

# 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 33      21 JANUARY 2013      PAGES 3512 TO 3637

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 3512</p> <p>1 [PROCEEDINGS ON 21 JANUARY 2013]  2 [10:11] CHAIRPERSON: The Commission resumes.  3 During the recess you will have seen that it has been  4 announced that the period to which the Commission is  5 operated and extended, evidence to be heard up to the end  6 of May and the report to be filed and presented to the  7 President before the end of June. Now in the light of that  8 extension my fellow commissioners and I have decided we'd  9 like to have a meeting with all the parties and their  10 representatives, really their representatives. If it would  11 be possible for us to have the meeting at lunchtime, during  12 lunchtime tomorrow – we're not available today. If that's  13 not convenient, please, I would be grateful if the  14 representatives would let us know during the tea  15 adjournment, but it's very important, I think, that we  16 should have a meeting to discuss the way forward,  17 particularly in the light of the extension that's been  18 granted.  19 Welcome. I must welcome you all back. I'm  20 please to see that everyone looks refreshed and ready to  21 continue the harmonious cooperation that we received up to  22 now. I think Brigadier Mkhwanazi is in the witness box. I  23 must remind you, you are still under oath.  24 BRIG MKHWANAZI: Yes.  25 CHAIRPERSON: At one point his cross-</p>	<p style="text-align: right;">Page 3514</p> <p>1 CHAIRPERSON: Previously I had indicated  2 when parties all more or less from the same side were going  3 to cross-examine, that I would call upon their  4 representatives in order of seniority to cross-examine.  5 It's been represented to me that that sometimes is  6 unworkable and I've decided to proceed in future on an ad  7 hoc basis, in other words in the case of each witness where  8 there's a – after the evidence leaders have cross-examined  9 and the Police and Lonmin and NUM and AMCU have cross-  10 examined, that I would then decide on an ad hoc basis  11 preferably, possibly in most cases would be subject to an  12 agreement between the affected parties as to the order of  13 cross-examination. So are you going to cross-examine now,  14 Mr Ntsebeza?  15 MR NTSEBEZA SC: You'll be happy to hear,  16 Mr Chairman, that I will cross-examine now.  17 CHAIRPERSON: So my happiness is caused  18 by two almost contradictory causes. Mr Ntsebeza - I did  19 remind you, you are still under oath, didn't I, Brigadier?  20 So that reminder stands. Mr Ntsebeza, please cross-  21 examine.  22 MR NTSEBEZA SC: Thank you, Mr Chairman,  23 members of the Commission. Brigadier Mkhwanazi, we are  24 meeting for the first time.  25 BRIG MKHWANAZI: That's correct.</p>
<p style="text-align: right;">Page 3513</p> <p>1 examination Mr Bruinders for AMCU indicated that he wished  2 to reserved his cross-examination until after the recess.  3 I see Mr Bruinders isn't here, but Ms Barnes is. Are you  4 going to cross-examine the witness on behalf of AMCU?  5 MS BARNES: Chair, you'll be happy to  6 hear that we have no questions for this witness.  7 CHAIRPERSON: I don't know that I'm happy  8 to hear that, but it's important each party puts things  9 that the party considers important to each witness, but I  10 take it that you take the view that the points you wished  11 to put have been put by others already.  12 MS BARNES: That's correct.  13 CHAIRPERSON: Then I think Mr Fischer  14 indicated that the Human Rights Commission also wanted to  15 ask some questions. Am I correct? Is there –  16 MS JELE: Chairperson, Nokukhanya Jele.  17 I'm here on behalf of the Human Rights Commission, junior  18 counsel for the Human Rights Commission. Mr Fischer  19 unfortunately was unable to join us, though he's still part  20 of our legal team. I am here, accompanied by Ms Hardy of  21 the Centre for Applied Legal Studies. We would like an  22 opportunity to cross-examine the brigadier. We understood  23 that representatives for the families wished to cross-  24 examine him as well and we thought it appropriate that they  25 might do so prior to our turn.</p>	<p style="text-align: right;">Page 3515</p> <p>1 MR NTSEBEZA SC: I see you nod.  2 BRIG MKHWANAZI: First time inside here.  3 MR NTSEBEZA SC: Yes, yes, and just for  4 the record, I represent the families of the people who died  5 on the 16th, just for you to know. You appreciate that?  6 BRIG MKHWANAZI: Yes, Sir.  7 MR NTSEBEZA SC: And I think their  8 interests, it is fair to say, is to find out to what extent  9 the Commission will assist them through evidence from you  10 and from other witnesses, in establishing what happened on  11 that day, how it happened, why it happened, and all of  12 that. You do appreciate that? You understand that?  13 BRIG MKHWANAZI: Yes, Sir.  14 MR NTSEBEZA SC: But I have established  15 that you yourself - you will correct me if I'm wrong – you  16 were not there on the day it happened?  17 BRIG MKHWANAZI: That's correct.  18 MR NTSEBEZA SC: You will look at it, I  19 am sure, it has been dealt with by those who have put  20 questions to you, that you came here to give evidence of  21 another kind. You are not here to give an eyewitness  22 account of what happened on the day.  23 BRIG MKHWANAZI: Yes.  24 MR NTSEBEZA SC: Now just so that we  25 understand more or less the same things, you've just been</p>

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1 told by the chairman of the Commission that you are under  
 2 oath.  
 3 BRIG MKHWANAZI: Correct.  
 4 MR NTSEBEZA SC: What do you understand  
 5 that to mean? Sometimes we take that for granted, you  
 6 know, and I proceed on a different basis. What does that  
 7 mean to you, to be giving evidence under oath?  
 8 BRIG MKHWANAZI: My understanding is that  
 9 all what I will definitely answer or be in a position to  
 10 give before this Commission must be, at least be the truth  
 11 and the only truth.  
 12 MR NTSEBEZA SC: Now simply put, it means  
 13 that you must speak the truth.  
 14 BRIG MKHWANAZI: Yes.  
 15 MR NTSEBEZA SC: And do you also  
 16 understand that if you don't speak the truth, then it  
 17 colours the nature of your evidence?  
 18 BRIG MKHWANAZI: That's correct.  
 19 MR NTSEBEZA SC: Yes, and when you have  
 20 taken an oath there's usually a follow-up phrase to say  
 21 that the oath is binding on your conscience.  
 22 BRIG MKHWANAZI: That's correct.  
 23 MR NTSEBEZA SC: And you understand it to  
 24 mean what?  
 25 BRIG MKHWANAZI: Well, my understanding

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1 and hence been working with that a lot of years, is that  
 2 really it binds me to say really it's something that if I  
 3 don't give a proper understanding of the situation, it will  
 4 actually be, it's a thing that will actually, may hound me  
 5 to say I never said exactly what I was supposed to say.  
 6 MR NTSEBEZA SC: Indeed. It also means  
 7 that there is a duty upon you to make a full disclosure of  
 8 everything that you know.  
 9 BRIG MKHWANAZI: That's correct.  
 10 MR NTSEBEZA SC: And full disclosure  
 11 would also entail you saying to this Commission things that  
 12 are privy only to you, but which may be helpful to this  
 13 Commission.  
 14 BRIG MKHWANAZI: That's correct.  
 15 MR NTSEBEZA SC: There may be information  
 16 which only you and your colleagues know, you know it to  
 17 exist, but which has not been disclosed to this Commission.  
 18 I'm not saying that's a fact; I'm simply putting it as a  
 19 proposition.  
 20 BRIG MKHWANAZI: Yes, I have done so  
 21 already.  
 22 MR NTSEBEZA SC: And it is evidence which  
 23 because you have taken that kind of oath which is binding  
 24 on your conscience, you would disclose it even if I propose  
 25 it is something you would rather not have disclosed because

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1 it would be evidence that would be prejudicial to you or to  
 2 the Police or those whom you represent. Do you understand  
 3 that question?  
 4 BRIG MKHWANAZI: Yes.  
 5 MR NTSEBEZA SC: Now I'm asking you this  
 6 because up to now - and we have put it to the witnesses  
 7 that have gone before you - there has been a disturbing  
 8 absence of evidence that speaks to what happened on that  
 9 day. I'm just putting it to you. For instance we have not  
 10 been able to get from the Police footage of what happened  
 11 when that first volley of bullets was unleashed, and of any  
 12 other footage coming from the Police of what happened in  
 13 the small koppie. Do you understand what I'm saying? Do  
 14 you understand?  
 15 BRIG MKHWANAZI: Yes.  
 16 MR NTSEBEZA SC: And it may well be that  
 17 two possibilities exist. It may well be that that evidence  
 18 exists but it's being suppressed and it's not being brought  
 19 to this Commission. You understand that's a possibility?  
 20 BRIG MKHWANAZI: Yes.  
 21 MR NTSEBEZA SC: And it may well be that  
 22 that evidence existed, but was destroyed or deleted. I'm  
 23 not saying by you.  
 24 BRIG MKHWANAZI: Not so, Sir, not so.  
 25 MR NTSEBEZA SC: I'm simply raising

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1 possibilities.  
 2 BRIG MKHWANAZI: I understand.  
 3 MR NTSEBEZA SC: Right, and if we proceed  
 4 on that premise, when you come here and you knew either of  
 5 these two possibilities, the evidence existed but is being  
 6 withheld and you know where it is, or the evidence was  
 7 deliberately destroyed and you know about that, because you  
 8 have taken that oath to tell the truth, do you understand  
 9 that telling the truth under oath entails you to tell this  
 10 Commission about what you know? That is right?  
 11 BRIG MKHWANAZI: I understand. As I've  
 12 said, what I know I will definitely disclose, if I know.  
 13 MR NTSEBEZA SC: Yes. For instance, one  
 14 of - and I'll make the submission at the end - one of the  
 15 things that I found disturbing from those from SAPS who  
 16 have testified before you, is the fact that there doesn't  
 17 seem to have been a detailed or even an analysis at all of  
 18 the events of the 16th.  
 19 CHAIRPERSON: Before the witness answers  
 20 that, I take it that was intended to be a question. Before  
 21 the witness answers the question, Mr Semenya has indicated  
 22 that he wishes to say something.  
 23 MR SEMENYA SC: Chair, perhaps Mr  
 24 Ntsebeza can be particular. We have disclosed a whole  
 25 series of things, including an account of annexure L, I

<p style="text-align: right;">Page 3520</p> <p>1 mean exhibit L. The proposition cannot be correct that we 2 haven't given any detailed account of what happened. 3 CHAIRPERSON: Mr Ntsebeza, you heard what 4 Mr Semenya has said, and when the interpreter has 5 interpreted it, then you can reply. 6 MR NTSEBEZA SC: May I put it on a 7 simpler basis, I believe, because I was going to get to the 8 particulars. My sense so far of these witnesses who have 9 come before you - particularly like you, because they were 10 not there on that day, or when they were on that day they 11 didn't bring much evidence or footage of what happened on 12 the ground and I have in mind witness Botha - that there 13 doesn't seem from their evidence to have been any internal 14 review of the events that took place on the 16th that led 15 to the deaths of the members of the families whom I 16 represent. Do you understand that? 17 BRIG MKHWANAZI: I do understand. 18 MR NTSEBEZA SC: You understand that. 19 For instance Colonel Botha told the Commission that there 20 was a meeting in Potchefstroom after the events on the 21 16th, a nine-day meeting, and my impression of his evidence 22 was that he would let us believe, and very incredulously, 23 that throughout that period no footage for instance was 24 shown there from any unit, whether it's from the water 25 canon unit, from the helicopters, from the Nyalas, no</p>	<p style="text-align: right;">Page 3522</p> <p>1 referring to. 2 MR NTSEBEZA SC: Now I come to – 3 CHAIRPERSON: - order general 262 – 4 BRIG MKHWANAZI: Yes. 5 CHAIRPERSON: And in paragraph 13 under 6 the heading "Debriefing" it set out what must happen and a 7 thorough evaluation must be conducted and, if possible, 8 video coverage must be shown. Now I think what Mr Ntsebeza 9 is putting to you is as far as we could make out from 10 what's being said so far, no such evaluation took place and 11 no video coverage was shown. Now that's the impression 12 that I must profess I got. Whether I share Mr Ntsebeza's 13 impression, if that's an incorrect impression and there 14 will be evidence that a thorough evaluation was conducted 15 and video coverage was shown and there's full coverage 16 available as to what happened at all the phases, then one 17 would have expected that to have been forthcoming earlier. 18 If it's forthcoming later, I suppose better late than 19 never, but that's the basis of the question. So it's 20 specifically, your attention is specifically directed to 21 paragraph 13 of standing order general 262 which states 22 what must happen, which appears not to have happened. 23 That's the basis of the question. If I've messed up your 24 cross-examination, Mr Ntsebeza, I apologise. 25 MR NTSEBEZA SC: Mr Chairman, you saw it</p>
<p style="text-align: right;">Page 3521</p> <p>1 footage at all was dealt with in that nine-day period of 2 meeting, no analysis, no internal review on the basis of 3 that kind of footage. 4 [10:31] You understand what I'm putting to you? That's 5 what he said, and it's generally accepted by everybody, 6 that was the tenor of his evidence. Do you understand 7 that? 8 BRIG MKHWANAZI: I do understand. 9 MR NTSEBEZA SC: Now that is remarkable, 10 is it not, that when people meet for nine days to do an 11 examination or meet as a consequence of what had happened 12 on the 16th, which internationally is known to have been an 13 unfortunate event, that in that period of time no attention 14 was paid to any footage, no attention seems to have been 15 paid to establishing why there was no footage. Isn't that 16 a disturbing feature of behaviour by SAPS post the events 17 of the 16th? 18 BRIG MKHWANAZI: Counsellor, I'm not sure 19 but maybe what can I indicate that there was a session, a 20 session of which I was part of it myself, in Potchefstroom, 21 of which at this stage I'm not sure which one are we 22 referring to because the one I was part of it was only for 23 three days, if I remember properly, and the purpose was 24 clear why we were supposed to be there, but I'm not sure if 25 the one as it says Potchefstroom, which one are we</p>	<p style="text-align: right;">Page 3523</p> <p>1 from my nodding, which doesn't get recorded, that I was 2 with you all the way. It's exactly the substance of it. 3 MR BURGER SC: Chair, may I just say, and 4 I don't want to mess up my learned friend's cross- 5 examination, but I'm not clear why we should wonder about 6 that inquiry, why my learned friend for the Police 7 shouldn't simply tell us whether there was a thorough 8 investigation or not. 9 CHAIRPERSON: Mr Semenya, sometimes 10 people ask questions in response, and that's a fair 11 question. I don't know whether you're able to answer it at 12 this stage, but if you're not I'd be grateful if you'd give 13 us the answer as soon as you can. 14 MR BIZOS SC: Mr Chairman, I'm sorry to – 15 if my memory serves me correct, that question was asked of 16 the witness and others, and the evidence was – and perhaps 17 Mr Ntsebeza wants to take it further – the evidence was 18 that this was not, there was no inquiry in terms of the 19 standing order. That I remember well because we put what 20 the order said and he said no, that was not done. So I 21 thought I would just remind you, the Commission, of what is 22 already on record. 23 CHAIRPERSON: I remember that also and my 24 comments were based upon that evidence, but it may well be 25 that that evidence was incorrect. So that's why Mr Semenya</p>

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1 may appropriate reply where he can, to the point raised by  
 2 Mr Burger. But Mr Ntsebeza is busy with a different point.  
 3 Here's a witness called on the standing orders whose job  
 4 was to go to Potchefstroom to assist in relation to the  
 5 compliance with the standing orders, and that's why he's  
 6 asking these questions. But we mustn't anticipate too many  
 7 of the questions he wants to ask because I'm sure he's  
 8 worked it out very carefully in advance.  
 9 MR SEMENYA SC: Chair, the reply I can  
 10 give is there is no any video footage that was played  
 11 there. The evidence was given. What is troubling me is  
 12 that there is an innuendo that there has been suppression  
 13 of evidence and I'm waiting with zeal and eager to see  
 14 whether Mr Ntsebeza is going to put the possibility beyond  
 15 just the two he has because the other possibility is  
 16 there's no such material and he has no basis to be going  
 17 that direction.  
 18 CHAIRPERSON: I understand that point as  
 19 well, but the question we're busy with at the moment is  
 20 whether there was an evaluation, a thorough evaluation as  
 21 is envisaged in para 13, sub-para 3 of the standing order.  
 22 That's really the point that Mr Ntsebeza is concerned with,  
 23 but Mr Ntsebeza, just for the sake of good housekeeping  
 24 maybe you should put the other possibility Mr Semenya has  
 25 mentioned, but before you do that, he will tell us in reply

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1 to Mr Burger whether the evidence we've heard so far that  
 2 an evaluation as envisaged in para 13 sub-para 3 of the  
 3 standing order was in fact conducted or not.  
 4 MR SEMENYA SC: I confirm the observation  
 5 of Mr Bizos that that question was asked. The answer we  
 6 have on record is it was not done.  
 7 MR NTSEBEZA SC: Now Brigadier, let me  
 8 thank you for volunteering what I was going to ask you  
 9 anyway, that at least you participated in three days of  
 10 debate in the Potchefstroom gathering. Did I get you right  
 11 that you were involved in three days of discussion in  
 12 Potchefstroom, and I suppose that was three days of  
 13 discussing what had happened on the 16th, amongst other  
 14 things, or even on the 13th?  
 15 BRIG MKHWANAZI: That's correct, the main  
 16 purpose was to look to the issues, standing orders,  
 17 national instructions, as well as the procedures and to  
 18 look at that. That was the main reason.  
 19 MR NTSEBEZA SC: And to prepare for a  
 20 commission which had already been indicated, I would  
 21 assume, is going to take place, or which you anticipated  
 22 would take place, how do we plan for that commission? That  
 23 was the main [inaudible] of that meeting.  
 24 BRIG MKHWANAZI: That's correct, for the  
 25 purpose of submission, yes.

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1 MR NTSEBEZA SC: Yes, ja. No, we'll come  
 2 to that, but what I just want to deal with now - and also  
 3 apropos to what Mr Semenya indicated is his waiting with  
 4 baited breath and zeal for evidence that might pop up -  
 5 let's just get to basics first. There is an exhibit in  
 6 this Commission, and I think it's exhibit S, and I'll read  
 7 it to you. 3.3, particularly in your capacity as who you  
 8 are, now over and above what the chairman indicated to you  
 9 in terms of standing orders. Now that exhibit contains a  
 10 circular from MV Phiyega, who's the national commissioner  
 11 for SAPS. That's your national commissioner, is it right?  
 12 BRIG MKHWANAZI: That's correct, yes.  
 13 MR NTSEBEZA SC: And you'll see in 3.3  
 14 thereof on the second page it says, "POP Operational  
 15 Commanders must ensure that video footage is taken of the  
 16 crowd throughout the phases, and including during the use  
 17 of minimum force. A record keeper must also record  
 18 everything on the operational diary. The member who gives  
 19 the command for action must not be party in the action."  
 20 But I think for me having you there as the expert that you  
 21 have admitted you are in terms of POP, that is a standard  
 22 injunction. Do you accept that?  
 23 BRIG MKHWANAZI: Correct, yes Sir.  
 24 MR NTSEBEZA SC: It's not something in  
 25 relation to which we can simply be fobbed off by saying

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1 well it's not there, it was not done. There must be a  
 2 reason either why it was not done, which will be extremely  
 3 remarkable, or it was done except that we will not be  
 4 showing it because it is not the kind of thing that you  
 5 want the chairman and his commissioners and everybody else  
 6 here to see.  
 7 BRIG MKHWANAZI: Correct.  
 8 MR NTSEBEZA SC: Correct, thank you. You  
 9 see whether or not I'm going to be able to produce evidence  
 10 is a challenge. You must appreciate that. Isn't it?  
 11 However, if you do have the evidence you made the evidence  
 12 available, especially when you have given an oath to speak  
 13 the truth, to assist the Commission, etcetera, etcetera.  
 14 BRIG MKHWANAZI: That's correct.  
 15 MR NTSEBEZA SC: You know, Brigadier,  
 16 you'll forgive me if I seem to be sidetracking. I am  
 17 pursuing this line of questioning on an assumption which I  
 18 want all of us to make, namely the disturbing news over the  
 19 weekend, I assume that you read papers, you listen to radio  
 20 and all of that, and on the assumption that the initial  
 21 reports are accurate, there was a report - did you get a  
 22 report? - that journalists from The Star newspaper went to  
 23 Groenpunt with the portfolio committee of Correctional  
 24 Services, and they took photographs there. Did you read  
 25 that?

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1 BRIG MKHWANAZI: No, I couldn't. I  
 2 didn't.  
 3 MR NTSEBEZA SC: You didn't read that.  
 4 No, I will not take you to task for not having read that or  
 5 not having seen that on television, but just for purposes  
 6 of this exercise –  
 7 MR SEMENYA SC: But Chair, I must object.  
 8 There is no connection between that episode, whatever its  
 9 merits, and what happened in Marikana, about which we're  
 10 having this.  
 11 CHAIRPERSON: I was expecting Mr Ntsebeza  
 12 to explain to us what connection, if any, there was, but  
 13 obviously if there isn't a connection then I won't allow  
 14 the question, but I can't disallow it on the basis there's  
 15 no connection unless he, till he's had an opportunity to  
 16 indicate what connection he says there is. If the witness  
 17 of course didn't see the reports then I do not know whether  
 18 he can take it further with this witness, but let's see how  
 19 he handles the point you've raised.  
 20 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 21 The only basis I am seeking to explore with the brigadier,  
 22 the relevance of the news items that I am referring the  
 23 brigadier to has actually been raised in a tangential way  
 24 by Mr Semenya himself when he says please bring us  
 25 evidence. I want to tell the brigadier on the assumption

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1 that those reports may or may not be true, but if they are  
 2 true that those who are in officialdom are not disinclined  
 3 to remove evidence that may –  
 4 MR SEMENYA SC: No, Chair, no. No.  
 5 CHAIRPERSON: I don't think that if  
 6 something happened at Groenpunt, as reported in the press  
 7 and on television, is correct, it doesn't really assist us  
 8 in deciding whether something similar happened in this  
 9 particular case, and I think, with respect, that regard  
 10 being had to the time constraints to which we're subject,  
 11 there may be more fruitful lines of investigation to be  
 12 followed than that one and I'm disallowing the question,  
 13 upholding the objection. But before you proceed, are you  
 14 going to ask him about sub-paragraph 3.5 of exhibit S  
 15 before you proceed further?  
 16 MR NTSEBEZA SC: Yes, I wanted –  
 17 CHAIRPERSON: And if you aren't, I'd –  
 18 MR NTSEBEZA SC: Well if the chair –  
 19 CHAIRPERSON: No, but it's your cross-  
 20 examination; you carry on.  
 21 [10:51] MR NTSEBEZA SC: No, let's leave  
 22 Groenpunt alone, and I accept the ruling of the chair, with  
 23 respect. What I am seeking to convey to you and to seek  
 24 your concession in relation to, is that when you are under  
 25 oath here or in a court of law, you carry a heavier

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1 responsibility than what you as a group of police officers  
 2 may have decided should be the approach to what the  
 3 Commission has to know or not know. Do you accept that as  
 4 a proposal?  
 5 BRIG MKHWANAZI: Counsellor, I have  
 6 indicated right from the beginning when we started that  
 7 really, I'm actually of the understanding that I must  
 8 actually speak the truth and I have as well indicated that  
 9 I have indicated other issues even before and I'm still  
 10 prepared as well to indicate what I think should be done or  
 11 what's supposed to be done; if I have to do, I will have to  
 12 do that.  
 13 MR NTSEBEZA SC: And I take it on your  
 14 word, but you know, it helps sometimes for a person like  
 15 you to state it under oath that you are committed to  
 16 speaking the truth under oath.  
 17 CHAIRPERSON: You got that commitment  
 18 now, Mr Ntsebeza. We can carry on to the next point.  
 19 MR NTSEBEZA SC: Thank you.  
 20 CHAIRPERSON: Are you going to ask him  
 21 about paragraph 3.5 or not, or should I do it?  
 22 MR NTSEBEZA SC: Chair, I was going to  
 23 ask it at a different –  
 24 CHAIRPERSON: Okay, ask it at the time  
 25 that you consider it the most appropriate.

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1 MR NTSEBEZA SC: Yes. You say you were,  
 2 the three days at Potchefstroom were spent by you – what  
 3 actually did you do in the three days?  
 4 BRIG MKHWANAZI: In Potchefstroom what  
 5 happened is we were – I think if I'm correct were seven or  
 6 eight. Our task was just to assist after the final product  
 7 has been compiled by the group of the commanders who were  
 8 working on the day, hence they were divided into groups.  
 9 So when they come together, come back and do their  
 10 presentation, our task was to be able to advise, like to  
 11 say what has to be, how it has to be written. Especially  
 12 what we play a big role on was the issues of terminologies,  
 13 the police terminologies, we actually looked at that a lot.  
 14 That's what actually we managed to work most of the time  
 15 on, just to make sure that the document to be submitted is  
 16 actually correct.  
 17 MR NTSEBEZA SC: What was it that you  
 18 wanted to make sure had been properly drafted or written?  
 19 BRIG MKHWANAZI: As I've said, most of  
 20 ours we'd just have to look to the final product, not to  
 21 change the product that is, what is written there, because  
 22 what was supposed to be brought here was supposed to be  
 23 exactly what happened on the day in the 16th. We were just  
 24 looking at that, assisting into that. There wasn't  
 25 specifically that to say commanders or whoever write or say

<p style="text-align: right;">Page 3532</p> <p>1 something must say it in this way, it must not be in this 2 way. People were allowed to put their story on their own 3 in their groups, come back, give the feedback to us, and we 4 look at that together, holistically, we look at it and say 5 what needs to be rectified, but what was the most thing was 6 done on that time was the terminology, not changing 7 anything. Everything was the way it was. 8 MR NTSEBEZA SC: Very interesting choice 9 of words from you, Brigadier – not change anything. Was 10 there an inclination, did you detect there was an 11 inclination on the part of others or some of others to 12 change things from the way they were? Why was there an 13 emphasis on not changing things? 14 BRIG MKHWANAZI: It is normal definitely 15 in such a situation that everybody must come onboard and 16 assist to make sure that whatever has happened, it doesn't 17 happen again, and your question as well is to say why the 18 choice of words, "no changes made." This is not the first 19 time, Counsellor, this question is being asked from me. It 20 was asked even before to indicate whether were there any 21 changes in anything. That's why I'm touching back on it. 22 I'm tapping on it because it was even touched before, 23 whereby I explained the same way that we never changed 24 anything. The only thing what we did was to actually look 25 to the terminologies and everything and that's the reason.</p>	<p style="text-align: right;">Page 3534</p> <p>1 won't call that that it was a reviewal, because if it was, 2 like we were reviewing, strictly reviewing, we were going 3 to come out with the recommendation to say this is what 4 needs to be done. But I believe without doubt that it was 5 not going to be correct because the Commission was already 6 appointed. 7 MR NTSEBEZA SC: But you do know, and you 8 accept, and this is where the chairman's reference to 3.5 9 may be apposite for me to put to you, you will see in 10 exhibit S, 3.5, that you see there every time minimum 11 force, and here we're not even talking minimum force but 12 every time minimum force is used, a review of the action 13 taken must always be done by an officer holding the rank of 14 captain and above, who was not part of the action and was 15 also not on the scene, and that would be a person like you 16 particularly. 17 BRIG MKHWANAZI: But you agree, 18 Counsellor, it is like that, procedurally we have to do 19 that way. I agree with you. However, I was explaining the 20 purpose of my invitation in Potchefstroom. 21 MR NTSEBEZA SC: Okay, let's leave 22 Potchefstroom aside and let's focus on the requirement in 23 3.5. Do you know as a commissioned officer in your rank, 24 quite clearly one above the rank of captain, whether as a 25 consequence of this injunction which came to you by way of</p>
<p style="text-align: right;">Page 3533</p> <p>1 There's nothing specific to say I'm trying to hide 2 something or do what, but that's what actually we did when 3 we were there. 4 MR NTSEBEZA SC: Would you say that what 5 you were doing there would be amounting to an internal 6 review or the incidences of violence, particularly those 7 that involved the police either on the 13th as victims and 8 on the 16th as perpetrators? 9 BRIG MKHWANAZI: Counsellor, it can be 10 part of, but I will differ because it was going to be very 11 difficult because already the commission was already 12 appointed and to go deeper, the normal way how we do our 13 issues to say we need to as well maybe to give 14 recommendation if we review, if we review we need to give 15 recommendation to say what has to be done. That's why even 16 before the chairperson instructed me to say I must come 17 back with some recommendation, it was because of that that 18 when we were there we never made recommendation because the 19 belief was the commission has been appointed, hence it has 20 been appointed, let's prepare now the submission, and with 21 the belief that the commission will assist, that has 22 actually happened even before, that if the commission is 23 appointed, obviously there will be some recommendation that 24 will assist. However, I was instructed to go and get some 25 recommendation, of which I did, but when we were there, I</p>	<p style="text-align: right;">Page 3535</p> <p>1 a circular on the 20th of July 2012, whether any officer 2 reviewed the action that had been taken, particularly on 3 the two days where violence resulted in the death of the 4 police, the 13th, and of course three miners, and on the 5 16th, the death of those people? 6 BRIG MKHWANAZI: Not in my knowledge, 7 Counsellor. 8 MR NTSEBEZA SC: Now of course I always 9 want to remind you that you are under oath and because it's 10 something that you must remember, I want you to think very 11 carefully about this. Are you saying that as head of 12 training for POPs, that neither you nor anyone of a rank 13 above that of captain complied with that regulation or 14 injunction, which you expressed in peremptory terms, I must 15 remind you, no exceptions as to what must be done, and no 16 exceptions as to how frequently it must be done, it must 17 always be done? Whether there is a commission or no 18 commission appointed yet, that is a compliance issue. Are 19 you saying under oath before your God that you want to 20 stick with your answer? 21 BRIG MKHWANAZI: Counsellor, in my 22 understanding and my answer I gave from the beginning, I 23 would like to indicate that if it was done, it may happen 24 that I'm not having that knowledge, but it has to be done 25 as it is provided by the paragraph, that it has to be</p>

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1 looked at after any situation that has taken place.  
 2 MR NTSEBEZA SC: Brigadier, I give you an  
 3 opportunity now to think carefully because this kind of  
 4 injunction is the kind of injunction that would refer to  
 5 you. Firstly, you hold the rank of brigadier, which is  
 6 above the rank of captain. Secondly, you were not part on  
 7 your evidence of the action, neither on the 13th, nor on  
 8 the 16th, and on the evidence that I've gathered you've  
 9 given in chief and under cross-examination, you were not on  
 10 the scene. Is that right?  
 11 BRIG MKHWANAZI: You're correct.  
 12 MR NTSEBEZA SC: Am I right therefore in  
 13 saying you would be the obvious person, particularly if we  
 14 regard this as a POPS operation, which it should have been  
 15 – and I'm going to come to you and deal with the units that  
 16 were deployed on the 16th, but if we proceed on the basis  
 17 this is a crowd control issue, it's a POPS issue, you are  
 18 head of training in POPS, you are an expert as to what must  
 19 be used, what ammunition, what equipment, how, what the  
 20 numbers, all of those things, you would be the obvious  
 21 person to be involved in this kind of internal review, and  
 22 I am asking you again, are you saying under oath that we  
 23 will never find out that you were part of a process that  
 24 did exactly this?  
 25 BRIG MKHWANAZI: Counsellor, I would say

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1 no, that's not correct, because basically I'm based in  
 2 Northern Cape as an operational officer, provincial head in  
 3 Operational Response Services. The only time I could be in  
 4 a position to be part of the process, Counsellor, you are  
 5 talking about, I will be part of it on an invitation or  
 6 instruction by the head office. However, if I'm based in  
 7 head office as well, will be an instruction, hence  
 8 [11:11] BRIG MKHWANAZI: - hence I was pacing at  
 9 Head Office before and my job was to look to the skilled  
 10 development of all specialised units. That includes cope  
 11 as well and others, but hence I've moved to Northern Cape  
 12 now, I am not in that position anymore, but if I am  
 13 appointed, I will definitely be part of that, but as an  
 14 obvious person as the counsellor is saying, I will  
 15 definitely say "no", it was not going to be in that  
 16 position, because if I am in Head Office and I am in charge  
 17 of the skilled development training of the specialised  
 18 operation, I can initiate, I can ask permission to go and  
 19 actually start doing what actually 3.5 is saying, but in  
 20 this position I can't, I must be instructed or I must be  
 21 appointed to go and be part of that particular team or  
 22 maybe alone in person, I can do that, if I am appointed to  
 23 do like that, but I am not an obvious person.  
 24 MR NTSEBEZA SC: That is general  
 25 response, not necessarily to the question I put. I want to

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1 be more direct to you. Are you saying under oath, you  
 2 never was part of internal review envisaged in that  
 3 paragraph 3.5? For all the reasons that 3.5 injunction  
 4 says the person must be, not generally in this matter, are  
 5 you saying that you were never at a meeting with others or  
 6 by yourself, where the purpose was to do an internal  
 7 review, and I am giving you an opportunity to think very  
 8 carefully, because you are under oath.  
 9 BRIG MKHWANAZI: Counsellor, as I said,  
 10 in the three days we sat with all the commanders whereby  
 11 they were divided into groups, task was given to them and  
 12 they compiled the information. The final product, all of  
 13 us, we came together. We carved the final product, we made  
 14 our comment on the final product. As I have said, the most  
 15 part we commented on, was on the technologies to make sure  
 16 the document actually entails everything properly as it is  
 17 going to be submitted for the commission. Brigadier, if  
 18 you at any other stage, you think of revisiting this -  
 19 CHAIRPERSON: I am going to take the  
 20 adjournment in a moment, but before we do that, Mr  
 21 Ntsebeza, what is your question as to whether this witness  
 22 has ever participated in any review as envisaged by the  
 23 paragraph which was referred to? Confined to the three  
 24 days as Potchefstroom, or was it a question asked  
 25 generally, because he hasn't answered a general question,

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1 only confined his answer to what happened at Potchefstroom.  
 2 Perhaps, before we take the adjournment, we could just wrap  
 3 this point up.  
 4 MR NTSEBEZA SC: Yes, you will recall  
 5 that in anyone, I said, let us now forget about the three  
 6 days and I wanted us to focus on the expectation of 3.5.  
 7 Now forget about the three days now. I am isolating what  
 8 is contained in 3.5. Did you ever, either in yourself  
 9 alone, or with others, forfeit the expectations of 3.5.  
 10 Did you ever sit, meet, discuss, do exactly what is - do a  
 11 review of the action?  
 12 BRIG MKHWANAZI: Counsellor, I will say  
 13 again, no, we never have a specific meeting for the purpose  
 14 of reviewing, because if we review, it will at the end, if  
 15 I am part of that really, that is my understanding, we will  
 16 have to give recommendation, and I have indicated as well,  
 17 to say, already the commission was appointed. To have  
 18 recommendation, it was not going to be the correct thing.  
 19 And I have indicated as well that right when I was sitting  
 20 here, I was instructed by the chairperson to give the  
 21 recommendation. I went back, I wrote them, I came back  
 22 with them. If we have done it before, I could have given  
 23 it at the same time, because I was going to know exactly  
 24 what we have discussed before. So, on a reviewal part,  
 25 purpose to review and come up with recommendation



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1 everything, in my presence, it never happened in that way.  
 2 MR NTSEBEZA SC: Yes, now finally on this  
 3 point, do you know of anyone, who is of the rank of captain  
 4 and above, who undertook a review of the action that must  
 5 always be done by an officer of that rank?  
 6 BRIG MKHWANAZI: Not in my own knowledge,  
 7 counsellor, as 3.5 paragraph actually provides, and I have  
 8 said already, it can happen but on my knowledge I never  
 9 knew about it, but even now, I don't know who has done  
 10 that, but in my presence, I have indicated why I feel  
 11 strongly why it was not done in that way.  
 12 MR NTSEBEZA SC: Now, maybe let me de-  
 13 escalate it further, apart from that kind of review  
 14 envisaged in 3.5, do you know of any review, whatsoever, of  
 15 the action that took place on the 16th in particular, but  
 16 also stating the 16th that was ever done for purposes of  
 17 establishing the pros and cons of the operation that  
 18 resulted in the deaths of so many people?  
 19 BRIG MKHWANAZI: Counsellor, it's normal  
 20 it has to be done, but in my knowledge, no, I did not pick  
 21 it up, except only the task given to me only. If it was  
 22 done, I don't have the knowledge of this.  
 23 MR NTSEBEZA SC: Here as a person who is  
 24 head of training of POP and when you come from tea, I will  
 25 be putting to you that this was a POPs operation, I find

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1 that again, a very remarkable answer.  
 2 MR CHAIRPERSON: - Perhaps you can turn  
 3 that comment into a question after we have taken the tea  
 4 adjournment.  
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 6 [11:40] CHAIRPERSON: The commission resumes.  
 7 Brigadier, you're still under oath. Mr Ntsebeza, you were  
 8 going to turn a comment into a question.  
 9 MR NTSEBEZA: Thank you, Mr Chair. Well,  
 10 Brigadier, I was just going to - in turning the comment  
 11 into a question. Don't you find it is very remarkable and  
 12 unbelievable that there doesn't seem to have been, even to  
 13 your knowledge, there doesn't seem to have been any  
 14 exercise by the police to do a review of the action that  
 15 brought about the deaths of the people mentioned were a  
 16 subject of inquiry in this commission.  
 17 BRIG MKHWANAZI: Counsellor, I must  
 18 indicate that what I said it may happen it took place, but  
 19 not to my knowledge and there are other issues that took  
 20 place such as inspection log and all that, which were  
 21 conducted with the company of Counsellor Semanya and the  
 22 team at Marikana itself and I may definitely not have a  
 23 knowledge if there is something that has happened of that  
 24 nature which was not maybe mentioned to me. But I don't  
 25 say it never happened.

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1 CHAIRPERSON: On the assumption that it  
 2 didn't happen, as far as I know no documents has been  
 3 discovered by the police which constitutes a record of any  
 4 such review. So on the assumption that such review wasn't  
 5 held, I think you already said that a review should've been  
 6 held. Is that correct?  
 7 BRIG MKHWANAZI: That's correct,  
 8 Counsellor. I've said as per 3.5, I've said it has  
 9 actually - it should take place. The only thing I'm saying  
 10 is I'm not sure if it did.  
 11 CHAIRPERSON: Ja, no what I'm telling you  
 12 is that as far as I'm aware, no document indicating that  
 13 such review was ever held has been discovered by the  
 14 police. So on the assumption that such review didn't  
 15 happen, Mr Ntsebeza will ask such further questions as he  
 16 wishes.  
 17 BRIG MKHWANAZI: Maybe as well,  
 18 Commissioner, to allow me to rectify one part that the  
 19 inspection log I'm referring to which I was part of it,  
 20 Senior Counsel Semanya was not part of it but others were  
 21 there. Just to rectify that part.  
 22 MR NTSEBEZA SC: Let me just repeat  
 23 quickly step by step where I want to get to. You see, on  
 24 your own evidence you were not there on the day that people  
 25 got shot on the 16th of August, is that correct?

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1 BRIG MKHWANAZI: It's correct.  
 2 MR NTSEBEZA SC: And in the language of  
 3 2.5 you were not part of the action.  
 4 BRIG MKHWANAZI: Yes.  
 5 MR NTSEBEZA SC: And you were not on the  
 6 scene. You were not on the scene. You were not -  
 7 BRIG MKHWANAZI: Yes.  
 8 MR NTSEBEZA SC: Now at some stage before  
 9 you came to testify here, you must have, and you'll correct  
 10 me if I'm wrong, you must have had a discussion about you  
 11 having to come and testify here in the capacity that you  
 12 came in. Is that right?  
 13 BRIG MKHWANAZI: Yes, Sir. With Senior  
 14 Counsel Semanya and the team, yes. There was a meeting of  
 15 course to prepare me.  
 16 MR NTSEBEZA SC: And I would assume that  
 17 part of what you will be expected to do would be to be  
 18 filled in on what happened, what units were there, who they  
 19 were recommended by, what positions they took, who were  
 20 their negotiators and all of that, you would be told those  
 21 kinds of things in that kind of a meeting. Am I assuming  
 22 correct?  
 23 BRIG MKHWANAZI: Yes.  
 24 MR NTSEBEZA SC: And as an expert and  
 25 that as much came from the cross examination of Mr

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1 Budlender that you are actually an expert in POP, your  
2 views as to what happened on the day would be solicited.  
3 Not so?  
4 BRIG MKHWANAZI: Ja, but as I have said  
5 that your question was, was there any discussion prior.  
6 Yes, I'm saying there were discussions, yes, everything was  
7 discussed and the preparation was to say I'm going to come  
8 in, this is what actually has happened. Yes, definitely  
9 it's a lot of things that was discussed, but to come to a  
10 conclusion to everything – I never came to that position to  
11 say this is the conclusion but since I came in the  
12 commission the question that is came I have indicated what  
13 went wrong. I have indicated what went right during that  
14 position.  
15 MR NTSEBEZA SC: Can we simplify it in  
16 this way? You would've been told as the person was not  
17 there, you would've been told this is what happened. Did  
18 that happen?  
19 BRIG MKHWANAZI: That's correct.  
20 MR NTSEBEZA SC: And there would have  
21 been an expectation from you to say well this was compliant  
22 with POPs standing orders, this was not strictly in  
23 compliance with POPs orders etcetera, etcetera. Would that  
24 have happened? Did that happen?  
25 BRIG MKHWANAZI: Not in that session,

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1 Counsellor, because if I remember properly, when I arrived  
2 I was actually prepared to talk only about training, only  
3 specifically training but as I came inside here, I had to  
4 answer to other issues as well. But now when we were  
5 preparing I think maybe it can happen the time was not  
6 enough to say maybe we can just say now holistically this  
7 what went wrong or this what was. But as I was cross  
8 questioned here, I managed to say this was wrong or this  
9 was right.  
10 MR NTSEBEZA SC: Just by the way, do you  
11 keep any diary or pocket book of your activities that  
12 covered everything that you did in relation to your  
13 involvement with this Marikana incident?  
14 BRIG MKHWANAZI: No, not at all. I  
15 didn't kept any but we do have diaries we keep and anything  
16 that we actually do during the course of the day, but on  
17 issues of Marikana I couldn't because there was a specific  
18 task I was supposed to deal with and really to write each  
19 and every day, I couldn't do that. Definitely I couldn't -  
20 MR NTSEBEZA SC: Ideally especially and  
21 when you got to know that there was a commission that was  
22 coming, shouldn't you have kept a diary so that you have a  
23 fair record of what you did in connection with your – with  
24 whatever you would do as a witness in this case?  
25 BRIG MKHWANAZI: I don't think I'm like

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1 being compelled to maybe to do things in that way and I  
2 think it's totally optional and as a result really I never  
3 chose to kept a diary every time on what is happening here,  
4 if I'm inside here because really there are a lot of  
5 documents that are been given to me like Exhibit L is here.  
6 If anything I have to refer myself I refer myself. If I  
7 have to write now a diary it means it will be finished,  
8 Counsellor, before this commission is done because this is  
9 a big document. I have to write from the back to the end,  
10 really. Not to mean I'm sarcastic to my answer but really  
11 it's a lot of things I've dealt with. If I have a diary  
12 for how many pages I will write there.  
13 MR NTSEBEZA SC: Ja, I don't want to  
14 offend you, Brigadier, but you know, I'm just putting  
15 questions. I just want to be sure that I've been fair to  
16 you by putting a question as to whether you kept a diary  
17 because if you kept one then you know, it would assist this  
18 commission. You appreciate that, don't you? You have a  
19 diary that documented what you did after the 16th or on the  
20 16th with respect to Marikana. Hey, this is what I did. I  
21 met with brigadier so and so, General Annandale, Mckintosh  
22 and all of that. We had a meeting, those kinds of things.  
23 If it is there, it might assist us, wouldn't it?  
24 BRIG MKHWANAZI: No, you're correct,  
25 Counsellor. Yes, it can help but as I've said really I

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1 never felt that it is necessary for me to keep a diary.  
2 MR NTSEBEZA SC: Now before you came to  
3 testify and around the time that you were preparing to come  
4 and testify, did you see any video footage of any of the  
5 incidents that took place?  
6 BRIG MKHWANAZI: That's correct,  
7 Counsellor. Yes, I saw some of the video footage and some  
8 of them of course were shown to me even inside here.  
9 MR NTSEBEZA SC: Yes, no, I'm asking  
10 about what you saw outside the commission. So what video  
11 footage were you shown? I'm not saying describe what it  
12 was. Was it video footage which you were told this is  
13 video footage that was taken by POPs as they should've done  
14 or this is video footage that we got from elsewhere?  
15 BRIG MKHWANAZI: The videos I saw is  
16 videos were by Aljazeera. That's one I saw.  
17 MR NTSEBEZA SC: When was that and where?  
18 BRIG MKHWANAZI: Ja, if some is right  
19 here and some I saw them we were at Potchefstroom. Yes, I  
20 saw one of them there at Potchefstroom, but all of them,  
21 Counsellor, the one I saw at that stage is the one that  
22 came up right here. The one I saw here.  
23 MR NTSEBEZA SC: Let's forget about what  
24 you saw here. I'm more interested in what you saw  
25 elsewhere in preparation for you to come and testify. Are

<p style="text-align: right;">Page 3548</p> <p>1 you saying that the only video material you saw in your 2 preparation to come and testify here was video material 3 that was provided by the media outlets? Aljazeera for 4 instance.</p> <p>5 BRIG MKHWANAZI: The one I saw were from 6 the media and I was informed as well that there were other 7 video footage taken by the police as well. I was informed 8 on that one but I've never seen that one. But the one I 9 saw myself was by the media.</p> <p>10 MR NTSEBEZA SC: Were you told that 11 there's video material that the police had taken of the 12 events which the police will make available later?</p> <p>13 BRIG MKHWANAZI: What I was told was that 14 there is video footage which were taken by the police as 15 well but I never saw it when I was there, Counsellor. 16 That's what I'm saying. I saw only the one from media.</p> <p>17 MR NTSEBEZA SC: Who told you that 18 there's other video material that was taken by the police?</p> <p>19 BRIG MKHWANAZI: Well it was discussed as 20 we were actually viewing the, what's it name, the videos as 21 well. Discussed as we were busy looking to the final 22 product of what's supposed to be submitted as if it's got 23 visuals and everything, the information here. It was 24 discussed at that stage but specifically I cannot say that 25 so and so told me because it wasn't like a specific</p>	<p style="text-align: right;">Page 3550</p> <p>1 a guy who was taking videos as well for SAPS. I'm not sure 2 about his name myself.</p> <p>3 MR NTSEBEZA SC: Now as head of POPs 4 Training, who knows that it is a requirements or the 5 standing orders for video material to be taken, why didn't 6 you ask for that video material to be given to you so that 7 you can do what you have to do? No, I'm asking an entirely 8 other question, Mr Interpreter, that didn't he ask where is 9 this video material that the police took, I want to see it 10 too?</p> <p>11 BRIG MKHWANAZI: Counsellor, as I've said 12 I have a discussion and the whole purpose is to know if do 13 we have anything, and he mentioned that he got the video 14 footage.</p> <p>15 MR NTSEBEZA SC: Yes.</p> <p>16 BRIG MKHWANAZI: That definitely, I spoke 17 with him, I questioned in that way that –</p> <p>18 MR NTSEBEZA SC: Very good.</p> <p>19 BRIG MKHWANAZI: Ja.</p> <p>20 MR NTSEBEZA SC: Then did you say wait a 21 minute, I want to see it?</p> <p>22 BRIG MKHWANAZI: Ja, but Counsellor, as 23 I've said, I asked –</p> <p>24 CHAIRPERSON: Come on, Brigadier, it's a 25 simple question. Did you ask to see the video material</p>
<p style="text-align: right;">Page 3549</p> <p>1 question but it was a discussion as we busy there.</p> <p>2 MR NTSEBEZA SC: Brigadier, are you 3 saying you don't know who told you that there is other 4 video material taken by the police which will be shown 5 later on?</p> <p>6 BRIG MKHWANAZI: If I remember properly, 7 I have a discussion with a video operator for, I think it's 8 Public Order Policing, that's the person I have a 9 discussion but it was a discussion with everybody but there 10 was definitely a mention of that in that part.</p> <p>11 MR NTSEBEZA SC: Brigadier, who told you 12 that there was video material which will be shown later 13 which had been taken by the police? It's a simple 14 question.</p> <p>15 BRIG MKHWANAZI: Counsellor, I have said 16 it was a discussion emanating from the meeting - a question 17 specifically from a person. However I have a discussion 18 with a video operator as well, just in passing, discussing 19 and he said yes, I took some video when I was working. 20 That's the part that came up.</p> <p>21 MR NTSEBEZA SC: Who was that video 22 operator whom we talked to?</p> <p>23 [12:00] BRIG MKHWANAZI: I don't know his 24 surname. I don't know his surname, but maybe others may 25 know, like an operational commander, whoever, but there is</p>	<p style="text-align: right;">Page 3551</p> <p>1 which was referred to by the policeman who mentioned to you 2 that he'd taken it?</p> <p>3 BRIG MKHWANAZI: No, I didn't ask to see 4 it because even the one of Al Jazeera I was just shown, I 5 never asked in that fashion because as I've said my purpose 6 to be there was clear what I have to look at. So I was 7 shown what I was shown, but I never asked specifically 8 where is that material, no.</p> <p>9 MR NTSEBEZA SC: Really I want to put it 10 to you that you are being disingenuous with this 11 Commission, that you are being evasive, that you are not 12 being truthful, contrary to your swearing on oath that 13 you'll speak the truth.</p> <p>14 BRIG MKHWANAZI: Counsellor, I'm not 15 agreeing with the comment because really, your question is 16 did I see any footage. I indicated that I've seen the 17 media one and the one from SAPS I asked, as I was talking 18 to the video operator, and he indicated that he took some 19 video footage and whilst I was of the opinion that it can 20 be, to be shown in future, and I don't know what is the 21 position on that, but I'm saying this is what I find out if 22 I, the time I was talking with, that's all, and there's 23 nothing I'm hiding at all.</p> <p>24 MR NTSEBEZA SC: Wasn't it in your 25 interest, let alone the public interest, that you in your</p>

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1 rank and position should know what is contained in the  
 2 other video material that this video operator of all people  
 3 is referring to?  
 4 BRIG MKHWANAZI: Yes, I did. I did feel  
 5 like I would like to see it because it can give a different  
 6 angle of the situation, but I couldn't see it. There's  
 7 nothing I could do so far, but I couldn't see it yet.  
 8 MR NTSEBEZA SC: What do you mean there  
 9 was nothing you could not do?  
 10 BRIG MKHWANAZI: Sorry?  
 11 MR NTSEBEZA SC: Okay, I'm sorry. What  
 12 do you mean that there was nothing that you could do about  
 13 it? You are the brigadier and the video operator I assume  
 14 was of a rank way below you. Your police unit, the police  
 15 unit you train, could have been reflected in that video  
 16 material. It was the duty of the unit that you train, on  
 17 injunctions from the national commissioner, to take video  
 18 footage all the time and then when you get told that there  
 19 is footage that was taken by the Police, you show a  
 20 remarkable reluctance to know what is contained in that.  
 21 What do you call that?  
 22 BRIG MKHWANAZI: It's not the case,  
 23 Counsellor, that I never took it serious. However, I have  
 24 that belief that like all video footage available it will  
 25 come forward, if there's any, but as I'm saying I have a

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1 discussion with the video operator and he indicated that he  
 2 got video footage as well, of which sometime I thought  
 3 maybe that it's the same or maybe it cannot be the same,  
 4 but there was nothing much I could do as I was of the  
 5 opinion that it will be shown.  
 6 MR NTSEBEZA SC: Did you ask the video  
 7 operator what incident or incidents that video material  
 8 covers, details of what he has, or she has?  
 9 BRIG MKHWANAZI: Not in detail, Sir.  
 10 MR NTSEBEZA SC: I'll just ask you for  
 11 the last time, why were you reluctant -  
 12 CHAIRPERSON: Before you ask something  
 13 for the last time, you said not in detail. So that  
 14 indicates you did ask him to some extent, him or her - was  
 15 it a he or a she?  
 16 BRIG MKHWANAZI: It's he.  
 17 CHAIRPERSON: He. When you asked him  
 18 what, when you asked, did you ask him what was depicted on  
 19 the video material he took, you answered, not in detail.  
 20 So that indicates that you must have asked him in general  
 21 terms what was on it, and what did he say?  
 22 BRIG MKHWANAZI: Ja-no, it's correct, we  
 23 were discussing more on the position where in koppie 1  
 24 where every situation took place, that's where I was just  
 25 very much interested asking and he said yes he got the

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1 video footage, but as to say which angle and where he  
 2 managed to take pictures, I didn't ask that because I was  
 3 of the opinion that it will come out as the others are  
 4 here, that's all what I knew by this, because there's  
 5 nothing I thought of differently on that.  
 6 MR NTSEBEZA SC: I propose to move on,  
 7 but let me just ask a few questions around this. Do you  
 8 accept now that you are there under oath, that it would  
 9 have been a good thing for you to have asked the operator  
 10 the following, "Man, what is in that video material? Where  
 11 is that video material? I want to see it now that I've  
 12 seen the other video material from Al Jazeera."  
 13 BRIG MKHWANAZI: Counsellor, if I recall  
 14 right, this discussion we have is before the time as well  
 15 when we're going to see it and view everything, and all  
 16 what came in my mind was that everything actually maybe can  
 17 be there or maybe can be the same, or can differ from each  
 18 other and all that, and really, I felt that position that  
 19 there wasn't much to go deeper on that, but I knew, as I  
 20 said to you, that there was video footage taken as well by  
 21 SAPS and he indicated to me that he was part of the whole  
 22 scene. He took something, especially on koppie 1, but  
 23 definitely to say is this the same or not the same, I never  
 24 went into details on that.  
 25 MR NTSEBEZA SC: I see, and then at the

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1 end of that video footage that you saw, you realised that  
 2 this is all from the media. Do you agree that it would  
 3 have been at that stage an opportune moment for you to go  
 4 back to that video operator, say "Oh yeah, I've seen  
 5 everything now, but can we now see the video footage taken  
 6 by the Police that we talked about earlier?"  
 7 BRIG MKHWANAZI: Well, what came in my  
 8 mind at that time, Counsellor, was that the video footage  
 9 we are seeing, it may happen it's the same. That's how I  
 10 felt, and I never went further like to say show us whether  
 11 yours, it can have a different angle or what, but I felt  
 12 that what comes up there, it's fine and it will be shown as  
 13 well if there's a need, the one of SAPS as well, if it is  
 14 there it's possible that it can be shown, it can be shown.  
 15 That's what I felt, but strictly for me to sit down and say  
 16 I want to see yours, definitely I felt that's not  
 17 definitely, I couldn't do that, but it never came even in  
 18 my mind to say I must do it in that fashion. But the only  
 19 thing I'm saying, yes, discussion we had with him, but to  
 20 say I can go back and say show me yours now, I have seen  
 21 the one of media, no, I couldn't take it in that position.  
 22 MR NTSEBEZA SC: No, Brigadier, I want to  
 23 know why. I hear you say you couldn't do it or you  
 24 wouldn't do it or didn't want to do that. Why didn't you?  
 25 Why didn't you ask for video material which you know in

<p style="text-align: right;">Page 3556</p> <p>1 terms of your standing orders is a requirement? You get 2 satisfied with only media footage. Why didn't you ask for 3 your footage? 4 BRIG MKHWANAZI: Counsellor, I do not 5 have a real reason into that to say why not because 6 submissions were actually done by everybody when they were 7 preparing, and this is, was the question in passing with me 8 with the member to say do you have yours, and he say he got 9 his, and I thought whatever was coming, because if you 10 check here, it's different footages that are attached in 11 exhibit L, and for me somehow I felt that they are included 12 as well, you know. But to strictly say now tell me, is 13 this one from Al Jazeera or media, or this one, is it from 14 the Police, was not easy to ask that type of question 15 because everything was there and it's attached here and I 16 felt clearly, I felt clearly to say it may happen as well 17 his are there as well. That's how I felt. Because if I 18 mention Al Jazeera, it's because when you're starting the 19 footage, that's where you can pick it up that it's Al 20 Jazeera. That is media, you can pick up easy. That's why 21 I asked the question as well, but if you look to the 22 exhibit L it's a lot of video footage that are there, may 23 happen as well they are there. So I never took as if they 24 are not included. 25 MR NTSEBEZA SC: Am I correct in</p>	<p style="text-align: right;">Page 3558</p> <p>1 POP should have dealt with? 2 BRIG MKHWANAZI: Counsellor, partly I 3 will agree in a sense to say any gathering that is taking 4 place, it will be the duty that has to be performed by 5 members of Public Order Policing. However, I must indicate 6 as well that the situation changes every time. That 7 demands a lot of intervention to solve the problem. 8 CHAIRPERSON: That's not an exact answer 9 to the question. The question was, you saw the video, you 10 were told what happened, do you agree with the proposition 11 that counsel put to you, in the light of what you saw and 12 what you were told, it's your opinion that this should have 13 remained a POP event? I think that's the question and I 14 don't think you've answered - 15 MR NTSEBEZA SC: That's the question. 16 BRIG MKHWANAZI: I do agree. 17 MR NTSEBEZA SC: Indeed it is a situation 18 where - and I'm sure you'll agree with me as a trainer of 19 that unit - that POP from other provinces should have been 20 called. 21 BRIG MKHWANAZI: That's correct. 22 MR NTSEBEZA SC: In fact, as I did some 23 little research, it does appear that there are many other 24 POP members who are on reserve. So those could have been 25 called as well. I'm just talking about that unit.</p>
<p style="text-align: right;">Page 3557</p> <p>1 accepting that the answer to this question is the one you 2 have just given me, that you have no real reason why you 3 didn't ask for this video footage to be produced? 4 BRIG MKHWANAZI: Counsellor, I have asked 5 the question and I got the answer. The only part I never 6 asked was when the visuals are being shown to us to say is 7 that one for the Police. That's the only thing I'd never 8 done, but I've asked the question from the video operator. 9 That's the only thing. Even if you go to exhibit L, I 10 cannot even now go in and say this one is for Police, this 11 one is not for the Police. 12 CHAIRPERSON: Mr Ntsebeza, you've taken 13 that point as far as it could be taken. 14 MR NTSEBEZA SC: I think so. 15 CHAIRPERSON: You might consider moving 16 on to another point. 17 MR NTSEBEZA SC: Indeed. Indeed. 18 Indeed. Now I would like to debate with you, and you may 19 or may not have been asked by some of my colleagues some of 20 these questions, but I will avoid asking questions that 21 have been put to you. Now would I be correct in putting to 22 you that after having considered everything that you were 23 told, which you have seen on video footage, the situation 24 that had developed on the 16th was one that ideally should 25 have remained a POP event? It was the kind of thing that</p>	<p style="text-align: right;">Page 3559</p> <p>1 [12:20] BRIG MKHWANAZI: That's correct, ja, they 2 will be called. 3 MR NTSEBEZA SC: And how many - what kind 4 of numbers are we talking about, how many police from, 5 let's assume, POP from all the provinces, what number are 6 we talking about? 7 BRIG MKHWANAZI: Maybe counsellor, we 8 need to rectify maybe the term 'reserve'. In each 9 province, those provinces, each province there is Public 10 Order Policing that actually work within that province. We 11 don't have a POP that is reserved there. 12 MR NTSEBEZA SC: Okay. Okay. 13 CHAIRPERSON: I wanted to know from you, 14 how many, how many POP people are there available in the 15 country to deal with this ordinary P-O-P style situation? 16 BRIG MKHWANAZI: Counsellor, I'm not sure 17 with the total figure now at this stage, how many they are. 18 MR NTSEBEZA SC: More or less? 19 BRIG MKHWANAZI: Sorry? 20 MR NTSEBEZA SC: More or less, estimate? 21 BRIG MKHWANAZI: It may not be correct, 22 but if I have to guess now, it can be 8 000 or four, I'm 23 not sure, between that, I'm not sure. 24 MR NTSEBEZA SC: Now, this is exactly 25 what I was going to put to you on the basis of the research</p>

<p style="text-align: right;">Page 3560</p> <p>1 that I've conducted, that you are talking thousands of POP 2 members. That place could have been saturated like, and 3 now you look this and you see it. There would have been a 4 POP to each protestor if you accept the bandied about 5 number of 3 000 or 4 000 and there would still have been 6 left many more. Do you agree with that? 7 BRIG MKHWANAZI: Counsellor, I do agree, 8 but due maybe to other delivery protest issues that were 9 there at that stage, I think maybe it has actually had an 10 effect whereby a lot of members can be called at the same 11 time. 12 CHAIRPERSON: Brigadier, you're doing 13 something that I must ask you not to do. You are not 14 confining your answer to the question you're asked. You, 15 as it were, seeing what the next question – what you think 16 the next question is going to be, and answering that in 17 advance. That's not what witnesses are expected to do and 18 if you go on doing it, I shall have to speak to you again. 19 But the question was, simple question, were there enough 20 people, POP people there available to come to more than 21 outnumber the people on the Hill. The answer to that, yes. 22 You then start giving the reason why you think that they 23 weren't brought there. You weren't asked that. If counsel 24 wants you to answer that question, he'll ask you. You only 25 make difficulties for yourself and you waste our time</p>	<p style="text-align: right;">Page 3562</p> <p>1 made privy to, there were three to 4 000 people gathered on 2 a mountain and I'm saying to you, would you agree with me 3 that there is a viable alternative that could have been 4 resorted to and I'm giving you scenarios. Scenario 1, this 5 could easily have been contained as a POP operation, 6 because the place could have been saturated with POP 7 members, drawn from all the provinces. Is that a fair 8 proposition to make? 9 BRIG MKHWANAZI: Yes. 10 MR NTSEBEZA SC: And ideally this is an 11 operation that should have been under a POP operational 12 commander? 13 BRIG MKHWANAZI: It's correct. 14 MR NTSEBEZA SC: And you know, but I only 15 assume, but you know that General Allandale is not POP, is 16 he not? 17 MR SEMENYA SC: Objection, Chair. 18 CHAIRPERSON: Mr Semanya, what's your 19 objection? 20 MR SEMENYA SC: General Allandale was not 21 the operational commander. The evidence is clear, it was 22 Brigadier Calitz, who is a POP commander. 23 MR NTSEBEZA SC: I was not asking that 24 question, but thank you for the answer from the 25 representative of SAPS. But if you were to answer my</p>
<p style="text-align: right;">Page 3561</p> <p>1 frankly, by asking questions – sorry, by answering 2 questions that you're not being asked. Now I'm sure you're 3 doing it out of a desire to be helpful, but I just want to 4 tell you, you're not being helpful. So please just confine 5 yourself to the questions, okay. 6 MR NTSEBEZA SC: Now the estimation of 7 the number of police, POPS, just POPS from all provinces, 8 your own estimation is about 8 000, is that right, to go 9 with that number? 10 BRIG MKHWANAZI: Ja, I said I'm not sure 11 with the figure. 12 MR NTSEBEZA SC: Yes. 13 BRIG MKHWANAZI: I've never checked. 14 CHAIRPERSON: You said four to eight as I 15 understand it? There were something like 3 000 people at 16 the scene, so there would have been, if it was – if four 17 was the right number, there would have been – the people on 18 the Hill would have been outnumbered by POP policemen. 19 Obviously if there were 8 000, even more so. He started to 20 give a reason why maybe they didn't get all the POP people 21 there, but you didn't ask him. If you want to ask him 22 that, you can. If you don't want to, you don't have to. 23 MR NTSEBEZA SC: Now all I'm proposing to 24 you as an expert in that area, is to suggest to you that 25 this was a POP operation on the evidence that you have been</p>	<p style="text-align: right;">Page 3563</p> <p>1 question, General Allandale is not a POP member, is he not? 2 BRIG MKHWANAZI: That's correct. 3 MR NTSEBEZA SC: Who should have been in 4 charge? 5 BRIG MKHWANAZI: Calitz. 6 CHAIRPERSON: No, no, what counsel, Mr 7 Semanya has said, was that the operational commander was 8 Brigadier Calitz and that Brigadier Calitz is a POP member? 9 MR NTSEBEZA SC: Yes, no, I agree. I 10 agree. I'm just going with you through the personnel that 11 have been involved in this whole saga. You know Colonel 12 Scott, is it, ja, what Scott? 13 BRIG MKHWANAZI: Lieutenant Colonel? 14 MR NTSEBEZA SC: Yes. 15 BRIG MKHWANAZI: Lieutenant Colonel, yes. 16 MR NTSEBEZA SC: He spent very little 17 time in POP, isn't it, especially it is counter insurgency. 18 BRIG MKHWANAZI: That's correct. 19 MR NTSEBEZA SC: And has it appeared 20 correct – have you been able to establish and I'm asking 21 you now as a witness, who it was who was in charge on the 22 day? I know the other answer that came from elsewhere, but 23 have you been able as yourself, to establish who was in 24 charge? 25 BRIG MKHWANAZI: Maybe -</p>

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1 MR NTSEBEZA SC: Who was in charge of  
 2 that command on the 16th, who gave the directions as to  
 3 what must be done?  
 4 BRIG MKHWANAZI: Counsellor, I will try  
 5 to be straight to the answer if you ask the operational  
 6 commander, was Brigadier Calitz.  
 7 CHAIRPERSON: Before Mr Ntsebeza asks the  
 8 next question can I ask you a question. You said that it  
 9 relates to a point he's asked already. You said there  
 10 should have been a POP operation?  
 11 BRIG MKHWANAZI: Correct, Sir.  
 12 CHAIRPERSON: And there should have been  
 13 a POP operation commander as in fact there was, correct?  
 14 BRIG MKHWANAZI: It was.  
 15 CHAIRPERSON: Now the plan that was drawn  
 16 up, should that have been drawn up by a POP person with POP  
 17 expertise?  
 18 BRIG MKHWANAZI: That's correct.  
 19 CHAIRPERSON: Do you know who drew up the  
 20 plan?  
 21 BRIG MKHWANAZI: Yes, I was informed, I  
 22 know, Sir.  
 23 CHAIRPERSON: Who was it?  
 24 BRIG MKHWANAZI: What I know was that a  
 25 team was put in place, a team of planners and Lieutenant

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1 Colonel Scott was part of the team and he is the person who  
 2 actually thrown the plan with the instruction given to him  
 3 that's what I was told.  
 4 MR NTSEBEZA SC: Now for example, just  
 5 talking about alternatives, I'll put these alternatives to  
 6 you, because they may have been canvassed at great length  
 7 with you in the days that you have been on the stand.  
 8 BRIG MKHWANAZI: Yes.  
 9 MR NTSEBEZA SC: It has been suggested in  
 10 some of the evidence that I read in the transcript, that  
 11 SAPS used negotiators as a way of resolving the impasse on  
 12 the mountain. Are you aware of that?  
 13 BRIG MKHWANAZI: It's correct.  
 14 MR NTSEBEZA SC: But as an expert I want  
 15 to make – I want to bounce off certain views with you.  
 16 Firstly, it appears that the negotiator who was used, was  
 17 McIntosh?  
 18 BRIG MKHWANAZI: That's correct.  
 19 MR NTSEBEZA SC: And you will correct me  
 20 if I'm wrong, MacIntosh is from the Hostage Unit, a hostage  
 21 negotiator?  
 22 BRIG MKHWANAZI: That's true.  
 23 MR NTSEBEZA SC: He is not your typical  
 24 POP or POP team negotiator?  
 25 BRIG MKHWANAZI: That's correct.

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1 MR NTSEBEZA SC: Now I don't know what  
 2 you think about it, from everything that we've heard, this  
 3 did not appear to me to be a scenario that called for  
 4 hostage negotiation? There were no hostages?  
 5 BRIG MKHWANAZI: There wasn't any hostage  
 6 situation.  
 7 MR NTSEBEZA SC: It was not a counter  
 8 insurgence scenario, a terrorism scenario where, whatever  
 9 you understand by terrorism. That was not the situation  
 10 from everything that you know of it?  
 11 BRIG MKHWANAZI: That's correct.  
 12 MR NTSEBEZA SC: It was not a cash in  
 13 transit kind of scenario, cash in transit heist scenario?  
 14 BRIG MKHWANAZI: That's true.  
 15 MR NTSEBEZA SC: And from your training  
 16 as a POP negotiator, you will know that this was a  
 17 situation that called for a POP trained negotiator. And I  
 18 will tell you what features this POP trained negotiator  
 19 would have had. Firstly, a negotiator, POP trained  
 20 negotiator would have realised that this is a situation  
 21 where people want to protest and his duty would be to  
 22 negotiate for the facilitation of a peaceful protest.  
 23 Would you agree with that?  
 24 BRIG MKHWANAZI: That's correct, you're  
 25 correct on that, but can I ask something -

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1 MR NTSEBEZA SC: No, no, no.  
 2 CHAIRPERSON: The question was addressed  
 3 to me. You can't answer. A witness can't ask questions,  
 4 but tell me what your question is first and I'll then tell  
 5 you whether you can ask it.  
 6 BRIG MKHWANAZI: Ja, Chairperson, I'm  
 7 actually worried with your comments, whereby you said,  
 8 maybe I'm wasting time when I explain maybe sometime the  
 9 question that maybe still going to be asked.  
 10 CHAIRPERSON: That's correct. The  
 11 question may not be asked. You're answering a question  
 12 which may not be asked and you're actually wasting our  
 13 time, that's all. But - and I'm sure those present who  
 14 were still at the bar, always say to their clients, answer  
 15 the question, don't answer other questions as well, because  
 16 sometimes things go badly if you do that. And that was a  
 17 bit of friendly advice I've given you. Is that the  
 18 question you wanted to ask me or do you want to ask me  
 19 another question?  
 20 MR NTSEBEZA SC: He doesn't want any  
 21 more.  
 22 BRIG MKHWANAZI: Not exactly, Chair, but  
 23 I want just to make a comment that I feel a little bit more  
 24 confined now. I feel like I should say yes, no, yes, no,  
 25 until everything is over, because really the counsellor's

<p style="text-align: right;">Page 3568</p> <p>1 question is, do you agree? Then I should say, yes or no.  2 That's all then. I don't have this freedom of making sure  3 I answer to my ability –  4 CHAIRPERSON: What you're entitled to say  5 –  6 BRIG MKHWANAZI: Understand like, ja.  7 CHAIRPERSON: If counsel puts a  8 proposition to you and Oprah Winfrey style says to you, yes  9 or no -  10 BRIG MKHWANAZI: I can -  11 CHAIRPERSON: I'd like to qualify or  12 explain, that you can do.  13 BRIG MKHWANAZI: Yes. That's what I'm  14 asking, Sir.  15 CHAIRPERSON: All right.  16 BRIG MKHWANAZI: Can I do that, please?  17 CHAIRPERSON: Now you know that.  18 [12:40] MR NTSEBEZA SC: Yes. Now for instance,  19 may I propose to you that in the circumstances of what we  20 now know, so many people on the koppie what happened, all  21 of that. Your negotiator, I'm talking about now  22 negotiators from POP, would have appreciated that their  23 people want to be gathering on the mountain. It may be  24 illegal in terms of whatever Act to do so but a negotiator  25 would go in there and say, if you want to stay on this</p>	<p style="text-align: right;">Page 3570</p> <p>1 would say, you'd go say there, if you are going to be  2 gathering here, in a democracy that is allowed. If you  3 want to protest here in a democracy that is allowed, but  4 you are not permitted to carry these kinds of weapons,  5 don't bring these weapons here. If you want to gather here  6 for four weeks or for a month, you can do so. How is that  7 as a proposition?  8 BRIG MKHWANAZI: Agree.  9 MR NTSEBEZA SC: For instance it would be  10 quite permissible for a negotiator from POP, especially now  11 there was an identified group as the leaders or presumed  12 leaders of that group to say this is what I propose. If  13 these rules are not stuck to, there will be consequences,  14 and actually you spell the consequences. Let me provide a  15 few scenarios. In negotiating your negotiator would say,  16 if you don't disarm, we will come in with water cannons,  17 and it's not going to be one water canon or two water  18 cannons, it's going to be 10 to 15. Mind you the place is  19 saturated with POP members, 3000, 4000, we'll now get in  20 with water cannons, and if I remind you of the good old  21 days the water cannons will have pepper spray and dyes, so  22 we'll get to know who was here and was not going in terms  23 of the rules. Just in case you think we have now opted  24 out, we'll come with tear gas and just in case you think  25 that is all, we'll come with stun grenades, and if we have</p>
<p style="text-align: right;">Page 3569</p> <p>1 mountain for four weeks, stay for four weeks but there are  2 going to be terms. Let's negotiate terms in terms of which  3 you can stay on this mountain.  4 MR SEMENYA SC: Chair, I don't know if  5 there is any proposition that supports, there is any  6 authority that supports that proposition.  7 CHAIRPERSON: - the proposition, the  8 witness can say there's no authority and I don't agree or  9 the witness can say, yes, I do agree, or the witness can  10 say, yes, I do agree but I'd like to qualify the answer by  11 adding the following. He can do any of those things. I  12 don't think - was wrong with the rest. Counsel asks  13 questions, they don't have to quote authority in support of  14 every question they ask. So I think we'll let him carry on  15 but if he misbehaves further you can bring it to my  16 attention again and I'll deal with it. Yes, Mr Ntsebeza?  17 MR NTSEBEZA SC: I'm trying to explore  18 alternatives which you as a POP trainer, and I'm talking  19 now about negotiations – the negotiation, if the  20 negotiation is seeking to promote peaceful protests to  21 allow gatherings to take place, your negotiator, looking at  22 the situation, people there armed and what have you, would  23 seek firstly – and I propose to you – would seek firstly to  24 lay down some ground rules in negotiating. Instead of,  25 I'll tell you, do you agree with that, for instance you</p>	<p style="text-align: right;">Page 3571</p> <p>1 to go to that option, we'll come with rubber bullets. Now  2 how is that as a proposition of what a negotiator from POP  3 would be putting to those 3000 people?  4 BRIG MKHWANAZI: Yes, but -  5 MR NTSEBEZA SC: Don't be ashamed of  6 saying yes all the way.  7 CHAIRPERSON: You say yes but, are you  8 going to explain what the but means?  9 BRIG MKHWANAZI: I'm using this but,  10 Counsellor, I agree with you, however in a normal situation  11 where there are leaders of the march, everybody's there,  12 it's easy for the negotiator to get those position to  13 explain those position in a proper way. If everybody is  14 there, is identified, those plans can be made properly.  15 MR NTSEBEZA SC: Ja, well it seems your  16 only apparent qualification is if there were leaders. I  17 use that as a premise because it's generally accepted that  18 there were people who were identified as the leaders. You  19 see, my sense, and I want to bounce this off to you, I get  20 the sense that the plan, the operation seemed to have been  21 set up from the perspective of police who seemed scared  22 rather and therefore had to be protected rather than from a  23 police service which is trained to deal with unruly crowds,  24 whether it is in the context of the World Cup or in the  25 context of a strike, where people are armed and dangerous.</p>



<p style="text-align: right;">Page 3572</p> <p>1 The plan, as we have now known it, seemed to have been 2 premised on protecting the police from what could happen to 3 them rather than promoting peaceful protest, lawful 4 gathering. 5 BRIG MKHWANAZI: Counsellor, I'm not sure 6 about that, Sir. 7 MR NTSEBEZA SC: For instance the police, 8 every footage that we have seen of the police, they 9 negotiate from inside the Nyalas. Have you seen that? 10 BRIG MKHWANAZI: Yes. 11 MR NTSEBEZA SC: And this was canvassed 12 at great length with, they bring barbed wire and you 13 indicated to, in the question that has been put to you by 14 Mr Musi that that barbed has the potential to cause a 15 stampede. It's one of the indications that the plan was 16 premised on there being a need to protect the police rather 17 than promote peaceful gathering, peaceful protest. 18 ADV SEMENYA SC: I think – in fairness to 19 the witness, he could be shown slide 124, 125 which are 20 negotiators who are outside the Nyala and engaged with the 21 crowd, on exhibit L. 22 CHAIRPERSON: Thank you, Mr Semenya, I 23 was actually looking through exhibit L myself for those 24 slides, but you found them before I did and I'm grateful. 25 Mr Ntsebeza, I think Mr Semenya is correct. If one looks</p>	<p style="text-align: right;">Page 3574</p> <p>1 think, is it his Lieutenant General Macintosh and the 2 protestors, you put that he didn't get out of the police 3 vehicle and your suggestion was that that was an 4 inappropriate way of negotiating. Mr Semenya objected, 5 drew my attention to 124 and 125, but they actually show 6 something else and that's what happened on the 15th when 7 the NUM representatives went there. The earlier pictures 8 which deal with the negotiation between, I think it's 9 Lieutenant General Macintosh and other police negotiators 10 and the protestors, one finds that at 97 and 98, 97, I 11 think is the narrative, 98 is a picture, and that does 12 appear to have been taken from inside the police vehicle, 13 with the protestors outside and the police inside, and the, 14 so unless Mr Semenya can show us something better than what 15 he showed us earlier, 124 and 125, I propose to reverse my 16 ruling and allow you to ask the question you want to ask. 17 But let me ask Mr Semenya first if he wants to say 18 something. 19 MR SEMENYA SC: Chair, I'm just verifying 20 the observation is correct, the Chair is making. I'm just 21 verifying slide 162, whether the negotiators were there. 22 CHAIRPERSON: It may have been there but 23 that was on the 16th, you see, the earlier negotiations, 24 just with the police present, is dealt with around about 25 96, 97 and there it does appear as if the police, for</p>
<p style="text-align: right;">Page 3573</p> <p>1 at slides 124 and 125, it coincides with my recollection 2 that the negotiators were outside the Nyalas. So I think 3 that question can be withdrawn and you can proceed to the 4 next one. 5 MR NTSEBEZA SC: I accept that 6 correction. Can I put it to you further that the ideal 7 equipment – now accept what I've already said, the place is 8 saturated with POP police – the ideal equipment that should 9 have been part of containing that crowd – and this is what 10 the negotiator would have taken to these people – but as an 11 alternative the ideal equipment – correct me if I'm wrong – 12 would have been less lethal or non-lethal equipment, as I 13 said, not one water cannon, very many, 10 to 15 water 14 cannons, pepper spray, dye, tear gas, and all those kinds 15 of equipment which the outstanding orders say should be 16 used when dealing with crowds of the nature that we are 17 talking about. 18 BRIG MKHWANAZI: Agree. 19 MR NTSEBEZA SC: Now as I come to an end 20 – 21 CHAIRPERSON: Sorry, before you come to 22 an end, Mr Ntsebeza, I want to revisit a point – 23 MR NTSEBEZA SC: Yes. 24 CHAIRPERSON: I upheld an objection by Mr 25 Semenya about your question about negotiations between I</p>	<p style="text-align: right;">Page 3575</p> <p>1 reasons that we can perhaps understand, remained in the 2 police vehicle. 3 MR SEMENYA SC: On the 16th at the corner 4 of - 5 CHAIRPERSON: I know the 16th, AMCU were 6 there and they spoke on the 16th. 7 MR SEMENYA SC: No, no, I'm making a 8 different, Chair. 9 CHAIRPERSON: Sorry. 10 MR SEMENYA SC: At the corner or the 11 bottom of 162, you would see Mr Mathunjwa, but there is a 12 negotiator who is standing outside there as well. 13 CHAIRPERSON: Yes, yes, no, I understand. 14 The negotiator has got out of the vehicle and stood there 15 when the AMCU representative was there. But I think Mr 16 Ntsebeza was asking questions about the earlier 17 negotiations which were conducted on the Tuesday and the 18 Wednesday before the AMCU and the NUM people got there. 19 And he was making the point, or seeking to make the point 20 that it was inappropriate for the police negotiators, when 21 they were there by themselves, not with AMCU people there, 22 to negotiate from a vehicle. That's the point he's making 23 and I wouldn't allow him to ask the question because I 24 thought that at that stage the police negotiator did get 25 out of the vehicle. I see I'm wrong, that's why I want to</p>

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1 reverse my ruling. But before I do that, obviously I must  
 2 give you a chance to deal with it. Mr Ntsebeza, am I  
 3 correct in what I put to Mr Semenya?  
 4 MR NTSEBEZA SC: Mr Chairman, that –  
 5 CHAIRPERSON: The questions that you were  
 6 seeking to ask related to the initial negotiations between  
 7 the police negotiators and the protestors, which commenced,  
 8 I think, on the Tuesday, the 14th, and as far as we can see  
 9 at that stage, the police never got out of the vehicle.  
 10 That was the point you were seeking to make to the witness,  
 11 am I correct?  
 12 MR NTSEBEZA SC: Yes Chairman.  
 13 CHAIRPERSON: Therefore I wrongly  
 14 disallowed your question.  
 15 MR NTSEBEZA SC: Yes.  
 16 CHAIRPERSON: So let's see if Mr Semenya  
 17 wants to persist in his objection. Mr Ntsebeza, you may  
 18 ask the question you wanted to ask.  
 19 MR NTSEBEZA SC: Now, Brigadier, you are  
 20 aware that the critical day – I'm not discussing the others  
 21 – the critical day we are talking about is the 16th because  
 22 that's the day on which the events, 15, 16, that's when  
 23 there was supposed to be a negotiation and there was  
 24 supposed to be a decision, disarm and arrest and all of  
 25 that. Now there seems to be a suggestion that the order

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1 to, or the decision to disarm and disrupt and therefore  
 2 arrest was consequent upon negotiations having failed and  
 3 my proposition was that quite unlike what a POP negotiator  
 4 would have done in the circumstances, and proceeding on the  
 5 basis that he must negotiate for certain rules to govern  
 6 the gathering, to govern the protest, is different to a  
 7 negotiator who proceeds on the basis that the police are in  
 8 danger, they fear for their lives, and therefore must be  
 9 protected, and I was saying some of the indications that  
 10 the plan was not the former, which your negotiators would  
 11 have done, the plan was there to actually put an ultimatum  
 12 to these people and to deal with the consequences of the  
 13 ultimatum not being adhered to. Do you disagree with that?  
 14 [13:00] BRIG MKHWANAZI: Counsellor, I indicated  
 15 from the beginning that I do agree with you when you talk  
 16 about the procedures that actually maybe should have been  
 17 followed to deal with the situation to reach a position to  
 18 say the situation is solved peacefully without any  
 19 violence. However, to say this was right or wrong is  
 20 difficult for me because as I was not there, I'm not sure  
 21 how they took that type of a decision to handle the  
 22 situation in that way. It may happen there were reasons  
 23 really that actually led to that situation, of which it  
 24 hasn't come to my attention to say why they did in that  
 25 way. I have gone through the plan; that's all what I've

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1 done, but to say why the plan stands that way or maybe it  
 2 is a plan now that talks to protecting SAPS, then I can't  
 3 answer because all what I read, the plan indicates that it  
 4 was a plan that was actually supposed to be executed.  
 5 CHAIRPERSON: It's already just after 1,  
 6 so when you reach a suitable stage let me know and we can  
 7 take the adjournment.  
 8 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 9 Brigadier, I was just going to suggest to you on this  
 10 aspect that you will agree with me that ideally a POP  
 11 negotiator would never go to a situation of that nature and  
 12 purport to negotiate from inside a Nyala, as is depicted in  
 13 the footage of what happened, particularly on the night of  
 14 the 15th. Do you disagree with that?  
 15 BRIG MKHWANAZI: Yes, Sir, but I would  
 16 like to indicate that I'm not sure what led them to do  
 17 that, but yes, it's always build confidence between the two  
 18 people when they negotiate at that level, because we have  
 19 to build trust, as we do.  
 20 MR NTSEBEZA SC: This is exactly what I'm  
 21 trying to indicate to you, that a counter insurgency  
 22 commander was placed in charge of what is traditionally a  
 23 POP scenario. There was no insurgency here.  
 24 BRIG MKHWANAZI: It's true, I did agree  
 25 with you to say he was a negotiator, hostage negotiator.

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1 MR NTSEBEZA SC: And therefore what was  
 2 an analysis of what the threat was, in other words the  
 3 threat analysis, was not done by a POP person who would  
 4 have approached that on a different basis than a counter  
 5 insurgency task.  
 6 BRIG MKHWANAZI: Counsellor, it's normal,  
 7 definitely as you said, a POP commander was supposed to be  
 8 the person -  
 9 MR NTSEBEZA SC: A POP threat analysis  
 10 would have established that this was not a situation that  
 11 called for R1s, for all those, in fact that called for  
 12 those kinds of units, SRT, NUI, you know, NIU. They  
 13 saturate the place with large numbers of POP with the kind  
 14 of equipment that I've alluded to. Not so?  
 15 BRIG MKHWANAZI: Counsellor, I, it's  
 16 difficult for me to say yes or no because definitely always  
 17 it will be the OPS commander or the overall commander  
 18 together coming to an agreement to say what has to be done  
 19 with the situation before them at that stage, but  
 20 procedurally to say who does what job, it definitely, it  
 21 has to go the way you are saying, Counsellor.  
 22 MR NTSEBEZA SC: And finally, and then  
 23 I'll be done, there could have been better use of  
 24 intelligence. It seems that all intelligence that was  
 25 relied upon here was crime intelligence. Intelligence from

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1 Lonmin could have been used; intelligence from NIA could  
 2 have been used and planned thereon, and POP intelligence.  
 3 BRIG MKHWANAZI: That's always, it has to  
 4 be like that.  
 5 MR NTSEBEZA SC: But it doesn't seem it  
 6 was the case.  
 7 BRIG MKHWANAZI: On my understanding  
 8 crime intelligence was there, that's what I know –  
 9 MR NTSEBEZA SC: That's what I –  
 10 BRIG MKHWANAZI: I'm not sure if others  
 11 were in –  
 12 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 13 CHAIRPERSON: There's going to be further  
 14 cross-examination. Are you ready now – not now, but after  
 15 the lunch adjournment, will you be ready to cross-examine  
 16 on behalf of the Human Rights Commission?  
 17 MS JELE: I would be, Chairperson, yes.  
 18 Thank you.  
 19 CHAIRPERSON: Very well. We've gone over  
 20 a little bit, so we'll come back at about 10 past 2 and  
 21 we'll take the lunch adjournment.  
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 23 [14:26] CHAIRPERSON: The Commission resumes.  
 24 I'm sorry that the resumption is later than we thought it  
 25 would be, but we had a meeting with the evidence leaders

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1 about housekeeping matters, which took a bit longer than we  
 2 thought and I apologise to all concerned because of that.  
 3 Brigadier, I must remind you, you're still under oath.  
 4 BRIG MKHWANAZI: Yes, Sir.  
 5 CHAIRPERSON: Before the cross-  
 6 examination resumes, is the cross-examiner sitting in the  
 7 front row? Yes, you are.  
 8 MS JELE: Yes. Thank you, Chairperson.  
 9 The –  
 10 CHAIRPERSON: Yes, before you cross-  
 11 examine, Commissioner Hemraj wishes to ask a question.  
 12 MS HEMRAJ SC: Brigadier, do I understand  
 13 that Public Order Policing have their own negotiators  
 14 stationed with Public Order Policing?  
 15 BRIG MKHWANAZI: Commissioner, it's not  
 16 exactly that should be, or it is a standard that there must  
 17 be negotiators as a unit or as an office under Public Order  
 18 Policing, but it's advisable in each and every POP unit  
 19 that we must have members who can actually have that skill  
 20 who can be able to actually handle issues of negotiation.  
 21 As I indicated from the beginning that you receive this  
 22 type of training in conjunction with Regulation of  
 23 Gatherings Act to say how are you actually going to  
 24 negotiate if there are issues that need negotiation during  
 25 any crowd management situation.

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1 MS HEMRAJ SC: But in the structure of  
 2 the South African Police Services is there a unit of  
 3 negotiators who are called upon by different units when  
 4 there's an event or a situation?  
 5 BRIG MKHWANAZI: No we, under crowd  
 6 management we don't have a unit like that. Yes, there are  
 7 offices or units where we talk about hostage negotiation.  
 8 That one is an office there, we know exactly if it come to  
 9 those issues, but under crowd management itself we don't  
 10 have an office, but they are within Public Order Policing,  
 11 those members who can handle the issues of negotiation.  
 12 That means even an operational commander can handle issues  
 13 of negotiation as well, but as a unit we don't have in that  
 14 way.  
 15 MS HEMRAJ SC: And do these persons  
 16 receive specialised training then in negotiation in POP, in  
 17 situations where POP is managing the event?  
 18 BRIG MKHWANAZI: There was training in  
 19 that, but it's quite a long time, Commissioner, that there  
 20 was training on that part, but normally it comes out as  
 21 when people are receiving the training under Regulation of  
 22 Gatherings Act as negotiators, but as specialised that  
 23 within Public Order Policing they receive a special  
 24 training on the other side is not in that position.  
 25 MS HEMRAJ SC: That training is very

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1 different from what other negotiators would receive, for  
 2 example hostage negotiators?  
 3 BRIG MKHWANAZI: It would differ,  
 4 Commissioner, yes, because under hostage negotiation, even  
 5 though I'd never done that type of a course under hostage  
 6 negotiation, it differ most of the time because under  
 7 hostage negotiation we will be referring maybe to a  
 8 situation of maybe kidnapping or whatever, maybe inside the  
 9 house, a person will come and interact into that position.  
 10 It would differ a bit, ja.  
 11 MS HEMRAJ SC: Thank you very much.  
 12 CHAIRPERSON: Yes?  
 13 MR NTSEBEZA SC: Mr Chairman, may I just  
 14 make a request? It's not a follow-up question. Mr  
 15 Chairman, I had indicated at the end of our last session  
 16 that I was going to be engaged tomorrow and on Wednesday,  
 17 and I'm just worried about that application that we had  
 18 said we would know, for the families.  
 19 CHAIRPERSON: I was going to ask you a  
 20 question about that at the end of the day, but seeing  
 21 you've raised it, I'll raise it with you now.  
 22 MR NTSEBEZA SC: Yes.  
 23 CHAIRPERSON: As far as I am aware the  
 24 only opposition that we've had received notice of, that  
 25 I've certainly received notice of in respect of your

<p style="text-align: right;">Page 3584</p> <p>1 application is a partial opposition from NUM, set out in  2 the submissions which - on the table when we came back this  3 afternoon - in paragraph 7 of the submissions it's set out  4 that NUM wishes certain of the material contained in your  5 presentation to be excluded. I was going to suggest that  6 at the end of the day you and Mr Tip should have a meeting  7 to see whether there's not some way forward in that regard.  8 I'm reluctant to order – speaking for myself, and I think  9 my fellow commissioners agree with me, the application, it  10 would be appropriate for the application to be granted for  11 your clients to make the presentation they seek to make.  12 The problem relates to the prayer that cross-examination be  13 excluded. My attitude to that, prima facie, is I'd like to  14 hear those who will be deprived of the right to cross-  15 examine by such an order. I'd like to hear from them what  16 their attitude is. I don't think it would be right for me  17 to take away their right to cross-examine before they've  18 even had a hearing, and equally it would be important for  19 them to know what it is that you wish to present. I  20 understand it has been made available to them. The only  21 position that I am aware of comes from the side of NUM, and  22 it set out its limited opposition and relates to, it's set  23 out in para 7 of the submissions. There was a mention at  24 some stage earlier of opposition of some kind from SAPS. I  25 don't know whether you and Mr Semenya have settled your</p>	<p style="text-align: right;">Page 3586</p> <p>1 will return to the Commission.  2 CHAIRPERSON: Mr Madlanga, I'd like your  3 assistance in this regard. If the cross-examination of the  4 brigadier is concluded today or some time tomorrow, and the  5 application could not be moved for the reasons Mr Ntsebeza  6 has indicated, I take it, it would be possible for the NUM  7 witnesses to be called. Is that right, Mr Tip?  8 MR TIP SC: That's correct, Mr Chairman,  9 yes.  10 CHAIRPERSON: Alright. Anyway, let's  11 hear what Mr Madlanga has to say.  12 MR MADLANGA SC: No, that takes care of  13 the concerns we had, Chair, because we had given out a  14 notice that the order would be this witness and then that  15 application, but if that's what Mr Tip says, then it takes  16 care of –  17 CHAIRPERSON: And Mr Ntsebeza could  18 scarcely be heard to object to NUM witnesses being heard  19 next.  20 MR NTSEBEZA SC: No, I'm not objecting at  21 all, Mr Chairman. I'm actually grateful to my colleagues,  22 but especially also to the Commission.  23 CHAIRPERSON: Alright, okay.  24 MR NTSEBEZA SC: And may I also sneak out  25 when I am able to do so?</p>
<p style="text-align: right;">Page 3585</p> <p>1 differences in that regard, but again it may well be that  2 whatever reservations there were from the side of SAPS, can  3 also be satisfactorily dealt with. So if those points can  4 be dealt with satisfactorily, then the application would be  5 – Mr Semenya?  6 MR SEMENYA SC: Chair, we intend to  7 oppose the application.  8 CHAIRPERSON: Full-blooded opposition?  9 MR SEMENYA SC: Yes.  10 CHAIRPERSON: What I was saying to you is  11 either premature or falls away completely, but what I'm  12 trying to say to you was that if the application is going  13 to succeed without opposition, then obviously you wouldn't  14 have to be here. But if there's going to be opposition, in  15 which case you would have to be here to argue it, and it  16 may well be that the application would not succeed in the  17 light of the opposition. So what you're telling us is you  18 won't be here tomorrow and Wednesday and you'd like to move  19 your application when you're here, because you can't move  20 it when you're not here.  21 MR NTSEBEZA SC: That is exactly what I  22 was going to request from the Commission, but if it is  23 possible, without compromising the work of the Commission,  24 if I could be permitted to move the application either on  25 Thursday or on Friday, because those are the days that I</p>	<p style="text-align: right;">Page 3587</p> <p>1 CHAIRPERSON: Yes, so it doesn't sound as  2 if you and Mr Semenya and Mr Tip will be able to have a  3 discussion. Possibly you could do so telephonically –  4 MR NTSEBEZA SC: No, we will do it before  5 we move the application.  6 CHAIRPERSON: Ja.  7 MR NTSEBEZA SC: I had a conversation  8 with Mr Tip and I indicated to him that I'm going to be  9 consulting with my team and take a view of the objections  10 that the –  11 CHAIRPERSON: I don't know the nature of  12 the objection of Mr Semenya, but again you'll be able to  13 ascertain that from him and see whether there isn't some  14 way that you can –  15 MR NTSEBEZA SC: We have –  16 CHAIRPERSON: - some kind of accord.  17 Perhaps it's not appropriate to discuss it now in –  18 MR NTSEBEZA SC: Well, in the face of a  19 full-blown application, we haven't seen in what way it's  20 going to be a full-blown opposition, but maybe that it will  21 be argued without any papers being filed. But I will talk  22 to my colleague and find out, you know, what the areas are  23 of –  24 CHAIRPERSON: I would have thought it  25 would be appropriate for the voice of the bereaved to be</p>

<p style="text-align: right;">Page 3588</p> <p>1 heard in some way before the Commission, and I obviously  2 would, one would wish that to happen in a way which is  3 least hurtful and emotionally stressful for them, but on  4 the other hand one has to remember the rights of other  5 parties involved and that they shouldn't be unduly  6 prejudiced, but I'm sure it may be possible for you and Mr  7 Semenya to come to some kind of accord in that regard.  8 MR SEMENYA SC: Chair, before Mr Ntsebeza  9 slinks away, I wish to record a concern my client has.  10 Media 24 is quoting Mr Ntsebeza, and I would like to make  11 the quotation straight. He complains that there is a  12 shortage of information and absence of evidence and they  13 quote him as saying, "It may well be that the evidence  14 existed but was destroyed or deleted. I'm not saying by  15 you." Now the concern we have –  16 CHAIRPERSON: Is this what Media 24 has  17 report –  18 MR SEMENYA SC: Correct.  19 CHAIRPERSON: - in respect of the cross-  20 examination this morning?  21 MR SEMENYA SC: Correct.  22 CHAIRPERSON: I see.  23 MR SEMENYA SC: And the concern, Chair,  24 is I was waiting for Mr Ntsebeza to finish his cross-  25 examination to see if there was any basis for all this</p>	<p style="text-align: right;">Page 3590</p> <p>1 possibility. You didn't follow it through with the  2 assertion that you definitely would be leading evidence to  3 that effect, and in the circumstances there's significant  4 prejudice to his clients, as is evidenced by the fact that  5 this has already gone out on what used to be called the  6 wires, through Media 24 and the world has already been  7 informed that that allegation has been made. What do you  8 say about that?  9 MR NTSEBEZA SC: Thank you, Mr Chairman.  10 I think the basis has always been there and what Mr Semenya  11 says was speculation, it was only posed to the witness as a  12 possibility. It was never put to him as a fact. It was  13 endeavouring to find out from him under oath whether he is  14 aware of, or whether there is evidence that might be  15 existing that may even have been destroyed. Now up to that  16 point there was a general acceptance that there is no video  17 footage provided by SAPS. The witness in the course of his  18 cross-examination revealed, quite to the surprise –  19 certainly to my surprise – that not only was there someone  20 who said he had recorded video footage of what happened,  21 but that it was there and that he did not have any reason  22 to pursue and insist on it being made available. Now  23 that's one of the possibilities that are raised, that there  24 may be video footage there that is there, that is being  25 withheld from us.</p>
<p style="text-align: right;">Page 3589</p> <p>1 postulates and hypotheses he was carrying. I even said I'm  2 very zealous to know where he is going with this line of  3 questioning. Now if there was no substance or basis for  4 this line of cross-examination he engaged, together with  5 the fact that there may have been another review by Police  6 somewhere to which the witness was not privy, if there was  7 no basis for this, it is totally unfair to put these type  8 of propositions to witnesses. It's damaging to the case  9 the SAPS is making.  10 CHAIRPERSON: Let's deal with the two  11 points. In respect of a possible review of which the  12 witness was not privy, am I correct in saying no  13 information of such a review has been made available to the  14 evidence leaders?  15 MR SEMENYA SC: Because it doesn't exist.  16 CHAIRPERSON: Exactly, so there wasn't  17 another review?  18 MR SEMENYA SC: No.  19 CHAIRPERSON: So we can eliminate that.  20 As far as the suppression of videos and documents, the  21 suggestion of suppression of videos was –  22 MR SEMENYA SC: Video footage.  23 CHAIRPERSON: We can concentrate on that.  24 Now Mr Ntsebeza, what do you say about Mr Semenya's  25 objection? He said you put it up as a theoretical</p>	<p style="text-align: right;">Page 3591</p> <p>1 CHAIRPERSON: Mr Budlender, can you help  2 us on this? My understanding was that there was some SAPS  3 media footage – not media, SAPS video footage which was  4 made available –  5 MR BUDLENDER SC: Yes.  6 CHAIRPERSON: Is that correct?  7 MR BUDLENDER SC: Chair, there is video  8 footage which is taken on the days in question. There  9 were, it's taken, as I understand it, by POPs  10 photographers, or POPs video recorders, who ceased at a  11 early stage, and the complaint, if there's a complaint, is  12 they ceased too early and they didn't, they weren't there  13 at the time of the shootings, but there is no – there can  14 be no doubt that there was video material from POP  15 recorders and that it is available on the SAPS hard drive,  16 and has been made available to everybody.  17 CHAIRPERSON: Some of the video footage  18 that we saw in the Commission was as I understand it, taken  19 by SAPS video operators. Is that correct?  20 MR BUDLENDER SC: That's correct, Chair.  21 CHAIRPERSON: It sounds to me, Mr  22 Ntsebeza, that you may have to reformulate what you've said  23 and make it clear that you do not specifically allege that  24 any material of that kind was suppressed or destroyed, and  25 that what you said a few moments ago was based on a</p>

<p style="text-align: right;">Page 3592</p> <p>1 misapprehension, that no SAPS material was made available 2 to the parties. 3 [14:45] MR NTSEBEZA SC: May I put it on this 4 basis, Mr Chairman, I have always been seeking to angle my 5 questions on what POPs standard regulations or standing 6 orders are and that is why I pointed out to the witness 7 that there is a standing order that says they must always 8 take footage of anything, everything. There is no footage 9 that has been suggested or has been given to us that gives 10 everything that happened on that day. The one footage that 11 was taken, and I don't know, that is why I was keen to 12 understand from the witness whether that is the footage 13 that he was referring to, whether he had pursued that 14 operator, is the footage that was taken from the air. 15 Which was more like the National Geographic documentary 16 than it was a reflection of what was taking place on the 17 ground. That is the footage that I am aware of and that is 18 why I was seeking to pursue the witness as to whether that 19 was the way. But I have always been saying, given that in 20 your training as a trainer you know it is standard 21 procedure, there is even a circular that is to that effect 22 that serves you much - is the evidence of any footage that 23 reflects the operations because if it is there and it has 24 never been disclosed to us then there are various 25 scenarios.</p>	<p style="text-align: right;">Page 3594</p> <p>1 that footage must have been destroyed. 2 CHAIRPERSON: He says, Mr Semanya, it's 3 not quite as simple as that. What he says is, he is trying 4 to establish inferentially as it were that there is a 5 possibility. He says the instructions are that operators 6 must always see to it that the video images are taken or 7 what happens in these operations. That doesn't appear to 8 have happened, certainly in respect of the later stages 9 there is nothing at all. If the regulations were complied 10 with, there would have been material of that kind. 11 Therefore he suggests there is a possibility that the 12 regulations were complied with but the material is not 13 available. But I agree with you, I think he put the 14 proposition a bit higher than that to the witness and that 15 led the Media 24 reporter to phrase it the way it was done. 16 That's why I think it would be appropriate for Mr Ntsebeza 17 acting in accordance with this highest traditions of our 18 profession to make it clear that he was making no positive 19 assertion that that happened. He was merely probing a 20 possibility against the background of the regulations 21 applicable to POP operators. Would that be a fair summary 22 of what you propose to say? 23 MR SEMENYA SC: Exactly, Mr Chairman. 24 CHAIRPERSON: Would you be happy with 25 that formulation?</p>
<p style="text-align: right;">Page 3593</p> <p>1 One) it may have been that it is deliberately 2 being suppressed or it has been destroyed or it doesn't 3 exist. Now I cannot understand what other basis I could 4 have laid and in the light, with great respect, Mr 5 Chairman, in the light of what the witness also said, 6 merely that he was told whether in discussion or the other, 7 that there was police footage and I could not find out from 8 him so that I could say oh well if that is the footage, 9 then that footage was made available by the evidence 10 leaders. 11 For instance I'm not aware whether that footage 12 is the footage that he refers to, is footage that was taken 13 on the ground by Nyalas, by whatever, water cannons and all 14 of those things. So there was a basis and I felt it was my 15 duty in assisting the commission to establish from this 16 witness whether or not he is aware of material that may 17 deliberately have been withheld from us. 18 CHAIRPERSON: Mr Semanya? 19 MR SEMENYA SC: Chair, clearly there was 20 no basis even to remotely suggest that there is suppression 21 of evidence and if there is no basis, it's just simply 22 improper for a cross-examiner to, firstly wait for half an 23 hour, the witness was told your under oath, you must tell 24 the truth, you know what it means on your conscience and 25 then make that proposition that there is a possibility that</p>	<p style="text-align: right;">Page 3595</p> <p>1 MR SEMENYA SC: I'm happy with that. 2 CHAIRPERSON: And you will also wish me 3 of course to ask the Media 24 reporter to ensure that the 4 new formulation is communicated in the same way as the 5 early one was? 6 MR SEMENYA SC: I would be indebted to 7 the Commissioner. 8 CHAIRPERSON: Yes, I take it there is a 9 representative of the Media 24 here? Did you get what was 10 said? They got it from you? So you sent it out to all 11 your subscribers not just to Media 24? You sent it out to 12 all your subscribers not just to Media 24? You will see to 13 it that the reformulations are sent out? And if you 14 haven't got it exactly you can get it at the end of the day 15 from the recorders. Mr Burger? 16 MR BURGER SC: Chair, may I raise 17 something for clarification? In view of the new order of 18 witnesses, we may well hear the NUM witnesses sooner than 19 we expected. From the perspective of my client, we would 20 be interested to understand the version on what happened on 21 the 11th of August, that Saturday when the shooting took 22 place. Because it might well be relevant in the context of 23 probing the relationship between the two trade unions and 24 the change in mood in the crowd between the Friday and the 25 Saturday -</p>

<p style="text-align: right;">Page 3596</p> <p>1 CHAIRPERSON: That's one of the matters 2 we were proposing to raise with the parties at the meeting 3 that we suggested to be held tomorrow. 4 MR BURGER SC: Well may I raise it today, 5 because I'm concerned about a number of things? Firstly we 6 expected the five clients of my learned friend, Mr Mpofu to 7 be at court today because you would remember that they were 8 called here and the wires went out on that day and we were 9 told that on today, they would be coming here and I would 10 like to know have statements been taken and will we get a 11 version from them in particular on that incident, so that 12 when I have to ask questions of NUM at least I know the 13 other side of the story. Added to that, on the 28th of 14 November last year there was an open debate between my 15 learned friend, Mr Budlender and Mr Mpofu as to witness 16 statements to be produced by Mr Mpofu on behalf of his 17 clients. 18 There was then an undertaking recorded that there 19 would be three statements filed by that Friday. One 20 dealing with the events of the 16th of August, one dealing 21 with the events of the 15th of August and one dealing 22 importantly with the events of the 9th to the 16th of 23 August. We have not received three witness statements by 24 the 21st of January 2013. We have received two statements 25 and the two statements are particularly unhelpful on the</p>	<p style="text-align: right;">Page 3598</p> <p>1 Chair, that one of them was not here. 2 CHAIRPERSON: - wasn't here yet. 3 MR MPOFU: Yes, that is correct. 4 CHAIRPERSON: But you hoped he would be 5 here later in the day. 6 MR MPOFU: Which is why – 7 CHAIRPERSON: I don't want to waste time, 8 I was proposing to ask you if he was here at the end of the 9 day and if he wasn't, then we would have done something. 10 But any way when Mr Burgers raised the point it was 11 appropriate. 12 MR MPOFU: Ja, no he is not here, Chair, 13 but we, Mr Madlanga and I just had a quick meeting outside 14 to deal with the issue of the subpoenas and we had agreed 15 that what we would propose is an extension to a particular 16 date for, which now has been communicated to me is the 4th 17 of February and Chair, we have made attempts to find the 18 fifth person. I can simply just make an undertaking that 19 he has now been reached. He was at work, we don't know 20 what the circumstances are and we will come with an 21 explanation on the 4th but he is available or rather he is 22 not present here. 23 CHAIRPERSON: I think he had better be 24 here on the 4th as well. 25 MR MPOFU: Ja no I plead that we deal</p>
<p style="text-align: right;">Page 3597</p> <p>1 incident we are interested in, that is the 11th of August. 2 The one statement simply says I was present during the 3 march to the NUM offices on 11 August 2012 but was at the 4 back and could not see what happened. So far so good. And 5 the other one said, on or about the 10th or the 11th of 6 August 2012 I got wind of the fact that the rock drill 7 operators had taken a decision to go on strike. 8 Now if I have to cross-examine on this basis, I 9 will do so. But it's the most peculiar situation that we 10 are in our fourth month into the commission and we don't 11 know what one of the party's version is of what might well 12 be a critical issue. 13 CHAIRPERSON: I was proposing to raise 14 that with Mr Mpofu tomorrow but I also was told that some 15 of the people who were told to come back on the 21st were 16 here, and one wasn't. It was anticipated that he might 17 come later in the day. So I was going to raise that with 18 Mr Mpofu at the end of the day's hearing. But seeing you 19 raise it now, let's get all the points you have raised out 20 of the way. Let's give Mr Mpofu a chance to answer the 21 points you have made. 22 MR MPOFU: Chair, let me start with the 23 issue of the subpoenaed witnesses. Indeed Chair, Mr Burger 24 is correct that the five persons were asked to come back 25 today and I'm glad that somebody communicated to you,</p>	<p style="text-align: right;">Page 3599</p> <p>1 with it at that time, Chair. 2 CHAIRPERSON: Yes, I will now formally 3 record that his presence is required on the 4th. 4 MR MPOFU: Yes. 5 CHAIRPERSON: And that you undertake to 6 communicate it to him. 7 MR MPOFU: As well, thank you Chair. May 8 I - 9 CHAIRPERSON: What is his name? 10 MR MPOFU: His name is Mlambisa 11 Gxokokwana G-X-O-K-O-K-W-A-N-A. He was the fifth person. 12 So what I propose, Chair - 13 CHAIRPERSON: And are the other four 14 gentlemen - 15 MR MPOFU: Yes, if we could dispose of 16 that - 17 CHAIRPERSON: Okay, call them up. Let 18 them come up and let's tell them to come, to be here on the 19 4th. 20 MR MPOFU: Their names are Vuzi Mohale, 21 Thembele Ntakana, Longeni Mabutchana and Thembinkosi Mcho. 22 CHAIRPERSON: Good afternoon, thank you 23 for coming. I take it, they arranged to pay your witness 24 fees again for being here today. We don't require your 25 evidence today but we are extending your subpoena,</p>

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1 subpoenas on the basis that you will be back here on the  
 2 4th of February. Please be here at quarter to 10 on the  
 3 morning of Monday the 4th of February and you are excused  
 4 for the moment and Mr Mpofo will read out your names so  
 5 that they are on record, so that it will be part of the  
 6 official records of today's proceedings. But you are  
 7 excused until quarter to 10 on Monday the 4th of February,  
 8 thank you. You may now leave. You can go back and sit in  
 9 the auditorium.

10 MR MPOFU: Thank you Chairperson, I have  
 11 already read their names into the record. Regarding this  
 12 second issue, Chair, I think maybe my learned friend Mr  
 13 Burger has not checked his facts correctly. What happened  
 14 is as he correctly stated was that the arrangement was  
 15 between us and the evidence leaders to supply those three  
 16 statements, which was made in November. I will take my  
 17 learned friend's word for the date. That was done. The  
 18 statements were actually furnished, not two but three, as  
 19 undertaken. Obviously Mr Burgers has not seen the other  
 20 one and I think maybe he must talk to Ms Pillay and try to  
 21 secure the third statement. The, and then maybe we can  
 22 deal with it. It's just based on the incorrect factual  
 23 basis, what he said. If after that he still wants to raise  
 24 issues he can raise them directly with me. My  
 25 understanding is that one of the reasons why these people

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1 are being excused is exactly that once those three people  
 2 have testified either the subpoenas might fall away or  
 3 whatever and that's why we are doing these extensions. If  
 4 -

5 CHAIRPERSON: Depending on how extensive  
 6 their evidence is.

7 MR MPOFU: Correct and if not, then  
 8 obviously the evidence leaders might either subpoena other  
 9 people or Mr Burger can subpoena other people or whatever  
 10 he wants to do but the arrangement is that those three  
 11 people will be called and if there are gaps, either the  
 12 evidence leaders or any other party will do as it pleases.  
 13 Either approach us, if they want a cordial arrangement or  
 14 subpoena the people if they just want to go that way. And  
 15 Chair, sorry I just didn't want to commit myself without  
 16 looking. I suspect the statement that Mr Burger is  
 17 missing, is that of Simphiwe Booi, which was supplied and  
 18 on paragraph 23 and 24 up to 25, 26 it does deal with the  
 19 events of the 11th.

20 MR BUDLENDER: - just explain what has  
 21 happened, we have managed to unravel it. There was indeed  
 22 Mr Booi's statement which does deal to some extent with the  
 23 events of that day was sent by email on the 5th of December  
 24 to an address, something called Kameshni by Mr Mpofo's  
 25 attorneys. But it's the wrong address by about 100 yards,

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1 its pillaymichael@Irc.org.za. So Ms Pillay didn't receive  
 2 it from Mr Msimang, as a result of which it wasn't  
 3 distributed to the parties. That's why no one else has  
 4 seen it.

5 MR BURGER SC: So if the learned friend  
 6 can then just correct that my facts are wrong to statements  
 7 I have which are quite unhelpful, is by Mr Magwedwana and  
 8 Mr Putsa.

9 MR MPOFU: Well that's the same thing as  
 10 saying the one you don't have is the one of Booi.

11 CHAIRPERSON: I must confess, I'm not  
 12 sure I understand really what's going on Sir, perhaps you  
 13 must bear in mind my slowness of understanding and take me  
 14 through it gently.

15 [15:05] Am I correct in thinking the problem relates to  
 16 the events of the 11th of August where according to what we  
 17 were told at the inspection in loco there was a  
 18 confrontation between members of AMCU and NUM in the  
 19 vicinity of the NUM offices, and what we saw were signs of  
 20 attempted forcible entry into the NUM offices and we were  
 21 then told by the gentleman who's since been murdered what  
 22 happened – that was recorded – and he was going to come and  
 23 give evidence and confirm it but he can't, but presumably  
 24 we will do something with that evidential material that was  
 25 put before the inspection, at the inspection. We were also

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1 then told on the same occasion by – it must have been AMCU  
 2 representatives or possibly certain representatives of the  
 3 strikers, that shots were fired from the NUM side and one  
 4 person I think escaped over a fence. The suggestion was  
 5 that another had died. The evidence leaders, as I  
 6 understand it, have endeavoured to find any reference to  
 7 the person who allegedly died and can't do so, and Mr  
 8 Mathunjwa eventually conceded in cross-examination that the  
 9 report that someone had been killed on that occasion was  
 10 not correct. Is that what we're talking about?

11 MR SEMENYA SC: That's the incident,  
 12 Chair. That's exactly the incident.

13 MR BURGER SC: It's indeed correct, if I  
 14 may say that, and Mr Mathunjwa got a wrong message. AMCU  
 15 got a wrong message, namely that people had been killed, or  
 16 a person had been killed, but that version is typically a  
 17 version which must come from clients represented by my  
 18 learned friend Mr Mpofo, and that's why we've been waiting  
 19 for months now for that version to come forward. We're now  
 20 told that it was sent on the 5th of December to the wrong  
 21 email address. It doesn't help me to prepare my NUM cross-  
 22 examination.

23 CHAIRPERSON: I take it that in the  
 24 course of the day the particular statement will be  
 25 redirected from the correct address to, of evidence leaders



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1 to your correct address and by early this evening you'll be  
 2 in a position to start preparing your cross-examination on  
 3 that point. Is that correct?  
 4 MR MPOFU: That's correct, Chair, and for  
 5 the clerical error, or whatever it was, I must apologise  
 6 and I understand where Mr Burger is coming from, but what I  
 7 want to dispel, Chair, is that I made any undertakings to  
 8 bring a particular type of evidence. All I did say when we  
 9 were talking about the three people was that they would  
 10 have three, there would be three different witnesses to try  
 11 and cover the field, as it were, and that at least one of  
 12 them would cover the entire period and one would do the  
 13 16th and so on, and that's how we selected them, but as to,  
 14 if the quality of that evidence is not what is expected,  
 15 well then –  
 16 CHAIRPERSON: If the witnesses don't  
 17 cover the whole period and there are gaps and we need  
 18 further information –  
 19 MR MPOFU: Correct.  
 20 CHAIRPERSON: - I will request the  
 21 evidence leaders to subpoena further persons.  
 22 MR MPOFU: Correct.  
 23 CHAIRPERSON: Alternatively we look at  
 24 the statements of the gentlemen who'd been subpoenaed and  
 25 see whether they can deal with the gaps.

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1 MR MPOFU: Or we'll look for people to –  
 2 CHAIRPERSON: Obviously if it's necessary  
 3 any witness who we thought may give evidence to deal with  
 4 an aspect that's important will be subpoenaed.  
 5 MR MPOFU: Yes, thank you.  
 6 CHAIRPERSON: Mr Burger, can we put that  
 7 issue to bed for the moment and can we now – alright.  
 8 MR SEMENYA SC: Only with one rider,  
 9 Chair, if I may, that those statements don't cover the  
 10 tractor story. I'm still keen to see this tractor –  
 11 MR MPOFU: The Nyala –  
 12 CHAIRPERSON: The Nyala story?  
 13 MR SEMENYA SC: The Nyala going over  
 14 bodies, because that must have been from a particular  
 15 witness Mr Mpofu was referring to.  
 16 MR MPOFU: Chairperson, you know this is  
 17 getting to the ridiculous now.  
 18 CHAIRPERSON: It's not getting ridiculous  
 19 at all –  
 20 MR MPOFU: It is, Chair. These are not –  
 21 CHAIRPERSON: No –  
 22 MR MPOFU: - that these are all the  
 23 witnesses that we're going to call.  
 24 CHAIRPERSON: Mr Mpofu, it's undignified  
 25 for the two of us to speak at the same time. You put to

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1 certain witnesses as a fact that there would be evidence  
 2 that Nyalas were driven over the bodies of people lying at  
 3 the scene.  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: One assumes you got that  
 6 information from one or other of the witnesses with whom  
 7 you'd consulted.  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: And you said there would be  
 10 evidence to that effect.  
 11 MR MPOFU: Yes.  
 12 CHAIRPERSON: The statements that have  
 13 now been produced, filed, are the only witnesses you  
 14 propose calling –  
 15 MR MPOFU: No.  
 16 CHAIRPERSON: I don't understand. Are  
 17 you going to call other witnesses when you haven't given  
 18 statements?  
 19 MR MPOFU: Yes, Chair. Well, Chairperson  
 20 –  
 21 CHAIRPERSON: On what basis are they  
 22 going to come before us?  
 23 MR MPOFU: Ja, well Chairperson, let me –  
 24 CHAIRPERSON: Ridiculous is perhaps an  
 25 appropriate word to use, but not in respect of what I've

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1 said.  
 2 MR MPOFU: No, certainly not. But let me  
 3 just explain, Chair –  
 4 CHAIRPERSON: Yes, please do.  
 5 MR MPOFU: - or maybe let's try and trace  
 6 the problem. What happened here is simply this. Some time  
 7 in October or November the evidence leaders, because there  
 8 was some delay of the Police evidence, asked if we can step  
 9 in by producing one or two witnesses to bridge that gap.  
 10 You'll remember there was a long debate about the five  
 11 names and this, that and the other. The resolution of that  
 12 was that we kindly said we don't give you two, we'll give  
 13 you three witnesses. That, we made it clear and the  
 14 chairperson fortunately came to my rescue in this because  
 15 you said, Chairperson, your words were, "We cannot be  
 16 forced to bring witnesses at a particular time," or rather  
 17 to do our entire case, but what we undertook to do was to  
 18 provide those one or two witnesses. That does not mean by  
 19 any stretch of the imagination that the two or three  
 20 statements that we did to assist to bridge that gap is all  
 21 the evidence that we are ever going to call in this  
 22 Commission. For example, we've called Bishop Seoka. We  
 23 might call a whole lot of other people –  
 24 CHAIRPERSON: If you're going to call a  
 25 whole lot of other witnesses you will tell –

<p style="text-align: right;">Page 3608</p> <p>1 MR MPOFU: Of course.</p> <p>2 CHAIRPERSON: - tell people in good time</p> <p>3 that you're calling them and give statements.</p> <p>4 MR MPOFU: Yes, we would –</p> <p>5 CHAIRPERSON: I understood that there was</p> <p>6 an arrangement in place that the parties would indicate</p> <p>7 what witnesses they were going to call and thereafter</p> <p>8 provide statements. But perhaps I can ask Mr Madlanga to</p> <p>9 deal with that before you –</p> <p>10 MR MADLANGA SC: Mr Chairman,</p> <p>11 Commissioners, my learned friend Mr Mpofo is quite correct</p> <p>12 as to the origin of the arrangement, or the coming into the</p> <p>13 picture of the victims at the time. To avoid a public</p> <p>14 contradiction between us I think perhaps the best way, or</p> <p>15 the practical way is for Mr Mpofo and I to just engage each</p> <p>16 other and see whether there is a possibility of his other</p> <p>17 witnesses, that is over and above the three, being called</p> <p>18 sooner rather than later. Perhaps we should not get into</p> <p>19 any detail about that, but it is a fact that there was a</p> <p>20 timetable that the parties set for themselves and that it</p> <p>21 seems it is not everybody who has complied with that</p> <p>22 timetable. But I will take it no further than that. I</p> <p>23 will see whether between Mr Mpofo and I we cannot reach</p> <p>24 some sort of practical and acceptable arrangement.</p> <p>25 CHAIRPERSON: There are two points I want</p>	<p style="text-align: right;">Page 3610</p> <p>1 MR MPOFU: Thank you.</p> <p>2 CHAIRPERSON: Mr Burger I think indicated</p> <p>3 he wanted to say something. Is that right?</p> <p>4 MR BURGER SC: No, what I wanted to raise</p> <p>5 we'll then raise tomorrow. I would like to know if further</p> <p>6 witnesses are to be called by Mr Mpofo, which I find a</p> <p>7 startling proposition to start off with. By when will we</p> <p>8 receive it and on which subject? Because I'm cross-</p> <p>9 examining now for weeks on end, apparently without proper</p> <p>10 instructions from one of my sides.</p> <p>11 CHAIRPERSON: Yes, you will be able to</p> <p>12 deal with that at the meeting that I propose we have at</p> <p>13 lunchtime tomorrow, and quite clearly we've got to have</p> <p>14 final lists of witnesses prepared through, and witnesses</p> <p>15 can't be added just as people go along as the shoe pinches,</p> <p>16 and statements of what the witnesses are going to say must</p> <p>17 also be available sooner rather than later, in the</p> <p>18 interests of the smooth working of the Commission, regard</p> <p>19 being had to the time constraints that we're operating</p> <p>20 under, and the interests of fairness to everybody. Mr</p> <p>21 Semenya, anything to say? Alright. Are you ready now to</p> <p>22 cross-examine? Would you please put yourself on record and</p> <p>23 spell your name for the benefit of those who have to</p> <p>24 transcribe the proceedings?</p> <p>25 MS JELE: Thank you, Chairperson. Ms</p>
<p style="text-align: right;">Page 3609</p> <p>1 to make. The first is we're going to have a meeting</p> <p>2 tomorrow lunchtime, all the parties, to discuss the way</p> <p>3 forward, and that will involve the question of a final list</p> <p>4 of witnesses being provided and dates being fixed for</p> <p>5 statements. That's the first point. The second point is,</p> <p>6 Mr Mpofo must know who the witness was who told him about</p> <p>7 the Nyalas riding over people because he said he had</p> <p>8 evidence to that effect and he put it to the witness that</p> <p>9 that would be the evidence. So I will expect him to be</p> <p>10 forthcoming tomorrow with the witness who says that and a</p> <p>11 copy in due course of that witness's statement.</p> <p>12 MR MPOFU: Well Chair, the statement is</p> <p>13 already there. You'll find more than one of the statements</p> <p>14 making that allegation in the IPID file, but we'll deal</p> <p>15 with it tomorrow. In the IPID file –</p> <p>16 CHAIRPERSON: The IPID file is one thing,</p> <p>17 but the question of your, you put that there would be</p> <p>18 evidence which you would be leading –</p> <p>19 MR MPOFU: By my clients –</p> <p>20 CHAIRPERSON: And you haven't indicated</p> <p>21 which witness you're going to call to say that, but anyway</p> <p>22 –</p> <p>23 MR MPOFU: We'll do so.</p> <p>24 CHAIRPERSON: That matter will be dealt</p> <p>25 with by tomorrow.</p>	<p style="text-align: right;">Page 3611</p> <p>1 Jele, J-E-L-E, I'm junior counsel for the Centre for</p> <p>2 Applied Legal Studies, attorneys on record for the South</p> <p>3 African Human Rights Commission.</p> <p>4 CHAIRPERSON: Brigadier, in view of</p> <p>5 everything that's happened since I last reminded you, I</p> <p>6 remind you again, you're under oath, and remember what I</p> <p>7 told you about answering the questions you were asked and</p> <p>8 not answering other questions as well because that will</p> <p>9 only unnecessarily lengthen proceedings. Ms Jele, would</p> <p>10 you like to start cross-examining?</p> <p>11 MS JELE: Thank you, Chairperson, and if</p> <p>12 I may, Brigadier, thank you for your patience as well</p> <p>13 throughout this process. I know you were testifying for</p> <p>14 quite some time during the course of December and we do</p> <p>15 appreciate your presence here today, it must be said.</p> <p>16 Thank you. And if I may begin, the Human Rights Commission</p> <p>17 who I'm here representing, has a particular role to play in</p> <p>18 this process in that it seeks to assist the commission of</p> <p>19 inquiry as best it can and support the process that this</p> <p>20 commission of inquiry is following, and for that reason the</p> <p>21 evidence that will be brought before this Commission is</p> <p>22 essentially uniquely evidence of experts and individuals</p> <p>23 who'd be able to contextualise the issues that the</p> <p>24 commission of inquiry is dealing with. I'm attempting to</p> <p>25 do my best, and it is certainly my aim not to repeat any of</p>

<p style="text-align: right;">Page 3612</p> <p>1 the issues that have previously been addressed in your 2 testimony, and based both on your initial written 3 statements, as well as the evidence that you have provided 4 here in chief before the Commissioner, I would like to 5 address a number of issues with you. The issues that I 6 wish to address are all based on the opinions provided and 7 to be made into, as I understand it, exhibits before this 8 particular Commission, one of which I understand you might 9 have had an opportunity to see and that's Mr White. Can 10 you confirm that you have had an opportunity to read 11 through the provisional statement of Gary White? 12 BRIG MKHWANAZI: I got it. I've read, 13 even though it's a big document, yes, but I tried to read 14 it. 15 MS JELE: I appreciate it is a large 16 document. I just want to check at this stage whether or 17 not all relevant parties did receive a copy of it on Friday 18 when it was emailed and whether or not the commissioners 19 have a copy of it available to them at this time. Ms 20 Pillay, the commissioners don't seem to have a copy. We 21 provided a few copies this morning. Would it be possible 22 to provide them with one? 23 MS PILLAY: Chair, we do have copies here 24 which we were intending to hand up once they were made 25 exhibits and once they were referred to.</p>	<p style="text-align: right;">Page 3614</p> <p>1 of what happened at Marikana, and as a consequence he does 2 an analysis of the applicable policy. I want to refer 3 specifically to your knowledge in terms of the skills 4 development facilitator that you were and refer you to 5 paragraph 3 of your statement before this commission of 6 inquiry where you detail your responsibilities as skills 7 development facilitator. 8 CHAIRPERSON: Before that is interpreted, 9 can I ask you, point out that we haven't been given copies 10 of the annexures to this. We only got the statement and 11 the annexures include for example the Paton report which we 12 haven't been given copies of. I trust that that's an 13 omission that will be remedied in due course. 14 MS JELE: We shall remedy it as soon as 15 we are able, thank you. 16 [15:25] Brigadier, do you have paragraph 3 of your 17 initial statement before you? 18 BRIG MKHWANAZI: I'm trying just to check 19 if I've got it here. I'm just afraid maybe – 20 MS JELE: We have a copy available if you 21 need us to bring it forward. 22 BRIG MKHWANAZI: No, it's okay. I'll 23 share with the interpreter. I've got it here. 24 MS JELE: I'm glad to hear that. The 25 first item that you describe as part of your</p>
<p style="text-align: right;">Page 3613</p> <p>1 CHAIRPERSON: Well, the suggestion is we 2 get them on a preliminary anticipatory basis and we can 3 mark them as exhibits at the appropriate stage. 4 MS JELE: In that vein, if I may, 5 Chairperson, might I also request Ms Pillay to distribute 6 copies of Commissioner Titus's succinct preliminary 7 statement – 8 CHAIRPERSON: Do we need that – 9 MS JELE: - which we were only be in a 10 position to provide earlier this morning. 11 CHAIRPERSON: Do we need that now while 12 this witness is in the box? I mean at the table, the 13 witness stand. 14 MS JELE: I will be making reference to 15 some elements of Commissioner Titus's provisional witness 16 statement. I anticipate I won't get around to them today. 17 CHAIRPERSON: Yes, I see. Alright, well 18 now we've got it, I suggest you start your cross- 19 examination till about half past 3, round about then I'm 20 going to take the tea adjournment, but tell me at that 21 stage more or less when an appropriate stage has been 22 reached to take that adjournment. 23 MS JELE: Thank you, Chairperson. 24 Brigadier, one of the main issues covered by specifically 25 Gary White is the basis upon which any analysis can be made</p>	<p style="text-align: right;">Page 3615</p> <p>1 responsibilities is to identify training needs as 2 identified through operational shortcomings. That would, I 3 presume, mean that you would have to apply your mind as to 4 formulating elements of training that might evolve over 5 time. Would that be a correct interpretation, Brigadier? 6 MR HANABE: Sorry, Advocate, where is 7 that written? Because I don't have it on – 8 MS JELE: 3.1 on page, at the top of page 9 2. 10 MR HANABE: Okay, where it says, "I was 11 initially based in Visible Policing?" 12 MS JELE: If you just turn the page, you 13 should find 3.1 at the top of that page. 14 MR HANABE: Oh, 3.1? 15 MS JELE: Yes. 16 MR HANABE: Thank you very much, 17 Advocate. 18 BRIG MKHWANAZI: Yes, what mostly 19 happened is that some of the training interventions that 20 are being actually proposed on a financial year are based 21 on issues that have happened and some based on what members 22 has to be developed at because it should be a continuity in 23 developing members. 24 MS JELE: In order to ensure such 25 continuity, Brigadier, you would have to firstly be acutely</p>

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1 aware of the contents of existing policy and also pay  
 2 attention to developments nationally and internationally  
 3 that may have a bearing on valuable training in the future,  
 4 would you not?  
 5 BRIG MKHWANAZI: That's correct.  
 6 MS JELE: Now Brigadier, 3.2 of your  
 7 statement you indicate that another one of your  
 8 responsibilities was to monitor and evaluate the  
 9 implementation and adherence to these policies and  
 10 standards and national instructions. Correct?  
 11 BRIG MKHWANAZI: That's correct.  
 12 MS JELE: One of the basic difficulties,  
 13 however, Brigadier, you will agree with me, in crowd  
 14 management is that situations where crowds are concerned  
 15 are usually fluid and one isn't necessarily sure from one  
 16 minute to the next what challenges one might face?  
 17 BRIG MKHWANAZI: That's correct.  
 18 MS JELE: I would like to refer you to  
 19 exhibit R. I'm hoping you have a copy before you,  
 20 Brigadier. If not, I'm sure we can arrange to have one  
 21 brought to you.  
 22 BRIG MKHWANAZI: Exhibit R – no, I don't  
 23 have it.  
 24 MS JELE: It would be the document issued  
 25 by the Ministry of Police dated 29 August 2011.

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1 BRIG MKHWANAZI: Oh, okay. Got it.  
 2 MS JELE: Glad to hear it, Brigadier. If  
 3 you would turn to page 6 of that particular document,  
 4 paragraph before last the Ministry of Police states, and I  
 5 quote – I hope you have it, that's paragraph 6, above the  
 6 words, "The Regulation of Gatherings Act 205 of 1993."  
 7 BRIG MKHWANAZI: Yes.  
 8 MS JELE: It is stated, "Although the  
 9 current legal framework makes provision for some  
 10 negotiation and application procedures to hold a public  
 11 protest, gathering, or march, it happens frequently that  
 12 some of these public protests start spontaneously. The  
 13 latter raises serious challenges since the SAPS are not  
 14 afforded the opportunity to plan in advance and thus have  
 15 to respond in a reactive manner." I just will want to have  
 16 a couple of –  
 17 BRIG MKHWANAZI: I'm struggling to see  
 18 the paragraph, please.  
 19 MS JELE: The paragraph begins, "The  
 20 challenges of effective implementation."  
 21 BRIG MKHWANAZI: The challenges of  
 22 effective –  
 23 MS JELE: Second to last at the bottom.  
 24 BRIG MKHWANAZI: Ja, I've got it, of  
 25 effective implementation, ja. I've got it.

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1 MS JELE: Keeping this particular  
 2 statement in mind, would you agree, Brigadier, that  
 3 spontaneous gatherings are uniquely challenging to Police,  
 4 but also uniquely useful from a training perspective to  
 5 gain insight into potential future measures that might be  
 6 taken –  
 7 BRIG MKHWANAZI: Yes.  
 8 MS JELE: Also in your statement, under  
 9 paragraph 6 of your statement, you confirm that you were in  
 10 your position as skills development facilitator tasked with  
 11 supervising and monitoring training so you can check the  
 12 adherence and implementation to policies with a view to  
 13 continuously improving the training and execution of crowd  
 14 management as a whole. You would see that?  
 15 BRIG MKHWANAZI: Yes.  
 16 MS JELE: Based on the statement I would  
 17 presume - and do correct me if I'm wrong, Brigadier - that  
 18 you would be involved as skills development facilitator in  
 19 discussions directly relating to any changes in policy that  
 20 may affect training with regard to crowd management?  
 21 BRIG MKHWANAZI: That's correct. The  
 22 respective office will actually invite me. If I'm invited,  
 23 yes, I would participate.  
 24 MS JELE: Thank you, Brigadier.  
 25 Chairperson, this would be an appropriate time for the

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1 adjournment.  
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 3 [15:54] CHAIRPERSON: The Commission resumes.  
 4 Brigadier, you're still under oath. Ms Jele, you were  
 5 cross-examining.  
 6 MS JELE: Thank you, Chairperson. I've  
 7 dealt with the issue of policies. Now in reaching some of  
 8 his conclusions Gary White makes specific reference to a  
 9 number of international documents, and as I understand it,  
 10 the standing order does require attention to international  
 11 standards in formulating policy that relates to crown  
 12 management. Would I be correct in that respect?  
 13 BRIG MKHWANAZI: I saw that, yes.  
 14 MS JELE: Since in your capacity as  
 15 skills development facilitator you mentioned that you were  
 16 part of the process of identifying issues for the following  
 17 financial year that would need to go about training. Are  
 18 you acquainted with the international instruments  
 19 specifically that might be relevant to this field?  
 20 BRIG MKHWANAZI: No, I haven't been  
 21 actually involved into that position whereby - yes, on a  
 22 issue tactically, yes, but on issues on skill development  
 23 part, like checking on other countries and all that, no we  
 24 haven't.  
 25 MS JELE: Just to clarify, Brigadier, the

<p style="text-align: right;">Page 3620</p> <p>1 minister makes specific reference – and I'm again referring 2 to exhibit R – to at least one of these international 3 instruments. I want to understand your answer. Is it that 4 you yourself don't have experience in those instruments? 5 BRIG MKHWANAZI: Yes, I mean myself as a 6 person not involved before. 7 MS JELE: In light of your responsibility 8 as the skills development facilitator, Brigadier, I would 9 put to you it's rather surprising and that one would expect 10 you to be familiar with those international standards that 11 are also relevant to skills development and training of law 12 enforcement officers in crowd management situations. 13 BRIG MKHWANAZI: Maybe I misunderstood 14 your questions, I mean sorry, your question, because if we 15 talk about crowd management as such we have benchmarked 16 crowd management from other countries and we have used 17 their techniques and try and see if maybe we can develop 18 programmes that are actually going to assist us in South 19 Africa, looking to the crowd dynamics and all that. So 20 maybe I misunderstood you on that one. 21 MS JELE: Thank you, Brigadier, that is 22 what I was getting at. Perhaps if I just cite an example 23 of one of these documents. The Basic Principles on the Use 24 of Force and Firearms, which was adopted in Cuba in 1990 25 and which was explicitly referred to by the minister as one</p>	<p style="text-align: right;">Page 3622</p> <p>1 Semenya, with respect for example to choices of deployment 2 and the like. The four specific themes that I would like 3 to cover in order so that we might address each, one after 4 the other, are first the issue of training, secondly the 5 issue of planning, thirdly the issue of plan 6 implementation, and lastly the issue of debriefing. With 7 regard to training, Brigadier, you gave in your statements 8 a detailed outline of the type of training that is received 9 in relation to crowd management by SAPS officials, correct? 10 BRIG MKHWANAZI: That's correct. 11 MS JELE: You mentioned that - at 12 paragraph 5.1 - a platoon member will undergo training of 13 just three weeks. Is that correct? 14 BRIG MKHWANAZI: That's correct. 15 MS JELE: And that has been the case for 16 quite some time, in your knowledge? 17 BRIG MKHWANAZI: That's correct. 18 MS JELE: And the person who would be 19 commanding that platoon, the platoon commander training 20 would take just one week. Is that correct, Brigadier? 21 BRIG MKHWANAZI: Do you mean one week on 22 training? 23 MS JELE: I would refer to paragraph 5.2 24 at page – 25 BRIG MKHWANAZI: That's correct, yes.</p>
<p style="text-align: right;">Page 3621</p> <p>1 of the relevant instruments in crowd management at page 8 2 of exhibit R. 3 BRIG MKHWANAZI: Yes, I saw it when I 4 read the document, but I may point out that from a long 5 time we've been using other techniques from other countries 6 like Belgium, as well as like France as well, to our crowd 7 management techniques. 8 MS JELE: And I would assume that for 9 development of future crowd management policy you keep up 10 to date on what might be taking place either at the 11 international level or in other countries with similar 12 systems perhaps to our own? 13 BRIG MKHWANAZI: That's correct. 14 MS JELE: White's statement, Gary White's 15 statement, I'm sure you'll be happy to hear, states that in 16 his view South African policies are in line with policies 17 applicable in other countries, such as the United Kingdom. 18 I'm referring specifically to section 2 of Gary White's 19 statement where he deals with policy issues. However, 20 there are four themes that I would like to cover with you 21 where in his expert opinion there were serious shortcomings 22 in the actions of the SAPS at Marikana during these events. 23 I am acutely aware, Brigadier, that you were not there on 24 the day and I will be asking questions with regard to the 25 testimony that you gave when examined by my colleague, Mr</p>	<p style="text-align: right;">Page 3623</p> <p>1 PCT, platoon commander training. We are talking about 2 officers receiving training as platoon commanders. 3 MS JELE: At a higher level than when we 4 speak of OCT training, this particular training lasts just 5 four weeks, correct? 6 BRIG MKHWANAZI: That's correct. 7 MS JELE: Brigadier, is this a once-off 8 when it comes to the training, or does it take place more 9 often than once in a member's employment life at SAPS? 10 BRIG MKHWANAZI: In some of the training 11 interventions it can be a once-off, others can be a 12 refresher course, but mostly what should be done with crowd 13 management most of the time is that there must be some 14 rehearsal as well most of the time. That is in-service 15 training that needs to be given to the platoon if the 16 situation actually permits regarding to, or maybe if there 17 are no other problems around in that particular province, 18 then those members can have rehearsals or refresher 19 courses. 20 MS JELE: Are these refresher courses 21 shorter than the original courses or the same length? 22 BRIG MKHWANAZI: Refresher courses 23 normally will be shorter. 24 MS JELE: And when you spoke of 25 rehearsals I presume you're referring to some form of</p>

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1 practical aspect to the training. What portion of say for  
 2 example the three weeks of a platoon member would actually  
 3 be practical training?  
 4 BRIG MKHWANAZI: If the situation  
 5 permits, especially with PMT, platoon members training,  
 6 here we talk about non-commission officers, this one is  
 7 whereby the platoon commander takes his own platoon  
 8 normally to rehearse, to make sure everybody's still in a  
 9 good position to do what's supposed to be done. That is  
 10 rehearsal, but depend to the situation; if everything is  
 11 calm, there's no problem, then the platoon commander can do  
 12 that.  
 13 MS JELE: And when you mentioned the  
 14 refresher courses, are they obligatory or do members choose  
 15 whether or not they need to be refreshed in crowd  
 16 management skills?  
 17 BRIG MKHWANAZI: Normally it depends to  
 18 the situation; if some shortcomings have been identified  
 19 and all that then the refresher course will come into  
 20 being. Members definitely they will be actually be taken  
 21 in for refresher courses, depending to the situation, hence  
 22 we need to make sure that we stay in the same position to  
 23 be able to deal with the situation in the country.  
 24 MS JELE: If I understand you correctly,  
 25 Brigadier, that means that there is no obligation on a SAPS

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1 member who functions within the area of crowd management,  
 2 POP specifically, to return to training to update or  
 3 upscale their skills throughout their employment period.  
 4 Is that correct?  
 5 BRIG MKHWANAZI: I won't agree into that  
 6 because it is normally happening. If I'm correct, you  
 7 know, even before the end of the year last year we have  
 8 refresher courses running, you know, for the members as  
 9 well. It is definitely happening and the only thing is to  
 10 say will it be like after so much month or after so much  
 11 year a member has to go back, but as I've said, it will be  
 12 determined by the challenges that we are having to make  
 13 sure that members go back for the refresher courses, if  
 14 there's a need into that. If I may make an example as well  
 15 with Soccer World Cup members were taken again for training  
 16 for refresher into a lot of issues because we have to look  
 17 to the issues how to handle Soccer World Cup, so it's a lot  
 18 of techniques we receive from the side of French police and  
 19 those techniques were brought in. Trainers from France  
 20 came in, in the country, and members had to go through  
 21 again and as a result I went for that course as well  
 22 myself. I went through to it. It was a refresher course  
 23 to me because I've been into a number of courses in Public  
 24 Order Policing, but because of Soccer World Cup I had to go  
 25 back so that I can be able to work properly during Soccer

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1 World Cup.  
 2 MS JELE: The difficulty that we face at  
 3 this juncture, Brigadier, is that Commissioner Titus will  
 4 indicate, as is set out specifically in paragraph 27 of his  
 5 provisional statement, that the training provided POP  
 6 specifically and police generally in crowd management is  
 7 woefully insufficient.  
 8 BRIG MKHWANAZI: Yes, I understand, I see  
 9 the paragraph, as I see the statement now. I'm not sure  
 10 really if it's not sufficient maybe based on what position.  
 11 Maybe if I can have more information that it's not  
 12 sufficient because of 1, 2, 3, maybe I can be able to  
 13 comment.  
 14 MS JELE: I appreciate, Brigadier, that  
 15 with regard to Commissioner Titus's provisional statement  
 16 specifically you have not had an opportunity to read it, so  
 17 perhaps we can come back to the details of the content of  
 18 Commissioner Titus's provisional statement. I pause at  
 19 this juncture to ask Ms Pillay if this is an appropriate  
 20 time to enter the provisional witness statement as an  
 21 exhibit.  
 22 MS PILLAY: Chair, it will be exhibit  
 23 WW1.  
 24 CHAIRPERSON: We don't know yet what Mr  
 25 White MBE, what exhibit number his is going to be?

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1 MS PILLAY: That statement, White could  
 2 be WW2.  
 3 [16:14] MS JELE: Brigadier, specifically with  
 4 regard to training and formulation of training policy,  
 5 whilst we'll deal with the comments made by Commissioner  
 6 Titus at a later stage, I'm sure you're aware that the  
 7 Ministry of Police certainly has made certain statements  
 8 about the type of training received by individuals  
 9 responsible for crowd management.  
 10 BRIG MKHWANAZI: Yes, I saw the policy by  
 11 the minister.  
 12 MS JELE: If I may refer you again to  
 13 exhibit R, this time to page 16 of exhibit R, underneath  
 14 the heading "Training of members attached to Public Order  
 15 Policing Unit."  
 16 BRIG MKHWANAZI: Got it.  
 17 MS JELE: In light of the fact that this  
 18 is a statement issued to the parliamentary portfolio  
 19 committee on 29 August 2011, I quote from the first  
 20 paragraph of this statement that says, "Comparative  
 21 research has shown that the current level of training for  
 22 SAPS members in crowd management and control lacks content.  
 23 Basic and refresher training for police and others involved  
 24 in law enforcement should include courses not only on human  
 25 and constitutional rights, but also scientific techniques

<p style="text-align: right;">Page 3628</p> <p>1 and other best practices for the professional discharge of 2 their functions within the public protest environment." Do 3 you see that quote? 4 BRIG MKHWANAZI: Yes. 5 MS JELE: What is your reaction to seeing 6 that the ministry itself, of police, position on training 7 is that it is woefully insufficient? 8 BRIG MKHWANAZI: I agree that we need to 9 do more. I agree with that, yes. 10 MS JELE: During seemingly the course of 11 the same couple of days at parliament in August 2011 the 12 ICD, as it was then called, also made a presentation to the 13 parliamentary portfolio committee. Perhaps I might get 14 some assistance from Ms Pillay as to the exact exhibit 15 number of this document? 16 MS PILLAY: Just refresh me, which 17 document specifically? 18 MS JELE: It is a selection of slides by 19 the ICD entitled, as I read the cover page, "Presentation 20 to the Portfolio Committee on Police, 30 August 2011, 21 Parliament." 22 MS PILLAY: That document hasn't been 23 entered as an exhibit yet, so it would get a new exhibit 24 number. It will be WW3. 25 MS JELE: Thank you, Ms Pillay.</p>	<p style="text-align: right;">Page 3630</p> <p>1 this slide, Brigadier? 2 BRIG MKHWANAZI: Yes, I see training of 3 members. 4 MS JELE: The ICD's position and 5 recommendation in the second column seems to be "The SAPS 6 to provide updated training to members of the Public Order 7 Policing units. These members must be trained on a regular 8 basis and on current and international best practices." 9 You see that, Brigadier? 10 BRIG MKHWANAZI: I see that. 11 MS JELE: If you would now go to slide 12 28, Brigadier. It is a continuation of the challenges and 13 recommendations and there's just one line and it relates to 14 command and control, and in it, it is stated, "Members 15 involved in a crowd control situation must only act on 16 instruction and direction of the commander. Commanders 17 need additional training and must be able to provide good 18 command and control throughout the operation." You see 19 that? 20 BRIG MKHWANAZI: I see that, Ma'am. 21 MS JELE: In August 2011, correct me, 22 Brigadier, you were still skills development facilitator? 23 BRIG MKHWANAZI: Sorry, August? 24 MS JELE: 2011. 25 BRIG MKHWANAZI: 2011, yes I was still,</p>
<p style="text-align: right;">Page 3629</p> <p>1 CHAIRPERSON: What does one call it? 2 MS JELE: It's the Presentation to the 3 Portfolio Committee of Police, Briefing on Crowd Control, 4 and for the rest of the parties it's volume E, item 3. I 5 understand you've been provided with a copy of these 6 slides, Brigadier. Have you not? I will ask Ms Pillay to 7 assist again. 8 BRIG MKHWANAZI: I don't have it. 9 CHAIRPERSON: He's not the only one who 10 hasn't been provided with a copy. 11 MS JELE: My apologies, Chairperson. I 12 understood that these copies had been provided earlier. 13 CHAIRPERSON: Well, to be fair, if they 14 were provided late last week and we only came together 15 effectively this morning and we started immediately, so I 16 suppose those responsible for distributing them didn't get 17 a chance to do it. 18 MS JELE: To be fair, we weren't sure we 19 would need to refer to them until very recently, 20 Chairperson. 21 CHAIRPERSON: Thank you. WW3. 22 MS JELE: I'd like to make specific focus 23 to slide 25 entitled "Challenges and recommendations." 24 BRIG MKHWANAZI: Got it. 25 MS JELE: Do you see the second line in</p>	<p style="text-align: right;">Page 3631</p> <p>1 yes, I was still. 2 MS JELE: In your recollection, were 3 these recommendations brought to your attention? 4 BRIG MKHWANAZI: I would say no, because 5 what is happening, my office work together with the 6 national office division training, which is the human 7 resource development. So human resource will indicate to 8 us what needs to be done, then we'll align our training 9 towards whatever they are actually indicating to us what 10 we're supposed to do. In other words, my office as it was 11 working with specialised training, we cannot initiate on 12 our own. However, we can maybe request if there is a need 13 from division HRD, then they will be the people who 14 actually will be in a position to give us the way forward 15 in anything. 16 MS JELE: If I may ask, as I have 17 mentioned earlier, one of the descriptions of your 18 responsibilities is to identify training needs. I must say 19 I'm having difficulty reconciling that description of your 20 responsibilities with the description of the process that 21 you've just given. To what extent were you identifying 22 those needs, and perhaps give us examples of how you went 23 about doing so and what was the consequence of any actions 24 on your part in that respect. 25 BRIG MKHWANAZI: That's correct. Within</p>

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1 or around specialised units my task in the beginning of the  
 2 financial year will be to identify what are the training  
 3 needs for specific component. In other words, each  
 4 component will have its own trainers. They will indicate  
 5 to me to say these are our training needs, members need to  
 6 be trained into these. Then for me then together working  
 7 with them in our committees, which is training committee,  
 8 we will then sit down and discuss those training needs that  
 9 have been identified. Then we consolidate and give it to  
 10 human resource development, which is the national SAPS  
 11 training division. That's where now they will decide with  
 12 the funding and actually indicating how the programmes will  
 13 be actually be presented in the course of the financial  
 14 year.

15 MS JELE: You stated earlier that there  
 16 is a process of attempting to upgrade training of POP and  
 17 other crowd management officials if needs be. Does this  
 18 identification process include broadening training or  
 19 changing training at any given time?

20 BRIG MKHWANAZI: The whole process will  
 21 be to improve with the type of training that can be put in  
 22 place if there's a need.

23 MS JELE: If I could refer you again to  
 24 the policy and guidelines issued by the ministry, and I am  
 25 referring to a document signed on 29 August 2011 and

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1 specifically at page 21 -

2 CHAIRPERSON: 21?

3 MS JELE: Yes, Chairperson.

4 BRIG MKHWANAZI: Are we referring to the  
 5 Ministry of Police document?

6 MS JELE: We are, Brigadier.

7 BRIG MKHWANAZI: Yes, page 21, I'm there.

8 MS JELE: I'm going to refer you to the  
 9 very last paragraph at page 21, and I understand that this  
 10 might be a lengthy process, but I will ask the  
 11 commissioners as well as yourself, Brigadier, and my  
 12 colleagues, to bear with me. I would like to quote that  
 13 last paragraph as well as the first paragraph on page 22 as  
 14 I deem them directly relevant to the issues before this  
 15 Commission.

16 CHAIRPERSON: This particular point is  
 17 going to be quite a long point to deal with?

18 MS JELE: I'm nearly done with this  
 19 specific point, Chairperson.

20 CHAIRPERSON: Right, may I suggest you  
 21 finish this specific point, then we'll take the adjournment  
 22 till tomorrow. You might like to give the witness some  
 23 homework, something to read and study overnight, so as to  
 24 facilitate matters in the morning, and we will obviously  
 25 have to do the same homework, of course.

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1 MS JELE: I would at this stage already  
 2 ask the brigadier to have a look at Commissioner Titus's  
 3 provisional witness statement, which is only recently  
 4 obtained, so that we might deal with any elements that I  
 5 wish to cover contained therein. Thank you, Chairperson.  
 6 I return then to page 21, the last paragraph on that page.  
 7 It is stated, and in many respects you have referred to  
 8 these issues but in some not, "All along the SAPS Policing  
 9 was aligned to the Belgium model which seems to be a more  
 10 narrow approach. This model is based on distant policing  
 11 of crowds and would include discussions, negotiation and  
 12 persuasive methods. It's obvious that the distance  
 13 approach provides more room for protesters to provoke and  
 14 throw objects which could cause injury to people and damage  
 15 to property. The model also provides that the police may  
 16 negotiate with for example a small delegation from the  
 17 crowd. Unfortunately this distant approach leans too  
 18 easily in resorting to the use of force, especially where  
 19 crowds would overstep boundaries set by the police which in  
 20 most instances construed as posing a threat to the police."  
 21 I now turn to page 22. "In planning towards effective  
 22 crowd control during the 2010 FIFA Soccer World Cup  
 23 Tournament, the SAPS conducted research on different models  
 24 and decided to engage on the French model which is  
 25 underpinned by a wider approach than the Belgium model.

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1 The French model drastically cuts down on the distance and  
 2 requires that the police should be literally a few metres  
 3 in front of the crowd. This provides the opportunity to  
 4 restrain forward movement of the crowd and a possibility  
 5 for snatchers to pick on certain individuals who ought to  
 6 be the most provocative within the crowd. This model also  
 7 provides better formation and position of platoons in crowd  
 8 control and redirecting a process to lesser significant  
 9 areas. Training on this model were since introduced, but  
 10 never formalised."

11 [16:34] Thank you very much. Brigadier, in your capacity  
 12 at the time in August 2011, were these recommendations  
 13 brought to your attention? Did you become aware of them at  
 14 any stage then?

15 BRIG MKHWANAZI: Yes, I heard about it,  
 16 Advocate, and as I've said from the beginning only division  
 17 HRD nationally will actually give us the way forward what  
 18 to do, but I heard about it.

19 MS JELE: You would agree that to  
 20 implement this particular new model would lead to drastic  
 21 changes in the format of training and what the POP members  
 22 specifically learn at present?

23 BRIG MKHWANAZI: There will be a change  
 24 of course because we'll be adopting the French technique at  
 25 that stage because we have been using more the Belgium



1 technique in our issues when we handle situations.  
 2 MS JELE: Brigadier, if one looks at the  
 3 criticisms made in this document of the potential for use  
 4 of force under the Belgium system, does that description  
 5 not bring Marikana to mind and the events at Marikana to  
 6 mind? I would refer you, Brigadier, in order to assist for  
 7 example to paragraph 21 where it is stated that the  
 8 distance specifically that is required in order to  
 9 implement the Belgium model allows protesters to throw  
 10 objects, damage property, leading too easily in resorting  
 11 to the use of force.

12 BRIG MKHWANAZI: I won't disagree with  
 13 the comment made. The only thing I'm trying to figure out  
 14 the, or visualise the situation in reality, if you have a  
 15 situation whereby you have to deal with a crowd and your  
 16 members are closer, what will be the situation and when  
 17 they are in a distance. I'm trying just to visualise on  
 18 that to say what can be my comment on here, on this, but  
 19 always there will be some cases that support the statement  
 20 to say why the distance can be actually, can contribute to  
 21 give a chance to the participants to be able to throw  
 22 stones, whereas in a French technique, the closer we are  
 23 maybe they won't be able to, actually to do such throwing  
 24 of stone and damaging of property, but as you say, does it  
 25 figure, or trigger out the Marikana issue, I can say yes,

1 but it will depend what was the situation on the day, what  
 2 was the distance of the police, where the police were.  
 3 Looking to what we are reading now, yes I can just have to  
 4 try and visualise that and look at that, and I was not  
 5 there, then maybe it can be a problem too.

6 MS JELE: Would you agree with me,  
 7 Brigadier, that engaging in questions about the different  
 8 models and their value with regard to crowd management is  
 9 useful in order to learn lessons about what kind of  
 10 training and/or crowd management policy one could develop  
 11 in the long term?

12 BRIG MKHWANAZI: I agree.

13 MS JELE: Thank you, Brigadier.

14 Chairperson, I thought this might be an appropriate time  
 15 for the adjournment.

16 CHAIRPERSON: The Commission will adjourn  
 17 until 09:30 tomorrow morning.

18 [COMMISSION ADJOURNED]

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