you were explaining the 13th and Colonel Scott was 10 explaining the 16th, as it were. Did you hear Colonel Scott 11 telling the President that the police had acted in self- 12 defence? 13 MAJOR-GENERAL MPEMBE: I did say that 14 Colonel Scott briefed the President according to what I was 15 informed. 16 MR MPOFU: Please answer the question? 17 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 18 MR MPOFU: Thank you. Alright, now the 19 other crucial role which seems to have been played in this 20 whole saga is the role of the police intelligence or rather 21 information gathered by police intelligence, correct? That 22 also played a pivotal role in informing the decision to go 23 to stage 3. 24 MAJOR-GENERAL MPEMBE: I don't understand 25 the question, whether did I play it or maybe –</p>
<p style="text-align: right;">Page 16840</p> <p>1 maybe to save the lives of the people at that time but what 2 was more important is that all issues that I could have 3 been concerned with and which I do understand what Adv 4 Mpofu said, they were already being attended. Taking 5 together an average experience of the officers that were 6 there and also of a general that was there, I did believe 7 that that was enough, Chairperson, at that time. 8 MR MPOFU: Yes, okay, I hear that. I am 9 nevertheless going to argue that this is a sign of, to the 10 effect that you were either isolated or had disengaged 11 because you were disgruntled about that isolation, the same 12 point. Is it correct that when you were briefing the 13 President or the other senior people, your role was limited 14 to explaining what had happened on the 13th, correct? 15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson. Not limited but it was where I was personally 17 involved. 18 MR MPOFU: Yes, yes, that's exactly the 19 point. In other words with everything that happened 20 subsequently to that, you were not personally involved. 21 That's exactly my theory. 22 MAJOR-GENERAL MPEMBE: Chairperson, not 23 that I was told by somebody don't get involved, but what I 24 want, I said is that – I'm sorry, Chairperson – is to 25 explain what happened on Monday.</p>	<p style="text-align: right;">Page 16842</p> <p>1 MR MPOFU: No, no. 2 CHAIRPERSON: No, no, what Adv Mpofu wants to know 3 is, do you agree that a pivotal role in these events was 4 played by the criminal intelligence people who were 5 gathering information from various sources? What's your 6 comment on that? That is his proposition, as I understand 7 it. 8 MR MPOFU: That's correct, Chair. 9 MAJOR-GENERAL MPEMBE: That I was playing 10 that role? 11 CHAIRPERSON: Not you, not you. We know that the 12 criminal investigation people were gathering information, 13 Brigadier Engelbrecht, Colonel Isaacs and people who were 14 working under them. We know that, don't we, and I 15 understand they had informers out in the field and they had 16 handlers and so forth. That's correct, isn't it? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 CHAIRPERSON: And they were getting information 20 which they were then processing and they were making that 21 available, they were making that information available to 22 the JOCCOM. That's correct, isn't it? 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 24 CHAIRPERSON: And that's the basis upon which Mr 25 Mpofu is suggesting to you that the information that you</p>

<p style="text-align: right;">Page 16843</p> <p>1 got in the JOCCOM from the criminal investigation, criminal 2 intelligence people, from the intelligence people, was 3 pivotal in the decisions that were made. Are those correct 4 summaries? 5 MR MPOFU: That's correct, Chairperson, 6 in particular the decision to move to stage 3. 7 CHAIRPERSON: Now what do you say about that? He 8 says, the last point he makes is very important, he says 9 particularly in relation to the decision to move to stage 10 3, the information that had been obtained via the criminal 11 intelligence section was very important and pivotal, in 12 fact. Now do you agree with that proposition or don't you? 13 MAJOR-GENERAL MPEMBE: I do agree with 14 it, Chairperson. 15 MR MPOFU: Thank you very much. And as 16 overall commander did it ever occur to you that the 17 integrity of this information might not be good and by 18 that, let me explain what I mean by that and I'm not 19 blaming you, just by the nature of this kind of thing it 20 was probably somebody on the ground, some informer who 21 cannot be identified, I think SMSs, from what we gather 22 from Brigadier Engelbrecht – will SMS somebody called a 23 handler and then that handler will then relay that message 24 to Brigadier Engelbrecht. So if that person, the source 25 whom you and I will never know who it is, might have a</p>	<p style="text-align: right;">Page 16845</p> <p>1 slide. 2 MR MPOFU: Yes. 3 MAJOR-GENERAL MPEMBE: But not that all 4 people left the koppie. 5 [14:10] MR MPOFU: Sorry, so you remember the 6 slide as having some people still left in the koppie, I'm 7 talking about the big koppie now. 8 MAJOR-GENERAL MPEMBE: I'm talking about 9 the group that actually what is it, let's say those – 10 MR MPOFU: Went to the police – 11 MAJOR-GENERAL MPEMBE: Went into the 12 police – 13 MR MPOFU: Ja, that's fine, that's what I 14 – 15 MAJOR-GENERAL MPEMBE: Charged on the 16 police. 17 MR MPOFU: Yes, that doesn't have a 18 kraal, I'm talking about the koppie now, I'm saying do you 19 accept that the people, for them to be near the kraal by 20 definition it means they had left the koppie, isn't that 21 true? 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 23 MR MPOFU: Thank you. 24 MAJOR-GENERAL MPEMBE: But what actually 25 crime intelligence in my understanding was saying, was</p>
<p style="text-align: right;">Page 16844</p> <p>1 whole lot of other motives including being paid money for 2 giving information. I'm only saying it in that spirit, 3 that sometimes the integrity of the information, because it 4 comes from faceless people, could not be that good. Did 5 that ever concern you, yes or no? 6 MAJOR-GENERAL MPEMBE: It didn't concern 7 me, Chairperson, because I know that the information is 8 normally confirmed before it's brought to us. 9 MR MPOFU: And, well, we know for example 10 that one of the pieces of information that you were given 11 in the morning was that the strikers would resist or refuse 12 to leave the koppie and that didn't materialise. So as far 13 as that is concerned – 14 CHAIRPERSON: Why do you say that it didn't 15 materialise? 16 MR MPOFU: Well, I will – 17 CHAIRPERSON: What fact is that allegation based 18 on? 19 MR MPOFU: Okay. We went through this 20 last week. You remember I took you to, I don't know which 21 slide, that you and I agreed that at least the koppie was 22 empty and abandoned or deserted by the time, by some time 23 before even the tragedy happened. Do you remember that? 24 Otherwise I'll take you back to the slide. 25 MAJOR-GENERAL MPEMBE: I remember the</p>	<p style="text-align: right;">Page 16846</p> <p>1 talking about those that were charged the police. 2 MR MPOFU: No, okay, any way, ja well I 3 can't remember what the exhibit number is but I thought 4 that that piece of paper from so-called crime intelligence 5 was just that the people had refused to leave the koppie. 6 But I'll take your word for now. In any event is it, can 7 you, I just don't want to be unfair to you, is it fair to 8 say that your evidence was intended to give the commission 9 the impression that your real involvement in this matter 10 was on the 13th, correct? 11 MAJOR-GENERAL MPEMBE: No, Chairperson, I 12 think what is more important is that on the 13th I played 13 dual role. That's why then the 13th is much emphasised but 14 the fact that I was not on the scenes on the 16th that's why 15 I don't speak much on what happened on the ground. 16 MR MPOFU: No, thank you, General, I 17 think my question was vague. So it's my fault. I'm not 18 talking about any period subsequent to the 13th. I'm 19 actually talking about before. I'm saying would it be fair 20 to say that your evidence was meant to create the 21 impression to the Commission that prior to the 13th you were 22 not really involved, you were on leave and so on, your real 23 involvement commences on the 13th, would that be a fair 24 summary or would that be, am I being unfair to you? 25 MAJOR-GENERAL MPEMBE: Oh being unfair</p>

<p style="text-align: right;">Page 16847</p> <p>1 that I was on leave, I just wanted the clarity. 2 MR MPOFU: Okay sorry. I'm saying, okay 3 as your – 4 COMMISSIONER: Can I perhaps help. 5 According to exhibit GGG12 when you were on leave on 6 Saturday the 11th of August you received an SMS from 7 Brigadier Engelbrecht, the Provincial Head of the Crime 8 Intelligence North West Province regarding a march by 9 employees of Karee Mine to the hostel's sport ground and 10 they were demanding a salary increase and then he also 11 dealt with the events following the march. You forwarded 12 the SMS to Major-General Naidoo who was the acting 13 provincial commissioner at the time, is that right? 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson. 16 CHAIRPERSON: He then came back to you, 17 informed you that Brigadier Calitz had already been 18 informed and the POP members were attending to the 19 situation, is that right? 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson. 22 CHAIRPERSON: And you then went back to 23 Brigadier Engelbrecht and said that Major-General Naidoo 24 had attended to the situation. That's all you did on the 25 Saturday the 11th, is that right?</p>	<p style="text-align: right;">Page 16849</p> <p>1 and I go further and I say that which you've now confirmed 2 with the Chairperson was calculated to deliberately 3 underplay the role that you played before the 13th and it is 4 not a reflection of the truth. 5 MAJOR-GENERAL MPEMBE: Sorry, Chairperson 6 – 7 CHAIRPERSON: How can he answer a 8 question like that. Mustn't you put to him the role he 9 played before then to indicate why you say that this 10 evidence he gave was misleading and was deliberately 11 designed to underplay what he'd actually done and I think 12 before you can expect an answer you must give him the 13 details so that he can reply. 14 MR MPOFU: Then I'd lose the thrust of 15 the cross-examination. I want to commit him first, if he 16 says no what he said to you is the only thing he did then 17 I'm going to put to him what's the point, if I put the, all 18 the thing, ja, alright. 19 CHAIRPERSON: Perhaps you want to put it 20 differently. What you've told us you've did on the 21 Saturday was that all you did on the Saturday in relation 22 to Marikana? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 CHAIRPERSON: And did you do anything on</p>
<p style="text-align: right;">Page 16848</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 2 CHAIRPERSON: According to your statement 3 you didn't do anything on Sunday the 12th? 4 MAJOR-GENERAL MPEMBE: Correct. 5 CHAIRPERSON: You were on leave and then 6 what happened on Monday the 13th you, at about 8:30 you 7 attended the interim joint operation centre, that was the 8 JOC established at Lonmin, that was the interim JOC and you 9 got there with Lieutenant-General Mbombo, the provincial 10 commissioner who had come back obviously from her leave and 11 Major General Naidoo who had been acting in her place until 12 then, is that right? 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 14 CHAIRPERSON: So what Mr Mpofu is putting 15 to you is apart from dealing with the SMS that you got from 16 Brigadier Engelbrecht which you passed on to the 17 appropriate quarters and then when you got feedback you 18 reported back to Brigadier Engelbrecht, apart from that you 19 weren't involved at all in what was happening at Marikana 20 until the Monday morning, is that right? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 CHAIRPERSON: Is that your point, Mr 24 Mpofu? 25 MR MPOFU: That's correct, Chairperson,</p>	<p style="text-align: right;">Page 16850</p> <p>1 the Sunday relating to Marikana? 2 MAJOR-GENERAL MPEMBE: No, Chairperson, 3 except only when I'm contacted or maybe and then I give the 4 information but nothing physically I did at Marikana. 5 CHAIRPERSON: Alright and before the 6 Saturday, Friday the 10th did you do anything? Were you 7 involved in any way in what was going on in Marikana, you 8 were on leave I think? 9 MAJOR-GENERAL MPEMBE: Yes, I was on 10 leave, Chairperson. 11 CHAIRPERSON: When did your leave end? 12 When did you come back from leave? 13 MAJOR-GENERAL MPEMBE: Actually I was 14 called from leave when I reported on Monday. 15 CHAIRPERSON: That has been your evidence 16 throughout. 17 MAJOR-GENERAL MPEMBE: Yes. 18 CHAIRPERSON: Now what Mr Mpofu is 19 suggesting to you that there was something else that you 20 did that's very relevant that you, in relation to Marikana 21 which you kept away from us, is that correct? 22 MR MPOFU: That's correct, Chairperson. 23 CHAIRPERSON: Now as far as you're aware 24 is there any substance in that allegation? 25 MAJOR-GENERAL MPEMBE: No, I'm not aware</p>

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1 except all this that.

2 MR MPOFU: Thank you very much,

3 Chairperson. Okay now the, according to Brigadier

4 Engelbrecht the, your interactions with him are not

5 confined to the SMS, he actually had several telephonic

6 conversations with you on top of the SMS. Do you, is he

7 lying or are you making a –

8 CHAIRPERSON: I'm sorry, Mr Mpfu, he

9 does say in his statement GGG12 that after he got the SMS

10 from Brigadier Engelbrecht and after he forwarded to Major-

11 General Naidoo and then got feedback from Major-General

12 Naidoo he then reported back to Brigadier Engelbrecht that

13 Major-General Naidoo had attended to the situation. So in

14 other words his involvement was not just limited to the

15 SMS, he does say that there was a further communication or

16 discussion between him and Brigadier Engelbrecht, he

17 doesn't tell us what the form of that report, what form

18 that report took. So that's something that needs to be

19 investigated further.

20 MR MPOFU: Fair enough.

21 CHAIRPERSON: Before you put the

22 proposition as starkly as you did.

23 MR MPOFU: Yes, thank you, Chairperson.

24 Yes. I want to suggest to you that apart from the SMS and

25 your report back to Brigadier Engelbrecht that you had

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1 passed it on you were actually had more detailed

2 discussions with Brigadier Engelbrecht before the 13th about

3 the situation in Marikana, do you dispute that?

4 MR MATHIBEDI SC: Sorry, Mr Chairman, I

5 think with due respect I mean the necessary you know

6 information or version should be put to the witness to

7 enable to deal with that. I mean to just say that he had

8 more interaction or telephone conversation with Brigadier

9 Engelbrecht without telling him –

10 CHAIRPERSON: Well he committed himself

11 has he not to what the answers he gave to me. So it is put

12 to him there's more happened then he told us. Sorry.

13 MR MATHIBEDI SC: What is the more, Mr

14 Chairperson, that's the problem I've got.

15 CHAIRPERSON: Well he's entitled to be, I

16 mean if you ask someone when you went to the shop and you

17 took one tin of stuff from the shelf and he says yes and

18 you said did you take any more he says no, I put it to you

19 took more, you're obliged to say to him what precisely he

20 took. If he didn't take anything more he didn't take any

21 more. So same thing would apply, I think the question is

22 admissible. But you and I will keep an eye on it just to

23 make sure that Mr Mpfu doesn't go further then he should.

24 MR MPOFU: Yes, thank you.

25 COMMISSIONER HEMRAJ: But the basis of

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1 the question is in the statement of another of your

2 witnesses, Mr Mathibedi. The basis for these questions

3 appear from the statement of another of the SAPS's

4 witnesses and I think that's what Mr Mpfu is exploring.

5 MR MPOFU: Thanks, Chairman. Just to

6 assist you, General, I'll take you to the statement JJJ167,

7 just so that we play open cards here. JJJ167 which is a

8 statement of Brigadier Engelbrecht. If we go to paragraph,

9 let's start with paragraph 2. You see that there's a

10 reference to the SMS. So we can eliminate that. Paragraph

11 3 is where I have an interest.

12 CHAIRPERSON: Para 4 also has got the –

13 MR MPOFU: And 4, yes. We're going to

14 get there. Let's start –

15 MR MATHIBEDI SC: Mr Chairman –

16 MR MPOFU: Sorry, sorry.

17 MR MATHIBEDI SC: If the witness could be

18 pointed where precisely in paragraph 2 is it indicated that

19 that information was given over to the witness.

20 MR MPOFU: No, no I'm sorry if I gave

21 that impression then it's my mistake. I was just saying

22 there is a reference to the SMS that, I'm not quarrelling

23 with him as far as the SMS is concerned. I'm not saying

24 that it saying at this stage that it was relayed to him.

25 So apologies for that. Now paragraph 3, General, says

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1 remember in our heads information that there were going to

2 be attacks that night against supporters of NUM and so on.

3 He says, "I then telephoned Major-General Mpembe and

4 discussed information that I had received with him -

5 CHAIRPERSON: I'm sorry.

6 MR MPOFU: Sorry, Chairperson.

7 CHAIRPERSON: I just want to be sure of

8 something. Have you got the statement in front of you,

9 Brigadier Engelbrecht's statement.

10 MAJOR-GENERAL MPEMBE: Correct,

11 Chairperson.

12 CHAIRPERSON: And are you following the

13 passage that is being read to you by Mr Mpfu?

14 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

15 MR MPOFU: Thank you, Chairperson. The

16 crucial part is the one I've just read. "I then telephoned

17 Major-General Mpembe and discussed information that I had

18 received with him. I did this because it was my duty to

19 report this information to General Mpembe and because I

20 wanted to see that visible policing was deployed in the

21 area. I discussed information that I had received with

22 Major-General Mpembe in relation to the gathering that had

23 taken place the previous day. I also forwarded the SMS".

24 So that's why I was saying lets eliminate the SMS because

25 you and I agree about that. It's that it's the extra

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1 discussion with I suggest is much more then what you had
 2 given to the commission, do you have an answer to that?
 3 MAJOR-GENERAL MPEMBE: Chairperson, my
 4 answer still remains according to my statement. There was
 5 no time where or there was no stage where I said to
 6 Brigadier Engelbrecht I'm not happy, how I could have done
 7 that assessment.
 8 CHAIRPERSON: No, no, no. It's not as
 9 simple as that, Major-General, if you look at the last
 10 sentence of paragraph 3 which is the top of page 2 of the
 11 statement. He says, after he says he's forwarded the SMS
 12 to you. He says you told him, Major-General Mpeembe told
 13 me, "that he was going to deploy operational people from
 14 SAPS at Marikana and that he would deal with the issue."
 15 That's the point that Mr Mpfu is putting to you. He's,
 16 and this conversation took place according to paragraph 2
 17 on the 11th. Now the 11th you'll remember was the Saturday.
 18 Now you did say that you got an SMS on the Saturday and you
 19 did say that once you had forwarded it to Major-General
 20 Naidoo and you got feedback you then reported to Brigadier
 21 Engelbrecht that Major-General Naidoo had attended the
 22 situation. But you did not say that you deployed
 23 operational people from SAPS at Marikana if you in fact did
 24 that or alternatively that you said that you were going to
 25 do that and you didn't do it. So that's really what Mr

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1 Mpfu is about. So perhaps Mr Mpfu could put his question
 2 to you again and then we can get a crisp answer to it.
 3 MR MPOFU: Yes. Well maybe to do that
 4 I'll tend to the crisp question, which is that what is
 5 suggested in paragraph 3 I'm going to argue is much more
 6 then what you have led the commission to believe up to now
 7 where your activities on the 11th, is that fair or do you
 8 have answer to that or am I being unfair to you?
 9 MAJOR-GENERAL MPEMBE: Unfair,
 10 Chairperson.
 11 CHAIRPERSON: May I ask a question?
 12 MR MPOFU: Yes, Chairperson.
 13 CHAIRPERSON: Did you in fact deploy
 14 operational people from SAPS at Marikana on the Saturday?
 15 MAJOR-GENERAL MPEMBE: No, Chairperson.
 16 MR MPOFU: Thank you, so then we go back
 17 to where we started. So it is either you are correct or
 18 Major-General, rather Brigadier Engelbrecht is mistaken or
 19 making it up, we don't know which but he's wrong, correct?
 20 MAJOR-GENERAL MPEMBE: I don't want to
 21 say he is but myself I was on leave. I did not go to
 22 Marikana on Saturday but I was constantly, whatever he
 23 reported to me I reported to General Naidoo and also to
 24 Brigadier Calitz. I have never at any stage been at
 25 Marikana.

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1 CHAIRPERSON: He doesn't say you did.
 2 What he says is that you told him that you were going to
 3 deploy operational people from SAPS at Marikana and that
 4 you would deal with the issue, you didn't say I will go
 5 there personally, I will deal with the issue personally on
 6 the spot. But what he says you said to him was that you
 7 would deploy operational people from SAPS at Marikana and
 8 you said that to him on the Saturday. Now did you say that
 9 to him?
 10 MAJOR-GENERAL MPEMBE: No.
 11 CHAIRPERSON: You've told us you didn't
 12 deploy people on the Saturday but did you tell him on the
 13 Saturday that you would deploy operational people?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson,
 15 what I said to him is that, okay.
 16 CHAIRPERSON: What did you say?
 17 MAJOR-GENERAL MPEMBE: No, Chairperson,
 18 you are correct because I just want to repeat what I said
 19 in my statement to say that I told the people who were on
 20 duty.
 21 CHAIRPERSON: Yes.
 22 MAJOR-GENERAL MPEMBE: Yes, what he has
 23 reported to me.
 24 COMMISSIONER HEMRAJ: When you told this
 25 to the people on duty did you perhaps say to them that more

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1 police need to be deployed in Marikana, did you perhaps do
 2 that?
 3 MAJOR-GENERAL MPEMBE: I did because even
 4 those SMSs they were also speaking the same thing that he
 5 told me.
 6 COMMISSIONER TOKOTA: Since you were on
 7 leave would you have been in a position to deploy SAPS at
 8 Marikana when there were people who were on duty and
 9 General Naidoo will be acting provincial commissioner?
 10 MAJOR-GENERAL MPEMBE: No, Chairperson.
 11 MR MPOFU: Okay now let just understand
 12 that last answer. Are you saying that if you are on leave
 13 as, you know given your seniority and your rank and
 14 everything, if you had picked up the phone, given your
 15 seniority and said listen this unit and that unit, what you
 16 call it, visible policing and all those people must go
 17 there, would there have been anything wrong with that or 2,
 18 would someone have said well you are on leave we're not
 19 going to listen to you?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I'll
 21 ask permission to explain this. When one goes on leave you
 22 are actually give somebody your position and your
 23 authority. In the sense that somebody acts in your
 24 position. So at that time you only, the information that
 25 you get, you only convey to the one that is on duty because

<p style="text-align: right;">Page 16859</p> <p>1 at that time you can't give an instruction from leave, you 2 don't know what is happening actually on the ground. So 3 that's why I was communicating any information that was 4 coming to me back to those that are on duty. 5 MR MPOFU: Yes, okay. That's fair. Now 6 if that is true then it means the part that the Chairperson 7 read to you, the words he there which obviously refers to 8 you that, then it means Brigadier Engelbrecht was not 9 telling the truth because he says Major-General Mpmembe told 10 me that he was going to deploy operational people from SAPS 11 at Marikana and that he would deal with the issue. 12 MAJOR-GENERAL MPEMBE: I did not go there 13 and I did not deal with it personally, Chairperson. 14 MR MPOFU: Yes, so Engelbrecht is wrong? 15 Correct? 16 MAJOR-GENERAL MPEMBE: According to my 17 answer, yes, Chairperson. According to my answer he is not 18 correct. 19 MR MPOFU: Okay, now apart from that 20 discussion which involved the SMS, prior to the 13th did you 21 have another telephonic discussion with Brigadier 22 Engelbrecht relating to the events in Marikana? 23 [14:30] MAJOR-GENERAL MPEMBE: Chairperson, I 24 can't really state numerically the numbers. There were 25 times when Brigadier Engelbrecht would phone me. But I</p>	<p style="text-align: right;">Page 16861</p> <p>1 MAJOR-GENERAL MPEMBE: But it's possible 2 that I might have communicated with him on the 12th because 3 immediately when he got the SMSs from the members he was 4 normally sending them to me. 5 MR MPOFU: Yes, well if the telephone 6 included something as serious as two security guards having 7 been killed would you remember that or would your failure 8 of memory suggest that it didn't happen? 9 MAJOR-GENERAL MPEMBE: Chairperson, there 10 were quite some people that phoned me when those incidents 11 happened. It's not only Brigadier Engelbrecht. I could 12 say also Brigadier Calitz, I did communicate with him, it's 13 not only that I was only communicating with Brigadier 14 Engelbrecht. And I don't deny that he might have 15 communicated with me but by that time he was aware that I'm 16 on leave. 17 MR MPOFU: Yes, I'm saying that once 18 again because apart from what happened on the 11th, on the 19 12th, if you go to paragraph 4 of the statement, I'm reading 20 from the third sentence it says – 21 CHAIRPERSON: No, no, no, I think we must 22 go further down of Para 4. 23 MR MPOFU: Yes, Chairperson. 24 CHAIRPERSON: Take Para 4 to the top of 25 the screen, stop there, then you'll see it says "Afternoon</p>
<p style="text-align: right;">Page 16860</p> <p>1 can't say it's about ten or six or what. 2 MR MPOFU: No, I'm only interested in 3 one. I'm saying apart from the time that we've just 4 discussed did you again have any other telephonic 5 conversation, in other words apart from this thing about 6 the SMS and deployments, did you have any other telephonic 7 discussion about the situation in Marikana with Brigadier 8 Engelbrecht before the 13th? 9 MAJOR-GENERAL MPEMBE: Chairperson, I 10 don't understand the question. I already said before the 11 13th was the 11th, there might also have been because every 12 time Engelbrecht when he gets any SMS from his members he 13 would SMS it to me. Then I'll also relate to the other 14 people or maybe even myself phoning Brigadier Calitz or 15 General Naidoo. That could have happened. 16 MR MPOFU: General, according to your own 17 memory did you have another discussion with Brigadier 18 Engelbrecht regarding the event in Marikana apart from the 19 one that we have discussed which occurred before the 13th? 20 MAJOR-GENERAL MPEMBE: Chairperson, I 21 said yes, with regard to the SMSs and the telephone 22 communication that happened on the 11th. But what I'm 23 saying is we might have also communicated on the 12th. I 24 don't recall that. 25 MR MPOFU: You don't recall.</p>	<p style="text-align: right;">Page 16862</p> <p>1 the 12th of August I received another report," this is 2 Engelbrecht talking "by way of an SMS from the same 3 handler." He says the contents of it in Para 6 of exhibit 4 TT5. Okay, it says "The protesters wanted to stop 5 employees going to the Karee mine on the nightshift which 6 was the next day." He says he telephoned you again and 7 conveyed this report to you and he raised his concern with 8 you concerning the killing of the two security guards at 9 Wonderkop which, of course, had happened on that day. He 10 says his concern being why people are being killed when 11 he'd asked the previous day for visible policing to be 12 deployed. This is what he says was your reply. He says 13 "Major-General Mpmembe replied that he was attending to the 14 issue and that visible police had not been employed as he 15 would have wanted them to be deployed." He then says that 16 he forwarded the SMS to you again. So what he says, really 17 what Mr Mpofo is asking you about is that he contacted you, 18 asked why the people who were going to be – the visible 19 police who were going to be deployed hadn't been and how it 20 happened that these people had been killed. And he said 21 that – and then he sets out your reply. Now that's really 22 what Mr Mpofo wants to know about. Is that right, Mr 23 Mpofo? 24 MR MPOFU: That's correct, Chairperson. 25 CHAIRPERSON: Now can you remember that</p>

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1 conversation?

2 MAJOR-GENERAL MPEMBE: Chairperson, I

3 don't remember the conversation where he raised his concern

4 with me and I say no I'm not happy with the people that

5 they have been deployed. When in the first place I did

6 tell him that I was on leave.

7 MR MPOFU: Ja, I'm sorry if I didn't

8 catch that but maybe it does raise the issue that I was

9 going to ask you about. Presumably you indicated on the

10 11th already to Brigadier Engelbrecht that listen here I'm

11 on leave, correct?

12 MAJOR-GENERAL MPEMBE: Correct,

13 Chairperson.

14 MR MPOFU: So are you then suggesting

15 that the other conversation and all these things you're

16 supposed to do could not have happened because he already

17 knew that you were on leave?

18 MAJOR-GENERAL MPEMBE: No, Chairperson,

19 what I'm saying is that he will send me the SMS and the SMS

20 I will do it as I did with the one on the 13th and maybe I

21 can even check on my records of the cell phone. You will

22 find that maybe –

23 CHAIRPERSON: Sorry to interrupt you, I

24 think you made a mistake. You said I did what I would have

25 done on the 13th, I think you meant the 11th. On the 11th

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1 you forwarded the SMS to Naidoo so that he could do the

2 necessary. You're now talking about the 12th and about an

3 SMS which Brigadier Engelbrecht says he sent you. Are you

4 saying you would have dealt with that SMS on the 12th,

5 Sunday the same way that had dealt with the SMS of the

6 Saturday the 11th, is that what you're saying?

7 MAJOR-GENERAL MPEMBE: Correct,

8 Chairperson, because I couldn't have gone to Marikana

9 because if I had gone to Marikana I could have tell him.

10 But the way in which he put it here, he said even I was not

11 satisfied with the deployment as if I was there and I could

12 have done the assessment and that is not true.

13 MR MPOFU: Okay, well you've answered my

14 next question.

15 CHAIRPERSON: Sorry, Mr Mpofo, can I just

16 ask another question before you move on? You say you were

17 on leave and you said when you go on leave you hand your

18 office over as it were, your functions and responsibilities

19 over to the person who is acting in your place. Is that

20 right?

21 MAJOR-GENERAL MPEMBE: Correct,

22 Chairperson.

23 CHAIRPERSON: Now who was acting in your

24 place on Sunday the 12th when you were still on leave?

25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 will just check whom did I recommend because sometimes

2 there was a time where you would recommend a Provincial

3 Head who's a Brigadier. But sometimes when you discuss it

4 with the Provincial Commissioner she will say no, no, if

5 another general is available. Sometimes it depends whether

6 it could be General Naidoo or General Tumane but it does

7 happen to say no, no, don't appoint this brigadier but tell

8 your provincial head they will report to so and so.

9 CHAIRPERSON: If you'd appointed a

10 brigadier would it have been Brigadier Calitz?

11 MAJOR-GENERAL MPEMBE: It could have been

12 Brigadier Calitz or it could have been Brigadier Mbombo

13 because I do have three brigadiers.

14 CHAIRPERSON: Oh I see.

15 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

16 CHAIRPERSON: So it would have been one

17 of your three brigadiers.

18 MAJOR-GENERAL MPEMBE: One of my three

19 brigadiers or General Naidoo or General Tumane. One of –

20 CHAIRPERSON: I see, the fact that you'd

21 deferred this SMS on the Saturday to Major-General Naidoo,

22 is that an indication that he may have been the person

23 acting in your place at that time or would that not be a

24 justifiable inference?

25 MAJOR-GENERAL MPEMBE: He might be the

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1 Acting Provincial Commissioner to know what is happening in

2 the province and maybe at that he knows who to assign but

3 it would happen again, Chairperson, in my capacity while

4 I'm still on leave, if it's concerning crowd management I

5 do normally, if the information come to me, phone Brigadier

6 Calitz to say are you aware about this crowd management

7 problem? And are you attending to it? So maybe my cell

8 phone can also show whether I did communicate to him or

9 not.

10 MR MPOFU: Thank you, anyway all in all

11 your final word is that in respect of paragraph 4 Brigadier

12 Engelbrecht is again wrong, correct?

13 MAJOR-GENERAL MPEMBE: Chairperson, I'm

14 referring to certain words where he assumes that I

15 personally took the matter.

16 MR MPOFU: Yes, to that extent he's

17 wrong, right?

18 MAJOR-GENERAL MPEMBE: Yes, but with the

19 communication he might not be wrong. I might have

20 communicated with him.

21 MR MPOFU: No, let's leave the places

22 where he's correct. There are places where he is wrong.

23 MAJOR-GENERAL MPEMBE: Yes.

24 CHAIRPERSON: Mr Mpofo –

25 MR MPOFU: Sorry, Chairperson.

<p style="text-align: right;">Page 16867</p> <p>1 CHAIRPERSON: - I think you've got to 2 you've got to record the points where this witness 3 Brigadier Engelbrecht is wrong, obviously you'll take them 4 up with Brigadier Engelbrecht in due course. 5 MR MPOFU: No, of course, Chairperson. 6 CHAIRPERSON: I would have thought if I 7 may say so, you've got enough on record now to take the 8 matter further with Brigadier Engelbrecht. I don't want to 9 stop you if there's something – 10 MR MPOFU: No, fair enough, Chairperson. 11 CHAIRPERSON: - point you want to make, 12 but I would have thought, if I may say so, you've got 13 enough on record for your purposes, if I may say so. 14 MR MPOFU: Thank you, Chairperson. Now 15 in the same vein let me take a related but separate topic. 16 You were aware that the strikers did not harbour any 17 animosity towards the police and they explained to you that 18 they were in possession of these weapons in order to 19 protect themselves against the NUM, correct? 20 MAJOR-GENERAL MPEMBE: That's what they 21 said to me, Chairperson. 22 MR MPOFU: Yes, you were also aware that 23 according to Mr Cassim, I think, it was only on the 11th, 24 after the alleged attack by the NUM that Mr Cassim's store 25 emptied of 30 pangas which were bought in some rush,</p>	<p style="text-align: right;">Page 16869</p> <p>1 buying pangas from me." So it might well have been from – 2 sorry it's just the time, is it 9:00 or 7:00, it could be 3 9:00. "I was on duty at 9:00 since the time at 9:00 when I 4 opened I had a rush of African males buying pangas from 5 me." And he says he had about 30 and it was all sold out 6 in no time." The stock. So that's the passage which is 7 being put to you. 8 MR MPOFU: That's correct, Chairperson, 9 ja. That's the passage I was paraphrasing from Mr Cassim. 10 You were aware of that? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson, I was aware after the 16th about that 13 information. 14 MR MPOFU: Fair enough, ja. The point 15 really that I was going to is that – sorry I've just lost 16 my train of thought. Oh yes, the point I was coming to is 17 that with all this evidence, pieces of evidence, in 18 particular what you yourself, personally had been told by 19 the strikers there was no reason to believe that they 20 harboured any animosity towards the police and they 21 communicated this not just to you but to McIntosh, to all 22 the people who were talking to them, correct? 23 MAJOR-GENERAL MPEMBE: I already said 24 that the only problem that I had with the strikers is that 25 why they refused to give me dangerous weapons. That's the</p>
<p style="text-align: right;">Page 16868</p> <p>1 correct? 2 MAJOR-GENERAL MPEMBE: Chairperson, if 3 maybe we can check the statement, just to confirm that 4 because I know that there is a statement of Mr Cassim that 5 was submitted to the Commission. 6 MR MPOFU: No, you can take it from me 7 that he says that some time around 9:00 or just after 9:00 8 on the 11th that's what he describes in that short statement 9 he says it happened on the 11th at about 9:00. You can 10 accept that. What I'm saying is that in terms of your own 11 information were you aware or have you just become aware of 12 that – 13 MR MATHIBEDI SC: Sorry, Mr Chairman, the 14 witness has asked to be shown the statement, I think it's 15 only fair. 16 CHAIRPERSON: That's a good point, Mr 17 Mpofo. 18 MR MPOFU: Okay, sorry. I was trying to 19 save time because it's not germane to what I'm going to ask 20 you, but it's fine. It's HHH7.1 I'm told, thanks. And 21 7.3. And 7.3 as well, Chairperson. 22 CHAIRPERSON: Yes, I'm reading it. He 23 says he's got a hardware shop and he says "On the 11th of 24 August at 9 o'clock I was on duty in my shop since the time 25 at 7 o'clock when I opened I had a rush of African males</p>	<p style="text-align: right;">Page 16870</p> <p>1 only point that really I had a serious problem with the 2 strikers about. 3 MR MPOFU: Yes, General, I accept that. 4 Let me tell where I'm going with this. You had no reason 5 prior to the so-called attack that you say you witnessed, 6 or which was reported to you, to believe that the strikers 7 would want to attack the police, did you? 8 MAJOR-GENERAL MPEMBE: The only problem 9 and I'm still repeating my answer is that their refusal to 10 give me the dangerous weapons because that to me it could 11 mean something else because why they could refuse to give 12 me dangerous weapons. And yet they're talking about an 13 attack which I am present at that time I could defend them. 14 MR MPOFU: Yes. 15 MAJOR-GENERAL MPEMBE: But yet they don't 16 trust the police and they continue with dangerous weapons. 17 MR MPOFU: Ja, yes, General, please just 18 bear with me here. I accept what you're saying, as a 19 senior police official if I was in your shoes I would also 20 find – I would find it objectionable that somebody's 21 defying me as a senior police officer. That's not what I'm 22 about, I'm saying there's a difference to if I intend to 23 attack Mr Chaskalson and you ask me and I have no such 24 intentions, and you ask me to hand over the weapon with 25 which I'm intending to attack Mr Chaskalson you'll have a</p>

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1 reason to complain because you are a policeman and I'm
 2 defying you. But I'm saying that's a different thing to
 3 believing that because I'm refusing to give you the weapon
 4 with which I'm going to attack Mr Chaskalson it means I'm
 5 going to attack you. Those are two different scenarios.
 6 Do you understand the difference?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson, I do understand.
 9 MR MPOFU: Now I'm saying then that in
 10 all this situation what was communicated clearly to you and
 11 when I say you again I mean the police was that these
 12 people were refusing and hoarding and wanting to keep onto
 13 their weapons for the purposes of defending themselves
 14 against the NUM, not for the purposes of attacking the
 15 police, correct?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson.
 17 MR MPOFU: Well, I'm sorry –
 18 CHAIRPERSON: He wants to finish his
 19 answer.
 20 MAJOR-GENERAL MPEMBE: Chairperson, what
 21 I'm saying is and I need to be understood in this context,
 22 that for them to refuse to hand over the dangerous weapons
 23 to me, to me it showed a wide intentions of what they will
 24 continue wanting to do or even to injure any person because
 25 to me I didn't know even now I don't know the reason why

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1 they refuse to hand the dangerous weapon knowing very well
 2 that they are committing an offence and here is a police
 3 official who doesn't say I'm arresting you, who requires
 4 them to hand over dangerous weapons. What could have been
 5 the reason for them to refuse to give that police official
 6 those dangerous weapons.
 7 MR MPOFU: Yes, no, they gave you the
 8 reason, General, and I'm not condoning the fact that they
 9 did not listen to you. It's wrong, okay, all I'm saying to
 10 you is that the mere fact that they said we're not going to
 11 give you these weapons because we're going to defend
 12 ourselves against the NUM which is wrong, they shouldn't do
 13 that. It does not suggest that they were hoarding those
 14 weapons for the sake of attacking the police. Do you
 15 accept that?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson,
 17 they could have attacked the police or anybody else and
 18 that's my meaning. For the fact that NUM was not there and
 19 the police were there to protect them.
 20 CHAIRPERSON: Now, I think you've got
 21 enough on record to argue the point you want to argue. If
 22 it's a good point we'll decide later but I think you've got
 23 enough on record to argue.
 24 MR MPOFU: Yes, Chairperson, I want –
 25 it's also my view that this is a good point.

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1 CHAIRPERSON: No, no, you'll contend that
 2 it's a good point. The witness has indicated his attitude,
 3 you're suggesting to him the refusal to hand over the
 4 weapons because they wanted to use them against NUM either
 5 aggressively or defensively isn't a sign that they would –
 6 an indication that they were aggressive towards to the
 7 police.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: And he said he doesn't
 10 accept that proposition and he's given his reasons.
 11 MR MPOFU: Yes and I can't take further –
 12 CHAIRPERSON: It's a point you've made.
 13 MR MPOFU: Yes, thank you very much,
 14 thanks, Chairperson. Except for just this one part.
 15 According to Brigadier Engelbrecht, according to Brigadier
 16 Engelbrecht actually he –
 17 COMMISSIONER HEMRAJ: Mr Mpofu, there's
 18 an objection, I think, from one of your colleagues.
 19 [14:50] MR MPOFU: Oh yes, I'm sorry. Sorry, Mr
 20 Mathibedi.
 21 MR NTSONKOTA: Thank you, Commissioner.
 22 CHAIRPERSON: It's not Mr Mathibedi,
 23 it's –
 24 MR MPOFU: It's Mr Ntsonkota.
 25 MR NTSONKOTA: Mr Ntsonkota for NUM.

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1 CHAIRPERSON: - Mr Ntsonkota, sorry, from
 2 NUM.
 3 MR NTSONKOTA: Yes, thank you, Chair.
 4 There is a suggestion emanating from Mr Mpofu to the effect
 5 that the weapons as per the witness statement of Mr Cassim
 6 were purchased after the alleged attack (just to borrow
 7 from his phrasing) by NUM on the strikers. There's no
 8 basis for such a suggestion, Chair. All that there is –
 9 CHAIRPERSON: Well, there is, you know,
 10 because if you look at exhibit L you'll see it's said in
 11 exhibit L that the attack on the NUM office took place at
 12 8:30. It's slide 19. Now whether that time is correct or
 13 not, we obviously have to consider, but Mr Mpofu is
 14 entitled to say that according to some evidential material
 15 at least before this Commission, that march on the NUM
 16 office took place at 8:30 and therefore, he will say, or he
 17 does say that if weapons were purchased after 9 o'clock
 18 that's an indication that it was after that incident.
 19 There are all sorts of inferences that can be drawn from
 20 the purchase of the weapons, but we'll not go into those
 21 now. All I'm saying to you is his assertion that the
 22 indications on the evidential material before us that those
 23 weapons were purchased after the incident is not something
 24 that's snatched out of the air and not supported by
 25 material before us.

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1 MR NTSONKOTA: No, sorry, Chair, the
 2 matter is not as simple and as straightforward, Chair, with
 3 respect, because I'm looking at a statement of Mr Albert
 4 Gegeleza - whom we know now is deceased and may his soul
 5 rest in peace - his evidence -
 6 MR MPOFU: No, Mr Gegeleza is not
 7 deceased.
 8 MR NTSONKOTA: Mr Gegeleza passed away in
 9 January I think it was, and we made a formal announcement
 10 in the Commission.
 11 MR MPOFU: Oh, I'm so sorry -
 12 CHAIRPERSON: Yes, I think that's
 13 correct, Mr Mpfu.
 14 MR MPOFU: That's correct.
 15 CHAIRPERSON: But anyway, but in the -
 16 MR MPOFU: Mr Gegeleza passed away
 17 afterwards, ja.
 18 CHAIRPERSON: But whether he's deceased
 19 or not is neither here nor there.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: There is a statement, but -
 22 MR MPOFU: I withdraw, Chairperson.
 23 CHAIRPERSON: He testified.
 24 MR MPOFU: Thank you, Chairperson.
 25 MR NTSONKOTA: Yes, he testified, and his

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1 evidence was to the effect, if I can just find the
 2 paragraph and just read - his evidence was to the effect
 3 that at around just before 9 whilst they were in the office
 4 they received a call from a friend of his who was amongst
 5 the group that had converged just outside the Wonderkop
 6 Stadium, to alert them that in fact the group had just
 7 decided to March towards the NUM's office, and that was
 8 just before 9, so he says. So it couldn't have been at
 9 half past 8. That is on the version that was not
 10 challenged -
 11 CHAIRPERSON: The incident was just
 12 before 9. It's not suggested they all hastened off to the
 13 arms shop to purchase their pangas before they went on to
 14 the NUM office. I mean there are other inferences. One
 15 inference is that they weren't all armed and after the
 16 incident at the NUM office those who weren't armed thought
 17 it might be sensible to arm themselves and went off and
 18 bought - because there were only 30 that were purchased,
 19 and there were 3 000 people, you remember, or so the
 20 evidence was, who marched on the - or something like that,
 21 2 to 3 000. So there are all sorts of inferences -
 22 MR NTSONKOTA: I don't think much turns
 23 on it -
 24 CHAIRPERSON: No, but anyway, before
 25 you -

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1 MR NTSONKOTA: - except merely to say
 2 that there are various inferences that can be drawn.
 3 That's all I wanted to say.
 4 CHAIRPERSON: No, no, I'm aware of that,
 5 astutely aware of that.
 6 MR NTSONKOTA: Thank you, Chairperson.
 7 CHAIRPERSON: But that's not a basis for
 8 an objection. Your objection was that Mr Mpfu was making
 9 an assertion to the witness that wasn't borne out by any
 10 evidential material before us, and that's not right. So -
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: - that's why I overrule
 13 your objection. The point about possible inferences and
 14 various inferences, they're all there, but they're not a
 15 reason for disallowing Mr Mpfu's question. That's all.
 16 So Mr Mpfu will carry on for the moment -
 17 MR MPOFU: Thank you, Chairperson. Yes,
 18 my -
 19 CHAIRPERSON: The timeline, the exact
 20 time it happened, whether the people who came there had
 21 weapons already, whether they, other perhaps decided it was
 22 sensible to get weapons as well, all these matters we'll
 23 deal with later, but Mr Mpfu will carry on and be allowed
 24 to carry on despite those possible inferences.
 25 MR MPOFU: Thank you, Chairperson, ja,

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1 and I'm putting the questions only on that basis, that at
 2 least on one of the versions it's competent. Okay, now
 3 what I'm getting at, General, with this is that Brigadier
 4 Engelbrecht says, we can go to page 5 of his statement,
 5 which is JJJ167, paragraph 7 - I'm just waiting for it to
 6 get to the screen, General, but in the meantime we can read
 7 from the middle of the page, paragraph 7. Yes, the
 8 following page, page 5, okay thank you. The part that I'm
 9 interested in is somewhere in the middle. It starts with
 10 saying, "I said that," this is now the intelligence people,
 11 "I said that the information that we received from the
 12 koppie was that the protesters would never surrender their
 13 weapons, the reason for this being that they needed their
 14 weapons for purposes of protecting themselves from NUM
 15 members." In other words what I'm saying is that from your
 16 own intelligence sources you were told that yes, they will
 17 refuse to hand over the weapons, and the reason is because
 18 they wanted to protect themselves from NUM members, and to
 19 you among all the other people this was not news, because
 20 that's exactly what they told you repeatedly on the Monday
 21 the 13th, correct?
 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 23 it was said to me.
 24 MR MPOFU: Thank you.
 25 MAJOR-GENERAL MPEMBE: But what I did not

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1 believe in.

2 MR MPOFU: Ja, but did you believe it –

3 okay, you might not have believed it from them. Did you

4 believe it when Brigadier Engelbrecht was saying it to you?

5 MAJOR-GENERAL MPEMBE: Chairperson, the

6 believing is that the police were there to protect any

7 person. So when –

8 CHAIRPERSON: Sorry, General, when you

9 said "I didn't believe it," that is a statement that was

10 ambiguous because there were two things. Did you

11 disbelieve both, or only disbelieve one? Remember the

12 statement was they wouldn't hand over their weapons and the

13 reason given was they wanted to protect themselves against

14 NUM. Now you obviously didn't, and I think it's clear from

15 what you've just said, you didn't think it was necessary

16 for them to hang on to their weapons to protect themselves

17 against NUM because if NUM tried anything, the police were

18 there to prevent them. Is that correct?

19 MAJOR-GENERAL MPEMBE: Correct. That's

20 what I'm saying.

21 CHAIRPERSON: The first part of it is did

22 you believe the information that they wouldn't hand over

23 their weapons, or did you think they would hand over their

24 weapons because they knew or thought or accepted the police

25 would protect them? You see the two points?

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1 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

2 CHAIRPERSON: Now what was your belief or

3 disbelief regarding that part of the information which said

4 that they wouldn't hand over their weapons? Did you accept

5 that as correct, albeit for the wrong reason perhaps?

6 MAJOR-GENERAL MPEMBE: No, Chairperson,

7 on the 16th, and I did say to Mr Mathunjwa after he has

8 given to me to say "I'm impressed," because at that time I

9 thought that when Mr Mathunjwa speaks to them they will

10 hand in their weapons, but the only part is this one that

11 the Chairperson is speaking about, that they are protecting

12 themselves against the NUM.

13 CHAIRPERSON: The statement that's been

14 put to you relates to the information, the meeting that was

15 held, I think it was on the Wednesday – ja, the JOC meeting

16 on the Wednesday, and that's what's being talked about in

17 the passage that we're looking at now, and the question

18 really is when Brigadier Engelbrecht said that at the

19 JOCCOM meeting on the Wednesday morning, that the

20 protesters aren't going to hand over their weapons, would

21 never surrender their weapons, you hadn't spoken to Mr

22 Mathunjwa yet; you didn't know what he was going to say.

23 Did you accept as correct the information which Brigadier

24 Engelbrecht gave you, or gave the meeting on the Wednesday

25 morning at the JOCCOM meeting? I think that's your

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1 question, Mr Mpofo, is it?

2 MR MPOFU: Yes, Chairperson, except that

3 my quick reading of this evidence is that it was in

4 relation to the 15th or even the 16th. Let me just –

5 CHAIRPERSON: It's the 15th, the –

6 MR MPOFU: Oh yes, sorry, then it's my

7 mistake. Thank you, Chairperson. Then you're correct.

8 MAJOR-GENERAL MPEMBE: Chairperson, as

9 I'm saying, I still say the same thing, that I believed

10 what Mr Mathunjwa was, that because this was already being

11 said to us –

12 CHAIRPERSON: No, no, no, it wasn't so.

13 The meeting that's being talked about in this passage is on

14 the Wednesday morning.

15 MAJOR-GENERAL MPEMBE: Correct,

16 Chairperson.

17 CHAIRPERSON: And you met Mr Mathunjwa

18 for the first time on the Wednesday afternoon, and he went

19 to the koppie, remember, just before sunset on the

20 Wednesday evening and came back and that your debriefing

21 took place. So on the Wednesday morning when Brigadier

22 Engelbrecht gave this information to the JOCCOM meeting,

23 the question is did you believe - not the reason they gave,

24 but did you believe that part of the information which was

25 to the effect that the strikers would not surrender their

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1 weapons?

2 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

3 I did believe what he told because that could have been a

4 confirmed information.

5 CHAIRPERSON: That they wouldn't

6 surrender them to you?

7 MAJOR-GENERAL MPEMBE: Correct, yes.

8 CHAIRPERSON: Despite the fact that you

9 spoke to them very nicely and said you wouldn't arrest

10 them, you just wanted the weapons, they still were obdurate

11 and wouldn't hand over?

12 MAJOR-GENERAL MPEMBE: That's right,

13 Chairperson, and that's why then the route was also through

14 the unions.

15 CHAIRPERSON: Ja, that's right. Alright,

16 it seems a suitable stage to take tea, Mr Mpofo, unless

17 there's a point you want to make before we take tea? I'm

18 in your hands.

19 MR MPOFU: Yes, there's just one small

20 point, Chairperson. The thrust really of what is being

21 said is I accept that you say you didn't believe that they

22 were going to hand over their weapons. Also I accept that

23 you might have thought that the reason that they were

24 giving was invalid, but the point I'm making is that you

25 knew that at least according to Brigadier Engelbrecht the

<p style="text-align: right;">Page 16883</p> <p>1 reasons that they would never – actually in the next 2 sentence he says, “They were never going to surrender their 3 weapons” – was because of they feared attack by NUM. You 4 knew that, and you believed, you might not have believed 5 the strikers, but you believed that the information that 6 Brigadier Engelbrecht has received has some integrity. I 7 thought that was your earlier evidence, correct? 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 9 MR MPOFU: Thank you, Chairperson, yes 10 that’s a place for – 11 CHAIRPERSON: Very well, with your 12 permission we’ll take the tea adjournment. 13 MR MPOFU: Permission granted, 14 Chairperson. 15 [COMMISSION ADJOURNS COMMISSION RESUMES] 16 [15:21] CHAIRPERSON: The Commission resumes. 17 Major-General, you’re still under oath. 18 WILLIAM MPEMBE: Yes, Chairperson. 19 CHAIRPERSON: Mr Mpofo. 20 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 21 Thank you, Chairperson. General, again another proposition 22 which I’m going to argue that I want to give you a chance 23 to comment on, and it’s something that I’ve partly covered 24 but I’m approaching it from a different angle. I’m going 25 to argue that so much were you isolated that you must have</p>	<p style="text-align: right;">Page 16885</p> <p>1 MR MPOFU: Yes, correct. 2 MAJOR-GENERAL MPEMBE: But I need to 3 state that in writing, and Chairperson, I already said that 4 I was the commander and he was reporting to me. 5 CHAIRPERSON: According to exhibit L he 6 was your deputy. 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR MPOFU: No, that’s good enough. Thank 10 you, General. In any event, as far as – or let me put it 11 this way. If it is correct that – and we don’t know yet – 12 that Lieutenant-General Mbombo called Major-General 13 Annandale up herself and without consulting you, that could 14 be construed as undermining your authority as the big 15 chief, correct? 16 MAJOR-GENERAL MPEMBE: Not at all, 17 Chairperson, and as I’ve said, she is my senior and she 18 takes decisions independently according to the 19 circumstances, as I briefed her. 20 MR MPOFU: Yes, but there was nothing 21 preventing her from even as a matter of courtesy informing 22 you that she was bringing another person of equal or higher 23 status than you, correct? 24 MAJOR-GENERAL MPEMBE: Chairperson, she 25 was not replacing me with General Annandale, so what I’m</p>
<p style="text-align: right;">Page 16884</p> <p>1 cut a very lonely figure in that you had lost the support 2 of both your superiors and your subordinates at the same 3 time, and I’m going to give you the examples now, but as 4 general statement I suppose you refute that, correct? 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 6 MR MPOFU: Yes, now would it be true to 7 say that of the people who were there, the only people that 8 you regarded as your superior were General Mbombo and 9 General Annandale, correct? 10 CHAIRPERSON: Why would you have regarded 11 General Annandale as your superior? He was the same rank 12 as you were and he was your junior. Hadn’t you been a 13 Major-General for about 10 years and he for about 10 days? 14 MAJOR-GENERAL MPEMBE: Yes, he’s actually 15 my junior, but in – 16 CHAIRPERSON: Substantially. 17 MAJOR-GENERAL MPEMBE: But in terms of 18 him coming from head office yes, but actually in terms of 19 the rank he is my junior, but for the fact that he comes 20 from head office – 21 MR MPOFU: Yes. No, I accept that. 22 Because he comes from head office, actually he’s senior 23 only in that sense, in that limited sense, correct? 24 MAJOR-GENERAL MPEMBE: Only in terms of 25 the position.</p>	<p style="text-align: right;">Page 16886</p> <p>1 saying is that there was no reason to inform me because she 2 was actually reinforcing me. 3 MR MPOFU: Okay, now in any event, as far 4 as your juniors are concerned, we all know now about the 5 whole saga of the people who allegedly wanted to kill you, 6 so we don’t have to go through that, correct? 7 MAJOR-GENERAL MPEMBE: Chairperson, I 8 will really request that this one I should be clarified the 9 whole saga and these juniors, and I don’t want to go in 10 front, but specifically with names. 11 MR MPOFU: Yes, well okay – 12 CHAIRPERSON: You will understand there 13 are sensitive aspects as well – 14 MR MPOFU: Very much. 15 CHAIRPERSON: Least of all what you are 16 referring to – continue to be his juniors, continue to 17 serve under him, continue to owe him loyalty and respect 18 and so forth – 19 MR MPOFU: Yes. 20 CHAIRPERSON: And so it may be necessary 21 for you to make, have generalised propositions on record 22 that you can deal with, but I think too much particularity 23 might have unfortunate knock-on effect, so – 24 MR MPOFU: I get you, Chairperson, and 25 that’s why I was using words like “allegedly” and so on,</p>

<p style="text-align: right;">Page 16887</p> <p>1 because I didn't want to get into the sensitivities. All 2 I'm saying, General, is that you were aware of at the very 3 least that there were these allegations about some people 4 who were your subordinates - in rank only – who may have 5 harboured those kinds of ill intentions, correct? 6 MAJOR-GENERAL MPEMBE: Chairperson, I was 7 made aware – 8 MR MPOFU: Yes. 9 MAJOR-GENERAL MPEMBE: - but it didn't 10 come up from me and I didn't see it from those individuals 11 myself. 12 MR MPOFU: Yes. 13 CHAIRPERSON: I understand you didn't 14 know it, weren't aware of it at all; it was Lieutenant- 15 Colonel Merafe who informed you of what he'd heard and then 16 took steps to make sure that you were taken out of harm's 17 way, shall we say. Is that so? Or sorry, was it Vermaak? 18 Sorry, I got it wrong. 19 MAJOR-GENERAL MPEMBE: Yes. 20 CHAIRPERSON: Lieutenant-Colonel Vermaak, 21 yes, I'm sorry. Lieutenant-Colonel Vermaak informed you of 22 these things and then made arrangements to get you out of 23 harm's way, but you had no direct knowledge of it yourself? 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p>	<p style="text-align: right;">Page 16889</p> <p>1 radio and everybody could have heard it. So he had to 2 explain to me how I could have given that instruction. 3 MR MPOFU: Yes. No General, I accept 4 that you disputed it and you know, you thought he was out 5 of his mind, but – 6 CHAIRPERSON: I don't know that that's 7 a – 8 MR MPOFU: Well – 9 CHAIRPERSON: In fact, there's a bit of 10 hearsay. It's not clear, ambiguity, it's not clear – 11 MR MPOFU: Oh, from what? 12 CHAIRPERSON: From the evidence he gave 13 it's not clear whether the captain was saying he, it's 14 ambiguous, that he heard the Major-General give the order. 15 What he said is consistent with his having heard it said 16 that the Major-General gave the order, and in the latter 17 case there would be far less scope for insubordination than 18 there would in the first case. 19 MR MPOFU: That's right, but there was 20 also some – 21 CHAIRPERSON: But the fact that he's out 22 of his mind, it was never suggested that he's out of his 23 mind. 24 MR MPOFU: Ja, no. 25 CHAIRPERSON: That is just a bit of –</p>
<p style="text-align: right;">Page 16888</p> <p>1 MR MPOFU: Apart from that, were you 2 aware of any other efforts to undermine you, coming from 3 the side of your subordinates? 4 MAJOR-GENERAL MPEMBE: No, Chairperson, 5 as I indicated that taking into account what type of an 6 organisation we are, when Lieutenant-Colonel Merafe 7 expressed to say, "General, I disagree with you," that is 8 allowed within SAPS because we are doing what we call 9 participative management. So the views of the juniors, 10 it's important that they come out. So I didn't see it as 11 undermining authority. 12 MR MPOFU: Yes, and when – I forget the 13 rank now - Warrant-Officer, I think, Tupe said to you to 14 your face, rather, at – 15 CHAIRPERSON: I think Mr Tupe is a 16 captain. 17 MR MPOFU: Captain, thank you, 18 Chairperson. When Captain Tupe said to you to your face, 19 as it were, that you had given the instruction for teargas 20 on the 13th, which we now know you didn't do, did you view 21 that also as some form of undermining, insubordination, 22 that kind of thing? 23 MAJOR-GENERAL MPEMBE: No, Chairperson. 24 That's why I also wanted to know how I could have done it 25 because if I have done it, I could have done it through the</p>	<p style="text-align: right;">Page 16890</p> <p>1 MR MPOFU: I was exaggerating, 2 Chairperson. We can forget that. 3 CHAIRPERSON: - a bit of forensic 4 hyperbole, as it happens. 5 MR MPOFU: Yes. No, I was – 6 CHAIRPERSON: Anyway, carry on, minus the 7 hyperbole. 8 MR MPOFU: Yes. No, I was just 9 exaggerating to assist the General, that he didn't believe 10 it. Ja, all I'm saying is that insofar as it is consistent 11 – Chairperson is right; it might be consistent with him 12 having heard from somebody else, but it's also consistent 13 with him having being accusing you from his own knowledge. 14 Now insofar as he would have been accusing you wrongly from 15 his own knowledge, being a captain and you being a General, 16 that would be a little bit unusual, to say the least, 17 correct? Particularly if it was not true. 18 MAJOR-GENERAL MPEMBE: No, Chairperson, 19 because normally if I felt that it was false accusations 20 against a senior officer, I could have said so. 21 MR MPOFU: Well, it was actually, as it 22 happens from your point of view, a false accusation against 23 a senior officer, wasn't it? 24 MAJOR-GENERAL MPEMBE: I said, 25 Chairperson, according to me, seeing Captain Tupe raising</p>

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1 that where I am present, it is consistent with
 2 participative management, that it shows also that I'm not
 3 threatening people, suppressing their views, but what I
 4 wanted to know from him is that how I could have done it.
 5 CHAIRPERSON: I understand he didn't have
 6 an answer. Am I right?
 7 MAJOR-GENERAL MPEMBE: Chairperson?
 8 CHAIRPERSON: From what I could
 9 understand from your evidence he didn't have an answer.
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 CHAIRPERSON: So you effectively put him
 13 to flight insofar as he was making this allegation against
 14 you.
 15 MAJOR-GENERAL MPEMBE: Yes.
 16 CHAIRPERSON: Or repeating an allegation
 17 he'd heard.
 18 MAJOR-GENERAL MPEMBE: Yes, because he
 19 couldn't substantiate how I could have done it, but to me
 20 it was important that it came out at that stage so that I,
 21 my side, I could also put my side to him, other than the
 22 one that he could have come to the Commission and I didn't
 23 know and I didn't have a chance of responding.
 24 MR MPOFU: Okay, now as far as Colonel
 25 Scott is concerned, am I correct in my understanding that

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1 your view is that you don't know where this notion comes
 2 from that this was a Scott plan because he was not your
 3 planner, correct?
 4 MAJOR-GENERAL MPEMBE: Chairperson, not
 5 that he was not my planner; I'm sorry, may I just explain?
 6 To my understanding Scott's plan is that he planned this
 7 plan alone and he imposed the plan to all of us, and that
 8 is what I was disputing, but I didn't dispute the fact that
 9 he was a compiler of the plan and one of the compilers, but
 10 the ultimate one, and I also did state the reason why also
 11 I allowed that Colonel Duncan Scott to be part of that
 12 planning team, not to be one of the compilers.
 13 MR MPOFU: Yes, no that's what I'm
 14 saying. You think he's a compiler. He thinks he's the
 15 chief architect. So as far as you're concerned, Scott did
 16 not plan for you, correct?
 17 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 18 just asking, plan in what sense? Maybe –
 19 MR MPOFU: General, you know what plan
 20 means.
 21 MAJOR-GENERAL MPEMBE: - the clarity -
 22 Chairperson, what I'm saying is that he did compile, he did
 23 present, and there was deliberations of other people.
 24 MR MPOFU: Was he your planner or not?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson,

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1 he was the compiler and the people did participate in the
 2 plan.
 3 MR MPOFU: Alright, okay, in any event
 4 we'll leave that for argument. The other person who
 5 undermined you was Colonel Vermaak, correct?
 6 MAJOR-GENERAL MPEMBE: I don't
 7 understand, maybe in relation to what, Chairperson –
 8 MR MPOFU: Well, did he undermine you in
 9 relation to anything first, before – I will explain to you,
 10 but did you feel that he undermined you at all?
 11 MAJOR-GENERAL MPEMBE: No, Chairperson.
 12 MR MPOFU: When he phoned the Provincial
 13 Commissioner and spoke about you without your knowledge,
 14 did you find that a good thing or a bad thing?
 15 MAJOR-GENERAL MPEMBE: Chairperson, may I
 16 just explain this first in terms of Colonel Vermaak's work.
 17 He's a commander of the Air Wing and the Air Wing falls
 18 under head office. He might well be at that level to say I
 19 can talk to the Provincial Commissioner because I'm
 20 delivering services to the province, and on the other hand
 21 he might also be talking to Brigadier Calitz because he's
 22 also falling in terms of responsibility and services to
 23 crowd management. But as a junior person one might say
 24 yes, he should have consulted me, but there is no total
 25 obligation. For the purpose of courtesy, for the purpose

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1 of saying 'General, these are my views,' in that sense,
 2 yes, but there was no legal obligation.
 3 MR MPOFU: Yes. Well, I know there was
 4 no legal obligation, but insofar as one might say that,
 5 would one be correct to say that you felt offended because
 6 you felt that he was undermining you?
 7 MAJOR-GENERAL MPEMBE: Chairperson, maybe
 8 we might use the word courtesy.
 9 MR MPOFU: General, please let's not make
 10 this more painful than it is.
 11 CHAIRPERSON: No, no, let him explain
 12 what he means. I take it you're referring to exhibit
 13 HHH68, a letter written to your Provincial Commissioner and
 14 to your subordinate, Brigadier Calitz, the Provincial Head
 15 Operational Response Services, on the 12th of December 2012.
 16 In that letter a statement is made in paragraph 11.4,
 17 "Senior officers do planning without any experience in
 18 serious incidents, and this cause that the SAPS must
 19 afterwards explain their actions. Marikana Lonmin is a
 20 very good example" – this is paragraph 11.4 – "where senior
 21 management was warned before specific actions were taken,
 22 but they did not give any attention to the advice. This
 23 type of ignorance put the National and Provincial
 24 Commissioners in a very difficult situation." Now when you
 25 were asked about that last week you indicated that that was

<p style="text-align: right;">Page 16895</p> <p>1 a, at least I understood you to indicate that it was to 2 some extent a criticism of various people, including you, 3 and it wasn't sent to you, it was sent to your superior and 4 your subordinate and you describe that as Colonel Vermaak's 5 modus operandi. Now you've now said that, characterised 6 your criticism of him, that he didn't extend to you the 7 courtesy which you expected. That's what you're saying, is 8 it? 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 CHAIRPERSON: Now Mr Mpofu is going a bit 12 further than that and he's suggesting to you, and he wants 13 your comment on the suggestion, that in fact what he did 14 amounted to an undermining of you and your authority. Am 15 I – 16 MR MPOFU: That's correct, Chairperson. 17 CHAIRPERSON: - summarising your point 18 correctly? 19 MR MPOFU: Very much, Chairperson. 20 CHAIRPERSON: Now in other words it 21 wasn't just a lack of courtesy that he showed in this modus 22 operandi, as you put it, but it actually had the effect, or 23 potentially had the effect of undermining your authority. 24 Now what's your response to that criticism that Mr Mpofu 25 says he's going to argue later?</p>	<p style="text-align: right;">Page 16897</p> <p>1 MAJOR-GENERAL MPEMBE: I feel that he 2 should have spoken to me, but I know that he has no 3 obligation. 4 MR MPOFU: Yes, all I'm saying, General, 5 is that now today you are busy justifying his actions. I'm 6 saying that at the time you were offended and you felt 7 undermined. What do you say to that? 8 CHAIRPERSON: He denies he feels 9 undermined. 10 MR MPOFU: He actually accepted, or 11 rather - yes, he accepted that he was offended, but denied 12 that he was undermined. Thank you, Chairperson. 13 CHAIRPERSON: That's the point. You say 14 you didn't feel undermined, but you did feel offended. 15 That's your – 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 CHAIRPERSON: Alright, is that all you 19 need for your argument later, Mr Mpofu, or you want to put 20 something else? And the lack of courtesy point he also 21 made. 22 MR MPOFU: Ja, that's it – 23 CHAIRPERSON: Is there anything else you 24 need on this matter? 25 MR MPOFU: No, that's enough,</p>
<p style="text-align: right;">Page 16896</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, as I 2 have explained before that he is there falling directly 3 under national head office, and secondly he is in that 4 position that he can communicate with the Provincial 5 Commissioner and Brigadier Calitz. In my understanding 6 when we talk about undermining authority I, it is my belief 7 that there should have been a policy that forces him to 8 communicate through me, hence I'm referring to a courtesy. 9 MR MPOFU: Yes. General, I understand 10 all that. I'm more interested in – I suggested when I 11 asked the question earlier that you subjectively were 12 offended by this and that's really what I want you to 13 comment on. What I'm saying is that whether there's a 14 policy against it and so on, whatever, but this is 15 something that offended you because you saw it as 16 undermining your authority, particularly because it was not 17 the first time that it was happening. 18 MAJOR-GENERAL MPEMBE: Chairperson, the 19 courtesy that I'm referring to, it is the one that he 20 should have communicated with me, but I didn't interpret it 21 as undermining the authority. 22 MR MPOFU: Were you offended? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 CHAIRPERSON: Did you feel undermined?</p>	<p style="text-align: right;">Page 16898</p> <p>1 Chairperson. Just to say that also one of the reasons why 2 you're offended was because this was not the only time it 3 had happened. It was a pattern, correct? On the part of 4 Vermaak. 5 MAJOR-GENERAL MPEMBE: There were letters 6 that were raised with me that they were not addressed to 7 me. 8 MR MPOFU: No, please answer the 9 question. One of the reasons that made you to be more 10 offended was the fact that this was not the first time it 11 was happening; it was part of a pattern of behaviour on his 12 part, correct? 13 [15:40] MAJOR-GENERAL MPEMBE: Chairperson, I 14 don't know whether three times is a pattern, but it is at 15 least three times. I'm referring to, specific to those 16 documents. 17 MR MPOFU: Yes, okay, let's then leave it 18 to one of the reasons you were offended was because it was 19 not the first time. 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson, as far as documents are concerned. 22 MR MPOFU: Thank you. Now I'm not going 23 to spend a lot of time on this one because Mr Chaskalson 24 dealt with it this morning, but would I be correct to say 25 that actually the principal reason why the encirclement</p>

<p style="text-align: right;">Page 16899</p> <p>1 plan was abandoned, I accept that it was also a reason that 2 there was not enough barbed wire, but that the principal 3 reason was the fact that the manpower, or the personnel 4 that had been called had not yet arrived and you did not 5 have sufficient people? 6 MAJOR-GENERAL MPEMBE: No – 7 MR MPOFU: Would that be a fair – 8 MAJOR-GENERAL MPEMBE: No, Chairperson. 9 MR MPOFU: That was not the reason? 10 MAJOR-GENERAL MPEMBE: Yes – 11 MR MPOFU: The only reason was the 12 shortage in barbed wire? 13 MAJOR-GENERAL MPEMBE: The reason that I 14 know at that time was the shortage of barbed wire, but I'm 15 referring on the 16th. 16 MR MPOFU: Well, okay, at any other time, 17 as I understand it, and I accept your question because the 18 abandonment is alleged at various points, but at any point 19 do you know that a reason for the abandonment of the 20 encirclement plan at any point was the fact that the 21 personnel was not sufficient? It might not have been the 22 only reason, but it was a main reason, or one of the 23 reasons. To your knowledge, yes, no? 24 MAJOR-GENERAL MPEMBE: No, Chairperson. 25 MR MPOFU: Okay, then can you go to</p>	<p style="text-align: right;">Page 16901</p> <p>1 barbed wire being a – or rather, shortage of human beings 2 being the reason, correct? 3 MAJOR-GENERAL MPEMBE: I just wanted to 4 find out when, or on the 14th – 5 MR MPOFU: At any day. It doesn't matter 6 when. 7 MAJOR-GENERAL MPEMBE: No, Chairperson. 8 MR MPOFU: Chairperson, if you can just 9 give me one second. 10 CHAIRPERSON: [Microphone off, inaudible] 11 looking for? 12 MR MPOFU: I'm looking for something, 13 Chairperson, if you give me a second. 14 CHAIRPERSON: Are you not perhaps looking 15 for slide 63 of exhibit L? 16 MR MPOFU: 63, yes. I was looking just a 17 bit later. Yes, thank you very much, Chairperson. If you 18 go to L63, what is suggested there is that, after the 19 summary that I gave you, and this coincides with your 20 statement, at least insofar as it also refers to the 14th, 21 which is in paragraph 23 of your statement. It says the 22 encirclement, and so on, "This was deemed not feasible due 23 to the forces called up from distant locations not having 24 arrived yet, and those who were there had not yet been 25 orientated to the mission area or briefed sufficiently."</p>
<p style="text-align: right;">Page 16900</p> <p>1 paragraph 23 of your GGG12? Right, are you there, General? 2 MAJOR-GENERAL MPEMBE: Yes, it's 3 paragraph 3? 4 MR MPOFU: 23, sorry. 5 MAJOR-GENERAL MPEMBE: Oh, sorry. 6 Thanks. 7 MR MPOFU: There you say something which 8 I will argue contradicts your previous answer. You say 9 that, "At the JOCCOM briefing in the morning of Tuesday the 10 14th an operational strategy was considered in terms of 11 which the protesters would be prevented from gathering at 12 the koppie armed. All those approaching the koppie were to 13 be searched and disarmed, and those already on the koppie 14 encircled and disarmed. This strategy was, however, 15 considered not to be feasible as there were insufficient 16 resources to implement it. For that reason it was not 17 implemented. The JOCCOM instead adopted a strategy to 18 negotiate a peaceful solution" – is that, or rather, what 19 were you referring to there? Or would you like to change 20 your answer? 21 MAJOR-GENERAL MPEMBE: Chairperson, the 22 resources that I referred to, it was because, it was the 23 barbed wire. 24 MR MPOFU: Oh, I see. So there was no 25 issue about members, human beings, rather, as opposed to</p>	<p style="text-align: right;">Page 16902</p> <p>1 So your evidence is that this is not true, correct? 2 MAJOR-GENERAL MPEMBE: Chairperson, on 3 the 14th there was no time where we were – there was no, let 4 me say there was no stage where we decided whether to 5 disarm or not. That's why I was saying at that time we 6 were speaking to say how do we go about it, particularly 7 with the barbed wire, because at that time there was no 8 decision whether we disperse and take the processes either 9 today or tomorrow, but when that decision, there was a time 10 where there was a decision to do it on Wednesday and the 11 resources were there. Hence my answer was mainly on the 12 barbed wire. 13 MR MPOFU: No. No, no, no. Well firstly 14 I don't understand what you've just said, but the question 15 I had asked you, which you had committed yourself to, was 16 that the reason of abandoning the encirclement at this 17 stage at least of paragraph 23, which as I say happens to 18 be the same period that L63 is dealing with, was the issue 19 of the barbed wire which you said to Mr Chaskalson this 20 morning. You remember Mr Chaskalson went to some length 21 with you about that issue? 22 MAJOR-GENERAL MPEMBE: I remember, 23 Chairperson. 24 MR MPOFU: Yes, now I was now suggesting, 25 and you disagreed with me, that there was another reason,</p>

<p style="text-align: right;">Page 16903</p> <p>1 not discounting the one that you and Mr Chaskalson 2 discussed, and you said to me there was no such reason. 3 That's why I said to you so there was no reason that 4 involved resources. You then said the word "resources" was 5 confined to barbed wire, not human beings. I'm now showing 6 you that according to this paragraph it was referring to 7 human beings and not barbed wire. In other words, it's 8 either this was the only reason, or there were both 9 reasons, but what you are saying that the only reason was 10 barbed wire is not true. Or what you said in this slide is 11 not true. Which is it?</p> <p>12 COMMISSIONER TOKOTA: General, before you 13 answer, maybe I should help you. This refers to people who 14 were going to the koppie and the encirclement of the few 15 that were there, not so? This particular slide. Not to 16 the 3 000 which was already there. Isn't that the 17 difference? Look at the bullet point, at 6 o'clock, bullet 18 point 1, bullet point 2, and then the third one.</p> <p>19 MAJOR-GENERAL MPEMBE: Yes, I could see 20 this one, Commissioner, that it was relating to those 21 people that were coming from the different places, going to 22 the koppie.</p> <p>23 MR MPOFU: Yes, do you think you –</p> <p>24 COMMISSIONER TOKOTA: But you were not 25 dealing with that when you dealt with this aspect with Adv</p>	<p style="text-align: right;">Page 16905</p> <p>1 there were more people on Wednesday that they were 2 available, and that's why I'm saying that the issue of the 3 resources pertaining to people, to me it was not a problem, 4 but the problem was the barbed wire.</p> <p>5 MR MPOFU: No, I understand that, and 6 therefore that's what I'm saying. So it's either you are 7 correct or L63 is not correct. The two cannot stand 8 together. If you are saying for you there was no human 9 resources – and I'm qualifying, using that adjective – so 10 in other words you are saying the problem was material 11 resources, and I'm putting to you that the problem 12 according to L63 was human resources. Now if you are 13 saying that is not the case, then it's either you are 14 incorrect or whoever wrote this is incorrect, correct?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson, as I 16 said, this was made from different inputs from different 17 people.</p> <p>18 MR MPOFU: Ja, no fair enough.</p> <p>19 MAJOR-GENERAL MPEMBE: Yes, but –</p> <p>20 MR MPOFU: Okay, let's make it easier so 21 that you don't accuse anybody of lying. If this is correct 22 that the reason for abandoning this strategy on the 14th 23 about the 50 people or whatever, that is something that 24 never came to your attention. Can we put it neutrally like 25 that?</p>
<p style="text-align: right;">Page 16904</p> <p>1 Chaskalson?</p> <p>2 MAJOR-GENERAL MPEMBE: Yes, I did mention 3 that there were various stages, Chairperson, that this 4 issue was dealt with. It was dealt with the 50 people. It 5 was also dealt with the filtering line.</p> <p>6 MR MPOFU: Yes, you see, General, that 7 cannot be true. That's why I said to you when you asked me 8 at what stage, I said at any stage, because I didn't want 9 to get into this trap of saying no, this was – of splitting 10 hairs. I said at any stage of any day, or whatever, was 11 there a reason that was advanced, which is the shortage of 12 people, and you said no. Now I'm saying to you that at 13 this stage – and in any event, does it matter in terms of 14 the amount of barbed wire you need if you're encircling a 15 koppie whether there are 50 people or 3 000 people?</p> <p>16 MAJOR-GENERAL MPEMBE: When you use the 17 barbed wire it's very much important because it creates a 18 barrier between you and those that are carrying the 19 dangerous weapons, but why I'm emphasising on this, by the 20 time when we wanted to disperse, and there was a time where 21 we wanted to disperse on Wednesday, and there were people, 22 but the barbed wire, why it's emphasised is that we could 23 not get it. There was no time where we could get that 24 amount of barbed wire, and I was told in the Commission 25 that that was actually obtained, and I didn't know. But</p>	<p style="text-align: right;">Page 16906</p> <p>1 MAJOR-GENERAL MPEMBE: Regarding human 2 resources?</p> <p>3 MR MPOFU: Yes, Sir.</p> <p>4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson, it was mainly with the barbed wire.</p> <p>6 MR MPOFU: Okay, thanks. Now when it 7 came to arresting the people that I represent, I'm going to 8 argue at the end, I'm now going to give you again a chance 9 as the overall commander, I'm going to argue at the end of 10 the case that those arrests were senseless and unnecessary. 11 Understand? Not that you agree, but do you understand what 12 I'm saying?</p> <p>13 MAJOR-GENERAL MPEMBE: I understand, 14 Chairperson.</p> <p>15 MR MPOFU: Yes. Now according to the 16 plan it's clear that when you were going through all this 17 arranging for cells and Canters and what have you, this was 18 in order that you should arrest those people who refused to 19 disarm, correct?</p> <p>20 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>21 MR MPOFU: Or that's at best. At worst 22 if would be to arrest those people who were in possession 23 of dangerous weapons, correct?</p> <p>24 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>25 MR MPOFU: Now do you know now, or have</p>

<p style="text-align: right;">Page 16907</p> <p>1 you ever known that none of the people who were arrested 2 could be linked to any particular arm? In other words, 3 they were just taken just because they happened to be at 4 the wrong place at the wrong time and piled into those 5 Canters and arrested.</p> <p>6 MAJOR-GENERAL MPEMBE: I don't know, 7 Chairperson, and the main fact it is that I was also not 8 there and I was not the arresting officer. I think those 9 that were arresting might be giving more light, but what I 10 do know, that some of the firearms that were found there, 11 they were not belonging to the people that were there, in 12 terms of the further investigations.</p> <p>13 MR MPOFU: Yes.</p> <p>14 MAJOR-GENERAL MPEMBE: But whether they 15 were arrested in possession, that one I cannot state it.</p> <p>16 MR MPOFU: Yes. No, General, I accept 17 that you were not the – I'm the one who accused you of 18 having avoided the scene like the plague, so I can't now 19 turn around and say you were there. All I'm saying to you 20 is that as the overall commander, knowing that the plan, or 21 the intent at least, was that these Canters that you were 22 busy arranging for and the cells from the five police 23 stations, what have you, were intended to be used for the 24 purposes of putting those people who, (a), either refused 25 to hand over dangerous weapons, or are found in any event</p>	<p style="text-align: right;">Page 16909</p> <p>1 because you don't know. That's a separate matter which may 2 well only form the subject of investigation in the criminal 3 trials, insofar as there are criminal trials, but on the 4 assumption – which he doesn't ask you to make conclusively, 5 but on the provisional assumption that those facts are 6 right, would you say that the original plan was deviated 7 from? Is that your question?</p> <p>8 MR MPOFU: That's correct, Chairperson.</p> <p>9 MAJOR-GENERAL MPEMBE: My understanding 10 is that I won't be able to really speculate.</p> <p>11 MR MPOFU: General, I promise you, this 12 is my last attempt at asking this. All I'm saying is that 13 you as General Mpeembe, you know the plan; you know that the 14 plan is to arrest either people who refused to disarm, or 15 those who are found in possession of dangerous weapons. 16 Okay, now if I say to you, myself, you know what, I was 17 arrested on the 16th, therefore knowing the plan you must 18 then assume that I either fall into one of those two 19 categories. It is either I refused to disarm, or I was 20 found in possession of a dangerous weapon. Isn't that a 21 logical deduction from what you knew would be the plan? 22 Because those were the categories of people who were 23 candidates for arrest.</p> <p>24 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 25 it's correct.</p>
<p style="text-align: right;">Page 16908</p> <p>1 in possession thereof. Now I'm telling you that none of 2 those two preconditions would qualify in respect of the 259 3 people, or more – okay, some were arrested later in 4 hospitals, at least the more than 250 people who were 5 indeed arrested on the 16th. Would you have anything to say 6 about that? Or rather let me put it this way. Would you 7 agree that that's a deviation at the very least from the 8 plan?</p> <p>9 MAJOR-GENERAL MPEMBE: No, Chairperson, I 10 cannot talk about deviation when I was not there.</p> <p>11 MR MPOFU: No, General, please, I'm not 12 going to belabour this –</p> <p>13 CHAIRPERSON: [Microphone off, inaudible] 14 the point on this basis. He accepts you weren't there. He 15 accepts you haven't got personal knowledge of the facts 16 that he's putting to you, but what I understand him to be 17 saying is if the facts he puts to you are correct, would 18 you – is that right, Mr Mpofu?</p> <p>19 MR MPOFU: That's correct, Chairperson.</p> <p>20 CHAIRPERSON: - would you accept that 21 there was then a deviation from the original police plan 22 only to arrest people who were unwilling to hand over their 23 arms and were in possession of dangerous weapons? That's 24 what he's putting to you. So if the facts he put to you 25 are right - you're not asked to accept that they're right</p>	<p style="text-align: right;">Page 16910</p> <p>1 MR MPOFU: Now if, as the Chairperson is 2 correct, assume now then that I'm not making it up, because 3 I could be lying, maybe I was holding a big panga, but if 4 you assume that I'm right, that I neither refused to 5 disarm, nor was I in possession of a dangerous weapon, 6 would you say then my arrest confirms a deviation to that 7 extent only from the plan?</p> <p>8 MAJOR-GENERAL MPEMBE: Chairperson, on 9 assumption, that is correct, it will be a deviation.</p> <p>10 MR MPOFU: Thank you.</p> <p>11 [16:00] CHAIRPERSON: It's not of course quite as 12 easy as that, but there's a further thing you've got to put 13 into the mix. Even if what Mr Mpofu puts to you is right, 14 that the people didn't have dangerous weapons didn't refuse 15 to be disarmed, as a fact, if there was a reasonable 16 suspicion on the part of the arresting officer, or 17 arresting member, that the person fell into one of those 18 categories, that would explain the arrests, because 19 presumably the plan was to arrest people who were suspected 20 on reasonable grounds of doing the things that were 21 described. Is that correct?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct, 23 Chairperson, hence I also mention about the firearms that 24 were found to be there, which were not belonging legally to 25 those that were there.</p>

<p style="text-align: right;">Page 16911</p> <p>1 MR MPOFU: Well, okay, I don't want to go 2 there, but now let's go there because we've been brought 3 there. Would you accept that for there to be a reasonable 4 suspicion of arresting these 259 people, one of the things 5 would be that at a minimum 259 dangerous weapons had been 6 recovered there, and we know that it was not even half of 7 that. Would your answer still be the same? 8 MAJOR-GENERAL MPEMBE: There were more 9 weapons recovered, Chairperson. My answer will remain the 10 same. 11 MR MPOFU: Well, the evidence will show 12 that at scene 2, which is where the people were arrested, 13 there were – I don't have the number now, but at worst, or 14 at best for the police, about, there was one shambok and 15 one axe or whatever. If you go to slide L263, you see that 16 at, well I've done a tally there, if I'm not incorrect, 17 people would not be arrested for knobkieries, correct? As 18 dangerous weapons. 19 MAJOR-GENERAL MPEMBE: Knobkieries are 20 dangerous weapons. 21 CHAIRPERSON: Mr Mpofo, I'm sorry to have 22 to do this to you, but I'm told the council is going to 23 have a meeting here shortly and they ask us to leave. So 24 we'll have to take up the point again in the morning. 25 MR MPOFU: Okay.</p>	<p style="text-align: right;">Page 16913</p> <p>1 MR MPOFU: Thank you, Chairperson. 2 CHAIRPERSON: It's the kind local 3 authority that's given us these premises free of charge. 4 MR MPOFU: Yes, Chairperson, they have 5 better rights, more than even the Chairperson. 6 CHAIRPERSON: Indeed they have. We now 7 adjourn till tomorrow morning 9 o'clock. 8 [COMMISSION ADJOURNED] 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 16912</p> <p>1 CHAIRPERSON: But of course if one adds 2 up the numbers in slide 263 in exhibit L, 163 plus 57 plus 3 29 plus 4 plus 33 plus 4, you might get a number in excess 4 of 275, but anyway – 5 MR MPOFU: I've got the number; it's 196, 6 Chairperson, but we'll deal with it – 7 CHAIRPERSON: How can that be? It's a 8 matter of arithmetic, knobkierie 163, spears 57, that's 9 already 220 – 10 MR MPOFU: No – 11 CHAIRPERSON: Iron rods 29, that's 249, 12 knives 4, 253, pangas 33, that's on my arithmetic over 280, 13 but you and I can match our arithmetical skills tomorrow at 14 9 o'clock. 15 MR MPOFU: Okay, Chairperson. 16 CHAIRPERSON: We will now adjourn – 17 MR MPOFU: Chairperson, can I just, 18 please just ask one question? 19 CHAIRPERSON: But we've been asked to go 20 now because – 21 MR MPOFU: Oh, we have to go right now? 22 CHAIRPERSON: - we have received a 23 message from the council; it's not I who are endeavouring 24 to stop you, it is our landlord who – well, landlord is the 25 wrong word –</p>	

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