

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 96 21 MAY 2013 PAGES 10152 TO 10259

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 21 MAY 2013]
 2 [09:38] CHAIRPERSON: The Commission resumes.
 3 Generaal-Majoor, u is nog steeds onder eed.
 4 CHARL ANNANDALE: More.
 5 CHAIRPERSON: Mr Ntsebeza.
 6 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 7 Thank you, Mr Chairman. General, there is just one aspect
 8 I want to clear up, and that is in relation to whether it
 9 is your evidence that the plan was to deal with the group
 10 of 3 000 as a whole, and not simply the allegedly militant
 11 group of 300. Now you will know that you have testified
 12 about this in your evidence-in-chief. You have been cross-
 13 examined at length by a number of colleagues, and I'm none
 14 too sure where we are at. The latest response was to Adv
 15 Mpofu, but we need not be detained here longer than it is
 16 necessary. What is your evidence in that regard?
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 18 ons was gerig gewees om die totale groep te deel in terme
 19 van 'n uiteendryf aksie. Dan was ons pertinent gerig
 20 gewees om te deel met handeling in terme van groeperings
 21 wat sodanig gewapen was, pertinent die groep van 3 tot 400.
 22 MR NTSEBEZA SC: Ja, I understood that to
 23 be your evidence in, I think it was in response to Adv
 24 Mpofu, and the line is, page 9383, lines 1 to 8,
 25 "Voorsitter, ek sal dit as volg probeer beantwoord. Dit

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1 was aan my uitgewys deur mnr, Adv Bizos, in terme van die
 2 wat in Brigadier Calitz se verklaring is, Voorsitter, en ek
 3 het gesê dat die plan het nie gedeel met die tussen 3 en
 4 400 nie. Ek het gesê die plan het ook ingesluit die
 5 aanspreek van die groter groep in terme van 'n uiteendryf
 6 aksie."
 7 CHAIRPERSON: What page are you referring
 8 to?
 9 MR NTSEBEZA SC: The page is 9383 –
 10 CHAIRPERSON: 9?
 11 MR NTSEBEZA SC: 9383.
 12 CHAIRPERSON: Thank you.
 13 MR NTSEBEZA SC: Lines 1 to 8. Day 88,
 14 I'm told, which I should say the date as well, 8 May 2013.
 15 CHAIRPERSON: Thank you.
 16 MR NTSEBEZA SC: Thank you, Mr Chairman.
 17 Now that we have that kind of confirmation, there will be
 18 expert evidence from a gentleman called Eddie Hendrickx,
 19 who in his interpretation of what he understands to be the
 20 plan, will say that the tactical phase of the plan – and we
 21 now know what the tactical phase of the plan is from what
 22 we traversed yesterday from Scott's plan – involved
 23 confronting the strikers, and in his view this was ill-
 24 conceived, highly risky, and not in accordance with tried
 25 and tested POP methods. His view is that there were other

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1 less risky options for managing the situation. What would
 2 your comment be to that view?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 ons het oor 17 jaar het ons met duisende en duisende
 5 gevalle van openbare orde gedeel, en suksesvol het ons
 6 groot groeperings uiteengedryf. Ek het ook getuig dat die
 7 beplanning nie was om sodanige getalle te probeer ontwapen
 8 en arresteer nie, en dat ons voorsiening gemaak het vir
 9 sowat 170 arrestasies, en dit dan juis was dat ons die
 10 sodanige gewapende groep dus sou opbreek in kleiner
 11 hanteerbare groepe om die risiko te verminder.
 12 MR NTSEBEZA SC: Can we just explore some
 13 of what you have just said? When you said you have been
 14 dealing for years and years with unrests of this nature,
 15 what kind of time are we talking about? Is it the 19 years
 16 of democracy that we have enjoyed since 1994, or is it
 17 including a period before that?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dit is verwysend na die gevalle waarmee gedeel is in die
 20 demokrasie.
 21 MR NTSEBEZA SC: Which incident or
 22 incidents come to mind when you want to make a comparison
 23 with what happened on the 16th?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 geen pertinente gevalle nie, slegs die sowat 151 000 wat

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1 ons in 'n 17-jaar periode suksesvol - of gehanteer het,
 2 waarvan die grootste persentasie, omtrent, seker omtrent
 3 80, 88%, heeltemal opgelos is sonder dat die polisie eers
 4 moes aksie loods, en die ander persentasie wat minder
 5 vreedsaam was, wat uiteengedryf is en waar daar minimale
 6 beserings en sterftes was.
 7 MR NTSEBEZA SC: Yes, I thought we're
 8 going to compare like for like, General, like they say
 9 apples with apples. We are talking here about an incident
 10 in which the police killed 34 people in just under three
 11 minutes, or at least 34 people were killed by the police on
 12 this day. Now I'm saying to you the expert will say if, as
 13 you have now confirmed, you had devised a plan to contain
 14 3 000 mineworkers, your plan was ill-conceived, and I'll
 15 tell you the reasons. It was highly risky, and was not in
 16 accordance with tried and tested POP methods.
 17 You say you disagree. Now why do you disagree?
 18 CHAIRPERSON: Mr Ntsebeza, that's a
 19 double question. May I suggest that it would be more
 20 appropriate to divide it up, deal with the highly risky
 21 part first and then the tried and tested POP methods
 22 second, and when we deal with the highly risky part you
 23 could put to him why you say it's highly risky so that he
 24 can deal specifically with what you say in that regard.
 25 MR NTSEBEZA SC: Yes, thank you, Mr

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1 Chairman, I think that's fair. Now the experts feel that
 2 there were insufficient POP people to disperse the crowd.
 3 CHAIRPERSON: So just for clarity, Mr
 4 Ntsebeza, at this point you're concentrating on the
 5 dispersal side. He says their plan was twofold; to
 6 disperse the majority as it were, and to disarm the
 7 minority, the 3, 400, and now you're talking about the
 8 dispersion, or dispersal, and you say there were not enough
 9 POP people for that. Is that not enough POP people for
 10 3 000 people, or 3 000 minus 300, or have you got some
 11 other figures in mind for the support of the allegation
 12 that there weren't enough POP people? I think that should
 13 be made clearer.
 14 MR NTSEBEZA SC: No, my impression of
 15 your evidence, General, just to follow up on the Chairman's
 16 indications, was that your evidence was that all of those
 17 mineworkers, all 3 000 or 4 000 of them were armed, except
 18 that the others were armed with traditional weapons.
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 nee, ek het gesê daar is 'n onderskeid in terme van die
 21 kleiner groep, hulle gewapen was meestal met meer
 22 gevaarlike wapens, selfs twee, en die groter groep was
 23 meestal, meestal gewapen met meestal meer tradisionele
 24 wapens.
 25 MR NTSEBEZA SC: And your intention was

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1 to disarm everybody. Isn't that right?
 2 GENERAAL-MAJOOR ANNANDALE: Nee,
 3 Voorsitter.
 4 MR NTSEBEZA SC: So is it your evidence
 5 that those armed with traditional weapons would not be
 6 disarmed?
 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 8 dit was geag dat dit nie sou nodig wees nie, dat die groep
 9 self uiteen sou gaan, en dat hulle die gevaarlike wapens
 10 sou neergelê het as daar dan sodanige taking was deur die
 11 polisie.
 12 MR NTSEBEZA SC: Who are those people?
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 die groter groep, en selfs van die kleiner groep sou
 15 dieselfde gedoen het.
 16 MR NTSEBEZA SC: Which comes back to what
 17 you had said earlier, but where you seem to say the aim was
 18 to disarm only the 300 people, but you would disarm also
 19 the 3 000 people if they remained. Would it be safe and
 20 fair to say your mission, on the assumption that there
 21 would be no resistance from the crowd, was to disarm anyone
 22 who was having weapons and that the emphasis on the so-
 23 called smaller group was because your sense was that the
 24 smaller group was armed with more dangerous weapons in your
 25 estimation, sharpened irons, spears, assegais, pangas? Is

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1 that your evidence?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 daar was 'n duidelike verskil in die gedagtes in die twee
 4 groeperings, en die verwagting was dat die groter groep dit
 5 sou neerlê. Maar ek het ook getuig op 'n vraag van die
 6 Voorsitter wat sou as die groep nie uiteengegaan het nie,
 7 en ek het getuig dat ons hulle dan net die heelyd sou by,
 8 bly uiteendryf, uiteendryf, in terme van kleiner en kleiner
 9 groeperings.
 10 CHAIRPERSON: Mr Ntsebeza, this has been
 11 covered already. Now obviously I'm not going to stop you
 12 if you've got a new angle or something new to contribute,
 13 but what we've had so far is simply a repetition of what
 14 happened before, and when you referred to what Mr Hendrickx
 15 said, I take it you were referring to paragraph 22 of
 16 exhibit GGG2 where the ratios are given, but it's
 17 particularly paragraph 22.2. That was also dealt with when
 18 he gave evidence; I can't remember if it was Mr – I think
 19 Mr Bizos actually questioned him on this. As I say if you
 20 have got something new to contribute I won't stop you, but
 21 if you're just going to plough over the ground that's been
 22 ploughed already, I don't think we're advancing the
 23 investigation very much at the moment.
 24 [09:58] MR NTSEBEZA SC: Mr Chairman, I –
 25 CHAIRPERSON: I'm sorry, Adv Hemraj has

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1 pointed out to me that the relevant section, it starts on
 2 page 8835 where Mr Bizos is cross-examining, and then
 3 proceeds on 8836 and following. Now that's the passage in
 4 the evidence. Now if you're simply going to cross-examine
 5 further, eliciting the same information we've got there,
 6 then I'm afraid I won't let you do that. If you're going
 7 to elicit extra, put extra material that he's got to deal
 8 with, or elicit extra material from him which will help us,
 9 then obviously you can carry on.
 10 MR NTSEBEZA SC: Ja, I can understand the
 11 dilemma in which we are all in because I'd thought that I
 12 would curtail, trying to put to the witness that he came
 13 across as giving two, or a mixed message about whether the
 14 plan was to control 3 000 people or only 300 people, and I
 15 thought we had arrived at a consensus that generally the
 16 entirety of the crowd was intended, (a), to be dispersed;
 17 and to be disarmed, and it appeared that he draws a
 18 distinction between the extent to which the 300 or 400
 19 people were armed. They were perceived to be highly
 20 dangerous because their instruments were sharp and what
 21 have you, and then the remainder.
 22 Now as I understand the general's evidence at the
 23 moment, it seems to me that he concedes that everybody was
 24 armed, but that the plan was formulated on a basis that the
 25 larger group would hand over the weapons, and I also

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1 thought that he says all 3 000 of them were, it was not
 2 anticipated that they would not hand over –
 3 CHAIRPERSON: Lay down, is what he said.
 4 MR NTSEBEZA SC: Lay down –
 5 CHAIRPERSON: And I'm not sure that he
 6 said – in fact I think he didn't say that all the 3 000 had
 7 sharp, or had dangerous weapons. Some of them had
 8 traditional weapons, but we do know that it wasn't only the
 9 3 or 400 in the front who had dangerous weapons because for
 10 example, the people from the observation post are reported,
 11 according to the occurrence book, as having said in note
 12 978 at 9:45 that 600 people were arriving at the koppie,
 13 heavily armed. So, and I think the photographs also tend
 14 to show that some of the people on the koppie appeared to
 15 have sharp weapons as well, although the majority appears
 16 to have traditional weapons. But his evidence seems to be
 17 most of them on the koppie had traditional weapons. "We
 18 thought that they would lay down their weapons, the people
 19 on the koppie, and disperse peacefully, and we would have
 20 to deal specifically with the 3 or 400, the separate group
 21 at the front, and there we anticipated that we'd have to
 22 take more vigorous action because we have to disperse them
 23 into smaller groups," and so on. So he said all that.
 24 That analysis of the situation then, if you put
 25 what Colonel Hendrickx said in 22.2, if you're only

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1 concentrating on taking offensive action against the people
 2 (mechanical interruption) ratio he says is one protester
 3 every three police. Now the witness has said they really
 4 thought they'd have to deal with about 170 and they had, I
 5 think about 750 police, so he's already told us, I think,
 6 that that ratio was right. As far as the others were
 7 concerned, they didn't think they needed so many police
 8 because they were going to lay down their weapons and go
 9 quietly. That's his evidence, as I understand it. If it's
 10 wrong he will correct me, or you will correct me, but if I
 11 summarised it correctly, then it's no good just going over
 12 that ground again, but if you've got something extra you
 13 want to put to him, then obviously I must allow you to
 14 carry on.
 15 MR NTSEBEZA SC: Yes. General, was the
 16 plan to deal with the smaller group which were armed with
 17 what would be called dangerous weapons, on the assumption
 18 that the remainder of the group would lay down their arms?
 19 Was that the plan?
 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 21 die plan was om almal uiteen te dryf en die wie nie self
 22 vertrek het nadat die defensiewe maatreel uitgerol is en
 23 die waarskuwing gegee is, die verwagting was dat die groter
 24 groep self uiteen sou gaan en selfs van die kleiner groep
 25 se lede ook uiteen sou gaan, met die fokus dan op die

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1 kleiner groep wat oorbly in terme van ontwapening en
 2 arrestasie.
 3 CHAIRPERSON: May I also say that the
 4 passage in Colonel Hendrickx's statement was put to the
 5 witness and he answered it. The answer begins on page 8877
 6 and he then proceeds for some pages thereafter to give his
 7 answer. Now you may not accept the answer, but the answer
 8 is on record. So as I say, there's no point in getting him
 9 to repeat it in the hope that he might say something
 10 different, because I don't think that's going to happen.
 11 MR NTSEBEZA SC: Yes, Mr Chairman.
 12 Perhaps let me – the statement is what it is, Mr Chairman,
 13 but perhaps let me come back to this after I've taken you
 14 to some other evidence which is before this Commission,
 15 which is supportive of the position as taken by Mr
 16 Hendrickx. So I will come to this point later on. But
 17 let's look at what happened, I just want to go to your role
 18 in the planning, to the extent that you participated
 19 thereat. Was it your evidence, as I understand it, page
 20 G8205, that it was, you mobilised Scott. You specifically
 21 asked Scott to be the one to come, and you did this through
 22 Brigadier Fritz. Was it your evidence?
 23 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 24 Voorsitter.
 25 MR NTSEBEZA SC: And Scott comes from the

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1 STF?
 2 GENERAAL-MAJOOR ANNANDALE: Korrek,
 3 Voorsitter.
 4 MR NTSEBEZA SC: So is Fritz?
 5 GENERAAL-MAJOOR ANNANDALE: Dis reg,
 6 Brigadier Fritz is die seksiehoof van Spesiale Taakmag.
 7 MR NTSEBEZA SC: And McIntosh?
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 McIntosh is, ek dink die eenheidsbevelvoerder van "Child
 10 Protection," die ou naam was die Kinderbeskerming, ek dink
 11 dis nou "Serious and Violent," ek is nie seker wat is die
 12 benaming nie, maar dis 'n speureenheid wat spesialis
 13 ondersoek doen.
 14 MR NTSEBEZA SC: He's in the STF?
 15 MR MAHLANGU: Can you repeat the
 16 question, Sir?
 17 MR NTSEBEZA SC: Is McIntosh also in the
 18 STF?
 19 GENERAAL-MAJOOR ANNANDALE: Nee,
 20 Voorsitter.
 21 CHAIRPERSON: Mr Ntsebeza, if you look at
 22 paragraph 8 of the witness's statement, exhibit GGG1, you
 23 will see that he said there that on the Tuesday, the 14th,
 24 he telephoned the National Coordinator for Hostage
 25 Negotiators, Lieutenant-Colonel Strydom, and asked him to

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1 deploy a team of negotiators to Marikana. This was after
 2 they'd decided on a strategy of negotiating first and going
 3 over to tactical options later, and he says that – or it
 4 appears from what he said that Colonel Strydom then sent a
 5 team of negotiators under Lieutenant-Colonel McIntosh. So
 6 he didn't actually send McIntosh, the witness didn't send
 7 McIntosh, but he effectively requested that someone
 8 answering to the description of McIntosh be sent so that
 9 the negotiation could be – and I think that's a summary of
 10 his evidence. If I summarised it incorrectly I'm sure
 11 he'll correct me.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 dis reg. Ek het nie Kolonel McIntosh geken voor die
 14 Marikana voorval nie, en ek het ook nie na hom verwys by
 15 name nie. Ek het net beskryf dat ek soek 'n onderhandelaar
 16 wat kan onderhandel in sodanige situasie, en hy het daar
 17 opgedaag.

18 MR NTSEBEZA SC: You do know that he's a
 19 hostage negotiator, don't you?

20 GENERAAL-MAJOOR ANNANDALE: Dit is
 21 korrek, Voorsitter.

22 MR NTSEBEZA SC: In fact the next
 23 question was going to be what you say in paragraph 8 of the
 24 statement, and the Chairman has already pointed out what
 25 you said in paragraph 8 of your statement. Now I will want

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1 to submit that in your own statement, in paragraph 7 of
 2 your statement – I'm just trying to locate the statement,
 3 Mr Chairman. Yes, in paragraph 7 of your statement you say
 4 this, "On Tuesday, 14 August 2012, I returned to the JOC,
 5 accompanied by Brigadier Tsiloane and the Section Head,
 6 Special Task Force, Brigadier Fritz. I had a
 7 responsibility as the Head, Specialised Operations, to
 8 command and coordinate the deployment of the NIU and STF
 9 members," and then you go on to say, "The deployment was
 10 done under the command and guidance of the Provincial
 11 Commissioner North West, Lieutenant-General Mbombo," and so
 12 on. Do you see that?

13 GENERAAL-MAJOOR ANNANDALE: Ek sien dit,
 14 Voorsitter.

15 MR NTSEBEZA SC: So your first thought
 16 after the briefing of – and I'm talking about you
 17 specifically, when you had had the briefing with the
 18 National Commissioner your first thought was that this is a
 19 situation that called – we're talking about you – for the
 20 deployment of the National Intervention Unit and Special
 21 Task Force members. Is that correct?

22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 nee, ek het omvattend daarna getuig. Die Nasionale
 24 Intervensie Eenheid was reeds op die Sondag die 12de
 25 ontplooi, en dat -

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1 MR NTSEBEZA SC: It's not the date that
 2 is important, General. What I'm trying to get through to
 3 you is that your first thought –

4 MR SEMENYA SC: Chair, no, the witness –
 5 MR NTSEBEZA SC: - in the mobilisation –
 6 MR SEMENYA SC: The witness is giving an
 7 answer –

8 CHAIRPERSON: Mr Semanya?
 9 MR SEMENYA SC: The witness is giving an
 10 answer directly to the question asked –

11 CHAIRPERSON: - on the Monday, and he
 12 went there that evening. We heard all the evidence about
 13 that. He then appears to have decided, I think it was his
 14 evidence that this also called for the special talents of
 15 the people from the Special Task Force. So he then made
 16 the arrangements to send some of them as well. Scott was
 17 there already not so much because he was an STF man, but
 18 because he was good at coordinating plans. I think that
 19 was his evidence, but then he also brought Brigadier Fritz
 20 along, who was the Section Head of the Special Task Force –

21 MR NTSEBEZA SC: Yes.
 22 CHAIRPERSON: - and that happened on
 23 Tuesday, the 14th, and other STF people came as well. So
 24 his first thought was NIU. His second thought was we need
 25 STF as well. I think that's summarised correctly -

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1 MR NTSEBEZA SC: That's sufficient for
 2 me. For my purpose that's –

3 CHAIRPERSON: Let's just make sure I've
 4 got it right. Did I get it right, Major-General?

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 die Sondag was na gelang van, die NIU is gestuur na gelang
 7 van 'n oproep wat ek ontvang het en die Maandag was die
 8 eskalاسie, so addisionele ontplooiing verder dan die
 9 ontplooiing wat reeds daar was van NIU, en Taakmag het u
 10 reg na verwys.

11 CHAIRPERSON: The STF resulted from the
 12 escalation –

13 MR MAHLANGU: The NIU, yes, was –
 14 CHAIRPERSON: The NIU was already there
 15 on, he said on the Sunday, but on Monday he, because of the
 16 escalation he then decided to send the STF as well. I
 17 think that's his evidence. Is that right?

18 MR MAHLANGU: Yes, correct.
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 pertinent na gelang van die bespreking en die potensiele
 21 intelligensie het, Taakmag het aanvanklik deurgekom
 22 daarvoor en toe lateraan het ons hulle daar behou in terme
 23 van addisionele ontplooiing vir hulle vaardighede.
 24 [10:18] MR MAHLANGU: I'm asking for some
 25 assistance, Chairperson.

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1 CHAIRPERSON: You spoke rather fast. Can
 2 you repeat that again so as to assist Mr Mahlangu and me to
 3 -
 4 MR MAHLANGU: Thanks.
 5 CHAIRPERSON: - convey it?
 6 MAJOR-GENERAL ANNANDALE: Chairperson,
 7 yes, STF we brought in the Monday evening based on the
 8 discussions we had on the meetings on the potential of
 9 intelligence-driven operation, so that's why we brought in
 10 a small group of STF members on the Monday, and then
 11 basically from the Tuesday we supplemented them in terms of
 12 additional taskings, the chopper, the observation post, as
 13 well as the counter sniper team.
 14 VOORSITTER: Ja, dankie.
 15 MR NTSEBEZA SC: Yes, now I don't
 16 disagree with what you're saying, General. It appears that
 17 - and you'll correct me if I'm wrong - that when you gave
 18 the command for Scott, and you did this through Fritz, what
 19 was uppermost in your mind was to get these units, your
 20 evidence says you particularly wanted Scott because he was
 21 one of the few who is capable of doing that disciplinary
 22 planning, familiar with STF, NIU, TRT. You do of course
 23 say he was a member of POP prior to joining the STF. He
 24 did the OCT training in 2002, crowd management. He was the
 25 best performer in his class. He was one of the planners

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1 for 2010 World Cup, Confederation, I think COP17, this
 2 environment thing, various deployments in Africa. Do you
 3 recall that evidence?
 4 GENERAAL-MAJOOR ANNANDALE: Dit is
 5 korrek, Voorsitter.
 6 MR NTSEBEZA SC: You did not specifically
 7 request somebody who is head of POP, like Brigadier
 8 Mkhwanazi for instance.
 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 Brigadier Mkhwanazi is nie hoof van Openbare Orde
 11 Polisiëring nie.
 12 CHAIRPERSON: - his evidence he had been
 13 involved in POP training and so forth.
 14 MR NTSEBEZA SC: Yes.
 15 CHAIRPERSON: But he then had been
 16 appointed to a senior position in the Northern Cape. That
 17 was his evidence. So he wasn't head of POP at all, but he
 18 obviously had the experience from what he told us about
 19 what he'd done in the past, but anyway, whether it's
 20 Mkhwanazi doesn't matter. Your point is that a top man on
 21 the POP side wasn't sent for. Is that your point?
 22 MR NTSEBEZA SC: That's the point.
 23 CHAIRPERSON: Alright.
 24 MR NTSEBEZA SC: That's just the point,
 25 Mr Chairman. So just to put the question to you, General,

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1 for your comment; you didn't really summon anyone who was
 2 either head of POP, yes, who is head of POP?
 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 4 die aard van die situasie was sodanig dat daar 'n van
 5 eenhede betrokke was en dat dit belangrik is dat 'n persoon
 6 wat verstaan, wat die ontplooiing, die benadering, die
 7 hantering van sodanige eenhede, iemand moet dit kan
 8 verstaan, maar ek dink dus die konsolidasie van informasie
 9 maak dit makliker in terme van 'n beplanning, maar ons
 10 het meer as voldoende ervare Openbare Orde Polisiëring
 11 offisiere reeds ontplooi gehad in Marikana, pertinent
 12 Brigadier Calitz in terme van sy agtergrond en sy noue
 13 betrokkenheid oor baie, baie jare in die openbare orde
 14 omgewing. Dan was Luitenant-Kolonel Merafe ook teenwoordig
 15 gewees reeds op die Maandagaand.
 16 MR NTSEBEZA SC: I'm not talking about
 17 people being present as part of the police contingency.
 18 I'm talking about the priority which you gave to who should
 19 be there. Is it your evidence, as I understand it from
 20 your long answer, that the situation in your assessment was
 21 such that it called for the prioritisation of the
 22 deployment of NIU, TRT, and STF members?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 TRT, NIU, was reeds sedert die Sondag was hulle daar
 25 ontplooi gewees. Die addisionele STF pertinent het ek oor

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1 getuig hoekom dit noodsaaklik wees, en ook die eskalاسie
 2 van NIU. So elkeen van die eenhede wat daar was het 'n
 3 pertinente rol gehad, soos wat daar omvattend verwys was na
 4 hulle rol.
 5 MR NTSEBEZA SC: Was it your estimation,
 6 as you decided on what forces to deploy, as you say in your
 7 statement, that this was a situation that the POP, Public
 8 Order Police could not contain; you needed the
 9 prioritisation - and I will insist - of STF, NIU and TRT?
 10 GENERAAL-MAJOOR ANNANDALE: Die situasie
 11 en die omstandighede het dit daartoe verleen dat die
 12 addisionele eenhede soos vermeld nodig was om stabilisering
 13 te doen in terme van die openbare orde, om openbare orde te
 14 stabiliseer. Voorsitter, ek wil net meld pertinent, en ek
 15 het dit al gemeld, dat ek persoonlik het STF deurgebring en
 16 voorgestel en dit bespreek, en dat ook Mobile Operations,
 17 dat TRT en Openbare Orde reeds daar was, dat NIU daar was
 18 op versoek van die provinsie, en dat addisionele eenhede in
 19 terme van K9 en Berede Eenheid was ontplooi deur die
 20 provinsie.
 21 MR NTSEBEZA SC: Yes, and it was that
 22 assessment by you that persuaded you to call, as you say in
 23 your paragraph 8, to phone Dr Strydom, Lieutenant-Colonel
 24 Strydom, to deploy a team of hostage negotiators. You had
 25 determined the situation to be one that called for hostage

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1 negotiators. Is that right?

2 GENERAAL-MAJOOR ANNANDALE: Voorster,
3 onderhandelings en konflik resolusie is deel van 'n openbare
4 orde benadering. Ek het ook verwys dat die amptelike naam
5 van die onderhandelaars in die polisie is "Hostage
6 negotiation and suicide prevention team," gyselaar
7 onderhandelings en selfmoordvoorkoming span. Voorster,
8 dat hulle niks anders is as krisisonderhandelaars en dat
9 hulle omvattend opgelei is vir drie weke in terme van
10 onderhandelingsprosesse –

11 CHAIRPERSON: That they are nothing other
12 than crisis negotiators and they're highly trained in the
13 techniques of negotiation. I think that's what he said.

14 MR MAHLANGU: That's right, I possibly
15 started the sentence in the middle.

16 GENERAAL-MAJOOR ANNANDALE: Daar was
17 reeds op die Maandagaand 'n bespreking in terme van
18 pertinente ontplooiing van onderhandelaars, en dat Dr
19 Strydom die vestigingslid was van onderhandelings in die
20 Suid-Afrikaanse Polisiediens, dat ek hom geskakel het synde
21 dat hy vertrou is met al sy onderhandelaars regdeur die
22 land, om die mees geskikte span onderhandelaars te kry,
23 gegewe die situasie.

24 MR NTSEBEZA SC: Now on the question of
25 negotiators, I believe that there is a range of

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1 negotiators, people who are called in to negotiate a
2 hostage situation, people who are called in to negotiate
3 counter insurgency situation, and there are people who are
4 called in to negotiate a situation such as this one where
5 the issue is Public Order Policing of a crowd, you know,
6 crowd management. Are you aware of those segregations of
7 negotiators?

8 CHAIRPERSON: Mr Semenya?

9 MR SEMENYA SC: Chair, for the record,
10 the witness has been under cross-examination now for 14
11 days, cross-examination, that is, and this evidence has
12 been tendered. He told us many days ago that there is no
13 designation like a POP negotiator and STF negotiator; they
14 are all teams of negotiators who do the same thing under
15 the same type of training. I don't see why we still are
16 harvesting that very same field.

17 CHAIRPERSON: Mr Ntsebeza, it does seem
18 as if you are re-ploughing ground that's already been
19 ploughed over and I don't know that any purpose – unless
20 you've got a new angle that you want to put to the witness
21 on this, I don't think there's any purpose in going over
22 this stuff all over again.

23 MR NTSEBEZA SC: I certainly didn't
24 provide the plough, Mr Chairman. I don't know by whom it
25 has been dealt with. Again I assure my learned friend that

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1 I need this witness to differ if he wants to differ, to
2 differ – I'm going to put to this witness the evidence of
3 Brigadier Mkhwanazi on the question of negotiations.

4 CHAIRPERSON: Why don't you do that then?

5 But the points that you've been covering for the last few
6 minutes have already been covered. I understand sometimes
7 it's useful to repeat certain evidence to sort of set the
8 scene for further cross-examination, but I think you've set
9 the scene. I suggest you now proceed.

10 MR NTSEBEZA SC: No, I was just going to
11 do that if there was no objection. Now the evidence of
12 Brigadier Mkhwanazi that I want us to look at is on page
13 3565, starts at line 9. Do you have a transcript?

14 GENERAAL-MAJOOR ANNANDALE: Voorster
15 nee, ek het dit nie beskikbaar nie.

16 CHAIRPERSON: - passage, or would it be
17 desirable for us to take an early tea adjournment, give the
18 witness the relevant section of the evidence to look at,
19 and then you could resume the cross-examination after tea?
20 That's just a suggestion; that's not binding on you. You
21 may think of another way of dealing with the problem.

22 MR NTSEBEZA SC: It's one of the best
23 suggestions that have come from the Chair, Mr Chairman,
24 without any disrespect. I think that would facilitate
25 matter if the witness – because I –

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1 CHAIRPERSON: Alright, well let's take
2 the –

3 MR NTSEBEZA SC: I could –

4 CHAIRPERSON: Let's take the flattery out
5 of it and just do it that way then. Shall we take the
6 adjournment now, we'll come back at 11 o'clock or when the
7 witness tells us, if he needs more time, when the witness
8 tells us after 11 that he's read the passage. In fact
9 we'll take the adjournment now. You've given him the
10 reference already –

11 MR NTSEBEZA SC: Yes, can I give the
12 witness –

13 MR MAHLANGU: The reference again?

14 [10:37] MR NTSEBEZA SC: - the reference, yes.
15 On the question of negotiations it's T3565, starting at
16 line 9, 3568, starting at line 18 to T3572, line 18, and
17 T3576, line 25, to 3579, line 8, and then the last
18 reference was when Brigadier Mkhwanazi was responding on
19 this specific issue to Commissioner Hemraj, and that would
20 be on 3581, line 12 to 3583.

21 CHAIRPERSON: Those are the passages
22 you're going to put to him, so we'll take the tea
23 adjournment now. I hope there's a copy of the transcript
24 available for him. I presume Mr Semenya's side have got
25 one, and he can study it and then we'll resume at 11,

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1 unless he tells us that he needs a bit more time, in which
2 case we'll wait until he tells us his ready. Okay. We'll
3 take the tea adjournment.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]
5 [11:12] CHAIRPERSON: The Commission resumes.
6 Generaal-Majoor, u is nog steeds onder eed. Have you had
7 the opportunity to read the passages to which counsel
8 referred you?
9 MAJOR-GENERAL ANNANDALE: I did,
10 Chairperson.
11 CHAIRPERSON: Mr Ntsebeza, I suggest you
12 proceed with your cross-examination now.
13 MAJOR-GENERAL CHARL ANNANDALE: s.u.o.
14 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD):
15 Thank you, Mr Chairman. Now General, now that you've read
16 the evidence that was given by your colleague, I just want
17 to put some propositions to you and you can disagree with
18 them if you feel like doing so. The first point that comes
19 out of the passages that you were referred to is that, in
20 Brigadier Mkhwanazi's assessment, this was, what happened
21 on the 16th of August 2012 was not a situation that called
22 for a hostage negotiator. It was rather a situation that
23 called for what he agreed is a POP trained negotiator, a
24 negotiator who would have realised that that situation
25 where people want to protest, called for a negotiator who

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1 would facilitate a peaceful process and that you would find
2 on page 3565 between lines 9 and 3566 up to line 25. Do
3 you have any comment on that being -
4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 daar bestaan nie so iets soos 'n POP trained negotiator
6 nie. Dit, per implikasie, sê dat daar 'n amptelike
7 geregistreerde kursus in die Suid-Afrikaanse Polisiediens
8 is waar tydens sodanige persone opgelei word. Die enigste
9 amptelike kursus in die polisie wat geakkrediteer is,
10 waarvan ek bewus is, is die sogenaamde hostage negotiation
11 en suicide prevention training. Voorsitter, ek weet iewers
12 - dit kan in die laat 90's of die vroeë 2000's wees, dat
13 daar ek dink 'n Prof. Spoelstra was wat werksessies
14 aangebied het, ek dink dit was 'n twee-dag werksessie en
15 baie van die openbare orde lede en ek aanvaar
16 bevelvoerders, het sodanige werksessie bygewoon. Ek
17 vermoed dan ook dit is die opleiding wat Brigadier
18 Mkhwanazi na verwys in sy, in die transkripsie.
19 MR NTSEBEZA SC: So you disagree with his
20 evidence.
21 CHAIRPERSON: I'm sorry, I think the
22 witness is still continuing with his answer, am I correct?
23 GENERAAL-MAJOOR ANNANDALE: Dis reg,
24 Voorsitter. Voorsitter, dan weet ek ook Brigadier Calitz
25 het dieselfde werksessie deur Prof. Spoelstra bygewoon,

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1 maar dat Brigadier Calitz ook die gyselaar onderhandelings
2 kursus bygewoon het en dat hy 'n gevorderde diploma in
3 onderhandeling verwerf het, juis soos aangebied deur die
4 Prof. Spoelstra. Voorsitter, ek weet ook dat in die
5 gyselaar onderhandelings kursus is daar 'n aspek wat hulle
6 pertinent deel met "labour-related incidents." Ons moet
7 ook onthou dat Luitenant-Kolonel McIntosh was nie allenig
8 ontplooi nie. Hy was ontplooi gewees as deel van 'n span
9 van vier, dat dit die heelyd in die teenwoordigheid of
10 meestal in die teenwoordigheid van Brigadier Calitz was wat
11 baie opgetree het as 'n sogenaamde openbare orde
12 polisiëring onderhandelaar. Voorsitter, dan was daar ook
13 'n gekwalifiseerde sielkundige teenwoordig gewees in die
14 aanloop. Voorsitter, dan laastens wil ek net sê dit is 'n
15 leemte wat ons het in terme van openbare orde, dat hulle
16 nie hulle eie pertinent gerugte onderhandelings kursus het
17 nie, dat ons divisie menslike hulpbron ontwikkeling, human
18 resource development, dat hulle reeds getaak is om dan as
19 deel van die nuwe openbare orde polisiëring kurrikulum
20 pertinent onderhandeling, konflik, hantering van konflik in
21 te sluit as 'n pertinente module in die kursus. En dan wil
22 ek net meld dat Kolonel McIntosh sal so vroeg soos, ek
23 dink, 2003 of -4 wat hy pertinent betrokke was by verskeie
24 - in Mamelodi, wat hy betrokke was by verskeie openbare
25 oproer wat hy pertinent as onderhandelaar opgetree het in

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1 'n openbare orde polisiëring scenario, ook met xenophobia
2 en dan ook in myne wat ek dan pertinent betrokke was.
3 MR NTSEBEZA SC: Is that the answer?
4 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
5 Voorsitter, ek het my liggie afgesit.
6 MR NTSEBEZA SC: Now one of the things
7 that Brigadier Mkhwanazi suggests there, and I would like
8 your comments thereon, is that when a negotiator goes to a
9 crowd like that to negotiate how a peaceful protest should
10 take place in a democracy, firstly he negotiates for ground
11 rules to be observed by the other parties. In other words,
12 he goes there to say, this is a democracy, you are allowed
13 to protest, if you want to stay on this mountain for a
14 month you can stay, but let's now enter into rules of
15 engagement. Did you get that sense from his evidence?
16 MR SEMENYA SC: Chair, may we ask if Mr
17 Ntsebeza is going to lead this evidence or this is his
18 opinion about how negotiations must happen?
19 MR NTSEBEZA SC: The evidence is there,
20 Mkhwanazi has given that evidence.
21 MR SEMENYA SC: Which ground rules?
22 CHAIRPERSON: Mr Semanya -
23 MR NTSEBEZA SC: I read from -
24 CHAIRPERSON: - I'm talking to Mr
25 Semanya. Adv Hemraj draws my attention to the fact that at

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1 page 3569 contains a long question by Mr Ntsebeza –
 2 MR NTSEBEZA SC: Yes.
 3 CHAIRPERSON: - where he essentially puts
 4 to Brigadier Mkhwanazi what he is now putting to this
 5 witness and at line 8 on page 3570 Brigadier Mkhwanazi
 6 says, "Agreed" – so that he, what he puts has been has
 7 become evidence before us by the, as a result of the
 8 agreement of the brigadier.
 9 MR SEMENYA SC: I concede the point,
 10 Chair.
 11 MR NTSEBEZA SC: Yes, Mr Chairman, there
 12 were many interjections in that cross-examination but we'll
 13 not go there. Do you see what the Chairman has referred
 14 you to? I'm trying to save time, General. You know, you
 15 have read this and I'm simply summarising what is in the
 16 evidence by Brigadier Mkhwanazi and I'm putting to you what
 17 he says. You can say you agree with that, you disagree
 18 with that because, in your experience, there's no such
 19 thing as a POP negotiator. We're trying to save time.
 20 That's why the Chairman gave you the time to go and
 21 familiarise yourself with what the evidence is. Now, are
 22 we clear about what I'm putting to you? Brigadier
 23 Mkhwanazi says the thing to do when you want to promote
 24 peaceful protest, as against going there to negotiate and
 25 issue an ultimatum, you first establish ground rules with

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1 the people and say, let us first see in what way we can
 2 promote peaceful protest, but you can't be here and be
 3 armed but if you want to be on this mountain for a month,
 4 you can stay here for a month. Do you see that?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek het dit gelees.
 7 MR NTSEBEZA SC: Now, you may or may not
 8 agree with it but he says one of the ground rules would be
 9 to say to these people, listen, if you do not for instance
 10 lay down your arms and you don't stick to the rules, there
 11 will be consequences. That's what a negotiator does. He
 12 goes there and says there will be consequences. He says if
 13 you don't disarm, we'll come in with water cannons and it's
 14 not going to be one water cannon, it's going to be 10 to 15
 15 water cannons. Did you read that there?
 16 GENERAAL-MAJOOR ANNANDALE: Ek het dit
 17 gelees, Voorsitter.
 18 MR NTSEBEZA SC: And I take it you know
 19 that the water cannons, there were one or two – were there
 20 three water cannons on the day? Two? Do you know that
 21 there were two water cannons, not 15 water cannons?
 22 GENERAAL-MAJOOR ANNANDALE: Daar bestaan
 23 nie 15 in die Suid-Afrikaanse Polisiediens nie, Voorsitter.
 24 MR NTSEBEZA SC: And that is why – he
 25 also, because of an earlier question that had been put to

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1 him about the size of the POPS in the South African Police
 2 Service, he had said you had between 4 000 to 8 000 South
 3 African – I mean public order police in the South African
 4 Police Service, is that right?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter
 6 nee, ons het net so oor die 4 000 openbare orde
 7 polisiëringslede in die land in totaliteit
 8 MR NTSEBEZA SC: Ja, well, the record
 9 about what he said there are will speak for itself. The
 10 point here was that he agreed that the proper way to have
 11 dealt with that situation would have been to saturate the
 12 place with POP members. 3 000 not 4 000, that's what he
 13 was saying he agreed to.
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ons het gevoel dat ons voldoende openbare orde
 16 polisiëringslede ontplooi het vir die pertinente taking wat
 17 ons in gedagte gehad het, in lyn met die plan. Voorsitter,
 18 verder het ek verwys dat daar sowat 34% min of meer
 19 openbare orde polisiëringslede op enige gegewe stadium nie
 20 beskikbaar is nie. Voorsitter, dit laat ons dan met so min
 21 of meer 2 500, 2 600 as hulle opgedeel is in flexi-ure in
 22 terme van net twee groeperings dan is daar nooit meer as
 23 net so oor 'n duisend openbare orde polisiëringslede
 24 landwyd beskikbaar gelyktydig nie.
 25 [11:32] MR MAHLANGU: Chairperson, this would

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1 then leave us with between 2 500, 2 600, leaving us with a
 2 shortage of about –
 3 GENERAAL-MAJOOR ANNANDALE: No.
 4 MR MAHLANGU: - with about a thousand –
 5 MAJOR-GENERAL ANNANDALE: No.
 6 Chairperson, no, if they would work flexi-hours, the ones
 7 available, that would leave us then with more or less –
 8 even if they're just in two groups, about 1 300 public
 9 order policing members available countrywide at any given
 10 time. Voorsitter, dan ook, openbare orde is opgelei en
 11 hulle funksioneer in seksies van agt en hulle ontplooiing
 12 is in lyn met dit. So om 'n gebied eenvoudig te gaan flood
 13 met openbare orde, verstaan ek nie hoe Brigadier Mkhwanazi
 14 bedoel het dan ons hulle dan nou net gaan orals oor plaas
 15 as sigbaarheid nie.
 16 MR NTSEBEZA SC: I believe the numbers
 17 have been, about ratio, have been dealt with in the past
 18 but can I put it to you on this basis, what Brigadier
 19 Mkhwanazi says on the figures that he gave the Commission –
 20 you were given others – is that it would have assisted the
 21 management of that gathering peacefully and avoid
 22 fatalities if the police were saturated with POP members.
 23 On your own numbers, 1 300 POPS members who would have been
 24 on that mountain, would have been a far cry from the 90
 25 that there were. Do you agree?

<p style="text-align: right;">Page 10184</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 nee, daar was nie 90 openbare orde nie, daar was net so 3 onder 200 openbare orde lede. 4 CHAIRPERSON: According to my 5 recollection it was 176, unless I've missed some. If one 6 goes to exhibit L, slide 137 there's 45, then we have some 7 53 on slide 139, that's 98, then there are eight at 142, 8 that's 106 and then there are 70 at 144, that's 176. I 9 didn't see any others but I may have missed them. 10 MR NTSEBEZA SC: But a deployment of 11 1 300 POP members would have made a lot of difference, 12 would that be – 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 wat ons nou weet kan ons baie bespiegel in terme van meer 15 of minder. Die realiteit is, en prakties kan 'n mens nie 16 1 322 or 1 300, en die totale land leegtrek in terme van 17 alle openbare orde kapasiteit terwyl daar sowat 10 tot 18 12 000 openbare orde plaasvind in die land in 'n jaar nie. 19 Ek dink die Provinsiale Kommissaris van Gauteng, Generaal 20 Petros, het nou die ander dag verwys dat in Gauteng deel 21 hulle met soveel as 15 gevalle per dag, net in Gauteng. 22 MR MAHLANGU: Briefly, that we could not 23 really empty the whole country with members of POP - and 24 into one country, because of the number of protests that 25 are there, between 10 and 12 per day. Recent –</p>	<p style="text-align: right;">Page 10186</p> <p>1 dis niks anderste as wat die bestaande plan ook dit ten 2 doel gehad het nie, as ons gaan kyk na vlak 3 in terme van 3 die uitrol van die offensiewe aksies. Voorsitter, en 4 volgens die beplanning sou daar dan ook, na die defensiewe 5 aksie sou daar dan presies die waarskuwing gegee wees in 6 terme van die uiteen dryf en die tweede waarskuwing in 7 terme van pertinent watsse handelinge gaan gebruik word teen 8 die stakers. So die voorstel is, wat gemaak is of bevestig 9 is deur Brigadier Mkhwanazi, dis in terme van die force of 10 die kontinuum van geweld, kontinuum of force. Behalwe 11 pepersprei, Voorsitter, dit is individuele houertjies wat 12 'n individuele polisiebeampte saam met hom dra, so dit word 13 een op een word dit aangewend en nie in terme van deur 'n 14 waterkannon of sodanig nie. 15 MR NTSEBEZA SC: Now, you will have 16 noticed that Brigadier Mkhwanazi on page 3573 between lines 17 5 and 18, actually agrees with the proposition that for 18 containing a crowd of that nature – and he's aware of what 19 kind of crowd we're talking about – the ideal equipment 20 that should have been used would have been less lethal or 21 non-lethal equipment and it's in that context where he 22 talks about many water cannons, pepper spray, dye, teargas, 23 et cetera and he agrees with that proposition. You don't 24 agree? 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>
<p style="text-align: right;">Page 10185</p> <p>1 GENERAAL-MAJOOR ANNANDALE: 12 000. 2 MR MAHLANGU: 12 000, 10 to 12 000 rands 3 per annum and – 4 MAJOR-GENERAL ANNANDALE: Chairperson, I 5 will assist. 10 to 12 000 public order policing incidents 6 that we have to deal with per annum and that we cannot 7 withdraw the total capacity throughout the country to one 8 province, based on the numbers that we have to deal with 9 and then I referred to Lieutenant-General Petros, the 10 Provincial Commissioner of Gauteng, in terms of that he 11 indicated I think last week, that they deal with as many as 12 15 incidents on average per day only in Gauteng over a 13 period of time. 14 MR NTSEBEZA SC: And he suggests that 15 since the ground rules would be aimed at having minimum 16 fatalities, if any, what would have to be communicated to 17 the protesters would be that the police would use pepper 18 spray, they would use dyes, so that they should know who 19 has been at the place and not acting in terms of the rules. 20 They would then use teargas and they would use stun 21 grenades and if they have to resort to that option, they 22 would come with rubber bullets. And that's the suggestion 23 that was put to him by me and he seems to agree with that. 24 You will find that on page 3570 from line 9 to line 25. 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p>	<p style="text-align: right;">Page 10187</p> <p>1 dit is presies soos die plan voorsiening gemaak het ook, 2 die sogenaamde minder dodelike stappe. Daar is, in 3 offensiewe aksies is daar nie so iets soos totaal nie- 4 dodelik. Daar is altyd, altyd 'n risiko van besering. 5 MR MAHLANGU: The so-called non-lethal 6 equipment and in a – 7 MAJOR-GENERAL ANNANDALE: Defensive 8 action or an offensive action. 9 MR MAHLANGU: In the offensive action 10 there is no – 11 MAJOR-GENERAL ANNANDALE: Chairperson, 12 even a water cannon can lead to injuries, so that's why we 13 say it's not a non-lethal, it's a less than lethal. Water 14 cannon can lead to injuries, teargas, CS gas in terms of 15 the irritation that it can cause is a form of injury. A 16 stun grenade in terms of the audible injuries that it can 17 lead to. Rubber, as we know – so that's why we refer to it 18 as less than lethal and I agree, the plan made provision 19 exactly within the public order policing context for the 20 utilisation of purely less than lethal methods. 21 CHAIRPERSON: I think you then went on to 22 say that in the offensive action one cannot speak entirely 23 of non-lethal means because there's always a risk. I think 24 you said that as well, did you not? 25 MAJOR-GENERAL ANNANDALE: Yes,</p>

<p style="text-align: right;">Page 10188</p> <p>1 Chairperson. In terms of all of those various stages, 2 water cannons, stuns, CS, all of that, there remains a 3 risk, even although a slight risk, in terms of injury. 4 MR NTSEBEZA SC: You see the difference 5 between what you say was done insofar as you agree with 6 what Brigadier Mkhwanazi is saying, and what Brigadier 7 Mkhwanazi was saying is that he was promising his agreement 8 with the use, ideal use of less than lethal equipment of 9 the nature that I described, because the place in the first 10 place would have been saturated with police officers and 11 the police officers would have come from the public order 12 police division. Do you understand that, that to be the 13 difference. In terms of your plan there were less than 14 ideal numbers for POP officials. There were a less than 15 ideal number of water cannons and I'm not so sure that 16 there was as much use of teargas as would have been ideal 17 to contain the situation. That's all I'm putting to you. 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 nee, in terme van ons plan was daar voldoende openbare 20 order polisiëringslede in terme van die taking wat hulle 21 moes ten uitvoer bring. Voorsitter, ons moet net nooit 22 vergeet dat ons plan was ten uitvoer gebring met die uitrol 23 van die defensiewe maatreël en dis waar dit gestop het, 24 want toe was daar 'n aanval op die polisielyng gewees 25 MR NTSEBEZA SC: The one other</p>	<p style="text-align: right;">Page 10190</p> <p>1 [11:51] GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ons moet darem net ook regverdig wees teenoor Brigadier 3 Mkhwanazi. Op bladsy 3577, so min of meer vanaf lyn 20, sê 4 hy, "However, to say this was right or wrong is difficult 5 for me because as I was not there. I'm not sure how they 6 took that type of a decision to handle the situation in 7 that way. It may happen there were reasons really that 8 actually led to that situation of which it hasn't come to 9 my attention to say why they did it in that way." And then 10 he goes on in terms of he went through the plan and then 11 later on also, Chairperson, on page 3578 line 15 he says, 12 "Yes, sir, but I would like to indicate that I'm not sure 13 what led them to do that but yes, it's always build 14 confidence between the two people when they negotiate at 15 that level because we had to build trust, as we do." 16 MR NTSEBEZA SC: We are aware of that. 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 ek stel voor dat dit altyd redelik is ook dat Kolonel 19 McIntosh of Brigadier Calitz in terme van enigene van die 20 persone in die Nyala wat betrokke was by die 21 onderhandelinge ook kan sê watse pogings hulle aangewend 22 het om dan juis daardie vennootskap te bou en daardie 23 verhouding te bou. Ek dink nie ons het dit al pertinent 24 gehoor nie en dit sal noodwendig nie verskil van die 25 basiese beginsels van onderhandeling nie.</p>
<p style="text-align: right;">Page 10189</p> <p>1 observation that Brigadier Mkhwanazi makes is that when you 2 negotiate in a situation of that nature, you seek more to 3 build confidence and trust first, than to confront the 4 situation and you'll find that in his testimony on page 5 3578. In fact, it starts at 3577 line 1 and ends at 3578 6 line 25. Do you see that? 7 GENERAAL-MAJOOR ANNANDALE: Ek neem dit 8 waar, dis reg, Voorsitter. 9 MR NTSEBEZA SC: And that was said in the 10 context of it being indicated that it was not building 11 trust if the police would seek to negotiate on the night of 12 the 15th of August 19 – I mean 2012 – if they would seek to 13 negotiate from behind the Nyala and talk to people and the 14 Chairman later on drew our attention to the appropriate 15 slide. In fact, if we could go to that slide, I think it 16 is slide – what, 90 something, 96 – the Chairman drew our 17 attention to slides 97 and 98 but more appropriately to 18 slide 98. He was saying that whilst he does not know why 19 the police had decided to negotiate, to negotiate in 20 circumstances where they felt they must be behind the 21 safety of a Nyala and the negotiators or the people with 22 whom they negotiate will sitting as they - you sense, was, 23 you know – a negotiator of the nature that he understands 24 POP members are trained to be, would avoid a situation such 25 as that one.</p>	<p style="text-align: right;">Page 10191</p> <p>1 MR NTSEBEZA SC: I'm aware of those 2 passages and when I put the question to you it was not as 3 though I was being selective and I said in my questioning, 4 he did say whilst he doesn't know what led to that, he 5 nonetheless says those who are trained to negotiate as part 6 of the POP negotiating team, approached negotiations with 7 crowd management on the basis that trust must be built, 8 confidence must be built in a situation such as we see in 9 slide 98, does not lend itself to inducing that trust. 10 That's all that I was putting to you but I'm just 11 indicating to you that I'm aware of what goes beyond. Now 12 – 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 ek het getuig oor die redes hoekom ons uit 'n Nyala uit 15 onderhandel het en dit vat nie weg die pogings wat 16 aangewend was en die verhouding wat daar wel bewerkstellig 17 was tussen die vyf, leierskap groep, en die onderhandelaars 18 nie. 19 MR NTSEBEZA SC: Now, it has never been 20 the suggestion that there is a designation within the 21 negotiators called a POP negotiator but there is clearly – 22 it was put and it was suggested that POP officers are 23 trained in a particular fashion and I think that was 24 canvassed for us to be able to say there may not be that 25 designation, but they are trained in a particular way and</p>

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1 Commissioner Hemraj, on page 3581 from line 12 to page 3583
2 up to line 11, deals with that. I'm sure you read that
3 aspect.

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 ek het dit gelees.

6 MR NTSEBEZA SC: I want us then to go
7 back to the questions that I was putting to you relative to
8 what the expert evidence of Hendrickx – firstly what you
9 have, in spite of its bulkiness, by way of a report from Mr
10 Hendrickx, is a preliminary report and in consultation –
11 and that is what, when he testifies, he will say, will be
12 that when the – when he says the plan was highly risky, it
13 was risky in the following ways. All intelligence reports
14 to that point had actually pointed out that there was a
15 high likelihood that the 3 000 mineworkers would refuse to
16 lay down their arms and I will refer you to an affidavit
17 I'm told is TT5. "Lonmin Platinum Mine, Marikana labour
18 unrest – criminal intelligence intervention/inputs." Now I
19 don't know if you have access to TT5 in paragraphs 9 and
20 10. Whilst you look for it, it reads, "On 20/12 08:15 at
21 the Prov. JOC meeting a discussion took place with regard
22 to the disarming and dispersion of all the striking
23 mineworkers. Brigadier Engelbrecht held a view in favour
24 of negotiations with the group who always gather at the
25 koppie and disperse during the evenings. The view was

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1 further based on an analysis of the striking workers'
2 behaviour during the incident of 13 August 2012 where the
3 police officials were killed. They were all armed with
4 different kinds of dangerous weapons. They became agitated
5 when their comfort zone was threatened" – I suppose that's
6 what was meant there – "and made it clear that they will
7 never surrender their weapons as they needed the weapons to
8 protect themselves against NUM members." Now paragraph 10,
9 "On 20/12 08:16 during a Prov. JOC meeting where the
10 disarming and dispersing of the group at the koppie was
11 discussed, Colonel Isaacs, CI representative at the Prov.
12 JOC for the day, advised that many strikers had dangerous
13 weapons with them and informers reported that they would
14 not hand their weapons to the police and that the situation
15 was tense." Now, on the 16th itself at 12, that's now at
16 midday, there's a heading there pertaining to the decision
17 to disarm the people, "1. Approximately 3 000 mineworkers
18 are gathered at the koppie. 2. Many of these mineworkers
19 are in possession of dangerous weapons, spears."

20 CHAIRPERSON: I'm sorry, Mr Ntsebeza,
21 where are we now?

22 MR NTSEBEZA SC: We are – the annex, this
23 is the annexure to TT5, exhibit TT5, I'm told. It's headed
24 "Crime intelligence/input at JOC."

25 CHAIRPERSON: Thank you - thank you.

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1 MR NTSEBEZA SC: Thank you, Mr Chairman.
2 Do you see that, General?

3 GENERAAL-MAJOOR ANNANDALE: Ek sien dit –
4 CHAIRPERSON: Mr Ntsebeza, I'm sorry, I
5 thought you said – I thought I heard you say, in reading
6 out this document, that there were 20 000 mineworkers. If
7 you did say that you meant three and if you did say that, I
8 misheard you.

9 MR NTSEBEZA SC: Well, maybe I was
10 reading 3 000 while I'm looking at 2012. I'm sorry, I'm
11 sorry, Mr Chairman.

12 CHAIRPERSON: Just to get it clear –
13 MR NTSEBEZA SC: Yes.

14 CHAIRPERSON: The report said there were
15 – noon on the 16th, intelligence information, 3 000
16 mineworkers at the koppie, many of them in possession of
17 dangerous weapons –

18 MR NTSEBEZA SC: Yes.

19 CHAIRPERSON: - spears, assegais and
20 pangas. According to the information received, the group
21 will decline to surrender these weapons to the police –

22 MR NTSEBEZA SC: Yes.

23 CHAIRPERSON: Information indicates that
24 they will not leave the koppie, they're prepared to fight
25 if their demands are not met, which includes resisting the

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1 police. The situation is currently very tense. That's
2 what the document –

3 MR NTSEBEZA SC: Yes, yes, that's it.
4 Thank you, Mr Chairman. Now, General, before I made a
5 detour to go to the evidence of Brigadier Mkhwanazi you
6 were consistently saying it was your sense, which is why
7 you had thought that the larger group would just go away on
8 its own, that you wouldn't have to deal with 3 000 people
9 because, you know, they were going to disperse peacefully.
10 Now it seems to me, according to this intelligence report,
11 that as late as only four hours before the people were
12 killed on that day you had an intelligence report that
13 indicated that the people are not only not prepared to
14 leave but that they would be prepared to fight if their
15 demands were not met. Was there any other intelligence
16 report on the basis of which you formed that other view,
17 that they would simply leave?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter –
19 MR NTSEBEZA SC: Do you understand the
20 question?

21 GENERAAL-MAJOOR ANNANDALE: Ja, dit was
22 die intelligensie verslag soos gelewer deur Colonel Isaacs.

23 CHAIRPERSON: Do you have any reason to
24 reject that report and to believe or to think that the
25 report was mistaken and that the consequences as set out in

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1 para 3 would not happen?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

3 ja, oor daardie – die onderskeid tussen die twee

4 groeperings, die verskil in gedrag, die los verspreiding

5 van die groter groep. Hulle het nie in pertinente

6 groeperings gesit, hulle handeling was nie dieselfde nie,

7 terwyl die kleiner groepie was, het 'n nou kern gevorm en

8 hulle het reageer, gesamentlik opgestaan en beweeg en

9 wapens gelyktydig geklap. Hulle het, op handgebare het

10 hulle gewerk, so daar was 'n duidelike onderskeid tussen

11 hulle. Voorsitter, reeds van die 13de af was daar 'n totale

12 onderskeid. Daar was 'n groep van sowat 2 000 op die

13 koppie terwyl hierdie ander groepie by die spoorweglyn was.

14 [12:11] Maar ten spyte daarvan was ons voorbereid gewees

15 om die totale groeperings uiteen te dryf met dan die focus

16 op die groep wat ons geglo het, het die leierskap element

17 binne in hulle.

18 CHAIRPERSON: Does that mean that you

19 accepted paragraph three of this report was correct, at

20 least insofar as it applied to the front group, the ones of

21 most of whom were armed with dangerous weapons and numbered

22 somewhere between 300 and 400?

23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

24 ekskuus ek het sleg geluister nou, as u net kan herhaal.

25 CHAIRPERSON: Do your previous answers to

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1 the question I put to you mean that you accepted that

2 paragraph three of this report applied at least insofar as

3 it related to the smaller groups, the groups between 300

4 and 400, most of whom were armed with dangerous weapons and

5 who were on the flat area in front of the koppie?

6 GENERAAL-MAJOOR ANNANDALE: Dis korrek,

7 Voorsitter.

8 CHAIRPERSON: Sorry to interrupt, Mr

9 Ntsebeza, the thought occurred to me that in fact what

10 happened is I take it most if not all of the people on the

11 koppie, the larger group, in fact were dispersed. The ones

12 who remained, as far as one can tell from numbers and so on

13 is a broad statement and probably a over simplification but

14 looks as if the people who remain, those who were killed,

15 those who were injured, those who were arrested are

16 probably, taking a broad view of it, were probably largely

17 members of the smaller group between 300 and 400. And the

18 others, the ones on the koppie they appear to be the people

19 who were dispersed and left. Is that a realistic approach

20 to the matter?

21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

22 dis baie redelik en ek het iewers 'n foto gesien en ek die

23 naaste aan die foto wat nou my hand kan ople is dalk 191 of

24 selfs 193 in bewysstuk L.

25 CHAIRPERSON: 193 where the legend at the

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1 top, on the right-hand side said protestor "organised

2 group" remain with others on the koppies while a number of

3 the protestors are departing. 191 as you say, the other

4 one you referred to says a protest group starts thinning

5 out just before mobilising towards the police lines.

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

7 dis my punt. As mens hierdie fotos sou behoorlik vergroot

8 dan sal u opmerk dat as mens kyk na 193 dat die groter

9 koppie is dat baie beweging en daar's nie meer daai

10 pertinente gekonsentreerde groepering nie. Terwyl die

11 kleiner groepie, as mens gaan kyk is daar baie min beweging

12 direk om die kleiner groepie in terme van individue wat dan

13 weg beweeg het -

14 CHAIRPERSON: Sorry, Mr Ntsebeza, I

15 interrupted you. You were cross-examining on the Crime

16 Intelligence input at noon which is TT5.

17 MR NTSEBEZA SC: Yes, yes.

18 CHAIRPERSON: And witness has now said

19 they accepted that para three was correct insofar as it

20 related to the small group if I'm not incorrectly

21 summarising what he said.

22 MR NTSEBEZA SC: I'm sorry to have to say

23 to you, General, and I will submit that just as my

24 colleagues have put it to you previously, this thing about

25 a smaller group and a big group is of recent origin. Your

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1 own Crime Intelligence reports starting from TT3, TT4, TT5

2 do not say anything about a larger group and a smaller

3 group. You talk about 3000 protestors at a koppie. Do you

4 confirm that? Nowhere in your Intelligence report is there

5 a reference to a smaller group that has to be targeted

6 because they are armed with dangerous weapons and a larger

7 group. Do you confirm that nowhere in the exhibited Crime

8 Intelligence reports is that distinction made?

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

10 ek kan net weer getuig soos ek getuig het op die vorige

11 verwysings daarna dat -

12 MR NTSEBEZA SC: General, please I have

13 heard what you have said and I've heard even -

14 CHAIRPERSON: Mr Ntsebeza, don't

15 interrupt him, he's giving an answer, he's entitled to give

16 his answer. When he's finished giving his answer you can

17 come back at him if you wish but I don't think we should

18 stop him from giving his answers.

19 MR NTSEBEZA SC: I'm in your hands, Mr

20 Chairman.

21 GENERAAL-MAJOOR ANNANDALE: Dat daar

22 deurgaans kollektief verwys was na die globale groep, ek

23 ontken nie dat dit nie pertinent so uiteen gesit is in TT5

24 nie.

25 MR NTSEBEZA SC: Is that a question to

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1 the answer? Do you want me to repeat the question? The
 2 question was, do you confirm that in none of your
 3 intelligence reports that have been exhibited here is there
 4 a distinction between the smaller group and a larger group
 5 as you have testified?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek het my antwoord afgesluit deur te sê dat in bewysstuk
 8 TT5 word dit nie so onderskei nie.
 9 CHAIRPERSON: In other words you admit
 10 that the intelligence was as Mr Ntsebeza has put it to you
 11 because you've already explained that for various reasons
 12 you didn't accept that the information was entirely correct
 13 insofar as it related to the people other than the small
 14 "militant group" who were in the front apparently fairly
 15 close to each other and separated to the some extent from
 16 the people on the koppie. Is that a fair summary of what
 17 you say?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 dis korrek en dan was daar ook besprekings in die JOCOM in
 20 terme van hierdie kleiner groepie. Daar's verskeie fotos
 21 wat bewys dat daar so groepie was, maar dis 'n baie
 22 redelike samevatting.
 23 MR NTSEBEZA SC: Now what I'm simply
 24 putting to you is that if you look at TT3 for instance
 25 which is the briefing minutes of Wednesday 15th of August at

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1 6 o'clock, Marikana Talk where you welcomed all the
 2 commanders who were present to the briefing session. And
 3 the crime intelligence report is given by Brigadier
 4 Engelbrecht who indicates that the situation is tense. Now
 5 and this is put very clear there, members of AMCU indicated
 6 that they will not surrender their weapons as they need to
 7 defend themselves against - the same thing that I referred
 8 to you. Now there isn't there anything that minutes your
 9 rejection of this report, do you agree? If anything it
 10 reports that you were told that members of AMCU, not a
 11 small group, not a bigger group, members of AMCU as the
 12 situation or the perception at that stage was that all of
 13 those people are members of AMCU that they will not
 14 surrender their weapons.
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 dis reg. Dis hoe die intelligensie verslag oorgedra was en
 17 die intelligensie verslag is nie verwerp nie.
 18 MR NTSEBEZA SC: On the 16th TT5, TT4
 19 briefing minutes Thursday 16th August 2012 at 6AM Marikana
 20 JOC, Major-General Annandale welcomed all commanders
 21 present to briefing session. Standing discussing points,
 22 Crime Intelligence, Lieutenant-Colonel Isaacs informed the
 23 meeting on the following, "there are currently about 3000
 24 mine workers that were gathered at the koppie. Many of
 25 these mine workers are in possession of dangerous weapons,

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1 spears, assegais and pangas," not a smaller group, just
 2 many of them. "According to information received the
 3 group, the group will decline to surrender these dangerous
 4 weapons to the police. Information also included that the
 5 mine workers will not leave the Koppie and are prepared to
 6 fight if their demands are not met which includes resisting
 7 the police. Now that entire minute doesn't record anywhere
 8 that there was a rejection of Lieutenant Isaacs's
 9 information on behalf of Crime Intelligence. Do you agree?
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 die verwysing na 3 000 is foutief, dis 300. Daar was nie 3
 12 000 persone op die koppie ses uur die oggend van die 16de
 13 nie. Maar die res van die informasie weereens dit was so
 14 aanvaar en nie verwerp nie.
 15 MR NTSEBEZA SC: Now I put it to you that
 16 you are now not being economical with the truth and I will
 17 argue that this is change in your evidence trying to
 18 explain why we don't have in the minutes a desegregation of
 19 that group into a smaller group and a larger group. In
 20 fact -
 21 CHAIRPERSON: Mr Ntsebeza, can I put
 22 something to you? The witness says that on the morning of
 23 the 15th at 6 o'clock there were only 600, sorry there were
 24 only 300 people at the koppie -
 25 MR NTSEBEZA SC: The 16th -

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1 CHAIRPERSON: And he's supported by note
 2 169 of exhibit FFF25 which is the page of the occurrence
 3 book dealing with the 15th of August which reads "situation
 4 report, the chopper reported plus minus 300 people already
 5 gathered at the koppie." So that would mean that at that
 6 stage, 6 o'clock there was a relatively small number,
 7 presumably round about 300, I couldn't find an earlier
 8 reference on that day of the number of people on the
 9 koppie. More people of course gathered as the day
 10 progressed but the answer he gives is at 6 o'clock there
 11 were comparatively fewer people, 300. And there was no
 12 reason to reject what was said in the intelligence report
 13 at that stage. That's his evidence as I understand it and
 14 I'm not sure that your question does justice to the
 15 evidence that he's given.
 16 MR SEMENYA SC: Chair, can we also add -
 17 MR NTSEBEZA SC: At 6 o'clock on the 16th
 18 -
 19 CHAIRPERSON: Mr Ntsebeza, sorry Mr
 20 Semenya wants to say something.
 21 MR SEMENYA SC: You may also add, Chair,
 22 that entry 207 recording 1702 still talks about two groups
 23 -
 24 CHAIRPERSON: What entry?
 25 MR SEMENYA SC: 1207.

<p style="text-align: right;">Page 10204</p> <p>1 CHAIRPERSON: On page?</p> <p>2 MR SEMENYA SC: On the 15th, page 18.</p> <p>3 CHAIRPERSON: And what number?</p> <p>4 MR SEMENYA SC: 207, 1702.</p> <p>5 CHAIRPERSON: Yes, yes.</p> <p>6 MR SEMENYA SC: That is reference to two</p> <p>7 groups of -</p> <p>8 CHAIRPERSON: Yes, yes but the witness</p> <p>9 was talking about a reported dated 6 o'clock in the morning</p> <p>10 on the 15th and that's why he answer which he did and I</p> <p>11 didn't think that Mr Ntsebeza appreciated fully what he</p> <p>12 said and hence I thought his question indicated that he</p> <p>13 hadn't, so I was trying to help him. But anyway Mr</p> <p>14 Ntsebeza will proceed with or without assistance. I'm</p> <p>15 going to adjourn now for five minutes while you sort</p> <p>16 yourself out as it's put to him and then you can proceed.</p> <p>17 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>18 [12:35] CHAIRPERSON: The Commission resumes.</p> <p>19 Generaal-Majoor, u is nog steeds onder eed. Sorry, Mr</p> <p>20 Ntsebeza?</p> <p>21 MAJOR-GENERAL CHARL ANNANDALE: s.o.e.</p> <p>22 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD):</p> <p>23 Thank you, Mr Commissioner. This intelligence report, TT4,</p> <p>24 is your evidence now that it is a reflection of what was</p> <p>25 the position as at 6 o'clock on Thursday, 16 August 2012?</p>	<p style="text-align: right;">Page 10206</p> <p>1 at 6AM but that's not directly relevant to what you're now</p> <p>2 talking about because I think you're talking about the</p> <p>3 Wednesday and the Wednesday is on TT3 and there the number</p> <p>4 is not indicated under "Crime intelligence 2.1" and there</p> <p>5 the witness says at that stage they had no reason to reject</p> <p>6 what they were told because their understanding was that</p> <p>7 there were about 300 at the koppie at that stage, 6AM, and</p> <p>8 they were presumably members of the close-knit sort of</p> <p>9 warrior group. So I think, therefore, that you and the</p> <p>10 witness are talking past each other. I hope that I've</p> <p>11 enabled you to not repeat that situation.</p> <p>12 MR NTSEBEZA SC: I am not sure we are</p> <p>13 talking past each other -</p> <p>14 CHAIRPERSON: Sorry, Mr Ntsebeza. Let's</p> <p>15 get the witness's reaction to what I've put about a</p> <p>16 possible mistake in 224 because if I'm wrong on that, then</p> <p>17 what I've said falls away. You heard what I said, Major-</p> <p>18 General. The minutes at TT4 are, may well be incorrect</p> <p>19 insofar as the crime intelligence section is concerned</p> <p>20 Brigadier Calitz what appears there is word for word what</p> <p>21 is in the annexure to TT5 which, according to that</p> <p>22 document, was the intelligence report you received at noon.</p> <p>23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>24 soos ek dit onthou was daar nie 'n noemenswaardige verskil</p> <p>25 tussen die 6-uur in die oggend intelligensie verslag en die</p>
<p style="text-align: right;">Page 10205</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>2 dis korrek. Ek fabriseer nie getuienis nie. Dit is 'n</p> <p>3 tikfout, dit is 300. Dit word bevestig deur voorvalle</p> <p>4 boekinskrywing 169 om 8:45 wat sê 300 ongeveer en dan selfs</p> <p>5 inskrywing 171 om 09:30. Toe word daar gerapporteer deur</p> <p>6 die chopper dat daar toe op dié stadium plus-minus 1 000</p> <p>7 is.</p> <p>8 CHAIRPERSON: Mr Ntsebeza, there seems to</p> <p>9 be a problem which is causing possibly a failure to</p> <p>10 communicate between you and the witness, I've just noticed.</p> <p>11 It looks to me as if you were talking about TT4 and the</p> <p>12 witness I think is talking about TT3 because he's talking</p> <p>13 about the Wednesday, the 15th. That's the reference I think</p> <p>14 in the occurrence book that's been talked about but if you</p> <p>15 look at TT4 which you refer to, there appears to be a</p> <p>16 mistake which I've just noticed and that is in para 2.1</p> <p>17 under the heading "Crime intelligence" it's stated,</p> <p>18 "Lieutenant-Colonel Isaacs informed the meeting on the</p> <p>19 following" - but what is there printed is actually what</p> <p>20 appears on the third page of TT5, which is the crime</p> <p>21 intelligence input at the JOC at noon. It's word for word,</p> <p>22 as you can see from - or virtually word for word what</p> <p>23 appears in 2.1 on TT4. So it looks to me as if when the</p> <p>24 minutes were written up, by mistake, what had been in terms</p> <p>25 of the input at 12 noon, was reflected as in terms of input</p>	<p style="text-align: right;">Page 10207</p> <p>1 spesiale JOCOM verslag om 13:30 nie.</p> <p>2 CHAIRPERSON: That document which is the</p> <p>3 third page of TT5 is apparently, well, headed apparently,</p> <p>4 headed 12H00. So in other words it purports to be a</p> <p>5 statement of what was reported at noon or *06-28 what was</p> <p>6 reported to be the position at noon. Is that right?</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>8 dit is korrek. Die enigste verskil tussen die oggend</p> <p>9 verslag 6-uur en dan die 12-uur verslag wat 13:30 voorgehou</p> <p>10 is, is 'n verskil in getalle. Die oggend was dit 300 en</p> <p>11 dan die middag was dit 3 000. Verder was dit dieselfde</p> <p>12 informasie, daar het niks nuut bygekom nie.</p> <p>13 MR MAHLANGU: The information,</p> <p>14 Chairperson, at both these times, at six and at 13:30 was</p> <p>15 basically the same, save to say the numbers differed. At 6</p> <p>16 o'clock it was 3 000 and later, 3 000, otherwise all the</p> <p>17 other information was basically the same.</p> <p>18 MR SEMENYA SC: No, it's 300 in at six</p> <p>19 and 3 000 at 12.</p> <p>20 MR MAHLANGU: At 12.</p> <p>21 CHAIRPERSON: That is supported, of</p> <p>22 course, by FFF25. One can see the build-up on the 16th</p> <p>23 starting on page - the first entry appears to be, above the</p> <p>24 numbers, appears to be - well, actually on page 22, 97 -</p> <p>25 well, firstly 972 says there were about 100 more on the way</p>

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1 and then you can see the numbers building up. By just
2 after 10 o'clock it's 2 000 and then at 11:20 it's 3 500.
3 So it seems from the reports you were receiving that a
4 relatively small number were there early in the morning but
5 as time went by in the course of the morning, more and more
6 people were gathering there until, by 11:20, here were
7 3 500. That appears to be correct. I take it you'd agree
8 with that?

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
10 dis korrek. Dit het elke dag begin met 'n klein groepie en
11 dan het dit so opgebou, min of meer so teen 10-uur se kant,
12 na 10 het dan die groter getal daar gewees wat so in die
13 omgewing van 3 000 was.

14 CHAIRPERSON: That shows that TT4 is
15 wrong when it reflects in paragraph 2.1 that there were
16 3 000 mineworkers gathered at the koppie at 6AM.

17 MR NTSEBEZA SC: General, this matter is
18 of small moment. Let me just say this, I don't want to
19 accuse you of being uneconomical with the truth, as I've
20 done, but help me here. Are you now saying to the
21 Commission, the minute TT4 that says there are currently
22 about 3 000 mineworkers is incorrect and the Commission
23 must change it?

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
25 ek sê dat daar was nie 3 000 mense op die koppie gewees

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1 nie. Daar was gerapporteer dat daar 300 was, so dit is
2 verkeerd gereflekteer in TT4, net soos dit onder paragraaf
3 3.3.8 in TT4 verwys word na Luitenant-Kolonel Botha, wie
4 nie teenwoordig was sover ek kan onthou nie, dit was 'n
5 Kaptein Mohlaki wat op die betrokke dag, die 16de, daar was.

6 MR NTSEBEZA SC: Do you know when these
7 minutes were generated?

8 GENERAAL-MAJOOR ANNANDALE: Nee,
9 Voorsitter, ek kan nie onthou nie.

10 MR NTSEBEZA SC: You see, Mr Budlender in
11 his cross-examination on page 8627 where apparently there
12 was a tussle between you as to whether the minutes can be
13 expected to be those of an annual general meeting or an
14 association or board of directors of the company, insofar
15 as you are saying I can accept that they cannot be
16 comprehensive, now he says to you in line 8 –

17 CHAIRPERSON: Can you give the page
18 number again, please?

19 MR NTSEBEZA SC: 8627, Chairman.

20 CHAIRPERSON: Thank you.

21 MR NTSEBEZA SC: "I can understand that
22 they will not be comprehensive," that is at 5. "Generaal-
23 Majoor Annandale: Dis korrek." "But can we accept
24 that what is stated in those minutes is correct?" And your
25 response is, "Met die uitsondering van grammatika en spel

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1 foute en dan die enkele ander aspekte, is dit oor die
2 algemeen korrek."

3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4 op my bladsy 8627 lyn 8 is daar 'n ander vraag.

5 MR NTSEBEZA SC: What is in your bladsy?
6 MAJOR-GENERAL ANNANDALE: Page 8627 line
7 8 says, "Mr Budlender SC: Well, I have to put it
8 to you, General, that what that means is that the
9 communications system was so bad that you didn't even know
10 there was something wrong with it."

11 CHAIRPERSON: You've got the wrong page,
12 if I may say so. 8627 begins, it's the 29th of April and it
13 begins with the words, "On Thursday, these are not the
14 minutes of an annual general meeting or association or
15 minutes of a board of directors, they're not formal and
16 they aren't detailed, they will not be comprehensive." And
17 you say, "It's correct." And then it goes on, then he
18 asks, "Can we accept that what is stated in these minutes
19 is correct?"

20 COMMISSIONER HEMRAJ: It appears as
21 though the transcript of, the page numbers are different.
22 The one that the witness is looking at and the one that
23 we're looking at, with you Mr Ntsebeza, differ.

24 MS PILLAY: Chair, just for
25 clarification, we have had experiences where the transcript

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1 has been corrected a day or two later so it might be that
2 the General is working from an uncorrected transcript.

3 CHAIRPERSON: As long as we all sing from
4 the same hymn sheet it doesn't matter which pages we're
5 looking at if the pages are differently numbered but he's
6 now been given our set of the transcript which is the same
7 as the one from which you are working, Mr Ntsebeza, so I
8 suggest you repeat your question and hopefully this time
9 we'll get a helpful answer.

10 MR NTSEBEZA SC: Thank you, Mr Chairman.
11 Have you got the place now, General?

12 GENERAAL-MAJOOR ANNANDALE: Ek het dit,
13 dankie Voorsitter.

14 MR NTSEBEZA SC: You see, you only
15 qualified the correctness or otherwise of the minutes to
16 the extent that there could be grammatical and spelling
17 mistakes and any other aspects. So it's a wide net but
18 here is an opportunity now and I believe you had an entire
19 weekend to look at the minutes.

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 kan ek net verder ook gaan op dieselfde bladsy 8627, die
22 regte een wat ek nou het? In line 15 the Chairperson asks,
23 "Before we move on, wat is die enkele andere aspekte, what
24 are the few other aspects apart from spelling and grammar?"
25 Waarop ek geantwoord het in lyn 18, "Voorsitter, ek sal

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1 deur die notas moet werk om daarop, die Kommissie daarop te
 2 wys." Mnr Budlender het toe aangegaan en hy het lateraan
 3 gesê, "There are only a few things in those minutes which I
 4 want to refer you to and I'm happy for you to" - and then
 5 he said, "How many matters are there that are problematic
 6 in the minutes?" Voorsitter, en op bladsy 8628 in lyn 2
 7 het ek gesê ek kan hulle nie nou vinnig tel nie, maar 'n
 8 hele aantal. Dan die laaste, mnr Budlender het toe in lyn
 9 4 gesê, "Chair, I'm concerned we may spend a long time
 10 going through minutes which may not – an amendment which
 11 may not be material, I'm prepared to take my chances."
 12 MR NTSEBEZA SC: Well, Mr Budlender took
 13 his chances, I'm not. Did you in any event go and look at
 14 the minutes between then and today and did you satisfy
 15 yourself about their correctness?
 16 [12:55] GENERAAL-MAJoor ANNANDALE: Voorsitter,
 17 ek het selfs toe mnr Budlender my gevra het, het ek notas
 18 gemaak op die betrokke TT4 en ek het aspekte omsirkel,
 19 notas gemaak, so daarso is baie aspekte wat nie korrek
 20 oorgedra is nie.
 21 CHAIRPERSON: - purposes the point that's
 22 being concentrated on is the number 3 000 which was given
 23 as the number of mineworkers at the koppie at 6AM,
 24 according to the minutes. Was that one of the areas that
 25 you spotted when you went through the minutes?

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1 GENERAAL-MAJoor ANNANDALE: Voorsitter,
 2 dis reg. Twee aspekte wat ek omkring het op die stadium
 3 toe Adv Budlender my gevra het, die een is die 3 000 wat ek
 4 die laaste nul omkring het, en die ander een is die
 5 luitenant voor die kolonel, because Isaacs is a colonel,
 6 not a lieutenant-colonel.
 7 CHAIRPERSON: Mr Ntsebeza, I see it's
 8 just before 1 o'clock. I asked that question in the hope
 9 that it would enable you to launch your next rocket at the
 10 witness, but would you like to do that after 2 o'clock, if
 11 there are more rockets that you have available to launch?
 12 MR NTSEBEZA SC: Yes, thanks, I will do
 13 that at 2 o'clock, Mr Chairman.
 14 CHAIRPERSON: We'll adjourn now until 2
 15 o'clock.
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]
 17 [14:01] CHAIRPERSON: The Commission resumes.
 18 Generaal-Majoor, u is nog steeds onder eed.
 19 CHARL ANNANDALE: s.o.e.
 20 VOORSITTER: Mnr Ntsebeza, sal u
 21 voortgaan met u kruisondervraging?
 22 KRUISONDERVRAGING DEUR MNR NTSEBEZA SC (VERV.):
 23 Ja, mnr die Voorsitter. Thank you, Mr Chairman. General,
 24 I think for good order going forward, we need to straighten
 25 the question of the minutes, and correct me if I'm wrong; I

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1 think I heard you say you made notes after that interlude
 2 with Mr, I mean interaction with Mr Budlender, you made
 3 notes on the documents, on the minutes, or you made
 4 separate notes. I'm not so sure. Please help me.
 5 GENERAAL-MAJoor ANNANDALE: Dis reg,
 6 Voorsitter. Op die dokument het ek notas gemaak.
 7 MR NTSEBEZA SC: And you have that
 8 document? We've made arrangements for copies to be made.
 9 GENERAAL-MAJoor ANNANDALE: Ek het die
 10 dokument, Voorsitter.
 11 MR NTSEBEZA SC: Are you able to – I
 12 believe that a quick, a few photocopies could be made of
 13 the document.
 14 MR SEMENYA SC: Chair -
 15 CHAIRPERSON: Is that all that appears on
 16 the document? Are those the only notes you made?
 17 GENERAAL-MAJoor ANNANDALE: Voorsitter,
 18 ek het die dokument, en dan notas wat ek gemaak het en
 19 aspekte wat ek "ge-highlight" het.
 20 CHAIRPERSON: Yes, Mr Semenya?
 21 MR SEMENYA SC: Chair, my understanding
 22 of the rule is if a witness is testifying through a set of
 23 notes, not the ones he's making as he's testifying, if as
 24 an aide memoire you come and testify through notes, those
 25 would be subject to the request now made by Mr Ntsebeza,

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1 but not as marking notes in testifying so that I highlight
 2 points that I have to testify about. I don't understand
 3 that rule to apply.
 4 MR NTSEBEZA SC: Mr Chairman, this
 5 witness has told us that he had an opportunity to look at
 6 the minutes and in relation thereto he found that the
 7 minutes needed some alteration and/or correction. That's
 8 how I understood him. He then said, after the questioning
 9 by Mr Budlender, he found that there were either omissions
 10 or things in the minutes that were not reflected as he
 11 would have liked them to have been reflected, and he made a
 12 point of noting those minutes in the respect in which they
 13 are not reflective of what happened. Now –
 14 CHAIRPERSON: Mr Ntsebeza, can I cut this
 15 short? Do you want to know all the corrections he made on
 16 his copy of the minutes of the JOC meeting on Thursday, the
 17 16th of August at 6AM? Is that what you want?
 18 MR NTSEBEZA SC: Yes, Mr Chairman, I
 19 believe that the minutes are those of the 15th of August –
 20 CHAIRPERSON: Yes, the 15th of August?
 21 MR NTSEBEZA SC: Both the TT3 and the
 22 TT4.
 23 CHAIRPERSON: I see. I'm not sure if Mr
 24 Budlender asked him to check both. Let's just sort, find
 25 that out first. The notes that you made, are they on TT3

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1 and TT4, or just TT4?

2 GENERAAL-MAJOOR ANNANDALE: Slegs

3 bewysstuk TT4, Voorsitter.

4 CHAIRPERSON: The notes that you made, do

5 they only relate to corrections; they're not private notes

6 of your own relating to anything else?

7 GENERAAL-MAJOOR ANNANDALE: Nee, daar is

8 enkele privaat notas ook, Voorsitter.

9 CHAIRPERSON: Isn't the sensible way

10 forward to ask him, insofar as it may be relevant, what the

11 corrections are that he picked up in the minutes?

12 Sometimes you know, people make notes for their own use

13 which they didn't think anyone else would ever see, and

14 they might embarrass them, so – I'm not saying that's the

15 case here, but one has to be sensitive to the

16 possibilities. So is it perhaps appropriate to ask him

17 what the corrections are, insofar as it's relevant, and

18 then we can carry on? I doubt if Mr Semenya will object to

19 that. I don't see on what basis he could.

20 MR NTSEBEZA SC: General, do you have any

21 objection in sharing the notes that you made with the

22 Commission? I see you look to Mr Semenya for inspiration.

23 CHAIRPERSON: I don't know if that's an

24 appropriate remark, but I didn't notice it. I don't think

25 it's correct actually.

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1 MR NTSEBEZA SC: Well, I saw what I saw,

2 Mr Chairman, but I won't make an issue of it.

3 CHAIRPERSON: Mr Semenya wouldn't have

4 given him any guidance any way; Mr Semenya knows better

5 than that. So if you want to know what corrections he

6 picked up in the minutes, why not ask him? Insofar as it's

7 relevant, which will be put before us as exhibit, so it's

8 only right if somebody who was at the meeting says the

9 minutes aren't correct and I notice some mistakes, it's

10 only appropriate that those should be drawn to our

11 attention insofar as they're relevant.

12 MR NTSEBEZA SC: Mr Chairman, I

13 understand that. I mean in all seriousness, I am simply

14 seeking to find out from the witness if he is prepared to

15 share his notes. He may say no, or he may say yes, and

16 then I'll go forward. General?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

18 ek het nie 'n probleem nie. Ek het niks om weg te steek

19 vir die Kommissie nie.

20 MR NTSEBEZA SC: Can we arrange for those

21 notes to make copies? The evidence leaders will arrange to

22 make copies thereof, and whilst the copies are being made,

23 I personally – because let me indicate to you, Mr Chairman,

24 with respect, and to the General, I am keen that there

25 should be some certainty going forward as to what

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1 constitutes the minutes which –

2 CHAIRPERSON: I haven't got a problem

3 with that. As I said, they put the minutes before us, but

4 if the minutes turn out to be incorrect and this witness

5 has spotted mistakes in them, it's only right that we

6 should know what the mistakes are.

7 MR NTSEBEZA SC: Yes.

8 CHAIRPERSON: I have no problem with

9 that. I was more concerned about his private notes because

10 I've known colleagues in the past who've made notes on

11 documents and when they were asked to produce them it was a

12 source of great embarrassment. I'm sure that doesn't

13 happen here, but the general principle is one shouldn't ask

14 people to produce their private notes unless there's a

15 specific reason for it, because otherwise it's intrusive,

16 you know.

17 MR NTSEBEZA SC: I understand, Mr

18 Chairman. Some of the things I write in my own notes I

19 wouldn't share with anybody, but –

20 CHAIRPERSON: Objecting to us seeing the

21 notes from which you're cross-examining then?

22 MR NTSEBEZA SC: Yes, I would be

23 privileged, but the General has already indicated that we

24 can make copies. General, just to quickly go through, do

25 you – for instance in TT4, which we have, are there any

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1 additions that you have made on page 1 or alterations that

2 you have made on page 1 of the minutes?

3 CHAIRPERSON: The notes have been taken

4 away from him, haven't they? So unless he's got a

5 photographic memory he won't be able to tell us if there

6 are –

7 MR NTSEBEZA SC: Okay, okay. Perhaps let

8 me suspend it, because the minutes are coming. Can I move

9 to some other area, Mr Chairman?

10 CHAIRPERSON: I think it would be a good

11 idea.

12 MR NTSEBEZA SC: In the interest of time,

13 yes. Thank you. General, there is something that I just –

14 and it may be quicker, now that I think of it, maybe –

15 there's a reference that I would like to draw your

16 attention to. T8759 in the transcript, I guess it was –

17 CHAIRPERSON: I'm sorry, Mr Ntsebeza,

18 what's the reference again?

19 MR NTSEBEZA SC: T8759 of the transcript,

20 yes. It was again in my learned friend Budlender's cross-

21 examination on the 30th of April. Now I think you were

22 saying it in Afrikaans. "Ek was nie op toneel 2 nie. Ek

23 was nie daar nie toe daar enige herkonstruksie plaasgevind

24 het nie. Ek het nie die lede se verklarings geneem of

25 onderhoude met hulle gevoer nie," etcetera, etcetera.

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1 CHAIRPERSON: I'm sorry, Mr Ntsebeza, I
2 don't know, is this 8759?
3 MR NTSEBEZA SC: According to this
4 computer.
5 CHAIRPERSON: 8759?
6 MR NTSEBEZA SC: Yes.
7 CHAIRPERSON: 8759, what line are you
8 quoting from?
9 MR NTSEBEZA SC: The lines are 9 to 10,
10 Mr Chairman.
11 CHAIRPERSON: I see. "Ek was nie op
12 toneel 2 nie. Ek was nie daar toe daar enige
13 herkonstruksie plaasgevind het nie." Is that the passage?
14 MR NTSEBEZA SC: Yes. Yes, that's it.
15 CHAIRPERSON: "I wasn't at scene 2. I
16 wasn't there" –
17 MR NTSEBEZA SC: "When the
18 reconstructions were done" –
19 CHAIRPERSON: - "when the reconstruction
20 took place." Right?
21 MR NTSEBEZA SC: I have translated it as
22 "when the reconstructions were done, and I did not take
23 their statements or interviews" –
24 CHAIRPERSON: And it goes on, "Ek het nie
25 lede se verklaring geneem of onderhoude met hulle gevoer

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1 nie," - I didn't take members' statements or conducted
2 interviews with them – "maar wat ek waargeneem het" - what
3 I noticed - "is dat dit nie so 'n eenvoudige toneel is soos
4 wat nou voorgelê word nie," - What I noticed was it wasn't
5 such a simple scene as now being presented – "en dat die
6 sterftes op verskillende kante plaasgevind het" – the
7 deaths took place at particular sides. Is that the piece?
8 MR NTSEBEZA SC: Yes, that's that.
9 CHAIRPERSON: Do you want any more?
10 MR NTSEBEZA SC: No, no. No, no, Mr
11 Chairman, I just wanted to contextualise what I'm going to
12 put to the General. Now General, I just wanted to be sure
13 that my English translation of that phrase is correct. "I
14 was not there when the reconstructions were done, and I did
15 not take their statements or interview them." I would like
16 to know what exactly you are talking about.
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ek verwys na wat ek verneem het in mnr De Rover se
19 verklaring dat hy na die toneel toe gegaan het en dat daar
20 van die persone, bevelvoerders en persone wat wapens
21 afgevuur het teenwoordig was tydens die besoek.
22 MR NTSEBEZA SC: Just tell us more.
23 MR MAHLANGU: I'm sorry, the witness says
24 I didn't understand everything well.
25 CHAIRPERSON: Sorry, perhaps you could

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1 repeat what you said and then we can concentrate on what
2 the correct translation is.
3 MAJOR-GENERAL ANNANDALE: Chairperson, if
4 I can try to help. I think it was said in the context that
5 I was not there at the time. Mr De Rover, according to his
6 statement he visited the scene 1 and scene 2, or scene 2
7 specifically – I'm not too sure – and it's my understanding
8 that there were some of the commanders from scene 2, as
9 well as potentially some of the members that fired firearms
10 was there. I was not present at that time.
11 MR NTSEBEZA SC: I see. So you were
12 referring to that incident. It's not, you have no
13 independent knowledge of reconstructions that were done.
14 You were simply saying that those that are indicated by De
15 Rover, you were not party to them?
16 GENERAAL-MAJOOR ANNANDALE: Dis reg,
17 Voorsitter. Ek sê ek was nie teenwoordig tydens mnr De
18 Rover se – en ek het daarna verwys as 'n herkonstruksie.
19 MR NTSEBEZA SC: Are you saying that
20 there is a statement, or there is reference in De Rover's
21 statement to a reconstruction process?
22 COMMISSIONER HEMRAJ: Mr Ntsebeza, that
23 cross-examination, isn't it preceded by the table from
24 exhibit L being put to the witness as to the number of
25 shots that were fired by the K9 members on scene 2, as

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1 opposed to the other members who were present at scene 2?
2 That's the context in which, as I understand the
3 transcript, that cross-examination took place. Your junior
4 seems to be nodding her head in agreement.
5 MR NTSEBEZA SC: Thank you. Thank you,
6 Commissioner. Do you agree with that assessment, General,
7 that it was not really in the context of describing what is
8 in De Rover's statement?
9 MR NTSEBEZA SC: Voorsitter, dis korrek.
10 Dit was twee tabelle in terme van aantal skote wat gevuur
11 was, maar ook in terme van dat Spesiale Taakmag, sover ek
12 kan onthou, was die eenheid beste geskik om dan sodanig
13 ontplooi te wees en dit was my verduideliking gewees van
14 hulle ontplooiing soos ek dit verstaan.
15 MR NTSEBEZA SC: You see, I'm asking
16 because I had hoped that at least through you we could get
17 to know whether in terms of the Standing Orders there was a
18 review of what had happened on the 16th, in which you
19 participated or of which you are aware.
20 CHAIRPERSON: Mr Ntsebeza, I'm sorry,
21 would you be kind enough to repeat that question? I didn't
22 quite catch it. Repeat your question, please. I didn't
23 quite catch it.
24 MR NTSEBEZA SC: Oh yes, no I was saying,
25 Mr Chairman, I am asking the General, because I had thought

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1 that when he talks about reconstruction he probably was
 2 referring to what the SAPS did by way of an internal review
 3 of what had happened on the 16th, and that I had hoped that
 4 he is the witness who'll now give us an account of what
 5 happened in the review.
 6 CHAIRPERSON: He says he wasn't there,
 7 but –
 8 MR NTSEBEZA SC: Yes.
 9 CHAIRPERSON: He obviously does know
 10 something about Mr De Rover's visit, albeit on hearsay
 11 basis. So perhaps we can get the answer.
 12 MR NTSEBEZA SC: Yes. General, do you
 13 know if there was an internal review that was conducted by
 14 SAPS of events that took place on the 16th of August in
 15 particular.
 16 [14:21] GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 die enigste wat naby kom aan 'n nabetragting was die
 18 Potchefstroom vergadering wat ons gehad het, maar in terme
 19 van die internal reviews, soos in 'n aangestelde taakgroep
 20 of iets om dit te ondersoek, ek is nie bewus daarvan nie.
 21 MR NTSEBEZA SC: You would therefore –
 22 okay, I see –
 23 CHAIRPERSON: It sounds actually like
 24 some kind of inspection in loco, which Mr De Rover had with
 25 some of the witnesses who were telling him their side of

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1 the story and indicating where various things happened.
 2 I'm not sure you could describe that as a review, it's
 3 clearly the experts being instructed –
 4 MR NTSEBEZA SC: No, there is the kind of
 5 review that is anticipated in the standing order.
 6 CHAIRPERSON: The police witnesses have
 7 been consistent that that never happened. They may have to
 8 dodge a bit of flack on the basis that it should have
 9 happened, but they say it didn't happen, and they've given
 10 reason why they didn't do it. So I don't know whether –
 11 MR NTSEBEZA SC: Yes, no, no, I'm
 12 intending to flog that horse, Mr Chairman. So whether we
 13 already have the general's notes. Is this going to be
 14 given an exhibit number?
 15 CHAIRPERSON: You must tell us, are you
 16 going to put it in. I mean, is there anything in it that
 17 you want? I mean, there are a lot of little notes, typos
 18 and spelling errors and so on that have been picked up, but
 19 I'm not sure the work of the Commission will be taken one
 20 millimetre further by handing it in, but if you think it
 21 is, and you want it, then I obviously have to grant you the
 22 indulgence of making it – we are in your hands, Mr
 23 Ntsebeza.
 24 MR NTSEBEZA SC: One can never predict
 25 the future these days. We would really want to have it as

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1 an exhibit, because at least now we now know that this is
 2 the approved record – these are the minutes which the
 3 Major-General says –
 4 CHAIRPERSON: Well, it's not approved
 5 minutes, these are just notes made by the chairman of the
 6 JOCOM. They're not officially signed by him, so they're
 7 not official – the copy we have is not signed either, so we
 8 accept there's no official copy, but I suppose inasmuch as
 9 he was the chairman and he was at the meeting and he knew
 10 what happened, his corrections might help to avoid
 11 misunderstandings and so on. But it might be an idea to
 12 look at it over the tea adjournment and see if there's
 13 anything you want. You may feel that it's just an
 14 unnecessary waste of time, but I can't tell you what to do,
 15 you must run your case the way you want to.
 16 MR NTSEBEZA SC: I was going to put the
 17 question to the general whether, just like Mr Budlender
 18 did, whether we must now accept this document with all the
 19 alterations. For instance, we now know that it's not 3 000
 20 miners, it says 300 miners. And then we now know it's not
 21 Lieutenant-Colonel Isaacs, it's Colonel Isaacs, and all the
 22 other question marks, etcetera. Now, does he want us to go
 23 into the future with this as the official minute? Official
 24 for him, as he was the chair.
 25 CHAIRPERSON: It's not the official

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1 minute, because the minutes apparently weren't duly
 2 confirmed. You know, at a meeting, it's not the chairman
 3 who goes through the minutes and so on, everyone present at
 4 the next meeting suggests corrections or not, as the case
 5 may be. Only when that happens, do you have official
 6 minutes. So these aren't official minutes, but these are
 7 the notes of the chairman as to corrections that he thinks
 8 should be incorporated in –
 9 MR NTSEBEZA SC: Okay, let me ask the
 10 question. General Annandale, was there ever a time at all
 11 when the minutes were – as it happens, I know you said this
 12 is not a board of directors and AGM and whatever, but was
 13 there ever a time when these briefing minutes were
 14 certified as correct minutes of what had taken place?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 nie tydens my ontplooiing daar vanaf die 14de tot die 25ste
 17 wat ek vertrek het nie.
 18 MR NTSEBEZA SC: So what has been
 19 presented to us as minutes, are actually notes?
 20 GENERAAL-MAJOOR ANNANDALE: Ek dink dit
 21 sal 'n meer ware beskrywing wees daarvan, Voorsitter.
 22 MR NTSEBEZA SC: Must we rely on them, or
 23 must we read them?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ja, u sal sien my opmerkings en dit is soos u dit tereg

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1 gestel het. Dit is soos ek dit onthou het amper nege
 2 maande na die betrokke dag. Die kern daarvan is nog steeds
 3 daar is spel foute, daarso is nie omskrywing gegee in terme
 4 van aspekte wat plaasgevind het nie en so aan, maar daar is
 5 'n goeie aanduiding in terme van aspekte wat bespreek was
 6 tydens sodanige JOCOM vergadering.

7 MR NTSEBENZA SC: And one of them was
 8 today in respect of 3 300.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 nee, die 300 versus die 3 000 het ek reeds gedoen nadat Mnr
 11 Budlender gevra het ek moet deur die notas gaan.

12 MR NTSEBEZA SC: Now, can we – I don't
 13 know how to deal with this. Are we going to get a
 14 situation in the future, maybe you can say this, where
 15 another witness, who is referred to this minute, because
 16 they have not been adopted officially, he's going to say
 17 no, no, that minute is wrong in relation thereto? I'm just
 18 wanting to find a way in which we can function with these
 19 kinds of minutes going forward.

20 CHAIRPERSON: I don't know if the witness
 21 can answer the question, but let's take this practical
 22 example. At the very end it says, "Briefing meeting
 23 adjourned at 7:30." Now the Major-General has written
 24 above that 8, so I take it he means it was 8:30. Now, in
 25 other words, according to him, the meeting, as far as he

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1 can remember, the meeting took 2.5 hours, not 1.5 hours.
 2 Now, I presume another witness may come later, there may be
 3 some discussion on how long the meeting took, and the other
 4 witnesses memory as to how long it took may be different,
 5 but what we know from now is that the Major-General thinks,
 6 or remembers after nine months, that the meeting took about
 7 2.5 hours. So that's one sort of situation that could
 8 arise if another person who was present at the meeting
 9 comes and is asked questions about what happened. Now, how
 10 helpful that will be for us, I'm not quite sure.

11 MR NTSEBEZA SC: Well, Chairman, thank
 12 you. It's just that I want some basis on which we can
 13 accept the document, and since he was the Chair of the
 14 meetings in relation to which we have these briefing
 15 minutes, I'm simply seeking to find out from him whether he
 16 is of the view that the minutes, as corrected by him having
 17 been the Chair, are what we should go by. And we can put
 18 to the witnesses that come, who would have attended these
 19 meetings, as having been the version with which the
 20 chairman of the meeting was satisfied with.

21 CHAIRPERSON: - anyway can't check
 22 without his say-so if it's the correct –

23 MR NTSEBEZA SC: No, Chairman, I didn't
 24 want the situation arising at that stage, when that witness
 25 is going to say, no, no –

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1 CHAIRPERSON: Well, let's hope those
 2 disputes of fact don't arise, and that we don't have to
 3 waste time trying to resolve, but if he wants the document,
 4 I suppose I'll put it in as TT4.1, okay. Would that
 5 satisfy you, Mr Ntsebeza? Can we then move onto the next
 6 point?

7 MR NTSEBEZA SC: Well, we'll move to the
 8 next point, Mr Chairman.

9 CHAIRPERSON: So I'll make this Exhibit
 10 TT.4.1.

11 COMMISSIONER HEMRAJ: May I just ask who
 12 took these minutes during the briefing, General?

13 MR NTSEBEZA SC: Just one last question,
 14 these minutes, when they were –

15 CHAIRPERSON: He hasn't answered
 16 Commissioner Hemraj's question yet. Wait to hear the
 17 answer first, before you come along with your question.

18 GENERAAL-MAJOOR ANNANDALE: Dankie.
 19 Kommissaris, as ek reg kan onthou, op die 16de was dit Adv
 20 Moolman gewees wat notas gemaak het. Voorsitter, ja, ek
 21 dink so. Ek weet die ander was gewees Brigadier Pretorius,
 22 maar ek dink die 16de was dit Moolman.

23 MR NTSEBEZA SC: Ja, the question I was
 24 going to ask is whether the minutes were not circulated
 25 among those who were there for their comments, before they

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1 were then sent to the Commission?

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 sover ek dit het, het dit nie plaasgevind nie. Ek weet nie
 4 of daar een of twee individue genader was rondom, wat ek
 5 kan onthou nie.

6 MR NTSEBEZA SC: Now, I want to move on
 7 to something else and that is your evidence with regard to
 8 your role, where you were at, what you did or did not do,
 9 when scene 1 occurred and when scene 2 occurred. There
 10 does seem to have been the canvassing of those situations.
 11 I think it was in the context of what came across as your
 12 having, or the reasons that you gave as why you did not
 13 action to stop matters happening at scene 1 and scene 2.
 14 Do you recall that evidence?

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 ek dink dit het meer as een keer opgekom in my getuienis
 17 lewer, maar ek het getuienis daaroor gelewer. Dis korrek.

18 MR NTSEBEZA SC: Yes. It seemed, if I
 19 recall well, that principally, with respect to – it seemed
 20 to me that one of the bases you indicated was that Calitz
 21 was in charge on the ground and General Mpembe was in
 22 charge in the JOC and then in the air. Is that something
 23 that you recall? In other words, they were not central in
 24 the running of the show.

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

<p style="text-align: right;">Page 10232</p> <p>1 nee, ek het gesê dat Brigadier Calitz was die operasionele 2 bevelvoerder op die grond, ja, maar Generaal Mpembe was die 3 oorhoofse bevelvoerder. Ek het nooit daarna verwys dat hy 4 die bevelvoerder in die lug was nie. So dan met verwysing 5 na die C-JOC, is die oorhoofse bevelvoerder dan, by 6 implikasie, dan die bevelvoerder van die C-JOC.</p> <p>7 MR NTSEBEZA SC: I think you – just to 8 put a context to it, you indicated that so much were you 9 not central in the running of the show that you didn't know 10 that people had been killed at scene 1 until much later, 11 when General Naidoo reported from scene 2, because if you 12 had known at the time, you would have called a halt to the 13 operation for purposed of reassessing. You remember that 14 theme in your evidence?</p> <p>15 MR SEMENYA SC: There's nowhere the 16 witness says he was central in the show. There's no such 17 evidence.</p> <p>18 MR NTSEBEZA SC: No, I said he's not 19 central. In fact, the witness makes the point that he was 20 peripheral, that's why he puts Calitz, he puts Mpembe, and 21 I'm saying that that is why he even says he did not know 22 that people had been killed until much later when he got 23 the report from General Naidoo. He did not know because 24 Brigadier Calitz and General Mpembe were the people who 25 were centrally involved.</p>	<p style="text-align: right;">Page 10234</p> <p>1 reference is page - 2 GENERAAL-MAJOOR ANNANDALE: Chairperson, 3 apologies, I'm not following it because we have a situation 4 again in terms of the page numbering. I'm on day 82, the 5 pages end at 8662 in terms of the copy that's in front of 6 me.</p> <p>7 CHAIRPERSON: - is sending you her copy 8 which I think has the same pagination as Mr Ntsebeza's. 9 Give the witness the reference again please Mr Ntsebeza.</p> <p>10 MR NTSEBEZA SC: The references as I have 11 them on day 82, page 8697, lines 3 to 9.</p> <p>12 GENERAAL-MAJOOR ANNANDALE: Ek het dit 13 opgemerk dankie, Voorsitter.</p> <p>14 MR NTSEBEZA SC: Yes, there the reference 15 is that you came to be aware that people had been shot and 16 killed at scene one only at 4:30. Now the other reference 17 is 8698 starting from line 5 to 8699, line 4 where you say 18 you only learned about the deaths when you were told by 19 General Naidoo. And the further reference is page 8699, 20 lines 1 to 4 where you confirm that again. Then let me 21 just deal with all the references with regard to this 22 second theme. Day 83, page 8736, lines 1 to 4 start with 23 scene two. JOC commanders still didn't know about the 24 scene 1 deaths and then 8739, lines 10 to 18 that is where 25 you say if you had known about the shootings you would have</p>
<p style="text-align: right;">Page 10233</p> <p>1 MR SEMENYA SC: No, that was not the 2 evidence, Chair. The witness was asked, in the absence of 3 General Mpembe in the JOC and a decision had to made there 4 who would be the one to make it, and he said himself, and 5 that's where the hypothesis came, whether or not if he had 6 known, being the only senior member there despite the PCs 7 whether he would have made the call and he said yes that's 8 how the evidence was tendered.</p> <p>9 [14:40] COMMISSIONER HEMRAJ: I actually think he 10 went further and he said that there was no situation that 11 arose where he was called upon to make any decision. Isn't 12 that right?</p> <p>13 MR NTSEBEZA SC: Maybe let me deal with 14 what I referred to as the second theme first and that is 15 that you didn't know that people had been killed at scene 16 one until much later when Naidoo reported from scene two 17 and that if you had known at that time you would have 18 called a halt to the operation to reassess. Now that will 19 be found on day 82, page 86 and 7, lines 3 to 9 where you 20 claim that you've heard - you heard that people had been 21 shot and killed at scene one only at about 4:30. The 22 reference on this theme is on page 8698 line 5 to 8699 line 23 4 where you say you only learned about the deaths when told 24 by Naidoo. And the other reference will be on page 8699 25 lines 1 to 4 where you confirm that again. Further</p>	<p style="text-align: right;">Page 10235</p> <p>1 called a halt to reassess. Do you see the reference in 2 there?</p> <p>3 CHAIRPERSON: General, it's quite a long 4 passage so perhaps read it slowly to yourself and then when 5 you're finished tell us and then Mr Ntsebeza can continue 6 questioning you.</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Thank you, 8 Chairperson.</p> <p>9 MR NTSEBEZA: Mr Chairman, maybe we can 10 take early tea and - maybe we can take early tea.</p> <p>11 CHAIRPERSON: I don't know how much 12 longer he's - I'm sure he must be nearly finished now.</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Ek is gereed, 14 Voorsitter.</p> <p>15 MR NTSEBEZA: Now I just want to put it 16 to you that on his own terms that seems to be an 17 extraordinary proposition, to suggest that 15 people get 18 killed in an SAPS operation and that the onsite commanders 19 who had been part of the planning of the operation and are 20 in charge of it only get informed of this 40 minutes after 21 it has happened and after the operation has rolled forward 22 regardless, killing another 18 people in the process.</p> <p>23 MR SEMENYA SC: Chair, what is reference 24 the 40 minutes and people in charge?</p> <p>25 CHAIRPERSON: What do you say to the</p>

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1 point Mr Semenya raises?
 2 MR NTSEBEZA SC: The first point is
 3 linked to the first point - I mean this point is linked to
 4 the first point that I was going to make and that is if we
 5 have regard to exhibit 11, exhibit L - it's been a long day
 6 -
 7 CHAIRPERSON: What Mr Semenya and I, in
 8 fact want to know is where do you get the 40 minutes from?
 9 Is it somewhere in exhibit L?
 10 MR NTSEBEZA SC: Yes and a similar thing.
 11 This is tied with - you see if my learned friend is asking
 12 the question where is it -
 13 CHAIRPERSON: He says he wants to be sure
 14 that what you're putting is correct because he doesn't
 15 remember it that way. That's the way I interpret his
 16 approach.
 17 MR NTSEBEZA SC: No, Mr Chairman, what we
 18 are exploring and we are seeking to put to this witness is
 19 that he was actually central
 20 CHAIRPERSON: What's the reference to the
 21 40 minutes, that's the question. We know he was central,
 22 you don't have to remind us of that but where does the 40
 23 minutes come in?
 24 MR NTSEBEZA SC: The killing at scene 1
 25 is reported by the witness, he only knows about it at 4:30.

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1 Now we know from all other evidence that the killing took
 2 place at 15:50 or thereabouts, that is 40 minutes from 3:50
 3 according to the old school arithmetic. So the 40 minutes
 4 comes from there.
 5 CHAIRPERSON: That's the starting point.
 6 Now the 40 minutes expires at half past four, if the period
 7 started at ten to four, so why do you say 40 minutes where
 8 do you get the 4:30 from? I understand where you got the
 9 ten to four from, but where do you get the half past four
 10 from?
 11 MR NTSEBEZA SC: The witness claims to
 12 have heard that people had been shot and killed at 6.1 only
 13 at 4:30. That's what you say day 82 -
 14 CHAIRPERSON: I'm not quarrelling with
 15 you about that but where do you get it from? What's the
 16 reference?
 17 MR NTSEBEZA SC: 8697, lines three to
 18 nine.
 19 CHAIRPERSON: Then you know you've got
 20 the answer to your question. I haven't got that page in
 21 front of me but you have.
 22 MR NTSEBEZA SC: The witness says - can
 23 you confirm that, General?
 24 GENERAAL-MAJOOR ANNANDALE: Page 8697?
 25 MR NTSEBEZA SC: Lines 3 to 9.

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1 GENERAAL-MAJOOR ANNANDALE: Chairperson,
 2 I said that I cannot recall the exact time, it would have
 3 probably been in the area of around - as it said here half
 4 vyf of selfs later. It was clarified 16:30. Half vyf.
 5 CHAIRPERSON: So Mr Ntsebeza's got his 40
 6 minutes then. Mr Ntsebeza's got his 40 minutes. The
 7 shooting was at 3:50 and you only heard about it at 4:30,
 8 he got his 40 minutes. So Mr Semenya your query has been
 9 satisfactorily answered. Mr Ntsebeza would you like to
 10 proceed in the three minutes before tea?
 11 MR NTSEBEZA SC: Let's take the tea now,
 12 Chair. Let's cut it short. No I'm prepared to put the
 13 next question. The witness has now got his 40 minutes.
 14 I'm simply saying and this is what I put to you and this is
 15 what I will argue. That on its own terms this proposition
 16 that you only heard of the killings 40 minutes after they
 17 had taken place and after they rolled forward killing
 18 another 18 people in the process, that on its very own
 19 terms is an extraordinary proposition.
 20 CHAIRPERSON: Major-General, can you
 21 throw light on the fact. It does appear prima facie to be
 22 rather un-sustained that a period of 40 minutes expired
 23 before you heard about the shooting. There may well have
 24 been reasons for it but I think what Mr Ntsebeza would like
 25 to know from you is what that reason is.

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 ja daar was - ek het verduidelik dat ek as 'n individue nie
 3 bewus van 'n toneel een en 'n toneel twee nie. Daar was
 4 net een operasie wat dit afgespeel het. Dis eers na die
 5 tyd wat ek verstaan het dat daar 'n toneel een was en
 6 verwyderde tot toneel twee. Voorsitter, en dat ek
 7 omvattend verwys na die beperkings wat ons gehad het om die
 8 analoog sisteem en die beperkings wat ons gehad het met een
 9 radio kanaal. Voorsitter, en dan was daar twee pertinente
 10 persone wat die by verder die meeste van die tyd op die
 11 radio kanaal in beslag geneem het en dit was Pappa Een,
 12 Brigadier Calitz en Charlie Een, Lieutenant-Colonel Vermaak
 13 in die tjopper en in die oordrag wat beide van hulle gemaak
 14 het was dit geensins duidelik tot baie later waarskynlik
 15 eers in die omgewing van 16:30 dat daar persone gesterf
 16 het. Voorsitter, die enigste verwysing wat daar was wat
 17 ons op die radio gehoor het was eers soos ek dit onthou
 18 "persons lying down" en lateraan "bodies lying down."
 19 Voorsitter, en as ek reg kan onthou van 'n transkripsie, ek
 20 dink dit was die Protea Coin helicopter se transkripsie wat
 21 gekoördineer is met die ene van Kaptein Ryland. En ek is
 22 onder korreksie maar daar's verwysing daar as ek kan onthou
 23 ongeveer 16:15, min of meer daar rond wat daar verwys is na
 24 twee bodies as ek dit nie mis het nie. En dan ek dink
 25 toneel twee soos ek dit nou weet was waarskynlik hier

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1 ongeveer 16:17 daar rond moes toneel twee hom klaar reeds
 2 afgespeel het met die laaste skietery.
 3 [15:00] CHAIRPERSON: Before we take the tea
 4 adjournment, let's just get our, do a little bit of
 5 housekeeping. The transcript of the soundtrack, as it
 6 were, of the Lonmin video, the Lonmin chopper, is, or as
 7 far as I can see, is GGG36, and that can be read together
 8 with the – no, I'm wrong. It's the other way around. The
 9 transcript of the Ryland's video is GGG36 and that can be
 10 read together with the transcript of the Protea chopper
 11 video, which is GGG35, and one can to some extent marry
 12 them together. Some of the things that aren't clear in the
 13 one become clear on the other, but they seem to start
 14 already at scene 2, as far as I can see. But perhaps
 15 that's something that you and your junior can study while
 16 the rest of us drink tea. We'll take the tea adjournment.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [15:23] CHAIRPERSON: The Commission resumes.
 19 Generaal-Majoor, u is nog steeds onder eed.
 20 MAJOR-GENERAL CHARL ANNANDALE: (s.o.e.)
 21 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD):
 22 Thank you, Mr Chairman.
 23 CHAIRPERSON: We've solved the mystery
 24 that we were debating and discussing before we adjourned.
 25 MR NTSEBEZA SC: Yes. No, we'll be

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1 dealing with a different mystery, Mr Chairman. I want to
 2 put it to you, General, that your version – quite apart
 3 from it being an extraordinary proposition, as I indicated
 4 – seems to be highly improbable and I'll give you several
 5 reasons for that. The first reason is that you yourself
 6 admitted that what was transmitted on the radio – and this
 7 was a question to Commissioner Hemraj – that what was
 8 transmitted on the radio was audible to everyone in the
 9 JOC. Day 83, page 8746 lines 16 to 21.
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 ek kan onthou dat ek dit so geantwoord het aan Kommissaris
 12 Hemraj.
 13 MR NTSEBEZA SC: Yes, and the point here
 14 I'm making is that it is implausible that you can say, as
 15 you did say, that in spite of the fact that 16 people had
 16 been killed in an SAPS operation, that you only got
 17 informed about it 40 minutes after it had happened. The
 18 second basis on which I will put it to you that your
 19 version seems implausible is the fact that the occurrence
 20 book FFF25 records a radio message at entry 1017, 15:55 and
 21 I quote –
 22 CHAIRPERSON: Page 25 of the exhibit.
 23 MR NTSEBEZA SC: "Papa 1 reporting the
 24 group are moving to TRT members and they tried to attack
 25 them. Papa 1 reporting that the people are moving around

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1 and some are down." Comment?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek het in detail, ek weet nie of dit – ek dink dit was laas
 4 week gewees wat ek verwys het dat die weergawe in daardie
 5 betrokke voorvalleboek nie korrek is, eerstens in terme van
 6 hoe dit beskryf is nie en ook, tweedens, in terme van die
 7 tyd.
 8 MR MAHLANGU: Chairperson, I gave
 9 evidence, I think it was last week where I mentioned that
 10 that entry in that occurrence book was not totally correct
 11 in terms of time.
 12 MAJOR-GENERAL ANNANDALE: And contents.
 13 MR MAHLANGU: And content.
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 en ek het na verskeie voorbeelde daarin verwys en dit sal
 16 miskien makliker wees as ons na die transkripsie kyk maar
 17 anderste kan ek weer deur dit gaan in terme van wat my noop
 18 om so te sê, dat dit net nie moontlik was nie.
 19 MR NTSEBEZA SC: No, I'm simply saying
 20 what you admit in the reference that was given seems to
 21 tally with what is in the occurrence book in the reference
 22 given, namely that – or what I put to you is the second
 23 basis on which I am pointing out how highly implausible
 24 your proposition is and I'm simply saying in terms of the
 25 occurrence book, as early as 15:55 there was a report, Papa

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1 1, TRT members are being attacked and Papa 1 reports to all
 2 of you in the JOC and you all can hear this, there are
 3 people moving around and this seems to be in terms of the
 4 recording at five to four.
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek het gesê dat ons kan nie die tyd gebruik nie en ook nie
 7 die korreksie daarvan nie en ek het daarna verwys dat dit
 8 nie Papa 1 was nie, dat dit was nie op TRT members nie, dit
 9 was op die polisielyn en ek het ook gesê dat dit duidelik
 10 is dat die persone wat die voorvalleboek opgeskryf het,
 11 verweef geraak het in terme van feite wat hulle lateraan
 12 bewus van geraak het en hulle het dit dan sodanig ingevul.
 13 En ek het gewys dat dit net eenvoudig nie so kon wees in
 14 terme van verskeie voorbeelde, so die tye kan ons nie
 15 aanvaar nie. Al daardie aspekte het nie plaasgevind onder
 16 15:56 nie.
 17 MR NTSEBEZA SC: The record will – yes,
 18 the record will show what it will show, General. The third
 19 basis for the high implausibility of your proposition is
 20 that Colonel Scott in his statement FFF18 in paragraph 33
 21 thereof corroborates what is in the occurrence book,
 22 because the –
 23 COMMISSIONER HEMRAJ: I'm sorry, Mr
 24 Ntsebeza, whose statement are you referring to now?
 25 MR NTSEBEZA SC: Commissioner – if

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1 Colonel Scott in his statement FFF18 corroborates what is
 2 in the occurrence book in FFF25 by saying the following in
 3 paragraph 33, "At about 15:45" – obviously it's not the
 4 same as 15:55 but he says, "At about 15:45 I heard over the
 5 police radio in the JOC, as the events unfolded, that the
 6 police were coming under some form of attack. Lieutenant-
 7 Colonel Vermaak in the police helicopter was providing
 8 periodic situation reports as events unfolded on the
 9 ground. At about 15:55 he reported a number of protesters
 10 lying on the ground." Do you see that? Do you have any
 11 comment, General?

12 MR SEMENYA SC: Chair, just so that we
 13 follow, what is being put to the witness is that it is
 14 implausible that he would have been told at that time or
 15 what is implausible about this proposition? I'm told the
 16 proposition you make is implausible, I'll show you why and
 17 refers to bodies down. I can't follow the debate.

18 CHAIRPERSON: Maybe you should
 19 reformulate the question so that that objection can no
 20 longer be raised.

21 MR NTSEBEZA SC: Well, I'll reformulate
 22 the question, Mr Chairman, but may I just indicate this, I
 23 have indicated that there is a proposition that is
 24 untenable and we'll argue that it is untenable and these
 25 are indications of bases on which we'll rely to –

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1 CHAIRPERSON: I think Mr Semenya's
 2 objection, if I'm reading it correctly, is that you can't
 3 just put it to him it's implausible, you should tell him
 4 why so he can deal with it. Is that your – was that part
 5 of your complaint, Mr Semenya?

6 MR SEMENYA SC: What is implausible that
 7 is illustrated? The fact that the witness was told that
 8 the bodies were, people were killed only at 16:30? Is that
 9 what is implausible?

10 CHAIRPERSON: You see the problem, Mr
 11 Ntsebeza, you said it's implausible but you haven't exactly
 12 said what is implausible. So perhaps you should make it
 13 clear what you say is implausible, so the witness can deal
 14 with it, it's an answer.

15 MR NTSEBEZA SC: We have said what is
 16 implausible. We have said –

17 CHAIRPERSON: What's implausible –

18 MR NTSEBEZA SC: - that it is – it's an
 19 extraordinary proposition to suggest that the General, as
 20 he articulated, didn't know that there had been people who
 21 had been killed and only came to know about it at half past
 22 four. That is what is implausible and these are
 23 indications that what he says is untenable. He himself
 24 says, I'm sitting in the JOC, we are able to hear
 25 everything. When Commissioner Hemraj says, you know, were

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1 you able to hear what is going into the JOC – and all of
 2 these reports, Papa 1, are getting into the JOC where all
 3 of them are listening and these reports indicate what is
 4 happening. One, people – they allege that they are being
 5 attacked by the mineworkers and then thereafter people are
 6 down. Now it's highly unlikely, and that's what we'll
 7 argue, that the General only got to know at half past four
 8 that people had been killed to the extent that they were
 9 killed. This is common cause between all of us and if we
 10 just avoid semantics and concentrate on the issues, then
 11 we'll get to the end of this, certainly my cross-
 12 examination, easier.

13 CHAIRPERSON: Have you got any answer to
 14 what – sorry, Mr Semenya. Have you got any comment to make
 15 in regard to the point made by Mr Ntsebeza?

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 ek het, ja. Kolonel Scott verwys na "a number of
 18 protesters lying on the ground." Hy verwys ook dat
 19 Luitenant-Kolonel Vermaak in die polisie helikopter het
 20 detail gegee en dit sluit aan by my punt dat ek gesê het
 21 dat Papa 1 Calitz het nie die verslag gegee in terme van 'n
 22 aanval en dit was ook nie op 'n TRT lyn nie. So dit is
 23 100% soos wat Kolonel Scott dit hiero weergee.

24 MR NTSEBEZA SC: General, the point is
 25 this –

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1 GENERAAL-MAJOOR ANNANDALE: Kan ek net my
 2 vraag antwoord asseblief, Voorsitter?

3 CHAIRPERSON: Mr Ntsebeza, can you just
 4 give him a chance to finish?

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 behalwe dat 15:45 is nie noodwendig die tyd nie, maar dit
 7 is – dit was waarskynlik bietjie later gewees en ek onthou
 8 dit as "people lying on the ground" en ek sien Kolonel
 9 Scott verwys daarna as "protesters lying on the ground."
 10 Voorsitter, dan het ek verwys dat die inskrywing onder
 11 1018, 15:56 byvoorbeeld net 'n voorbeeld hier, "18 bodies
 12 are down, chopper 1 reporting that it's at the back of the
 13 koppie." Dit kan nie toneel 1 wees nie want dit was by die
 14 kraal gewees, so dit is dan waarskynlik by toneel 2 en dit
 15 is net ter illustrasie dat dit nie om 15:56 kon plaasvind
 16 nie. Voorsitter, daardie selfde inskrywing word dit
 17 gemeld, "Instructing members to make arrests, six people
 18 arrested." Dit is ook onder 15:56 gereflekteer, maar as
 19 ons na bewysstuk GGG35 gaan –

20 MR NTSEBEZA SC: General, all I am
 21 putting to you –

22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 ek sal net wil klaarmaak as u my sal vergun asseblief.

24 CHAIRPERSON: Mr Ntsebeza, let him finish
 25 his answer. I understand it's sometimes difficult to know

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1 when he's finished –

2 MR NTSEBEZA SC: Yes.

3 CHAIRPERSON: Because he pauses,

4 understandably, for the interpreter and then you sometimes

5 think that's the end of his answer but it isn't, so let him

6 finish.

7 GENERAAL-MAJOOR ANNANDALE: Word dit

8 aangedui op 11 minute en 25 sekondes nadat die video 'n

9 aanvang geneem het en ek het dit verstaan dat die video so

10 min of meer 15:57, 15:58 begin het. So aldus hierdie

11 tydlyn moet dit dan min of meer so agt of nege minute oor

12 vier wees, 16:08, 16:09 waar daar dan getuig word deur, ek

13 het die stem geïdentifiseer as Papa 1, Brigadier Calitz,

14 wat hy verwys na ses arrestasies wat gemaak is. En dan net

15 daarna is daar die verwysing na "two bodies, two bodies at

16 the back of the second koppie" wat ook vermeld word onder

17 dieselfde inskrywing in die voorvalleboek om 15:56,

18 "Chopper 2 reporting two bodies down." Voorsitter, so daar

19 moet ten minste 'n 13 minute verskil wees tussen dit wat in

20 die voorvalleboek geskryf is en dit wat ons gehoor het op

21 die video.

22 MR MAHLANGU: So there should be a

23 difference of about 30 minutes, Chairperson, from that

24 which is in the occurrence book and that which we heard

25 over the radio.

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1 MR SEMENYA SC: 13 minutes.

2 GENERAAL-MAJOOR ANNANDALE: 13, one-

3 three.

4 MR MAHLANGU: Yes, one-three.

5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

6 en ek het self in my getuienis verwys dat ek ook gehoor het

7 dat daar "bodies down" is en ek het dit verduidelik dat dit

8 nie gesien was as sterftes nie, as ons kyk na die "two

9 bodies down" direk nadat die arrestasies vermeld is, was

10 dit vir my in verband gewees met arrestasies wat gemaak

11 was, en ek sal nou verduidelik.

12 [15:43] MR SEMENYA SC: Did not necessarily

13 convey that people are dead, that was the translation.

14 MR MAHLANGU: That two bodies were down

15 did not necessarily convey that those people referred to

16 were dead.

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

18 en dit is my punt. Tydens uiteendryfaksies en arrestasies

19 is daar gevalle wat mense self op die grond gaan lê of

20 tydens die arrestasie, as ons meertalle mense arresteer dan

21 sal dit tipies wees dat ons die een persoon se kop sal

22 plaas op die volgende persoon se enkels met sy hande dan

23 geboei agter die persoon se rug. Voorsitter, so my – dit

24 wat ek gehoor het van "people lying down and bodies down"

25 het nie vir my die indruk gegee dat persone gedood is nie.

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1 COMMISSIONER HEMRAJ: Mr Ntsebeza,

2 there's a timeline that's referred to by Lieutenant-Colonel

3 Vermaak in his statement in paragraph 7 which might add a

4 perspective to this discussion about the times. It's

5 exhibit GGG17, paragraph 7.

6 CHAIRPERSON: Mr Ntsebeza, I think you've

7 got a problem, have you not, because the Lieutenant-

8 Colonel's statement is in Afrikaans and while you can read

9 Afrikaans, I'm not sure that you can read it as fluently as

10 the witness can. Would that be fair?

11 MR NTSEBEZA SC: I don't know, it looks

12 like we may have a translation, a translated version.

13 CHAIRPERSON: Can I ask a few questions

14 while you're looking at that? Major-General, I take it we

15 have to accept, in the light of what you've told us, that

16 there are problems in relation to the entries under note

17 1018 in exhibit FFF25, in other words the occurrence book

18 has got a whole series of entries with times next to them,

19 all covered by note 1018 and you've indicated to us that

20 there appears to be a measure of confusion, it looks as if

21 the notes were written up later, not contemporaneously and

22 in fact some of the details may be wrong. Is that a fair

23 summary of your evidence?

24 GENERAAL-MAJOOR ANNANDALE: Korrek,

25 Voorsitter.

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1 CHAIRPERSON: And also in the case of

2 note 1017 there's a problem, in fact there are two

3 problems, I think. The first is the question as to who

4 made the report and the second question is as to whether

5 the attack was being made on TRT members or not, is that

6 correct?

7 GENERAAL-MAJOOR ANNANDALE: Dis korrek,

8 Voorsitter.

9 CHAIRPERSON: What we can do, however, is

10 with the aid of Lieutenant-Colonel Scott's statement we can

11 correct the note 1017 in the sense that he says it was

12 Lieutenant-Colonel Vermaak from the police helicopter whose

13 report was heard and he says that what was said was that

14 the police, the police were coming under some form of

15 attack but not – which, whether it was the TRT or the NIU

16 or the POP or whomever – but Lieutenant-Colonel Scott

17 enables us to correct, as it were, this note. I think he

18 gives – he gives the time at about 15:55 but again the time

19 may not be strictly correct. Would that be fair?

20 GENERAAL-MAJOOR ANNANDALE: Dis reg,

21 Voorsitter.

22 CHAIRPERSON: Then if we turn to

23 Lieutenant-Colonel Vermaak's statement which is exhibit

24 GGG17, he then gives us an account in para 7 of what it was

25 that he saw and what he in fact said over the radio. He

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1 describes – it starts really, it starts in para 6, then he
 2 goes on. He describes what happened earlier and then he
 3 says in para 7 the following, “Die groep het terugbeweeg en
 4 weer hergroepeer aan die anderkant van die kraal.” The
 5 group moved backwards and regrouped again on the other side
 6 of the kraal. So he’s now talking about what’s called the
 7 third approach and then he goes on to say, “En die
 8 polisiemanne weer om ongeveer 15:55 aangeval.” And the
 9 policemen again attacked, attacked the policemen at about
 10 15:55. “Dit was duidelik uit die lug waargeneem,” it was
 11 clearly noted from the air, “dat die groep nie gaan toegee
 12 nie,” that the group would not retreat, I suppose it would
 13 be, or surrender. “Brigadier Calitz het weer vir die lede
 14 opdrag gegee om ‘n optrede te loods.” Brigadier Calitz
 15 again gave the members the order to mount an operation.
 16 “Dit het amper voorgekom asof die lede nie gehoor het nie.”
 17 It almost appeared as if the members didn’t hear. “Weens
 18 die voorval op Maandag, 13 Augustus,” as a result of the
 19 incident on Monday the 13th of August, “waar die twee
 20 polisielede onder die helikopter doodgekap was,” where the
 21 two members of the police were chopped to death or hacked
 22 to death under the helicopter, “het ek besef dat die lede
 23 sal moet optree om hulle te beskerm.” I realised that the
 24 members would have to act in order to defend themselves.
 25 “Ek weer” – I take it there’s a “het” missing – “Ek het

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1 weer Brigadier Calitz se opdrag herhaal.” I again repeated
 2 Brigadier Calitz’s order, “uit die helikopter,” from the
 3 helicopter, “waarop ek gesien het dat die lede optree,”
 4 whereupon I saw that the members were acting. “Groepe
 5 aanvallers het weggehardloop.” Groups of, brackets,
 6 attackers ran away in the direction of the squatters’
 7 houses, “in die rigting van die plakkershuise aangrensend
 8 tot die toneel,” in the direction of the squatters’ houses
 9 abutting on the scene. “Om 15:58,” at 15:58 “het ons oor
 10 die toneel gevlieg,” we flew over the scene, “en opgemerk
 11 dat daar ‘n aantal persone op die grond lê.” So that
 12 sounds – that, what he’s described there appears to be what
 13 is recorded, albeit somewhat inaccurately, in note 10, in
 14 entry 1017 but which we’re able to correct in the light of
 15 what Lieutenant-Colonel Scott says. So that’s clearly a
 16 description of what happened at the first scene and so when
 17 things were happening at the first scene, you therefore
 18 must have – you heard over the radio that something was
 19 happening, namely, there was an attack on the police and
 20 that orders, I take it, were given by Lieutenant-Colonel
 21 Vermaak that an operation should be launched and after
 22 which people were lying on the ground. I take it that’s a
 23 fair summary, is it? Would you agree with that?
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ja. Soos u tereg gewys het, selfs in Kolonel Vermaak se

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1 verklaring is daar drie minute verskil tussen die 15:55 en
 2 die 15:58 wat hy sê ‘n aantal persone op die grond lê,
 3 terwyl dit alles vervat was in een inskrywing om 15:55, ja.
 4 Maar dit is soos dit sporadies deurgekom het, dis reg.
 5 CHAIRPERSON: I’m not so interested in
 6 the actual time recorded in the occurrence book. What is
 7 clear is that what was recorded, what was heard or even if
 8 it was recorded later, what was heard was the first scene,
 9 was action at scene 1. That must be right.
 10 MR NTSEBEZA SC: General, I see you
 11 nodded.
 12 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 13 Voorsitter.
 14 CHAIRPERSON: Now we know what time,
 15 roughly, when scene 1 happened – round about 4 o’clock,
 16 just before 4 o’clock, right? So therefore just before 4
 17 o’clock when there was action at scene 1, you knew
 18 something was happening there and in fact you knew the
 19 police were being attacked, you knew that the police were
 20 being ordered to take action and you knew that after that
 21 there were bodies on the ground. Is that fair?
 22 GENERAAL-MAJOOR ANNANDALE: Dis reg,
 23 Voorsitter.
 24 CHAIRPERSON: Perhaps - my colleague
 25 Commissioner Hemraj points out that I’m over-egging the

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1 pudding. It wasn’t, one can’t say you knew there were
 2 bodies on the ground, you knew there were - people were
 3 lying on the ground. Whether they were dead or alive
 4 wasn’t clear. That’s fair, isn’t it?
 5 GENERAAL-MAJOOR ANNANDALE: Dis reg,
 6 Voorsitter.
 7 CHAIRPERSON: Now, we discussed that a
 8 few days ago, on the probabilities, if they’d attacked the
 9 police and the police were mounting an operation to deal
 10 with them – you agreed but this obviously was hindsight –
 11 that the probabilities were the police would have reacted
 12 by shooting them.
 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 14 soos ons dit na die tyd weet. Onthou net wat het ons op
 15 daardie stadium geweet en hoe was ons plan gewees.
 16 CHAIRPERSON: Yes.
 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter –
 18 ekskuus.
 19 CHAIRPERSON: I did say we know, you
 20 conceded that was so but with hindsight. I think that’s an
 21 accurate summary of what you said. So what it amounts to,
 22 I would think - and I’m putting this to you because if I’m
 23 wrong you’ll put me right – was that you were aware round
 24 about, just before 4 o’clock that there had been an
 25 incident, that the - I prefer to call them the strikers

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1 because they weren't really protesters – that the strikers
 2 had attacked the police, that the police had been ordered,
 3 both by Brigadier Calitz and by Colonel Vermaak, to take
 4 action to defend themselves, I take it, and that after that
 5 there were bodies on the ground. Now –
 6 MR SEMENYA SC: People were on the
 7 ground.
 8 CHAIRPERSON: Sorry, I made the same
 9 mistake I made before. There were people on the ground, is
 10 that – is that fair? Alright.
 11 GENERAAL-MAJOOR ANNANDALE: Dis reg,
 12 Voorsitter.
 13 MR NTSEBEZA SC: Is it your evidence that
 14 your – did you say people on the ground or bodies on the
 15 ground, so that I think you qualified it by saying –
 16 CHAIRPERSON: I think people, I think
 17 people.
 18 MR NTSEBEZA SC: I'm sorry, Mr Chairman,
 19 I thought the witness qualified by saying the mere fact
 20 that there were bodies on the ground did not necessarily
 21 mean that they were killed.
 22 CHAIRPERSON: Vermaak says persons, you
 23 see, in his statement and we're busy trying to reconstruct
 24 what would have been heard over the radio and I put bodies
 25 but, as I said, I over-egged the pudding. One can't say

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1 that. The most that one can say, there were persons lying
 2 on the ground.
 3 MR NTSEBEZA SC: Yes.
 4 CHAIRPERSON: And the witness agreed to
 5 that.
 6 MR NTSEBEZA SC: Yes.
 7 CHAIRPERSON: He also agreed that it's a
 8 matter – with the benefit of hindsight it was probable that
 9 they were lying on the ground as a result of having been
 10 fired at by the police but he said he wasn't aware of that
 11 at the time. So the question is, was there not at least
 12 the possibility that some kind of action had taken place or
 13 incident had taken place at scene 1 which could, might well
 14 have involved loss of life on the part of the strikers?
 15 Let me just add one point to the question before you answer
 16 it. And that you must have known at the time or realised
 17 at the time that that was at least a possibility of what
 18 had happened.
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 ek wil dit asseblief net in die konteks verduidelik en dan
 21 sal u verstaan hoekom ons dit nie sodanig ervaar het nie.
 22 Voorsitter, ons is blind in die JOC in terme van dat ons
 23 net audio, ons kan net hoor oor die radio hoe gebeure
 24 homself afspeel. So Voorsitter, wat in ons kop is, is dat
 25 ons voorste linie het van openbare orde polisiëringslede,

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1 dat hierdie lede dan nou ook in gepantserde voertuie is en
 2 dat sowat 100 meter agter hulle is die TRT lyn.
 3 Voorsitter, en dat die draad nou uitgerol word en onthou
 4 net, die draad uitgerol in terme van wat ons in ons kop het
 5 en die plan is dat ses Nyalas draad uitrol wat dan by verre
 6 die grootste gedeelte van die polisie neutrale area
 7 afsonder. Voorsitter, so nou is daar 'n aanval. Die
 8 aanval in ons kop is, daar is 'n draad, dis persone wat
 9 naderbeweeg, die polisie is agter die draad en dit is
 10 openbare orde polisiëringslede. Voorsitter, en dan hoor
 11 ons woorde soos, waterkannon, ons hoor CS of gas, ons hoor
 12 stun grenades en ook dat die groep beweeg.
 13 [16:03] So wat ek probeer illustreer, Voorsitter, op
 14 daardie stadium is 'n aanval, die polisie is in 'n veilige
 15 area, daar is draad tussen hulle, die polisie tree op maar
 16 hulle tree op in terme van tipies openbare orde minder dan
 17 dodelike maatreëls. Voorsitter, so persone wat op daardie
 18 stadium op die grond gaan lê is, baie keer gaan persone, in
 19 uiteendryfaksies gaan hulle self op die grond lê totdat die
 20 aksie verby is. Dit kan ook persone wees wat geval het en
 21 potensieel ook beseer is, maar ons het nooit die aanduiding
 22 gekry, die gevoel op daardie stadium gegewe hoe ons dit
 23 sien afspeel, dat dit persone is wat gedood is nie.
 24 MR SEMENYA SC: Chair, we will see that
 25 all this evidence was earlier given to a very proposition

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1 coming from the Chair about this possibility. It's at
 2 record 8744 and we mention it purely to try and make use of
 3 the water in the bucket, as meaningful as we all can.
 4 CHAIRPERSON: That's a very good point
 5 you make, Mr Semanya, and on the note of that good point
 6 shall we take the adjournment till tomorrow morning at
 7 9:30.
 8 [COMMISSION ADJOURNED]
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