

# 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 95    20 MAY 2013    PAGES 10059 TO 10151

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 10059</p> <p>1 [PROCEEDINGS ON 20 MAY 2013]  2 [10:10] CHAIRPERSON: The Commission resumes.  3 Generaal-Majoor, u is nog steeds onder eed.  4 CHARL ANNANDALE: s.o.e.  5 CHAIRPERSON: Ms Barnes, do you wish to  6 proceed with your cross-examination?  7 CROSS-EXAMINATION BY MS BARNES (CONTD.):  8 Thank you, Chair. Good morning, General.  9 MAJOR-GENERAL ANNANDALE: Good morning,  10 Advocate.  11 MS BARNES: General, when we left off on  12 Friday you said that on the 16th of August 2012 Mr Mathunjwa  13 had in fact been given a police escort to go to the koppie.  14 Is that what you said?  15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  16 Brigadier Tsiloane was besig om te reël vir sodanige  17 begeleiding, maar mnr Mathunjwa het vertrek op sy eie.  18 MS BARNES: What arrangement precisely  19 was Brigadier Tsiloane making?  20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  21 hy het gereël met Kaptein Seleke wat die bevelvoerder was  22 van die lede van Mobiele Operasies om begeleiding te doen,  23 en hy het ook gereël vir 'n Lonmin bussie wat beskikbaar  24 was om dan die delegasie na die koppie toe te neem.  25 MS BARNES: Was Mr Mathunjwa to your</p>	<p style="text-align: right;">Page 10061</p> <p>1 translation, please? I didn't follow that at all.  2 MR HANABE: The translation was that  3 Brigadier Tsiloane had in his occurrence book made note of  4 the fact that arrangements were made and that transport was  5 provided, the escort that took the delegation, the AMCU  6 delegation.  7 MS BARNES: So are you saying that a  8 police escort was in fact provided to the AMCU delegation?  9 GENERAAL-MAJOOR ANNANDALE: Aldus die  10 voorvalleboek inskrywing van Brigadier Tsiloane, maar  11 uitgesluit mnr Mathunjwa.  12 MS BARNES: Do you have any explanation  13 for why Mr Mathunjwa's evidence on this aspect was not  14 challenged in this Commission?  15 CHAIRPERSON: Ms Barnes, that's not how  16 you ask the question. The question you ask, did you hear  17 the evidence being given, did you draw to your counsel's  18 attention, and then you can go on from there. You just  19 can't ask the question like that, like shooting into the  20 bush.  21 MS BARNES: As the Chair pleases. Sir,  22 were you aware of Mr Mathunjwa's evidence on this aspect  23 that he gave in this Commission?  24 GENERAAL-MAJOOR ANNANDALE: Voorsitter  25 nee, nie in terme van sy getuienis nie. Ek dink hy het</p>
<p style="text-align: right;">Page 10060</p> <p>1 knowledge informed that he should wait, that a police  2 escort is being organised for him?  3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  4 ja sover ek kan onthou het Generaal Mpembe vir hom gesê dat  5 ons besig is om te reël.  6 CHAIRPERSON: Forgive me, Ms Barnes,  7 forgive my asking a question which shows my ignorance.  8 Which of his two visits to the koppie on the 16th are you  9 talking about, the first or the second, or does this apply  10 to both, the question?  11 MS BARNES: First visit, Chair. Because,  12 Genera, Mr Mathunjwa gave detailed evidence on this aspect  13 and he said in summary that he repeatedly asked first for a  14 SAPS vehicle to take him to the koppie and this was not  15 provided, and that thereafter he asked to at least be  16 provided with a police escort to the koppie, and that was  17 also not provided. That evidence was not challenged in  18 this Commission.  19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  20 daar was sodanige reëlings getref. Die voorvalleboek  21 inskrywing wat ook gemaak is deur Brigadier Tsiloane verwys  22 daarna dat dan die res van sy delegasie van AMCU het  23 agtergebly en dat dan sodanige begeleiding aan hulle gegee  24 was nadat hy reeds vertrek het.  25 MS BARNES: Could you repeat the</p>	<p style="text-align: right;">Page 10062</p> <p>1 vermelding gemaak in sy verklaring daarvan.  2 MS BARNES: Did you see Mr Mathunjwa's  3 statement?  4 GENERAAL-MAJOOR ANNANDALE: Dit is  5 korrek, Voorsitter.  6 MS BARNES: And you'll agree with me then  7 that he deals with this aspect in detail in paragraph 69 to  8 72 of his statement? Would you like to have a look at  9 that? It's exhibit NN, I beg your pardon.  10 CHAIRPERSON: For Nellie?  11 MS BARNES: That's correct.  12 CHAIRPERSON: Did you read that statement  13 before Mr Mathunjwa came and give evidence? It was  14 distributed beforehand.  15 GENERAAL-MAJOOR ANNANDALE: Voorsitter  16 nee, ek het dit nou gelees met die beskikbaarstel van die  17 bewysstukke pertinent toe Adv Barnes aangedui het dat dit  18 een van die bewysstukke is waaruit hulle vrae gaan vra aan  19 my.  20 MS BARNES: General, what is peculiar is  21 how on Wednesday, the 15th of August, when Mr Mathunjwa  22 pleaded with SAPS to be allowed to address the strikers  23 from outside the Nyala, he was not allowed to do so, and  24 yet the following day on the 16th of August he was allowed  25 to go to the koppie without a police escort, let alone a</p>

<p style="text-align: right;">Page 10063</p> <p>1 Nyala. Would you like to comment on that?</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>3 ek het my getuienis verduidelik dat die 15de was 'n</p> <p>4 polisie-gereelde besoek in terme van die versoek van</p> <p>5 Generaal Mpembe. Voorsitter, en ook dat op die 16de het</p> <p>6 ons sodanige begeleiding gereël. Die delegasie het daar</p> <p>7 gestaan en wag sodat die reëling getref kan word vir die</p> <p>8 voertuie, en mnr Mathunjwa het op sy eie het hy vertrek.</p> <p>9 MS BARNES: And you conceded on Friday,</p> <p>10 General, that you knew Mr Mathunjwa was going to give bad</p> <p>11 news to the strikers and that you knew it was going to</p> <p>12 upset them. Was it not irresponsible for the police to let</p> <p>13 Mr Mathunjwa go to the koppie without a police escort in</p> <p>14 those circumstances?</p> <p>15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>16 ek het ook getuig dat mnr Mathunjwa het aangedui dat hy</p> <p>17 weet wat van hom as 'n leier verwag word, en dat hy die</p> <p>18 situasie sodanig sal hanteer, maar ek het ook gesê dat in</p> <p>19 retrospek is dit iets wat die polisie sou moes gedoen het</p> <p>20 om ekstra moeite te doen om weereens te vergader met</p> <p>21 Lonmin.</p> <p>22 MS BARNES: Perhaps you'll agree with me</p> <p>23 then in my next proposition, General, that what had in fact</p> <p>24 happened on the 16th was not that negotiations between the</p> <p>25 parties had deadlocked. All that had happened was that</p>	<p style="text-align: right;">Page 10065</p> <p>1 Lonmin, whether it's true or not is another matter. That –</p> <p>2 MS BARNES: I accept that, Chair.</p> <p>3 CHAIRPERSON: That's not relevant for</p> <p>4 your question.</p> <p>5 MS BARNES: Indeed.</p> <p>6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>7 ek kan net sê ja dat ek nie vertrouwd was met die</p> <p>8 samesprekings tussen mnr Mathunjwa en Lonmin nie, maar die</p> <p>9 verbreking in die onderhandelinge was ook tussen die</p> <p>10 polisie-onderhandelaars en die vyf leierskap, of die vyf</p> <p>11 persone in terme van die klein groepie leiers. Daar was</p> <p>12 ook geen verdere – die poging van die onderhandelaars om</p> <p>13 verdere onderhandeling met hulle te bewerkstellig het ook</p> <p>14 nie geslaag nie.</p> <p>15 MS BARNES: Would you agree with me that</p> <p>16 there had been great hope the night before, on the evening</p> <p>17 of the 15th, that Mr Mathunjwa might be able to assist in</p> <p>18 bringing a negotiated solution to bear? Correct?</p> <p>19 GENERAAL-MAJOOR ANNANDALE: Die hoop was</p> <p>20 op mnr Mathunjwa om die groepering te oortuig om hulle</p> <p>21 wapens neer te lê.</p> <p>22 MS BARNES: I put it to you, General, for</p> <p>23 your comment - because this is what we're going to argue –</p> <p>24 that the real reason that SAPS did not bother to contact</p> <p>25 Lonmin on the morning of the 16th, or bother to provide Mr</p>
<p style="text-align: right;">Page 10064</p> <p>1 Lonmin had reneged on its earlier commitment and in those</p> <p>2 circumstances the police could and should have taken steps</p> <p>3 to get the process back on track. You agree with me in</p> <p>4 relation to that proposition at least in retrospect?</p> <p>5 MR VAN AS: Sorry, Mr Commissioner, it's</p> <p>6 simply a version of Mr Mathunjwa that Lonmin reneged on the</p> <p>7 agreement. The question can't be phrased in such –</p> <p>8 CHAIRPERSON: Ms Barnes, it's a</p> <p>9 controversial question as to whether – one of the matters</p> <p>10 on which we'll have to make a finding in the end, as to</p> <p>11 whether Lonmin did really renege on an undertaking, but the</p> <p>12 police of course, according to what we've heard, didn't go</p> <p>13 back to Lonmin and say this is what Mr Mathunjwa alleges,</p> <p>14 is it correct. So presumably your point is based upon what</p> <p>15 they, the information available to the police. So if you</p> <p>16 put the proposition in that way, I think you may find that</p> <p>17 there won't be an objection from the side of Lonmin.</p> <p>18 MS BARNES: Yes, Chair, I'm happy to put</p> <p>19 it on the basis that Mr Mathunjwa informed the police that</p> <p>20 Lonmin had reneged on their undertaking. The proposition</p> <p>21 really, General, is that there wasn't truly a deadlock on</p> <p>22 the morning of the 16th; there was information that Lonmin</p> <p>23 reneged and steps could have been taken to deal with that.</p> <p>24 CHAIRPERSON: It's information that Mr</p> <p>25 Mathunjwa gave. Whether Lonmin – yes, I see. Whether</p>	<p style="text-align: right;">Page 10066</p> <p>1 Mathunjwa with a police escort, was because SAPS was no</p> <p>2 longer interested in facilitating a negotiated solution,</p> <p>3 because SAPS had already at that stage decided to go</p> <p>4 tactical. Would you like to comment on that?</p> <p>5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>6 dit is nie waar nie. Die polisie-onderhandelaars het</p> <p>7 steeds probeer om verdere onderhandeling voort te sit. Die</p> <p>8 polisie het wel begeleiding gereël. Die bevestiging</p> <p>9 daarvan is dat die res van die AMCU delegasie agtergebly</p> <p>10 het; mnr Mathunjwa het op sy eie besluit om te onttrek.</p> <p>11 Daar is 'n voorvalleboek inskrywing tot die effek van die</p> <p>12 begeleiding, en dan Brigadier Tsiloane en ek is seker ook</p> <p>13 Kaptein Seleke sal sodanige reëlings kan bevestig.</p> <p>14 CHAIRPERSON: Ms Barnes, I take it you</p> <p>15 have that reference. It's note, entry number 1004 in</p> <p>16 exhibit FFF25, and it is said that the Lonmin branded Combi</p> <p>17 went, was driven to the koppie with other members of AMCU</p> <p>18 and Captain Seleke of Mobile Operations escorted them. Now</p> <p>19 do your clients deny that? Do the members, the other</p> <p>20 members of AMCU deny that they were driven to the koppie at</p> <p>21 round about 11:55 in the Lonmin branded Combi and that</p> <p>22 Captain Seleke of Mobile Operations escorted them? Because</p> <p>23 that's the basis, as I understand it, of this evidence.</p> <p>24 MS BARNES: Chair, I was really just</p> <p>25 cross-examining in relation to what had happened in</p>

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1 relation to Mr Mathunjwa. Now General, you've conceded  
 2 earlier in your evidence that the decision to go tactical  
 3 had been taken before 1:30 on Thursday, the 16th of August.  
 4 Is that correct?  
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter  
 6 ja, dit was tydens die oordrag deur die oorhoofse  
 7 bevelvoerder, Generaal Mpmembe, aan die Provinsiale  
 8 Kommissaris, Generaal Mbombo.  
 9 MS BARNES: You said that it was as a  
 10 result of that decision being made, that is the decision to  
 11 go into the tactical phase, that the JOCOM meeting was held  
 12 at 1:30 on the 16th of August. Correct?  
 13 GENERAAL-MAJOOR ANNANDALE: Dit is  
 14 korrek.  
 15 MS BARNES: What time was the decision  
 16 made? Was it before 1 o'clock? Was it before 12 o'clock?  
 17 [10:30] GENERAAL-MAJOOR ANNANDALE: Voorsitter ek  
 18 kan nie presies die tyd onthou nie, maar dit was  
 19 waarskynlik so in die omgewing van 13:15, daar rond gewees  
 20 het.  
 21 MS BARNES: You've testified that one of  
 22 the reasons why it was considered necessary to go into the  
 23 tactical phase on the 16th of August was because threats had  
 24 been made to the police, is that correct?  
 25 GENERAAL-MAJOOR ANNANDALE: Een van die

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1 redes, dis korrek, Voorsitter.  
 2 MS BARNES: Yes, one of the reasons. If  
 3 you could go to exhibit L, the police presentation, to  
 4 slide 192. This is a reference here to two threats that  
 5 were allegedly made by Mr Noki against the police. You'll  
 6 see that the first threat is recorded as having been made  
 7 at 15 - well in fact you need to read the paragraph in that  
 8 slide the other way around. The first threat is recorded  
 9 as having been made at 13:40 and the second threat is  
 10 recorded as having been made at 15:40. So those threats  
 11 were made after the decision to go tactical had already  
 12 been taken, is that correct?  
 13 GENERAAL-MAJOOR ANNANDALE: Dis korrek,  
 14 maar daar was ook 'n dreigement gewees min of meer soos ek  
 15 dit onthou, 11:20 van die oggend van die 16e.  
 16 CHAIRPERSON: That's dealt with in the  
 17 occurrence book, exhibit FFF25 as entry 998 or 11:20 which  
 18 says, "Situation report, Papa1 reported that the group were  
 19 moving towards the Nyala. The group leader asked the  
 20 police officials to remove their wires and he said he's not  
 21 going to ask them again as he's also aggressive." That's  
 22 the note to which you are referring. It does appear as if  
 23 according, if one reads the exhibit L, the slide in exhibit  
 24 L to which you've referred, Ms Barnes, 192, together with  
 25 this entry in the occurrence book there were basically

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1 three threats. At 11:20 he asked them to remove the wires  
 2 but he's not going to ask them again, in an aggressive tone  
 3 apparently. Then at 13:40 he said, according to slide 192,  
 4 he can see the SAPS are making ready for war and he said to  
 5 Lieutenant-Colonel McIntosh, "We must sign a paper so that  
 6 the world can see how we kill one another today," and then  
 7 it looks at, round about 15:40 after Brigadier Calitz gave  
 8 Colonel Makhubela the instruction or the command to start  
 9 with the uncoiling of the barbed wire, that Mr Noki came  
 10 forward once the first Nyala started uncoiling the wire,  
 11 came to the front window of the negotiation Nyala and said,  
 12 "These hippos would not leave this place and you will all  
 13 die today," and that he would not be returning again. So  
 14 those were the three incidents to which you are referring.  
 15 Is that correct?  
 16 MS BARNES: Yes thank you, Chair, I was  
 17 drawing attention specifically to the two threats mentioned  
 18 in slide 192 and I just wanted to get the witness to  
 19 confirm that these would have, would not have been taken  
 20 into account in deciding that it was necessary to go into  
 21 the tactical phase on the 16th of August. Is that correct?  
 22 GENERAAL-MAJOOR ANNANDALE: Dis korrek,  
 23 Voorsitter.  
 24 MS BARNES: You could go still in exhibit  
 25 L to slide 189. You'll see there's a reference in that

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1 slide both to the mood of the strikers changing and also to  
 2 the fact that the media were withdrawing in fear of their  
 3 safety, and those events are recorded as having taken place  
 4 at 25 to 4 on the 16th of August, correct?  
 5 GENERAAL-MAJOOR ANNANDALE: Korrek,  
 6 Voorsitter.  
 7 MS BARNES: So those events would also  
 8 not have been factors which you took into account in  
 9 deciding that it was necessary to go tactical on the 16th,  
 10 correct?  
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 12 dis korrek, maar daar was ook 'n ander geval gewees wat die  
 13 polisie video-operateurs gedreig was en dan ook op 10:40 op  
 14 "slide" 156 wat daar verwysend is na die gemoed van die,  
 15 van die stakers.  
 16 MS BARNES: If you go, General, to slide  
 17 170, you'll see that that deals with the withdrawal of the  
 18 video operators and you'll see that that took place at 25  
 19 past 1 on the 16th.  
 20 GENERAAL-MAJOOR ANNANDALE: Dit is  
 21 korrek, Voorsitter.  
 22 MS BARNES: So it seems that that also  
 23 took place after your decision had already been made,  
 24 correct?  
 25 GENERAAL-MAJOOR ANNANDALE: Dit is

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1 korrek, Voorsitter.

2 MS BARNES: General, another reason you

3 gave for your decision to go tactical on the 16th of August

4 was that you said not even the president of AMCU could

5 persuade his members to lay down their arms, correct?

6 GENERAAL-MAJOOR ANNANDALE: Korrek,

7 Voorsitter.

8 MS BARNES: You were in that regard

9 operating on the assumption that the majority of the

10 strikers were AMCU members because that's what you had been

11 told by Lonmin. Is that correct?

12 MAJOR-GENERAL ANNANDALE: Apology,

13 Chairperson, could you just repeat the question?

14 MS BARNES: I said in holding that view

15 you were presumably operating on the assumption that the

16 majority of the strikers were AMCU members because that's

17 what you had been told by Lonmin. Would that be correct?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

19 ja maar ook in terme van die intelligensie verslae en dan

20 ook die feit dat alhoewel daar talle NUM lede teenwoordig

21 was, het ons dit verstaan dat die meeste van hulle in die

22 proses is om oor te gaan vanaf NUM na AMCU in terme van

23 lidmaatskap. Voorsitter, en dan die pertinent verwysing na

24 bewysstuk TT5 waar daar telkens verwysend is, selfs so

25 vroeg as Februarie dat AMCU vermoed was dat hulle pertinent

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1 betrokke was. Maar pertinent dan ook die ontvangs wat die

2 onderskeie presidente gehad het op die 15de in terme van

3 dat die president van NUM verwerp was en dan AMCU verwelkom

4 was.

5 MS BARNES: Now General, if you would go,

6 still in exhibit L, to slide 161. You'll see that Mr

7 Mathunjwa's first address finished at 25 past 1, do you see

8 that?

9 GENERAAL-MAJOOR ANNANDALE: Dit is

10 korrek. Ekskuus, Voorsitter, ek's nie seker of sy

11 toespraak klaargemaak het nie, want die inskrywing meld

12 net, "The leadership of AMCU stated that they were going to

13 speak to the mine's management."

14 MS BARNES: What is stated there, at

15 least in the last line of that paragraph, is that the

16 leadership of AMCU left the scene, that is the scene of the

17 first address, at 25 past 1, they went, in order to go and

18 find the police in order to report back. Do you agree with

19 me?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter

21 ja, die laaste sin dui aan dat die leierskap van AMCU het

22 die toneel verlaat.

23 MS BARNES: So at that stage there had

24 certainly not been any feedback from AMCU to the police

25 about that first address, correct?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

2 ek weet nie of daar enige so oordrag plaasgevind het nie.

3 CHAIRPERSON: You seem to have got a

4 report about what the AMCU people as they're described in

5 the occurrence book had said, because if you look at entry

6 10:10 which is at 13:25 in exhibit FFF25, it appears that

7 P1 gave a report as to what had happened and what AMCU had

8 said just before they left. Is that correct?

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

10 dis reg, daar is so 'n inskrywing en terugvoer.

11 CHAIRPERSON: AMCU hadn't reported back

12 to you, you already knew from P - whose P1 again?

13 GENERAAL-MAJOOR ANNANDALE: Calitz.

14 CHAIRPERSON: Yes so you already knew

15 from Brigadier Calitz what had happened there.

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

17 ja die terugvoer wat hulle gegee het is in terme soos daar

18 verskillende sprekers was, ek dink daar was vyf of ses

19 sprekers gewees en dat die president was die laaste

20 spreker.

21 CHAIRPERSON: But it goes further than

22 that, because it says AMCU promised that they will be back

23 after half an hour with the mine management because the

24 group are not satisfied. So while, when you, at the moment

25 when you were told that AMCU were leaving and hoping to

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1 come back in half an hour with the mine management, you

2 decided to implement the plan. I don't quite understand

3 that.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

5 ek het die vraag gehoor dat daar, die samespreking, die

6 polisie, is nie met "mine management" nie.

7 CHAIRPERSON: It is so, but that's not

8 the point. The point is that Brigadier Calitz reported to

9 the JOC at 13:25 according to note 1010 what appears here,

10 and that indicated that the promise, the AMCU people

11 promised the people on the koppie that they were, would be

12 back within, after half an hour with the mine management.

13 That you people in the JOC knew at 13:25, the very moment

14 you decided to proceed with the plan, the tactical option.

15 Now I have difficulty understanding, that's why I put my

16 problem to you so that you can help me to understand it.

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

18 dis reg, ons was bewus daarvan.

19 MS BARNES: Isn't it correct, General,

20 that you had in fact made the decision to go tactical, well

21 you said at about quarter past 1. So by the time you

22 received this situation report you had already made the

23 decision to go tactical and you were going to go ahead with

24 that regardless. Isn't that correct?

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter

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1 nee, ek het verduidelik dat die operasionele bevelvoerder  
 2 die oomblik as so 'n plan tuitvoer gebring word, dan word  
 3 daardie oordrag gedoen aan die operasionele bevelvoerder,  
 4 dat die oordeel van sodanige optrede word dan oorgelaat aan  
 5 die operasionele bevelvoerder sou omstandighede sodanig  
 6 verander dat dit nie tuitvoer gebring moet word nie, en  
 7 so was dit dan ook gewees dan om 15:30 toe die plan 'n  
 8 aanvang moes nie wat dit nie begin het nie weens die  
 9 teenwoordigheid steeds van Mnr Mathunjwa. So, so 'n plan  
 10 kan op enige stadium nog gestop word in terme van terugvoer  
 11 vanaf die operasionele bevelvoerder of die besluit van die  
 12 operasionele bevelvoerder, gegewe die omstandighede wat  
 13 afspeel voor sodanige persoon.

14 CHAIRPERSON: I think he said depending  
 15 on the feedback that he receives from –

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 17 en so oordrag kan van beide kante af wees, hetsy terugvoer  
 18 vanaf die operasionele bevelvoerder of dan uiteraard uit  
 19 die JOC, of van die oorhoofse bevelvoerder weer na die  
 20 oorhoofse bevel –ag, na die operasionele bevelvoerder toe.

21 [10:49] MS BARNES: General, I put it to you that  
 22 if you had truly believed that Mr Mathunjwa could persuade  
 23 the strikers to lay down their arms and go back to work,  
 24 you would not have made the decision to go tactical while  
 25 he was still addressing them and before you had received a

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1 report. Would you like to comment on that?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 3 ons het geglo op die 15de, die veranderings op die 16de was  
 4 sodanig dat – en mnr Mathunjwa se eie erkenning wat hy  
 5 gemaak het aan Kolonel McIntosh, wat hy gesê het dat hy  
 6 beheer verloor het oor sy mense.

7 MS BARNES: But, General, one of the  
 8 reasons you gave for why the police had to adopt the  
 9 tactical phase on the 16th of August was that not even Mr  
 10 Mathunjwa could persuade his members to lay down their  
 11 arms, but yet when you made that decision, you'd not yet  
 12 given him an opportunity to do so, or received a report-  
 13 back, isn't that correct?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 15 nee, hy het al interaksie gehad met sy lede voor die  
 16 besluit geneem was, so vroeg as net na 12:00, en verdere  
 17 geleentheid was aan hom gegee en die plan kon op enige  
 18 stadium sou daar 'n positiewe draai gewees het in terme van  
 19 'n potensieel van neerlê van wapens kon dit nog steeds  
 20 gestop word.

21 CHAIRPERSON: I just want to interrupt  
 22 and go back for a moment. Did you say a decision was taken  
 23 the previous night? Did I hear you correctly?

24 GENERAAL-MAJOOR ANNANDALE: Nee,  
 25 Voorsitter, ek sê die vorige aand, die 15de, was ons vas

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1 oortuig dat mnr Mathunjwa die sodanige invloed het op sy  
 2 lede dat hulle sou wapens neerlê.

3 CHAIRPERSON: But the transcript of what  
 4 happened on the 15th when Mr Mathunjwa spoke to the police  
 5 ends on a note almost of jubilation and congratulation.  
 6 Are you saying that that congratulation was not sincere,  
 7 that in fact you didn't believe him that he could do what  
 8 he said he was going to try to do?

9 GENERAAL-MAJOOR ANNANDALE: Nee,  
 10 intendeel, Voorsitter, ons was vas oortuig – ek het gesê  
 11 op die 16de het dit verander.

12 CHAIRPERSON: What decision was made on  
 13 the 15th then?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 15 ek kan nie – ek weet nie waarna u verwys nie –

16 CHAIRPERSON: I understood you a few  
 17 minutes ago to say – I actually thought you said it and I  
 18 wasn't sure, so I put to you again and said did I  
 19 understand you correctly to say the decision was made on  
 20 the 15th, and you said, yes, and I said why on the 15th, and  
 21 you said, no, well, we didn't believe that Mathunjwa could  
 22 do what he said he was going to do. That was your  
 23 evidence, as I understand it, unless I misunderstood, in  
 24 which case I apologise.

25 MS BARNES: I must say I have that

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1 understanding as well. The decision was made on the 15th  
 2 and it had to do with Mr Mathunjwa's own admission to  
 3 McIntosh that he'd lost control –

4 GENERAAL-MAJOOR ANNANDALE: Nee,  
 5 Voorsitter, dit was op die 16de gewees. So tydens die  
 6 voorligting wat Brigadier Calitz en al die bevelvoerders  
 7 ontvang het in daardie tyd, op die 16de, en dit moes min of  
 8 meer so 14:30 gewees het wat Mnr Mathunjwa met Kolonel  
 9 McIntosh gepraat het.

10 CHAIRPERSON: I'm sorry, Major-General, I  
 11 don't understand it now. I thought you said the 15th. I  
 12 was surprised at that. That's why I specifically asked  
 13 you, did I understand you correctly, and I repeated it, and  
 14 I said the 15th, and you said, yes. Did you misunderstand  
 15 me, perhaps?

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 17 nee die enigste verwysing wat na die 15de gemaak het was  
 18 die aand wat ons vas geglo het dat mnr Mathunjwa sodanige  
 19 beheer het dat die lede dit sal neerlê, en op die 16de het  
 20 dit verander en dan die bevestiging was ook gewees toe mnr  
 21 Mathunjwa self aan Kolonel McIntosh die oordrag gemaak het.

22 MS BARNES: What time was this  
 23 conversation between Mr Mathunjwa and Colonel McIntosh?

24 GENERAAL-MAJOOR ANNANDALE: Kommissaris,  
 25 dit was in die tyd gewees dat Luitenant-Kolonel Scott en

<p style="text-align: right;">Page 10079</p> <p>1 die bevelvoerders by "forward holding area" 1 besig met die 2 "briefing." So ek aanvaar dit moes min of meer so tussen 3 14:30 en selfs 15:00 gewees het. 4 MS BARNES: Were you present during this 5 conversation? 6 GENERAAL-MAJOOR ANNANDALE: Nee, ek was 7 nie, Voorsitter. 8 CHAIRPERSON: - forward holding area 1, 9 as I understand it, the witness was in the JOC. Obviously 10 Lieutenant-Colonel McIntosh must have reported it to him 11 later, I take it. 12 MS BARNES: I'm just trying to clarify 13 where he got the information from. Did you – who reported 14 this to you? 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 sover ek kan onthou, was dit met die terugkeer van Pappa1 17 en Brigadier Calitz. 18 MS BARNES: I'm going to move on to 19 another topic now, and this relates to evidence that you've 20 given regarding the Provincial Commissioner's media 21 briefing on the 16th of August. That would have been early 22 in the morning at about 9:30 on the 16th of August. Now in 23 relation to that, you were asked – well, in fact, you gave 24 the following evidence. You said that during the 25 Provincial Commissioner's briefing she was asked by one of</p>	<p style="text-align: right;">Page 10081</p> <p>1 were civilians – sorry, three of the 10 people who died 2 were civilians. Two of them appeared to have definitely 3 been strikers who were killed on the 13th, and then there 4 was the third civilian who was found stabbed in front of 5 one of the houses in the informal settlement on the same 6 day. So the ones that I think you could regard as murders, 7 that you're talking about, would be seven, I would think, 8 but it's just a detail, but 10 can't be the right number. 9 Am I correct? 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 soos ek dit gehad het, is die arrestasies verbonde aan 12 enige van die sterftes, so enige van die 10 persone, hetsy 13 dit stakers, sekuriteitsbeamptes of gewone mynwerkers is. 14 MS BARNES: So you were not told, 15 General, that six people had been arrested for the murder 16 of two police officers on the 13th? 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 nee, dis nie hoe ek dit onthou nie. 19 MS BARNES: I'd like to introduce a 20 docket as a new exhibit. It is in the – part of the SAPS 21 hard drive under dockets. It's docket 118 of – 22 CHAIRPERSON: It looks as if we can use 23 exhibit GGG38, which we used on Friday and then discarded. 24 Thank you. So these are – we've been given two documents. 25 The first is headed crime document, or is this all part of</p>
<p style="text-align: right;">Page 10080</p> <p>1 the journalists whether any arrests had been made at 2 Marikana and she answered that, yes, six people had been 3 arrested, and you then said that those arrests – I'm not 4 sure whether this is your information or you were reporting 5 what the Provincial Commissioner had said, but the point is 6 that you stated that those arrests were not necessarily 7 linked to the murder of the police officers on the 13th of 8 August. Are you with me? 9 GENERAAL-MAJOOR ANNANDALE: Dis korrek, 10 Voorsitter. 11 MS BARNES: So was that the information 12 that you had on the 16th of August, that the six arrests did 13 not necessarily relate to the murder of the two police 14 officers on the 13th? 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 ja, soos ek dit onthou was daar 'n vraag gevra aan die 17 Provinsiale Kommissaris of daar al enige arrestasies 18 uitgevoer is ten opsigte van die moorde wat plaasgevind 19 het, en dat, soos ek dit verstaan het, was die ses 20 arrestasies nie noodwendig nie, dit kan beteken dit was nie 21 eers enigsins verbind met die polisie moorde nie, dit kan 22 net wees 'n kombinasie van enige van die nege moorde op 23 daardie stadium, of 10 moorde. 24 CHAIRPERSON: I think you mean eight, 25 because two of the 10 were – actually three of the strikers</p>	<p style="text-align: right;">Page 10082</p> <p>1 the same – 2 MS BARNES: I believe it is all part of 3 the same docket. It's just been put together in two 4 bundles. 5 CHAIRPERSON: But the top bundle, as it 6 were, begins with a page headed, "South African Police 7 Service, Crime Docket." So that would be – and that's been 8 very thoughtfully paginated for us. So that's exhibit 9 GGG38. Ms Barnes, I assumed this was all one document, but 10 I notice, because Adv Hemraj has drawn my attention to it, 11 that the second batch of documents, which was separately 12 stapled, the pagination begins again at 1. So it does look 13 as if it's two documents, separately paginated, unless the 14 paginator made a mistake and just went over – 15 MS BARNES: Yes, I'm afraid, I had 16 intended for it to be paginated as one document, but I'm 17 afraid that wasn't done. 18 CHAIRPERSON: "The best laid plans o' 19 Mice an' Men, Gang aft a'gley." So what we will do is we 20 will call the whole document exhibit GGG38, and possibly 21 the kind person who paginated them incorrectly, can have 22 another go during the teatime at repaginating the documents 23 in the second bundle, stapled bundle. Is that a sensible 24 way to proceed? 25 MS BARNES: Yes, thank you, Chair.</p>

<p style="text-align: right;">Page 10083</p> <p>1 CHAIRPERSON: Fine. Case dockets – I 2 don't know – case docket CAS118/8/2012. Ja, that's all we 3 need. 4 MS BARNES: Now, you'll see, General, 5 that this is in fact the docket which relates to the arrest 6 of the six people that we've been referring to. You'll see 7 on the very last page of the second bundle – so it's the 8 very last page of the combined bundle that you have in 9 front of you, there's a reference to accused number 1 and 10 2. Do you see that? 11 CHAIRPERSON: I'm sorry to interrupt. 12 That will be page 79 of the overall bundle. 13 MS BARNES: Yes, that's correct. 14 GENERAAL-MAJOOR ANNANDALE: Ek neem dit 15 waar, Voorsitter. 16 MS BARNES: And then on page 25, this 17 will accord with your pagination, it's part of the first 18 section, that deals with accused numbers 3 and 4. It sets 19 out there their personal details. 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 ek sien dit is verwysend na een persoon. 22 MS BARNES: On page 25 there's a 23 reference to accused number 3, and then below that there is 24 a reference to another person, as accused number 4, 25 Mcingwa(?) and Zukululu, do you see that?</p>	<p style="text-align: right;">Page 10085</p> <p>1 but please endeavour in the future to do so, and that 2 applies to everybody, not just to you. 3 MS BARNES: Chair, but I must say, in our 4 defence, we did circulate an index on Thursday last week, 5 which did make reference to this document. 6 CHAIRPERSON: Well, we didn't get it and 7 we haven't got – we've made it practice not to look at the 8 documents that have not been put before us. So we are 9 inconvenienced, but never mind. I've said what I want – 10 [11:09] MS BARNES: Chair, I will make sure it 11 doesn't happen again. 12 CHAIRPERSON: Yes, thank you, and you can 13 only promise on behalf of yourself but the others present 14 must listen and silently assent to what you said. 15 MS BARNES: General, if you could go then 16 to page 7, this is an additional statement by Constable 17 Mafora and he says the following, four lines into his 18 statement he says, "Six suspects was identified to be 19 present and commit murder of the two police officers during 20 the strike or march. Out of six suspects four was 21 hospitalised due to injuries they sustained and could not 22 stand for trial or appear before the court as they are 23 still ill." So what emerges from this docket is that all 24 these six people were linked to the murder of the two 25 police officers. They were in fact charged with murder and</p>
<p style="text-align: right;">Page 10084</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Ek was in die 2 verkeerde bundel gewees, die tweede een gewees. Ek sien 3 dis in eerste bundel, bladsy 25, verwysend na twee persone. 4 MS BARNES: And then on page 9, there is 5 the reference to accused numbers 5 and 6. 6 GENERAAL-MAJOOR ANNANDALE: Ek merk op 7 twee persone, 5 en 6. 8 MS BARNES: And if you go to page 19, 9 you'll see that there's a statement from the investigating 10 officer in the case, a Constable Mafora, and he says in the 11 second paragraph, he says four suspects that are 12 hospitalised, and he refers to four suspects, and he then 13 says "linked to the strike and killing of police officers 14 that took place at Lonmin Platinum Mine, Marikana." Do you 15 see that? 16 GENERAAL-MAJOOR ANNANDALE: Ek merk dit 17 op, Voorsitter. 18 CHAIRPERSON: Ms Barnes, I'm sorry to 19 have to say this again, but you know we did ask for 20 documents that are going to be used in cross-examination to 21 be made available to us beforehand. If we got them on 22 Friday, we could have spent some of the weekend studying 23 them, and then be on top of the documents, and it would 24 save a lot of time. I understand things happen sometimes 25 in practice, you can't always comply with these rulings,</p>	<p style="text-align: right;">Page 10086</p> <p>1 robbery. Four of them were arrested in hospital, while 2 they were in hospital on the 13th of August. One was 3 arrested at home on the 13th of August, and one was arrested 4 at his home on the 14th of August. That was early the 5 following morning, on the Tuesday. Is it correct then that 6 you did not have this information on the 14th, 15th, or 16th 7 of August? 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 9 ek het getuig dat die oordrag van die Provinsiale 10 Kommissaris het ek nie noodwendig verstaan dat dit ses 11 arrestasies is in die polisie nie. Ek kan net daarby hou. 12 MS BARNES: General, you testified that 13 you were in the JOC on the afternoon of the 16th of August 14 from 3:30PM until 5PM and that you were there throughout, 15 apart from when you stepped outside at various times within 16 that period in order to take three phone calls. Is that 17 correct? 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter 19 nee, ek het nie gesê drie oproepe nie; ek het gesê ek het 20 twee of drie keer het ek uitgegaan, so dit kon twee oproepe 21 gewees het, dit kon drie gewees het. 22 MS BARNES: So you're not sure whether it 23 was two or three calls? 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter 25 nee, ek is nie.</p>



<p style="text-align: right;">Page 10087</p> <p>1 MS BARNES: Who were those calls from?</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Ek kan nie</p> <p>3 onthou nie, Voorsitter.</p> <p>4 MS BARNES: You testified that during the</p> <p>5 time that you were receiving reports from the chopper, this</p> <p>6 is during the afternoon of the 16th, that there were two</p> <p>7 women constables who were taking handwritten notes as the</p> <p>8 information came in. Is that correct?</p> <p>9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>10 verwysend na die twee radio-operateurs, ek dink hulle was</p> <p>11 beide konstabels.</p> <p>12 MS BARNES: Can you give us their names?</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Voorsitter</p> <p>14 nee, ek weet nie wat hulle name is nie.</p> <p>15 MS BARNES: And the notes that they kept,</p> <p>16 where would we find those notes at this stage?</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>18 ek weet nie. Ons sal by hulle moet verneem of hulle die</p> <p>19 notas beskikbaar het en of hulle dit oorgedra het in die VB</p> <p>20 en dit nie daarna gehou het nie. Ek weet glad nie.</p> <p>21 MS BARNES: You'll agree that those notes</p> <p>22 will assist us in order to have a more accurate record of</p> <p>23 what transpired? Is that correct?</p> <p>24 GENERAAL-MAJOOR ANNANDALE: Dit is</p> <p>25 korrek, Voorsitter.</p>	<p style="text-align: right;">Page 10089</p> <p>1 Thank you, Mr Chairman and members of the Commission.</p> <p>2 General, let me just start there so that I don't have to</p> <p>3 canvas that aspect when we are in full-blown cross-</p> <p>4 examination. You have just been reminded that you are</p> <p>5 under oath and I would take it that you understand that you</p> <p>6 should speak the truth, the whole truth, and nothing else</p> <p>7 but the truth, so help you.</p> <p>8 GENERAAL-MAJOOR ANNANDALE: Goeiemiddag,</p> <p>9 Advokaat. Voorsitter, dit was nog altyd hoe ek dit</p> <p>10 verstaan het, dat ek die totale waarheid moet praat.</p> <p>11 MR NTSEBEZA SC: Yes. No, it's just that</p> <p>12 this is our first encounter and I've understood that you've</p> <p>13 said so and, General, you understand that if there was</p> <p>14 something you knew had happened and it was nonetheless not</p> <p>15 something that you are free to talk about, in this</p> <p>16 Commission, however, because of the nature of the work the</p> <p>17 Commission has to do you would not fail to disclose that to</p> <p>18 the Commission, simply because there had been an agreement</p> <p>19 between you as colleagues not to talk about it.</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>21 ek verstaan my verantwoordelikheid en dat as aspekte</p> <p>22 relevant tot die Kommissie moet sodanig voorgelê word.</p> <p>23 MR NTSEBEZA SC: You will do so, and I'm</p> <p>24 just asking, you will do so even if between the officers</p> <p>25 themselves there was a view that some things might</p>
<p style="text-align: right;">Page 10088</p> <p>1 MS BARNES: Thank you, Chair, those are</p> <p>2 our questions -</p> <p>3 CHAIRPERSON: It is now quarter past 11.</p> <p>4 Is this perhaps a convenient stage for us to take the</p> <p>5 adjournment, or do you wish to ask a few more questions on</p> <p>6 this point before we adjourn?</p> <p>7 MS BARNES: No, Chair, we are done with</p> <p>8 our cross-examination.</p> <p>9 CHAIRPERSON: I see. Well that's a very</p> <p>10 convenient stage to take the adjournment then. Very well,</p> <p>11 we'll take the tea adjournment at this stage.</p> <p>12 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>13 [11:45] CHAIRPERSON: The Commission resumes. I</p> <p>14 was going to ask if the pages had been repaginated of the</p> <p>15 second bundle, but I see they have. So I want to thank the</p> <p>16 persons responsible therefore. Mr Ntsebeza, welcome back.</p> <p>17 I understand you're going to, you're the next counsel to</p> <p>18 cross-examine, is that correct?</p> <p>19 MR NTSEBEZA SC: Yes it is, Mr Chairman.</p> <p>20 CHAIRPERSON: Let me just remind the</p> <p>21 Major-General, not that he needs reminding, but I'll still</p> <p>22 remind him, Generaal-Majoor u is nog steeds onder eed.</p> <p>23 CHARL ANNANDALE: s.o.e.</p> <p>24 CHAIRPERSON: Mr Ntsebeza?</p> <p>25 CROSS-EXAMINATION BY MR NTSEBEZA SC:</p>	<p style="text-align: right;">Page 10090</p> <p>1 embarrass the SAPS if they were known?</p> <p>2 MR SEMENYA SC: Chair, I thought to</p> <p>3 restrain myself, but this question assumes a fact not in</p> <p>4 evidence. There's no suggestion that the officers sat</p> <p>5 somewhere and connive not to tell the truth or to suppress</p> <p>6 the truth. Unless if my learned colleague is going to be</p> <p>7 giving us an indication that he has such intention,</p> <p>8 instruction or facts.</p> <p>9 MR NTSEBEZA SC: Maybe let me put it on a</p> <p>10 different basis, General. You probably do know by now that</p> <p>11 most of the video footage which the Commission has, has</p> <p>12 come from the media, and that the police have not provided</p> <p>13 video footage of the actual occurrence of the shooting,</p> <p>14 particularly on the 16th of August. You do know that?</p> <p>15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>16 ek is bewus daarvan dat die video materiaal wat beskikbaar</p> <p>17 gestel is deur die polisie, dat dit nie pertinent enige van</p> <p>18 die skietvoorvalle hetsy dit op toneel 1 of 2 sodanig wys</p> <p>19 nie.</p> <p>20 MR NTSEBEZA SC: Now you will know, or</p> <p>21 you will have heard that it's one of the features that to</p> <p>22 previous witnesses from the SAPS I personally put as a</p> <p>23 remarkable feature, given the Standing Orders in POPS for</p> <p>24 the video covering of all events and incidents. Are you</p> <p>25 aware of that?</p>

<p style="text-align: right;">Page 10091</p> <p>1            GENERAAL-MAJOOR ANNANDALE:        Voorsitter, 2    daar is so 'n Staande Order en sodanige vereiste. 3            MR NTSEBEZA SC:            And just so that - 4            GENERAAL-MAJOOR ANNANDALE:        Ekskuus, 5    Voorsitter, Voorsitter, en ek het ook getuig dat histories 6    gebruik ons meestal slegs een kamera en die Kommissie net 7    bewus wees dat ons het nie geweet dat daar gaan 'n toneel 1 8    of 'n toneel 2 of enige sodanige skietery homself afspeel 9    nie. Voorsitter, en ons as 'n JOCOM het maatreëls 10    daargestel wat ons op die stadium onder die indruk was dat 11    dit voldoende is in terme van die vyf kameras waarna verwys 12    was. Vyf kameras, pertinent verwysend na die video 13    kameras, en dan het ek ook getuig die omstandighede rondom 14    pertinent die twee video-operateurs van OOP, en dan ook die 15    waterkanonne, hoekom daar nie sodanige beeldmateriaal 16    beskikbaar is nie. 17            MR NTSEBEZA SC:            Indeed you have. I'm 18    not seeking to explore that. I'm conscious, I think this 19    matter was canvassed with you by several counsel. But what 20    I put to some of the witnesses from SAPS, and I'd like to 21    put to you as well, is that - and without indicating or 22    volunteering to produce that evidence, because I don't have 23    that evidence, but I was putting it on this basis. The 24    remarkable absence of that material may well be 0 and I'll 25    come to your taking the oath to speak the truth - it may</p>	<p style="text-align: right;">Page 10093</p> <p>1    tell this Commission what I know, and in my submission, Mr 2    Chairman, members of the Commission, that's a fair question 3    to put. 4            CHAIRPERSON:            Mr Semenya, I'd like to put 5    this to you, get the benefit of your reply. Generally 6    speaking when a cross-examiner puts something to a witness 7    he has direct evidence to support what he's putting. But I 8    don't understand the rules to go so far as to say that if 9    the fact the counsel wishes to put to the witness depends 10    upon circumstantial evidence, he can't put it to the 11    witness. It would depend obviously on the circumstances. 12    Now in this case, as I understand Mr Ntsebeza's argument, 13    what he's saying is, he didn't mention the case of Govern 14    and Skidmore but it was, I'm sure, present in his mind, as 15    it is I'm sure in yours, but the civil test for 16    circumstantial evidence would apply, the more plausible 17    inference from the facts. He said what the facts are and 18    he says he will argue at the end of the day that applying 19    the principals of circumstantial evidence to these facts 20    the more plausible inference is that there was a 21    suppression of material, and that fact, or that inference 22    that he seeks to draw he's putting to the witness for his 23    comment. How would you deal with that argument? I know 24    it's not quite what he said, but I thought that was 25    basically –</p>
<p style="text-align: right;">Page 10092</p> <p>1    well be that the video camera material was taken; it was 2    found to be against the interest of the police and 3    therefore was withheld. Now if that was so, given your 4    oath, would you be prepared in this forum to say you see, 5    yes we did have that material? 6            MR SEMENYA SC:            Chair – 7            CHAIRPERSON:            Mr Semenya? 8            MR SEMENYA SC:            There is again no factual 9    foundation for that and it is not cured by making it an 10    "if" question. 11            MR NTSEBEZA SC:            Is that an objection? 12            MR SEMENYA SC:            Yes, it is an objection 13    that it is an assumption resting on another one. There is 14    no factual foundation for it. 15            MR NTSEBEZA SC:            I'm putting it as a 16    proposition to the witness because it is preceded by the 17    fact that every rule seems to have been broken insofar as 18    the taking of video footage is concerned. I'm aware of the 19    evidence that the witness has given with regard to cameras 20    that didn't work and all of that. But it is still 21    remarkable that all other material that we have is from a 22    source other than the SAPS, and I'm putting it as a basis 23    for argument and I would like his comments. If it was so 24    that there is material but that material was withheld, 25    would he be prepared to break rank and say I am going to</p>	<p style="text-align: right;">Page 10094</p> <p>1            MR NTSEBEZA SC:            I'm willing to adopt 2    that, Chair. 3            CHAIRPERSON:            Sorry? 4            MR NTSEBEZA SC:            I'm prepared to adopt 5    that, Mr Chairman, as an indication of where I'm - 6            CHAIRPERSON:            [Inaudible] do that, but 7    let's hear what Mr Semenya says. 8            MR SEMENYA SC:            Well, Chair, even 9    circumstantial evidence must be consistent with the 10    accepted facts. If Mr Ntsebeza still accepts there is an 11    explanation, that explanation must be wrong for his 12    supposition to stand. We are being told that the reasons 13    the cameras, or the visuals were not taken of the actual 14    shooting was XYZ. If that evidence stands, it cannot be 15    consistent with the supposition now being placed by Mr 16    Ntsebeza. 17            CHAIRPERSON:            It's premature to say 18    whether it stands, but one particular aspect of the 19    evidence which one can't say without more, but it stands, 20    and that is the evidence of the two videographers who were 21    on the koppie who were told that the, there's a threat to 22    kill them and they then left and went, according to their 23    statements they went back to the JOC. Now it's something 24    they're going to have to answer why they went back to the 25    JOC instead of just moving to a protected area and taking</p>

<p style="text-align: right;">Page 10095</p> <p>1 videos from there. So obviously if their evidence that  2 they went back to the JOC and they didn't go to protected  3 area and take photographs, as one would have expected them  4 to do, but if the evidence that they went back to the JOC  5 is accepted then you're correct, but it's not possible for  6 us to say at this stage whether that evidence will be  7 accepted. So I put the point to you so that you can deal  8 with it.</p> <p>9 MR SEMENYA SC: Chair, maybe the word  10 "stand" is too strong, not that it is ultimately so found.  11 What I'm meaning by my objection is we will lead that  12 evidence and we will put the proposition at the level of  13 saying that evidence will be led. Now it is either Mr  14 Ntsebeza has information that that evidence is untrue and  15 therefore he is able to then say I can put a hypothesis  16 which controvert that fact. Our objection is firstly he  17 says if there is a collusion happening, would you on the  18 basis of that "if" break rank with it, and I'm saying the  19 question of breaking rank can't arise if the fact that  20 there was a collusion is not established, there's no  21 intention to establish it, there's no basis even for  22 offering it. That's the nature of the objection I'm  23 raising, Chair.</p> <p>24 CHAIRPERSON: I'm not prepared to allow  25 the question insofar as it rests upon a suggestion of</p>	<p style="text-align: right;">Page 10097</p> <p>1 everything that happens at a scene, he said he did not seek  2 to know what had happened to that video material. Do you  3 understand? He did not seem to be able to tell the  4 Commission why he did not - given who he is, he did not  5 express an interest in seeing what he was being told is  6 available SAPS video material.</p> <p>7 [12:05] Now, if you were the one who knew of the  8 existence of this video material, which Brigadier Mkhwanazi  9 didn't express any interest in seeing, even though he was  10 told it was there, would you be prepared to disclose it's  11 presence?</p> <p>12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  13 daar was tydens die Potchefstroom vergadering was daar  14 bespreking gewees rondom die beskikbaarheid van polisie  15 videomateriaal, en ek weet nie of Brigadier Mkhwanazi na  16 dieselfde videomateriaal verwys as wat ek van bewus is nie.</p> <p>17 CHAIRPERSON: I'm not sure that's  18 correctly interpreted. Did you not say that you don't know  19 whether Mkhwanazi looked at the same material that you saw,  20 or did I misunderstand?</p> <p>21 MAJOR-GENERAL ANNANDALE: - was aware of  22 the same video material that I was aware of, which I will  23 elaborate now too, Sir. Voorsitter, dit was pertinent die  24 videomateriaal wat geneem was deur Luitenant-Kolonel Botha,  25 wat hy getaak was om te neem en wat hy nie beskikbaar gehad</p>
<p style="text-align: right;">Page 10096</p> <p>1 collusion between the police officers concerned to suppress  2 evidence, but on the narrower issue as to the Govern and  3 Skidmore inference that one draws in relation to the  4 videographers who instead of moving to a protected area to  5 take photographs went off to the JOC and didn't take  6 photographs or videos, I'm prepared to allow you to ask  7 questions on that.</p> <p>8 MR NTSEBEZA SC: Thanks, Mr Chairman.  9 General, then if there was - or put it this way; do you  10 know Brigadier Mkhwanazi?</p> <p>11 GENERAAL-MAJOOR ANNANDALE: Ek doen,  12 Voorsitter.</p> <p>13 MR NTSEBEZA SC: And you are aware that  14 he has given evidence here?</p> <p>15 GENERAAL-MAJOOR ANNANDALE: Dit is  16 korrek, Voorsitter.</p> <p>17 MR NTSEBEZA SC: Now some of his evidence  18 was that at a meeting in Potchefstroom he became aware that  19 other than the video footage from the media, there was  20 other video footage that has been taken by the police which  21 was not shown. He was told by someone there that there was  22 other video footage taken by the police. When we asked him  23 whether he wondered, or he expressed a desire to see them,  24 given his position in POP and given his understanding that  25 video material from SAPS and POP would be material of</p>	<p style="text-align: right;">Page 10098</p> <p>1 het tydens Potchefstroom se bespreking nie, en wat hy gesê  2 het hy gaan nie beskikbaar stel aan ons nie, synde dat dit  3 'n potensiele bewysstuk is vir die IPID ondersoek. Dit was  4 aan hom oorgedra dat hy 'n verpligting het en dat sodanige  5 videomateriaal moet beskikbaar gestel word vir die  6 Kommissie, en dit was dan ook sodanig beskikbaar gestel, en  7 ek weet nie of dit dan dieselfde is wat Brigadier Mkhwanazi  8 na verwys het nie.</p> <p>9 MR NTSEBEZA SC: Now, the long and short  10 of what I was trying to get to establish from you, and  11 probably there is a basis for me to move on, is whether I  12 can accept it from you that as you sit there, having sworn  13 before God to speak the truth, the whole truth, and nothing  14 else but the truth, you will not hesitate to tell this  15 Commission anything on the basis only that it would not be  16 favourable to SAPS.</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  18 ek wil dit onomwonde stel dat ek nie bewus is van, dat dit  19 nie onder my aandag gekom het, dat ek geen aanduiding het  20 nie van enige ander videomateriaal wat beskikbaar is in die  21 polisie se besit wat nie voorgelê is aan die Kommissie nie,  22 en, Voorsitter, sou ek daarvan bewus gewees het, sou ek dit  23 reeds al openbaar gemaak het.</p> <p>24 MR NTSEBEZA SC: I'm pleased to hear  25 that, General. General, I didn't even introduce myself</p>

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1 properly. I represent the families of most of the people  
 2 who were killed by the police on the 16th of August, and  
 3 those who were killed also on the 13th of August.  
 4 GENERAAL-MAJOOR ANNANDALE: Dankie,  
 5 Voorsitter, ek het so kennis geneem.  
 6 MR NTSEBEZA SC: You do accept that they  
 7 were killed by the police, just to make sure that –  
 8 CHAIRPERSON: He conceded that when he  
 9 was cross-examined by other counsel, but the isiXhosa  
 10 interpreter hasn't had a chance to interpret the reply  
 11 anyway, so you must allow him to interpret as well before  
 12 you proceed, but the witness has already said he accepts  
 13 that the people to whom you refer were killed by the  
 14 police.  
 15 MR NTSEBEZA SC: Chairman, I won't dwell  
 16 on, but stranger things have been - have happened –  
 17 GENERAAL-MAJOOR ANNANDALE: Ekskuus tog,  
 18 op die 13de, Voorsitter, daarso is 'n derde persoon wat  
 19 gekry was, sy liggaam, en sover ek weet is daar geen  
 20 polisie aandadigheid in terme van die sterfte nie.  
 21 CHAIRPERSON: You said that it's not  
 22 clear what happened. That person was stabbed, in any  
 23 event. What happened in respect of the third civilian  
 24 deceased on the 13th –  
 25 GENERAAL-MAJOOR ANNANDALE: Dis korrek,

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1 Voorsitter.  
 2 CHAIRPERSON: But you have accepted  
 3 unequivocally that the two strikers who were killed on that  
 4 day, and the 34 who were killed on the 16th, were killed as  
 5 a result of police action, but there are other aspects that  
 6 you've mentioned.  
 7 GENERAAL-MAJOOR ANNANDALE: Dis korrek,  
 8 Voorsitter.  
 9 MR NTSEBEZA SC: Now you'll appreciate  
 10 that the families that I represent are not sophisticated  
 11 people. For instance, some of the questions that come to  
 12 us, frequently asked questions, are, why was it necessary  
 13 for the police to kill the mineworkers. Do you understand  
 14 that? I'm not asking you to respond, but I'm simply  
 15 indicating to you the questions that I will seek to explore  
 16 with you, because I've got to provide answers to those whom  
 17 I represent. For instance, that's one of the frequently  
 18 asked questions. Why was it necessary for the police to  
 19 kill the mineworkers?  
 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 21 ek verstaan dit so.  
 22 MR NTSEBEZA SC: And some of the  
 23 questions that they want us to try and canvass is, for  
 24 instance, what danger did those mineworkers who got killed  
 25 present to the police. That's one of the questions. Do

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1 you understand that?  
 2 CHAIRPERSON: Do you want to ask him  
 3 that?  
 4 MR NTSEBEZA SC: No, I'm simply putting  
 5 it to him to understand the context.  
 6 CHAIRPERSON: Alright, now when you've  
 7 finished explaining to him the heavy obligations that you  
 8 bear, then perhaps you can start asking him some questions.  
 9 MR NTSEBEZA SC: Yes, I will, Mr  
 10 Chairman, you can be sure of that. Now there is an area  
 11 about which you have been asked by other counsel and I  
 12 don't intend to be longer that I need to be, but it is an  
 13 area that was sparked by a comment that was made by a  
 14 counsel for SAPS and a response that you gave, and that is,  
 15 a reference to a so-called Scott plan and to which you  
 16 expressed pleasure that it had been put in the form of a  
 17 so-called Scott plan. Now I just want to ask if it is your  
 18 evidence that the plan was a so-called Scott plan?  
 19 MR SEMENYA SC: Chair, I can't follow the  
 20 question.  
 21 CHAIRPERSON: It seems that there was a  
 22 passage in the examination-in-chief – I don't remember it,  
 23 but he says there was – where you asked him a question and  
 24 you referred to "the so-called Scott plan." He wants to  
 25 know whether there was a so-called Scott plan. That seems

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1 to be the question.  
 2 MR NTSEBEZA SC: What I want to know,  
 3 with respect, without interrupting you, sorry, Sir, is  
 4 whether, because he seemed to - in the manner in which he  
 5 answered, he seems to have accepted that it was a so-called  
 6 Scott's plan.  
 7 CHAIRPERSON: Can you perhaps give us the  
 8 reference in the transcript so that Mr Semenya can check  
 9 it?  
 10 MR SEMENYA SC: No, Chair, I remember in  
 11 my examination-in-chief –  
 12 MR NTSEBEZA SC: It's at TH205.  
 13 MR SEMENYA SC: - I said to the witness,  
 14 "And what is about the so-called Scott's plan?" and he  
 15 said, "I'm glad you're asking me that question," and  
 16 answered that it was not a Scott's plan.  
 17 MR NTSEBEZA SC: Well, my learned friend  
 18 will remember, because he –  
 19 CHAIRPERSON: No, he says he remembers  
 20 it, but I was still asking the page.  
 21 MR NTSEBEZA SC: I gave the page number.  
 22 CHAIRPERSON: Sorry, I didn't write it  
 23 down. What's the page?  
 24 MR NTSEBEZA SC: Well, you were attending  
 25 to my learned friend.

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1 CHAIRPERSON: Yes, well, I can only  
 2 listen – I’m challenged, I can only listen to one person at  
 3 a time. What’s the page?  
 4 MR NTSEBEZA SC: It’s TH205.  
 5 CHAIRPERSON: Give it again, TH2...?  
 6 MR NTSEBEZA SC: It’s transcript, H205.  
 7 The witness went on to say “It was never Scott’s plan; it  
 8 was a police plan that was a collective input that we  
 9 received from all our commanders that we had present in  
 10 terms of having a permanent representative,” etcetera,  
 11 etcetera. Why do you, if I interpret whatever your  
 12 responses have been, why do you insist that it was a so-  
 13 called Scott’s plan, it was not a plan that had been  
 14 conceptualised, that had been conceived by Scott?  
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 16 maar ek het pertinent gesê dit is nie 'n Scott plan nie,  
 17 dit is 'n polisie plan.  
 18 MR NTSEBEZA SC: I mean nobody is going  
 19 to deny that at some stage the police might have applied  
 20 their minds, but what I am seeking to clarify with you, is  
 21 why you are insistent that it was not Scott’s plan, it was  
 22 just something that all the police officers had come around  
 23 the table to do and produced?  
 24 MR SEMENYA SC: Chair, on our record, I  
 25 think the page is 8228.

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1 MR NTSEBEZA SC: Yes, why do you call it  
 2 the so-called Scott’s plan?  
 3 MR SEMENYA SC: Chair, it is not the  
 4 witness who’s calling it a Scott’s plan. Those are the –  
 5 MR NTSEBEZA SC: He certainly concurs  
 6 with whoever called –  
 7 CHAIRPERSON: Mr Semanya called it the  
 8 so-called Scott plan in the question which elicited the  
 9 answer which has been read. Mr Semanya, you -  
 10 MR SEMENYA SC: And it was because in  
 11 cross-examination it was persistently put to the witness  
 12 the Scott’s plan, the Scott’s plan, the Scott’s plan.  
 13 MR NTSEBEZA SC: I read from the  
 14 transcript, Mr Chairman. Mr Semanya SC, “Now can we pause  
 15 for a moment here and talk about what is happening in the  
 16 JOC in relation to the plan – the operational plan - the  
 17 so-called Scott’s plan?” That’s Mr –  
 18 CHAIRPERSON: That’s the point Mr Semanya  
 19 makes. He says he called it the so-called Scott plan, and  
 20 he’s explained why he did so.  
 21 MR NTSEBEZA SC: The response from this  
 22 witness, “Chairperson, I’m glad that the advocate is  
 23 referring to it as the so-called Scott’s plan. I think I  
 24 want to place it on record that it was never Lieutenant  
 25 Scott’s plan, that it was a police plan, that was a

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1 collective input that we received from all of our,” – so he  
 2 confirms that the appellation so-called Scott’s plan is the  
 3 correct appellation.  
 4 CHAIRPERSON: No, no, no, that flowed  
 5 from cross-examination of earlier witnesses, I think in  
 6 particular Brigadier Mkhwanazi, who was questioned about  
 7 the plan, and you remember that one of the points of  
 8 criticism of some of the experts is it was a mistake for a  
 9 Public Order Policing operation to be the subject of a plan  
 10 drawn by someone from the STF, and that was the basis of  
 11 the criticism, and I think still is, from the experts. And  
 12 certainly, as far as I can recall, when Brigadier Mkhwanazi  
 13 was giving evidence, this was freely referred to by cross-  
 14 examining counsel as being the Scott plan, and that’s where  
 15 Mr Semanya got this expression, the so-called Scott plan,  
 16 and the witness then tried to explain why so-called was a  
 17 useful word to use in front of the expression “Scott plan”  
 18 for the reasons he gave.  
 19 [12:24] MR NTSEBEZA SC: Mr Chairman, thank you  
 20 very much. I want to canvas with the witness, because I  
 21 want to make submissions later on that it’s important that  
 22 there shouldn’t be any doubt as to who was the author of  
 23 the plan and why it was significant and why the outcome  
 24 would have been different had the author of the plan been  
 25 somebody else. That’s it.

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1 CHAIRPERSON: You’re perfectly at liberty  
 2 to put questions along those lines to the witness. I was  
 3 afraid that we were getting bogged down, the needle was  
 4 sticking in the groove on the so-called Scott plan point  
 5 and I was trying to enable you to move on to the points  
 6 that obviously you’re going to make.  
 7 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 8 Now you’ll correct me if I’m wrong; my own sense is that  
 9 Scott in his statement identifies two situations and he  
 10 speaks to those two situations. In the first one he talks  
 11 really about what has come to be known as an operational  
 12 strategy and a mission, and if we go to his statement and  
 13 read paragraphs 8 and 9 of his statement -  
 14 CHAIRPERSON: In fairness, you should  
 15 give the witness the exhibit number so that he can find it  
 16 in his file and then he can turn to paragraphs 8 and 9 and  
 17 be able to converse with you along the lines you wish him  
 18 to converse.  
 19 MR NTSEBEZA SC: FFF18. If you’ll bear  
 20 with me, Mr Chairman. Have you got the passage? Do you  
 21 see that, General?  
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 23 ek het net Luitenant-Kolonel Scott se addisionele  
 24 verklaring; ek het nie sy oorspronklike verklaring nie.  
 25 Maar ek het hom nou ontvang.

<p style="text-align: right;">Page 10107</p> <p>1 MR NTSEBEZA SC: Now it seems to me if  2 you read paragraph 8, paragraphs 8 and 9, you do get the  3 sense that at that stage he talks about an operational  4 strategy and a mission, and he says why he was putting that  5 forward. Do you see that? Now for instance in paragraph 8  6 - before you answer, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, on the  7 tenth line from 8 he says the following, "I presented the  8 following strategy to the JOC senior management for  9 approval. SAPS will enter into dialogue with the  10 protesters, giving an opportunity for a non-tactical  11 resolution. SAPS will protect life and property, should  12 the need arise, by responding proportionally to such force;  13 and thirdly, SAPS will exercise caution to protect its  14 members without provoking aggression from the protestors."  15 Then in paragraph 9 he says, "I thereafter  16 proposed the SAPS mission which would provide a guideline  17 for the operational deployment to achieve the desired  18 outcome, namely a combined SAPS force will restore  19 stability to the Lonmin Mine area in Marikana from 14  20 August 2012 by deploying proactively with a visible show of  21 force, isolating the transgressing group and ensuring an  22 orderly processing of gatherers to extract weapons and  23 identify suspects involved in the unrest. The mission was  24 accepted and adopted by the SAPS senior management of the  25 JOC."</p>	<p style="text-align: right;">Page 10109</p> <p>1 gaan nie. Kolonel Scott was reeds op die Maandagaand, die  2 13de, was hy aangewys om die beplanning te koördineer, so  3 insette te versamel en te koördineer.  4 CHAIRPERSON: I think an important word  5 is not just information but inputs, the witness spoke about  6 inputs, inputs from other –  7 MR HANABE: Inputs yes, instead of  8 information. That all the inputs gathered, that he would  9 coordinate this.  10 MR NTSEBEZA SC: Yes.  11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  12 en die strategie en die missie was dan alreeds in terme van  13 insette wat so vroeg ontvang is soos die Maandagaand, is  14 daaraan begin werk, en dit was na aanleiding van 'n gesprek  15 wat ons gehad het, Nasionale Kommissaris was teenwoordig,  16 die Provinsiale Kommissaris, die pertinente drie  17 vergaderings op die Maandagaand, en dan ook die nag se  18 werkery wat Luitenant-Kolonel Merafe betrokke was saam met  19 Luitenant-Kolonel Scott die nag van die 13de, die oggend  20 van die 14de. Voorsitter, maar die belangrikste is op  21 bladsy 10, en dit is die laaste sin, "The mission was  22 accepted and adopted by the SAPS senior management of the  23 JOC," en ek wil, ter illustrasie wil ek hierso meld, in  24 polisie beplanning is dit nie relevant wie die individuele  25 beplanner of beplanningsspan is nie, nie relevant in die</p>
<p style="text-align: right;">Page 10108</p> <p>1 Now before you answer, I want you to look at  2 paragraph 8 where he says, "I concluded an appreciation of  3 the environment incorporating the background information I  4 had been given during the course of the night, and  5 reflected the police's views on how to deal with the  6 situation, as was discussed that evening." Now what I want  7 to put to you is that to the extent that there was other  8 participation by police officers, it was to the extent of  9 the formulation of the operational strategy and mission as  10 is captured in paragraphs 8 and 9. Nothing more.  11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  12 Kolonel Scott het deurgaans verwys na homself in terme van  13 sy eie verklaring en hy het nie die royal "we" gebruik soos  14 wat ek verneem ek Adv Ntsebeza het na verwys in terme van  15 die kollektiewe verwysing na persone nie.  16 CHAIRPERSON: The royal "we" actually is  17 when someone is actually in the first person singular, when  18 he puts it "we," you know as the Queen does, that's why the  19 royal "we," we decide this, when the Queen says it, it  20 means I decide it. But your point is he didn't use the  21 first person plural, he used the first person singular.  22 MR NTSEBEZA SC: Thank you, Mr Chairman.  23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  24 en ek het reeds omvattend daarna verwys en pertinent in die  25 bewysstuk op bladsy 8228, en ek kan nie in detail daarin</p>	<p style="text-align: right;">Page 10110</p> <p>1 konteks dat op die einde van die dag word sodanige  2 beplanning, word dit goedgekeur, en die goedkeuring beteken  3 dat die JOCOM en dan pertinent die oorhoofse bevelvoerder  4 hulle self versoen met dit wat sodanig vermeld is in  5 sodanige beplanning of benadering.  6 MR NTSEBEZA SC: Yes, General, I mean  7 that's a long answer, but I don't disagree with you in what  8 you are saying. I'm simply putting to you that what Scott  9 proposed at that stage and what inputs were given by SAPS  10 officers, spoke to operational strategy and the mission,  11 and that is distinct from the plan about which we are going  12 to have a conversation now.  13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  14 dis in lyn met die beplanning; die strategie en die missie  15 is in lyn met die beplanning.  16 MR NTSEBEZA SC: And what I will put to  17 you is that when we look at the evidence - whether it's in  18 the statements by Merafe and everybody else's statement,  19 and even General Mpembe - what the police participated in  20 by way of comments and input and whatever, was the broad  21 strategy and mission of how to deal with what had arisen,  22 and that is what Scott – Scott, incidentally, is the one  23 who had been formulating the operational strategy, but he  24 invited the input of all other police officers. That is  25 what you see in paragraphs 8 and 9 of his statement. I</p>

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1 will put it to you that when it came to the plan he was the  
 2 sole author of the plan, and there is no evidence  
 3 throughout that in the conceptualisation of the plan he got  
 4 input from anybody else.

5 GENERAAL-MAJOOR ANNANDALE: Dit is nie  
 6 waar nie, Voorsitter.

7 MR NTSEBEZA SC: And I'll put it to you  
 8 that the reluctance to admit that it was his plan is  
 9 because he was not the person, professionally, who should  
 10 have been drawing the plan to contain what was going on at  
 11 the mountain, or in Marikana.

12 MR SEMENYA SC: Chair, but the fair  
 13 treatment of the evidence, again we refer to the statement  
 14 of General Mpembe, paragraph 26, where it reads, "The  
 15 commanders of the various SAPS units and disciplines  
 16 participated in the development of this plan. After  
 17 consulting everyone at JOCOM, I then approved both the  
 18 operational strategy and the mission statement." So it is  
 19 clear on that, that it is the commanders of the various  
 20 SAPS units and the various disciplines who participated in  
 21 the development of the plan.

22 CHAIRPERSON: The interesting point seems  
 23 to be that General Mpembe in paragraph 27 says, "Based on  
 24 the mission statement and the operational strategy, a six-  
 25 stage plan was adopted, premised on the following

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1 approach." So he seems to suggest that the mission  
 2 statement and the strategy come first and then the plan is  
 3 adopted based on that. The questioning, as I understand  
 4 it, seems to suggest that things went the other way around.  
 5 The plan came first, which is entirely Scott's work, and  
 6 then the strategy and the mission statement came in respect  
 7 of which the other officers participated. Mr Ntsebeza –

8 MR NTSEBEZA SC: Yes, it was on a –

9 [12:44] CHAIRPERSON: What do you say about this  
 10 passage? I understand what paragraph 26 says, but what do  
 11 you say about the first sentence - in a sense you're  
 12 putting what you say the evidence is - about the first  
 13 sentence in para 27 where, "Based on the mission statement  
 14 and the operational strategy, a six-stage plan was  
 15 adopted." Now which comes first; the mission and the  
 16 strategy go after the plan, or is it the other way around?

17 MR NTSEBEZA SC: That's what was just put  
 18 to the witness –

19 CHAIRPERSON: So what exactly are you  
 20 putting to the witness?

21 MR NTSEBEZA SC: No, no, I'm saying this  
 22 - it's a very simple proposition. I'm saying, and I don't  
 23 know whether the interjection was by way of an objection by  
 24 my learned friend, or whether he's doing his re-examination  
 25 now to clarify a point, because I don't know why he's

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1 testifying about where what is. I would have expected that  
 2 if I'm putting a wrong proposition to the witness, he would  
 3 say that is not what is contained. It doesn't seem to be  
 4 the basis. It seems to be that he's telling us what the  
 5 testimony is, and I have dealt with Mpembe. I'll come to  
 6 Mpembe. In fact, Mpembe says exactly what we are saying.  
 7 I'm throwing two distinct situations here. Scott comes and  
 8 conceptualise - he does all those things he says he does in  
 9 paragraph 8. He comes up with an operational strategy –  
 10 broad, it's a broad brush against the canvas - and then he  
 11 comes with a mission. So where Mpembe talks about there  
 12 having been a discussion about generals and what, he refers  
 13 to exactly what is contained by Scott in his statement in  
 14 paragraphs 8 and 9.

15 Now, I am putting to this witness that what – and  
 16 I'll come to Mpembe, and it will be clear that we are  
 17 talking about two distinct situations here. The one is  
 18 where everybody is, throw your input, broad strategy brush  
 19 against the canvas to see what your inputs are. For what?  
 20 To achieve these objectives. SAPS will enter into  
 21 dialogue. SAPS would protect lives. SAPS will exercise  
 22 caution, and in paragraph 9, this will be the mission. We  
 23 will patiently demonstrate that that is the fullest extent  
 24 of participation by other officers. Anything else – that's  
 25 why Mpembe, in spite of himself, ends up by saying, you

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1 know, after we had made our input, we adopted the  
 2 operational strategy and mission.

3 MR SEMENYA SC: Chair –

4 CHAIRPERSON: Mr Ntsebeza, are you in  
 5 effect relying on what appears at the top of page 4 of the  
 6 statement by Lieutenant-Colonel Scott, FFF18, where he  
 7 says, having set out –

8 MR NTSEBEZA SC: Yes.

9 CHAIRPERSON: - the strategy and the  
 10 mission, he then says, "I hereafter" –

11 MR NTSEBEZA SC: Indeed.

12 CHAIRPERSON: - "conceptualised three  
 13 escalating stages of deployment in line with the police's  
 14 strategy to reach the desired outcome," and then he  
 15 explains how this was done through what he calls three  
 16 escalating stages.

17 MR NTSEBEZA SC: Yes.

18 CHAIRPERSON: So you say that's the plan?

19 MR NTSEBEZA SC: That's the plan.

20 CHAIRPERSON: And you say he says he  
 21 conceptualised three escalating stages –

22 MR NTSEBEZA SC: Yes.

23 CHAIRPERSON: - therefore it's his plan.  
 24 Is that your point, in a nutshell?

25 MR NTSEBEZA SC: That's going to be the

<p style="text-align: right;">Page 10115</p> <p>1 basis, and we'll take it step by step just to show that  2 it's not a question of semantics where one thinks one was  3 using royal "we," when one was not using a royal "we."  4 It's a question where even the other witnesses, or the  5 other statements, Merafe and everybody else nowhere -  6 CHAIRPERSON: The witness has heard the  7 discussion between us. I hope he now understands the point  8 that you're making that I've been trying to understand,  9 which I now think I understand, and perhaps he can give us  10 the benefit of his comments on that exchange between us.  11 MR NTSEBEZA SC: Indeed.  12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  13 nee, in terme van die verklaring van Scott het hy, deur die  14 nag het hy informasie ingesamel en hy sê ook dan daar in  15 paragraaf 8, "I started working on an operational strategy  16 which would provide the operational concept," en dit is toe  17 voorgelê aan die JOCOM vergadering op die 14de in die  18 oggend. Dit was sodanig dan aanvaar deur die JOCOM, die  19 oorhoofse bevelvoerder en die verteenwoordigers van die  20 JOCOM, nadat daar insette gelewer was deur die  21 verteenwoordigers van die betrokke JOCOM vergadering, dat  22 die strategie en missie eerste gekom het en daarna,  23 voortspruitend uit die JOCOM goedkeuring, het die plan toe  24 begin ontvou.  25 MR NTSEBEZA SC: General, you can be sure</p>	<p style="text-align: right;">Page 10117</p> <p>1 conceptualises, he identifies three stages of deployment in  2 paragraph 10 thereof. Do you see that?  3 GENERAAL-MAJOOR ANNANDALE: Ek sien dit  4 op bladsy 4 onder paragraaf 10, dis korrek.  5 MR NTSEBEZA SC: Now you can see there  6 it's a detailed plan, stage by stage. It's not just  7 principles that speak to strategy. There now he gives, as  8 Scott, a detailed indication of who must do what, why,  9 where, when. Would you agree?  10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  11 ja, hy sit dit uiteen; net so sit Generaal Mpembe dit  12 uiteen.  13 MR NTSEBEZA SC: Ja, we'll come to what  14 General Mpembe says, but you know, we can't give words  15 meanings that they do not have. When Scott says "I  16 conceptualise," and doesn't say anywhere thereafter that  17 Major-General Annandale said, no, you can't do this,  18 General Mpembe critiqued this, nowhere. Throughout he  19 conceptualises. He takes it to the JOC, the JOC approves,  20 yes, we implement it. That is what is remarkable about the  21 plan. You can put your inputs in the strategy, but in the  22 plan no-one ever contributes anything.  23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  24 ek het reeds getuig dat Luitenant-Kolonel Scott kan  25 duidelikheid daarvoor gee hoekom hy dit is sy verklaring</p>
<p style="text-align: right;">Page 10116</p> <p>1 that we will patiently take you through the evidence to  2 show that that plan didn't evolve on its own. It had an  3 author who was informed by a particular mindset, and that  4 is what we are going to be arguing to the Commission at the  5 end of the day. You have just repeated what you have said.  6 I don't disagree with you. On the 14th, you all assembled  7 there. You talked about - and Scott says, you know, look,  8 if we are going to contain a situation like this, this is  9 what we must - I've got these three operational strategy  10 plans, one, two, three; this is our mission. I agree with  11 you, but then thereafter, as the person whom you had  12 invited to come and deal with this situation, you had said,  13 I want Scott, because of these qualities. You didn't say,  14 who is going to do crowd control? Oh, Mkhwanazi, Mkhwanazi  15 must be - you chose Scott, and he then says I then, after  16 all that input about what the strategy is and what the  17 mission is, I then went to conceptualise a plan. That is  18 what we are going to investigate.  19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  20 ek volstaan dat Luitenant-Kolonel Scott die koördineerder  21 was, en hetsy dit Scott of Mkhwanazi was, die rol sou  22 dieselfde gewees het, om insette te kry van al die ander  23 rolspelers en dit sodanig te vervat in die betrokke plan.  24 MR NTSEBEZA SC: And it is very  25 interesting to see what he proposes. On page - but what he</p>	<p style="text-align: right;">Page 10118</p> <p>1 vermeld het of nie vermeld het nie. Hy kan ook meld watse  2 insette hy in ag geneem het. Ek weet, en ek was  3 teenwoordig toe dit voorgelê was by 'n JOCOM vergadering  4 met sowat 30-plus bevelvoerders. Ek weet, en ek was  5 teenwoordig toe hy met myself in gesprek getree het, ook  6 met Generaal Mpembe in gesprek getree het, ook met Generaal  7 Naidoo en Brigadier Calitz. Ek weet dat elkeen van die  8 offisiere teenwoordig die geleentheid gehad het om hul  9 insette te lewer, hetsy dit dan iets nuut is, nie saamstem  10 nie of byvoeg, en ek weet dat as voorsitter, as jy 'n  11 voorstel maak en niemand het enige objeksie teen dit nie,  12 is dit hulle totale ondersteuning in terme van dit wat  13 voorgedra word; en ek weet ook dat Luitenant-Kolonel  14 Merafe, wie 'n baie ervare Openbare Orde Polisiëring  15 beampte is, saam met Kolonel Scott gewerk het die nag van  16 die 13de; en ek weet ook dat ons 'n verskeidenheid van  17 senior offisiere teenwoordig gehad wat gesamentlik  18 tientalle jare ervaring in Openbare Orde het, niemand  19 minder as Brigadier Calitz homself, Kolonel Makhubela,  20 Pitsi en Mere, en ander wat ek reeds genoem het.  21 MR NTSEBEZA SC: After lunch, General,  22 we'll go to General Mpembe's affidavit so that we can put  23 this thing to rest about what he says. Subject to your  24 permission, Mr Chairman, we'll ask to take the lunch break  25 now.</p>



<p style="text-align: right;">Page 10119</p> <p>1 CHAIRPERSON: Very well. Thank you, Mr 2 Ntsebeza. We'll take the lunch adjournment at this stage. 3 We'll endeavour to reassemble just after 2 o'clock. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [14:06] CHAIRPERSON: The Commission continues, 6 resumes. Generaal-Majoor, u is nog steeds onder eed. 7 CHARL ANNANDALE: s.o.e. 8 CHAIRPERSON: Mr Ntsebeza, do you have 9 any more questions for the witness? 10 CROSS-EXAMINATION BY MR NTSEBEZA SC: 11 Thank you, Mr Chairman. General, I don't know whether 12 you've had time to look at Mpembe's affidavit, exhibit 13 GGG13. Do you have it – 14 COMMISSIONER HEMRAJ: Mr Ntsebeza, I 15 think it's GGG12. That's the number I have on my exhibit. 16 MR NTSEBEZA SC: Possibly. It is 17 possible. I'm – 18 CHAIRPERSON: Well, I'm informed by both 19 the Commissioners that it's GGG12. If you've got a 20 document called GGG13 then we, there's something wrong. 21 According to our information Brigadier Calitz's statement 22 is GGG13. 23 MR NTSEBEZA SC: Yes. It looks like 24 these are different index, because – 25 MS PILLAY: Chair, it is that Brigadier</p>	<p style="text-align: right;">Page 10121</p> <p>1 follows to the effect that "The commanders of the various 2 SAPS units and disciplines participated in the development 3 of this plan," and obviously the plan referred to is this 4 operational strategy. He then says, "I then approved both 5 operational strategy and the mission statement," just like 6 Colonel Scott said in his own affidavit in paragraphs 8 and 7 9. You see that? 8 GENERAAL-MAJOOR ANNANDALE: Ek sien dit, 9 Voorsitter. 10 MR NTSEBEZA SC: And when you have regard 11 then to Scott's statement in paragraph 10 thereof, he then 12 sets out what he says he conceptualised and we'll see in 13 his additional affidavit how he builds up on the three 14 stages, because he talks about six stages. But more to 15 General Mpembe's statement, paragraph 26, then – I mean 27, 16 says, "Based on the mission statement and the operational 17 statement, a six-stage plan was adopted, in summary the six 18 stages," and then he goes on. Do you see that? 19 GENERAAL-MAJOOR ANNANDALE: Ek sien dit, 20 Voorsitter. 21 MR NTSEBEZA SC: In fact we will submit 22 that there is confirmation – maybe let me go back, Scott's 23 statement – do you see page 4 of FFF18? 24 GENERAAL-MAJOOR ANNANDALE: Ek sien 25 bladsy 4, Voorsitter.</p>
<p style="text-align: right;">Page 10120</p> <p>1 Calitz is GGG13 and Mpembe is GGG12. 2 MR NTSEBEZA SC: Sorry, it's GGG12. Do 3 you have that, General? 4 GENERAAL-MAJOOR ANNANDALE: Korrek, 5 Voorsitter, ek het die bewysstuk. 6 MR NTSEBEZA SC: Now in that statement, 7 when you were being cross-examined by Adv Jele, your 8 counsel drew the attention of the Commission to paragraph 9 26 of the statement, but in order to put the context 10 properly, I would like us to have regard to paragraph 25. 11 Do you have paragraph 25? 12 CHAIRPERSON: It appears to be on page 9 13 of the statement. 14 MR NTSEBEZA SC: Indeed. Indeed, Mr 15 Chairman. 16 GENERAAL-MAJOOR ANNANDALE: Dis reg, 17 Voorsitter. Ek het die paragraaf. 18 MR NTSEBEZA SC: So before you read 19 paragraph 26, it seems to me to put it in its proper 20 context, is to read 25 also. Do you see that, "That 21 Lieutenant Scott proposed the following operation strategy, 22 which was then adopted by JOCOM." Do you see that? 23 GENERAAL-MAJOOR ANNANDALE: Ek merk dit 24 op, Voorsitter. 25 MR NTSEBEZA SC: And then paragraph 26</p>	<p style="text-align: right;">Page 10122</p> <p>1 MR NTSEBEZA SC: Now he goes through the 2 various steps. In stage 1 in the affidavit, you see what 3 he says there, the deployment and what have you, say, "SAPS 4 to deploy a monitoring contingent." Do you see that? 5 GENERAAL-MAJOOR ANNANDALE: Ek sien dit, 6 Voorsitter. 7 MR NTSEBEZA SC: Now keep your finger on 8 that and go to exhibit L, and you'll see that in slide 71 9 the operational strategy is being discussed. Do you see 10 that? 11 GENERAAL-MAJOOR ANNANDALE: Dis korrek, 12 Voorsitter. 13 MR NTSEBEZA SC: But more importantly it 14 is the plan that I want to draw your attention to. Slide 15 72 and 73, if you look at page 4 of Scott's statement, and 16 you look at slide 72 of exhibit L, you will find that there 17 are no substantial differences, substantive differences at 18 all. Page 4 says, "SAPS to deploy a monitoring contingent 19 of POP members with a negotiating component to engage in 20 dialogue." [Inaudible] says "SAPS said to deploy one 21 [inaudible] monitoring contingent with a negotiating 22 component to engage in dialogue." If you read any - maybe 23 let me give you an opportunity to read both and draw our 24 attention to any differences, if there are any. We will 25 submit that there are no substantive differences at all.</p>

<p style="text-align: right;">Page 10123</p> <p>1            GENERAAL-MAJOOR ANNANDALE:            Voorsitter,  2 die eerste "bullet" op "slide" 72 is basies die eerste sin  3 op bladsy 4 van "stage" 1 en die eerste "bullet."  4 Voorsitter, sonder om deur al die detail te gaan, die, in  5 "slide" 72 word daar 'n korter weergawe verwys na wat in  6 die eerste twee "bullets" van "stage" 1 op bladsy 4 van  7 Luitenant-Kolonel Scott se verklaring is.  8            MR NTSEBEZA SC:            Yes, you're not  9 suggesting that that is a substantive difference? In fact  10 I would understand you to be saying what you find in  11 Scott's statement, describing of stage 1, is reflected in  12 terms in slide 72 of exhibit L. Is that right?  13            GENERAAL-MAJOOR ANNANDALE:            Dit wat op  14 "slide" 72 is, is basies die gedeeltes onder "stage" 1, die  15 eerste twee "bullets."  16            MR NTSEBEZA SC:            Well, if you look at  17 slide 73 and compare slide 73 with the remainder of the  18 bullets in paragraph 10 of Scott's statement, you see that  19 third bullet on Scott's statement says "A reserve group  20 comprising of" da-da-da-da, da-da-da-da, and it then goes  21 on. Second bullet it describes SAPS helicopters.  22            GENERAAL-MAJOOR ANNANDALE:            Dis reg, op  23 bladsy 5 egter net na die twee "bullets" aan die bokant van  24 die bladsy, die paragraaf wat begin met "These units," en  25 wat dan eindig in hakies, "towards the west," is dan nie</p>	<p style="text-align: right;">Page 10125</p> <p>1 11 with what you see in slides 75 and 76. Take your time,  2 General. I don't want to be unfair to you.  3            GENERAAL-MAJOOR ANNANDALE:            Dit is reg,  4 Voorsitter.  5            MR NTSEBEZA SC:            Now stage 3, which you  6 will find in paragraph 12, or from paragraph 12 of Scott's  7 affidavit, very detailed as to what will have to happen in  8 stage 3. He, if you compare that to L78 to L80, the slides  9 78 to 80 of exhibit L, give yourself some time to reflect  10 on that. It will be 78 to 80, in other words 78, 79, 80.  11            GENERAAL-MAJOOR ANNANDALE:            Dis korrek,  12 Voorsitter. Daar is groot ooreenkomste.  13            MR NTSEBEZA SC:            Now because it will be  14 our submission, and you may or may not comment on this,  15 that firstly Scott says so, in so many words, that this is  16 his plan, and when you read his statement together with  17 exhibit L, our submission will be that it is very clear  18 that he devised the plan. We will argue – before you  19 respond – that there were no changes to that plan, so what  20 was presented to this Commission is what is contained in  21 this plan.  22            GENERAAL-MAJOOR ANNANDALE:            Voorsitter  23 nee, ek stem nie saam nie. Dit was, Kolonel Scott was  24 aangestel om die koördinasie te doen van die insette, so hy  25 het dit gekonsolideer. Met sy konsolidasie het hy dit</p>
<p style="text-align: right;">Page 10124</p> <p>1 noodwendig, blyk dit vir my op "slide" 73 gereflekteer nie.  2            MR NTSEBEZA SC:            Of course I'm not  3 suggesting that, you know, it's a replica.  4            GENERAAL-MAJOOR ANNANDALE:            Nee.  5            MR NTSEBEZA SC:            What I'm suggesting to  6 you is that the presentation which was made to the  7 Commission by way of exhibit L mirrors almost in identical  8 terms the Scott statement, which in our submission will be  9 that it is the plan.  10            GENERAAL-MAJOOR ANNANDALE:            Maar  11 Voorsitter, dan ook so bewysstuk GGG12 vanaf paragraaf 27  12 op bladsy 10 en Generaal Mpembe se verklaring, maar dan  13 nader aan die woorde van Luitenant-Kolonel Scott as dit in  14 Generaal Mpembe s'n.  15            MR NTSEBEZA SC:            Now stage 2 as described  16 by Scott appears in paragraph 11. In his statement Scott  17 says this would have to be what goes on into the plan.  18 [14:26] Now if you look at the SAPS presentation to the  19 Commission, and we are talking about slides 75 and 76,  20 again we will make the same submission in that what is  21 presented to us here when the slide exhibit L was tendered  22 in evidence, those slides 75 and 76, a mirror substantively  23 of the plan that Scott in his own words says he  24 conceptualised. I'll give you an opportunity to look  25 through paragraph 11 and compare what you see in paragraph</p>	<p style="text-align: right;">Page 10126</p> <p>1 uiteraard dan verwoord, en dit is soos dit in sy verklaring  2 vermeld is. Voorsitter, daar was ander opsies oorweeg en  3 dit is op die einde van die dag is dit bevind dat dit nie  4 geïmplementeer gaan word nie. Ek stem nie saam met die  5 argument van Adv Ntsebeza nie.  6            MR NTSEBEZA SC:            Of course you don't  7 agree because it gainsays anything that you have said so  8 far to the contra –  9            CHAIRPERSON:            Mr Ntsebeza, it's not  10 necessary to make comments on the answers the witness has  11 given. Please concentrate on asking questions.  12            MR NTSEBEZA SC:            Yes, Mr Chairman. Now  13 in paragraph 18 of his statement, do you see paragraph 18  14 of his statement?  15            GENERAAL-MAJOOR ANNANDALE:            Paragraaf 18  16 van my eie verklaring, GGG1, ek merk dit op, Voorsitter.  17            MR NTSEBEZA SC:            You see for instance in  18 paragraph 18 he does say what was happening at 6 o'clock in  19 the morning on that day, on the 15th of August.  20            GENERAAL-MAJOOR ANNANDALE:            Ekskuus  21 Voorsitter, ek het dit verkeerd gehad. Ek dog dis my  22 verklaring –  23            CHAIRPERSON:            Isn't that dealt with in  24 17? "17, on Thursday, 16 August at 6 o'clock I chaired the  25 JOCOM," and he goes on about what happened.</p>

<p style="text-align: right;">Page 10127</p> <p>1 MR NTSEBEZA SC: No. It starts -  2 COMMISSIONER HEMRAJ: I think perhaps you  3 can tell us first of all which statement are we looking at,  4 Mr Ntsebeza.  5 CHAIRPERSON: Presumably it's GGG –  6 MR NTSEBEZA SC: It's Scott's statement.  7 CHAIRPERSON: Oh, Scott's statement  8 [inaudible] don't deal with, you see, so I thought  9 obviously he deals with things in his statement. So it's  10 Scott's statement.  11 MR NTSEBEZA SC: No, no, Scott's  12 statement. I'm sorry. I'm sorry, members of the  13 Commission. You see in Scott's statement in paragraph 18,  14 he says though, you know, he confines himself to what  15 happened on Tuesday where inputs were made, but he does  16 mention in the context of what happened on Wednesday, he  17 tells us everything, and there's no suggestion there that  18 there was a review of what had been agreed or there were  19 further inputs or there were any criticisms, or there were  20 things that were taken out of that statement. Do you see  21 that?  22 GENERAAL-MAJOOR ANNANDALE: Dis reg,  23 Voorsitter.  24 MR NTSEBEZA SC: And he then goes on to a  25 debriefing in the evening of the, on the 15th, and he also</p>	<p style="text-align: right;">Page 10129</p> <p>1 toeligtig.  2 CHAIRPERSON: I think the point Mr  3 Ntsebeza is endeavouring to make is that the plan was  4 unchanged, that there were no modifications or  5 qualifications to the plan. The plan had been laid out on  6 Tuesday, and on Wednesday morning it was still in place,  7 and I think the point he's now making is that by Wednesday  8 evening there was still no change. Is that your point, Mr  9 Ntsebeza?  10 MR NTSEBEZA SC: Indeed. Indeed, Mr  11 Chairman.  12 GENERAAL-MAJOOR ANNANDALE: Voorsitter  13 nee, daar was veranderings gemaak. Byvoorbeeld ons het  14 "forward holding area" 2 het ons by gebring op die  15 Woensdag.  16 MR NTSEBEZA SC: What I'm putting to you,  17 General, is that Scott doesn't say so, and I will take to  18 what the other people you said were planning this, were  19 conceptualising this plan with Merafe and everybody else.  20 What I'm putting to you now is that he doesn't say so here  21 that we made some changes to my plan as a consequence of A,  22 B, C, D. It doesn't.  23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  24 ek het reeds daarna verwys en dit was nie Scott se plan  25 nie, soos wat die Advokaat nou gemeld het, Voorsitter, en</p>
<p style="text-align: right;">Page 10128</p> <p>1 mentions a JOCOM meeting during the evening of the 15th in  2 paragraphs 20 to 21. Do you see that?  3 GENERAAL-MAJOOR ANNANDALE: Voorsitter  4 nee, ek sien nie die verwysing in die paragrawe na die  5 JOCOM vergadering nie.  6 CHAIRPERSON: Which paragraph are you  7 referring to, Mr Ntsebeza? If you're talking about the  8 debriefing, you're referring to para 20, and then in the  9 second line it says it was reported to JOC that the AMCU  10 leadership had informed the police. Admittedly it doesn't  11 say about a committee meeting, but it certainly refers to  12 reports made to the JOC.  13 MR NTSEBEZA SC: Yes, and in 21 he refers  14 to discussions that took place at the JOC. Do you see  15 that?  16 GENERAAL-MAJOOR ANNANDALE: Ek neem dit  17 waar, dis reg, Voorsitter.  18 MR NTSEBEZA SC: And the point - I think  19 I've already indicated to you that the point here is that  20 there is no suggestion that at those meetings there was a  21 reviewal of the plan as we now know it, or there was any  22 addition or a qualification, subtraction, to the plan.  23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  24 tydens die JOCOM vergaderings was die, elke dag was die  25 plan weer deurgegaan in terme van 'n Google lewendige</p>	<p style="text-align: right;">Page 10130</p> <p>1 dat elke persoon kan self getuig in terme van wat hy of sy  2 besluit het om in hulle verklarings te meld en wat hulle  3 uitgelaat het. Dit neem nie weg dat daar sodanige  4 besprekings plaasgevind het nie.  5 MR NTSEBEZA SC: I hear you, General.  6 GENERAAL-MAJOOR ANNANDALE: Dit is net  7 nie sodanig verwoord nie, Voorsitter. Dit was die  8 operasionalisering van 'n plan. Dit was nie 'n behoorlike  9 plan soos in wat mens geskryf het in terme van 'n OCT  10 formaat nie.  11 MR NTSEBEZA SC: Yes? No, I hear what  12 you are saying, but I want to put it to you that our  13 argument will be that when there was input that Scott got  14 from SAPS officers of whatever rank, he stated so in so  15 many words.  16 [14:46] CHAIRPERSON: Isn't that a question for  17 you to ask Lieutenant-Colonel Scott when he comes? I'm not  18 sure the witness can deal with it. But may I interrupt you  19 for a moment and ask this question; you said there was at  20 least one change on the Wednesday and that was forward  21 holding area 2 was added. Can you remember who suggested  22 that?  23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  24 nee, ek kan nie onthou nie maar dit was met die addisionele  25 senior offisiere wat ons van Gauteng gehad het, spesifiek</p>

<p style="text-align: right;">Page 10131</p> <p>1 Brigadier Whitman en daar was 'n Kolonel Smit en nog 'n 2 kolonel van Openbare Orde Eenhede en dit was met die 3 addisionele personeel wat daar toe besluit is dat ons moet 4 'n addisionele tweede area identifiseer.</p> <p>5 CHAIRPERSON: I see from slide 115 it 6 looks as if an additional 36 members had arrived, were 7 deployed to the Marikana region, which presumably is what 8 necessitated that change. Were there any other changes 9 that you can recall?</p> <p>10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 ja, op 'n stadium was dit oorweeg om filter lyne, om dit 12 daar te stel vanaf al die windrigtings. Voorsitter, dan 13 was daar ook die kwessie wat -</p> <p>14 CHAIRPERSON: I'm sorry, but that wasn't 15 done. That change may have been - that possible change may 16 have been discussed but it wasn't accepted. Is that 17 correct?</p> <p>18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 ja, dit was bespreek maar dit was nie prakties uitvoerbaar 20 nie, weens 'n verskeidenheid van redes wat ek reeds na 21 verwys het.</p> <p>22 CHAIRPERSON: But the question I'm asking 23 you is were there any changes effected, apart from the 24 addition of the extra forward holding area for the reasons 25 you have explained, on the Wednesday?</p>	<p style="text-align: right;">Page 10133</p> <p>1 anyway, we won't go there now.</p> <p>2 MR SEMENYA SC: Chair, we seem to read 3 paragraph 10, page 5, just below the two bullet points, he 4 then deals with the forward holding area 2.</p> <p>5 CHAIRPERSON: Where is this? You say 6 page 5?</p> <p>7 MR SEMENYA SC: Page 5 just below the two 8 bullet points that are at the top of the page.</p> <p>9 CHAIRPERSON: Yes.</p> <p>10 MR SEMENYA SC: Then in that paragraph he 11 deals in parenthesis -</p> <p>12 CHAIRPERSON: Oh, I see, yes. Yes, I'm 13 sorry, you are correct. Originally in the passage to which 14 I referred where he was, he seemed to be talking about the 15 original conception, but you are correct, the passage in 16 square brackets higher up indicates that this is something 17 he introduced on the Wednesday. Thank you for drawing that 18 to my attention. What we were busy with, was - we went on 19 a "dwaalspoor" through my fault - was the changes that we 20 introduced to the original plan, and one was the addition 21 of forward holding area 2 occasioned by the arrival of 22 reinforcements from Gauteng, and the second was the 23 abandonment of the 360-degree encirclement. Were there any 24 other changes?</p> <p>25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>
<p style="text-align: right;">Page 10132</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 dan ook die aanvanklike "encirclement" was die bedoeling 3 gewees dat ons draad reg rondom die groot koppie gooi. 4 Voorsitter, en daar was daarna verwys as die "encirclement 5 group." Voorsitter, die verandering wat ons toe ingebring 6 het is dat die ses Njala sal aanvanklik, hulle sou op die 7 Woensdag net in die reserwe groep gebly het op "forward 8 holding area" 1, en die besluit was toe gewees dat dit sal 9 slegs 'n reguit lyn maak aanvanklik met die sesde Njala net 10 ietwat weswaarts en toe lateraan te verskuif na ooswaarts 11 in terme van 'n fisiese lyn tussen die stakers en die 12 polisie.</p> <p>13 CHAIRPERSON: If Colonel Scott's 14 description of the plan as he conceptualised it in fact 15 incorporates the subsequent amendments that were effected, 16 as you have explained, because I see he seems to speak 17 already of forward holding areas 1 and 2. This is the last 18 bullet on page 5, foot of page 5. So it would seem from 19 what you say that we can't rely entirely on his statement 20 for a description of the plan as originally conceptualised 21 by him, but - and I couldn't find the reference to the 360- 22 degree encirclement, unless I read it badly, which was 23 discarded later for the reasons you gave. So that's a 24 useful warning light that shines in respect of the accuracy 25 in some of the things Lieutenant-Colonel Scott says, but</p>	<p style="text-align: right;">Page 10134</p> <p>1 klein veranderings. NIU het toe later, aanvanklik was dit 2 STF of NIU sou uit die Oryx helikopter uit gefunksioneer 3 het. Dit was toe lateraan net NIU geword.</p> <p>4 MR NTSEBEZA SC: General, I notice you 5 seem to be fairly conversant with English and you have been 6 indicating to the interpreter how he is not interpreting 7 what you are saying. Are you comfortable and fairly 8 conversant with English?</p> <p>9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 laat ek dit sommer nou vir die rekord stel, ek is nie 'n 11 kampvegter vir Afrikaans nie.</p> <p>12 CHAIRPERSON: Anyway, it will be better -</p> <p>13 MR NTSEBEZA SC: You are not a what?</p> <p>14 CHAIRPERSON: He is not a "kampvegter," a 15 campaigner I would think.</p> <p>16 MR NTSEBEZA SC: Oh, okay.</p> <p>17 CHAIRPERSON: Everyone has the fullest 18 right to use his own language. If I was being cross- 19 examined in Afrikaans, I would prefer to give my evidence 20 in English, even though I could understand the questions 21 being put. I would be more at ease; I would feel I am 22 better able to do justice to what I wanted to say. So I 23 have no problem with the Major-General using his first 24 language. He is prepared to answer questions put to him in 25 English, and where he feels that there is something wrong</p>

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1 with the interpretation he corrects it, but I haven't got a  
 2 problem with that myself. I will tell you what I would do  
 3 in similar circumstances and I would, I know what your  
 4 reaction would be, Mr Ntsebeza, so I won't ask you.

5 MR NTSEBEZA SC: Mr Chairman, I'm not  
 6 accusing the General of anything and I'm not, I'm just  
 7 observing that Mathunjwa, whose first language is isiZulu  
 8 and who is not clearly conversant with the English  
 9 language, in the interests of progress spoke the English as  
 10 he understands it and as he can, and all of us are of the  
 11 view that he was -

12 CHAIRPERSON: That was his choice, he was  
 13 given the opportunity.

14 MR NTSEBEZA SC: Indeed.

15 CHAIRPERSON: But when the witness says  
 16 something which counsel later want to use against the  
 17 witness, the witness can't then be heard to say well I'm  
 18 sorry, I was speaking in my second language, please forgive  
 19 me.

20 MR NTSEBEZA SC: Yes, no, no.

21 CHAIRPERSON: So in fact there are both,  
 22 this sword is "n tweesnydende swaard." It's got edges on  
 23 both sides. So anyway, let's carry on. Perhaps we can  
 24 carry on after tea with this interesting linguistic  
 25 discussion, if that's convenient for you, Mr Ntsebeza?

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1 MR NTSEBEZA SC: I'm quite comfortable  
 2 with the General using Afrikaans.

3 CHAIRPERSON: Alright. Shall we take the  
 4 tea adjournment then on that comfortable note?

5 MR NTSEBEZA SC: Yes.

6 CHAIRPERSON: We will take the tea  
 7 adjournment.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [15:23] CHAIRPERSON: The Commission resumes.  
 10 Generaal-Majoor, u is nog steeds onder eed.

11 CHARL ANNANDALE: s.o.e.

12 CHAIRPERSON: Mr Ntsebeza, are you still  
 13 on an existing point or are we moving on?

14 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):  
 15 I will pursue that point. I want to be able to make  
 16 submissions to you at the end of the day on the basis of  
 17 evidence. Thanks, Mr Chairman. Now General, I have heard  
 18 your evidence about what seems to be speaking to the  
 19 implementation of the plan rather than to the  
 20 conceptualisation thereof. I want to take you to paragraph  
 21 29 of Scott's statement where he writes about a meeting  
 22 that you chaired on the day of the killings, the 16th of  
 23 August. He said that, "At about 13:30 I was called for  
 24 special JOCOM meeting, which was chaired by Major-General  
 25 Annandale. Most of the senior command representing their

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1 fields were present, including the senior command of the  
 2 operation. The operation was described as tense on the  
 3 ground at Wonderkop, with the police media liaison officer,  
 4 Captain Dennis Adriao, reporting that the media who had at  
 5 all times been amongst the protesters were moving behind  
 6 police lines for protection as they now feared for their  
 7 lives. The brief was that the police needed to move to  
 8 implement stage 3 of the operational strategy." Then  
 9 paragraph 30 he says, "I briefed the JOCOM on a strategy to  
 10 employ the dispersion action with the aim of breaking the  
 11 protesters up using crowd management dispersion techniques,  
 12 water cannons, teargas, and if necessary, stun grenades and  
 13 rubber bullets, displacing them from the koppie, then  
 14 confronting smaller groups to disarm and arrest those with  
 15 dangerous weapons. Should the protesters advance on the  
 16 POP dispersion line and the members' lives become  
 17 endangered, the members would tactically retreat to their  
 18 Nyalas, leaving the TRT, NIU, and STF line behind them to  
 19 confront the protesters." Then paragraph 32, let's read 31  
 20 as well, "The second line of tactical force was armed with  
 21 their standard issue weapons, with sharp-point ammunition.  
 22 Two STF teams were to be placed in rows of Nyalas  
 23 overlooking the protesters in order to provide feedback on  
 24 protester activities, and if necessary engage any threat  
 25 posed by protesters taking up higher ground and shooting at

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1 police members from their advantage position. The proposal  
 2 was accepted by the JOCOM and I was instructed by Major-  
 3 General Annandale to brief the commanders. I made the  
 4 arrangement over the radio to meet the commanders from the  
 5 different units and deployment points. At forward holding  
 6 area 1 Brigadier Pretorius, the JOC staff officer,  
 7 accompanying me to forward holding area 1, arriving at  
 8 14:30. I briefed the commanders and explained the stage 3  
 9 deployment strategy with reference to [inaudible], the same  
 10 one I used to describe the strategy to the JOCOM. The  
 11 briefing was as follows," and then he gives a detail of the  
 12 briefing. Do you see that?

13 What I want to put to you is the following, that  
 14 from all of that what essentially comes out is that Scott  
 15 briefed the JOCOM on stage 3, that it was accepted and  
 16 approved, and there is nothing there where he even hints  
 17 that he had to adapt the plan at that stage based on  
 18 suggestions from members of JOCOM or anyone else. What's  
 19 your comment on that?

20 GENERAAL-MAJoor ANNANDALE: Voorsitter,  
 21 die plan was reeds ooreengekom. Dit was om net weer deur  
 22 die pertinente detail te gaan en dan was daar addisionele  
 23 lug, of 'n Google lugfoto wat dit net beter grafies  
 24 aangedui het in terme van hoe die plan homself gaan uitrol.  
 25 Daar was nie werklik verandering in terme van hoe die plan

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1 bespreek was die oggend van die 16de tydens die JOCOM  
 2 vergadering nie. Daar was net meer detail gegee in terme  
 3 van die pertinente koppie wat TRT sal moet vee, en dan hoe  
 4 Taakmag en NIU die groter koppie sal vee. Daar was  
 5 bevestiging gegee dat die sesde Njala van posisie  
 6 intussentyd verskuif het. Dit is basies net in verdere  
 7 fases opgedeel en dan pertinent dat die draad wat nou  
 8 gepreposisioneer was, dat dit nou sal ontplooi word.

9 MR NTSEBEZA SC: In fact I'm going to  
 10 refer you – and I'm told it is not yet an exhibit, Mr  
 11 Chairman, but there is an additional affidavit made by  
 12 Scott in which he makes it very clear - or clearer, if he  
 13 has not made it clear so far – that he drafted the plan,  
 14 that it was his plan and all he did was to take it to your  
 15 good selves for approval and implementation.

16 CHAIRPERSON: We'd been given copies of a  
 17 document headed "Affidavit," which appears to be a second  
 18 affidavit, or certainly a further affidavit, I'm not sure  
 19 if it's second or subsequent, unsigned, but dated November.

20 MR NTSEBEZA SC: It is signed, Mr  
 21 Chairman. Certainly the one I have, on the last page  
 22 thereof, 19th of November 2012.

23 CHAIRPERSON: On my copy I haven't got  
 24 that.

25 MR NTSEBEZA SC: I believe there's a

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1 signed – I don't know what's going on. Maybe yours is not  
 2 signed –

3 CHAIRPERSON: No well, I don't know,  
 4 there's something strange happening here. My two  
 5 colleagues have got a statement dated the 19th of November,  
 6 signed by Lieutenant-Colonel Scott. I've got a, what might  
 7 be interpreted as a concept, it's a statement in blank with  
 8 slightly different pagination, the date not filled in.  
 9 Anyway, so there are different copies of the same document  
 10 floating around. I don't know why I'm a disadvantaged  
 11 citizen and not given the one signed and dated.

12 MR NTSEBEZA SC: I've been given only the  
 13 one –

14 CHAIRPERSON: I would have thought,  
 15 regard being had to my position in the chair, I'm entitled  
 16 to be treated at least on the same basis as everybody else.  
 17 But I suppose one must accept these problems with  
 18 equanimity. Right, I've now got a proper document. It's  
 19 exhibit GGG39, I take it. It's its second statement, or  
 20 shall I just call it "Further statement?" Further  
 21 statement, Lieutenant-Colonel Scott, dated 19/11/2012. I  
 22 don't know why we weren't given this previously, but I  
 23 suppose I must be grateful we have it at least now.  
 24 Exhibit GGG39. Yes, Mr Ntsebeza?

25 MR NTSEBEZA SC: Thank you, Mr Chairman.

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1 What exhibit number has it been given?  
 2 CHAIRPERSON: GGG39.  
 3 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 4 I thought the Chairman would use the fancier, call it  
 5 triple G, 39.  
 6 CHAIRPERSON: If you want me to say that  
 7 I will.  
 8 MR NTSEBEZA SC: Now do you have the  
 9 triple G, 39, or GGG39, General?  
 10 MAJOR-GENERAL ANNANDALE: I have the  
 11 document described in both ways, yes, Sir.  
 12 MR NTSEBEZA SC: Now I would like to draw  
 13 your attention to paragraph 4 thereof. He says there, "In  
 14 my affidavit of 18 October 2012 I described a three-stage  
 15 strategy of dealing with the problem at the koppie." We  
 16 already have that. "My strategy in fact comprised six  
 17 stages. The reason I did not mention stages 4 to 6 was  
 18 that these stages were never implemented because  
 19 developments that day, 16 August 2012, did not unfold as we  
 20 had anticipated. The plan that I proposed to the JOC did  
 21 not anticipate an armed attack on the police line by the  
 22 protesters while the police were preparing for the tactical  
 23 option. When that happened, some of the planned stages had  
 24 to be adjusted (stage 4) or become temporarily unattainable  
 25 for that day (stages 5 and 6). Those stages involved the

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1 following actions. Finally, I want to add that in my 21  
 2 years at the SAPS, 19 of which were in the STF, I'm not  
 3 aware that SAPS has ever," as oppose, not never, "has ever  
 4 been confronted with a situation of the kind with which  
 5 members were confronted on the ground on 16 August 2012.  
 6 The plan or strategy that I prepared and proposed for  
 7 adoption by the JOCOM was the first of its kind. Neither  
 8 crowd management strategies, for which Standing Order 262  
 9 provides, nor the hostage management strategies were  
 10 appropriate in isolation. I thus devised what I considered  
 11 at the time to be an appropriate plan for an unprecedented  
 12 situation, being one which had to be encompassed, the  
 13 principle of Standing Order 262, but moving beyond the  
 14 restriction of the Standing Order to effectively plan the  
 15 disarming of the protesters while considering the  
 16 protection of the police officers and the community in the  
 17 area when dealing" – so, and then he ends off what I want  
 18 to be bringing to your attention. In paragraph 7, the last  
 19 sentence in paragraph 7 seems to – and I will submit that  
 20 is so – again he says, "The only alternative in my  
 21 respectful submission, considering the circumstances, was  
 22 to employ defensive strategy to limit the opportunity for  
 23 attacks on police members and other possible targets, such  
 24 as the media, by restricting access by armed protesters to  
 25 them."

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1 So the point here I'm making, which is the point  
 2 I've been making throughout, is that there doesn't seem to  
 3 be any doubt – and so we will argue – that this is a plan  
 4 which is conceptualised by this officer whom you had  
 5 invited to come and plan for how to deal with the situation  
 6 that had arisen, and unlike earlier on when you were  
 7 discussion the overall operational strategy and mission,  
 8 after that had been approved, there doesn't seem to be  
 9 anywhere where that plan is not his and all he does is to  
 10 submit to JOCOM the plan for implementation and/or  
 11 approval.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 13 my antwoord en kommentaar bly presies dieselfde as wat ek  
 14 deurgaans na verwys het tydens my getuienislewering en ook  
 15 in kruisonderoervraging.

16 [15:43] Voorsitter, in respek vir die tyd wat dit sal in  
 17 beslag neem, gaan ek nie deur al die detail gaan nie want  
 18 daar is verskeie verwysings in terme van Kolonel Scott se  
 19 rol en die ander [onhoorbaar] se rol. Voorsitter, ek wil  
 20 net twee verdere verwysings gee wat dit miskien sal  
 21 duideliker stel. Selfs as 'n mnr White of 'n mnr Hendrickx  
 22 of 'n mnr De Rover vir ons 'n beplanning aangestuur het en  
 23 ons het dit aanvaar, dan is dit nie een van hulle  
 24 beplannings nie, dan dit word die oorhoofse bevelvoerder en  
 25 die JOCOM se beplanning, en as ek 'n brief skryf aan die

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1 volgende gesag en ek vra my sekretaresse om die brief vir  
 2 my te verwoord en ek plaas my handtekening daarop, dan is  
 3 dit my brief, nie haar brief nie.

4 MR NTSEBEZA SC: I put it to you,  
 5 General, that you understand very well that is not what I'm  
 6 suggesting to you. You testified that this was never  
 7 Scott's plan. You testified that it was a police plan that  
 8 was collective input that was received from all the  
 9 commanders. You testified that during the JOCOM meetings  
 10 you had most of the officers, most of the commanders  
 11 present, and you testified that how the process worked is  
 12 that Scott was responsible to coordinate the input. Now I  
 13 am putting to you that with all due respect to your  
 14 reference to a PA or a secretary, that Scott was not just a  
 15 secretary. This was his - what do you call it? This was  
 16 his plan. There's an English word I want to put, like you  
 17 know, this was his baby. He was the architect.

18 CHAIRPERSON: Is "brainchild" perhaps the  
 19 word?

20 MR NTSEBEZA SC: Brainchild, there you  
 21 are. There you are, Mr Chairman. This was, in all  
 22 seriousness, the plan that got to be accepted by JOCOM, was  
 23 his brainchild. After that meeting on the Tuesday where a  
 24 broad strategy and a mission had been dealt with and inputs  
 25 were received, he then went on and conceptualised the plan,

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1 brought it to you and that was the plan that you  
 2 implemented. No change was made to it after that meeting  
 3 on the Tuesday.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,  
 5 ek volstaan met my antwoord, getuienis, en kommentaar.

6 MR NTSEBEZA SC: Yes, indeed. Now let's  
 7 look at the affidavits of the commanders whom you testified  
 8 had made suggestions or had provided input into the plan,  
 9 and Ms Jele may have canvassed this thing with you. Was it  
 10 your testimony, if I follow the transcripts well, that  
 11 Merafe, Colonel Merafe assisted Scott during the early  
 12 morning of 14 August?

13 GENERAAL-MAJOOR ANNANDALE: Dit is  
 14 korrek, Voorsitter.

15 MR NTSEBEZA SC: And of course I should  
 16 ask this from Scott, but you don't, you have no explanation  
 17 as to why Scott himself does not make any specific mention  
 18 of Merafe?

19 CHAIRPERSON: How can you expect him,  
 20 this witness, to answer that question?

21 MR NTSEBEZA SC: He may know, Mr  
 22 Chairman, but I want this, but I just put it to you that  
 23 there is no specific mention of Merafe having helped Scott,  
 24 given that this is what you had expected to happen.

25 MR SEMENYA SC: That is also not

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1 completely correct, Chair, because the views of the police,  
 2 says Colonel Scott, were considered.

3 CHAIRPERSON: Sorry, could you repeat it?

4 MR SEMENYA SC: That the views of the  
 5 police as far as Colonel Scott's statement goes, were  
 6 considered. So to say it did not have that of Merafe is  
 7 technically not correct.

8 CHAIRPERSON: It sounds like a good  
 9 point, Mr Ntsebeza. What do you say about it?

10 MR NTSEBEZA SC: I didn't hear it, Mr  
 11 Chairman.

12 CHAIRPERSON: Well, he repeated it twice,  
 13 but you can say it again for the benefit of Mr Ntsebeza.

14 MR SEMENYA SC: Chair, to say that the  
 15 statement of Colonel Scott does not mention the input by  
 16 Merafe is not correct, when the statement of Colonel Scott  
 17 itself says the views of the police were considered.

18 MR NTSEBEZA SC: I see. Mr Chairman, the  
 19 only thing I isolate, the only basis I'm isolating Colonel  
 20 Merafe seems to be what comes out of the evidence where the  
 21 witness mentions Merafe as having being one of the people  
 22 who he had - I put the question just now whether it is so  
 23 that in terms of his testimony Merafe had assisted  
 24 Lieutenant-Colonel Scott during the early morning of the  
 25 14th of August 2012, and the witness said yes. So it was

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1 only on that basis because he doesn't, he seems to remember  
 2 that Merafe is one of the people who helped Scott with the  
 3 plan, and all I was putting to the witness is that there  
 4 doesn't seem to be any mention anywhere in the statements  
 5 available so far by Scott, that one of the people that he  
 6 worked with was Mr Merafe.  
 7 CHAIRPERSON: Mr Semenya, do you wish to  
 8 reply?  
 9 MR SEMENYA SC: That Colonel Merafe is a  
 10 policeman, so if the views of the police are taken into  
 11 account, how can my learned colleague conclude that those  
 12 of Colonel Merafe were not?  
 13 CHAIRPERSON: Which paragraph in  
 14 particular are you referring to?  
 15 MR SEMENYA SC: Paragraph 8.  
 16 MR NTSEBEZA SC: Scott's statement in  
 17 paragraph 8, in fact paragraph 8 -  
 18 CHAIRPERSON: Mr Ntsebeza, paragraph 8,  
 19 line 9 he says, having described what he did, how he worked  
 20 on the operational strategy, he says, "I concluded an  
 21 appreciation of the environment" -  
 22 MR NTSEBEZA SC: Yes.  
 23 CHAIRPERSON: - "incorporating the  
 24 background information I had been given during the course  
 25 of the night, and reflected the police's views on how to

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1 deal with the situation as was discussed that evening." So  
 2 what he is saying is that he incorporated into the document  
 3 he prepared, the views of the police which had been  
 4 communicated to him and as had been discussed the evening  
 5 before. So he does at least there refer to other policemen  
 6 and views that had been communicated to him.  
 7 MR NTSEBEZA SC: Mr Chairman, the one  
 8 point I'm making is a very narrow one as far as this is  
 9 concerned.  
 10 CHAIRPERSON: Yes, the other point -  
 11 MR NTSEBEZA SC: I'm simply saying this  
 12 witness has accepted that in his testimony he, Lieutenant-  
 13 Colonel Merafe worked with Scott. Now, and I prefaced my  
 14 question by saying maybe it's a question that I must put to  
 15 Scott when Scott testifies, or if he comes to testify.  
 16 CHAIRPERSON: I understand he will, and  
 17 if he is not called we will subpoena him.  
 18 MR NTSEBEZA SC: Yes, Mr Chairman. So  
 19 all I was putting to the witness is that Scott doesn't  
 20 mention having, maybe it is because it is included in that  
 21 globular statement in paragraph 8 where he says the police,  
 22 the police being everybody, including Merafe, but having  
 23 been specifically mentioned, we will go to what Merafe  
 24 himself says and see -  
 25 CHAIRPERSON: No, Mr Ntsebeza, the

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1 problem I have got is these are points that you can put to  
 2 Lieutenant-Colonel Scott. You can also find out from  
 3 Colonel Merafe what input, if any, he provided.  
 4 MR NTSEBEZA SC: Yes.  
 5 CHAIRPERSON: But I don't know that this  
 6 witness can be called upon to answer for deficiencies which  
 7 you allege exist in Lieutenant-Colonel Scott's statement or  
 8 even the fact that there, Merafe doesn't claim the credit  
 9 for anything in his statement. Maybe he is more modest  
 10 than Scott.  
 11 MR NTSEBEZA SC: Mr Chairman, I seek to  
 12 do no more. I merely canvass what I have canvassed this  
 13 morning and afternoon, and simply to say the plan was  
 14 conceptualised and is Scott's brainchild, and if it assists  
 15 then other objective evidence in the form of statements by  
 16 Merafe and all the other people whom the witness himself  
 17 indicates were the people who had assisted Scott, on the  
 18 face of it those statements do not show that to be so. I  
 19 seek to do no more.  
 20 CHAIRPERSON: No, these are points for  
 21 argument. I understand the, because you have made it clear  
 22 what it is. I understand the argument that you wish to  
 23 present.  
 24 MR NTSEBEZA SC: Yes.  
 25 CHAIRPERSON: And you have extracted a

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1 certain amount of material from this witness from which you  
 2 are going to base your argument, but I don't know if you  
 3 can take it any further at this stage.  
 4 MR NTSEBEZA SC: That's okay, Mr  
 5 Chairman.  
 6 CHAIRPERSON: I'm not hampering you in  
 7 your cross-examination, I'm just commenting that I wonder  
 8 whether you have taken this point as far as is necessary in  
 9 your case, and perhaps you should move onto another point,  
 10 if you have one.  
 11 MR NTSEBEZA SC: Die agteros kom ook in  
 12 die kraal.  
 13 MR MAHLANGU: What that means is even the  
 14 cow that is following right at the back eventually arrives  
 15 at the kraal.  
 16 CHAIRPERSON: The ox, the rear ox also  
 17 gets home to the kraal eventually.  
 18 MR NTSEBEZA SC: Chairman, I did indicate  
 19 right from the start that some of the questions put to the  
 20 General, I don't seek to traverse them more than it is  
 21 necessary. It's just that certain aspects thereof I would  
 22 like - but I accept what the Chairperson has indicated and  
 23 all I was going to put to the General, and perhaps that  
 24 would be something that we could do after the adjournment -  
 25 CHAIRPERSON: Do you mean, by after the



1 adjournment do you mean here today after we have adjourned,  
2 or tomorrow morning?

3 MR NTSEBEZA SC: No, tomorrow morning, Mr  
4 Chairman.

5 CHAIRPERSON: Okay.

6 MR NTSEBEZA SC: I was going to go to a  
7 new area of -

8 CHAIRPERSON: Yes, we'll move on to a new  
9 area and we can do that more appropriately tomorrow  
10 morning.

11 MR NTSEBEZA SC: As the Commission  
12 pleases.

13 CHAIRPERSON: The Commission will now  
14 adjourn until 9:30 tomorrow morning.

15 [COMMISSION ADJOURNED]

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