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COMMISSION OF INQUIRY

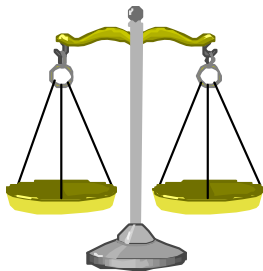
MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 146 11 NOVEMBER 2013 PAGES 16083 TO 16206



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1 [PROCEEDINGS ON 11 NOVEMBER 2013]
 2 [09:53] CHAIRPERSON: The Commission commences.
 3 We're starting a bit later than the scheduled time, but
 4 that is because we were requested only to start when we
 5 were told that the General had an opportunity to read all
 6 the documents to which his attention had been drawn
 7 yesterday, which form the subject matter of the cross-
 8 examination, and we were also then provided with copies of
 9 some at least of these documents, which we've had the
 10 opportunity to study, so that's the reason for the delay,
 11 for which I apologise to those who'd been waiting in the
 12 chamber since the scheduled time for us to begin. General,
 13 you're still under oath.
 14 WILLIAM MPEMBE: Yes, Chairperson.
 15 CHAIRPERSON: Ms Barnes, I understand
 16 you're going to cross-examine on behalf of AMCU. Is that
 17 correct?
 18 MS BARNES: Yes, thank you, Chair.
 19 CHAIRPERSON: Please do so.
 20 CROSS-EXAMINATION BY MS BARNES: Thank
 21 you. Good morning, General.
 22 MAJOR-GENERAL MPEMBE: Good morning,
 23 Advocate.
 24 MS BARNES: General, I'd like to start by
 25 referring you to a portion of your evidence-in-chief. It

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1 appears on page 11420 of the transcript. The transcript
 2 references that I will be referring to have been given to
 3 the people operating the screen, so I'm sure they'll be
 4 able to put that up for us. If we could have a look,
 5 General, at page 11420 from line 15, it is on the screen
 6 now, that it might be easier if you just look at the
 7 screen. Okay, you've given evidence here, Sir, about the
 8 events of the 16th of August, and you say the following,
 9 "Chairperson, we did receive the report that Mr Mathunjwa
 10 had gone to the koppie and he did address the protesters,
 11 and Mr Mathunjwa did come back to the JOC and when he
 12 arrived at the JOC, there he requested to see the
 13 Provincial Commissioner. I was in the JOC at that time.
 14 Then when I saw him, I went to him." You were then asked
 15 by your counsel, "Roughly what time are we talking about
 16 now?" and you say, "Chairperson, it was towards 1 o'clock,
 17 between 12 and 1 o'clock at that time." Your counsel then
 18 says, "Please continue." You say, "And when he arrived at
 19 the JOC he said 'I want to see the Provincial Commissioner'
 20 and I informed him that the Provincial Commissioner has
 21 gone to Ferncrest Hospital and he insisted to see the
 22 Provincial Commissioner. Then I phoned the Provincial
 23 Commissioner." And then your counsel goes on and says,
 24 "Sorry, did you tell him, or did you know why, for what
 25 purpose the Provincial Commissioner had gone to Ferncrest

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1 Hospital? Did you convey that to Mr Mathunjwa?" and you
 2 say, "Correct." And you were then asked, "What did you
 3 convey to him?" and you say that you told Mr Mathunjwa that
 4 the Provincial Commissioner had gone to visit Lieutenant
 5 Baloyi at the Ferncrest Hospital in Rustenburg. You recall
 6 that evidence?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 MS BARNES: Now what I'd like us to do,
 10 General, is to look at what you've said in your evidence
 11 there happened on this particular occasion, and look at
 12 what Mr Mathunjwa says happened and see if we can get to
 13 the bottom of it. So I'd like to start by taking you to Mr
 14 Mathunjwa's statement. It's exhibit NN. If you go to page
 15 22 of the statement to paragraph 72, Mr Mathunjwa says the
 16 following, he says, "I cannot remember the exact time, but
 17 I think it was about 12:30 when I told my colleagues that
 18 the sun was hot and we had given an undertaking that we
 19 would speak to the workers much earlier. We then left for
 20 the koppie with no police escort." Okay, so what Mr
 21 Mathunjwa is saying there is he estimates that he left to
 22 go and speak to the strikers at the koppie at about 12:30
 23 on the 16th of August. You see that?
 24 MAJOR-GENERAL MPEMBE: I see it,
 25 Chairperson.

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1 MS BARNES: And if you can perhaps just
 2 keep your finger on that page of Mr Mathunjwa's statement,
 3 because we're going to come back to it shortly, but if I
 4 could ask you to look at the same time at exhibit FFF25,
 5 this is the police occurrence book. If you could go to
 6 page 24 of that document, and on page 24 you'll see there's
 7 entry 1008, 1009, and then the one after that is 1010. I'd
 8 like you to just focus on those three entries. You'll see
 9 that the first entry just after half past 12, "Papa1
 10 records that the media are speaking to the AMCU leaders,"
 11 and then as the next entry is 1009 where there's a report
 12 again from Papa1, "reports that everything is still under
 13 control; AMCU is still addressing the people." You see
 14 that?
 15 CHAIRPERSON: Could we go back for a
 16 moment to look at 1006, just for a second? So it starts at
 17 1004, I'm told by Adv Hemraj. Let's look at 1004. So that
 18 tells us that at 11:55, that's 1004, Brigadier Tsiloane
 19 reported the president of AMCU just left the base on his
 20 own to visit the group. So we have Mr Mathunjwa leaving
 21 then at 5 to 12. Then 1006 tells us that, if the times are
 22 correct, that at 12:12, 12 minutes past noon, past 12
 23 o'clock, Mr Mathunjwa arrives and they addressed the media.
 24 It sounds as if Mr Mathunjwa must have gone with some other
 25 people, and they addressed the media, then went to the

<p style="text-align: right;">Page 16087</p> <p>1 group together with the media. The group were also at the 2 gathering. Then we move on to 1008, the one you were 3 dealing with, where 24 Media - presumably, is that Media 4 24? – at the group busy with AMCU leaders. 5 MS BARNES: Yes, thank you, Chair. 6 That's – 7 CHAIRPERSON: And then your client 8 according to 1009 was, Mr Mathunjwa rather, the president 9 of your client was still addressing the people at 5 past 1 10 and then there's a further note, the one that you were 11 focussing on, which is 1010, that at 13:25, it looks as if 12 something, it looks as if the address had ended by then 13 because it's in the past tense. Is that, am I reading it 14 correctly? 15 MS BARNES: Yes, it looks as though that 16 came to an end at around half past 1, if you look at entry 17 1010. 18 CHAIRPERSON: Well yes, it looks as if it 19 had already come to an end by 25 past 1 because it's, 20 there's a summary of what AMCU had promised, I presume Mr 21 Mathunjwa had promised that he and his colleagues would be 22 back after half an hour with the mine management. So 23 they'd promised to go off and see if they could get the 24 mine management to come back with them. Is that a 25 correct –</p>	<p style="text-align: right;">Page 16089</p> <p>1 page? Have you got paragraph 77 in front of you? 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 3 CHAIRPERSON: What he's saying is he left 4 at about half past 1 and the point put to you by Adv Barnes 5 is that that coincides more or less with what we see in the 6 police occurrence book. So we can accept, she will say, I 7 take it, that when Mr Mathunjwa says he left at about half 8 past 1, we can accept that he's correct. Am I reading your 9 mind correct, Adv Barnes? 10 MS BARNES: Yes, Chair. 11 CHAIRPERSON: I take it you'd agree with 12 that too? 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 14 it's more or less with some of the minor adjustments in 15 terms of the content thereof. 16 CHAIRPERSON: All she's concentrating - 17 MS BARNES: Yes, we're just talking about 18 the time now. 19 CHAIRPERSON: All she's concentrating on 20 at the moment is the times. 21 MAJOR-GENERAL MPEMBE: Okay. 22 CHAIRPERSON: So are you happy with that? 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 24 MS BARNES: So in summary from Mr 25 Mathunjwa's statement taken together with the occurrence</p>
<p style="text-align: right;">Page 16088</p> <p>1 MS BARNES: Yes. 2 CHAIRPERSON: - summary of what these 3 entries say? 4 MS BARNES: Yes, thank you, Chair. 5 You're with us, General; you agree that that's what the 6 occurrence book appears to reflect? 7 MAJOR-GENERAL MPEMBE: It's what the 8 occurrence book is supposed to – is reflecting, yes, 9 Chairperson. 10 MS BARNES: And you'll see, General, if 11 you go back to Mr Mathunjwa's statement, if you just go one 12 page on to page 23, in paragraph 77 you'll see that Mr 13 Mathunjwa says, "Again I'm not sure of the time, but I 14 think it was about half past 1 when I, together with the 15 other AMCU officials, left the koppie. I went back to the 16 base." So Mr Mathunjwa's recordal in his statement seems 17 to accord with what's contained in the occurrence book. 18 You agree? 19 MAJOR-GENERAL MPEMBE: I'm sorry, 20 Chairperson, I just want to check which paragraph on page 21 27. 22 MS BARNES: No, we're on page 23 of Mr 23 Mathunjwa's statement, page 23, paragraph 77. 24 CHAIRPERSON: You see there he says he 25 left at about – or get the page first. Have you got the</p>	<p style="text-align: right;">Page 16090</p> <p>1 book, it appears that Mr Mathunjwa left the base at around 2 12 to go to the koppie to address the strikers, and then he 3 returned to the base at about 1:30. You agree? 4 MAJOR-GENERAL MPEMBE: That's what, more 5 or less what is being said in the FFF25 and also Mr 6 Mathunjwa's statement, which is exhibit NN. 7 MS BARNES: Now if we can go on and look 8 at what Mr Mathunjwa says happened next. You can stay then 9 on page 23 of Mr Mathunjwa's statement, paragraph 77, and 10 he then says the following, "At the base I asked to see the 11 Provincial Commissioner. I had to report back to her in 12 terms of safety and security, as had been explained to me 13 the night before. We waited for about 30 minutes. I then 14 asked a black SAPS officer to ask for either of the 15 generals to come out and see me," and then in the next 16 paragraph, paragraph 78, Mr Mathunjwa then says that 17 General Mpeembe came out of the operations room, and if we 18 might pause there, we will deal with the conversation that 19 you had with Mr Mathunjwa shortly, but if we could just 20 pause at that point. Now we know, General, that the 21 special JOCCOM meeting that the SAPS held on the 16th of 22 August took place from half past 1 to 2 o'clock. Is that 23 correct? 24 MAJOR-GENERAL MPEMBE: That's correct. 25 MS BARNES: And so it appears then that</p>

<p style="text-align: right;">Page 16091</p> <p>1 while Mr Mathunjwa was waiting, he had come back from the 2 koppie and he was waiting at the JOC to report back to the 3 police, you together with your colleagues were in the 4 special JOCCOM meeting. Is that correct? 5 MAJOR-GENERAL MPEMBE: May you repeat the 6 question, Chairperson? 7 CHAIRPERSON: The question is that Mr 8 Mathunjwa says he came back at about half past 1. He 9 wanted to see either you or the Provincial Commissioner. 10 He was kept waiting for about half an hour till about 2 11 o'clock and then you'll see 78 says you then came out, and 12 what counsel is putting to you is that while he was waiting 13 outside from about, according to him from half past 1 to 2 14 o'clock, the JOC meeting, the special JOC meeting was 15 taking place, JOC committee meeting was taking place in the 16 JOC room. That's the point that's being put to you. That 17 seems right, isn't it? 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 19 because the JOC meeting took place at 13:30. 20 CHAIRPERSON: Yes, between 13:30 and 2 – 21 MAJOR-GENERAL MPEMBE: Yes. 22 CHAIRPERSON: And I think the evidence is 23 – well, I don't know whether you can confirm it, but the 24 evidence is that the JOC meeting continued, but the 25 decision had been conveyed to those present, and in fact</p>	<p style="text-align: right;">Page 16093</p> <p>1 outside the JOC. He then asks another officer to please go 2 in and call one of the generals, and eventually you come 3 out. But given that he waited for 30 minutes and given 4 that he arrived at half past 1, and given that the meeting 5 ran from half past 1 to 2, the simple point is that he's 6 waiting outside while the meeting is taking place. Isn't 7 that right? 8 MAJOR-GENERAL MPEMBE: Chairperson, I 9 cannot confirm that he was outside for – 10 CHAIRPERSON: You don't know, do you. If 11 you were inside the JOCCOM, if you were inside the JOC room 12 you wouldn't know necessarily who was waiting outside. So 13 you can't confirm that, but I take it you also can't 14 contradict it. So it's something in respect of which you 15 have no knowledge. Is that right? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 COMMISSIONER HEMRAJ: General, if you 19 look at your evidence in the transcript, it would appear as 20 well according to that timeframe you would have met with Mr 21 Mathunjwa before the 1:30 meeting that took place. 22 MAJOR-GENERAL MPEMBE: Correct, 23 Chairperson, it was when he was called by the Provincial 24 Commissioner in the morning. 25 COMMISSIONER HEMRAJ: No, you say that he</p>
<p style="text-align: right;">Page 16092</p> <p>1 Colonel Scott says that he was asked at about 2 o'clock to 2 expound what exactly was going to happen, what form the 3 operation would take. I think that's his evidence. So the 4 JOCCOM meeting as such had ended at about 2 o'clock. That 5 seems to be, all that happened after that was Colonel Scott 6 then gave a briefing, an exposition of what was to happen, 7 but the suggestion is that you left the JOCCOM, according 8 to Mr Mathunjwa, at 2 o'clock. Is that the point you're 9 making, Ms Barnes, or am I misreading you? 10 MS BARNES: Yes, the point is really that 11 while Mr Mathunjwa was waiting to give feedback, remember 12 he says he had to wait for 30 minutes, that the JOCCOM 13 meeting was taking place, that's the simple point. That 14 seems clear from the evidence. You accept that? 15 MAJOR-GENERAL MPEMBE: Chairperson, I 16 don't understand the feedback with regard to, because there 17 were times in the morning and then now he said he's going 18 to give the feedback. That's one maybe I want also the 19 clarity on the question. Was he going to give the feedback 20 to SAPS, or maybe – 21 MS BARNES: Well, General, we've seen 22 what he said in his statement. He says he comes back from 23 the koppie, he wants to speak to the police to give you 24 feedback. He asks to see the Provincial Commissioner, but 25 she doesn't see him. He then waits for about 30 minutes</p>	<p style="text-align: right;">Page 16094</p> <p>1 – sorry, if you look at the transcript at page 11420, the 2 timeframe you give is around between 12 and 1 o'clock. Is 3 that correct? So that would then have been before the 1:30 4 JOCCOM meeting according to the transcript. 5 MS BARNES: If we can go to – is it line 6 15? 7 MAJOR-GENERAL MPEMBE: Yes, I do see line 8 15. 9 MS BARNES: And if you go on a little bit 10 it says, "When he arrived at the JOC," so this is now Mr 11 Mathunjwa arriving, "he then requested to see the 12 Provincial Commissioner." So he made that request to you. 13 Is that right? Is that what you're saying in your 14 evidence? He asked you if he could see the Provincial 15 Commissioner? 16 MAJOR-GENERAL MPEMBE: Yes, he asked me 17 when I went to him. 18 MS BARNES: Was that now before the 19 special JOCCOM meeting started, or did you come out of the 20 meeting to speak to Mr Mathunjwa at some stage? 21 MAJOR-GENERAL MPEMBE: No, when I met Mr 22 Mathunjwa it was before the special JOCCOM meeting. 23 MS BARNES: So and that's when he asked – 24 CHAIRPERSON: Sorry, you get that from 25 line 24, I think. Mr Ngalwana asks, "Roughly at what time</p>

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1 are we talking about now?" At line 24 General Mpmembe says,
 2 "Chairperson, it was towards 1 o'clock, between 12 and 1
 3 o'clock at that time." So that's before the JOCCOM meeting
 4 which started at 1:30.

5 MS BARNES: And we know of course,
 6 General, that the Provincial Commissioner was present
 7 throughout this special JOCCOM meeting. Isn't that
 8 correct? She was in that meeting.

9 MAJOR-GENERAL MPEMBE: Yes, she was.

10 MS BARNES: Now presumably - you say that
 11 you spoke to Mr Mathunjwa before that meeting started and
 12 he asked to see the Provincial Commissioner. Presumably
 13 you would have been interested to get a report-back from Mr
 14 Mathunjwa about what had happened on the koppie. Isn't
 15 that right?

16 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 17 correct.

18 MS BARNES: So would you have asked Mr
 19 Mathunjwa what had happened at the koppie and what his
 20 report-back was? Did you ask him that?

21 MAJOR-GENERAL MPEMBE: Chairperson, Mr
 22 Mathunjwa wanted to see the Provincial Commissioner and
 23 then I did ask him, but he wanted to see the Provincial
 24 Commissioner.

25 CHAIRPERSON: I think the key point is at

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1 what time this discussion took place, whether it was before
 2 or after he'd been to the koppie. In other words, had he
 3 come back from the koppie wishing to report something, or
 4 had he not yet gone to the koppie? Now the answer to that
 5 appears to be in lines 15 and following from what you say
 6 on page 11420, where you say, "Chairperson, we did receive
 7 the report that Mr Mathunjwa has gone to the koppie and he
 8 did address the protesters.

9 [10:13] And Mr Mathunjwa did come back to the JOC and
 10 when he arrived at the JOC then he requested to see the
 11 Provincial Commissioner. So it does appear from that
 12 answer that this discussion took place after he returned
 13 from the koppie and we know from the police occurrence book
 14 roughly what time that was. So it does look as if your
 15 answer in lines 24 and following is wrong as far as times
 16 are concerned. I can understand it's difficult to estimate
 17 times correctly that's why one has things like occurrence
 18 books to check the accuracy or estimations of time. But it
 19 looks as if your answers in lines 24 and following about
 20 the time isn't right, but it does seem that this discussion
 21 took place after Mr Mathunjwa returned from the koppie.
 22 That seems right, am I correct?

23 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

24 MS BARNES: Okay, if we go on now,
 25 General, still on page 23 of Mr Mathunjwa's statement,

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1 paragraph 78 Mr Mathunjwa then says the following, "General
 2 Mpmembe came out of the operations room and said to me that
 3 he was no longer in charge of the operation and the
 4 Provincial Commissioner was in charge. I said to General
 5 Mpmembe that I would like to see the Provincial Commissioner
 6 and General Mpmembe said to me that the Provincial
 7 Commissioner was not around as she'd gone to an ANC torch
 8 bearing ceremony with the Premier of the North-West. Now
 9 did that conversation happen at the same time, before the
 10 JOCCOM meeting started or did this conversation happen
 11 after the JOCCOM meeting was finished?

12 MAJOR-GENERAL MPEMBE: After,
 13 Chairperson, as I said. It was before the JOCCOM meeting,
 14 sorry, Chairperson.

15 COMMISSIONER TOKOTA: Sorry, General, did
 16 you say that she went to a torch - did you say that to
 17 Mathunjwa?

18 MAJOR-GENERAL MPEMBE: Chairperson, I
 19 didn't say so, the answer is no to the question of
 20 Commissioner Tokota and the conversation with Mr Mathunjwa,
 21 as I said before, did take place before the JOCCOM meeting,
 22 but after he came from the koppie.

23 MS BARNES: Okay, so this conversation
 24 here and I understand that it's disputed, I understand that
 25 you say one thing about where the Provincial Commissioner

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1 was and Mr Mathunjwa says another thing and we're going to
 2 get to that in a moment, but this conversation in page 78
 3 happened before the JOCCOM meeting started. Is that right?

4 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

5 MS BARNES: I'm just trying to make sure
 6 that I understand your evidence, okay thank you. Now we
 7 see what Mr Mathunjwa says here in this paragraph, he says
 8 that he was told that by yourself that the Provincial
 9 Commissioner had gone to an ANC torch bearing ceremony with
 10 the Premier of the North-West. Now you say that that's not
 11 correct, is that right? You say no, in fact you told Mr
 12 Mathunjwa that she'd gone to the Ferncrest Hospital. Is
 13 that right?

14 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 15 that the Provincial Commissioner has gone to Ferncrest
 16 Hospital.

17 MS BARNES: And we know that when Mr
 18 Mathunjwa testified in this Commission which was I think in
 19 late November or early December last year, it was
 20 specifically put to him by your counsel that this was not
 21 correct. That you'd not told him that the Provincial
 22 Commissioner had gone off to a function, that you'd in fact
 23 said that she'd gone to hospital to visit a colleague.
 24 That was put to Mr Mathunjwa in his testimony by your
 25 counsel. Do you follow?

<p style="text-align: right;">Page 16099</p> <p>1 MAJOR-GENERAL MPEMBE: I follow what the 2 Advocate says. 3 MS BARNES: So presumably before Mr 4 Mathunjwa testified last year you would have consulted with 5 your legal representatives, you would have gone through Mr 6 Mathunjwa's statement and things that he said, particularly 7 about you, that were incorrect, you would have drawn your 8 attorney's and perhaps your counsel's attention to. Is 9 that right, is that what happened? 10 MAJOR-GENERAL MPEMBE: I don't understand 11 the question, Chairperson. 12 MS BARNES: The question is before Mr 13 Mathunjwa testified last year, before he gave his evidence 14 in this Commission you would presumably have had a meeting 15 with your lawyers and to go through Mr Mathunjwa's 16 statement so that you could point out to your lawyers 17 anything in his statement that was incorrect? 18 MAJOR-GENERAL MPEMBE: No, Chairperson, 19 the answer is no in the sense that by the time when I get 20 consulted with my legal representatives it was long after 21 Mr Mathunjwa has given evidence. 22 MS BARNES: But you would have told your 23 lawyers at some stage that Mr Mathunjwa's statement that 24 you told him the Provincial Commissioner had gone to an ANC 25 torch bearing event was wrong. You would have given your</p>	<p style="text-align: right;">Page 16101</p> <p>1 version as we'll see and it in fact only deals with the 2 events of Thursday the 16th. Do you have that document in 3 front of you? 4 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 5 MS BARNES: If you go to page 3 of the 6 document you'll the second entry at the top, it's at the 7 time of 10:24. You'll see that it's marked in red, I'm not 8 sure how it came to be marked in red, but in any event it 9 states as follows, "Arrival of MEC Baloyi, Premier and 10 ministers at premises at JOC for meeting." Do you see 11 that? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson, I see it. 14 MS BARNES: It seems that premier there 15 is actually – should be – is actually referenced to 16 Premier, the Premier of the province. Were you aware, 17 General, that on the morning of the 16th the Premier of the 18 North-West, MEC Baloyi and ministers had arrived at the 19 JOC for a meeting? 20 MAJOR-GENERAL MPEMBE: No, Chairperson, I 21 first see it here in the sentence. 22 CHAIRPERSON: The police counsel can tell 23 us what the significance of the fact that this entry – 24 what the significance is of the fact that this entry is in 25 red type. I think I know the answer, but I may be wrong.</p>
<p style="text-align: right;">Page 16100</p> <p>1 attorneys that information, correct? 2 MAJOR-GENERAL MPEMBE: Chairperson, I say 3 I was consulted with the legal team long after Mr Mathunjwa 4 has given evidence to the Commission. 5 MS BARNES: I'd like to take you now, 6 General, to another exhibit – 7 CHAIRPERSON: Sorry, are you going to put 8 to him at some stage what would happen during the cross- 9 examination of Mr Mathunjwa by the police council on this 10 point? You don't have to do it now, but I take you're 11 going to do it at some stage are you? 12 MS BARNES: Yes, I will revisit this to 13 some extent, Chair. 14 CHAIRPERSON: The document you want to 15 put to him is this one of the new documents? Must I give 16 it an exhibit number? 17 MS BARNES: No, it's not. It's in fact 18 JJJ128. 19 COMMISSIONER HEMRAJ: Ms Barnes, what's 20 JJJ128? 21 MS BARNES: JJJ128 is another, apparently 22 another version of the SAPS occurrence book, it was 23 obtained off Colonel Scott's hard drive, but it relates – 24 so you'll see that it looks similar to FFF25, General, that 25 we looked at earlier. But it's a somewhat different</p>	<p style="text-align: right;">Page 16102</p> <p>1 But can counsel for the police perhaps tell us? 2 MS BARNES: Chair, perhaps I should also 3 indicate that this entry does not appear in FFF25, so – 4 CHAIRPERSON: No, no, no, that's the 5 point. It's an addition, but I seem to remember we were 6 given an explanation at some point about what these red 7 entries are about, but perhaps counsel for the police can 8 tell us. If he can't, he can take instruction. 9 MR MATHIBEDI SC: Mr Chairman, I'm 10 instructed that these other entries that were made by 11 Brigadier Pretorius after the event of the 16th and I think 12 she'll – and this entry is wrong because the evidence will 13 be that the Premier and the MEC arrived at Marikana after 14 the 16th, not on the 16th. 15 CHAIRPERSON: Thank you. 16 MS BARNES: If I could at this stage 17 introduce an article, this would be a new exhibit. It's an 18 article that comes out of the Taung Daily News, I'm not 19 quite sure what the exhibit would be. 20 CHAIRPERSON: Well let's ask Ms Pillay, 21 she always comes to our assistance. Would this be HHH56? 22 MS PILLAY: That's correct, Chair. 23 CHAIRPERSON: It's an article from the 24 Taung Daily News of the 16th of August 2012 and it's a copy 25 that's been downloaded from the Internet as far as I can</p>

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1 see. Is that correct, Ms Barnes?

2 MS BARNES: Yes, thank you, Chair. So

3 General, you'll see that this is entitled Kgosi Maubane

4 Elected As New Chairperson For Traditional Healers and -

5 MR MATHIBEDI SC: Traditional Leaders

6 actually. It's Traditional Leaders, not Healers.

7 MS BARNES: I beg your pardon.

8 CHAIRPERSON: Did you say healers? I

9 thought you said leaders.

10 MS BARNES: I thought I said leaders.

11 CHAIRPERSON: It wasn't too clearly

12 actually. Anyway now it is clear. So it's a very

13 important position that the chairperson was elected to,

14 that the chief was elected to but the new chairperson of

15 the National House of Traditional Leaders for the next four

16 years from August 2012.

17 MS BARNES: And this article, General,

18 describes an event that took place in Pretoria on the 16th

19 of August in order to commemorate or celebrate this

20 election and the Premier of the North-West was present at

21 that event and spoke and congratulated the new incumbent.

22 That's the essence of the article. I presume you have had

23 an opportunity to read it.

24 CHAIRPERSON: Where do you see that in

25 the article, I'm not sure that the article says that the

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1 Premier was present in Pretoria. I may have misread it but

2 certainly the election took place it would seem on

3 presumably the 15th of August in Pretoria. It actually says

4 on Thursday, so it must have been the 16th then. Or unless

5 it was the previous Thursday. Anyway there's an election

6 in Pretoria and this report says that the Premier of the

7 North-West Province congratulated Kgosi Phopolo Pontsho

8 Maubane on his election. Unless I misread it, it doesn't

9 say that she was in Pretoria when she congratulated him.

10 Am I right, or am I wrong?

11 MS BARNES: Well, Chair, there's a

12 picture of the Premier on the article.

13 CHAIRPERSON: Yes, I understand, but that

14 may be a studio picture that was on file in the newspaper.

15 If the newspaper report says in turn she was there in

16 Pretoria and shook him by the hand and congratulated him

17 then and there then it's fine. But if it simply says she

18 congratulated him – but what puzzles me about it is it's

19 dated the 16th of August, so it's the Taung Daily News of

20 the 16th. Now we know the 16th was a Thursday and it says

21 that he was elected during an inauguration of the House in

22 Pretoria on Thursday. Now either that would be the

23 previous Thursday if the newspaper appears in the morning,

24 or possibly the morning of the 16th if the newspaper appears

25 in the afternoon. But do we know what the position is?

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1 MS BARNES: Chair, we don't know much

2 more than what is contained in this article at this stage.

3 It's certainly the way we read the article there was an

4 event to commemorate this election held on Thursday the 16th

5 in Pretoria and there's a reference to the Premier having

6 congratulated the incumbent.

7 CHAIRPERSON: The way I read it the

8 election took place on Thursday. The members of the House

9 were inaugurated on the Thursday which was either the 16th

10 or the 9th and once they'd been inaugurated they then had to

11 elect a chairperson and deputy chairperson. The election

12 took place after Judge Mabusa had sworn the members in.

13 That's the inauguration of the members and Kgosi Maubane

14 was elected. The report also seems to be wrong, he seems

15 to have got less votes, fewer votes rather than the person

16 who wasn't elected, which indicates how reliable the report

17 is. But anyway I understand the point you're trying to

18 make is that you say this report indicates that the Premier

19 wasn't there, she was in Pretoria. I'm putting it to you

20 the report doesn't seem to say that and there are a whole

21 lot of problems about which Thursday it is, but maybe you

22 must do some further investigation before you return to the

23 charge on this particular point.

24 MS BARNES: So we won't take this any

25 further at this stage.

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1 CHAIRPERSON: - think you can. It does

2 sound as if this cross-examination point is a bit of a non-

3 event for two reasons. Firstly the one that we've just

4 covered and secondly counsel for the police says that that

5 entry which Brigadier Pretorius made subsequently, which is

6 reflected in the red ink entry, is in fact wrong anyway

7 because the Premier wasn't there on the Thursday morning.

8 Is that correct, was it the following day the 17th?

9 MR MATHIBEDI SC: That's correct, Mr

10 Chairman.

11 CHAIRPERSON: Did she come on the 17th?

12 The Premier and the ministers and the MEC did they come on

13 the 17th, the following day or don't you know that?

14 MR MATHIBEDI SC: I don't know. We'll

15 take instruction –

16 CHAIRPERSON: Well we'll find out. If

17 it's relevant we'll find out.

18 MR MATHIBEDI SC: Thank you, Mr Chairman.

19 CHAIRPERSON: But anyway this point is a

20 non-event, perhaps you should move onto the next one which

21 hopefully will be an event.

22 MS BARNES: Chair, just for the record,

23 we have requested diaries and chopper logbooks and so on so

24 that we can attempt to get to the bottom of the movements

25 of the various actors in relation to this. So we'll –

<p style="text-align: right;">Page 16107</p> <p>1 CHAIRPERSON: If we hear no more of the 2 point from you we will assume that the point is a non- 3 event. 4 MS BARNES: General, if we can move now 5 to the first statement that you made, are you wanting to 6 say something, General? 7 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 8 Chairperson, Mr Mathunjwa's statement on paragraph 78 he 9 speaks about – 10 CHAIRPERSON: Paragraph? 11 MAJOR-GENERAL MPEMBE: 78. 12 CHAIRPERSON: 78, thank you. 13 MAJOR-GENERAL MPEMBE: - he speaks about 14 the torch bearing and the torch bearing and the 15 inauguration of the House are two different ceremonies. 16 The torch bearing in North-West was attended by the 17 President and he addressed in Mafikeng. I'm not sure, 18 Chairperson, about the time. I'm just assisting that we 19 should – 20 CHAIRPERSON: We know the President on 21 that day was in Mozambique I think. We also know that, if 22 we could take judicial notice of it that the ANC torch, the 23 centenary torch to celebrate the centenary of the ANC 24 travelled all over the country. 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>	<p style="text-align: right;">Page 16109</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, correct, 2 Chairperson. In addition on this article I see the badge 3 of the South African Police Service. I don't know why is 4 it here and I'm really shocked about this badge here which 5 has nothing to do with – so maybe that's why it's being 6 used as an exhibit. 7 CHAIRPERSON: I think you've misread it. 8 That's the second report, the second report talks about the 9 suspension of the North-West Transport Investment Board and 10 its subsidiary companies. Suspension took place, 11 suspension was effected by the Executive Council of the 12 North-West Province and that's the next story on the 13 website of Taung Daily News for the 16th of August. It's 14 not relevant at all. 15 [10:33] What we have to look at stops above that green 16 about Bombela chiefs, Bobby Motaung arrested, SARS 17 corruption, Jimmy Mohala, ANC, that's where that, the next 18 report starts, has got nothing to do with us at all. So 19 don't worry about the SAPS badge, it's not relevant for our 20 purposes. 21 MS BARNES: General, if we can look now 22 at your statement, the first statement that you've made in 23 this Commission, it's exhibit GGG12, if you – 24 CHAIRPERSON: This is his first 25 statement, I think this is his second statement, his first</p>
<p style="text-align: right;">Page 16108</p> <p>1 CHAIRPERSON: And it spent some time in 2 each province. 3 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 4 CHAIRPERSON: And it spent some time in 5 the North-West Province. 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. 8 CHAIRPERSON: And as far as I could see 9 from the little research I did which I didn't bother about 10 because for the reasons will become apparent in a moment, 11 it wasn't in Rustenburg on the 16th. 12 MAJOR-GENERAL MPEMBE: That's correct, 13 Chairperson. 14 CHAIRPERSON: In fact on the 16th it went 15 over the border I think, to the Northern Cape but certainly 16 it wasn't in Rustenburg. So that does seem to be what is 17 known in Afrikaans as a dwaalspoor at this particular point 18 about the torch. But certainly the President may well have 19 attended a function in the North-West Province when the 20 torch was here, was in the North-West Province but it 21 obviously couldn't have been the 17th because A, he was in 22 Mozambique at the time and as far as I could ascertain from 23 my own Google research the torch went to the Northern Cape 24 on that day. So I don't know whether your understanding is 25 the same as mine but –</p>	<p style="text-align: right;">Page 16110</p> <p>1 statement was a handwritten one. Unless this is a typed 2 copy of it. 3 MS BARNES: That may be so, Chair, 4 there's the supplementary statement which followed this. 5 There may have been – 6 CHAIRPERSON: Anyway – 7 MS BARNES: - an initial handwritten one. 8 This is the first substantial – 9 CHAIRPERSON: Anyway the way to identify 10 it is to give the date by which it was made. 11 MS BARNES: Yes, and it does have an 12 exhibit number, it's GGG12. 13 MAJOR-GENERAL MPEMBE: I've got it, 14 Chairperson. 15 MS BARNES: On page 15, at paragraph 31, 16 you says, "At about half past eight on the same day," and 17 if you just - 18 CHAIRPERSON: Please wait for us to get - 19 MR SNYMAN SC: Oh, I apologise. 20 CHAIRPERSON: - to the section on the 21 screen, then we can listen to you, Advocate, at the same 22 time. Now would you now please read it to us? 23 MS BARNES: Paragraph 31, "At about half 24 past eight on the same day, I arranged through the mine 25 management a meeting for the following with the management</p>

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1 and the two Union presidents." If you –
 2 CHAIRPERSON: Relates to Tuesday the 14th
 3 of August.
 4 MS BARNES: That's right, I just wanted
 5 the witness to perhaps just look at the preceding paragraph
 6 and just confirm that you are there talking about the 14th
 7 of August. Is that right?
 8 MAJOR-GENERAL MPEMBE: It's paragraph 31,
 9 Chairperson, I just want to –
 10 MS BARNES: Yes.
 11 CHAIRPERSON: And the suggestion is if
 12 you look at paragraph 30, you will see that you are talking
 13 in paragraph 31, about what happened on the 14th, on the
 14 evening of the 14th, round about 08:30 as I would describe
 15 it and 20:30 as you would.
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson, I see it.
 18 MS BARNES: You say that you made the
 19 arrangement through mine management, who in particular did
 20 you put this request to?
 21 MAJOR-GENERAL MPEMBE: Mr Kwadi,
 22 Chairperson.
 23 MS BARNES: And what precisely did you
 24 ask Mr Kwadi to do?
 25 MAJOR-GENERAL MPEMBE: Chairperson, my

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1 answer will be, is still yes, it's Mr Kwadi, and I'll
 2 explain even the circumstances under which as I have
 3 already testified about it. I did testify to the
 4 Commission that when the Provincial Commissioner arrived on
 5 the 13th, we had a meeting with the mine management which it
 6 was made mention of faceless people. Now following up with
 7 that, after the incident of the 13th, I wanted to see now
 8 the mine management following up the faceless and then we
 9 brought photographs of the mine – of the strikers, and I
 10 said "yesterday, you said you don't know the people, today,
 11 at least we got the photos and we also through your help
 12 established that some of these people are from AMCU and
 13 some are from NUM." Then I, we have to make sure that we
 14 talk to the union leaders and then I requested that
 15 meeting.
 16 MS BARNES: Okay, I am really just
 17 wanting to get specific details about your request to Mr
 18 Kwadi. Did you speak – did you make the request -
 19 CHAIRPERSON: I am sorry to interrupt
 20 you, my recollection is, the same as my colleagues'
 21 recollection I think, is that the story about faceless
 22 people was first aired, if that is the right word, or
 23 raised by the people from Lonmin on the 13th, the Monday
 24 night, and the National Commissioner was present as was the
 25 Provincial Commissioner and you and various other people.

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1 It may well have been mentioned again on the Tuesday, but
 2 the evidence we have is that Lonmin made that point first
 3 on the evening of Monday the 13th, and as I say, they have
 4 repeated it again, and then – but in fact my recollection
 5 is, they were then shown photographs the following day, and
 6 they then had to admit that they were wrong, that some of
 7 the people were people known to them as being their
 8 employees. So anyway, I don't know that this is the point
 9 Ms Barnes is busy with, but it seems to be a point that we
 10 must get right while we are busy with it.
 11 MAJOR-GENERAL MPEMBE: Chairperson, it
 12 was also raised when the National Commissioner was there.
 13 As I said, it was firstly raised of the meeting with the
 14 Provincial Commissioner when we arrived at Lonmin, and then
 15 after the incident, when the National Commissioner arrived,
 16 we briefed him, and we also said that the Lonmin management
 17 said they were faceless. And then we spoke to the Lonmin,
 18 and then, then the National Commissioner said "in the
 19 meeting that I am going to meet with them I will also raise
 20 it with them." And it was on the basis of my request in
 21 particular that now that we have established that they are
 22 the AMCU and NUM members, I would like personally to talk
 23 to the union leaders, so that the problem should be
 24 resolved in a negotiated manner.
 25 MS BARNES: Yes, thank you, General. I

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1 do have understand your motivation for wanting to organise
 2 such a meeting, what I am trying to establish is the
 3 precise details of how you did that through Mr Kwadi. Did
 4 you speak to – did you ask Mr Kwadi over the telephone to
 5 arrange this meeting, or did you speak to him in person
 6 about it?
 7 MAJOR-GENERAL MPEMBE: Chairperson, if I
 8 remember very well, I did it in person but it was not only
 9 Mr Kwadi, but specifically I mentioned Mr Kwadi because he
 10 was working with the union members.
 11 MS BARNES: And did Mr Kwadi then return
 12 to you and confirm that he had arranged such a meeting?
 13 MAJOR-GENERAL MPEMBE: Chairperson, I was
 14 only informed that the meeting is going to take place, and
 15 the time, and that was to me an answer of my request.
 16 CHAIRPERSON: When did you get that
 17 information?
 18 MAJOR-GENERAL MPEMBE: Chairperson, it
 19 was already on the following day, on the 15th to say,
 20 General Mpeembe, the meeting then is arranged for this time.
 21 That was the time when we were still at the meeting, then I
 22 was informed by Mr Kwadi himself.
 23 CHAIRPERSON: Thank you.
 24 MS BARNES: So Mr Kwadi never actually
 25 said to you in terms that he had contacted Mr Mathunjwa and

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1 asked him to attend a meeting, did he?
 2 MAJOR-GENERAL MPEMBE: No, Chairperson,
 3 and I did not ask, only what I asked him, is about the
 4 meeting, and if the meeting is arranged, then I thought
 5 that it's him who arranged it.
 6 CHAIRPERSON: He told you that on the
 7 morning, some time on the 15th?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 CHAIRPERSON: Well, you see, the evidence
 11 is, I don't know if you remember this, the evidence is that
 12 on a radio programme The Forum at eight, on SAFM, on the
 13 morning of the 15th, just after eight o'clock, the people
 14 who took part in the programme were Mr Sekwane of NUM and
 15 Mr Mathunjwa of AMCU and a representative of Lonmin, under
 16 the chairmanship of Mr Malini Gwala who was at that stage
 17 the presenter of the SAFM programme and at the end of that
 18 programme, we have a transcript of it, at the end of that
 19 programme Mr Gwala suggested that the union presidents
 20 should go there to Marikana to deal with the problem and
 21 address the strikers, and we have read the transcript, and
 22 eventually they both agreed. I think Mathunjwa was happy
 23 to go immediately, and Mr Thekwana took a time. At the end
 24 of the programme they agreed to go. There was a
 25 representative of Lonmin also taking part in the programme.

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1 One doesn't get the impression from the programme that
 2 there was an arrangement already in place. It seems to
 3 have been as far as the trade union presidents were
 4 concerned, to have been the agreement to go, seemed to be
 5 in consequence of the imputation or the urging by Mr Gwala
 6 but again I don't think anything turns on that. Clearly
 7 after the programme, which is nine o'clock, the presidents
 8 had agreed to go, and arrangements clearly were being made
 9 to take them there. So again, I don't anything turns on
 10 it, but while we are busy with it, we should get the facts
 11 right.
 12 MS BARNES: Yes, that's correct, Chair,
 13 thank you. Mr Mathunjwa's evidence was of course that the
 14 only reason he ended up on Lonmin on that day, was in
 15 response to a challenge by Mr Gwala. Mr Mathunjwa did not
 16 give any evidence about having been requested to attend a
 17 meeting by Lonmin, but you wouldn't be able to help us any
 18 further with that, presumably General. You made a request
 19 to Mr Kwadi, but what he did after that, you have no
 20 knowledge of. Is that right?
 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 22 but I also need to comment on this, to show that I did
 23 really take the initiative. The SAPS, the South African
 24 Police Service did not take part to Mr Gwala's talk shop.
 25 CHAIRPERSON: What is it, before the

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1 programme had even taken place the previous day?
 2 MAJOR-GENERAL MPEMBE: Yes.
 3 CHAIRPERSON: You had set in motion the
 4 arrangements – set in motion the process which was supposed
 5 to lead to the meeting. That's your point.
 6 MAJOR-GENERAL MPEMBE: Yes. And I need
 7 also to put it on record that Mr Mathunjwa in his
 8 statement, and it is also recorded on the OO4, his
 9 recording, hence the meeting was handed over to me to chair
 10 the meeting. That was a precise evidence that the meeting
 11 was actually arranged by SAPS.
 12 MS BARNES: Well, it's not correct to say
 13 that it was arranged by SAPS, General. What you've told us
 14 is that you asked Mr Kwadi to arrange a meeting with the
 15 two union presidents, but what Mr Kwadi did after that, you
 16 have no detailed knowledge of, isn't that correct?
 17 MAJOR-GENERAL MPEMBE: No, Chairperson,
 18 this is not what I am saying, but what I am saying is 004
 19 is very clear and Mr Mathunjwa also in his statement he
 20 said the meeting that was attended it was handed over to
 21 the police leader, that is Major-General Mpeembe. So the
 22 meeting could not have been handed over to me, if I did not
 23 personally make the arrangements.
 24 MS BARNES: We accept that you chaired
 25 the meeting, but I think we can move on at this stage,

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1 General. If you can look at page 16 of your statement,
 2 GGG12, page 16, paragraph 36, you say the following, "At
 3 about four o'clock the leadership of both unions was
 4 conveyed to the koppie separately in a police Nyala to
 5 address the group of about 2 000 to 3 000 protesters
 6 gathered at the koppie." And it then goes on, turning my
 7 page, "In each instance, Mr Jomo Kwadi of Lonmin and I
 8 followed the Nyala on foot, accompanied by police members.
 9 We were both present when each delegation addressed the
 10 protesters. Each member was allowed 15 minutes to address
 11 the protesters." Do you see that?
 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 13 I see it.
 14 MS BARNES: So you and Mr Kwadi would
 15 have heard what the Union president said to the protesters.
 16 Is that right?
 17 MAJOR-GENERAL MPEMBE: No, Chairperson.
 18 We were not in such a proximity but when I say we followed
 19 them we couldn't stay where the Nyalas, where the vehicles
 20 were transporting, we came nearer, but the way in a Nyala
 21 closer to the protesters.
 22 MS BARNES: "Mr Mathunjwa used a
 23 loudhailer to address the protesters," isn't that right?
 24 MAJOR-GENERAL MPEMBE: That's correct,
 25 Chairperson.

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1 MS BARNES: And when the strikers
2 responded to Mr Mathunjwa, they also took the loudhailer
3 and used the loudhailer and used the loud hailer in order
4 to respond to him. Were you aware of that?
5 MAJOR-GENERAL MPEMBE: What I was aware
6 is the cheering of the crowd when Mr Mathunjwa spoke
7 because that was obvious.
8 CHAIRPERSON: What counsel wants to know
9 from you is, did you see that when Mr Mathunjwa replied, he
10 used a loudhailer? Or were you not able to see that from
11 where you were standing?
12 MAJOR-GENERAL MPEMBE: Chairperson, I
13 could see it.
14 MS BARNES: You could see that
15 loudhailers were being used but you couldn't hear what was
16 being said.
17 MAJOR-GENERAL MPEMBE: Chairperson, there
18 were some of the information that I heard, there were some
19 that I could not hear because of the crowd that was jeering
20 on that day.
21 MS BARNES: We know that there were
22 police officers in the Nyala with Mr Mathunjwa, one of
23 those, I think it was, can you confirm for us that Papa 1
24 was the Nyala that Mr Mathunjwa was in on that occasion?
25 MAJOR-GENERAL MPEMBE: Yes, it is

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1 correct, Chairperson, it is Papa 1 of Brigadier Calitz's
2 Nyala.
3 MS BARNES: We know that, I think it's
4 Colonel MacIntosh was in that Nyala at the time, is that
5 correct?
6 MAJOR-GENERAL MPEMBE: What I know is
7 that Colonel MacIntosh, Chairperson, was posted in that
8 Nyala, but at the time of the address, I think he might
9 confirm that he was there. But I know that in terms of the
10 posting he was posted to be with Papa 1.
11 MS BARNES: Brigadier Calitz, was he in
12 Papa 1 at that time?
13 MAJOR-GENERAL MPEMBE: I may say yes,
14 Brigadier Calitz was in charge of Papa 1 but when Mr
15 Mathunjwa was addressing, I don't know whether was in the
16 Nyala or outside the Nyala.
17 MS BARNES: If you have regard to exhibit
18 FFF25, which is the occurrence book that we looked at
19 earlier, you will see that there's an entry at page 19,
20 it's entry 228, and this is the report by the police
21 officers that were in Papa 1 as to what had transpired. Do
22 you see that?
23 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
24 I just want to confirm is OB entry 231.
25 MS BARNES: At 228, and it says,

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1 "Situation report. Papa 1 reported that they concluded
2 that they will meet tomorrow at nine o'clock and they will
3 feedback from management on what they've said today."
4 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
5 I could see it.
6 MS BARNES: So that entry would have been
7 made by the police officers who were in the Nyala who heard
8 what was said, is that correct?
9 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
10 from the reading of the entry.
11 MS BARNES: Presumably you would have
12 discussed with the police officers who were in the Nyala
13 what was said afterwards, is that correct?
14 MAJOR-GENERAL MPEMBE: No, Chairperson.
15 COMMISSIONER HEMRAJ: I am sorry, can I
16 just clarify something? The question you put was the entry
17 would have been made by whom? Sorry, can I just have
18 clarity
19 MS BARNES: By the police officers who
20 were in Papa 1.
21 CHAIRPERSON: No, no, the entry must
22 surely have been made by the police officer in the JOC,
23 writing down what had been reported from Papa 1, the actual
24 recording was in the JOC.
25 MS BARNES: Yes, I put it incorrectly.

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1 The information –
2 CHAIRPERSON: But what was recorded was
3 information that had been received from Papa 1.
4 MS BARNES: The information would have
5 been received from the police officers in Papa 1. Now
6 presumably, you would have discussed the exchange, that Mr
7 Mathunjwa had with the strikers with the police officers
8 who had been in Papa 1? Who had been right there and had
9 heard what was said. Did you do that?
10 MAJOR-GENERAL MPEMBE: No, Chairperson.
11 MS BARNES: Why not?
12 MAJOR-GENERAL MPEMBE: Chairperson,
13 according to GGG4, Mr Mathunjwa spoke to the generals
14 personally, so it was better for me to hear if I may be
15 allowed by the Commission to use the word "from the horses
16 mouth." I didn't want to hear from the hearsay. I wanted
17 to hear from Mr Mathunjwa himself, and we met after he
18 addressed the people and that's why I didn't ask the
19 police.
20 MS BARNES: We know that you had a de-
21 briefing after that exchange, and we have a transcript to
22 that, and it's not necessary for us to go through that. We
23 know what was said there, but it's clear from that
24 transcript General, that you were not unhappy or annoyed
25 with Mr Mathunjwa at all in relation to what he said. Am I

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1 right?

2 [10:53] MAJOR-GENERAL MPEMBE: Yes, Chairperson,

3 I used the words to be precise, "I am impressed." I am

4 sorry, I just want to add to say, I said I'm impressed,

5 even if after I played the devil's advocate to Mr

6 Mathunjwa.

7 MS BARNES: If we can go now to exhibit

8 GGG5, this is the statement of the Provincial Commissioner,

9 General Mbombo, and if we go to page 7 of that statement –

10 CHAIRPERSON: Which paragraph do you want

11 to refer to in particular?

12 MS BARNES: It's paragraph 18, General

13 Mbombo says the following, "On Wednesday, the 15th of

14 August, while I was attending the National SAPS Management

15 Forum meeting in Midrand, I received telephonic feedback

16 from Major-General Mpeembe to the extent that there had been

17 an agreement between AMCU and SAPS that the following day

18 at 9 the protesters shall lay down their weapons and

19 disperse peacefully." Now General, is that what you told

20 the Provincial Commissioner?

21 MAJOR-GENERAL MPEMBE: Correct,

22 Chairperson, to indicate to the Provincial Commissioner

23 that the protesters according to Mr Mathunjwa are prepared

24 to lay down their weapons the following day. So as a

25 result of that then I gave the Provincial Commissioner the

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1 feedback.

2 MS BARNES: Yes, but did you actually say

3 to the Provincial Commissioner that there was an agreement

4 between the police and AMCU that the strikers would lay

5 down their weapons the next day? Are those the words that

6 you used?

7 MAJOR-GENERAL MPEMBE: These are the

8 words that I used by the Provincial Commissioner to

9 interpret what I'm saying, but the feedback that I received

10 from Mr Mathunjwa is that the protesters tomorrow were

11 going to lay down their weapons. But as a result of that I

12 gave to the Provincial Commissioner the feedback, so the

13 Provincial Commissioner, if she interpreted it as an

14 agreement, it is also correct in the sense that we expected

15 that the protesters were going to lay their weapons down

16 tomorrow.

17 CHAIRPERSON: What you're saying is you

18 didn't use the word "agreement"?

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson.

21 CHAIRPERSON: That may be the way she

22 interpreted it.

23 MAJOR-GENERAL MPEMBE: Correct,

24 Chairperson.

25 CHAIRPERSON: Yes, and what you were

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1 really conveying – am I correct? – was the result of the

2 exchanges between you and Mr Mathunjwa? Is that right?

3 MAJOR-GENERAL MPEMBE: Correct,

4 Chairperson.

5 COMMISSIONER HEMRAJ: Might you have said

6 that Mr Mathunjwa told you that the strikers had agreed to

7 put down their weapons at 9 o'clock the next morning?

8 MAJOR-GENERAL MPEMBE: Correct,

9 Chairperson, that could be found on the, I think it's O-O,

10 it's GGG4, from page 12 upwards, that's where he was really

11 informing us –

12 CHAIRPERSON: We have got the transcript

13 of what he told you and I think we've also got a

14 transcript, haven't we, of what happened when he spoke to

15 the strikers. So we don't have to speculate. Is this

16 perhaps a note upon which we can take the tea adjournment?

17 MS BARNES: Yes, Chair.

18 [COMMISSION ADJOURNS COMMISSION RESUMES]

19 [11:22] CHAIRPERSON: The Commission resumes.

20 Major-General, you're still under oath.

21 WILLIAM MPEMBE: Yes, Chairperson.

22 CHAIRPERSON: Ms Barnes.

23 CROSS-EXAMINATION BY MS BARNES (CONTD.):

24 Thank you, Chair. General, if I might take you back for a

25 minute to your special JOCCOM meeting that took place from

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1 1:30 to 2 o'clock on the 16th, if you could go to the minute

2 of that meeting, it's JJJ126, and I'd like you to look at

3 paragraph 3 in particular, so there's the attendance list

4 and then just below that paragraph 3. I'd like to read

5 that for you. "The Provincial Commissioner, Lieutenant-

6 General Mbombo, informed the meeting that she was involved

7 in meetings with the leadership of AMCU, namely Mr Joseph

8 Mathunjwa, to resolve the current situation, for the whole

9 morning. Mr Mathunjwa was supposed to indicate at 9

10 o'clock whether the protesters on the koppie were prepared

11 to lay down their weapons. Mr Mathunjwa failed to provide

12 feedback as agreed." Now my question, General, is when the

13 Provincial Commissioner said this in the meeting, why did

14 you not say –

15 CHAIRPERSON: No, no, no, firstly – no,

16 that's not good cross-examination. You've got to get him

17 to say whether the minute is correct. You can't ask the

18 question assuming it is. It may well be, but you've got to

19 ask the question first.

20 MS BARNES: I thought this was one of the

21 minutes that was in fact correct, but let me ask you –

22 CHAIRPERSON: I don't think any

23 assumptions of that kind can be made one way or the other.

24 MS BARNES: You agree that that's what

25 the Provincial Commissioner said in the meeting, General?

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1 MAJOR-GENERAL MPEMBE: Chairperson, I
 2 will say yes, but there is one clarity that I would like to
 3 get, because JJJ126, I remember this was EE something when
 4 I was testifying, so I see JJ today. I just want to make
 5 sure is it the same one that I testified in my evidence-in-
 6 chief with? Because now this is another exhibit number.
 7 MS BARNES: Well, it appears that there
 8 are two exhibits. Perhaps I'll have to clarify, I'll have
 9 to clarify whether there's also an exhibit that's called
 10 EE, but can you tell us –
 11 CHAIRPERSON: [Microphone off, inaudible]
 12 entitled to be satisfied that this is indeed the minute
 13 before you ask him to comment on it. He's raised the
 14 query. It's not an unreasonable query. Perhaps Ms Pillay
 15 with her usual mastery of these things can tell us the
 16 answer.
 17 MS BARNES: It seems we have rather
 18 quickly been able to establish that you're quite correct,
 19 General, there is an EE exhibit, which my colleague tells
 20 me is identical to JJJ126. Perhaps Ms Pillay could confirm
 21 that for us, just so that we're absolutely certain?
 22 MS PILLAY: Chair, the document we have
 23 been working from is exhibit EE. I think there is one very
 24 minor change in the current document, but the one the
 25 witnesses have been testifying from is exhibit EE. The

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1 paragraph is identical though, the paragraph on which Ms
 2 Barnes is currently cross-examining.
 3 CHAIRPERSON: Well, I think he should be
 4 shown EE, seeing that's the one that he's concerned about.
 5 What's the number? EE what? EE1, is it?
 6 MS PILLAY: EE.
 7 MS BARNES: It seems it's just EE.
 8 CHAIRPERSON: Just EE, no number.
 9 Alright, okay.
 10 MS BARNES: Perhaps we could go to EE -
 11 CHAIRPERSON: Show him EE, just to
 12 satisfy himself, so he can satisfy himself. JJJ wasn't
 13 before us in any event when he was testifying previously.
 14 So let him look at EE and then we can – this one is, I
 15 think taken from Colonel Scott's computer, and I think it
 16 was put in for reasons connected with that, but let's look
 17 at the EE, so there you are, exhibit EE. There you see
 18 para 3 on the screen now, and that does contain the words
 19 which were in the one we saw earlier, but let me just
 20 repeat them for the benefit of those who haven't been able
 21 to follow it properly. "The Provincial Commissioner,
 22 Lieutenant-General Mbombo, informed the meeting that she is
 23 involved in meetings with the leadership of AMCU, namely Mr
 24 Joseph Mathunjwa, to resolve the current situation, for the
 25 whole morning. Mr Mathunjwa was supposed to indicate at

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1 9:00 whether the protesters on the koppie were prepared to
 2 lay down their weapons. Mr Mathunjwa failed to provide
 3 feedback as agreed." That's the passage that was put to
 4 you, and what Adv Barnes wants to know, does that coincide
 5 with your recollection of what happened at that meeting?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson. If I need to respond is that the culture in
 8 the police is that when your senior speaks in the meeting
 9 you do not say things in front of the other juniors, but I
 10 think, Chairperson, that's why I'm saying I think
 11 Lieutenant-General Mbombo will be in a position to explain
 12 why she speaks about agreement.
 13 MS BARNES: But General, my question to
 14 you is really the following. You know at this stage that
 15 Mr Mathunjwa is standing outside the JOC and is wanting to
 16 give feedback to the police, and has asked to give the
 17 feedback to the Provincial Commissioner –
 18 CHAIRPERSON: No, no, no, no, I'm not
 19 sure that you got him to admit that initially. He said he
 20 was outside for half an hour. The witness said, eventually
 21 he said he saw him and went out to speak to him, but I'm
 22 not sure that you've got him to say at what stage he
 23 realised that Mr Mathunjwa is waiting outside. I think
 24 that point must be clarified first also before the question
 25 you now want to put can be put to him.

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1 MS BARNES: We have established, General,
 2 haven't we, that you saw Mr Mathunjwa just before you went
 3 into the JOC meeting and he asked to see the Provincial
 4 Commissioner and you then went into the JOC meeting. Isn't
 5 that correct?
 6 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 7 I did see that.
 8 MS BARNES: General, surely then when you
 9 went into the JOC meeting you should have said to the
 10 Provincial Commissioner that, 'Mr Mathunjwa is here, I've
 11 just seen him, he's wanting to give feedback to the police;
 12 let's go and hear what it is.'
 13 MAJOR-GENERAL MPEMBE: Chairperson,
 14 what 0
 15 COMMISSIONER HEMRAJ: Sorry, just a
 16 second. I'm sorry to interrupt you. Was Mr Mathunjwa
 17 wanting to give feedback to the police or was he looking
 18 for transport to the, back to the scene?
 19 MS BARNES: There's no mention of
 20 transport in the passages that I referred to earlier. Mr
 21 Mathunjwa has simply come back from the koppie at this
 22 stage and he's wanting to report back to the Provincial
 23 Commissioner about his engagement with the strikers.
 24 That –
 25 CHAIRPERSON: Sorry to interrupt you.

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1 He'd actually come back in his own vehicle, as far as I can
2 recall, on the Thursday.

3 MS BARNES: [Microphone off, inaudible]
4 transport issue hasn't arisen at this stage, but the point,
5 the question really, General, is that Mr Mathunjwa has come
6 back and he wants to see the Provincial Commissioner to
7 give feedback. Why do you not tell the Provincial
8 Commissioner that he's there and suggest that you go and
9 get his feedback?

10 MAJOR-GENERAL MPEMBE: Advocate, I need
11 to put the things also in the right perspective in a very
12 short brief. The Provincial Commissioner was referring to
13 he, to her earlier interaction with Mr Mathunjwa
14 personally. That's why he was, she was even specific about
15 9 o'clock. By the time that Mr Mathunjwa wanted to give
16 the feedback to the Provincial Commissioner, I did testify
17 that the Provincial Commissioner was not there, and I even
18 said that he was at the hospital, and when I wanted to give
19 feedback to Mr Mathunjwa he has gone again. But the
20 Provincial Commissioner knew that Mr Mathunjwa did come
21 back, but what the Provincial Commissioner is referring to
22 here, it is her earlier interaction with Mr Mathunjwa
23 himself.

24 MS BARNES: So it's a simple question,
25 General. Did you say to the Provincial Commissioner, 'I've

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1 just seen Mr Mathunjwa outside moments ago; he's just come
2 back from the koppie and I've just seen him moments ago.'

3 Did you say that to the Provincial Commissioner?

4 MAJOR-GENERAL MPEMBE: No, Chairperson,
5 because I could see that the Provincial Commissioner was
6 referring to her earlier interaction with Mr Mathunjwa.

7 MS BARNES: General, if we can go now to
8 the 13th of August, and I'm going to ask you some questions
9 relating to the conversation that you had with the strikers
10 at the railway line on the 13th of August. I know that some
11 of my colleagues have cross-examined you on this aspect and
12 I do not intend to repeat the questions they have asked
13 you, but there are just two aspects there that I need to
14 ask you about. Firstly, you've testified that you were
15 concerned that this group of strikers on their way back to
16 the koppie would go into the informal settlement and
17 injure, maim, or kill people. I think those were the three
18 specific words that you used. Is that correct?

19 MAJOR-GENERAL MPEMBE: No, Chairperson,
20 but what I said is that it was the briefing that I have
21 received that they might injure or kill those that are
22 going at work.

23 MS BARNES: But you were concerned that
24 the strikers might injure or kill people in the vicinity,
25 and in particular in the informal settlement. That was

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1 your concern. Is that correct?

2 MAJOR-GENERAL MPEMBE: Correct,
3 Chairperson, those that are going at work.

4 MS BARNES: Yes, the ones that are not
5 participating in the strike. Is that correct?

6 MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson.

8 MS BARNES: Now we also know, and I'm
9 sure you accept it, that while you were having that
10 conversation with the strikers at the railway line, they
11 repeatedly asked you to escort them to the koppie. Is that
12 correct?

13 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

14 MS BARNES: Now General, if those
15 strikers had an intention to injure or kill people along
16 the way back to the koppie, why would they ask the police
17 to escort them back to the koppie?

18 MAJOR-GENERAL MPEMBE: In my
19 understanding it was that it was because I wanted to disarm
20 them. I wanted they must voluntarily hand over their
21 weapons, and that, the reason that they gave me is that
22 they were attacked by NUM people, and which I did not
23 agree.

24 MS BARNES: Yes, but the point is simple,
25 General. If they harboured these intentions to hurt

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1 people, or even to kill people, why would they ask the
2 police to take them to the koppie?

3 MAJOR-GENERAL MPEMBE: Chairperson, I
4 don't know why they asked the police to escort them. I
5 cannot think or say what they, were their intentions, but
6 what I do know is that the people, there were people that
7 died as a result of those movements and so on, but I cannot
8 say precisely by whom.

9 MS BARNES: Now you agree with me that
10 while the strikers said that they wanted you to escort them
11 back to the koppie, they also said to you that it didn't
12 have to be the koppie; it could be a location of your
13 choice. In other words they could be escorted back to some
14 other location. You agree that they said that?

15 MAJOR-GENERAL MPEMBE: No, Chairperson, I
16 do not agree. They were precisely saying the koppie. I
17 even asked them, "Where were you?" They said, "At the
18 koppie," and I said, "Are you coming there?" They said,
19 "Yes."

20 MS BARNES: Okay, well perhaps then we
21 need to go to exhibit QQ2, to page 10, page 10, and I'll
22 give you the line number in a moment. So if you can look
23 at line 20 on that page, this Lonmin worker 1 says the
24 following, "We are at the mountain, but if you want us we
25 will come to the location of your choice. We will come to

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1 the stadium to hear what our employer says regarding the
 2 request." You see that?
 3 MAJOR-GENERAL MPEMBE: Yes, I see it.
 4 MS BARNES: So there you have a striker
 5 saying to you it doesn't have to be the koppie, "take us to
 6 a location of your choice, for example, the stadium. Call
 7 our employer to speak to us and we will give you our
 8 weapons."
 9 MAJOR-GENERAL MPEMBE: There were many of
 10 them that said, "At the koppie, we will give you there at
 11 the koppie."
 12 CHAIRPERSON: This man who's described
 13 here as Lonmin worker 1, was he as far as you could see one
 14 of the leaders of the group?
 15 MAJOR-GENERAL MPEMBE: Chairperson, at
 16 that moment I couldn't see who's the leader, because there
 17 were so many self-appointed leaders who were talking on
 18 behalf of the strikers. They are about more than 10, if I
 19 remember, or maybe the video can be clear, but there was
 20 one who was even giving others instructions, but there were
 21 many that were speaking and talking how do they feel and
 22 what their intentions are.
 23 CHAIRPERSON: As far as I can remember
 24 from the video one person did quite a lot of speaking. Is
 25 that correct?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 CHAIRPERSON: Is that the person
 4 described here as Lonmin worker 1?
 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 6 I'm not sure whether it is the same one. Maybe; I'm not
 7 definitely sure whether it is the same one, because the one
 8 that spoke on that day, as I testified, is Mr Noki, that I
 9 don't know whether it's him that described him as Lonmin
 10 worker 1.
 11 CHAIRPERSON: And after this Lonmin
 12 worker 1, this person described as Lonmin worker 1, says
 13 what is transcribed here on page 10 of the transcript, did
 14 any of the other strikers present disagree or indicate that
 15 he didn't agree with what this worker had said?
 16 MAJOR-GENERAL MPEMBE: Chairperson, as
 17 far as I remember - the video can be there - they didn't
 18 disagree, but the majority of them, they were referring
 19 them at the koppie, and I remember even I said to them
 20 [African language] then they said "At the mountain."
 21 That's what they said, and that was in majority that, the
 22 video can also be clear on that.
 23 MR MATHEBEDI SC: Sorry, Mr Chairman.
 24 With regard to this paragraph, my reading of this paragraph
 25 was that they will go to the stadium to be addressed by, or

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1 to a location to be addressed by the employer, but not to
 2 go and hand up the weapons, not in this paragraph, Mr
 3 Chairman.
 4 CHAIRPERSON: I think that's correct, Ms
 5 Barnes. I think there are two issues. The one was the
 6 place where the employer was going to address them, if the
 7 employer was minded to address them, and the second issue
 8 is the place at which the weapons would thereafter be
 9 handed over, and I'm not sure that this passage that you
 10 put covers both of those events.
 11 MS BARNES: Well, if one goes up the page
 12 a little bit to page, to line 15, I think it's quite clear
 13 it's the same worker, Lonmin worker 1, he says, "What we
 14 are saying is that you let us go to the place where we are
 15 gathered and we will give you," that probably should be
 16 "our weapons when you bring our employer." And then if you
 17 carry on going down, "We are at the mountain, but if you
 18 want us we will come to the location of your choice. We
 19 will come to the stadium to hear what our employer says
 20 regarding our request." So it's the same worker who's
 21 talking about if they are escorted two things are intended
 22 to happen; the employer will come and talk to them, and the
 23 weapons will be handed over, but this striker is saying
 24 that does not have to be the koppie, "it can be a location
 25 of your choice."

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1 COMMISSIONER TOKOTA: Sorry, Ms Barnes,
 2 but if you look at the previous paragraph, it says, "We
 3 will hand you the weapons at the koppie," because the place
 4 where they are is the koppie. Then the second paragraph
 5 says the employer can address us wherever they want. So
 6 there is specifically says we are saying is that you must
 7 let us go to the place where we are, and the place where
 8 they are at that moment is the koppie. That is where we
 9 will give you the weapons. Then you must bring the
 10 employer.
 11 MAJOR-GENERAL MPEMBE: I'm sorry,
 12 Chairperson -
 13 MS BARNES: I think the witness would
 14 like to say something.
 15 MAJOR-GENERAL MPEMBE: Chairperson, even
 16 on the same page there on top they still mention the
 17 koppie, and I remember very well when I asked them,
 18 [African language] and they said "At the koppie."
 19 [11:41] MS BARNES: But General, didn't this give
 20 you a way out? You now had strikers saying, you know, the
 21 koppie is not the only possible location. Didn't this give
 22 you a way out on the day?
 23 MAJOR-GENERAL MPEMBE: No, Chairperson.
 24 Actually what I wanted for them to do is to drop the
 25 weapons, hand them over to me, and I could have escorted

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1 them. There could have been nothing has happened, but for
 2 the fact that they mention any other location, it couldn't
 3 give me any way out.
 4 MS BARNES: General, we've heard evidence
 5 in relation to Warrant-Officer Kuhn on the 13th, and in
 6 relation to the teargas that he fired. Now what that
 7 evidence has been, and I think it's accepted to this
 8 extent, is that Warrant-Officer Kuhn fired the teargas on
 9 the 13th on the basis of a command which he said that he
 10 heard, but he could not identify –
 11 CHAIRPERSON: No, no, no, I don't think
 12 you can say it's accepted. What is accepted, whether it's
 13 correct or not is a matter we will be in a position, we
 14 hope, to be able to make a finding on at the end, but you
 15 can't say it's accepted. We're trying to keep an open
 16 mind. What is accepted is that Kuhn claimed that he had
 17 received an order and which he had obeyed, but there are
 18 certain problems in respect of that claim which were
 19 covered in the evidence, but it's too early to say whether
 20 we accept what he said on the point or reject it.
 21 MS BARNES: Chair, I apologise. I
 22 phrased it poorly. I was really referring to Kuhn's
 23 version, that Warrant-Officer Kuhn's version, which seems
 24 to be clear, is that he heard a command to fire teargas,
 25 but he could not identify where that command had come from.

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1 Is that how you understand his version?
 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 3 with the addition of saying he did not even know who gave
 4 the command.
 5 CHAIRPERSON: [Microphone off, inaudible]
 6 received a command at all.
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 MS BARNES: Now my question is simply
 10 this, General; did you recommend that disciplinary action
 11 be taken against Warrant-Officer Kuhn?
 12 CHAIRPERSON: He's dealt with this point
 13 in evidence. He said initially he didn't, but when he was
 14 re-examined by Mr Semenya, I think it was – Mr Ngalwana,
 15 sorry, yes it was Mr Ngalwana, I remember – when he was re-
 16 examined by Mr Ngalwana, one of the points he made was he'd
 17 thought about it subsequently and he'd come to the
 18 conclusion that disciplinary steps should be taken and he
 19 was going to do, he was either going to do the necessary or
 20 had already done so, but certainly that matter has been
 21 covered. There may well be other questions you want to ask
 22 about it, but that's the evidence he gave. I think you
 23 weren't with us at the time.
 24 MS BARNES: If we can go now to exhibit
 25 GGG4, this is the debriefing that you held with first Mr

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1 Zokwana and then Mr Mathunjwa on the 15th of August. If you
 2 look at page 684, paginated page 684, you're having a
 3 conversation here with Mr Mathunjwa, and perhaps one should
 4 just go back to 683, just so that you can get the context
 5 and try and recall what you were talking about. You're
 6 telling Mr Mathunjwa about the firearms that the strikers
 7 had gotten hold of and on page 683 you say, "I know there
 8 is one, but there might be 10, there might be 6, and we
 9 understand" –
 10 CHAIRPERSON: That passage isn't the part
 11 that's being shown on the screen. Perhaps we could go down
 12 a bit.
 13 MS BARNES: Sorry, that's the bottom of
 14 page –
 15 CHAIRPERSON: Yes, you've given us the
 16 line number, we'll pick it up. Yes, it's line 29.
 17 MS BARNES: You say, "There might be 10,
 18 there might be 6," and then on to the next page you – well,
 19 if we go down to line 5, Mr Mathunjwa says, "Where did they
 20 get these firearms?" and then you say, "No, no, remember
 21 now that thing that happened, first they took police
 22 firearm," and then Mr Mathunjwa says, "Oh, not one?" and
 23 you then say, "No, no, they did not take one. They did not
 24 take one, and we, we lost our focus and we did not want to
 25 kill people. So that is what we are saying." So it seems

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1 to us, General, that what you're saying here is that you
 2 lost focus on the 13th of August, and I'd like you to tell
 3 the Commission what you meant by that comment.
 4 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 5 didn't say so.
 6 CHAIRPERSON: [Microphone off, inaudible]
 7 Mr Mathunjwa line 10 on this page you are – sorry, I beg
 8 your pardon. General Mpembe, sorry, let me get it right,
 9 General Mpembe, according to line 10 on this page when Mr
 10 Mathunjwa had suggested that only one firearm had been
 11 taken, you said, "No, no, they didn't one. They didn't
 12 take one," and then you said, "We lost focus and we did not
 13 want to kill people. So that's what we are saying there
 14 are State firearms there." And then what Ms Barnes wants
 15 to know from you is what did you mean when you said "We
 16 lost focus," unless you're suggesting that the
 17 transcription is wrong, but if you accept the correctness
 18 of the transcription, she wants to know from you what did
 19 you mean by saying "We lost our focus"?
 20 MAJOR-GENERAL MPEMBE: Actually I was
 21 only saying to Mr Mathunjwa that they didn't take only one
 22 firearm, they took more firearm, but not referring any loss
 23 of focus on what, on the 13th.
 24 MS BARNES: General, you say, "And we
 25 lost our focus and we did not want to kill people." Have

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1 you got no explanation for what you meant by that comment?

2 MAJOR-GENERAL MPEMBE: Chairperson, as

3 I'm saying, I didn't mean to have lost focus on the 13th.

4 My evidence to the Commission is, (1), is that I did take a

5 decision based on the situational appropriateness and to Mr

6 Mathunjwa here I wanted only to say to him they didn't take

7 one firearm, they take more firearm, but losing of the

8 focus, really to me here it, I agree, it doesn't make

9 sense.

10 MS BARNES: Because General, we've

11 analysed the evidence in relation to the 13th and it seems

12 to us that what happened on the 13th was that you were in

13 fact indecisive and I need you to comment on this, and I'm

14 going to –

15 CHAIRPERSON: Why do you say he was

16 indecisive? On what facts do you base that proposition?

17 Because I think he has to know the facts upon which you

18 base it before he can answer you properly.

19 MS BARNES: Indeed. In the sense that,

20 General, it seems to us, if we look at all the evidence -

21 and I'll take you through that evidence in a moment – that

22 you first took a decision that the strikers should be

23 escorted and you then gave that order. You then changed

24 your mind and you took another decision that the strikers

25 should in fact be stopped.

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1 CHAIRPERSON: That's not his evidence. I

2 understand you may be proposing to put statements to him to

3 that effect, but that's certainly not his evidence. His

4 evidence is quite clear that originally he wanted to take

5 the weapons away, but he decided, applying the principle of

6 situational appropriateness, that if they didn't hand over

7 their weapons he was simply going to escort them to the

8 koppie because otherwise there would be bloodshed, and –

9 COMMISSIONER HEMRAJ: Perhaps you can –

10 CHAIRPERSON: - a Tatane situation. So

11 you can't put it to him as if that's something that he,

12 that that's an objective fact and that's something he

13 admits. So I think you should reformulate the question

14 because as it's presently put I'm not prepared to allow it.

15 COMMISSIONER HEMRAJ: Perhaps you can

16 tell us, Ms Barnes, what evidence it is that you rely on

17 when you allege that he took a decision that they must be

18 stopped. Exactly what are you alluding to there?

19 MS BARNES: I will deal with the evidence

20 shortly, Commissioner. I didn't suggest that it was this

21 witness's version, but what I'm putting to the witness is

22 having looked at the evidence, which I will take you to in

23 a moment, that is what we're going to argue that the

24 Commission should find at the end, is that you took one

25 decision and then changed your mind and took the other

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1 decision.

2 COMMISSIONER HEMRAJ: We would like to be

3 appraised of exactly where it appears in the transcript or

4 a statement that a decision was taken for them to be

5 stopped. Perhaps you can refer us to that before you put

6 the proposition, so that we can be appraised of where it

7 emanates from at least.

8 MS BARNES: I'm going to do that. I

9 simply wanted the witness to know where I was going with

10 the –

11 CHAIRPERSON: But you know, the way you

12 put it was – but never mind, let's move on. I take it

13 you're going to refer to the statement of Constable

14 Plaatjie which we were given copies of and which he'd been

15 given a copy of. Are you going to rely on anything else?

16 MS BARNES: Yes, there are quite a number

17 of statements that are before the Commission already, which

18 I'm not going to refer to, but these are two new statements

19 which say the same thing and I'll refer to those now.

20 CHAIRPERSON: Alright, well then you must

21 put them to him so that he can then deal with them, but I

22 understand that you are really saying to us that by way of

23 a preliminary point you put to the witness what you're

24 going to put to him in more detail, you summarised it in

25 one sentence. But I think before I can expect him to give

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1 an answer, you should put to him the passages in these two

2 statements upon which you rely, and which one do you want

3 to rely on first?

4 MS BARNES: They will both be new

5 exhibits –

6 CHAIRPERSON: Ja, I know, that's why I'm

7 asking you which one do you want to rely on first.

8 MS BARNES: Firstly the statement of

9 Constable Zondi of POP.

10 CHAIRPERSON: That's the handwritten

11 statement, that will be HHH57, and thereafter the statement

12 of Constable Plaatjie. Is that right?

13 MS BARNES: That's right.

14 CHAIRPERSON: That will be HHH58.

15 MS BARNES: If we look then first at the

16 statement of Constable Zondi, do you have that in front

17 of –

18 CHAIRPERSON: Make sure the witness has

19 got it. Have you got exhibit HHH57, the statement of

20 Constable Zondi, in front of you?

21 MAJOR-GENERAL MPEMBE: Correct,

22 Chairperson, I do have it.

23 MS BARNES: If you look at paragraph 5 of

24 that statement it says, "General instructs us to let them,

25 the group pass. We moved, the group passed to the shack's

<p style="text-align: right;">Page 16147</p> <p>1 direction and said we must escort them." And then the 2 following paragraph, paragraph 6, the language is a little 3 unclear, but at the outset it says, "Then the consents of 4 once the group," I assume that means consent, or consensus 5 perhaps, "once the group gets in the shacks it will be a 6 big problem because police are not familiar with the 7 shacks," and then comes the important line, "General Mpembe 8 issued a command of blocking the group from going to the 9 shacks," and it then goes on, "The first Nyala from the far 10 left of the group drove in front and the others followed on 11 the right and other police officers on foot." You see 12 that? 13 MAJOR-GENERAL MPEMBE: I see it, 14 Chairperson. 15 MS BARNES: So that particular officer is 16 saying that you issued a command to block the group of 17 strikers. Do you have any comment on that? 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 19 I do have a comment. My comment will also start from the 20 evidence that is already before the Commission. As it was 21 firstly presented by Adv Madlanga and by the evidence 22 leaders, it was also presented through the SAPS15, and 23 firstly I said I did not brief any junior member 24 personally. Secondly, I decided to go to the, to 25 intercept, and I gave my reasons thoroughly why I decided.</p>	<p style="text-align: right;">Page 16149</p> <p>1 miners, trying to stop them." Do you have a comment on 2 that paragraph? 3 MAJOR-GENERAL MPEMBE: Correct, 4 Chairperson. Chairperson, my comment is still the same to 5 that one of Nkosinathi Reginald Zondi and there is also 6 similarity on their statements on HHH57, then paragraph 2 7 he says that, "On Monday around 12 o'clock midday we got 8 instructions from General Mpembe to go and stop the group 9 of people on the railway line who were intending to attack 10 other members who were not striking." That's what, how he 11 interprets it, and I take that is an individual 12 interpretation and when you check on page, on paragraph 2, 13 he says, "I was officially on duty when we were deployed at 14 Marikana Lonmin. Captain Nqutu was our commander for that 15 deployment." Now it is important to indicate here that 16 that commander is the one that briefed the members. I did 17 not brief the members, and the members can also confirm 18 that. 19 MS BARNES: Because you'll know, General, 20 that it's of course not just these two statement, but a 21 large number of other statements that are already before 22 the Commission, that I'm not going to traverse – 23 CHAIRPERSON: They were put to him in 24 cross-examination and he dealt with them. The versions put 25 in these various statements were conflicting in any event,</p>
<p style="text-align: right;">Page 16148</p> <p>1 Thirdly, I only briefed the commanders there on the scene, 2 and secondly, and then lastly that I did not give any 3 member the command of any other, but the briefing that I 4 gave to the commanders was that we should make sure that 5 the protesters, strikers, do not enter the koppie and – 6 CHAIRPERSON: I don't think you mean 7 koppie. You mean the informal settlement? 8 MAJOR-GENERAL MPEMBE: Informal 9 settlement, thanks, Chairperson. Informal settlement, and 10 also there was another area of the shaft of the mine on the 11 left-hand side. But in that briefing I also gave my 12 reasons to say my earlier briefing when I arrived on that 13 day is that actually the people who are targeted by the 14 strikers are those that are reporting on duty because they 15 don't want them to report on duty. Then as a result we 16 don't know where are they staying in the informal 17 settlement, and I went on very extensive to prove that 18 informal settlement was one of the key point. 19 MS BARNES: Alright, if we can look then 20 at the next statement, that's the statement from Constable 21 Plaatjie, similarly at paragraph 5 of that statement he 22 says the following, "While General Mpembe was addressing 23 the crowd they stand up and walk away. General Mpembe 24 instructs us to stop them. One Nyala of Public Order 25 Police unit drove after and ended up in front of walking</p>	<p style="text-align: right;">Page 16150</p> <p>1 but he dealt with them fully already. I don't want to stop 2 you from raising a new point, but if it's simply the points 3 that have been put to him already, then I don't think I 4 should allow it. 5 MS BARNES: I'm simply making the point, 6 Chair, that the common thread in these statements and in 7 the two new statements that I've introduced today is 8 officers hearing an instruction by yourself to stop the 9 strikers. That's the common threat. 10 CHAIRPERSON: Yes, but of course the one 11 that you were just referring to now at HHH58 in para 5 12 talks about General Mpembe instructing them to stop the 13 strikers, and then the next sentence seems to indicate the 14 nature of the stoppage that he envisaged, because it says, 15 "One Nyala of Public Order Police unit drove after and 16 ended up in front of the walking miners, trying to stop 17 them." So it would seem, if this is correct, and I'm not 18 sure the witness agrees with it but if there was any 19 instruction conveyed to the commanders which they may have 20 passed on, it related to stopping by blocking rather than 21 stopping by firing teargas or anything else. 22 [12:01] MS BARNES: General, the other relevant 23 piece of evidence on this point, we submit, is the 24 statement of Lieutenant-Colonel Vermaak. That statement is 25 exhibit GGG17 and if we look at paragraph 5 of that</p>

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1 statement, this is where Lieutenant-Colonel Vermaak refers
 2 to arriving at the scene on the 13th, after the incident had
 3 taken place, and he then says that police officers speak to
 4 him, and are very angry and upset with you, so much so that
 5 they in fact threatened your life, and they say, the
 6 statement is in Afrikaans, but the important words are
 7 these, they say that you are responsible for what happened
 8 because you gave the incorrect command, so the Afrikaans
 9 words are "verkeerde opdragte" and the English translation
 10 would be "the incorrect command." Now, my question to you
 11 is, why would these officers be threatening your life if
 12 you haven't in fact given any command?

13 MR MATHIBEDI SC: Sorry, Mr Chairman,
 14 before the witness answers, what were the incorrect
 15 commands that were allegedly given by the witness before he
 16 can answer.

17 CHAIRPERSON: All it's suggested as you
 18 say, it is eight lines from the foot of that paragraph
 19 where Lieutenant-Colonel Vermaak is saying what he was told
 20 after he landed, and presumably alighted from his
 21 helicopter. Then he says that some of the members were
 22 very, very angry, mentioned to him that they blamed him for
 23 the members who were dead, "en dat hy verkeerde opdragte
 24 gegee het," and that he gave wrong commands. Now that's
 25 very vague. It's not clear what wrong commands in their

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1 opinion had been given. There are various possibilities,
 2 but I think you should ask the witness whether he's able to
 3 comment at all.

4 MS BARNES: Yes, General –

5 CHAIRPERSON: Certainly, it's not clear
 6 that the wrong commands that they complained of, if there
 7 were any, were the ones that you are now putting to the
 8 witness. Let's give him a chance to answer.

9 MAJOR-GENERAL MPEMBE: For example, one
 10 of the comments was that escort them, you can't disarm
 11 them, I don't want a situation here, that's another
 12 command.

13 MS BARNES: Yes, the commands aren't
 14 identified. I am simply putting the – putting what was
 15 stated to Vermaak to the witness, and perhaps he has some
 16 sort of explanation for this.

17 MAJOR-GENERAL MPEMBE: But you don't want
 18 to identify which command because this one is vague. There
 19 are so many commands. He says, "I can't confront them."
 20 COMMISSIONER HEMRAJ: But doesn't this
 21 whole point rather emanate from the differences of opinion
 22 between Colonel Merafe and this witness?

23 MS BARNES: Commissioner, I – the
 24 commands aren't identified in Vermaak's statement and with
 25 the greatest of respect I never suggested that they were.

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1 I am simply asking whether the witness has any explanation
 2 for what Vermaak describes having happened here.

3 MAJOR-GENERAL MPEMBE: Chairperson –

4 CHAIRPERSON: Sorry, let me ask a few
 5 questions first, hopefully I can clear the ground. Were
 6 you aware of the fact that some of the members had said
 7 what appears from the passages that has been put to you had
 8 said that to Lieutenant-Colonel Vermaak, that you had, that
 9 they blamed you for the fact that the members were dead,
 10 because you had given wrong commands. Were you aware that
 11 that complaint had been raised by them against you to
 12 Lieutenant-Colonel Vermaak?

13 MAJOR-GENERAL MPEMBE: No, Chairperson,
 14 but what I was aware of and I stated in this Commission is
 15 that Lieutenant-Colonel Merafe was not happy with my
 16 decision of letting the strikers to go if they don't hand
 17 over, and I even explain it in details, that he wanted
 18 actually the strikers should have been dispersed. But that
 19 they complained, I didn't know, but what I do know,
 20 Chairperson, again is that Lieutenant-Colonel Vermaak while
 21 I arrive on the scene, he said, "my life is danger." But
 22 he never explained to me that there were members that were
 23 complaining about me.

24 CHAIRPERSON: Ms Barnes, I think it is
 25 clear the witness can't take this matter any further. It

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1 may well be a matter for argument. It may be that
 2 subsequent witnesses may tell us what was meant but I don't
 3 think we are profitably engaged in an exercise in getting
 4 this witness effectively to guess what these people meant.

5 MS BARNES: I am happy to move on at this
 6 stage, Chair, thank you. General, if we can now turn to
 7 some of the events at Potchefstroom after the events of the
 8 16th. Now the Potchefstroom meeting took place from the
 9 27th of August to the 7th of September, is that right?

10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson, if I can also check the call ups.

12 CHAIRPERSON: Call ups are exhibits
 13 before us, I mean, I haven't the relevant statistics at my
 14 finger tips, but I can get them quite quickly. Do we have
 15 to spend time, with assistance, from my friends. Do we
 16 have to ask the witness. I am going to stop you, if you've
 17 got a point to make you must make it but I don't know that
 18 the exact details that you asked for are necessary for the
 19 point to be made, but if I am wrong on that, you will
 20 correct me, I think. What exactly do you want to know
 21 about the call ups?

22 MS BARNES: Well, I don't want to know
 23 about the call ups. I was just clarifying the date, the
 24 Potchefstroom dates with the General. I don't think they
 25 are contentious. We can move on, but I'd like you to refer

<p style="text-align: right;">Page 16155</p> <p>1 to a portion of your evidence -</p> <p>2 CHAIRPERSON: The dates are on record,</p> <p>3 they extend over a period, it is on record.</p> <p>4 MS BARNES: Indeed, I am going to be</p> <p>5 asking the witness some questions about his involvement in</p> <p>6 Potchefstroom, so I just wanted to orientate, to help to</p> <p>7 orientate the General as well, with regard to those dates.</p> <p>8 Now in your evidence-in-chief you testified about the</p> <p>9 events of Potchefstroom, and I need to take you to a</p> <p>10 particular passage, it's page 11168 of the transcript.</p> <p>11 Okay, that's perfect, it's line 5 on that page, and you say</p> <p>12 the following, "Chairperson, he earlier on, I said at</p> <p>13 Potchefstroom, we gathered all those members that took part</p> <p>14 on the 13th, and during that discussion that's when Warrant</p> <p>15 Officer Kuhn was asked in the presence of the members</p> <p>16 there, and that's - and then he said he heard an order but</p> <p>17 he could not know who gave the order or whose voice was</p> <p>18 that." It's probably not necessary for me to go on any</p> <p>19 further. What I am really trying to establish here is, not</p> <p>20 so much what happened in relation to Warrant Officer Koen</p> <p>21 here, but the session that you are referring to here, are</p> <p>22 you referring to a session where all the police officers</p> <p>23 that were involved in the events of the 13th, got together</p> <p>24 in a breakaway session, so to speak, and discussed what had</p> <p>25 happened and put together a narrative, is that what you are</p>	<p style="text-align: right;">Page 16157</p> <p>1 of your involved in the 13th, gathered together in a</p> <p>2 separate room and produced a narrative of what happened on</p> <p>3 the 13th.</p> <p>4 MAJOR-GENERAL MPEMBE: I said it before,</p> <p>5 and I said it yes, Chairperson.</p> <p>6 MS BARNES: And that is in fact the modus</p> <p>7 operandi at Potchefstroom, that individuals that had been</p> <p>8 involved in particular events would go – form themselves</p> <p>9 into breakaway groups, and they would then produce a</p> <p>10 written narrative of the events as far as they could recall</p> <p>11 them. Is that how it worked?</p> <p>12 MAJOR-GENERAL MPEMBE: Yes, Chairperson,</p> <p>13 if you says modus operandi I only know of the group where I</p> <p>14 was involved. I didn't take part to other groups but maybe</p> <p>15 other groups could have done it in a different way, I am</p> <p>16 only, if my answer on "yes," is only with that group of the</p> <p>17 13th.</p> <p>18 MS BARNES: Do you remember when this</p> <p>19 particular session took place at Potchefstroom?</p> <p>20 MAJOR-GENERAL MPEMBE: As I indicated</p> <p>21 before, yes, Chairperson, according to the call ups.</p> <p>22 MS BARNES: Yes, but this particular</p> <p>23 sessions where a narrative was produced, in relation to the</p> <p>24 13th, do you remember when that happened or at least whether</p> <p>25 it was in the first week or the second week?</p>
<p style="text-align: right;">Page 16156</p> <p>1 referring to there?</p> <p>2 MAJOR-GENERAL MPEMBE: Correct,</p> <p>3 Chairperson. But I also wanted to correct there, I think</p> <p>4 it's line 13, because I did indicate to the Commission that</p> <p>5 Captain Taupe said I did give the order but there he says I</p> <p>6 did not. I just want –</p> <p>7 CHAIRPERSON: Yes, he says, line 12,</p> <p>8 "General, I heard you giving the order." And you then said</p> <p>9 to him, "I did not give the order," then you want to</p> <p>10 explain, if you had given the order it would have been over</p> <p>11 the radio and all of them would have heard it and only one</p> <p>12 person wouldn't have fired a tear gas canister," and so on.</p> <p>13 So that's all clearly there stated. You in fact showed us</p> <p>14 your diary in which you had made contemporaneous notes on</p> <p>15 the points as well.</p> <p>16 MAJOR-GENERAL MPEMBE: Thanks,</p> <p>17 Chairperson, I didn't see the one where Captain Taupe said</p> <p>18 I did. I just wanted to -</p> <p>19 CHAIRPERSON: Because you weren't looking</p> <p>20 at line 12, and now I draw your attention to it, you see</p> <p>21 it.</p> <p>22 MAJOR-GENERAL MPEMBE: Thanks,</p> <p>23 Chairperson.</p> <p>24 MS BARNES: So General, can we just</p> <p>25 clarify, you are referring here to the meeting where those</p>	<p style="text-align: right;">Page 16158</p> <p>1 MAJOR-GENERAL MPEMBE: It was the first</p> <p>2 week.</p> <p>3 COMMISSIONER HEMRAJ: Can I just</p> <p>4 understand that when this group met was there a narrative</p> <p>5 that, was there something that was written down as regards</p> <p>6 what was agreed on as being the events that occurred on the</p> <p>7 13th?</p> <p>8 MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>9 what was happening there is that each and every one was</p> <p>10 expected to give information as far as you know, the</p> <p>11 information that you have, the information that you have a</p> <p>12 personal knowledge of. But there was no an agreed version.</p> <p>13 COMMISSIONER HEMRAJ: Would all of this</p> <p>14 be written down somewhere? Would there be a recording of</p> <p>15 what everyone was saying? Was it put on paper?</p> <p>16 MAJOR-GENERAL MPEMBE: Correct,</p> <p>17 Chairperson, it will be given on paper, and thereafter we</p> <p>18 go back and we give to Colonel Visser and what is given to</p> <p>19 Colonel Visser, the one that comes from the group, he will</p> <p>20 say, but this point is not in there, and it will be put in.</p> <p>21 COMMISSIONER HEMRAJ: Thank you.</p> <p>22 MS BARNES: But General, isn't it correct</p> <p>23 that this session produced a document that, I call it a</p> <p>24 narrative, because that's the term that comes up in the –</p> <p>25 when we've gone through the material, isn't it correct that</p>

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1 this group sat down and produced a document which said what
 2 happened on the 13th?
 3 MAJOR-GENERAL MPEMBE: No, Chairperson,
 4 what I say is that you were supposed to be together and you
 5 compiled the information as far as your personal knowledge
 6 is concerned, and you will also make sure that is being
 7 given to the last document, that's what I am saying. But
 8 it is not an agreed document.
 9 MS BARNES: Are you saying that everybody
 10 in the session would write down what they thought happened?
 11 MAJOR-GENERAL MPEMBE: What has happened
 12 according to their personal knowledge.
 13 CHAIRPERSON: I am not sure I understand
 14 this. I can understand you had various breakaway sessions
 15 and the people who were involved in a particular aspect of
 16 the matter, would go away into a particular breakaway
 17 session and discuss that aspect, and would there be someone
 18 whose job it was to be the rapporteur of what was discussed
 19 at that session, a duty to, when you went back into the
 20 main section, to report what had come out at the breakaway
 21 session, was it the duty of that person to rapport what was
 22 said or did each person report separately or how did it
 23 work? You know, what often happens in this kind of
 24 situation where you have breakaway sessions, in the
 25 breakaway session somebody is appointed as the rapporteur,

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1 it's his job or her job to compile the report of the
 2 breakaway session and then we all go back in to the plenary
 3 session, then the rapporteur then rapps what was said
 4 and then obviously some people then add extra things,
 5 that's one way breakaway sessions work. Another way it
 6 could work, I suppose, that each person at the breakaway
 7 session could write his own notes of what happened, and
 8 then everyone can go back and say what they had recorded.
 9 Now, can you remember how this particular breakaway session
 10 worked, the one that you were talking about in the passage
 11 which we see on the screen? Sorry, before you answer that,
 12 perhaps something else you could answer, which will help us
 13 to follow what happened, this breakaway session, this is a
 14 breakaway session, is it that you are talking about, in the
 15 passage that we have before us? Is that right?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 CHAIRPERSON: Now, obviously all the
 19 people who were with you at the railway line, weren't at
 20 Roots. Weren't at Potchefstroom, correct?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson. Only the commanders.
 23 CHAIRPERSON: So how many people took
 24 part in this breakaway session that you are talking about
 25 here, in the passage that we have on the screen? Obviously

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1 not all 70, so approximately how many would it have been?
 2 MAJOR-GENERAL MPEMBE: Chairperson, I can
 3 also, I can also know them by their call up instruction on
 4 that day and the commanders, they can be four, or more than
 5 five.
 6 CHAIRPERSON: Yes, let's four or five or
 7 a few more? Right?
 8 MAJOR-GENERAL MPEMBE: Yes.
 9 CHAIRPERSON: Now we know that Koen was
 10 one of them and we know Captain Taupe was another.
 11 MAJOR-GENERAL MPEMBE: Correct, and also
 12 Lieutenant-Colonel Merafe.
 13 And Lieutenant Colonel Merafe and –
 14 MAJOR-GENERAL MPEMBE: And –
 15 CHAIRPERSON: Was Lieutenant-Colonel
 16 Vermaak there as well?
 17 MAJOR-GENERAL MPEMBE: He was also there.
 18 CHAIRPERSON: Also part of that group?
 19 MAJOR-GENERAL MPEMBE: He was also part
 20 of that group.
 21 CHAIRPERSON: And anybody else that you
 22 can remember?
 23 MAJOR-GENERAL MPEMBE: There was also a
 24 Captain that was coming from POP in Johannesburg.
 25 CHAIRPERSON: Yes.

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1 MAJOR-GENERAL MPEMBE: And also Colonel
 2 Silwane was there.
 3 CHAIRPERSON: Perhaps over the lunch
 4 adjournment you can have a look at the call up instructions
 5 and try to refresh your memory further on the matter. Now
 6 where somebody – was somebody at this breakaway session,
 7 was somebody acting as a kind of rapporteur or chairperson
 8 to get from the various members what they had to contribute
 9 on the particular topic that was under discussion?
 10 MAJOR-GENERAL MPEMBE: No, Chairperson,
 11 what happened is that we will go and sit and we discuss it
 12 amongst ourselves and while we discuss it amongst
 13 ourselves, then we will go back and when we go back, each
 14 one will present and hence my notes I took them on the
 15 diary which I also submitted to this Commission and when
 16 the report is done, actually individually they will go to
 17 Colonel Visser, and Colonel Visser, we don't talk, we go to
 18 Colonel Visser, he types what you – and then Colonel Visser
 19 will put it on the slide and then now all of us will take
 20 part and other one will say but my point is not in there,
 21 and one will also say your point is not in there. And
 22 that's the kind of rapporteur that took place.
 23 CHAIRPERSON: Thank you, is it convenient
 24 Ms Barnes, if we take the comfort break at this stage?
 25 MS BARNES: Indeed, Chair.

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1 CHAIRPERSON: We will take a comfort
 2 break for ten minutes.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [12:32] CHAIRPERSON: The Commission resumes. I
 5 thought we'd taken too long a comfort break, which is why I
 6 came back as soon as I saw the General at his place, but
 7 I'm afraid that I was precipitate, I came in too early
 8 because Ms Barnes wasn't with us. But fortunately she has
 9 now arrived and if we give her a minute, she will be in her
 10 place and then she can continue. Did I tell you, you're
 11 already under oath? If I didn't, I'm telling you now.
 12 WILLIAM MPEMBE: s.u.o.
 13 CHAIRPERSON: Ms Barnes, I'm sorry I came
 14 back too early. Please forgive me; I didn't intend to
 15 embarrass you, but would you like to carry on with your
 16 cross-examination?
 17 CROSS-EXAMINATION BY MS BARNES (CONTD.):
 18 Yes, thank you, Chair. So General, in relation to the
 19 breakaway session that we've been talking about in relation
 20 to the 13th, are you telling this Commission that there
 21 wasn't at the end of that session one document produced
 22 that compiled all the notes from the various police
 23 officers present into one –
 24 CHAIRPERSON: No, he's saying the
 25 opposite. What he said was, unless I misunderstood him,

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1 that people told their, contributed their inputs to the
 2 discussions, that Colonel Visser typed it out. Isn't that
 3 right? It is what you said, wasn't it? Or did I
 4 misunderstand? Is that right, General?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 CHAIRPERSON: Yes, so at the end of the
 8 exercise there would have been a document typed by Colonel
 9 Visser, including the inputs that came from the various
 10 people. Is that correct also?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MS BARNES: Was Colonel Visser in the
 14 breakaway session?
 15 CHAIRPERSON: No, no, he didn't say that.
 16 He said –
 17 MS BARNES: Well, that's what I'm trying
 18 to confirm –
 19 CHAIRPERSON: - people broke away and
 20 then when they came back – is that correct? – from the
 21 breakaway session?
 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 23 CHAIRPERSON: Back into as, what one can
 24 call the plenary session –
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
 2 CHAIRPERSON: And presumably there were a
 3 number of breakaway sessions.
 4 MAJOR-GENERAL MPEMBE: There were a
 5 number of breakaway sessions according even to the dates.
 6 CHAIRPERSON: Yes, and, but some of
 7 these –
 8 MAJOR-GENERAL MPEMBE: And the incidents.
 9 CHAIRPERSON: - these breakaway sessions
 10 took place in parallel, I take it. One group went to one
 11 room or –
 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 13 and the other group went to a –
 14 CHAIRPERSON: Another group, if they were
 15 people who were not involved in the first group but
 16 involved in another one, they went somewhere else.
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 CHAIRPERSON: Yes, and then the groups
 20 came back.
 21 MAJOR-GENERAL MPEMBE: Came back –
 22 CHAIRPERSON: Colonel Visser was in –
 23 MAJOR-GENERAL MPEMBE: He was sitting in
 24 the main room where feedback was going to be given; each
 25 and every individual will go to him, and type what you were

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1 telling him, and thereafter then Colonel Visser and the
 2 others, they produce a document.
 3 MS BARNES: Is that the input fed into
 4 the actual police presentation through Colonel Visser? Is
 5 that what you're saying? You see, what I'm really just
 6 trying to understand, General, is whether there was a
 7 document at some stage that was produced out of each
 8 breakaway session, which was separate from the police
 9 presentation. Do you follow?
 10 MAJOR-GENERAL MPEMBE: As I'm saying is
 11 that each individual went to Colonel Visser and there
 12 Colonel Visser type that feedback.
 13 CHAIRPERSON: You see, but the next
 14 question which Ms Barnes is asking you – perhaps I should
 15 say trying to ask you – is at the end of it all, at the end
 16 of your group that was taking part in the discussion that
 17 we've just been busy with, for what happened on the 13th
 18 near the railway line and so on, when Colonel Visser was
 19 finished with getting all the inputs from the people who
 20 spoke about that – and there were only about five or six of
 21 them, I think you said four or five of them – then
 22 obviously there was a document which he, the completed
 23 document which he typed out. Now did that go straight into
 24 the police presentation, or is that one of the preliminary
 25 documents which was used – perhaps you wouldn't know the

<p style="text-align: right;">Page 16167</p> <p>1 answer to that because you weren't involved, but as far as 2 you could see was that a document that went straight into 3 the presentation, or as far as you could see was that a 4 document that was then used for the compilation of the 5 police presentation? You understand what I'm asking you? 6 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 7 What I don't know is that after we have done that, 8 precisely what happened I do not know, but Colonel Visser 9 will explain, but even there one will indicate what has 10 happened individually. Whether it formed part or it 11 didn't, but some of the others, on the final presentation I 12 did see them that these were coming from the breakaway 13 group. 14 MS BARNES: Well, perhaps we can take 15 you, General, then if you would, to exhibit JJJ140. This 16 is a document which is entitled "A chronological order of 17 the notes for the incident," and then just below that 18 there's a heading, "The 13th, Monday, 2012." Now what we 19 have established is that this document was created and 20 saved on the 28th of August 2012, and in order to establish 21 that we have produced a document which indicates the 22 properties of this narrative, which we'd like to introduce 23 as a new exhibit. 24 CHAIRPERSON: This is the document headed 25 "Chronological order of the notes for the incident."</p>	<p style="text-align: right;">Page 16169</p> <p>1 document to be marked as an exhibit. You propose to 2 substitute for it a better document which will have the 3 benefit of your inputs and those of presumably your 4 colleague who's sitting next to you over the lunch 5 adjournment. Is that correct? 6 MS BARNES: Yes, thank you, Chair. So if 7 one has a look at this document, you have it in front of 8 you now, General? 9 MAJOR-GENERAL MPEMBE: Yes, I have it in 10 front of me, Chairperson. 11 MS BARNES: Have you seen this document 12 before? 13 MAJOR-GENERAL MPEMBE: I've seen it this 14 morning, 6 o'clock. 15 MS BARNES: You never saw this document 16 at Potchefstroom? 17 MAJOR-GENERAL MPEMBE: As I've said is 18 that how we compiled the documentations and everything, yes 19 I do know the contents of what could have been there at 20 Potchefstroom. 21 MS BARNES: I'd like to refer you in 22 particular – 23 CHAIRPERSON: Sorry, could I just ask a 24 question before you carry on? Does this look like the 25 document which Colonel Visser typed?</p>
<p style="text-align: right;">Page 16168</p> <p>1 MS BARNES: Ja. 2 CHAIRPERSON: There's a – 3 MS BARNES: I apologise. There seems to 4 be some confusion with that particular document, so I 5 wonder if I might just – 6 CHAIRPERSON: Well, I've got a document 7 in my hand which says, which you gave me before we came in, 8 which is headed, the main heading is "Document properties 9 for exhibit JJJ140," and then it starts, "Chronological 10 order of the notes to the incident," "13th, Monday, 2012," 11 and then "Incidents" – 12 MS BARNES: Yes, so that is the – 13 CHAIRPERSON: And then on top of that is 14 a, superimposed as it were, is a document which I take it 15 sets out the properties for that document, and there some 16 kind person, thoughtful person, has put a red circle around 17 the sections that deal with the date it was created, the 18 date it was modified, the date it was accessed. Now is 19 that the document you want to put in? 20 MS BARNES: That is indeed the document 21 that we provided, but some confusion has since arisen in 22 relation to that document, which I would appreciate an 23 opportunity to sort out, if I could perhaps do that over 24 lunchtime and then indicate – 25 CHAIRPERSON: So you don't want this</p>	<p style="text-align: right;">Page 16170</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 CHAIRPERSON: It does look as if it's a 4 document that was typed straight out because there are all 5 sorts of little mistakes in it, which I take it would have 6 been corrected later. 7 MAJOR-GENERAL MPEMBE: It is the one that 8 was typed by Colonel Visser. 9 CHAIRPERSON: Alright, thank you. 10 MS BARNES: If you look at the second 11 page of the document, the second paragraph, it says the 12 following, "General Mpembe gave instructions" – 13 CHAIRPERSON: Sorry, let's wait for the 14 page to be shown to us on the screen. 15 MS BARNES: Perhaps it will be useful to 16 start with the first paragraph. It says, "The General warn 17 them that by count of 10 they will be forced to surrender 18 the dangerous weapon. They did not listen to the General 19 and they decided to take the other direction leading 20 towards the nearby settlement. They were followed towards 21 the settlement." Then it says, "General Mpembe gave 22 instruction to corner the strikers in order to disarm and 23 arrest them. After the instruction of cornering them was 24 announced, the police ran after the strikers and the 25 strikers increased their walking pace towards the nearby</p>

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1 settlement." So I take it, General, that if you had seen
2 this at Potchefstroom, you would have objected and said
3 that's absolutely not true?
4 MAJOR-GENERAL MPEMBE: Chairperson, I
5 want to put it again on record in my answer, I said to this
6 Commission what was said in my presence and I denied it in
7 my presence. I even said that, I even mentioned the name
8 of the officer who said I gave the instruction, and it is
9 there on my record as you quote it in before. I am the
10 type of a commissioner who's not oppressing the information
11 as it comes, but it has to be proven.
12 MS BARNES: I take it, General, that as
13 the police presentation, which as we now know is exhibit L,
14 was produced at Potchefstroom, it was obviously compiled
15 over time. It was reviewed and amended from time to time
16 at Potchefstroom. I take it you would have been involved
17 in at least some of those reviews. Is that right?
18 MAJOR-GENERAL MPEMBE: I did say the last
19 time that I was there it was when I gave the information
20 and the latest information is when it was presented to the
21 Commission, and it was not even presented under oath. It
22 was presented by Colonel Visser. He was not under oath,
23 and it was also presented by, I think he's also Lieutenant-
24 Colonel by then, Scott, and they did present it not under
25 oath.

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1 MS BARNES: General, I'm not –
2 CHAIRPERSON: [Microphone off, inaudible]
3 wasn't under oath doesn't mean very much because presumably
4 they wouldn't have told something different if it had been
5 under oath, as opposed to not being under oath, but you're
6 correct, it was presented not as evidence but really as
7 preliminary evidential material to enable us to proceed
8 with our work. That's what you're saying, is it?
9 MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson.
11 MS BARNES: Yes, General, I'm not talking
12 about the stage at which the presentation was presented to
13 this Commission, but I'm still talking about Potchefstroom.
14 Colonel Scott in his evidence said that in the second week
15 of Potchefstroom the presentation as it then was, was
16 presented twice. Were you at either of those
17 presentations?
18 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
19 MS BARNES: Both?
20 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
21 but there were other documents that they do have which I
22 did not see, but the presentations, I did see them.
23 MS BARNES: And you were satisfied with
24 the presentation at that stage insofar as it related to
25 yourself at Marikana. Is that right?

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1 MAJOR-GENERAL MPEMBE: I said,
2 Chairperson, I was not satisfied. The only issue that I
3 raise in the presence of everybody, and not only in
4 Potchefstroom, even in the Commission during my evidence-
5 in-chief I did reveal that even the officers said I did
6 give an instruction. which I said I did not.
7 MS BARNES: Yes, but General, didn't that
8 take place in the breakaway session in the first week that
9 we've just talked about, where that allegation was made by
10 Captain Tupe and you denied it? Didn't that happen in the
11 breakaway session?
12 MAJOR-GENERAL MPEMBE: Chairperson, I
13 said it's both ways. It is in the breakaway and the
14 information it was also filtered again, but I couldn't stop
15 Captain Tupe to say this is what he said, but what I said
16 in Potchefstroom and even in this Commission is myself who
17 revealed that what Captain Tupe said. I didn't hide it,
18 and I said I did not give an instruction. If I gave any
19 person instruction, I could have done so through the radio,
20 which everybody could have heard.
21 MS BARNES: If we could try and focus
22 specifically on the two occasions in the second week of
23 Potchefstroom where the presentation was made to the
24 commanders. Right, you've just confirmed that you were at
25 both of those presentations.

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1 MAJOR-GENERAL MPEMBE: Chairperson, in my
2 presence maybe they will have to look at the attendance if
3 there was any other one, because there were days that I
4 could not attend, but I need to state clearly that in
5 Potchefstroom I did say that I did not give the command,
6 and even in the Commission in, during my evidence-in-chief
7 I did say what Captain Tupe said there, even if it's
8 captured by Colonel Visser, but I still denied it, and in
9 the Commission and even there I said if I gave a command to
10 Warrant-Officer Kuhn or to whomever, it could have been
11 during the, through the radio and everybody could have
12 heard it.
13 CHAIRPERSON: Presumably more than one
14 person would have fired teargas too.
15 MAJOR-GENERAL MPEMBE: Chairperson?
16 CHAIRPERSON: I say and presumably if
17 you'd given the command over the radio and everyone had
18 heard it, more than one person would have fired teargas.
19 MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson.
21 MS BARNES: I understand. I understand
22 your evidence, General. I'm really just trying to
23 establish in the second week of Potchefstroom when the
24 presentation was made to you and the other generals, the
25 people that had been in charge, you were satisfied at that

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1 stage that it correctly reflected the position as it
 2 related to you?
 3 MAJOR-GENERAL MPEMBE: Chairperson, I say
 4 it for the third time, no, with reference to the
 5 instruction. I said it there, no, even in the Commission,
 6 no, and I didn't hide it to the Commission because I know
 7 that if it does appear it will seem as if I wanted to hide
 8 it.
 9 CHAIRPERSON: Ms Barnes, I've got a
 10 problem with this. I don't want to stop you asking the
 11 question because I think I see the point you're trying to
 12 make and I don't want to hamper you, but you know, we're
 13 trying to find the truth here and what we do know is that
 14 earlier, which Mr Chaskalson referred to when he cross-
 15 examined Colonel Scott, earlier drafts of the presentation
 16 do reflect a statement, do contain a statement that the
 17 General gave this instruction, but the final version
 18 doesn't. So at some point a decision was taken to delete
 19 it, and that seems to fit in with the point that he
 20 contended that this information was incorrect. But as I
 21 say, I don't want to stop you if you've got meaningful
 22 focussed questions on the point. You obviously have the
 23 fullest right to put them, but the point was of course made
 24 by Mr Chaskalson, he covered with, admittedly not with this
 25 witness, with Colonel Scott, he covered the previous drafts

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1 and so forth, and there is a point beyond which it's clear
 2 that it is not the police version that General Mpeembe gave
 3 the instruction. A previous assertion in earlier drafts
 4 was clearly abandoned and withdrawn. So presumably he
 5 wasn't involved in that, so he's not the right person to
 6 ask about it, but that does confirm what he says, that he
 7 clearly stated at all material times that he didn't give
 8 that instruction. But if I'm wrong on that you must
 9 correct me, because that's the way I see it.
 10 MS BARNES: Chair, I'm happy to move on.
 11 If we can go to the transcript, General, day 103 at page
 12 11093 –
 13 CHAIRPERSON: Do you have that page,
 14 General?
 15 MAJOR-GENERAL MPEMBE: Yes, I do have it,
 16 Chairperson.
 17 MS BARNES: 11093, I just need to find
 18 the line, if you could go down the page. Yes, line 13 you
 19 say, "Chairperson, the emotions were extremely high, but as
 20 a senior officer at the scene I did take control, cool up
 21 the members and I said that the members should not follow
 22 the protesters because by that time I could see that there
 23 is no more any attack and I said that we should withdraw
 24 and go back to the JOC." You see that?
 25 MAJOR-GENERAL MPEMBE: I see it,

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1 Chairperson.
 2 MS BARNES: Now was that the stage at
 3 which you arrived at the scene at which the killings had
 4 just taken place?
 5 MAJOR-GENERAL MPEMBE: It is on the
 6 scene, yes.
 7 MS BARNES: And when you arrived at that
 8 point where the killings had taken place, it was – I'm just
 9 trying to get the timelines correct – that's when you, it
 10 was clear to you at that stage that the police were no
 11 longer under attack. Is that correct?
 12 CHAIRPERSON: Sorry, before he answers
 13 the question, I don't think it's appropriate to say he
 14 arrived on the scene. The fact is he was there all the
 15 time, wasn't he? I'm not quite sure whether "arrived"
 16 covers what you want to put, but the way it was put isn't
 17 entirely accurate.
 18 MS BARNES: Well, you arrived at the
 19 particular spot where the police officers had been killed.
 20 Is that the stage you're referring to in that passage?
 21 MAJOR-GENERAL MPEMBE: I was walking with
 22 the police all along, so I don't know whether I arrived at
 23 a particular place, but I was all the time with the police
 24 and even when the attack takes place I was always with the
 25 police. I didn't go back to the JOC or to sit in the

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1 office.
 2 CHAIRPERSON: You haven't turned your
 3 machine on. Repeat what you said. It wasn't recorded, the
 4 last sentence.
 5 MS BARNES: I'm not suggesting that you
 6 left the scene. I'm simply asking you to confirm that the
 7 stage you're referring to there is the stage at which you
 8 arrived, or walked up to the spot at which the police
 9 officers had been killed.
 10 [12:52] MAJOR-GENERAL MPEMBE: The statement
 11 doesn't indicate that I was arriving, I said at the scene.
 12 So this indicates that I was always there with the police.
 13 Maybe I don't understand the question, but my understanding
 14 is that I was always with the police so even if when the
 15 scene happened it happened within my full-blown view.
 16 MS BARNES: At what stage did you say
 17 that the members should not follow the protesters because
 18 by that time you could see that there was no longer an
 19 attack.
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson, that's when immediately after I was told by
 22 Colonel Vermaak that my life was in danger and I also said
 23 we should no more follow the protesters.
 24 MS BARNES: Thank you.
 25 CHAIRPERSON: At that point had the

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1 protesters moved on, there was a situation where the
2 protesters or, sorry I prefer strikers, where the strikers
3 had stopped walked and had in fact, some of them at least,
4 had attacked some members of the police. That's correct
5 and there was something in the nature of a fight, but then
6 when the fight was over did the strikers move on?

7 MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson.

9 CHAIRPERSON: And when you said what
10 you've said here in the passage as being put to you that
11 you said was the time when the strikers were no longer
12 standing where the fight had taken place but were in the
13 process of moving away. Is that right?

14 MAJOR-GENERAL MPEMBE: Definitely
15 correct, Chairperson.

16 MS BARNES: So you were speaking to the
17 members and you said it was after Vermaak had told you
18 about the threat on your life. Did you say this in the
19 presence of Lieutenant-Colonel Vermaak?

20 MAJOR-GENERAL MPEMBE: I said it to all
21 the members who were there and if Colonel Vermaak was there
22 at that time I said it also to him.

23 MS BARNES: If we can go now to a new
24 exhibit. This is the presentation in relation to the path
25 that the strikers took on the 13th of August.

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1 Hemraj makes a suggestion which I think we should take on
2 board. This bundle of documents is not paginated, it might
3 make it easier for us to follow when we later read the
4 transcript and easier for you while you're putting
5 questions to the witness and while the witness is giving
6 his answer if we number the pages. So the covering sheet
7 we'll call 1, the seconds that begins "This presentation
8 uses Google Earth" etcetera we'll call 2 and then we'll
9 number all the pages thereafter sequentially. So it means
10 that the last page which we'll number page 8 is the one
11 headed "The strikers did not visibly change direction."
12 And then there's a number of entries in it in various
13 colours of the rainbow. Is that correct?

14 MS BARNES: That would be correct, Chair.

15 CHAIRPERSON: Now when you refer to it
16 you can either call it exhibit HHH59 point, give the number
17 or page so and so, whichever you prefer.

18 MR MATHIBEDI SC: Sorry, Mr Chairman, we
19 are being told that this is the likely path that the
20 strikers would have taken, what's the basis of that, Mr
21 Chairman? We don't have –

22 CHAIRPERSON: You mustn't ask me the
23 question, we'll ask Ms Barnes.

24 MR MATHIBEDI SC: I'm doing it through
25 the Chairman.

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1 CHAIRPERSON: Ms Barnes, you've given us
2 a document or rather a bundle of documents stapled
3 together. The first document has the following on it:
4 The position and direction of the strikers on 13 August
5 2012, is the document to which you are referring?

6 MS BARNES: Yes, quite correct, Chair.

7 CHAIRPERSON: And shall we give that the
8 exhibit number HHH59?

9 MS BARNES: Thank you, Chair.

10 CHAIRPERSON: Is that what you wanted?
11 Very well then exhibit HHH59 is a document – I'll just put
12 the words in quotation marks on it "The position and
13 direction of the strikers on 13 August 2012." I take it
14 this is a document you have compiled which you are wishing
15 to put to the witness. Is that correct?

16 MS BARNES: Yes, that's right, Chair.

17 CHAIRPERSON: It's not an original
18 document, it's a document constructed for the purpose of
19 the Commission.

20 MS BARNES: That's right. It's a
21 document, General, that's been compiled by our legal team,
22 it's an analysis of the likely path that the strikers took
23 on the 13th of August. So if we can start on the first page
24 of the presentation –

25 CHAIRPERSON: Before we proceed, Advocate

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1 CHAIRPERSON: Ms Barnes, you've heard the
2 question that was addressed to me, may I delegate to you
3 the duty of answering it?

4 MS BARNES: Yes, that's precisely what
5 the presentation addresses. It's how the path was arrived
6 at. So that's the purpose of the presentation. So if one
7 starts on page 1, General, you'll see this is a –

8 CHAIRPERSON: No, no, I'm sure you've
9 answered the question entirely - fully, but let's take it
10 page by page. No question arises in respect of the source
11 of the information on the first page, nor the second which
12 merely gives you a Google Earth imagery on which you made
13 certain – indicated certain areas and stated in the key
14 what they are. Right then we move to page 3 it may be that
15 my colleague Advocate Hemraj has a suggestion.

16 COMMISSIONER HEMRAJ: Are you perhaps, Ms
17 Barnes, relying on evidence before us to plot these paths
18 that you're suggesting?

19 MS BARNES: Partially it is a
20 combination, so it's a combination of information drawn
21 from exhibit B in particular and then video –

22 COMMISSIONER HEMRAJ: What is exhibit B?
23 Please remind me.

24 MS BARNES: Exhibit B is the crime scene
25 pack. So for example we know when the inspection in loco

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1 was done. We know where bodies were found and where
 2 cartridges were found and so forth and that's all captured
 3 in exhibit B. So it's partly drawn from exhibit B and
 4 you'll see that particularly on page 12 and it's partly
 5 drawn from –

6 CHAIRPERSON: Page 12? We've only got 8
 7 pages.

8 MS BARNES: Oh sorry, page 4.

9 CHAIRPERSON: Page 4.

10 MS BARNES: It's partly drawn from the
 11 video footage and then it's partly drawn from the Google
 12 maps and there are really 3 points that are plotted to
 13 create the path and I can explain how each of the three
 14 points was derived.

15 COMMISSIONER HEMRAJ: May I suggest that
 16 before you embark on this cross-examination that we have
 17 some clarity when you say for example it comes from video
 18 footage, precisely where it comes from so that I think
 19 we're all on the same pages as to where this evidence
 20 emanates from that you were using to draw these conclusions
 21 with regards to the path?

22 CHAIRPERSON: It seems a sensible or
 23 reasonable approach if I may say so. It's now lunch time,
 24 so perhaps thought can be given to this and the other
 25 matter that you mentioned? Who has done the following? I

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1 can understand – Ms Barnes, I can understand looking at
 2 what you've prepared that some of the pages are fairly
 3 self-explanatory in a sense that they indicate spots you've
 4 identified and stated in the key what they are. There are
 5 also excerpts from videos that one can see from that the
 6 source of the information. But there are also documents or
 7 pages that have lines on them. We're not sure who drew the
 8 lines, one of the issues is going to be whether the line is
 9 correctly drawn and that might depend upon who drew them
 10 and what the lines were based on. Perhaps these are all
 11 matters that you can address after lunch.

12 MS BARNES: Thank you, Chair.

13 CHAIRPERSON: We'll take the lunch
 14 adjournment.

15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [14:02] CHAIRPERSON: The Commission will resume.
 17 Ms Barnes?

18 MS BARNES: Thank you, Chair. Chair, in
 19 relation to the presentation, as well as the properties
 20 document, which I indicated earlier that there was a little
 21 bit of confusion over, what we thought would be a sensible
 22 way to proceed would be – and we've agreed this with our
 23 colleagues from SAPS – would be to attempt to reach
 24 agreement with SAPS in relation to those particular
 25 documents, and they've agreed to hold such a meeting with

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1 us. If we're able to do that, then it won't be necessary
 2 to traverse them in this way and so for the moment, if we
 3 might be permitted to, in relation – well, the one has been
 4 introduced an exhibit, the other one has not yet been given
 5 an exhibit number.

6 CHAIRPERSON: Yes. In respect of the
 7 presentation, as I understand it, there's a problem in
 8 relation to certain of the things, but not – I mean, for
 9 example, page 2 is quite useful to – it's an aerial view of
 10 the terrain with the place by the railway line where the
 11 first meeting was. I take it that red circle correctly
 12 indicates where engagement – if one can call it that - the
 13 hostilities took place. And then the koppie is marked and
 14 the informal settlement is marked. I mean that's useful
 15 thing to have anyway. And then if one disregards the
 16 arrow, which may well be subject to controversy at this
 17 stage – the arrow, the arrows, the third page also is quite
 18 helpful. Four, is I think an exhibit we've had before
 19 actually. And then five is two extracts from the videos
 20 with arrows indicating where the events, which are in the
 21 two top pictures, took place.

22 So there are matters outstanding in respect of
 23 which agreements are required and one hopes you'll succeed
 24 in getting them. So we'll leave those documents for the
 25 moment, and I think we may as well leave the exhibit

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1 though, with the exhibit number, because the agreement that
 2 you hope to be able to conclude, will refer to that
 3 exhibit.

4 MS BARNES: Thank you, Chair.

5 CHAIRPERSON: One approach my colleague,
 6 Advocate Hemraj, is raising, she says are we bound by the
 7 agreement if you have it? Well, I suppose technically not,
 8 because this is not a dispute between parties, it's not a
 9 court case where the court is bound by agreeing with the
 10 parties. We are here to find the truth, and we're assisted
 11 by the evidence leaders primarily, but also the parties as
 12 well, and ultimately it's our decision as to whether what
 13 is put before us will guide us to the truth, but let's
 14 cross that bridge when we get there.

15 MS BARNES: Yes, we do understand that,
 16 thanks, Chair.

17 CHAIRPERSON: Yes, you understand we want
 18 to be able evidential value to it. That's the object of
 19 the exercise. And the direction in which the strikers
 20 moved on that particular day has got some relevance.
 21 There's already some circumstantial evidence on the point
 22 which may be of assistance, but clearly it's one of the
 23 issues. So it will be helpful if material is put before us
 24 of a nature which we can have regard to.

25 You're now going to move onto another point, are

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1 you, Ms Barnes?

2 MS BARNES: Yes, thank you, Chair.

3 General, if we could go back to your statement, Exhibit

4 GGG12, paragraph 3 of your statement. Now, this refers to

5 a meeting which you had with Lonmin on Monday, the 13th of

6 August, at 10 o'clock. That would have been shortly after

7 you arrived at Lonmin that morning. Do you need a moment

8 to find it?

9 CHAIRPERSON: According to my copy it is

10 paragraph 4.

11 MS BARNES: Yes, sorry, Chair, it is in

12 fact paragraph 4. Do you have that, General?

13 MAJOR-GENERAL MPEMBE: I have it,

14 Chairperson.

15 MS BARNES: And you've described who was

16 at the meeting and you've said that Mr Mokwena, referring

17 to protestors, stated that they were faceless and that the

18 company does not know them. Now, were you told at this

19 meeting, General, that Lonmin had obtained an interdict

20 against these strikers the previous Friday?

21 MAJOR-GENERAL MPEMBE: No, Chairperson,

22 that one we were not told.

23 MS BARNES: If I could take you then to

24 Exhibit RR? This is in fact the interdict application that

25 was brought – well, it's the founding affidavit, in support

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1 of the application. And you'll see that Lonmin is the

2 applicant and there are then three respondents. The first

3 respondent is the National Union of Mineworkers. The

4 second – well, it's in fact described as the third, but it

5 should be the second respondent, is AMCU. And then the

6 third to further respondents are the persons whose names

7 appear an annexure A to the Notice of Motion. Do you see

8 that?

9 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

10 I see it.

11 CHAIRPERSON: I take it that when

12 Lonmin's counsel get's a chance to present evidence,

13 they'll explain to us why Eastern Platinum Limited is

14 referred to as the third applicant and there's no second

15 applicant, but that's not a matter that need detain us at

16 the moment. And they'll also explain to us why AMCU is the

17 third respondent, as you've said, and why the other persons

18 are referred to further respondents, but we don't have to

19 waste time on it at this stage.

20 MS BARNES: Indeed. If we can go to

21 paragraph 8 of that founding affidavit, you'll see that

22 that just identifies in terms the third to further

23 respondents. It says that they are 3 000 employees of

24 Lonmin and their names are in fact listed in annexure A1 to

25 interdict application. That is also an exhibit. It's

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1 Exhibit 0019. It's not necessary for you to go to that,

2 General, but the point is you were not given this

3 information by Lonmin on Monday. Is that correct?

4 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

5 MS BARNES: And then if we could look at

6 your statement at paragraph 30? That's page 15. The same

7 statement that we've been working with. This is now a

8 reference to a meeting that you had with Lonmin on the 14th

9 of August, and it's now by this stage certain of strikers

10 have been identified by Lonmin as their employees. Is that

11 correct? And you then say, "I challenged them on their

12 earlier claim that the marchers and protestors were unknown

13 to the mine and were faceless." And you then that they had

14 a duty in terms of the Labour Relations Act to engage with

15 the unions. So you made a specific request and in fact an

16 appeal to Lonmin that occasion to engage with the

17 strikers. Is that right?

18 MAJOR-GENERAL MPEMBE: I just want to

19 check, is it paragraph 15 or?

20 MS BARNES: Paragraph 30, page 15.

21 CHAIRPERSON: Paragraph 30, page 15.

22 MAJOR-GENERAL MPEMBE: Yes, I see,

23 Chairperson.

24 MS BARNES: So you made an appeal to

25 Lonmin on that occasion to engage with the strikers. Is

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1 that right?

2 SPEAKER: Sorry, Mr Chairperson, the

3 appeal was actually to engage with the trade unions, not

4 with the strikers. If you have regard to the last sentence

5 of paragraph 30.

6 CHAIRPERSON: That's correct, Ms Barnes.

7 MS BARNES: I accept that, Chair.

8 CHAIRPERSON: May I ask, if you're

9 leading up to something, I won't stop you, but these points

10 that you're now making are all points already on record.

11 So unless you want to take them further, I don't see the

12 point in just getting him to repeat, possibly by way of

13 some kind of highlighting exercise, particular passages of

14 his affidavit.

15 MS BARNES: Chair, I simply wanted to ask

16 the general whether there were other occasions on which he

17 made a request to Lonmin to engage with either the unions

18 or the strikers, other than the one that we see here.

19 MAJOR-GENERAL MPEMBE: Chairperson, it is

20 only this one. As I did testify that the first time when I

21 met the management, it was on the 13th, and thereafter it

22 was when I make the follow-up on the same – on the 14th, and

23 also requested that I should meet the unions.

24 CHAIRPERSON: Did you get any feedback

25 from Lonmin as to their response to what you had told them,

<p style="text-align: right;">Page 16191</p> <p>1 as set out in the last sentence of paragraph 30?</p> <p>2 MAJOR-GENERAL MPEMBE: Paragraph?</p> <p>3 CHAIRPERSON: Paragraph 30, at the top of</p> <p>4 page 15, the last sentence of that paragraph states what</p> <p>5 you informed them. You informed them of their duty in</p> <p>6 terms of the Labour Relations Act to do certain things.</p> <p>7 Did you get any feedback from Lonmin as to their response</p> <p>8 to what you had put to them?</p> <p>9 MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>10 except what Mr Barnard Mokwena said when I met them with</p> <p>11 the unions. Except that one, I did not receive any</p> <p>12 feedback.</p> <p>13 MS BARNES: Now, General, if I might then</p> <p>14 refer you to Exhibit JJJ192? This is the transcript of a</p> <p>15 meeting that was held between the provincial commissioner</p> <p>16 and certain employees of Lonmin on the 14th of August. And</p> <p>17 I simply wanted to find out from you, General, whether you</p> <p>18 were present at this meeting or not?</p> <p>19 MAJOR-GENERAL MPEMBE: No, Chairperson, I</p> <p>20 was not present.</p> <p>21 MS BARNES: Did the provincial</p> <p>22 commissioner ever give you a report-back about this</p> <p>23 particular meeting?</p> <p>24 MAJOR-GENERAL MPEMBE: No, Chairperson,</p> <p>25 it is not normally a duty or a trend that a senior officer</p>	<p style="text-align: right;">Page 16193</p> <p>1 Presumably you would have seen this on the day. Is that</p> <p>2 correct?</p> <p>3 MAJOR-GENERAL MPEMBE: No, Chairperson, I</p> <p>4 did not see it. It's the first time that I see it in the</p> <p>5 Commission.</p> <p>6 CHAIRPERSON: Sorry, Ms Barnes. Was this</p> <p>7 on, what one could call the police JOC, or I think there</p> <p>8 was a separate smaller room which was the Lonmin JOC? Do</p> <p>9 we know –</p> <p>10 MS BARNES: Yes, no, this is was in the</p> <p>11 police JOC.</p> <p>12 CHAIRPERSON: Thanks.</p> <p>13 MS BARNES: You'll see that it is a</p> <p>14 photograph taken by a Captain Van Heerden in the police JOC</p> <p>15 on the 16th of August. Now if you look at the document now,</p> <p>16 General, you'll see that it refers to – well, it's titled,</p> <p>17 "Mining Security Posting," and it seems to indicate where</p> <p>18 various Lonmin security guards will be posted on the 16th of</p> <p>19 August. It also appears to indicate the various firearms</p> <p>20 that are allocated to those particular individuals. Can</p> <p>21 you see that? Particularly on the enlargement page.</p> <p>22 MAJOR-GENERAL MPEMBE: Yes, Chairperson,</p> <p>23 I can see it.</p> <p>24 MS BARNES: So you would presumably have</p> <p>25 had – one would have expected, General, that you would have</p>
<p style="text-align: right;">Page 16192</p> <p>1 will give a junior officer feedback.</p> <p>2 MS BARNES: I'm going to now refer to a</p> <p>3 new exhibit. It will be the last new exhibit, and it is a</p> <p>4 photograph of one of the JOC boards. It's entitled,</p> <p>5 "Mining Security Posting," and it's a photograph that was</p> <p>6 taken on the 16th of August 2012. The exhibit, I believe is</p> <p>7 two pages. There has been attempt – that is the first page</p> <p>8 that we see on –</p> <p>9 CHAIRPERSON: The last one is on the</p> <p>10 second page. So we'll call that HHH60. 1 and 60.2. Is</p> <p>11 that in order?</p> <p>12 MS BARNES: Yes, thank you, Chair.</p> <p>13 CHAIRPERSON: We better get permission</p> <p>14 from Ms Pillay first.</p> <p>15 MS PILLAY: That's in order, Chair.</p> <p>16 CHAIRPERSON: Very well, the first page,</p> <p>17 which is headed a photograph of one of the JOC Boards,</p> <p>18 "Mining Security Posting," I've marked HHH60.1 and the</p> <p>19 second page, which is no heading – it's actually got a page</p> <p>20 number 2 on it, I've marked – which contains enlargements</p> <p>21 of - some of it appears on the document which is on 60.1,</p> <p>22 together with a photograph of an LM5 assault rifle. That</p> <p>23 will be HHH60.2.</p> <p>24 MS BARNES: So this was a document that</p> <p>25 was posted on the JOC wall on the 16th of August.</p>	<p style="text-align: right;">Page 16194</p> <p>1 had a discussion with at least Mr Sinclair, the head of</p> <p>2 Lonmin Security, about where these particular security</p> <p>3 officials were going to be posted.</p> <p>4 MR MATHIBEDI SC: No, Chair, there's no</p> <p>5 basis for that question, with respect. Sorry, Mr Chairman,</p> <p>6 the witness answered that he's seen this document for the</p> <p>7 first time. That being the case, how would he have known</p> <p>8 where the various officers were going to be posted?</p> <p>9 MS BARNES: Chair, I'm simply asking</p> <p>10 since this document was in the police JOC, I'm simply</p> <p>11 asking, and given what it refers to, I'm simply asking the</p> <p>12 witness whether he would have had discussions with Mr</p> <p>13 Sinclair about where security officials would be posted on</p> <p>14 the 16th?</p> <p>15 CHAIRPERSON: The question asked has</p> <p>16 nothing directly to do with the document, it's a follow-up</p> <p>17 from the document. Did you have discussions with Mr</p> <p>18 Sinclair about the positions where various Lonmin employees</p> <p>19 would be posted by way of security postings? Did you have</p> <p>20 such a discussion?</p> <p>21 MAJOR-GENERAL MPEMBE: Chairperson, the</p> <p>22 security, Mr Sinclair, they were posting their securities</p> <p>23 on the normal posting, like inside the mines and so on, but</p> <p>24 those discussions were not even part of the police</p> <p>25 discussions, but what I can also say is that we do not have</p>

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1 the same JOC with the security mine.

2 CHAIRPERSON: I didn't say that. No, the

3 simple question is, did you have discussions with Mr

4 Sinclair about where these people would be posted? If the

5 answer to that is no, the answer to that is no, that's all.

6 MAJOR-GENERAL MPEMBE: Correct,

7 Chairperson, the answer is no.

8 MS BARNES: Was the issue of Lonmin

9 security postings discussed in the JOC on the 16th of August

10 in your presence?

11 MAJOR-GENERAL MPEMBE: No, Chairperson.

12 MS BARNES: Now, General, I'd just like

13 to revisit something that we touched on earlier and that

14 was the matter of –

15 CHAIRPERSON: Are you leaving this?

16 MS BARNES: Yes, Chairperson.

17 CHAIRPERSON: Well, let me ask a question

18 about it. According to this document, which remember we'll

19 hear about at some stage, above the names of a number of

20 these people – well, I just turn the document on HHH60.1,

21 are references, as one can see, from HHH60.2 to firearms,

22 and if you have HHH60.2 in front of you, you will see above

23 the name of Mr Kellerman, whom I gather is an employee of

24 Lonmin, there is, it appears the words 9mm, which

25 presumably refers to a firearm.

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1 [14:22] One by SG which refers to a shotgun and then LM5

2 and then below that enlarged picture is a photograph of an

3 LM5 assault rifle. Do you know anything about the weapons,

4 in particular assault rifles which were in the possession

5 of Lonmin employees?

6 MAJOR-GENERAL MPEMBE: No, Chairperson.

7 CHAIRPERSON: Oh you can't throw any

8 light on this at all.

9 MAJOR-GENERAL MPEMBE: Correct,

10 Chairperson.

11 MS BARNES: General, perhaps I can just

12 ask you on that, we've heard evidence in this Commission

13 that the police were not issued with shotguns that fired

14 live rounds on the 16th of August, is that correct?

15 MAJOR-GENERAL MPEMBE: May you please

16 repeat because shotguns there are many, me I'm not

17 understanding the question, because a shotgun it can mean

18 there is a shotgun that can use the rubber bullet.

19 MS BARNES: Yes, the shotguns were issued

20 for the purposes of firing rubber bullets, but shotguns

21 were not issued with shotgun shells on the 16th to the

22 police, would that be correct?

23 MAJOR-GENERAL MPEMBE: Chairperson, maybe

24 I'm not understanding the type of the shotgun because there

25 are so many shotguns.

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1 MS BARNES: Let me try and be clearer.

2 The police were not issued with shotgun rounds containing

3 shotgun pellets on the 16th, is that correct?

4 MAJOR-GENERAL MPEMBE: Correct,

5 Chairperson.

6 MS BARNES: Then, General, we've

7 established earlier that during Mr Mathunjwa's evidence

8 here in this Commission it was put to him that his

9 statement that you had told him that the Provincial

10 Commissioner had left for an ANC torch bearing ceremony was

11 not correct, do you follow?

12 MAJOR-GENERAL MPEMBE: No, Chairperson, I

13 do not follow.

14 MS BARNES: When Mathunjwa gave his

15 evidence in this Commission the counsel for the police and

16 – let me take it step by step. Mr Mathunjwa gave his

17 evidence and he said in the course of that evidence that

18 you had told him when he wanted to speak to the Provincial

19 Commissioner that she was not there because she'd gone to

20 an ANC torch bearing ceremony. That was his evidence, it's

21 also in his statement as you will have seen. Now your

22 counsel put it to him that you, General, would come and say

23 that that was incorrect, that you never told Mr Mathunjwa

24 that the Provincial Commissioner had gone to an ANC torch

25 bearing ceremony. Do you follow?

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1 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

2 I do follow.

3 CHAIRPERSON: Ms Barnes, can you give us

4 a reference to the transcript to this cross-examination?

5 MS BARNES: I don't have it at my

6 fingertips right now, Chair, but I will be able to obtain

7 it.

8 CHAIRPERSON: I understand.

9 MS BARNES: So would it be correct then,

10 General, that you would have given that information to your

11 legal team?

12 CHAIRPERSON: There must be – I mean they

13 couldn't have put that you deny that you spoke about the

14 torch bearing ceremony unless you told them that you deny

15 talking about the torch bearing, I don't think it's the

16 bearing, but anyway the torch ceremony. So I mean counsel

17 couldn't say General Mpebe denies that he spoke about the

18 ANC torch ceremony unless you had told them that that was

19 so. That must correct surely.

20 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

21 From the beginning the Provincial Commissioner herself knew

22 that she has never been at the torch ceremony.

23 CHAIRPERSON: You see the allegation was

24 that you had said that and what was put that you denied

25 saying that. So I take it we can accept realistically that

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1 you must have given instructions to the SAPS legal team
2 that you never said that.

3 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
4 I did say particular during my consultation with the legal
5 team that I did not say so and I even put it clear in my
6 statement that I do not know why Mr Mathunjwa will try to
7 put words in my mouth. I didn't really understand why he
8 will always say I said things that I didn't say.

9 MS BARNES: And if there were other
10 aspects of Mr Mathunjwa's evidence or any statements that
11 were wrong you would also have told your attorneys about
12 that, isn't that correct?

13 MAJOR-GENERAL MPEMBE: Correct,
14 Chairperson.

15 MS BARNES: Chair, we have the reference
16 for the challenge that was put to Mr Mathunjwa by Mr
17 Semenya, it is day 23, it's page 2460 and it's from line 22
18 to 2461 line 7.

19 CHAIRPERSON: Thank you.

20 MS BARNES: Now, General we know that you
21 have said it's not correct that you told Mr Mathunjwa that
22 you were no longer in charge of the operation on the 16th,
23 is that correct?

24 MAJOR-GENERAL MPEMBE: That I'm not in
25 charge or – I just wanted to find the question for clarity.

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1 CHAIRPERSON: The allegation is that you
2 told Mr Mathunjwa that he must speak to the Provincial
3 Commissioner because you were no longer in charge of the
4 operation, she was. That's the allegation, that's what Mr
5 Mathunjwa said you said. Do you understand? It was Mr
6 Mathunjwa's allegation about what you'd told him. Now the
7 question I think is do you admit that that's what you told
8 Mr Mathunjwa or do you deny that that's what you told Mr
9 Mathunjwa?

10 MAJOR-GENERAL MPEMBE: I deny it,
11 Chairperson.

12 MS BARNES: General, it wasn't put to Mr
13 Mathunjwa by your legal team in this Commission that that
14 was false. Do you have any explanation for that?

15 MAJOR-GENERAL MPEMBE: Chairperson, in my
16 evidence in chief I did say when I introduced Mr Mathunjwa
17 to the Provincial Commissioner, not knowing that they met
18 somewhere else, I did say to Mr Mathunjwa in the presence
19 of Major-General Annandale "Provincial Commissioner, this
20 is Mr Mathunjwa, the President of AMCU." And we were in
21 front of the JOC, of the JOC by that time. And I also
22 introduced the Provincial Commissioner to Mr Mathunjwa as a
23 Provincial Commissioner and she is in charge of me.

24 CHAIRPERSON: I see, so did you actually
25 say to Mr Mathunjwa in the presence of the Provincial

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1 Commissioner this is the Provincial Commissioner, she is
2 the one who is in charge of me? Did you say –

3 MAJOR-GENERAL MPEMBE: Yes, I report to
4 her, she is my provincial commissioner.

5 CHAIRPERSON: Yes, I'm interested in if
6 you can remember what your exact words were. Did you say I
7 report to her or did you say, you know speaking
8 colloquially, did you say she's in charge of me?

9 MAJOR-GENERAL MPEMBE: Chairperson, I
10 said she is in charge of the province and that all of us
11 were reporting to her, but not she is in charge of the
12 operation.

13 MR MATHIBEDI SC: Sorry, Mr Chairman,
14 page 2462, that would be line 325 which reads as follows,
15 "And if that fact is established there is no way General
16 Mpeembe could have said that to you."

17 CHAIRPERSON: You're now jumping from
18 2461, line 7 which is the end of the passage to which Ms
19 Barnes refers to something which on the next page. So have
20 the advantage over me if you've got it the computer in
21 front of you. So perhaps if that could be put up on the
22 screen then we would be able to follow the point. I see
23 the point Ms Barnes is trying to make, it may be that it's
24 not quite as focused as I think it is at the moment.

25 Anyway we will see when we see that extract. We really, I

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1 suppose, should start at 2460 line 22 and then run through
2 to the passage – no, I think we must show it on the screen.

3 The important passage is on page 2462 line 9 where Mr
4 Semenya is reported as having said "neither did General
5 Mpeembe say to you that the Provincial Commissioner was the
6 one in charge" to which Mr Mathunjwa says "Mr General
7 Mpeembe introduced the Provincial Commissioner during the
8 morning and told us that she is in charge of the
9 operation." So it was challenged. So what you have put
10 I'm afraid isn't correct.

11 MS BARNES: Yes, Chair. General Mpeembe,
12 we have established through –

13 CHAIRPERSON: I think, Ms Barnes, you owe
14 the witness an apology. You put something to him which is
15 not correct but would it be safe to say the graceful way of
16 handling it is to apologise and then move on. And I'm sure
17 you'd like to do it like that.

18 MS BARNES: Yes, General, I do apologise
19 for my error.

20 MAJOR-GENERAL MPEMBE: Thanks, Advocate.

21 MS BARNES: General, we have had a look
22 at the video footage as well as the transcript of your
23 conversation with the strikers on the 13th of August and we
24 have established that the person who is described as Lonmin
25 worker 1 is in fact Mr Noki. I just wanted to indicate to

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1 you that we have now established that and invite your
 2 comment if you wish.
 3 CHAIRPERSON: If you want to see it
 4 again, just to satisfy yourself that it is indeed Mr Noki
 5 you're entitled to ask for that. But if you're prepared to
 6 accept it from counsel then we can carry on without more.
 7 I'm in your hands.
 8 MAJOR-GENERAL MPEMBE: It's true,
 9 Chairperson, I do not want to dispute that, but I wanted to
 10 say is that there was no precise leader and there is many
 11 in the transcript and if you listen that they did not say
 12 to me I can have another location. The location was
 13 precisely the mountain.
 14 MS BARNES: Thank you, Chair, those are
 15 our questions.
 16 CHAIRPERSON: Thank you. The next person
 17 scheduled to cross-examine is Mr Mpofu who's indicated on
 18 Friday I think he couldn't be here today but would be here
 19 tomorrow. At one stage there was a possibility as I
 20 understood it that the evidence leaders might wish to ask
 21 the General some further questions. I don't know whether
 22 that is so or not. Yes, before we move any further I did
 23 ask Mr Wesley to ascertain from Mr Mpofu whether the
 24 documents to which reference is going to be made during the
 25 cross-examination of General Mpembe by Mr Mpofu had been

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1 indicated. And whether insofar as any new documents copies
 2 have been made available for the witness to see. Because I
 3 don't want to waste time tomorrow if General Mpembe comes
 4 back and Mr Mpofu hasn't got the documents and we stand
 5 down. I see the attorney for Mr Mpofu's clients is with
 6 us, can she perhaps enlighten us on the point? We also
 7 raised at a meeting in chambers with Mr Mpofu on Friday.
 8 ATTORNEY: Thank you, Mr Chair.
 9 Documents have been given to the evidence already. The
 10 exhibits will be given to the witness before close of
 11 business day today, thank you.
 12 CHAIRPERSON: Yes, thank you. I never
 13 thought of sitting in a Commission constituting business
 14 but I suppose one learns all the time. Thank you. Ms
 15 Pillay.
 16 MS PILLAY: Chair, the list of documents
 17 which Mr Mpofu intends to rely on has been circulated to
 18 the parties.
 19 CHAIRPERSON: Thank you and there are new
 20 documents are there? Or are they all old ones?
 21 MS PILLAY: There don't appear to be any
 22 new documents.
 23 CHAIRPERSON: I see, so it's not
 24 necessary for copies for documents to be provided, good.
 25 All right so that problem seems to have been sorted out in

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1 what I can describe as a businesslike fashion. Mr
 2 Chaskalson.
 3 MR CHASKALSON SC: Chairperson, the
 4 evidence leaders don't have any questions for Major-General
 5 Mpembe at this stage. We'd like to reserve our position
 6 until after Mr Mpofu but we're certainly not in a position
 7 to ask any new questions on new documents at this stage.
 8 And we haven't disclosed the new documents that we might
 9 want to raise with Major-General Mpembe.
 10 CHAIRPERSON: Yes, thank you. Is there
 11 any other party representative here who wishes to ask
 12 questions, something that's not yet been disclosed to us?
 13 No, so it seems as if – I'm sorry about this, but it
 14 appears that we cannot continue in the chamber this
 15 afternoon. I'd like to speak to the evidence leaders in
 16 regard to certain matters relating to phase 2 after we
 17 adjourn and if there's anyone else here who wishes to raise
 18 any matter with us n chambers they'll be free to do so now.
 19 But we will now adjourn then until 9 o'clock tomorrow
 20 morning. Sorry, before we adjourn Advocate Hemraj wants to
 21 say something to me.
 22 COMMISSIONER HEMRAJ: Mr Mathibedi, if
 23 you look at the evidence n chief of General Mpembe there
 24 are a lot of references to the video being stopped at
 25 various places. Now when one reads that evidence it's very

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1 difficult to know at exactly which point in the video
 2 reference is being made to – it's difficult to follow the
 3 evidence. We raised this with Mr Ngalwana and at some
 4 stage we were promised that we would have a list of all
 5 those spots on the video that are referred to where the
 6 video was stopped and the witness then comments on it. And
 7 I think if that can be done sooner rather than later it
 8 would help us follow that evidence because as it stands
 9 it's quite confusing because we don't know what the
 10 reference is.
 11 MR MATHIBEDI SC: Thank you, Mr Chairman,
 12 I'll pursue this matter.
 13 CHAIRPERSON: Well on that basis then we
 14 can take the adjournment till 9 o'clock tomorrow morning.
 15 [COMMISSION ADJOURNED]
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