

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 232

22 MAY 2014

PAGES 28802 TO 29015



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1 [PROCEEDINGS ON 22 MAY 2014]
 2 [09:06] CHAIRPERSON: The Commission resumes.
 3 Lieutenant-Colonel, you're still under oath.
 4 STEPHEN JAMES McINTOSH: (s.u.o.)
 5 CHAIRPERSON: Mr Ntsebeza, you were
 6 granted an extra 10 minutes from yesterday because we
 7 adjourned early.
 8 MR NTSEBEZA SC: From Tuesday, Mr
 9 Chairman.
 10 CHAIRPERSON: Yes, you're absolutely
 11 right, not yesterday, the day before.
 12 MR NTSEBEZA SC: Yes. Yes, Mr Chairman.
 13 Mr Chairman, I think proper justice about the presentation
 14 will be done with the other witnesses rather than this
 15 witness in the time that we have. But I've got just –
 16 CHAIRPERSON: If it's an important
 17 presentation, as long as it's done with a witness, then
 18 it's important.
 19 MR NTSEBEZA SC: Yes, Mr Chairman. Mr
 20 Chairman, there's a new exhibit we just want to introduce
 21 and it's the statement of Captain Greyling, who is also a
 22 member of the negotiation team. I believe the exhibit, the
 23 statement is being circulated –
 24 CHAIRPERSON: Shall we mark it TTT9?
 25 Yes, has the witness seen it?

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1 MR NTSEBEZA SC: I believe the witness
 2 has the statement and I wonder if the statement cannot be
 3 put up on the screen?
 4 CHAIRPERSON: Yes, well let's make sure
 5 the witness had a chance to read it. When did you get it,
 6 Lieutenant-Colonel?
 7 COLONEL McINTOSH: Chair, I received it
 8 yesterday afternoon.
 9 CHAIRPERSON: So you've had an
 10 opportunity to read it?
 11 COLONEL McINTOSH: That's correct, Chair.
 12 CHAIRPERSON: Good.
 13 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 14 Now whilst we are having the statement being put up,
 15 Colonel, Captain Greyling is known to you as he was part of
 16 your negotiating team. Is that right?
 17 COLONEL McINTOSH: That's correct, Chair.
 18 MR NTSEBEZA SC: And on the day about
 19 which he testifies in his statement he was in Papa1 with
 20 you?
 21 COLONEL McINTOSH: That's correct, Chair.
 22 MR NTSEBEZA SC: Now in paragraph 27 of
 23 that statement you will see the following. It's not on the
 24 screen yet, but I can read into the record what is in
 25 there. "During this incident I [that is now Captain

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1 Greyling] became aware of about four police officers
 2 chasing a striker with an assegai. Another Nyala blocked
 3 the striker" - Mr Chairman, I'm being very embarrassed here
 4 because of this phone I've forgotten before to switch off –
 5 CHAIRPERSON: Was it your own phone?
 6 MR NTSEBEZA SC: It was my own –
 7 CHAIRPERSON: Then I can't ask you to
 8 leave the chamber at this stage of your cross-examination,
 9 can I?
 10 MR NTSEBEZA SC: Mr Chairman, I –
 11 CHAIRPERSON: Those who are going to
 12 cross-examine today, please don't take advantage of the
 13 license I've granted him because I may have to make an
 14 exception to the rule I'm now applying, but I think, Mr
 15 Ntsebeza, a cake to your colleagues would be an appropriate
 16 recompense for the trouble they've had to endure while this
 17 noise has been assailing their ears.
 18 MR NTSEBEZA SC: I apologise profusely,
 19 Mr Chairman.
 20 CHAIRPERSON: No, no, you're going to
 21 provide a cake to your colleagues?
 22 MR NTSEBEZA SC: I think a cake will
 23 assuage that –
 24 CHAIRPERSON: Regard yourself as duly
 25 caked.

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1 MR NTSEBEZA SC: Indeed, Mr Chairman.
 2 Well, the interruption has also given us an opportunity to
 3 have the statement put up on there.
 4 CHAIRPERSON: No, I think to be fair one
 5 should for the benefit of people like me who haven't seen
 6 the statement at all, we should look at 26 first, which
 7 puts this in the context. 26 is they went behind the
 8 koppie and on their way to the scene behind the koppie they
 9 engaged with several small splinter groups. He and
 10 Lieutenant-Colonel McIntosh got out of the Nyala together
 11 with the uniform members, arrested 10 armed strikers
 12 without incident, who threw down their homemade weapons and
 13 surrendered, and then during that incident, then 27, he
 14 became aware of about four police officers chasing a
 15 striker with an assegai. Another Nyala blocked the striker
 16 from fleeing, which resulted in the striker turning around
 17 and with the assegai above his head storming the police
 18 officials who were chasing him. He was about five metres
 19 away from the nearest police official when this official
 20 opened fire on the striker, killing him almost instantly.
 21 Lieutenant-Colonel McIntosh tried to revive the striker,
 22 but he was already dead. Now that's the passage that's
 23 been put to you.
 24 MR NTSEBEZA SC: Now Colonel, I put to
 25 you that this clearly should be the reference to Mr Mpumza

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1 because Captain Greyling says you tried to revive him.
 2 Would you agree with that?
 3 COLONEL McINTOSH: That's correct, Chair.
 4 MR NTSEBEZA SC: Yes, and Captain
 5 Greyling says that he charged the police officer in self-
 6 defence to avoid – this is what I would put, that he was
 7 trying to avoid being trapped between four police officers
 8 who were chasing him, and the Nyala which was trying to
 9 block his path. You see that?
 10 COLONEL McINTOSH: I can see that, Chair.
 11 MR NTSEBEZA SC: Now you will know that I
 12 put your version, last week I put your version and I put
 13 the version of Captain Kidd, I put the version of Sebayane,
 14 and this is the fourth version and this version contradicts
 15 in a very material respect, should I say, the version, your
 16 version and the version of the other police officers. I'm
 17 sure you agree with that, don't you?
 18 COLONEL McINTOSH: Chair, I agree with
 19 the fact that this would contradict due to the fact that he
 20 says five metres. I am very, very sure it was less than
 21 five metres. It was actually less than two metres, but in
 22 any event what Captain Greyling says here he will have to
 23 give evidence about. I can't give evidence on how he
 24 perceived it to be, ja.
 25 MR NTSEBEZA SC: But you will see that

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1 it's very – this statement says something that neither of
 2 you in your statements have said. You know, the one thing
 3 that is very material in this statement is that Mr Mpumza
 4 was being chased and whilst he was being chased by police
 5 officers he was being warded off by yourselves in the
 6 Nyala. It's a totally different dimension that is being
 7 brought into what was happening on that day. Do you agree
 8 with that?
 9 COLONEL McINTOSH: No Chair, we were not
 10 chasing him with a Nyala, like you have just said.
 11 MR NTSEBEZA SC: There was a Nyala, he
 12 says, I mean paragraph 26, 27 –
 13 COLONEL McINTOSH: Chair, if we see 26,
 14 Papa1 at that time was in the middle of the veld –
 15 MR NTSEBEZA SC: "Another Nyala blocked
 16 this striker from fleeing." Do you see that in paragraph
 17 27?
 18 COLONEL McINTOSH: Chair, to my knowledge
 19 there was no Nyalas except from forward holding area 2
 20 which came around that way and they were behind the koppie.
 21 If you actually have a look at the photographs as well
 22 which we have provided, they show that the Nyalas were
 23 behind the koppie and not in the area that is now alleged
 24 by the Advocate.
 25 MR NTSEBEZA SC: Well, I hear what you

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1 say, Colonel, but what I'm saying to you is that a member
 2 of the negotiation team, Captain Greyling, who would have
 3 no reason to manufacture things, says in a sworn statement
 4 relating to the same incident, another Nyala blocked this
 5 striker from fleeing, which resulted in the striker turning
 6 around and with the assegai above his head storming the
 7 police officers who were chasing him, the police officer
 8 who was chasing him. Now this is clearly not only new
 9 material in a sworn statement by a member of your
 10 negotiation team, it gives a completely different dimension
 11 to what was happening there, and to the extent that you are
 12 identified by your own member, Captain Greyling, as having
 13 being the one who then applied first aid to Mr Mpumza, we
 14 are all talking, you are all talking about the same
 15 incident, except that – and this is the point I'm making –
 16 except that Captain Greyling tells us that this man was
 17 being chased and he was fleeing and he was being prevented.
 18 CHAIRPERSON: Let's take it step by step.
 19 You accept, I take it, that this is the incident that
 20 Captain Greyling is talking about, is the incident about
 21 which you also testified, which involved the death of Mr
 22 Mpumza. Is that right?
 23 COLONEL McINTOSH: That is correct,
 24 Chair.
 25 CHAIRPERSON: Right, so that point, that

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1 block we can tick. Now you accept that he wasn't five
 2 metres away, Mpumza, when he was shot dead, when he was
 3 shot. Is that right?
 4 COLONEL McINTOSH: That's correct, Chair,
 5 he wasn't five metres.
 6 CHAIRPERSON: He was actually quite close
 7 to Constable Sebayane, wasn't he?
 8 COLONEL McINTOSH: That is correct,
 9 Chair.
 10 CHAIRPERSON: How close?
 11 COLONEL McINTOSH: Chair, it was less
 12 than two metres. It was very, very close, and I also had
 13 the opportunity to study the post mortem with regards to
 14 the shots and most of the shots were in the legs and the,
 15 there was three shots in the torso. I've actually done
 16 that over the break as well, Chair.
 17 CHAIRPERSON: Yes, alright. Anyway, he
 18 was certainly significantly closer than five metres away.
 19 COLONEL McINTOSH: Definitely, Chair.
 20 CHAIRPERSON: Ja, and there's no question
 21 according to Captain Greyling of his falling. You remember
 22 the incident, both of them fell and Constable Sebayane went
 23 on firing even though he'd fallen down. That's not here at
 24 all.
 25 COLONEL McINTOSH: I don't see that in

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1 his statement either, Chair.

2 CHAIRPERSON: No, I don't see it either.

3 So what Mr Ntsebeza is putting to you is there are

4 significant differences between Captain Greyling's version

5 and your version. Is that correct?

6 COLONEL McINTOSH: There are differences,

7 Chair.

8 COMMISSIONER HEMRAJ: Colonel, it was

9 also Brigadier Calitz's evidence that the Nyalas were used

10 by driving into the crowd to disperse the crowd.

11 COLONEL McINTOSH: The Nyalas from

12 forward holding area 2 I did not see. I actually see on

13 slide 20, 247, which is part of the presentation given by

14 Mr Ntsebeza and you can see that the closest Nyala to that

15 point is in the western direction behind the rocks.

16 COMMISSIONER HEMRAJ: His evidence was in

17 relation to the Nyala that you were in and a couple of the

18 other Papa Nyalas, they were going to drive into the veld

19 to try and disperse.

20 COLONEL McINTOSH: That's correct, Chair.

21 If you have a look where the Papa vehicles are, the POPS

22 vehicles are in the northern area, or the north-western

23 area basically to the north of the indicated point on 247

24 where it's alleged that Mr Mpumza's body was –

25 COMMISSIONER HEMRAJ: And in the exercise

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1 of that did you see any of the strikers being blocked by a

2 Nyala?

3 COLONEL McINTOSH: Not by the Nyalas; the

4 people who were going through the veld were actually

5 cornered by the members who were already outside their

6 vehicles, those vehicles in those lines there, but I didn't

7 see anybody from – or the first time I'm actually seeing

8 that Nyala up there in the western area, that was from

9 forward holding area 2, that was the guys from TRT and they

10 had formed a line coming down.

11 COMMISSIONER HEMRAJ: Sorry to have

12 interrupted you, Mr Ntsebeza.

13 MR NTSEBEZA SC: Thank you, Commissioner.

14 Colonel, we now know what a member of your team says about

15 the event and we will argue, and I would like you to

16 comment in relation thereto, we'll argue that in the

17 circumstances, to the extent that Mr Mpumza was charging

18 the police officers it was clearly meant in self-defence to

19 avoid being trapped between four police officers who were

20 chasing him, and a Nyala which tried to block his path.

21 What's your comment to that?

22 COLONEL McINTOSH: Chair, I did not see

23 the Nyala. The fact that Mr Mpumza attacked the police

24 officer is what I can say is not self-defence, Chair.

25 MR NTSEBEZA SC: Captain Greyling would

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1 have no motive, you agree, to lie about this?

2 COLONEL McINTOSH: As I have no motive

3 either, Chair.

4 MR NTSEBEZA SC: Well, I don't know. I'm

5 not so sure, having heard you, but that's what we'll argue.

6 And indeed we will argue, and I would like to get your

7 comment here, that what Captain Greyling says is in fact

8 more closer to the correct version of what happened there

9 than anything that you have said. Do you want to comment –

10 CHAIRPERSON: I think that question is a

11 little bit vague. I mean you've surely got to indicate to

12 him in what respects it's closer to the version that the

13 witness is telling.

14 MR NTSEBEZA SC: Well, Mr Chairman, thank

15 you. One is always conscious of the clock ticking. (1),

16 Mr Mpumza was fleeing. He was not being the one who was

17 the aggressor. He was fleeing and he was cornered. He'd

18 been chased and he was cornered. You will disagree with

19 that, will you?

20 COLONEL McINTOSH: Chair, I would hazard

21 to say no, I don't agree with that due to the fact I am

22 quite aware that he was informed to go down and that they

23 were going to arrest him. So he knew that his arrest was

24 imminent, so an attack on a police officer would then also

25 still be unlawful.

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1 MR NTSEBEZA SC: The more –

2 CHAIRPERSON: We've got to work out,

3 we've got to know what the facts are before we can

4 determine whether the conduct complained of was lawful or

5 unlawful. At the moment we're trying to find out what the

6 facts were and there does appear to be something in the

7 nature of a conflict, but if you look at 247 of L that you

8 referred to, one sees that there – it's the yellow arrow,

9 isn't it? This seems to indicate that what happened was

10 that Mr Mpumza ran out from the bush in essentially a

11 north-easterly direction. He then according to the

12 photograph, the person who put things on the photograph, he

13 came under fire or some kind of attention he didn't like

14 from the NIU people who were approaching from the east and

15 he turned around and then ran in basically a westerly

16 direction. That's what is said in exhibit L. Now are you

17 able to confirm that that's what happened, or do you say

18 something else happened?

19 COLONEL McINTOSH: Chair, the fact that

20 he did turn around and went back towards to the western

21 direction did happen. Then he turned around again and went

22 back to the eastern direction, because remember there was

23 also a line of TRT members coming from the western

24 direction from FHA, forward holding area 2, which I'm now

25 aware of and I also see like I say the Nyala just

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1 underneath the western, but he went back that way and then
2 he turned around and came back towards Sebayane.
3 CHAIRPERSON: You were at Roots, weren't
4 you?
5 COLONEL McINTOSH: I was, Chair.
6 CHAIRPERSON: Did you take part in the
7 breakaway group that was considering what happened at scene
8 2 where Mr Mpumza was killed?
9 COLONEL McINTOSH: Chair, I was in Cape
10 Town at that time at the High Court.
11 CHAIRPERSON: So you provided no inputs
12 at Roots as to what happened when Mr Mpumza died?
13 COLONEL McINTOSH: When I did come back I
14 informed them that I tried to do CPR on Mr Mpumza and that
15 he'd run into the guys from the TRT and actually attacked
16 Sebayane and I did witness that taking place.
17 CHAIRPERSON: Before L was finalised you
18 were able to provide your inputs?
19 COLONEL McINTOSH: That's correct, but
20 the slides were already set up with that in mind already,
21 but like I said –
22 CHAIRPERSON: If you had put a different
23 light on it they could have been changed, surely. They
24 weren't set up in indelible ink, were they?
25 COLONEL McINTOSH: No, they weren't,

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1 Chair. I gave my feedback with regards to how, what had
2 happened to Mr Mpumza, that he had been shot by Sebayane in
3 the area more or less where it's indicated, but I don't
4 agree with the exact point where this is now on the map, as
5 they showed me now.
6 COMMISSIONER HEMRAJ: Colonel, in the
7 light of the fact that you've had a look at the PM report
8 more recently than I have, and I don't have it in front of
9 me, is there any indication on the report that the entrance
10 wounds were caused at close quarters?
11 COLONEL McINTOSH: Chair, it says it was,
12 the injuries were caused by high-velocity rounds, high-
13 velocity injuries, but like I say in the legs and in the,
14 one in the sternum with regards to 9-mil. The rest seem to
15 be R5 rounds.
16 COMMISSIONER HEMRAJ: Ja, the question
17 was is there any indication on the report that they were
18 caused at close quarters?
19 COLONEL McINTOSH: Chair, there was
20 nothing said with regards to the marks on the legs and so
21 forth. I did not actually check what it said about the
22 clothing.
23 COMMISSIONER HEMRAJ: Can we have any
24 assistance on that? Does anyone know?
25 MR NTSEBEZA SC: Well Commissioner, the

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1 post mortem report is there. It's objective and then it
2 says what it says. Certainly we put to the witness
3 yesterday that the post mortem report clearly doesn't say
4 what he says it says.
5 CHAIRPERSON: We'll look at the post
6 mortem reports in due course.
7 MR NTSEBEZA SC: Mr Chairman, for the
8 record, and I'm sure Colonel will have noticed this when he
9 was looking at the presentation, you will see that the
10 position of where Mr Mpumza's body was found, as depicted
11 in Exhibit L.
12 [09:26] And especially in slide 247 is disputed, the
13 scenario I'm not going to be able to go into with you but I
14 just want the record to reflect that it is disputed and you
15 saw that, Colonel, that's just what I want to – you saw
16 that we are disputing the correctness of the positioning of
17 Mr Mpumza's body in exhibit L?
18 COLONEL McINTOSH: I do agree with that,
19 Chair.
20 MR NTSEBEZA SC: Thank you very much.
21 Just one last aspect that I want to deal with, Mr Chairman,
22 it will be dealt with only in two minutes. It's in
23 connection with what you have in your statement to the
24 IPID. It was referred to – Mr Chairman, I just don't know
25 what exhibit number it is but it was the IPID statement.

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1 Your statement to the IPID, you have that, don't you?
2 COLONEL McINTOSH: Yes, I do.
3 MR NTSEBEZA SC: Yes. Now paragraph 7 -
4 I'm told, is it GGG5? GGG5, do you have the typed version?
5 I think you, if you could get the typed version of GGG5.
6 Mr Chairman, I'm just wanting to make sure that our
7 reference is correct. I'm looking for a sentence that
8 starts with "Whilst we were talking to them, a group of
9 men" –
10 CHAIRPERSON: Whilst?
11 MR NTSEBEZA SC: "Whilst we were talking
12 to" –
13 CHAIRPERSON: "Whilst we were talking" –
14 MR NTSEBEZA SC: "Whilst we were talking
15 to them a group of men on the mountain attacked and killed
16 a male person behind the koppie who was walking past the
17 koppie."
18 CHAIRPERSON: In the first statement
19 HHH14, that –
20 MR NTSEBEZA SC: Oh, I'm told it's the
21 new handwritten statement, IPID.
22 CHAIRPERSON: Let's look at all the
23 versions. In HHH14 the information about the body to the
24 left of the position at the back of the koppie is in
25 paragraph 8 but then the section that you're looking for

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1 you say –

2 MR NTSEBEZA SC: I saw that –

3 CHAIRPERSON: - is in the handwritten

4 statement which is the top actually of, it's not actually

5 paragraph 5, it appears to be page 5. It's a continuation

6 of paragraph 7 which starts on page 4 and the very top of

7 page 5 after the witness has said that the police told Noki

8 and his colleagues that they guaranteed their safety –

9 guaranteed, in other words I take it that means the

10 strikers' safety – it then continues, "Whilst we were

11 talking to them a group of men on the mountain attacked and

12 killed a male person behind the koppie who was walking past

13 the koppie." That's the passage you're referring to.

14 MR NTSEBEZA SC: Yes, Mr Chairman.

15 CHAIRPERSON: HHH14.

16 MR NTSEBEZA SC: Now maybe with what we

17 have on the screen, Mr Chairman –

18 CHAIRPERSON: A different complexion is

19 put on paragraph 8 in exhibit HHH14. Perhaps the witness

20 might like to explain the difference to us.

21 MR NTSEBEZA SC: Yes, Mr Chairman, but

22 can I just ask him whether the killing he's referring to –

23 I think it's common cause but this is the killing of Mr

24 Twala, the man who was found with the skull of a beast on

25 his chest. You are referring to that, are you not,

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1 Colonel?

2 COLONEL McINTOSH: That is correct,

3 Chair, that refers to Mr Twala.

4 MR NTSEBEZA SC: Yes. Now, the only

5 thing I really want to put to you is that that statement is

6 written as if it was a contemporaneous account. In other

7 words you say whilst whatever you were talking, Mr Twala

8 was killed. Do you accept that? It does not say you were

9 informed or were told that Mr Twala had been killed. One

10 would get the impression there that you are talking about

11 events in relation to which we have got first-hand

12 knowledge, or am I not understanding the English language

13 properly?

14 COLONEL McINTOSH: No, that is correct,

15 Chair. That was only informed to us, it was not witnessed

16 by myself.

17 MR NTSEBEZA SC: But you don't say that

18 in the statement. You don't say we were informed, you are

19 giving a hearsay account. You create an impression or

20 anyone who was reading that would get the impression that

21 you actually witnessed the killing of Mr Twala, would they

22 not?

23 COLONEL McINTOSH: I did not witness the

24 attack or the death of Mr Twala. It was what was informed

25 to the Nyala, so it is actually hearsay, Chair.

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1 CHAIRPERSON: No, let's assume it's

2 hearsay for the moment. I take it, it obviously is and

3 what I said to you yesterday – no, not yesterday, the day

4 before about putting hearsay in your statements applies but

5 we won't repeat it – but the way it reads is, it sounds as

6 if the killing took place whilst you were talking. There's

7 an element of contemporaneousness about it. "Whilst we

8 were talking to them a group of the men on the mountain

9 attacked and killed a male person." Now you were told,

10 according to what appears in your other statement, that a

11 body had been seen. Let's have a look at that. It's the

12 paragraph that I had put to you earlier, it's paragraph 8

13 that's right. Now in that paragraph – this is exhibit

14 HHH14 – "At about 17:03 we received information," that's

15 just after 5 o'clock, "we received information that there

16 was a body to the left of our position at the back of the

17 koppie. The investigation and crime scene personnel were

18 required at the scene – to fly in a helicopter" and then

19 you go on to say what then happened but certainly you

20 weren't informed that this happened while you were talking

21 to the people, were you?

22 COLONEL McINTOSH: It had been informed

23 to the Nyala that there was now a body to the left –

24 CHAIRPERSON: Yes.

25 COLONEL McINTOSH: - which had taken

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1 place.

2 CHAIRPERSON: It had happened, someone

3 had been killed and there was – Mr Twala in fact had been

4 killed and his body was behind the koppie, right, but you

5 were not told that this happened contemporaneously with

6 your discussions with the strikers' negotiators as you say

7 in your handwritten statement. That's correct, isn't it?

8 COLONEL McINTOSH: That's correct, Chair.

9 CHAIRPERSON: Why did you put it that way

10 in your handwritten statement, creating the impression not

11 only that you knew it from your own knowledge and it

12 wasn't hearsay but also that this incident must have

13 happened as you were talking to the strikers' negotiators?

14 Why did you do that?

15 COLONEL McINTOSH: Chair, the body was

16 only discovered there after 5 o'clock or just before 5

17 o'clock and it wasn't there when we moved into place in the

18 morning. So I'm not sure why I put it into the statement

19 as such but in the typed version I did rectify that, Chair.

20 CHAIRPERSON: Where was the body exactly?

21 COLONEL McINTOSH: Just behind the koppie

22 between the power station and the koppie on the left-hand

23 side of the koppie, basically to the southern side, the

24 south-eastern side just between the power station and the

25 koppie itself.

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1 CHAIRPERSON: And [microphone off,
2 inaudible] – passed that part earlier that day?
3 COLONEL McINTOSH: The Nyalas had passed
4 that, two of the Nyalas had passed that way to come in
5 earlier.
6 CHAIRPERSON: Did your Nyala pass that
7 way?
8 COLONEL McINTOSH: No, we came in from
9 the other side.
10 CHAIRPERSON: So you don't even know from
11 your own knowledge whether the body was there earlier or
12 not when you arrived on the scene?
13 COLONEL McINTOSH: When we arrived –
14 CHAIRPERSON: More hearsay. You were
15 told by other people in the other Nyalas that the body
16 hadn't been there earlier.
17 COLONEL McINTOSH: That's correct, Chair.
18 CHAIRPERSON: Ja, I see. Carry on, Mr
19 Ntsebeza.
20 MR NTSEBEZA SC: Thank you very much, Mr
21 Chairman. Actually this is exactly the point. I don't
22 want to remind you about what the Chairman said about the
23 way you give your evidence and how you, on Tuesday – but
24 then we put to you, this, that we will argue that when you
25 put hearsay account in the manner that we have now

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1 demonstrated you do and you pass it off as if it was first
2 knowledge on your part, the aim is to mislead the
3 Commission and this is what we'll argue and the aim is
4 always to deceive. It happens all the time with witnesses
5 give statements like you do and who testify as you do.
6 What do you say to that?
7 COLONEL McINTOSH: Chair, I –
8 MR NTSEBEZA SC: You are intending to
9 mislead the Commission and you are intending to deceive the
10 Commission.
11 COLONEL McINTOSH: Under no
12 circumstances, Chair.
13 MR NTSEBEZA SC: I didn't actually grasp
14 your – what is your response?
15 COLONEL McINTOSH: I said I do not agree
16 with your statement, Mr Ntsebeza, Chair.
17 MR NTSEBEZA SC: At the very least we
18 will argue that it has that effect. Do you want to make a
19 comment relevant to that? It has the effect of misleading,
20 it has the effect of deceiving and it happens,
21 incidentally, when witnesses who know that they are the
22 only witnesses who can testify to the truthfulness of how
23 the events occurred, when they want to mislead they conduct
24 themselves in the manner in which you've done.
25 CHAIRPERSON: What comment do you have to

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1 make about that proposition?
2 COLONEL McINTOSH: Mr Chair, I do not
3 agree with Mr Ntsebeza.
4 CHAIRPERSON: You realise, of course,
5 that if you hadn't been cross-examined, those people who
6 read your IPID statement would have thought that this
7 killing took place at some stage after 3:20 in the
8 afternoon when you arrived at the scene, whilst you were
9 talking to the strikers' negotiators.
10 COLONEL McINTOSH: That's correct, Chair,
11 but like I did say, the original statement, the statement
12 HHH also rectifies that situation as well.
13 CHAIRPERSON: Oh yes, yes, no but that
14 presupposes that the person who reads your IPID statement
15 also has the advantage of reading HHH14 but when you made
16 the IPID statement, had HHH14 been made yet? HHH14 isn't
17 dated, I don't think.
18 COLONEL McINTOSH: HHH14 was made on the
19 same day, later the same day, Chair.
20 CHAIRPERSON: Yes, yes, it doesn't say
21 that but that's your evidence and I accept that that's
22 correct but they were designed for different dockets,
23 weren't they? I mean why – you made two statements. One
24 is intended for IPID, right, that is the handwritten one,
25 is that correct?

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1 COLONEL McINTOSH: Chair, at that time we
2 did not know that the docket was going to go to IPID
3 either.
4 CHAIRPERSON: But why did you make then
5 two statements covering the same ground on the same
6 afternoon?
7 COLONEL McINTOSH: Chair, due to the fact
8 that after I'd finished with General Johnson I was actually
9 already in the process to start typing the original
10 statement, which I'd done by myself and then I completed it
11 afterwards as well.
12 CHAIRPERSON: They were intended for
13 different dockets surely, weren't they? You're typing your
14 statement, right, you then stop and you're interviewed by
15 Major-General Johnson, is that right, and they're clearly
16 intended for different dockets. If you look at HHH14 it's
17 headed "Case number CAS138/08/2012" and if you look at TTT5
18 you will see that that is for Marikana CAS134/08/2012.
19 COLONEL McINTOSH: Okay, I see that,
20 Chair.
21 CHAIRPERSON: So they were clearly
22 intended for different dockets, weren't they?
23 COLONEL McINTOSH: All these dockets
24 would still remain together, Chair. If they'd stayed
25 together for the prosecution purposes, they'd stay

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1 together.

2 CHAIRPERSON: Ja well, that may be so but

3 it's not normally the case that you have to see what a

4 statement in one docket actually means by looking at the

5 statement in another docket and it might be different

6 prosecutors and so on handling the matter so we won't have

7 to go into that – the fact of the matter is you made two

8 statements on the same afternoon, the one contains this

9 direct statement which would lead the reader of that

10 statement to believe that this happens after 3:20 and that

11 you were able to give direct evidence about it and the

12 other statements tells a different story. Now can you

13 explain why you did that? I've never heard of that ever

14 before.

15 COLONEL McINTOSH: No, Chair, like I say

16 I finished the other statement after that and then handed

17 it in as well, which has now been kept ever since and I've

18 never changed a statement since.

19 CHAIRPERSON: Well, that's the

20 explanation, I accept it. That's all you can say on the

21 point. Yes, Mr Ntsebeza?

22 MR NTSEBEZA SC: Mr Chairman, can I just,

23 on privilege, put just three questions to the Colonel?

24 Colonel, I'm not going to go through the presentation. I

25 indicated to the Chair that we'll canvass that with some

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1 other witness but in slides 12 to 20 which I'm sure you

2 looked at where we deal with the placement of the weapons

3 we have seen what you say regarding the placement of the

4 weapons in slides 12 to 20 and I believe there is also an

5 additional presentation. The question here is, are you in

6 a position to dispute any of the –

7 COLONEL McINTOSH: Chair, no, I'm not in

8 a position to dispute any of that.

9 MR NTSEBEZA SC: We will – you see I

10 wanted to put this to you because, and I want to give you

11 the benefit of making a comment in regard thereto because

12 we'll argue that those weapons seen in later LCRC photos

13 must have been placed there. Do you want to make any

14 comment on that?

15 COLONEL McINTOSH: Chair, no, I can't

16 make a comment on that. The weapons that were there, I

17 cannot say if it's the same weapons but I didn't move any

18 weapons and I didn't see anybody move any weapons when I

19 was there, until I left.

20 MR NTSEBEZA SC: Mr Chairman, those are

21 the questions to the witness.

22 CHAIRPERSON: Thank you.

23 MR NTSEBEZA SC: Thank you for the

24 addition al time.

25 CHAIRPERSON: Thank you. Mr Bizos, I

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1 think you're next. Half an hour, Mr Bizos.

2 CROSS-EXAMINATION BY MR BIZOS SC:

3 [Microphone off, inaudible] document containing your

4 curriculum vitae.

5 COLONEL McINTOSH: Can you just say that

6 again, sir, I could not hear you?

7 MR BIZOS SC: You filed exhibit TTT2,

8 your curriculum vitae.

9 COLONEL McINTOSH: That's correct, Chair.

10 MR BIZOS SC: Yes. Now that and the

11 introductory paragraphs of the various other statements

12 that you have made appear to be to the effect that you are

13 a person who is particularly trained in order to deal with

14 serious crimes as a hostage operator. Would you agree with

15 that?

16 COLONEL McINTOSH: Correct, Chair.

17 MR BIZOS SC: I looked in vain throughout

18 these documents to find you claiming any expertise in

19 relation to the control and management of labour disputes.

20 [09:46] COLONEL McINTOSH: That's correct, Chair.

21 I did not mention that because I'm not an expert with

22 regards to the labour relations.

23 MR BIZOS SC: You are not an expert in

24 labour relations. Do you agree that some knowledge of

25 labour relations is necessary in order to be an effective

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1 negotiator?

2 COLONEL McINTOSH: I do not necessarily

3 have to agree with that, Sir.

4 MR BIZOS SC: I'm sorry I didn't hear

5 you.

6 COLONEL McINTOSH: I don't necessarily

7 agree with that, Chair.

8 MR BIZOS SC: You don't agree. So you

9 think that you can be an effective negotiator without any

10 knowledge of what are the problems that one may have to

11 face between employer and employee.

12 COLONEL McINTOSH: As I said I don't

13 necessarily have, agree with you there, Mr Bizos.

14 MR BIZOS SC: Not necessarily, why don't

15 you agree? Don't you think that it is essential that you

16 should know something about the relationship between

17 employer and employee and what the rights of the one and

18 what the rights of the other or what the expectations of

19 the one and the expectations of the other are before you

20 can become an effective negotiator?

21 COLONEL McINTOSH: If I remember

22 correctly, Chair, you asked if you had to be an expert in

23 that field. I've got a basic knowledge with regards to

24 that due to the fact that we also have a labour relations

25 in the police and with regards to the other strikes and the

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1 public violence cases that we work with as well.
 2 MR BIZOS SC: Now I don't know what the
 3 expertise of a hostage negotiator may be. But if that is
 4 your speciality were there any hostages involved in this
 5 dispute?
 6 COLONEL McINTOSH: Chair, we are hostage
 7 and crisis negotiators. We don't just negotiate for
 8 hostages, we also negotiate for other reasons as well.
 9 MR BIZOS SC: What is your answer to the
 10 question. Were there any hostages involved?
 11 COLONEL McINTOSH: There were no hostages
 12 involved, Chair. However like I've just said –
 13 MR BIZOS SC: The answer is no.
 14 COLONEL McINTOSH: The answer is no. But
 15 –
 16 MR BIZOS SC: Thank you, Colonel.
 17 CHAIRPERSON: May I say something to
 18 you. When you're asked a question just answer it. It's
 19 never wise for a witness to think what the next question is
 20 going to be and try to answer to in advance. It's never
 21 sensible to give extra material apart from what you've been
 22 asked to give. It just prolongs the proceedings
 23 unnecessarily and causes difficulty when the record is read
 24 later. So if you're asked, where the answers it seems your
 25 answer is either yes or no. You don't have to then add on

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1 a whole lot of extra material which you think may deal with
 2 the next question Mr Bizos is going to ask. If something
 3 is left in the air which requires further clarification
 4 counsel who led you initially would be able to deal with it
 5 in re-examination. So please bear that in mind.
 6 COLONEL McINTOSH: Thank you, Chair.
 7 MR BIZOS SC: Thank you, Mr Chair. Now
 8 who was responsible for your appointment as the head of the
 9 negotiating team?
 10 COLONEL McINTOSH: Sir, we work in teams.
 11 We don't have, we've got a primary –
 12 CHAIRPERSON: No, no, that's not the
 13 answer to the question. Do you know who was responsible,
 14 you weren't stationed in Marikana or Rustenburg were you,
 15 you weren't even in the North West Province. You were
 16 brought there especially to deal with the negotiations
 17 weren't you?
 18 COLONEL McINTOSH: That's correct, Chair.
 19 CHAIRPERSON: Now somebody decided that
 20 you were the man, decided that you must be brought there to
 21 perform that function, isn't that right? You either know
 22 who that person was or you don't. Did you know who it was?
 23 COLONEL McINTOSH: The request came from
 24 the North West Province for assistance, Chair.
 25 CHAIRPERSON: So they didn't say please

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1 send us Colonel McIntosh did they?
 2 COLONEL McINTOSH: No, they requested
 3 assistance from Gauteng.
 4 CHAIRPERSON: And somebody said the man
 5 to go is McIntosh and sent you, isn't that right?
 6 COLONEL McINTOSH: Chair, the request was
 7 sent to all available members to go and assist.
 8 CHAIRPERSON: So who decided to send
 9 you?
 10 COLONEL McINTOSH: It came from the
 11 Gauteng coordinator Colonel Thompson.
 12 CHAIRPERSON: Alright. So Colonel
 13 Thompson is the man who decided to send you, that's the
 14 answer to the question you were asked. Do me a favour,
 15 just answer the questions.
 16 MR BIZOS SC: Before you undertook this
 17 task upon your appointment did you know who was in overall
 18 charge of the operation?
 19 COLONEL McINTOSH: I was informed that it
 20 would be General Mpmembe assisted by General Annandale.
 21 MR BIZOS SC: And did you know who had
 22 drawn up the plan?
 23 COLONEL McINTOSH: I was informed that
 24 Colonel Scott was drafting the plan.
 25 MR BIZOS SC: Did you speak to any of the

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1 senior officers, General Annandale, Brigadier Calitz or
 2 Colonel Scott about what was expected of you?
 3 COLONEL McINTOSH: We were briefed with
 4 regards to that by Brigadier Calitz and Brigadier Fritz.
 5 MR BIZOS SC: What did they tell you?
 6 What were you supposed to do?
 7 COLONEL McINTOSH: We were supposed to
 8 find a solution to reduce the possibility and deescalate
 9 the possibility of violence with regards to the
 10 negotiations. To try and get the party to start to talk
 11 instead of resorting to any other methods of violence and
 12 so forth and to deescalate the violence. We were also
 13 informed about the run-up to the situation where we found
 14 ourselves including the 13th where the police officers and
 15 the members of the strikers were involved.
 16 MR BIZOS SC: Yes. Now you knew that
 17 there was a strike on and you were asked to try and solve
 18 that problem, is that right?
 19 COLONEL McINTOSH: That is correct,
 20 Chair.
 21 MR BIZOS SC: Now were you told by them
 22 or anyone else that the employer was not prepared to
 23 negotiate unless the workers came back to work?
 24 COLONEL McINTOSH: That was informed at a
 25 meeting on the 15th with the members, with the management or

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1 the management tools of Lonmin, it was informed to us with
 2 regards to that where General Mpmembe, Captain Moolman was
 3 also present.
 4 MR BIZOS SC: Now was it made clear to
 5 you that the only way in which the employer would come to
 6 terms with the employees was if the employees came back to
 7 work as a precondition to any meaningful negotiation?
 8 COLONEL McINTOSH: Can you repeat that,
 9 Sir.
 10 MR BIZOS SC: Did anyone tell you that
 11 the employer was not prepared to enter into any meaningful
 12 negotiation to settle the dispute unless the workers came
 13 back to work.
 14 COLONEL McINTOSH: That, as I said was
 15 informed to us on the meeting on the 15th when we met with
 16 the management of Lonmin. We were informed on the 14th that
 17 it was an unprotected strike.
 18 MR BIZOS SC: So that what you had to go
 19 and tell the workers we must settle this, that it will,
 20 that it will only be settled if you return to work. Did
 21 you say that?
 22 COLONEL McINTOSH: We did not say that on
 23 the 14th. We informed the workers with regards to the fact
 24 on the 15th that the management would be willing to
 25 negotiate if they would return to work.

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1 MR BIZOS SC: And that there was no
 2 possibility of any settlement until they returned to work?
 3 COLONEL McINTOSH: We did make the
 4 suggestion that they could send a small delegation, we
 5 could possibly arrange to see the management of Lonmin to
 6 discuss it with them.
 7 MR BIZOS SC: Did you tell the five
 8 people in front of the Nyala practically on their knees
 9 that there would be no settlement unless they return to
 10 work. Did you tell them that?
 11 COLONEL McINTOSH: That was only given to
 12 them on the 15th where we informed them that the management
 13 said that they would not be willing to negotiate until they
 14 returned to work.
 15 MR BIZOS SC: Now you know for a, to be a
 16 good negotiator you have to show independence, would you
 17 agree with that?
 18 COLONEL McINTOSH: Yes, Chair.
 19 MR BIZOS SC: Yes. Now one of the
 20 weapons in inverted commas, that workers have is to
 21 withdraw from work in order to bring about a just solution
 22 to the problem by withdrawing their work. Here you are as
 23 the chief negotiator telling the workers that if they want
 24 a settlement they will have to forego the one weapon that
 25 they have in order to bring the employer to agree to an

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1 increase on their wages. That was a precondition that you
 2 communicated to the people that you were supposed to be
 3 negotiating with?
 4 COLONEL McINTOSH: Chair, we were not
 5 there to negotiate with regards to the labour dispute. We
 6 were there to negotiate the fact that there should be peace
 7 and there should be, things should return to normal, that
 8 there be no further violence and to ensure safety and
 9 security. We do not negotiate on behalf of labour
 10 organisations or with regards to employees, employers. We
 11 could only give back the feedback that they requested from
 12 the previous day which we did.
 13 MR BIZOS SC: Do you agree that your
 14 statement was, must have been understood that there would
 15 be no settlement, that you as negotiator couldn't do
 16 anything that would benefit them unless they returned to
 17 work?
 18 COLONEL McINTOSH: Chair, the entire time
 19 that we spoke with the striking party we informed them that
 20 we cannot negotiate based on labour issues but only on the
 21 safety and security aspects. The request they made we gave
 22 them feedback on the request that they made and the
 23 questions that they had. The feedback was given to them as
 24 such. We kept on reiterating that we cannot negotiate with
 25 regards to anything with regards to the labour related

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1 issues. That is something that they had to negotiate with
 2 Lonmin.
 3 MR BIZOS SC: Would you agree that an
 4 independent, wise negotiator would have told the person
 5 that appointed you this is an impossibility, I can't
 6 negotiate with the workers if I am, if you want me to tell
 7 you to tell them that there's nothing that can be done in
 8 their favour until they gave up their right to strike and
 9 they return to work.
 10 MR VAN AS: Sorry, Mr Chair, Mr Bizos,
 11 will remember they didn't have a right to strike at that
 12 stage. The labour courts had already –
 13 CHAIRPERSON: Mr Van As, that's not an
 14 appropriate objection. The question has been put. When
 15 you get a chance to present the case for Lonmin these
 16 matters insofar as they may not be clear already to the
 17 commission can be clarified. I think Mr Bizos, we must let
 18 Mr Bizos continue without interruption. The fact that Mr
 19 Bizos would like to take aboard what you put to me and
 20 reformulate his question.
 21 MR BIZOS SC: Yes. A negotiator, as a
 22 negotiator you were supposed to facilitate a settlement of
 23 the dispute as it was. Whether it was a lawful strike or
 24 an unlawful strike or not, could not have made any
 25 difference to your function as the chief negotiator. You

<p style="text-align: right;">Page 28838</p> <p>1 were there to solve an existing problem and you needed to 2 be impartial, wise, patient and not call on one side to 3 capitulate in order that there may be a settlement? 4 COLONEL McINTOSH: Mr Chair, as I've said 5 before the purpose of the negotiators being there was not 6 to negotiate a settlement between the workers and the 7 employers. It had to do with the safety and security and 8 the disarmament of the strikers with regards to the legal 9 gathering with regards to the weapons, the dangerous 10 weapons in their possession and to ensure safety and 11 security. Not to facilitate, we will not get involved in 12 labour disputes. That is a cause for the labour courts and 13 not for the police. We are there to ensure safety and 14 security and that was our briefing, that we had to find a 15 solution for the violence and to reduce the amount of 16 violence taking place and to ask the people to disarm. 17 MR BIZOS SC: So you were merely a 18 messenger not a negotiator. 19 COLONEL McINTOSH: We were there to 20 negotiate, to have the people surrender their weapons and 21 then things could go normally. 22 CHAIRPERSON: I take it from what you're 23 saying is there were two disputes. The one was the dispute 24 between Lonmin and the strikers about their wages. You 25 weren't concerned with that dispute, you weren't</p>	<p style="text-align: right;">Page 28840</p> <p>1 COLONEL McINTOSH: That's correct. The 2 questions that we were asked or the requests that were made 3 by the strikers we gave to the mine and the answers we got 4 back from the mine such as they wanted to see the mine, the 5 mine management and they didn't agree to that. That we 6 gave back as well, Chair. 7 MR BIZOS SC: You were really carrying 8 out the briefing from General Annandale who says in 9 paragraph 8 – 10 CHAIRPERSON: Major General Annandale. 11 MR BIZOS SC: Major General Annandale, 12 paragraph 8 of GGG1, paragraph 8. The negotiators were 13 tasked to encourage the protestors to return to their 14 working station, that was the primary purpose. 15 COLONEL McINTOSH: Chair, the briefing 16 that we had received was that they had to disarm and that 17 is the briefing that we concluded with. 18 CHAIRPERSON: What General Annandale 19 says and you, by the way you did according to both your 20 statements, the IPID one and HHH14 you were briefed only by 21 Brigadiers Calitz and Fritz but also by General Annandale 22 as well. You say that in both those statements. What 23 General Annandale says here is that he describes your task 24 as he saw it and I presume he communicated it to you, or as 25 it was communicated to you by Brigadiers Calitz and Fritz,</p>
<p style="text-align: right;">Page 28839</p> <p>1 endeavouring to settle it, that's what you say. 2 COLONEL McINTOSH: That's correct. 3 CHAIRPERSON: The other dispute was 4 between the police and the strikers, they were in 5 possession of dangerous weapons and they were purporting to 6 exercise their right to assemble but the constitutional 7 right to assemble says you can, you have the right to 8 assemble without weapons. 9 COLONEL McINTOSH: That's correct, Chair. 10 CHAIRPERSON: That was the dispute you 11 were endeavouring to settle, is that correct? 12 COLONEL McINTOSH: That's correct, Chair. 13 CHAIRPERSON: As far as the wage dispute 14 was concerned you put, you did act to some extent as a 15 messenger which is the proper thing for you to do, you 16 communicated to Lonmin what the strikers had said and you 17 communicated back to the strikers what Lonmin's answer was, 18 that's correct? 19 COLONEL McINTOSH: That's correct, Chair. 20 CHAIRPERSON: But in a sense you were 21 wearing two hats. Your main hat was as a negotiator in 22 respect of this, what one can almost call a law and order 23 dispute and as far as there was a labour dispute there you 24 were carrying messages to and fro to some extent, is that 25 correct isn't it?</p>	<p style="text-align: right;">Page 28841</p> <p>1 what he says is your expected role was the following. You 2 were tasked to establish a rapport with the lead element of 3 the striking group with the intent to creating an 4 opportunity for the protestors to end the situation 5 peacefully by them surrendering their weapons. So that's 6 the law and order dispute aspect that you and I talked 7 about, isn't that right? 8 COLONEL McINTOSH: That's correct, Chair. 9 CHAIRPERSON: Right, then Brigadier, 10 sorry then Major General Annandale goes on to say "the 11 negotiators were tasked to encourage the protestors to 12 return to their working stations whereafter the mine 13 management would engage with negotiations about labour 14 related matters. It was made clear that the hostage 15 negotiators would not negotiate on behalf of Lonmin as the 16 employer". 17 [10:05] But is it correct that you were tasked or briefed 18 by Brigadiers Calitz and Fritz, not only to endeavour to 19 bring an end to the situation of weapons being possessed 20 and used and brandished about by the strikers at the koppie 21 but also to encourage the protesters to, as he put it, to 22 return to their working stations. 23 COLONEL McINTOSH: At that time when 24 being briefed properly by Brigadier Calitz, it had to do 25 with the SAPS's role with regard to safety and security.</p>

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1 Only after the 15th when that request was made or the
 2 request was made from the strikers, Chair, that the meeting
 3 had been held with Lonmin, the request or the answer from
 4 Lonmin was that they had to return to work before they
 5 would negotiate further, that was then given back to them.
 6 That was the only time it was given back to them, Chair.
 7 CHAIRPERSON: Is your answer then to the
 8 question I asked you, is, if I'm correctly understanding
 9 your answer, is that you were not tasked to encourage the
 10 protesters to return to their working stations? This is in
 11 the context of the task in respect of which you received a
 12 briefing - task or perhaps tasks - in respect of which you
 13 received a briefing from Brigadiers Calitz and Fritz, is
 14 that correct?
 15 COLONEL McINTOSH: That's correct, Chair.
 16 We were briefed with regard to the surrendering of weapons
 17 and bring it back to a stabilised situation, Chair.
 18 MR MPOFU: Chairperson, I'm sorry to
 19 interrupt. Just for me to understand and follow this,
 20 since the witness says it only happened the 15th, that
 21 approximately 10:15 on paragraph 8, can we just say what
 22 date -
 23 CHAIRPERSON: That was the 14th.
 24 MR MPOFU: 14th, thank you.
 25 CHAIRPERSON: The evidence of General

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1 Annandale was that on the morning of the 14th he telephoned
 2 the national co-ordinator for hostage negotiators,
 3 Lieutenant-Colonel Strydom, and he said please send, please
 4 deploy a team of negotiators which he then agreed to do and
 5 the negotiators under the command of the witness then
 6 arrived. That was all on the Tuesday.
 7 MR BIZOS SC: What you've told us you
 8 said, could you please explain what you said in HHH14
 9 paragraph 14, the middle of the paragraph?
 10 CHAIRPERSON: I don't think you - Mr
 11 Bizos, that's not an informative way of putting the
 12 question. I take it the passage you're referring to is,
 13 "The man with the green blanket, Mr Noki, insisted to speak
 14 to management of Lonmin mine and not to the police. We
 15 informed him the mine management doesn't want to talk to
 16 them" -
 17 MR BIZOS SC: That's the passage.
 18 CHAIRPERSON: - "before they put down
 19 their weapons and return to work. We also informed them
 20 the mine stated there was a two year wage agreement in
 21 place with all the unions and that the strike is
 22 unprotected but the mine will talk to the unions again when
 23 the workers lay down their weapons and return to their
 24 normal duties." That's the passage you're putting.
 25 MR BIZOS SC: Yes. The unions, and that

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1 the strikers - but the mine will talk to the unions again
 2 when the workers lay down their weapons and return to
 3 normal duties. This is the paragraph.
 4 COLONEL McINTOSH: Mr Chair, with regard
 5 to that, in my evidence in chief I did discuss that. The
 6 question had come or the request had come on the 14th from
 7 the strikers that they wanted the mine management to come
 8 and speak to them at the face, at the koppie. We gave it
 9 back and then we later, when we got back to the JOC, gave
 10 it through again and on the Wednesday morning we had a
 11 meeting, early morning meeting with General Mpembe and Adv
 12 Moolman and the people from Lonmin where this was
 13 reiterated, stating that they had this wage agreement and
 14 we went back and gave the feedback as was given to us that
 15 if they went back to work they would then re-negotiate with
 16 the workers. That is what weapons said there.
 17 MR BIZOS SC: Was it the business of the
 18 chief negotiator whether the gathering was legal or not?
 19 COLONEL McINTOSH: Yes, Chair.
 20 MR BIZOS SC: How? What could you do
 21 about that as a negotiator? Was it your business to say
 22 disperse?
 23 COLONEL McINTOSH: No, Chair. Our
 24 business was to form a rapport with the people and to
 25 request them to put down the weapons. The fact that the

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1 gathering was there is not illegal but the fact that they
 2 had the weapons in their possession was and we had to try
 3 and resolve that, Chair.
 4 MR BIZOS SC: Have a look at paragraph 7
 5 of exhibit HHH14. "Later I informed them that the SAPS
 6 want a solution to the problem" - the SAPS want a solution
 7 to the problem - "and that we want them to disperse
 8 peacefully as the gathering was illegal. We also requested
 9 them to leave their weapons on the koppie and that we will
 10 collect them when they left. I specifically informed them
 11 that the police do not want to fight with them or hurt them
 12 but we want a peaceful solution to the problem and that we
 13 guarantee their safety." Now for the chief negotiator,
 14 what did you offer them in return in relation to their main
 15 demand that they wanted an increase in salary?
 16 COLONEL McINTOSH: Chair, for the
 17 severalth time, we were not negotiating about salaries, we
 18 were negotiating about the safety with regard to everybody
 19 and to de-escalate the violence. We did give the feedback
 20 or the request back that they wanted with regard to they
 21 wanted to see the management but at that point we were
 22 negotiating for the safety and security in that area. And
 23 if one takes note on the 14th and the 15th there were no
 24 signs of violence that took place with regard to the times
 25 that negotiations were taking place except for the body

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1 that was found next to the koppie.
 2 MR BIZOS SC: Do you agree that a
 3 competent negotiator has to offer something in return for
 4 what the people are asking for? There has to be, if I may
 5 use the expression but I'm sure that you have heard it
 6 before, there has to be a quid pro quo.
 7 COLONEL McINTOSH: Chair –
 8 MR BIZOS SC: What did you offer them in
 9 relation to their main demand, we are gathering, whether it
 10 be lawful or not, because we want an increased wage. We'll
 11 come to the question of arms afterwards. What did you
 12 offer them in relation to that? What did you have, as a
 13 negotiator, to make it attractive for them to agree to your
 14 proposal?
 15 COLONEL McINTOSH: Chair, again, we were
 16 negotiating for the safety and security, not with regard to
 17 their demands with regard to labour. We offered them that
 18 everything would be safe, we could ensure their safety if
 19 they de-armed. That was what we were giving, the assurance
 20 that they would be safe. With regard to their other
 21 demands with regard to the - we informed them constantly
 22 that we were not there to negotiate with regard to the
 23 labour related issues but regarding the safety and security
 24 issues with regard to the weaponry and with regard to their
 25 own safety.

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1 MR BIZOS SC: Do you agree as a general
 2 statement that in order to be a successful negotiator you
 3 have to give something back in relation to the demands of
 4 the, one of the parties? Do you agree that that is an
 5 essential element in reaching a settlement?
 6 COLONEL McINTOSH: That is correct,
 7 Chair, and that's what we'd done. We ensured their safety
 8 and security if they would disarm.
 9 MR BIZOS SC: Wasn't their main demand,
 10 we want an increase in salary? And what did you offer them
 11 for what you wanted them to do? Nothing.
 12 COLONEL McINTOSH: Mr Chair, again, we
 13 offered them their safety and their security –
 14 MR BIZOS SC: You've told us –
 15 COLONEL McINTOSH: - by disarming –
 16 MR BIZOS SC: But nothing –
 17 COLONEL McINTOSH: We did not do anything
 18 with regard to the labour. We did not go to negotiate
 19 labour related issues.
 20 MR BIZOS SC: Yes. Well, let me put to
 21 you that it is quite apparent that whatever you may have
 22 done as a negotiator of hostage takers, what you did was,
 23 had no prospect of success whatsoever without some promise
 24 that their main demand would be either partly or wholly
 25 agreed to and that your negotiation was completely foreign

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1 to labour matters and foreign to the expectations of the
 2 people who are on strike.
 3 COLONEL McINTOSH: Chair, with regards to
 4 that I would like to say what we did bring into place was
 5 we ensured safety and security. We were not there as
 6 labour brokers or to try and resolve a labour issue. It's
 7 their right to strike, their right to safety and security
 8 is a police issue which we did discuss. We also went
 9 further and brought the union representatives to the face
 10 as well to discuss with their members as well with the
 11 purpose of trying to disarm and explaining the situation
 12 from a labour point of view, which they would do, not from
 13 the police's point of view.
 14 MR BIZOS SC: What we will submit at the
 15 end of it is that you were the wrong choice as a
 16 negotiator, you had no experience whatsoever in negotiating
 17 wage disputes between employer and employee and that more
 18 suitable people were available to perform that task. What
 19 do you say to that?
 20 COLONEL McINTOSH: Chair, as I've said
 21 before in evidence as well, we do not work individually.
 22 We work in a group of negotiators. We had Brigadier Calitz
 23 who is very, very experienced with regard to mine related
 24 incidents as a negotiator and then we also had the other
 25 members available as well. So it wasn't independent, it

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1 was done in group format and we negotiated based on the
 2 police issue with regard to safety and security, not labour
 3 brokers.
 4 MR BIZOS SC: So you say that if you did
 5 not do the right thing, your senior officers, the General,
 6 the Brigadier and Colonel Scott bear the responsibility as
 7 well. If in fact the Commission finds that you were an
 8 incompetent person to be the chief negotiator you're not
 9 alone because you acted in concurrence with your three
 10 senior officers.
 11 COLONEL McINTOSH: Chair, we negotiated
 12 based on our brief which was to disarm and to de-escalate
 13 the risks of violence, nothing with relation to the labour
 14 issues. We were not there to do labour broking or labour
 15 type things but with regard to trying to get the people to
 16 disarm and to ensure safety and security for them and
 17 that's what we did, Chair.
 18 MR BIZOS SC: To be quite blunt, Colonel,
 19 you didn't make an offer, you really issued an ultimatum.
 20 Do you agree?
 21 CHAIRPERSON: What was the ultimatum, Mr
 22 Bizos?
 23 MR BIZOS SC: Do what I say, do what I
 24 say –
 25 CHAIRPERSON: Or?

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1 MR BIZOS SC: - and disperse and go back
 2 to work, particularly the ultimatum –
 3 CHAIRPERSON: That's not an ultimatum.
 4 An ultimatum is do as I say or I'll do something, then the
 5 threat would have to accompany the command. So what was
 6 the ultimatum that you put, that you say he put?
 7 MR BIZOS SC: Well, what were you going
 8 to do if they did not return to work?
 9 COLONEL McINTOSH: Not returning to work
 10 was not our concern that was a labour issue. To put down
 11 their weapons and to de-escalate violence was the purpose
 12 that we were there for, not to force people to go to work.
 13 That is a labour related issue.
 14 MR BIZOS SC: But you specifically said,
 15 and must return to work. That was an ultimatum. If you
 16 want anything to happen –
 17 CHAIRPERSON: He didn't say – I'm sorry,
 18 Mr Bizos, he didn't say that. What he said was that that's
 19 what Lonmin had said. He was wearing two hats, a
 20 negotiating hat, the safety and security issue, dispute,
 21 and the other hat was as a messenger conveying, firstly,
 22 what they said to management of Lonmin and then secondly
 23 giving them the reply which Lonmin had given him.
 24 MR BIZOS SC: Well –
 25 CHAIRPERSON: He didn't say they must

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1 return to work. What he said was that was the attitude of
 2 Lonmin. So the question isn't correctly framed.
 3 MR BIZOS SC: Well, it wasn't your
 4 ultimatum. You conveyed the ultimatum of the employer.
 5 COLONEL McINTOSH: I did not convey an
 6 ultimatum. That was the answer that we received from their
 7 request and that was the answer that we gave them with
 8 regard to what the situation was, Chair.
 9 MR BIZOS SC: Well, don't let's argue
 10 whether it's an ultimatum or not, those are the facts. Now
 11 what I want to put to you is not my own view in relation to
 12 your suitability of being a negotiator but refer to the
 13 evidence of your two colleagues. You know Colonel Merafe?
 14 COLONEL McINTOSH: Yes, I do.
 15 MR BIZOS SC: He gave evidence before the
 16 Commission on the 220th day page 27098, cross-examined by my
 17 learned friend Mr Wesley. "So in a crowd control operation
 18 you're the operational commander we're talking
 19 fictitiously now again in theory, you'd get
 20 yourself or another experienced POP member to go and do
 21 these negotiations?" "Yes, Chair. Operational Commander
 22 is the one that must negotiate." "Just out of interest do
 23 you ever send somebody else or would you always do it
 24 yourself if you were the operational commander?" "My
 25 officers, the officers that works with me sometimes they do

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1 the negotiation." "Okay, and these officers they're POP
 2 members, Public Order Policing?" "Experienced POP members,
 3 not ordinary POP members." "Okay, yes. So you wouldn't
 4 even send an ordinary POP member, you'd want an experienced
 5 Public Order Policing Officer to go and do your
 6 negotiations?" "Correct, Chairperson." "And would you
 7 send a hostage
 8 negotiator for example?" "I would not do that."
 9 Is Mr Merafe wrong, or Colonel Merafe wrong?
 10 COLONEL McINTOSH: Chair, I do disagree
 11 with that due to the fact that we do negotiate with crowd
 12 control matters as well and we have done that.
 13 CHAIRPERSON: The whole thing seems to be
 14 based on a false premise. Your evidence is that you
 15 weren't the only negotiator, you were a team.
 16 COLONEL McINTOSH: Yes.
 17 CHAIRPERSON: And one of them was
 18 Brigadier Calitz who was the operational commander.
 19 COLONEL McINTOSH: That's correct, Chair.
 20 CHAIRPERSON: And he's an experienced POP
 21 person with decades of experience in POP work and
 22 particularly in the context of mine unrest, isn't that
 23 right?
 24 COLONEL McINTOSH: That's correct, Chair.
 25 CHAIRPERSON: Ja.

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1 MR BIZOS SC: And as far as you are
 2 concerned, as far as you are concerned if anyone is at
 3 fault it's not you but Brigadier Calitz, do I understand
 4 you correctly?
 5 COLONEL McINTOSH: At fault where, sir?
 6 MR BIZOS SC: In not negotiating properly
 7 as expected in matters relating to employer/employee
 8 disputes.
 9 [10:25] COLONEL McINTOSH: Once again, Chair, we
 10 did not negotiate in the employer/employee dispute. We
 11 negotiated with regards to safety and security issues. We
 12 merely gave feedback with regards to what was asked by the
 13 strikers –
 14 MR BIZOS SC: Go back –
 15 CHAIRPERSON: Mr Bizos, you've got five
 16 minutes left.
 17 MR BIZOS SC: Thank you. "Go back to
 18 work" is not an employer/employee matter, is it, according
 19 to you?
 20 CHAIRPERSON: Mr Bizos, we've had this
 21 point before and the answer the witness gave was he didn't
 22 say to the workers go back to work. He said he conveyed to
 23 Lonmin what they had said and asked for –
 24 MR BIZOS SC: Yes.
 25 CHAIRPERSON: And then as duty-bound he

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1 carried back to them what Lonmin's response was.

2 MR BIZOS SC: Yes.

3 CHAIRPERSON: And he said to them Lonmin

4 say you must go back to work and then they'll negotiate

5 with you, obviously negotiate with you about the wage

6 dispute, but he didn't say to them you must go back to

7 work. He was in that capacity, in that context he was

8 wearing his messenger hat and he was simply reporting to

9 the workers what Lonmin had said. So the question is not a

10 fair one.

11 MR BIZOS SC: Well, you as the senior

12 negotiator was supposed to find an overall solution to the

13 problem, were you not?

14 COLONEL McINTOSH: Chair, as I've said

15 before, we were not there to end a strike. We were there

16 to do the interests of public safety and security. The

17 labour issues had to be dealt with by the striking parties,

18 the mines and the unions, not by the police. That is not

19 our function.

20 MR BIZOS SC: Colonel Merafe was not the

21 only one. Do you know Colonel Vermaak?

22 COLONEL McINTOSH: Yes, I do.

23 MR BIZOS SC: He gave evidence on day

24 213, page 26313, Mr Mpfu –

25 CHAIRPERSON: What page, Mr Bizos?

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1 MR BIZOS SC: I beg your pardon?

2 CHAIRPERSON: What page?

3 MR BIZOS SC: Page 26313, Mr Chairman.

4 CHAIRPERSON: We've got that page on the

5 screen. You've got about two minutes left, but let's

6 finish, round off this point.

7 MR BIZOS SC: Yes.

8 CHAIRPERSON: It looks as if we need to

9 go lower down the page. What line are you referring to?

10 MR BIZOS SC: Line 25, or 20 – well,

11 let's start on line 18, Mr Chairman, and at 26314 –

12 CHAIRPERSON: Alright.

13 MR BIZOS SC: - if we leave the

14 introductory part out, "And one of the ways in which that

15 would have had to be done would be deploying specialist

16 negotiators who know" –

17 CHAIRPERSON: Sorry, we should now be on

18 the next page. It's not on the screen. Top of the page

19 26314, I think –

20 MR BIZOS SC: Yes.

21 CHAIRPERSON: Yes, "is by deploying

22 specialist negotiators who know how to handle those kind of

23 situations, correct?" Colonel Vermaak says, "Yes." And

24 then as you can see on the screen he says, "The police did

25 the opposite. They brought negotiators with no idea of

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1 dealing with this kind of situation, correct?" Colonel

2 Vermaak said, "That's correct. There was available, as I

3 have mentioned prior," and then he says, "There were people

4 in the police who specialise in this kind of negotiation,"

5 and he agreed, and then he says, "Yes, in the North West

6 province there is Brigadier Calitz, Colonel Merafe himself,

7 who is a unit commander, Colonel Johnny Du Plooy," and so

8 on. Now you've already said that Brigadier Calitz, one of

9 the people to whom Colonel Vermaak refers, was there with

10 you in the Nyala and he was part of the negotiating team.

11 COLONEL McINTOSH: That's correct, Chair.

12 He was the operational head as well.

13 MR BIZOS SC: Well, Mr Chairman, I have a

14 few more questions but since my time is up –

15 CHAIRPERSON: Your time is up.

16 MR BIZOS SC: - I will try and ask one or

17 other of my colleagues that follow –

18 CHAIRPERSON: Yes.

19 MR BIZOS SC: - to possibly deal with

20 them.

21 CHAIRPERSON: Yes. No, certainly. We'll

22 now take the first comfort break, quarter of an hour.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [10:50] CHAIRPERSON: The Commission resumes.

25 You're still under oath, Lieutenant-Colonel.

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1 STEPHEN JAMES McINTOSH: (s.u.o.)

2 CHAIRPERSON: Adv Lupuwana informed me

3 during the comfort break that she had concluded an

4 agreement with Mr Mpfu that she would cross-examine before

5 he would.

6 MR MPOFU: That's correct.

7 CHAIRPERSON: And she stated that Mr

8 Mpfu agreed. So Ms Lupuwana.

9 CROSS-EXAMINATION BY MS LUPUWANA: Thank

10 you, Chairperson. The questions are few, but they will

11 need just a little bit of background, if the Commissioners

12 can bear with me, but I will be within my 30 minutes, if

13 not less.

14 Colonel, if we can just pick up on Mr Bizos's

15 questions on the SAPS strategy to negotiate a peaceful

16 solution, but that is from a slightly different angle. Is

17 it correct that the dynamics of the strike of August 2012

18 were such that for the SAPS strategy to succeed, that is

19 now including laying down of arms, the cooperation of other

20 players was required? Those players would be NUM, AMCU,

21 and to a great extent, Lonmin. Is that correct?

22 COLONEL McINTOSH: Chair, to an extent

23 that would be correct.

24 MS LUPUWANA: Yes. The Commission has

25 heard that NUM was reluctant to be involved initially, but

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1 after great persuasion the relented, hence we saw Mr
 2 Zokwana participating in the address of the strikers on the
 3 15th.
 4 COLONEL McINTOSH: That's correct, Chair.
 5 MS LUPUWANA: And we've also seen how
 6 AMCU's Mr Mathunjwa worked very hard to act as a go-between
 7 between Lonmin and the strikers, and how he begged the
 8 strikers to lay down their weapons and disperse.
 9 COLONEL McINTOSH: That's correct, Chair.
 10 MS LUPUWANA: Colonel, we've seen the
 11 dedication demonstrated by SAPS to try and get the strikers
 12 to lay down their arms as well. What comes to mind here is
 13 the video by, of the 13th where General Mpembe was trying to
 14 talk to the strikers, and incidentally I agree with you
 15 that your attempts at negotiations on the 14th got off to a
 16 good start because you managed to make contact with the
 17 leaders and they dispersed peacefully on that day.
 18 COLONEL McINTOSH: That is correct,
 19 Chair.
 20 MS LUPUWANA: And then we've also seen
 21 SAPS' attempts on the 15th to facilitate the address of the
 22 strikers by NUM, Zokwana, and AMCU, Mr Mathunjwa.
 23 COLONEL McINTOSH: Correct, Chair.
 24 MS LUPUWANA: Now here's the question,
 25 Colonel; of all these players in this strike that I've

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1 referred to, NUM, SAPS, Lonmin, etcetera, Lonmin is a
 2 different kettle of fish, or was a different kettle of fish
 3 in its steadfast refusal to come to the party and be
 4 involved unless its conditions were met, bearing in mind
 5 that the strikers were adamant that they wanted to talk to
 6 Lonmin. Is that so?
 7 COLONEL McINTOSH: Chair, that is
 8 correct.
 9 MS LUPUWANA: Colonel, am I correct then
 10 that Lonmin was the main obstacle in SAPS' strategy? It
 11 actually thwarted the efforts of SAPS to carry through its
 12 strategy of peaceful negotiations insofar as laying down of
 13 the arms is concerned, and Lonmin was the reason your
 14 negotiations with the strikers deadlocked?
 15 COLONEL McINTOSH: I cannot raise that
 16 opinion. I cannot agree with that. I cannot state that –
 17 MR VAN AS: There is no basis for that
 18 submission.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 MS LUPUWANA: Don't you agree that Lonmin
 21 played a part in the failure of SAPS to try and negotiate
 22 with the parties to lay down their arms by refusing to come
 23 to the party?
 24 COLONEL McINTOSH: Chair, I cannot say
 25 that.

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1 MS LUPUWANA: You then agree –
 2 COMMISSIONER HEMRAJ: Sorry, what you can
 3 say is that when you conveyed the message to the strikers
 4 that Lonmin was not prepared to come to address them at the
 5 koppie, that there was some aggression in their reply, or
 6 that their mood changed?
 7 COLONEL McINTOSH: That is correct,
 8 Chair.
 9 MS LUPUWANA: Alright, so you would agree
 10 with me then that whatever criticisms are levelled on the
 11 failure of the SAPS strategy of peaceful negotiations,
 12 Lonmin must share in the spotlight, if not take the centre
 13 stage?
 14 COLONEL McINTOSH: I cannot say that,
 15 Chair. Unfortunately I cannot say that. There's several
 16 role-players, including the strikers as well. So I cannot
 17 say that with all certainty, Chair.
 18 MS LUPUWANA: Okay. Colonel, the
 19 Commission has heard evidence of the precautions that were
 20 taken by SAPS to safeguard the life and limb of Mr Zokwana
 21 and Mr Mathunjwa when they went to the koppie on the 15th to
 22 address the strikers, in that they were escorted to the
 23 koppie and they addressed the strikers in the safety of the
 24 Nyalas. Is that true?
 25 COLONEL McINTOSH: That is correct,

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1 Chair.
 2 MS LUPUWANA: Except for the singing of
 3 the song "Sizoyibulala kanjani le NUM," their lives were
 4 not in any danger at all. Is that so?
 5 COLONEL McINTOSH: Chair, we cannot say
 6 that. We were dealing with a group of 3 000 armed persons.
 7 We cannot say that with all certainly, Chair.
 8 MS LUPUWANA: Okay, tell us, Colonel,
 9 would you have taken the same or similar precautions to
 10 safeguard Lonmin representatives had they agreed to go to
 11 the mountain?
 12 COLONEL McINTOSH: Chair, we would have
 13 offered that opportunity to anybody who wanted to go and
 14 speak.
 15 MS LUPUWANA: Alright, thank you.
 16 Colonel, the Commission has heard how during the early days
 17 of the strike Lonmin executives appealed to very senior
 18 officials in government, including cabinet ministers,
 19 influential political figures, for SAPS involvement in the
 20 strike action and indeed we saw how SAPS pumped resources
 21 into Marikana. My point now is this; you testified that
 22 after Lonmin refused to get involved and stating its
 23 reasons why it wouldn't, the negotiations deadlocked and
 24 all you could do was to monitor the situation. Is that so?
 25 COLONEL McINTOSH: Chair, if you actually

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1 see there were still things being done in the background
 2 where we got the union officials together, who also spoke
 3 to the Lonmin Mine and also eventually were brought to the
 4 face to speak to the people as well. So there was still
 5 work going on behind the scenes as well.
 6 MS LUPUWANA: Ja, but the negotiations
 7 had deadlocked at that stage and you were saying, you said
 8 in your statement that all you could do was to monitor the
 9 situation at that stage.
 10 COLONEL McINTOSH: We monitored that
 11 situation at that time, that's correct, Chair.
 12 MS LUPUWANA: Ja, so am I correct that at
 13 that stage as SAPS you really desperately needed Lonmin's
 14 cooperation to break the deadlock? Isn't that so?
 15 COLONEL McINTOSH: Chair, with regards to
 16 the safety and security aspects, like I say there's a lot
 17 of parties involved. I cannot say if Lonmin was a major
 18 role-player, but everybody had a responsibility, that is
 19 correct. Everybody had a responsibility, of which the
 20 safety and security was the police's main issue.
 21 MS LUPUWANA: Now Colonel, bearing in
 22 mind Lonmin's appeal for SAPS involvement that I referred
 23 to earlier, correct me if I'm wrong; as a negotiator I
 24 would have expected SAPS upper echelons to go back to
 25 Lonmin's big wigs and say 'Well, we have heeded your call

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1 to become involved as SAPS. The ball is now in your court.
 2 The strikers are demanding to talk to you. They are
 3 demanding an audience with you. Please come to the party.
 4 Our negotiators now need you and their success is in your
 5 hands. They depend on you for your cooperation.' Wouldn't
 6 you expect that from your top-ranking SAPS officials?
 7 COLONEL McINTOSH: Chair, I'd just like
 8 to say only recently I've become aware that there was
 9 political intervention, or request with regards to this,
 10 which I didn't know about at that time. So I cannot
 11 mention anything with regards to that, but with regards to
 12 the fact that we did speak to Lonmin as well and that was
 13 going on behind the scenes with the generals as well to try
 14 and persuade them also to come and speak to the workers as
 15 well personally, and that's also where we came with the
 16 idea that if we could maybe get five people to come forward
 17 and go and see the management of Lonmin to say if they
 18 could broker something that way as well, and we did make
 19 that suggestion.
 20 MS LUPUWANA: Alright. Coming back to
 21 your statement, that's HHH14, about SAPS members acting in
 22 self-defence in scene 1, may I refer you to the statement
 23 of Mr De Rover, that's FFF11, at paragraph 77. Is that
 24 FFF11? Okay -
 25 CHAIRPERSON: FFF11 is -

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1 MS LUPUWANA: Yes, at scene 1 -
 2 CHAIRPERSON: - Mr De Rover's statement.
 3 Is that what you're looking for?
 4 MS LUPUWANA: Yes.
 5 CHAIRPERSON: What paragraph?
 6 MS LUPUWANA: 77.
 7 CHAIRPERSON: It's on the screen.
 8 MS LUPUWANA: "At scene 1 a total of 53
 9 SAPS officers discharged their firearms, firing sharp
 10 ammunition," and then he says how many were fired combined,
 11 and then fourth line he says, "I do see evidence in this
 12 scene for what is called associative threat perception,
 13 that is officers firing because others were, without
 14 necessarily having perceived that threat themselves."
 15 COLONEL McINTOSH: I see that, Chair.
 16 MS LUPUWANA: Am I correct then that the
 17 statement, broad statement that SAPS was acting in self-
 18 defence cannot be accurate in the light of that? That is a
 19 SAPS expert, an expert that had been consulted by SAPS. So
 20 it can't be accurate that all of them, all of the officers
 21 who fired at scene 1 were acting in self-defence. There is
 22 that possibility of that associative threat perception.
 23 COLONEL McINTOSH: That is a possibility,
 24 Chair.
 25 MS LUPUWANA: Alright. Who from your

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1 team of negotiators was briefing the authors of exhibit L
 2 on the threats that were made by Mr Noki on the 16th?
 3 COLONEL McINTOSH: That was done at Roots
 4 with regards to that as well and the negotiators who were
 5 present also gave their inputs with regards to that as
 6 well.
 7 MS LUPUWANA: It was you and who, who
 8 gave input?
 9 COLONEL McINTOSH: Myself, Brigadier
 10 Calitz, Captain Greyling, the people who were at Roots.
 11 MS LUPUWANA: Alright. You say in your
 12 statement at scene 1 the strikers stormed the police. Do
 13 you remember where you say that?
 14 COLONEL McINTOSH: That's correct, Chair.
 15 MS LUPUWANA: Okay, was that part of the
 16 hearsay or did you actually see that?
 17 COLONEL McINTOSH: That is what I'd
 18 personally seen myself, coming around the Nyala 4.
 19 MS LUPUWANA: Okay, what did you mean by
 20 storming?
 21 COLONEL McINTOSH: Trying to get around
 22 the vehicles to get into the police lines.
 23 MS LUPUWANA: That excludes any form of
 24 attack? I was just trying to get around?
 25 COLONEL McINTOSH: It could be perceived

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1 as an attack, Chair.

2 COMMISSIONER HEMRAJ: Perhaps you could

3 describe for us what led to the perception of storming, or

4 categorisation of storming.

5 COLONEL McINTOSH: Chair, the people who

6 came around the vehicle were in a large number and in a

7 group and they still had their weapons with them as well,

8 Chair.

9 MS LUPUWANA: Alright, let's go back to

10 scene 1, Colonel. You and Warrant Officer Nong, he says so

11 in his statement in paragraph 21, you said you heard some

12 shooting at scene 1 and Brigadier Calitz did not. Are you

13 speaking specifically about the sound of sharp ammunition?

14 COLONEL McINTOSH: That's correct, Chair.

15 I heard two distinct shots and it was confirmed and given

16 back in the Nyala as well that we'd heard sharp ammunition

17 being fired, two shots.

18 MS LUPUWANA: Okay, are you able to shed

19 some light on why perhaps Brigadier Calitz would not have

20 heard the sound of the shooting of sharp ammunition?

21 COLONEL McINTOSH: Chair, I cannot even

22 speculate on that.

23 MS LUPUWANA: And I seem to have heard

24 you in your evidence that you did tell Calitz that you

25 thought you heard the sharp ammunition being fired?

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1 COLONEL McINTOSH: That is correct. It

2 was given back in the Nyala.

3 MS LUPUWANA: And he didn't respond?

4 COLONEL McINTOSH: I didn't receive any

5 response from the front – from the back.

6 MS LUPUWANA: That's a little bit

7 strange, wasn't it? It's something serious if sharp

8 ammunition – I mean SAPS officers could have been hurt.

9 COLONEL McINTOSH: Chair, like I say –

10 MS LUPUWANA: Strange that he didn't

11 respond.

12 COLONEL McINTOSH: I cannot say why he

13 didn't respond.

14 COMMISSIONER HEMRAJ: What does "given

15 back in the Nyala" mean?

16 COLONEL McINTOSH: In other words the,

17 from the front we've given the information back to the back

18 of the Nyala. Remember the Nyala's built basically in two

19 parts – your driver and crew, and then your members section

20 which will then debust if there's a situation, that the

21 doors open on the side, they can get out. So the Nyala's

22 basically, you've got your driver and your co-driver, or

23 your passenger, the engine in between, and the transmission

24 runs down the back. So it splits the cab basically. So

25 you, we give it back, and if we get instructions from the

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1 back we say it's been given forward to us, to the driver.

2 MS LUPUWANA: You are trained in the

3 administration of first aid and if you had remained behind

4 at scene 1 you would have been able to assist, isn't that

5 so?

6 COLONEL McINTOSH: If I had known about

7 scene 1 I would have stayed behind to assist, most

8 definitely.

9 MS LUPUWANA: What was the rush again to

10 scene 2?

11 COLONEL McINTOSH: The instruction was

12 given that we had to go to scene 2 to follow with the other

13 vehicles to break ranks to go through and to follow the

14 other people who were busy fleeing at the moment, to try

15 and effect arrest and dispersions.

16 MS LUPUWANA: Thank you very much,

17 Colonel. That will be all. Thank you, Chair.

18 COMMISSIONER HEMRAJ: What was the

19 instruction that caused Papa1 to move across the fence into

20 the veld? What was that instruction?

21 COLONEL McINTOSH: The instruction was

22 that the driver must move forward, we must go and follow up

23 with those who are busy fleeing to try and disperse and to

24 see what arrests could be effected with the other vehicles

25 from the Papa units.

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1 COMMISSIONER HEMRAJ: Thank you.

2 CHAIRPERSON: Who gave that instruction?

3 COLONEL McINTOSH: Brigadier Calitz

4 informed us to move forward, Chair.

5 CHAIRPERSON: Mr Mpofo.

6 CROSS-EXAMINATION BY MR MPOFU: Thank you

7 very much, Chairperson. Colonel, I just want to clarify

8 something very quickly before I get to the questions that I

9 was going to ask you, in relation to a point that Mr Bizos

10 was trying to put to you and where I think the Chair was

11 unfair to Mr Bizos, and I just want you to assist me with

12 this. I'll make a little speech so that I don't waste your

13 time. I understand that you've said to the Chair

14 effectively that there were two disputes. The one dispute

15 was between the employer and the employee; in respect of

16 that you were a messenger, and in respect of the second

17 dispute between the police and the strikers you were a

18 negotiator. I'm paraphrasing, so do I understand you

19 correctly?

20 COLONEL McINTOSH: That is correct,

21 Chair.

22 MR MPOFU: Yes, and I also understand

23 that you are adamant that you had no interest in

24 negotiating in respect of the first dispute. Is that

25 correct?

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1 COLONEL McINTOSH: That is correct,
 2 Chair. Police officers and police negotiators do not
 3 negotiate labour-related issues. That is for labour
 4 brokers and labour relations persons.
 5 MR MPOFU: Yes.
 6 CHAIRPERSON: I don't know if labour
 7 brokers is the right word –
 8 MR MPOFU: Ja.
 9 CHAIRPERSON: But I think you mean labour
 10 negotiators probably.
 11 MR MPOFU: Yes.
 12 COLONEL McINTOSH: That's correct, Chair,
 13 sorry.
 14 MR MPOFU: Yes, yes. Well, okay, but you
 15 do accept that the idea of asking people to go back to work
 16 is a labour relations issue?
 17 COLONEL McINTOSH: Chair, that would be a
 18 labour relations issue –
 19 MR MPOFU: Yes.
 20 COLONEL McINTOSH: - but if you have a
 21 look at the context which it was said, it was feedback on a
 22 demand given by the strikers.
 23 MR MPOFU: No –
 24 COLONEL McINTOSH: So it was just a
 25 feedback to that, that was what was said back, so that they

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1 knew about it. So it wasn't a demand or a request.
 2 MR MPOFU: Yes. No, but I understand
 3 that. That's why I was saying the –
 4 CHAIRPERSON: I'm sorry to interrupt you.
 5 It was a demand or a request as far as Lonmin – emanating
 6 from Lonmin. You were merely the reporter.
 7 COLONEL McINTOSH: That's correct, Chair.
 8 It was just feedback from what they requested and that is
 9 what we gave back.
 10 [11:10] MR MPOFU: Fine. I understand that, but
 11 what I'm saying is that, and that's why I was saying there
 12 was unsureness, is because if that was just the situation
 13 that's fine but what we know for a fact, unless if General
 14 Annandale is lying, what we know is that General Annandale
 15 says that you, the negotiators were tasked to encourage the
 16 protestors to return to their working stations. Is that a
 17 lie or a, or an untruth or an actual statement of fact?
 18 COLONEL McINTOSH: Chair, based on the
 19 briefing that we received it was not an instruction. We
 20 were instructed to request them to put down their weapons
 21 so that we could. So with regards to the labour issue we
 22 did not negotiate on labour issues.
 23 MR MPOFU: Colonel, please I don't want
 24 us to waste time. Time is very precious in these
 25 proceedings. I'm saying when General Annandale says under

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1 oath the negotiators were tasked to encourage the
 2 protestors to return to their working stations is he
 3 telling the truth.
 4 COLONEL McINTOSH: Chair, that was never
 5 our briefing.
 6 MR MPOFU: So he's not telling the truth.
 7 COLONEL McINTOSH: Chair, I cannot say
 8 what he informed other people but the briefing that we
 9 received –
 10 CHAIRPERSON: Well he's talking about
 11 the briefing you people received. So what you're saying is
 12 that may be, that's what he says, it may be what he
 13 remembers and may not be what he remembers but it's
 14 certainly not what you remember?
 15 COLONEL McINTOSH: That's correct, Chair.
 16 MR MPOFU: What's correct?
 17 COLONEL McINTOSH: What we were informed,
 18 what I can remember is we were there to negotiate the
 19 putting down of the weapons and the peaceful resolution
 20 that there would be no more bloodshed or injuries or
 21 attacks that take place.
 22 MR MPOFU: And you, as far as you, you
 23 were certainly not tasked to encourage protestors to return
 24 to their working stations?
 25 COLONEL McINTOSH: That's correct, Chair.

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1 MR MPOFU: So it's not true that you
 2 were, that you ever received a task like that?
 3 COLONEL McINTOSH: Chair, as far as I can
 4 definitely remember, no we were informed that we had to try
 5 and negotiate the de-escalation of the violence.
 6 MR MPOFU: Yes. And if your memory has
 7 somehow failed you and if indeed Annandale tasked you
 8 to encourage protestors to return to their working station
 9 that he would have been tasking you in relation to a labour
 10 relations matter, correct?
 11 COLONEL McINTOSH: Chair, I would have,
 12 if I had been informed about that I would have informed
 13 immediately that it's a labour relations function, not our
 14 function. Our function is only for safety and security and
 15 I definitely did not receive that briefing.
 16 MR MPOFU: The -
 17 CHAIRPERSON: Sorry there's a further
 18 point that whether Annandale may or may not have said to
 19 you. Did you at any stage endeavour to do that, did you
 20 ever endeavour to encourage them to return to their work
 21 stations and so forth?
 22 COLONEL McINTOSH: No, we did not, Chair.
 23 We only gave the feedback on the 15th with regards to the
 24 questions that they asked and Lonmin's said they would
 25 negotiate only when they returned to the work places and

1 that was only feedback we gave on that.

2 MR MPOFU: Ja, no but remember, if you

3 don't remember being told by Annandale that you must ask

4 them to return to their working stations what that means is

5 that it possibly happened and you probably don't remember.

6 COLONEL McINTOSH: I definitely do not

7 remember anything of that type.

8 MR MPOFU: I know that, but I'm saying

9 what that statement means, when you say you do not

10 remember, because I asked you if it's a lie or an untruth

11 and you were not prepared to commit –

12 CHAIRPERSON: You know, Mr Mpofu, it's

13 for us to decide at the end of the day whether, firstly

14 whether the statement is correct, there's a conflict

15 clearly between the Major General and the Lieutenant

16 Colonel. It's for us to decide whether the statement, the

17 General made is correct and then it may be necessary for us

18 to make a further finding as to whether, if it was

19 incorrect it was deliberately incorrect or came, were there

20 some other explanation for it. But that's our function.

21 It's not for the witness to -

22 MR MPOFU: No, Chairperson, maybe you

23 didn't hear my question. I'm not probing that at all. All

24 I'm saying is that if the witness says he cannot remember

25 Annandale saying this does he accept that that means it

1 possibly happened. It may have happened and he simply

2 doesn't remember it. It's a simple question.

3 COLONEL McINTOSH: No, Chair.

4 MR MPOFU: So now you remember that it

5 definitely did not happen?

6 COLONEL McINTOSH: Chair, it did not

7 happen. As I remember it did not happen.

8 MR MPOFU: Yes.

9 COLONEL McINTOSH: And that is the truth.

10 MR MPOFU: Now you were given by Mr Bizos

11 and you agreed some of the qualities that are needed from a

12 negotiator, I think he mentioned independence, you agree to

13 that, correct?

14 COLONEL McINTOSH: Chair, you must be

15 able to think independently and work independently but you

16 work in a team in general.

17 MR MPOFU: So you must also be

18 independent in relation to the conflict that you are

19 negotiating, correct?

20 COLONEL McINTOSH: Can you explain which

21 context you're talking about.

22 MR MPOFU: No, you're the chief

23 negotiator, when you agreed with Mr Bizos that independence

24 is an important quality for a negotiator what did you mean?

25 COLONEL McINTOSH: Chair, it is must be

1 that you must be able to think you must be able to

2 rationalise, you must be able to remain calm at all times

3 and be totally in check with your feelings at all given

4 times when you're a negotiator and you must be able to give

5 the information back because remember a negotiator doesn't

6 make decisions, it goes back, there's decision makers that

7 make the decisions and they inform yes or no.

8 MR MPOFU: Yes, but you must also be

9 independent of the conflicting parties, you must not be

10 associated with one of them?

11 COLONEL McINTOSH: That's correct, Chair.

12 MR MPOFU: Ja, so if now, let's put aside

13 this, the first conflict that the Chair postulated to you

14 in respect of which you say you were a messenger, let's go

15 to the conflict B where you say you were a negotiator.

16 CHAIRPERSON: I think the correct word

17 is dispute.

18 MR MPOFU: Dispute yes, ja. That one was

19 between SAPS and the strikers, correct?

20 COLONEL McINTOSH: That's correct, Chair.

21 MR MPOFU: So you were not independent in

22 relation to that one, because you are a member of SAPS.

23 COLONEL McINTOSH: Sir, we work for the

24 police, for a peaceful resolution. That is the purpose

25 behind a hostage negotiator.

1 MR MPOFU: Colonel, I'm sorry, please,

2 please, I'm asking you a very simple question. Would you

3 agree with the statement that in relation to dispute number

4 B which according to you was between the strikers and the

5 police you could not possibly be an independent negotiator

6 in the sense that Mr Bizos was raising the question of

7 independence.

8 COLONEL McINTOSH: Chair, with regards to

9 the police work we are not independent. We work for the

10 interest of the community and the safety and security. We

11 work for the police to get a peaceful resolution.

12 MR MPOFU: Ja and if in terms of the,

13 that second conflict one needed an honest broker or an

14 independent party then that honest independent person could

15 not A, be a policeman or B a striker. Because if he was a

16 striker he couldn't be an independent person because he's a

17 striker, he's part of the conflict, similarly if it's a

18 policeman, he can't be independent because they are part of

19 the conflict, correct?

20 COLONEL McINTOSH: Chair, I do not agree

21 with that.

22 MR MPOFU: So you think a striker, one of

23 the strikers could have been appointed to be the

24 negotiator, the independent negotiator between his fellow

25 strikers and yourselves, that's really what you're saying

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1 as a trained negotiator. So Mr Noki could have been the
2 negotiator?

3 COLONEL McINTOSH: Chair, as far as I can
4 remember in terms of the constitution it says the police is
5 responsible for safety and security and that's what we were
6 doing.

7 MR MPOFU: I'm not –

8 COLONEL McINTOSH: And that falls into
9 our ambit.

10 MR MPOFU: Sorry, sorry, I'm not talking
11 about policing here. You know that, I'm talking about
12 negotiating, independent negotiation.

13 COLONEL McINTOSH: Chair, as far as I can
14 understand what Mr Mpofo is saying is that we could have
15 brought in an independent person to try and broker safety
16 and security which falls outside the mandate of a private
17 company or a private individual. It falls into the ambit
18 of the South African Police Service in terms of the
19 constitution.

20 MR MPOFU: Anyway, you agree that also
21 another important quality for a negotiator would be honesty
22 and open-mindedness, sorry those are two, ja agreed?

23 COLONEL McINTOSH: That's correct, Chair.

24 MR MPOFU: And a negotiator should be
25 free from any prejudice or prejudging either the situation

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1 or the people involved in the conflict, in the dispute,
2 correct?

3 COLONEL McINTOSH: That's correct, Chair.

4 MR MPOFU: And the, just again to touch
5 on this issue of the capitulation. I won't go through that
6 because it was canvassed with you, but I think the simple
7 statement that really is being discussed with you is that
8 as a negotiator you can, you know that negotiations by
9 definition involve give and take.

10 COLONEL McINTOSH: That's correct, Chair.

11 MR MPOFU: Yes, otherwise it's not a
12 negotiation, it's just an instruction, there must be give
13 and take or what Mr Bizos called quid pro quo, correct?

14 COLONEL McINTOSH: That's correct, Chair.

15 MR MPOFU: Ja, and you say that, and
16 alright would you agree that from the striker's point of
17 view they did not feel unsafe, in fact I think the version
18 of the police is that the koppie was their safety haven,
19 correct?

20 COLONEL McINTOSH: I cannot say what the
21 police called it but they were in an area there which they
22 could be seen as safe.

23 MR MPOFU: Yes, or rather where they
24 could perceive themselves as safe as well, correct?

25 COLONEL McINTOSH: It could be perceived

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1 that way, Chair.

2 MR MPOFU: Yes. So then when you were
3 questioned about what it is that you were offering them,
4 you said you were offering them safety, I mean that, if you
5 would excuse me, it would be a nonsensical offer to offer
6 them something that they already have, which is their
7 safety, correct? It can't be part of give and take, you
8 can't offer me this jacket as part of give and take because
9 I already have it.

10 COLONEL McINTOSH: Chair, I do not agree
11 with that.

12 MR MPOFU: No, please, Colonel, man, I'm
13 saying to you. We have agreed that negotiations are by
14 definition a matter of give and take. Okay.

15 COLONEL McINTOSH: That's correct, Chair.

16 MR MPOFU: Ja, so the thing that you
17 give, if I'm fighting with Mr Ntsebeza here and you want to
18 mediate that conflict, you must then give me something so
19 that I must stop wanting to hit him, correct?

20 COLONEL McINTOSH: Chair, with regards to
21 this, when the people moved away from the koppie they were
22 no longer in a safe haven, there we could still ensure
23 their safety and security.

24 MR MPOFU: No, no, no. We are talking
25 about the stage where you were brokering the peace while

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1 they were still sitting secure in their safe haven, on the
2 14th and the 15th, in the morning of the 16th. So let's not
3 talk about the situation when they left. I'm saying at
4 that point you were offering them absolutely nothing, there
5 was nothing for you to give apart from safety which they
6 already had which is the same statement, you were offering
7 them zilch.

8 COLONEL McINTOSH: No, Sir, I don't agree
9 with your statement. We still offered the safety and
10 security for any movements that they would want to have and
11 to ensure that they would not be attacked as well.

12 MR MPOFU: Yes, but, sorry Colonel, the,
13 in the little example that I was giving you, would you
14 agree that in the give and take and offering and so on you
15 must offer me in order not to attack Mr Ntsebeza you must
16 offer me something that I don't already have.

17 COLONEL McINTOSH: One of the problems
18 that they had was the fact that they had been attacked
19 before and we ensured their safety and security. Thus if
20 you had a look with the de-escalation on the 14th and the
21 15th with only one incident reported the de-escalation of
22 violence had taken place because we were ensuring their
23 safety, Chair.

24 MR MPOFU: Yes, but according to them
25 they had adequately provided for their safety by taking

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1 refuge in the koppie. That's what I was trying to explain
2 to you which you agreed with earlier.

3 COLONEL McINTOSH: Chair, if they had
4 taken refuge, remember they still had to leave the koppie
5 and go home as well. They had to go back to where they
6 were staying. They didn't stay on the koppie all the time.

7 MR MPOFU: Ja, well did you go and stand
8 guard outside their houses when they left the koppie or did
9 you offer that?

10 COLONEL McINTOSH: Chair, if you have a
11 look the amount of visible policing aspects and all that
12 was brought into place it was heightened police presence
13 and it reduced the possibility of violence taking place.
14 So thus their security was ensured.

15 MR MPOFU: Okay but, okay fine, I'll
16 leave that for argument.

17 COMMISSIONER HEMRAJ: Well what risk did
18 they run if they simply just stayed on the koppie as they
19 were?

20 COLONEL McINTOSH: If they had stayed on
21 the koppie, Chair, there would have been no risk to them
22 whatsoever. The problem is when leaving the koppie there's
23 a possibility of escalation of violence. Where they could
24 have been attacked or if they had also launched attacks
25 from the koppie there could have been attacks on other

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1 people as well. So we were looking at the general safety
2 and security of everybody, Chair.

3 CHAIRPERSON: No, of course the key to
4 it, sorry was the fact that they were in possession of
5 weapons. If they had been on the koppie without being,
6 without weapons and if NUM, whom they regarded as the
7 people against whom they wanted to protect themselves and
8 if NUM had decided it was appropriate to attack them with
9 weapons they could have defended themselves, without the
10 weapons they couldn't have defended themselves or certainly
11 not as effectively. But of course if the police were
12 present to protect them then the police could have stopped
13 NUM from attacking them. I take it that's also correct,
14 isn't it?

15 COLONEL McINTOSH: That's correct, Chair.

16 MR MPOFU: Captain McIntosh, are you a
17 racist?

18 COLONEL McINTOSH: No, Sir, why?

19 MR MPOFU: And you would agree that a
20 person who is in your position would -

21 MR MATHIBEDI SC: I'm sorry, Chairperson,
22 what's -

23 CHAIRPERSON: Mathibedi's light on.

24 MR MATHIBEDI SC: What's the relevance of
25 this question.

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1 CHAIRPERSON: That's not the question,
2 that's what I think what the witness asked, I mean he said
3 why. But I must assume that, I must assume that Mr Mpofu
4 has a reason for asking the question. If it becomes
5 apparent that he hasn't I'll disallow the question. But I
6 think it's an introductory question, I can't without more
7 say it's, there's no relevance. Let's see, maybe there's
8 no relevance but let's see, if Mr Mpofu tries either to
9 indicate the relevance of the question or indicate it's
10 irrelevance in which case it will be disallowed.

11 MR MPOFU: And you've agreed with me
12 earlier that a good negotiator should have no prejudices or
13 prejudging the people or the situation, correct?

14 COLONEL McINTOSH: That's correct, Chair.

15 MR MPOFU: What does this business about
16 asking the strikers to give you five of their bravest men,
17 what is that?

18 COLONEL McINTOSH: Chair, that is a
19 principle that was come up inside the vehicle, that was
20 decided on, that when the people didn't want to come
21 forward we always take cognisance of the fact that there is
22 a leadership and the leadership are always seen as the
23 bravest of the brave and the decision was come up with that
24 with regards to the psychologist who was on board as well
25 and we agreed to the fact to request the five bravest men

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1 and that is the five, the leading five that came out.

2 MR MPOFU: If the people who had gathered
3 there were members of Solidarity union which organises
4 white workers specifically would you have asked them that
5 kind of question, bring their five bravest men, what is
6 that?

7 COLONEL McINTOSH: Chair, like I say with
8 regards to this specific incident, your bravest men are
9 your, are normally seen as the bravest warriors,
10 unfortunately it comes down to the Afrocentric. If it had
11 been the solidarity we would have told them we want five
12 people to come forward and we would like them to come
13 forward now.

14 MR MPOFU: Yes.

15 COLONEL McINTOSH: So it's got nothing to
16 do with race, Chair.

17 MR MPOFU: No, thank you very much. No
18 it is something to do with race. You've just said that if
19 -

20 CHAIRPERSON: I'm sorry, Mr Mpofu -

21 MR MPOFU: Chairperson, I'm sorry can I
22 proceed.

23 CHAIRPERSON: Who's the chairman of this
24 commission, you or me.

25 MR MPOFU: Pardon.

<p style="text-align: right;">Page 28886</p> <p>1 CHAIRPERSON: I said who is the chairman 2 of this commission, you or me. I want to say something. 3 MR MPOFU: Well I'm the cross-examiner – 4 CHAIRPERSON: But I'm the chairman. 5 MR MPOFU: Ja, well – 6 CHAIRPERSON: I want to ask you a 7 question. Is it necessarily a matter of race or could it 8 be a matter of culture. 9 MR MPOFU: Chairperson, I'm not going to 10 debate that with you either. Are you saying that, so you 11 are basically saying that if it were white workers you 12 would have used different language, you wouldn't have asked 13 them for their bravest men, you say you would have asked 14 them for five people. That's your evidence, correct? 15 COLONEL McINTOSH: Chair, it depends on 16 the situation. We would have asked to get a result. I 17 would just like to also, Chair, if you would just indulge 18 me, if I was a racist how would I have worked for five and 19 a half years in Mamelodi, I also received a silver star for 20 bravery for saving 17 African children's lives in a shack 21 fire there. Would I have put my life at risk. 22 MR MPOFU: Yes, you would, many racists 23 have done those things. I'm asking you a simple question. 24 Do you agree or not that your evidence is that if those 25 were 3 000 white workers you would not have asked them for</p>	<p style="text-align: right;">Page 28888</p> <p>1 there as well who also agreed with the idea. 2 MR MPOFU: Okay, so it was not your idea 3 so you are not able to justify it, correct? 4 COLONEL McINTOSH: Chair, at the end of 5 the day it had the effect that the persons came forward to 6 start to talk to us and to negotiate with us. 7 MR MPOFU: Colonel McIntosh, since it was 8 not your idea you are not able to justify it, is that 9 correct or not? 10 COLONEL McINTOSH: At the end of the day 11 it was ratified by everybody inside the Nyala so we take a 12 responsibility with regard to that as well, Chair. 13 MR MPOFU: I'm asking you this question 14 for the fourth time and this is the last time. Since it 15 was not your idea you are not able to justify it, yes or 16 no? 17 COLONEL McINTOSH: Chair, I think it was 18 the right decision. 19 MR MPOFU: Because of what, culture? 20 COLONEL McINTOSH: Based on the fact that 21 it did work and the people came forward. 22 MR MPOFU: And you accepted, I mean the 23 fact that it was racist, whether it came from you or came 24 from somebody else and you accepted it doesn't make any 25 difference but the point I'm making, that you accepted that</p>
<p style="text-align: right;">Page 28887</p> <p>1 five of their bravest men, that is your evidence, correct? 2 [11:30] COLONEL McINTOSH: Chair, it comes down 3 to the cultural background, that is what we have learnt and 4 that is what we used, Chair, and it was the idea of the 5 psychologist to make use of that. 6 MR MPOFU: What cultural background? 7 What do you know about the people's culture that suggests 8 that you must ask for the five brave people and when it's 9 others you must ask for people? 10 COLONEL McINTOSH: Mr Chair, I'm not 11 quite sure I understand the relevance of this due to the 12 fact that this has got nothing to do with – 13 MR MPOFU: Are you the Chairperson of 14 this Commission now? 15 CHAIRPERSON: No, I think the question 16 may be asked. He says you say it's a cultural matter, he 17 says well, what do you know about culture? Did you base it 18 upon your own knowledge or did you base it upon – because 19 you talked about the matter being discussed in the Nyala – 20 did you base it upon what other people in the Nyala's view 21 was is the appropriate way to proceed? 22 COLONEL McINTOSH: Chair, as I've said 23 before, it wasn't my decision. We have five people on the 24 Nyala, negotiators, and that was the idea that was, came 25 forward, and remember there were also members from POPS</p>	<p style="text-align: right;">Page 28889</p> <p>1 this was the way to address this particular group of 2 people. You accepted that as a person – 3 COLONEL McINTOSH: Mr Chair, I do not see 4 that as racist. 5 CHAIRPERSON: No, that's not the 6 question. The question is, you accepted it as the right 7 way to proceed. I understood your evidence to be that it 8 was discussed in the Nyala what the best thing to do in 9 order to ensure that the barrier which was existing at the 10 time between you and the strikers was breached and you 11 could get their co-operation and get the leaders to come 12 forward, I understood you to say that the consensus in the 13 Nyala – and the idea didn't come from you – was that if you 14 put it this way it'll work. Your evidence further is that 15 you put it that way and it worked, is that – that's really 16 what you're saying as I understand you? 17 COLONEL McINTOSH: That's correct, Chair. 18 It had nothing to do with race. 19 MR MPOFU: Did it occur to you that as a 20 negotiator, that you might end up just with the wrong bunch 21 of people, you end up with five bravest men, whatever that 22 means, when what you really needed were people who were 23 representative and leaders of the group? 24 COLONEL McINTOSH: Chair, I do believe 25 that those five men were the leaders of the group.</p>

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1 MR MPOFU: No, but that's not what you
 2 asked for. You wanted, you didn't want to negotiate, you
 3 didn't say I want to negotiate with the leaders of the
 4 group. You said you wanted to negotiate with the five
 5 bravest men. The five bravest men may or may not be the
 6 leaders. I mean bravery and leadership are not the same
 7 thing. There might be a few overlaps.
 8 COLONEL McINTOSH: Chair, when we started
 9 to try and call the people forward, no-one came forward
 10 when we said we wanted the leadership aspect. When we went
 11 across to the five bravest men, they came forward.
 12 MR MPOFU: Is it important to you as a
 13 negotiator that the people that you are using in your
 14 negotiation have got the confidence and the mandate of the
 15 larger group? Is that an important essential thing?
 16 COLONEL McINTOSH: Chair, in general yes,
 17 it is and I do believe that Mr Noki was one of the leaders
 18 of this, of the strikers.
 19 MR MPOFU: Ja, he could have been the
 20 leader but if he was a coward he wouldn't be part of the
 21 people that you asked for. You wanted five brave men, so
 22 the fact that he might have been a leader but a cowardly
 23 one, then you would have disqualified him from your group.
 24 Do you accept that?
 25 COLONEL McINTOSH: No Chair, I don't

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1 think so.
 2 MR MPOFU: Now, so you did not – let me
 3 put it this way. I'm going to argue that you did not
 4 satisfy yourself that the people you were using had the
 5 mandate, had a proper mandate, which is a fatal flaw for a
 6 negotiator.
 7 COLONEL McINTOSH: No Chair, I do not
 8 agree with that.
 9 MR MPOFU: Do you also agree that for a
 10 negotiator, one of the things that he must do, one of the
 11 essential things is to have the correct information about
 12 the situation?
 13 COLONEL McINTOSH: That's correct, Chair.
 14 MR MPOFU: And it is your duty, as it
 15 were, to school yourself sufficiently about the dynamics of
 16 the dispute, correct?
 17 COLONEL McINTOSH: That is correct,
 18 Chair.
 19 MR MPOFU: And yet you did not know that
 20 the people at the koppie did not want the involvement of
 21 trade unions?
 22 COLONEL McINTOSH: Chair, that is correct
 23 but like I say Brigadier Calitz was also on the vehicle,
 24 part of the team but I don't know if he knew it either.
 25 MR MPOFU: Well, then that's even worse.

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1 Then maybe nobody knew that but I'm saying to you that this
 2 would have been an important thing. For example when the
 3 decision was taken to bring union leaders, that decision
 4 may not have been taken had you known that these people had
 5 avowedly said they don't want the involvement of trade
 6 unions, just using that as an example of why it's important
 7 for you to know the milieu of what it is that you are
 8 helping to negotiate.
 9 COLONEL McINTOSH: Chair, if one takes
 10 cognizance of the fact when we asked the union leaders to
 11 come forward, one was accepted, the other one was rejected.
 12 So there has to be some type of affiliation there.
 13 MR MPOFU: Now – that's fine. So you did
 14 not know that fact, that that's just a cold fact, that you
 15 did not know that they had rejected the involvement of
 16 unions, as the chief negotiator.
 17 COLONEL McINTOSH: Chair, with regard to
 18 the briefing that we'd received, the information from the
 19 intelligence division, that was not what we were given.
 20 MR MPOFU: Ja. So you did not know it?
 21 COLONEL McINTOSH: It was not given to us
 22 as such.
 23 MR MPOFU: Alright. Did you know that
 24 this was a group of different working categories, that some
 25 were RDOs, some were not RDOs, the different language

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1 groups, different cultural backgrounds?
 2 COLONEL McINTOSH: Chair, that we did
 3 know, that they came from various cultural groups. We also
 4 knew that the majority were RDOs.
 5 MR MPOFU: So –
 6 CHAIRPERSON: The demand for which they
 7 were striking was an increase for RDOs and only for RDOs,
 8 as I understand the evidence.
 9 COLONEL McINTOSH: That is correct,
 10 Chair.
 11 MR MPOFU: No, well, that may or may not
 12 be correct but that's irrelevant. I'm saying did you know
 13 that the people sitting on that koppie were RDOs, some of
 14 them were not RDOs and that they were, they came from
 15 diverse cultural backgrounds?
 16 COLONEL McINTOSH: Chair, that we did
 17 know and the majority were RDOs.
 18 MR MPOFU: You knew that – I thought you
 19 said you didn't know, now you say you knew. So you also
 20 knew that they came from different cultural backgrounds?
 21 CHAIRPERSON: He didn't say he didn't
 22 know that. He did say that he knew the majority were RDOs.
 23 MR MPOFU: No, he didn't. After you
 24 helped him, Chair, after you said –
 25 CHAIRPERSON: Before that, but anyway the

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1 record will speak for itself.
 2 MR MPOFU: Ja, well, okay. The record
 3 will speak for itself. So did you know that they came from
 4 diverse cultural and language backgrounds?
 5 COLONEL McINTOSH: That is correct,
 6 Chair, we knew that as well. That's why we took a Fanagolo
 7 interpreter with us due to the fact that it would bridge
 8 most of the language gaps.
 9 MR MPOFU: Now alright, and so when you
 10 say you were resorting to culture, which one of the diverse
 11 cultural backgrounds were you referring to?
 12 COLONEL McINTOSH: Chair, there's a lot
 13 of different cultures. There's Zulus, there's Xhosas,
 14 there was quite a few people in there and the decision was
 15 made to make use of the five bravest men because in general
 16 your cultural groups will come forward as the five bravest.
 17 MR MPOFU: Yes, that's what I'm saying.
 18 So according to you, whether they were Zulu, Xhosa, Sotho,
 19 whatever, this thing of five bravest men would appeal to
 20 them.
 21 COLONEL McINTOSH: Generally it would,
 22 Chair, according to the discussion that we had inside the
 23 Nyala.
 24 MR MPOFU: In other words, just because
 25 they were black?

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1 COLONEL McINTOSH: No Chair, not because
 2 they were black.
 3 MR MPOFU: You've just said that they
 4 were diverse in culture but you are saying nevertheless you
 5 addressed them in that way because it would appeal to all
 6 of them.
 7 CHAIRPERSON: He was talking about
 8 Fanagolo –
 9 MR MPOFU: No, we were not talking about
 10 Fanagolo. We're talking about the bravest men. Answer the
 11 question.
 12 COLONEL McINTOSH: Can you please repeat
 13 it? You have taken some time already.
 14 MR MPOFU: I am saying to you, you are
 15 saying despite the fact that according to you they had
 16 diverse cultural backgrounds, you thought that this clarion
 17 call for bravest men appeal to them homogeneously and I'm
 18 saying to you, you are saying that because they were all
 19 black.
 20 COLONEL McINTOSH: Chair, due to the fact
 21 that everybody was on the koppie was black, if there'd been
 22 white people there as well we would have done the same
 23 thing if we hadn't got people to come forward, if they'd
 24 been inside the crowd as well. So it had to do with
 25 calling for the five bravest men to come forward, it had

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1 nothing to do with anything else but in general that was
 2 the discussion we had inside the vehicle, to try that and
 3 it did work.
 4 MR MPOFU: Okay. And then you also did
 5 not know what languages they spoke, you say. You've
 6 already said that, correct?
 7 COLONEL McINTOSH: Chair I did say they
 8 came from a vast different background of people including
 9 Zulus, Xhosas, et cetera and that's why we went with the
 10 decision to go with Fanagolo due to the fact that it is
 11 understandable to most miners.
 12 MR MPOFU: Colonel McIntosh, I'm sorry.
 13 Please answer my questions properly. There are no people
 14 in South Africa who speak et cetera. I'm saying did you
 15 know what language groups the people there represented and
 16 what language they spoke? Don't tell me it's Xhosa, Zulu,
 17 etcetera. Did you know or did you not know what languages
 18 they spoke?
 19 COLONEL McINTOSH: There was a vast
 20 amount of languages that they spoke, Chair -
 21 MR MPOFU: Do you know which -
 22 COLONEL McINTOSH: - and thus we went
 23 with Fanagolo.
 24 MR MPOFU: Did you know in that vast
 25 array of languages which they were and which they were not?

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1 COLONEL McINTOSH: From the information
 2 we received it was Xhosa, Zulu, there was a variety of
 3 them that was mentioned to us and that is why the
 4 predominant that we could get through on was Fanagolo.
 5 MR MPOFU: So you did not know.
 6 COLONEL McINTOSH: I knew about the
 7 various languages that were there, Chair.
 8 CHAIRPERSON: I take it you knew the
 9 people were all mineworkers and you knew that Fanagolo is
 10 the lingua franca used on the mines, is that correct?
 11 COLONEL McINTOSH: That's also correct,
 12 Chair.
 13 MR MPOFU: Ja, but that's not my
 14 question. I understand that you knew that there were
 15 various languages and they were et cetera and et cetera.
 16 Did you know which language group were represented on that
 17 mountain, yes or no?
 18 COLONEL McINTOSH: Chair, once again, we
 19 were informed of all the different cultural groups that
 20 were on the mountain –
 21 MR MPOFU: What were they?
 22 COLONEL McINTOSH: - and we knew about
 23 it.
 24 MR MPOFU: What were they?
 25 COLONEL McINTOSH: There was Xhosas,

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1 Zulus, there was from Malawi – not from Malawi, from
 2 Lesotho, there was a vast majority of people.
 3 MR MPOFU: Any other ones?
 4 COLONEL McINTOSH: Chair, I can't recall
 5 offhand right now.
 6 CHAIRPERSON: If you knew these people
 7 were mineworkers but not all speaking the same language and
 8 if you didn't know what languages they all spoke but you
 9 knew that Fanagolo was the lingua franca of the mines, was
 10 that enough for you?
 11 COLONEL McINTOSH: Yes Chair, that's why
 12 we decided to go with the Fanagolo.
 13 MR MPOFU: This has got nothing to do
 14 with the language, this question I'm asking but that's
 15 fine. I think let's just – it's even causing more
 16 confusion here. The point I'm asking to you is that you
 17 said that there were people with various cultural
 18 backgrounds there. It's got nothing to do with language
 19 per se. I'm simply probing whether you knew what those
 20 various cultural backgrounds were but that's fine, I think
 21 we are talking at cross-purposes all of us. Did you know
 22 how many of the people were armed?
 23 COLONEL McINTOSH: The majority of the
 24 people were armed, most of whom had traditional weapons,
 25 assegais, there was axes, the majority were armed.

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1 MR MPOFU: Did you know, I'm asking it
 2 for the second time, did you know what proportion of the
 3 3 000 to 4 000 people were armed with dangerous weapons,
 4 yes or no?
 5 COLONEL McINTOSH: No, I'm not going to
 6 speculate on that, Chair.
 7 MR MPOFU: Yes, but your view was that
 8 the majority of them were armed with dangerous weapons.
 9 COLONEL McINTOSH: Chair, if you had a
 10 look from the vantage point that we had, yes, you could see
 11 it as well.
 12 MR MPOFU: Thank you.
 13 CHAIRPERSON: Mr Mpofu, I'm going to take
 14 tea at a suitable stage but I don't want to interrupt your
 15 cross-examination unduly. If you want to round off a point
 16 –
 17 MR MPOFU: Yes, yes.
 18 CHAIRPERSON: - or make another point
 19 shortly before tea –
 20 MR MPOFU: Let me –
 21 CHAIRPERSON: It's in your hands.
 22 MR MPOFU: Yes, two or three points just
 23 to round off this series. Thank you, Chairperson. And did
 24 you know that the majority of the people went home at night
 25 and came back in the mornings, every day?

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1 COLONEL McINTOSH: Chair, on the 14th the
 2 majority of the people walked past the Nyalas going back
 3 into the informal settlements. Others would be going to
 4 hostels and so forth, so the majority did leave and go home
 5 as far as we can ascertain. They walked past our vehicles
 6 into the informal settlements.
 7 MR MPOFU: And did you know about the
 8 attack on the strikers on the 11th by NUM people?
 9 COLONEL McINTOSH: On the 11th, that would
 10 have been the Saturday?
 11 MR MPOFU: Yes, I think so.
 12 COLONEL McINTOSH: There is reference to
 13 an attack on people on the – but there were no names
 14 mentioned in the briefings and no-one was killed in that
 15 incident either.
 16 MR MPOFU: No, I'm not talking about
 17 killing. I'm saying, I'm asking you about your knowledge
 18 of the situation that you were confronted with. These are
 19 all, the things I'm asking you are all important things
 20 about what it is, what I've called the milieu of that – so
 21 you didn't know how come they went to the koppie in the
 22 first place, for example?
 23 COLONEL McINTOSH: Chair, we were
 24 informed that they'd gone there to gather as a group
 25 together and that was the instructions as well, that we had

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1 to negotiate from there –
 2 MR MPOFU: Ja, so you –
 3 COLONEL McINTOSH: - and we were informed
 4 about that and it was as a result of possible intimidation
 5 and attacks.
 6 MR MPOFU: Okay, so you did not know that
 7 they had been attacked on the 11th and two of them were
 8 seriously injured and that –
 9 MR TIP SC: Chair?
 10 CHAIRPERSON: Yes?
 11 MR TIP SC: Chair, I object to the manner
 12 in which that question is being framed. There is very
 13 decidedly disputed evidence as to what took place on the
 14 11th. The Chair is aware and so is my learned friend that
 15 the NUM version is that it was a defence. If my learned
 16 friend puts it on the basis that his clients say that there
 17 was a perception then that is different from putting it to
 18 the witness as though it is a cold established fact.
 19 MR MPOFU: Alright –
 20 CHAIRPERSON: Mr Mpofu, I think there's
 21 something in that. One way of – could I ask a few
 22 questions along this line to try to deal with the point?
 23 MR MPOFU: Thank you, Chairperson.
 24 CHAIRPERSON: We've had evidence that
 25 there was an incident, I use the neutral word, an incident

<p style="text-align: right;">Page 28902</p> <p>1 on Saturday the 11th when a group of mainly rock drill 2 operators, I think, went towards the NUM office and NUM 3 people had been informed, according to the evidence, that 4 these people had come to attack them and so they came out 5 and some of them left, some of them came out to defend the 6 office and according to their evidence, and this is their 7 evidence, they, in order to defend their office, fired 8 shots. There is a dispute as to whether they did so 9 lawfully, whether in fact they were acting in self-defence 10 and various other issues may follow from that but what is 11 clear is, there was an incident when the strikers on the 12 one hand – a group of strikers on the one hand and NUM 13 officials on the other were engaged in a situation where 14 NUM people fired and two of the strikers were seriously 15 injured. The strikers claim that that was why they then 16 decided to go to the koppie to gather there and they also 17 claim that that was why they taken weapons. There are 18 other versions and other contentions, we'd have to decide 19 the correct position at the end of the Commission but 20 certainly the evidence or the case put forward, let me put 21 it that way, the case put forward by the strikers is that 22 they decided to gather on the koppie to protect themselves 23 and they decided to get their weapons and keep them with 24 them so that they could protect themselves. There also is 25 evidence that there was a rumour that the two people who</p>	<p style="text-align: right;">Page 28904</p> <p>1 At that time they didn't inform us about which but 2 Brigadier Calitz was aware of that and they had informed us 3 about the attack or the people who had been injured. They 4 didn't say critically injured but had been injured on the 5 Saturday and the people who had been murdered on the Sunday 6 and the Monday. That was information that we had been 7 given. 8 CHAIRPERSON: Is this perhaps a suitable 9 stage for us to take the tea adjournment? You can proceed 10 after the tea adjournment. 11 MR MPOFU: Yes, Chairperson, thank you. 12 CHAIRPERSON: We'll take the tea 13 adjournment. Let's try to be back by five past 12. 14 [COMMISSION ADJOURNS COMMISSION RESUMES] 15 [12:10] CHAIRPERSON: The Commission resumes. 16 Lieutenant-Colonel, you're still under oath. 17 STEPHEN JAMES McINTOSH: (s.u.o.) 18 CHAIRPERSON: Mr Mpofo. 19 MR MPOFU: Thank you. Thank you, 20 Chairperson. 21 CHAIRPERSON: Resuming at 10 past. We'll 22 bear that in mind when we allocate your time. 23 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 24 Thank you, Chairperson. Lieutenant-Colonel McIntosh, I 25 think it's already been established that your expertise</p>
<p style="text-align: right;">Page 28903</p> <p>1 were shot were actually killed. It turns out later that 2 that wasn't so but it does appear to be fair, on the 3 evidence so far, to have been a belief on the part of the 4 strikers or some of them, that the two people who had been 5 shot had actually been killed. So that's the background 6 against which the question has been framed. Now what it 7 really amounts, comes to is this, were you informed about 8 that? Were you informed anything about what happened in 9 the vicinity of the NUM office on the 11th and if so, what 10 were you told? I think that's, that covers your point so 11 far, Mr Mpofo, is that right? 12 MR MPOFU: Well, yes, with a few 13 qualifications, Chairperson. 14 CHAIRPERSON: Alright. 15 MR MPOFU: I didn't know that defending a 16 building can be called self-defence but there you are. 17 [11:49] CHAIRPERSON: The question was, were you 18 told in the briefing you got that there had been an 19 incident on Saturday morning in the vicinity of the NUM 20 office and, if so, what were you told about it? 21 COLONEL McINTOSH: Chair, we were 22 informed about incidents that took place right through the 23 weekend up to the run-up with regards to that we had been 24 informed that there had been an altercation between two 25 various groups, which I now believe to be NUM's offices.</p>	<p style="text-align: right;">Page 28905</p> <p>1 really lies in child protection and hostage negotiation, 2 correct? 3 COLONEL McINTOSH: Chair, I have got a 4 wide variety of experience with regards to policing, quite 5 a bit with regards to serious and violent crimes as well, 6 and I'm also now at the Public Violence Unit in Gauteng. 7 MR MPOFU: Yes. No, no, I'm – 8 CHAIRPERSON: The question was actually 9 directed to your negotiating skills and I think what Mr 10 Mpofo meant – if I'm wrong he'll correct me, as he usually 11 does – that as a negotiator your experience is primarily in 12 the field of child protection and hostage-taking. Would 13 that be correct? 14 COLONEL McINTOSH: Chair, with regards to 15 that, it's with regards to hostage situation. It's got to 16 do with suicides and it's got to do with barricading and so 17 forth as well. That's the primary fields. 18 MR MPOFU: Yes. No, I understand, but 19 also child protection, I mean if someone was keeping a 20 child in a – and wanted to torture them, that would be kind 21 of your expertise? 22 COLONEL McINTOSH: That is correct, 23 Chair. 24 MR MPOFU: Ja. 25 COLONEL McINTOSH: I've got that</p>

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1 expertise as well.

2 MR MPOFU: Thank you, and you would agree

3 that both your child protection and hostage experiences

4 were irrelevant to the situation that was pertaining at the

5 koppie. There were not any children or hostages.

6 COLONEL McINTOSH: Mr Chair, this is

7 where I will have to differ due to the fact that I was at

8 the teams, task teams in Mamelodi with regards to serious

9 and violent and related offences there was well and we

10 dealt with quite a few situations with regards to public

11 discrepancies with regards to xenophobia and so forth.

12 That all fell into our mandates as well.

13 MR MPOFU: No, thank you, Colonel. I

14 accept that. I think we're talking at cross purposes. All

15 I'm saying is that the things that you are known for, your

16 expertise, namely child protection and hostage

17 negotiations, that those two specific ones were irrelevant

18 in relation to what was happening at the koppie.

19 COLONEL McINTOSH: Chair, I agree with

20 those two, but like I say, I do have other experience as

21 well.

22 MR MPOFU: But what we do know, whatever

23 these other experiences, they don't include labour

24 relations issues.

25 COLONEL McINTOSH: Chair, not with

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1 regards to labour relations as such.

2 MR MPOFU: Yes, and as a negotiator and

3 in general terms you know that whatever the thing is about,

4 let's even take your expertise of hostage negotiation, the

5 first rule of negotiation is that there's always an

6 underlying problem. Isn't that correct?

7 COLONEL McINTOSH: That's correct,

8 Chair –

9 MR MPOFU: Yes.

10 COLONEL McINTOSH: - with regards to

11 hostage negotiation.

12 MR MPOFU: No, any negotiation. I mean

13 people won't just hold hostages because they want to look

14 at them in the face. They'll hold hostages but there's

15 always an underlying issue. In other words they say if you

16 don't release - like what's happening in Nigeria now, we're

17 holding these hostages but you must release our people.

18 There's always an underlying issue. Do you understand

19 that?

20 COLONEL McINTOSH: I understand that,

21 Chair.

22 MR MPOFU: And in this case the

23 underlying issue was the labour dispute, correct?

24 COLONEL McINTOSH: That's correct, Chair.

25 MR MPOFU: Yes, and so a negotiator must

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1 be conversant with both the crisis, as it were, whether

2 it's a hostage-taking or occupying a koppie or whatever,

3 must be conversant with that crisis as well as the

4 underlying issue, correct?

5 COLONEL McINTOSH: Chair, I agree with

6 that.

7 MR MPOFU: Right, and you actively shied

8 away from any involvement with the issues to do with the

9 underlying issue.

10 COLONEL McINTOSH: Chair, we did not shy

11 away from it. The requests that were made were given

12 through and the feedback given with regards to that.

13 Remember, again I say the primary function of a negotiator

14 is to ensure safety and security and that's what we were

15 doing.

16 MR MPOFU: No, I would have thought the

17 primary function of a negotiator is to end the, what I've

18 called the crisis situation, whether it's the hostage-

19 taking or the armed people occupying a koppie. That's what

20 you want to do, but you can't do that without addressing

21 the underlying issue. That's what you and I have agreed.

22 COLONEL McINTOSH: Chair, with regards to

23 that, unfortunately it will have to be a slightly longer

24 explanation, but if the weapons had been put down and the

25 people were at the koppie, there was no issue anymore.

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1 MR MPOFU: But you see – alright, I'm

2 going to come back to that issue. The issue really I'm

3 canvassing with you now is an issue that Ms Lupuwana was

4 putting to you. As a negotiator surely even if your

5 attitude was that look, my primary concern is this issue of

6 the occupation of the koppie and the weapons and so on,

7 once they say look – and you used the words yourself all

8 over the statements, you're saying that they were adamant

9 that they wanted to speak to Lonmin. Remember that?

10 COLONEL McINTOSH: That's correct, Chair.

11 MR MPOFU: Ja, every time you spoke to

12 them they were adamant, and those are the kinds of words,

13 they stressed the fact that they wanted to speak to Lonmin,

14 correct?

15 COLONEL McINTOSH: Correct, Chair.

16 MR MPOFU: Yes. Now what I'm saying is

17 that, as it was put to you earlier, therefore the failure

18 or refusal of Lonmin to meet that one sole demand or

19 request surely was an impediment to the success of your

20 negotiations, or resolving the crisis?

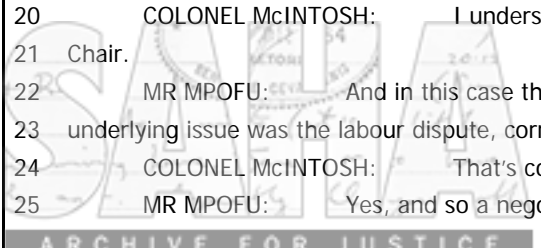
21 COLONEL McINTOSH: Chair, I cannot say

22 that.

23 MR MPOFU: Yes, but this is what I don't

24 – I know that was your answer to Ms Lupuwana. Isn't it

25 self-evident that the mere, the very reason that you even



1 took an effort to convey that request to Lonmin was part
2 and parcel of your efforts to defuse the crisis? Wasn't
3 it? You were not just doing it for, you know, as a tape
4 recorder. It was part of your efforts in defusing the
5 crisis, which was your primary concern, granted.

6 COLONEL McINTOSH: Chair, with regards to
7 the demands that were made, we gave it back with regards to
8 that, so to see if they could come to a solution. If it
9 had worked then it would have worked. If it didn't and
10 they didn't want to take place, I cannot force people to go
11 and negotiate, and we tried our utmost to try and bring
12 this in line and bring the people to the koppie, which they
13 didn't want to do. I cannot force people to do things they
14 do not wish to do, Chair.

15 MR MPOFU: Colonel, please, again maybe
16 it's my fault; maybe it's the way I'm framing this
17 question. I'm saying to you that – okay, maybe let me ask
18 this to you like this. Other witnesses, other police
19 witnesses where I've put this proposition have conceded, or
20 agreed that the refusal by Lonmin to come to the party – as
21 Ms Lupuwana had put it – was a source of frustration on the
22 part of SAPS because it impeded progress. You seem to
23 differ with that.

24 COLONEL McINTOSH: Chair, I cannot say
25 it's frustration due to the fact that we were totally

1 the same, but the concept changes.
2 MR MPOFU: Ja, okay. So it never
3 occurred to you as the chief negotiator in this major
4 crisis, it never occurred to your head that if only Lonmin
5 could just give us just – these people have only asked for
6 one thing, one, we want to talk to management, that's all.
7 They're not even saying we want to talk to them, we want
8 them to give us 12 500, whatever. We want to talk to
9 management. That's all. It never occurred to you as a
10 chief negotiator that if only Lonmin could assist us by
11 coming to the party and talk to these people, and even say
12 nothing, or tell them themselves to go to work, that my
13 work as a chief negotiator would then be much better? This
14 never occurred to you?

15 COLONEL McINTOSH: Chair, with regards to
16 that I have given evidence on this before. That is why we
17 also put forward an idea with regards to if we could
18 facilitate that five people go and see the management of
19 Lonmin, would they be willing to do that, and I've said it
20 in evidence already. So you look further than that. You
21 look for different options and different angles that you
22 can use. But remember, the primary responsibility was
23 safety and security, not to broker a labour dispute.

24 MR MPOFU: Ja, but Colonel McIntosh, I
25 think I've tried so many times to show you that it's

1 impartial with regards to the strikers and Lonmin. So
2 nothing can frustrate you. If someone says no, it's no.
3 You have to work around that and see if you can get
4 anything else.

5 MR MPOFU: No, but Colonel, please,
6 you're a hostage negotiator. If there's a hostage-taker
7 there who says look, you must bring me food to eat
8 otherwise I'm going to kill a hostage every five minutes,
9 that's the typical stuff of hostage negotiation, and
10 somebody who is in a position to provide that which is
11 going to save the lives, I will accept that you as a
12 negotiator, you are worried about the hostage-taking. If
13 that person says no, I'm not going to do that, let them
14 kill those hostages if they want, wouldn't that be a source
15 of frustration because it's impeding your work as the
16 negotiator?

17 COLONEL McINTOSH: Chair, as I said, I
18 was not frustrated by it. We're used to getting these type
19 of things. Working with a hostage situation would be
20 totally done in a different manner –

21 MR MPOFU: Okay –
22 COLONEL McINTOSH: - if it's a different
23 concept.

24 MR MPOFU: Okay.
25 COLONEL McINTOSH: The principles stay

1 impossible for you to solve the secondary problem. You
2 should know that. I mean I shouldn't be the one who's
3 telling you that. You're the negotiator. It's impossible
4 in a negotiation simply to resolve the secondary problem
5 and ignore the underlying issue that has created the
6 crisis. I thought you and I agree on that at least.

7 COLONEL McINTOSH: Chair, like I said, we
8 came with different options. We gave options to look at.
9 So we were trying to resolve an issue to allow the people
10 to talk, but we were not trying to broker any type of
11 resolution with regards to that. We were trying to look at
12 options that we could look at where maybe five people could
13 go, that we could maybe discuss and sort out and see if it
14 would be applicable or amicable for both parties to do
15 that, and the only time that things start going is when
16 people start to talk.

17 MR MPOFU: Yes.

18 COLONEL McINTOSH: And that's what we
19 were trying to do. We were trying to facilitate a
20 discussion between ourselves and then also we gave options
21 with regards to the fact, when they said they would not be
22 coming to the face to discuss this we gave another option
23 to say well, there's a possibility if we could take five
24 people. We also gave the assurance if it was amicable we
25 would take them and we would bring them back, and they

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1 would be free to go back to their people without a problem.
 2 MR MPOFU: Yes, yes, yes, I agree with
 3 you. I'm not saying it was your duty to make them to agree
 4 on 12 500 or whatever housing allowance, whatever they
 5 wanted to talk about. I'm simply saying to you if Lonmin
 6 had acceded to the request to talk – okay, not to agree, to
 7 talk, which is all that these people were asking for – then
 8 it would have made your job easier.
 9 COLONEL McINTOSH: Chair, it could have
 10 been possible. It might have been possible, it might not
 11 have. I cannot speculate on that.
 12 MR MPOFU: It's not something that
 13 worried you or you thought was important in achieving your
 14 goals?
 15 COLONEL McINTOSH: Chair, if it hadn't
 16 been important to me we wouldn't have come with the idea of
 17 bringing another option or a different angle with regards
 18 to see if we could assist.
 19 MR MPOFU: And therefore the fact that it
 20 was not done, or that they refused to it would have been a
 21 source of frustration because it was, the other side of the
 22 coin is that it was then blocking progress in your work,
 23 correct?
 24 COLONEL McINTOSH: Chair, as I said
 25 before, I do not get frustrated when I'm busy doing my job

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1 as a negotiator. You can't afford to get frustrated about
 2 it.
 3 CHAIRPERSON: Perhaps frustration is too
 4 strong a word, but I think what Mr Mpofu wants to know from
 5 you is the answer to a very difficult question, and that's
 6 a what-if question, and what-if questions are very
 7 difficult to answer. But nevertheless, a witness very
 8 often can say well, I can't be entirely sure but if this
 9 had happened then it's probable that something else would
 10 have followed.
 11 Now, so there are two points really that Mr
 12 Mpofu, as I understand, is busy with. Let's take
 13 frustration out of the picture and just use a work like
 14 disappointed, or unhappy. Now what Mr Mpofu is trying to
 15 get to is this; if Lonmin had said alright, we will speak
 16 to them, we will go, provided you give us the necessary
 17 protection and so on, we will go to the koppie and we will
 18 talk to them, if that had happened, the question is would
 19 that have made your task easier? Does it make it probable
 20 that you would have been able to achieve what you wanted to
 21 achieve, namely the restoration of law and order and the
 22 return of safety and security to the area? That's the big
 23 issue.
 24 Now put it that way; if Lonmin had agreed to do
 25 that, it's never possible to give an absolutely certain

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1 answer to a what-if question, but you can sometimes if you
 2 were involved in the issue give a, venture an opinion as to
 3 the probabilities as you saw them at the time and even as
 4 you see them now. So now that I've reformulated Mr Mpofu's
 5 question, can you answer it?
 6 COLONEL McINTOSH: Chair yes, I would say
 7 there was a possibility, or a probability that things could
 8 have changed, but it could have been a double-edged sword;
 9 (1), it could have been positive, or the second, it could
 10 have been a negative aspect. So possibly things could have
 11 been different, Chair, but which way it would have gone we
 12 don't know.
 13 MR MPOFU: Yes, but what we do know from
 14 your statements is that, even let's assume what you're
 15 saying, ja it could have worked well and everyone would
 16 have been happy, or it might not have yielded any positive
 17 result, in other words things could have still turned out
 18 the same. Let's for now accept that, but what we certainly
 19 do know is that your, when you conveyed the message to the
 20 strikers that Lonmin was refusing to talk to them, that
 21 resulted in agitation. That much we know as a matter of
 22 fact, correct?
 23 COLONEL McINTOSH: That is correct,
 24 Chair.
 25 MR MPOFU: Yes, and that so at the very

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1 least – and the Chair is quite right – now if you yourself
 2 are linking their agitation to the conveyance of the
 3 message that Lonmin was refusing to talk to them, then at
 4 the very least we can say had your message been different,
 5 had you come to them to say Lonmin has agreed to talk to
 6 you, they would not have been agitated, correct?
 7 COLONEL McINTOSH: It's possible.
 8 CHAIRPERSON: You know, probably you're
 9 being a little bit too cautious there. I would have
 10 thought that if, we know they were agitated when you
 11 conveyed the negative message. If you conveyed a positive
 12 message, surely the probabilities are that they wouldn't
 13 have been agitated. What would they have had to be
 14 agitated about?
 15 COLONEL McINTOSH: I understand, Chair,
 16 but there is possible that it wouldn't have been a source
 17 of agitation. That's why we also gave another option with
 18 regards to taking a delegation and see if we could
 19 facilitate that. So you look at it from both sides to try
 20 and bring other options, Chair.
 21 MR MPOFU: Alright. Another important
 22 attribute for a negotiator is gaining the trust of the
 23 disputants, correct?
 24 COLONEL McINTOSH: That's correct, Chair.
 25 MR MPOFU: And treating them with

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1 respect, correct?

2 COLONEL McINTOSH: That's correct, Chair.

3 MR MPOFU: And treating them as your

4 equals, correct?

5 COLONEL McINTOSH: That's correct, Chair,

6 that's what we did.

7 [12:30] MR MPOFU: Now, would you say that those

8 attributes which, are they consistent with the manner in

9 which you connected the discussion, here you are in the big

10 Nyala and the people that you are talking to are

11 effectively on their knees somewhere down there on the

12 ground. Does that engender a spirit of mutual trust and

13 mutual respect in your view?

14 COLONEL McINTOSH: Chair, seen in that

15 circumstance I would say no but now comes the –

16 MR MPOFU: But, okay sorry?

17 COLONEL McINTOSH: The but is

18 unfortunately we requested to be allowed to negotiate

19 outside the vehicles and due to the safety aspect we were

20 informed that we had to negotiate from inside the vehicle.

21 I would also prefer to have been outside but unfortunately

22 they couldn't ensure our safety and thus we were refused to

23 negotiate outside.

24 MR MPOFU: Ja, no I accept the reasons.

25 I'm just saying, at least you and I agree that for whatever

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1 good reason this was not a situation which would engender

2 mutual trust and mutual respect, for good reasons.

3 COLONEL McINTOSH: If you say so, Chair.

4 MR MPOFU: I say so, what do you say?

5 COLONEL McINTOSH: I will agree with you

6 on that point.

7 MR MPOFU: Thank you. Thank you, sorry I

8 didn't cut in I hope. Right, another very, very important

9 issue in negotiations is what one might call, just the

10 psychology of the partners, you know body language, how you

11 address each other, that kind of thing, correct?

12 COLONEL McINTOSH: Chair, it is seen as a

13 point but it is not always as you could say ideal to work

14 on body language. Remember when people are frustrated and

15 angry and so forth they tend to act otherwise and during

16 that whole negotiation with Mr Noki things did change. His

17 way of talking changed, his attitude changed and we started

18 to, in the first, on the 14th we actually started to build a

19 relationship as such where we could talk to one another and

20 ask one another things.

21 MR MPOFU: Ja.

22 COLONEL McINTOSH: Which worked very

23 well.

24 MR MPOFU: No, that's fine and not to go

25 back to what we have already discussed, if one analyses all

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1 your statements the point at which that, those changes

2 would happen always coincided with when you told them that

3 Lonmin was refusing to talk to them, correct?

4 COLONEL McINTOSH: Also times when we

5 didn't, when we hadn't spoken to them, it changed sometimes

6 as well. But like I say on the 14th we really started to

7 build a relationship where we could share and request one

8 another for things and we did that and we informed them of

9 decisions we were making as well.

10 MR MPOFU: Yes, but the attitudinal

11 change happened mostly when you convey to them that the

12 employer was not going to talk to them, we can go through

13 the statements. Which is a general statement, I'm not

14 saying always, but mostly.

15 COLONEL McINTOSH: In some of the cases,

16 yes.

17 MR MPOFU: Yes, thank you. Now a further

18 important tool is language itself, isn't it?

19 COLONEL McINTOSH: That's correct, Chair.

20 MR MPOFU: Yes, and we've even seen this

21 in the movies. I mean if there's a hostage taker who

22 speaks Italian or whatever then they'll bring a detective

23 who can talk to him in his language, it's very important,

24 correct?

25 COLONEL McINTOSH: Chair, you can also

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1 make use of an intermediate.

2 MR MPOFU: Yes, but it's not first

3 choice, first choice would be to find, of course if you

4 found someone that speaks Chinese and there was no other

5 person then obviously you would have to get an intermediate

6 but if it was possible to have someone speaking the same

7 language it would be preferable, I won't put it higher than

8 that, correct?

9 COLONEL McINTOSH: It would be preferable

10 to find someone that can speak the language but like I say

11 in most cases you use an intermediate which we do very

12 regularly.

13 MR MPOFU: Yes, but you do that as a, as

14 a fall back and as a second option. It can't be your first

15 option, correct?

16 COLONEL McINTOSH: Chair, no it's not the

17 ideal but we mostly make use of it due to the fact that

18 there is a lot more languages than just 11 languages in

19 South Africa and we make use of intermediates quite

20 regularly so.

21 MR MPOFU: Okay. Now, and that is not

22 just for cosmetic reasons. It's because negotiation is

23 about knowing nuance, inflection, if you are speaking with

24 a person directly in the same language you're more likely

25 to influence them, correct, rather than through an

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1 intermediary?

2 COLONEL McINTOSH: Chair, that could be

3 50/50 because in some cases the intermediate works better

4 and other cases direct communication may work better.

5 MR MPOFU: Ja, but in general if you were

6 conducting a negotiation, you, surely you would prefer to

7 do it as I'm talking to you now, in a language that we both

8 understand, so that we can understand each other.

9 COLONEL McINTOSH: It would be

10 preferable.

11 MR MPOFU: Yes, ja, that's what I'm

12 saying. I'm saying if you were, if I was the bad guy and

13 you know that you can speak to me in English like we are

14 speaking now you wouldn't say okay I think despite the fact

15 that Mr Mpofo and I can speak English and I'm the

16 negotiator I'm going to get an intermediary whose going to

17 ask him the questions in Xhosa and then convey to me.

18 Surely you would prefer the situation that you and I are

19 doing now, correct?

20 COLONEL McINTOSH: It would be suitable –

21 MR MPOFU: Yes.

22 COLONEL McINTOSH: More suitable that

23 way.

24 MR MPOFU: Yes.

25 COLONEL McINTOSH: But for clarification

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1 you can still use the intermediary.

2 MR MPOFU: Correct, yes. So effectively

3 you, what, where I'm going with this is that you placed

4 yourself at a disadvantage in that you now had to rely on

5 good old George whose origins we don't know, who was the

6 interpreter rather than being able to talk to the people

7 themselves. Okay let me withdraw that, of placing

8 yourself, you were at an advantage because of that, a

9 disadvantage, I'm sorry, correct?

10 COLONEL McINTOSH: Chair, yes, we were at

11 a slight disadvantage -

12 MR MPOFU: Ja.

13 COLONEL McINTOSH: With regards to that.

14 MR MPOFU: And all you should have done,

15 instead of these things about brave men and what have you,

16 would be to say of the people who are sitting there whoever

17 their leadership is can you give me five people who are

18 leaders and who can speak English and then you wouldn't

19 have been at that disadvantage, correct?

20 COLONEL McINTOSH: Chair, we had tried to

21 get people to come forward without any result before.

22 That's why we went across to the decision to go with the

23 five brave people.

24 MR MPOFU: Ja, I know that. I'm saying

25 to you that the important language barrier which operated

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1 in these negotiations would have been simply removed had

2 you instead of asking for brave people asked for people who

3 can speak English or Afrikaans or whatever you speak,

4 correct?

5 COLONEL McINTOSH: It could have been a

6 possibility, Chair.

7 MR MPOFU: But instead of placing

8 yourself in that situation which would have facilitated

9 your negotiations and maybe might have even resulted in

10 success because of all the things that you and I have

11 agreed, the advantages, you concentrated on an irrelevant

12 factor of bravery, correct?

13 COLONEL McINTOSH: Chair, I would not say

14 it was irrelevant. I think it was very relevant.

15 MR MPOFU: What has bravery got to do

16 with the success or failure of negotiations more than being

17 able to speak the same language?

18 COLONEL McINTOSH: As I have said before

19 we tried to get people to come forward and then with the

20 decision made and the suggestion made it was based on to

21 request the five bravest men to come forward and in general

22 it seemed to be that those were the leaders of the group.

23 MR MPOFU: Now why did you say to the

24 people that they are, they were involved in an illegal

25 gathering?

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1 COLONEL McINTOSH: The illegal gathering

2 had to do with the weaponry with regards to that. The

3 weapons should not have been there. If they had no weapons

4 the koppie, they could have been there for as long as six

5 months, ten months, two years, it makes no difference.

6 MR MPOFU: Alright. So but don't you

7 think isn't that a strange thing, you don't say to people

8 listen here at an illegal gathering if really your concern

9 is only weapons, you simply say you are in possession of

10 dangerous weapons. It doesn't matter if there is twenty or

11 one of them. Your concern is the weapons. Why did you

12 have to go via the route of the gathering.

13 COLONEL McINTOSH: It was that the

14 gathering was made illegal due to the weaponry and it was

15 said many times, we've even asked them in the afternoons

16 not to bring weapons back to the koppie or they could leave

17 the weapons at the koppie then there wouldn't be an issue.

18 MR MPOFU: Yes, but the point I'm simply

19 making to you, even if it was one person there with many

20 illegal weapons you would still have been concerned,

21 correct?

22 COLONEL McINTOSH: Chair, if it had been

23 one person it would have been no problem.

24 MR MPOFU: So one person could sit there

25 at the koppie with dangerous weapons and the police would

<p style="text-align: right;">Page 28926</p> <p>1 just drive by and say no but no there's no problem here.</p> <p>2 COLONEL McINTOSH: Does one person</p> <p>3 constitute a gathering, no it doesn't.</p> <p>4 MR MPOFU: Exactly the point I'm making.</p> <p>5 That if you were concerned with the weapons the fact that</p> <p>6 it was one person or a gathering is mightily irrelevant,</p> <p>7 the point is that you were worried about weapons?</p> <p>8 COLONEL McINTOSH: The weapons is what</p> <p>9 was making it an illegal gathering, Chair. Weapons should</p> <p>10 not have been there and it was requested several times not</p> <p>11 to bring the weapons back to the koppie. They could have</p> <p>12 sat there indefinitely without weapons.</p> <p>13 MR MPOFU: Is that all? Then why was one</p> <p>14 of your primary objectives to disperse them?</p> <p>15 COLONEL McINTOSH: My primary objective</p> <p>16 was not to disperse anybody, Chair.</p> <p>17 MR MPOFU: Ja, but the operation that you</p> <p>18 were taking part in as we have heard from many witnesses</p> <p>19 had one of its main objectives the dispersal of the people,</p> <p>20 do you agree?</p> <p>21 COLONEL McINTOSH: Chair, if you have a</p> <p>22 look you'll notice that it's two separate entities. The</p> <p>23 negotiations was part of a plan and then afterwards if it</p> <p>24 didn't work dispersal would take place, to disperse the</p> <p>25 people with the weapons, to encircle and arrest or whatever</p>	<p style="text-align: right;">Page 28928</p> <p>1 exactly what we are probing, we are busy probing. I'm</p> <p>2 saying if that was true what you are saying, if that was</p> <p>3 the attitude of SAPS then we wouldn't be having all the</p> <p>4 statements littered with them being told to leave the</p> <p>5 koppie and the, that the primary thing was to disperse them</p> <p>6 and all that. You knew that in the evenings they go home,</p> <p>7 they disperse themselves voluntarily. So you could have</p> <p>8 taken the arms from there. So why did you have to wait for</p> <p>9 them to go to the koppie and then disperse them?</p> <p>10 COLONEL McINTOSH: Chair, with regards to</p> <p>11 that I cannot say what the operational side would have</p> <p>12 done. But I can say with regards to the negotiation point</p> <p>13 we said if there's no weapons, if they come to the koppie</p> <p>14 they mustn't bring weapons. There was no talk about</p> <p>15 dispersing people after there was no weapons on the koppie.</p> <p>16 At no time did I ever hear someone say that. The purpose</p> <p>17 was to disarm the people and to take the arms or the</p> <p>18 dangerous weapons and so forth away. We even gave them the</p> <p>19 option of leaving them on the koppie, we would have fetched</p> <p>20 them that night, Chair.</p> <p>21 MR MPOFU: So if someone said the</p> <p>22 approach that was decided was the negotiated approach with</p> <p>23 the striking group to lay down their weapons, disperse and</p> <p>24 conduct their labour dispute through established</p> <p>25 structures, that person would be, it wouldn't be what you</p>
<p style="text-align: right;">Page 28927</p> <p>1 they said in the plan. It would not have been a</p> <p>2 negotiation issue. So it was to disperse at the end of the</p> <p>3 day if it didn't work.</p> <p>4 MR MPOFU: I see, so you're saying you</p> <p>5 yourself you had, you never said that they must leave the</p> <p>6 koppie?</p> <p>7 COLONEL McINTOSH: Chair, if you read and</p> <p>8 see what we tried to do, we said we don't have a problem,</p> <p>9 they can come to the koppie but they can leave their</p> <p>10 weapons behind, they mustn't bring weapons to the koppie.</p> <p>11 MR MPOFU: Colonel, please if you're</p> <p>12 leaving weapons behind it means you are not there, you have</p> <p>13 dispersed, correct?</p> <p>14 COLONEL McINTOSH: Chair, that is correct</p> <p>15 if you've left you've gone, you're dispersed.</p> <p>16 MR MPOFU: Yes. The point I'm making to</p> <p>17 you even in the solution quote unquote that you are</p> <p>18 postulating now it involved them leaving the koppie which</p> <p>19 is not the same thing as what you have just said that they</p> <p>20 could stay there for six months if they wanted. Do you</p> <p>21 agree?</p> <p>22 COLONEL McINTOSH: Chair, again I'm</p> <p>23 reiterating if the people had no weapons then there was no</p> <p>24 issue with regards to the koppie.</p> <p>25 MR MPOFU: Ja, but, Colonel, this is</p>	<p style="text-align: right;">Page 28929</p> <p>1 understood to be the situation?</p> <p>2 COLONEL McINTOSH: Chair, it seems that</p> <p>3 we're on two different pages here at the moment. But let</p> <p>4 me try and answer it better as you can, or as best as I</p> <p>5 can. What the purpose was, was to get them to lay down</p> <p>6 their weapons. The dispersal would then take place because</p> <p>7 then they would have left without their weapons or they</p> <p>8 could have left them at home and then they were also</p> <p>9 informed the following day after the request if they wanted</p> <p>10 to see Lonmin to go through the normal channel and we</p> <p>11 offered that to them as well in the process of taking five</p> <p>12 people there.</p> <p>13 MR MPOFU: Yes, okay that's the point,</p> <p>14 the exact point I'm making. I'm saying if the, if indeed</p> <p>15 it's true that the primary concern was weapons there was</p> <p>16 nothing stopping, instead of shooting and doing all the</p> <p>17 things that were actually done, there would have been</p> <p>18 nothing stopping you as SAPS or you as negotiators from</p> <p>19 saying well let's surround the place overnight when there's</p> <p>20 no one there, either with people or with wire or with</p> <p>21 Nyalas or whatever. Create one place for them to come in</p> <p>22 and to leave their weapons, then they can gather there for</p> <p>23 six months as you put it, if they want.</p> <p>24 COLONEL McINTOSH: That's a possibility.</p> <p>25 That's something that could have taken place.</p>

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1 MR MPOFU: Ja.

2 COLONEL McINTOSH: If it would have been

3 that operational way but remember we don't stay put down

4 the wire, that comes from operational side. We go with the

5 negotiation side not with the operational side, Sir.

6 MR MPOFU: Ja, but do you at least agree

7 that even with the benefit of hindsight that that option

8 was better than killing 34 people and all the things that

9 actually happened.

10 COLONEL McINTOSH: Chair, with regards to

11 what happened at Marikana I cannot even speculate what

12 would have or could have happened and I'm not going to -

13 MR MPOFU: No.

14 COLONEL McINTOSH: Due to the fact that

15 if things had gone right no one would have been hurt.

16 MR MPOFU: Yes.

17 COLONEL McINTOSH: And things hadn't gone

18 right we now sit with 34 people who were killed on one

19 specific day.

20 MR MPOFU: Yes, absolutely and I don't

21 accept that you don't want to discuss what actually

22 happened. That cannot be correct. Surely as the chief

23 negotiator you must see the death of those 34 people and

24 the injuries of many more as a direct result of the failure

25 of the negotiations. You must know that had your efforts

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1 been successful those people would have been alive and not

2 injured. So it's directly related, it's the failure of the

3 negotiations, whether that failure is your fault or not is

4 another question. But it certainly what happened there

5 symbolises a dismal failure of the negotiation effort,

6 surely.

7 COLONEL McINTOSH: Chair, I do not see it

8 as such. I see it as the situation where if they had

9 disarmed there would have been no problem. But

10 unfortunately they did not want to, there was many factors

11 included in that, Chair.

12 CHAIRPERSON: Colonel, I think you're

13 not understanding the question. What Mr MpoFU says to you

14 is the failure of the negotiations was part of the causal

15 train as it were that led to the shootings. If the

16 negotiations had succeeded shootings wouldn't have

17 happened. That's his point and he says he's not dealing,

18 he's not playing a blame game now, he's not saying the

19 failure was necessarily due to any fault on your part,

20 there may be all sorts of other factors, other people may

21 be responsible for the failure.

22 [12:50] But he's putting a simple question to you. Shorn

23 of any culpability as far as you were concerned, if the

24 negotiations had succeeded there wouldn't have been the

25 shooting. I think the answer to that must surely be yes.

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1 COLONEL McINTOSH: Chair, I agree to

2 that.

3 CHAIRPERSON: Right, and it follows that

4 the fact that the negotiations didn't succeed is causally

5 connected – it wasn't the only cause by any manner of means

6 but it's causally connected to what ultimately happened.

7 That's the second part of his question and I take it you

8 would agree with that too

9 COLONEL McINTOSH: It does –

10 CHAIRPERSON: - that follows the previous

11 answer, doesn't it? Ja.

12 MR MPOFU: Thank you for agreeing with

13 the Chair – via an intermediary, as the witness would put

14 it, yes. Thank you, Chairperson.

15 COLONEL McINTOSH: Properly phrased,

16 Chair, properly phrased.

17 MR MPOFU: Ja, much better, alright.

18 Then, Colonel, I just want to ask you a question and I know

19 that this is a matter that was dealt with but there are

20 aspects of it which, as the Chair would say, from a

21 different angle but in this case it's something that Ms

22 Barnes dealt with you and I'm not going to re-traverse the

23 whole thing about the tracks and so on, you remember that?

24 COLONEL McINTOSH: Correct, Chair.

25 MR MPOFU: Ja. What I want to ask you or

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1 rather to say to you is that given – and this is one of the

2 problems with this language thing, you yourself honestly

3 speaking cannot say what Mr Noki said or did not say. You

4 can say what you thought the interpreter said or what the

5 interpreter said, whether the interpretation was correct or

6 not is another matter, that's out of your hands. Once

7 again I'm not blaming you, I'm just saying you as

8 Lieutenant-Colonel McIntosh, you can't put your hand down

9 here and gang the table and say this is what Mr Noki said,

10 correct?

11 COLONEL McINTOSH: That's correct, Chair.

12 MR MPOFU: Yes. And therefore – but

13 having said that, all the evidence or the allegations, at

14 the very least, that SAPS level on Mr Noki on what he said

15 or did not say, what tracks he made, come from you.

16 COLONEL McINTOSH: It comes through to

17 the interpreter to us, that's correct, yes.

18 MR MPOFU: Yes but it comes from

19 Lieutenant-Colonel McIntosh.

20 COLONEL McINTOSH: That's correct and the

21 people in the Nyala with me.

22 MR MPOFU: Yes. So now seeing that we

23 are in that quandary and seeing that the interpreter is not

24 going to give evidence, it means the Commission will never

25 really know what Mr Noki said, correct?

<p style="text-align: right;">Page 28934</p> <p>1 COLONEL McINTOSH: Chair, that is correct 2 based on the interpreter. 3 MR MPOFU: Yes. Yes, no, no, what I'm 4 saying is that that problem would have been resolved if the 5 interpreter would come, then you would be out of the 6 picture. He would simply say he said blah-di-blah-di-blah- 7 di-blah, you know. 8 COLONEL McINTOSH: Agreed. 9 MR MPOFU: Correct? 10 COLONEL McINTOSH: Agreed. 11 MR MPOFU: Ja, but we know now that's not 12 going to happen so we'll never know what Mr Noki actually 13 said, correct? 14 COLONEL McINTOSH: That's correct, Chair, 15 due to the fact that we worked through an intermediate – 16 MR MPOFU: Yes. Something which you 17 would have avoided if you'd asked for English-speaking 18 people, correct? 19 COLONEL McINTOSH: Chair, requests were 20 made for people to come forward and we had to resort to the 21 five bravest men, Chair. 22 MR MPOFU: Alright. You were referred 23 this morning to the statement of Captain Greyling. I'm not 24 sure if it was given an exhibit number, Chair. 25 CHAIRPERSON: It's TTT9.</p>	<p style="text-align: right;">Page 28936</p> <p>1 police were there to maintain peace and you wanted a 2 peaceful resolution. That's the passage that is put to 3 you. 4 COLONEL McINTOSH: Noted, Chair. 5 MR MPOFU: Chairperson, I must confess I 6 didn't hear that last one. 7 CHAIRPERSON: I'm just putting 19 to him 8 – 9 MR MPOFU: In context. 10 CHAIRPERSON: - together with 18 in the 11 context. Your point was that what Captain Greyling 12 remembers the interpreter as having said was that what Mr 13 Noki said was along these lines, "There will be bloodshed 14 on this day." That's the point you – 15 MR MPOFU: Thank you, Chairperson, yes. 16 You would agree that "There will be bloodshed on this day" 17 is not – or firstly, is not a threat, correct? 18 COLONEL McINTOSH: In which context? 19 Sorry, just – 20 MR MPOFU: Well, in any context. If 21 someone says "There will be bloodshed," if I say to you 22 "There will be bloodshed today," that blood might be mine 23 so I can't be threatening you, correct? 24 COLONEL McINTOSH: No, Chair, I don't 25 agree with that statement.</p>
<p style="text-align: right;">Page 28935</p> <p>1 MR MPOFU: TTT9. 2 CHAIRPERSON: Sorry, it's – TTT9. 3 MR MPOFU: Thank you, Chair. Can you go 4 to paragraph 19? It looks like Captain Greyling, at least 5 he's honest because he does say that it was through the 6 interpreter but he says this – 7 CHAIRPERSON: The context, you'd better 8 look at it in relation to what's in 18. 9 MR MPOFU: Yes. 10 CHAIRPERSON: I think this is what had 11 happened on the Thursday morning when, for the first time, 12 the Nyalas had come pulling barbed wire trailers. They'd 13 been kept out of sight at forward holding area 1, I think, 14 the day before because it was feared they might provoke the 15 strikers. So they came into the sight of the strikers, 16 actually the area in front of the koppie on the Thursday 17 morning and this is what is being talked about. Mr Noki, 18 as we now know, demanded to know why they had, the Nyalas 19 on this day had barbed wires when they hadn't had them the 20 previous day and he said that. And then you explained that 21 it was for everyone's safety and then 19 says, "This answer 22 seemed to agitate him and" – obviously the word "he" is 23 missing – "he said words that the interpreter interpreted 24 along these lines, "there will be bloodshed on this day." 25 You tried to calm him down by again assuring him that the</p>	<p style="text-align: right;">Page 28937</p> <p>1 MR MPOFU: No, but Colonel please, if I 2 say to you, you and I are involved in a duel, you are a big 3 man and I come to you and I say, "You, I'm going to fight 4 with you. There's going to blood," if I'm referring to my 5 blood as opposed to yours then I can't be threatening you, 6 correct? 7 COLONEL McINTOSH: Chair, I don't agree 8 with that statement. 9 MR MPOFU: Yes, I think a good example is 10 exactly that, yes. General Mpembe said, for example, that 11 if the police were to take, confront people with axes – I'm 12 paraphrasing – there would be bloodshed. So surely that 13 was not a threat, he was just meaning, making a statement 14 that there'll be a problem. 15 CHAIRPERSON: What do you say to that? 16 COLONEL McINTOSH: Chair, I still 17 disagree because why would someone say there's going to be 18 bloodshed or something to that effect and mean that it's 19 not going to be somebody else's? Why would it say, be your 20 own? 21 MR MPOFU: No, it could be anybody – 22 CHAIRPERSON: Sorry, Mr Mpofo, before you 23 carry on. 24 MR MPOFU: Sorry, Chairperson. 25 CHAIRPERSON: You've been shown a piece</p>

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1 of paper saying you've got five minutes left. Mr Wesley
 2 has overlooked the fact that we started at 10 past and not
 3 five past.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: So you've got 10 minutes.
 6 MR MPOFU: 10 minutes. Yes, Chairperson,
 7 also another disputed additional 15 minutes but we'll come
 8 to that if we need it. Colonel, really I'm just putting a
 9 simple – okay, another example. General Mbombo said, look,
 10 if given what has happened on the 13th there are emotions on
 11 both sides, if the police are unleashed, as it were, 20
 12 people may die. She said that. Now what I'm saying is
 13 that that is not a threat, she was not making a threat.
 14 The mere fact of saying there will be bloodshed or 20
 15 people may die in itself does not constitute a threat,
 16 correct?
 17 COLONEL McINTOSH: Chair, with regards to
 18 the way that they said it and so forth, but remember this
 19 was issued directly back to the police –
 20 MR MPOFU: No, but –
 21 COLONEL McINTOSH: - that was directed
 22 directly back to the police and what I see as a threat and
 23 what you see as a threat may be two different things,
 24 Chair, but I still see that as a threat.
 25 MR MPOFU: So okay, so your evidence to

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1 the Commission is that if somebody says there'll be
 2 bloodshed on this day, they are making a threat.
 3 COLONEL McINTOSH: Chair, those weren't
 4 even the words that were – those aren't even the correct
 5 words –
 6 MR MPOFU: But you don't know – I'm
 7 sorry, sorry –
 8 CHAIRPERSON: Don't talk over each other.
 9 MR MPOFU: I'm sorry, yes.
 10 CHAIRPERSON: I take it what you're
 11 saying is it depends on the context.
 12 COLONEL McINTOSH: Definitely, Chair.
 13 CHAIRPERSON: If someone says to me
 14 there'll be blood, there's going to be bloodshed today,
 15 then the only two people involved are me and him and I
 16 don't intend and no-one suggests I'm likely to want to shed
 17 blood, then I would interpret it as a threat by him that
 18 there will be bloodshed caused by his action but on the
 19 other hand there would, other, equally be contexts where
 20 the mere statement "There will be bloodshed today" will be
 21 a prediction as to what's going to happen without
 22 necessarily a threat by the person making the prediction
 23 that he will be responsible for shedding blood. I take it
 24 that's Mr Mpofu's point. Would you agree with that?
 25 COLONEL McINTOSH: Chair, in that context

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1 yes, I would.
 2 MR MPOFU: Thank you.
 3 CHAIRPERSON: Can we take the lunch
 4 adjournment now?
 5 MR MPOFU: Yes, Chair.
 6 CHAIRPERSON: I was going to go on till
 7 10 past but on the basis that you say you've got another 15
 8 minutes, which I think is correct because there's 15
 9 minutes in the kitty, as it were –
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: - because it wasn't used by
 12 the evidence leaders –
 13 MR MPOFU: Thank you.
 14 CHAIRPERSON: - which you've claimed and
 15 I don't see anybody else claiming it, so we will start
 16 again when we've finished lunch and you will then have 25
 17 minutes.
 18 MR MPOFU: Thank you, Chairperson.
 19 CHAIRPERSON: We'll now adjourn until
 20 quarter to two.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [14:00] CHAIRPERSON: The Commission resumes.
 23 Lieutenant-Colonel, you're still under oath.
 24 STEPHEN JAMES McINTOSH: (s.u.o.)
 25 CHAIRPERSON: Mr Mpofu.

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1 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 2 Thank you, Chairperson. Colonel, I just want us to finish
 3 off this issue of the threats, in addition to what Ms
 4 Barnes dealt with you. Can you please up JJJ34? Page 31,
 5 or slide 31. While we are doing that, Colonel, you and I
 6 have agreed that all the information that SAPS had about
 7 the so-called threats came from you, correct?
 8 COLONEL McINTOSH: From the negotiator
 9 group that was at the Roots, yes.
 10 MR MPOFU: Yes, now the interest in this
 11 is that this is a version that must have been given to SAPS
 12 which was subsequently sanitised, or removed, and did not
 13 find its way to exhibit L until the evidence leaders
 14 discovered certain hard drives, but –
 15 CHAIRPERSON: "Sanitise" isn't the right
 16 word. I think you mean significantly altered.
 17 MR MPOFU: Significantly altered, ja.
 18 Well, ja sanitised in the sense that –
 19 CHAIRPERSON: Significantly altered –
 20 MR MPOFU: - in the favour of SAPS.
 21 CHAIRPERSON: Well, ja, I'm not sure in
 22 whose favour it is. Can you see the point? If you look at
 23 the third bullet, 15:37, the leader of the militant group
 24 approached the police armoured vehicle line, telling
 25 Brigadier Calitz, "The protesters have made a contract that

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1 they would not lay down their arms and were willing to die
 2 there that day; there was no turning back." That was what
 3 was saved on the computer on the 27th of August 2012. The
 4 version at that point was that - I take it the leader of
 5 the militant group means Noki - Noki said what appears
 6 there in quotation marks.
 7 That's now been changed to that "We must sign a
 8 contract," we, with you, in other words the police and the
 9 strikers must sign a contract that they'd fight and kill
 10 each other today. Now that's significantly different from
 11 this one and as a matter of probability it's, some might
 12 say that it's more likely that what appears here was said
 13 rather than that Noki would come to the police and say 'You
 14 and I must sign a contract we're going to kill each other
 15 today,' and so on, 'Sign a paper,' and whatever.
 16 But the point is the closer you get to the actual
 17 day when it all happened, a matter of 11 days thereafter
 18 when matters were fresher in anybody's mind than they were
 19 subsequently, this was the version that was recorded.
 20 That's your point, isn't it?
 21 MR MPOFU: That's correct. Thank you,
 22 Chairperson, yes. You get the point?
 23 COLONEL McINTOSH: I get the point,
 24 Chair.
 25 MR MPOFU: Yes, the two points, or what

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1 the Chair was saying, which is that this must be the truth
 2 because it was before what I call sanitisation, or
 3 alteration. That's one point. You would agree with that,
 4 that what is said a few days after the event is likely to
 5 be more, a better recordal of what actually happened than
 6 what comes a few months thereafter, correct?
 7 COLONEL McINTOSH: Chair, I would agree
 8 to the fact that it would be fresher in their minds -
 9 MR MPOFU: Yes.
 10 COLONEL McINTOSH: - but I don't remember
 11 those words.
 12 MR MPOFU: Yes, but you'll also agree
 13 that those words are put in quotes, so they must have
 14 either come from you or someone in your Nyala.
 15 COLONEL McINTOSH: They didn't come from
 16 me, Chair.
 17 MR MPOFU: Yes. Well, they either came
 18 from you or Brigadier Calitz or somebody in your Nyala, in
 19 the negotiation Nyala. No-one else had anything to do with
 20 that interaction. Would you agree?
 21 COLONEL McINTOSH: What I do see there
 22 that it does say "Telling Brigadier Calitz." It wasn't -
 23 MR MPOFU: Yes, but it could someone -
 24 yes, that's why I'm saying we can't for that reason say it
 25 came from Brigadier Calitz. It may have come from him -

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1 CHAIRPERSON: Mr Mpofu, sorry to
 2 interrupt -
 3 MR MPOFU: - but I'm saying -
 4 CHAIRPERSON: Sorry to interrupt, Mr
 5 Mpofu. I would have thought the probability is it's most
 6 likely to have been Brigadier Calitz. I mean you're
 7 sitting down at Roots on the 27th. There's a breakaway
 8 group discussing what happened. I think it was Captain
 9 Visser, wasn't it, who was keeping the notes and typing it
 10 up. The most likely thing is he would say to, he'll get
 11 Brigadier Calitz's version and put that down, particularly
 12 if he says that that's what Brigadier Calitz was told.
 13 COLONEL McINTOSH: It could be that way,
 14 Chair.
 15 MR MPOFU: Yes.
 16 COLONEL McINTOSH: But like I say, they
 17 don't bear in my mind with regards to those words.
 18 MR MPOFU: Alright, then the second
 19 point, that is that that statement does not constitute a
 20 threat. You would agree, correct?
 21 COLONEL McINTOSH: I would say that's not
 22 a threat as it stands there.
 23 MR MPOFU: Yes, and the third point is
 24 that if it is read together with the statement I put to you
 25 before lunch that, from Captain Greyling who said there

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1 will be bloodshed today, remember the Chair correctly said
 2 that could mean your blood or my blood, but now that we
 3 hear that you're saying the strikers were willing to die,
 4 so it's very clear now whose blood he was referring to. So
 5 if you read this with Captain Greyling's version of what
 6 was said, then you would agree that Captain Greyling's
 7 statement was also not a threat, correct?
 8 COLONEL McINTOSH: Chair, if we read it
 9 together like it is now I would say no, but the context in
 10 Captain Greyling's, I would say it was a threat, especially
 11 the threats he made towards the police, but we'll disagree
 12 on that, I'm quite sure.
 13 MR MPOFU: No, let's not disagree for the
 14 sake of disagreeing. You've already agreed that what was
 15 said to Captain Greyling, and I said I'll grant you that,
 16 may have been - I said may have not been a threat. That's
 17 what you agreed before lunch when the Chair put the
 18 question to you. You agree?
 19 CHAIRPERSON: I think what was agreed was
 20 it would depend on the context.
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: And those words are capable
 23 of not being a threat, they're also capable of being a
 24 threat -
 25 MR MPOFU: Yes-

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1 CHAIRPERSON: - of the context, and
 2 really it's for the Commission to decide, having regard to
 3 its appreciation of the context and the arguments that are
 4 put before it by the various counsel as to whether in the
 5 context that amounts to a threat.
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: I think that is a fair
 8 summary of what happened before lunch. Am I right?
 9 COLONEL McINTOSH: That's correct, Chair.
 10 MR MPOFU: Yes, okay. Now that's exactly
 11 what I was saying to you, but now I'm saying now the
 12 context has now been improved in that we're putting these
 13 words, which are part of the context, where Mr Noki was
 14 saying that the strikers are the ones who are prepared to
 15 die. So you see that that then supports the view that that
 16 other statement was not a threat if it was said in the same
 17 context?
 18 COLONEL McINTOSH: Chair, said in the
 19 context on the board, I do agree it would not be
 20 constituted as a threat, but –
 21 MR MPOFU: Yes, thank you. Sorry, sorry.
 22 Right, okay, that's fine. So that's – and therefore you
 23 would agree that it would be unfair, or it may be very
 24 unfair, given all these things now that we've established
 25 that the words might have not been constituted a threat,

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1 you can't say what the words were because of the language
 2 barrier, and so on and so on, and yet if Mr Noki was your
 3 relative and what is out there in the world is that he said
 4 something which is not what we have here, something very
 5 chilling which was 'We are going to kill each other' and
 6 all these things, that that would be – if it wasn't, if we
 7 hadn't had these discussions like I'm having with you now,
 8 it might be that Mr Noki's remembered for words that he
 9 never even uttered, which would be unfair.
 10 COLONEL McINTOSH: It would be unfair,
 11 but I stand by my statement.
 12 MR MPOFU: Which one? I've just given
 13 you five versions of the same thing. Which one do you
 14 stand by?
 15 COLONEL McINTOSH: The fact that he
 16 requested us to sign a paper to show that we were going to
 17 kill one another today.
 18 CHAIRPERSON: Sorry, Mr Mpofo, before we
 19 carry on, you put something earlier which I'm sure you did
 20 it inadvertently, but it was, if I understood you correctly
 21 it was incorrect. What you said was we have another
 22 version of what was said in regard to the killing and so
 23 on. That's the passage at 15:37 about the protesters who
 24 made a contract and so on, which we see here on exhibit
 25 JJJ34 at page 31 of 88. But the statement about the

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1 contract that we must sign, the piece of paper we must sign
 2 that we're going to kill one another today, which the
 3 witness refers to in paragraph 23 of exhibit HHH14, appears
 4 to be made earlier because it appears in para 23 and in
 5 para 24 he talks about what happened at 2PM, 14:00. So,
 6 and there's another reference to this alleged statement
 7 about the piece of paper that had to be signed in slide 192
 8 and there the time is given as being – it's not exactly the
 9 same wording, but again it's signing a piece of paper and
 10 so on, and killing one another today. That apparently was
 11 said according to slide 192 at 13:40.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: So it is possible that
 14 there were two statements; the signing of the piece of
 15 paper at 13:40, if that's correct, and this further
 16 statement at 15:37. So –
 17 MR MPOFU: Yes, Chairperson –
 18 CHAIRPERSON: I just put that –
 19 MR MPOFU: Yes –
 20 CHAIRPERSON: - up because it's important
 21 that we –
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: - be alive to the
 24 difference.
 25 MR MPOFU: Yes, Chairperson, yes. No,

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1 I'm aware of that. Thank you, Chairperson, but to save
 2 time I'm quite satisfied that given previous cross-
 3 examination and what Ms Barnes has dealt with on this
 4 point, that at the end we'll be able to show the
 5 discrepancies. Thank you. Thank you, Chairperson. Now
 6 what I want to –
 7 CHAIRPERSON: I'm sorry, Mr Mpofo –
 8 MR MPOFU: Sorry, Chairperson.
 9 CHAIRPERSON: - just to make a point, in
 10 fairness to you, while we're busy with this. What may be
 11 relevant in this regard – I'm just mentioning it now so we
 12 don't forget it – is that the statement in exhibit L, the
 13 slide I mentioned, 192, talks about 13:40. This document,
 14 which is an earlier version of the SAPS presentation, talks
 15 about what had happened at 13:30, talks about what happened
 16 at 15:35, and the next bullet is 15:37. It does not
 17 include what is subsequently inserted into L, namely what
 18 allegedly happened at 13:40, and it of course as we see
 19 gives a different version of what was said in regard to
 20 killing, to dying that day and so on.
 21 MR MPOFU: No, thank you, Chairperson.
 22 Yes, that's why I was saying I'm quite sure that at the end
 23 we'll have sufficient to show that either no threats were
 24 made or no-one can really account for whatever was said.
 25 Thank you, Chairperson.

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1 Now Colonel, I want to approach something that
 2 you've dealt with, but from a different angle. You see, my
 3 criticism at the end of the case is going to be that at
 4 best for you, you added no value to what was going on
 5 there. At worst you just made the situation worse. So you
 6 would accept that your answer to that when it was put
 7 differently by someone else this morning was that well, I
 8 might not be a POPS negotiator as other people have said,
 9 but Brigadier Calitz was there and he's from POP. You
 10 remember that whole discussion?
 11 COLONEL McINTOSH: Chair, I do.
 12 MR MPOFU: Ja, but what I want to put to
 13 you is that Brigadier Calitz was there anyway before you,
 14 so your being brought into the scene was supposed to add
 15 value, to add something to the fact that Brigadier Calitz
 16 was already there, and it did not because firstly you were
 17 just the wrong thing. You're not even a negotiator that is
 18 appropriate to this kind of situation, and you asked for
 19 strange things, like brave men, and you did not do what you
 20 were supposed to do, like making sure that the language
 21 barrier is – all the criticisms that I gave you earlier.
 22 So like I say at best you added nothing, at worst you just
 23 made it worse. What would you say to that?
 24 COLONEL McINTOSH: Chair, I think Mr
 25 Mpofu is entitled to his opinion. I do not agree with him,

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1 but that is his opinion, he can have it.
 2 CHAIRPERSON: I'm not sure it's his
 3 opinion. Counsel have to put the case of their clients and
 4 we always say to counsel we're not interested in your
 5 opinion, we're interested in your submissions, and so
 6 sometimes counsel may have – I'm not saying in this case
 7 it's the situation, but sometimes counsel may think one
 8 thing but the client thinks something else and counsel's
 9 duty is to put his client's case. So it doesn't help to
 10 say he's entitled to his opinion. His clients may be
 11 entitled to their opinion. You hold a different view, and
 12 we've got to decide at the end which is correct, if it's
 13 necessary for us to do so.
 14 COLONEL McINTOSH: I agree with that,
 15 Chair.
 16 MR MPOFU: You agree with who? With the
 17 Chair or with me or both?
 18 COLONEL McINTOSH: I agree with the
 19 Chair.
 20 MR MPOFU: Okay, alright, so therefore
 21 would you also agree that you either made the situation
 22 worse, which would be bad, or you simply added no value,
 23 which would be better?
 24 COLONEL McINTOSH: Chair, I think any
 25 form of negotiation which took place was a positive.

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1 Unfortunately when you have got very little to go on left,
 2 unfortunately situations de-escalate, or escalate and you
 3 have problems based on that. I think the days of
 4 negotiation actually assisted, so that's my opinion.
 5 MR MPOFU: Ja. No, because simply put,
 6 on what you and I have agreed are the attributes of a
 7 negotiator you were not a negotiator. You were just a man.
 8 COLONEL McINTOSH: Chair, I disagree –
 9 MR MPOFU: You understand what I'm
 10 saying? Let me – we've agreed that there were two primary
 11 disputes. For the first one we put it aside, you were just
 12 a messenger, so let's forget that. But the other dispute,
 13 you were not a negotiator in the sense that you were not
 14 independent and you were an interested party.
 15 COLONEL McINTOSH: Chair, as I've said
 16 before with regards to the police negotiators, we act in
 17 the interests of the police. So it's not a question that
 18 we're independent, it's a question of we work for the
 19 police, so –
 20 MR MPOFU: Yes. No, no, Colonel, I'm not
 21 criticising you for doing police work. You have to do
 22 police work. You are a policeman. I'm saying that you
 23 were, in that you were just doing policing duties, you were
 24 not a negotiator. You know, you were not a negotiator in
 25 the sense that you and I have agreed what a negotiator is.

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1 I'm not saying you shouldn't have done the policing work.
 2 That's what you get paid to do, but you were not an
 3 independent broker, to use your word, correct?
 4 COLONEL McINTOSH: Chair, I still don't
 5 agree with that. I do believe that we had a function to
 6 play there and we played a function. We had other people
 7 involved as well, like I said Brigadier Calitz and so
 8 forth, who also had a role to play. Unfortunately if
 9 negotiations don't work then unfortunately it broke down.
 10 That is the fact.
 11 CHAIRPERSON: You put to the Colonel that
 12 he made it worse. He either didn't improve, didn't add
 13 value, or he made it worse. Now in what respect are you
 14 going to contend that he made it worse?
 15 MR MPOFU: Yes, okay. What we dealt with
 16 before lunch for example was the fact that he failed to, or
 17 he called for brave men instead of calling for leaders.
 18 Brave men could have been what you might call the –
 19 CHAIRPERSON: No, Mr Mpofu, I'm sorry to
 20 interrupt you. That's not a correct statement of the
 21 evidence. What he said was "We called for leaders and
 22 nobody came. We then had a discussion" and the advice he
 23 received was it might help to ask for the five bravest men
 24 to come, so they tried that, five people came, and as far
 25 as they could see thereafter they were leaders and they

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1 were accepted as such by the strikers. Whether their
 2 acceptance is correct is another matter –
 3 MR MPOFU: No, Chairperson, I'm –
 4 CHAIRPERSON: And one of the people who
 5 came is Mr Noki who had functioned in a leadership role on
 6 the 13th, as we can see from the video that we saw.
 7 MR MPOFU: Ja. Well, Chairperson, I'm
 8 sorry, you can't apply the wrong negotiating tactics and
 9 then be saved by some coincidental fact of which you were
 10 not even aware.
 11 CHAIRPERSON: If that's the argument
 12 you're going to address, so that the –
 13 MR MPOFU: Yes, that's –
 14 CHAIRPERSON: So the point I was
 15 concerned is to what extent did they make things worse.
 16 MR MPOFU: Yes, okay. So that was the
 17 one thing, because in my language at least the so-called
 18 brave men could be the hotheads, just the wrong people to
 19 call for this kind of thing. But we'll leave that
 20 argument, and that would make it worse. The other thing is
 21 – so that was the, where we say you make it worse by
 22 commission.
 23 [14:20] Where you would have made it worse by omission is
 24 also something that we dealt with this, before lunch which
 25 is the failure to ask for people who could speak English or

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1 that you could speak to in order to avoid this whole
 2 debacle about the language barrier. So that was, that also
 3 made it worse. You've said that in so, in almost so many
 4 words, by saying it was, it would have been preferable, ja
 5 so if it would have been preferable then it means it would
 6 have been better, the opposite of better is worse. Do you
 7 agree, do you understand that?
 8 COLONEL McINTOSH: I understand.
 9 MR MPOFU: Not that you agree with me but
 10 do you understand what I'm going to argue in relation to
 11 that.
 12 COLONEL McINTOSH: I understand what
 13 you're going to argue, Chair.
 14 MR MPOFU: Sure, thank you.
 15 CHAIRPERSON: Mr Mpofo, you received a
 16 notice saying that you've got five minutes left. You
 17 actually got ten, please bear that in mind.
 18 MR MPOFU: Thank you, Chairperson. I
 19 think, Mr Wesley has got something against me or he just
 20 doesn't have a ten minute note. He has a five minute note
 21 only. He should do it twice. Thank you, Chairperson.
 22 CHAIRPERSON: Look don't fight with Mr
 23 Wesley, I gave you an extra five minutes, if you want me to
 24 change my mind and go back to Mr Wesley I will. Let's just
 25 carry on. Use your ten minutes as profitably as –

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1 MR MPOFU: As we can.
 2 CHAIRPERSON: As lucratively, if that's
 3 the right word.
 4 MR MPOFU: Thank you, Chairperson. Okay,
 5 so we understand each other as what I'm going to argue in
 6 relation to your, that you were not really a negotiator.
 7 CHAIRPERSON: I think you've made that
 8 point.
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: I think you've got enough
 11 material on record to argue that. Whether it will
 12 ultimately succeed –
 13 MR MPOFU: Is another matter.
 14 CHAIRPERSON: Is something we will all
 15 discover in due course.
 16 MR MPOFU: Yes. The other point that was
 17 made earlier was and the Chairperson assisted again in this
 18 was that causal connection between the mass, the tragedy
 19 and the collapse of negotiations. So that would make it
 20 important to, from your point of view when did the
 21 negotiations collapse?
 22 COLONEL McINTOSH: Throughout the period
 23 from the 14th up until the 16th negotiations went well on
 24 the 14th. It was not so well on the 15th as from the
 25 afternoon. When the unions came in we managed to open

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1 dialogue again and then the 16th there was no dialogue
 2 basically except for threats and to ask what we were doing
 3 and we explained that as well to the group.
 4 MR MPOFU: Ja, I'm sorry you're not
 5 answering my question but maybe again, maybe I didn't put
 6 it clearly. I'm simply saying if we accept what, the
 7 discussion between you and the Chair before lunch, which is
 8 the causal connection between the failure of negotiations
 9 and the subsequent tragic events. Then one of the things
 10 that's important would be then to punctuate when actually
 11 the negotiations collapsed. So in your view when did the
 12 negotiations collapse and I'm talking in time if you can,
 13 obviously it's a long time ago but in your view at what
 14 point as the chief negotiator did you say oh well I'm
 15 washing my hands now the thing has collapsed.
 16 COLONEL McINTOSH: Chair, if I understand
 17 Mr Mpofo correct that he says when did I wash I hands, I
 18 never washed my hands of trying to negotiate further. So
 19 you must understand that firstly.
 20 CHAIRPERSON: Metaphorically I take it.
 21 COLONEL McINTOSH: We stopped negotiating
 22 around about midday on the 15th and started to observe, to
 23 try and see what else we could bring into place to try and
 24 get things back on track.
 25 MR MPOFU: Okay. So in your view the

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1 negotiations at midday on the 15th?
 2 COLONEL McINTOSH: More or less, Chair.
 3 MR MPOFU: Okay. So if somebody says
 4 that the negotiations collapsed on the 16th that would, you
 5 wouldn't share that view?
 6 COLONEL McINTOSH: Chair, as I said we
 7 continued to try and get negotiations back on track up
 8 until the end, Chair.
 9 MR MPOFU: Unsuccessfully?
 10 COLONEL McINTOSH: Unfortunately
 11 unsuccessfully, yes, Chair.
 12 MR MPOFU: Yes, therefore if, okay let's
 13 go to, save time go to slide 189 of exhibit L, yes.
 14 According to that the negotiations stopped at this point
 15 all negotiations and discussions stopped and that slide is
 16 15:35 on the 16th. So that's not your version, correct?
 17 COLONEL McINTOSH: Chair, that also
 18 included the attempts to restart negotiations and that also
 19 includes the discussions that were held with Mr Mathunjwa
 20 as well.
 21 CHAIRPERSON: There's another point,
 22 isn't there, and that is your negotiations may, as far as
 23 you were concerned have come to a dead dead-end on 12
 24 o'clock on the previous day but thereafter you tried
 25 another form of negotiations through the trade union

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1 presidents. Mr Zokwana's negotiations ended quite quickly,
 2 he didn't get anywhere. Mr Mathunjwa then came along and
 3 he started addressing the strikers and his negotiations as
 4 it were, if you can call it that, the negotiations and
 5 discussions is the phrase used here they came to an end
 6 when, after he had gone down on, having spoken to them mine
 7 is on two occasions, on the Thursday, at the end of the
 8 second occasion he went down on his bended knees and
 9 pleaded with them to leave and they weren't interested and
 10 he had to leave. That's when all negotiations, discussions
 11 including those involving the trade union presidents came
 12 to an end, that's correct, isn't it?
 13 COLONEL McINTOSH: That is correct,
 14 Chair, that's what I was trying to explain as well to the
 15 Chair as well.
 16 CHAIRPERSON: I'm reminded of the fact
 17 that what I put wasn't entirely accurate. Some of, quite a
 18 considerable number of the mine workers did leave. But
 19 after, at various stages, particularly after Mr Mathunjwa
 20 made his final impassioned address but, and there's an
 21 argument that flows from that to which we'll hear later but
 22 I'm concerned whether the point at which all negotiations
 23 and discussions stopped and that point was when Mathunjwa
 24 made his final desperate plea to persuade the people to
 25 leave. That's correct, isn't it?

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1 COLONEL McINTOSH: That's correct, Chair,
 2 as I say we tried to restart negotiations the whole time,
 3 so negotiations never gave up until it was the last moment
 4 and the operational side had to take over.
 5 MR MPOFU: Yes. Well for the record
 6 since it has been mentioned and maybe I can invite your
 7 comment if you have any. The version of the people I
 8 represent is exactly that after Mr Mathunjwa's intervention
 9 everybody left. The only difference is that the, some
 10 group, some started to run, some started to rush and that
 11 Mr Noki said to a particular group that they must walk away
 12 because they have done nothing wrong and that, but in
 13 reality everybody left the koppie, is that what you
 14 witnessed?
 15 COLONEL McINTOSH: Chair, I can't comment
 16 on what was said, I don't know what was said. But the
 17 dispersion group started to move into place with the barbed
 18 wire roiling into place and so forth and dispersion was
 19 going to take place and the operational side. So I don't
 20 know what was said but the people did start to disperse.
 21 MR MPOFU: Okay, fair enough.
 22 COLONEL McINTOSH: And started to come in
 23 various directions.
 24 MR MPOFU: Yes, fair enough you wouldn't
 25 know what was said but I'm saying but you would confirm

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1 that after Mr Mathunjwa's address everybody left their
 2 positions.
 3 COLONEL McINTOSH: Some people started to
 4 leave while he was still talking. Others left only after
 5 but still there were people that were still in place when
 6 the barbed wire and so forth was rolled into place.
 7 MR MPOFU: Yes, but when the events, the
 8 tragic events occurred everyone had left their positions of
 9 where they were when Mr Mathunjwa was addressing them,
 10 correct?
 11 COLONEL McINTOSH: Chair, I cannot say
 12 that with all certainty.
 13 CHAIRPERSON: That sounds like something
 14 that must be common cause. They weren't shot in the place
 15 in front of the koppie where they had been previously.
 16 They had moved, what they were doing, whether they were
 17 going to attack the police, trying to get to Nkaneng these
 18 are matters that are the subject of controversy and which
 19 we'd have to decide at the end. But one thing is clear
 20 that even the group at the front had left where they were
 21 initially and had gone round the kraal and then they were
 22 eventually on, I think it was the eastern side of the kraal
 23 proceeding down in the direction of Nkaneng, whether they
 24 were going there or were going to attack the police is a
 25 matter that we'll have to decide later and you can't help

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1 us on either.

2 COLONEL McINTOSH: Chair, like I say the

3 people were, most of the people were leaving, there is a

4 possibility some people were still in place but the people

5 were moving.

6 MR MPOFU: Okay, that's fine. This is,

7 okay I just want to put this to you before I finish. From

8 all the questions that have been put to you around the

9 questions of your statement about self defence which you've

10 now clarified was hearsay and so on, so I'm not going

11 there, but would this be fair from everything that has been

12 said and what you've heard it would look like that there

13 were now four groups of individual, of policemen who were

14 involved in the killing of people and injuring of people.

15 The one group are those who may have perceived a threat to

16 their own lives, so those would be claiming self defence,

17 agreed?

18 COLONEL McINTOSH: I agree with that.

19 MR MPOFU: And then another group would

20 be those who perceived a threat to other people, so that

21 would be private defence. Okay.

22 COLONEL McINTOSH: I can agree with that,

23 Chair.

24 MR MPOFU: And then the third group would

25 be those who did not perceive a threat to themselves or to

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1 anyone else and who did not shoot. Do you agree?

2 COLONEL McINTOSH: That's correct, Chair.

3 MR MPOFU: And the fourth group would be

4 those who suffered from what Ms Lupuwana called associated

5 threat perception, who were not under any threat but they

6 just shot because everyone else was shooting.

7 COLONEL McINTOSH: That is a possibility,

8 Chair.

9 MR MPOFU: Ja. Okay and it, how would

10 you say is it possible for the commission then to know from

11 the 50 people let's say, I'm just using that number, who

12 shot and killed and injured people, any of them could fall

13 into any of these four groups, correct?

14 COLONEL McINTOSH: That is possible,

15 Chair.

16 MR MPOFU: Okay and for, okay that's

17 legal argument. That's fine, okay and the only way we

18 would know who falls into which category would be to

19 question or understand the motives of each one of the

20 shooters, that would be logical, correct?

21 COLONEL McINTOSH: That would be correct,

22 Chair.

23 MR MPOFU: Yes, otherwise we would never

24 know. Alright, now, yes, okay Chairperson I was going to –

25 CHAIRPERSON: Your time is up, Mr Mpofo.

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1 MR MPOFU: That's what I was going to

2 say, Chairperson.

3 CHAIRPERSON: I agree with you.

4 MR MPOFU: Thank you.

5 CHAIRPERSON: Thank you, Mr Mpofo. Mr

6 Mathibedi, are you ready for re-examination?

7 RE-EXAMINATION BY MR MATHIBEDI SC:

8 Thanks, Chair. Lieutenant Colonel, did the five leaders of

9 the strikers complain about the fact that an interpreter

10 speaking Fanagalo language was used?

11 COLONEL McINTOSH: No, Chair, they did

12 not.

13 MR MATHIBEDI SC: Was there anything

14 wrong in utilising the services of an interpreter speaking

15 Fanagalo instead of speaking English to the protestors?

16 COLONEL McINTOSH: No, Chair, there's

17 nothing wrong with it.

18 MR MATHIBEDI SC: Did the five leaders of

19 the protestors indicate their unhappiness or tell you that

20 they felt this, humiliated and not respected because the

21 negotiation team spoke from within the Nyala?

22 COLONEL McINTOSH: No, Chair, they did

23 not.

24 MR MATHIBEDI SC: Taking into account the

25 situation that prevailed was there anything wrong in the

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1 senior officers of the police insisting that the

2 negotiating team should conduct negotiations from within

3 the Nyala?

4 COLONEL McINTOSH: Chair, there's nothing

5 wrong with that due to the fact that they fear for the

6 lives of the members, they have to take the necessary

7 precautions and that's what they did.

8 MR MATHIBEDI SC: Did the five leaders of

9 the strikers complain because of the way in which they were

10 addressed?

11 COLONEL McINTOSH: No, Chair, they did

12 not.

13 MR MATHIBEDI SC: Now prior to addressing

14 them as five brave leaders at that stage were there only

15 white –

16 MR MPOFU: Sorry, Chairperson, this is

17 the first time I'm hearing this phrase now. In re-

18 examination you can't introduce something, five brave

19 leaders is a new concept.

20 CHAIRPERSON: The expression actually

21 was five of the bravest men.

22 MR MATHIBEDI SC: Thanks, Chairperson.

23 Now we've seen what did the negotiating team only comprise

24 of white members?

25 COLONEL McINTOSH: No, Chair, like I say

<p style="text-align: right;">Page 28966</p> <p>1 there was also the members from POPS as well. They were 2 also there with us as well and it was discussed with 3 everybody to try that option with the decision, with the 4 suggestion of the psychologist. 5 MR MATHIBEDI SC: Lieutenant Colonel, I'm 6 talking about race here because the issue of racism arose. 7 I want to find out as to whether the team of negotiators 8 only comprised of members of, white members of the South 9 African Police Services? 10 COLONEL McINTOSH: At that point it was, 11 Captain Basani only arrived slightly after that, but like I 12 say it was also discussed with the POPS members as well to 13 decide – 14 CHAIRPERSON: So it was the POPS members 15 who were in the Nyala with the negotiators were they all 16 white males or were some of them blacks? 17 COLONEL McINTOSH: No, Sir, all the POPS 18 members that were with us except Brigadier Calitz were 19 black. 20 CHAIRPERSON: Thank you. 21 MR MATHIBEDI SC: Now did they take part 22 in the deliberations that were going on within the members 23 of the team? 24 COLONEL McINTOSH: With regards to 25 certain aspects, yes they did and that was one of them that</p>	<p style="text-align: right;">Page 28968</p> <p>1 did it take any sides with any of the parties? 2 COLONEL McINTOSH: Chair, no we did not. 3 We have no interests in having parties, affiliation with 4 any party. 5 MR MATHIBEDI SC: Using the words of Mr 6 Mporo did the conflicting parties, the police and the 7 strikers find common ground on the 14th? 8 COLONEL McINTOSH: Chair, yes, we did 9 find some common ground on the 14th with regards to demands 10 and requests and we also informed them of all the movements 11 we were making as well. 12 MR MATHIBEDI SC: Now relating to the 13 death of Mr Mporo you testified about that. 14 COLONEL McINTOSH: That is correct, 15 Chair. 16 MR MATHIBEDI SC: The evidence that you 17 tendered regarding that incident is hearsay evidence? 18 COLONEL McINTOSH: Chair, with regards to 19 seeing what happened no that cannot be hearsay. 20 MR MATHIBEDI SC: At the stage that Mr 21 Mporo charged at the members of the police was his life in 22 danger? 23 COLONEL McINTOSH: Chair, no Mr Mporo's 24 life was not in danger, if he had surrendered he would not 25 have been injured.</p>
<p style="text-align: right;">Page 28967</p> <p>1 they did discuss – 2 MR MATHIBEDI SC: With regard to the 3 offer or assurance of safety was it only limited to the 4 koppie where the protestors had gathered? 5 COLONEL McINTOSH: No, Chair, it was 6 including all the areas, that's why the visible policing 7 aspects had been beefed up during that period as well. 8 MR MATHIBEDI SC: According to you would 9 people who felt safe at the koppie carry dangerous weapons? 10 COLONEL McINTOSH: That would be 11 speculation, but I would say no, they should feel safe. 12 MR MATHIBEDI SC: What led to the break 13 down of the negotiations? 14 COLONEL McINTOSH: The fact that the 15 situation was not conducive with regards to the fact that 16 they had wanted the mining houses to approach them as well 17 and that we couldn't do that but we were dealing mainly 18 with the safety and security aspect if they had put down 19 their weapons. 20 MR MATHIBEDI SC: Was it within the 21 powers of the police to make any offer relating to wage, to 22 the wage demand? 23 COLONEL McINTOSH: No, Chair, definitely 24 not. It's not our function. 25 MR MATHIBEDI SC: The negotiating team</p>	<p style="text-align: right;">Page 28969</p> <p>1 MR MATHIBEDI SC: Had the members not 2 fired live ammunition what would have happened to them? 3 COLONEL McINTOSH: Chair, I'm very sure 4 that Constable Sebatjane would have either been seriously 5 injured or would be dead today. 6 MR MATHIBEDI SC: Thanks, chairperson, no 7 further questions. 8 CHAIRPERSON: Thank you. Commissioner 9 Hemraj, wishes to ask a question or questions. 10 COMMISSIONER HEMRAJ: Colonel, at the 11 time the five strikers stepped forward they were asked to 12 leave their blankets behind, to ensure that there were no 13 concealed weapons. 14 COLONEL McINTOSH: Chair, no they were 15 not asked to leave their blankets behind. They were 16 requested to open their blankets to ensure that there was 17 no weapons there. 18 COMMISSIONER HEMRAJ: But you can see 19 them on the video dropping their blankets to the ground 20 before Mr Noki stepped forward. 21 COLONEL McINTOSH: They were requested to 22 open their blankets so that we could see what was 23 underneath and then Mr Noki actually came forward with his 24 blanket on after showing us as well. 25 COMMISSIONER HEMRAJ: From that point on</p>

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1 when they approached the Nyala that you were in, there was
 2 no apparent danger from them?
 3 COLONEL McINTOSH: At that point, no,
 4 Chair.
 5 COMMISSIONER HEMRAJ: Was it open to one
 6 of the negotiators at that stage to step out of the Nyala
 7 to speak with them?
 8 [14:40] COLONEL McINTOSH: Chair, we did make
 9 that request and the request was denied, they said we had
 10 to negotiate from inside the Nyalas.
 11 COMMISSIONER HEMRAJ: Did you make the
 12 request at that stage after they stepped forward?
 13 COLONEL McINTOSH: When we started the
 14 negotiation we couldn't hear one another, we requested that
 15 we be allowed to negotiate from outside.
 16 COMMISSIONER HEMRAJ: I expect the reason
 17 that you weren't allowed to go outside was because there
 18 might be a danger but having satisfied yourself that the
 19 five strikers did not have any weapons concealed, at that
 20 stage was it open to you to step, one of the negotiators to
 21 step out of the Nyala to talk to them?
 22 COLONEL McINTOSH: Chair, like I say, we
 23 were willing to negotiate outside of the Nyala but we had
 24 to get permission for that first and the permission was not
 25 granted. They requested us to negotiate from inside the

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1 Nyala for safety reasons. Also when the people came
 2 forward we also told them we were not going to get out of
 3 the Nyala to be any form of threat to them as well because
 4 if we started to get out of the Nyalas there was a
 5 possibility the people from POPS would also do the same and
 6 it would also cause confusion there, but we did issue the
 7 request that we'd like to negotiate from outside. The
 8 problem would have also been with the interpreter to do the
 9 interpretation, then his life would have been in danger as
 10 well, Chair.
 11 COMMISSIONER HEMRAJ: Thank you, Colonel.
 12 CHAIRPERSON: Adv Tokota?
 13 COMMISSIONER TOKOTA: Colonel, I just
 14 want to put something on record which Ms Barnes spent a lot
 15 of time on it and you conceded. She said that this
 16 question of Mr Noki having come to you and threatened to
 17 burn Hippos and so on was never made in your original
 18 statement of the 19th of August, both the one to the IPID
 19 and the typed one and you agreed with that. Do you
 20 remember that?
 21 COLONEL McINTOSH: That's correct, Chair,
 22 I did.
 23 COMMISSIONER TOKOTA: In all fairness to
 24 you, I just want to say that that agreement was actually
 25 not correct and also Ms Barnes's statement was also not

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1 correct because if you look at TT5 which is the statement
 2 which you made on the 19th, which is the IPID statement
 3 paragraph 11, there you say "The person with the green
 4 blanket then came to our vehicle and said why are we
 5 deploying barbed wire, we are going to die and our Hippos"
 6 – referring to SAPS armoured vehicles – "will be burned
 7 today." So you did say that in your statement.
 8 Notwithstanding that, you've agreed that you didn't. You
 9 did, is that not correct?
 10 COLONEL McINTOSH: Chair, that is
 11 incorrect. I didn't even realise it was in there, I'm
 12 sorry –
 13 COMMISSIONER TOKOTA: It is there.
 14 CHAIRPERSON: There's one point I want to
 15 ask you about and that is, it relates to a statement that
 16 you make in HHH14. It's paragraph 7 of the statement and
 17 it relates to what you said on the Tuesday. "Later I
 18 informed them that the SAPS want a solution to the problem
 19 and that we want them to disperse peacefully as the
 20 gathering was illegal. We also requested them to leave
 21 their weapons on the koppie and that we will collect it
 22 when they left." In other words you weren't – I understand
 23 your argument was that the gathering was illegal because
 24 they had weapons and you also conceded that provided, if
 25 they didn't have the weapons they didn't have to go or

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1 didn't have to disperse, they didn't have to, they could
 2 still be on the koppie provided they were not armed.
 3 That's your evidence, isn't it?
 4 COLONEL McINTOSH: That is correct,
 5 Chair.
 6 CHAIRPERSON: Now of course here you say
 7 you told them you want them to disperse because,
 8 peacefully, as the gathering is illegal and you also
 9 requested them to leave their arms. Now would it have been
 10 practical for you to have said to them, look here, this
 11 gathering with arms is illegal. If you come forward and
 12 bring your arms and put them down here where, in front of
 13 the Nyala, you can go back to the koppie because hour
 14 gathering will no longer be illegal. In other words, was
 15 it possible to have a procedure whereby they were disarmed,
 16 they laid down their arms but they didn't have to disperse
 17 or from a practical point of view was it not possible to do
 18 that?
 19 COLONEL McINTOSH: Chair, at that point
 20 it was not really practical due to the fact that there was
 21 only the five Nyalas in place and we would have had to have
 22 got extra people into place to do that. It could have been
 23 done if we'd had the extra manpower available to do, with
 24 more people in place. The wire would have had to have been
 25 in place as well just for protection purposes as well.

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1 CHAIRPERSON: I see. So in other words,
 2 am I correct in thinking that what you're saying is that
 3 the only practical way would be for them to leave their
 4 weapons on the koppie and leave, you would then go and take
 5 the weapons away. After that they could come back,
 6 provided they came back without weapons, and there wouldn't
 7 have been a problem?
 8 COLONEL McINTOSH: Correct –
 9 CHAIRPERSON: Do I understand it
 10 correctly?
 11 COLONEL McINTOSH: That's correct, Chair.
 12 CHAIRPERSON: Thank you. Any questions
 13 arising? Mr Mpofo?
 14 MR MPOFU: Ja, one or two, Chair.
 15 CHAIRPERSON: I didn't think you would
 16 leave an opportunity like this unutilised.
 17 MR MPOFU: No Chair, I wouldn't.
 18 CHAIRPERSON: Only two questions, I mean
 19 two as in t-w-o.
 20 MR MPOFU: Ja, yes, one or two,
 21 Chairperson. It might be less.
 22 CHAIRPERSON: I'll take you up on that
 23 offer.
 24 FURTHER CROSS-EXAMINATION BY MR MPOFU:
 25 Thank you, Chair. Sorry, just for clarification, when

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1 Commissioner Hemraj asked you about the reason why you did
 2 not go out physically and so on, you kept on saying you
 3 requested for permission but they did not give it to you.
 4 Who is they?
 5 COLONEL McINTOSH: Sir, as negotiators
 6 you work in a *NOC. You've got a JOC that gives you
 7 permission for everything. We don't make any decisions
 8 based on our own. It comes from the JOC, they give us the
 9 go-ahead to do anything and if you ask for anything, we ask
 10 back that way and they give their answers back.
 11 MR MPOFU: Okay, so the answer to that is
 12 the JOC did not give you the permission.
 13 COLONEL McINTOSH: That's correct, Chair.
 14 MR MPOFU: Yes. Now did you make it
 15 clear to them why you were making this request that as an
 16 expert, as a negotiator it would be preferable to talk to
 17 the people not from a condescending, all the things we
 18 discussed before lunch, that you know you had to talk to
 19 them as equals, that you would have preferred for the
 20 success of your mission, which is the negotiator, you would
 21 have, it would have been preferable that you go outside and
 22 talk to them one on one.
 23 COLONEL McINTOSH: Chair, it's always
 24 better to have some form of barrier, barricade between
 25 yourself and your subjects but in certain cases it's better

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1 to try and negotiate face-to-face which I also stated it
 2 would be better to negotiate face-to-face because working
 3 through the porthole of a Nyala is not a good aspect to
 4 have.
 5 MR MPOFU: Yes.
 6 COLONEL McINTOSH: But the thing was they
 7 were still worried about our safety.
 8 MR MPOFU: No, I understand that. All I
 9 am asking you is did you make it clear to whoever you were
 10 directing the request to that this was better, as you say,
 11 it would have been, it might yield better results?
 12 COLONEL McINTOSH: Yes, it was given
 13 back.
 14 MR MPOFU: And despite you making it
 15 clear, they disallowed you from taking that better option
 16 or the one that might yield better results?
 17 COLONEL McINTOSH: That's correct, Chair.
 18 MR MPOFU: Thank you –
 19 CHAIRPERSON: Mr Mpofo if – I was going
 20 to say that's number 3 question. I've often wondered
 21 whether you could count. Lieutenant-Colonel, you're
 22 excused on the usual basis that if it's necessary for you
 23 to come back if some point arises – I'm not, I don't think
 24 it's likely but it could happen – some point arises on
 25 which we need further evidence from you, you'll come back

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1 without our having to issue a subpoena for your return. On
 2 that, if you're prepared to agree to that you will be
 3 excused.
 4 COLONEL McINTOSH: Thank you, Chair, I
 5 agree to that.
 6 CHAIRPERSON: Right, you're excused,
 7 thank you.
 8 MR WESLEY: Sorry Chair, can I just take
 9 this opportunity to answer a question that Commissioner
 10 Hemraj posed while the witness was busy testifying about
 11 the autopsy report of Mr Mpumza.
 12 CHAIRPERSON: Yes, we'd like that
 13 information.
 14 MR WESLEY: There was a question about
 15 the signs of maybe the range of fire on the wounds. Mr
 16 Mpumza's report is at exhibit 1, it begins at page 19. One
 17 of the conclusions –
 18 CHAIRPERSON: It's exhibit?
 19 MR WESLEY: Exhibit A, rather.
 20 CHAIRPERSON: Exhibit A and it's number
 21 19, is it?
 22 MR WESLEY: Page 19.
 23 CHAIRPERSON: Oh, it's page 19 of exhibit
 24 A.
 25 MR WESLEY: I'm reading from the

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1 paragraph 1 dealing with entrance wounds, "Approximately 12
 2 wounds were identified as entrance wounds" and this is the
 3 important part, "and all had no signs of range of fire."
 4 So the entrance wounds that were found had no signs of
 5 range of fire and then if one has regard to the clothing on
 6 the next page, "No soot or grease staining was identified
 7 on any of the clothes of the deceased." Thank you, Chair.
 8 CHAIRPERSON: So the forensic experts,
 9 forensic medicine experts can tell us that the range within
 10 which you will always find soot or other things of that
 11 kind which indicate the range of fire – but anyway that's
 12 not a matter we need deal with now. It's suggested to me
 13 that we take the tea adjournment now and the next witness
 14 will be Captain Kidd and hopefully by the time we've
 15 finished tea he will be sitting at the evidence table
 16 waiting to be either sworn in or asked to make an
 17 affirmation. We'll now take the tea adjournment.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [15:13] CHAIRPERSON: The Commission resumes. Ms
 20 Baloyi, you're going to call the next witness?
 21 MS BALOYI: Thank you, Chairperson. The
 22 next witness is Captain Wayne Peter Kidd.
 23 CHAIRPERSON: Would you please stand,
 24 Captain Kidd? Are you prepared to take the oath or do
 25 you –

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1 CAPTAIN KIDD: Yes.
 2 CHAIRPERSON: - or do you wish to affirm?
 3 CAPTAIN KIDD: Oath is fine, Chairman.
 4 CHAIRPERSON: Sorry?
 5 CAPTAIN KIDD: Oath is fine, Chairman.
 6 CHAIRPERSON: You'll take the oath.
 7 Would you raise your right hand? Do you swear the evidence
 8 you'll give before this Commission will be the truth, the
 9 whole truth, and nothing but the truth? Please say, "I
 10 swear, so help me God."
 11 WAYNE PETER KIDD: I swear, so help me
 12 God.
 13 CHAIRPERSON: You may be seated.
 14 CAPTAIN KIDD: Thank you, Chairman.
 15 CHAIRPERSON: Yes, Ms Baloyi.
 16 MS BALOYI: Thank you, Chair. Chair –
 17 CHAIRPERSON: Now we've got some
 18 housekeeping, have we?
 19 MS BALOYI: Yes.
 20 CHAIRPERSON: You've given us a bundle of
 21 documents and as far as I can see there are four new
 22 documents.
 23 MS BALOYI: Yes, Chair, in fact there may
 24 be some errors in the labelling of the exhibits and I was
 25 trying to get the evidence leaders during the break to try

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1 and assist us. What we've got, item 1, which is the
 2 curriculum vitae, it's a new document, so we would need to
 3 give that a –
 4 CHAIRPERSON: [Microphone off, inaudible]
 5 he's in the triple V-series?
 6 MS BALOYI: Okay.
 7 CHAIRPERSON: Sorry, U. He's in the
 8 triple U-series.
 9 MS BALOYI: So that would be –
 10 CHAIRPERSON: So exhibit UUU1 is the CV
 11 of Captain Kidd.
 12 MS BALOYI: Yes, thank you, Chair.
 13 Chair, I'm wondering whether we shouldn't call it by the
 14 proper name at the top of the document, because it might
 15 just be misleading. The heading of that document is
 16 "Qualifications and work history," just so that there's no
 17 confusion.
 18 CHAIRPERSON: [Microphone off, inaudible]
 19 MS BALOYI: Yes, Chair.
 20 CHAIRPERSON: Alright, so the
 21 "Qualifications and work history" of Captain Kidd is
 22 exhibit UUU1. The next new document is his consolidated
 23 statement dated the 12th of May, so that will be UUU2.
 24 MS BALOYI: Yes, Chair.
 25 CHAIRPERSON: The third document is a –

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1 have we not had this before? Consolidated statement of
 2 Constable Sebatjane. We have a statement of Constable
 3 Sebatjane which has already been referred to.
 4 MS BALOYI: We've been given TTT7, Chair.
 5 CHAIRPERSON: Or a statement anyway, by
 6 Constable Sebatjane has been referred to already.
 7 MS BALOYI: Yes.
 8 CHAIRPERSON: Whether it's consolidated
 9 or not I don't know. I'm trying to see from my notes.
 10 MS BALOYI: Chair, I think Mr Wesley has
 11 given me the exhibit number, TTT7 as the exhibit number.
 12 CHAIRPERSON: I've got in my notes
 13 reference to exhibit TTT7.1, which is Constable Sebatjane's
 14 typed statement, and then TTT7.2, which is his handwritten
 15 statement. I haven't got a consolidated statement. So it
 16 does appear as if we've now got a consolidated statement –
 17 yes, we haven't seen it before –
 18 MS BALOYI: Which is a new document.
 19 CHAIRPERSON: Alright, so it has to go
 20 in, exhibit UUU3, consolidated statement Constable
 21 Sebatjane. Then we've got a manuscript statement by
 22 Captain Ryland. That will be exhibit UUU4. Yes, the
 23 documents concerned will be so marked and you may –
 24 MS BALOYI: Thank you, Chair.
 25 CHAIRPERSON: - commence the examination-

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1 in-chief.
 2 EXAMINATION BY MS BALOYI: Thank you,
 3 Chair. Captain Kidd, if you look at the first document in
 4 that bundle of documents, which is head the "Qualifications
 5 and work history," and we've marked it UUU1, you have that
 6 document in front of you?
 7 CAPTAIN KIDD: I do have it, Mr Chairman.
 8 MS BALOYI: Is it correct that according
 9 to this document – and you confirmed that – that you joined
 10 the SAPS in 1992?
 11 CAPTAIN KIDD: That's correct, Chairman.
 12 MS BALOYI: And that in August 2012 you
 13 were a member of the TRT, Johannesburg. Is that correct?
 14 CAPTAIN KIDD: In August 2012, that's
 15 correct.
 16 MS BALOYI: Yes, are you still employed
 17 in the TRT, Johannesburg?
 18 CAPTAIN KIDD: No, I've since left the
 19 TRT.
 20 MS BALOYI: Where are you presently
 21 employed?
 22 CAPTAIN KIDD: I'm now employed at Knysna
 23 SAPS.
 24 MS BALOYI: Thank you. Now if you would
 25 move to the next document in that bundle, in the index,

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1 Chairperson, it's item 2.1, which is the manuscript of the
 2 statement of Captain Kidd.
 3 CHAIRPERSON: That's described as TTT8.1
 4 in your –
 5 MS BALOYI: Yes.
 6 CHAIRPERSON: - cover sheet. Is that
 7 correct?
 8 MS BALOYI: Chair, I'm not sure about
 9 that because when we look at the transcript, previous
 10 cross-examination, Ms Le Roux referred to this document and
 11 it's referred to as HHH12, either 1 or 2. It wasn't quite
 12 clear. So between that document 2.1 and 2.2, and maybe
 13 even 2.3, we couldn't quite work out what exhibit number it
 14 is and it is that which I was trying to get assistance from
 15 the evidence leaders about –
 16 CHAIRPERSON: Well, I've got a note which
 17 simply reads "Exhibit TTT8, Captain Kidd's statement," but
 18 I didn't write down the date. I don't know whether –
 19 MS BALOYI: I think Mr Wesley seems to
 20 think that TTT8 is a statement of September 2012, which
 21 would be item 2.2 in that index. Mr Wesley says he will
 22 check, Chair.
 23 CHAIRPERSON: Alright. Well anyway let's
 24 – then I take it you're going to lead him primarily from
 25 the consolidated statement?

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1 MS BALOYI: I will do so indeed. I just
 2 need him to confirm –
 3 CHAIRPERSON: Which is –
 4 MS BALOYI: - to confirm the statement,
 5 Chair.
 6 CHAIRPERSON: - UUU2.
 7 MS BALOYI: Indeed so, Chair. Captain
 8 Kidd, the first document, the manuscript statement which in
 9 the index says it is undated, when did you sign that
 10 statement? Firstly let me say, is that your statement? Do
 11 you confirm it as your statement?
 12 CAPTAIN KIDD: Yes, I confirm it's my
 13 statement.
 14 MS BALOYI: And you confirm the contents
 15 thereof?
 16 CAPTAIN KIDD: I do.
 17 MS BALOYI: When did you sign that
 18 statement?
 19 CAPTAIN KIDD: On the 17th of August.
 20 MS BALOYI: 20?
 21 CAPTAIN KIDD: 2012.
 22 MS BALOYI: Thank you. And what was the
 23 purpose of – why was this statement completed by you and
 24 signed? What was it for?
 25 CAPTAIN KIDD: This was a statement that

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1 was made in order for the police docket.
 2 MS BALOYI: And if you then move on to
 3 the next document, which is 2.2, you confirm that is a
 4 typed version of the manuscript that we've just referred
 5 to?
 6 CAPTAIN KIDD: I confirm that, Mr
 7 Chairman.
 8 MS BALOYI: Yes, and do you confirm the
 9 contents thereof?
 10 CAPTAIN KIDD: I do.
 11 MS BALOYI: And that statement is dated
 12 September 2012. You confirm that?
 13 CAPTAIN KIDD: That's correct.
 14 MS BALOYI: And the contents you confirm.
 15 Now the first document, it is 2.3, says "Statement Captain
 16 Kidd," it is dated 14 November 2012 and we've marked it
 17 here as exhibit HHH12. You see that document in front of
 18 you?
 19 CAPTAIN KIDD: I do see it, Mr Chairman.
 20 MS BALOYI: Is that your statement and
 21 signature?
 22 CAPTAIN KIDD: That's correct.
 23 MS BALOYI: Do you confirm the contents
 24 thereof?
 25 CAPTAIN KIDD: I do.

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1 MS BALOYI: And lastly, and this is the
 2 document from which we'll be working, the document, item
 3 2.4, which is consolidated statement dated the 12th of May
 4 2014. We've marked it exhibit UUU2. You confirm that is
 5 your statement?
 6 CAPTAIN KIDD: That's my statement.
 7 MS BALOYI: The contents, and the
 8 signature?
 9 CAPTAIN KIDD: That's correct, Mr
 10 Chairman.
 11 MS BALOYI: Thank you. Now if you would
 12 just open that last statement, and that will principally be
 13 the discussion with cross-references to some of the parts
 14 of your statement. Now in this consolidated statement,
 15 which is UUU2, if you look at paragraph 4 thereof, you tell
 16 us that you arrived at Marikana on the 15th August 2012.
 17 You see that?
 18 CAPTAIN KIDD: Yes, I do see that, Mr
 19 Chairman.
 20 CHAIRPERSON: Mr Pretorius is proceeding
 21 to the operator's corner to make sure that it's put up on
 22 the screen, so I think we'll wait a minute while that's
 23 being done.
 24 MS BALOYI: Chairperson, I do apologise
 25 for the delay. I'm not sure what the extent of the

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1 difficulty is. I don't now if we should –
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 to say was that the, in future I think we must try to set
 4 these things up in advance because it's a waste of time and
 5 time is a precious commodity here, although it doesn't seem
 6 to be treated as such. But I won't deduct it from your
 7 time. I should actually, it's your fault, you should have
 8 made the arrangements beforehand –
 9 MS BALOYI: Chairperson, I'm indebted to
 10 you not deducting.
 11 CHAIRPERSON: Well, don't regard it as a
 12 present and don't quote it to me next time it happens. But
 13 are we ready to go now?
 14 MS BALOYI: Chair, I'm not getting an
 15 indication. It seems there may be some difficulty with
 16 the –
 17 CHAIRPERSON: Well, I think the answer is
 18 you'd better proceed then without it being on the screen.
 19 It will be interpreted to those who need it in Xhosa, and
 20 those who would otherwise look at it on the screen will
 21 just have to listen carefully while you lead the witness.
 22 MS BALOYI: Thank you, Chair.
 23 CHAIRPERSON: But I hope that it's
 24 attended to as soon as possible.
 25 MS BALOYI: Yes. Thank you, Chair.

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1 Captain Kidd, if you look – I was discussing with you, or
 2 starting to discuss with you paragraph 4 of that statement
 3 and had just confirmed with you that you tell us that you
 4 arrived at Marikana on the 15th of August. Is that correct?
 5 CAPTAIN KIDD: That's correct, Mr
 6 Chairman.
 7 MS BALOYI: And you say in that statement
 8 that you would be deployed as part of the reserve group to
 9 be stationed at forward holding area on the western side of
 10 koppie 1, and that you will wait for further instructions.
 11 You see that?
 12 CAPTAIN KIDD: Yes, I do see that, Mr
 13 Chairman.
 14 MS BALOYI: What does it mean that you
 15 would be a reserve group in forward holding area 2? What
 16 exactly does that mean?
 17 CAPTAIN KIDD: What it meant was that we
 18 were the reserve group in case we were needed, we would
 19 just have to go and wait there by the forward holding area
 20 2.
 21 MS BALOYI: Yes. Now if you turn the
 22 next page to paragraph 5 –
 23 CHAIRPERSON: You go on to say you stayed
 24 there the whole day and then you went back to the JOC in
 25 the early evening and were instructed to report for duty

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1 the next morning at the JOC.
 2 CAPTAIN KIDD: That's correct, Mr
 3 Chairman.
 4 MS BALOYI: Thank you, Chair. And then
 5 if you turn to the next page, paragraph 5.1, you say that
 6 on the 16th you reported for duty at the parade grounds at
 7 the JOC. You see that?
 8 CAPTAIN KIDD: Yes, I do see that.
 9 MS BALOYI: Chairperson, perhaps because
 10 it's not on the screen I should read the paragraph in the
 11 meantime so that those who don't have the document can
 12 follow. You say at paragraph 5.1, "On Thursday, 16/08/2012
 13 at 06:00 I reported for duty at the parade grounds at the
 14 JOC. I attended the JOCCOM meeting. Colonel Scott gave a
 15 presentation of the various phases of the plan" –
 16 CHAIRPERSON: I think you'd better not
 17 read the next sentence because that may be controversial.
 18 You'd better let him give his own evidence on the point.
 19 MS BALOYI: Chair, I beg your pardon, I
 20 didn't understand what the Chair said.
 21 CHAIRPERSON: The next sentence may be
 22 controversial, so perhaps you should not read it yourself,
 23 let the witness give the evidence on that point.
 24 MS BALOYI: Captain Kidd, perhaps let's
 25 start so that there's no confusion in the record. Can I

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1 ask you to read into the record paragraph 5.1 of the
 2 statement?
 3 CAPTAIN KIDD: From the beginning?
 4 MS BALOYI: Yes.
 5 CAPTAIN KIDD: Okay, "On Thursday
 6 16/8/2012 at 06:00 I reported for duty at the parade
 7 grounds at the JOC. I attended the JOCCOM meeting.
 8 Colonel Scott gave a presentation of the various phases of
 9 the plan. We were advised that there is a possibility of
 10 the strikers laying down their dangerous weapons at 9
 11 o'clock. The members were told that the police would
 12 continue negotiating with the strikers. Colonel Scott
 13 further indicated that if the protesters failed to lay down
 14 their weapons and there's a possibility of dispersing,
 15 disarming and arresting them. Members would be advised
 16 accordingly if the need arose. We were again, like the
 17 previous day, deployed at forward holding area 2 with the
 18 same instructions and purpose. On the 16th members deployed
 19 at the forward holding area 2 were under the command of
 20 Lieutenant-Colonel Pitsi."
 21 MS BALOYI: Thank you. Chair, I see we
 22 have the document on the screen, so I'll continue.
 23 CHAIRPERSON: It has finally been
 24 achieved.
 25 MS BALOYI: Thank you.

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1 CHAIRPERSON: I congratulate those
 2 responsible. Let's carry on.
 3 MS BALOYI: Thank you, Chair. And then
 4 perhaps if we could have exhibit L, slide L1.81. Captain
 5 Kidd, I'm told by Mr Pretorius that you have a pointer with
 6 you.
 7 CAPTAIN KIDD: That's correct, Mr
 8 Chairman.
 9 MS BALOYI: Now in that slide there,
 10 1.81, we see areas that are depicted, and if you look at
 11 the right-hand bottom there's a block there that says
 12 "FHA2, deployed to protect the informal settlement." You
 13 see that?
 14 CAPTAIN KIDD: Yes, I do see it. It's on
 15 the left-hand side bottom.
 16 MS BALOYI: Yes. Now on the 15th and the
 17 16th, where exactly in relation to where that block is were
 18 you deployed to be?
 19 CAPTAIN KIDD: Okay, if I can show with
 20 the pointer, it was more here at the edge of where the
 21 informal settlement started.
 22 CHAIRPERSON: What you are pointing is to
 23 the left, it's not actually on the slide, it's to the left
 24 of the slide at the bottom left-hand corner.
 25 CAPTAIN KIDD: That's correct, Mr

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1 Chairman.
 2 MS BALOYI: And this is where you
 3 returned on the 16th in the morning?
 4 CAPTAIN KIDD: That's correct, Mr
 5 Chairman.
 6 MS BALOYI: Yes, now you also say that
 7 you attended the JOCCOM meeting and received a briefing
 8 from Colonel Scott.
 9 CAPTAIN KIDD: That was in the morning,
 10 that's correct.
 11 MS BALOYI: Yes, I'm referring to the
 12 morning.
 13 CAPTAIN KIDD: That's correct.
 14 MS BALOYI: Yes, thank you. And then in
 15 paragraph 5.2 you say, "At around 10:00 Lieutenant-Colonel
 16 Pitsi was redeployed by Brigadier Calitz to the frontline,
 17 that is to the koppie. Lieutenant-Colonel Pitsi left with
 18 40 POP members and four Nyalas and one Casspir, and left me
 19 in command of the remaining units." You see that?
 20 CAPTAIN KIDD: Yes, I do see that, Mr
 21 Chairman.
 22 [15:33] MS BALOYI: Now, in your statement that
 23 we have marked exhibit TTT8 you tell us how many members
 24 you remained with. I don't need you to go to that
 25 document, I just need you to confirm how many members you

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1 remained with.
 2 CAPTAIN KIDD: I remained with 90
 3 members.
 4 MS BALOYI: Yes.
 5 CAPTAIN KIDD: If I can say, it was 55
 6 TRT, 29 POP and six dog unit.
 7 MS BALOYI: And then you say at paragraph
 8 6 - perhaps even before I go to paragraph 6, while you
 9 deployed there before 2:30 did you engage in any activities
 10 to do with the operation while you were deployed there?
 11 CAPTAIN KIDD: No activities, Mr
 12 Chairman. It was very quiet there.
 13 MS BALOYI: Now if you go to paragraph 6
 14 you say that you were then called to attend a briefing at
 15 forward holding area 1, do you see that, at half past two?
 16 CAPTAIN KIDD: Yes, I see that.
 17 MS BALOYI: Who called you to attend this
 18 briefing?
 19 CAPTAIN KIDD: It was called over the
 20 radio by Brigadier Calitz.
 21 MS BALOYI: Yes and then you say you
 22 attended the briefing by Colonel Scott, that at 15:30 phase
 23 3 of the plan would be implemented. Do you see that?
 24 CAPTAIN KIDD: Yes, I see that?
 25 MS BALOYI: What did Colonel Scott say in

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1 this briefing about phase 3?
 2 CAPTAIN KIDD: He said that the
 3 dispersement would commence.
 4 MS BALOYI: The dispersal action.
 5 CAPTAIN KIDD: That's correct.
 6 MS BALOYI: And then you tell us that –
 7 now in this briefing, perhaps let me ask you, in this
 8 briefing did Colonel Scott say what the task of your group
 9 would be, the group that is stationed at forward holding
 10 area 2?
 11 CAPTAIN KIDD: That's correct. Our main
 12 task was to protect the informal settlement situated at
 13 forward holding area 2 and also to make a line.
 14 MS BALOYI: When you say to make a line,
 15 to make a line for what purpose?
 16 CAPTAIN KIDD: Just to make a line so
 17 that whoever came or was leaving the hill area that would
 18 come through, we could search and maybe disarm those
 19 people.
 20 MS BALOYI: Yes and then you say "Members
 21 were to specifically move in a straight line once the
 22 deployment of the barbed wire commenced, to form a barrier
 23 between the koppie and the informal settlement." Do you
 24 see that?
 25 CAPTAIN KIDD: Yes, I do.

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1 MS BALOYI: And the members were to
 2 protect the informal settlement from attack. You also say,
 3 "The members would also disarm and confiscate any dangerous
 4 weapons in the possession of the strikers that would be
 5 approaching the line and allow them to proceed. I returned
 6 to forward holding area 2 and accordingly briefed the
 7 members of our role." Do you see that?
 8 CAPTAIN KIDD: Yes, I do.
 9 MS BALOYI: In the briefing to members,
 10 what did you say to them?
 11 CAPTAIN KIDD: Okay. When I arrived back
 12 I called all the members together. I tried to stand on a
 13 raised position so in order that I could speak to everyone.
 14 I explained to the people what was said to me by Colonel
 15 Scott at the briefing about what we had to do and when it
 16 would commence.
 17 MS BALOYI: And did members understand
 18 what the task of your group was going to be?
 19 CAPTAIN KIDD: Yes, the members
 20 understood. I asked if there was any questions and then
 21 there did come some questions.
 22 MS BALOYI: Yes and then you say in, you
 23 say there did come some questions. What kind of questions
 24 were they?
 25 CAPTAIN KIDD: Okay, there were questions

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1 put to me by the members asking what type of weapons or
 2 firearms or stuff that they could encounter.
 3 MS BALOYI: And?
 4 CAPTAIN KIDD: Okay and then I informed
 5 these members that there was an incident that had happened
 6 on the Monday where firearms had been taken from police
 7 officials as well as an incident where firearms had been
 8 taken from security personnel, so this was passed over to
 9 my members.
 10 MS BALOYI: Now in your manuscript
 11 statement of the 17th of August you say at paragraph 8, page
 12 2 of that document you say at paragraph 8, "Once we
 13 received the instruction to deploy over the radio, I
 14 instructed the members to exit their vehicles and to make
 15 one long straight line facing the hill," do you see that?
 16 CAPTAIN KIDD: Yes, I do see that, Mr
 17 Chairman.
 18 MS BALOYI: In fact, I beg your pardon,
 19 let me go back. In that same document if you go to
 20 paragraph 6, that's where I should be referring you to.
 21 Paragraph 6, the manuscript statement. Video operator, if
 22 we could have the manuscript statement?
 23 CHAIRPERSON: That's not the manuscript
 24 statement, that's the typed statement if I'm – well, it's
 25 almost the same.

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1 MS BALOYI: It is the same, Chair, I'm
 2 happy to work with it. At paragraph 6 thereof you say, and
 3 there you're discussing the briefing at 2:30, am I correct?
 4 CAPTAIN KIDD: That's correct, Mr
 5 Chairman.
 6 MS BALOYI: And you say, "I was called to
 7 a briefing where information was given to myself by
 8 Brigadier Callitz that instructions would be given over the
 9 radio as to deploy my 90 members. I was to perform a
 10 straight line with members by walking towards the hill
 11 area," you see that?
 12 CAPTAIN KIDD: I do see that.
 13 MS BALOYI: Yes. Now if we could –
 14 unfortunately I'm going to be straddling documents – if we
 15 could go back to slide L181.
 16 CHAIRPERSON: Is 181 –
 17 MS BALOYI: 181. Now where you say, what
 18 you describe there, you say you would be walking towards
 19 the hill area. Can I ask you to point out using your
 20 pointer, to indicate where you would be walking to?
 21 CAPTAIN KIDD: Mr Chairman, again it's
 22 off the screen to the left and it would be up this side.
 23 MS BALOYI: And –
 24 CAPTAIN KIDD: Next to the informal
 25 settlement, towards the hill area.

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1 CHAIRPERSON: Yes, you see the top of the
 2 page – they're not numbered unfortunately – the top of the
 3 third page of your statement UUU2 in paragraph 8 of the
 4 statement you say "Before we reached our intended position"
 5 and then you say what happened then. So you were walking
 6 towards the hill but you were, obviously you weren't going
 7 to walk all the way to the hill. It was intended, as I
 8 understand it, that you were going to be stationary at a
 9 particular point, the so-called intended position.
 10 CAPTAIN KIDD: That's –
 11 CHAIRPERSON: Now what, can you indicated
 12 for us where the intended position was going to be?
 13 CAPTAIN KIDD: Mr Chairman, my intended
 14 position when I was to be stationary would be here facing,
 15 would be this basic line like this, where the informal
 16 settlement would be behind me.
 17 CHAIRPERSON: So what you're indicating
 18 is that there's a line which runs more or less from the
 19 middle of the left-hand side of the slide, diagonally as it
 20 were, past the corner, the top right-hand corner of the
 21 informal settlement where there are two red figures and
 22 then coming, then what looks like a slimes dam or something
 23 just beyond that to the right, is that right? So where
 24 exactly – so you would start round about the mid-point of
 25 the left-hand side of the slide. That's correct, is it?

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1 CAPTAIN KIDD: That's correct, Mr Chair.
 2 CHAIRPERSON: And where would it end?
 3 CAPTAIN KIDD: It would go to about
 4 there. That was my intended position.
 5 CHAIRPERSON: I'm not sure if it is a
 6 slimes dam but it looks like it, roughly there. About a
 7 third of the way along the bottom of the photograph there's
 8 what looks like a road going up and I take it a dam of some
 9 sort. It was roughly there, was it?
 10 CAPTAIN KIDD: There is a dam there,
 11 correct.
 12 CHAIRPERSON: That was basically where
 13 your intended position was going to stop?
 14 CAPTAIN KIDD: That's correct, Mr
 15 Chairman.
 16 CHAIRPERSON: So you had 90 men stretched
 17 out from the point, the beginning point, the extreme left-
 18 hand side of the photograph halfway up, that's the first
 19 man and the 90th man near the slimes dam, is that correct?
 20 CAPTAIN KIDD: That was the intention, Mr
 21 Chairman.
 22 MS BALOYI: Now Captain Kidd, the
 23 paragraph 6 that we are looking at, when you say walking –
 24 in the last part you say "By walking towards the hill
 25 area." Which hill are you talking about?

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1 CAPTAIN KIDD: I was talking about the
 2 hill where basically everything was happening, where the
 3 strikers had gathered, where the negotiations was
 4 happening.
 5 MS BALOYI: Is that the area that we've
 6 now come to know as scene 1, do you know? Is that what –
 7 CAPTAIN KIDD: That's correct.
 8 MS BALOYI: Or koppie 1 rather, I do
 9 apologise.
 10 CAPTAIN KIDD: That's correct.
 11 MS BALOYI: And then to go back to your
 12 consolidated statement at paragraph 7 you say, "At about
 13 15:40 we heard over the radio an instruction that the
 14 barbed wire be deployed. I then instructed the members to
 15 form the basic line and to move forward to form a barrier
 16 as indicated above." Do you see that?
 17 CAPTAIN KIDD: I do see that.
 18 MS BALOYI: Yes. Now if I could ask the
 19 video operator again to go back to slide L181. Now when
 20 you heard over the radio an instruction, where are you at
 21 that point? Where are you positioned?
 22 CAPTAIN KIDD: We weren't there yet, we
 23 were about here. Sorry, we weren't there yet, we were
 24 about halfway through. We were only about there.
 25 CHAIRPERSON: There is roughly the bottom

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1 left-hand corner of the rectangle in which the words "FHA
 2 deployed to protect the informal settlement" appear.
 3 CAPTAIN KIDD: That's correct, Mr
 4 Chairman.
 5 COMMISSIONER HEMRAJ: But you would have
 6 only instructed the basic line after you heard the
 7 instruction, isn't it?
 8 CAPTAIN KIDD: That's correct, Mr Chair.
 9 The instruction to climb out of the vehicles and to form
 10 the basic line only happened when the instruction was given
 11 by Brigadier Callitz to deploy the barbed wire.
 12 MS BALOYI: Thank you, Chair. And you
 13 then give this instruction. You've indicated to the
 14 Chairperson where the members formed up and to move forward
 15 to form a barrier as indicated above. Can you just
 16 indicate the movement where you do form a barrier? In
 17 fact, where is the barrier to be formed? How do you move
 18 from your original position, if you could just indicate
 19 with the help of a pointer?
 20 CAPTAIN KIDD: It's from the original
 21 position from when it was given over the radio by Brigadier
 22 Callitz, was still, we were at the back. We were indicated,
 23 I indicated the members to climb out of the vehicles to
 24 make the barrier line here, or the basic line.
 25 MS BALOYI: Yes and then you hear the

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1 instruction for the barbed wire to be rolled out.
 2 CAPTAIN KIDD: Yes. From there then the
 3 people started walking forward.
 4 MS BALOYI: Okay and they moved in a
 5 straight line?
 6 CAPTAIN KIDD: That's correct, they move
 7 in a straight line forward towards the hill area.
 8 MS BALOYI: And then in the next
 9 paragraph, in the next page you say "Before we reached our
 10 intended destination I heard over the radio" –
 11 CHAIRPERSON: Intended position .
 12 MS BALOYI: Intended position, thank you,
 13 Chairperson – "I heard over the radio that the police were
 14 under attack." You see that?
 15 CAPTAIN KIDD: I do see that.
 16 MS BALOYI: And you've pointed out to the
 17 Chairperson where the intended position was. If we could
 18 go back to L181 please? Whereabouts are you when you hear
 19 this message over the radio?
 20 CAPTAIN KIDD: We were halfway, halfway.
 21 My intended position, like I pointed out to the Chairman,
 22 was here but we were only, we only – we were here when over
 23 the radio we heard that the police were being attacked on
 24 the other side.
 25 CHAIRPERSON: You pointed out a few

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1 centimetres to the left, from the left-hand side of the
 2 photograph, the place that I described earlier near the
 3 bottom left-hand corner of that rectangle.
 4 CAPTAIN KIDD: That's correct, Mr
 5 Chairman.
 6 MS BALOYI: Thank you, Chair. Captain
 7 Kidd, just to avoid any doubt, can I ask you to again
 8 indicate your intended position? Chairperson, Mr Pretorius
 9 thinks that he didn't describe what, the position of the
 10 intended position.
 11 CHAIRPERSON: Mr Pretorius is wrong –
 12 MS BALOYI: Yes, I thought so –
 13 CHAIRPERSON: Let's not repeat the point.
 14 MS BALOYI: Thank you, Chair. You say
 15 you'd reached, before you reached your intended position
 16 you heard about the attack on the radio, that the police
 17 were under attack, you hear that. What then happens? What
 18 do you do, if anything, after you hear this message?
 19 CAPTAIN KIDD: Okay, when that happens I
 20 start calling on the radio. I start calling on the radio,
 21 Brigadier Calitz, the JOC, Lieutenant-Colonel Vermaak, I
 22 was calling, calling just to get some response but I
 23 received nothing.
 24 MS BALOYI: And what –
 25 COMMISSIONER HEMRAJ: Sorry, what did you

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1 hear on the radio? Exactly what did you hear as regards
 2 the attack?
 3 CAPTAIN KIDD: Mr Chairman, I heard
 4 commotion, the firing of ammunition, people screaming.
 5 COMMISSIONER HEMRAJ: And could you
 6 identify any person's voice making the report that the
 7 police were under attack?
 8 CAPTAIN KIDD: No, I couldn't identify
 9 any members.
 10 CHAIRPERSON: You hear on the radio that
 11 a volley was being fired, ammunition was being fired and
 12 presumably you can tell the difference between rubber balls
 13 being fired from a shotgun and sharp ammunition being fired
 14 from an R5 rifle, can you? It's a different sound, isn't
 15 it?
 16 CAPTAIN KIDD: That's correct, Mr
 17 Chairman.
 18 CHAIRPERSON: That's what you heard?
 19 CAPTAIN KIDD: That's correct.
 20 CHAIRPERSON: R5 rifle. So anyone
 21 listening to the radio would have heard that?
 22 CAPTAIN KIDD: That's correct, Mr
 23 Chairman.
 24 CHAIRPERSON: I see. So what did you do
 25 about it?

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1 CAPTAIN KIDD: Mr Chairman, I carried on
 2 calling, calling. There was no response. I consulted with
 3 another Captain who was with me, Captain Ryland, when we
 4 made the decision to move forward towards the hill and not
 5 stop where I intended to stop.
 6 CHAIRPERSON: You say in your statement
 7 this was your own decision as you thought it was necessary
 8 to give other members your support.
 9 CAPTAIN KIDD: That's correct, Mr
 10 Chairman, I made that decision as the commander.
 11 CHAIRPERSON: Did you have a cell phone?
 12 CAPTAIN KIDD: Yes, I did.
 13 CHAIRPERSON: And Captain Ryland also had
 14 a cell phone?
 15 CAPTAIN KIDD: Yes, he did.
 16 CHAIRPERSON: Did either of you think of
 17 telephoning the JOC or Brigadier Calitz to say you were
 18 doing this?
 19 CAPTAIN KIDD: No, we didn't think of it
 20 –
 21 CHAIRPERSON: Why not?
 22 CAPTAIN KIDD: We didn't try phone –
 23 CHAIRPERSON: Wasn't it sensible,
 24 wouldn't it have been sensible to have informed the JOC
 25 that you were leaving the area where you were supposed to

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1 be and going – obviously for good reason, but going forward
 2 to the koppie?
 3 CAPTAIN KIDD: That's correct, Mr
 4 Chairman. My interest there was to go forward to help the
 5 people but still to realise that the informal settlement
 6 would still be behind me, that no people would still pass
 7 me with any weapons. So that was my, my point in the
 8 beginning was to look after the informal settlement.
 9 CHAIRPERSON: I understand that but there
 10 are two points. The first is, you obviously had to protect
 11 the informal settlement, I understand that but if you were
 12 going forward to take part in the action near the koppie,
 13 surely it was necessary that the operational commander and
 14 those in the JOC should know you were there so that the
 15 actions of your group could be co-ordinated.
 16 CAPTAIN KIDD: That's correct, Mr
 17 Chairman.
 18 CHAIRPERSON: It didn't happen.
 19 CAPTAIN KIDD: No, it didn't.
 20 CHAIRPERSON: And subsequently, I mean
 21 jumping ahead but subsequently when you went to scene 2,
 22 koppie 3, there was the same problem. Brigadier Calitz
 23 still didn't know you were there, did he?
 24 CAPTAIN KIDD: Mr Chairman, while we –
 25 CHAIRPERSON: Had you told anybody you

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1 were coming? Had you told the JOC? Did the JOC know what
 2 you were up to?
 3 CAPTAIN KIDD: While we were moving
 4 forward, with the bird's eye view of Lieutenant-Colonel
 5 Vermaak, when I realised that we couldn't get through we
 6 were listening to the radio and there was, on numerous
 7 occasions where Lieutenant-Colonel Vermaak made gestures to
 8 people on my side, the people on the western side go left
 9 or the people on the western side go forward. So according
 10 to myself, the people that were listening to the radio knew
 11 that we were there.
 12 CHAIRPERSON: They didn't know exactly
 13 where – all you knew was, all they knew was that Colonel
 14 Vermaak was giving instructions but surely the people in
 15 the JOC were entitled to know where you were and what you
 16 were doing so that the actions of your members could be co-
 17 ordinated.
 18 CAPTAIN KIDD: That's correct, Mr
 19 Chairman.
 20 CHAIRPERSON: And you didn't do that?
 21 CAPTAIN KIDD: No, I didn't.
 22 CHAIRPERSON: Okay.
 23 MS BALOYI: Captain Kidd, did it occur to
 24 you, did you make the decision not to call Captain,
 25 Brigadier Calitz by cell phone? Did you make the decision?

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1 CAPTAIN KIDD: Yes, I made that decision.
 2 I didn't think of phoning them. It was just over the radio
 3 then the response just to move forward.
 4 MS BALOYI: Can I ask my question again?
 5 Did you make a conscious decision, a positive decision not
 6 to call him? Did you think Brigadier Calitz, I should call
 7 him by cell phone, no, I am not calling him? That's the
 8 question I'm asking.
 9 CAPTAIN KIDD: No, I didn't think of
 10 calling.
 11 MS BALOYI: When you say there was –
 12 COMMISSIONER HEMRAJ: Or the JOC.
 13 CAPTAIN KIDD: Or the JOC, Mr Chairman.
 14 MS BALOYI: When you say, where you
 15 describe your attempt to use the radio and you say it was
 16 not accessible, can you describe what was happening?
 17 Practically what was happening? You were attempting to
 18 speak on the radio. What responses you were hearing?
 19 [15:52] CAPTAIN KIDD: Okay, the radio was just
 20 keying out. You could only hear Lieutenant-Colonel Vermaak
 21 on the radio and then every now and then you would hear
 22 Brigadier Calitz.
 23 MS BALOYI: When you made the decision
 24 after you heard that the police were under attack and the
 25 commotion that you describe that you heard on the radio,

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1 why did you not decide to stay where you were?
 2 CAPTAIN KIDD: I went back to the, what
 3 was said earlier in the morning that we were the reserve
 4 reaction group, so I took it on myself that if something is
 5 happening and we are the reserve people, we're standing
 6 there idly, doing nothing, we could just as well move
 7 forward and go and assist.
 8 MS BALOYI: And then you say in paragraph
 9 9 of the consolidated statement, if we could go back to
 10 that, you say, "While we were moving in the direction of
 11 the koppie hundreds of strikers approached our line. They
 12 were allowed to pass after laying down the dangerous
 13 weapons in their possession." You see that?
 14 CAPTAIN KIDD: Yes, I do see that, Mr
 15 Chairman.
 16 MS BALOYI: And these strikers that
 17 you're describing here, what direction were they coming
 18 from in relation to the koppie?
 19 CAPTAIN KIDD: They were coming from the
 20 hill.
 21 CHAIRPERSON: By "the hill" you mean what
 22 we call koppie 1?
 23 CAPTAIN KIDD: That's correct, Mr
 24 Chairman.
 25 CHAIRPERSON: You know the distinction,

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1 do you, between koppie 1, which is where they were most of
 2 the time during that week; koppie 2 is the little one
 3 nearby, and koppie 3 the one where a number of other people
 4 were killed later –
 5 CAPTAIN KIDD: Yes, Mr Chairman, from
 6 koppie 1.
 7 COMMISSIONER HEMRAJ: Were any of those
 8 weapons sharp weapons, or were they all just traditional
 9 weapons?
 10 CAPTAIN KIDD: Mr Chairman, there was a
 11 variety of weapons. It was spears, axes, sticks, all
 12 kinds. There was all, all different types of weapons.
 13 MS BALOYI: And then you go on to say,
 14 "None of the strikers refused to lay down their weapons as
 15 instructed." You see that?
 16 CAPTAIN KIDD: I do see that.
 17 MS BALOYI: Now if we could go back to
 18 exhibit L181, the slide, now when you encounter these
 19 strikers that you say came past your filtering line, can
 20 you indicate with your pointer the formation of your line
 21 of members, how it is laid out at that point?
 22 CAPTAIN KIDD: By then we were situated
 23 like in a line about there.
 24 CHAIRPERSON: What you indicate on this
 25 slide is a line stretching from just below the words "first

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1 line" in a white rectangle in more or less the middle of
 2 the picture, diagonally downwards towards the mid-point in
 3 the white sort of section which is an extension of the
 4 lower part of the power station.
 5 CAPTAIN KIDD: That's correct, Mr
 6 Chairman.
 7 CHAIRPERSON: On the left-hand side.
 8 CAPTAIN KIDD: That's correct, Mr
 9 Chairman.
 10 MS BALOYI: And then you continue to say,
 11 "While we were on the way to the koppie I saw a police
 12 chopper hovering in the air and I could see a police
 13 officer who waved to us to move to our left-hand side."
 14 You see that?
 15 CAPTAIN KIDD: I do see that.
 16 MS BALOYI: Can you indicate again
 17 whereabouts are you when you see this chopper and you get
 18 that indication?
 19 CAPTAIN KIDD: Okay, if I can indicate,
 20 Mr Chairman, if the line was situated like that, we had
 21 moved – okay, from there where we first witnessed the, some
 22 protesters, or strikers coming past us, we'd moved a bit
 23 forward by then. By then we were about here, like this,
 24 and I was situated –
 25 CHAIRPERSON: I'm sorry, "round about

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1 here" is more or less parallel with the previous line, but
 2 now further up near the, the line would cross more or less
 3 at the time of the second P of POP in the middle of that
 4 white rectangle I referred to earlier.
 5 CAPTAIN KIDD: Maybe a bit further up, Mr
 6 Chairman.
 7 CHAIRPERSON: A bit further up.
 8 CAPTAIN KIDD: A bit further, ja. And as
 9 I want to indicate, with this line I was in the middle, I
 10 situated myself in the middle.
 11 MS BALOYI: And you say that "The police
 12 office (lady) who waved to us moved to our left-hand side."
 13 You see that?
 14 CAPTAIN KIDD: Yes, I do see that.
 15 CHAIRPERSON: You left out a word – she
 16 waved to us, I take you mean to move.
 17 MS BALOYI: To move, yes.
 18 CHAIRPERSON: To our left-hand side.
 19 MS BALOYI: Yes, that's how it should
 20 read.
 21 CAPTAIN KIDD: That's correct, Mr
 22 Chairman.
 23 CHAIRPERSON: She indicated to you with
 24 her hand?
 25 CAPTAIN KIDD: She indicated with –

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1 CHAIRPERSON: Like a traffic constable
 2 would direct –
 3 CAPTAIN KIDD: - with her hand. She was
 4 half lying out of the helicopter.
 5 CHAIRPERSON: And she indicated to you
 6 with her hand, as I say like a traffic constable who's
 7 directing traffic –
 8 CAPTAIN KIDD: Yes, she gestured to go to
 9 the left-hand side.
 10 CHAIRPERSON: To go that way.
 11 CAPTAIN KIDD: That's correct, Mr
 12 Chairman.
 13 COMMISSIONER HEMRAJ: The left-hand side
 14 would be where on this?
 15 CAPTAIN KIDD: Up.
 16 COMMISSIONER HEMRAJ: Further up on the
 17 slide?
 18 CAPTAIN KIDD: That's correct.
 19 MS BALOYI: Now we have the statement of
 20 Brigadier Fritz which has been submitted as exhibit JJJ72 -
 21 Chairperson, I don't propose to ask for it to be shown – at
 22 paragraph 6.4 where he describes "the ALEO leaning over and
 23 directing a group of members on the ground."
 24 CHAIRPERSON: The ALEO is Sergeant
 25 Venter.

1 MS BALOYI: Sergeant Venter, indeed.
 2 CHAIRPERSON: She leant over,
 3 apparently –
 4 MS BALOYI: Yes.
 5 CHAIRPERSON: - stuck her arm out of the
 6 window - if that's the right word – of the helicopter and
 7 gave these traffic directions.
 8 MS BALOYI: Yes, Chair.
 9 CHAIRPERSON: That's right?
 10 CAPTAIN KIDD: That's correct, Mr
 11 Chairman.
 12 MS BALOYI: Is that the helicopter that
 13 you're referring to?
 14 CAPTAIN KIDD: That's correct, Mr
 15 Chairman.
 16 MS BALOYI: And then you also say, "I
 17 also heard an instruction from Lieutenant-Colonel Vermaak,
 18 who was in one of the police choppers, that we must move to
 19 the side, which I understood to be to our left-hand side,
 20 which we did."
 21 CAPTAIN KIDD: That's correct. Colonel
 22 Vermaak on more than one occasion said "The people on the
 23 west, move to your left, move to your left," which I, the
 24 way I was walking and facing the hill, or the koppie, would
 25 be to my left, which as I'd indicated in the beginning,

1 towards the northern side.
 2 CHAIRPERSON: So people in the JOC
 3 listening to this would of course simply know there were
 4 people on the west who were getting instructions. They
 5 wouldn't know it was you and your members.
 6 CAPTAIN KIDD: They wouldn't know, but I
 7 think, Mr Chairman, I was probably at that time the only
 8 group that was on the western side.
 9 CHAIRPERSON: Ja, ja, okay. I see we've
 10 now reached a point where you are very close to koppie 3.
 11 So I suggest we continue that discussion tomorrow morning.
 12 MS BALOYI: Thank you, Chair.
 13 CHAIRPERSON: At 9 o'clock?
 14 MS BALOYI: Thank you, Chairperson.
 15 CHAIRPERSON: We'll adjourn until
 16 tomorrow morning.
 17 [COMMISSION ADJOURNED]

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