

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 88 8 MAY 2013 PAGES 9275 TO 9404

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 8 MAY 2013]
 2 [09:44] CHAIRPERSON: The Commission resumes. I
 3 would remind those present that what I said yesterday about
 4 cell phones applies today as well. Please switch your cell
 5 phones off. We can't have the proceedings being
 6 interrupted by cell phones. Mr Mpofo, before you continue
 7 with your cross-examination, can you give me an indication
 8 of how long – I know it's difficult to predict because you
 9 don't know how long the answers will be, but have you any
 10 idea of how long you think you'll be? The reason I ask you
 11 the question is we have to arrange for the National
 12 Commissioner to come back so you can finish your cross-
 13 examination of her, and we obviously can't expect her to
 14 sit around here, waiting indefinitely for this witness to
 15 end. So we have to fit her in at an appropriate stage, and
 16 I don't think it's a good idea to fit her in the middle of
 17 the next witness. So can you tell me how long you think
 18 you'll be? Subject to the points I've made already.
 19 MR MPOFU: Yes, the answers and the
 20 double interpretations and so on. Chairperson, I would say
 21 I'm definitely not going to finish today.
 22 CHAIRPERSON: Does that mean you may
 23 finish tomorrow?
 24 MR MPOFU: I may finish tomorrow. I know
 25 that tomorrow is a half day, so it's not a promise, it's a

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1 – or rather it's not a threat, but the promise that I'll
 2 try to do it within that time.
 3 CHAIRPERSON: Alright, and I think –
 4 MR MPOFU: But I'll certainly be able to
 5 indicate, just to make it easier, Chair, maybe by the end
 6 of today, how far I am.
 7 CHAIRPERSON: Yes, alright. I think we
 8 must all from now on be conscious of the fact that this
 9 Commission can't go on forever. This is not like the
 10 Northern Ireland one that went on for 12 years. We can't
 11 do that.
 12 MR MPOFU: Ja.
 13 CHAIRPERSON: So we all must strive,
 14 witnesses, counsel, Commissioners, all must strive to keep
 15 things under control from a time point of view. I did
 16 suggest when Mr Burger was last with us that the parties'
 17 representatives and the evidence leaders should have a
 18 meeting to see if they could devise means for shortening
 19 things. I may have to impose things from the chair, but
 20 it's obviously better if whatever is done, is done by
 21 agreement, everybody buys into it. I don't think you were
 22 here – I think you already had your –
 23 MR MPOFU: I was, Chairperson –
 24 CHAIRPERSON: Were you here?
 25 MR MPOFU: But I did follow it on the

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1 internet. I followed that debate.
 2 CHAIRPERSON: So you're aware of the
 3 debate. There was a general consensus, everybody realised
 4 that we are facing a problem.
 5 MR MPOFU: Me too, Chair.
 6 CHAIRPERSON: So anyway, I hope that that
 7 meeting will take place soon that was suggested. Anyway –
 8 MR MPOFU: Yes, Chair, if I may, I
 9 subscribe to the idea of the meeting, but obviously if it
 10 fails then – if as the parties we can't find measures, then
 11 obviously –
 12 CHAIRPERSON: Yes, but anyway, I hope
 13 that –
 14 MR MPOFU: No, Chair, yes, I –
 15 CHAIRPERSON: What's the English for
 16 "daadwerklike poging," a thorough energetic endeavour will
 17 be made to solve this problem.
 18 MR MPOFU: Yes, it will, Chair. But with
 19 this witness, of course Chair, I think the problem started
 20 when he was led for four days in chief because that
 21 obviously –
 22 CHAIRPERSON: Yes, yes, yes, we are
 23 making, considering ways of reducing the length of
 24 evidence-in-chief in future.
 25 MR MPOFU: Thank you, Chair.

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1 VOORSITTER: Generaal-Majoor, u is nog
 2 steeds onder eed.
 3 CHARL ANNANDALE: Voorsitter.
 4 CHAIRPERSON: Mr Mpofo.
 5 MR MPOFU: Thank you, Chairperson.
 6 COMMISSIONER HEMRAJ: Mr Mpofo, are you
 7 moving away from the point about the length of time
 8 available for the briefing of the members?
 9 MR MPOFU: Yes, yes, I think I had
 10 already moved – or one of the reasons, Chair, was exactly,
 11 it's one of those things, I know it's somewhere but I
 12 couldn't put my finger on it, and that's why I promised the
 13 Chair that when I do find the suggestion that it was not
 14 longer than 10 minutes, if I find it during the cross-
 15 examination I'll come back to it, otherwise I'll do it with
 16 other witnesses, but I have moved away from it. Thanks,
 17 Chairperson. The only necessary –
 18 CHAIRPERSON: Sorry, may I say one
 19 further thing about the question of the National
 20 Commissioner. I think it would be sensible, if I may say
 21 so, for the evidence leaders and Mr Semanya and possibly
 22 you, if you're still cross-examining at the time, to
 23 consider when it would be appropriate for her to come back.
 24 As I say, we can't have her sitting around here for days.
 25 She's got important work to do in her office –

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1 MR MPOFU: Very much.
 2 CHAIRPERSON: - and presumably elsewhere
 3 in the country.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: So we must try to find a
 6 convenient time when she can come, finish her evidence and
 7 then go.
 8 MR MPOFU: And then we're back to normal.
 9 CHAIRPERSON: That's obviously a matter
 10 of importance, but it's primarily a matter for Mr Semenya
 11 to attend to, but with cooperation of everybody else. Is
 12 that - I think it you're happy with that, Mr Semenya.
 13 Alright, let's carry on with the cross-examination. My
 14 colleague Adv Hemraj I think may want to say something
 15 further, or ask you something further about the point that
 16 she raised.
 17 MR MPOFU: Yes.
 18 COMMISSIONER HEMRAJ: I just want some
 19 clarity from the General before you start -
 20 MR MPOFU: Maybe, Commissioner, if you
 21 don't mind, there's just one question which might assist
 22 your enquiry that I might put in that regard, literally
 23 one.
 24 COMMISSIONER HEMRAJ: Ja.
 25 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

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1 General, how far distance wise, was FHA1 from FHA2?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek is nie seker nie. Ek is regtigwaar nie seker nie.
 4 MR MPOFU: Okay, that's fine. Alright.
 5 CHAIRPERSON: Isn't it more relevant to
 6 know what the travelling time between the two was by the
 7 means of travel used by those who were travelling between
 8 the two? You know -
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 ek was nooit op die toneel nie, so ek weet nie die terrein,
 11 of daar 'n direkte pad is -
 12 CHAIRPERSON: We'll have to ask other
 13 people then.
 14 COMMISSIONER HEMRAJ: General, if you
 15 look at the briefing minutes, TT4, of the JOCOM meeting
 16 held at 6 o'clock in the morning, and if you look at page
 17 2, do you have that with you, General? If you look at page
 18 2, halfway down the page there's a timeline for deployment.
 19 The 7:30 entry, line function commanders' briefing to their
 20 members, the question I have is what is that briefing
 21 about?
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 Kommissaris, dit is, 6 uur begin ons met die JOCOM
 24 vergadering met die hoofbevelvoerders. Dan in dieselfde
 25 tyd sal daar dan, hulle begin met 'n parade om dan die lede

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1 bymekaar te kry terwyl ons besig is met dit. Voorsitter,
 2 dan direk na afloop van die JOCOM vergadering gee ons dan
 3 'n geleentheid -
 4 CHAIRPERSON: Sorry, Major-General. Mr
 5 Booi has got to interpret it into isiXhosa.
 6 MR BOOI: What I am lost is this FH4 and
 7 SH, whatever it is, I stood a long -
 8 CHAIRPERSON: FHA is forward holding area
 9 and 1 or 2. There were two forward holding areas and FHA1
 10 is forward holding area number 1, and FHA2 is forward
 11 holding area 2, and there were various members of the
 12 police service placed at these two forward holding areas
 13 with their commanders, prepared to do certain things at the
 14 appropriate time. That's what that's about. Perhaps you
 15 could -
 16 MR BOOI: Which means holding people
 17 that, for holding area -
 18 CHAIRPERSON: Forward holding area;
 19 forward holding area1, forward holding area 2.
 20 MR MADLANGA SC: Mr Chairman, could I
 21 just ask to be of assistance to Mr Booi on this? Mr Booi,
 22 if perhaps you could just refer to it - [African language].
 23 Thank you.
 24 MR BOOI: Thank you, Sir.
 25 CHAIRPERSON: - necessary to interpret

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1 what you said because I take it that what you said was in
 2 accordance with our understanding of the position.
 3 MR MPOFU: Chairperson, if Mr Booi can
 4 interpret that, it will mean he understands what was said.
 5 CHAIRPERSON: I've spoken already about
 6 saving time at these inquiries.
 7 COMMISSIONER HEMRAJ: General, what I
 8 really wanted to know was whether the briefing there at
 9 , the contents of that briefing, whether it's the same
 10 as the briefing after the 1:30 JOCOM meeting, or are they
 11 two different briefings?
 12 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 13 die oggend se vergadering is terugvoer van die bespreking
 14 op die JOCOM, so dit wat ons op die JOCOM bespreek het gaan
 15 die bevelvoerders nou terug na die lede toe en hulle gaan
 16 dra oor wat die JOCOM se bespreking was. So dis
 17 verskillend. Kommissaris, so die "special" JOCOM en die
 18 toeligtig wat daarna plaasgevind het, is dan addisioneel
 19 tot dit wat reeds in die oggend oorgedra was aan die lede.
 20 COMMISSIONER HEMRAJ: That means that the
 21 actual implementation of stage 3 was not dealt with in the
 22 briefing in the morning?
 23 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 24 dis korrek. Ons het nie in die detail ingegaan nie,
 25 alhoewel dit reeds bewus was maar ons het nie die detail

<p style="text-align: right;">Page 9283</p> <p>1 nie. Die detail was dan tydens die 13:30 "special JOCOM." 2 MR MPOFU: Thanks, Chairperson. Just one 3 or two questions arising from that. In any event from 4 what, the schedule we see there, it's clear that at least 5 the one hour was budgeted for in respect of both the 6 commanders' briefing and the line function briefing. 7 Correct? The one was 6 to 7, the other one 7:30 to 8:30. 8 CHAIRPERSON: While the witness is 9 looking for it, Mr Booi it might help if you interpret the 10 question, to make it easier for you when you interpret the 11 answer. 12 MR MPOFU: I can repeat the question 13 while the witness is looking, for Mr Booi's benefit. I was 14 saying, does it appear from the document that Commissioner 15 Hemraj referred to that one hour was budgeted each, rather 16 for each briefing, namely the commanders' briefing and the 17 line function briefing? 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 nee, vir die bevelvoerders is daar een en 'n half uur voor 20 voorsiening gemaak tydens die JOCOM, en dan die toeligting 21 daarna deur die bevelvoerders aan die lede was daar net 'n 22 uur voorsiening gemaak. 23 MR MPOFU: Yes, and at that stage of, at 24 the stage of those briefings did you personally know that, 25 in the words of General Mbombo, today was D-day?</p>	<p style="text-align: right;">Page 9285</p> <p>1 told us that he was there at the time. 2 MR MPOFU: He was where? 3 CHAIRPERSON: When he gave his evidence- 4 in-chief he said he was at the briefing. 5 MR MPOFU: I know. I've read that, 6 Chair. 7 CHAIRPERSON: So why are you asking him 8 now – 9 MR MPOFU: No, Chair, I think the problem 10 between you and me, all I'm saying is he was there at the 11 briefing with Mbombo – 12 CHAIRPERSON: Yes. 13 MR MPOFU: At 6 o'clock, we're now 14 talking about 6 o'clock, was he aware already at 6 o'clock 15 of what was going to happen at 9:30? 16 CHAIRPERSON: That's the question I 17 repeated to him in the hope that we'd be able to move on. 18 Anyway, let's give the Major-General a chance to answer the 19 question you and I both asked him. 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 dit was geensins 'n bespreking tydens die 6 uur oggend 22 JOCOM vergadering nie. Die Provinsiale Kommissaris was nie 23 teenwoordig nie en daar was nie so 'n bespreking nie. 24 MR MPOFU: Ja, well that's not what I 25 asked you, but anyway, let's move on. Can you –</p>
<p style="text-align: right;">Page 9284</p> <p>1 CHAIRPERSON: - the accuracy, that was 2 Captain Adriaio's expression. The general had said 3 something slightly different, but I don't think it's 4 material for the purposes of your question. 5 MR MPOFU: Yes, I'm qualifying it. Well, 6 she said "We are ending this thing today," something, words 7 to that effect. 8 CHAIRPERSON: Were you aware of that, 9 that was only said at 9:30, so in the briefing at the JOCOM 10 before that obviously that factor wasn't taken into 11 account. Would that be correct? 12 MR MPOFU: That's exactly why I'm asking, 13 Chair. It might have been discussed earlier – 14 CHAIRPERSON: Yes, I'm repeating your 15 question for the Major-General. If I repeat it incorrectly 16 you can be cross with me. If I'm doing it accurately, be 17 grateful. 18 MR MPOFU: Okay. Well, you're not 19 repeating it correctly and I'm not cross with you still, 20 Chair, but the question is, you know what the general 21 communicated in the press briefing. Were you aware of that 22 that she communicated at the press briefing regarding the 23 16th being the day where the thing would be resolved, as at 24 the time of – 25 CHAIRPERSON: When you weren't here he</p>	<p style="text-align: right;">Page 9286</p> <p>1 CHAIRPERSON: Mr Mpofo, Mr Mpofo, you got 2 the answer you wanted. You wanted to establish from him 3 that when he gave the briefings at 6 o'clock in the 4 morning, he wasn't aware of the Provincial Commissioner's 5 decision to say what she was going to say at 9:30 and what 6 Captain Adriaio was going to summarise later. He says he 7 wasn't aware of that, therefore there was no discussion of 8 that. That's exactly what you asked him – 9 MR MPOFU: He never said he was not 10 aware, Chair. You're the first person to say that. He 11 didn't say he was not aware. All he says is that there was 12 no discussion about the Provincial Commissioner, which is 13 not what I asked him. I asked him was he aware, he, 14 Annandale, aware of the fact that it was D-day. It's a 15 simple question. 16 CHAIRPERSON: I understood him to be 17 saying exactly that. Mr Burger, you turned your light on. 18 MR BURGER SC: Chair, we are really 19 wasting time. 20 MR MPOFU: Ja. 21 MR BURGER SC: I follow this evidence 22 very clearly. The question you put was clearly understood 23 by the witness; he answered it. My learned friend didn't 24 like the answer, so he said to the witness he didn't answer 25 the question. It doesn't advance the debate and we're</p>

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1 wasting time.

2 CHAIRPERSON: Let's move on.

3 MR MPOFU: Ja, well Mr Burger is wasting

4 my time now. Okay, Chair –

5 CHAIRPERSON: We're not going to get any

6 profit from having these little spats between each other.

7 MR MPOFU: Well, exactly. My point

8 exactly –

9 CHAIRPERSON: Let's just concentrate,

10 keep our eye on the ball, try to get it into the net as

11 many times as we can, and then we may surprise ourselves

12 with the result.

13 MR MPOFU: Sure. General, yesterday we

14 were busy with – or firstly, have you got the delegation of

15 authority that says you can just up and go from Pretoria

16 and come to Marikana –

17 CHAIRPERSON: He wasn't going to get

18 that. He was going to give his –

19 MR MPOFU: Okay, what I –

20 CHAIRPERSON: - his job description.

21 MR MPOFU: Ja.

22 CHAIRPERSON: Have you got your job

23 description with you today, or is it still coming?

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

25 ek is inwonend in Rustenburg in die week en dit is in my

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1 kantoor in Pretoria. Ek het gedink ek sal oor die naweek,

2 Vrydag sal ek na my kantoor toe gaan en dit kry.

3 CHAIRPERSON: Your answer that you're

4 having –

5 MR MPOFU: I don't know – so do I

6 understand that now you're saying you didn't promise a

7 delegation of authority framework?

8 CHAIRPERSON: He didn't promise it today

9 –

10 MR MPOFU: He did. It's on the record.

11 CHAIRPERSON: I didn't understand him to

12 promise it today –

13 MR MPOFU: It's on the record, but that's

14 fine.

15 [10:03] CHAIRPERSON: Even if he promised it

16 today, it's lex non cogit ad impossibilia, he couldn't do

17 it. He's going to give it to us after the weekend. Let's

18 carry on. We'll get it after the weekend, and if

19 necessary, if you're finished with him already we'll get

20 him back for that.

21 MR MPOFU: Ja, well I'm entitled to know

22 what it is I'm going to get, Chair, but anyway, I'll move

23 on.

24 CHAIRPERSON: He's going to give you his

25 job description as it is contained in a document in his

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1 office. That's what he's going to get for you and we will

2 see it when it comes.

3 MR MPOFU: That's fine. I'll be happy to

4 have that, but that's not what he promised us yesterday.

5 CHAIRPERSON: That's fine, let's carry

6 on.

7 MR MPOFU: Thank you. Now we were busy

8 with the, what I call the significant events that, the

9 significant events around the incident on the 16th that I

10 would say have the Annandale fingerprint, so to speak. Is

11 it also correct that you mobilised the presence of

12 Lieutenant-Colonel McIntosh who was the chief negotiator?

13 GENERAAL-MAJOOR ANNANDALE: Voorsitter

14 nee, ek het nie Luitenant-Kolonel McIntosh in persoon

15 gemobiliseer nie.

16 MR MPOFU: Well, I thought your evidence

17 was that you called a – I can't remember the rank –

18 Strydom, who then brought McIntosh, but that that was done

19 at your initiative.

20 CHAIRPERSON: It's common cause, para 8

21 of his statement, that he telephoned the National

22 Coordinator for Hostage Negotiators, Lieutenant-Colonel

23 Strydom, asked him to deploy a team of negotiators and the

24 negotiators under the command of Lieutenant-Colonel

25 McIntosh in due course arrived. That's common cause. You

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1 don't have to ask him about that. He's already said it.

2 MR MPOFU: Chairperson, with the greatest

3 respect, that's exactly why I asked the question. The

4 answer should have been yes, but he says he did not. So

5 it's no longer common cause when he denies it.

6 CHAIRPERSON: Mr Mpofo, I don't want to

7 get involved in an argument with you. You asked an

8 inexactly phrased question, did you get him. The answer

9 was no, I didn't, somebody else sent him. I asked for, I

10 spoke – the answer was he spoke to someone else who sent

11 him. So anyway, let's not waste time on this –

12 MR MPOFU: It's exactly what I'm saying,

13 yes.

14 CHAIRPERSON: May I say this to you, the

15 time we have available is limited. Please, I want everyone

16 to think of it as water in a bucket. Every drop that's

17 wasted is something that we will regret. So let's carry on

18 using the water as profitably as we can.

19 MR MPOFU: Yes, Chairperson, no-one

20 should waste the water. That's the point I'm making.

21 General, really, is it true that through the medium of

22 somebody else you mobilised McIntosh?

23 MR BURGER SC: No, I object to that

24 question –

25 CHAIRPERSON: He said that in chief. Do

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1 we have to ask him something that he said in chief? You
 2 know that. Let's move on to your question based on that.
 3 Mr Burger, you turned your machine on. Do you want to say
 4 something?
 5 MR BURGER SC: Chair, it's in the
 6 statement which was read over four days. Why that question
 7 has to be repeated –
 8 CHAIRPERSON: You're now repeating what I
 9 said, so carry on, Mr Mpofo.
 10 MR MPOFU: Thank you. I don't know who's
 11 wasting time more here. It looks like it's a competition.
 12 Chairperson, or rather Mr Annandale, General Annandale, in
 13 other words through your efforts the person who was the
 14 chief planner and also the person who was the chief
 15 negotiator became prominent members of the operation.
 16 Correct?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 ja ek het vir onderhandelaars gevra en Luitenant-Kolonel
 19 McIntosh en sy span het opgedaag.
 20 MR MPOFU: Yes, it was also at your
 21 initiative that the deployment of the Special Task Force
 22 was involved. Correct?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 my inisiatief en voorstel, dis korrek.
 25 MR MPOFU: And can you tell us why you

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1 thought it was necessary to have a paramilitary unit such
 2 as the Special Task Force and then went on to mobilise its
 3 deployment?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 die Spesiale Taakmag is nie 'n paramilitêre eenheid nie.
 6 Voorsitter, die Spesiale Taakmag is 'n polisie eenheid.
 7 Die definisie van 'n paramilitêre eenheid verwys na 'n
 8 eenheid nie verbonde aan die Staat nie. Voorsitter, en dan
 9 die redes hoekom ek die Spesiale Taakmag ontplooi het, het
 10 ek omvattend na verwys in my getuienis. Ek sal dit graag
 11 herhaal as dit nodig is.
 12 MR MPOFU: Okay, can you go to exhibit Q?
 13 Unfortunately it's quite a bulky exhibit and it's not, the
 14 numbers are not – rather, the pages are not numbered, but
 15 you'll see that it outlines the various units. Towards the
 16 back, I've numbered mine and it's page 88, but I don't
 17 expect you to do that, but just to give you a sense, it's
 18 page 88. It's a mission –
 19 CHAIRPERSON: Just give us the heading of
 20 that page.
 21 MR MPOFU: That's what I'm doing, Chair.
 22 It's mission statement of the STF. The slide before that
 23 just says "mission." Ja, the one that's on the, that page
 24 on the overhead. Ja, can you read out the description of
 25 the Special Task Force there?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 "The Special Task Force tries to be the model of excellence
 3 for tactical paramilitary policing operations in dealing
 4 with" –
 5 MR MPOFU: Yes, carry on.
 6 MAJOR-GENERAL ANNANDALE: - "hostage
 7 situations, acts of terror, sabotage, sieges, other high-
 8 risk threats."
 9 MR MPOFU: Thank you. So do you now
 10 accept that by the SAPS' own description the STF is a
 11 paramilitary –
 12 CHAIRPERSON: Mr Mpofo, that's not a good
 13 question. He gave a definition of paramilitary which you
 14 may not agree with. He said it's something not aligned to
 15 the State. The STF obviously are people who work for the
 16 State. Your real dispute with him may relate to the
 17 meaning of paramilitary, but without challenging his
 18 definition of paramilitary you're not going to get the
 19 answer you want by asking the question you asked.
 20 MR MPOFU: I'll leave it.
 21 CHAIRPERSON: It's a matter for argument
 22 anyway. If the dictionaries may well show that the
 23 definition of paramilitary you have in mind is correct, in
 24 which case you'll be able to argue the point –
 25 MR MPOFU: I have no definition. It's

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1 the SAPS document that says it's a paramilitary –
 2 CHAIRPERSON: No, no, Mr Mpofo, he said
 3 paramilitary means not aligned to the State. STF obviously
 4 is aligned to the State; they're part of the police force –
 5 I beg your pardon, police service, and they are a State
 6 body. So on his definition, whatever the STF does, even if
 7 it might qualify for, might comply with the definition of
 8 paramilitary in the dictionary, he won't accept it as being
 9 paramilitary because he's got another definition. So
 10 you're wasting your time down that line. You say you're
 11 going to not proceed with the point. Let's move to the
 12 next one.
 13 MR MPOFU: And the person that you
 14 organised to head the planning process was also from this
 15 paramilitary force, according to the exhibit Q. In other
 16 words he was from STF.
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 dis regtig jammer dat mnr Mpofo nie hier was toe ek
 19 getuienis gelewer het nie, en ek het ook daarna verwys dat
 20 Kolonel Scott verbonde is aan die Spesiale Taakmag. Ek het
 21 ook verwys dat hy nie een van die drie operasionele eenhede
 22 is nie, dat hy hoofsaaklik verantwoordelik is vir opleiding
 23 en ook ander funksies.
 24 MR MPOFU: No General, I've explained to
 25 you, I listened to your evidence very carefully on the

<p style="text-align: right;">Page 9295</p> <p>1 internet and I've read the transcript, and the question is 2 very simple, which is that – I accept whatever you said, 3 but that the person that you appointed was from the STF, 4 yes I know.</p> <p>5 GENERAAL-MAJOOR ANNANDALE: Voorsitter 6 ja, ek het so gesê in my verklaring en ek het so ook gesê 7 onder getuienis en ek het dit nou net so weereens bevestig.</p> <p>8 MR MPOFU: And the person that you 9 mobilised indirectly, McIntosh, let's just say McIntosh is 10 the commander of the Family Violence, Sexual Offences and 11 Child Protection Unit, and a hostage negotiator. Correct?</p> <p>12 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 13 ek het nie Luitenant-Kolonel McIntosh geken voor die tyd 14 nie. Ek het na die tyd verneem hy is verbonde aan die 15 Speurdiens en ek het geweet hy, toe hy ontplooi is, dat hy 16 'n onderhandelaar is.</p> <p>17 MR MPOFU: You also mobilised the 18 additional deployment of the NIU personnel. Correct?</p> <p>19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 op versoek van die –</p> <p>21 CHAIRPERSON: - paragraph 4 of exhibit 22 GGG1.</p> <p>23 MR BURGER SC: I just wanted friendly to 24 ask my learned friend not to ask questions which we've 25 dealt with, which is in this statement, which we've heard</p>	<p style="text-align: right;">Page 9297</p> <p>1 MR MPOFU: Thank you, Chairperson. 2 CHAIRPERSON: - ability to protect you 3 and to protect everybody else. So let's just carry on with 4 the – keep an eye on the ball, let's see how many goals we 5 can score by teatime.</p> <p>6 MR MPOFU: Thank you, Chairperson. It's 7 correct, isn't it, that of the units that were mobilised as 8 from the 13th onwards, at least five of them have as their 9 standard armament sharp ammunition? Sorry, just so that we 10 don't waste another question, those five are the TRT, NIU – 11 it's four, I'm sorry, TRT, NIU and STF and K9. There may 12 be others, but at least those four use sharp ammunition.</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 alle aangestelde polisie-beamptes in terme van die Suid- 15 Afrikaanse Polisie Wet –</p> <p>16 CHAIRPERSON: I think Mr Mpofu really is 17 concentrating on assault rifles. I think he knows 18 everybody has got side-arms. The question really relates 19 to units whose members have assault rifles. Is that right, 20 Mr Mpofu?</p> <p>21 MR MPOFU: That's correct, thank you, 22 Chair.</p> <p>23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 24 daar is nie 'n eenheid wat ek aan kan dink wat nie 25 uitgereik is met R5-aanvalsgewere nie. Dit sluit in</p>
<p style="text-align: right;">Page 9296</p> <p>1 for days now.</p> <p>2 CHAIRPERSON: Well, I pointed out that's 3 at the end of para 4 of exhibit GGG1.</p> <p>4 MR BURGER SC: Perhaps we should both do 5 that, Chair, and see whether it doesn't help.</p> <p>6 CHAIRPERSON: I think we can accept that 7 Mr Mpofu is taking the points that we make and he will act 8 appropriately.</p> <p>9 MR MPOFU: Ja, Chairperson, I don't 10 appreciate my cross-examination being interrupted 11 unnecessarily –</p> <p>12 CHAIRPERSON: Mr Mpofu –</p> <p>13 MR MPOFU: No, this is an objection. I'm 14 representing people here who died and who are victims. If 15 I'm going to be ridiculed –</p> <p>16 CHAIRPERSON: I'm here to protect you. 17 We've had this debate before. Counsel are entitled to 18 object. If they object incorrectly or the objection is 19 bad, I will overrule them. If they're good, I'll uphold 20 them. If I think –</p> <p>21 MR MPOFU: Well, I just want to –</p> <p>22 CHAIRPERSON: If I think there is being 23 undue interference with cross-examination I'll deal with 24 it. Please don't unnecessarily raise the matter. I'm 25 doing my duty to the best of my –</p>	<p style="text-align: right;">Page 9298</p> <p>1 Speurdiens, dit sluit in Openbare Orde Polisiëring, dit 2 sluit in die patrolliewaens. 3 [10:23] Daar is ook 'n bestaande reëling dat elke 4 polisievoertuig tydens ontplooiing moet 'n R5-aanvalsgeweer 5 op die voertuig hê.</p> <p>6 MR MPOFU: Okay, well in the interest of 7 time I'll move on. I think that you know that I'm asking 8 about standard issue because that's exactly what I said, 9 but the –</p> <p>10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 dit is standaard uitreiking. Ek wil dit net op die tafel 12 plaas, dit is standaard uitreiking.</p> <p>13 MR MPOFU: Ja, I understand that, 14 General. You described yourself as the, that your role 15 there was as the coordinator of the specialised units. Is 16 that correct?</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 in bewysstuk GGG1 op bladsy 2, paragraaf 7, het ek gesê, en 19 ek haal aan, "I had the responsibility as the Head, 20 Specialised Operations, to command and coordinate the 21 deployment of the NIU and STF members," en dan onder my 22 getuienis het ek ook gesê daar was 10 lede van die Mobiele 23 Operasies eenheid ook betrokke.</p> <p>24 MR MPOFU: Yes, did anyone give you this 25 responsibility to coordinate the NIU and STF, or did you</p>

<p style="text-align: right;">Page 9299</p> <p>1 once again deploy yourself?</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>3 ons het as 'n span opgetree saam met die oorhoofse</p> <p>4 bevelvoerder, en ek het getuig dat beide die eenhede, en</p> <p>5 selfs ook Mobiele Operasies is nasionale entiteite en</p> <p>6 kapasiteite, en dit is my verantwoordelikheid. Ek het</p> <p>7 hulle gemobiliseer.</p> <p>8 MR MPOFU: Should I take that as a no,</p> <p>9 nobody specifically assigned you to that responsibility –</p> <p>10 CHAIRPERSON: He explained, Mr Mpofo,</p> <p>11 that he's the Component Head of Specialised Operations.</p> <p>12 MR MPOFU: And?</p> <p>13 CHAIRPERSON: And he's got, these matters</p> <p>14 fall under him. He's got, and he does the necessary in his</p> <p>15 capacity as Component Head. So it wasn't necessary for him</p> <p>16 to look upwards. It wasn't very far he could look upwards</p> <p>17 anyway to see whether anyone else could tell him whether he</p> <p>18 could do what he's in any event employed and appointed to</p> <p>19 do.</p> <p>20 MR MPOFU: Okay, so are we also going to</p> <p>21 get that from the job description or whatever it is that</p> <p>22 you're going to supply, the fact that you can "sommer" come</p> <p>23 and command the STF and NIU merely because you are the</p> <p>24 Component Head?</p> <p>25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>	<p style="text-align: right;">Page 9301</p> <p>1 MR MPOFU: Ja, I'm asking for the –</p> <p>2 CHAIRPERSON: - to show that what he says</p> <p>3 is incorrect then we can hear about it –</p> <p>4 MR MPOFU: No –</p> <p>5 CHAIRPERSON: - but otherwise he's going</p> <p>6 to produce his appointment letter which sets out his</p> <p>7 functions apparently.</p> <p>8 MR MPOFU: Yes.</p> <p>9 CHAIRPERSON: If these things aren't</p> <p>10 there, then maybe you can make something of it, but aren't</p> <p>11 there better points that you can ask?</p> <p>12 MR MPOFU: No, there aren't, Chairperson</p> <p>13 –</p> <p>14 CHAIRPERSON: I understand –</p> <p>15 MR MPOFU: The only question –</p> <p>16 CHAIRPERSON: Can I say something? I</p> <p>17 understand you've got a difficult task. I understand the</p> <p>18 function you're performing here is very important. I</p> <p>19 understand you've got a lot of clients and you've got to</p> <p>20 put their case to the best of your ability. I understand</p> <p>21 all that and I'm here to see to it that you get the chance</p> <p>22 to do that, but I also have the right to make sure that</p> <p>23 every drop of water that's in the bucket is properly used.</p> <p>24 So this question you're now asking I would suggest you</p> <p>25 leave for the moment. When we've got the document that</p>
<p style="text-align: right;">Page 9300</p> <p>1 dis deel van my funksies en verantwoordelikhede en</p> <p>2 behoorlik so uiteengesit dat ek verantwoordelik is vir die</p> <p>3 koördinerings van onder andere die vermeldde eenhede.</p> <p>4 MR MPOFU: And you do know that the STF</p> <p>5 in particular is established in terms of section 218(m) of</p> <p>6 the Constitution, and if you do, which I assume you do, can</p> <p>7 you explain to us how from that constitutional power to a</p> <p>8 situation where you, you Mr Annandale, can just command it</p> <p>9 at will?</p> <p>10 MR MAHLANGU: I am lost here, Mr</p> <p>11 Chairperson.</p> <p>12 CHAIRPERSON: Before you even get back on</p> <p>13 the page, Mr Semenya wants to say something. Yes, Mr</p> <p>14 Semenya?</p> <p>15 MR SEMENYA SC: Chair, Mr Mpofo must give</p> <p>16 us the basis for why he says the witness is commanding the</p> <p>17 STF at will.</p> <p>18 MR MPOFU: Yes, well the witness himself</p> <p>19 said he, merely because he's the head of the unit, he – not</p> <p>20 of that unit, by the way – he has the right without being</p> <p>21 ordered by anybody to just arrive in Marikana and command</p> <p>22 them, firstly to deploy them, which he has already agreed</p> <p>23 that he did, and then to arrive here and command them.</p> <p>24 CHAIRPERSON: - said that, and if you've</p> <p>25 got something to put to him -</p>	<p style="text-align: right;">Page 9302</p> <p>1 he's promised us, maybe you can return to it, but I don't</p> <p>2 think there's any point in fencing almost in the dark about</p> <p>3 the point before we've got the document he talked about.</p> <p>4 MR MPOFU: No, fine.</p> <p>5 COMMISSIONER HEMRAJ: Mr Mpofo, the</p> <p>6 question you perhaps want to put, that he deployed the STF</p> <p>7 here or any other unit without it being necessary for it to</p> <p>8 be deployed, is that the point you were –</p> <p>9 MR MPOFU: Yes, in a way. That's the</p> <p>10 bigger point because – you're quite right, Commissioner –</p> <p>11 there are two components to it. It would be the question</p> <p>12 of whether it was necessary to do so, which is a separate</p> <p>13 point, but what I was busy with now, which is related, is</p> <p>14 the fact that he even has the right to do so, the</p> <p>15 authority, which is why we're talking about delegations and</p> <p>16 job descriptions, and the Chairperson is right, when those</p> <p>17 documents are brought it might bring to light the fact that</p> <p>18 he's got the authority, and then the only question would be</p> <p>19 your question, which is whether it was necessary in any</p> <p>20 event, even assuming he had the right to do so.</p> <p>21 COMMISSIONER HEMRAJ: Is that now in</p> <p>22 dispute, that he had the right to deploy –</p> <p>23 MR MPOFU: Yes, which, as the Chairperson</p> <p>24 said, will be resolved or not resolved when he presents his</p> <p>25 credentials.</p>

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1 CHAIRPERSON: Okay, let's move on for the
2 moment. The passage in the Constitution to which you
3 refer, section 218(1)(m) is already set out in exhibit Q.
4 I take it the witness is aware of it.
5 MR MPOFU: Yes.
6 CHAIRPERSON: But I'd like to ask the
7 witness a question which steps a little bit back to the
8 point that you made -
9 MR MPOFU: Yes, thanks Chairperson.
10 CHAIRPERSON: - that you and I were
11 talking about, your suggestion that the unit was a
12 paramilitary one, which he denied, and you gave a
13 definition, Major-General, of paramilitary, a body that's
14 not aligned to the State, I think is what you said. Now if
15 you look at exhibit Q, look at the section dealing with the
16 STF, look at the section headed "Mission statement" to
17 which I think Mr Mpofu did refer you, have you got that
18 document in front of you?
19 GENERAAL-MAJOOR ANNANDALE: Ek het dit,
20 Voorsitter.
21 CHAIRPERSON: The first two lines read,
22 "The Special Task Force strives to be the model of
23 excellence for tactical paramilitary policing operations."
24 Do you persist in your statement that the STF is not a
25 paramilitary body?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 hoe ek paramilitêr verstaan is dat dit moet verbonde wees
3 aan die Staat. So in terme van die metodes wat hulle doen
4 kan dit geskoei wees op militêre metodes, maar tegnies is
5 hulle nie 'n paramilitêre eenheid nie.
6 CHAIRPERSON: Anyway, that's a matter for
7 further argument, I would imagine. Alright, so please
8 proceed, Mr Mpofu.
9 MR MPOFU: Thank you, Chairperson. You
10 say, well we've had this debate now about whether you were
11 as of right entitled or you were deployed by anybody. In
12 the following sentence in paragraph 7, after you've said
13 that you were, you had the responsibility to command and
14 coordinate the deployment of the NIU and STF, the very next
15 sentence you say, "The deployment was done under the
16 command and guidance of Mbombo," and so on. What
17 deployment were you referring to there?
18 CHAIRPERSON: Mr Mpofu, it's obvious if
19 one reads the statement, the previous sentence, he says, "I
20 had the responsibility as the Head of Specialised
21 Operations to command and coordinate the deployment of the
22 NIU and STF members. The deployment was done under the
23 command and guidance of the Provincial Commissioner."
24 Obviously he's referring to the NIU and STF members whom he
25 deployed there, as he'd previously said.

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1 MR MPOFU: The Chairperson is right, ja.
2 He's not talking about his own deployment, yes. Okay, now
3 I want to suggest to you that – General, I'm now moving to
4 the, back to the 13th. We'll come back to the 16th, but
5 we've covered most of that ground.
6 GENERAAL-MAJOOR ANNANDALE: Kan ek net
7 vra, Voorsitter, dat ek net – daar was opmerkings gemaak en
8 ek sal graag net wil geleentheid hê om te reageer op dit.
9 MR MPOFU: Okay.
10 GENERAAL-MAJOOR ANNANDALE: Reg, die
11 oomblik as ek my funksies en verantwoordelikhede voorlê sal
12 u sien dat dit, ek sodanige magte het om die lede te
13 ontplooi, en dan wil ek net verder verwys na die mandaat
14 van STF. Voorsitter, en dan in dieselfde bewysstuk Q, die
15 bladsy wat getitel is "Functions within the mandate,"
16 verwysend na Spesiale Taakmag, en pertinent verwysend na
17 hulle ontplooiing by Marikana haal ek aan, "Operational
18 assistance within the SAPS for criminal related high-risk
19 operations where specialised skills and equipment are
20 required." Dankie vir die geleentheid om dit op die tafel
21 te sit.
22 MR MPOFU: That's fine. That of course
23 deals with the mandate of the STF itself. We were busy
24 with your mandate to deploy them, but that's fine –
25 CHAIRPERSON: Can I interrupt you for a

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1 moment and ask a question flowing from the answer we just
2 received. What were the specialised skills which the STF
3 brought to Marikana?
4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 ek het verwys na die "intelligence driven operations," die
6 pertinente vaardighede wat hulle het as hulle moet persone
7 gaan arresteer wat hulle self bevind in sekere persele.
8 Voorsitter, ek het verder verwys na skerpskutter
9 vaardighede.
10 CHAIRPERSON: Shooting capabilities, I
11 think. I think sharpshooting capabilities is the –
12 MR MAHLANGU: Shooting capabilities, yes.
13 VOORSITTER: Stem u saam, Generaal-
14 Majoor?
15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
16 ons verwys daarna na "sniper" en "counter sniper," ja.
17 Voorsitter, en dan ook die, en dat hulle 'n helikopter kan
18 gebruik as 'n platform om dan met tou te ontplooi.
19 CHAIRPERSON: It's a helicopter. I think
20 he's talking about with a rope ladder. But anyway, with a
21 helicopter – that's a very suitable stage for the lights to
22 go out, isn't it. It doesn't help to say see how it looks.
23 I think we'd better take the adjournment until the lights
24 are restored.
25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:25] CHAIRPERSON: The Commission resumes.
 2 I'm glad that the lights are on again and we can see what
 3 we're doing. I'm sorry about the time that was lost. I
 4 don't know how many drops of water that is out of the
 5 bucket. Majoor-Generaal, u is nog steeds onder eed.
 6 CHARL ANNANDALE: s.o.e.
 7 CHAIRPERSON: Mr Mpfu?
 8 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 9 Thanks, Chairperson. The thinking this side is that the
 10 bucket is half empty, Chairperson, but we'll carry on.
 11 CHAIRPERSON: Or it's half full, all the
 12 more reason to use what's left carefully.
 13 MR MPOFU: Thank you, Chairperson.
 14 General, this question of deployment is quite important
 15 because we're going to argue that one of the deficiencies
 16 in this whole operation was that the deployments were done
 17 incorrectly and not by the authorised people, and as have
 18 been suggested, sometimes unnecessarily. Surely – let me
 19 put it this way. Your powers, the powers that you said you
 20 have to deploy the STF, as you did, do they similarly apply
 21 to the NIU? Is it the same source of power, of authority?
 22 GENERAAL-MAJOOR ANNANDALE: Dit is
 23 korrek, Voorsitter.
 24 CHAIRPERSON: Mr Mpfu, it may cut things
 25 short if I say that if one looks in exhibit Q in the

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1 section dealing with the NIU, there is a page headed
 2 "Deployment under NIU" and it says, "The Divisional
 3 Commissioner of Operational Response Services will
 4 prioritise," yes, so you're there?
 5 MR MPOFU: Okay, thanks, Chairperson.
 6 Who is the Divisional Commissioner of Operational Response
 7 Services?
 8 GENERAAL-MAJOOR ANNANDALE: Luitenant-
 9 Generaal Mawela.
 10 MR MPOFU: Yes, okay, now can you go to
 11 the page that the Chairperson just referred to? It's
 12 probably, it's about 10 pages before the one that we dealt
 13 with. It's head "Deployment under NIU," and NIU is just
 14 before STF.
 15 CHAIRPERSON: In fact the second page of
 16 the section dealing with the National Intervention Unit.
 17 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 18 ek het hom, Voorsitter.
 19 MR MPOFU: Yes, okay, now if you look at
 20 the second bullet, can you read it out, please?
 21 GENERAAL-MAJOOR ANNANDALE: Ek het die
 22 tweede "bullet," dis reg.
 23 MR MPOFU: Please read it out.
 24 MAJOR-GENERAL ANNANDALE: "Divisional
 25 Commissioner of Operational Response Services will

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1 prioritise and approve the deployment of the unit to other
 2 provinces. The National Commissioner can, however, deploy
 3 the NIU to any province should he or she so desire."
 4 MR MPOFU: Yes, so it seems from that
 5 that the two people who are authorised to approve the
 6 deployment of the NIU to other provinces are either
 7 Lieutenant-General Mawela or the National Commissioner. It
 8 says nothing about you.
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 ek het die gedelegeerde magte en Generaal Mawela was ook
 11 bewus van die ontplooiing.
 12 MR MPOFU: Okay, well so that there's no
 13 further confusion, can you, when you bring that other
 14 document, whatever it is, also supply us with the delegated
 15 authority that you referred to which entitles you to do so?
 16 If it's not the same document.
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 dit is in my amp en my aanstelling is dit my magte. Daar
 19 is nie 'n dokument wat elke ding omskryf pertinent soos in
 20 as dit en dit en dit gebeur nie, maar ek sal die dokumente
 21 op die tafel lê.
 22 MR MPOFU: Yes.
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, u
 24 sal merk in die Polisie Wet word daar omvattend verwys na
 25 die Nasionale Kommissaris, maar ook dat die Nasionale

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1 Kommissaris dan sodanige persoon of persone kan toewys of
 2 aanwys. Duidelik kan mens nie verwag dat die Nasionale
 3 Kommissaris elkeen doen nie, dis hoekom ons 'n struktuur
 4 het in die polisie.
 5 MR MPOFU: Yes, General, just to assure
 6 you, that I understand very well. I don't expect – when I
 7 ask for the document, I want the document from which the
 8 power is sourced. I know that, I mean you're never going
 9 to get a delegation framework if it says you can make
 10 breakfast, it's not going to say now you can make eggs, now
 11 you can make this. That I understand, but all I want is
 12 the delegation framework, broad, narrow or whatever, that
 13 where you source that power.
 14 GENERAAL-MAJOOR ANNANDALE: Dit sal so
 15 voorgelê word in terme van my dokument funksies en
 16 verantwoordelikhede.
 17 MR MPOFU: And just to support what you
 18 are saying about the – well, before I support you, let me
 19 put this to you. One of the reasons I'm putting this to
 20 you is because the National Commissioner testified here
 21 that she is the person who's responsible for these
 22 deployments, which is not in dispute I think between you
 23 and I. The second question that obviously arises is
 24 therefore is whether she delegated that power, and section
 25 15(1) of the Police Act, in support of what you are saying,

<p style="text-align: right;">Page 9311</p> <p>1 says that –</p> <p>2 CHAIRPERSON: Mr Mpofu, it looks as if –</p> <p>3 I don't know if we have to worry about the National</p> <p>4 Commissioner, but anyway you can ask her I suppose when she</p> <p>5 comes –</p> <p>6 MR MPOFU: Well, he introduced the</p> <p>7 National Commissioner –</p> <p>8 CHAIRPERSON: I know, but this document</p> <p>9 that we're looking at headed "Deployment," talks about a</p> <p>10 divisional instruction establishing and functioning of</p> <p>11 National Intervention Units. So it looks as if this</p> <p>12 document that we've got in front of us gives the text, or</p> <p>13 summarises anyway, this divisional instruction, which I</p> <p>14 take it would have been issued by the National Commissioner</p> <p>15 on the 20th of February 2010 when the National Intervention</p> <p>16 Units were set up. Presumably in that document she would</p> <p>17 have given certain powers to the Divisional Commissioner</p> <p>18 and he in turn, as the witness says, would have the power</p> <p>19 to delegate those powers further to him, and that's a</p> <p>20 matter – anyway, the documents that we are going to get are</p> <p>21 presumably going to show us all that, and if they're not,</p> <p>22 well –</p> <p>23 MR MPOFU: Yes, thank you. Thank you,</p> <p>24 Chairperson.</p> <p>25 CHAIRPERSON: - the point can be taken</p>	<p style="text-align: right;">Page 9313</p> <p>1 gemobiliseer het, en dat Openbare Orde, TRT, K9 en sodanige</p> <p>2 eenhede is provinsiale eenhede en as sodanig word die</p> <p>3 ontplooiing van ander provinsies af ter ondersteuning van</p> <p>4 'n pertinente provinsie gehanteer, gewoonlik tussen die</p> <p>5 Adjunk Provinsiale Kommissaris van die onderskeie</p> <p>6 provinsies en deur die bemiddeling van die NATJOC.</p> <p>7 MR MPOFU: Yes, and it is from that</p> <p>8 understanding of how it should work that you testified on</p> <p>9 page 8206 of the record and said, quote, "I requested</p> <p>10 General Mpembe and General Naidoo that between them that</p> <p>11 they can communicate with their counterparts in the</p> <p>12 neighbouring provinces for additional POP personnel." Is</p> <p>13 that correct?</p> <p>14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>15 ek het so getuig.</p> <p>16 MR MPOFU: Do you know that unlike the</p> <p>17 other units that we discussed, which we will be educated</p> <p>18 upon when you bring the documents, the deployment of POP is</p> <p>19 specifically dealt with in the Police Act? And sorry, just</p> <p>20 further, General, just so that we don't have many</p> <p>21 questions, and that as part of that – and that the two</p> <p>22 persons entitled to deploy POP nationally in terms of that</p> <p>23 act are the National Commissioner in terms of section 17(1)</p> <p>24 of the act, and the President in terms of section 17(5)?</p> <p>25 Sorry, can you answer that part? I'll ask you a separate</p>
<p style="text-align: right;">Page 9312</p> <p>1 further.</p> <p>2 MR MPOFU: Yes. I want to put to you as</p> <p>3 well that surely given what you and I had agreed about the</p> <p>4 hierarchical nature of the Police Service, it can't be</p> <p>5 correct that, you know, people can just wake up one day and</p> <p>6 deploy these important units which are provided for in the</p> <p>7 Constitution. I'm sure you'd agree with that, that there</p> <p>8 must be some legislative authority to do so.</p> <p>9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>10 die Suid-Afrikaanse Polisiediens is 'n professionele</p> <p>11 organisasie. Ons staan nie op in die oggende en dan</p> <p>12 besluit ons sommer net op die ingewing ons gaan dit en dit</p> <p>13 en dat doen nie. Ons laat ons lei in terme van riglyne,</p> <p>14 instruksies, wetgewing.</p> <p>15 MR MPOFU: Alright, okay. Then the</p> <p>16 position with STF and NIU will then be revisited when we</p> <p>17 get those documents. Would you agree with me that – or</p> <p>18 firstly, let me put it this way. You in your evidence-in-</p> <p>19 chief testified, or it might have been during Mr</p> <p>20 Budlender's cross-examination, that you asked Major-General</p> <p>21 Mpembe and Naidoo to phone their counterparts in other</p> <p>22 provinces and get POP members. Is that correct?</p> <p>23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>24 ek het verduidelik dat die STF, die NIU, en die Mobile</p> <p>25 Operations is nasionale entiteite; dis hoekom ek hulle</p>	<p style="text-align: right;">Page 9314</p> <p>1 question.</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>3 ja, daar is verwysing daarna in die Polisie Wet. Ek is</p> <p>4 onder die indruk – ek is sekerlik verkeerd – dat die</p> <p>5 Minister kan ook, is ook 'n verdere vlak, maar ek aanvaar</p> <p>6 dit so.</p> <p>7 MR MPOFU: Yes, no actually remarkably</p> <p>8 the Minister doesn't have that power. It's the National</p> <p>9 Commissioner and the, rather, the President in consultation</p> <p>10 with cabinet, the whole cabinet. Now the issue really is</p> <p>11 that what you suggested here in the part that I quoted and</p> <p>12 which you've repeated now is not how it works, how it</p> <p>13 should work, that a person in your position can tell – well</p> <p>14 even if you hadn't played any role, but that a provincial</p> <p>15 person like Major-General Mpembe and Naidoo can once again</p> <p>16 "sommer" phone someone in Mpumalanga and Free State and ask</p> <p>17 for POP people to come. That's not how it works.</p> <p>18 MR BURGER SC: Chair, with respect, I</p> <p>19 object to the relevance of this. Will my learned friend</p> <p>20 take us into his confidence and tell us whether his</p> <p>21 suggestion is that POP should not have been called out or</p> <p>22 they should have been called out, or more POP should have</p> <p>23 been called out or less POP, and then any of those</p> <p>24 questions, how that relates to the incidents of the 9th to</p> <p>25 the 16th?</p>

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1 CHAIRPERSON: Yes, Mr Mpofu, you'll
 2 answer Mr Burger in a moment –
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: But my recollection is that
 5 in any event the National Commissioner had been involved
 6 and I thought it wasn't just, never mind what the witness
 7 says in the passage you quoted, there was other evidence
 8 dealing with the deployment of POP people from other
 9 provinces, but perhaps you should deal with Mr Burger's
 10 objection first.
 11 MR MPOFU: Yes, thanks, I'll deal with
 12 both –
 13 COMMISSIONER HEMRAJ: Before you do that,
 14 Mr Mpofu, didn't the National Commissioner testify at
 15 length about the procedure involved in the deployment of
 16 POP members from one province to another?
 17 [11:44] MR MPOFU: Yes, that's exactly the point,
 18 and it's different from what the witness says is the
 19 process.
 20 CHAIRPERSON: But that with respect
 21 doesn't matter. If the National Commissioner said I did
 22 what had – I did what had -
 23 MR MPOFU: But she never said that.
 24 CHAIRPERSON: - to be done, or I approved
 25 of what was done – I thought she did. I thought she said

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1 she agreed with what was done and she'd authorised it. If
 2 she did, the fact that this witness may arguably have got
 3 it a bit wrong in the paragraph you mentioned isn't
 4 relevant, but anyway, Mr Burger's point is what is the
 5 relevance, is he said –
 6 MR MPOFU: No, I'm sorry, Chairperson,
 7 with the greatest respect, if the National Commissioner did
 8 it and this witness did it wrongly, we are entitled to know
 9 whether those people arrived there through the wrong
 10 procedure or the correct one, of course.
 11 CHAIRPERSON: If the National
 12 Commissioner authorised the deployment of POP people from
 13 another province, the fact that this witness – I didn't say
 14 he did it wrongly – the fact that this witness didn't
 15 express himself correctly in the paragraph that we've
 16 mentioned, it doesn't matter because if the people were
 17 there validly, as it were, because of what the National
 18 Commissioner did, then they were there, but you must answer
 19 the question Mr Burger put, and I understood Mr Semanya has
 20 turned his machine on, so perhaps let's see what and hear
 21 what Mr Burger says –
 22 MR MPOFU: Let me deal with Mr Burger
 23 very quickly –
 24 CHAIRPERSON: No, no, it may be that it
 25 will be helpful for you to deal with both of them together.

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1 Mr Semanya?
 2 MR SEMENYA SC: Chair, my recollection of
 3 the evidence is that on the 15th after the meeting of the
 4 National Forum there were all heads of various provinces,
 5 where the National Commissioner gave an express mandate,
 6 please assist with everything you can in relation to the
 7 events that are happening in the North West.
 8 CHAIRPERSON: That's my recollection as
 9 well, Mr Mpofu.
 10 MR MPOFU: So it is mine as well, but the
 11 15th happened after the 13th, as it happens in terms of
 12 numerical sequence. All I'm asking is whether before that
 13 happened this witness mobilised POP and POP was there on
 14 his method before the correct method of the 15th happened or
 15 did not happen.
 16 CHAIRPERSON: This witness, as I
 17 understand it, only arrived really on the scene – did he
 18 not? – on the 13th. He had on the 12th agreed to deploy
 19 members from the NIU, which we're not busy with at the
 20 moment, in support of what was happening in the North West
 21 province, but I suggest you deal with Mr Burger's
 22 objection.
 23 MR MPOFU: Well, Mr Burger's objection is
 24 not valid. I already took Mr Burger and everyone who was
 25 listening into my confidence, or into his confidence, as it

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1 were, when I said to the witness in preface to the
 2 question, one of the things we are going to argue is that
 3 the deployments were done incorrectly and in an
 4 unauthorised manner and sometimes unnecessarily. So I
 5 don't know why I must repeat the basis of that question
 6 because that's exactly –
 7 CHAIRPERSON: I think Mr Burger's point
 8 is that even if they were done invalidly, it doesn't
 9 matter. But anyway, Mr Burger must speak for himself.
 10 MR BURGER SC: Then I formally object.
 11 Then the question line is clearly irrelevant. Whether they
 12 had a mandate or had no mandate is quite irrelevant in
 13 considering why what happened in August happened, and it
 14 now appears that my learned friend's version is not that
 15 there were too many POPs, or too few POPs, or from the
 16 wrong provinces. He's got no version on that. He's just
 17 probing something which is irrelevant and I object to that
 18 line of questioning.
 19 MR MPOFU: Well, Chairperson, if I may
 20 respond to that.
 21 CHAIRPERSON: Of course. I expect you to
 22 respond.
 23 MR MPOFU: Yes. No, I think it's
 24 ridiculous, Chairperson, to suggest –
 25 CHAIRPERSON: Mr Burger, don't tell me

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1 what you think –

2 MR MPOFU: Well, my submission –

3 CHAIRPERSON: I'm sorry, Mr Mpofu, don't

4 tell me what you think. You just make a submission –

5 MR MPOFU: Ja, my submission is that to

6 say that to a victim of a shooting that happens in place X

7 that it's irrelevant for them to know whether the policeman

8 who shot them was authorised to be there in the first place

9 or not, or was not supposed, was wrongly and unlawfully or

10 in an unauthorised manner there in the first place, how on

11 earth can that be irrelevant to this inquiry? Really,

12 Chairperson, let's not waste more time on this kind of

13 thing.

14 CHAIRPERSON: - reply do you have to the

15 point Mr Mpofu's made?

16 MR BURGER SC: Chair, whether the POP was

17 there in an authorised fashion or not in an authorised

18 fashion will not help us to decide what happened on the

19 16th, how 34 people lost their lives. It does not advance

20 the debate. My learned friend, with respect, I suspect is

21 probing a civil claim on authority. He can do that at his

22 heart's content at discovery stage then. This is not the

23 forum for that. What is his version, I ask rhetorically,

24 were they properly authorised or not properly authorised?

25 If not, how does he dealt with the evidence of the National

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1 Commissioner, which stands thus far unchallenged?

2 CHAIRPERSON: Mr Mpofu –

3 MR MPOFU: Yes, if I may just –

4 CHAIRPERSON: Mr Mpofu, are your

5 questions then directed solely to what happened before the

6 15th?

7 MR MPOFU: Yes, they are on this aspect,

8 and they're based on the evidence-in-chief. I don't know

9 what other basis I can use for cross-examination. All I'm

10 saying is that the witness says to this forum I did this, I

11 asked Mpembe to phone his friends - his counterparts,

12 sorry, his counterparts and so on and so on, and it's

13 either through that effort those POP arrived, or it's

14 either they didn't arrive and it's through the other effort

15 on the 15th. That is a different matter, but what I'm

16 surely entitled to do - and I reject the notion that this

17 has anything to do with civil claims – is to establish that

18 the policemen who shot and killed people and maimed others

19 were not, even in the first place not authorised to be

20 there, and I think that, if you put it in those simple

21 terms, that surely can never be irrelevant.

22 CHAIRPERSON: Mr Mpofu, I'm afraid I

23 don't understand what you're saying. Deal with the 13th

24 separately. As far as the 16th is concerned, let us assume

25 for the sake of this discussion that the present witness

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1 didn't have authority to deploy the people who were

2 deployed - let's assume that for the moment – and he tried

3 to do it, but also in parallel, unknown to him – let's

4 assume that also – the National Commissioner did what had

5 to be done on the evening of the 15th, then it doesn't

6 matter what this witness tried to do. If the National

7 Commissioner did what had to be done on the 15th then the

8 people were validly there on the 16th and insofar as they

9 shot and maimed people, they did so as people who were

10 lawfully there, and whether they acted correctly or not,

11 whether the plan under which they were there was correct,

12 was a sensible plan, a reasonable plan, these are other

13 matters, but strictly speaking Mr Burger is correct as far

14 as the – as I see it –

15 MR MPOFU: No –

16 CHAIRPERSON: - in regard to the

17 relevance.

18 MR MPOFU: No, Chair –

19 CHAIRPERSON: In regard to the 13th –

20 MR MPOFU: Ja.

21 CHAIRPERSON: - that may well –

22 MR MPOFU: No, I'm not –

23 CHAIRPERSON: - may require further

24 argument because there, what happened on the 13th happened

25 prior to what the National Commissioner did on the 15th. So

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1 I would like to hear you on the 13th.

2 MR MPOFU: Yes, I understand that,

3 Chairperson. All I'm saying is this, Chairperson, to the

4 submission. It cannot be legally correct to say that an

5 unauthorised policeman, let's say from Mpumalanga, who

6 happened to be there and killed my brother, was that taint

7 of unlawfulness was cured retrospectively by the arrival

8 two or three days later of the National Commissioner,

9 because if the National Commissioner wanted to do a

10 deployment on the 15th he may have sourced these people from

11 the Western Cape where the police are less trigger-happy,

12 whatever, but the point is the specific policemen who shots

13 those specific shots were there and were they there because

14 of the unlawful and unauthorised activities of this

15 witness, or were they there because of the lawful

16 activities of the – those specific policemen, not the idea

17 of deployment. We are talking about the people who were

18 there.

19 CHAIRPERSON: Adv Hemraj wishes to ask

20 you a question.

21 COMMISSIONER HEMRAJ: Mr Mpofu, the

22 passage you referred to on page 8206, are you suggesting

23 that when this witness requested Generals Mpembe and Naidoo

24 to have further POP personnel deployed, that those two

25 generals did not follow the protocol as set down by the

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1 National Commissioner? Is that the suggestion?
 2 MR MPOFU: By the act.
 3 COMMISSIONER HEMRAJ: By the act, and as
 4 testified to by the National Commissioner?
 5 MR MPOFU: Yes, I think that much is
 6 established. Even Mr Semenya says that that happened on
 7 the 15th, if it happened, but I'm not dealing with that at
 8 all.
 9 CHAIRPERSON: We are here to determine
 10 the facts and one of the issues is the liability of the
 11 various parties. Now let's assume for the sake of the
 12 discussion that the people – we're talking about the 13th I
 13 think now – the people who killed, the members of the
 14 police service who killed the civilians who died on the 13th
 15 were not validly deployed to the North West province, let's
 16 assume that for the moment; let's therefore assume they
 17 were trespassers. If they acted in self-defence, what they
 18 did would surely not be illegal. The mere fact that, if it
 19 is a fact, that they were trespassers, I mean it doesn't
 20 mean that a trespasser can't defend himself, and if they
 21 acted in self-defence, then – if so, I mean that they did
 22 is another matter –
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: Then of course I don't see
 25 what liability can arise. It's some kind of versari in re

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1 illicita doctrine that you're seeking to apply, which is
 2 clearly not part of our law. So I'll give you a chance to
 3 respond to that and then I'll make my ruling.
 4 MR MPOFU: Yes, Chairperson, this issue
 5 is with respect quite simple. It is either I am entitled
 6 to probe the validity of the presence of the shooters –
 7 let's call them that for convenience – as at the time that
 8 they arrived there and whatever activities they did, and I
 9 think the idea of confining it to the 13th makes it easier,
 10 thank you, Chairperson. Now let's assume that policeman X
 11 came through this method and was there - and I accept the
 12 Chairperson's point, if it's self-defence it doesn't
 13 matter, but let's assume it's not. Let's assume the police
 14 attacked first with teargas, which is actually what
 15 happened, but the presence of that police X would have
 16 been, its genesis would have been these phone calls which
 17 were asked for by this witness, as opposed to whatever
 18 might or might not have happened on the 15th, or even, let's
 19 even postulate that the National Commissioner did it on the
 20 13th, she might have deployed people from province A and he
 21 deployed "people from province A," and that particular
 22 deployment - we now know that there were divisions and
 23 schools of thought and policemen wanted to kill each other
 24 in terms of the differences on the strategy – all that
 25 cumulatively would have an influence on the outcome. Add

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1 to that, Chairperson, the fact that we are talking here
 2 about a person – I'm now talking about the witness – who on
 3 his own evidence was not deployed there by anybody and
 4 shot, rather played a major role in appointing the person
 5 who drew the plan, played a major role in appointing the
 6 person who was the chief negotiator, and now seems to have
 7 played a major role in the – well, we know he played a
 8 major role in NIU and STF –
 9 CHAIRPERSON: He played no real role in
 10 respect of the 13th, did he? Except he did send some NIU
 11 people, but I understood –
 12 MR MPOFU: He did, ja.
 13 CHAIRPERSON: - him to explain –
 14 MR MPOFU: Ja, no, no, I'm talking it's a
 15 cumulative –
 16 MR MPOFU: - that his right to do that,
 17 his authority to do that depends to some extent on the
 18 points that were standing over for discussion later.
 19 MR MPOFU: Yes. Yes, that point taken,
 20 Chairperson, but the cumulative effect of his specific
 21 contributions, including what may or may not be wrongful or
 22 unlawful or unauthorised deployment of POP, surely, surely
 23 cannot be, you know, pooh-pooed as irrelevant. That is
 24 the nub of the matter, Chairperson. Just as much as we can
 25 say if the paramilitary forces were not there, which he

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1 deployed, this may or may not have happened in terms of its
 2 effect, surely if he usurped the powers of the President
 3 "nogal," and the National Commissioner, then how on earth
 4 can that be irrelevant?
 5 CHAIRPERSON: - say anything in reply?
 6 MR BURGER SC: I don't profess to
 7 understand the argument against me, but let me just say
 8 we're now at the 13th. We've limited the debate to that.
 9 It appears to me had the police acted in self-defence on
 10 that day, whether they were authorised or not is singularly
 11 irrelevant. Had they overstepped the mark and as it is
 12 suggested, they killed the people intentionally or because
 13 they didn't act in self-defence, whether they were
 14 authorised or not will be singularly irrelevant. So what
 15 the authority has to do with it is underlined by the fact
 16 that we're now here for eight months; it's the first day
 17 that we hear that there might be a challenge on the
 18 authority of the POP to be on site. I say it's an
 19 afterthought; I say it's irrelevant, and I submit you
 20 shouldn't allow this line of questioning to proceed.
 21 MR MPOFU: Well Chair, sorry, before you
 22 make a ruling, that's a self-contradiction. It can't be
 23 the first day, in the same breath say that the National
 24 Commissioner dealt with it a few weeks ago.
 25 CHAIRPERSON: I'm prepared to accept that

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1 it's not an afterthought, and even if it is, that's not –
 2 MR MPOFU: Thank you.
 3 CHAIRPERSON: - relevant. If it was a
 4 good afterthought, it's a good afterthought. I'm afraid I
 5 don't think it is a good afterthought. I think this
 6 evidence is irrelevant and in the circumstances I uphold
 7 the objection.
 8 MR MPOFU: That's fine. General, you
 9 asked – or let me put it this way. I'm going to argue – or
 10 no, let me not do it that way. Would it be correct to say
 11 that the reason why there was this, what I'll call a frenzy
 12 of activity, including you upping and going from Pretoria,
 13 the deployment of the paramilitary unit and all that, was
 14 sparked by the news of the killing of the two policemen on
 15 the 13th? That's one of the principal reasons for example
 16 for your actions, which we've debated for so many – in
 17 other words, I'm going to argue that that's what sparked
 18 it, but I'm also going to argue – which is in my opening
 19 statement – that some of the actions, including on the 16th,
 20 were motivated by revenge, a sense of revenge, a desire for
 21 revenge for those killings?
 22 CHAIRPERSON: Now you're introducing a
 23 whole lot of extra things. The moment you're concerned
 24 with the question of whether he acted as he did on the 13th
 25 because of the killing of the police and not so much

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1 because of the other deaths that had happened before that,
 2 that's the question you want to ask –
 3 MR MPOFU: Okay.
 4 CHAIRPERSON: You say what you're going
 5 to argue, it's normally, one normally waits to hear what
 6 all the evidence is before one argues because certain
 7 arguments may be untenable, so it's not a good idea to say
 8 I'll argue this, never mind what the evidence may be in the
 9 meanwhile. But anyway, you've asked the question; let's
 10 get the witness's answer.
 11 MR MPOFU: Okay.
 12 CHAIRPERSON: Yes, Major-General?
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 daar is so 'n mondvul genoem, maar ek gaan probeer om dit
 15 te antwoord.
 16 CHAIRPERSON: Major-General, please, I
 17 deal with Mr Mpofo when he makes comments, but you mustn't
 18 make comments either because I'll have to deal with you as
 19 well. So just concentrate on answering the questions and
 20 don't make comments.
 21 GENERAAL-MAJOOR ANNANDALE: Ek vra om
 22 verskoning, Voorsitter. Voorsitter, daar was nie 'n
 23 "frenzy" gewees nie. Voorsitter, en ek volstaan daar was
 24 nie paramilitêre eenhede ontplooi nie. Voorsitter, en ek
 25 volstaan dat ek deurgegaan het na Marikana om my te

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1 vergewis van die omstandighede, pertinent in terme van die
 2 hulpbronne wat potensieel benodig word. Voorsitter, en dit
 3 was my intensie om terug te keer na Pretoria die aand van
 4 die 13de nadat ek gekonsulteer het met die Provinsiale
 5 Kommissaris en die oorhoofse bevelvoerder. Die Provinsiale
 6 Kommissaris het my versoek om te bly. Dit is bevestig met
 7 die aansluiting van die Nasionale Kommissaris later die
 8 aand wat sy dit ook so oorgedra het aan die Nasionale
 9 Kommissaris.
 10 [12:04] Die Nasionale Kommissaris het bevestig dat ek
 11 moet van hulp wees aan die provinsie, dat my
 12 teenwoordigheid daar was gemagtig en in opdrag van die
 13 Nasionale Kommissaris. Voorsitter, dan ook, dis nie oor
 14 die sterftes van die twee polisieledes nie. Dit was as
 15 gevolg van die eskalاسie en die sterftes van vyf individue,
 16 asook die beserings aan ander op die betrokke dag.
 17 MR MPOFU: Well, if that was so, then why
 18 is it that in paragraph 3 of your statement you say that
 19 you "were called by Major-General Naidoo, he informed you
 20 that two police officers were killed and a third officer
 21 seriously injured when a group of striking miners working
 22 at Lonmin, Marikana, near Rustenburg, attacked them during
 23 a protest march. He indicated that the province had
 24 required additional personnel to be deployed. I left
 25 Pretoria, accompanied by" –

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1 CHAIRPERSON: Mr Mpofo, you've left out
 2 an important sentence. I'm sure you did it inadvertently.
 3 MR MPOFU: Where?
 4 CHAIRPERSON: After talking about the two
 5 police officers who were killed and the third officer
 6 seriously injured, there's a sentence that says, "He also
 7 mentioned that some of the protesters were killed in
 8 subsequent police action." That's the reference presumably
 9 to the three other people he mentioned, the two who were
 10 killed, policemen, plus the three others, the three
 11 civilians. You left that out when you read it.
 12 MR MPOFU: No, I didn't. I was reading,
 13 obviously reading from an earlier version, and if it is
 14 correct then why – I have a version of your statement dated
 15 15th October where the sentence that the Chairman has read
 16 does not appear, and in the version that the Chairman read,
 17 it's 12 November, and that sentence suddenly appears. Can
 18 you give an explanation for that, for having left it out
 19 originally as the reason?
 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 21 die bewysstuk is GGG1 waarna ons verwys. Dis my verklaring
 22 aan hierdie Kommissie.
 23 CHAIRPERSON: Major-General, the counsel
 24 is referring you to – sorry, Mr Booi, I think you'd better
 25 translate first before I put the next sentence. What Mr

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1 Mpofu is putting to you is that an earlier draft of your
 2 statement, which he has a copy of which was dated in
 3 October, omits the sentence which I read and he wants to
 4 know from you why that sentence was not in the first draft
 5 of your statement. That's the question.

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek het 'n verklaring voorberei vir IPID, sou hulle dit
 8 benodig. U sal sien daardie verklaring is gemerk bo-aan
 9 "Marikana CAS" en dan die betrokke MAS-nommer, en dan het
 10 ek 'n verklaring pertinent voorberei vir die Kommissie, wat
 11 gemerk is dan nou GGG1, en dan die verklaring aan die
 12 Kommissie sal u merk dat daar's min verskille; ons kan die
 13 verskille kan ons pertinent gaan uitwys, meer detail wat
 14 verskaf is.

15 MR MPOFU: Yes, General, I agree with you
 16 on the description of the two statements. Indeed the
 17 October statement has got the CAS-number, as you've
 18 explained. The statements are almost identical and there
 19 are a few changes, but what we are busy with now is the
 20 fact that one of those few changes amounts to the fact that
 21 in October you mentioned the killing of the policemen and
 22 the injury as the reason why you went there, but in
 23 November you remembered that there was an additional
 24 reason, which was the other people being injured, I accept
 25 the history, and that's what I would like you to explain.

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1 CHAIRPERSON: Mr Mpofu, the paragraph in
 2 question doesn't give the reason why he went there. It
 3 just, we know what it says, but you put something that's
 4 not quite there, it isn't there. You said you gave that as
 5 the reason. Well, he didn't give that as the reason. One
 6 might argue something about that, but the statement you put
 7 isn't entirely correct, but once one – now that I've
 8 corrected it the witness can answer the question.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 ek het soos in daardie laaste paragraaf van paragraaf 3,
 11 voorlaaste paragraaf, en die rede was dan die addisionele
 12 personeel wat benodig was en die feit dat ek dit nie
 13 vermeld het nie vat nie weg die oordrag wat gemaak is deur
 14 Generaal-Majoor Naidoo aan my nie.

15 MR MPOFU: Chairman, if you'll just bear
 16 with me one second. Well, maybe we can get a sense of your
 17 discussion with Major-General Naidoo by going to his
 18 statement, which also significantly only highlights the
 19 police killings. It's – sorry, I don't have the exhibit
 20 number. DD, exhibit DD, thank you. It's page –

21 CHAIRPERSON: The numbers are, the
 22 paragraphs aren't numbered.

23 MR MPOFU: The fax pages, yes,
 24 Chairperson, page 2 of the, the fax page is at the top and
 25 yes, the paragraphs are not numbered. Towards the bottom

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1 of the first, the long paragraph, the first one, I'll read
 2 it out just to make it faster. He says, "On our return to
 3 Marikana we proceeded straight to the Lonmin Mine JOC and
 4 on our arrival we were briefed by Major-General Mpenbe and
 5 Brigadier Calitz on how, whilst escorting the earlier
 6 identified group of armed miners, the police had come under
 7 attack from them. Two police officers were killed and a
 8 third was seriously injured and airlifted to Pretoria." No
 9 mention whatsoever of any other fatalities. Let me just
 10 complete that. You jump the next paragraph and go to the
 11 third paragraph. He says, "The National Commissioner and
 12 Provincial Commissioner Gauteng arrived at Lonmin later
 13 than evening and the situation was discussed. It was
 14 decided that a drastic escalation of the police resources
 15 will be necessary to both stabilise the public order
 16 situation, as well as to facilitate the investigation of
 17 the murders and attack which had occurred on the police
 18 officers." That's it. So it would seem that the, at least
 19 in your mind, given your earlier statement of October and
 20 in the mind of General Naidoo on this statement, the
 21 prominent issue was the killing of the police and not the
 22 other killings.

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 Adv Mpofu lees nie die sin net voor dit nie, en ek getuig
 25 oor wat die oordrag was en die sin sê, "We immediately

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1 turned around and returned to Marikana and en route I
 2 contacted Major-General Annandale to appraise him of the
 3 development," en dit was tydens hierdie proses wat die
 4 oordrag aan my gemaak is.

5 MR MPOFU: Ja. No, no, no, that's not
 6 the issue. The issue is of course you were appraised of
 7 the development, and those developments must have included
 8 the killing of the policemen, but I'm saying in your mind
 9 and in the mind of Naidoo the killing of the police
 10 warranted special mention - even though you had been told
 11 of the developments - in both those statements, and before
 12 you answer, just so that we get the full picture, if you go
 13 to Lieutenant-Colonel Scott's statement, which is – Scott,
 14 I'll get the exhibit number now, sorry.

15 CHAIRPERSON: FFF18, I think –

16 MR MPOFU: 18, yes thank you. FFF18,
 17 paragraph 2, I'll read it out. He says, "On 13th August
 18 2012 at 18:00 I was phoned by Brigadier Fritz, the Section
 19 Head of the STF, and instructed to report to Lonmin Mine,
 20 Marikana, to assist in planning an operation to apprehend a
 21 crowd of protesters, apparently striking miners who had
 22 reportedly killed two police officials and critically
 23 wounded a third earlier in the day. The protesters had
 24 reportedly sought refuge on the mountain," and so on. Once
 25 again you, it's Naidoo, it's Scott, and you highlight only

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1 the deaths of the police, as if the other deaths did not
2 matter.

3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4 die erns van die dood van die polisiebeamptes word nie
5 ontken nie.

6 MR MPOFU: Yes, no, no, I appreciate
7 that. The point I'm simply making to you is that – okay, I
8 won't use the word "frenzy" anymore because you've disputed
9 it – that the hive of activity which included you coming
10 from Pretoria, all these units, including the paramilitary
11 ones being deployed, the major escalation in the deployment
12 on the 13th, I'm saying that from all this was sparked by
13 the killing of the police. In fact I'm going to argue that
14 had those two deaths been the death of civilians, we
15 wouldn't have seen the same hive of activity.

16 MR SEMENYA SC: Chair –
17 CHAIRPERSON: Mr Semenya?
18 MR SEMENYA SC: FFF18, which is the
19 statement of Colonel Scott, further adumbrates the facts
20 around those killings under paragraph 3 –

21 CHAIRPERSON: Mr Mpfu's point is that
22 that deals with what happened when Colonel Scott got there.
23 He's concerned about the facts that led to his being sent
24 there, which are dealt with in para 2, so I think that's
25 the answer to that. But could I ask you this, Mr Mpfu –

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1 are you suggesting that the deployment of extra police
2 there from other provinces and other units and so on, was
3 irregular or improper? If one bears in mind that on the
4 Sunday already, by the Sunday, or on the Sunday two of the
5 mine security guards were killed and two of the mine's
6 employees were killed, and I think most of the vehicles
7 were set alight and it was a serious breakdown in law and
8 order, are you suggesting that if two policemen hadn't been
9 killed on the Monday and another wounded, it wouldn't have
10 been proper or appropriate for extra units to be sent from
11 other provinces?

12 MR MPOFU: No, no, no, that's not what
13 I'm saying, although I may address that. All I'm saying at
14 this stage is that - in fact the fact that there were
15 earlier deaths emphasises the point I'm making. I'm saying
16 that the fact, despite the deaths – and I will come to
17 that; at this stage you must remember the police, like the
18 people on the koppie, thought that two people had died
19 after the NUM attack. We know now that that was not the
20 case. I'll show you the slide which indicates that the
21 police also thought that two police had died. At that
22 stage that's what they thought. Two further people died,
23 the security personnel on the 12th. Three further people
24 died on the 13th, who, according to these three people, are
25 not even worth mentioning, and all I'm suggesting is that

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1 the spark – I can't think of a better word – the spark that
2 caused what I call the "frenzy" of activity, including the
3 unauthorised deployment, the unnecessary deployment, which
4 is the issue that I discussed with Commissioner Hemraj, and
5 everything else that I've said, was sparked by the special
6 fact that policemen had been killed. The fact that I'm
7 suggesting to this witness, his own voluntary spirit was
8 ignited to come from Pretoria, uninvited, specifically by
9 the killings of the police.

10 [12:24] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
11 dit is nie waar nie. Daar was reeds 'n eskalاسie van
12 ontplooiing vanaf die Sondag en reeds op die Sondag is daar
13 NIU lede asook Openbare Orde Polisiëringslede ek dink van
14 Gauteng ontplooi deur die interaksie van die provinsie se
15 offisiere met myself en die NATJOC uitsluitlik vir NIU en
16 Openbare Orde. Op die Maandag is die aantal sterftes, het
17 dit eensklaps het dit verdubbel vanaf vier, toe is daar
18 meer, toe is daar vyf persone, so dit het verdubbel.

19 MR MPOFU: And yet you and your
20 colleagues found it necessary to mention specifically the
21 two policemen who were killed, which let's put aside, and
22 the third one who was wounded, over and above the three
23 civilians who were dead.

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
25 ek het getuig dat die erns van die dood van die

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1 polisiebeamptes word nie deur die, deur ons ontken nie.

2 MR MPOFU: Okay, we'll leave that for
3 argument. The issue, this issue, I'm putting it to you
4 that the issue of the killing of the policemen was also
5 significant in another respect –

6 CHAIRPERSON: Are you moving on to
7 another point now?
8 MR MPOFU: Related, but separate, yes
9 Chair.

10 CHAIRPERSON: The reason I ask that is we
11 were busy with the point, the question I asked, when the
12 lights failed and when you went back we didn't finish it.

13 MR MPOFU: The helicopter –
14 CHAIRPERSON: So perhaps we should for
15 the sake of order finish it now. The question that you
16 were asked was what specialised skills did the STF bring to
17 Marikana, and you mentioned, according to my notes,
18 intelligence-driven operations, also mentioned the
19 pertinent experience that the STF have when they're dealing
20 with arresting of armed persons, and you also spoke about
21 their capabilities in regard to what you've described as
22 sniper and counter sniper operations, and you were then
23 going on to the fourth point, which was about the use of,
24 experiencing in using helicopters particularly with ropes,
25 which I take it meant a rope ladder, and that was the point

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1 at which the lights failed. So would you like to complete
 2 your answer in respect of the capabilities in respect of
 3 helicopters so we can have that interpreted, and then you
 4 can tell us if there are any other specialised skills which
 5 you had in mind.

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek sal graag lig daarop werp.

8 CHAIRPERSON: - give us the light
 9 earlier.

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 die helikopter word gebruik dan met 'n aantal STF lede en
 12 dan wat ons na verwys as "fast roping," so dis nie
 13 noodwendig 'n touleer nie. So in beginsel beteken dit, of
 14 in praktyk beteken dit, Voorsitter, dat die helikopter hoef
 15 nie te land vir die lede om te ontplooi nie, hulle kan
 16 terwyl hy nog in die lug is, 'n ent van die grond af kan
 17 hulle dan afgaan grond toe, en Voorsitter dan laastens, dis
 18 nie noodwendig vaardighede nie, maar net die toerusting wat
 19 hulle het in terme van 'n observasiepos met gevorderde
 20 verkykers.

21 CHAIRPERSON: Thank you. Mr Mpfu, you
 22 were going to go on to – unless you were going to go on to,
 23 unless you want to ask questions arising from that. You
 24 were going to go on to ask further questions, I think about
 25 the incident on the 13th.

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1 MR MPOFU: Yes. Chairperson, if you and
 2 the witness will forgive me, can I just pause on this and
 3 round off the issue of deployment so that we don't go back
 4 to it. General, very briefly, it's correct, isn't it, that
 5 there was, part of the deployment on that day was were
 6 members of the South African National Defence Force in the
 7 SAAF aircraft called Oryx.

8 CHAIRPERSON: You're talking about the
 9 16th, or the 13th?

10 MR MPOFU: Any time in the relevant
 11 period.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 daar was 'n Oryx helikopter van die Suid-Afrikaanse Lugmag.

14 MR MAHLANGU: There was an Eric's
 15 helicopter of the –

16 MAJOR-GENERAL ANNANDALE: Oryx. O-R-Y-X.

17 MR MPOFU: O-R-Y-X.

18 GENERAAL-MAJOOR ANNANDALE: En dan die
 19 personeel verbonde aan die funksionering van die
 20 helikopter. Ek is nie seker of dit drie of vier persone
 21 was nie.

22 MR MPOFU: Yes, you're talking about the
 23 crew, the pilot and one or two other people. Right, now do
 24 you happen to know – or well, you may or may not know that
 25 the deployment of the SANDF alongside the police in any

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1 operation requires presidential approval. If you know, you
 2 know. If you don't, well if you know, do you know if that
 3 approval was obtained, and if you don't, obviously someone
 4 else will answer that question. Sorry, I know it's two
 5 questions.

6 CHAIRPERSON: The legal proposition, I'm
 7 not sure the legal proposition is correct. Assuming –

8 MR MPOFU: No, the third proposition is –

9 CHAIRPERSON: Assuming someone has fallen
 10 down Table Mountain and the police are trying to rescue
 11 them in their helicopter and they can't manage, and they
 12 phone the Wingfield, I think it is, and they ask the air
 13 force to send in a helicopter as well, do you mean to tell
 14 me that the rescue operation can't proceed until someone
 15 has gotten hold of the President and say would you please
 16 approve that the members of the South African Air Force can
 17 help the police in rescuing this person on the mountain?
 18 I'd be very surprised if that's what the Constitution, or
 19 the relevant statutes say, but perhaps you're putting a
 20 legal proposition to the witness which may or may not be
 21 correct. Let's first have the statutory provision before
 22 us to see whether what you're putting is correct. If what
 23 you're putting is correct, then obviously you can put the
 24 question, but maybe we should look at that over the lunch
 25 hour.

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1 MR MPOFU: Yes, I –

2 CHAIRPERSON: My common sense tells me –
 3 I don't know if perhaps I have so much of it, but my common
 4 sense tells me the law can't go that far.

5 MR MPOFU: Yes, well –

6 CHAIRPERSON: I may be wrong –

7 MR MPOFU: No –

8 CHAIRPERSON: - in which case I will be
 9 duly overruled.

10 MR MPOFU: As always, Chair, you're
 11 right. If there was such an emergency I would be the first
 12 one to be surprised, but in a situation where there's a
 13 five-day operation, there's an SANDF helicopter parked
 14 there for five days, I don't see the relationship between
 15 that and the mountain example, but anyway –

16 CHAIRPERSON: - statutory provision that
 17 says that.

18 MR MPOFU: Ja.

19 CHAIRPERSON: Perhaps you can go on with
 20 other points in the meanwhile.

21 MR MPOFU: Yes, thanks, Chairperson.

22 Alright, we'll come back to that. And by the way, subject
 23 to me finding the provision – I was saying, Chairperson, by
 24 the way, subject to me finding the provision, which the
 25 Chairperson is right is a legal proposition, what I was

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1 really asking is the factual issue of whether such
 2 permission existed. But we'll deal with it all in one go.
 3 CHAIRPERSON: Ja. You didn't hijack the
 4 helicopter and its crew. You will, I take it, have
 5 requested the defence force to lend you the assistance of a
 6 helicopter and they would have done so with the crew. Is
 7 that right, or would you just march on to – what's the name
 8 of the place?
 9 MR MPOFU: Waterkloof.
 10 MR MAHLANGU: Waterkloof, Chairperson.
 11 CHAIRPERSON: Will you just march off to
 12 Waterkloof and grab a helicopter and come – how does it
 13 work in practice?
 14 MR MPOFU: You never know, Chairperson.
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, u
 16 het my vroeër op die vingers getik, so ek gaan baie ernstig
 17 dit antwoord. Ons doen dit verseker nie so nie,
 18 Voorsitter, en ek is nie bewus van die regsprosedures
 19 rondom wanneer dit mag ontplooi word of nie. Dit is
 20 sekerlik by die – maar ek het net getuig –
 21 COMMISSIONER HEMRAJ: Mr Mpfu, wasn't
 22 the SANDF helicopter on standby in Pretoria?
 23 MR MPOFU: Whatever. If it was there –
 24 CHAIRPERSON: If you look at slide –
 25 sorry to interrupt you –

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1 MR MPOFU: Let's assume it was on
 2 standby, but it's deployment, on my version - and the Chair
 3 is right, we'll find the specific provision - any
 4 involvement of the army in a police action –
 5 CHAIRPERSON: Well, this is the air
 6 force, I think but anyway, you referred to slide –
 7 MR MPOFU: Well, the air force is the
 8 SANDF –
 9 CHAIRPERSON: You referred to slide 145
 10 of exhibit L where the reference is to the SAAF Oryx
 11 helicopter being remaining in Pretoria on standby –
 12 MR MPOFU: Ja.
 13 CHAIRPERSON: - with a 40-minute response
 14 time to Marikana. Anyway, that's relevant –
 15 MR MPOFU: It doesn't matter.
 16 CHAIRPERSON: - for when the matter is
 17 debated.
 18 MR MPOFU: Ja. Thank you, Chairperson.
 19 No, it doesn't matter really whether they were sitting or
 20 standing by, or whatever. The issue really I'm talking
 21 about is their mere deployment, whether in fact they did
 22 this, that is irrelevant. You will remember, you might
 23 remember, General, just to maybe help your memory, that
 24 this issue that I'm debating with you now was heavily
 25 debated in parliament in September, a month after these

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1 events, when the police and the army did go and raid there
 2 and a councillor was killed, and one of the issues raised
 3 in parliament was whether that joint raid, as it were, was
 4 authorised in terms of the Constitution. It's the same
 5 debate really that I'm getting at. And by the way, the
 6 SAAF is a division of the SANDF.
 7 CHAIRPERSON: Before you answer the
 8 question, and before Mr Booie interprets it, Mr Madlanga has
 9 something which he wishes to say.
 10 MR MADLANGA SC: Yes, thank you, Mr
 11 Chairman and Commissioners. I'm not going to address the
 12 legal question that my learned friend Mr Mpfu is raising.
 13 I'm just going to address a factual matter. We did consult
 14 with certain members of the South African National Defence
 15 Force and we obtained statements from them. I've just
 16 asked Ms Pillay to circulate that statement, or statements
 17 to our colleagues. Thank you, Mr Chairman.
 18 CHAIRPERSON: Thank you. Well hopefully
 19 that will save some of the water in the bucket.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: Carry on, Mr Mpfu.
 22 MR MPOFU: It might address the issue,
 23 thank you very much, Chairperson. Now moving away,
 24 General, back to the issue of the – oh, I'm sorry, I hope
 25 I'm not blocking any interpretation. Am I?

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1 MR MAHLANGU: No.
 2 MR MPOFU: Okay. Back to the issues of
 3 the 13th, the other significance of the killing of the
 4 police is a matter which I'm not going to waste time on,
 5 which was debated between you and Mr Bizos regarding the
 6 death threats that were made to the CJOC. Would you agree
 7 with that?
 8 GENERAAL-MAJOOR ANNANDALE: Saamstem dat
 9 dit gedebatteer was, dit is korrek, Voorsitter.
 10 MR MPOFU: And as I remember your sense
 11 of voluntarism did not extend to doing anything about the
 12 murder threats that were made against Major-General Mpmembe.
 13 Am I correct?
 14 CHAIRPERSON: Please forgive me, Mr
 15 Mpfu. Would you repeat the question –
 16 MR MPOFU: Yes.
 17 CHAIRPERSON: - because I didn't
 18 understand it, but it may have been my want of
 19 understanding, so repeat it please.
 20 MR MPOFU: Thank you. No, I was saying,
 21 I was just confirming really, which he confirmed, that this
 22 was a significant event – he says it is, and the follow-up
 23 question was that his sense of duty and voluntarism did not
 24 extend to him taking any steps in respect of those death
 25 threats levelled against Mpmembe.

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1 CHAIRPERSON: No, you repeated some of
2 the –

3 MR MPOFU: Okay, I'll –

4 CHAIRPERSON: No, you repeated some of
5 the evidence, but then I don't understand what your
6 question was. So as I say it may be my fault, so if you'd
7 repeat the question I'd be grateful.

8 MR MPOFU: Ja. Is it correct that your
9 sense of duty and voluntarism did not extend to taking any
10 steps in respect of the death threats against Mpembe?

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
12 ek het verduidelik dat Luitenant-Kolonel Vermaak dit direk
13 aan die Provinsiale Kommissaris gerapporteer het.

14 MR MPOFU: The third significance of the
15 police killings on the 13th which we'll argue is that it
16 marked, the event itself and its aftermath marked the
17 divide between the approach taken by people like Major-
18 General Mpembe, who we can call the doves, and the approach
19 taken by people like you and Vermaak and Calitz and others,
20 who we can call the hawks, who were not in favour of a –

21 [12:44] MR SEMENYA SC: Chair, really –

22 MR MPOFU: - the approach that Mpembe
23 favoured on the 15th, and on the 13th.

24 CHAIRPERSON: Before the question is
25 interpreted, Mr Semanya would like to say something.

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1 MR SEMENYA SC: Is this for the
2 newspapers, or what, the hawks and the doves?

3 MR MPOFU: Sorry, Chair –

4 CHAIRPERSON: No, Mr Mpofo is using
5 figurative language to describe –

6 MR SEMENYA SC: No –

7 CHAIRPERSON: No, no, no, listen to me,
8 Mr Semanya. As I understand Mr Mpofo he's saying he will
9 contend that there was a division in the police as to the
10 approach adopted. One was what you could call the soft
11 approach, one you could call the hard approach. Whether
12 that's correct or not is another matter, but he says that
13 there was such a thing, and he's going to ask, he asks
14 whether that division first manifested itself after the
15 death of the police. I don't think that's a question that
16 can be disallowed. You may proceed with it.

17 MR MPOFU: Thank you, Chair. General, if
18 you can please answer.

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
20 daar was nie divisie gewees tussen enige van die
21 bevelvoerders nie. Daar was 'n ooreengekome benadering en
22 plan van die Suid-Afrikaanse Polisiediens, soos beliggzaam
23 in die dokumente wat beskikbaar gestel is, en elke so 'n
24 benadering het die goedkeuring weggedra van die oorhoofse
25 bevelvoerder, Generaal-Majoor Mpembe.

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1 MR MPOFU: Okay, well then let's start on
2 the 13th. Is it correct that – whether you want to use the
3 word "division" or not – is it correct that there was one
4 school of thought represented by Major-General Mpembe,
5 which favoured that the protesters should be escorted back
6 to the koppie, and another school of thought favoured by
7 people like Lieutenant-Colonel Merafe and Baloyi, which
8 favoured that those people should have been disarmed on the
9 spot, and that that leads to the murder threats?

10 MR BURGER SC: Chair – I'll buy the cake.

11 CHAIRPERSON: - self-imposed sentence.

12 MR BURGER SC: Chair, I object to this
13 line of questioning. What we're entitled to do is to probe
14 the facts and to place the facts before you. Then as
15 counsel at times we have a duty to put a proposition to a
16 witness. If I want to argue at the end of the day that the
17 witness is not credible, I have a duty to say I will argue
18 you're not credible, so that he or she can answer to that.
19 What I can't do is to take my argument which I will address
20 at the end of the day, put it to a witness, and if he does
21 not unsurprisingly disagree with me, then to start debating
22 the merits of my argument with him. Now this is what's
23 happening here. My learned friend says at the end of the
24 day I will present an argument with doves and pigeons and
25 dogs and whatever involved, and I say there's a watershed.

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1 The witness says I don't agree with it and I give you the
2 reason. What is happening now is to say but let me tell
3 you why my argument is right. Now we're going to sweep
4 from the 13th; we're going to go through the whole argument.
5 Whether this witness agrees or not, Chair, is not going to
6 assist you. You will be convinced, and your Commissioners,
7 or not. The merits of that argument is not a place for a
8 debate with the witness, be it a police general or not. So
9 I with respect think the water is running out again, and I
10 object to this line of approach.

11 CHAIRPERSON: Yes, I must say, Mr Mpofo,
12 I'll give you a chance to reply, but can I give you my
13 prima facie response at this stage?

14 MR MPOFU: Yes.

15 CHAIRPERSON: And that is that I
16 understand there's a debate at the moment as to whether
17 there was a division of opinion, whether General Mpembe
18 agreed with the plan or he didn't, based upon the material
19 that's already been put before the Commission.

20 MR MPOFU: Yes.

21 CHAIRPERSON: This witness says he didn't
22 regard it as being a difference between them; he doesn't
23 think there were hawks and doves together in the cage at
24 the time, but again I think I've put this before, we will
25 really be in a position to take that point further or not,

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1 as the case may be, depending on what General Mpembe says.
 2 This witness has already told us he doesn't regard it as
 3 being a valid point. He can't really tell us that because
 4 the person who can do that is General Mpembe. So may I
 5 suggest that you keep that point until General Mpembe comes
 6 in the box? I gather he's the next witness on the list.
 7 MR MPOFU: Well, that's good to know,
 8 Chair, but the point I'm simply making, Chairperson, is I
 9 cannot come and accuse this witness later in argument of
 10 having been a member of the hawks, so to speak, with all
 11 the people that I mentioned, if I've not given him the
 12 opportunity and the basis of that proposition – him, not
 13 Mpembe. Mpembe we'll deal with as a dove later. All I'm
 14 busy doing now is to say that – and I thought we were
 15 making progress with the witness – is to say that on the
 16 objective evidence before us, and I've never had such a
 17 situation where people are threatening to murder each other
 18 and to say they're not divided, but let's put that aside.
 19 But on the objective evidence before us there was this
 20 divide, and it's not even a secret, Chair. Merafe in his
 21 statement says as much. He says, "I did not agree with
 22 Mpembe on his approach." That is not something that I'm
 23 making up. Lieutenant-General Baloyi in his – or I can't
 24 remember his –
 25 CHAIRPERSON: I think you're prematurely

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1 promoting him. He is just a lieutenant.
 2 MR MPOFU: Yes, the lieutenant –
 3 CHAIRPERSON: He's the POPCRU witness, I
 4 believe.
 5 MR MPOFU: Yes, he is. He is Mr Gumbi's
 6 client - also makes it clear in his statement that he
 7 preferred the stun grenade approach, as it were, and we
 8 know that that little division almost ended up in murder,
 9 and all – I don't understand, Chairperson, with the
 10 greatest respect, why I'm not, or the public of this
 11 country is not entitled to probe the question whether the
 12 force that was deployed in Marikana was made up of, you
 13 know, what the citizens are entitled to expect, a
 14 hierarchical disciplined force, or some people who wanted
 15 to kill each other and having their own ructions, which
 16 obviously if that was the case, would have contributed to
 17 the chaos that followed, including the – it has to be clear
 18 that if the leadership of any organisation is at each
 19 other's throat, the results will probably be disastrous,
 20 even for a rugby team. But the issue here is, is that we
 21 had people with machine guns, and if they are fighting
 22 amongst each other and threaten to kill each other, that
 23 cannot be irrelevant as to whether that contributed to the
 24 result.
 25 CHAIRPERSON: I'm not sure the people

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1 were threatening to kill each other.
 2 MR MPOFU: Well, they were –
 3 CHAIRPERSON: But as far as the leaders
 4 were concerned, we confine ourselves to those in the JOC,
 5 they're the people listed in exhibit EE and –
 6 MR MPOFU: Let me say officers.
 7 CHAIRPERSON: Well, the people in the JOC
 8 were the ones in command really, and this witness, as I
 9 understand it, says there wasn't a difference of opinion in
 10 the JOC. Before you can draw a distinction between hawks
 11 and doves, you've got to have a division. But if everyone
 12 is agreed, then they're all the same. How one describes
 13 the bird is not a matter that we need to spend time on, but
 14 they're all the same. It's only if there's a division, two
 15 classes, one, some taking a stronger view, others taking a
 16 weaker view, you can talk about hawks and doves or
 17 whatever. Now this witness says he wasn't aware of such a
 18 division. He knew about the threats that had been reported
 19 earlier, but as far as he was concerned, as I understand
 20 his evidence, those in command, those on the JOCOM were all
 21 agreed and there's no scope for dividing them into the two
 22 classes that you give. Now you say he's wrong; you're
 23 going to argue that later. He will have to take the
 24 criticism that you set forth in your argument on the chin
 25 if you put it out. He's chosen to say there wasn't, as far

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1 as he's concerned there's no division. You're entitled to
 2 argue later he's wrong, but I don't think we need spend
 3 time trying to persuade him now that he's wrong. I don't
 4 think that will be a profitable exercise.
 5 MR MPOFU: Okay.
 6 CHAIRPERSON: So I uphold the objection
 7 and suggest you proceed to your next question.
 8 MR MPOFU: Okay, Chairperson. Well, I
 9 always thought until now that if a witness gives you an
 10 answer that patently you can cross-examine on it, but
 11 obviously I was wrong. Okay –
 12 CHAIRPERSON: The nature of the answer
 13 and the nature of the issues.
 14 MR MPOFU: Ja. Okay, were you aware – or
 15 well, you must have been aware, I'm putting it to you as a
 16 leading question. You must have been aware that one of
 17 General Mpembe's views, which he expressed openly again,
 18 was that trying to disarm – I think were his words –
 19 somebody with an axe when you are carrying a gun, would
 20 lead to bloodshed.
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 dit was so bespreek gewees en daar was, ek was verwys na
 23 die betrokke transkripsie van die 15de se vergadering.
 24 MR MPOFU: And you are certainly aware
 25 that Major-General Mpembe favoured the approach which

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1 included the activity of Mr Mathunjwa speaking to the
2 crowd?
3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4 so ook ek en so ook Generaal-Majoor Naidoo, wie teenwoordig
5 was in die betrokke vergadering.
6 MR MPOFU: Okay, maybe let me put it
7 differently. You are aware that the reason, or at least
8 one of the reasons advanced by Major-General Mpembe for
9 favouring that, let's call it softer approach, was because
10 he believed that the alternative, which I've already
11 described, would be disastrous. And maybe, sorry, I know
12 it's compounding the question, and that in relation to the
13 13th he had specifically said he did not want another Tatane
14 incident. In other words, it was the same kind of feeling,
15 not wanting bloodshed or the image of the police to be
16 tainted, that kind of thing.
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ons het ook omvattend na hierdie betrokke twee punte
19 verwys. Ek het daaroor getuig. Ek sal weer my kommentaar
20 lewer.
21 CHAIRPERSON: Mr Budlender and Mr Bizos
22 dealt with it in their cross-examination. Answers were
23 given which you may not accept, which you can deal with in
24 argument. I'm not sure it's necessary to plough this
25 ground again.

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1 MR MPOFU: No, it was not from the
2 perspective that I'm pursuing the matter. The mere fact
3 that the incident was referred to by other people from
4 another perspective has nothing to do with that.
5 CHAIRPERSON: Let's hear the other
6 perspective after lunch. Would it be convenient if we did
7 that, Mr Mpofo?
8 MR MPOFU: Yes, Chairperson.
9 CHAIRPERSON: So you can then advance the
10 other perspective, if you wish, after lunch.
11 MR MPOFU: After lunch, yes, thank you,
12 Chairperson.
13 CHAIRPERSON: We'll take the lunch
14 adjournment.
15 [COMMISSION ADJOURNS COMMISSION RESUMES]
16 [14:07] VOORSITTER: Generaal-Majoor, u is nog
17 steeds onder eed.
18 CHARL ANNANDALE: s.o.e.
19 CHAIRPERSON: Mr Mpofo, before you
20 continue with this line of cross-examination, what is the
21 other perspective from which you are going to approach that
22 point? If there is another perspective I'll allow you to
23 do so, but I want to be satisfied that it is really another
24 perspective [inaudible] counsel think it's another
25 perspective, any way, in good faith [inaudible] –

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1 MR MPOFU: Thank you, Chairperson.
2 Chairperson, maybe I should take a step back. No, let me
3 not; I'll do that through the witness. The perspective
4 that I'm pursuing, Chairperson, is something that goes to
5 the heart of the events of the 16th in particular, and that
6 is that what we were dealing with was a divided police
7 force in the manner that I had described earlier, and
8 that's what I'm busy pursuing with the witness. But more
9 than that, it is that –
10 CHAIRPERSON: I thought some of the
11 questions were disallowed –
12 MR MPOFU: No, no, of course, those we
13 won't resurrect, but I thought specific questions were
14 disallowed, but I think the approach of saying, of pursuing
15 as to whether those divisions ran to such an extent that
16 they would in themselves result in a botched operation, to
17 paraphrase, is really the subject. So I'm pursuing the
18 issue of the divisions, from that perspective, and my
19 thesis which I've canvassed with the witness, is that those
20 –
21 CHAIRPERSON: Sometimes when I was
22 counsel I objected to having to explain to the court in the
23 presence of the witness a line I was going to adopt in
24 cross-examination, and I asked that the witness leave the
25 court while I explained the point. I take it that doesn't

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1 arise here.
2 MR MPOFU: No. No, Chair, as I've
3 already placed my –
4 CHAIRPERSON: It's sometimes embarrassing
5 for a cross-examiner to say in the presence of the witness
6 what line he's going to take. So I don't want to make that
7 mistake here.
8 MR MPOFU: I appreciate that, Chair. As
9 it were, my approach has been always to play the open cards
10 with the witness and say this is what I'm pursuing, but I
11 understand –
12 CHAIRPERSON: I thought this is the kind
13 of witness you can play open cards with.
14 MR MPOFU: Yes. Thank you, Chairperson,
15 yes, and really, that's the perspective, Chair. It's
16 merely to get sufficient answers to allow me to argue at
17 the end that – and I take the point that for example I
18 don't have to pursue with him the fact that people wanted
19 to kill each other because that's patent from the
20 documents, but it's the implications of that that I'm
21 pursuing on the overall operation. In other words what I'm
22 really trying to say, Chairperson, is that it was doomed to
23 fail if it was riddled with these internal ructions, in one
24 way or the other. If people at that level –
25 CHAIRPERSON: I think I can understand

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1 the logic –

2 MR MPOFU: Thank you, Chairperson.

3 CHAIRPERSON: Very well, you may proceed.

4 MR MPOFU: Thank you very much,

5 Chairperson. General, in line with the type of questioning

6 that I was busy with, and pursuant to the short discussion

7 between myself and the Chair, it would be fair to say that

8 given what General Mpembe said in his statement, that had

9 he been in touch, or even informed about the disaster that

10 had happened at scene 1, he would have halted the

11 operation, and thereby would have saved – this is my

12 addition to it – thereby would have saved at least 16

13 lives, probably the, I don't know which proportions of the

14 injuries happened at scene 1 or scene 2, you'll forgive me,

15 but let's just say some of the injuries, and all of the

16 arrests.

17 COMMISSIONER HEMRAJ: Sorry, I missed

18 that, Mr Mpfu. What are you referring to?

19 MR MPOFU: No, it's my fault,

20 Chairperson. Firstly it's long, but also there was no real

21 question. I was putting the statement. What I was saying

22 is – maybe let me break it down. It's common cause that

23 General Mpembe's view that had he known about what had

24 happened at scene 1 he would have halted the operation at

25 that stage. Do you accept that?

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1 MR SEMENYA SC: Chair –

2 CHAIRPERSON: Before you answer the

3 question, Major-General, Mr Semenya wants to say something.

4 MR SEMENYA SC: The evidence, Chair, is

5 that he would halt, reassess and reorganise.

6 CHAIRPERSON: The evidence was?

7 MR SEMENYA SC: Halt, reassess and

8 reorganise. It's not what Mr Mpfu is putting.

9 CHAIRPERSON: I think what Mr Mpfu is

10 putting is what Mr De Rover says he was told by the

11 commanding officer, who obviously was Major-General Mpembe.

12 I don't remember Major-General Mpembe putting it in as many

13 words in his statement, but I think it's maybe an inference

14 that that's what he must have told Mr De Rover. So I think

15 I'll allow the question, but we'll keep a careful watch in

16 case, let's see if you object again. Yes Mr Mpfu, carry

17 on.

18 MR MPOFU: Thank you, Chairperson. In

19 fairness to Mr Semenya, he's half correct. It's a

20 combination of –

21 CHAIRPERSON: - grateful for that

22 admission.

23 MR MPOFU: Small mercies, yes,

24 Chairperson. For his, half of it came from De Rover, as

25 the Chair correctly pointed out. What Mpembe himself does

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1 say, which is the other half, is contained in paragraph 56

2 of his statement where he says, "I wish to state that if I

3 had been told immediately after scene 1, but before scene

4 2, that people had been killed, I would have directed that

5 the police members do a show of force and contain the

6 situation while attending to the scene around the kraal.

7 Effectively I would have directed that we do the same thing

8 that I had done on Monday, the 13th, 2012." Now if you read

9 that in conjunction, and the Chair is correct, with what De

10 Rover says, then I should hope that it –

11 CHAIRPERSON: [Inaudible]

12 MR MPOFU: Thank you, Chairperson.

13 CHAIRPERSON: You don't have to give a

14 concurring judgment every time I uphold you, and I object

15 to descending judgments after I haven't upheld you. But

16 anyway, let's carry on.

17 MR MPOFU: Thank you.

18 CHAIRPERSON: Mr Burger I think wants to

19 say something first. Not?

20 MR BURGER SC: This time I'll pass,

21 Chair.

22 MR MPOFU: Okay, thanks. I bought him

23 lunch, Chairperson. Thank you.

24 CHAIRPERSON: I don't know that pass is

25 the right word, but fail is possibly a better word, but

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1 never mind, carry on, Mr Mpfu.

2 MR MPOFU: Thank you, Chairperson.

3 Brigadier, you've heard the debate. I won't repeat it.

4 Rather General, sorry to demote you. The gist of what I'm

5 saying is that there is an interpretation that would

6 suggest that what General Mpembe would have done had he

7 known about the disaster, what I call the disaster that had

8 happened at scene 1, would have been to halt the operation,

9 and if you dispute that you will, but the real question is

10 that do you accept that had that happened, that would have

11 saved at least 16 lives, some of the injuries –

12 unfortunately I don't have the breakdown of who got injured

13 where at this stage, so let's leave it at some of the

14 injuries – and all of the 270 arrests? Sorry, which are

15 the people that I represent.

16 CHAIRPERSON: I don't understand the

17 logic of that, Mr Mpfu. It may well be the witness would

18 say he would have done the same if he'd known after scene 1

19 what had happened, but if he called a halt and reassessed

20 the situation then the unknown is what would have happened

21 after the reassessment. He might have reassessed, seen

22 these people are taking refuge in the bushes and whatever,

23 shots might have been fired from that direction, as they

24 allegedly were, and they may then have decided we have to

25 go in to scene 2 to deal with the situation, and if they

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1 had acted in self-defence, as they say they did, they might
 2 have had to do it again and the results might have been the
 3 same. So it's a bit, it's not one of these cases you say
 4 well if they'd stopped – obviously if they'd stopped and
 5 done nothing further then certainly no-one would have been
 6 killed at scene 2, but I didn't understand either the
 7 passage you read from Major-General Mzembe's statement or
 8 what he told Mr De Rover to mean that they wouldn't have
 9 gone in to scene 2 to deal with the situation to try to
 10 arrest those people. So I think the question, if I may say
 11 so, is overly ambitious because there are so many
 12 imponderables, so I don't see how the witness can be
 13 expected to say I agree that would have happened, and if he
 14 were to say that, I'm not sure that one would accept the
 15 answer. But perhaps, but I think I know where you're
 16 coming from. Perhaps you can reformulate the question to
 17 deal with the problems that I've raised and then proceed.
 18 In other words I don't want to stop you, but I don't think
 19 the question that you phrased is sufficiently framed to
 20 help us.

21 MR MPOFU: Yes, I accept that, Chair.
 22 General, my last attempt. Would you agree that had General
 23 Mzembe halted the proceedings and done the assessment which
 24 he envisaged, that one of the results may have been not to
 25 proceed towards scene 2?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 ek kan nie getuig wat Generaal Mzembe sou gedoen het nie.
 3 Ek kan net 'n paar potensieële opsies gee van my perspektief
 4 af. Ek het getuig dat ek nie bewus was van 'n toneel 1 en
 5 'n toneel 2 nie.

6 MR MPOFU: Yes, I'll accept that answer.
 7 I don't think I can take that particular point further.
 8 Maybe then what I should say, to ask you, knowing what you
 9 know now, do you think it was a wise decision after the,
 10 what I call the disaster - you may or may not agree with
 11 that description – of scene 1, to nevertheless continue
 12 with another, well maybe not another operation, the portion
 13 of the operation that resulted in these things that I've
 14 said, at scene 2?

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek het getuig dat sou ek as individu bewus gewees het wat
 17 hom afgespeel het by wat ons nou ken as toneel 1, dan sou
 18 ek 'n aantal stappe sou ek geneem het self. Omdat ons, as
 19 ek kan verwys, blind is in die JOC in terme van beperkte
 20 bewus, ons nie openlik bewus is van wat gebeur in die veld,
 21 sou ek pertinent met die operasionele bevelvoerder, in die
 22 geval Brigadier Calitz, kontak gemaak het en 'n situasie
 23 rapport kry van wat besig is om af te speel. Voorsitter,
 24 dan sou die taking gewees het dat mens stop –

25 MR MAHLANGU: Before going on, Mr

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1 Chairperson, if you could help me with "die taking."
 2 CHAIRPERSON: Tasking, or giving a task.
 3 MR MAHLANGU: The tasking, yes.
 4 CHAIRPERSON: If I'm wrong the –
 5 GENERAAL-MAJOOR ANNANDALE: Ja, verdere
 6 polisie optrede, so further police –
 7 CHAIRPERSON: Further police actions.
 8 MAJOR-GENERAL ANNANDALE: Actions, ja.
 9 Dan die situasie assessee en hergroepeer. Ek het ook
 10 gemeld dan as ek die operasionele bevelvoerder was sou ek
 11 waarskynlik iemand soos Generaal-Majoor Naidoo gestuur het
 12 vanaf "forward holding area" 1 en hom dan stuur na die,
 13 waar die toneel homself afgespeel het om te bepaal wat die
 14 omstandighede is en of daar enige mediese sorg benodig
 15 word. Voorsitter, maar synde dat die gewapende groep nog
 16 steeds in 'n koherente groep teenwoordig was met die wapens
 17 sou ek dan voortgegaan het met die verdere polisie optrede
 18 in lyn met die aanvanklike plan om hulle dan uit, verder
 19 uiteen te dryf en dan te ontwapen en te arresteer.
 20 Voorsitter, dan in terme van die herassessering wat
 21 plaasgevind het sou 'n ou dan nou natuurlik 'n ander
 22 benadering volg in terme van hoe om hierdie groep te
 23 benader.

24 MR MPOFU: Yes, thank you, General. I
 25 understand that, and exactly, my point is exactly that,

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1 that the absence of that reassessment which Major-General
 2 Mzembe and you now postulate, was something significant and
 3 maybe the question is this; would you accept that had you
 4 done that reassessment as you explained now, and as Major-
 5 General Mzembe also says it should have been done, that the
 6 outcome of scene 2 – and I'm now assuming you nevertheless
 7 decided to proceed – would at the lowest have been
 8 different from what it was without the reassessment?

9 [14:27] MR SEMENYA SC: Chair, this is the
 10 difficulty with conjecture, Chair. We know as a matter of
 11 fact as far as the JOC was concerned they were unaware
 12 there's a scene 1 or a scene 2. We know as the statements
 13 stand, at least of Brigadier Calitz, the operational
 14 commander, he was not aware that scene 1 had happened. To
 15 then put this proposition that things would have panned out
 16 differently given the reassessment is just misleading.

17 MR MPOFU: Chairperson, this is where my
 18 response might assist the witness with what I want to put,
 19 but I'll let Mr Burger first –

20 MR BURGER SC: May I join on a different
 21 basis with my learned friend Mr Semanya? What is now being
 22 asked is a conclusion which you will have to draw as a
 23 Commission, Chair, on the fact available what would have
 24 happened. So it's not the function whether this witness
 25 thinks that he thinks it would have been different or not,

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1 is quite irrelevant, but secondly it is a meaningless
 2 question without what they call in Competition Law, a
 3 counterfactual. What would have happened if these measures
 4 were implemented? It's no good to say to a witness things
 5 might have been different. That takes us nowhere. It's no
 6 good to say things might have been better. What is the
 7 counterfactual? What would have happened to the alleged
 8 shooting from the koppie as the police approached? One
 9 doesn't know that, so with respect, it is again an argument
 10 in closing which is being debated with the good General and
 11 I object to it on that basis.

12 CHAIRPERSON: Mr Mpofo, isn't this really
 13 the point which I put to you earlier; you can ask a
 14 question of what might have happened, but –

15 MR MPOFU: That's why I didn't use that
 16 word.

17 CHAIRPERSON: It's impossible to say what
 18 would have happened because various things might have, you
 19 know, might have happened. One can't be certain what would
 20 have happened. As I said one of the things that could
 21 have, that might have happened, was exactly what did
 22 happen. In other words so the people there would have, as
 23 alleged by the police, and I'm not, we haven't made a
 24 finding, we will find out at the end of the matter as to
 25 what, if we can find what actually happened, but if what

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1 the police say happened, what the police say happened may
 2 well have happened anyway. In other words once they
 3 stopped to reassess as they approached the area they might
 4 have been shot at, as the police say they were. They might
 5 have had to defend themselves, as the police say they did,
 6 and the same number of people might have been killed. But
 7 it's all so conjectural. It's very difficult, but anyway,
 8 to expect this witness to tell us – if he'd been able to
 9 produce a crystal ball from his pocket and tell us by
 10 looking at his crystal ball what would have happened, then
 11 maybe I would allow the question, but he's not armed or
 12 equipped with a crystal ball, so I think there are more
 13 profitable lines you could follow, if I may say so.

14 MR MPOFU: Yes, Chairperson, save just to
 15 say this; once again we are slipping into the unfortunate
 16 arena of treating the people who died as statistics. I
 17 don't care, with greatest respect, whether the same number
 18 of people would have been killed or not. The issue is that
 19 had the assessment happened, however long it would have
 20 taken, it is unlikely that the same people, the ones that I
 21 represent, were killed or were –

22 CHAIRPERSON: It's likely precisely the
 23 same set of circumstances would have happened as had
 24 happened, but I don't think –

25 MR MPOFU: Then say it could have been

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1 500, it might have been another 500 –

2 CHAIRPERSON: I don't think you need ask
 3 the witness that. Surely on the facts that you've elicited
 4 on the table you can argue it, and it's unlikely that
 5 exactly what happened would have happened again. But you
 6 got that. I mean what's the point of spending more time on
 7 getting an answer from the witness – he may be willing to
 8 give you the answer and he may not, but even if he doesn't,
 9 I mean the facts that you need are before us. You've got
 10 the material with which to argue –

11 MR MPOFU: No, fair enough.

12 CHAIRPERSON: Move on.

13 MR MPOFU: Yes. Let me just ask this
 14 then. In your – the last question on this, I promise you.
 15 In your estimation this reassessment that you've described,
 16 how long would it have lasted? Now with the benefit of
 17 hindsight. I know when you were sitting in the JOC you
 18 didn't even think it was necessary. I'm talking, I'm
 19 asking you now as we are sitting here, if you knew that 16
 20 or 18 people are down on the other side and so on and so
 21 on, and it's time to pause and do the reassessment, how
 22 long more or less would it take?

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 selfs met die voordeel van nabetragting kan ek my nie eers
 25 dink om te waag hoe lank dit sou wees nie. Daar is net te

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1 veel veranderlikes wat moet in gedagte gehou word.
 2 Voorsitter, ons moet kyk na die terrein. Ons moet kyk hoe
 3 ons onderskeie personeel ontplooi was, waar was hulle in
 4 relasie tot mekaar, wat is ons nuwe benadering, volg ons
 5 die ou benadering. Daar is net so 'n verskeidenheid
 6 faktore ongelukkig.

7 MR MPOFU: Alright, is it correct that
 8 you yourself as you are sitting there, you've never set
 9 your foot at or near the koppies?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 nee, ek het gesê ek was nie op die toneel nie. Ek was daar
 12 gewees seker vir so 10 minute, en ek sal nou verduidelik.
 13 Voorsitter, dit was, soos ek kan onthou, ek dink dit was op
 14 die Vrydag wat die Minister van Polisie besoek afgelê het
 15 aan die gebied en die Minister wou na die betrokke toneel
 16 toe gaan met 'n helikopter, Voorsitter, en ons het gegaan
 17 na 'n gebied 'n ent weg van die koppies af wat ons beskou
 18 het as 'n potensiële plek waar die helikopter kan land, en
 19 daar was groeperings van mense gewees in die direkte
 20 omgewing en die helikopter het nie geland nie, waarop ons
 21 toe onttrek het.

22 MR MPOFU: Thank you very much. In fact
 23 I'm going to paraphrase one of your answers, and forgive
 24 me, if I'm wrong you'll correct me because I don't have the
 25 direct reference. You suggested that during the operation

<p style="text-align: right;">Page 9371</p> <p>1 when somebody made reference to the second koppie or 2 another koppie, you did not know what they were talking 3 about? In other words, on the 16th you were not even aware 4 that there was another koppie. 5 MR BOOI: You were not aware? 6 MR MPOFU: That there was another koppie, 7 the koppie of scene 2. 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter 9 nee, ek het getuig dat soos die situasie in my kop, soos ek 10 dit in my kop afgespeel het, het ek die ander koppie gesien 11 as die koppie langsaan die groter koppie. 12 MR MPOFU: Okay, that's fine. Now just 13 going back to the issue that we were debating now about the 14 scene 2, would you accept that the, if you look at it as a 15 cost benefit kind of issue, that the cost of proceeding 16 with scene 2 is what I've already mentioned to you, 16 17 lives, more injuries, 259 arrests, or let's put the arrests 18 on the side for now, and the only benefit is really the 19 arrest of those people and a few kieres and then other 20 dangerous weapons. Would you say that – sorry, and the 21 question is knowing what we know now, would you say that 22 the so-called benefit of what was achieved at scene 2 23 justified the cost? 24 MR BURGER SC: Chair, I object to that 25 question. The opinion of the witness is irrelevant and the</p>	<p style="text-align: right;">Page 9373</p> <p>1 CHAIRPERSON: No, obviously – 2 MR MPOFU: If you know what I mean. 3 CHAIRPERSON: You'll only – 4 MR MPOFU: But you might want to, if 5 there's a terrorist, as it says in the thing, with 35 bombs 6 which can decimate all of us, you – so the cost benefit 7 thing is, as far as I know, inherent in dangerous police 8 work. 9 CHAIRPERSON: In this case the issue 10 raised, as I understand it, by the police is they say they 11 shot in self-defence or private defence. That's the only 12 justification put forward. Implicit in that is that if 13 that's not established and we do not find that it was a 14 situation of self-defence or private defence, we will have 15 to find the shootings were illegal if that's so. So cost 16 benefit won't come into it. 17 MR MPOFU: Okay. Well, fine – 18 CHAIRPERSON: Because you know, we won't 19 have to – you know, we won't have to worry about that 20 point, will we, because it won't be on the table to be 21 decided. It's either self-defence or private defence, or 22 illegal shooting. 23 MR MPOFU: Well, Chairperson, I didn't 24 think it was that simple. I thought one of your tasks is 25 not simply to say it was either self-defence or not, but to</p>
<p style="text-align: right;">Page 9372</p> <p>1 question answers itself. If one person loses his life, the 2 cost is too high to get a few assegais or to arrest people. 3 The view of the witness is not going to help and the logic 4 of the question escapes me. 5 CHAIRPERSON: Mr Semenya, I think you 6 also indicated you want to say something. 7 MR SEMENYA SC: That was my objection. I 8 don't know in police operations whether there are 9 measurements for cost benefits. So I don't even understand 10 how the witness is expected to answer that. 11 CHAIRPERSON: Mr Mpofo, what do you say 12 about the points that have been raised? 13 MR MPOFU: Well, if that is so, then God 14 save us all, Chairperson. I would have thought that the 15 mark of a policeman, an officer for that matter, one of 16 them is exactly to always have that cost benefit analysis 17 at the back of your head. In other words you don't shoot a 18 machine gun in a crowded room just because somebody has 19 forgotten their passbook, as it were – 20 CHAIRPERSON: You only shoot in self- 21 defence or private defence. 22 MR MPOFU: No, no. Yes, no, I'm 23 exaggerating, Chair. All I'm saying is that you don't, you 24 wouldn't fire into a crowded room because someone has 25 stolen a loaf of bread.</p>	<p style="text-align: right;">Page 9374</p> <p>1 look into the circumstances and even recommend what should 2 in the future be done or not done in order to prevent a 3 similar situation. But if it's simply, it's either self- 4 defence, therefore you're in or – 5 CHAIRPERSON: As far as the actual deaths 6 were concerned, that's the only justification put up – 7 MR MPOFU: Ja. 8 CHAIRPERSON: - by the police. 9 MR MPOFU: I accept that, but I thought 10 that – 11 CHAIRPERSON: And if that fails, 12 consequences flow, won't they? 13 MR MPOFU: Yes, exactly – 14 CHAIRPERSON: We don't then have to go 15 into further questions, I don't think, but in any event 16 these are matter of argument too, I would have thought, and 17 Mr Burger's point is that we haven't really got an expert 18 on cost benefit analysis. So it's a matter which, if he's 19 giving evidence as an individual, without the benefit of 20 special expertise, then the evidence isn't really 21 admissible. It's a matter that could be argued on the 22 facts before us. So I'm inclined to think the objection is 23 a good one. 24 MR MPOFU: That's fine. That's fine. 25 Why did you –</p>

<p style="text-align: right;">Page 9375</p> <p>1 CHAIRPERSON: Sorry, can I ask you a 2 question in relation to the questions you just asked? When 3 did you first become aware of the fact that there was a 4 small koppie or a scene? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 ek dink dit het eers vir my duidelik geword toe ek in 7 telefoniese gesprek met Generaal-Majoor Naidoo was, wat hy 8 vir my dit verduidelik het, en toe ek op lugfoto's, of op 9 Google gaan kyk het om dit te sien in perspektief tot die 10 groter koppie. 11 CHAIRPERSON: About what time would that 12 have been? 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 ek kan nie presies onthou nie. Dit was waarskynlik voor 5 15 of in die omgewing van 5 uur die middag. 16 CHAIRPERSON: Thank you. 17 MR MPOFU: As I've already indicated to 18 you that I act inter alia for the people who were arrested, 19 can you tell us why those people were arrested? 20 GENERAAL-MAJOOR ANNANDALE: Hoekom die 21 persone op die koppie gearresteer was, die 259? 22 MR MPOFU: Correct, yes. It was actually 23 about 270, but the numbers don't matter. Let's say more 24 than 250. 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>	<p style="text-align: right;">Page 9377</p> <p>1 MR MAHLANGU: I'm sorry, I spoke of 2 public works. Public Order Policing. 3 MR MPOFU: Public violence. 4 MR MAHLANGU: Public violence. 5 CHAIRPERSON: I think he said "geweld." 6 "Openbare geweld" is public violence. Mr Mpofo, you'll get 7 an opportunity to ask these questions of people who have 8 more direct knowledge of it. I'm not stopping the enquiry 9 altogether. 10 MR MPOFU: Yes. No, I accept that, 11 Chairperson, especially since he has confirmed he played no 12 role even in terms of directing others. 13 CHAIRPERSON: - concurring judgment, Mr 14 Mpofo. 15 MR MPOFU: Thank you. Something happened 16 over lunchtime. Alright, I think the next question will 17 also have to go to the other people. You accept, I'm sure 18 you do – or let me put it this way. I take it that you 19 don't subscribe to the theory that it wouldn't matter in 20 terms of the operation whether there were three armed 21 people or 300 or 3 000, and I can assure you, I know that's 22 Mr Bizos' favourite subject so I'm going to approach it 23 briefly and from another perspective. But the question, 24 because I know he must have covered it. What I'm saying is 25 you as a matter of fact, with the experience as a</p>
<p style="text-align: right;">Page 9376</p> <p>1 vir besit van gevaarlike wapen, as ek dit nie mis het nie. 2 MR MPOFU: You are missing it. Or let me 3 ask you this. To your knowledge were any of the people 4 arrested there linked to any specific weapons found? 5 [14:47] CHAIRPERSON: Mr Mpofo, this witness 6 wasn't on the scene. He wasn't involved in making the 7 arrests. Any evidence he can give on the matter is likely 8 to be hearsay. There are people directly concerned 9 presumably, or people more directly concerned who are going 10 to give evidence in due course. You're almost asking him 11 to guess, or to tell us what he heard from other people 12 later. I don't know that it's going to help us in our 13 investigation. 14 MR MPOFU: Okay, Chairperson, I thought 15 he was the big honcho in the CJOC, but that's fine. If 16 these things were not discussed with him, or he played no 17 role in the arrests, or if the Chairperson knows that he 18 played no role, then that's fine. 19 CHAIRPERSON: Did you play any role in 20 the arrests? 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter 22 nee, ek was nie teenwoordig nie. Ek was maar net terugvoer 23 gegee soos die mense gearresteer was, en ek dink ook 24 melding van "public violence," openbare geweld, maar ek was 25 nie deel daarvan nie.</p>	<p style="text-align: right;">Page 9378</p> <p>1 policeman, you would agree that it would make a difference 2 whether there were three people who were armed, or 300, or 3 3 000? 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5 dis net belangrik dat ek verstaan, make a difference in 6 terms of the number of police officers deployed or to the 7 deployment of resources, or – 8 MR MPOFU: Yes, thank you, that's a fair 9 question. Yes, I mean firstly in terms of the deployment 10 of the resources, the numbers, you know, the numbers of 11 paramilitary personnel, the numbers of – or let's put it 12 this way, the numbers of people with sharp ammunition, you 13 know, the amount of barbed wire, all those kinds of things, 14 ja. In other words on the overall complexion of the – I 15 know it's a vague term – of the operation. 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 17 ek sien Adv Mpofo stem nie saam met my definisie van 18 paramilitêr nie. Ek volstaan nog steeds dat dit nie 19 paramilitêre eenhede is nie, maar [onhoorbaar] – 20 MR MPOFU: Okay, I'm so sorry, let me 21 [inaudible]. You know what I mean; STF. 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 23 daar is verskeie faktore wat ons na kyk. Ons kyk na risiko 24 faktore, ons kyk na dreigemente. Ons kyk na getalle. Ons 25 kyk na pertinente dreigemente. Ons kyk na geskiedenis van</p>

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1 geweld. Voorsitter, ons kyk ook na die geografie van die
2 betrokke omgewing, en dan uiteraard ook na die bewapening
3 van sodanige groepe.
4 CHAIRPERSON: "Uiteraard" I think means
5 especially. Especially the amount of weapons that were
6 there, the group had. Would that be a fair translation?
7 GENERAAL-MAJOOR ANNANDALE: Ek is
8 gemaklik daarmee, Voorsitter.
9 CHAIRPERSON: So the answer was yes to
10 the question that you were asking.
11 MR MPOFU: A long yes, yes Chairperson,
12 and I expect that.
13 CHAIRPERSON: A motivated yes, I suppose.
14 MR MPOFU: Yes. Let me just qualify it
15 as follows. As economists would say, ceteris paribus; all
16 these other things being the same, the geography, what have
17 you and so on, would it make a difference if the operation
18 was targeted at three armed people, 300 armed people, or
19 3 000 armed people? Assuming everything else you've said,
20 and which I accept, remains the same.
21 MR BURGER SC: I object to the question
22 because it's quite unintelligible. You can't assume all
23 things are the same if the witness says it depends on the
24 area surrounding the incident. We don't know what the area
25 is. My learned friend says three, 300, or 3 000. Can he

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1 tell us, are we dealing with three terrorists on the top of
2 the Carlton Centre, armed to the teeth, then you probably
3 need about 1 000 POPs. Does he refer to something in the
4 abstract, or is he really asking a question about Marikana
5 - a core group of people armed, with a larger group on one
6 version also armed, on another version not armed, then we
7 can use the water in the bucket.
8 CHAIRPERSON: I see there's substance in
9 the point but I think Mr Mpofo can repair the problem.
10 MR MPOFU: Yes.
11 CHAIRPERSON: I think what you want to
12 know, Mr Mpofo - if I'm wrong you'll correct me - that
13 would your plan have been different, would you have
14 different plans if this group of 3 000 people on the koppie
15 only consisted of, in that group there were only three
16 people who were armed, compared with a situation where
17 there were 300 armed, compared with a situation where all
18 3 000 were armed? Those, same area, same geography -
19 MR MPOFU: Same everything else.
20 CHAIRPERSON: Everything else, not
21 Carlton Centre, not terrorists. I would have thought you
22 wouldn't have had POP people if there were terrorists
23 [inaudible] either, but anyway, I think that's your
24 question -
25 MR MPOFU: That's my question, Chair.

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1 CHAIRPERSON: I think that probably meets
2 Mr Burger's problem. Let's hear what the answer is.
3 MR MPOFU: Yes, thank you, Chairperson,
4 and I'm not answerable for Mr Burger's intelligence. If he
5 couldn't -
6 CHAIRPERSON: No, no, no, Mr Mpofo, don't
7 go there.
8 MR MPOFU: Well, he does say the question
9 is unintelligible. He shouldn't go there, Chairperson, as
10 well. The question was very intelligible. You understood
11 it.
12 CHAIRPERSON: We've had a harmonious
13 relationship, all of us, so far, generally speaking -
14 MR MPOFU: I wouldn't go that far, Chair.
15 CHAIRPERSON: - at this Commission, and
16 let it remain so, and this kind of sniping thing to say
17 doesn't help. So just - alright, Major-General, ignore
18 that sniping; just answer the question as I've reframed it.
19 MAJOR-GENERAL ANNANDALE: Hear no evil,
20 see no evil, and we do not evil, Chairperson. Voorsitter,
21 ek het regtig gedink ek het dit verduidelik toe ek die
22 voorbeelde gesê het meer mense, minder mense, gewapende
23 goed, maar om direk te antwoord op u, daar so 'n
24 verskillende benadering wees in terme van die ontplooiing
25 van hulpbronne as daar sou 3 000 gewapen wees teenoor drie.

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1 MR MPOFU: Thank you, that's all I
2 wanted. Now once again I'm sure this was canvassed with
3 you, so I don't want to belabour it, but are you aware that
4 of the top leadership at least - and here I'm talking about
5 people like you, Calitz, Naidoo, Mbombo and a number of
6 others - that there were so many versions, or there are so
7 many versions of how many armed people were the subject of
8 the operation. On one version it was 4 000 - no, that was
9 on the 14th. That Calitz says for example that on the 14th
10 there were 3 000 to 4 000 armed people, and then he says on
11 the 16th there were I think 3 000 to 3 500, all armed, and I
12 know that was canvassed with you by Mr Bizos, and you say
13 that the operation was focussed on 300 people.
14 CHAIRPERSON: Armed people.
15 MR MPOFU: 300 armed people, thank you,
16 Chairperson.
17 CHAIRPERSON: 3 to 400 I think.
18 MR MPOFU: Yes, 3 to 400. So we can
19 accept that there are those differences, unless if you want
20 to contest it. The real question is do you think that if
21 at the top there were such different versions of the
22 problem, that the solution was bound to go haywire, so to
23 speak, because you were diagnosing a different problem, if
24 I'm correct in those numbers? Sorry, I know it's a long
25 question.

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 ek sal dit as volg probeer beantwoord. Dit was aan my
3 uitgewys deur mnr, Adv Bizos in terme van dit wat in
4 Brigadier Calitz se verklaring is, Voorsitter en ek het
5 gesê dat die plan het nie net gedeel met die tussen 3 en
6 400 nie; ek het gesê die plan het ook ingesluit die
7 aanspreek van die groter groep in terme van 'n uiteendryf
8 aksie.
9 MR MAHLANGU: I said, Mr Chairperson, the
10 plan was not only directed at the 3 to R400; the plan was
11 to deal with –
12 MR MPOFU: Sorry, 3 to 400 people.
13 MR MAHLANGU: - all who were there –
14 MR MPOFU: Not rand.
15 CHAIRPERSON: I don't think it was 3 to
16 R400; I think it was 3 to 400 people with weapons.
17 MR MAHLANGU: I'm sorry, Mr Chairperson,
18 I think some –
19 CHAIRPERSON: Mr Mahlangu, you know what
20 the problem is –
21 MR MAHLANGU: I think I'm getting a bit
22 tired.
23 CHAIRPERSON: You know what the problem
24 is -
25 MR MAHLANGU: But I'll try my level best

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1 -
2 CHAIRPERSON: It's 3 o'clock. You should
3 have tea. When we've had tea and you've had a rest we'll
4 have another go after –
5 MR MAHLANGU: Possibly after tea break
6 I'll be fine.
7 CHAIRPERSON: And then mistakes like that
8 which come from fatigue won't be repeated. The Commission
9 will now adjourn.
10 MR MPOFU: For R15, Chairperson.
11 [COMMISSION ADJOURNS COMMISSION RESUMES]
12 [15:21] CHAIRPERSON: The Commission will resume.
13 Generaal-Majoor, u is nog steeds onder eed.
14 CHARL ANNANDALE: s.o.e.
15 CHAIRPERSON: Mr Mpofo.
16 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
17 Chairperson, yes, thank you. Major-General, just to
18 proceed on what we were busy with, do I take it that when
19 you refer to the larger group, you're talking about the
20 3 000 plus?
21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
22 dit is korrek.
23 MR MPOFU: Now in your statement at
24 paragraph 22, and contrary to what you have said here, but
25 I'll give you an opportunity obviously to respond, you seem

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1 to indicate that it was the bigger group, or the larger
2 group that had to be disarmed, and I'm just going to read
3 the last sentence. You said, "This entailed" – I'm sorry,
4 I'm assuming you've read the first part, so I'm reading it
5 almost out of context, but it says, "She instructed us to
6 proceed with the implementation of stage 3 of the
7 operational plan. This entailed a dispersal tactic with
8 the intention of spreading the bigger group into smaller
9 groups that would be more manageable and would allow the
10 police to encircle smaller groupings with the intention to
11 disarm and arrest them." Would you agree that that
12 statement refers to the disarmament of the bigger group at
13 least?
14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
15 dit is altyd bedoel die groter gewapende groep, so nie
16 noodwendig die groot 3 000 groep.
17 MR MPOFU: Ja, well I don't understand
18 that. I thought you and I had established that when you
19 refer to the bigger group, you're talking about the 3 000.
20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 die groter groep in terme van konteks inteenstelling met
22 die kleiner groep.
23 MR MPOFU: Yes, well it means then the
24 bigger group in your terms is the rest of the people which
25 had to be disarmed, or rather encircled into smaller groups

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1 and disarmed.
2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
3 ek het in my getuienis verduidelik en ek het verwys na twee
4 "distinct groups," die groot groep sowat 3 000 en die
5 kleiner groep tussen 3 en 400. Ek het verduidelik dat daar
6 voorsiening gemaak is sou dit nodig wees om die groter
7 groep uiteen te dryf, maar dit nie verwag was dat dit sou
8 nodig wees nie en dat hulle waarskynlik self sou
9 uiteengaen, soos wat hulle ook dan op die einde van die dag
10 uiteengegaan het. Die konteks in my verklaring van hierdie
11 "bigger group" die groter gewapende groep en dat die
12 intensie was om hulle te ontwapen en te arresteer.
13 CHAIRPERSON: This group is bigger than
14 what other group?
15 GENERAAL-MAJOOR ANNANDALE: Ek het nie
16 gehoor nie, Voorsitter.
17 CHAIRPERSON: I said the group you're
18 referring to was bigger than what other smaller group?
19 GENERAAL-MAJOOR ANNANDALE: Die groter
20 gewapende groep, Voorsitter.
21 CHAIRPERSON: The bigger group that
22 you're talking about here in your statement was bigger than
23 what other smaller group? What's the smaller group that's
24 implied in the use of the comparative word "bigger" before
25 group?

<p style="text-align: right;">Page 9387</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Nee, ek sien 2 wat u bedoel, Voorsitter. Nee, daar is nie 'n ander 3 kleiner, daar is nie drie groepe gewees nie. Dit die groot 4 groep en 'n kleiner groep. 5 CHAIRPERSON: So I take it the smaller 6 group is what you mean – sorry, the expression “bigger 7 group” refers to the smaller group? 8 GENERAAL-MAJOOR ANNANDALE: Dis reg, 9 Voorsitter. 10 CHAIRPERSON: What a strange use of 11 language. 12 GENERAAL-MAJOOR ANNANDALE: Dis die groep 13 van 3 tot 400 gewees wat ons dan verder wou opbreek in 14 kleiner groepe. 15 MR MPOFU: General, maybe it's my fault. 16 I'm totally confused now. You and I have established that 17 the larger group, or the bigger group, is the 3 000, and as 18 the Chairperson said, in relation, when you have two 19 groups, when you say the larger and the smaller, clearly 20 the larger group meant the one that is not the 300 to 400. 21 CHAIRPERSON: No, no, I didn't say that. 22 I just asked him – 23 MR MPOFU: No, I'm saying – 24 CHAIRPERSON: - that when you talk about 25 the big – you as “as the Chairman said.”</p>	<p style="text-align: right;">Page 9389</p> <p>1 CHAIRPERSON: Is that an objection? 2 MR SEMENYA SC: I'm saying, Chair, we're 3 going to say the direct meaning of the statement of the 4 witness, if given that construction would then suggest the 5 implausible. 6 CHAIRPERSON: Yes, yes, no I understand 7 you're going to say that. I'm just asking you is that an 8 objection? 9 MR SEMENYA SC: I'm raising that for 10 fairness of the question, Chair. 11 CHAIRPERSON: Alright, well Mr Semenya 12 has raised what he wants to raise. Do you want to ask the 13 question now, Mr Mpfu? 14 MR MPOFU: Yes, I'll ask the question, 15 Chairperson. I want to suggest that the bigger group that 16 you referred to, refers to the estimated 3 000 or so people 17 which may or may not have included the 300, but it's the 18 people at the koppie, it's the larger crowd, as it were, or 19 whatever it is, it's definitely not the smaller crowd. 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 nee dit, ek het verwys in my getuienis daarna omvattend in 22 terme van die onderskeid in die twee groepe. Ek kan ook 23 verwys na bewysstuk SSS3 waar daar spesifiek melding gemaak 24 word van die kleiner groep, en dan selfs in bewysstuk 25 GGG13, Brigadier Calitz se verklaring, is daar waarskynlik</p>
<p style="text-align: right;">Page 9388</p> <p>1 MR MPOFU: Ja. 2 CHAIRPERSON: The Chairman didn't say 3 that. The Chairman said when you talk about the bigger 4 group you imply there must be a smaller group and what's 5 the smaller group, and he said that by the bigger group he 6 really meant the smaller group, and I commented it is a 7 strange use of language, but that's the evidence and I can 8 understand – 9 MR MPOFU: Okay. 10 CHAIRPERSON: - people don't always 11 express themselves well, but anyway, that's his evidence. 12 MR MPOFU: Ja, okay. Well, I put it to 13 you, despite what people do, that in that paragraph when 14 you were talking about the bigger group, you were indeed 15 talking about the 3 000 plus, and that the version that it 16 was only the 300 is one that is a much later afterthought. 17 In other words what I'm saying, that you were like the 18 others, like Calitz and so on and so on, working on the 19 assumption that there are 3 000 armed people. 20 CHAIRPERSON: Before you answer, Major- 21 General, Mr Semenya wants to say something. 22 MR SEMENYA SC: Chair, that type of 23 construction then suggests the only group that was going to 24 be broken up is 3 000 and nothing would have been done with 25 the group of 3 to 400.</p>	<p style="text-align: right;">Page 9390</p> <p>1 seker omtrent vyf keer wat hy verwys na die onderskeid, 2 maar ek wil pertinent verwys na paragraaf 12 aan die einde, 3 en ek haal aan, “At this stage a group of people on the 4 mountain, some of them covered with blankets and armed with 5 weapons, were on the ground about 80 metres away from the 6 barbed wire vehicles; these men were very aggressive and 7 were waving their weapons at us. They were about 300 to 8 400 men. The rest of the men remained on the koppie from 9 where they were chanting and waving their weapons at us.” 10 MR MPOFU: Yes, well that's exactly the 11 problem, General. It is the fact that according to what 12 you've just read now, “the rest of the men were chanting 13 and waving their weapons at us.” In other words, according 14 to that sentence the rest were also wielding weapons, and 15 if that is not enough, if you go to paragraph 19 of Calitz 16 he says, “The crowd that assembled on the koppie was unruly 17 and very aggressive. They were all armed with extremely 18 dangerous homemade and bought weapons, which they clearly 19 intended to injure and kill SAPS members. They acted as 20 one group and all of them associated themselves with the 21 action of each other. All of them had the same intention 22 or goal.” So if you read what you've said, where he says 23 “the rest were armed,” together with what he says in 24 paragraph 19, then there can't be any dispute that he's 25 saying everybody there were armed with dangerous weapons.</p>

<p style="text-align: right;">Page 9391</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ek het ook in my getuienis verwys na my waarneming en dat 3 die groter groep, die 3 000 sowat, dat van hulle ook 4 gewapen was met meer tradisionele wapens. Brigadier Calitz 5 sal sy eie waarneming van die groep sal hy kan kom 6 verduidelik. 7 MR MPOFU: Ja, before we move to another 8 aspect of this, if you can assist the Commission by going 9 to paragraph 12 of your statement, once again you speak 10 there about feedback and the breakdown of negotiations and 11 so on, and your last sentence says, "This in turn led to 12 the bigger group becoming more hostile, causing a breakdown 13 with further communication." Which group are you referring 14 to now? 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 soos ek die terugvoer op die 15de Augustus onthou het 17 Brigadier Calitz gemeld dat die vyf persone het vanaf die 18 kleiner meer militante groep uit die groepie uitgekom en 19 dat hierdie "bigger group" waarna verwys word die groter 20 3 000, sowat 3 000 is, of hoeveel daar op die betrokke dag 21 was, maar die groter groep. 22 MR MPOFU: So what you're really asking 23 us to believe is that in that paragraph when you say the 24 bigger group, you are talking about the 3 000, and in the 25 other paragraph that I quoted to you, you were talking</p>	<p style="text-align: right;">Page 9393</p> <p>1 something that is there. The point I'm making is that your 2 version, or rather exactly because of what you're saying, 3 Calitz's statement was made in August, so it was more 4 contemporaneous with the events; 2, Calitz was on the field 5 there. He saw these things with his own eyes. You have 6 told us that you didn't, so we have to believe Calitz's 7 version just for those two reasons alone, let alone all the 8 other people who say that there were thousands of armed 9 people and your own statement which suggests so. 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 ek kan net sê ek stem nie saam nie want dit is iets wat 12 moet geargumenteer word en besluit word op. 13 MR MPOFU: Okay, thank you. I happen to 14 agree with you, so I won't take you to task that it will be 15 argued. But let's take it a little bit further. Your 16 version about the so-called group of 300 to 400 is 17 unsustainable for another reason. Yes, sorry, I forgot to 18 use the word "armed." That was the group that was armed, 19 and I'll just take you through your own statement. You 20 would agree that your version is that by the 6 o'clock 21 meeting there were already 300 armed people at the koppie 22 on the 16th. Correct? That's in paragraph 17 of your 23 statement. 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 dis nie presies soos wat Adv Mpofu dit oordra nie. Ek</p>
<p style="text-align: right;">Page 9392</p> <p>1 about actually the smaller group. How does that make 2 sense? 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 4 ek het my bedoeling oorgedra in terme van daardie betrokke 5 paragraaf, en dat dit verwysend was na die gewapende groep 6 van sowat 3 tot 400. 7 [15:41] MR MPOFU: Yes, well, thank you. I put 8 it to you that you are busy contradicting yourself because 9 the use of that same phrase in the same statement made by 10 you could not possibly have meant the exact opposite in one 11 place and then the other, and that you are doing so because 12 this evidence that the operation was aimed at the smaller 13 group, the real smaller group, is an afterthought. You, 14 like the others, were intending to deal with the 3 000. 15 Sorry, it's a long statement, but since I expect you to 16 deny it, I suppose you are entitled – 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 ek stem nie saam nie. Ek kan ook net daarop wys dat 19 Brigadier Calitz reeds sy verklaring op die 19de Augustus 20 2012 afgelê het, Voorsitter, en dat daar pertinente foto's 21 is wat daarna verwys van die twee groepe en dat daar ook 22 vermelding is in bewysstuk L. 23 MR MPOFU: Ja. No, you will know you'll 24 be told that I disputed the notion of two separate groups, 25 but for the purposes of this question I'll accept it as</p>	<p style="text-align: right;">Page 9394</p> <p>1 verwys na die intelligensie verslag deur Kolonel Isaacs wat 2 hy dan meld dat daar reeds 300 persone by die koppie is en 3 baie van hulle, "many of them are in possession of 4 dangerous weapons." 5 MR MPOFU: Okay, even if we accept that, 6 if you read that in conjunction with paragraph 19, your own 7 evidence is that, "At 9:45 the members deployed at the 8 observation post reported that about 600 people arrived at 9 the koppie, heavily armed, and that a lot of people are 10 still on their way from the eastern side." In other words 11 another 600 people arrived, heavily armed, at about quarter 12 to 10. So that 300, even if you give or take that it was 13 just the majority, plus the 600, cannot amount to 300 14 again. 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 die paragraaf in my verklaring is verwysend na die 17 terugvoer wat ek gekry het toe ek teruggekeer het by die 18 JOC, waar dit gerapporteer was dat die observasiepos dit 19 sodanig oorgedra het. 20 MR MPOFU: Yes. No, I'm not suggesting 21 that you had first-hand information. All I want to say is 22 that to your knowledge, whether it was reported by others 23 to you or not, but to your knowledge there were a group of 24 600 people who were armed and another group of about 300, 25 the majority of which were armed, which is about 900, three</p>

1 times the number that you have told us.
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 nee, ek dink nie mens moet dit noodwendig saamstel, saamtel
 4 nie. Dit kan wees dat uit hierdie 600 was daar dan die 3
 5 tot 400 geskatte gewapende persone.
 6 CHAIRPERSON: That's of course not what
 7 the observation post people said. According to exhibit
 8 FFF25, which is the occurrence register of the JOC, it's
 9 note 978, "9:45, situation report, OP1 reported that 600
 10 people arriving at the koppie, heavily armed. A lot of
 11 people still were coming from eastern side." So what the
 12 two members, I think they were STF people and what they
 13 reported from the observation post was 600 people heavily
 14 armed. Now it may be of course that some of those people
 15 who were heavily armed who were arriving at 9:45 were part
 16 of the larger group who were mainly armed with traditional
 17 weapons, but I don't know that one can read this report as
 18 indicating that there was a group of 600 people of whom 300
 19 were armed. That's not what the observers said.
 20 MR MPOFU: Well, Chairperson, I don't
 21 know what else it can mean. Even if –
 22 CHAIRPERSON: That was intended to be a
 23 point in your favour, Mr Mpofo.
 24 MR MPOFU: Yes, I agree.
 25 CHAIRPERSON: I'm sorry if you don't like

1 it, but I'm just trying to find out –
 2 MR MPOFU: No, I do like it –
 3 CHAIRPERSON: I'm just trying to find out
 4 what the facts are.
 5 MR MPOFU: Maybe I was unwisely trying to
 6 amplify it. I'll leave it at that, Chairperson, but I
 7 won't look a gift horse in the mouth. Would you respond to
 8 the question as further explained by the Chairperson,
 9 thanks, General.
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 wat ek sê is dat van hierdie 600 gewapende persone, dat van
 12 hulle was die klein groepie gewees, dat die 300 wat
 13 aanvanklik op die groep, op die koppie was wat die
 14 intelligensie gegee het, is nie noodwendig te sê dis van
 15 die klein groep nie, en dat ek verstaan dat dit 600 dan nou
 16 plus 300 is, so 900 potensieel swaar gewapende persone,
 17 maar dat van hulle dan verseker tussen die groot groep kon
 18 wees want daar was pertinent ook wapens in die groter groep
 19 gewees, maar meer tradisionele wapens.
 20 MR MPOFU: Yes, and that would then tend
 21 to support the contention that I put to you at the
 22 beginning of this discussion, which is that it was your
 23 view as expressed in paragraph, I think 22, that the larger
 24 group had to be disarmed.
 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

1 dit is nie so nie. Die fokus was gewees op die kleiner 3
 2 tot 400 swaar gewapende persone wat as 'n "cohesive" groep
 3 saam gefunksioneer het. Voorsitter, dit het nie uitgesluit
 4 dat die groter groep wapens gehad het nie, maar dit was
 5 meestal, soos waargeneem, tradisionele wapens. Voorsitter,
 6 dan was daar ook gerapporteer deur die groep wat in die
 7 suidweste was, Kaptein Kidd – kom ek verwys nou maar na die
 8 groter, Kaptein Kidd se groep – dat in hulle vee-aksie was
 9 daar soveel as, meer as 500 mense wat deurgegaan het,
 10 waarvan sommige wapens gehad het en hulle verbaal ingelig
 11 was om dit neer te lê, wat hulle gedoen het.
 12 MR MPOFU: Right, I'll leave the – I'm
 13 getting more confused. I'll leave it for argument, but
 14 save to say this, and to invite your comment; that I will
 15 argue at the end that this was one of the key criticisms
 16 which can be levelled at this operation. If the
 17 leadership, of which you were part, the top 5 in the line
 18 of command had different views as to what was the task at
 19 hand, if Calitz thought there were 3 000 people single-
 20 minded, all armed and dangerous and with intention to kill
 21 the police, and you thought it was 300 to 400 of those
 22 people, which may be 900, and the National Commissioner
 23 says it doesn't matter, even if it was just three of them,
 24 it would make no difference, that honestly that is a state
 25 of such utter confusion in the ranks that there could not

1 have been a successful operation. No wonder 34 people were
 2 killed.
 3 CHAIRPERSON: I'm sorry, I don't
 4 understand that question. There are two things I don't
 5 understand. I don't remember the National Commissioner
 6 said it didn't matter if there were three people who were
 7 armed –
 8 MR MPOFU: She did.
 9 CHAIRPERSON: It's 300, this witness, and
 10 3 000 Calitz. That's the distinction you're putting. But
 11 never mind what Calitz thought; if this witness thought
 12 that there were 300 who needed to be dealt with and he was
 13 satisfied with the plan, as he said he was, then I take it
 14 he will have to say that he thought that the plan was
 15 adequate for 300 armed people, 300 heavily armed people.
 16 The fact that Calitz thought that there were more heavily
 17 armed people isn't, wouldn't be relevant to his assessment
 18 of whether the plan was a satisfactory plan, regard being
 19 had to the situation as he saw it. So I don't understand
 20 your question. I can understand the idea behind it, if
 21 you've got a whole lot of, five people around the table
 22 agreeing on a plan and each one has a different idea of
 23 what the problem is, then the result might be chaos, but if
 24 you ask one of them whether the plan which he thought was a
 25 good plan was suitable for the situation as he understood

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1 it, he's likely to say yes. So I don't understand where
 2 this question gets us.
 3 MR MPOFU: Well, Chairperson, maybe
 4 you'll understand it if I gave you this following example.
 5 If you, or let's say me, if I was to be operated –
 6 CHAIRPERSON: No, no, let's not include
 7 the two of us. Let's take Mr Burger as –
 8 MR MPOFU: Mr Burger, even better, thank
 9 you. Then I'll make it more severe, Chairperson. If Mr
 10 Burger was to be operated upon, just to keep the word
 11 "operation" –
 12 MR BURGER SC: Brain operation?
 13 MR MPOFU: No, dental operation by five
 14 dental surgeons and one of them thought the problem was
 15 with three of his teeth, the other one thought the problem
 16 was with 10 of his teeth, the other one thought it was with
 17 all of his teeth, then I don't think he'll come out alive.
 18 That's really the kind of point I'm making. If the
 19 leadership –
 20 CHAIRPERSON: I think we understand your
 21 point. I see it's 4 o'clock. Perhaps the witness, in view
 22 of this very difficult question that you've posed to him,
 23 perhaps he'd like to think about it overnight –
 24 MR MPOFU: Sleep over it.
 25 CHAIRPERSON: - and give us the benefit

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1 of his answer tomorrow morning?
 2 MR MPOFU: Yes, please, Chairperson, and
 3 build in it –
 4 CHAIRPERSON: Let it be interpreted first
 5 so the interpreters remember what the question is while
 6 it's still fresh in their mind.
 7 MR MPOFU: Thanks, Chairperson. I just
 8 wanted to say, sorry, even to the interpreters, build into
 9 that homework the fact that the difference between your own
 10 statement between the 300 and the 900, and then the other
 11 people.
 12 CHAIRPERSON: While Mr Burger has still
 13 got a mouth full of teeth, he'd like to say something.
 14 MR MPOFU: Okay, yes.
 15 MR BURGER SC: My learned friend was also
 16 going to tell us whether he's going to be another three
 17 days or 300 days or 3 000 days in cross-examination. So
 18 perhaps this is the occasion, Chair.
 19 CHAIRPERSON: - tell us at the beginning
 20 that he would tell us, give us a sort of position or
 21 assessment – if that's the right word – of where he is now.
 22 Okay, are you in a position to do that, Mr Mpofu? I
 23 understand injury time is difficult to predict.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: But subject to that.

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1 [16:01] MR MPOFU: No, Chairperson – well, I'm
 2 going to, all I can promise is that I'm going to do my best
 3 overnight to condense the rest of my cross-examination. As
 4 it stands now I won't be finished in the half day that is
 5 left, but you never know, Chairperson, I might surprise you
 6 and even Mr Burger. I'm going to do my best –
 7 CHAIRPERSON: Well, it's the kind of
 8 surprise that one looks forward to of course.
 9 MR MPOFU: It will be a pleasant
 10 surprise. I'm really going to try, Chairperson, because
 11 even my own plans would be, the whole idea was that the
 12 reason I came back was to be able to do this witness so
 13 that I can then refocus on the Phiyega –
 14 CHAIRPERSON: Yes, alright.
 15 MR MPOFU: - rather than having two
 16 cross-examinations hanging.
 17 CHAIRPERSON: No, I understand, and may I
 18 ask which of the other parties wish to cross-examine after
 19 that, just so we can bear that in mind? It's more relevant
 20 for next week, I suppose, but – Mr Tip, I think you're
 21 keeping your powder dry for the moment, are you?
 22 MR TIP SC: As we did previously, and it
 23 will be short.
 24 CHAIRPERSON: I see, alright. Ms De Vos?
 25 MS DE VOS: Chair, we were advised the

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1 Human Rights Commission are keen to go after Mr Mpofu on a
 2 very informal basis.
 3 CHAIRPERSON: But you're for AMCU, are
 4 you?
 5 MS DE VOS: I am, Chair, and the
 6 understanding was then that AMCU and the families' team
 7 would follow after –
 8 CHAIRPERSON: After the Human Rights
 9 Commission.
 10 MS DE VOS: Or after whoever wants to go
 11 after, then we –
 12 CHAIRPERSON: Yes, I understand Ms Jele
 13 is likely to be back on Monday, is that right, and she's
 14 going to cross-examine. Is that correct?
 15 MS DE VOS: That's correct, Chair.
 16 CHAIRPERSON: And Mr Gumbi I think as
 17 well?
 18 MR MPOFU: No, Mr Gumbi is for Phiyega.
 19 MR GUMBI: It's for General Phiyega,
 20 Chairperson.
 21 MR MPOFU: Mr Gumbi is not for this
 22 witness, Chairperson, for General Phiyega. If you remember
 23 the Chairperson said he might as well wait for my cross-
 24 examination –
 25 CHAIRPERSON: Yes, yes, no, no, no, I

1 understand that. He's waiting to cross-examine the
 2 National Commissioner, but is he going to cross-examine
 3 this witness as well?
 4 MR MPOFU: He says no.
 5 MR GUMBI: No, Chairperson.
 6 CHAIRPERSON: I see, alright. So is
 7 there anyone else who wants to cross-examine? Mr Burger,
 8 you are here –
 9 MR BURGER SC: We'd like to ask a few
 10 questions. It won't be long, Chair.
 11 CHAIRPERSON: I see. Anybody else?
 12 MR MPOFU: Chairperson, if I may, is
 13 someone from the Human Rights Commission here? Oh, okay,
 14 then, because I have some –
 15 CHAIRPERSON: Yes, Ms Le Roux is here,
 16 but she came to see me, introduced herself to me, the three
 17 of us, and to say that Adv Jele will be here on Monday.
 18 She and Ms Hardy came to tell us -
 19 MR MPOFU: No, fine.
 20 CHAIRPERSON: Ms Jele will be here –
 21 MR MPOFU: I had a different discussion
 22 with her over the –
 23 CHAIRPERSON: - armed with a quiver full
 24 of questions to ask this witness on Monday.
 25 MR MPOFU: Thank you, Chairperson. No,

1 that's fine. I had a –
 2 CHAIRPERSON: Right, so we now know who's
 3 going to cross-examine after you're finished. So that's
 4 something for the witness and the rest of us to look
 5 forward to. At this point we'll adjourn – oh sorry, the
 6 interpreters had better interpret some of this stuff while
 7 the interpreters remember. On that note we will adjourn
 8 until tomorrow morning at half past 9. We will be
 9 adjourning at the, the end of the evidence tomorrow will be
 10 at 1 o'clock, and because we're not sitting on Friday.
 11 Those who want to make travel arrangements may find that
 12 information of use. We will now adjourn until tomorrow
 13 morning.
 14 [COMMISSION ADJOURNED]
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