

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON

MR TOKOTA SC

MS HEMRAJ SC

HELD ON

DAY 171

Lukmos
—communications—

17 JANUARY 2014

TRANSCRIPT PAGES 20107 TO 20240

1 **[PROCEEDINGS ON 17 JANUARY 2014]**

2 **[09:19] CHAIRPERSON:** The Commission resumes.

3 Brigadier, you are still under oath.

4 **ADRIAAN MARTHINUS CALITZ:** Thank you, Mr.

5 Chairperson.

6 **CHAIRPERSON:** Mr Mpofo.

7 **CROSS-EXAMINATION BY MR MPOFU (CONTD.):**

8 Thank you very much, Chairperson. Good morning, Brigadier.

9 **BRIGADIER CALITZ:** Good morning,

10 Advocate.

11 **MR MPOFU:** Okay, before we move on, I

12 just want to round off the topic that we were busy with

13 when we adjourned, and that was the issue of the alleged

14 threat which according to the police version played a role

15 in what subsequently happened, and just to remind you, you

16 remember that you and I had agreed that the two versions of

17 what Mr Noki allegedly said would give completely different

18 implications.

19 Now, I want to say this. Maybe let me start at

20 the end. I am going to argue that it is improbable that Mr

21 Noki said that they were going to kill the police, and that

22 it is more probable that he said they – the strikers – were

23 willing to die, and of course I do appreciate your

24 disadvantage in this regard because as we know, this is

25 something you got through the medium of the interpreter, so

1 I am not going to – I mean I am going to regard that as part
2 of what I am going to say to you.

3 **MR SEMENYA SC:** No, Chairperson, I suffer a
4 much greater difficulty in understanding how Mr Mpofu can
5 calculate probabilities when we know he did not consult with
6 Mr Noki.

7 **CHAIRPERSON:** He did not?

8 **MR SEMENYA SC:** He did not consult with
9 Mr Noki.

10 **CHAIRPERSON:** No, but in the case, if it
11 is alleged that a dead person while he was alive behaved in
12 a particular way and someone says, well, he couldn't have
13 behaved in that way because that is very improbable that he
14 would have done that, and then the point can be raised.

15 Whether it is a good point or bad point, whether the
16 probabilities are as Mr Mpofu is going to suggest is
17 perhaps another matter, but I do not think I can stop him
18 from putting what effectively is an argument, that it is
19 unlike that this deceased person acted in this particular
20 way while he was still alive. Therefore, I will allow him to do
21 that, but it really goes to weight. The weight may not be
22 very substantial; it may. It is too early for us to say.

23 There are other aspects on this point, which presumably will
24 have to be looked at. You can carry on, Mr Mpofu, for the
25 time being.

1 **MR MPOFU:** Thank you, Chairperson. And
2 Brigadier, I shall base that, or rather, I shall base – that is
3 why I use the word advisedly, probability – I shall base, my
4 persuasion of the Commission to accept that argument will
5 be based on objective evidence, which I am just going to deal
6 with you now, okay.

7 **CHAIRPERSON:** May I ask the evidence
8 leaders and Mr Semenya, do we know whether there are any
9 recordings of what was said during the course of the
10 negotiations between the witness and Lieutenant Colonel
11 McIntosh and some of the strikers? If we –

12 **MR SEMENYA SC:** Chairperson, no, we do not, but
13 we do have a statement of the Lonmin interpreter.

14 **CHAIRPERSON:** No, I know that, but the
15 Lonmin interpreter, at the moment Lonmin has not disclosed
16 his name and he hasn't signed the affidavit; he's merely
17 put his fingerprints on it, and there may be problems in
18 relation to assessing the weight of an affidavit from an
19 anonymous person and so we have, I know we have the
20 statement, I understand that, but when it comes to
21 questions of weight when you have that kind of thing –
22 now I am not sure to what extent Mr Noki was alone when he
23 spoke, or whether he spoke within earshot of some of his
24 colleagues. So these are all matters that are important,
25 but you say as far as you know there is not a tape recording

1 of that, because that would be helpful. But if there
2 isn't, then –
3 One of the questions I asked you yesterday,
4 because I said you shouldn't find out, maybe the SAPS or
5 the evidence leaders should, you mentioned the names of the
6 people who were with you in Pappa1 at the time these threats
7 were allegedly made and I was interested to know whether
8 any of them could understand Fanagolo, but I take it you
9 have not made the enquiries, but presumably, there are
10 affidavits of course from some of them. But that is a
11 matter we can look into in due course.

12 **BRIGADIER CALITZ:** That is correct, Mr.
13 Chairperson. I did not follow it up, as you gave the task
14 to someone else, but we can –

15 **CHAIRPERSON:** I do not want you to do it,
16 you see, because otherwise there would be allegations – or no –

17 **BRIGADIER CALITZ:** I do not understand –

18 **CHAIRPERSON:** There may be allegations
19 that you have been tampering with witnesses and so on.
20 That is not a route we want to go, but there's no reason why
21 the SAPS team can't interview these witnesses, and the
22 evidence leaders can interview them as well, but –

23 **BRIGADIER CALITZ:** Correct, Mr.

24 Chairperson.

25 **CHAIRPERSON:** You keep out of it.

1 **BRIGADIER CALITZ:** I shall do so,

2 thank you, Mr. Chairperson.

3 **MR MPOFU:** Thank you. The Chairperson –

4 **CHAIRPERSON:** I am sorry to interrupt. I

5 thought I indicated yesterday that I would like that exercise

6 to be performed, but obviously there hasn't been time to do

7 it yet. But alright, Mr Mpofu, please proceed.

8 **MR MPOFU:** Thank you very much,

9 Chairperson. Brigadier, the Chairperson is quite correct;

10 if there was a tape recording of this it would take us one

11 second to know what was said. Because there is not, we have

12 to rely on indirect evidence, and what I was saying to you

13 when we adjourned yesterday is simply this; whether through

14 an interpreter or eavesdropping or whatever, what is clear

15 is that it came to the attention of the South African

16 Police Service that Mr Noki had said that they, had said to

17 Mr Mathunjwa at least - I know this is a bit earlier, but

18 I am facing the probabilities, as I have indicated – that at

19 least to Mr Mathunjwa at 15:35 the strikers said – or

20 firstly let us take one-step back. Mr Mathunjwa said,

21 "Look, you're going to be killed." We went through that

22 yesterday, and they in response said, "We are prepared to

23 die." In other words, they were the ones who were going to

24 be prepared to die, and the evidence of that is at L189

25 which I read out to you yesterday, where the police version

1 itself says that, "Mr Joseph Mathunjwa remarked to the
2 protesters they would die that day if they continued with
3 their course of action, to which they responded that they
4 were prepared to die there that day." Okay, so that is the
5 police confirming the attitude of the strikers. You accept
6 that that is the police version?

7 **BRIGADIER CALITZ:** I agree that this is what it
8 says on page 189.

9 **MR MPOFU:** Yes, okay. Now, we then take it
10 a step further from there, and if you can go to – and in
11 that, what is in the police statement is common cause
12 because Mr Magidiwana also testified that after Mr
13 Mathunjwa's address, the response of the workers was that
14 'Well, if they want to kill us let them kill us. We want
15 money,' and so on. He said all the things that he said in
16 this Commission. So that is the second pointer. First
17 pointer is the police themselves, Mr Magidiwana, now I am
18 going to take you to the third pointer. If you can go to
19 JJJ34, slide 31. It is just a slide.

20 **BRIGADIER CALITZ:** Say again; JJJ?

21 **MR MPOFU:** 34. It is just a slide. Okay,
22 you can see it. This is –

23 **CHAIRPERSON:** That is not the same as what
24 it is in exhibit L.

25 **MR MPOFU:** Yes, it is not –

1 **CHAIRPERSON:** This is an earlier version,

2 and -

3 **MR MPOFU:** Yes, an earlier version -

4 sorry, Chairperson.

5 **CHAIRPERSON:** It is an earlier version

6 which was taken from one of the computers, I think of

7 Colonel Scott, and it was at Roots. For some reason or

8 other, it was changed in the final version of the

9 police presentation, exhibit L, but what appears to have

10 been said at one stage at Roots, which was recorded by one

11 of the people there and in fact put into an earlier draft

12 of the presentation, was that what Noki - because he was

13 presumed the leader - told you, obviously through an

14 interpreter, was the protesters had made a contract that

15 they would not lay down their arms and were willing to die,

16 there was no turning back. That is what is being put to you

17 by Mr Mpofo.

18 **MR MPOFU:** That is correct. Thanks,

19 Chairperson. So we have the third pointer, which as the

20 Chairperson says comes from a version of the police, what

21 we call the previously undisclosed information, which was

22 an earlier version of L where once again the police

23 themselves say that what was said, telling you, Brigadier

24 Calitz, that the protesters have made a

25 contract that they would not lay down their arms and were

1 willing to die, and it is put in quotes to suggest that that

2 is what was said. Do you see that?

3 **CHAIRPERSON:** [*Microphone off, inaudible*]

4 now you were at Roots. I am not sure whether you were

5 present at that particular session, but are you able to

6 tell us whether some – it looks as if it is a version of

7 what you said because the way it is written down is that the

8 leader approached the police, telling Brigadier Calitz, and

9 then the bits in quotation marks. So did you at any stage

10 at Roots say to those who were recording the information so

11 that it could be put into the police presentation, what we

12 see there in the passage in quotation marks in the third

13 bullet on this slide?

14 **BRIGADIER CALITZ:** Mr, Chairperson,

15 no, I don't know at which stage this – how long before,

16 or if this is the first "inputs" received – but

17 I didn't, the words as it is written here, I was not

18 informed. I did have inputs of what was told,

19 to me, and already testified to that, and it is so in my

20 statement. This looks like a combination of – I do not

21 want to make assumptions here, the "contract" looks

22 like it refers to that "signed" paper, the "lay

23 down of arms," there are various times when we did tell them

24 to lay down their arms, it is illegal, and that they

25 gave indication; "we were

1 willing to die that day," "we were willing to die that
2 day," this is not from them; I only seen this afterwards
3 on the video the Advocate referred to.

4 But they did make the threat to us, not
5 that they were prepared to –

6 **CHAIRPERSON:** So if you did not say that
7 and it was – but someone said it at Roots and it was
8 correctly recorded by Colonel Visser or whoever it was who
9 was writing these things down and putting them into the
10 draft presentation, then presumably it would have been said
11 by somebody else who was in the Nyala with you?

12 **BRIGADIER CALITZ:** This is why I say, Mr.
13 Chairperson, it seems to me, if I can air my
14 opinion here, like a summary of the "inputs"
15 given here, but not the specific words –

16 **CHAIRPERSON:** Yes, the inputs, but I am
17 interested in who would have given the input, you see, and
18 the inputs about what was said in these negotiations
19 between you on the one hand, and the leader of the militant
20 group on the other, could only have come presumably from
21 people who were with you in your Nyala. Is that right?

22 **BRIGADIER CALITZ:** It can only be Pappa1's
23 personnel in Nyala.

24 **CHAIRPERSON:** Yes, okay.

25 **BRIGADIER CALITZ:** That is correct, Mr.

1 Chairperson.

2 **CHAIRPERSON:** You agree with that.

3 **MR MPOFU:** Thank you, and just to go back

4 to where we started, what I am saying is that it is based on

5 those pointers that I have given you, what Mr Noki said, what

6 Mr Magidiwana – I am sorry, what the strikers said to Mr

7 Mathunjwa, what Mr Magidiwana says was their response, and

8 what the police's own initial version of what it is that

9 was said, it is based on those that I will argue that – and

10 fourthly the fact that through no fault of your own you

11 received this via the medium of an interpreter. It is not

12 as if you, it is something you heard, you are put banging

13 your hands on the table that you heard with your own ears,

14 and I am saying with all those factors would tend to suggest

15 that Mr Noki said that they were prepared to die as opposed

16 to that they were going to kill you. Would you care to

17 comment?

18 **BRIGADIER CALITZ:** Mr. Chairperson,

19 no, I hear what you say. I think on the first one, the

20 video what was made, this is what I say we saw in

21 "hindsight" when he spoke to them. I

22 know there was one of the protesters who did make a threat

23 and said that the police who were there, are,

24 I think, from outside the provinces, or something like

25 the home –

1 **CHAIRPERSON:** The evidence was that
2 police officers that come from the homelands, the "homelands" –

3 **BRIGADIER CALITZ:** The homelands.

4 **CHAIRPERSON:** A homeland.

5 **BRIGADIER CALITZ:** Yes, I tried looking at the
6 videos, I think it is in the CC-series, but we do not have

7 the transcripts part, so now it is in a language

8 I don't understand, so, but I do know it is been entered as an
9 exhibit, that in the video part they said;

10 the police, that the police will die, and then –

11 **CHAIRPERSON:** Of course, that was not said,

12 that remark was not made, one can hear it on the tape, as I

13 understand, but that was not made in the negotiations

14 between you and the militant group.

15 **BRIGADIER CALITZ:** No, Mr.

16 Chairperson.

17 **CHAIRPERSON:** What Mr Mpofo is busy with

18 is whether the evidence that is been given by the police

19 that the militant group, or the leader in negotiations with

20 you or with Lieutenant Colonel McIntosh made threats of

21 this kind. That is what he is exploring at the moment. Have

22 you put all the points to –

23 **MR MPOFU:** Yes, I have, Chairperson.

24 I will leave it for argument.

25 **CHAIRPERSON:** Alright.

1 **MR MPOFU:** I think the –

2 **CHAIRPERSON:** Now tell me, you gave the

3 names yesterday, I can't remember them, of the people who

4 were with you in the Nyala. Were any of them either Xhosa

5 or Zulu speakers?

6 **BRIGADIER CALITZ:** I believe so –

7 **CHAIRPERSON:** Okay, can you remember

8 their names, the people who were with you? You gave them

9 yesterday, so you should remember them.

10 **BRIGADIER CALITZ:** Warrant Officer Nong,

11 the driver, and –

12 **CHAIRPERSON:** Do you know what his home

13 language is?

14 **BRIGADIER CALITZ:** I cannot tell you

15 Mr. Chairperson.

16 **CHAIRPERSON:** You do not know. Next one?

17 **BRIGADIER CALITZ:** Then there is Seeko,

18 Kgosana, Captain, I think it is –but yes, I don't have the

19 names in front of me –

20 **CHAIRPERSON:** If you are not sure we can

21 find out, I am sure, with more accuracy from some or other –

22 **BRIGADIER CALITZ:** There were three members –

23 yes, an officer, a captain, and the driver, Warrant

24 Officer Nong, five members who I knew spoke either Xhosa,

25 maybe Fanagolo, maybe Tswana.

1 **CHAIRPERSON:** Well, I understand that
2 Fanagolo is a mixture, it is an artificial language used on
3 the mines initially. It is a mixture of a number of
4 indigenous languages.

5 **BRIGADIER CALITZ:** This is what the
6 interpreter –

7 **CHAIRPERSON:** With a, so I understand we
8 may have to lead evidence on this, but with a fairly strong
9 Nguni base, so that Nguni speakers are able to understand
10 Fanagolo. But anyway, that is a matter we do not have to
11 explore with you because you cannot help us on it, but we
12 may have to investigate it more fully. If your comrades,
13 or your colleagues in the Nyala are able to remember
14 independently what was said, but that may not even be the
15 case either, but we will not waste time with you on it. It is
16 a matter we would have to investigate.

17 **BRIGADIER CALITZ:** Thank you Mr.
18 Chairperson.

19 **MR MPOFU:** Chairperson, I am sorry, I
20 misled you when you asked me if I have put all the points.
21 There is one more point. Brigadier, if you go to – or let
22 me put it this way. The last point, or pointer that I am
23 going to use to support the argument that the Commission
24 must reject the evidence that Mr Noki made that threat, will
25 be the fact that the interpreter himself does not say that

1 Mr Noki or anybody said that the police are going to be
2 killed. Now if you got this from the medium of the
3 interpreter, then obviously the person who must be closer
4 to the truth must be the interpreter. I think that is
5 obvious, isn't it?

6 **BRIGADIER CALITZ:** Yes, as I said, I had received
7 via Colonel McIntosh, who was in discussion
8 with the interpreter.

9 **MR MPOFU:** Okay, and the highest that the
10 interpreter puts it in – if we go to JJJ202 –

11 **[09:39] CHAIRPERSON:** He says in paragraph 46 –

12 **MR MPOFU:** 45 –

13 **CHAIRPERSON:** – of Exhibit JJJ202, it is

14 page 3 of the affidavit, well, I shall read from 45, "Two

15 people came forward and they said to us, today there will

16 be a fight." At 46, "They said the police and the strikers

17 must sign a paper that there will be a fight but there is

18 no piece of paper. I do not know whether the brigadier

19 answered that question," and then at 48 he says, "They

20 started threatening us, they said the police would run away

21 by foot today. They told us the police would leave the

22 Nyalas there, the police would run away on foot." So

23 that is part of the statement.

24 **MR MPOFU:** Yes, thanks, and that is why I

25 used the words, the highest, and even at the highest of what

1 the interpreter is saying, there is nowhere where he says
2 that Mr Noki or anybody said they were going to kill you
3 and I suppose the Brigadier that he is referring to is you,
4 so this means you were involved in this discussion. You
5 were the only brigadier in the interpreter's Nyala,
6 correct?

7 **BRIGADIER CALITZ:** This is correct, yes, so

8 -

9 **MR MPOFU:** Yes, okay -

10 **BRIGADIER CALITZ:** - I don't see the
11 words you refer to; the word "kill", only the
12 words; "threatening, run away, will leave the Nyalas there
13 and run away," yes.

14 **CHAIRPERSON:** So he of course supports
15 the version which the witness has given to us, that it was
16 said the police and the strikers must sign a paper that
17 there would be a fight, but there was no piece of paper.

18 There is a slightly different version of that of course in
19 the slide to which you referred -

20 **MR MPOFU:** Yes, -

21 **CHAIRPERSON:** - the earlier part at Roots
22 but insofar as we are looking at this anonymous affidavit
23 by this person, that is in it, but anyway we can have it
24 before us.

25 **MR MPOFU:** Yes, Chairperson, I am putting

1 it in fairness to the witness to say at worst the
2 interpreter is 50/50, as he would put it, but the other
3 objective evidence that I have put to him suggests the
4 opposite. So in fairness, that is why I was saying I have
5 to put this last pointer to him. So anyway, so the
6 argument, I am sure one day Mr Semanya and I will deal with
7 all those pointers. What I want to say to you really,
8 Brigadier, is this, the concern about this is not so much
9 that the wrong thing gets propagated, it has serious
10 implications in that Mr Noki is not here to answer for
11 himself. You know there is a book that has been written
12 which is entitled "We are going to kill each other today,"
13 and those words are attributed to Mr Noki and from what
14 I have just said he may never have said those words. So it
15 is that kind of thing that a person who is deceased, who
16 can't answer for himself, can be prejudiced forever simply
17 because of, and I am not at this stage attributing it as an
18 intentional thing, I will just now, but I am just saying
19 that it is that kind of danger. Do you understand what I am
20 saying?

21 **BRIGADIER CALITZ:** I hear what you say, Mr.

22 Chairperson.

23 **MR MPOFU:** Do you accept that it is

24 undesirable for someone who has departed, leaving loved

25 ones to be misquoted possibly in that way, on such a

1 crucial point?

2 **BRIGADIER CALITZ:** If he was indeed misquoted,

3 I will agree with you.

4 **MR MPOFU:** Thank you, so that is the first

5 concern. The second concern is something which is more

6 sinister which is that another reading of this changing of

7 Mr Noki, of what Mr Noki said, insofar as it may be

8 deliberate, - well, what we know that it was deliberate to

9 remove that bullet point from the presentation until it was

10 discovered. So if it was deliberate to misquote Mr Noki

11 then it points to something even more serious, which is

12 that the police are prepared to go to any length and to

13 even lie about someone who has departed ,in order to portray

14 the strikers as belligerent, and to support this theory that

15 they were being attacked. Now that is even more serious,

16 the other one is serious for Mr Noki and his family, but

17 this, what I am saying to you now is something that would

18 have serious implications for this Commission. What would

19 you say to that?

20 **BRIGADIER CALITZ:** Mr. Chairperson,

21 yes, I didn't follow Colonel Scott's evidence at all.

22 so, for him or Colonel Visser, who perhaps testified to

23 this deliberate removal of, was, as you -

24 **CHAIRPERSON:** No, Colonel Visser hasn't

25 testified yet.

1 **BRIGADIER CALITZ:** Oh then just say Colonel
2 Scott; if there was evidence of deliberate removal,
3 as you say and it is discovered, and if it was part of
4 the notes, and eventually summarised into a document,
5 so I can't help you in that case.
6 What I answered here eventually; it seems like a summary
7 and maybe a final draft summarized in a document,
8 when all the information was gathered. So I unfortunately
9 I cannot help you any further with this.

10 **MR MPOFU:** Okay, well, apropos to this, what
11 I call a serious matter, you may or may not be aware that
12 there is a general belief certainly held by my clients that
13 the police leadership will stop at nothing to protect its
14 members and each other, including lies and exaggerations
15 and distortions such as the one that you and I have been
16 discussing, in order to give a particular slant to the
17 events and my emphasise is on the deliberateness, if people
18 make mistakes and they might have perceived things
19 differently, we all make mistakes. I am talking about a
20 situation where there is a deliberate distortion of events,
21 sometimes taking advantage of the fact that people are not
22 there to answer for themselves.

23 **CHAIRPERSON:** Mr Mpofu, forgive my
24 interfering, intervening but –

25 **MR MPOFU:** Yes –

1 **CHAIRPERSON:** - what is the relevance of
2 the belief your clients hold on that and the fact that your
3 clients may have a belief on the point, of the nature that
4 you've described doesn't take the case any further and the
5 question is whether the belief is well founded.

6 **MR MPOFU:** Yes, Chairperson.

7 **CHAIRPERSON:** And the mere fact that they
8 believe it takes the inquiry no further and I am not sure
9 whether it is an appropriate question to put to this
10 witness, my clients believe that the police are going to
11 tell lies. Well, they may believe that but the police may
12 believe that your clients are going to tell lies. In both
13 cases we would ignore the belief of a person's concern and
14 concentrate on the evidence.

15 **MR MPOFU:** Well, thank you, Chairperson.

16 **CHAIRPERSON:** Unless of course, I take
17 it, some of that deliberateness has been attributed to this
18 witness, but –

19 **MR MPOFU:** Yes –

20 **CHAIRPERSON:** - the mere fact that your
21 clients believe that and I am not suggesting for a moment
22 they don't and I am prepared to accept that they do, but it
23 doesn't help me to decide whether their belief is correct,
24 so I am not sure that it helps us.

25 **MR MPOFU:** Yes, thank you, Chairperson,

1 I am indebted to Commissioner Hemraj. Yes, that is exactly
2 the point, the point, when I say that that belief is widely
3 held by my clients and I might add, by my colleagues who
4 have had experience in this matter, the point is that, I am
5 saying it is against the leadership of the police and this
6 witness is part of that in the context of this Commission
7 and I am accusing him effectively.

8 **CHAIRPERSON:** I am sorry to interrupt you
9 again.

10 **MR MPOFU:** I am sorry, Chairperson.

11 **CHAIRPERSON:** I don't care in respect of
12 whom the belief is held, the question I am putting to you is
13 the fact that your clients believe that doesn't help us to
14 decide whether they believe it is justified. That is my
15 point.

16 **MR MPOFU:** Yes, thank you.

17 **CHAIRPERSON:** And I would never when I
18 was counsel, and I am surprised if I may say so, that you
19 would put to witnesses on the other side that my clients
20 believe you telling an untruth, telling untruths, but I
21 would have been told by the judicial officer concerned that
22 your clients' belief is irrelevant, we at the end of the
23 day will decide whether that is correct or not. So I don't
24 think it is a fruitful line of cross-examination.

25 **MR MPOFU:** And as you said, Chairperson,

1 unless it is attributed to this witness and I am answering
2 that part, I am saying, yes, all what you've said is correct
3 unless it is attributed to this witness and it is
4 attributed to this witness.

5 **COMMISSIONER HEMRAJ:** Mr Mpofu, perhaps
6 you can assist us by showing what aspect of this witness'
7 conduct it is, to which you attribute that deliberate
8 conduct.

9 **MR MPOFU:** Yes.

10 **COMMISSIONER HEMRAJ:** That will assist
11 us.

12 **MR MPOFU:** Thank you, I am going to argue
13 as I have indicated earlier, that your evidence earlier that
14 Mr Noki said that he is going to kill when he may have
15 said, "They are going to die," as I have indicated, is a
16 deliberate distortion on your part, specifically yourself
17 in order to create an impression that there were life
18 threatening statements which were made and the ultimate aim
19 is to justify the false claim of self-defence, you, you as
20 the witness, Calitz.

21 **BRIGADIER CALITZ:** Mr Chairperson, if I can
22 answer, for myself, I don't agree with you.
23 The reason is that I have never been involved in any
24 cover up, or a cover up of any sort regarding members
25 we became aware of that acted wrongly, if any. If

1 you go to my video of the 18th, you will see that I told the
2 members, we will give 100% cooperation. I told them they
3 have nothing to hide. I also said they have to come forward
4 and say exactly what happened, in their
5 statements. So, from my side as commander, I ensured
6 that everyone will give their 100%
7 cooperation with their statements to
8 Commission.
9 So, I am not aware of, and never have been, and can definitely
10 assure you that not one personnel member above me, referring
11 to my Generals, ever expected from me to cover up for
12 anyone or anything, never had orders either re same, so,
13 in my 27 year career it has
14 never happened.

15 **MR MPOFU:** The second evidence, piece of
16 evidence which I am going to use to advance that,
17 reinforcement of the belief that I am talking to you about
18 is the issue of your, you again, your justification of the
19 placing of a boot or the kicking of a person when they were
20 down literally, near the kraal where I will argue that you
21 gave a really flimsy justification which cannot hold any
22 water and I shall take you through that, and that is, if I am
23 correct, would be consulate with the belief that the police
24 leadership, including yourself, will stop at nothing to
25 protect even the un-protectable.

1 **BRIGADIER CALITZ:** Mr, Chairperson, my
2 answer to you will be, maybe just one speech or statement
3 you made, is that you said;
4 "placing a boot or kicking," I never used the word
5 "kicking". It was taken out of context,
6 I did say where you had seen the person put his
7 foot, refers to the boot of the uniform, on
8 the person, I explained that it would be operational
9 tactics, if you have a R5 in hand, and this has been testified
10 about already, it will be dangerous and highly unsuitable
11 to either use your hands or place the weapon down next to you.
12 It is a way to keep a person stable; when I say stable-
13 to keep still until you colleagues arrive to assist. And
14 I stated very clear this is done in an ordered,
15 and disciplined manner. So, the word "kicking"
16 and the allegations you are making now, I definitely do not agree with.

17 **MR MPOFU:** Sure, no, fine, no, the word
18 "kicking" came from me when I showed that evidence to Mr
19 Magidiwana. All I am saying to you is that you yourself,
20 you don't know whether it was kicking or it was placing of
21 the boot, do you?

22 **BRIGADIER CALITZ:** I certainly saw it on my video
23 footage and accordingly made my statement.
24 There definitely was no, the person
25 was definitely not kicked.

1 **MR MPOFU:** Well, - okay, I don't want to
2 go down that line, but I shall, let us just say this. In any
3 event your justification of the placing of the boot or the
4 kicking, as I allege it was, is that sometimes when a
5 person is going to be arrested one has to place a boot or a
6 knee on their face, is that the sum total of what you say
7 or am I distorting it?

8 **BRIGADIER CALITZ:** I said to place the boot,
9 or as you refer, the knee on a person. It is to
10 keep him stable, in order for someone else,
11 seeing as you have a weapon in your hands and can't use
12 the hands, until people or colleagues who are with you
13 can come closer to help examine
14 such a person. The reason for that is the person
15 can move, can have a weapon under him, even, as you know,
16 that person can have a firearm, that is
17 why he must be held down in that manner.

18 **MR MPOFU:** And if that was the situation
19 then that would apply to all the 20 or 30 people who were
20 lying on the ground, not just that one, unfortunate one who
21 was kicked, correct?

22 **BRIGADIER CALITZ:** Again, I do not agree with you,
23 according to me he want kicked, and I will say that it
24 as it played out in front of the members, or that is what they
25 had seen, I was not there and only

1 testify to what I see on the video. The other people had weapons
2 next to them, which I had seen, some had weapons taken out from under them,
3 so in the case of this person, I don't know what the member who did that
4 manoeuvre observed at
5 that stage.

6 **MR MPOFU:** Yes, that is the point exactly,
7 Brigadier, shouldn't you have just said, "Look, I don't
8 know the circumstances, I was not, I was not there, as
9 you are saying now, instead of jumping to a justification
10 of something which you don't know based on what may
11 be an arrest and so on? Remember you even said that that
12 manoeuvre is done when the arresting person is holding a
13 heavy firearm, do you remember that?

14 **BRIGADIER CALITZ:** Yes, I referred to a
15 R5 toe, but I never said in my testimony
16 that is what the member had done.

17 **MR MPOFU:** Good.

18 **BRIGADIER CALITZ:** I testified from a tactical viewpoint,
19 a general operational method and then told you
20 how it would be done normally, usually. I did not refer in my
21 testimony to any specific member and that is why
22 he did it.

23 **MR MPOFU:** And, I am sorry, Brigadier, and
24 you yourself don't know whether the kicker or the placer of
25 the boot in that instance was carrying a big firearm,

1 because you'd never witnessed this incident and you were

2 not there, correct?

3 **BRIGADIER CALITZ:** It was only on the video footage

4 that we had seen it, this is correct.

5 **MR MPOFU:** What did you see on the video?

6 **BRIGADIER CALITZ:** A person who placed his foot

7 on another person and then other people coming closer.

8 I don't remember seeing what they removed from

9 that person.

10 **MR MPOFU:** So you can't remember, you're

11 saying exactly what I am saying, you yourself don't know

12 whether the person who was kicking had a heavy R5, which is

13 part of the justification, or not, you can't say that to me

14 now?

15 **BRIGADIER CALITZ:** I will have to look again

16 at the video –

17 **MR MPOFU:** Yes, that means you don't know

18 –

19 **BRIGADIER CALITZ:** - to answer you

20 precisely.

21 **MR MPOFU:** I am sorry, I am sorry, I am

22 sorry to interrupt you. Yes, no, no, I accept that you'll

23 have to go and look again but this means you don't know

24 whether he was indeed carrying such a thing, correct?

25 **BRIGADIER CALITZ:** At this stage I can't tell you exactly

1 what he was carrying.

2 **MR MPOFU:** Yes.

3 **BRIGADIER CALITZ:** When I looked at the footage,

4 if I must think back, it was quite a while ago,

5 I believe he did actually have a weapon in his hand

6 .but this I can confirm later.

7 **MR MPOFU:** And yet you felt entitled to

8 justify that action to this Commission despite all the

9 shortcomings that you've now admitted to. You were not

10 there, you don't know whether he was carrying this, you did

11 not witness it yourself and so on. That is the kind of

12 thing, Brigadier, I am getting to. I am saying those are

13 instances which I will use to persuade the Commission that

14 the belief that the leadership of the police is prepared to

15 go to absurd lengths to justify and to protect the members

16 of the police, even when something is patently

17 unjustifiable, patently unjustifiable is properly held by my

18 clients.

19 **[09:59]** Do you understand where I am coming from?

20 **COMMISSIONER HEMRAJ:** Mr Mpofu, is it –

21 **MR SEMENYA SC:** This is argument.

22 **COMMISSIONER HEMRAJ:** Mr Mpofu, at the

23 time the witness gave the explanation wasn't he shown the

24 video?

25 **MR MPOFU:** No.

1 **COMMISSIONER HEMRAJ:** And at this point
2 in time he doesn't remember what was on the video.
3 **MR MPOFU:** No, Chairperson, I am sorry,
4 Commissioner, no he was not. What happened is this, in Mr
5 Semenya in sweeping up his examination-in-chief which was a
6 proper thing to do, at the end he then had a section where
7 he deals with criticisms of Mr White and this that and the
8 other and in that same breath he then said Mr Mpofu has
9 already raised, I don't know if he used my name, but
10 someone has raised the criticism about the boot. It is at
11 17, you'll find it is at, in the transcript at 17399,
12 Chairperson and Mr Semenya started 17398.

13 **CHAIRPERSON:** If I understand correctly,
14 Mr Mpofu –

15 **MR MPOFU:** The short answer –

16 **CHAIRPERSON:** Sorry you haven't heard my
17 question.

18 **MR MPOFU:** Sorry. I was referring to the
19 Commissioner.

20 **CHAIRPERSON:** The point that you are now
21 dealing with, you say that doesn't appear in the
22 consolidated statements of Brigadier Calitz, he made a
23 consolidated statement which is exhibit JJJ107 and in that
24 he deals at the end with a number of miscellaneous points
25 and is the point you're busy with there or is it with

1 something that was merely added in the course of his oral

2 evidence as it were which was not in the statement?

3 **MR MPOFU:** No, it is both, Chairperson.

4 What Commissioner Hemraj, the question was really that the

5 witness was shown the video. I am saying he wasn't, that is

6 established. But what I am now saying is that what happened

7 both you and I are right, Chairperson, in his statement

8 pre-emptively he dealt with it and then in evidence at

9 17398 of the transcript, line 9 Mr Semenya also raised it.

10 So that it was certainly on both occasions, at least when

11 Mr Semenya raised it with him he didn't show the video.

12 **CHAIRPERSON:** Alright, well anyway let us

13 look first at his consolidated statement JJJ107.

14 **MR MPOFU:** 107.

15 **CHAIRPERSON:** Before we look at the

16 transcript.

17 **MR MPOFU:** Yes.

18 **CHAIRPERSON:** On page 29 of that

19 statement at paragraph 154 and 155 the witness deals with

20 the point and he says concerns have also been raised about

21 how the arrest of the strikers were done particularly where

22 footage is shown of a police officer placing a boot on a

23 suspect lying on the ground. So there's he's clearly

24 referring to criticism based upon a video. Because he

25 talks about where footage is shown. Then he says 155 in

1 normal practice where an arrest is affected by a police
2 officer of a suspect believed to be in possession of a
3 dangerous weapon whereas a police officer is holding a
4 rifle it would be foolhardy to put the rifle on the ground
5 to use his hands to affect an arrest. The police officer
6 in those circumstances would use their foot in a controlled
7 and sublime way to restrain the suspect until he's
8 satisfied that it is safe for the arrest to be effected.
9 These are often dangerous encounters which are done under
10 difficult circumstances.

11 **MR MPOFU:** Absolutely.

12 **CHAIRPERSON:** Now that is what he said in
13 the consolidated statement. Do you quarrel with that at
14 all?

15 **MR MPOFU:** No, no I don't. In fact
16 that is exactly, the reason why my criticism of him is that
17 you can't say even that unless it is premised on the ground
18 that you know that the alleged kicker or the placer of the
19 boot was holding a rifle as he says. Now that I asked
20 him was he, and he says he doesn't know. So that theory
21 just flies out of the window if it is not based on his
22 knowledge, because that justification quote unquote can
23 only hold water if in this instance the kicker was in the
24 position that he presupposes. That is exactly the point I am
25 making.

1 **CHAIRPERSON:** But in the context, you're
2 talking about general practice, he says if there's, he says
3 footage was shown which indicated that a member of SAPS had
4 his foot on a suspect or an arrested person lying on the
5 ground and he says, he then says based on general practice
6 he then gives us what I read, I think it is page 155 I put
7 the passage away already. That is what it says.

8 **MR MPOFU:** Yes.

9 **CHAIRPERSON:** He's describing what he
10 understands to be general practice in a case of this kind.
11 That is why I asked do you quarrel with that.

12 **MR MPOFU:** No, no. No, Chairperson, let
13 me make a simple example if –

14 **CHAIRPERSON:** What exactly is your
15 quarrel on this point?

16 **MR MPOFU:** Thank you, I shall explain.

17 **CHAIRPERSON:** I want to make sure I
18 understand it properly.

19 **MR MPOFU:** Yes, I shall explain it,
20 Chairperson. If, let us assume I said a policeman should
21 not do this and that and then he says well if the police officer
22 is too short then he can do that, that is what I am criticising
23 about. Now if I say to him now do you know if that
24 policeman who did that was short or tall and he says I
25 don't know then that explanation flies out of the window.

1 That is the simple point I am making. I am saying if he say
2 yes it, as you correctly say, Chairperson, in general if
3 someone is holding a rifle dah, dah, then I say to him as
4 I have just said now do you know if that person was holding a
5 rifle before he testifies, I don't know. Then what's the
6 value of theoretical –

7 **CHAIRPERSON:** - it flies out of the
8 window. He's giving evidence to a general practice. If
9 the evidence indicates that the general practice to which
10 he's referring didn't apply in this case or the
11 circumstances were different than that event the
12 explanation falls away because it doesn't help us. But
13 the, I am not sure that we are able to make a finding at
14 this stage that the circumstances outlined by him in
15 paragraph 155 weren't present. It may affect the weight of
16 what he said if, because he didn't purport in that passage
17 that I read to be saying that is exactly what I see on the
18 video. He's simply explaining that is the sort of thing that
19 can happen. But I think Mr Semenya turned his light on at
20 one stage and I didn't give him a chance. Have you
21 repented of your idea, proposal to say something, Mr
22 Semenya?

23 **MR SEMENYA SC:** No, thank you, Chairperson.

24 **CHAIRPERSON:** Alright. Have you put
25 what you want to put to the witness on this point?

1 **MR MPOFU:** Yes, Chairperson, yes I simply
2 want to address the point like this. I won't proceed much
3 further with the witness. All I am saying, Chairperson,
4 you're a 100% correct we neither I nor him nor you at this
5 stage can say that those conditions prevailed or didn't
6 prevail. What we know as a fact which is why I put the
7 question to him, is that he doesn't know whether those
8 conditions prevailed, that is the only point I am making and
9 therefore the theory flies out on the basis that unless it
10 is, it was backed up by his own knowledge, if he said oh yes
11 you know I know that person, I have seen him, he usually does
12 it like that, he doesn't mean badly or whatever, that would
13 be a different set of circumstances but if he just tells us
14 about some theoretical thing which may or may not apply in
15 this case then how does it assist the commission.

16 **CHAIRPERSON:** That is an argument that
17 you can advance later and I am sure –

18 **MR MPOFU:** Thank you.

19 **CHAIRPERSON:** Mr Semenya may say
20 something about, before we move on, is there anything else
21 you want to say on this point, Brigadier?

22 **BRIGADIER CALITZ:** Mr, Chairperson,
23 no, except to affirm what you just said. I did say in
24 normal practice and I explained how it plays out
25 in normal policing. I don't know the member.

1 I did not say –

2 **CHAIRPERSON:** Sorry, your explanation

3 may or may not apply on the facts of this case.

4 **BRIGADIER CALITZ:** In this case, it is general

5 practise and doesn't refer to this

6 specific member.

7 **CHAIRPERSON:** Okay. So your explanation

8 may or may not be applicable to this particular case which

9 presumably effects the weight of what you said, but anyway,

10 these are matters which will be traversed in argument that

11 you and I don't have to space now. That is all you want to

12 say on that point, is that right? Am I right?

13 **BRIGADIER CALITZ:** Yes, at this point

14 of -

15 **CHAIRPERSON:** I'd like to go back to a

16 point that was dealt with earlier in the cross-examination

17 and refer to an exhibit which is, to which our attention

18 was drawn by the Human Rights Commission, I think it was

19 one of the statements they handed in. I marked it exhibit

20 KKK27, it is the statement by Joseph Skosana, he's a warrant

21 officer, Warrant Officer Joseph Skosana. He was in Nyala

22 P1 and he had a shotgun with 40 rounds in it and he

23 describes that, what happened, he's talking about the 16th

24 of August and in paragraph 4 he says the following. This

25 is the Skosana Brigadier who was in your Nyala, is that

1 right?

2 **BRIGADIER CALITZ:** That is correct; He is the one who

3 who threw the stun grenade, if I am

4 correct.

5 **CHAIRPERSON:** That is what he says in

6 paragraph 3, that you were his commander and the interpreter was

7 there and the negotiations and then he says the following,

8 in paragraph 4 that, at around 15:30 three guys came

9 towards the Nyala. One of them who was wearing a green

10 blanket came to the Nyala and ordered that all the Nyalas

11 and vehicles must leave that place, if not all the police

12 are going to die. Then all the Nyalas with wires were

13 deployed and he goes on about that in paragraph 5. Now we don't

14 know at this stage whether he's merely reporting what the

15 interpreter said or whether with his own knowledge of one

16 or more of the vernacular languages he was able to

17 understand what Mr Noki, who was the man in the green

18 blanket was saying, but that is something we shall have to find

19 out from him in due course.

20 **BRIGADIER CALITZ:** That is right, thank you,

21 Mr. Chairperson.

22 **MR MPOFU:** Thank you, Chairperson. If

23 you may be kind enough, Chairperson, unfortunately I don't

24 have that statement at hand. If maybe Chairperson you'll

25 be kind enough to tell me the date of the statement or it

1 can be, because it is important whether it was given before

2 or after the doctoring of the, of exhibit L.

3 **CHAIRPERSON:** What we have is, the usual

4 practice you know, the usual practice is that there were

5 manuscript statements and then they were typed by, I think

6 Mr Pretorius's secretary who, and what we've got are

7 actually unsigned typed versions. Whether, and that simply

8 says blank day of September.

9 **MR MPOFU:** Oh.

10 **CHAIRPERSON:** Which would be post Roots.

11 **MR MPOFU:** Post Roots, okay.

12 **CHAIRPERSON:** But whether there was an

13 manuscript version prior to that is something –

14 **MR MPOFU:** We don't know.

15 **CHAIRPERSON:** We shall find out in due

16 course.

17 **MR MPOFU:** Okay. No for me it is good

18 enough that it is post Roots.

19 **MR SEMENYA SC:** Chairperson, through you –

20 **CHAIRPERSON:** Mr Semanya, you've now

21 turned your light on.

22 **MR SEMENYA SC:** Through you can we ask

23 that Mr Mpofu retract the comment of doctoring of documents

24 by the police.

25 **MR MPOFU:** Okay.

1 **CHAIRPERSON:** I didn't actually hear it.

2 What did you say, Mr Mpofu?

3 **MR MPOFU:** No, I say I wanted to know

4 whether it was before Roots or not or after Roots as, so

5 that we know whether it was before or after what we

6 perceive as the doctoring of exhibits. But I am prepare to

7 retract that, I shall say alteration.

8 **CHAIRPERSON:** I don't think that is an

9 appropriate comment to make at this stage.

10 **MR MPOFU:** Alteration.

11 **CHAIRPERSON:** I share your concern, no

12 concern is not the word. I share your caution in respect

13 of things that happened during and after Roots. The

14 caution may in fact when applied still lead to a conclusion

15 that evidence, information of this kind is accurate. I am

16 not suggesting everything from Roots and afterwards is

17 necessarily incorrect. But in light of some of the

18 evidence we've had it is advisable to adopt a measure of

19 caution. But I don't think one can go and put the thing as

20 starkly as you do, that would be inappropriate.

21 **MR MPOFU:** Yes, thank you, Chairperson.

22 **CHAIRPERSON:** You withdraw that?

23 **MR MPOFU:** I withdraw it. It is

24 premature. Let us call it alteration, neutral word.

25 **CHAIRPERSON:** No, you don't have to say

1 that, Mr Mpofo. If there's a statement, if the statement
2 I have read could exist in manuscript form from a very early
3 stage that might in the circumstances give it greater
4 weight than it would have if it was only dated later. But
5 that is a matter that can be addressed later. Alright.

6 **MR MPOFU:** I accept that, Chairperson.

7 In any event, Chairperson, I am sorry, Brigadier, I hope you
8 understand I am not going to belabour this, I just want to
9 say I am not criticising you now about the alleged kicking
10 or placing of boots or whatever. You didn't do that. I am
11 making a separate point. I am saying this kind of
12 explanation which we now know may not apply to this
13 situation supports the belief that the senior leadership of
14 the police will go out of its way to justify even the
15 unjustifiable. That is the only purpose for which I was
16 raising it to you, not necessarily to attribute it to you
17 or to say because you were in command these people of, I am
18 not going there at all. I am just dealing with the issue of
19 the leadership's propensity to defend the indefensible.

20 **MR SEMENYA SC:** Chairperson, also that is
21 argumentative.

22 **CHAIRPERSON:** You know you, I think
23 we've traversed this ground. You've put things to him.

24 **MR MPOFU:** I shall move –

25 **CHAIRPERSON:** These are matters for

1 argument. But while were busy with the point that I was
2 busy with about statements about the alleged threat. It is
3 also dealt with in the statement of Warrant Officer, I
4 think it is Warrant Officer Mong.

5 **MR MPOFU:** No, N-O.

6 **CHAIRPERSON:** Nong. He's called Mong
7 but he's really Nong. It is exhibit KKK24 and do you know
8 what the home language of what Officer Nong is?

9 **BRIGADIER CALITZ:** No, Mr.

10 Chairperson. He is from Johannesburg and I don't
11 know.

12 **CHAIRPERSON:** In paragraph 18 of the
13 statement he says the following. It is, I gave the exhibit
14 number, yes KKK24. He says at about plus minus 15h00 hours
15 the then high rank in the negotiating police vehicle, I
16 take it by that that he means the senior person in the
17 negotiating police vehicle, Brigadier Calitz, instructed the
18 police vehicle with the barbed wire to deploy the barbed
19 wire into position as planned. There were five barbed
20 wires. When the first Nyala started to deploy the man in
21 the green blanket approached the negotiating team. He said
22 in Xhosa that I can see that you are placing yourself in
23 position. I can see that you are ready for war. But I am
24 telling you today that the world will see how the angry
25 community of miners will react to the police and they're

1 going to be killed and leave their vehicle behind for
2 someone who will be burnt into the vehicle. Para 19, the
3 negotiator tried very hard to bring the man back and his
4 team but he was running, swirling towards the crowd when
5 the second Nyala deployed the barbed, obviously the barbed
6 wire. The man in the green blanket came back again holding
7 his spear and a steel pipe with another black male which
8 was never in the negotiation at the time. He speaks
9 angrily in Xhosa saying today you are going to leave this
10 Hippo's police vehicle, you will run away. He was showing
11 that his followers are ready for us and then we have this,
12 he said that the police must bring a piece of paper that we
13 all sign that today we're going to kill each other, no one
14 is to be blamed as the letter will be the evidence to the
15 world.
16 Now this statement is also one that having blank,
17 not signed by the witness, the date is September. So the
18 same points apply. Whether there's a manuscript copy of it
19 beforehand it is something which we will discover later. I
20 see there's a note at the top on the first page which says
21 typed as written by the deponent which indicates that there
22 was a manuscript version at some stage which we presumably
23 will see in due course and the date of that may be
24 significant. But any way, I am just drawing to your
25 attention the fact that there is other material other than

1 the mere say so of the interpreter who appears to be
2 reluctant to even tell us who he is, and it may well be that
3 the two Warrant Officers who's statements I have referred to,
4 are able to, if in fact Xhosa is their home language and if
5 it is correct that these remarks were made in Xhosa then
6 they would be able to tell us what they are. But any way
7 this is a matter –

8 **MR MPOFU:** Yes.

9 **CHAIRPERSON:** That we look at in due
10 course. I just want to put it on record now as it were,
11 draw your attention to the fact that there is material and
12 there may be other statements as well from other people in
13 the –

14 **MR MPOFU:** Yes.

15 **CHAIRPERSON:** Which I haven't had, we
16 haven't had time to find but any way I didn't say that by
17 way of interfering with your cross-examination.

18 **MR MPOFU:** NO.

19 **CHAIRPERSON:** It is helpful to mention
20 these on record now so it focuses our attention when we
21 look at this issue further in due course.

22 **MR MPOFU:** Yes. I mean that is exactly
23 that, Chairperson.

24 **CHAIRPERSON:** Adv. Hemraj suggests that I
25 ask Mr Semenya, which I am now going to do to put the, if

1 there are manuscripts statements by these two people and
2 also other people who were in that Nyala if they could be
3 put before us as exhibits. If they're not, they're not but
4 –

5 **MR SEMENYA SC:** All the parties have the
6 manuscript, Chairperson.

7 **CHAIRPERSON:** Yes, alright thank you.

8 So, we shall get that in due course and we'd like them in as
9 exhibits.

10 **MR MPOFU:** Yes.

11 **CHAIRPERSON:** Mr Mpofu –

12 **MR MPOFU:** Chairperson –

13 **CHAIRPERSON:** Would you like now to move
14 to your next point?

15 **MR MPOFU:** Yes, I would. If I may just
16 say apropos, alright.

17 **MR BUDLENDER SC:** Can I just confirm that
18 there are manuscript, all of those typed statements are
19 available in manuscript and it was either at our request or
20 by arrangement that they were typed because they're quite
21 difficult to work with in manuscript.

22 **CHAIRPERSON:** I understand that.

23 There's nothing sinister about us being given typed
24 versions, in fact it was done to help our tired eyes to
25 read them because manuscripts particular manuscripts

1 written by someone like me are normally not easy to read.

2 **[10:18] MR MPOFU:** Thank you –

3 **CHAIRPERSON:** I am sure the police's

4 handwriting is better than mine, but it still may be a

5 problem. Anyway, Mr Mpofu.

6 **MR MPOFU:** Yes –

7 **COMMISSIONER HEMRAJ:** It is just that the

8 dates of those statements will –

9 **MR MPOFU:** That is the issue.

10 **COMMISSIONER HEMRAJ:** - will be relevant

11 to certain aspects of the cross-examination.

12 **MR MPOFU:** Thank you, Chairperson, that

13 actually is the only issue. The only issue is when the

14 statements were made, as far as I am concerned, because if

15 they were made before Roots then I shall be able to say well,

16 despite those statements it looks like the consensus at

17 Roots is that they said we're going to die. If they were

18 made after Roots then it means that they might have been

19 made in the process of what we call politely "alteration."

20 **CHAIRPERSON:** Well, let us be blunt. An

21 earlier consistent statement can be put in, in relation to

22 the evidence of the witness to rebut a suggestion of recent

23 fabrication.

24 **MR MPOFU:** Yes.

25 **CHAIRPERSON:** And in effect, you will be

1 contending if they were post Roots, that there's a danger
2 of recent fabrication.

3 **MR MPOFU:** Thank you. Thank you,
4 Chairperson.

5 **CHAIRPERSON:** Alright, which means we've
6 cleared the bush on that issue.

7 **MR MPOFU:** Thank you very much.

8 **CHAIRPERSON:** And then we move on to the
9 next one.

10 **MR MPOFU:** Yes, thank you. Well, I think
11 let us stop at those – we shall stop at those two examples
12 about what I was saying is the, for now we shall stop at those
13 examples about what I was saying is the propensity. Maybe
14 I can just say to you that, because it pertains to my next
15 topic, that another example that happened here is that when
16 the National Commissioner was testifying she, like you,
17 kept on saying, I think about 10 times, that the plan was
18 disrupted, the plan was disrupted. When I asked her how
19 was the plan disrupted she did not know.

20 **MR SEMENYA SC:** No she did –

21 **CHAIRPERSON:** Mr Mpofu, I –

22 **MR MPOFU:** Or she did not answer.

23 **CHAIRPERSON:** That is a matter you can
24 address in argument later. You may well have criticisms of
25 the National Commissioner's evidence which may not apply to

1 this witness, but in any event, I take it you will listen
2 attentively to what Mr Mpofo has to say on his next topic
3 and give us your answer when he finally asks you a
4 question.

5 **BRIGADIER CALITZ:** I will do so, Mr.

6 Chairperson.

7 **MR MPOFU:** Yes, I am sorry, I was just

8 saying that by way of saying I am not – those other examples
9 will be made in argument to sustain what I am saying.

10 Chairperson, I don't know if you were threatening to have a
11 tea break or –

12 **CHAIRPERSON:** Look, if you want a

13 premature, an earlier tea break than usual for a reason
14 related to your preparation and so forth –

15 **MR MPOFU:** No –

16 **CHAIRPERSON:** - or your continuation of

17 the cross-examination, I shall grant you one. If you want to
18 carry on until half past 10 –

19 **MR MPOFU:** I shall carry on.

20 **CHAIRPERSON:** - which is when I was

21 supposed to take the tea break, you can do so, but

22 sometimes a cross-examiner requires an earlier tea break

23 just to gather his material together so that he can proceed

24 to the next point. If you're in that position, I shall give

25 you a tea break now.

1 **MR MPOFU:** No, I shall continue,
2 Chairperson. I misunderstood. I thought earlier you were
3 saying, you were asking me whether we should break then or
4 not.

5 **CHAIRPERSON:** No, no, no.

6 **MR MPOFU:** Okay, thank you. Alright, now
7 you would agree, Brigadier, or in fact, you have already
8 agreed yesterday that of the symbiotic, or the direct
9 relationship, I think we used the expression "same side of
10 the same coin," or you might call it Siamese twins or
11 whatever other metaphor, but of the direct relationship
12 between the plan and the execution thereof, that it is
13 really the same thing. Agreed?

14 **BRIGADIER CALITZ:** I told you that the
15 execution is part of the planning,
16 one of the points in planning, that is what we
17 agreed upon, yes.

18 **MR MPOFU:** Yes, and if the plan is good
19 and the execution is good, then the outcome will also be
20 good. That is also logical, correct?

21 **BRIGADIER CALITZ:** I can agree with
22 you.

23 **MR MPOFU:** Yes, now as far as the
24 execution is concerned, we've established that you were the
25 big boss on the ground, and as far as the planning is

1 concerned, it was Colonel Scott. So those would be the

2 Siamese twins of that coin, two sides of the same coin.

3 Correct?

4 **CHAIRPERSON:** I don't know what you mean

5 by Siamese twins. Siamese twins are sometimes joined at

6 the hip and so on. I don't know if there is any suggestion

7 really of that kind, even metaphorically speaking.

8 **MR MPOFU:** At the head. Okay, thanks,

9 Chairperson. Now you would also agree with me that the

10 point at which plan meets execution is – or let me put it

11 this way. You're aware of the expression that says a

12 journey of a thousand miles starts with a single step. In

13 other words if you miss the first step in anything, it is

14 likely to be ill-fated. You know what I mean? Are you

15 aware or are you not aware?

16 **BRIGADIER CALITZ:** No. I can really not say.

17 Maybe if you use an idiom or, I –

18 **MR MPOFU:** No, forget the idiom. The

19 fact that if you are planning something and you mess up the

20 first step, then it will, it is likely to be ill-fated.

21 Forget the idiom.

22 **BRIGADIER CALITZ:** No, I can't agree with you.

23 It depends on the circumstances, it is not to say if your first step

24 is wrong, – I don't know,

25 one can probably compare it, to any mishap you cause during

1 a Rugby match and you err in the beginning, that is not to say your
2 team will lose. If I understand correctly, so that
3 it depends on the circumstances.

4 **MR MPOFU:** Yes. No, so okay, I am sure
5 that might be, with everything there might be many
6 exceptions. I am saying you actually, you don't know that
7 if you mess up the first stage of something which is
8 supposed to happen serially, it is likely to be messed up?
9 You don't know that as a human being?

10 **BRIGADIER CALITZ:** No, I didn't put it to you that I don't
11 know. I told you that I don't agree with you
12 and I gave you a reason.

13 **MR MPOFU:** So why are you arguing against
14 that idiom?

15 **BRIGADIER CALITZ:** You keep repeating the question.
16 I said I don't agree with you.

17 **MR MPOFU:** Anyway, I am now going to say
18 to you that stage 3, the one thing that – stage 3 as you
19 know is the tactical phase, which is the dangerous phase of
20 the operation, okay? We agree on that?

21 **BRIGADIER CALITZ:** When you refer to
22 "dangerous" do you refer to the practical side? The dispersion? The tactical
23 phase?

24 **MR MPOFU:** No man, I am saying you know
25 that stage 3, which is called the tactical phase, is the

1 most dangerous stage of the operation because it is the one

2 where death might likely occur. Do you accept that or

3 don't you accept it?

4 **BRIGADIER CALITZ:** No, I don't agree with you.

5 There were other phases also where there could

6 have been consequences. So –

7 **MR MPOFU:** Yes, anyway, the issue is this,

8 and I am going to demonstrate to you that stage 3, which I

9 regard as the dangerous stage, was ill-fated and stillborn

10 because the very first step was a misstep, of stage 3. You

11 remember that the only difference that you've been prepared

12 to admit to in this Commission between you and Colonel

13 Scott, the Siamese twins, is this issue of simultaneous

14 rollout. Is that fair, or is that not fair? In other

15 words, you said what Scott was talking about was dangerous,

16 this thing of simultaneous rollout. So to that extent you,

17 and more so, you said you've never seen it being done in

18 your entire life, simultaneous rollout. Is that fair, or

19 is it not fair?

20 **BRIGADIER CALITZ:** If you're perhaps referring to,

21 where we differed in our statements,

22 or in our testimonies –

23 **MR MPOFU:** Yes.

24 **BRIGADIER CALITZ:** - this is so; I did

25 say that – but, I had already testified to that.

1 **MR MPOFU:** Yes. Now if the Siamese
2 twins, the chief of planning and the chief of execution,
3 have such a difference on what I call the very first step
4 of the dangerous phase 3, then clearly, disaster looms.
5 Would you agree?

6 **BRIGADIER CALITZ:** No, I don't agree with
7 with you on that.

8 **MR MPOFU:** Okay, if Scott had the view
9 that the simultaneous rollout, as the word "simultaneous"
10 obviously implies, would last for a period of let us say
11 whatever period it would take to unfurl one A-frame, you
12 know what I mean, because simultaneous would mean the whole
13 thing of unfurling would last for that period. You
14 understand that, accept that?

15 **BRIGADIER CALITZ:** I don't know "that
16 period," but I will follow as you proceed.

17 **MR MPOFU:** Yes, but you, the other Siamese
18 twin, is of the view that the unfurling of the barbed wire
19 is going to happen serially, in other words it is that
20 period that Scott has in mind times 6 –

21 **MR SEMENYA SC:** Chairperson, can I ask that the
22 witness be protected and not be called a Siamese twin or
23 something like that.

24 **CHAIRPERSON:** Sorry, you lowered your
25 voice, I didn't hear.

1 **MR SEMENYA SC:** Can I ask the witness to

2 be protected, not –

3 **CHAIRPERSON:** I did try to tell him not

4 to call them Siamese twins because I said it is an

5 inappropriate expression. Mr Mpofu's trouble is he's

6 fallen in love with the expression and he doesn't want to

7 part with it. It doesn't really help us. It is not an

8 insult to be called a Siamese twin –

9 **MR MPOFU:** No.

10 **CHAIRPERSON:** I am sure there are lots of

11 people in Bangkok who have no objection to that, but Mr

12 Mpofu, it doesn't take it any further. It is a distraction

13 when you use an expression like that, that is inaccurate.

14 So may I suggest put that expression back in your –

15 **MR MPOFU:** No, Chairperson –

16 **CHAIRPERSON:** - in your file and carry on

17 without it, okay? You'll make me and Mr Semanya happy.

18 **MR MPOFU:** Yes, Chairperson, I am not

19 married to that expression. It is clear what I am trying to

20 convey here, which is that execution and planning are

21 inextricably linked.

22 **CHAIRPERSON:** [Microphone off, inaudible]

23 agrees with that.

24 **MR MPOFU:** Yes. So that is the, what I

25 mean by the expression, but I shall use another expression. I

1 mean we're not – it has nothing to do with twins here.

2 It is about the differences, major differences in unfurling

3 barbed wire which subsequently resulted in people dying.

4 Okay, so if I am saying –

5 **CHAIRPERSON:** I am not sure that the

6 difference led to deaths, but anyway, you make the comment;

7 you can argue it later if necessary.

8 **MR MPOFU:** Yes, okay. Yes, that is

9 exactly –

10 **CHAIRPERSON:** If that was the sole cause

11 of the problem, this Commission would have been over a long

12 time ago.

13 **MR MPOFU:** No, Chairperson, I would with

14 respect say that is also an inappropriate comment because

15 I have said to the witness – and I don't think we should

16 trivialise this – that the rolling out of the dangerous

17 phase, which resulted in the death of people, we are busy

18 dealing with the first step, and if that first step was

19 missed - at least that is the theory that I am advancing – if

20 that theory was missed –

21 **CHAIRPERSON:** No, I understand you make –

22 **MR MPOFU:** Yes, I am not –

23 **CHAIRPERSON:** I understand you make that

24 point.

25 **MR MPOFU:** Yes.

1 **CHAIRPERSON:** Whether that led to the

2 deaths is a matter that will be argued about later.

3 **MR MPOFU:** Yes.

4 **CHAIRPERSON:** You were stating it as a

5 fact. That was my only complaint. But never mind, let us

6 dispose of this point before teatime and then we can deal

7 with another topic thereafter, but carry on.

8 **MR MPOFU:** Yes, thank you, Chairperson.

9 Just to take one step back, so that we can breathe a bit –

10 **BRIGADIER CALITZ:** I am comfortable, Mr.

11 Chairperson, thank you.

12 **MR MPOFU:** Yes, well, congratulations. I am

13 saying that you – or remember on the 21st of November, I

14 think that is what it was, we did that exercise across the

15 road with the Nyala and the A-frame. Remember that?

16 **BRIGADIER CALITZ:** This s correct.

17 **MR MPOFU:** And that rollout – let us call

18 it rollout – rollout of that experimental A-frame took

19 about nine to 10 minutes, correct?

20 **BRIGADIER CALITZ:** On that day?

21 **MR MPOFU:** On that day, yes.

22 **BRIGADIER CALITZ:** No, I don't agree with you.

23 I think we can see by the length of that

24 video from when they started unfurling to when the wire

25 is tied to the vehicle.

1 **MR MPOFU:** Yes.

2 **BRIGADIER CALITZ:** But definitely not

3 nine minutes no, I doubt it, no.

4 **MR MPOFU:** Okay.

5 **COMMISSIONER HEMRAJ:** It takes just under

6 five minutes on the video, Mr Mpofu.

7 **MR MPOFU:** Okay. We shall establish that.

8 I saw something which referred to that, but whatever it is,

9 let us call it X. It doesn't matter, let us call it X.

10 We shall establish it. The point I am making is –

11 **BRIGADIER CALITZ:** Apologies, who –

12 who are you referring to as X? I am not –

13 **MR MPOFU:** No, I am saying the amount of

14 time, whether it was five or 10 –

15 **BRIGADIER CALITZ:** O, okay, I am with you.

16 **MR MPOFU:** - yes, it is irrelevant.

17 **BRIGADIER CALITZ:** I am with you.

18 **MR MPOFU:** That is what I am going to say

19 to you, yes.

20 **BRIGADIER CALITZ:** I am with you.

21 **MR MPOFU:** So let us call it X minutes, it

22 took X minutes, okay. The point I was making to you is

23 that if that rollout was going to be done simultaneously

24 according to Scott, then it would have taken X minutes, but

25 if it was going to be done serially it would take 6 x, six

1 times x. You understand? Understand the difference?

2 **BRIGADIER CALITZ:** I hear what you say.

3 **MR MPOFU:** No, but apart from hearing it,

4 do you agree that if it was to be done simultaneously it

5 would take X, and if it was done serially it would take 6x?

6 **BRIGADIER CALITZ:** Now you're asking me and

7 I agree. You did not ask before if I agreed.

8 Now, yes. It makes sense.

9 **MR MPOFU:** Thank you. Now the crucial

10 thing, you as the police were of the view that the strikers

11 were going to attack, correct?

12 **BRIGADIER CALITZ:** The only conflict we could have

13 predicted is after we gave the warning, moved out,

14 in a north-western -, no, a

15 - No, a North-easterly direction

16 and gave the warning to the hill.

17 During that phase, we expected conflict. This is

18 correct.

19 **MR MPOFU:** And do you think it is

20 significant or insignificant that you would have to project

21 the time that it would take to roll out the barbed wire,

22 which was the first step of stage 3, that you, at least the

23 big leaders, you'd have to be on the same page as to that

24 crucial issue, correct?

25 **BRIGADIER CALITZ:** No, I don't agree

1 agree with you, Mr. Chairperson.

2 **MR MPOFU:** So it would be – remember,

3 this goes right up to General Annandale. He's the one who

4 has fixed the time for this, so that means he also must

5 have some projections as to how long each stage is going to

6 take because he didn't want it to get dark while the thing

7 was being done, but I am just placing that aside. You were

8 not there. That is at the half past 1 meeting, and he has

9 given evidence as to why he chose half past 3. So we can

10 take it for granted that that is what he said.

11 **BRIGADIER CALITZ:** Mr, Chairperson, yes, I

12 think the half past 3 was, had nothing to do with –

13 **CHAIRPERSON:** Half 4.

14 **BRIGADIER CALITZ:** I mean, the 15:30, call it that

15 – Well in my opinion it had nothing to do with the

16 rolling out of the wire, and the time of the wire,

17 no, and I differ from you here.

18 **CHAIRPERSON:** [*Microphone off, inaudible*]

19 it works like this. He didn't want it to take place, to

20 start too late because there would be a problem with lights

21 as you approach sunset and so forth. So he must have

22 formed some kind of, made some rough kind of estimate as to

23 how long the whole process might take, and therefore he had

24 to fix it at a time so that the thing would be over whilst

25 – So that those parts that needed light would be over

1 before the light became problematic. I mean that must
2 follow, surely. So he must have formed some kind of, made
3 some kind of estimate as to how long the rollout would
4 take, but he would also have had to take other factors into
5 account, such as the period, the warning you would give,
6 the period that would elapse before – I think you were
7 going to give two warnings really - before the second
8 warning, and how long would elapse after, between the
9 second warning and the actual commencement of the operation
10 as such, the actual dispersal operation. He would have had
11 to work those out roughly, wouldn't he? That must be so.
12 Is that right?

13 **BRIGADIER CALITZ:** That can be a possibility,
14 Mr. Chairperson.

15 **CHAIRPERSON:** Yes, so what Mr Mpofu is
16 putting to you is that he must have made some kind of
17 estimate, looking at it from a practical point of view, as
18 to how long the rollout would take. I think that, is that
19 your point, Mr Mpofu?

20 **MR MPOFU:** That is all, Chairperson.

21 **CHAIRPERSON:** You agree with that?

22 **BRIGADIER CALITZ:** This which I understand from you,
23 Mr. Chairperson, yes. I, the way Mr. Mpofu put it,
24 I just disagree with him -

25 **MR MPOFU:** Okay.

1 **BRIGADIER CALITZ:** - at that stage.

2 **[10:38] CHAIRPERSON:** You mustn't agree with me

3 because I ask questions, if you really disagree with Mr

4 Mpofo, if you disagree you must disagree consistently and

5 if you agree with him you must do the same.

6 **BRIGADIER CALITZ:** Mr. Chairperson, -

7 **CHAIRPERSON:** Is this a note from which

8 we can tea, Mr Mpofo?

9 **MR MPOFU:** It is, Chairperson, and on

10 that note I adopt the Chairperson's question to which he

11 has agreed.

12 **BRIGADIER CALITZ:** Mr. Chairperson,

13 can I just say something? Your descriptions and explanations

14 are sometimes broader than allegations made in

15 just a short sentence, so, I am careful,

16 yes, else tomorrow I am quoted as having said; yes, the General "

17 did it because the wire," so this is what I wanted to differ about,

18 but I agree with you, Mr. Chairperson,

19 thank you.

20 **CHAIRPERSON:** Well, I did try to help all

21 the cross-examiners from time to time, sometimes I succeed

22 and sometimes I don't, but we won't take that point any

23 further now, we shall have tea instead.

24 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

25 **[11:08] CHAIRPERSON:** The Commission resumes. Mr

1 Budlender, I see you have your hand up?

2 **MR BUDLENDER SC:** Chairperson, there is a

3 matter which I need to raise with the Commission in an open

4 session regrettably, it is complaint about a lack of

5 cooperation. I want to say immediately this is not a

6 complaint about a lack of cooperation by our colleagues and

7 the SAPS legal team who have always cooperated fully with

8 us, but I am afraid on this matter there has been a lack of

9 cooperation by their client. The problem, Chairperson, is that

10 for, we require, for the purpose of the evidence of

11 Lieutenant-General Mbombo, materials relating to the

12 National Management Forum meeting which was held on the 15th

13 of August 2012 and what was called the extraordinary

14 session, we've been tempting to obtain the relevant

15 materials for some time and unfortunately without success

16 and can I just say what they are?

17 The first thing is the agenda papers and pack

18 which were distributed to members of the National

19 Management Forum before the meeting of 15 August 2012,

20 those were first requested on the 23rd of September last

21 year. We've requested it a number of times since then.

22 Secondly, there are the agenda papers and the pack which

23 was distributed to members of the National Management Forum

24 before the following meeting of the National Management

25 Forum after August 2012 and that was requested more

1 recently, on the 7th of January.

2 Thirdly, there is the tape recording of the

3 meeting of the National Management Forum meeting which was

4 held on the 15th of August 2012. We've been told that it

5 has been, it was recorded and that the recording has been

6 preserved. We requested that on the 17th of November last

7 year, we've requested it since then and we haven't received

8 it. Fourthly, we have asked for, the method which the

9 secretariat uses for the minutes of these meetings is that

10 Brigadier Mahlalela distributes a draft and asks members

11 who were there for comments on the draft minutes, and so

12 we've asked for a copy of the draft minutes of the

13 extraordinary session which she distributed to those

14 present for their comment and we've asked for the comments

15 which she received from those who were present. Those were

16 both requested on the 6th of January and we are sure they're

17 available because we interviewed Brigadier Mahlalela.

18 Sadly we have not received them. Our colleagues,

19 we believe, have attempted to secure them for us. The

20 result is that we are hindered in our preparation for the

21 evidence of Lieutenant-General Mbombo, the Provincial

22 Commissioner, and the fact that we are hindered means that

23 we are hindered in our ability to assist the Commission in

24 its function. Now we've tried to resolve this by other

25 matters, unfortunately other attempts have not succeeded

1 and we now ask the Commission to intervene and to address
2 the matter.

3 **CHAIRPERSON:** General Mbombo is the next
4 witness?

5 **MR BUDLENDER SC:** That is correct, Chairperson.

6 **CHAIRPERSON:** So as soon as this witness,
7 Brigadier Calitz is finished she will come to the witness
8 table to give evidence, and the first person to cross-
9 examine her will be you, as I understand it, is that
10 correct?

11 **MR BUDLENDER SC:** That is so, Chairperson.

12 **CHAIRPERSON:** Yes, Mr Semenya, you've
13 heard what Mr Budlender said, I don't know whether you wish
14 to say anything or you wish merely to convey, you may wish
15 merely to convey to your clients that I have now asked you
16 in an open session to see to it that we get this material
17 or no, we don't get it, but the evidence leaders get it. I
18 understand some of it may be of a confidential nature which
19 may not be relevant to our proceedings and I am sure that
20 there is no suggestion that any material of that kind will
21 not be dealt with appropriately, but would you convey to
22 your clients that this is cooperation which we require. We
23 were promised full cooperation when the Commission was
24 appointed and this appears, there may be an explanation for
25 it and I don't want to prejudge anything, it does appear

1 prima facie if what Mr Budlender says is correct, not to be
2 the kind of cooperation we've been promised. There may be
3 an explanation but if this material is not made available
4 to us I would expect the National Commissioner to appear
5 before us in person, not to give evidence, but to explain
6 the reasoning for this lack of cooperation, if indeed that
7 is what it is. I don't know if you wish to say anything?

8 **MR SEMENYA SC:** Chairperson, thank you, we will
9 make the complaint and the transcript of this complaint,
10 we shall give it to the National Commissioner for her notice.

11 **CHAIRPERSON:** Thank you, Mr Semenya.
12 Brigadier, you're still under oath.

13 **BRIGADIER CALITZ:** Thank you, Mr.
14 Chairperson.

15 **CHAIRPERSON:** Mr Mpofu?

16 **MR MPOFU:** Yes, Chairperson.

17 **CHAIRPERSON:** Do you still have some
18 questions to ask this witness?

19 **MR MPOFU:** Yes, yes, Chairperson. Brigadier,
20 would it be fair to say that one of the reasons you
21 differed sharply with what Colonel Scott was suggesting
22 was, I am now, we're still on the point of simultaneous
23 rollout, was because it was, if implemented going to be
24 very dangerous.

25 **COMMISSIONER HEMRAJ:** I am so sorry, I

1 missed the question, Mr Mpofo, would you mind repeating
2 that?

3 **MR MPOFU:** Okay, it looks like the
4 witness also missed the question. Is it correct or is it
5 not that one of the reasons why you differed with what
6 Colonel Scott is said to have been suggesting, is that it
7 would have been very dangerous, a very dangerous thing to
8 do, the simultaneous rollout, correct?

9 **BRIGADIER CALITZ:** This is not what I said why
10 I differed with him, I said in my previous
11 testimony, Mr. Chairperson, that I don't know what
12 Colonel Scott testified to what his meaning
13 was during the planning. What I did testify to is that
14 operationally it wasn't possible.

15 **MR MPOFU:** Yes, that is another reason,
16 the second one, it was impossible, correct?

17 **BRIGADIER CALITZ:** Operationally, this is
18 correct.

19 **MR MPOFU:** Yes, and it was very
20 dangerous, correct?

21 **BRIGADIER CALITZ:** When you say dangerous, in
22 what sense?

23 **MR MPOFU:** I don't know, in any sense
24 that you can imagine, was it very dangerous?

25 **CHAIRPERSON:** What was dangerous, do you

1 mean the danger of Nyalas colliding with each other or

2 people getting entangled in a wire or –

3 **MR MPOFU:** Well, okay, I shall give an

4 example.

5 **CHAIRPERSON:** What, I think you did say

6 earlier when you dealt with it previously in your evidence,

7 that it would have been a dangerous thing to do and I think

8 Mr Mpfu is just getting you to confirm that and to explain

9 to us what kind of danger you referred to earlier.

10 **BRIGADIER CALITZ:** Mr, Chairperson,

11 thank you, yes, I was careful in answering where he was

12 going, so –

13 **CHAIRPERSON:** No, look here, if we're

14 going to have this business of he asks a question, -

15 **BRIGADIER CALITZ:** I understand –

16 **CHAIRPERSON:** You know it is dangerous to

17 answer, until I have repeated the question in my language,

18 we're not going to get anywhere. I don't think you mean

19 that but, you didn't mean that or did you, but anyway let us

20 get the answer now?

21 **BRIGADIER CALITZ:** Thank you, Mr.

22 Chairperson. What I did testify to is that operationally, it

23 would be very unsuitable to simultaneously roll out the wires

24 The reason is that you can never judge the length of the

25 wire. I testified in detail to this; it is about how

1 far a barb wire can be rolled out.
2 Some of the wires hook and then only reaches,
3 say 50 of 60 meter, another roll out easily and can reach
4 up to 80 and 100 meters, so, it can never be judged before
5 the time. It depends on the terrain, the grass,
6 and anything else. Say the terrain, it depends on the circumstances
7 say, and the danger as you maybe refer to it, if I understand you
8 correctly, is that there would be openings, and this
9 were possibly left between this, which creates a
10 dangerous situation in the neutral zone, the safety
11 zone which I said the police, die media and
12 those people were.

13 **MR MPOFU:** And for that reason it would
14 be very dangerous, yes, no?

15 **BRIGADIER CALITZ:** If the people did indeed come
16 through there and the confrontation that could develop
17 would be dangerous, this is correct.

18 **MR MPOFU:** It was also, you've already
19 said it was impossible, it would also be unprecedented,
20 you've never seen it done before?

21 **BRIGADIER CALITZ:** Yes, I did testify
22 that in our, my experience when you roll out the wire
23 you roll out one after the other so, yes,
24 it has never been rolled out all at once before that
25 I was aware of .

1 **MR MPOFU:** I take that as a, yes, and it
2 was also, it would also have been life threatening or a
3 danger to people's lives, correct?

4 **BRIGADIER CALITZ:** Maybe if you could just repeat
5 again and say what you mean?

6 **MR MPOFU:** Yes, we've established that
7 you regarded the suggestion by Scott as very dangerous,
8 impossible, unprecedented. I am asking you now whether it
9 was also life threatening in the sense that it would be
10 threatening to lives.

11 **BRIGADIER CALITZ:** I had testified that if
12 the people managed to get through that gap, a confrontation
13 would occur at the back.

14 **MR MPOFU:** And would it also be irregular
15 in the sense that it wouldn't be in compliance with what is
16 expected of the police obviously to do a dangerous thing?

17 **BRIGADIER CALITZ:** No, I did not testify that the police
18 did a dangerous thing, so,
19 I cannot agree with your question.

20 **MR MPOFU:** No, I accept that, Brigadier,
21 please just answer the question.

22 **BRIGADIER CALITZ:** In other words the
23 answer is no, Mr. Chairperson.

24 **MR MPOFU:** So it would not be, - it would
25 be dangerous, life threatening but it would not be

1 irregular, the answer?

2 **BRIGADIER CALITZ:** In the context you asked

3 the question, as I understand it, if you can't rephrase

4 the question, I must tell you, I have to say no.

5 **MR MPOFU:** Alright, now we were at the

6 stage where we had said that, on your understanding the

7 rollout would take so long, on Colonel Scott's

8 understanding I would take so long.

9 **BRIGADIER CALITZ:** I did not testify to that,

10 no, Mr. Chairperson.

11 **MR MPOFU:** You don't remember when I said

12 to you if it was done simultaneously it would be X and if

13 it was done serially it would be 6 times X?

14 **BRIGADIER CALITZ:** All I am saying is; I had never

15 said Colonel Scott and I had compared those times

16 with each other and it was never my testimony. I remember

17 I said that I don't know what Colonel Scott testified,

18 what his testimony was in that case. This is not how I

19 understood it and that is then why I didn't

20 implement it.

21 **MR MPOFU:** Yes, but you also were not

22 prepared to dispute that that is what he said, so it is

23 possible that he did testify like that, correct?

24 **BRIGADIER CALITZ:** No, it is possible he could have

25 said it, yes.

1 **MR MPOFU:** So let us work on that
2 possibility and I am saying if, as part of the possibilities
3 he did say that it would be rolled out simultaneously, then
4 it would take, or rather your understanding of the process,
5 it would take 6 times longer than his, correct?

6 **BRIGADIER CALITZ:** If it has to be multiplied the way you
7 suggested it just now? No, I believe it would have taken
8 longer.

9 **MR MPOFU:** Yes, your idea of how long the
10 warning period would have been was about half an hour,
11 correct?

12 **BRIGADIER CALITZ:** I said the group on the hill
13 would have taken between 20 and 30 minutes, what I would
14 have given them to react after I gave them the warning.

15 **MR MPOFU:** Yes, that is the same thing, so
16 it is, yes, it was about half an hour?

17 **BRIGADIER CALITZ:** I testified between
18 20 en 30 minutes.

19 **MR MPOFU:** But 30 minute is half an hour,
20 correct?

21 **BRIGADIER CALITZ:** I stand on my answer.

22 **MR MPOFU:** And if the rollout was going
23 to be done according to your understanding, not the
24 dangerous and life threatening one, then it would have
25 taken another half an hour, more or less, not less than

1 that, it could be more but it wouldn't take less than that,

2 at least based on the demonstration, correct?

3 **BRIGADIER CALITZ:** If you will repeat it,

4 you say my version, I want to understand correctly?

5 **MR MPOFU:** If the rollout was going to be

6 done serially as you insist it should have been done,

7 because you were obviously not going to do the dangerous

8 approach, then it would take about another, about half an

9 hour, I am assuming that X will find it to be less than what

10 I thought it was and I am using five minutes. If it was ten

11 minutes it would be an hour, if it took five minutes it

12 would be half an hour, so I am taking the best case scenario

13 so that I don't argue with you about it.

14 **MR SEMENYA SC:** Chairperson, this matter was

15 extensively dealt with, I think by Mr Budlender. We had

16 established that it would take two minutes and on - logic

17 of time 6 it would be whatever it is, it is not a matter

18 for cross-examination.

19 **CHAIRPERSON:** Yes, well, there is a

20 further point and that is that it was in fact unrolled, the

21 wire was in fact uncoiled consecutively and we know the

22 time from, in terms of ETV time, we know how long it took

23 and it was actually less than 12 minutes as far as I

24 remember. So we're looking at, on your rough estimate, 2

25 minutes versus 12 minutes. My impression was it was

1 actually slightly less than 12 minutes, but let us take 12
2 minutes at the outer limit for the moment. It added an
3 extra 10 minutes on that quote to, what was going to happen
4 that afternoon as envisaged initially by Colonel Scott,
5 isn't that right? So there is an extra 10 minutes delay if
6 I can call it that, it was occasioned by the facts that the
7 wire was uncoiled consecutively rather than simultaneously.

8 **MR MPOFU:** Yes, that is what in fact
9 happened, I am not busy with that, with respect.

10 **CHAIRPERSON:** Well, what are you –

11 **MR MPOFU:** I am busy with what the, I am
12 obviously talking about the interaction, that is why I
13 talked about the interaction between what was planned via
14 Scott and what was envisaged via Calitz. I am still there,
15 I am coming to –

16 **CHAIRPERSON:** Well, obviously what Scott
17 envisaged was two minutes and what this witness, I am not
18 sure what he envisaged, let us ask him quickly. How long
19 did you think this exercise would take, this uncoiling of
20 the wire?

21 **MR MPOFU:** Yes.

22 **BRIGADIER CALITZ:** Mr, Chairperson,
23 it will usually take two to three minutes to uncoil a wire.
24 Again, it depends on the circumstances, so multiply
25 with –

1 **CHAIRPERSON:** So this is –

2 **BRIGADIER CALITZ:** Multiply with 6.

3 **CHAIRPERSON:** This is not accurate

4 science but it is an estimation, so it sounds like you

5 thought it might take as much as 18 minutes?

6 **BRIGADIER CALITZ:** I will say 2 to 3 minutes,

7 3 multiply by 6 between 12 –

8 **CHAIRPERSON:** You can take your

9 calculator out of your pocket if you like?

10 **BRIGADIER CALITZ:** Between 12, I am going –

11 **CHAIRPERSON:** You can take it from me,

12 6 x 3 is 18.

13 **BRIGADIER CALITZ:** This is, I take your word,

14 thank you Mr. Chairperson.

15 **MR MPOFU:** Have you, in your life have

16 you ever seen that exercise being done in two minutes, what

17 we witnessed out there the other day?

18 **BRIGADIER CALITZ:** Mr, Chairperson,

19 yes, we do a lot of work with wire, uncoiled lots of wire

20 and picked it up during courses, I am talking about the

21 past, and it is difficult to roll it out just that way.

22 I have to tell you it depends a lot on the terrain, and the

23 circumstances on the day, the pressure there is,

24 what is played out in front of the members.

25 It plays an important role in the rolling out of the wire,

1 the same with the picking up of it, it can be anything -

2 **MR MPOFU:** And the purpose of us being

3 taken to this exercise across the road was among other

4 things to give us a life show of the average, how long it

5 takes to do that, wasn't it?

6 **BRIGADIER CALITZ:** No, the purpose I tried showing there to the,

7 Commissioner, and everyone present,

8 because there were witlessness that maybe, it

9 it was simultaneous, and the operation on the ground,

10 with the, my en Colonel Makhubela's

11 deploying of the plan, it wasn't possible,

12 and if we had done it simultaneously and there is a

13 space of, I think we left a space of 5 meter

14 or something like it, and then to pick up the A frame

15 to tie it to the Nyala is virtually impossible. You will

16 remember that a section consists of 6 to 8. I think on

17 the video we saw at a stage 6 people

18 simultaneously pulling on the A frame where everyone

19 could see and it is on video, and it was just not possible

20 to pull it any further. The wire hooks onto

21 anything, you had seen at that stage the wire that

22 that was uncoiled.

23 There was plastic bags, all kind of debris and stuff,

24 so it was with previous deployments. The barb wire

25 hook physically onto anything so, if at all possible,

1 not doing it this way will definitely leave openings and to
2 leave spaces will be very unwise.

3 **MR MPOFU:** I have just asked you a simple
4 question, was your understanding of the exercise that you
5 took us to do across the road intended to give us a sense
6 of how long it takes to roll the wire out or not?

7 **BRIGADIER CALITZ:** Not just that, no.

8 **MR MPOFU:** Was that part of the reasons?

9 **[11:28] BRIGADIER CALITZ:** You asked me the purpose.
10 I told you the purpose. That was part
11 of it.

12 **MR MPOFU:** Thank you. And given all the
13 things that you've explained, the possibility of it
14 catching on something and so on and the terrain, all the
15 things that you've said, how long did you envisage it would
16 take on that day, on the 16th?

17 **BRIGADIER CALITZ:** This is what Mr. Chairperson
18 answered, between that 12 and 18
19 minutes.

20 **MR MPOFU:** So given all those things you
21 thought it would take two minutes per Nyala?

22 **BRIGADIER CALITZ:** Mr. Chairperson,
23 yes, this is the average time. I said three to four minutes
24 to get this thing rolled out.

25 **MR MPOFU:** Alright.

1 **BRIGADIER CALITZ:** Should something have happened,
2 and there was an occurrence, or as you put it
3 yesterday, Nyala was stuck, it would have influence
4 there upon, especially since we could not do it
5 simultaneously.

6 **MR MPOFU:** That is fine. We shall stick with
7 your 12 to 18 minutes, which I don't accept, but that is
8 another story. So the issue is that on your – or rather,
9 on Scott's version then the whole thing would have taken
10 about two minutes. On yours, it would take about 12 to 18
11 minutes. Let us just accept that for now. The point is on
12 your version you then expected that for those 18 minutes
13 these strikers were going to do what? Just sit, wait and
14 watch for 12 minutes, or 18 minutes? What was your view of
15 what was going to happen in that 18 minutes?

16 **BRIGADIER CALITZ:** Mr. Chairperson, I testified that the wire was
17 never "intended" to be used against the
18 "strikers" and I also testified in detail I think,
19 I can't remember, I think it was Adv.
20 Budlender, that we used the "public address system" to
21 explain the purpose of the wire and why it was there. I counted
22 roughly, I think we came out up to 12 times to talk about it
23 over the "address system," Noki only with Mr. Noki,
24 but also with the whole group who sat there, and who
25 could hear. So the "uncoiling" of the wire was not at all

1 against the "protesters". So, no, they would have watched to
2 see what was happening in front of them, the movement of
3 the vehicles, and from there we would have engaged in
4 conversation with them.

5 **MR MPOFU:** Yes, that is exactly what I
6 mean when I say your plan was stillborn, because you
7 anticipated a group of people that you had categorised as
8 belligerent, who were going to kill you and all these
9 menacing things, to sit for 18 minutes at worst, or at
10 best, folding their arms and waiting for you to unroll the
11 barbed wire, which they had repeatedly told you is
12 something that they found to be offensive. Do you think
13 that is logically sustainable, that expectation that they
14 were just going to stand there and both of you, stand there
15 for 18 minutes and, you know, kindly wait for you to unroll
16 the barbed wire?

17 **BRIGADIER CALITZ:** Mr. Chairperson, yes,
18 this is what I testified.

19 **MR MPOFU:** Right, and what do you say to
20 my suggestion that that was an unreasonable and, kind of
21 out there expectation that these people that you had
22 categorised like this would suddenly behave like that?
23 That is was from a leadership point of view, for you as a
24 leader, that it would be a criticism that I will level
25 against you that you expected them to behave that way when

1 you've categorised them the way that I have said?

2 **MR SEMENYA SC:** Chairperson, that is still

3 argument.

4 **MR MPOFU:** No. Sorry Chairperson, no,

5 no, no, it is not. It is not argument. I am putting to this

6 witness something that I am going to use to criticise him,

7 so I am giving him an opportunity to deal with it. I am

8 simply saying if he even on his version, which I don't

9 accept, expected that the people would stand there for 18

10 minutes while the police are kindly rolling out the barbed

11 wire, that that is a criticism of his own assessment and

12 leadership and so on –

13 **CHAIRPERSON:** Yes, Mr Mpofu, let us deal

14 with it this way.

15 **MR MPOFU:** Yes.

16 **CHAIRPERSON:** Your question about what he

17 expected, I take it that relates to what he expected before

18 the wire started being uncoiled. Is that right?

19 **MR MPOFU:** Well, yes, that is why I said

20 there are two sections, Chairperson –

21 **CHAIRPERSON:** No, no, no, I –

22 **MR MPOFU:** There's what actually happened

23 and there's what he anticipated to happen.

24 **CHAIRPERSON:** Yes, but you agree with me,

25 I take it –

1 **MR MPOFU:** Yes.

2 **CHAIRPERSON:** - that your question as to

3 what he expected relates to what he expected before the

4 wire started being uncoiled.

5 **MR MPOFU:** Yes, Chairperson.

6 **CHAIRPERSON:** Alright, now were there any

7 - When that morning when the Nyalas arrived with the wire

8 trailers, you remember the previous day there had been

9 Nyalas at the scene but without wire trailers, they had

10 been kept away I think in the forward holding area or

11 something because it was thought that their presence might

12 provoke trouble and so on. That is correct, isn't it?

13 **BRIGADIER CALITZ:** They were back

14 at the JOC.

15 **CHAIRPERSON:** They were at the JOC, okay.

16 So they were not there on the Wednesday. They were brought

17 there on the Thursday, and when the Nyalas arrived with the

18 wire trailers was there any response from the strikers, or

19 any of the strikers?

20 **BRIGADIER CALITZ:** Mr. Chairperson,

21 yes, this is what I testified. Mr Noki himself came to

22 us and asked what is the purpose, why are the vehicles

23 there. The same movement happened in front from 1

24 to and with 6, so the same cars with the same wires

25 move and take up positions. So, he came to us and asked

1 what the purpose is, and this is one of the times

2 we explained to them, and he turned around and

3 walked away.

4 **CHAIRPERSON:** So you explained what they

5 were for and he turned around and went away. Alright, then

6 when the wire started being uncoiled, when Nyala 1 started

7 moving away from the power station, I think it was, and the

8 wire started being uncoiled, I think on the evidence he

9 came back to you.

10 **BRIGADIER CALITZ:** This is correct, Mr.

11 Chairperson.

12 **CHAIRPERSON:** And he expressed, he expressed

13 his disdain. Am I right? He expressed his

14 dissatisfaction about what was happening. Is that right?

15 **BRIGADIER CALITZ:** It is, that is when he

16 threatened us.

17 **CHAIRPERSON:** Yes, alright, so certainly

18 whatever you expected before the wire started being

19 uncoiled, wasn't happening. You thought they'd just

20 observe it and stand quietly with their arms folded and

21 watch the wire being uncoiled for 18 minutes. That is what

22 you told us that is what you expected, but that wasn't

23 happening. Once the first Nyala moved away with the fire,

24 he came back to you and complained in rather aggressive

25 tones, I think is your evidence. Is that right?

1 **BRIGADIER CALITZ:** That is correct.

2 **CHAIRPERSON:** So your expectations

3 weren't realised.

4 **BRIGADIER CALITZ:** Whereupon we explained to him again

5 and over the "address system" the

6 purpose of it, and that it wasn't aimed against them.

7 **CHAIRPERSON:** And did he seem satisfied

8 with that?

9 **BRIGADIER CALITZ:** No, he walked away

10 and it was then that "dismissive action" took place,

11 at that stage, that –

12 **CHAIRPERSON:** What did you expect then?

13 I can understand what you've told Mr Mpofu you expected

14 before the wire started to be uncoiled, but what were your

15 expectations once you started uncoiling the wire and there

16 was the reaction that you've described?

17 **BRIGADIER CALITZ:** He walked away from us, Mr. Chairperson,

18 and I could see that he wasn't

19 very happy, if I can put it in those terms,

20 and there is my feedback that threats were made, and

21 then we had just "observed." He went to the group and this

22 where this specific militant group

23 started, moved nearer to one another and this is,

24 after the Nyala 3 moved to 4 and

25 back –

1 **CHAIRPERSON:** No, my question, Brigadier
2 – I am sorry to interrupt you. I understand it is difficult
3 sometimes, I am not being critical, but you haven't answered
4 my question yet and so I shall repeat my question to you. The
5 question was, you had certain expectations what would
6 happen before you began to uncoil the wire. I understand
7 what you're saying. You've also told us that you expected
8 something different once you started uncoiling – well, you
9 hadn't answered the question. The question is what did you
10 expect once you saw his reaction to the uncoiling of the
11 wire by Nyala 1? You've told us what happened, but I take
12 it you must have realised that your expectation wasn't
13 going to turn into reality because he wasn't just standing
14 there with his arms folded, watching the wire being
15 uncoiled, was he?

16 **BRIGADIER CALITZ:** No, he came toward
17 us –

18 **CHAIRPERSON:** So what did you expect to
19 happen once his attitude, as you've described it to us, was
20 manifested?

21 **BRIGADIER CALITZ:** I expected him to return to
22 his people and then certainly to give them
23 the message, which I learned they have heard,
24 and clearly their order would then, had shown it
25 changed immediately. So I expected him to,

1 return and share it with the group, himself seeing as he

2 was the only communication between them and

3 us the whole day.

4 **CHAIRPERSON:** So the short point is their

5 conduct would change, wouldn't it? Their conduct would

6 change once they saw the wire being uncoiled and he behaved

7 in the fashion that you've described.

8 **BRIGADIER CALITZ:** Yes.

9 **CHAIRPERSON:** Now what did you expect

10 their conduct to change to? That is the question. You

11 still haven't answered it.

12 **BRIGADIER CALITZ:** Yes, I hear what you say,

13 Mr. Chairperson. Yes, I can't say at that stage that I

14 sat in the vehicle and thought about anything else

15 except that we must get this wire closed because the

16 people are unhappy, and he'd have given

17 feedback, but I also said the moment he reached the people,

18 that grouping came together. I could see an immediate

19 and drastic "change of mood,"

20 yes. This is the best way I can answer this.

21 **CHAIRPERSON:** I have cut some of the bush

22 out of the way for you, Mr Mpofu, you can now proceed -

23 **MR MPOFU:** Yes, indeed, Chairperson.

24 **CHAIRPERSON:** - if you wish.

25 **MR MPOFU:** I will, Chairperson. Thank

1 you very much. Now let us examine then what the Chairperson
2 says what you expected the mood to change to. What we do
3 know for sure is that at that stage you thought that these
4 people were prepared to fight with the police and to die,
5 correct?

6 **BRIGADIER CALITZ:** Which stage? Just say
7 again?

8 **MR MPOFU:** At all stages you had the
9 impression that these people were prepared to fight the
10 police and to die, correct?

11 **BRIGADIER CALITZ:** Yes, those threats were made later
12 first to us, not the whole
13 time, no..

14 **MR MPOFU:** No, Brigadier, please listen.

15 This is a very important question. Is it correct that at
16 all stages you were of the view that these people were
17 prepared to fight the police and to die, or is it not
18 correct? Yes or no?

19 **BRIGADIER CALITZ:** There is not an easy
20 yes or no. It became known to me when he flung
21 the threats my way.

22 **CHAIRPERSON:** You see, Mr Mpofo used the
23 word "at all times." If you change the question slightly
24 and said once they made the threats, which of course you
25 deny they made, dealing with his evidence now, once they

1 made the threats that you say they made, what did you think
2 would happen? If you ask the question that way you may –
3 if I may suggest that you may get the answer you're looking
4 for.

5 **MR MPOFU:** Okay, maybe I shall make it
6 easier. I shall make it easier, Chairperson, and it will be
7 clear why I ask the question that way, by quoting you
8 yourself, Brigadier, and you can tell me if you still stand
9 by this statement. "At no stage, at no stage during the
10 whole negotiating process did I get the impression that the
11 crowd was willing to listen to reason and lay down their
12 weapons. Instead I came to the conclusion that they will
13 never surrender their weapons and that they were prepared
14 to fight with the police and to die." Do you stand by that
15 statement?

16 **BRIGADIER CALITZ:** This is as you
17 read there.

18 **MR MPOFU:** Yes, thank you.

19 **BRIGADIER CALITZ:** That doesn't refer to one
20 specific part.

21 **MR MPOFU:** At no stage –

22 **BRIGADIER CALITZ:** If I can go to that sentence,
23 I think I had explained it to
24 Adv. Budlender or Adv. Ntsebeza, and that refers to the process
25 where it started, where they didn't want to lay down their

1 arms. We asked them more than a couple of times to lay
2 down their arms. After it went over to the "mood
3 change", when we gave them feedback, and then
4 it changed to threats. So, that sentence
5 summarised it as it happened.

6 **MR MPOFU:** I asked you a simple question.

7 Do you still stand by that statement or not?

8 **BRIGADIER CALITZ:** This is correct, in the
9 way I just put it now.

10 **MR MPOFU:** Yes. So if at no stage, then
11 it means all stages and that is why I framed that question
12 that way. I am saying to you that we have a situation where
13 you've just spoken to this gentleman – well firstly, it was
14 not the first time that you were telling them that the
15 barbed wire was not meant against them, was it?

16 **BRIGADIER CALITZ:** Mr. Chairperson, I
17 had answered these question intensively already.

18 **MR MPOFU:** Just a yes or no. It was not
19 the first time that you were telling them that the barbed
20 wire was not –

21 **BRIGADIER CALITZ:** Which part of the time factor are
22 you talking about now? When you say; "that was not the first
23 time," there, which part is the "that"?

24 **MR MPOFU:** In your life. Was it the
25 first time that you were telling them that the barbed wire

1 was not meant against them?

2 **MR SEMENYA SC:** Chairperson –

3 **BRIGADIER CALITZ:** Mr. Chairperson, I

4 understand nothing at all now what you say –

5 **CHAIRPERSON:** “In your life” is actually

6 a little bit –

7 **MR MPOFU:** Well, it is a ridiculous

8 question –

9 **CHAIRPERSON:** - a little bit over the

10 top. No, no, let us approach it differently. Did you tell

11 them several times what the purpose of the wire was?

12 **BRIGADIER CALITZ:** Mr. Chairperson,

13 yes –

14 **CHAIRPERSON:** Okay, the answer is yes.

15 Next question, what was the first time you told them the

16 purpose of the wire?

17 **BRIGADIER CALITZ:** The first time, if I noted

18 it here correctly, was in paragraph 48 of my

19 statement and that is when Colonel McIntosh arrived

20 with the “public address system,” people came forward

21 and that is when we told them – but over the

22 “public address system”, when we spoke

23 to them –

24 **CHAIRPERSON:** Yes, yes, no, but when was

25 that?

1 **BRIGADIER CALITZ:** - to get the trust -

2 **CHAIRPERSON:** Was that when the Nyalas

3 arrived on the scene, dragging the wire trailers behind

4 them?

5 **BRIGADIER CALITZ:** This is what I wanted to clear

6 now, Mr. Chairperson. He asked when was the first time

7 that we "addressed" them about

8 - If he only means about the wire it was

9 around 10 o'clock on the 16th.

10 **CHAIRPERSON:** That was the first time.

11 Now how many times altogether was it explained to them?

12 **BRIGADIER CALITZ:** Since they arrived

13 Mr. Chairperson?

14 **CHAIRPERSON:** Yes, yes, well I mean

15 obviously you didn't tell them before the trailers -

16 **BRIGADIER CALITZ:** I will put it this way -

17 **CHAIRPERSON:** Sorry, listen. You didn't

18 tell them before the Nyalas arrived on the scene with the

19 wire trailers, did you? So that was the first time. So

20 from then on how many times did you tell them before the

21 actual uncoiling took place? Did you explain to them again

22 at all?

23 **BRIGADIER CALITZ:** It was at that stage when -

24 I am trying to determine the correct time,

25 so there isn't a dispute. Paragraph 81

1 of my statement, when he came to us, this was
2 about 9, 10 o'clock in the morning, we explained the wire
3 to him, and again at around 12,
4 "roughly" 12:35, just after we also explained to the AMCU president
5 the purpose of the wire. In fact,
6 here I spoke to the AMCU president about the first threats
7 around Nyala 6, and we clearly requested that they
8 pass it forward. So that would
9 be the second time. Then he - my paragraph 91,
10 after the media and the people started moving, because
11 they said it was "unsafe", and this is where
12 they saw the long weapon in front - Noki came to us
13 again, demanded to know about the barbed wire.
14 We again explained to him, I think this was now the third time.
15 **CHAIRPERSON:** What time was that?
16 **BRIGADIER CALITZ:** That would be
17 before, or just on 14:00.
18 **CHAIRPERSON:** So 2 o'clock.
19 **BRIGADIER CALITZ:** About.
20 **CHAIRPERSON:** And thereafter?
21 **BRIGADIER CALITZ:** Where he was -
22 **CHAIRPERSON:** That is 2 o'clock in the
23 afternoon, and thereafter?
24 **BRIGADIER CALITZ:** This is correct,
25 Mr. Chairperson.

1 **CHAIRPERSON:** Yes, yes, and thereafter –

2 **BRIGADIER CALITZ:** This is the fourth time,

3 and –

4 **CHAIRPERSON:** Did you give a warning

5 again about it later, or –

6 **BRIGADIER CALITZ:** Just after he made the threat re

7 the “signing piece of paper,

8 killing,” – and then we spoke with him again after

9 that threat; “We informed him

10 with the public address system, no intention to fight. We

11 can resolve it by talking. Request them to disarm again.”

12 So, as I counted it was the –

13 **CHAIRPERSON:** But did you talk about the

14 barbed wire again on that occasion?

15 **BRIGADIER CALITZ:** Another time, yes.

16 **CHAIRPERSON:** Okay, alright.

17 **BRIGADIER CALITZ:** So, this is what I could get

18 now, and then as the “barbed wire,” paragraph 108,

19 unrolled, het, he approached us again; “very

20 aggressively. Colonel McIntosh then explained again

21 over the public address system that the purpose of the

22 barbed wire is for the protection of the police, the media,

23 and the community.” You questioned me before about the

24 “community. I told him it included the protesters, and

25 the whole community, “He told him that it is not

1 intended against the strikers." Mr. Noki then said he was going

2 back, we won't see him again.

3 **CHAIRPERSON:** Okay, so –

4 **BRIGADIER CALITZ:** So, this was the 6th –

5 **CHAIRPERSON:** You told them on a number

6 of occasions –

7 **BRIGADIER CALITZ:** - 7 times.

8 **CHAIRPERSON:** - on a number of occasions,

9 starting early in the morning when the Nyalas arrived on

10 the scene, dragging these wire trailers and you've explained

11 all the other cases thereafter, so I think you've got

12 the information you want, Mr Mpofu.

13 [11:48] **MR MPOFU:** Thank you, Chairperson, yes, I

14 do, and so despite the fact that you had told him four or

15 five times –

16 **BRIGADIER CALITZ:** No, more times than

17 that, Mr. Chairperson.

18 **MR MPOFU:** Yes, let us say, what are you

19 happy with, eight?

20 **BRIGADIER CALITZ:** More like –

21 **CHAIRPERSON:** About six I think, but it

22 doesn't matter –

23 **MR MPOFU:** Yes, okay.

24 **CHAIRPERSON:** - whether it was four, five

25 or six, they were told a number of times, that is it.

1 **MR MPOFU:** Yes, okay, six, let us agree on
2 six. Despite the fact that you told him six times that the
3 wire was not meant for them, he did not accept that
4 explanation, otherwise you would only had to tell him once,
5 correct?

6 **BRIGADIER CALITZ:** I assumed he didn't
7 accept it.

8 **MR MPOFU:** Yes, so that is the situation
9 we have, we know that you've said this six times to these
10 people and they still don't accept it. We know that they
11 are prepared to fight with the police and to die, we know
12 that there were about 3,000 people waving arms at you,
13 number three, all of whom were armed with extremely
14 dangerous weapons and we also know that they acted with one
15 goal and one intention, the 3,000 people, and despite those
16 five things you expected them for 18 minutes to sit there,
17 fold their arms, okay, maybe that is an unfortunate time,
18 sit there and watch you uncoiling the barbed wire for about
19 18 minutes, is that your evidence?

20 **BRIGADIER CALITZ:** This is what I testified about

21 - Previously

22 Mr. Chairperson.

23 **MR MPOFU:** Well, I have to say,
24 Brigadier, that I will argue that any reasonable person in
25 your position knowing all these things that I have just

1 explained to you, should have known that those people were
2 not going to sit there and that your failure to appreciate
3 that fact contributed to the disastrous consequences of
4 that operation, would you care to comment?

5 **BRIGADIER CALITZ:** Yes, I don't agree
6 with you, Mr. Chairperson, for the reasons which I
7 had given.

8 **MR MPOFU:** Yes, do you know whether, or
9 rather let me put it this way, do you know at what stage
10 the change to, or rather from the intended deployment of
11 the six Nyalas in that concave shape that we see in, I
12 think in slide 81, to the actual deployment towards the
13 kraal, when that change happened?

14 **CHAIRPERSON:** - change in the plan?

15 **MR MPOFU:** In the plan, yes, Chairperson.

16 **CHAIRPERSON:** The plan was the concave.

17 **MR MPOFU:** The concave shape, yes.

18 **CHAIRPERSON:** Shape that you refer to and
19 then of course that wasn't implemented.

20 **MR MPOFU:** Yes.

21 **CHAIRPERSON:** And clearly that was
22 because the plan will change, you want to know when the
23 change of plan took place?

24 **MR MPOFU:** Yes, thank you, Chairperson.

25 **CHAIRPERSON:** Okay, can you answer that

1 please, Brigadier?

2 **BRIGADIER CALITZ:** Mr. Chairperson,

3 given the time, 11 and 12 o'clock on that day,

4 there was a threat on Nyala6, and that was observed,

5 as I already testified by Colonel

6 Vermaak, the photo was sent to JOC. Those people informed

7 us about the threat on them and once again the

8 JOC gave orders, as we can see on

9 page 81 of Exhibit L, and he moved clockwise

10 – If I remember my testimony correctly with

11 Advocate Budlender of Chaskalson, who questioned me

12 in detail about this – at that stage he moved clockwise

13 in the direction of the kraal, and not

14 move as he was here now.

15 **CHAIRPERSON:** That then inevitably

16 brought in its train a change of plan as far as the shape

17 of the barbed wire fence or what the shape of the barbed

18 wire fence would be, is that right?

19 **BRIGADIER CALITZ:** That is correct, Mr.

20 Chairperson.

21 **CHAIRPERSON:** And did you realise at the

22 time then that the shape of the barbed wire fence would now

23 be different from what was originally planned in

24 consequence of the decision communicated by the JOC, I

25 think with General Annandale's decision to move Nyala6 from

1 where it was to the place it ended up, is that correct?

2 **BRIGADIER CALITZ:** Yes, that is correct,

3 they had seen it and picked it up that way, Mr.

4 Chairperson.

5 **MR MPOFU:** Okay, now we know the motive

6 or the motivation for that change. Who took the decision

7 to make that change?

8 **CHAIRPERSON:** Which change, the change –

9 **MR MPOFU:** The change from concave to the

10 kraal?

11 **CHAIRPERSON:** So –

12 **MR MPOFU:** No, I am saying he has now

13 given us a motivation which I accept, but who took that

14 decision, Brigadier?

15 **BRIGADIER CALITZ:** Mr. Chairperson,

16 I believe it would have been discussed in the JOC .

17 **CHAIRPERSON:** All you can say is, the

18 decision was made in the JOC.

19 **BRIGADIER CALITZ:** That was my

20 feedback.

21 **CHAIRPERSON:** Who in the JOC took the

22 decision is something you can't help us about, but I think

23 the evidence is with General Annandale, but that is

24 something –

25 **BRIGADIER CALITZ:** I think –

1 **CHAIRPERSON:** - you can't from your own

2 knowledge tell us.

3 **BRIGADIER CALITZ:** I think I testified that

4 Colonel Scott phoned me, but I must -

5 **MR MPOFU:** Yes, -

6 **BRIGADIER CALITZ:** This is under correction.

7 -

8 **CHAIRPERSON:** So obviously someone

9 contacted you and said you must move the Nyala.

10 **BRIGADIER CALITZ:** That is correct.

11 **CHAIRPERSON:** But whose idea it was,

12 whose decision it was is something you can't tell us about,

13 but I think General Annandale said it was him.

14 **BRIGADIER CALITZ:** I f he testified to that -

15 **CHAIRPERSON:** It was him.

16 **BRIGADIER CALITZ:** Then it is so, Mr.

17 Chairperson.

18 **CHAIRPERSON:** Yes.

19 **MR MPOFU:** No, no, no, it is fine, I am

20 not looking for an identity, that is good enough that the

21 decision was taken by the JOC so to speak, whoever it was,

22 is that your evidence?

23 **BRIGADIER CALITZ:** That is correct, yes, that

24 is where the decision was made.

25 **MR MPOFU:** Yes, and I am sorry if you've

1 answered this, maybe I was not listening, how was it

2 communicated to you and by whom?

3 **BRIGADIER CALITZ:** I had just testified to this,

4 I said –

5 **MR MPOFU:** Yes –

6 **BRIGADIER CALITZ:** - I think my testimony was

7 that Colonel Scott contacted me, I speak under

8 correction.

9 **MR MPOFU:** So he said to you, because

10 now, I am not quoting him verbatim, because Nyala 6 had to

11 retreat the plan has now changed, and the six Nyalas will no

12 longer have to uncoil the barbed wire in the concave shape

13 and now it must go straight to the kraal, words to that

14 affect?

15 **BRIGADIER CALITZ:** It will be more or less, as I explained,

16 in a clockwise

17 movement.

18 **MR MPOFU:** And at that stage, you say

19 this was sometimes in the morning?

20 **BRIGADIER CALITZ:** Yes, that is correct, Mr.

21 Chairperson.

22 **MR MPOFU:** And then, so it means at that

23 stage you then already knew that the only way through which

24 the operation could be rolled out, so to speak, would have

25 been through that gap between the sink house and the kraal

1 where the people died. So you knew that in the morning,

2 correct?

3 **BRIGADIER CALITZ:** This was from the beginning

4 the opening through which the police would

5 move out.

6 **MR MPOFU:** Yes, that is what I am saying,

7 the only, it was the only other way in which this

8 operation could be rolled out now, was between the zinc

9 house and the kraal, you knew that from the morning, that is

10 what I am saying.

11 **BRIGADIER CALITZ:** Yes, from around 12 o'clock, this

12 is correct, Mr. Chairperson.

13 **MR MPOFU:** So that when you were briefing

14 the group commanders you said to them, once again not

15 verbatim, listen here fellows, we're no longer going to go

16 directly to the mountains, we are now going to go through

17 that gap between the sink house and the kraal and that is

18 how we are going to access the period. In other words the

19 only opening that will be available for anybody coming in

20 or out will be that gap between the kraal and the zinc

21 house, you knew that by about twelve, correct? Oh, I am sorry,

22 it is a double question, this is wrong, forget about that

23 you knew that one. The question is, when you were briefing

24 the group commanders, that is what you said to them.

25 **BRIGADIER CALITZ:** Mr., Chairperson,

1 just a correction, at 14:30, when we got the briefing. Which
2 was done by Colonel Scott, and it was his changes to the plan
3 which he explained to us as such. It is still the opening through
4 which the police would move out,
5 and in a North-easterly direction to
6 reformat at the top of the hill. So it wouldn't have brought any change
7 to the police vehicles who moved out and
8 took up their positions.

9 **CHAIRPERSON:** Let me see if I understand
10 it. The evidence is that, I think it was phase 2, involved
11 what was called the repositioning of the wire trailers,
12 that is correct, isn't it?

13 **BRIGADIER CALITZ:** Correct, Mr.
14 Chairperson.

15 **CHAIRPERSON:** Were the commanders of the
16 Nyalas which had the wire trailers behind them informed
17 initially what the routes to be covered by the barbed wire
18 barrier would be, or were they simply told, that is where
19 you're going to go, your reposition, you will be told
20 later what exactly is to happen, can you help me on that?

21 **BRIGADIER CALITZ:** Mr. Nyala, I believe
22 Colonel Makhubela will, he was the group commander in
23 the JOC, which would have moved out and he would give his
24 members orders, and I believe the order that he would then
25 have given, would be for all to keep their positions. To indicate

1 that they had seen the overhead

2 presentation of Colonel Scott. So the Nyala so, the Nyala driver

3 would know in which direction to go.

4 **CHAIRPERSON:** So they wouldn't simply

5 have known that they were prepositioning the trailers as it

6 were, they would also have known at that early stage

7 already what the routes, if I can call it that, of the

8 barbed wire barrier would be?

9 **BRIGADIER CALITZ:** Mr. Chairperson, I will just say,

10 the prepositioning of the vehicles, maybe not to where the wire

11 or when the wire would be rolled out, they wouldn't have known

12 it at that stage.

13 **CHAIRPERSON:** Yes, but as far as I

14 remember phase 2 simply talks about prepositioning.

15 **BRIGADIER CALITZ:** This is just -

16 **CHAIRPERSON:** It didn't talk about the

17 routes that will be - communications -

18 **BRIGADIER CALITZ:** No, -

19 **CHAIRPERSON:** - covered by the barbed

20 wire.

21 **BRIGADIER CALITZ:** NO, Mr. . -

22 **CHAIRPERSON:** That was part, that was

23 going to be part of phase 3.

24 **BRIGADIER CALITZ:** That is correct, what would be

25 decided later.

1 **CHAIRPERSON:** And it was said, you were
2 told about phase 3 later and there was of course also the
3 question of whether they were told that phase 3 will even
4 take place on the day. I talk about early in the morning,
5 am I right or did I, there is other evidence but your
6 evidence as I understand it was, you only heard that phase
7 3 was going to happen at half past two of the Thursday
8 afternoon, is that correct?

9 **BRIGADIER CALITZ:** I think the evidence was, M. Chairperson,
10 that it will, have gone over to the next
11 phase, apologies, Mr. Chairperson.

12 **CHAIRPERSON:** Sorry, I was listening to
13 Advocate Hemraj. Would you repeat this sentence again,
14 please?

15 **BRIGADIER CALITZ:** Yes I did say my testimony is that
16 we'd have gone over to the next phase.
17 should it be communicated to us, so it was, concerning
18 phase 3.

19 **CHAIRPERSON:** The point that Advocate
20 Hemraj put to me which flows directly from what I was busy
21 with is, if you look at slide 149, have you got Exhibit L
22 there in front of you?

23 **BRIGADIER CALITZ:** I have
24 Mr; Chairperson.

25 **CHAIRPERSON:** Slide 149, that slide,

1 that is this concave shape that Mr Mpofu is talking about,
2 was a hardcopy of that slide given to the commanders of the
3 wire trailer pulling Nyalas in the morning?

4 **BRIGADIER CALITZ:** Mr, Chairperson, I know the group of
Cheerleaders were briefed, they came to the Nyalas.

6 this is my vehicles, because you can see me standing among the group
7 and with the group of commanders, the but if it, the order was given
8 to a Nyala driver, I am not sure, I can't help
9 you with this.

10 **CHAIRPERSON:** The evidence was, it was
11 given to the commanders, so that wouldn't have included the
12 Nyala driver, the commanders of the wire trailer dragging
13 Nyalas at that stage, they would simply, presumably, have
14 been told; this is where you're going to place your Nyala
15 with the trailer and what's going to happen thereafter,
16 that will be phase 3, you'll hear about that later if it
17 happens, that is your evidence, is that right?

18 **BRIGADIER CALITZ:** I understand you correctly, then yes,
19 this is right, I think Colonel Makhubela will tell us
20 more, whether he gave orders to his drivers as well.

21 **CHAIRPERSON:** So it would be fair to say
22 that you can't really help us on that, you don't know what
23 the commanders, in this case it would be Colonel Makhubela,
24 what he told his Nyala, - sorry, I shall repeat it again, his
25 wire trailer dragging Nyala commanders, you don't know what

1 he told them at the early stages of the morning, is that

2 right, but you say he would have had a copy of that

3 hardcopy of that slide, is that correct?

4 **BRIGADIER CALITZ:** This was in the morning with

5 the JOCCOM, Mr.. Chairperson. According to me, later in the day,

6 after 14:30, we did brief the Nyalas and given the

7 group commandos instructions, so this

8 was early morning, yes.

9 **CHAIRPERSON:** Yes, you say that

10 "briefing", that instruction was given at 14:30 by

11 Lieutenant-Colonel Scott at forward holding area A, is that

12 right?

13 **BRIGADIER CALITZ:** And after that with, just after 3, me, so

14 after 3, he communicated with all the drivers and the commandos..

15 **CHAIRPERSON:** The field commanders weren't there at about 14:30,

16 but you were.

17 **BRIGADIER CALITZ:** Only the group -

18 the commanders was with -

19 **CHAIRPERSON:** Yes, yes -

20 **BRIGADIER CALITZ:** - was with at

21 but not -

22 **CHAIRPERSON:** Not the drivers and you

23 then told the drivers at three o'clock, 15:00, -

24 **BRIGADIER CALITZ:** With the group.

25 So commander, like the, Colonel Macintosh, he was there as well.

1 **CHAIRPERSON:** Alright.

2 **BRIGADIER CALITZ:** And they then took

3 it further.

4 **CHAIRPERSON:** Thank you, I think that is

5 some of the information you was after, Mr Mpofu?

6 **MR MPOFU:** Yes, that is, thank you very

7 much, Chairperson, and before we proceed with this let me

8 just, forgive me Brigadier, just go back very slightly to

9 something that we just covered now. So all in all, apart

10 from the criticism that I presented to you about the

11 expectation of the people sitting for 18 minutes, on top of

12 that 18 minutes there was going to be approximately 30

13 minutes of the warning and they would still be, - so

14 effectively they would be sitting there, waiting for about

15 48 to 50 minutes and doing nothing, that was the plan.

16 **BRIGADIER CALITZ:** If you mean the moving away of the police

17 vehicles, the line and then the warning, and

18 that time is counted with, it is correct.

19 **MR MPOFU:** Okay, thanks, and when you say

20 that you, I know the National Commissioner also said this

21 but let us stick with you, when you say that the plan was

22 disrupted, when you gave answers as to why things were done

23 in that way, what exactly are you referring to? How was it

24 disrupted?

25 **BRIGADIER CALITZ:** This was the attack,

1 the unforeseen attack -, incident, we referred to.

2 1, 2, 3, It wasn't planned beforehand. Before -

3 **MR MPOFU:** Yes -

4 **BRIGADIER CALITZ:** - they came there

5 yes. So, this is what Mr. Chairperson asked,

6 what I saw was happening and after the rolling out

7 of the wire by 1 and 2, this is then what

8 happened.

9 **[12:08] MR MPOFU:** Yes, do you accept then that

10 if the disruption that has been told, the refrain in the

11 Commission, that, as you say that it was unforeseen but

12 would you accept that it was foreseeable in the sense that

13 it was well, unreasonable to expect a group of belligerent,

14 3 000 arm-waving, murderous people to sit there for 48

15 minutes.

16 **MR SEMENYA SC:** Is Mr Mpofu accepting his

17 clients to be so described as the murderous ones?

18 **MR MPOFU:** No, obviously I am reading -

19 that is why I am reading from the statement of the

20 Brigadier -

21 **CHAIRPERSON:** That sounds like a debating

22 point, Mr Semanya. I take it everything he says is on the

23 basis that that is what you say -

24 **MR MPOFU:** That is what the Brigadier

25 said, yes.

1 **CHAIRPERSON:** Alright, okay. It is very

2 unlikely -

3 **MR MPOFU:** Even the 18 minutes for that

4 matter I don't accept -

5 **CHAIRPERSON:** It is very unlikely that

6 he -

7 **MR MPOFU:** - as Mr Semenya clearly knows.

8 **CHAIRPERSON:** Mr Mpofo, let us not talk

9 over each other. It is very unlikely he would accept it. I

10 take it implicit in the questions you're asking is that is

11 the police case, I don't accept it, as you've indicated

12 from time to time you don't accept it.

13 **MR MPOFU:** I have. If I have to -

14 **CHAIRPERSON:** You're probing details of

15 the police case, police evidence and so forth.

16 **MR MPOFU:** Yes. Thank you, Chairperson.

17 **CHAIRPERSON:** Its version.

18 **MR MPOFU:** Yes. Yes, Brigadier, in case

19 it wasn't clear, I am saying, and that is why I laid out all

20 the things you've said, your view was that these people

21 were all armed with extremely dangerous weapons. They

22 acted as one group. They had one intention. At no stage

23 did you have the impression that they were willing to

24 listen, and they were prepared to fight and to die, and I am

25 saying that given those circumstances, for you

1 simultaneously to expect that they would stay for 48
2 minutes minimum, about, and basically wait for you while
3 they are doing nothing, given those circumstances of yours,
4 as the leader, your subjective assessment of their levels
5 of dangerousness, that what you call a disruption might not
6 have been foreseen, but it was foreseeable. In other words
7 if you didn't foresee it, it was your own weakness not to
8 foresee because it was obvious for all to see. Do you
9 understand what I am saying, first, and I suspect you might
10 disagree with it, but do you understand?

11 **COMMISSIONER HEMRAJ:** Mr Mpofu, I don't
12 understand the question. Do you mind repeating it –

13 **MR MPOFU:** Well, in that case –

14 **CHAIRPERSON:** Before you repeat it –

15 **MR MPOFU:** I should assume the Brigadier

16 also doesn't understand it.

17 **CHAIRPERSON:** - I am going to suggest we

18 take a comfort break in a minute.

19 **MR MPOFU:** Okay.

20 **CHAIRPERSON:** But before we do that, you
21 talked about 48 minutes. I just want to make sure I
22 understand what the 48 minutes consist of.

23 **MR MPOFU:** Yes, the –

24 **CHAIRPERSON:** Am I correct in thinking
25 you're referring to – you may have even said it, but

1 perhaps I didn't pick it up at the time – you got the 18
2 minutes of the uncoiling, not simultaneous, consecutively.
3 You then got the half hour in the middle of which there are
4 two warnings to the strikers, we're going to take action
5 against you, we're going to disarm and disperse you, or
6 we're going to disperse you and disarm you, and so on,
7 unless you do what we tell you in the meanwhile. So that is
8 your 48 minutes. 18 minutes is the uncoiling and the half
9 an hour is this period during which they're getting
10 warnings and so on, before the rest of stage 3 can be
11 implemented.

12 **MR MPOFU:** That is correct, Chairperson.

13 **CHAIRPERSON:** That is your 48 minutes,
14 right.

15 **MR MPOFU:** That is exactly it.

16 **CHAIRPERSON:** Now we understand that, I
17 suggest we take a comfort break. I hope it will only be
18 five minutes and then we can proceed until 1 o'clock or
19 shortly thereafter. I want to proceed for three-quarters
20 of an hour after we resume.

21 **MR MPOFU:** Thank you, Chairperson.

22 **CHAIRPERSON:** And we will then adjourn
23 for the day.

24 **MR MPOFU:** Thank you, Chairperson.

25 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

1 **[12:19] CHAIRPERSON:** The Commission resumes,

2 Brigadier, you're still under oath.

3 **BRIGADIER CALITZ:** Thank you.

4 **CHAIRPERSON:** Mr Mpofu? We've been asked

5 to adjourn promptly at one o'clock because there are people

6 who're afraid they will miss planes if we don't do that, so

7 one o'clock in mid-sentence we're going to stop, okay, bear

8 that in mind.

9 **MR MPOFU:** Thank you, Chairperson.

10 Brigadier, I am busy saying to you that it, or at least I

11 will argue at the end that it bothers, it is so absurd

12 that, it must be completely untrue that a person in your

13 position, believing what you'd believed about the strikers,

14 could expect that for about 38 minutes or even 18 minutes,

15 even 5 minutes for that matter, while you were unrolling

16 the barbed wire these people were going to politely check

17 out that, were going to just sit there and do nothing, that

18 it is so absurd that it is false, that is how absurd it is.

19 **BRIGADIER CALITZ:** Mr. Chairperson,

20 no, I differ from you, I can only testify to my own experiences

21 where we had worked with crowds and will work lots more,

22 never in the history of the police had anyone attacked the,

23 police that I am aware of in this country, after the wire was

24 rolled out, and the police had warned the people,

25 that anyone would attack the police or moved towards

1 them with that purpose or stormed the police with that purpose. The
2 reaction usually if something like that occur, is

3 to move away in that case, so –

4 **CHAIRPERSON:** So you're talking about

5 what happened in your experience in the past, over the
6 period that you've been in charge of-

7 **BRIGADIER CALITZ:** This is correct –

8 **CHAIRPERSON:** Involved in POP operations,
9 is that right?

10 **BRIGADIER CALITZ:** It is correct.

11 **CHAIRPERSON:** You're talking about cases

12 where wire was uncoiled or other defensive lines were set
13 up?

14 **BRIGADIER CALITZ:** That is correct, Mr.

15 Chairperson.

16 **CHAIRPERSON:** In any of those cases that

17 you were talking about, were they preceded by threats by

18 members of the crowd, armed members of the crowd that they
19 will attack the police?

20 **BRIGADIER CALITZ:** Mr. Chairperson,

21 There were many times when stones were thrown, people came

22 with petrol bombs, people who said they wouldn't go,

23 and made threats against the police,

24 and when we deploy our defensive lines/ as soon as our

25 vehicles begin to move away , our experience is that

1 people, although not perhaps much, started to move away from the
2 police, to see if they can suspend,
3 the dispersion, that is only when the arrests were being made
4 where there is confrontation, but never to my knowledge have
5 I heard of a confrontation to police
6 line; the attack on line of 'n position that the police held.

7 It was -

8 **CHAIRPERSON:** You're telling me you've
9 never, you're telling us that you've never known a case
10 where a rowdy crowd, members of a rowdy crowd have attacked
11 the police line?

12 **BRIGADIER CALITZ:** This is what I said
13 Mr. Chairperson, when we deploy a defence line,
14 in other words, defensive measure means, get the
15 vehicles in line, roll the wire out, or let the members
16 deploy in lines with the shields, this is all defensive
17 before the warning is given, in that case we have never
18 seen them storming the
19 police line.

20 **CHAIRPERSON:** And in fact they normally
21 move the opposite direction.

22 **BRIGADIER CALITZ:** In my experience they moved away,
23 maybe not ran away altogether, ,
24 but moved away to a safer position, if I can say it like this for them? We will say
25 it to them to see what their next step is;

1 normally when we warn them, they will
2 throw stones or petrol bombs, in some
3 of the cases where I was and then we go on to action.

4 **CHAIRPERSON:** So they move in, you used
5 the word "safer", they moved to a safer position
6 normally, is that right?

7 **BRIGADIER CALITZ:** It is correct.

8 **CHAIRPERSON:** Because they realise that
9 the police appear to mean business and it could be
10 unpleasant for them if they say where they were, is that
11 your experience normally?

12 **BRIGADIER CALITZ:** I think in this case,
13 the distance were of such a manner that they would
14 be able to move away on a safe
15 distance –

16 **CHAIRPERSON:** That is your experience
17 previously?

18 **BRIGADIER CALITZ:** With their purpose,
19 yes.

20 **CHAIRPERSON:** yes, so that is your
21 experience. Now did you ever have a case, now this is a
22 question that Mr Mpfu can't ask you but I can. Did you
23 ever have a case in the past where the crowd that you were
24 dealing with were armed with dangerous weapons, were
25 aggressive and hostile towards the police, had gone through

1 rituals to your knowledge and appear to believe that muti

2 which they had received then render them invincible,

3 did you ever have such a case in the past?

4 **BRIGADIER CALITZ:** Mr. Chairperson,

5 no, I think with previous mine incidents we handled there was

6 allusions to people who did actually use such 'muti'. But I have never

7 seen it myself. In this case it is the first time

8 where I had physically seen the naked people

9 on the 16th, the 800 who has stayed behind

10 by die hill to get to each other again., etc...

11 **CHAIRPERSON:** Not the incident

12 photographs you saw afterwards, had you been informed by

13 the time, by midday shall we say or the middle of the day

14 on the 16th, information received prior to that, over the

15 days prior to that, that the people in the police

16 helicopters had observed people undergoing rituals, had

17 that, in other words had you already been informed that the

18 police suspected, rightly or wrongly is a matter that we

19 debate later, but the police suspected that these people

20 had undergone rituals with the view to rendering them

21 invincible and vulnerable and so on?

22 **BRIGADIER CALITZ:** Mr. Chairperson, yes,

23 what I had seen myself was the day we arrived

24 there with the Nyala, when we arrived, the video which was made from

25 inside the Nyala

1 I remember seeing on the video where they moved
2 in the direction of the kraal, but what their specific
3 purpose was, I couldn't determine that.
4 There have always been references to the, what they call him,
5 the Sangoma. Also, on the day of the 16th,
6 say said they see this person but I have never met him,
7 no photos were taken something I would be aware of,
8 was that I wished we could go to school in.

9 **COMMISSIONER HEMRAJ:** In answer to the
10 chairman's question as to in any previous incident have you
11 ever encountered threats being made by protestors or
12 strikers against the police, I am not sure that I heard your
13 answer and I am not sure if you did answer it.

14 **BRIGADIER CALITZ:** Commissioner, yes,
15 definitely. There are many threats made
16 the police, especially POP, they could hear it if they had threats,
17 the go-between already on their way is to the
18 municipality for a service delivery protest, so,
19 we are the line that stand between them and that.
20 we always try with the leaders or the organizers
21 who can observe us, to see, but there was
22 definitely threats, also as previously throwing stones
23 at us and that type of thing –

24 **CHAIRPERSON:** I found what I am looking
25 for. If you look at slide 85, this deals with the position

1 on Tuesday, the 14th, it said, and the time given is 15:23.
2 "It was reported that the protesters had imported inyanga
3 to perform certain rituals and manufactured muti which
4 would ensure them victory and confrontations with the
5 opponents. The men who gathered at the hill armed with
6 knopkieries, iron rods, spears and pangas believed the
7 inyanga could perform a ritual at the hill and sprinkle
8 them with muti to make them brave," and then the next
9 bullet, "Protestors were seen by a police helicopter and
10 the observation after undergoing a ritual," there is a word
11 missing obviously after the word observation but I shall start
12 reading from the beginning of the sentence. "Protestors
13 were seen by a police helicopter and the observation after
14 undergoing a ritual where their bodies were wiped down with
15 a substance, believed to be made from or called [African
16 language]." Now that information that the report referred
17 to in the first bullet and the information contained in the
18 whole of the slide which appears on a page of the
19 presentation dealing with the 14th, Tuesday, the 14th, was
20 that information made available to you prior to the 16th?
21 **BRIGADIER CALITZ:** Mr. Chairperson,
22 on the 14th I myself saw the group of naked people, and on the 15th
23 there was a report from a helicopter which has seen the 800
24 men, so that report is also available
25 yes.

1 **CHAIRPERSON:** Alright, and the other
2 report that the protestors, there was a report, presumably
3 the Criminal Intelligence people got it through their
4 informants, that protestors had imported an inyanga to
5 perform certain rituals and manufactured muti which would
6 ensure them victory in confrontations with their opponents,
7 was that report conveyed to you?

8 **BRIGADIER CALITZ:** No, I cannot say in
9 those words..

10 **CHAIRPERSON:** Not the words, was the
11 "reason", the way of the operation –

12 **BRIGADIER CALITZ:** No, -

13 **CHAIRPERSON:** - stated in that sentence,
14 was that conveyed to you, you're the operation commander.
15 Surely it would have been important that that information
16 which has been obtained according to this slide by the 14th,
17 had been conveyed to you, so that you could bear it in mind
18 and factor it into anything that happened, that it was
19 done?

20 **BRIGADIER CALITZ:** Mr. Chairperson ,
21 yes the words as they stand here I cannot tell you,
22 all I can say is the words and the rituals there, a sangoma
23 being with them, that was reported and
24 discussed.

25 **CHAIRPERSON:** So now we're dealing with

1 your expectation of what's going to happen, you've got a
2 crowd of people there on the hill who, according to your
3 information had undergone these rituals, got in an inyanga
4 manufactured muti to ensure them victory, they were making
5 threats to you, they were armed with dangerous weapons,
6 they obviously don't like the wire that is being uncoiled,
7 they're aggressive about it. Now the question Mr Mpofo
8 wants to know from you, well, he couldn't ask the questions
9 I have just asked you about the muti because those aren't his
10 instructions. The question Mr Mpofo wants to know from you
11 is, what did you expect as a reasonable operational
12 commander with extensive POP experience, they would do once
13 the wire started being uncoiled because they clearly were
14 aggressive about it and didn't like it, is that your
15 question, Mr Mpofo?

16 **MR MPOFU:** It is –

17 **CHAIRPERSON:** More or less?

18 **MR MPOFU:** It is, Chairperson, I had put
19 the five factors and I would add to that the sixth factor
20 which the chairperson has just dealt with, in other words
21 that on top of being dangerous and armed they were also
22 possessed.

23 **CHAIRPERSON:** According to the police
24 information, whether it is right or wrong is a matter you
25 will debate later but according to the police information

1 that was the position and that would have presumably
2 contributed to your expectation of what's was going to
3 happen.

4 **MR MPOFU:** Yes.

5 **CHAIRPERSON:** That is fair, isn't it?

6 **BRIGADIER CALITZ:** I earlier

7 asked the question earlier, Mr Chairperson,

8 at what stage did

9 we know about this situation. I was not aware of

10 the call made at 13:30, before we went

11 on to the next phase,

12 when they were informed at 14:30 we were already

13 aware of the situation. So after the first wire was

14 uncoiled, Mr Noki walked up to us and

15 and made the threat,

16 the mood changed, and that is why

17 I ordered Nyala4 to move down and I told

18 the people to get back in the vehicles, I saw a

19 an attack very clearly in front of us.

20 **CHAIRPERSON:** So you foresaw, in other

21 words, an attack by these people after the wire started

22 being uncoiled by Nyala 1 and the strikers manifested or

23 some of them anyway, manifested aggression and serious

24 dissatisfaction with the uncoiling of the wire, is that a

25 fair summary of what you say?

- 1 **BRIGADIER CALITZ:** This is correct Mr.
- 2 Chairperson.
- 3 **MR MPOFU:** Yes, thank you and what I am
- 4 saying to you or I am putting to you is that because of the
- 5 six factors, because, what I am putting to you is that
- 6 because of the six factors which I won't repeat, you as a
- 7 reasonable operational commander ought and I shall go so far
- 8 as to say you did foresee that they would attack. In other
- 9 words I am saying you should have because of all the things
- 10 that I have discussed together with the chairperson, I am
- 11 saying you should have foreseen that they would attack and
- 12 I am going further than that and I am saying a person in your
- 13 position actually did foresee it, what is your comment?
- 14 **CHAIRPERSON:** Mr Mpofo, he said, I
- 15 summarised his answer to him, he says at the time, to be
- 16 fair, we've got to fix the time limit –
- 17 **MR MPOFU:** Oh, yes, yes, fair enough.
- 18 **CHAIRPERSON:** At the time the wire was
- 19 being uncoiled by Nyala 1 and they reacted aggressively and
- 20 dissatisfaction, at that stage he expected that there will
- 21 be an attack and in fact that is why he gave certain
- 22 instructions to Nyala 4.
- 23 **MR MPOFU:** Yes.
- 24 **CHAIRPERSON:** So that is his evidence
- 25 because he said that.

1 **MR MPOFU:** No, fair enough, Chairperson,
2 sorry, I was asking the question wrongly. What I am putting
3 to you is that before that point, well before that point,
4 knowing what you knew about these factors that we have gone
5 through, including the fact that these people were
6 possessed, dangerous, wanting to kill and so on and so on,
7 I am saying well before that time you as a reasonable
8 operational commander, a senior member of the police with
9 the experience that you have, ought to have foreseen and
10 actually did foresee that they were going to attack.

11 **BRIGADIER CALITZ:** If you mean
12 before the time and not the time if the uncoiling of Nyala 1
13 the wire played out before the time?

14 **MR MPOFU:** Yes.

15 **BRIGADIER CALITZ:** During the planning,
16 no, then I don't agree with you Mr. Chairperson.
17 The evidence is clear, that it was planned,
18 the planning drawn, the discussions in the JOC,
19 etcetera.

20 **MR MPOFU:** Alright, I don't want to
21 belabour the point because it is a matter that is obviously
22 going to be central in argument but in fairness to you I
23 have to finally just put it like this, that the thrust of
24 what I am saying is that even if I were to accept that you
25 did not foresee it until that point, which I don't, but

1 let us say for the purposes of this question I accept it,
2 the thrust of what I am saying to you is that a reasonable
3 person in your position should have foreseen, given all
4 these factors that we've gone through, that an attack would
5 come?

6 **BRIGADIER CALITZ:** Mr. Chairperson,

7 no I differ from you, not from you, from the
8 Advocate that the reasons we gave are inadequate.
9 We had a show of force there, had, as the police,
10 the amount of Nyalas you mentioned earlier, the force, the power
11 turned up, the vehicles of the Taskforce, the uniforms,
12 the helicopters, there was a huge show of force
13 on that day that it will take a reasonable man in my eyes
14 to see, I still have the courage and I am not going to
15 attack this group, the logic being that here is a show of force
16 placed in front of them and they are 30 plus,
17 what the purpose was for any more, but I would not explain the wire,
18 again, but we also strengthen the relationship between them and us with
19 negotiations. So given all the stuff put into place, a reasonable
20 person in that situation would, I shall say,
21 rather choose a safe option and not
22 an attack, in short.

23 **CHAIRPERSON:** But obviously you placed

24 your faith, I am not speaking about you specifically, you
25 the police involved in this operation, placed your faith in

1 the show of force, you thought the show of force combined
2 with the force continuum which was a slow build-up with
3 less than lethal force, would be effective in achieving
4 what you wanted to achieve, is that fair?

5 **BRIGADIER CALITZ:** Certainly, yes,
6 Mr. Chairperson.

7 **CHAIRPERSON:** And you say that any
8 reasonable person on the other side, your opponents if one
9 can use that expression, would have reacted that way and in
10 the face of this show of force that was mounted, would have
11 not done what these people did, is that fair?

12 **BRIGADIER CALITZ:** That is what I say and it is the
13 first thing that happened here, Mr. Chairperson.

14 **CHAIRPERSON:** Yes, so you assumed that
15 your opponents were reasonable people?

16 **BRIGADIER CALITZ:** No, they were people who,
17 we knew at that stage people had died. We do know
18 there were faction differences,
19 so, no, this is not what I would say the test of
20 a reasonable man is, no. We are talking about a striker,
21 protestor, in our experience with Public Order Policing,
22 so this is someone who is very unhappy, who wanted to
23 proof a point over wage differences
24 so, not a reasonable normal person without
25 frustrations

1 **[12:39] CHAIRPERSON:** Reasonable people, well,
2 this is a matter where one must phrase it delicately
3 because there are cultural differences which one must be
4 sensitive to, but it may well be contended that reasonable
5 people wouldn't believe that undergoing rituals and using
6 "muti" which had been manufactured would necessarily ensure
7 them victory in confrontation with the police. So you knew
8 that your opponents, if I can use that word for the sake of
9 brevity, were according to the information you had
10 received, that that was what they had done. Is that right?
11 That is the information you got. That is the belief they
12 held. We know the belief was unfounded. It is contended,
13 it will be contended that that is not what they believed and
14 they hadn't done that, but we're not busy with that. We're
15 busy with the information you'd received.
16 The point that presumably will be argued, and
17 we'd have to consider whether it is correct or not, is
18 whether it was reasonable for you to assume, as you say you
19 did, that the show of force combined with the force
20 continuum will be enough to deal with the situation, and
21 that these people would not, in the face of the facts that
22 were put to you by Mr Mpfu and the extra one I added,
23 would not attack you, attack the police and behave as in
24 fact they appear to have done according to the evidence.
25 That is going to be the contention, I take it, from Mr

1 Mpofu. We will have to decide on that contention, whether

2 it is right or wrong. What's your response to it?

3 **BRIGADIER CALITZ:** Mr, Chairperson,

4 yes, we must just bear the time factor, when this

5 show of force was put into place. This morning's 'show

6 of force," the vehicles, was put in place with a purpose,

7 remember there would have been a possible laying down of

8 weapons, and then we would have moved out, and then after the

9 13:30 "call" of the JOC, that I was instructed in at 14:30,

10 so my time to brief the members between 15:00

11 and 15:40, that 40 minute is what we had to put into place

12 the extra "show of force," t execute the task

13 as ordered by the JOC.

14 **CHAIRPERSON:** There's another aspect of

15 course, to be fair to you, that we must bear in mind and

16 that is I am not sure you were a free agent to do entirely

17 what you might have done if you had total authority to act.

18 You were subject to instructions from the JOC. That is

19 correct, isn't it?

20 **BRIGADIER CALITZ:** This is so –

21 **CHAIRPERSON:** You received this briefing

22 at 2:30. It would have been a very bold step for you to

23 have taken, if you considered it was appropriate, to say

24 I am sorry, we can't do it, and we won't do it. That would have

25 led to all sorts of repercussions. I am not saying if you

1 felt very strongly about it you might have done that, but
2 it would have been a very delicate situation. You're being
3 trained in the force for many years. Basically it is a
4 hierarchy. You obey instructions from above. Is that
5 correct?

6 **BRIGADIER CALITZ:** This is correct, Mr.

7 Chairperson. Should -

8 **CHAIRPERSON:** So we must -

9 **BRIGADIER CALITZ:** Should I not react or maybe they had moved
10 into the "village", we can only
11 "hypothesise" and should 2 or even 1 person had
12 been killed in the "village"
13 I would definitely have been charged because
14 I didn't follow orders.

15 **CHAIRPERSON:** The criticism is about what
16 was expected and what should have been borne in mind and
17 what was appropriate to do, is criticism that in the first
18 place isn't really criticism that should be addressed to
19 you, but those who are responsible for the instruction you
20 received. Would that be fair?

21 **BRIGADIER CALITZ:** Mr. Chairperson,
22 I received the order at 14:30, if I can answer it like that.

23 **CHAIRPERSON:** No, I am saying if there's
24 criticism about what was done, that it shouldn't have been
25 done, it shouldn't have been done that way - and there will

1 be criticism about that, we can see that already – what I am
2 putting to you is to be fair to you, the criticism is
3 really criticism that should more appropriately be
4 addressed to others, those who gave the instruction to you,
5 not to you who did your best to carry it out. Would you
6 agree with that, without you commenting on the correctness
7 or otherwise of the criticism? Would that be an
8 appropriate way of putting it?

9 **BRIGADIER CALITZ:** I agree with you,
10 Mr. Chairperson.

11 **MR MPOFU:** Well, okay, I think in the
12 same vein of to be fair to you, in that respect I will make
13 two points for you to comment, one in your favour and the
14 other one against you.

15 **CHAIRPERSON:** Are you going to tell him
16 in advance which is which?

17 **MR MPOFU:** Yes, okay well let us start
18 with the one against you. The one against you is this; it
19 is that it is not – the point against you is this one. It
20 is not those other people, whoever they might be, who held
21 the views which I quoted from your statement, about these
22 people who were all armed with dangerous weapons, they all
23 had one intention, they were prepared to fight the police
24 and die, and so on, and so on. It is you, Brigadier Calitz,
25 who held those views. So insofar as this point is based on

1 your subjective beliefs, it cannot be, I am afraid, passed
2 over to anyone else. So that is the point against you. You
3 also were the one who believed that the "muti" was going to
4 make them brave, or whatever that means.

5 **CHAIRPERSON:** [Microphone off,
6 inaudible].

7 **MR MPOFU:** Yes.

8 **CHAIRPERSON:** The "muti" wouldn't make
9 them brave, but they might believe it will make them brave.

10 **MR MPOFU:** Yes.

11 **CHAIRPERSON:** It would make them brave,
12 might make them foolhardy –

13 **MR MPOFU:** Yes.

14 **CHAIRPERSON:** - but wouldn't necessarily
15 work. You say it wouldn't make them brave –

16 **MR MPOFU:** Yes. Or rather yes, that they
17 believed that it would make them brave, and on top of that,

18 as it were, there was also the crime intelligence report in

19 the morning, that is a seventh factor, but let us just put

20 that away. So those factors are to do with your subjective

21 belief, or your reasonable belief. That is the point

22 against you. Do you understand the point?

23 **BRIGADIER CALITZ:** Do you want me to

24 react on this or –

25 **MR MPOFU:** Yes, just that you understand

1 – I am sure you don't agree with it, so we don't have to
2 waste time on that, but do you understand what I am saying?

3 **BRIGADIER CALITZ:** I just want to put on record
4 u read, I know, paragraph 19 of my first statement
5 which was discussed in detail, I had explained every word and
6 and every sentence in the sense that I meant
7 it, so, maybe no in the context you put it now,
8 but it was already discussed and put on record.
9 So I differ from you.

10 **MR MPOFU:** Okay, now the point in your
11 favour, which emanates from what the Chairperson has said,
12 is that irrespective of the fact that you knew all these
13 things, it was after all D-day and this had to happen today
14 and that decision of making it D-day is what I was talking
15 to you about yesterday, that it was made at another level,
16 probably high up in the police, and probably even at a
17 political level. Now as far as that part of the criticism,
18 the fact that you now had to rush-rush this thing because
19 it is D-day, that is as I can say a point that I cannot
20 criticise you about because that we will deal with, with
21 the relevant witnesses. But I am busy now dealing with you
22 and accepting that this other criticism of having to do it
23 that day, for some reason not even being able to wait for
24 another day and so on and so on, that is not something I
25 can blame you for because in that context you were taking

1 instructions. Do you understand that point in your favour

2 as well? And I am sure that one you agree with.

3 **BRIGADIER CALITZ:** Let me just say, Mr.

4 Chairperson, the order we received was to not leave the group

5 who were walking around so freely with their weapons,

6 so the order was to disperse that group ,

7 into smaller groups, to disarm and to

8 to arrest. It concerned the unlawfulness of the gathering,

9 that it would no longer be allowed because of

10 all that had happened at that stage.

11 **MR MPOFU:** And I don't want to make too

12 many points in your favour, but the last one I shall make is

13 that as a result of the D-day rush-rush, one of the things

14 is that the briefings which had to be made, which according

15 to the manual and according to 262, Regulation 262 –

16 **CHAIRPERSON:** Standing Order 262.

17 **MR MPOFU:** - Standing Order 262, thank

18 you, Chairperson, are supposed to be thorough and detailed

19 and so on, those briefing in some instances had to be done

20 in 10 minutes, and as I say that is not something I can

21 blame you for. I can blame you for doing it, but I can't

22 blame you for having decided that that is how it should be

23 done because there you were constrained; it is D-day, it has

24 to be done today. Do you understand the point? And I am

25 sure you differ again, but do you understand the point?

1 **BRIGADIER CALITZ:** It is not that I
2 differ; I just want to know, the briefing you refer to is
3 the, 14:30 instructions?
4 **MR MPOFU:** No, no, am I correct that
5 there were three sets of briefings which had to be done?
6 **BRIGADIER CALITZ:** You will tell me which one
7 you refer to –
8 **MR MPOFU:** Yes.
9 **BRIGADIER CALITZ:** - then I can answer.
10 **MR MPOFU:** The first briefing is by Scott
11 to you and the group commanders, correct?
12 **BRIGADIER CALITZ:** This is the one I asked
13 you; are you asking the 14:30 –
14 **MR MPOFU:** Yes, the second is by the group
15 commanders to the section commanders, correct?
16 **BRIGADIER CALITZ:** Yes, the 2nd will be that I
17 did it at about 3, _____communications_____
18 quarter past 3..
19 **MR MPOFU:** Yes, and the third one is by
20 those section commanders to the members, to the troops –
21 using that word loosely – correct?
22 **BRIGADIER CALITZ:** Maybe for those in
23 the vehicles, you are correct.
24 **MR MPOFU:** Yes, thank you. So we have
25 three sets of briefings which must take place within a

1 short space of time because it is D-day, and I am saying to
2 you in terms of the regulations we know that under normal
3 circumstances those briefings are meant to be long, or
4 well, not necessarily long, but thorough, and people, I
5 suppose one of your duties according to Standing Order 262
6 is to ensure that in the course of those briefings people
7 ask questions and so on, and so on, but because of the
8 position in which you were placed – and that is why I am
9 saying it is a point in your favour – all this had to be
10 done in, as I say in at least the case of one of those
11 briefings in about 10 minutes or so, which is clearly
12 inadequate. Would you agree? And it is not your fault;
13 it is because it had to be done, correct?

14 **BRIGADIER CALITZ:** The times that the
15 “briefings” were given, I must agree with you,
16 it was a limited time.

17 **MR MPOFU:** Yes, thank you. Okay, so
18 that is it –

19 **BRIGADIER CALITZ:** But I –

20 **MR MPOFU:** That is enough. No more points
21 in your favour.

22 **BRIGADIER CALITZ:** I can just the – yes,
23 the “inadequate” part I can’t tell you, the members
24 are trained and instruction given to them, not at
25 that stage the commanders, what is said to them.

1 So I don't want to agree with the "inadequate" part,

2, but with the time share.

3 **MR MPOFU:** Chairperson, if you could just

4 bear with me for one minute. An example of what I am saying

5 to you is contained in L183. According to the police

6 version in L183 at 20 past 3, which is 10 minutes before

7 the start, the scheduled start of the operation, it was

8 only then that the NIU commander briefed his members with

9 regard to their roles and responsibilities, and the STF

10 commander briefed his members, and so on, and so on.

11 That is just a reference point. I am not going to ask you a

12 specific question around that. Do you see that slide?

13 **BRIGADIER CALITZ:** I see the "slide"

14 183 you are referring to. I see it, yes.

15 **MR MPOFU:** Yes, in any event, in the – let

16 me first ask you this, and I am not a witness, but I can

17 tell you I have got some experience in these things,

18 including some of the ones you referred to, Vryburg, the

19 rolling out of the wire and the use of the barbed wire, I

20 was there.

21 **BRIGADIER CALITZ:** Which side?

22 **MR MPOFU:** Against your side. What a

23 question.

24 **BRIGADIER CALITZ:** We haven't met. No,

25 this is only in a light moment, Mr. Chairperson.

1 **MR MPOFU:** Thank you, yes. And the other
2 time where I experienced the use of barbed wire was last
3 year where there was a case in Bloemfontein of two factions
4 of a political party and the court, the precinct of the
5 court had to be divided so that the one side is this side
6 and the other section is this side. So those are the two
7 experiences.

8 The third one, which you referred to, was
9 Ventersdorp, the Eugene Terre'Blanche incident. That one I
10 saw, but I saw it on television, but in all these instances
11 that I am talking to you about, never did it happen that the
12 barbed wire was so-called prepositioned and only rolled out
13 when the people were already there. In the case of
14 Vryburg, as you know, it was put up there. In the case of
15 the court example that I am giving you from last year, when
16 we got to court in the morning we found the barbed wire
17 there, and in the case of the Terre'Blanche I stand
18 corrected; I don't know, but also I think it was put before
19 the court commenced.

20 Now against all that background, in your
21 experience have you ever heard of a situation where the
22 rolling out, we know that it has been used before, barbed
23 wire, but it is rolling out process is done when the rowdy
24 crowd is already there?

25 **BRIGADIER CALITZ:** To return to where

1 you say, you and I were both, if you remember in Vryburg
2 when a group of about 1500 were on the way – at that stage
3 they planned a meeting at Huhudi, and I speak now under
4 correction about some facts, and the community gathered at
5 the school. So, we didn't know at that
6 stage who was moving where. So, the
7 wire-car" was not pre-deployed. We waited to see,
8 and as we saw the group moving toward Huhudi on
9 that dirt road– you will know if you were on that side
10 – straight to us, I gave the order and the wire was
11 rolled out during the forward movements of the vehicles.
12 Myself and the cameraman – I remember well,
13 Warrant Officer Letsie – moved forward at that stage.
14 I had moved quite a number of metres forwards,
15 and tried to talk to the leader.
16 You will remember the facts of the case; there I was
17 shot at. They threw stones and I think also
18 petrol bombs. I had to retreat to a safe place, and
19 upon that I gave the order for the teargas.
20 If it affected you I don't know. Teargas came
21 but, it seemed, immediately after it was thrown,
22 it was as if the people halted and only the few
23 leader figures came forward. So, it isn't that the whole group
24 stormed. Only when I tried to make contact with them
25 and the group from behind threw the stone

1 over did I –I don't know if you were in the front –or at the back.
2 only then did the whole group attack, but not in reaction to the wire
3 and that is where I received the order,
4 "gave the order to disperse. We moved to the road
5 and there you will remember Colonel Vermaak,
6 he came through a veld on the right-hand side en was dispersing
7 the group from as he went along. So, I think we were, on that day,
8 about 15, 16 hours with that scene. So, this is
9 just to put it this way.

10 **MR MPOFU:** Yes, thank you. I think
11 you've forgotten the question. The question was – and I
12 agree with you here and there, or mostly, but that is
13 probably just as a result of the fact that we were on
14 opposite sides. The question was, have you in your
15 experience, have you any example of a situation where the
16 wire was deployed when the crowd was already there? In
17 other words it was prepositioned, as in this case of
18 Marikana, waiting there in the vans, in the Nyalas, or in
19 the A-frames or whatever, and instead of it being deployed
20 overnight or in anticipation of a situation or whatever,
21 being deployed when they had rowdy crowd there and there.
22 That is the question.

23 **[12:50] CHAIRPERSON:** - question. Answer it
24 quickly so that we can then take the adjournment till
25 Tuesday.

1 **BRIGADIER CALITZ:** Mr. Chairperson,
2 besides Vryburg I think I referred once to Ramatlabama Mafeking
3 where the SADF wanted to go over to Botswana's
4 I think there was the same situation where we
5 closed while the people were still on the way.
6. There also was not a storm, just came into my
7 mind. But I can –

8 **CHAIRPERSON:** Thank you, that is something
9 that you can take up on Tuesday morning. We have been
10 asked, as I have indicated before not to use these premises
11 on Monday, they normally would be available to us, because
12 there is a special meeting the council wants to hold. So
13 we will adjourn now until half past 9 on Tuesday morning
14 when you can continue with your cross-examination.

15 **MR MPOFU:** Thank you very much,
16 Chairperson.

17 **[COMMISSION ADJOURNED]**