

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 87 7 MAY 2013 PAGES 9147 TO 9274

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 7 MAY 2013]
 2 [09:38] CHAIRPERSON: The Commission resumes.
 3 Generaal-Majoor, u is nog steeds onder eed. Which of the
 4 parties wishes to cross-examine next? Mr Mpofo, we're
 5 pleased to see you back. We hope that you've recovered
 6 from your unpleasant ordeal. You're in a position to
 7 cross-examine immediately?
 8 MR MPOFU: Yes, thank you very much,
 9 Chairperson, for the kind words.
 10 GENERAAL-MAJOOR CHARL ANNANDALE:
 11 (s.o.e.)
 12 CROSS-EXAMINATION BY MR MPOFU: Thank
 13 you, Chairperson. Good morning, General.
 14 MAJOR-GENERAL ANNANDALE: Good morning,
 15 sir.
 16 MR MPOFU: General, I know that the
 17 Chairperson has made a sensible ruling that people should
 18 have the documents before, the day before preferably,
 19 before it's referred to or at least get a few minutes to
 20 read it but I'll take some liberty. There's a document
 21 that I'm going to refer you to which I'll just refer you
 22 literally to one sentence and then over the tea break or
 23 whatever, you can read it properly. Is that in order?
 24 MAJOR-GENERAL ANNANDALE: That's in order
 25 with me, yes, Chairperson.

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1 MR MPOFU: Thank you, thank you. It's
 2 probably in front of you, it's the opening statement that
 3 we made and I suppose it would be exhibit –
 4 MS PILLAY: Chair, it hasn't been made an
 5 exhibit yet, so it would be GGG18.
 6 MR MPOFU: GGG18.
 7 CHAIRPERSON: Thank you.
 8 MR MPOFU: And in it you will see that,
 9 also by way of introduction, that I represent the persons
 10 who were injured and those who were arrested during the
 11 relevant period. And the section that I want you to
 12 concentrate on is paragraph 9, it's 9.1 to 9.10 which you
 13 can read in your own time.
 14 CHAIRPERSON: The page is page 5.
 15 MR MPOFU: Page 5, that's correct. Thank
 16 you, Chairperson.
 17 CHAIRPERSON: What is the sentence that
 18 you want to –
 19 MR MPOFU: It's 9.7.
 20 CHAIRPERSON: 9.7.
 21 MR MPOFU: 9.7, that's - the first topic
 22 that I want to deal with is around 9.7, who gave the orders
 23 and you see that we say – or by the way, those 10 points
 24 there are what we will argue at the end of the case as our
 25 overall case and –

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1 CHAIRPERSON: Surely depending on the
 2 evidence that emerges.
 3 MR MPOFU: Of course, yes.
 4 CHAIRPERSON: Yes.
 5 MR MPOFU: Ja, and we're at the stage of
 6 the evidence so we won't be able to argue these unless we
 7 debate them with people like you, understand, General?
 8 GENERAAL-MAJOOR ANNANDALE: Ek verstaan
 9 dit so, dankie Voorsitter.
 10 MR MPOFU: Yes and one of those issues is
 11 at 9.7 and it deals with who gave the orders at all levels
 12 of government and the police chain of command. Now, also
 13 to try and save time I've sort of clustered some of the
 14 topics that I'm going to deal with where they are related,
 15 so you'll forgive me if I seem to be moving from one topic
 16 to another but you'll see where the relationships are.
 17 CHAIRPERSON: As long as you make it
 18 clear to the witness what topic you're busy with at what
 19 time –
 20 MR MPOFU: At a particular time.
 21 CHAIRPERSON: - then he won't be
 22 prejudiced, but if he wants to know what topic you're busy
 23 with because it's necessary for him to answer maybe, he can
 24 ask –
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: - and I'm sure you'll tell
 2 him.
 3 MR MPOFU: Yes, thank you. You
 4 understand that, General. If we are going to save time –
 5 otherwise the clustering will end up wasting time. If we
 6 are going to save time you will have a right to, if you
 7 think we're now jumping to something else, to say are we
 8 still on this or whatever. That will be in order, correct?
 9 GENERAAL-MAJOOR ANNANDALE: Ek is
 10 gemaklik daarmee, Voorsitter.
 11 MR MPOFU: Thank you. Now, the police
 12 force or service or whatever you call it, one of the key
 13 ingredients there is discipline, correct?
 14 GENERAAL-MAJOOR ANNANDALE: Dit is
 15 korrek, Voorsitter.
 16 MR MPOFU: And whether you are talking
 17 about the militarised format of the police or the
 18 demilitarised version, it is still a hierarchical
 19 organisation where orders from above ought to be followed,
 20 all things being equal, correct?
 21 GENERAAL-MAJOOR ANNANDALE: Daar's 'n
 22 definitiewe hierargie in die polisie diens, dis korrek,
 23 Voorsitter.
 24 MR MPOFU: In fact, there is a specific
 25 injunction for members to obey orders subject, of course,

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1 to the right not to obey an unlawful order, do you know
2 that?

3 GENERAAL-MAJOOR ANNANDALE: Dit is
4 pertinent so, wettige opdragte.

5 MR MPOFU: And section 47 – well, the
6 issue about obeying orders is covered in the Constitution
7 and I think Mr Bizos read you something about it but that
8 what he read to you is, also gets legislative approval in
9 section 47 of the Police Act, which I'll read out to you
10 now. "Subject to subsection (2), a member shall obey any
11 order or instruction given to him or her by a superior or a
12 person who is competent to do so, provided that a member
13 shall not obey a blatantly unlawful order or instruction,"
14 which we've dealt with. I take it that you're familiar
15 with the Constitution, the Police Act and the standing
16 orders. Can I proceed on the basis that you are, insofar
17 as it relates to the police, of course?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter
19 ja, daar is verskriklik baie staande ordes, baie nasionale
20 instruksies.

21 MR MPOFU: Okay.

22 GENERAAL-MAJOOR ANNANDALE: So vir my om
23 te sê dat ek vertrou is met elke lieve staande orde,
24 instruksie, magsorde, is bietjie te veel gevra maar ek is
25 geredelik op hoogte.

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1 MR MPOFU: Okay, no, certainly. Okay,
2 fair enough. Can you then confine that part of the
3 question to the standing orders that are relevant to this
4 matter, you are familiar with those?

5 GENERAAL-MAJOOR ANNANDALE: Korrek.

6 MR MPOFU: Thanks. Just to finish the
7 subject of following orders, you do know that the section
8 that I read does not give you really a right to disobey an
9 order. What it does do is to say that if you have the
10 right to demand that the person who gives you the order
11 must give it to you in writing – in other words, when you
12 are in doubt, to cover yourself, it is that right and it is
13 also given in the legislation, do you know that?

14 GENERAAL-MAJOOR ANNANDALE: Dit is
15 korrek, Voorsitter, ja. Die toets is altyd 'n wettige
16 opdrag.

17 MR MPOFU: Ja. Thank you. And you would
18 agree, I have no doubt, that the society of citizens are
19 entitled to assume that the police work within that
20 hierarchical structure and that they don't sort of act on
21 frolics of their own. Would that be a fair assumption?

22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
23 kan ons net 'n ordereëling – gewoonlik wag ek vir die tolk
24 om eers te vertolk en dan so kan –

25 CHAIRPERSON: Yes, yes. I think, Mr

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1 Booi, we must proceed on that basis that once a question
2 has been asked in English you can interpret it into
3 isiXhosa.

4 MR BOOI: Yes.

5 CHAIRPERSON: The witness will then
6 answer in Afrikaans, Mr Mahlangu will interpret that into
7 English and you will then interpret into isiXhosa. I think
8 that – we must be consistent about it because the witness
9 doesn't know if he must pause before you interpret or
10 whether he can give the answer immediately, so I think we
11 must stick to that.

12 MR BOOI: I understand. If it could be
13 repeated I would appreciate it.

14 MR MPOFU: No, I said that the General
15 will hopefully agree with me that the citizens of a
16 country, of this country, would be entitled to assume that
17 the police would act within these confines of the
18 hierarchical structure and orders from above and so on,
19 rather than on frolics of their own.

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 daar is met reg 'n verwagting op die polisie om binne die
22 raamwerk van die Wet op te tree, en dan ook binne die
23 raamwerk van hulle eie staande ordes, instruksies,
24 regulasies.

25 MR MPOFU: Yes, thank you. And I take it

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1 that you also would agree that the question that we pose in
2 9.7 which I read out to you, of our opening statement,
3 namely the orders that were given by whom, at what stage
4 and so on, is a very, very important question in relation
5 to the resolution of the issues before this Commission.

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 ek moet verstaan wat is die omvang van die ordes waarna
8 verwys word in paragraaf 9.7.

9 MR MPOFU: Yes.

10 GENERAAL-MAJOOR ANNANDALE: Is dit
11 opdragte in die algemeen of is dit opdragte pertinent tot
12 sekere instruksies om handeling te verrig?

13 MR MPOFU: Yes. No, thank you, that is
14 very fair General, because I've asked you literally to
15 pluck out a sentence out of a whole document and I'm sure
16 once you've read the document you'll understand it in
17 context, so your question is quite fair. No, the orders
18 that are referred to in 9.7 are the orders in the context
19 of what happened in the relevant period between the 9th and
20 the 16th and I'm – really the question that I'm asking you
21 is, at all the crucial stages of those events it would be
22 important for the Commission to understand who gave the
23 orders to do what, at what stage, if any.

24 CHAIRPERSON: Mr Mpofo, you talk about at
25 all levels of government and the police chain of command.

<p style="text-align: right;">Page 19155</p> <p>1 MR MPOFU: Yes.</p> <p>2 CHAIRPERSON: Now, I take it –</p> <p>3 MR MPOFU: Maybe I should explain that.</p> <p>4 CHAIRPERSON: I'm not sure that the</p> <p>5 Minister, for example, has the power to give orders to the</p> <p>6 members of the police service. I think he can give policy</p> <p>7 directions and that kind of thing but I'm not sure that</p> <p>8 anyone else at any level of government is entitled to give</p> <p>9 orders but presumably that puzzlement on my part will be</p> <p>10 removed as you proceed with you cross-examination.</p> <p>11 MR MPOFU: Thank you, Chair.</p> <p>12 CHAIRPERSON: Is that correct?</p> <p>13 MR MPOFU: Thank you, Chairperson, yes</p> <p>14 that's correct. Please accept, General, that the word</p> <p>15 "orders" there is used broadly or loosely to refer to</p> <p>16 instructions, all sorts of commands, orders, pressure even</p> <p>17 that may come. The issue really that I wanted from you is</p> <p>18 whether you accept that that, the answer to that question</p> <p>19 would be an important one in going to the root of the</p> <p>20 issues that we are dealing with.</p> <p>21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>22 in die konteks, na die breë verwysing van algemene opdragte</p> <p>23 sal dit belangrik wees om die prentjie van Marikana in te</p> <p>24 vul, dat ons dit dan so verstaan, ja.</p> <p>25 MR MPOFU: And if, for example if it is</p>	<p style="text-align: right;">Page 19157</p> <p>1 I think it's fair to say to you at this stage that one of</p> <p>2 the things that we're going to argue at the end of the case</p> <p>3 is that you, you as Major-General Annandale, as an</p> <p>4 individual personally – and when I say personally, now or</p> <p>5 in the future, I don't mean outside of your scope of work</p> <p>6 but I mean as an individual policeman, do you understand –</p> <p>7 that you played a significant role in the events that led</p> <p>8 up to the massacre on the 16th.</p> <p>9 CHAIRPERSON: Is that a general question</p> <p>10 or are you going to give the witness any particulars, as it</p> <p>11 were –</p> <p>12 MR MPOFU: Yes.</p> <p>13 CHAIRPERSON: - on which the allegation</p> <p>14 is based so that he can deal with them?</p> <p>15 MR MPOFU: Thank you, Chairperson. Yes,</p> <p>16 no, I was just – ja, I am unconventionally, I'm giving you</p> <p>17 the conclusion but of course I'll give you a series of</p> <p>18 questions which will justify that conclusion or argument at</p> <p>19 least.</p> <p>20 CHAIRPERSON: Ask those who have their</p> <p>21 mobile phones with them to ensure that they're turned off.</p> <p>22 I've just checked that my own is turned off in case what</p> <p>23 I'm going to say would apply to myself. It's very</p> <p>24 disturbing and it affects the concentration of everybody</p> <p>25 concerned, so I don't know what I'll do if another cell</p>
<p style="text-align: right;">Page 19156</p> <p>1 contended that those orders, instructions, et cetera, were</p> <p>2 unlawful, in those cases the answer to that question would</p> <p>3 determine who, for example, criminal proceedings could be</p> <p>4 proceeded, against whom disciplinary, internal disciplinary</p> <p>5 steps may be taken against and now that the issue of</p> <p>6 government has been brought in, who, if any, might even</p> <p>7 have to face the International Criminal Court if it would</p> <p>8 be a government agency, for example. In other words, the</p> <p>9 answer to that question of who ordered what, particularly</p> <p>10 if it was, if it's contended that those orders are</p> <p>11 unlawful, would determine those kinds of actions, correct?</p> <p>12 [09:58] MR SEMENYA SC: Chair, can Mr Mpofo</p> <p>13 explain to us what he means by that question? I can't see</p> <p>14 how criminal prosecution can follow on a contention.</p> <p>15 MR MPOFU: Okay. If that contention is</p> <p>16 found to be, to have substance by the Commission, I mean.</p> <p>17 Can you answer the question now?</p> <p>18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>19 ek is slegs 'n gesag om vanuit die perspektief van die</p> <p>20 polisie te praat en ja, sou daar 'n bevinding gemaak word</p> <p>21 dat daar eerstens 'n onwettige opdrag gegee was en</p> <p>22 tweedens, dat die onwettige opdrag dan uitgevoer was, dan</p> <p>23 sal dit vir seker bepalend wees vir enige voortspruitende</p> <p>24 aksie na gelang van dit.</p> <p>25 MR MPOFU: Right. Given that background,</p>	<p style="text-align: right;">Page 19158</p> <p>1 phone goes off but I'll perhaps take argument on that but</p> <p>2 please turn them off in the meanwhile so that I don't have</p> <p>3 to decide what to do with people who keep their cell phones</p> <p>4 on.</p> <p>5 MR MPOFU: Thank you, Chairperson. I see</p> <p>6 that the Chairperson wisely checked his own cell phone</p> <p>7 first.</p> <p>8 CHAIRPERSON: I've had the experience</p> <p>9 where my own one went off, so I don't want a repetition –</p> <p>10 it's called leading by example.</p> <p>11 MR MPOFU: Thank you, Chair.</p> <p>12 CHAIRPERSON: The question you asked was</p> <p>13 a general one and you said you would then give particulars,</p> <p>14 so I don't expect you – I take it you don't expect an</p> <p>15 answer from the general question, that was just explaining</p> <p>16 the topic, as it were and then you are now going to ask a</p> <p>17 series of questions –</p> <p>18 MR MPOFU: That's correct.</p> <p>19 CHAIRPERSON: - which you do require</p> <p>20 answers to –</p> <p>21 MR MPOFU: Thanks Chairperson, thank you</p> <p>22 very much. Now, let's start with the fact that you</p> <p>23 basically invited yourself to Marikana. Nobody asked you</p> <p>24 to come, correct?</p> <p>25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>

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1 nee. Die korrekte woord is nie uitnodiging nie. Ek het 'n
 2 professionele verpligting en gegewe die feit dat daar reeds
 3 van my, een van my nasionale eenhede ontplooi was en daar
 4 versoek was vir verdere ontplooiing van een van my
 5 nasionale eenhede, het ek dit goedgevind om self deur te
 6 gaan om my te vergewis van die omstandighede.

7 CHAIRPERSON: What counsel put to you is
 8 correct, you weren't asked to go there by anybody or
 9 invited, you were told what had happened and in the
 10 circumstances you've explained you thought it best to go on
 11 your own initiative for the reasons set out. Is that –
 12 would that be correct?

13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 dis reg, my beswaar was teenoor die woord wat gebruik was.

15 MR MPOFU: Okay. Thank you, sorry
 16 General, I must apologise. I would like you in the future
 17 to answer the question and then of course if you want to
 18 explain or object to the use of a particular word and so
 19 on, you can qualify your answer but I'm certain now the
 20 answer is that you went on your own initiative. And the
 21 point of the matter is that even from your answer, whoever
 22 had asked for members of your unit to be deployed there,
 23 not for you, correct?

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek het reeds in my getuienis verduidelik die redes hoekom

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1 ek gegaan het en hoekom ek dit goedgevind het om deur te
 2 gaan, maar niemand het vir my pertinent gesê, sal jy
 3 asseblief deurkom nie, alhoewel ek dit gemeld het in die
 4 oproep aan Generaal Naidoo dat ek gaan deurkom en dit was
 5 sodanig aanvaar.

6 MR MPOFU: Ja. In short, General, I
 7 don't want us to belabour this point, when you went there –
 8 given the background of what we discussed about hierarchy
 9 and orders and all that – you were not ordered by anybody
 10 nor were you invited by anybody.

11 CHAIRPERSON: He said that.

12 MR MPOFU: Yes, okay. Thank you,
 13 Chairperson. Now, would it be – is it correct that all
 14 policemen have a professional responsibility towards the
 15 public, it's not just you, correct?

16 GENERAAL-MAJOOR ANNANDALE: Dit is
 17 korrek, Voorsitter.

18 MR MPOFU: But that they are still
 19 legally obliged to act on orders and instructions.

20 GENERAAL-MAJOOR ANNANDALE: Ons het reeds
 21 verwys daarna, wettige opdragte.

22 MR MPOFU: So would it be fair then to
 23 say that your departure from Pretoria or wherever you came
 24 from and your arrival in Marikana on the 13th was not
 25 necessarily authorised by anybody.

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1 CHAIRPERSON: Before you answer the
 2 question, Mr Semenya wishes to say something.

3 MR SEMENYA SC: Chair, the witness has
 4 already told us that he has a professional responsibility
 5 to act as he did. To say it's unauthorised is incorrect.

6 CHAIRPERSON: I take it you mean not
 7 authorised by somebody else, which is a bit different from
 8 unauthorised. I think he's virtually said that already but
 9 I think we can accept it wasn't authorised by anybody else.
 10 It doesn't mean it was, quote, "unauthorised" but I suggest
 11 you move to your next question.

12 MR MPOFU: Well, no, Chair, I don't think
 13 we'll leave it at that. Okay, apart from your professional
 14 responsibility which we've established applies to every
 15 single member of the police force, what – who authorised
 16 your visit to Marikana?

17 CHAIRPERSON: Mr Mpofo, he's made it
 18 clear nobody authorised his visit. He went on his own
 19 initiative, he had the power, as it were, to do so. You've
 20 established that by the questions you've asked already.

21 MR MPOFU: Yes.

22 CHAIRPERSON: I don't know that you –

23 MR MPOFU: Chairperson, I'm wanting to
 24 take it further. I understand the distinction that the
 25 Chairperson has made. What I'm trying to establish now is

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1 not that it was not authorised but that it was
 2 unauthorised, so that's what I'm leading to, Chairperson.

3 CHAIRPERSON: Very well.

4 MR SEMENYA SC: Chair, that's an antonym
 5 of the same word.

6 MR MPOFU: Well, if it is then it is not
 7 –

8 CHAIRPERSON: If I act on my own
 9 initiative, I'm not authorised by anyone to do it, but I
 10 don't need authority if I do it on my own. If I'm
 11 unauthorised that would, I would think, connote the idea
 12 that I was acting beyond my authority. I think that's the
 13 point he's trying to make, so I think – but perhaps as my
 14 colleague Commissioner Hemraj says, it's necessary to
 15 establish whether authority was needed or – before you can
 16 say he acted in an unauthorised fashion. So perhaps ask,
 17 or let me ask that question. Was authority, did you
 18 require anybody's authority to do what you did and go on
 19 your own initiative to Marikana?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 21 ek het nie sodanige magtiging nodig nie. Ek is 'n
 22 komponentshoof, ek is 'n baie senior offisier in die Suid-
 23 Afrikaanse Polisiediens.

24 MR MAHLANGU: I am a very senior official
 25 in the South African Police Service, Mr Chairperson, I do

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1 not need such authority.

2 CHAIRPERSON: He also said I am the head

3 of a component, I am a component head.

4 MR MAHLANGU: That's right, I am a head

5 of a component.

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

7 en dis deel van my bestuursverantwoordelikhede en binne my,

8 die delegasie van my bevoegdhede.

9 MR MPOFU: Okay, thank you very much.

10 Now that makes it much clearer. Will you kindly then

11 favour us with a copy of the delegation of authority that

12 gives you this kind of free rein to sommer up and go

13 wherever you want to?

14 MR SEMENYA SC: Chair, the witness –

15 CHAIRPERSON: Mr Semanya wishes to say

16 something. Yes, Mr Semanya?

17 MR SEMENYA SC: The witness has not said

18 he's got a delegated authority to up and down to wherever

19 he wants to go to.

20 CHAIRPERSON: [Inaudible] the delegation

21 of my bevoegdhede, die delegasie van my bevoegdhede, which

22 isn't quite what Mr Mpofo put. Yes, now to that extent I –

23 MR MPOFU: Okay, what –

24 CHAIRPERSON: But I think Mr Mpofo will

25 be able to reformulate the question –

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1 MR MPOFU: Yes.

2 CHAIRPERSON: - for me to object.

3 MR MPOFU: Yes, thank you, Chair. Okay,

4 well then give us a delegation of authority that gives you

5 what you say it gives you.

6 GENERAAL-MAJOOR ANNANDALE: Ek sal 'n

7 dokument beskikbaar stel as dit die Voorsitter so behaag.

8 CHAIRPERSON: Does this document set out

9 your powers and duties and so forth as the head of your, of

10 the component to which you referred earlier or does it go

11 beyond that?

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

13 ek sal my verantwoordelikhede as 'n komponentshoof sal ek

14 beskikbaar stel.

15 MR MAHLANGU: I will make available the

16 delegation of my authority if the Chairperson so pleases.

17 CHAIRPERSON: - the delegation of my

18 authority is a correct translation. What was the word you

19 used, Major-General?

20 GENERAAL-MAJOOR ANNANDALE: My

21 posbestuursverantwoordelikhede.

22 CHAIRPERSON: And how would you translate

23 – what is the English translation for that, used in the

24 police service, do you know?

25 MAJOR-GENERAL ANNANDALE: It will

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1 probably be my post description or my job description in

2 terms of my specific responsibilities as a component head.

3 MR MPOFU: Okay, thank you. Alright, we

4 look forward to that. You would agree with me that, but

5 for your arrival in Marikana, authorised or unauthorised,

6 things might have turned out differently or at least would

7 not have happened the way they did.

8 MR SEMENYA SC: Chair –

9 CHAIRPERSON: I assume you want him to

10 answer as you've phrased, or are you going to put to him

11 the differences you say his presence on the scene made –

12 MR MPOFU: Yes, Chairperson, maybe that's

13 fair, ja. Let me rather –

14 CHAIRPERSON: I think that would be fair.

15 I mean I don't know how – I wouldn't like to have to answer

16 the general question you've asked if I was in the witness

17 chair –

18 MR MPOFU: That's correct.

19 [10:18] CHAIRPERSON: I think give him the detail

20 why, what you say made – what difference you say his

21 presence made.

22 MR MPOFU: Yes.

23 CHAIRPERSON: I think Mr Semanya won't

24 object to that. He's promised he won't object to it, okay.

25 MR MPOFU: Okay, let's just take a random

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1 thing. You would agree that you are the person who

2 determined that that operation is to be carried out at half

3 past three, correct, on the 16th – you as an individual?

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

5 dit was 'n voorstel wat ek gemaak het in terme van die

6 begin van die operasie. Ek het pertinent so voorgestel en

7 elke sodanige besluit wat in die konteks van 'n JOCOM

8 vergadering gedoen word –

9 CHAIRPERSON: Then he started another

10 sentence and said every single suggestion that I made at

11 the JOCOM – I don't think he's finished that sentence yet.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

13 elke besluit, elke voorstel wat in 'n JOCOM gemaak word –

14 kan ek net klaarmaak asseblief – word kollektief sodanig in

15 die JOCOM goedgekeur en dit word dan ten uitvoer gebring.

16 MR MAHLANGU: Every discussion, decision

17 that is being made in the JOCOM is being done collectively

18 and –

19 CHAIRPERSON: And approved, I think he

20 said, by the JOCOM.

21 MR MPOFU: By the JOCOM.

22 CHAIRPERSON: Do you mean by the whole

23 JOCOM or I suppose, if necessary, a majority of it but

24 certainly in most cases the whole JOCOM would approve

25 suggestions made. Is that what you're saying?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 tensy daar 'n betrokke beswaar is, is daar 'n kollektiewe
3 aanvaarding van sodanige besluit. Sou daar 'n beswaar wees
4 dan sal daar, op die einde van die dag sal die oorhoofse
5 bevelvoerder dan sodanig sal hy dan sê ja of nee.
6 MR MPOFU: Yes. No, you can take it that
7 I accept that there was no objection but the point I'm
8 making – maybe before I make that point, would you accept,
9 would you agree with me that just from common human
10 experience, you don't have to be an advocate or a general
11 to accept this, that if the operation let's say would have
12 been carried out at 5 o'clock or at half past two, it might
13 have had different consequences – sorry, in other words
14 what I'm getting at is that the specific time that it
15 occurred is an important factor in the actual consequences.
16 CHAIRPERSON: The real question is, do
17 you agree with the proposition that the time at which the
18 operation was implemented, the plan was implemented, was a
19 material factor or would you say it was irrelevant whether
20 it was 3 o'clock or half past three or 4 o'clock? Seeing
21 I've taken over the question, perhaps I should rephrase it.
22 You did explain that you'd – the decision to implement the
23 plan was in fact delayed because Mr Mathunjwa went back to
24 speak to the people, to the strikers and it was considered
25 inappropriate to do anything before he had a chance to

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1 speak to them again. I think that's what you said
2 yesterday, is that – or the day before, previously. I
3 think that's correct, isn't it?
4 GENERAAL-MAJOOR ANNANDALE: Dit is
5 korrek, Voorsitter.
6 CHAIRPERSON: So that the time is at
7 least relevant, apart from the points that Mr Mpofu is
8 leading up to, at the time it was relevant not necessarily
9 on the point that it made any difference but it was
10 important in this sense that Mr Mathunjwa was given a
11 second chance to go back and speak to the people and if
12 he'd succeeded on the second occasion with his impassioned
13 plea for them to leave the koppie because there was a
14 bloodbath that was going to take place and if his plea had
15 been listened to, then obviously we wouldn't be here today.
16 I think that's correct, isn't it?
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 dis alles waar wat u sê en dan addisioneel daartoe was die
19 konteks van 15:30 vir 'n spesifieke rede dat die son sowat
20 20 voor ses, so 17:40, 17:45 reeds ondergegaan het en die
21 redes was dat, sou daar 'n uiteendryfaksie plaasvind –
22 CHAIRPERSON: I'm sorry to interrupt you,
23 the interpreter said 25 to five, it's actually 25 to six.
24 MR BOOI: 25 to six, 17:35.
25 GENERAAL-MAJOOR ANNANDALE: No, 17:40,

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1 17:45.
2 CHAIRPERSON: It's actually 20 to six to
3 quarter to six.
4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 en dan sou 'n uiteendryfaksie moes plaasvind, dat dit nie
6 in die nag ingegaan het nie. Om te verwys na mnr Mpofu se
7 breë stelling dan hetsy dit nou kwart oor drie, halfvier,
8 vier-uur plaasgevind het, sou dit waarskynlik geen verskil
9 gemaak het nie.
10 CHAIRPERSON: The only difference I can
11 think of, although there may be another one Mr Mpofu's
12 going to suggest, the only difference I can think of at
13 this stage is that if you had done it before Mr Mathunjwa
14 had had a chance to back the second time, we would never
15 have known whether his impassioned plea would have
16 succeeded or not and the allegation could have been made
17 that if you'd given Mathunjwa a chance to go back to make
18 his plea to the people, they might well have listened to
19 him and gone off the koppie and we wouldn't be here, but
20 that's now taken out of the equation but there may be
21 something else that Mr Mpofu has got up his sleeve. He's
22 going to show us in due course but that's all I can see at
23 the moment.
24 GENERAAL-MAJOOR ANNANDALE: Dis reg,
25 Voorsitter.

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1 CHAIRPERSON: Would you agree with that?
2 MR MPOFU: Okay, well, I'll tell you now
3 what I've got up my sleeve. You've answered the question
4 and the Chairperson has correctly added to it in respect of
5 what may or may not have happened had you acted earlier
6 than 15:30. I now want to postulate to you what may or may
7 not have happened had you decided to act at let's say 16:30
8 and just to turn what the Chairperson put to you, around,
9 had you done that we would've known, we would have had an
10 hour to know whether or not the people or at least some of
11 them would have left the koppie, as impassionately asked by
12 Mr Mathunjwa. Would you agree with that?
13 CHAIRPERSON: Mr Semenya?
14 MR SEMENYA SC: Chair, Mr Mpofu must tell
15 us the basis of that hypothesis.
16 MR MPOFU: Yes, I will.
17 MR SEMENYA SC: Or whether he's going to
18 lead evidence on it. I don't understand.
19 MR MPOFU: Well, I've already led the
20 evidence, Chairperson. The evidence of Mr Magidiwana is
21 that as soon as Mr Mathunjwa left, some of the people
22 actually started to leave.
23 CHAIRPERSON: Yes, your point as I
24 understand it is that because the operation started pretty
25 soon after Mr Mathunjwa left, one of the photographs

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1 actually shows his car in the distance still, that the
 2 slower thinking members of the group on the mountain might
 3 well have followed the example of those who had gone
 4 already and possibly they all would have gone but that may
 5 be a proposition you may have difficulty to establish but
 6 anyway, that's your point. Yes, I think that's – what the
 7 answer is, and it doesn't matter, but I don't like to
 8 disallow the question so you may proceed with that
 9 question, Mr Mpofu.

10 MR MPOFU: Thank you, Chairperson, and
 11 maybe just to assist you, General, I think it's exhibit
 12 L193 but don't hold me to that for now.

13 CHAIRPERSON: There's a detailed sequence
 14 of events but there's an earlier picture of –

15 MR MPOFU: Yes, yes, that's correct,
 16 Chairperson, it's 193, it is.

17 CHAIRPERSON: There's a picture somewhere
 18 of Mr –

19 MR MPOFU: It's that same one.

20 CHAIRPERSON: Oh, here it is, it's 193.

21 MR MPOFU: Yes.

22 CHAIRPERSON: 193 is the one I had in
 23 mind.

24 MR MPOFU: Yes.

25 CHAIRPERSON: With the AMCU president

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1 leaving the area and a number of protesters departing –

2 MR MPOFU: Yes.

3 CHAIRPERSON: - with the organised group
 4 remaining with others on the koppie, so that's the picture
 5 I had in mind.

6 MR MPOFU: Yes, thank you. So in fact
 7 the basis of my question is the police evidence itself,
 8 yes. Can you – are you on L193, General?

9 GENERAAL-MAJOOR ANNANDALE: Ek is,
 10 Voorsitter.

11 MR MPOFU: Now, according to the police,
 12 at 15:43 as Mr Mathunjwa was leaving the area after
 13 addressing the protesters, a number of the protesters were
 14 departing and, significantly, they were using the – you see
 15 the white arrow?

16 GENERAAL-MAJOOR ANNANDALE: I see two.

17 MR MPOFU: Sorry, not the white arrow,
 18 that's to Mr Mathunjwa's car, the other one of the
 19 protesters departing. The one that goes towards the koppie
 20 –

21 CHAIRPERSON: Mr Mpofu, do I understand
 22 this correctly? The red circle is what's described, I take
 23 it, described as the organised group.

24 MR MPOFU: Yes, correct.

25 CHAIRPERSON: The two yellow arrows are

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1 those remaining on the koppie, so they –

2 MR MPOFU: On the koppie.

3 CHAIRPERSON: - who are covered by the
 4 phrase "remained with others on the koppies." So the two
 5 koppies being the two places which are at the end of the
 6 two yellow arrows.

7 MR MPOFU: Yes.

8 CHAIRPERSON: And then the other white
 9 arrow, the right hand white arrow, that's the one depicting
 10 the number of protesters departing.

11 MR MPOFU: Yes.

12 CHAIRPERSON: Do I understand it
 13 correctly?

14 MR MPOFU: That's correct, Chairperson,
 15 yes.

16 CHAIRPERSON: Because of my interruption
 17 you'd better repeat the question.

18 MR MPOFU: Yes, Chairperson.

19 CHAIRPERSON: So that –

20 MR MPOFU: No, it was helpful,
 21 Chairperson. Yes, that's the map, General. The question
 22 is, after Mr Mathunjwa's address it would seem from the
 23 police version that a number of the protesters started
 24 departing and you can see in that photo and in other photos
 25 - if you look at 191 at the same time as 193, fortunately

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1 they're on the same foolscap, as it were, you'll see that
 2 there are a number of people who can be described as
 3 departing. You see what I mean?

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 ek sien dat daar is spikkels van persone wat verwyderd is
 6 van die twee groter groepe.

7 MR MPOFU: Yes, and incidentally the
 8 white arrow on 193 points to the spot where scene 1
 9 occurred, where 16 people or so were killed. Agreed?

10 GENERAAL-MAJOOR ANNANDALE: Incidentally.

11 MR MPOFU: Yes. Well, I mean okay, just
 12 by coincidence the arrow points to near the spot where the
 13 16 people, where the scene 1 people were killed. In other
 14 words the people were departing almost on the exact spot
 15 where their colleagues were later killed.

16 GENERAAL-MAJOOR ANNANDALE: Ek neem dit
 17 so waar, Voorsitter.

18 MR MPOFU: So that I'm still showing you
 19 the significance of the time, so that if you were Mr X –
 20 sorry –

21 CHAIRPERSON: I think there might be a
 22 more happily chosen letter.

23 MR MPOFU: Mr Y in the current context,
 24 ja, Mr Y or Mr Joe Soap, protester Y, and you were
 25 departing but at a particular point nearer to the koppie –

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1 pick any koppie – as to whether you were going to go
 2 through that place where people were killed before Nyala 4
 3 closed that gap or not was determined by the time. In
 4 other words, if the time to strike, as it were, was 16:40
 5 you might have made it but if it was 15:40 then you might
 6 not have made it. You get the general meaning of what I'm
 7 saying?
 8 GENERAAL-MAJOOR ANNANDALE: Nee, ek doen
 9 nie, Voorsitter.
 10 MR MPOFU: Okay. I'll try again. Okay,
 11 sorry ja, it was a bit convoluted. What I'm saying to you
 12 is this, the question as to whether somebody was trapped
 13 this side of the barbed wire or was one of the lucky ones
 14 who was already on the eastern side of the barbed wire, so
 15 to speak, is determined by the time at which that barbed
 16 wire was introduced in that dividing line. Is that better
 17 now?
 18 [10:38] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dit is nie so nie. Daar was 'n pertinente beweging van 'n
 20 groot groep persone gelyktydig na die polisielyn toe tydens
 21 die uitrol van die polisielyn.
 22 MR MPOFU: Yes, but General, I thought we
 23 both understand that the throwing, the initial throwing of
 24 the barbed wire deployment – initial, initial I mean – and
 25 the departure of Mr Mathunjwa almost coincided.

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1 CHAIRPERSON: [Inaudible] wasn't there,
 2 Mr Mpofo.
 3 MR MPOFU: He was at the JOC.
 4 CHAIRPERSON: If one looks at the
 5 material on – yes, he was at JOC – if one looks at the
 6 material at exhibit L –
 7 MR MPOFU: L.
 8 CHAIRPERSON: It looks as if there may
 9 have been something like a five minute – because I'll tell
 10 you why I say that. 15 –
 11 MR MPOFU: 15 minutes.
 12 CHAIRPERSON: Ja, if you look at slide
 13 190 you'll see that's apparently 15:35, say the police.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: And there you see Mr
 16 Mathunjwa's motor car. Over the page, five minutes later
 17 you see – or what they say is five minutes later, 15:40 –
 18 you see what looks like Mr Mathunjwa's motor car going
 19 away. You see just under 80 metres in yellow?
 20 MR MPOFU: Correct, yes.
 21 CHAIRPERSON: It looks like Mr
 22 Mathunjwa's car having turned around and going away.
 23 MR MPOFU: At 15:40.
 24 CHAIRPERSON: That's 15:40.
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: And then the next slide
 2 says that the command was given by Brigadier Calitz to
 3 Colonel Makhubela to start with the deployment of the
 4 barbed wire and that's also given as 15:40. So it's quite
 5 close but it looks as if it's something like five minutes
 6 or so.
 7 MR MPOFU: It's – no, no.
 8 CHAIRPERSON: Or three minutes maybe.
 9 MR MPOFU: It's less, three – at most
 10 three minutes, Chairperson, probably less but, at worst,
 11 the deployment or rather the deployment of the wire, of the
 12 barbed wire and Mr Mathunjwa's departure was separated by
 13 something like two to three minutes. Do you accept that?
 14 GENERAAL-MAJOOR ANNANDALE: As ek die
 15 foto's interpreteer lyk dit soos min of meer so drie
 16 minute.
 17 MR MPOFU: And it might even be less than
 18 three minutes, if you look at 191 and 193 because he's
 19 there at five, 15:40 and he's gone at 15:43, even a small
 20 distance, I concede. Correct?
 21 GENERAAL-MAJOOR ANNANDALE: Dit kan
 22 potensieel sekondes minder as drie minute wees.
 23 MR MPOFU: So that our protester 1's
 24 departure from the koppie could either be because of Mr
 25 Mathunjwa's departure, rather, impassioned plea as it has

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1 been described, or if they could see it, the initial
 2 deployment of the barbed wire.
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 dis 'n hipotese wat gestel word, protesteerder 1. Daar is
 5 ook ander foto's wat voor die tyd was en terwyl mnr
 6 Mathunjwa daar was, wat daar ook beweging is van mense.
 7 MR MPOFU: Sorry – I'm sorry, General, I
 8 think we are talking at cross-purposes. I'm not talking
 9 about beweging here, I'm talking about people who were
 10 departing, on the police version.
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek verwys pertinent na slide 191 terwyl mnr Mathunjwa nog
 13 steeds teenwoordig is met sy voertuig op die toneel, sal u
 14 ook opmerk dat daar persone verwyder is van die twee groot
 15 groepe.
 16 CHAIRPERSON: Exhibit 191 shows Mr
 17 Mathunjwa's vehicle departing. It looks as if, you see
 18 it's facing the direction away from the koppie and which I
 19 think is not its direction on 190 when he was addressing
 20 the people. So it looks as if he's turned around and he's
 21 just left, probably 30 seconds or a minute or so after the
 22 end of his address, as far as one can see. Would you agree
 23 with that?
 24 MR MPOFU: Yes. Do you agree with the
 25 Chairperson?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter

2 ja, maar dan as 'n mens kyk na die mense, hoe ver hulle

3 alreeds verwyder is, dan dink ek nie dat dit plaasgevind

4 het in daardie sowat enkele sekondes wat hy sy voertuig

5 omgedraai het nie.

6 MR MPOFU: Very good. Yes, but that's a

7 point that proves exactly what I'm saying, General, isn't

8 it? In other words, those people that you see on 191 could

9 only have been leaving because of what Mr Mathunjwa had

10 said.

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

12 ek kan nie daarvoor getuig in terme van een betrokke foto

13 wat ek sien nie. Die persone wat die beste daarvoor kan

14 getuig is sekerlik die operasionele bevelvoerder en sy lede

15 wie ontplooi was.

16 MR MPOFU: Ja, well –

17 CHAIRPERSON: There must be something in

18 that and obviously the people who were on the scene can

19 tell us at what stage, if there was one, when people

20 started leaving. Some of them might have started leaving

21 at an early part of Mr Mathunjwa's speech, some of them may

22 have started leaving – you'll notice on the previous page –

23 MR MPOFU: No, Chairperson –

24 CHAIRPERSON: - sorry, page 185 the

25 second bullet, that the president of AMCU informed the

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1 strikers that no person from the mines management or the

2 leadership of the police were willing to meet with them.

3 So at that stage some of them might have started moving but

4 we don't know, we have to infer. Now, the point that the

5 General is making is, the police officers who were at the

6 scene at the time will be better able to tell us that,

7 rather that we should merely draw inferences –

8 MR MPOFU: No.

9 CHAIRPERSON: - from photographs, that's

10 the point being made.

11 MR MPOFU: Well –

12 CHAIRPERSON: There must be something in

13 that, surely.

14 MR MPOFU: There is nothing in that,

15 Chairperson. We can't always resort to this thing of let's

16 ask the commanders who were there. It's not me who drew

17 the attention to picture 191, it's the witness. He said

18 there are other people departing there, so why then when

19 I'm asking about it does he want to refer me to somebody

20 else? He said it.

21 GENERAAL-MAJOOR ANNANDALE: Nee,

22 Voorsitter, net 'n regstelling. Hy het gesê so die aanname

23 kan ons dan maak en ek moet saamstem met die advokaat en ek

24 kan nie met hom saamstem nie, want ek kan dit nie baseer op

25 net een slide nie.

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1 MR MAHLANGU: I cannot agree with the

2 advocate based on the one slide only, Mr Chairperson.

3 CHAIRPERSON: He's not prepared to accept

4 the assumption put forward by counsel because it's only

5 based on one slide –

6 MR MAHLANGU: that is –

7 CHAIRPERSON: - that the full

8 implications of the point will only become apparent from

9 people who were at the scene at the time and saw it. I

10 take it that's what he's saying.

11 MR MAHLANGU: That is correct.

12 MR MPOFU: Yes. General, please, I am

13 saying – that's what I was saying in response to the point

14 made by the Chairperson, that it is not an assumption made

15 by me that those people were leaving while Mr Mathunjwa was

16 still there, it's an assumption made by you. You're the

17 one who drew my attention to this picture.

18 GENERAAL-MAJOOR ANNANDALE: Nee,

19 Voorsitter. Adv Mpofo het gesê stem ek saam met sy aanname

20 dat toe mnr Mathunjwa vertrek het, dat die protesteerders

21 toe begin vertrek het. Ek stem nie saam daarmee nie want

22 ek was nie daar, ek weet nie of daar van hulle dalk 20

23 minute vroeër tydens ander toesprake vertrek het nie.

24 CHAIRPERSON: You see the point, the

25 assumption that you're putting to the witness is people

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1 only – as I understand it, if I'm wrong you will correct me

2 – people only started, the strikers only started moving

3 away at the end of Mr Mathunjwa's speech in that short

4 little time of a few minutes, whereas the point the witness

5 is putting is for all we know some of them may have started

6 moving at an earlier stage in the light, for example – he

7 doesn't say this but it would appear to follow – of what is

8 said in the second bullet on 185 which appears to have been

9 an earlier part of –

10 MR MPOFU: An hour before that,

11 Chairperson.

12 CHAIRPERSON: So –

13 MR MPOFU: Those people, the people who

14 left an hour before were sitting at home and watching

15 television. I'm talking about the people in the picture.

16 CHAIRPERSON: The point being made, I

17 think, is that people appear – or may well have, we don't

18 know, we will find out when people who were on the scene

19 tell us – people may well have started moving away, as you

20 put it, an hour before and then there may have been a

21 continued exodus over that whole period. The proposition

22 you were putting, as I understood you, was that the people

23 started moving at the end of Mr Mathunjwa's speech and

24 that's the assumption, as I understand it, which the

25 witness doesn't accept and he says we need eye witnesses to

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1 tell us what happened, or possibly videos – I don't think
 2 there are any – but to tell us whether your assumption is
 3 correct or not. I think that's the difference, as I
 4 understand it, but if I'm wrong I hope you or the witness
 5 or both of you will correct me.

6 MR MPOFU: Yes. Do you have any evidence
 7 yourself of any remarkable departure such as that one that
 8 we see on 191 or 193 that might have happened while Mr
 9 Mathunjwa was speaking?

10 GENERAAL-MAJOOR ANNANDALE: Nee, nie
 11 pertinent nie, Voorsitter.

12 MR MPOFU: Okay, alright. Well, I'll
 13 move away from this because I think we're getting into
 14 specifics. The only issue really that I was canvassing
 15 with you is that – and you can dispute it if you want – is
 16 that whether, if, let me say if you had suggested that the
 17 operation should be done at half past four, at least some
 18 of those people who were departing who might have been
 19 caught on the western side of the barbed wire might have
 20 been home an hour before that. Do you accept that? Sorry,
 21 before you answer – and that question would apply, whatever
 22 the reason that made them to go, whether it was Mr
 23 Mathunjwa or whether it was something that happened an hour
 24 before or 10 days before.

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 hier word nou aannames gemaak wat ek nie mee kan saamstem
 2 nie. Dit moet gesien word in die konteks van die bedoeling
 3 en die polisie se plan en die plan was gewees nadat die
 4 defensiewe maatreël in werking gestel is of uitgerol is,
 5 die draad, dan sou daar steeds 'n waarskuwing gegee word
 6 vir al die persone om nog steeds in 'n redelike tyd uiteen
 7 te gaan. Ons het egter nooit daarby uitgekom nie, want
 8 daar was 'n aanval op die polisielyn gewees en die
 9 implementering van die plan was altyd gewees na gelang van
 10 die oordeel van die operasionele bevelvoerder, so alhoewel
 11 daar 'n tyd voorgestel was, was die implementering na
 12 aanleiding van die oordeel van die operasionele
 13 bevelvoerder.

14 MR MPOFU: Ja. General, please assist
 15 me. I understand that I want – I'll try not to make
 16 assumptions upon assumptions and so on, but we can't avoid
 17 assumptions totally. All I'm asking you is a simple
 18 question. If you assume that protester Y was departing,
 19 according to the police, at 15:43 – another assumption, I
 20 assume that person was going home – do you accept that if
 21 you had said that the operation must start at 16:40, that
 22 protester Y would have probably been home by then, by
 23 16:30, 16:43, let's make it an hour just for uniformity.
 24 It's actually simple.

25 [10:57] GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 weer eens is die aanname dat as dit een of enkele persone
 2 sou gewees het en die aanname is dan dat die groter groep
 3 in totaliteit en selfs die kleiner groep in totaliteit sou
 4 uitmekaar uit gegaan het, sou slegs enkeles uitmekaar
 5 gegaan het en dit was 'n uur later dan het dit, presies
 6 dieselfde situasie hom afgespeel.

7 MR MPOFU: Okay, listen here, General.
 8 These were not assumptions. I represent people who were
 9 injured and who were arrested at the scene, do you
 10 understand that?

11 GENERAAL-MAJOOR ANNANDALE: Dis korrek.

12 MR MPOFU: Ja. Now, I'm putting it to
 13 you not as an assumption, as a fact, that some of the
 14 people that I represent were injured or arrested, were
 15 trapped this side of the barbed wire specifically because
 16 it was there at a particular time which prevented them from
 17 going home. That's the evidence they have given and that's
 18 the evidence that some of them will still give. Let's stop
 19 with the assumptions. All I'm saying is that if one of
 20 those people had been in that group that we see in that
 21 picture, had you decided the thing to happen at 16:40,
 22 those people would have been home and not have been killed,
 23 injured or arrested.

24 CHAIRPERSON: Mr Semanya?
 25 MR SEMENYA SC: Chair, we are now many,

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1 many months into this hearing. We are still to see a
 2 statement of a witness of Mr Mpofu's making these
 3 averments.

4 CHAIRPERSON: Mr Mpofu, your witnesses,
 5 as I remember, said that they were going to the township,
 6 they were straight - do you remember there was a big
 7 argument –

8 MR MPOFU: That's correct.

9 CHAIRPERSON: - that the path that they
 10 should have gone on and that kind of thing, but my
 11 recollection was they stayed there until after the wire was
 12 deployed except for the gap and remember there were the
 13 three movements. The evidence was that at that late stage
 14 they were going through the gap when things happened. I
 15 don't remember any witness saying, I decided to leave after
 16 Mathunjwa's speech or during Mathunjwa's speech and I was
 17 trapped there, I would actually have got out earlier, I
 18 would have got out if the deployment of the wire had
 19 happened later. So I don't remember that you led any
 20 evidence directly on the point you're making. It sounds to
 21 me, if you'll forgive me for saying this, as if you are
 22 putting an assumption to the witness. It may not be an
 23 unrealistic assumption but I think the assumption you are
 24 putting, it seems to me that there were people who were
 25 minded to leave.

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1 MR MPOFU: It's the police who say that,
2 Chair.

3 CHAIRPERSON: No, [indistinct] assumption
4 that there were people who were minded to leave but they
5 were prevented from leaving because of the short time lapse
6 between the departure of Mathunjwa and the deployment of
7 the wire and if the deployment of the wire had happened
8 even quarter of an hour later they might – at one stage you
9 used the word "might", some or other of them might have
10 left and not been, as it were, trapped behind the wire when
11 these incidents happened. That's the question you're
12 putting but it's based on an assumption.

13 MR MPOFU: Yes.

14 CHAIRPERSON: The assumption is they
15 wanted to leave. There is an argument, as you know, that
16 some of them didn't want to leave, they in fact wanted to
17 stay and they wanted to fight with the police, so that's a
18 matter which presumably will be developed later in the
19 hearing –

20 MR MPOFU: No, Chairperson, I'm sorry,
21 there is no such evidence –

22 CHAIRPERSON: I –

23 MR MPOFU: There were –

24 CHAIRPERSON: I didn't say evidence, I
25 said there's –

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1 MR MPOFU: You said there was evidence.
2 CHAIRPERSON: If I said evidence – sorry,
3 the evidence hasn't been led yet actually, correct.

4 MR MPOFU: Okay.

5 CHAIRPERSON: The evidence I'm referring
6 to, which presumably will be led, is on slide 192 but it's
7 not evidence yet. So there is a – perhaps I should use the
8 word "suggestion", there's a suggestion, there's an
9 averment I think by the police that the people, certainly
10 the organised group stayed because they wanted to make, to
11 fight with the police and there was talk of a declaration
12 of war and so on, but I take it that your side will deny
13 those factual averments that are made.

14 MR MPOFU: No, Chairperson, it's more
15 than that. There is evidence before this Commission,
16 undisputed, that even the so-called warrior group decided,
17 at the suggestion of Mr Noki, to leave.

18 CHAIRPERSON: Yes –

19 MR MPOFU: So there's no suggestion – if
20 there was such evidence then it would have been put to Mr
21 Magidiwana, so the only evidence this Commission has is
22 that everybody wanted to leave.

23 CHAIRPERSON: Well, there was evidence,
24 there was quite a vigorous attack in cross-examination –

25 MR MPOFU: On that point.

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1 CHAIRPERSON: On the motives of what you
2 call the warrior group, whether they were going forward to
3 attack the police or whether they were going forward to go
4 to the township and you remember there were debates about
5 the paths and the way they could've moved and so on. So we
6 don't have to go into all that yet. What I'm putting to
7 you is –

8 MR MPOFU: I take the point now.

9 CHAIRPERSON: - there is an assumption
10 which underlies your proposition.

11 MR MPOFU: Mm.

12 CHAIRPERSON: It's an assumption which
13 relates to the "might have." If one accepts that some of
14 the people who were behind the wire when the wire was
15 unfurled were perhaps slower thinking than the others who
16 had already left –

17 MR MPOFU: Slower walking.

18 CHAIRPERSON: Or slower walking, but
19 intended to go out the way the others had done, they would
20 have succeeded in getting out if the unfurling of the wire
21 had taken place later. That's basically your proposition
22 and I'd be surprised if the witness disagrees with it but
23 let's see whether I'm in for a surprise or not.

24 MR MPOFU: Chair –

25 CHAIRPERSON: On the basis of might have,

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1 that's all, might have.

2 MR MPOFU: Do you accept it on the basis
3 of what the Chairperson is saying and once again I know you
4 don't like assumptions, but just to summarise, if somebody
5 was on their way out and were minded to leave for whatever
6 reason and the operation – and that realisation in their
7 mind had come at 15:43 and the operation was going to
8 happen at 16:40, those people could have all succeeded to
9 leave.

10 CHAIRPERSON: [Inaudible] might have, you
11 see.

12 MR MPOFU: Might have.

13 CHAIRPERSON: [Inaudible]

14 MR MPOFU: - after an hour I'm sure they
15 would have.

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 my probleem is met die woord "trapped," vasgevang.

18 MR MPOFU: Okay, let's not use trapped,
19 let's use a neutral word. Let's say this side, on the
20 western side of the wire.

21 GENERAAL-MAJOOR ANNANDALE: Daar was twee
22 kante gewees, so enige persoon kon steeds geloop het soos
23 wat duisende ander geloop het en huis toe gegaan het, selfs
24 na Ikaneng toe.

25 MR MPOFU: Okay.

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1 CHAIRPERSON: A note upon which we can
2 take the tea adjournment, Mr Mpofo, unless you want to -
3 MR MPOFU: Yes, Chairperson, if you maybe
4 allow me one -
5 CHAIRPERSON: Unless you want to put one
6 more question.
7 MR MPOFU: Just to wrap this point up,
8 yes. All this is premised on something that I would like
9 to bring your attention to, which we may or may not deal
10 with, depending on your answer, after tea and that is
11 exhibit EE which is a minute. I don't know if you have it
12 in front of you, EE - just EE.
13 CHAIRPERSON: Can we look at that after
14 tea -
15 MR MPOFU: Chairperson -
16 CHAIRPERSON: Get the correct document -
17 MR MPOFU: It is EE.
18 CHAIRPERSON: EE is a picture, I
19 understand, I haven't got it in front of me. Anyway, let's
20 sort these, the paper work out -
21 MR MPOFU: Yes.
22 CHAIRPERSON: - over the tea adjournment.
23 MR MPOFU: Okay.
24 CHAIRPERSON: And then we will carry on
25 after tea. You did ask the witness to look at your

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1 document that you handed in -
2 MR MPOFU: Oh yes.
3 CHAIRPERSON: - this morning. You
4 mentioned specifically paragraphs 9.1 to 9 -
5 MR MPOFU: It's that document, it might
6 well -
7 CHAIRPERSON: 9.1 to 9.10. I just want
8 to tell you I don't understand, I'm just putting it to you
9 now, what the relevance of 9.10 is to the inquiry. 9.10
10 relates to something that happened afterwards and I'm not
11 sure that it's covered by the terms of reference in any
12 way.
13 MR MPOFU: Well, Chairperson -
14 CHAIRPERSON: I just mention that, not to
15 pick a fight with you now but just to draw your attention
16 to the fact that I have that problem.
17 MR MPOFU: Fair enough, Chairperson.
18 Even worse, I accept there's even a whole paragraph which
19 falls into that category but nevertheless, because it's a
20 short document can I just ask the witness to read the
21 document?
22 CHAIRPERSON: Ja, ja.
23 MR MPOFU: Over tea.
24 CHAIRPERSON: Okay, we'll take the tea
25 adjournment.

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1 MR MPOFU: Thank you.
2 [COMMISSION ADJOURNS COMMISSION RESUMES]
3 [11:35] CHAIRPERSON: The Commission resumes.
4 Generaal-Majoor, u is nog steeds onder eed. Mr Mpofo, I
5 think you have some more questions.
6 MR MPOFU: Yes, I do, Chairperson.
7 GENERAAL-MAJOOR CHARL ANNANDALE:
8 (s.o.e.)
9 CROSS-EXAMINATION BY MR MPOFU (CONTD):
10 General, I was - what I wanted to say really is that the
11 line of questioning that I was pursuing before the tea is
12 predicated on the minutes which are in EE partly, the
13 minutes that are contained in exhibit EE which, as I
14 understand, you confirmed to my learned friend Mr Budlender
15 was a fair reflection, a weergawe of what happened.
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 nee, ek het gesê daar is spesifieke aspekte wat ons nooit
18 in detail ingegaan het, wat nie 'n presiese weergawe was
19 nie.
20 MR MPOFU: Yes, but generally speaking
21 that minute is a fair reflection of the meeting which you
22 chaired, correct?
23 GENERAAL-MAJOOR ANNANDALE: Dit is
24 aanduidend van die vergadering. Dit is meer notas wat
25 geneem is, dis korrek.

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1 MR MPOFU: And I want to take you
2 directly to page, the third page of EE, the last page just
3 before your signature would have been attached. It's a
4 three page document, it's just the last page. Have you got
5 that?
6 GENERAAL-MAJOOR ANNANDALE: Ek het dit,
7 Voorsitter.
8 MR MPOFU: Ja, I think the Chairperson is
9 looking for it.
10 CHAIRPERSON: I've got it.
11 MR MPOFU: Okay, thank you. Right, the
12 very last sentence of that minute says, "Major-General
13 Annandale instructed Brigadier Pretorius and Lieutenant-
14 Colonel Scott to report back at the JOC at 15:15 as he
15 wants the operation to commence at 15:30." Do you see
16 that?
17 GENERAAL-MAJOOR ANNANDALE: Dit is
18 korrek, Voorsitter.
19 MR MPOFU: And just before we proceed
20 with that, would you accept that from what we discussed
21 this morning it would seem that there was actually no time,
22 or at best a matter of seconds, between Mr Mathunjwa's
23 departure and the granting of the order to start with the
24 deployment of the barbed wire, both things happened at
25 15:40.

<p style="text-align: right;">Page 19195</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ek het eerstens die konteks verduidelik hoe werk 'n JOCOM 3 vergadering en dan het ons bespreek vroeër dat daar so min 4 of meer drie minute was tussen die twee - . 5 MR MPOFU: Yes, no – yes, no, no, I'm 6 sorry. Maybe I confused you. That discussion about – 7 CHAIRPERSON: That sounds suspiciously to 8 me like someone's cell phone. 9 SPEAKER: Judge, I'm afraid I don't know 10 whose phone it is either. 11 CHAIRPERSON: Mr Semenya, I can't order 12 you out of the auditorium because you've got an important 13 function to perform, so what I suggest you do – when I was 14 at the Cape Bar when advocates misbehaved, the judge 15 ordered them to provide a cake for their colleagues. Would 16 you be kind enough to give us a cake tomorrow, your 17 colleagues? 18 MR SEMENYA SC: I'll oblige, Chair. 19 MR MPOFU: In the meantime we are passing 20 it on so that it can be switched off. Thank you, 21 Chairperson. 22 CHAIRPERSON: Back to serious business. 23 MR MPOFU: Thank you, Chairperson. 24 General yes, no, I was saying it's my fault, maybe I 25 confused you. That discussion about the three minutes</p>	<p style="text-align: right;">Page 19197</p> <p>1 hindsight – we now know what Mathunjwa was saying to the 2 crowd when he kneeled down and it is that he was asking 3 them to leave the place as there were clear signs, 4 according to him, that they were going to be killed by the 5 police. 6 GENERAAL-MAJOOR ANNANDALE: Ek verneem 7 so, Voorsitter. 8 MR MPOFU: Now, in those circumstances 9 we're going to argue at the end that it would have been 10 reasonable for you, in plural, or for the police to give 11 that particular effort of Mr Mathunjwa a chance even for 15 12 minutes, to succeed instead of simultaneously deploying the 13 barbed wire which seems to be what has sparked the 14 massacre. 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 my kommentaar daarop is dat dit reeds 'n eskalاسie was van 17 verskeie faktore wat die polisie genoop het om te begin met 18 'n fase 3 ontplooiing. Nie net het die onderhandeling 19 gefaal nie, met die media wat vroeër vrye beweging gehad 20 het en tussen die stakers beweeg het, het hulle self 21 onttrek uit vrees van hulle eie lewens en die bedreiging 22 daarop en hulle het dit ook sodanig oorgedra aan Kaptein 23 Dennis Adriaan. Daar was ook, deur die oggend was daar 24 pertinente dreigemente tot geweld en dood teenoor die 25 polisie. Dit was ook duidelik dat die AMCU president nie</p>
<p style="text-align: right;">Page 19196</p> <p>1 regarded the situation where Mr Mathunjwa is already behind 2 the koppie, do you understand? 3 GENERAAL-MAJOOR ANNANDALE: Dit is die 4 verloop van die foto wat hy gewys word wat sy voertuig 5 omgedraai is tot na die koppie – 6 MR MPOFU: Yes, yes. 7 GENERAAL-MAJOOR ANNANDALE: Dis reg. 8 MR MPOFU: Now I'm asking you a 9 completely different question. I'm saying the departure of 10 Mr Mathunjwa at about 15:40 coincided with the granting of 11 the order by Brigadier Calitz at 15:40 for the deployment 12 of the wire, correct? 13 GENERAAL-MAJOOR ANNANDALE: Dit is 14 korrek, Voorsitter. 15 MR MPOFU: You did not know, or did you, 16 what Mr Mathunjwa had said to the – and when I say you, I 17 mean the broader command structure – what Mr Mathunjwa had 18 said discussed with the crowd. 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 nee, ek het nie die besondere detail nie, behalwe dat hy op 21 sy knieë gegaan het en die skare gevra het om uiteen te 22 gaan en hulle wapens neer te lê. 23 MR MPOFU: We know, now we know with the 24 benefit of the evidence that has been led, including that 25 of Mr Mathunjwa – in other words with the benefit of</p>	<p style="text-align: right;">Page 19198</p> <p>1 die beheer gehad het oor sy lede soos wat hy voorgegee het 2 hy het nie, dat daar steeds 'n onwettige groepering was van 3 'n pertinente swaar gewapende en 'n aggressiewe groep wie 4 nie uiteen gegaan het nie, wat duidelik opgesweep was en 5 dat die polisie maar terdeë bewus was van die risikofaktore 6 wat so 'n groep ingehou het as hulle uiteengaan, pertinent 7 die risiko van intimidاسie, beskadiging, geweld, dood. 8 Voorsitter, dan laastens stem ek nie saam met die verwysing 9 na die woord "massacre" nie. Dit was 'n tragiese insident 10 wat persone hulle lewens verloor het. 11 MR MPOFU: Yes, well, and all the other 12 massacres were also tragic, weren't they, like the 13 Sharpeville massacre? 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 15 'n massacre moet wees 'n brutale en 'n blindelinge, 16 onoordeelkundige slagting van mense. Daardie elemente is 17 nie teenwoordig nie. 18 MR MAHLANGU: Those elements mentioned by 19 General are not present here, that is a massacre should be 20 brutal – brutal? 21 MR MPOFU: Brutal and – 22 GENERAAL-MAJOOR ANNANDALE: 23 Onoordeelkundig, blindelings. 24 MR MAHLANGU: Blindly – 25 MR MPOFU: Yes, I know what a massacre</p>

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1 is, sir. Okay, anyway the issue is not so much on the
2 semantics. All the things that you have mentioned to
3 answer this question, except for the first thing you
4 mentioned which was the journalists and all that, all those
5 things that you mentioned were there from the 11th and the
6 crowd was sitting there on the 11th, they were armed, they
7 were dangerous, there was a potential for death, blah-blah-
8 blah, all the things that you've mentioned. Why could you
9 not wait for 15 minutes or 30 minutes to see whether Mr
10 Mathunjwa's plea was going to be acceded to?

11 CHAIRPERSON: Did you actually, from the
12 JOC, give an instruction that the barbed wire be unfurled
13 at that moment or was that a decision which rested with and
14 was made by one of the commanders on the field?

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
16 die – soos ek verduidelik het in my getuienis, is dat 'n
17 plan word ooreengekom en 'n strategie en dan word sodanige
18 uitvoering oorhandig aan die operasionele bevelvoerder.
19 Die operasionele bevelvoerder is op die grond en dit is dan
20 in daardie betrokke bevelvoerder se pertinente oordeel
21 wanneer die situasie sal dan sodanig wees dat betrokke
22 uitvoering van die plan gegee kan word.

23 MR MPOFU: General, you're not seriously
24 suggesting that the deployment at 15:40 was not related to
25 your suggestion that they must start at 15:30? I thought

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1 your evidence was that the reason why they didn't move at
2 15:30 was because they wanted Mr Mathunjwa to finish.
3 [11:55] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4 juis so was dit die besluit van die operasionele
5 bevelvoerder om nie om 15:30 te ontplooi nie.

6 CHAIRPERSON: Yes, your point is that the
7 barbed wire should have been deployed at 15:30 and the
8 commander in the field, is that so, the operational
9 commander, he used his discretion, held it back to 15:40
10 until Mathunjwa had finished, is that correct?

11 GENERAAL-MAJOOR ANNANDALE: Dit is
12 korrek, Voorsitter. Hy het dit so ook aan die JOC oorgedra
13 en die JOC en die oorhoofse bevelvoerder het dit sodanig
14 aanvaar.

15 CHAIRPERSON: If he'd said we'll wait
16 another 15 minutes to give everyone a chance to leave and
17 communicated that to the JOC, what would have happened?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 weer eens sal ons dit oorlaat aan die oordeel van die
20 operasionele bevelvoerder. Ons kan nie sien nie en ons is
21 baie beperk in terme van dit wat ons in die JOC
22 besonderhede het, so dit sou weer eens aan hom oorgelaat
23 gewees het.

24 CHAIRPERSON: So that's Brigadier Calitz.
25 GENERAAL-MAJOOR ANNANDALE: Dit is

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1 korrek, Voorsitter.

2 CHAIRPERSON: These questions that Mr
3 Mpofo is asking can obviously be asked to Brigadier Calitz
4 and he will presumably be able to give the answers.

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
6 ja, hy sal baie beter kan verduidelik. Hy was uiteraard
7 bewus van die plan.

8 MR MPOFU: Ja.

9 GENERAAL-MAJOOR ANNANDALE: Maar die
10 omstandighede op die oomblik wat so 'n plan ten uitvoer
11 moet gebring word is sy oordeel.

12 COMMISSIONER HEMRAJ: General, do I
13 understand that at the time of the special JOCOM meeting
14 when the decision was taken to start at 15:30, were you
15 aware at that time of a potential second addressing of the
16 crowd by Mr Mathunjwa?

17 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
18 nee, ek het eers na die JOCOM vergadering, daardie spesiale
19 JOCOM vergadering, het ek verneem dat mnr Mathunjwa was
20 weer buitekant die JOC gewees en dan pertinent die SMS om
21 14:15 en Generaal Mpembe wat gesê het hy het probeer om hom
22 telefonies in die hande te kry en hy is weer weg daarso,
23 vermoedelik op pad na die koppie toe.

24 MR MPOFU: Yes. In other words, by the
25 time Mr Mathunjwa arrived at the koppie you were already

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1 aware that he was going to the koppie, given the fact that
2 after the SMS you had been trying – or not you, some of
3 your colleagues had been trying to get hold of him and you
4 were told that he has gone to the koppie.

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
6 ek was bewus gewees dat hy terug is by die koppie. Dit was
7 ook sodanig dan oorgedra vir die operasionele bevelvoerder.

8 CHAIRPERSON: If you look in paragraph 23
9 of the witness's statement, it was exhibit GGG1, and on
10 slide 186 of exhibit L which essentially conveys the same
11 or contains the same material, it appears that this witness
12 knew at 2:15 that – sorry, we'll use police speak, 14:15
13 that Mr Mathunjwa was going back to the koppie because that
14 was contained in the SMS which is quoted in the two places
15 but all that, according to the SMS, Mr Mathunjwa was going
16 to say was he was going to inform the strikers that "no-one
17 is available, we've tried our best without co-operation
18 from anyone," but I'm not sure, perhaps you can explore
19 whether the witness knew any more about what Mr Mathunjwa
20 was intending to do than -

21 MR MPOFU: Well, okay. Thank you,
22 Chairperson. Well, at least one of the things that – that
23 makes the situation even worse because, as I understand it,
24 your response to Mr Mathunjwa was that you are available at
25 the JOC as you always have been. Is that correct? Your

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1 return SMS was that you are available at the JOC.
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek het gesê op dieselfde plek waar ons vroeër ontmoet het,
 4 so dis 'n aanname wat u maak dat ek weer die JOC vermeld
 5 het.
 6 MR MPOFU: No – okay, forget about the
 7 JOC but at least one of the possibilities that might have
 8 ensued from your return SMS is that Mr Mathunjwa might
 9 have, after his address, come back to meet you at the place
 10 where you had always been, whatever it's called.
 11 GENERAAL-MAJOOR ANNANDALE: Nee,
 12 Voorsitter, die bedoeling van my SMS was om vir Mr
 13 Mathunjwa te sê kom terug, ek is hier waar ons vroeër
 14 gepraat het. So nie noodwendig nadat hy die mense gaan
 15 toespreek nie, ek het hom eintlik gemis.
 16 MR MPOFU: Yes, I accept that. You said
 17 "nie noodwendig," in other words not necessarily, but he
 18 could have come back after addressing the people. That's
 19 one of the possibilities, that's why I used the word
 20 "possibility."
 21 GENERAAL-MAJOOR ANNANDALE: Ja, maar die
 22 konteks, ek verduidelik die konteks wat ek die SMS gestuur
 23 het. Dit was dat mnr Mathunjwa, dat hy teenwoordig or dat
 24 hy iewers buite the JOC area was en dat hy nie in gesprek
 25 met ons getree het nie en dat ek die SMS vir hom gestuur

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1 het om te sê ek is nou hierso beskikbaar.
 2 MR MPOFU: Yes, and if he had received
 3 your SMS on his way to the koppie he could as well have
 4 decided to come back to the place after addressing the
 5 strikers.
 6 GENERAAL-MAJOOR ANNANDALE: Hy kon
 7 sekerlik so besluit het, dis baie moontlik, maar ek het ook
 8 verneem dat hy heeltemal onttrek het en dat hy nooit
 9 teruggekom het na die JOC area nie.
 10 MR MPOFU: Yes, General –
 11 MR SEMENYA SC: Chair –
 12 MR MPOFU: - you know when I use the word
 13 "possibility" – sorry, sorry.
 14 CHAIRPERSON: Mr Semanya wants to say
 15 something.
 16 MR SEMENYA SC: Chair, that possibility
 17 doesn't exist at all if you look at the statement of Mr
 18 Mathunjwa himself. He deals with that from paragraph 92 of
 19 his statement.
 20 CHAIRPERSON: I haven't got his statement
 21 with me. Would you read it to me, please?
 22 MR SEMENYA SC: He says, I'll start at
 23 paragraph 91, "I said to them that it was not necessary and
 24 that they must please leave the koppie. I explained to
 25 them that the life of a black worker was cheap, that they

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1 would be replaced and that their demands would not have
 2 been realised. I pleaded with them to leave the koppie.
 3 The workers again asked me to leave. I got into the car
 4 with my colleagues. No barbed wire was rolled out at this
 5 stage. We travelled a couple of metres. I said that we
 6 cannot leave this place, these people are going to be
 7 killed. One person responded by saying, 'If we are all
 8 killed, who is going to tell the story?' The workers were
 9 waving to us, indicating that we must leave. I cannot
 10 remember the exact time but I think that this was at about
 11 15:30." Next paragraph, "We left the koppie. We took a
 12 back route to Witbank. As we drove behind the koppie we
 13 were confronted by a convoy of police who indicated that we
 14 must stop. I stopped." So Mr Mathunjwa does not
 15 contemplate going back to where General Annandale is.
 16 CHAIRPERSON: Ja, because part of the
 17 problem, I think, you know while we're debating this, I
 18 suppose it's possibly something that could be debated more
 19 fully later but it occurs to me that part of the problem
 20 was I don't think, I can't remember whether Mr Mathunjwa
 21 was asked this, I don't think he got Major Annandale's SMS.
 22 If you look at slide 186 he sent the –
 23 CHAIRPERSON: Can I say, Chair, all this
 24 is completely irrelevant. I'm not talking about what
 25 actually happened. All I've said to the witness is, from

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1 what he knew he had sent Mathunjwa a particular SMS. We
 2 know now of course, but we didn't know, he didn't know
 3 before that time whether Mathunjwa had received the SMS or
 4 not. All I'm asking the witness is a simple thing, that at
 5 least one of the possibilities is that Mathunjwa would have
 6 received the SMS and might have come back to him after the
 7 – I'm not saying it happened.
 8 CHAIRPERSON: Yes, I see. Alright.
 9 We're busy to some extent, therefore, with hindsight,
 10 aren't we?
 11 MR MPOFU: Yes, that's –
 12 CHAIRPERSON: According to slide 185, the
 13 representatives of AMCU, this is at 14:40, moved forward to
 14 address the protesters - this is now when Mathunjwa is back
 15 at the koppie, his second visit – and informed them that no
 16 person from the mines management or the leadership of the
 17 police were willing to meet with him. Now, if he'd
 18 received the SMS that the General sent him at 14:28 he
 19 would have known that someone from the leadership of the
 20 police was willing to meet with him. So the indications
 21 therefore are that he didn't actually – it was a missed
 22 call, you know, he didn't receive the SMS but – or rather
 23 he got the SMS but he didn't read it, but that's hindsight.
 24 MR MPOFU: yes.
 25 CHAIRPERSON: You're dealing at the

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1 moment with possibilities.

2 MR MPOFU: Correct.

3 CHAIRPERSON: Well, carry on with the

4 possibilities but –

5 MR MPOFU: Thank you, Chairperson.

6 CHAIRPERSON: - don't be too far divorced

7 from what really happened.

8 MR MPOFU: I hear that, thank you,

9 Chairperson, I promise I won't. Chair – General, we now

10 know that Mr Mathunjwa may not even have received your SMS,

11 I accept that.

12 CHAIRPERSON: Received it, I suppose he

13 didn't read it –

14 MR MPOFU: Or whatever.

15 CHAIRPERSON: - he hadn't downloaded it –

16 MR MPOFU: Yes, ja. That's one of the

17 possibilities, that he either didn't receive it, he didn't

18 read it or did not take it seriously, whatever. Do you

19 accept that?

20 GENERAAL-MAJOOR ANNANDALE: Ek het dit

21 aanvaar, daar is 'n verskeidenheid van redes potensieel

22 moontlik.

23 MR MPOFU: Ja. All I'm putting to you,

24 with the greatest respect, is that from your subjective

25 point of view it was not now in 2013 then, it was on the

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1 16th of August in 2012, from your subjective point of view

2 there remained a potential at least - I won't put it more

3 than that – that Mr Mathunjwa, after addressing the people,

4 would have come back to respond to your SMS, potentially.

5 GENERAAL-MAJOOR ANNANDALE: Potensieel

6 kon hy sekerlik dit dalk oorweeg het om –

7 MR MPOFU: And before it was clear

8 whether he would drive, turn left or right and move away

9 from the koppie or towards the JOC, the order was given to

10 deploy the barbed wire.

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

12 wat ons weet van bewysstuk L en die pertinente foto's is

13 dat daar so 'n opdrag gewees was min of meer 15:40, 43,

14 daar rond.

15 CHAIRPERSON: Mr Semenya?

16 MR SEMENYA SC: Chair, Mr Mathunjwa deals

17 with the concern that you raised, Chair. He said he got

18 the SMS from Major-General Annandale, he deals with that at

19 page 84, paragraph 84 and pertinently says, "At 14:28

20 Major-General Annandale replied as follows" and then he

21 quotes the quotation.

22 MR MPOFU: Oh, thank you. I am indebted

23 to my learned colleague. So my point is even stronger

24 then, that Mr Mathunjwa did receive the SMS –

25 CHAIRPERSON: Then it raises the further

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1 difficulty that according to 18, slide 185, the

2 representatives of AMCU moved forward to address the

3 protesters, that's when they got there at round about 14:40

4 and informed them, that's the strikers, that no person from

5 the mines management or the leadership of the police were

6 willing to meet with him. Now it's difficult to see how

7 that could have been said if he'd already got the SMS at

8 14:28 because here was a policeman saying I am willing to

9 meet you, but anyway that's something which –

10 MS DE VOS: Chair –

11 CHAIRPERSON: - we don't have to be

12 involved with now. Yes?

13 [12:14] MS DE VOS: Chair, apologies to

14 interrupt.

15 CHAIRPERSON: Sorry, Ms De Vos, I beg

16 your pardon.

17 MS DE VOS: Not a problem at all, Chair.

18 Chair, I've read paragraph 84 that my learned friend is

19 referring to and there's no allegation that Mr Mathunjwa

20 actually received the SMS. He says, "As I was leaving the

21 base I sent an SMS to Major-General Annandale. I sent the

22 same SMS." And then he said, "At 14:28 Major-General

23 Annandale replied as follows." He doesn't say received it,

24 he just says he responded.

25 CHAIRPERSON: That addresses my concern

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1 then, that the indications are he didn't - though it had

2 been sent, he hadn't read it yet because he couldn't have

3 said what he's alleged to have said on slide 185 and that

4 addresses also the point –

5 MR MPOFU: It does.

6 CHAIRPERSON: - that Mr Semenya made.

7 MR MPOFU: Ja.

8 CHAIRPERSON: But we're a little bit off

9 the main track at the moment but these are obviously

10 relevant points we'll have to concentrate on at the

11 appropriate stage but carry on, Mr Mpofu.

12 MR MPOFU: Ja. Sorry, I've lost the

13 track. That's fine, thanks. In any event, I'll leave the

14 rest of that for argument. I just wanted to correct

15 something that you said, that according to slide L,

16 according to slide L192 at least, according to slide L192

17 that command, I think that's the word you used, was given

18 at 15:40. Do you accept that at least?

19 CHAIRPERSON: In reading that, one has to

20 read what appears at page, at slide 189. What is being

21 discussed about what Mr Mathunjwa said to the strikers and

22 their response is set out in the first bullet in slide 189

23 and then there's the report about what the media people

24 told Capt Adriaio about the change in the mood and so on.

25 And then it says, "At this point all negotiation and

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1 discussion stopped. This information was given to
 2 Brigadier Calitz." It would then seem that his command,
 3 which you are now referring to in 192, was presumably given
 4 after he'd received that information if this statement is
 5 correct in slide 189.

6 MR MPOFU: Ja, I'm prepared to accept
 7 that, Chair. All I'm asking the witness is whether he
 8 accepts that because he spoke about 15:43, whether from the
 9 pictures he accepts that according to slide 192 that
 10 command was given at 15:40, yes or no.

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek het geen rede om die tyd soos gereflekteer daar nie, dit
 13 is opgestel vanaf sekere gebeure op die dag – foto's,
 14 aanduidings van die foto's se tye en so aan.

15 MR MPOFU: And we know, we know from the
 16 evidence that has been led that at least some of the people
 17 went there because Mr Mathunjwa was going to come back with
 18 feedback on the 16th.

19 GENERAAL-MAJOOR ANNANDALE: Moet ek dit
 20 as 'n feit aanvaar, want –

21 MR MPOFU: Yes, you should because you
 22 were there on the 15th when Mr Mathunjwa said that the
 23 people had asked him to come back on the 16th.

24 GENERAAL-MAJOOR ANNANDALE: Ja, maar dit
 25 is nie hoe u dit gestel het nie.

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1 MR MPOFU: Okay, I'm saying to you, apart
 2 from what you knew – I'm giving you information that you
 3 don't know –

4 GENERAAL-MAJOOR ANNANDALE: Dankie.

5 MR MPOFU: - that the evidence that has
 6 been led here would suggest that at least some of the
 7 people, or at least one, Mr Magidiwana, went there on the
 8 16th because Mr Mathunjwa was going to give the feedback.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 dit kan ek so aanvaar.

11 MR MPOFU: And for those people at least
 12 who would have gone there to listen to Mr Mathunjwa, when
 13 it was clear that he is no longer coming back, he has
 14 finished his job for the day, it would have been time to
 15 go. Sorry, Chairperson. Someone seems to be –

16 CHAIRPERSON: I think we'd better adjourn
 17 for a couple of minutes until that disturbance –

18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [12:24] CHAIRPERSON: It's been reported to me
 20 that what happened – the Commission resumes. It's been
 21 reported to me that in the room behind the auditorium where
 22 certain members of the family are gathered, some dispute of
 23 some kind arose between, I think it was two members of the
 24 family or of families, nothing to do with the Commission
 25 itself, and that led to the outburst that we heard. A

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1 social worker is now there attending to the matter but I
 2 want to say something that flows from that and that is, as
 3 we were standing in what amounts to the wings of the stage
 4 here, a television cameraman came towards us with his
 5 camera, walking towards the room behind where this had
 6 happened. That's not acceptable. Television cameramen are
 7 here to record what happens in the auditorium, they're not
 8 here to take pictures of things that happen in rooms behind
 9 the auditorium which have nothing to do with the sitting
 10 itself and I hope that there will not be a repetition of
 11 that. Before I had an opportunity to speak to the
 12 cameraman, someone else spoke to him and he left but I want
 13 to make it clear that this is not the kind of conduct which
 14 we're prepared to tolerate. Would you please proceed, Mr
 15 Mpfu?

16 MR MPOFU: Thank you, Chairperson. If I
 17 may just say that we appreciate those remarks on the side
 18 of the victims or even from the representatives of the
 19 families. Thank you, Chairperson. Now General, what I was
 20 saying to you is that for that section of the crowd that
 21 had come there specifically because Mr Mathunjwa was going
 22 to give his report back, once it became clear that he was
 23 done for the day, that would have been the time for them to
 24 go home. That would be a reasonable assumption, agreed?

25 CHAIRPERSON: I think the General is

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1 waiting for Mr Booi to interpret into isiXhosa before he
 2 answers and if Mr Booi would like you to repeat the
 3 question, I'm sure you'd be happy to do so.

4 MR MPOFU: Yes, okay Mr Booi, I was
 5 asking the General whether it would be a fair assumption to
 6 make that for that section of the crowd that had come there
 7 specifically because Mr Mathunjwa was going to give a
 8 report back, once it was clear that he was done, they would
 9 depart.

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 dit is weer eens 'n aanname. Dit kan so wees, maar dit kan
 12 ook wees dat hulle ander intensies gehad het en dat hulle
 13 dan juis nie sou gaan nie.

14 MR MPOFU: Yes, no, fair enough. What we
 15 do know for sure, given the pattern of the behaviour of the
 16 crowd over the preceding five days or so is that at about
 17 round about 6 o'clock they would, in all likelihood, all
 18 have gone home anyway except for maybe 50.

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 wat ons ook vir seker weet is dat die situasie en die
 21 omstandighede op die 16de totaal verander van die situasie
 22 op die 15de en die 14de van Augustus en ek het telkens daarna
 23 verwys in my getuienis en ek het ook vanoggend net daaraan
 24 geraak.

25 MR MPOFU: Yes.

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1 GENERAAL-MAJOOR ANNANDALE: En ek het ook
 2 verwys –
 3 MR MPOFU: Sorry, sorry, General.
 4 GENERAAL-MAJOOR ANNANDALE: Ek het ook
 5 verwys na die verhoogde risiko en historiese ervaring wat
 6 ons het in terme van so 'n gewapende groep. En ek het
 7 pertinent verwys na 'n meer onlangse geval aan die hand van
 8 'n voorbeeld wat gebeur het in Sasolburg en Zandela en ek
 9 het verwys wat potensieel kan gebeur en wat histories
 10 gebeur as so 'n groep opbreek in kleiner groepe en dan in
 11 die gemeenskap inbeweeg. Voorsitter, en dan het ek ook
 12 verwys na die polisie wat die bemiddelaar was op die 14de
 13 en die 15de en die konstruktiewe onderhandeling wat
 14 plaasgevind het.
 15 MR MPOFU: General, despite that long
 16 answer, you accept that – and firstly I accept for the
 17 purposes of this question what you are saying, that there
 18 might have been differences between the days but would you
 19 also accept that there were also similarities between the
 20 days from the 11th to the 15th?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 ek aanvaar dat daar ook ooreenkomste was tussen die 11de en
 23 die 15de.
 24 MR MPOFU: Yes. And you are not in a
 25 position to dispute that one of the similarities could

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1 possibly have been the fact that the people would depart,
 2 as they had before, at about something to 6 o'clock. I
 3 think you said at that time it got dark just before six,
 4 round about that time.
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek kan dit nie aanvaar sonder om daarna te verwys in die
 7 konteks nie en ek het in die konteks verwys, op die 14de en
 8 die 15de was dit berekende risiko.
 9 MR MAHLANGU: I mentioned, sir, that on
 10 the 14th and the 15th it was limited risk.
 11 MR MPOFU: I think that's calculated
 12 risk.
 13 MR MAHLANGU: Calculated – berekende,
 14 calculated risk, yes.
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 en op die 16de was dit 'n totaal verhoogde risiko en ons het
 17 nie geglo, gegewe die verhoogde risiko, dat pertinent die
 18 militante groep sou uiteen gaan nie, soos wat hulle die
 19 vorige twee dae uiteengegaan het nie en dat hulle in
 20 hierdie geval hulle toorn sou uithaal op eiendom en
 21 potensieel lede van die gemeenskap.
 22 CHAIRPERSON: Sorry to interrupt.
 23 There's another cell phone going off. Who is the owner of
 24 that cell phone? Will you please turn it off and if it
 25 goes off again I'll ask you to leave the auditorium.

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1 MR MPOFU: General, I'd like you to
 2 please listen to the question. The question was simply
 3 that yes, even if I accept your postulation that there were
 4 differences, you and I have agreed that there were also
 5 similarities and the question was that you could not rule
 6 out that one of the similarities might have been the fact
 7 that they would leave at about sometime up to 6 o'clock as
 8 they did for the previous five days.
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 ons het redelik geglo dat die groter groep sou uiteen gaan.
 11 Ons het nie redelik geglo dat die kleiner groep sou uiteen
 12 gaan soos die vorige twee dae nie.
 13 MR MPOFU: Yes. Now even if that is
 14 true, let's assume that it's true that you reasonably
 15 believed that the larger group would disperse in an hour or
 16 two but the smaller group would remain, had you given that
 17 possibility a chance would you agree that some lives might
 18 have been saved and some injuries that were sustained might
 19 not have been sustained and some of the people who were
 20 arrested because you did not do that, might not even have
 21 been there?
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 ek het verduidelik hoekom die plan, hoekom ons probeer het
 24 om die plan ten uitvoer te bring op die tyd wat hy ten
 25 uitvoer gebring is. Ek het verduidelik dat ons nooit die

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1 geleentheid gehad het om ons plan anderste dan die
 2 defensiewe maatreëls wat ons uitgerol het, te implementeer
 3 nie. Wat nie uit die oog uit verloor moet word nie is dat
 4 daar 'n aanval was.
 5 CHAIRPERSON: I'm sorry to interrupt.
 6 MR MPOFU: Sorry Chair, I'm sorry.
 7 CHAIRPERSON: General, I'm not sure that
 8 you're answering the question directly. I'm not suggesting
 9 you're deliberately evading it. You've been asked a what
 10 if question and I take it that Mr Mpofu knows what the plan
 11 was, he knows how - your case is it was disrupted and there
 12 was, the police were attacked by some of the strikers but
 13 he's asking you a what if question. His what if question
 14 is, if you had not – you or the others at the JOC – hadn't
 15 decided to implement stage 3 that afternoon and despite the
 16 change of mood and so forth of the people, nothing had
 17 happened until 6 o'clock, he is suggesting to you that what
 18 might have happened is that the people who normally went
 19 home to sleep at night would have left, leaving the group
 20 who stayed there behind and he's suggesting that certain
 21 consequences would have flowed from that. So it's a what
 22 if question and perhaps you could repeat the question to
 23 give the Major-General a chance to appreciate it and then
 24 we'll get his answer.
 25 MR MPOFU: Thank you, Chairperson –

<p style="text-align: right;">Page 19219</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ek is gemaklik daarmee, ek was op pad soontoe. Ek is 3 gemaklik met die vraag, ek was op pad soontoe. 4 MR MPOFU: No, let me save all of us some 5 trouble. 6 CHAIRPERSON: He says he's going to 7 answer the question, he knows what the answer to the 8 question is – 9 MR MPOFU: We'll wait, we'll – 10 CHAIRPERSON: Let's give him a chance. 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter 12 ja, wat as. Ons het ook wat as, wat sou gebeur het as die 13 mense gegaan het in die gemeenskappe in en hoeveel mense 14 potensieel dan dood kon gegaan het, maar al wat ons nou 15 weet is dat 'n aantal mense, 34 mense wat gesterf het. So 16 om nou terug te kyk, op die stadium het ons pertinent geglo 17 dat dit die gepaste optrede was. 18 MR MPOFU: Ja. 19 GENERAAL-MAJOOR ANNANDALE: So sou dit op 20 'n ander stadium gebeur het, potensieel kon daar minder 21 mense doodgegaan het, minder beserings gewees het, maar 22 potensieel kon daar ook meer mense doodgegaan het en meer 23 beserings gewees het. Maar ons moes, gegewe ons ervaring, 24 die omstandighede aan ons bekend op daardie stadium, moes 25 ons besluite neem, Voorsitter. So dit is baie maklik nou</p>	<p style="text-align: right;">Page 19221</p> <p>1 Maandagaand daar met my teenwoordigheid en sy was bewus van 2 my ontplooiing daar en ek het probeer verduidelik en ek 3 gaan weer verduidelik dat individuele voorstelle word 4 gemaak deur 'n verskeidenheid van mense, dat ons 5 waarskynlik soveel as 43 bevelvoerders gehad het op die 6 dag, dat tydens ons JOCOM vergaderings was daar waarskynlik 7 meer as 30 offisiere teenwoordig, dat ek voorgesit het 8 tydens twee van die JOCOM vergaderings en dan pertinent die 9 Special JOCOM vergadering, dat dit op instruksie was van 10 die oorhoofse bevelvoerder, dat tydens sodanige JOCOM 11 vergaderings word daar insette gelewer, voorstelle gemaak, 12 strategie bespreek, dat dit gedoen was met die ervaring van 13 waarskynlik meer as 'n duisend jaar in terme van kollektief 14 tussen die offisiere van verskeie velde, dat daar dan 15 ooreengekom is in terme van 'n spesifieke polisie aksie, 16 optrede of benadering en dat dit dan die polisie se 17 benadering daarstel. So individuele insette is gelewer en 18 op die einde van die dag is dit kollektief aanvaar. En ek 19 het ook vroeër op 'n vraag van die Voorsitter pertinent 20 gesê dat dit gewoonlik bespreking is en dan is daar 21 vrywillige nastrewing tot sodanige besluit, maar sou daar 22 nie ooreenkoms wees nie – en daar was 'n ooreenkoms in die 23 geval – dan sal die finale besluit by die oorhoofse 24 bevelvoerder lê. Die oorhoofse bevelvoerder het pertinent 25 die verantwoordelikheid in terme van staande orde 262 en ek</p>
<p style="text-align: right;">Page 19220</p> <p>1 om te gaan sê, ja, dit het gebeur, potensieel kon daar 2 minder – potensieel kon daar vir seker minder, maar daar 3 kon ook meer. 4 [12:43] MR MPOFU: Ja, even if I accept what 5 you're saying, you – in other words, that it could have 6 been more, it could have been less – you would accept that 7 that would be cold comfort to a victim or a widow because 8 on both postulations it might have been different people, 9 more or less, who died and not my father or my husband, 10 correct? 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 12 dis baie redelik, dit is so. 13 MR MPOFU: Thank you. And the real issue 14 really, General, is that you, having arrived there 15 uninvited, authorised or unauthorised – we will know when 16 you give us the document – within 72 hours of your arrival 17 had made a decision or a suggestion, at the lowest, of the 18 particular time at which the so-called tragedy took place. 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 my teenwoordigheid daar was gemagtig gewees, dit was 21 redelik gewees. Ek was daar in teenwoordigheid van die 22 Provinsiale Kommissaris wie sekerlik die prerogatief gehad 23 het om te sê, Generaal, dankie, maar ons het net pertinent 24 jou lede nodig, ons het nie jou nodig nie. Die Nasionale 25 Kommissaris van die Suid-Afrikaanse Polisiediens was die</p>	<p style="text-align: right;">Page 19222</p> <p>1 kan u daarna verwys as u sou wou, dan kan ons na die 2 pertinente besonderhede gaan in terme van – 3 MR MPOFU: No, no, thank you. 4 Chairperson - General, please, if you listen to the 5 question – I accept, the reason I used the word 6 "suggestion" is that I accept wholeheartedly that the 7 suggestion you made about 15:30 was accepted by the others 8 who were there present. Please accept that. I accept 9 that. All I'm saying, to put it crudely, is that if you 10 were not there that suggestion of 15:30 would not have been 11 made in the first place before they accepted it, correct? 12 CHAIRPERSON: How does he know that? 13 Someone else might have made the same suggestion. 14 MR MPOFU: Well – 15 CHAIRPERSON: We would have to guess, 16 would we not? 17 MR MPOFU: Chairperson, please, with the 18 greatest respect, was there something magical about 15:30 19 that even if you were not there we can infer that someone 20 else would have exactly said 15:30? 21 CHAIRPERSON: You've heard the question, 22 what is your answer? 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 24 soos daar 'n verskeidenheid van persone – daar was 667 op 25 die dag ontplooi en elkeen lewer 'n inset, so om nou te</p>

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1 gaan sê as Generaal Mpembe nie daar was nie dan sou dit nie
 2 gebeur het op daardie dag en daardie dag nie en as
 3 Annandale nie daar was nie sou dit en dit nie gebeur het
 4 nie – potensieel kon iemand gesê het 15:30 potensieel kon
 5 iemand gesê het 15:45. Ek weet nie of iemand sou, of
 6 iemand nie sou nie, maar as ek nie daar was nie dan kon
 7 Annandale nie gesê het 15:30 nie. Dit is net absoluut so,
 8 so dit is net 'n absolute sinnelose opmerking.
 9 MR MPOFU: Ja. Well, General –
 10 CHAIRPERSON: Mr Booï hasn't had a chance
 11 to interpret yet.
 12 MR MPOFU: I'm sorry.
 13 CHAIRPERSON: Major-General, in the
 14 interests of correctness, I think we must note that
 15 according to exhibit EE, at the special JOCOM meeting at
 16 1:30 there were nine people in attendance. So nine, any
 17 one of the nine people could have made a suggestion as to
 18 the time. What it does say, of course, is that you
 19 yourself said that you wanted it to start at 15:30 because
 20 the second last paragraph says, "Major-General Annandale
 21 instructed Brigadier Pretorius and Lieutenant-Colonel Scott
 22 to report back at the JOC at 15:15 as he wants the
 23 operation to commence at 15:30." So it was your idea but
 24 if you hadn't been there, someone else would have suggested
 25 a time, one of the other nine, one of the other eight. Is

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1 that right? In the interests of accuracy.
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 dit is so, maar as 'n persoon nie daar is nie kon daardie
 4 persoon uiteraard nie enige opmerking gemaak het nie en dit
 5 is my punt, so as ek nie daar was nie was daar dalk ses
 6 mense of daar was 12 mense gewees en potensieel sou hulle
 7 dalk 'n tyd voorgestel het, dit is vir seker so.
 8 CHAIRPERSON: I think perhaps to try and
 9 draw all these – sorry, do you want to interpret first, Mr
 10 Booï? Do you want to interpret first?
 11 MR BOOÏ: Yes, please.
 12 CHAIRPERSON: Now to draw all these
 13 strands together before we take the lunch adjournment, Mr
 14 Mpofu started off this morning by referring to paragraph
 15 9.7 of the opening statement which was made on behalf of
 16 his clients and which deals with who gave the orders at all
 17 levels of government and the police chain of command. And
 18 as far as I can make out he's been busy the whole morning
 19 trying to ascertain who gave the order or made the
 20 suggestion that the operation be implemented at 3:30 and
 21 then he's exploring the consequences of, that the decision
 22 should be then rather than some other time but would that
 23 be a summary of what you've been busy with this morning?
 24 MR MPOFU: No, it wouldn't. The issue
 25 that we're exploring here, Chairperson, which is related to

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1 that broad topic that I introduced is what I put to the
 2 witness, which he said I must first justify, namely that
 3 he, Annandale, his role in key issues – not in all, if the
 4 sun had come from the west or whatever – the specific issue
 5 that we were dealing with, the key issue is that the
 6 massacre or tragedy, whatever you call it, happened at
 7 15:30 and that it was at his suggestion. From that flows
 8 many things. One is the fact that Mathunjwa's opportunity
 9 for peace was not given a chance and I was going to move to
 10 the second implication right now, which is that the people
 11 on the ground, the duration of the briefings that took
 12 place in relation to the people on the ground was also
 13 shortened by the 15:30 time. In other words, some of them
 14 were briefed only for 10 minutes when, if had it been a
 15 different time, the briefing would have been at – so these
 16 are not just, these are not just wishy-washy points, these
 17 are pertinent issues –
 18 CHAIRPERSON: No, Mr Mpofu, Mr Mpofu –
 19 MR MPOFU: - whether the massacre could
 20 have happened or not happened.
 21 CHAIRPERSON: Mr Mpofu, I'm not
 22 suggesting anything you're putting is wishy-washy.
 23 MR MPOFU: Yes, no.
 24 CHAIRPERSON: I've tried to bring the
 25 morning's proceedings to a close before we take lunch.

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1 MR MPOFU: Ja.
 2 CHAIRPERSON: So that other points you
 3 talked about a moment ago, you can explore after lunch.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: But my understanding was,
 6 you set out to get the witness to concede that, whether he
 7 gave an instruction or whether he made a suggestion which
 8 was accepted is neither here nor there – the idea of 3:30
 9 came from him.
 10 MR MPOFU: Ja.
 11 CHAIRPERSON: And as we see that from
 12 exhibit EE, that he concedes. You've suggested that
 13 consequences flow from that choice of commencement time and
 14 you've debated some of those with the witness and
 15 presumably you're going to debate more of them in the
 16 afternoon.
 17 MR MPOFU: Thank you, yes –
 18 CHAIRPERSON: This seems a suitable stage
 19 –
 20 MR MPOFU: That's a fair summary.
 21 CHAIRPERSON: Is that a fair –
 22 MR MPOFU: It is.
 23 CHAIRPERSON: - summary of the progress
 24 we've made, if we can call it that?
 25 MR MPOFU: Ja.

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1 CHAIRPERSON: - this morning.
 2 MR MPOFU: Ja.
 3 CHAIRPERSON: We'll take the lunch
 4 adjournment.
 5 MR MPOFU: Thank you, Chairperson.
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [14:08] CHAIRPERSON: The Commission resumes. Mr
 8 Mpfu, I've just been informed that one of your clients has
 9 died, committed suicide apparently. Is there anything that
 10 you wish to say about it?
 11 MR MPOFU: Thank you, Chairperson, yes.
 12 My attorneys have been in touch with the affected parties
 13 so that one of victims or the survivors once again – this
 14 is the second one after Mr Alfred Mpfana – is also said at
 15 this stage to have committed suicide. We don't know at
 16 this stage, Chairperson, about the exact circumstances. It
 17 is already published in the media and no doubt if more
 18 light does come we will, and if it's relevant to the
 19 Commission, we will share it. Chairperson, all I want to
 20 say really is that this belies the fact, the approach that
 21 we take on this matter which is that these people are not
 22 statistics. Sometimes we – it's tempting to just deal with
 23 them as 34 people died or 60 were shot or 200 were arrested
 24 but these are, each of them, specific individuals,
 25 breadwinners, uncles, brothers and so on. And that is why

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1 perhaps even in the kind of detail we go to, we would like
 2 to find out exactly what happened on that specific day at
 3 that specific time because it doesn't help them to look at
 4 this thing holistically, as we might be tempted to do maybe
 5 as professionals. Each one of them, at least in our
 6 experience of having dealt with the hundreds that we
 7 represent, has an individual interest and so - what I'm
 8 saying may or may not be related to what led to the suicide
 9 but if the events that we are discussing here have any
 10 relevance, and it's a big if, then I would just like to
 11 make that comment. Thank you, Chairperson.
 12 CHAIRPERSON: Thank you, Mr Mpfu. I see
 13 from the newspaper report that I've been handed that his
 14 brother is quoted as having said that he – there was an
 15 earlier attempt by him to commit suicide in December and
 16 that he had told his brother he wanted to kill himself
 17 because he had financial problems. So it may well be that
 18 there's no direct link between what happened on the night
 19 of the 16th of August and the death, on the other hand there
 20 may well be, but whatever the circumstances were we wish,
 21 my colleagues and I and I'm sure everybody here who is
 22 involved in the Commission, would wish to extend our
 23 sincere condolences to his family and it's a cause of great
 24 sorrow, I'm sure, to them and something in which we share.
 25 I just want to say one thing in relation to what

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1 you said about the statistics. What you said, of course,
 2 is quite true but I would hope that people would appreciate
 3 that our approach here in this Commission has not been a
 4 purely statistical one. The evidence leaders, for example,
 5 made a point of referring to the deceased by name, not just
 6 by letter or number. You remember there were letters on
 7 photographs, the bodies were identified by letters and
 8 there were numbers and things. They always mentioned them
 9 by name and the families must know that each one of the
 10 individuals concerned in this matter is recognised as an
 11 individual, a person with a name, a person with a family, a
 12 person who suffered and whatever the rights and wrongs of
 13 the situation may be, it's something we're trying to
 14 unravel. We're determined to get to the truth insofar as
 15 is possible, with the help of everyone participating in the
 16 Commission but they must know that we do not see the
 17 people, either the deceased or those who were arrested or
 18 injured – and that of course applies to the policemen who
 19 were killed as well and the security guards – we do not see
 20 them as statistics, we see them as human beings.
 21 MR MPOFU: Thank you, Chairperson.
 22 Chairperson, if I may, before the witness is sworn in, just
 23 to place on record that the issue – and once again, if this
 24 is related – the issue of counselling for the victims is
 25 something that we have raised time and again and we are not

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1 sure in respect of the first suicide or this second one, if
 2 something could have been done had those calls been heeded.
 3 We know for example from the National Commissioner, I
 4 think, that the policemen who were involved in this
 5 incident were immediately taken for counselling, rightly so
 6 because it was quite a traumatic event but we do hope that
 7 whoever it is, the powers that be, that that issue should
 8 be taken into account before it's too late maybe for some
 9 of the victims. counselling for the victims is something
 10 that we have raised time and again and we are not sure in
 11 respect of the first suicide or this second one, if
 12 something could have been done had those calls been heeded.
 13 We know for example from the National Commissioner, I
 14 think, that the policemen who were involved in this
 15 incident were immediately taken for counselling, rightly so
 16 because it was quite a traumatic event but we do hope that
 17 whoever it is, the powers that be, that that issue should
 18 be taken into account before it's too late maybe for some
 19 of the victims.
 20 CHAIRPERSON: I will ask the evidence
 21 leaders to make enquiries as to whether that happened and
 22 to report back to us. May I enquire whether we have
 23 present with us today any member of the family of the late
 24 Mr Lungani Mabotyana who is the person to whom we've been
 25 referring.

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1 MR MPOFU: No, no, Chairperson. I
2 confirm that they're not here, they are busy making
3 arrangements. Thank you, Chairperson.
4 CHAIRPERSON: In any event, I would
5 appreciate it if what we've said by way of expressing our
6 condolences and conveying our sympathy to the next of kin
7 and the loved ones of the late Mr Mabotyana would be
8 conveyed to them.
9 MR MPOFU: We will undertake to do so,
10 Chairperson.
11 CHAIRPERSON: Thank you. Generaal-
12 Majoor, u is nog steeds onder eed. Mr Mpofu, would you
13 continue with your cross-examination.
14 GENERAAL-MAJOOR CHARL ANNANDALE:
15 (s.o.e.)
16 CROSS-EXAMINATION BY MR MPOFU (CONTD):
17 Thank you, Chairperson. General, maybe related to the
18 discussion that we've just had –
19 CHAIRPERSON: Mr Mpofu, sorry to interrupt you.
20 My colleague Commissioner Hemraj points out that we do not
21 see the family members of the deceased who normally sit
22 here in the first three rows which are reserved for them –
23 MR MPOFU: Oh yes –
24 CHAIRPERSON: We do not see any of them
25 here, I don't know what the reason for that is.

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1 MS DE VOS: Chair, I'm advised –
2 apologies, Chair. I'm advised that they've been moved to
3 the hotel to address some concerns and to have discussions
4 with the attorneys. That's why they're not here today,
5 Chair.
6 CHAIRPERSON: I see.
7 MS DE VOS: Apologies arrived now, Chair.
8 CHAIRPERSON: Yes, well, I hope it's –
9 whatever the problem is, it's capable of ready and easy
10 solution. Mr Mpofu?
11 MR MPOFU: Ja, thank you, Chairperson.
12 General, just to put my, or what I'm discussing with you in
13 perspective, maybe in relation to what – the discussion
14 between myself and the Chairperson about the tragedy that
15 we're talking about of this specific individual, I just
16 wanted to say to you that the reason I'm questioning you
17 about the specific massacre incident, tragedy, whatever you
18 call it which happened on the 16th at 15:30 or thereabouts
19 is exactly because of what has been said, because the
20 people I represent as individuals would like to know if
21 anything could have been done to avoid whatever calamity
22 that they might have faced. I'm sure we are together on
23 that.
24 GENERAAL-MAJOOR ANNANDALE: Ons is,
25 Voorsitter.

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1 MR MPOFU: Right, thank you. And that
2 fortunately they're all represented by me, otherwise we
3 could have had 350 counsel here, all asking you the same
4 questions but be that as it may –
5 CHAIRPERSON: I wouldn't allow that, Mr
6 Mpofu.
7 MR MPOFU: I know, Chairperson, but be
8 that as it may, General, the next issue that I wanted to
9 deal with where you specifically played a role or rather
10 which was a consequence of your specific intervention is
11 what I said earlier before lunch, the time that in fact
12 became available for the briefings to take place. Now the
13 question is this, you accept that the standing regulations
14 make it, or rather mark it as important that all the
15 persons involved in a particular operation should get a
16 detailed briefing prior to its execution. I'm sure we
17 agree on that.
18 GENERAAL-MAJOOR ANNANDALE: Ons doen,
19 Voorsitter.
20 MR MPOFU: Now, and you – I know when you
21 were being questioned by my learned friend Mr Budlender,
22 accepted that this was one of the biggest operations of its
23 kind involving violent protest and so on in your 30-odd
24 years of policing.
25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 soos ek dit uiteengesit het, met so 'n groot groep sodanige
2 gewapen, dis reg.
3 MR MPOFU: And you also accept that the
4 briefings would – let's talk about this specific case –
5 there was of course the briefing, if we can call it that
6 loosely – that happened at the JOCOM at half past one, of
7 the leadership. Agreed? Of the leadership of the police.
8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 dit was a JOCOM vergadering wat ook dan sekere toeligtig
10 geverg het.
11 MR MPOFU: Yes, correct. And the second
12 level of briefings which did take place were the briefings
13 of the commanders, correct, and I might as well say this so
14 that you cover both – and the third level would have been
15 the briefing of the members who reported to those
16 commanders.
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ja, maar die eerste toeligtig het nie eers begin op die
19 16de tydens die 13:30 vergadering, dit het reeds op die
20 14de, die Dinsdag begin. Die vlakke van toeligtig is
21 sodanig dat die oorhoofse bevelvoerder dan sal die
22 operasionele bevelvoerder toelig.
23 MR MAHLANGU: The level communication
24 would then be the operational commander would then inform –
25 GENERAAL-MAJOOR ANNANDALE: The overall –

<p style="text-align: right;">Page 19235</p> <p>1 MR MAHLANGU: The overall commander would 2 then further inform the? 3 GENERAAL-MAJOOR ANNANDALE: Of toesien 4 dat die operasionele bevelvoerder sodanig toegelig is. 5 MR MPOFU: Thank you. Ja, no, no – 6 GENERAAL-MAJOOR ANNANDALE: Die volgende 7 vlak sal wees die operasionele bevelvoerder wat dan die 8 ander onderskeie bevelvoerders toegelig en dan daardie 9 bevelvoerders die onderskeie lede. 10 MR MPOFU: Yes. Yes, no, I accept that, 11 General. For the purposes of what I'm canvassing now I'm 12 confining myself to the period between half past one and 13 half past three or thereabouts on the 16th and you would 14 agree, wouldn't you, that there were these three levels of 15 briefings and I do accept your qualification of the first 16 one but that there was the leadership and then there would 17 have been a need to brief the commanders and the commanders 18 to brief their people in that two hour period. 19 GENERAAL-MAJOOR ANNANDALE: Dit is 20 korrek, Voorsitter. 21 MR MPOFU: Now, one of the consequences 22 of – or let me put it this way, are you aware that the 23 briefings which were carried out by Lieutenant-Colonel 24 Scott, I'm sure and others, following the JOCOM meeting, 25 lasted until about 15:15, quarter past three – according to</p>	<p style="text-align: right;">Page 19237</p> <p>1 needed an hour, for example, then the time was not 2 adequate. Presumably if time, an hour had been required, 3 you would have fixed the time of the operation differently 4 from the way it was but what time, period of time would in 5 your opinion have been required, reasonably required for 6 the necessary briefings to be given? 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 8 die totale tyd van sowat een uur was voldoende gewees om 9 beide die toeligtings te doen, die toeligting aan die 10 bevelvoerders en dan verder, want dit het behels die 11 uiteensetting soos wat uiteengesit is in die Special JOCOM 12 vergadering, dis dieselfde toeligting wat moes plaasvind. 13 Ons moet besef dat die operasionele bevelvoerder en die 14 lede is vertrou as 'n mens praat van uiteendryfaksie en 15 die verskillende vlakke wat dit behels. Dit is – hulle is 16 opgelei en vertrou. 17 [14:28] MR MAHLANGU: If I may add, he spoke of 18 dispersal action. 19 MR MPOFU: Yes. And once again following 20 on the Chairperson's question and obviously we're not now 21 talking rigidly, that it must to the second – but would it 22 be fair to say that if it was dieselfde informasie, as you 23 say, that it should take more or less the same or maybe 24 even more to brief the troops on the ground than it took to 25 brief the commanders because the commanders are probably</p>
<p style="text-align: right;">Page 19236</p> <p>1 him, at least. I'll find the passage now, Chairperson. 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter 3 nee, ek is bewus daarvan, dit is doodreg. 4 MR MPOFU: Okay, thank you. Thank you, 5 that will save me from having to look for the passage. 6 Now, what that means is that given the time that you had 7 suggested of 15:30, which was accepted by the others, the 8 third level briefings of the actual people who were going 9 to carry out the operation would only have had 10, 15 10 minutes to take place. Maybe – sorry, let me finish that 11 question. And in line with what we were discussing 12 earlier, had you hypothetically set the time at 16:30 they 13 would have had more time to do so. 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 15 Kolonel Scott-hulle was, moes terug gewees het 15:15, so ek 16 weet nie hoe laat presies het hy klaargemaak met die 17 toeligting aan Brigadier Calitz en dan ook die ander 18 bevelvoerders nie, maar dit moes voor 15:15 moes dit klaar 19 gewees het want hulle het nog steeds terug gewees vanaf die 20 area na die JOC toe. Voorsitter, ek het in my verklaring 21 paragraaf 24, bewysstuk GGG1 op bladsy 11, het ek gesê het 22 hulle teruggekeer omtrent 15:15. 23 CHAIRPERSON: What time would you regard 24 as necessary, period of time would you regard as necessary 25 for the relevant briefings to be given? Obviously if you</p>	<p style="text-align: right;">Page 19238</p> <p>1 easier to deal with. 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 nee, dit sal waarskynlik langer vat om die bevelvoerders 4 toe te lig want hulle word toegelig oor die hele optrede, 5 pertinent die operasionele bevelvoerder want hy moet die 6 hele operasie, moet hy uitspel. Dan byvoorbeeld sal 7 Kolonel Makhubela wat verantwoordelik was vir die 8 ontplooiing van die draad, sou hy gefokus het op daardie 9 aspek met sy lede. 10 MR MPOFU: Yes. 11 CHAIRPERSON: The witness said he would 12 have to concentrate on that aspect. 13 MR MAHLANGU: Concentrate, have to 14 concentrate on that aspect with his members. 15 MR MPOFU: Thank you. No, in fact that's 16 a good correction – sorry – in the sense that I take it 17 that you accept that the briefing would cover the whole 18 operation because you can't just brief someone on their 19 specific thing but obviously they would concentrate on 20 their own area. 21 GENERAAL-MAJOOR ANNANDALE: 'n Oorsig van 22 die hele een met dan pertinente fokus op die pertinente 23 detail. 24 MR MPOFU: And what I'm saying really as 25 a general statement, and I'm not tying you to say was it 20</p>

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1 minutes, was it 45 minutes, all I'm saying is that as a
 2 general statement it would have been preferable if the
 3 briefings, particularly to the foot soldiers, so to speak,
 4 were given adequate time so that they get the full details,
 5 particularly in relation to an operation of this size.
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter
 7 ja, redelike tyd gegee vir die oordrag wat moet gemaak
 8 word.
 9 MR MPOFU: Yes and what I'm getting at
 10 here, I think we agree, is that had the time that you set
 11 or that was agreed been, for argument's sake, 4 o'clock,
 12 that would have been half an hour more available for those
 13 briefings to take place. In other words, it wouldn't just
 14 have been a question of whether Mathunjwa's advice would be
 15 given a chance but it might also have had another added
 16 advantage of prolonging the time for the briefings.
 17 GENERAAL-MAJOOR ANNANDALE: Nee,
 18 Voorsitter, as 20 minute of 'n halfuur voldoende sou wees,
 19 dan as daar nog 'n ekstra halfuur of nog 'n uur bygevoeg
 20 sou wees dan sou hulle dit net gebruik het om toeligting te
 21 doen nie.
 22 MR MPOFU: And if the evidence shows that
 23 let's say it took an hour to do the briefing to the
 24 commanders and only 10 minutes or 15 minutes to do the
 25 other briefings, would you agree that an extra 15, 20

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1 minutes or half an hour could have made a difference?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek volstaan dat 'n uur voldoende was. Selfs al sou 'n
 4 halfuur geneem gewees het deur die eerste toeligting aan
 5 die bevelvoerders was daar dan nog steeds 'n halfuur
 6 beskikbaar om die lede toe te lig. Ek meld weer eens dat
 7 van die toeligting het alreeds plaasgevind op die, so vroeg
 8 as die 14de en die 15de en dat lede bewus is van hulle
 9 verantwoordelikhede.
 10 MR MAHLANGU: Some of this information
 11 had already been transmitted from about the 14th and some of
 12 the members were aware of their responsibilities already.
 13 MR MPOFU: And some were not. In other
 14 words, there had been changes that were introduced at the
 15 half past one meeting which needed to be communicated. I
 16 think we agree on that. Agreed?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 daar was genoegsame tyd om die besonderhede van die 13:30
 19 vergadering oor te dra aan beide die bevelvoerders en ook
 20 die lede.
 21 MR MPOFU: Okay fine, we'll explore that
 22 –
 23 CHAIRPERSON: I'm not following you.
 24 What are the changes that you're talking about?
 25 MR MPOFU: For example that the barbed

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1 wire was going to be prepositioned as opposed to being
 2 deployed – the things that were discussed at 13:30,
 3 anything –
 4 CHAIRPERSON: Or perhaps I should ask the
 5 witness the question. Major-General, were there any
 6 changes which arose or which were introduced which would
 7 have required extra briefing time and, if so, what were
 8 they?
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 nie wat ek nou skielik aan kan dink nie, die – want fase 1
 11 tot 6 was reeds bespreek so vroeg soos die Dinsdagmiddag,
 12 of vlak 1 tot 6. Die posisionering van die draad,
 13 byvoorbeeld, was reeds op sesuur die oggend bespreek in
 14 terme van om die draadkarre met dit te posisioneer en ook
 15 dat dit 'n voorloop sou wees tot 'n fase of 'n vlak 3
 16 ontplooiing, dat dit geposisioneer – geposisioneer, dan
 17 ontplooi sou word.
 18 MR MAHLANGU: That is would be a step
 19 just prior to the –
 20 CHAIRPERSON: I think the word is
 21 prelude, isn't it? It would be a prelude.
 22 MR MAHLANGU: It would be a prelude to
 23 the implementation of the third stage.
 24 GENERAAL-MAJOOR ANNANDALE: So, en die
 25 res van die vlakke van die gebruik van geweld in terme van

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1 die force continuum is bestaande vlakke, die posisionering
 2 in terme van die lyn was reeds bespreek. So daar is niks
 3 pertinent wat ek nou my vinger op kan sit nie.
 4 MR MPOFU: Now – sorry, Mr Boo. Now of
 5 course that cannot be true because if it was true then
 6 there would have been no need for the relatively lengthy
 7 briefing that was given to the commanders if it was the
 8 same as the 14th or the 15th, correct?
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 dit was weer 'n bevestiging gewees en in hierdie geval was
 11 daar 'n Google-kaart gewees met spesifieke diagramme,
 12 grafieke – [onduidelik] of grafieke nie.
 13 MR MPOFU: In any event –
 14 GENERAAL-MAJOOR ANNANDALE: Dit was net
 15 'n bevestiging gewees –
 16 MR MPOFU: Sorry.
 17 GENERAAL-MAJOOR ANNANDALE: - net weer in
 18 detail deurgegaan.
 19 MR MPOFU: Okay, we'll canvass this
 20 matter with other witnesses and also we'll deal with it in
 21 argument but in fairness I must put to you that we're going
 22 to argue that the 15:30 time that you had suggested and was
 23 accepted, also among other things had an effect on the
 24 relatively reduced time that was available for the
 25 briefings, which was in the vicinity of 10 minutes which

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1 can't be adequate for an operation of this nature. You can
2 deny it or say whatever you want.

3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4 mag ek kommentaar lewer?

5 MR MAHLANGU: Should I comment, Mr
6 Chairperson?

7 GENERAAL-MAJOOR ANNANDALE: Mag ek?

8 MR MAHLANGU: Should I?

9 MR MPOFU: Yes, of course.

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
11 die 10 minute is nie so nie. Kolonel Scott-hulle was
12 reeds, sover ek kan onthou was hulle reeds kwart oor terug
13 gewees en die JOC is sowat 3.5 of 3.6 kilometer van die
14 forward holding area 1 af, so hulle moes nog gery het ook.
15 So dit opsigself dui aan dat hulle dan vir seker meer as 10
16 minute was wat die toeligting plaasgevind het. Voorsitter,
17 en dan die draad was eers om 15:43 of iets uit, was die
18 opdrag 15:40 en onthou net hierdie bevelvoerders is saam
19 met hulle lede, so as daar nog enigiets verder was, was
20 daar nog steeds addisionele reserwe tyd gewees soos die
21 omstandighede uitgedraai het.

22 MR MPOFU: Yes, but I thought –

23 CHAIRPERSON: I'm sorry, Mr Mpfu. I'm
24 not sure that the full answer was interpreted into English.
25 I think the point you were making was that there was enough

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1 reserve time, if needed. Is that correct, Major-General?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
3 ja, soos die omstandighede – natuurlik was dit nie sodanige
4 noodwendig voorsien nie, want ons het besluit op 15:30 maar
5 soos dit uitgedraai het was daar dan nog 'n addisionele 10
6 minute of so wat, reserwe tyd.

7 CHAIRPERSON: It wasn't envisaged
8 initially that there'd be this extra 10 minutes but the way
9 it worked out with the postponement, if that's the right
10 word, of the implementation time from 3:30 to 3:40 that
11 brought in the next 10 minutes that hadn't originally been
12 envisaged, is that correct?

13 MR MAHLANGU: That is correct, sir, yes.

14 MR MPOFU: Yes, look, I'm trying to get
15 out of this point but of course that so-called extra 10
16 minutes was the fortuitous event brought about by Mr
17 Mathunjwa's address. I'm talking about the plan, I'm
18 saying had Mr Mathunjwa – cancel him out of the equation –
19 had the other briefing, the third briefing only taken 10
20 minutes, assuming you would have started at half past
21 three, that time would not have been adequate. I think you
22 agree but you are saying that it must have been more than
23 10 minutes.

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
25 ek het nie gesê –

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1 CHAIRPERSON: The witness is emphasising
2 insofar as a causal connection would be required between
3 the lack of briefing time and what happened in the end, if
4 in the result there was more briefing time than originally
5 planned, then that would do away with the causal connection
6 between inadequate briefing time as originally envisaged
7 and what happened in the end. I think that's the point he
8 is making.

9 MR MPOFU: Well, that point is invalid
10 because it would take us to never-never land because it
11 would also depend on whether the extra 10 minutes was
12 itself adequate. I don't want to go there, Chairperson,
13 all I'm saying is that –

14 CHAIRPERSON: I'm just saying to you what
15 the witness said. You don't have to fight with me, I'm
16 trying to be, keep an open mind.

17 MR MPOFU: To be helpful. Thank you,
18 Chairperson. No, sorry, I would never fight with you,
19 Chairperson.

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter –
21 COMMISSIONER HEMRAJ: General, can I just
22 ask you, when the JOCOM meeting finished at 2 o'clock, when
23 did Lieutenant-Colonel Scott then leave to go to forward
24 holding area 1 to do the briefing of the other commanders?
25 GENERAAL-MAJOOR ANNANDALE: Kommissaris,

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1 dit was waarskynlik binne die minder as 10 minute wat hulle
2 vertrek het nadat hulle daar klaar was. Voorsitter, ek wil
3 net herhaal wat ek gesê het. Ek het kommentaar gelewer op
4 Adv Mpfu se 10 minute bewering wat hy gesê het dis al wat
5 toegelaat was en as ons uitsluit enige reserwe tyd of
6 enigiets wat na 15:30 gebeur het, dat dis my stelling dat
7 daar vir seker meer as 10 minute was om die lede toe te lig
8 aangesien ek dit baseer dat Kolonel Scott reeds om 15:15
9 terug was en hy 'n sekere afstand moet aflê. So ek reken
10 dat dit 20 minute plus was, wat sodanige toeligting geneem
11 het.

12 [14:47] CHAIRPERSON: Yes, Mr Semanya?

13 MR MPOFU: My last point – sorry,
14 Chairperson.

15 CHAIRPERSON: Mr Semanya has turned his
16 microphone on.

17 MR SEMENYA SC: Sorry, Chair, to the
18 extent it may be of assistance to Mr Mpfu, the statement
19 of Colonel Scott at paragraph 32 tells us that he started
20 briefing the commanders at 14:30.

21 CHAIRPERSON: Mr Mpfu will be grateful
22 for that assistance.

23 MR MPOFU: I know –

24 CHAIRPERSON: Please carry on.

25 MR MPOFU: I'm grateful but I knew that

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1 before, thank you, Chairperson. The only point I'm making,
 2 Chairperson – rather, General – is that I accept everything
 3 you've said and all the postulations that you and I are
 4 making but I'm saying if we can show through other
 5 witnesses, not you, that the amount of time available to
 6 brief the members, the foot soldiers as I've called them,
 7 was only 10 minutes.

8 CHAIRPERSON: Call them soldiers because
 9 that indicates –

10 MR MPOFU: Yes, it has other
 11 connotations, sorry, yes. The third level briefing that
 12 you and I have agreed on, if only 10 minutes had been
 13 available for an operation of this size with so many units,
 14 with all that we know about it, that 10 minutes would have
 15 been inadequate, that's all.

16 CHAIRPERSON: Mr Mpofo –

17 MR MPOFU: Yes, thank you, Chair.

18 CHAIRPERSON: Mr Mpofo, are you going to
 19 lead such evidence or is there such evidence available in
 20 some of the statements that have already been filed or is
 21 this a hypothetical question –

22 MR MPOFU: No.

23 CHAIRPERSON: - based on the fact that
 24 there may be such evidence if it turns out that way.

25 MR MPOFU: No, it's not, Chairperson.

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1 Chairperson no, it's something between those two extremes.
 2 It's not a hypothetical suggestion but insofar as one may
 3 call it evidence, it's evidence that will be inferred from
 4 other witnesses, maybe even police witnesses, which is
 5 inferred from their statements as it were and I won't put
 6 it higher –

7 CHAIRPERSON: If there's an evidential
 8 basis for it, that's fine.

9 MR MPOFU: Yes, it does. Thank you,
 10 Chair.

11 CHAIRPERSON: Mr Semenya?

12 MR SEMENYA SC: No, on the contrary,
 13 Chair. The witness told us just 20 minutes ago that these
 14 briefings had already commenced the Tuesday, so to say they
 15 had 10 minutes to do it is incorrect.

16 MR MPOFU: No, sorry, okay. I'm sure
 17 it's my fault, Chairperson. I accept that the, what the
 18 witness says that the briefings had happened, some of it
 19 was repetition and so on and so on, that I accept. All I'm
 20 saying is that to the extent that briefings were necessary,
 21 repetition or not, when I suggested to the witness that it
 22 would have, it might have taken about 10 minutes, he said
 23 he's sure that it would have been more than 10 minutes for
 24 the reasons that he stated. And all I'm asking him really
 25 is the simple proposition that if evidence comes to the

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1 fore later and we have debated the nature of that evidence,
 2 that it was only 10 minutes that was available, would that
 3 be – would he agree with me that it was inadequate? And
 4 sorry, General, before you answer let me just finish that
 5 question and I was saying given, (a) the nature, the size
 6 of the operation, the fact that these commanders probably
 7 would have had to walk somewhere where their people were
 8 and I don't know what the distances were – given all that,
 9 would you agree that a period of 10 minutes, if it's
 10 established, would be inadequate?

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 wat ek probeer aandui het is dat daar meer as 20 minute
 13 waarskynlik beskikbaar was.

14 MR MAHLANGU: What I'm trying to
 15 indicate, Mr Chairperson, is that there was an estimated 20
 16 minutes which was available.

17 CHAIRPERSON: He said probably available.
 18 He said more than 20 minutes was probably – waarskynlik –
 19 available.

20 MR MAHLANGU: Waarskynlik, which was
 21 probably available.

22 MR MPOFU: Yes, no -

23 GENERAAL-MAJOOR ANNANDALE: En –

24 MR MPOFU: I'll leave that for argument.

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 ek sal graag wil die antwoord voltooi.

2 MR MPOFU: Sorry, ja. Carry on, General.

3 GENERAAL-MAJOOR ANNANDALE: En dan
 4 Voorsitter, in daardie beskikbare tyd dat daar verskillende
 5 toeligting sou plaasgevind het en dat sekere toeligtings
 6 uiteraard langer sal wees as ander, gegewe die pertinente
 7 taking van die onderskeie lede en selfs as party van die
 8 toeligtings slegs 10 minute was –

9 MR MAHLANGU: Even if the briefings were
 10 10 minutes as it is –

11 CHAIRPERSON: Some of the briefings.

12 MR MAHLANGU: Some, some of the
 13 briefings.

14 GENERAAL-MAJOOR ANNANDALE: - dan was dit
 15 waarskynlik geag deur die betrokke bevelvoerder om genoeg
 16 te wees, maar ek was nie daar gewees nie.

17 MR MPOFU: Yes. So General, you know I'm
 18 trying as much as I can to move away from this point but
 19 your answers keep dragging me back. The simple point I'm
 20 making – sorry, sorry Chairperson. I wasn't sure,
 21 Chairperson, if I should – okay, thank you.

22 CHAIRPERSON: I'm capable of putting a
 23 short point to my colleague and listening to you at the
 24 same time –

25 MR MPOFU: Thank you, Chairperson.

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1 CHAIRPERSON: - do the same thing if you
2 have to?

3 MR MPOFU: No, Chairperson, it's just a
4 matter of courtesy.

5 CHAIRPERSON: Okay, that's a good point
6 you now make.

7 MR MPOFU: Thank you.

8 CHAIRPERSON: Carry on.

9 MR MPOFU: All I was saying is, I'm
10 trying to move away from this point but, as I say, you keep
11 on bringing me back. I'll ask you one more question. The
12 point I'm making, General, and I'm asking you because you
13 are the witness, not only are you the witness, you are a
14 policeman of 30 or more years' experience. You've probably
15 been to thousands of these briefings. I've never been and
16 I assume the commissioners have not been as well and I'm
17 saying from that knowledge of yours, for example you would
18 know whether question time is allowed at these briefings
19 and so on and so on. We know that there had to be walking
20 time because the commanders had to walk from wherever they
21 were being briefed to where their units were. Considering
22 all those things, with the walking time, the Q&A if it
23 exists – and you can tell us if it doesn't – and so on,
24 would you agree that a period of 10 minutes would not be
25 sufficient?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 ek stem nie saam dat dit onvoldoende tyd is nie, selfs 10
3 minute.

4 MR MPOFU: Okay.

5 CHAIRPERSON: You haven't dealt with Mr
6 Mpfu's point. Sorry, Mr Booi, carry on. Mr Booi, carry
7 on. You haven't dealt with Mr Mpfu's point as to whether
8 there's question and answer time included.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
10 dit alles hang af van die aard van die toeligting, die
11 kompleksiteit daarvan, die spesifieke takings wat ver wag
12 word van die lede. Maar Voorsitter, ek sal altyd toelaat
13 vir verdere toeligting so die lede sal, as daar
14 onduidelikhede is, sal die lede 'n geleentheid hê om te vra
15 en dit – Voorsitter, ons moet net –

16 CHAIRPERSON: Sorry?

17 GENERAAL-MAJOOR ANNANDALE: Ekskuus. Ek
18 wil net sê ons moet net altyd onthou dat dit nie afhanklik
19 was net slegs van die toeligting op die betrokke dag nie,
20 daar was reeds 'n aanloop gewees.

21 CHAIRPERSON: Would it be convenient for
22 us to take the tea adjournment now, Mr Mpfu?

23 MR MPOFU: Yes, Chairperson, I am moving
24 to another topic.

25 CHAIRPERSON: May I suggest – you're

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1 going to another topic – suggest, if there's anything in
2 this point it might be an idea to get the commanders to,
3 not in the auditorium but at some other time to repeat the
4 briefings in the presence of someone from your side, that
5 they would've given and have a stopwatch and then we can
6 have evidence as to how long the briefings took. That
7 might help us, but we'll take the tea adjournment now.

8 MR MPOFU: Well, Chairperson, we already
9 know that the other briefings took about 45 minutes.

10 [COMMISSION ADJOURNS COMMISSION RESUMES]
11 [15:29] CHAIRPERSON: The Commission resumes.
12 Generaal-Majoor, u is nog steeds onder eed. Mr Mpfu?

13 MR MPOFU: Thank you.

14 CHAIRPERSON: You, I think, were still
15 cross-examining.

16 MR MPOFU: I did, thank you, Chairperson.
17 Chairperson, just – not a serious suggestion but I just
18 wanted to say if the exercise that the Chairperson spoke
19 about of the stopwatch, one will have to also include the
20 Q&A. In other words, the people would have to ask the same
21 questions that they asked last year but –

22 CHAIRPERSON: I think it would have to be
23 scientifically accurate.

24 MR MPOFU: Yes. Thank you, Chairperson.

25 GENERAAL-MAJOOR CHARL ANNANDALE:

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1 (s.o.e.)

2 CROSS-EXAMINATION BY MR MPOFU (CONTD):
3 General, you do understand that I'm specifically confining
4 our discussion to things that – or rather contributions
5 that I'm contending you specifically made, leading up
6 towards the incident. Are we together on that?

7 GENERAAL-MAJOOR ANNANDALE: Ek sou die
8 laaste een gewees het wat dit agterkom, Voorsitter.

9 MR MPOFU: Yes. And that, just for the
10 sake of completion, or rather more so not for the sake of
11 completion but specifically I want to avoid having to ask
12 you about other people's roles insofar as I can avoid it.
13 I don't promise that I'll avoid it completely but I'm
14 confining it to the Annandale contribution, as I were.

15 GENERAAL-MAJOOR ANNANDALE: Ek neem
16 kennis, Voorsitter.

17 MR MPOFU: And also that – have you now
18 read my, the opening statement that was distributed in the
19 morning?

20 GENERAAL-MAJOOR ANNANDALE: Ek het dit
21 gelees, Voorsitter.

22 MR MPOFU: You will see that while
23 ostensibly we were dealing with 9.7, some of the points
24 also deal with 9.1 which is that the massacre could and
25 should have been avoided. Do you appreciate that? At

<p style="text-align: right;">Page 19255</p> <p>1 least from my point of view, I'm not saying you agree with 2 me but that some of the questioning relates to things that 3 might have been done which might have avoided the massacre. 4 GENERAAL-MAJOOR ANNANDALE: Ek neem dit 5 so waar en respekteer dit so. 6 MR MPOFU: And sorry, I'd just like to be 7 sure that we're on the same page – and that the questions 8 I'm putting to you are from the point of view of the so- 9 called protester Y who might be somebody who was arrested, 10 somebody who was injured, maybe even killed or even this 11 person who allegedly committed suicide. In other words, 12 it's from a point of view of someone who would say, had 13 this not happened I might either be alive or not injured or 14 not arrested or not having suffered any such a calamity - 15 from the point of view of that person whom I represent. 16 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar 17 dat aannames gemaak word, Voorsitter. 18 MR MPOFU: Right. Now, the other issue 19 which, in respect of which you specifically contributed 20 wholly or, if not, significantly is the fact that you are 21 the person who invited Lieutenant-Colonel Scott to be part 22 of this operation in the first place, correct? 23 GENERAAL-MAJOOR ANNANDALE: Dit is 24 korrek, Voorsitter. 25 MR MPOFU: In other words, once again –</p>	<p style="text-align: right;">Page 19257</p> <p>1 once and for all, how come, how did it happen that 2 Lieutenant-Colonel Scott was involved in the Marikana 3 operation? According to his statement he was invited by 4 Brigadier Fritz. You don't mention in your statement that 5 you invited him but how did it happen that he came to be 6 involved in the Marikana operation? 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 8 ek het Brigadier Fritz versoek om hom te mobiliseer om deur 9 te kom. 10 MR MPOFU: So we don't need any fanciful 11 suggestions, he was brought on the scene by this witness 12 having asked Brigadier Fritz to telephone him and tell him 13 to come. 14 MR MPOFU: Yes. No, that much was 15 established, Chairperson, after the first question. What 16 the witness said was that he wanted me to explain about the 17 – my use of the word "fanciful" and I simply explained to 18 him that what I was saying is that just like the 15:30 19 issue, there's always a remote possibility that someone 20 else would have asked for Scott at the same time for the 21 same reasons, but we're not dealing with that and I think 22 the witness and I understand each other in that regard. So 23 therefore you would agree with me that then the possibility 24 exists that had you not specifically done that, we might 25 have ended up with a different co-ordinator of the plan and</p>
<p style="text-align: right;">Page 19256</p> <p>1 sorry, sorry Chairperson. 2 CHAIRPERSON: I think we must give Mr 3 Booi a chance to interpret. 4 MR MPOFU: Once again I'll accept the 5 fanciful proposition that somebody else might also have 6 invited Lieutenant-Colonel Scott but the point I'm making 7 is that his presence there was as a result of your specific 8 invitation. Now the – you've already accepted that? 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 ek wil net die "fanciful" gedeelte, het ek nie lekker 11 verstaan nie. 12 MR MPOFU: Ja, okay. No, I'll explain it 13 to you. What I mean is that just like the 15:30 thing that 14 we discussed earlier, there is always a remote, but very 15 remote possibility that someone else – you see what I'm 16 trying to get at is, I said I'm questioning you about 17 things where, but for your intervention, would not have 18 happened. I'm saying it just so that you don't qualify it. 19 I accept that there's a chance, I don't know how many in 20 100, one in 100, that someone else might have done the same 21 thing at the same time for the same reason that you did, 22 but let's rule that out. 23 GENERAAL-MAJOOR ANNANDALE: Ek kan net sê 24 ek hoor wat u sê. 25 CHAIRPERSON: Just to sort this thing out</p>	<p style="text-align: right;">Page 19258</p> <p>1 maybe even a different plan altogether. 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 dit is baie moeilik om op al hierdie spekulasies te 4 reageer. As ons aanvaar dat net Luitenant-Kolonel Scott 5 nie daar was nie en daar was 'n ander sogenaamde 6 koördineerder en dat elke ander persoon van die 650, 676 of 7 67 offisiere en lede presies dieselfde was – 8 MR MAHLANGU: And that those other 650 or 9 670 other officers were there – 10 CHAIRPERSON: You left something out – 11 were precisely the same, he said, presies dieselfde was. 12 As ons aanneem dat hulle presies dieselfde was – 13 MR MAHLANGU: Yes, if precisely the same 14 650 or 670 were the same officers that were there. 15 GENERAAL-MAJOOR ANNANDALE: - en ons het 16 dieselfde JOCOM verteenwoordigers gehad, oorhoofse 17 bevelvoerder, die operasionele bevelvoerder, Voorsitter, 18 dan sou die plan waarskynlik baie naby aan presies 19 dieselfde gewees het. Dit sal dalk in 'n ander manier 20 voorgedra gewees het, dit sal dalk – 21 MR MPOFU: Okay. Can I just pause and 22 explain something to you. This Commission, in terms of the 23 terms of reference, deals with what caused the massacre, 24 incident, tragedy, whatever you call it. Do you accept 25 that – or who caused.</p>

<p style="text-align: right;">Page 19259</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 as dit regtig baie vereenvoudig word, ja. 3 MR MPOFU: And that inquiry, that kind of 4 inquiry, causation by its nature, General, requires us 5 sometimes to postulate what would have happened if X did 6 not take place or if Y did not take place. So we cannot 7 escape completely that inquiry, but for Annandale doing X, 8 Y, Z, would the thing have happened, but for Scott doing 9 this, would this thing have happened? Unfortunately that's 10 the nature of the beast that we're dealing with, do you 11 understand that? 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 13 ek verstaan dit so en ek was besig om dit sodanig te 14 antwoord ook. 15 MR TIP SC: Chair, I interfere with 16 reluctance but all of us have a common interest in the 17 duration of this inquiry, not only because there are 18 deadlines that are going to loom ever more close, also 19 because my client is financing a team to sit here and 20 questions which are based on the proposition under the 21 label of causation, that if you, General Annandale, hadn't 22 been there or Lieutenant-Colonel Scott had therefore not 23 been summoned, that events would have taken a different 24 course, can surely not be legally relevant when one 25 establishes the fact that General Annandale was there and</p>	<p style="text-align: right;">Page 19261</p> <p>1 aspects of the facts which may not have happened had 2 certain omissions, or rather commissions not taken place or 3 omissions not have occurred. I was just making that clear 4 to the General so that we are on the same page because he 5 seems to be uncomfortable when I say the – or rather, for 6 example the question that I was putting to him was that had 7 he not invited Scott, he would not have been there in the 8 first place and we might have had a different plan, which I 9 think is very, very, very relevant. So the objection 10 theoretically is correct but it has no place in what we are 11 discussing now. 12 CHAIRPERSON: Well, let's ask the 13 evidence leaders to see if they have any comment. Mr 14 Madlanga, as interested as anyone is in these proceedings 15 being brought to an expeditious conclusion after a thorough 16 investigation of the relevant facts. 17 MR MADLANGA SC: Yes. Mr Chairman, yes, 18 we are certainly are interested in that and it's a matter 19 that we've raised quite a number of times. Mr Chairman, I 20 must say I share Mr Tip's concerns. I'm not sure how one 21 can demonstrate that had it been, say, General, who at head 22 office who had come instead of General Annandale, how one 23 is able to then conclude or infer or even argue that that 24 general would have come up with something totally 25 different. He may well have, he may not, he may well not</p>
<p style="text-align: right;">Page 19260</p> <p>1 that General Annandale gave the instruction that 2 Lieutenant-Colonel Scott should be brought in to assist 3 with the drawing up of the plan. Otherwise one is in the 4 realm of infinite regression of causation, because then I'm 5 going to suggest that we should have an inquiry into who 6 was it amongst all the thousands of RDOs who first 7 suggested that there should be a demand for 12 500 a month 8 because if that demand hadn't been made, there would never 9 have been a strike, there would never have been people on 10 the koppie and none of this would have happened. So in the 11 interests of relevance, we would submit that the 12 establishment of fact should be pursued and that the 13 establishment of speculative alternatives of no direct 14 consequence should not be allowed. 15 CHAIRPERSON: What do you say to that, Mr 16 Mpofo? 17 MR MPOFU: Thanks, Chairperson. Well, 18 I'm disturbed, Chairperson, by the trivialisation of the 19 inquiry that we are busy with. All I'm saying, of course 20 one can ask a millions questions. That's not what I'm 21 saying. I'm just explaining to the General that in the 22 nature of finding a cause to something we - obviously 23 relevance is embedded in what I'm saying – we would look 24 for those relevant aspects of what happened which, at least 25 part of the inquiry might involve looking at those relevant</p>	<p style="text-align: right;">Page 19262</p> <p>1 have. Similarly, the same argument would apply to the 2 presence or absence of Colonel Scott. To my mind it seems 3 the issue should more be, what is it that was wrong with 4 the plan and that is what should be debated before this 5 Commission rather than so and so having been there or so 6 and so not having been there. Yes, I will, I will perhaps 7 to some degree accept that some criticism has been made of 8 the fact that Colonel Scott is from such and such a unit, 9 was he a suitable person to be involved in the plan, but I 10 would imagine one should cut to the chase and get to that 11 point – than, you know, how far can this, how far back can 12 this go? I was whispering, just joking to my colleagues 13 here, saying one could well just ask had your mother not 14 been born, you would not be here at all. How far back do 15 we go? So I share the concerns, but to the limited degree 16 that I would just indicate to an extent one understands 17 where my learned friend is probably or possibly coming from 18 but, but even with that, with the acceptance of that fact 19 or point, I think one should really cut to the chase and 20 get to grips with the plan and the criticisms that one has 21 of the plan. Thank you. 22 MR MPOFU: Chairperson, firstly yes, I 23 accept that and I'm the first one who said in the morning – 24 CHAIRPERSON: Sorry. 25 MR MPOFU: Oh.</p>

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1 CHAIRPERSON: Mr Semenya wants to say
 2 something.
 3 [15:48] MR SEMENYA SC: Chair, it is practice to
 4 exclude questions that call for conjecture because
 5 precisely conjectural outlooks are infinitive now and we
 6 are going through this routine with Mr Mpofo presupposing
 7 that the massacre could have been avoided by non-attendance
 8 of Mr Scott – that type of evidence will never be produced.
 9 MR MPOFU: Okay.
 10 CHAIRPERSON: Mr Mpofo, before you
 11 comment I just want to say this to you. I have a problem
 12 with questions on what might have happened if such and such
 13 hadn't been the case because all sorts of things might have
 14 happened. I can understand if the question were what would
 15 have happened if this hadn't been the case.
 16 MR MPOFU: Ja.
 17 CHAIRPERSON: In other words, if Colonel
 18 Scott for example hadn't come –
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: What would have happened.
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: But the questions are being
 23 asked on the level – I presume, I understand it to be
 24 difficult to ask them at any other level, what might have
 25 happened. All sorts of things might have happened, I'm not

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1 sure they're going to help us. And you will be alive to
 2 the concerns that were expressed by Mr Tip and Mr Madlanga,
 3 which I'm sure you share.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: Of the need to use the time
 6 profitably and so on. So bear that in mind, please. May I
 7 suggest we proceed on a more restricted basis than the one
 8 you've been doing so far? As Mr Madlanga says, I think we
 9 both think we know where you're getting to but it might
 10 help if you got there a bit quicker than you seem to be
 11 doing at the moment. I say that not intending to be
 12 critical but to be constructive.
 13 MR MPOFU: Yes. Chairperson, I would
 14 have gone there and been long past now if we hadn't wasted
 15 time with this objection. I'm the first one who said in
 16 the morning to the witness I'm not going to ask him, I
 17 think the example I used was if the sun had not come from
 18 the east to the west – I'm asking here about, not the birth
 19 of General Annandale but about his activities pertaining to
 20 specifically 15:30 on the 16th of August, which is –
 21 otherwise let's stop this Commission, if we're not going to
 22 enquire into the exact things that happened and if - that
 23 cannot be irrelevant. I am not saying to him –
 24 CHAIRPERSON: Mr Mpofo –
 25 MR MPOFU: - if you hadn't joined the

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1 police or whatever.
 2 CHAIRPERSON: Yes, okay –
 3 MR MPOFU: I'm not going to go there.
 4 CHAIRPERSON: Okay. I've allowed you to
 5 cross-examine about 15:30, which you did.
 6 MR MPOFU: Thank you, Chairperson.
 7 CHAIRPERSON: You've now established that
 8 he was responsible for bringing Colonel Scott.
 9 MR MPOFU: Ja.
 10 CHAIRPERSON: Right.
 11 MR MPOFU: Okay.
 12 CHAIRPERSON: If you want to put
 13 something about –
 14 MR MPOFU: I'll put it along the lines –
 15 CHAIRPERSON: - what would have happened
 16 –
 17 MR MPOFU: Yes.
 18 CHAIRPERSON: - if he hadn't brought
 19 Colonel Scott, then you can do that briefly.
 20 MR MPOFU: Thank you.
 21 CHAIRPERSON: But I'm not interested in
 22 what might have happened because all sorts of things might
 23 have happened -
 24 MR MPOFU: Of course.
 25 CHAIRPERSON: - if Colonel Scott hadn't

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1 come.
 2 MR MPOFU: Yes, and neither am I
 3 interested in that, Chairperson. General Annandale, do you
 4 accept that had you not introduced Colonel Scott into the
 5 mix of what happened in Marikana, as we will argue, that
 6 the plan that was subsequently executed at 15:30 on the 16th
 7 of August would have been different, would have come from
 8 somebody else?
 9 CHAIRPERSON: The questions have been put
 10 and the witness said that it either would have been the
 11 same or would have been very close to it. I think that was
 12 nearly the same –
 13 MR MPOFU: Well, I thought that was the
 14 question that was being objected to. If it's been answered
 15 then we move on –
 16 CHAIRPERSON: It's been asked and
 17 answered.
 18 MR MPOFU: No, no –
 19 CHAIRPERSON: Asked and answered. Let's
 20 move on to the next question.
 21 MR MPOFU: Then there, it was a non-
 22 objection then, Chair. Okay, the next question –
 23 CHAIRPERSON: If the objection would have
 24 been on the ground of repetition it would have been upheld.
 25 Let's move on to the next question.

<p style="text-align: right;">Page 19267</p> <p>1 MR MPOFU: Well, Chairperson, honestly I 2 think if there's any waste of time it's what we're doing 3 now. Can you move to this, we've now established that you 4 went there uninvited, I'll leave it at that – we'll leave 5 out the other question of authority – that you determined 6 the time or suggested the time of the operation at 15:30 7 and that you, General Annandale, invited the person who 8 ultimately drew the plan that was executed, is that 9 correct?</p> <p>10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 ons het al drie alreeds, het ek sodanig beantwoord.</p> <p>12 MR MPOFU: Right. Now, the fourth thing 13 is that General Mbombo instructed you, Major-General 14 Annandale, to execute stage 3 of the plan, is that correct?</p> <p>15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 die Provinsiale Kommissaris het my in my kapasiteit as die 17 voorsitter van die JOCOM, het sy my getaak dat ons nou moet 18 voortgaan met die volgende vlak.</p> <p>19 MR MPOFU: Yes, but according to the 20 chain of command the person to whom that instruction should 21 have been given is Major-General Mpembe. The mere fact 22 that you were chairing a meeting does not entitle you, 23 Major-General Mpembe to be skipped.</p> <p>24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 Generaal Mpembe was nie oorgesien nie. Hy het die</p>	<p style="text-align: right;">Page 19269</p> <p>1 to carry out the part of the plan that resulted in the 2 incident that we are discussing here, was given to you when 3 it should – let's not say should – it could have been 4 given, to put it at its lowest, to the C-JOC who was 5 General Mpembe. What do you say to that?</p> <p>6 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 7 ek het dit in die konteks verduidelik. Dit kon net gewees 8 het dat die PK dit gegee het aan Generaal Mpembe en dat hy 9 dan vir my gesê het, Generaal, kom ons kry die vergadering 10 bymekaar sodat ons kan die opdragte uitstuur.</p> <p>11 MR MPOFU: Ja, and the issue really that 12 I'm getting at is that – or maybe let me just give another 13 example to show what I'm saying. As it happened, when the 14 incident occurred at about 15:30 or so, you and not General 15 Mpembe were at the JOC, which is where the C-JOC should be. 16 Is that correct?</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Dit is nie 18 korrek nie, nee, Voorsitter.</p> <p>19 MR MPOFU: Were you at the JOC for the 20 duration of the time?</p> <p>21 MAJOR-GENERAL ANNANDALE: Referring to 22 what time?</p> <p>23 MR MPOFU: It's only one time when the 24 incident happened, General. I'm saying at the relevant 25 time, let's say between three and half past four, were you</p>
<p style="text-align: right;">Page 19268</p> <p>1 toeligtig gedoen aan die Provinsiale Kommissaris.</p> <p>2 MR MAHLANGU: General Mpembe wasn't 3 skipped –</p> <p>4 CHAIRPERSON: Bypassed.</p> <p>5 MR MAHLANGU: Wasn't bypassed. This 6 happened in the – I'm sorry. General Mpembe was nie 7 oorgesien nie, maar?</p> <p>8 GENERAAL-MAJOOR ANNANDALE: General 9 Mpembe -</p> <p>10 CHAIRPERSON: - information to the 11 Provincial Commissioner, I think the witness said. He gave 12 the information or presentation to the Provincial 13 Commissioner. I think that was what was said.</p> <p>14 MR MAHLANGU: That's correct, it was 15 General Mpembe who made the presentation, the briefing to 16 the National Commissioner.</p> <p>17 CHAIRPERSON: Provincial Commissioner.</p> <p>18 MR MAHLANGU: The Provincial 19 Commissioner, I'm sorry.</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Hierdie 21 taking was in sy teenwoordigheid gegee. Dit was 'n kwessie 22 van, ek moet dit aktiveer in terme van die voorsitter van 23 die JOCOM.</p> <p>24 MR MPOFU: Yes, you're not answering my 25 question, General. I'm saying to you that the instruction</p>	<p style="text-align: right;">Page 19270</p> <p>1 at the JOC?</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Ek was 3 teenwoordig in die JOC, dis korrek.</p> <p>4 MR MPOFU: And is it correct that Major- 5 General Mpembe was not at the JOC for at least some of that 6 time?</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 8 Adv Mpofu het verwys na 15:30 en hy het gesê dat Generaal 9 Mpembe nie in die JOC was nie. Hy was wel in die JOC 10 gewees 15:30.</p> <p>11 MR MPOFU: No sir, I didn't mention 12 15:30. I said between 15:00 and half past four.</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Voordat u dit 14 gesê het, het u gesê 15:30.</p> <p>15 MR MPOFU: Well, if I did, I'm sorry I 16 made a mistake. I meant to say between three and half past 17 four, sorry.</p> <p>18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 General Mpembe was teenwoordig in die 14:30 tot die – die 20 13:30 tot die 14:30, tot die 14:00 Special JOCOM en dan was 21 hy ook teenwoordig gewees 15:30, die tyd wat Adv Mpofu 22 verwys, tot so min of meer 16:00 wanneer hy dan besluit het 23 om in die helikopter te vertrek.</p> <p>24 MR MPOFU: General, I said to you forgive 25 me if I made a mistake. It looks like you're not prepared</p>

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1 to forgive me. I'm telling you that what I meant to ask
 2 you about was 15:00 to 16:40. Forget about what I might
 3 have said in a slip of the tongue. Do you accept that in
 4 that period between 15:00 and 16:30 Major-General Mpembe
 5 was, for part of that time, not at the JOC?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 maar ek het dit juis so geantwoord. Ek het gesê van 15:30
 8 tot en met ongeveer 16:00 was hy in die JOC gewees en toe
 9 het ek gesê toe het hy vertrek met die helikopter en toe
 10 was hy waarskynlik, ek weet nie, 20 minute min of meer toe
 11 was hy weer terug.
 12 MR MPOFU: Is it, would it be fair to say
 13 that if one reads the minutes of the meeting of 13:30, EE,
 14 one would be forgiven for assuming that you were in charge
 15 and not General Mpembe?
 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 ek het verduidelik die aard van om voor te sit in 'n
 18 vergadering is sodanig dat daar verwys word na die
 19 voorsitter.
 20 MR MPOFU: Yes. No, all I'm saying is
 21 that in those minutes – I accept what you're saying, as the
 22 person who was chairing the meeting but in those minutes it
 23 would look like General Mpembe, for the duration of that
 24 meeting, did not say anything that was worth writing home
 25 about because he is not mentioned except for the fact that

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1 he attended.
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 daar was insette gelewer en dit was sodanig gekonsolideer
 4 in die notas en ek het vergadering voorgesit so sou daar
 5 dan 'n bevestiging gewees het, het ek dit sodanig bevestig
 6 as die voorsitter.
 7 MR MPOFU: Listen General, there's a
 8 distinction. I've already accepted to the fact that you
 9 were chairing the meeting. I'm saying to you what is
 10 remarkable about these minutes is not about chairing, it's
 11 about the fact that General Mpembe does not seem to have
 12 said anything that was worth noting. On the contrary, you
 13 appear throughout the minutes. "The Provincial
 14 Commissioner instructed Major-General Annandale to proceed
 15 with implementation of stage 3 of the operational plan."
 16 That's just one part. Next one, "Major-General Annandale
 17 instructed Lieutenant-Colonel Scott to ensure that all the
 18 commanders are briefed accordingly." And the third one
 19 we've dealt with this morning, "Major-General Annandale
 20 instructed Brigadier Pretorius and Lieutenant-Colonel Scott
 21 to report back at the JOC at 15:15 as he wants the
 22 operation to commence at 15:30." That's the picture I'm
 23 talking about.
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek kan getuig oor wat daar gebeur het. As daar 'n sekere

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1 voorstel gemaak word, soos byvoorbeeld dat Luitenant-
 2 Kolonel Scott en Brigadier Pretorius die offisiere
 3 persoonlik moet gaan toelig, dan was dit sodanig bespreek,
 4 hetsy in die JOCOM of dan tussen my en die oorhoofse
 5 bevelvoerder en as daar dan so ooreengekom is, dan het ek
 6 as voorsitter gesê dit is dan die spesifieke instruksie of
 7 taking.
 8 CHAIRPERSON: Mr Mpofu, you'll notice on
 9 page 3 the passive voice is used quite, used. Discussion
 10 was held, it was decided, Brigadier Pretorius was
 11 instructed. It's not clear who took part in that
 12 discussion, so it's not possible to infer from the minutes
 13 standing by themselves that Major-General Mpembe sat
 14 silently in the corner and said nothing. He may have and
 15 he may not have, but you can't tell it from the minutes
 16 because of the phrases that I read.
 17 MR MPOFU: Ja.
 18 [16:08] CHAIRPERSON: Are you going to be much
 19 longer with this point or shall we –
 20 MR MPOFU: Yes, I will be –
 21 CHAIRPERSON: - carry on with it tomorrow
 22 then.
 23 MR MPOFU: No, maybe chair let me,
 24 without rounding it off completely, just –
 25 CHAIRPERSON: I think, you know, it's

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1 already 10 past four.
 2 MR MPOFU: Is it 10 past four?
 3 CHAIRPERSON: Ja. You're like Mr Bizos
 4 last week, he was having so much fun, time passed so
 5 quickly because he was having fun.
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: It obviously applies to you
 8 too. We'll carry on tomorrow at half past nine.
 9 MR MPOFU: Yes Chairperson, that's fine.
 10 I'll round this off and move – because I'm really almost at
 11 the next point, Chair.
 12 CHAIRPERSON: Sorry, you're nearly?
 13 MR MPOFU: At the next point.
 14 MR MPOFU: I see.
 15 MR MPOFU: So I thought if it wasn't 10
 16 past four I would have asked for –
 17 CHAIRPERSON: No – no, it is 10 past
 18 four.
 19 MR MPOFU: That's fine.
 20 CHAIRPERSON: The Commission will adjourn
 21 until half past nine tomorrow.
 22 [COMMISSION ADJOURNED]
 23 .
 24 .
 25 .

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