

# *RealTime Transcriptions*

TRANSCRIPTION OF THE

## **COMMISSION OF INQUIRY**

### **MARIKANA**

#### **BEFORE TRIBUNAL**

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

#### **HELD ON**

DAY 168

14 JANUARY 2014

PAGES 19510 TO 19710



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<p style="text-align: right;">Page 19510</p> <p>1 [PROCEEDINGS ON 14 JANUARY 2014]</p> <p>2 [09:10] CHAIRPERSON: The Commission resumes. I 3 hope everyone present has complied with the instruction 4 that we had on the screen to turn off your cell phones. I 5 don't know what I'll do to people who haven't; I'll think 6 about it. Brigadier, have you turned off your cell phone?</p> <p>7 First of all, I remind you, you're still under oath.</p> <p>8 ADRIAAN MARTHINUS CALITZ: s.u.o.</p> <p>9 CHAIRPERSON: Have you turned off your 10 cell phone?</p> <p>11 BRIGADIER CALITZ: In that regard, let me 12 check. It is off, Chairperson.</p> <p>13 CHAIRPERSON: Mr Bizos.</p> <p>14 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):</p> <p>15 Thank you, Mr Chairman. Brigadier, don't let's have any 16 time spent by my use of the word "eulogy." Let's deal with 17 your wording as is – we'll deal –</p> <p>18 CHAIRPERSON: Sorry, Mr Bizos, before you 19 proceed, I'm reminded by Adv Hemraj that Mr Semenya was 20 going to – he had objected, but he was going to address us 21 and motivate his objection. Unless you and he have settled 22 your differences since we adjourned, I suppose we must give 23 him an opportunity to motivate his objection if he still 24 wishes to do so and hasn't repented in the interim.</p> <p>25 MR SEMENYA SC: We have come to an</p>	<p style="text-align: right;">Page 19512</p> <p>1 command was given by their commanders as well as some of 2 them act in self-defence, alright? So that nothing, 3 nothing, nothing was wrong, okay? You acted. It was 4 justified and that is exactly the commitment and the 5 cooperation that we are going to give the people, those 6 people that still need to fill the 15S and say how many 7 rounds," is that, do you accept that you said that?</p> <p>8 BRIGADIER CALITZ: Dit is korrek, mnr die 9 Voorsitter.</p> <p>10 MR BIZOS SC: Right, now you were not 11 there at the vital moments when this happened, Brigadier.</p> <p>12 BRIGADIER CALITZ: Met sekere dele van 13 wat u gelees het ja, was ek nie daar nie.</p> <p>14 MR BIZOS SC: So you didn't have any 15 personal knowledge of exactly what happened.</p> <p>16 BRIGADIER CALITZ: Nee, ek stem nie saam 17 met u nie.</p> <p>18 MR BIZOS SC: Personal knowledge, I mean 19 you were not present to witness what happened.</p> <p>20 CHAIRPERSON: Mr Bizos, he said he was 21 there some of the time in relation to the matters he was 22 describing, so when he says he was there some of the time, 23 he then says no when you say you didn't know anything about 24 what happened, his answer obviously is I did know, from 25 personal knowledge I knew some of the stuff, and then the</p>
<p style="text-align: right;">Page 19511</p> <p>1 amicable settlement with my learned colleague.</p> <p>2 CHAIRPERSON: I regret I haven't got the 3 power to make it an order of court, but we will 4 nevertheless regard it as binding. Mr Bizos, please 5 proceed.</p> <p>6 MR BIZOS SC: Yes. To avoid arguments 7 about the meaning of the word "eulogy," Brigadier, let us 8 use your own words. In JJ82 at 8:07, which is a clip, you 9 are recorded as having said the following; "The police, we 10 will give our hundred percent full of cooperation, okay," 11 and at 8:10, "At this stage we did nothing wrong. From the 12 beginning to the execution was 110% exactly how we plan it 13 and it is not often that this happens in a large group. I 14 have to congratulate you, exactly how we planned it and we 15 briefed the commanders exactly, we executed in that line. 16 The force continuum, we did the water cannons, we did the 17 stun grenades, we did the tear smoke, we did the push back, 18 we tried. When was ineffective the guys ran back. Then on 19 the media they say police were running away. Yes, it is 20 true, but we call it tactical retreat and we don't call it 21 running away, nè? Ja." And at 8:53 you are recorded as 22 having said, "By retreating back to your safe haven, 23 therefore we got over to the second phase." And at 9:20, 24 "And that is where the TRT line and the NIU line was formed 25 and when they become under attack, that is where the</p>	<p style="text-align: right;">Page 19513</p> <p>1 point you're interested in is where he didn't know 2 himself –</p> <p>3 MR BIZOS SC: I will amend the question. 4 During the vital period immediately before the shooting 5 where 18 people were shot dead you were not there. You 6 were not anywhere near there to have personal knowledge of 7 what happened at the vital moment, or moments.</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, om u woorde te gebruik, "not there, not near," daar 10 verskil ek met u. Ek was daar naby. As u bedoel het of ek 11 dit gesien het, dan stem ek saam met u; nee, ek het dit nie 12 gesien nie.</p> <p>13 MR BIZOS SC: So you agree that what 14 happened during the vital moments prior to the shooting of 15 the 18 people at scene 1, you had no personal knowledge?</p> <p>16 BRIGADIER CALITZ: Ek sal getuig dat ek 17 het nie persoonlik dit gesien nie, die skietery nie.</p> <p>18 MR BIZOS SC: You had no personal 19 knowledge that you had seen yourself. You relied on 20 statements presumably made by a number of other people, but 21 you yourself did not know what happened.</p> <p>22 BRIGADIER CALITZ: Ek sê weer, ek het op 23 daardie stadium dit nie gesien nie, as dit, as ek u reg 24 verstaan, en ten tye van die video, ja, toe het ek my "ge- 25 rely" op wat ek, die inligting tot my beskikking.</p>

<p style="text-align: right;">Page 19514</p> <p>1        MR BIZOS SC:     On what basis did you come 2 to the conclusion that the actions of your colleagues were 3 100% correct if you had no personal knowledge?</p> <p>4        BRIGADIER CALITZ:     Adv Bizos, dit is wat 5 ek u nou net geantwoord het. Ek het gesê die deel waar ek 6 op die 18de die lede toegespreek het, dit is wat aan my 7 meegeleid is deur die lede en die bevelvoerders.</p> <p>8        CHAIRPERSON:     I'm sorry to interrupt, but 9 obviously you were relying substantially on what you were 10 told, but by the time you made your speech or address on 11 the 18th had you seen some of the video clips? You know not 12 necessarily ones that weren't shown, I'm only talking about 13 the ones that were broadcast on the media –</p> <p>14        BRIGADIER CALITZ:     Ek dink op die eNews, 15 daardie gedeelte wat die, as ek kan sê die bekende gedeelte 16 waar die persoon terughardloop, ek dink dit het ons gesien 17 daardie volgende dag.</p> <p>18        CHAIRPERSON:     So your remarks then on the 19 18th were based, I assume, on what you were told by people, 20 as you mentioned, but also to some extent I would think on 21 what you had seen on the eTV news broadcast. Would that be 22 correct?</p> <p>23        BRIGADIER CALITZ:     Dit sal korrek wees.</p> <p>24        MR BIZOS SC:     [Microphone off, inaudible]</p> <p>25        eTV broadcast that gave you the right to state as a fact</p>	<p style="text-align: right;">Page 19516</p> <p>1 moet teruggaan en gaan miskien kyk na die terugvoer wat ons 2 gekry het op daardie dag, wie wat gesê het, as dit miskien 3 nog op notas is. Die bevelvoerders van die Taktiese 4 Respons Eenheid was Kaptein Loest, asook Kaptein Ntlati, 5 Kaptein Thupe, ek dink dit was die drie bevelvoerders 6 gewees wat daardie inligting dan deurgegee het.</p> <p>7        CHAIRPERSON:     What about the commanders 8 of the Nyalas who had been under your command, who stayed 9 at the scene after you left and went off in the direction 10 of koppie 2, did they give you feedback?</p> <p>11        BRIGADIER CALITZ:     Mnr die Voorsitter, 12 nee, nie wat ek onthou ten opsigte van wie sou opdrag gegee 13 het nie.</p> <p>14        CHAIRPERSON:     [Microphone off, inaudible]</p> <p>15 Bizos definitely wants to know an account of what happened 16 which encouraged you to say everything as 110% correct.</p> <p>17 Now for example Colonel Pitsi I take it was there at the 18 time. We've seen where his Nyala was at the relevant 19 moment, and you say he didn't say anything to you when you 20 met him in the vicinity of koppie 3, but subsequently that 21 evening, or possibly the next day before you made your 22 address on the 18th, did you speak to him? Did you ask him 23 what happened? Because I take it you knew he was there. 24 Did you ask him to give you feedback?</p> <p>25        BRIGADIER CALITZ:     Mnr die Voorsitter,</p>
<p style="text-align: right;">Page 19515</p> <p>1 that you were 100% correct and nothing wrong happened?</p> <p>2        BRIGADIER CALITZ:     Mnr die Voorsitter, 3 ja, die 100% "correctness" het nie verwys na –</p> <p>4        MR BIZOS SC:     110%.</p> <p>5        BRIGADIER CALITZ:     Okay, daar was twee 6 goed, die "110% correctness" het nie verwys na die skietery 7 nie. Ek dink ons het al breedvoerig daaroor getuig. Dit 8 het glad nie verband gehou met die skietery nie. Wat ek 9 wel gesê het, as u verwys na "it was justified" en "self- 10 defence," dit is wat die lede aan my meegeleid het, asook 11 wat ek gesien het toe persoon terugbeweeg het, sy voet 12 vasgehaak het en daar op hom afgestorm was, in daardie 13 geval "self-defence."</p> <p>14        MR BIZOS SC:     None of your senior 15 officers were there - senior officers, the generals and 16 other brigadiers - were there to inform you. Who gave you 17 the information of precisely what happened?</p> <p>18        BRIGADIER CALITZ:     Dit was bespreek 19 gewees in die terugvoer wat ons gekry het van die 20 bevelvoerders af, van die grond af, asook –</p> <p>21        MR BIZOS SC:     Identify the person or 22 persons that gave you the information which led to your 23 conclusion that nothing wrong happened. Please identify 24 the persons that told you that.</p> <p>25        BRIGADIER CALITZ:     Mnr Bizos nee, ek sal</p>	<p style="text-align: right;">Page 19517</p> <p>1 dit is korrek, daar was – ek het net verstaan hy bedoel net 2 met die Taktiese Respons Eenheid. Daar was ander ook wat 3 die bevelvoerders daar was, Kolonel Pitsi wat u na verwys, 4 dan ook Luitenant Kolonel Mere wat dan op die toneel self 5 was, ek dink Pappa19 op die foto wat ons gesien het, wat 6 ons dan verwys het na Pappa10, wat pertinent verwys het na 7 die aanval op die polisie en dan die selfverdediging.</p> <p>8        CHAIRPERSON:     Did you get feedback from 9 them?</p> <p>10        BRIGADIER CALITZ:     Hulle was deel van die 11 groep definitief gewees.</p> <p>12        MR BIZOS SC:     Did anybody take notes of 13 what was reported to you and the other senior officers, 14 that were not, conveniently not there?</p> <p>15        BRIGADIER CALITZ:     Mnr die Voorsitter, 16 daardie aand toe die bevelvoerders teruggekom het was daar 17 wel 'n samekoms waar die bevelvoerders dan terugvoer gegee 18 het. Ek sou aanneem daar is met Kolonel Scott, het ek 19 vroeër getuig, gesit en dit is waar die feite dan – of dit 20 op daardie stadium, die inligting tot hulle beskikking 21 deurgegee is aan hom.</p> <p>22        MR BIZOS SC:     Has any document to your 23 knowledge been placed before the Commission at this stage 24 as to who said what happened at scene 1 and scene 2 which 25 led to your conclusion that things were okay by 110%?</p>

<p style="text-align: right;">Page 19518</p> <p>1 BRIGADIER CALITZ: Mnر die Voorsitter, al 2 dokument waarvan ek bewus is, is dat die, Kolonel Scott het 3 die dokument opgestel rondom die media "briefing." Ek dink 4 dit is die enigste waarvan ek op hierdie stadium bewus is, 5 die inligting daarin vervat.</p> <p>6 CHAIRPERSON: I think the evidence is 7 that the media briefing – you're talking about the speech 8 by, or remarks to the media given by the National 9 Commissioner?</p> <p>10 BRIGADIER CALITZ: Dit is korrek.</p> <p>11 CHAIRPERSON: I thought his evidence was 12 that Captain Adriaan was responsible for that. He had been 13 involved, if I remember his evidence correctly, in the 14 document which was prepared for the President, but there 15 are significant differences between the two and he couldn't 16 tell me who was responsible for the changes because he said 17 he wasn't involved, it was Captain Adriaan who was going to 18 explain them to us in due course.</p> <p>19 BRIGADIER CALITZ: Mnر die Voorsitter, 20 heeltemal moontlik. Soos ek gesê het, ek het aangeneem die 21 bevelvoerders het daardie aand met Kolonel Scott gesit en 22 dan die "feedback" gegee. As hy getuig het hy het dit 23 oorgegee aan Kaptein Adriaan, wat dan die "media liaison" 24 offisier is, en wie se verantwoordelikheid dit is om die 25 mediaverslag op te stel, dit mag so wees. Ek kan nie</p>	<p style="text-align: right;">Page 19520</p> <p>1 Standing Orders we have to give warnings and Captain or 2 Colonel or Major or whatever their rank was did give such a 3 warning? Did that happen?</p> <p>4 MR SEMENYA SC: Objection, Chair. There 5 is no Standing Order that requires a warning to be given 6 for the discharge of live ammunition.</p> <p>7 CHAIRPERSON: Yes, I think he's right, Mr 8 Bizos. The warning had to be given before the dispersal 9 action commenced and his evidence was he was going to do 10 that but he never got that far. So I think the objection 11 raised is correct, but you can I take it meet it by 12 reformulating your question and taking out the reference to 13 the required warning. Your concern is whether any warning 14 was given or indeed anything was actually said to the 15 advancing strikers before any shots were fired.</p> <p>16 MR MPOFU: I'm sorry to interrupt, 17 Chairperson. This exchange has made it impossible for the 18 witness to answer the Chairperson's question rather than Mr 19 Bizos's question.</p> <p>20 CHAIRPERSON: No, no, it's my question 21 and I was prepared to allow –</p> <p>22 MR MPOFU: Ja, but it got lost in the, 23 I'm just saying –</p> <p>24 CHAIRPERSON: No-one can get lost. I 25 thought Mr Bizos had reformulated, was busy reformulating</p>
<p style="text-align: right;">Page 19519</p> <p>1 daaroor getuig nie.</p> <p>2 MR BIZOS SC: Did anybody report that due 3 warning in terms of the Standing Orders were given before 4 live ammunition was to be used?</p> <p>5 BRIGADIER CALITZ: Ekskuus –</p> <p>6 MR BIZOS SC: Did anyone say that I or my 7 colleague so-and-so that was there warned the crowd that if 8 they advanced any further towards the line, live ammunition 9 will be used in order to keep them back? Did anybody say 10 words to that effect?</p> <p>11 BRIGADIER CALITZ: Nie wat nou tot my 12 geheue kom nie, mnر die Voorsitter, nie toe die "live 13 ammunition" gebruik is nie, die waarskuwing, nee.</p> <p>14 CHAIRPERSON: Never mind warning; did 15 anybody from the police side say anything to the advancing 16 strikers as they came around towards the point where the 17 TRT were lined up? Did anybody from the police say 18 anything to them, to your knowledge? I know you weren't 19 there at the time, but I take it Mr Bizos is interested in 20 the feedback you got.</p> <p>21 MR BIZOS SC: Yes.</p> <p>22 BRIGADIER CALITZ: Meneer –</p> <p>23 MR BIZOS SC: Was it reported to you 24 before you came to the conclusion that everything happened 25 100% correctly, did anyone report yes, in terms of the</p>	<p style="text-align: right;">Page 19521</p> <p>1 it. If I'm not satisfied with the reformulation I'll ask 2 it again. I can look after myself, but thank you for 3 trying –</p> <p>4 MR MPOFU: No, I'm looking after myself, 5 Chairperson. If that question is not answered it's for my 6 purposes, not for yours. Thank you.</p> <p>7 CHAIRPERSON: Anyway, okay. Let's make 8 an agreement that one or the other of us will ask the 9 question. Carry on, Mr Bizos.</p> <p>10 MR BIZOS SC: In response to the 11 objection, Mr Chairman, for the benefit of my learned 12 friend Mr Semenya I want to read out section 11(5) of 13 Standing Order 262 which states that, "Force may only be 14 used on the command or instruction of the CJOC or the 15 operational commander, if appointed. Members may never act 16 individually without receiving a command from their 17 commander." Now I think –</p> <p>18 CHAIRPERSON: What about subparagraph 19 (7), Mr Bizos?</p> <p>20 MR BIZOS SC: I beg your pardon?</p> <p>21 CHAIRPERSON: What about subparagraph 22 (7)?</p> <p>23 MR BIZOS SC: If I may – this is, the 24 common law principles of self-defence or private defence 25 are not affected by this order. We are going to argue, Mr</p>

<p style="text-align: right;">Page 19522</p> <p>1 Chairman, that this is a reference with a one-to-one 2 situation in which a person – 3 CHAIRPERSON: I'm sorry, Mr Bizos, it's 4 not confined to that. 5 MR BIZOS SC: I beg your pardon? 6 CHAIRPERSON: It's not confined to that. 7 Look, there may be common law principles that apply because 8 the very phrase "common law principles of self-defence" is 9 used, but in terms of the Order, that's what you said, in 10 terms of the Order you said no-one may use force – you're 11 referring to subpara (5). Force may only be used, the 12 exact words of the Order, "Force may only be used on the 13 command or instruction of the CJOC or operational 14 commander. Members may never act individually without 15 receiving a command from their commander." But that of 16 course is relevant to what happened on the 13th. 17 [09:30] But in relation to what happened on the 16th the 18 police version is – it's one of the matters we're 19 interrogating and examining – is that the deaths that 20 occurred at scene 1 occurred because of people either 21 defending themselves or defending others and with the 22 principles of self defence or private defence apply. Now 23 if that's correct and this is only, obviously the 24 assumption made at the moment, it may be rejected at the 25 end but if that's correct then sub para 5 doesn't then</p>	<p style="text-align: right;">Page 19524</p> <p>1 by the people in charge and the defence available to an 2 individual in a small scale or on a personal basis does not 3 apply. The general provisions of the standing orders in 4 relation to warning people in order to avoid deaths are the 5 primary interpretation. 6 CHAIRPERSON: Mr Bizos, you are arguing 7 at the moment. 8 MR BIZOS SC: Yes. 9 CHAIRPERSON: For a particular 10 interpretation of the relevant provisions of Section 11 of 11 the standing order. Now you may argue those at the end of 12 the matter when you argue, but I don't think I can allow 13 you to ask a question based upon your interpretation as if 14 your interpretation has already been decided to be correct. 15 So you may reformulate the question, you may say, we were 16 contend that this is the correct interpretation of the 17 order, you may proceed on that basis but I don't think it 18 would be proper for me to allow you to ask a question which 19 assumes that your interpretation is correct without the 20 witness having an opportunity to realise that another 21 construction may be open. Do you understand, I am trying 22 to be fair to you, I am also trying to be fair to him, so 23 I've got to keep the balance. 24 MR BIZOS SC: Yes, I'll, with your 25 permission I want to put a number of other questions which</p>
<p style="text-align: right;">Page 19523</p> <p>1 apply, that members were entitled to defend themselves or 2 their colleagues without having received a command from the 3 commander if they felt in the circumstances that it was 4 necessary to do so and that must be right surely. The only 5 way you can get out of it is if you say it is by reading 6 something into 7 which doesn't appear to be there. So I 7 think you should reformulate the question, take out the 8 requirements of an order requiring a warning and proceed 9 with your question and at the same time you may ask or re- 10 ask my question so that Mr Mpofu will go home satisfied 11 tonight.</p> <p>12 MR BIZOS SC: Mr Chairman, with due 13 respect I do not believe that the persons that complied, 14 that put the standing orders together, having regard to 15 what the Constitutional Court said in about Section 49 and 16 other interpretations, that the absence of a notice was 17 justified where you actually heard a large group of people 18 armed and a large group of people on the other side that 19 the exemption that you with respect referred to, reading on 20 the jurisprudence as I understand it, you do not expect in 21 a one to one or one or a few against a few to say, as one 22 of the top officials said, to take out a constitutional 23 provision and wave it at a criminal. I am not talking 24 about that in this case, Mr Chairman. In this case we have 25 standing orders which deal with the control and management</p>	<p style="text-align: right;">Page 19525</p> <p>1 will make it easier for the witness to answer the questions 2 that I want to put finally, Mr Chairman.</p> <p>3 CHAIRPERSON: Proceed in that way and 4 before you do that let me ask the question, Mr Mpofu won't 5 go home tonight happy unless it is asked and that is, apart 6 from any warning been given or not given, with anything 7 said based on the feedback you received, because you 8 weren't there, we know, by a policeman or a senior 9 policeman to the advancing strikers before any shots were 10 fired, was anything said at all to them?</p> <p>11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 nie wat tot my kennis strek nie, nie op hierdie stadium 13 nie, nee.</p> <p>14 CHAIRPERSON: Well, Mr Mpofu can now go 15 home rejoicing. Carry on, Mr Bizos.</p> <p>16 MR BIZOS SC: Let me ask you a few 17 questions. We asked you yesterday whether you became aware 18 that the photographs of the injured policemen were 19 circulated, do you remember?</p> <p>20 BRIGADIER CALITZ: Ek onthou, mnr die 21 Voorsitter.</p> <p>22 MR BIZOS SC: And there was a dispute as 23 to whether this was correct or not, do you remember that?</p> <p>24 BRIGADIER CALITZ: Ek onthou die, as u sê 25 dispuut, die argument dat –</p>

<p style="text-align: right;">Page 19526</p> <p>1       MR BIZOS SC:     Yes –</p> <p>2       BRIGADIER CALITZ:     - of dit feitlik</p> <p>3       korrek is, of daar bewyse daar rondom was. Ek onthou daar</p> <p>4       was 'n gesprek daar rondom, ja.</p> <p>5       MR BIZOS SC:     Very well. At page 15347</p> <p>6       of the record on day 141 the following question was asked</p> <p>7       at page 15347 by our learned friend, Mr Ntsebeza SC, "And</p> <p>8       do you know if the pictures of the dead police were</p> <p>9       disseminated amongst the police? Colonel Scott, yes, I</p> <p>10     believe they were." Will you accept that, that there was</p> <p>11     clear evidence that the picture was distributed to the</p> <p>12     police on the basis of what Colonel Scott said?</p> <p>13     BRIGADIER CALITZ:     Mnr die Voorsitter, -</p> <p>14     MR SEMENYA SC:     Chair –</p> <p>15     CHAIRPERSON:     Sorry, Mr Semenya, you've</p> <p>16     turned your light on.</p> <p>17     MR SEMENYA SC:     Yes.</p> <p>18     CHAIRPERSON:     Do you want to say</p> <p>19     something?</p> <p>20     MR SEMENYA SC:     Yes, I would prefer that</p> <p>21     we locate the context of that answer.</p> <p>22     CHAIRPERSON:     The question was put to</p> <p>23     Colonel Scott by Mr Ntsebeza, "And do you know if the</p> <p>24     pictures of the dead police were disseminated amongst the</p> <p>25     police," and then in that context you see the answer is</p>	<p style="text-align: right;">Page 19528</p> <p>1       Exhibit L, Mr Chairman, that's the picture that I am</p> <p>2       referring to.</p> <p>3       CHAIRPERSON:     Mr Bizos, you're concerned</p> <p>4       with pictures being shown to the police before the 16th.</p> <p>5       MR BIZOS SC:     That is the question.</p> <p>6       CHAIRPERSON:     And what Colonel Scott said</p> <p>7       was, he can recall picture being shown, I'm not quite sure</p> <p>8       to whom but being shown on the evening of the 13th, that's</p> <p>9       what he said.</p> <p>10     MR BIZOS SC:     Yes.</p> <p>11     CHAIRPERSON:     So that supports the</p> <p>12     question you put.</p> <p>13     MR BIZOS SC:     Thank you, Mr Chairman.</p> <p>14     CHAIRPERSON:     Of course it might be</p> <p>15     relevant to know to whom they were shown.</p> <p>16     MR BIZOS SC:     From my point of view it</p> <p>17     doesn't really matter who might have made it, Mr Chairman,</p> <p>18     there is evidence by a senior officer that he knew that</p> <p>19     they were distributed and that it was a picture, this most</p> <p>20     disturbing picture that was distributed to the police</p> <p>21     officers before the 16th. Now –</p> <p>22     CHAIRPERSON:     No, no, I'm sorry, Mr</p> <p>23     Bizos, it is not as easy as that. The nature of the</p> <p>24     distribution is relevant, if it was only shown to those in</p> <p>25     the JOC on the evening of the 13th and none of the people</p>
<p style="text-align: right;">Page 19527</p> <p>1       given and then he actually says, you can go on reading, "I</p> <p>2       believe they were, I first couldn't recall that and</p> <p>3       something in the recent past, I am not sure what it was,</p> <p>4       brought that back to memory but I think I actually did see</p> <p>5       pictures of that that evening," so in other words on the</p> <p>6       evening of Thursday, the 16th.</p> <p>7       MR SEMENYA SC:     It may be the 13th and</p> <p>8       that's precisely my difficulty.</p> <p>9       CHAIRPERSON:     Oh, I see what you mean.</p> <p>10     Alright, well, then perhaps we must take, look a little</p> <p>11     back but could we please have the earlier part of that</p> <p>12     passage, of that page? Yes, I think it was the 13th because</p> <p>13     the reference to Merafe being emotional in meeting with the</p> <p>14     actual Commission relates to the 13th. So it doesn't take</p> <p>15     away the full force of your question, Mr Bizos, it simply</p> <p>16     means that you have to ask whether pictures of the people</p> <p>17     who have been hacked to death, which of course happened on</p> <p>18     the 13th anyway, were shown to the police on the evening of</p> <p>19     the 13th and not later. You know if you put the question in</p> <p>20     that form I'll allow it but otherwise it requires</p> <p>21     modification.</p> <p>22     MR BIZOS SC:     My learned friend that no</p> <p>23     policeman was killed on the 16th, the policeman was killed</p> <p>24     on the 13th and there is an unfortunately, a very graphic</p> <p>25     picture available which was shown and it is slide 52 on</p>	<p style="text-align: right;">Page 19529</p> <p>1       who saw it was actually in the field as it were, on the</p> <p>2       16th, then that is one situation. Another situation would</p> <p>3       be if the pictures were generally seen by members of the</p> <p>4       police who were in the field on the 16th who might well have</p> <p>5       been influenced in acting in the way they did by what they</p> <p>6       saw, that would be a different situation. Now –</p> <p>7       MR BIZOS SC:     That's the point that –</p> <p>8       CHAIRPERSON:     I know that's the point</p> <p>9       you're trying to make, but I am not sure that that point</p> <p>10     can fairly be made if the distribution was of the limited</p> <p>11     kind that I mentioned. So surely the nature of the</p> <p>12     distribution has got to be investigated first before you</p> <p>13     can make what I can call the latter point. Do you</p> <p>14     understand the thing -</p> <p>15     MR BIZOS SC:     I understand, Mr Chairman,</p> <p>16     but with due respect I think that I am entitled to put</p> <p>17     before you and remind you and the members of the Commission</p> <p>18     what the state of mind of at least a number of the</p> <p>19     policemen that had deadly weapons in their possession on</p> <p>20     the afternoon of the 16th.</p> <p>21     CHAIRPERSON:     No, no, no, but that's the</p> <p>22     very point I am putting to you, that if the pictures were</p> <p>23     seen by policemen who were in the field, I use that phrase</p> <p>24     to cover those who were there at scene 1 and scene 2, in</p> <p>25     possession of short rifles and other firearms. That's one</p>

<p style="text-align: right;">Page 19530</p> <p>1 thing because I can understand they might well have been      2 influenced by what they've seen to be more zealous than      3 perhaps was appropriate, but if these pictures were only      4 seen by people who were in the JOC and who remained in the      5 JOC on the 16th and who weren't influenced at anything they      6 did on the 16th by what they'd seen then it is a different      7 point. We've got to know the nature of the distribution      8 before the point you want to make can validly be made.</p> <p>9       MR BIZOS SC:     I am entitled with respect      10 to assume from what Colonel Scott said, that they were      11 distributed.</p> <p>12       CHAIRPERSON: Could we see again what      13 Colonel Scott said? Could that be shown to us? It is a      14 bit lower down on page 15347. The question is, "Do you      15 know if pictures were disseminated among the police," and      16 he says, "Yes, I believe they were." I first couldn't      17 recall that, and something in the recent past, I am not      18 sure what it was, brought that back to memory but I think I      19 actually did see pictures of that that evening." Now, it's      20 true he says in the beginning, yes, I believe they were      21 disseminated, but then when he comes to elaborate on his      22 answer he says, "I actually saw pictures."</p> <p>23       Now we know that that evening he was in the JOC      24 with the National Commissioner and various other senior      25 officers, so I am not sure that the statement that he made</p>	<p style="text-align: right;">Page 19532</p> <p>1 objection and then you can answer. Yes, Mr Semenya?</p> <p>2       MR SEMENYA SC:     Chair, we have the      3 evidence and for the witness' context sake I request that      4 we read the transcript from page 15346 so that we know what      5 the actual evidence is. We don't have to assume anything.</p> <p>6       CHAIRPERSON:     What was the mood like      7 among those whom we met in the SAPS, this is a reference to      8 the evening of the 13th, a question asked by Mr Ntsebeza.      9 Colonel Scott replies, "On arrival many of the ground      10 commanders, I don't recall seeing for that matter, maybe he      11 was there but Colonel Merafe was only introduced to me      12 later, but I got to see who he was for the planning. I      13 recognised him though from when he gave his briefing to the      14 National Commissioner because he was pretty emotional and      15 explaining, obviously having to carry, I think Lieutenant      16 Baloyi, but who was in the JOC at that time, I can remember      17 General Annandale, General Mpembe, I think Brigadier Calitz      18 and then Mr Sinclair. Mr Ntsebeza, okay, but as you were      19 proceeding with your plan and I'll ask you this once and      20 then we move on, was it your sense that there was a      21 residual anger among the members of the SAPS on the basis      22 that two of their members have been killed by the miners?      23 Colonel Scott, I can understand and appreciate your      24 question. I don't remember picking that up. I do as I      25 say, recall Colonel Merafe being quite emotional at that</p>
<p style="text-align: right;">Page 19531</p> <p>1 necessarily covers the case, but possibly you can cover it      2 by asking this witness whether he knows about it and if      3 necessary further enquiries can be made of the SAPS. Yes,      4 I mean if your point is correct that there was a      5 distribution of the nature you suggest that is a material      6 fact that this Commission has to know about. So I don't      7 want to stifle the point but on the other hand I also want      8 to be fair to this witness and the SAPS attorney, but I am      9 sure you can use your fabled ingenuity and find a way of      10 getting the point appropriately before us.</p> <p>11       MR BIZOS SC:     Thank you for the guidance      12 and I'll try and comply with it, Mr Chairman. I want you      13 to assume, assume for a moment that what Colonel Scott has      14 said that they were distributed, that that is correct in      15 its broad sense, just assuming –</p> <p>16       MR SEMENYA SC:     No, Chair, -</p> <p>17       MR BIZOS SC:     Assuming.</p> <p>18       MR SEMENYA SC:     No, Chair.</p> <p>19       MR BIZOS SC:     No, with respect, Mr      20 Chairman, I am entitled to make –</p> <p>21       CHAIRPERSON:     No, Mr Bizos, we haven't      22 heard the objection yet. Mr Semenya wants to object.      23 You're doing what I told the witness not to do yesterday,      24 you're answering the question before it is being asked.      25 You haven't heard the objection yet, let's hear the</p>	<p style="text-align: right;">Page 19533</p> <p>1 meeting with the National Commissioner. I think what I      2 picked up more was almost a sense of awe, of shock at what      3 had happened that day, but this was something the police      4 were struggling to come to terms with, that this had      5 actually happened, that their members have been killed and      6 robbed but I don't remember anything other than that. It      7 was just the atmosphere I could feel, that I can remember.      8 It was just one of, a sort of awe and shock and how do we      9 get on with now dealing with the situation we're sitting      10 with," and then comes the question, "Do you know if      11 pictures of the dead police were disseminated amongst the      12 police," and then there is the answer we've read. That's      13 the context, Mr Semenya.</p> <p>14       MR MPOFU:     Chairperson, I am sorry, once      15 again I don't want to butt in but I think that the thrust      16 of this lies in Mr Ntsebeza's question rather than, - he      17 says very clearly was it disseminated amongst the police,      18 not amongst the people who attended the particular meeting      19 and the answer is, yes, I believe they were.</p> <p>20       CHAIRPERSON:     It is amplified by saying,      21 I really didn't remember that and then I remember seeing      22 them that evening, which is clearly a reference to what he      23 saw at the JOC –</p> <p>24       MR MPOFU:     Ja, because he is also a      25 member of the, yes, –</p>

<p style="text-align: right;">Page 19534</p> <p>1 CHAIRPERSON: He was a member in the JOC, 2 it is not –</p> <p>3 MR MPOFU: He is a member of the police 4 as well, so it doesn't detract from the fact that it was 5 disseminated amongst the police.</p> <p>6 CHAIRPERSON: No, no, it is ambiguous and 7 I am not prepared to allow a statement based upon a 8 particular interpretation of this ambiguous answer to be 9 put to the witness as if it is an unambiguous answer. So I 10 uphold the objection but, Mr Bizos, I am sure you will be 11 able to make the point either with this witness or with the 12 benefit of information from others at a later stage, but 13 can I intervene at this stage and ask a question of my own? 14 We've seen a transcript of a discussion on the Tuesday 15 between the Provincial Commissioner and people from Lonmin 16 and in that transcript the reference can be given if 17 necessary. In that transcript the Provincial Commissioner 18 says she delayed any action, in the context, it has got to 19 be the action on the Tuesday because that's when the 20 discussion took place. He is talking about after, what 21 happened after the killings on the 13th.</p> <p>22 "I delayed any actions," he said and she explains 23 that, partly at least the reasoning for that, maybe the 24 whole reasoning was, she wasn't sure, wasn't confident that 25 if she had given instructions to the police to act in a</p>	<p style="text-align: right;">Page 19536</p> <p>1 to rely only on the sub position and I'll accept the 2 ruling, but let's take the state of mind of the police on 3 the 16th having regard to what the police that wanted to 4 assassinate a very senior officer for what he had done on 5 the 13th and it was taken seriously enough to pull him out 6 of participation for his own safety, will you accept that 7 as a correct statement of the evidence that is before the 8 commission?</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 kan net seker maak ek verstaan die vraag reg, na wie verwys 11 –</p> <p>12 CHAIRPERSON: Sorry to interrupt you. 13 This is a reference to what General Mpembe said and the 14 action of Colonel Vermaak in removing him from the, what I 15 can call the field of engagement near the railway line on 16 the 13th when Colonel Vermaak heard, I'm not sure if they're 17 officers or just members of the force saying they were 18 going to kill General Mpembe because they're really angry 19 because they felt that he was responsible for the death of 20 their colleague and Colonel Vermaak then acted, quite a 21 tall thing to do actually, but he then removed his senior 22 officer, the Major General from the scene in order to, as 23 he saw it to save his life but that's the evidence and 24 that's what Mr Bizos is referring to, is that correct, Mr 25 Bizos?</p>
<p style="text-align: right;">Page 19535</p> <p>1 particular way, in a restrained fashion that they would 2 have complied with those instructions because emotions were 3 running high. That's the evidence she gave. I don't know 4 if you read the transcript, did you read the transcript?</p> <p>5 BRIGADIER CALITZ: Nee, mnr die 6 Voorsitter.</p> <p>7 CHAIRPERSON: Well, I think I've 8 summarised it accurately, if necessary it can be shown to 9 you. So the point is this, it was the considerate opinion 10 it would appear, of the Provincial Commissioner that it 11 would be dangerous to ask the police to take any action on 12 the Tuesday, that's why she delayed it, because emotions 13 were running high and she wasn't confident that any 14 instruction she gave them to hold back and act in a 15 restrained fashion, I take it that's what she means, would 16 have been complied with. Now, so it is clear, is it not, 17 that whether people saw the photographs or not they were 18 feeling very strongly indeed about the way in which their 19 colleagues, one colleague in particular had been killed. 20 That is correct, isn't it?</p> <p>21 BRIGADIER CALITZ: Dit sal seker so wees, 22 mnr die Voorsitter.</p> <p>23 CHAIRPERSON: No, perhaps you could 24 follow on from that, Mr Bizos?</p> <p>25 [09:50] MR BIZOS SC: Mr Chairman, we don't have</p>	<p style="text-align: right;">Page 19537</p> <p>1 MR BIZOS SC: That's –</p> <p>2 CHAIRPERSON: Does that clarify your 3 problem.</p> <p>4 BRIGADIER CALITZ: Ek het daardie, ja, ek 5 wou net weet wie is die senior offisier na wie u verwys 6 maar daardie reël weet ek wel gesien in die transkripsie en 7 ek is wel bewus van daardie mening wat daar uitgespreek is, 8 ja.</p> <p>9 MR BIZOS SC: Now taking the statement of 10 Colonel Scott as unclear as it may be but adding to it that 11 members of the police force were prepared to kill one of 12 their generals because of the death of a policeman, if we 13 take those two factors together would it be correct for us 14 to legitimately infer that there was deep concern among the 15 police as a result of the death of this policeman and might 16 they have sought revenge against a group of people that 17 were protesting on the 16th. What is your answer to that 18 question?</p> <p>19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 die eerste gedeelte van die stelling stem ek mee saam. 21 Daar was definitief skok en trauma betrokke by die dood van 22 'n kollega, wat vir my ook logies is en tragies is en die 23 tweede gedeelte van u vraag rondom dat die polisie revenge 24 vat stem ek glad nie mee saam nie. Dit is net die polisie 25 of die bevelvoerders in enige voorligting wat ons gegee het</p>

<p style="text-align: right;">Page 19538</p> <p>1 aan die lede dat dit 'n revenge is nie. Die lede en die 2 offisiere is professioneel en wraak kom die polisie nie toe 3 nie. So op die 16de is die wet en order net toegepas 4 volgens my op die regulasies, die orders wat vir ons gegee 5 is. So ek stem nie saam dat dit 'n revenge is nie, nee 6 glad nie.</p> <p>7       MR BIZOS SC:     How –</p> <p>8       CHAIRPERSON:   Sorry to interrupt, Mr 9 Bizos. The Provincial commissioner was obviously afraid 10 that some, that a factor or factors of that kind might well 11 be operative on the 14th, is that, because I told you what 12 he told people from Lonmin. Would those feelings of anger, 13 whatever they were, he used the phrase emotions were 14 running high on the 14th. Would those emotions have now 15 disappeared and no longer being operative on the 16th?</p> <p>16       BRIGADIER CALITZ:   Mnr die Voorsitter, 17 nee ek het gesê die persone het, die emotions, die gevoel, 18 die hartseer, die skok, daardie deel sal seker ons by bly. 19 Ek dink vandag nog, ek dink in die transkripsie wat ek 20 gelees het, Kolonel Merafe spesifiek wat die persoon gedra 21 het, ek dink trauma bly 'n lang ruk by 'n mens. So ek weet 22 nie presies wat die Kommissaris of die, ag die Proviniale 23 Kommissaris bedoel het by haar woorde op daardie stadium. 24 Maar die hartseer en die skok sal nog steeds by die lede 25 wees op die dag.</p>	<p style="text-align: right;">Page 19540</p> <p>1 those feelings were in the first place there and the 2 Provincial Commissioner was correct.</p> <p>3       CHAIRPERSON:   That sounds like a good 4 point. Let's reformulate the problem. If you'd like to 5 see what the Provincial Commissioner said we can arrange 6 for you to see it. But you shake your head and say you're 7 not. So you've heard what the Provincial Commissioner said 8 on the Tuesday, was that your assessment of the situation 9 as well that it was a sensible thing not to have take any 10 action on the Tuesday because emotions were high and 11 because one couldn't be confident that the police would be 12 able to keep those feelings in check when they proceeded, 13 did you agree with that view or did you not?</p> <p>14       BRIGADIER CALITZ:   Nee, mnr die 15 Voorsitter, my gevoel op die ooggend van die, as ek die 16 datums korrek het, die 15de –</p> <p>17       VOORSITTER:       Woensdag die 14de of die 18 Dinsdag -</p> <p>19       BRIGADIER CALITZ:   Ekskuus tog, mnr die 20 Voorsitter.</p> <p>21       CHAIRPERSON:   I spoke without the 22 microphone, I'll be in trouble again with the operators. 23 Die gespreek wat jy kon gepraat het was op die Dinsdag die 24 14de, ek dink die middag van die 14de bespreek tussen die 25 Proviniale Kommissaris en mense van Lonmin.</p>
<p style="text-align: right;">Page 19539</p> <p>1       CHAIRPERSON:   We'll show you the 2 passage, you see because she said, she gave that as a 3 reason or delaying, those are the words she used, for 4 delaying any action on the Tuesday because emotions were 5 running high and she was afraid that any instructions that 6 she gave the members you know to behave you know, with a 7 constrained manner wouldn't be listened to, that was her 8 concern on the Tuesday. Now you say those feelings of 9 shock and trauma and so forth would have persisted on the 10 16th. So the question that really, I think Mr Bizo is 11 getting is to is how confident can we be that those 12 feelings which legitimately gave rise to concern and 13 caution on the parts of the Provincial Commissioner on the 14 14th were still not operative on the 16th, is that basically 15 what you're about, Mr Bizo?</p> <p>16       MR BIZOS SC:     Yes.</p> <p>17       CHAIRPERSON:   You've heard the question 18 as I've formulated it. If you feel it's at a disadvantage 19 because you hadn't seen the passage in the transcript of 20 the Provincial Commissioner's conversation with Lonmin and 21 you'd like to see it then obviously you're free to ask for 22 that, but I'm in your hands on that point.</p> <p>23       MR SEMENYA SC:   But, Chair, can I raise 24 an objection. It is unfair for us to expect this witness 25 to talk about feelings of other people on a predicate that</p>	<p style="text-align: right;">Page 19541</p> <p>1       BRIGADIER CALITZ:   Ek verstaan u so, mnr 2 die Voorsitter. Dan die volgende dag, die 15de het ek 3 verstaan dat ons het reeds 'n verhouding met die, as ek 4 verwys na verhouding praat ek van 'n vertrouens verhouding 5 opgebou met die groep strikers as ek dit so kan noem, die 6 leierskap van hulle waarna ek verwys het wat ons later 7 bewus was, mnr Noki. So hoe ek dit verstaan het is dat 8 daardie verhouding was reeds opgebou en ons het vir hulle 9 dan twee of drie goed gesê is dat ons sal teruggekom het na 10 hulle toe, hulle het 'n versoek vir ons gerig dat ons moet 11 die boodskap oordra aan management wat ons gesê het ons 12 gaan terug gaan na hulle toe, asook ons het gesê en gereël 13 met hulle dat, u sal onthou die vorige dag was die dood van 14 daai ander persoon, dat ons die volgende ooggend sou terug 15 wees weer. So dit was my verstandhouding dat daar 'n tipe 16 van 'n vertrouens posisie opgebou word en dat ons die 17 onderhandelinge dan 'n kans gee eerder as om enige ander 18 optrede te loots.</p> <p>19       CHAIRPERSON:   I can understand that, but 20 that's, but that's not entirely the answer to the point 21 that I'm concerned with and I think Mr Bizo is concerned 22 with, and that is I understand there was 'n confidential 23 relationship built up, a relationship of trust between the 24 negotiators, you and the other negotiators, in the 25 negotiating Nyala and the leaders of the strikers, I can</p>

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1 understand that. But that wasn't what the Provincial  
 2 Commissioner had been concerned about. What she was  
 3 concerned about it would appear on the 14th and I understood  
 4 you to say you didn't necessarily disagree with her, on the  
 5 Tuesday. Was it was more the rank and file of the police,  
 6 they were ones that she wasn't confident would obey  
 7 instructions to keep their emotions under control and act  
 8 in a controlled and restrained fashion. So the vertrouens  
 9 verhouding would have been built up, it doesn't reflect on  
 10 that at all. It may well be that it was your view that by  
 11 the Thursday that was no longer a problem and if that was  
 12 your opinion then you must say but that's the issue that's  
 13 been probed, you understand.

14 BRIGADIER CALITZ: Mnr die Voorsitter,  
 15 nee ek –

16 CHAIRPERSON: I'm sorry, did you think  
 17 it was a problem on the Tuesday?

18 BRIGADIER CALITZ: Aan die?

19 CHAIRPERSON: On the Tuesday.

20 BRIGADIER CALITZ: On the Tuesday?

21 CHAIRPERSON: That it would be unwise to  
 22 take action that the Provincial Commissioner was right in  
 23 delaying action for the reasons that I've mentioned.

24 BRIGADIER CALITZ: Mnr die Voorsitter,  
 25 soos ek getuig het net op die Dinsdag waarvan ek bewus was,

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1 terug gegaan. Soos ek gesê het nooit is dit 'n posisie van  
 2 die polisie om wraak te neem nie, nee. Daarom is hulle  
 3 opgelei, die bevelvoerders, die lede self, ek verwys na  
 4 openbare order polisiëring waarin ek in beheer is in die  
 5 provinsie is opgelei en elk een weet hoe om op te tree. So  
 6 ek glo nie wraak sou 'n opsie gewees het, dit sou my input  
 7 gewees het in die vergadering dan dat die, miskien oor die  
 8 hoof gesien kan word nie, maar dit bespreek was. Maar ek  
 9 dink nie dit is waar nie, nee.

10 CHAIRPERSON: Let me move on to another  
 11 point. You say you weren't aware that photographs had been  
 12 disseminated among what I can call the rank and file of the  
 13 police, the ordinary members of the police weren't shown  
 14 pictures to your knowledge of this, which one of the  
 15 pictures I think is in exhibit L of the head very badly  
 16 hacked by, on the 13th. You weren't aware that pictures of  
 17 that kind were disseminated among the ordinary rank and  
 18 file of the police, is that your evidence?

19 BRIGADIER CALITZ: As, mnr die  
 20 Voorsitter, verwys na ranking, dit is die lede.

21 CHAIRPERSON: Ja.

22 BRIGADIER CALITZ: Ja, nee ek dra nie  
 23 kennis rondom dit nie.

24 CHAIRPERSON: Now the next question is  
 25 if you, has it come to your knowledge that that had

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1 ek was op die Dinsdag nie bewus dat dit haar woorde was of  
 2 dat sy gesê het nie. So ek is ook nie bewus dat dit in die  
 3 JOCCOM vergaderings bespreek was nie. Sou dit een van die  
 4 punte gewees het dan kon mens miskien daarop reageer. Ek  
 5 het maar net getuig op die Dinsdag hoe ek dit gesien het.

6 CHAIRPERSON: No, I understand. No it's  
 7 not suggested that it was said at the JOC on the Tuesday,  
 8 I'm not even sure if she's at the JOC on the Tuesday but  
 9 that was what she said on the Tuesday to people from Lonmin  
 10 in a private conversation which was clandestinely recorded  
 11 and, but you raise an interesting point now. If it had  
 12 been raised at the JOC, if she had said that at the JOC on  
 13 the Tuesday it would obviously have been discussed by those  
 14 present. How would you have reacted at that stage to it?  
 15 Hypothetically, it may be difficult to answer, I understand  
 16 that also but if you can be answer I'd be grateful.

17 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 18 sal maar net kan getuig soos uit my ondervinding uit waarna  
 19 ek kan terug gaan, dis die enigste waarna ek kan verwys.  
 20 Ons was in menige voorvalle al, ek het verwys na, ek het  
 21 oor die 2 000 plus gevalle hanteer wat party van die  
 22 gevalle oor dae geloop het en dit was maar altyd 'n gevall  
 23 van ons het nie die luksheid van om lede aan mekaar te  
 24 replace as ek dit so kan stel nie. So die volgende dag die  
 25 lede is gemotiveer, die gevalle is bespreek en dan het ons

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1 happened, the photographs of that kind had been  
 2 disseminated among the ordinary members who were going to  
 3 take part in future operations by way of controlling this  
 4 problem what would your attitude have been, what if  
 5 anything would you have done?

6 BRIGADIER CALITZ: Mnr die Voorsitter,  
 7 ons sou seer sekerlik dan gereël het dat ons, wat ons na  
 8 verwys ESW, die persone wat die trauma counselling en  
 9 daardie gevall doen wel met daardie lede in kontak is wat  
 10 die fotos gesien het. Hulle gemotiveer het en in gespreek  
 11 met hulle getree het en ek dink ek sou dit ook dan verwys  
 12 het in my gespreek op die 18de op die video miskien gesê  
 13 het vir die ouens om positief te bly en dan hulle gewaarsku  
 14 het dat dit is 'n voorval wat gebeur het maar nog steeds om  
 15 professioneel op te tree in daardie gevall. So ek dink ons  
 16 sou in daardie gevall leiding gegee het aan die junior lede.

17 MR SEMENYA SC: Chair, it may also be  
 18 for the record the evidence of General Mpembe is that there  
 19 was a debriefing, those who indicated they were  
 20 uncomfortable to proceed were removed and those who were,  
 21 were allowed to go.

22 CHAIRPERSON: But I think that relates  
 23 to those who were present on, at the field of engagement as  
 24 it were on the 13th. The question relates to other  
 25 policemen who may or may not, just remember there's an

<p style="text-align: right;">Page 19546</p> <p>1 ambiguous answer we're dealing with, who may or may not      2 have seen photographs but any way, I've asked the questions      3 that I thought legitimately flowed from that but let's see      4 whether Mr Bizos has got any further, before Mr Bizos gets      5 his chance, Adv Hemraj would like to ask a question before      6 he, before you do, Mr Bizos. No, Mr Bizos, Adv Hemraj,      7 would like to ask a question before you do. I'm sure      8 you'll stand back in your usual gentlemanly fashion for      9 her.</p> <p>10 COMMISSIONER HEMRAJ: Brigadier, as at      11 the 14th of August, the Tuesday amongst the members under      12 your command did you sense among them this sense of unease      13 and dissatisfaction about what had happened the previous      14 day?</p> <p>15 BRIGADIER CALITZ: As ek u reg verstaan,      16 die unease is dat daar wel die skok was 'n kollega -</p> <p>17 COMMISSIONER HEMRAJ: Agitation about      18 what, was there any agitation or dissent among those      19 members that you command about what had happened on the      20 13th?</p> <p>21 BRIGADIER CALITZ: Daar was wel 'n gevoel      22 van skok en ongeloof om, onder die lede en dit is soos      23 hulle met mekaar gepraat het maar die dag, die 14de toe ons      24 na die toneel toe beweeg het die persone met wie ek toe      25 gepraat het en die onderhandelinge en daar het die lede</p>	<p style="text-align: right;">Page 19548</p> <p>1 BRIGADIER CALITZ: Mutinous, ek wil net      2 sê dit is ernstige dreigemente, is dit hoe ek dit verstaan.      3 CHAIRPERSON: You know what mutiny is      4 muiterie I think the Afrikaans mutiny.</p> <p>5 BRIGADIER CALITZ: Verraad.</p> <p>6 CHAIRPERSON: Sorry. No verraad is      7 treason. Mutiny it is muiterie. M-U-I-T-E-R-Y the word      8 Muiterie is te gekom nie waar nie. What happens on a ship      9 when the Bounty was in South Pacific Fletcher Christian and      10 his men mutinied, took over the ship, Captain Blythe and so      11 many officers off and they sailed on with the ship. They      12 took over the ship against their, totally contrary to all      13 their obligations under the relevant laws applicable and if      14 soldiers rise up against their officers, disobey their      15 orders and try to shoot their officers, disobey them,      16 that's mutiny okay. You've come across the concept?</p> <p>17 BRIGADIER CALITZ: Dit is net wat die      18 duidelikheid wou gehad het. Die muiterie konsep wel -</p> <p>19 CHAIRPERSON: Now what Mr Bizos is      20 putting to you is that what the policemen concerned against      21 whose proposed actions Colonel Vermaak acted the way he did      22 to protect General Mpembe he's suggesting to you that that,      23 that actually amounted to mutiny, to muiterie right, that's      24 his question. I think you now understand the question. Do      25 you want to take it a bit further before the witness</p>
<p style="text-align: right;">Page 19547</p> <p>1 weer oorgegaan tot hulle normale dienste. Daar was nie,      2 hoe kan ek vir u sê enige verdere bespreking gewees rondom      3 dit.</p> <p>4 COMMISSIONER HEMRAJ: Did agitation      5 persist into the days after the 14th?</p> <p>6 BRIGADIER CALITZ: As jy verwys na      7 agitation, ekskuus tog?</p> <p>8 COMMISSIONER HEMRAJ: The agitation, the      9 unease, the discomfort about what had happened on the 13th?</p> <p>10 BRIGADIER CALITZ: Kommissaris, ja, as ek      11 nou reg is ek kan maar getuig wat in my Nyala bespreek is      12 en met die persone wat ek mee aangegaan het, maar dit het      13 aangegaan oor hoe ons volgende gaan optree, die      14 onderhandelinge verder vat en soos dit dan verder aangegaan      15 het. Dit was nie regtig verder met my bespreek.</p> <p>16 CHAIRPERSON: Mr Bizos, I fear we've      17 possibly trespassed on your ground unduly, forgive us, if      18 you'd prefer to carry on with your cross-examination.      19 Would you like to carry on with your cross-examination.</p> <p>20 MR BIZOS SC: I will not abandon the      21 point that I am pursing because there are other passages      22 from Scott that I want to refer to but let me try and be,      23 it's a serious matter and please try and answer the      24 questions. A threat by any number of police officers to      25 kill a general is mutinous, do you agree?</p>	<p style="text-align: right;">Page 19549</p> <p>1 answers, Mr Bizos?</p> <p>2 MR BIZOS SC: I want an answer from the      3 witness with respect, Mr Chairman. It's mutinous?</p> <p>4 BRIGADIER CALITZ: Mnr die Voorsitter,      5 daar is 'n moontlikheid die presies definisie, maar ek      6 verstaan wat u bedoel by muiterie. As daar wel 'n      7 dreigement op die senior offisier gemaak is en dat hulle      8 hom wou dood maak oor 'n sekere aspek is dit moontlik dat      9 dit, as jy sê dit so verstaan word.</p> <p>10 VOORSITTER: Moontlik, moontlik means      11 possible. Is there any possibility any other way.</p> <p>12 BRIGADIER CALITZ: Dit is hoekom ek sê      13 dit is maar my afleiding wat ek daarvan kan maak, mnr die      14 Voorsitter.</p> <p>15 MR BIZOS SC: Would have expected that a      16 well commanded and managed force, if this came to the      17 notice of any officer it would not have been kept a secret      18 from other senior officers.</p> <p>19 CHAIRPERSON: You haven't asked the      20 question yet. Do you agree with what Mr Bizos says that      21 that was a serious matter which wouldn't have been kept a      22 secret, presumably it wasn't kept a secret from other      23 senior officers, how do you respond to that question?</p> <p>24 [10:10] BRIGADIER CALITZ: Nee, ek dink in      25 hindsight tot my kennis het gekom dat dit is gerapporteer</p>

<p style="text-align: right;">Page 19550</p> <p>1 gewees, die feit van Kolonel Vermaak. Ek onthou hy het 2 dit, ek neem aan hy het iemand geskakel, die Kommissaris, 3 maar dit is wat ek in "indsight" verneem het.</p> <p>4 CHAIRPERSON: Yes, I think he said he 5 reported it to the Provincial Commissioner.</p> <p>6 BRIGADIER CALITZ: Ek is – ja, ja –</p> <p>7 CHAIRPERSON: Maybe even reported it to 8 the National Commissioner. I can't remember. But nothing 9 appears to have been done about it. Is that right? No 10 steps appear to have been taken that we know about, 11 according to the material before us. If something was done 12 and we don't know about it, perhaps we should hear about 13 it, but do you know whether any steps were taken against 14 the officers concerned?</p> <p>15 BRIGADIER CALITZ: Mnr die Voorsitter, 16 nee, tot huidiglik dra ek nie kennis of die Generaal dan, 17 of daar enige stappe geneem is ten opsigte van daardie 18 dreigemente nie. Ek dra nie kennis nie, nee.</p> <p>19 MR SEMENYA SC: Chair, when –</p> <p>20 CHAIRPERSON: I see you turned your light 21 on.</p> <p>22 MR SEMENYA SC: When Colonel Vermaak 23 comes the evidence will be even to this day he's unable to 24 identify the members who uttered those threats.</p> <p>25 CHAIRPERSON: Well, that's the answer</p>	<p style="text-align: right;">Page 19552</p> <p>1 high due to the loss of life and should the police" – 2 CHAIRPERSON: Not conditions; emotions, 3 Mr Bizos. "I suggested during the meeting that the 4 emotions on both sides were high."</p> <p>5 MR BIZOS SC: "The emotions on both sides 6 were high due to the loss of life and that should the 7 police move in to disperse the group the next morning, the 8 intervention could possibly be interpreted by the media and 9 the public as a retaliation instead of enforcement of the 10 law. I said this because I considered there was bound to 11 be conflict again should the police use force to defuse the 12 situation with the protesters that are armed, as they were, 13 and with their emotions running as high as they did at the 14 time." Were you present at that meeting?</p> <p>15 BRIGADIER CALITZ: Mnr die Voorsitter, 16 ja, ek het so vinnig probeer kyk; ek dink die vergadering, 17 as ons kyk na die volgende waar hy sê, "I suggested that to 18 the National Commissioner," ek dink dit is die vergadering 19 wat laataand plaasgevind het waar ek verwys het die 20 Generale het die voorligting gegee aan die Nasionale 21 Kommissaris. Ek kan nou onthou op 'n stadium dit was by 22 die Lonmin kantore, dat ek wel op 'n stadium daar was en 23 toe weer verlaat het. Ek dink dit was net om te hoor wat 24 ek –</p> <p>25 CHAIRPERSON: You're quite right, 6.11</p>
<p style="text-align: right;">Page 19551</p> <p>1 then, or will be the answer when we get it.</p> <p>2 MR BIZOS SC: It's not an answer. My 3 learned friend can't direct my cross-examination, Mr 4 Chairman. It's a legitimate question that I have asked and 5 I expect the witness to give an answer.</p> <p>6 CHAIRPERSON: You got the answer. He 7 said as far as he knows no steps have been taken against 8 anybody. He understands Colonel Vermaak reported it to the 9 General. Mr Semenza has given us information to prevent us 10 going off on a "dwaalspoor" and wasting time on what may be 11 a wild goose chase as to why no steps were taken. That was 12 intended merely to help us, but I suggest you proceed with 13 the point. I don't think his comment was intended to 14 derail or undermine or frustrate your cross-examination, so 15 carry on.</p> <p>16 MR BIZOS SC: Mr Chairman, I want to put 17 to the witness paragraph 6.10 on exhibit HHH20 at 6.10.</p> <p>18 CHAIRPERSON: Paragraph 6 point?</p> <p>19 MR BIZOS SC: 6.10.</p> <p>20 CHAIRPERSON: Thank you.</p> <p>21 MR BIZOS SC: On page 20, Mr Chairman.</p> <p>22 CHAIRPERSON: This is the consolidated 23 statement of Colonel Scott.</p> <p>24 MR BIZOS SC: It starts, "I suggested 25 during the meeting that the conditions of both sides were</p>	<p style="text-align: right;">Page 19553</p> <p>1 says, "I suggested to the National Commissioner," so he was 2 speaking at a meeting attended by the National 3 Commissioner, and when he talks in the third line of para 4 6.10 about the next morning, it's quite clear that he's 5 talking about what was said at a meeting on the Monday 6 night because the next morning was clearly the Tuesday. So 7 you're quite right. You don't have to elaborate on that 8 point.</p> <p>9 MR BIZOS SC: Do you agree with the view 10 of Colonel Scott that emotions on both sides were high? Do 11 you agree with what he said? You were there; you heard 12 him. Do you agree with him?</p> <p>13 BRIGADIER CALITZ: Mnr die Voorsitter, 14 nee, ek verskil van u. Ek het nie gesê ek was daar en dat 15 ek hierdie woorde gehoor het nie, maar of ek saam met hom 16 stem dat die emosie van die polisiemanne, daar was wel 17 emosie gewees en dan aan die ander kant glo ek van die 18 "strikers," as ek 'n afleiding kan maak, daar was ook 19 emosie betrokke gewees, ja.</p> <p>20 MR BIZOS SC: So that this was not kept a 21 secret among the high-ranking officers that were in command 22 and control of the situation at Marikana?</p> <p>23 CHAIRPERSON: What do you mean by "this 24 is not kept a secret"? What was not kept a secret was that 25 emotions were running high on both sides.</p>

	Page 19554		Page 19556
1	MR BIZOS SC: Yes.		1 nie as hulle kom getuig of hulle dan daaroor kan getuig –
2	CHAIRPERSON: Is that what you mean?		2 tot my kennis sou dit wel met hulle bespreek was, want soos
3	MR BIZOS SC: That was not kept a secret.		3 ek sê, in die JOCCOM vergadering het ons besluit om nie oor
4	It was known to all of you senior officers.		4 te gaan tot aksie nie daardie volgende dag, maar om die
5	BRIGADIER CALITZ: Ek glo daardie woorde		5 onderhandelingsproses en die reeds aan die gang te hou, en
6	was gedeel met die seniors, so die mense wat betrokke was,		6 as ek nou reg is, in 6.10, as ek 'n afleiding kan maak wat
7	as ek kan sê by die JOCCOM sou wel dan bewus gewees het van		7 hier staan by Kolonel Scott is dit presies wat hy sê, dat
8	die dreigemente. Of van die emosies.		8 dit nie moet gesien word as "retaliation" nie maar dat
9	MR BIZOS SC: It was a vital matter as to		9 daar, die plan se stappe nog steeds gevolg moet word. So
10	whether the plan that had been put together by Colonel		10 ek glo dit is gedoen.
11	Scott would be put into operation when the emotions of both		11 MR BIZOS SC: Do you agree that the
12	sides were as high, both sides being the protesters on the		12 suggestion that I have made as having been a good policy to
13	one hand and the hurt of the policemen that one of their		13 adopt did not take place? You didn't address the rank and
14	number, or at least two of their number but one more		14 file as to how to behave or not behave, having regard to
15	brutally than the other, and that was known to all the		15 what happened in relation to the death of two policemen?
16	senior officers involved. Commanders.		16 BRIGADIER CALITZ: Mnr die Voorsitter, al
17	BRIGADIER CALITZ: Mnr die Voorsitter, ek		17 waarna ek kan verwys is na die tyd het ek, op die 18de is
18	weet nie of ek die vraag nou reg verstaan nie. Dis		18 waar ek die parade toegespreek het. Voor die tyd is die
19	dieselde as die vorige vraag waar ek gesê het ja, die		19 ander bevelvoerders wat dan aan hulle lede – so dit is wat
20	senior offisiere, die persone wat daar was, sou wel bewus		20 ek sê ek glo dit het gebeur, dat dit wel met die lede sou
21	gewees het hiervan, ja.		21 bespreek gewees het.
22	MR BIZOS SC: So that can we draw the		22 MR BIZOS SC: [Microphone off, inaudible]
23	inference that we intend drawing to the attention that the		23 happen?
24	senior officers, the command from the Generals down to the		24 BRIGADIER CALITZ: Ek kan u ongelukkig
25	Colonels, were aware of the dangers of putting the plan		25 nie help nie. Ek was nie teenwoordig daar tydens daar
	Page 19555		Page 19557
1	into operation on the 16th?		1 voorligting –
2	BRIGADIER CALITZ: Mnr die Voorsitter, ek		2 MR BIZOS SC: No, but you were the
3	dink dit is die fases wat in die plan dan bespreek is. Dit		3 operational commander. Surely you must have had a
4	was my ondervinding op die Dinsdag, die Woensdag, dat ons		4 responsibility to quiet down the hurt members of the police
5	wel besig is om die verhouding op te bou en die plan het so		5 force. You, the operational commander, above all should
6	uitgespeel; elke dag is daar terugvoer gegee, so die plan		6 have taken the step that I have suggested to you.
7	se fases is in daardie verband uitgevoer. So as ek u reg		7 BRIGADIER CALITZ: Mnr die Voorsitter,
8	verstaan, dit was my verstandhouding gewees om dan eers		8 weereens, dit is in die JOCCOM tussen die senior offisiere,
9	deur die "negotiations" en die trust en al daardie stappe		9 glo ek dat hierdie aspek geadresseer is. Die bevelvoerders
10	te gaan voor daar besluit is die 16de, en ek dink dit is		10 wat dan teenwoordig is tydens hierdie sessies sou dan na
11	eers om 13:30 besluit om oor te gaan tot 'n uiteendryf		11 hulle lede toe gaan, maar nee, ek dra nie kennis van dat al
12	aksie.		12 die lede bymekaar geroep is en dan spesifiek hieroor
13	MR BIZOS SC: One would have expected		13 gepraat het nie. Dit dra ek nie van kennis nie.
14	careful commanders having regard to what happened on Monday		14 MR BIZOS SC: Would you agree that if
15	and the threat against a general, to have gathered the		15 what I had suggested ought to have happened did happen, we
16	police force together and say it is unfortunate that two of		16 may not have the tragedy of 34 dead people?
17	our members were killed, but please have regard that we are		17 BRIGADIER CALITZ: Nee, mnr die
18	dealing with 3 000 people; not all of them are responsible		18 Voorsitter, ek stem nie saam nie.
19	for these deaths. We are professionals and we must not		19 MR BIZOS SC: Why not?
20	seek to take revenge against the crowd. Would you agree		20 BRIGADIER CALITZ: Ek kan net gaan op wat
21	that that would have been a very useful precaution for the		21 vir my gesê is en wat ek gesien het. As daar 'n aanval is
22	officers to take?		22 op die polisielede en hulle het uit selfverdediging
23	BRIGADIER CALITZ: Mnr die Voorsitter,		23 opgetree was dit nie "revenge" soos wat u daarna verwys
24	tot my kennis dra ek nie kennis van die bevelvoerders wat		24 nie, nee.
25	met hulle lede bespreek het nie, maar ek glo – en ek weet		25 MR BIZOS SC: The question was not

<p style="text-align: right;">Page 19558</p> <p>1 relating to what you said on the 18th or what may have 2 happened. Why did not this obvious precaution not taken by 3 you or to your knowledge any other senior officer?</p> <p>4 BRIGADIER CALITZ: Mnr die Voorsitter, ek 5 verstaan die vraag weer dieselfde as op die 16de waar daar 6 wel 'n voorligting gegee is aan die lede en die voorligting 7 wat gegee is, is pertinent verwys na die plan en die fases 8 en ek dink ons het reeds breedvoerig daaroor getuig.</p> <p>9 CHAIRPERSON: Mr Bizos, you see you're 10 making two points. I'm not sure if the two points can be 11 taken together, the separate points. The first one is 12 whether warnings were given and instructions were given and 13 attempts were made to eliminate this revenge motive aspect. 14 That's one point, as I understand it. The other one is you 15 put to him if that had been done the 34 people mightn't 16 have died, and he's answered that by saying well, if they, 17 the strikers, still had attacked the police and if it's 18 correct that it was an attack on the police and if it's 19 correct that the police were placed in a situation of the 20 threat they had to deal with and that they acted in self- 21 defence and private defence, then of course despite 22 instruction and guidance of the kind you suggest should 23 have been given to the police, we might still have had the 24 situation we had on the Thursday afternoon. That's the 25 point the witness is dealing with, but the point I'm</p>	<p style="text-align: right;">Page 19560</p> <p>1 to assure the ordinary policemen there who carried the 2 lethal weapons as to how and when to use them.</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter, ek 4 het probeer die vrae kort hou deur net te antwoord "Ek stem 5 nie saam nie," maar u weet, ek word gevra om weer te 6 verduidelik. Weereens as ons teruggaan na die plan toe, 7 daar was breedvoerige voorligting gegee aan die plan. Elke 8 bevelvoerder het presies aan sy lede dan die voorligting 9 gaan gee soos dit uiteengesit is en wat hulle takings is.</p> <p>10 Die Taktiese Respons Enhede, die TRT, die NIU, die 11 Taakmag, glo ek het dan presies vir hulle lede gaan 12 terugvoer gee. So elkeen sou beslis geweet het wat van hom 13 verwag is. Die lede is opgelei; hulle is professioneel, en 14 elke lid van die polisie van die vlak van konstabel tot by 15 generaal glo ek is opgelei en weet presies wat van hom 16 verwag word.</p> <p>17 So om u vraag weereens te beantwoord, waar ek nie 18 saam met u stem nie is dat die nodige voorligting was 19 gegee. Die beplanning wat met ons bespreek is, is in 20 detail gegee. Ek glo nie iemand kon daardie voorligting 21 wat gegee is misverstaan het nie, en die lede het opgetree 22 as gevolg van die aanval en wat voor hulle dan plaasgevind 23 het op daardie stadium, en nie as gevolg van 'n swak 24 voorligting deur enige bevelvoerder nie.</p> <p>25 MR BIZOS SC: [Microphone off, inaudible]</p>
<p style="text-align: right;">Page 19559</p> <p>1 putting to you is that they're two separate points and they 2 have to be dealt with separately, surely.</p> <p>3 MR BIZOS SC: Well, let's take them one 4 by one. Let's take the second one. You assume that, 5 without having personal knowledge, that the police were 6 actually attacked and they did not fire out of a feeling of 7 revenge.</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 dit was my getuenis gewees. Ook uit die Nyulas uit was 10 dit my getuenis gewees dat ek gesê het dit was 'n aanval 11 op die polisie. Dit wat ek gesien het was 'n aanval op die 12 polisie. So ja, ek bly dit, hulle het opgetree as gevolg 13 van die aanval op die polisie en beslis nie 'n "act" van 14 "revenge" of wraak dan nie.</p> <p>15 MR BIZOS SC: The fact that there was, if 16 we assume that there was no order to shoot, because of the 17 lack of briefing, because of the lack of advising how to 18 behave in a disciplined manner, there may not have been a 19 danger to the police but rather a premature attack as an 20 act of revenge against the strikers.</p> <p>21 BRIGADIER CALITZ: Nee, ek stem nie saam 22 met u nie, mnr die Voorsitter.</p> <p>23 MR BIZOS SC: You may not agree, but you 24 cannot deny the possibility that it may not have happened 25 if proper steps had been taken by the commanding officers</p>	<p style="text-align: right;">Page 19561</p> <p>1 without any personal knowledge on your part as to the 2 truthfulness or not of what you now say you believe.</p> <p>3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter, wat ek nou getuig het is alles waar ek self by 5 betrokke was en wat ek gehoor het is die voorligting, en op 6 daardie dag self, so dit is nie 'n "assumption," dit is 7 feite.</p> <p>8 MR BIZOS SC: Let us turn to –</p> <p>9 CHAIRPERSON: Mr Bizos, I have a problem. 10 You ask him about things which you say he didn't know 11 about, and certainly some of the things he didn't know 12 about but you ask him about them. You asked his views; he 13 gives his views. You then say to him well, you don't know 14 what you're talking about because you weren't there. I 15 mean that's a bit unfair, isn't it? If you go into the 16 territory of asking him about things that you know he's 17 relying on feedback and information he'd received, when he 18 gives you an answer based upon that you then say to him ja, 19 but you weren't there, you're only relying on feedback –</p> <p>20 MR BIZOS SC: Yes.</p> <p>21 CHAIRPERSON: Well, that's a bit unfair, 22 isn't it?</p> <p>23 MR BIZOS SC: But Mr Chairman, my learned 24 friend says that we can't make assumptions. Is that 25 privilege not to be offered to me when he makes an</p>

<p style="text-align: right;">Page 19562</p> <p>1 assumption about things that when he was not there?</p> <p>2 CHAIRPERSON: You asked him to make an assumption. He makes the assumption, then you say ja, but it's only an assumption. That's the point I'm busy with.</p> <p>5 I haven't prevented you from asking him to make assumptions. I've allowed hypothetical questions to be asked. There had been objections sometimes which I've overruled. So don't get excited. I'm trying to be fair to everybody.</p> <p>10 MR BIZOS SC: No, Mr Chairman, I appreciate it and I'll try and bear it in mind. Let us turn to scene 2, Brigadier –</p> <p>13 CHAIRPERSON: Before we get to scene 2, can we have some tea?</p> <p>15 MR BIZOS SC: Yes, please.</p> <p>16 CHAIRPERSON: We'll take the tea adjournment.</p> <p>18 [COMMISSION ADJOURS COMMISSION RESUMES]</p> <p>19 [10:56] CHAIRPERSON: The Commission resumes, Brigadier, you're still under oath. Before we continue with the evidence I understand that Mr Semenya wishes to say something about the dates for the filing of statements.</p> <p>23 MR SEMENYA SC: Chair, you had directed that all statements must be in by Friday and we're trying to raise to get, to comply. We anticipate, we may not be</p>	<p style="text-align: right;">Page 19564</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek kan net getuig op wat ek in hindsight gehoor het.</p> <p>3 MR BIZOS SC: I don't like this hindsight to be used too often as an excuse to not answering a question directly.</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, dankie.</p> <p>8 CHAIRPERSON: But I don't know with respect if that's justified criticism. Many of the things he says are, I wasn't aware of that at the time, for whatever reason, but I now with hindsight realised that that is so or is not so. I don't regard that as –</p> <p>13 MR BIZOS SC: Can we have an answer, were any steps taken, Mr Chairman, and then if the witness wants to explain why not, if I choose to ask him that question he may want or my learned friend may want to re-examination –</p> <p>17 CHAIRPERSON: Yes, Mr Bizo, -</p> <p>18 MR BIZOS SC: I'm trying to avoid lengthy responses –</p> <p>20 CHAIRPERSON: Yes –</p> <p>21 MR BIZOS SC: - to direct questions which have a yes or no answer.</p> <p>23 CHAIRPERSON: Yes, do you remember I gave him a lecture on that yesterday? I said, if you're asked a question answer the question and don't answer the next</p>
<p style="text-align: right;">Page 19563</p> <p>1 in a position to do so, we're requesting that deadline to be moved to the next Friday or month-end.</p> <p>3 CHAIRPERSON: Yes, I discussed that with you and Mr Budlender in Chambers. In the circumstances it seems that the application is one which should be granted, so the date for the filing of statements is moved or the deadline for filing of statements is moved from the 17th of January to the 24th of January. Mr Mpofu did indicate that he has some difficulties and I hope his difficulties are now being eliminated. I think I've already reminded you, you're under oath, Brigadier?</p> <p>12 BRIGADIER CALITZ: Dankie.</p> <p>13 CHAIRPERSON: Mr Bizo, we are moving to scene 2, I believe?</p> <p>15 MR BIZOS SC: May I with your leave round off something on general before I go to –</p> <p>17 CHAIRPERSON: Of course –</p> <p>18 MR BIZOS SC: - to scene 2, Mr Chairman?</p> <p>19 Did you consider the threat made to General Mpembe an illegal act, a threat to kill the general, was that an illegal act?</p> <p>22 BRIGADIER CALITZ: Ja, enige dreigement op 'n persoon se lewe sal nie wettig wees nie.</p> <p>24 MR BIZOS SC: Yes, were any steps taken to investigate that illegal act?</p>	<p style="text-align: right;">Page 19565</p> <p>1 question which you think you may be asked because you're not asked that and if it is relevant to clarify the answer your counsel will deal with it in re-examination. I told him that yesterday and I'm sure he is conscious of it and if he isn't I'll have to speak to him sharply again in future, but remember that. If you're asked a question and your answer is, yes or no, say yes or no. I understand sometimes a yes or no answer isn't enough and you've got to explain a bit but forgive me if I say, sometimes I get the impression you say, he is asking me that question and the next question is going to be following and I'll quickly answer that as well and I told you yesterday, it is never a good idea. Counsel in fact like witnesses who don't answer, - who answer questions that haven't been asked because it very often gets the witness into trouble, but anyway just answer the questions and no more. Carry, Mr Bizo.</p> <p>18 BRIGADIER CALITZ: Ek sal so maak, mnr die Voorsitter, dankie.</p> <p>20 MR BIZOS SC: The answer is to your knowledge, no, no steps were taken?</p> <p>22 BRIGADIER CALITZ: Ek dra nie kennis nie, mnr die Voorsitter.</p> <p>24 MR BIZOS SC: Yes, now did you consider it your duty as an operational commander, threats made to a</p>

<p style="text-align: right;">Page 19566</p> <p>1 general was a very, very serious allegation that needed 2 investigation?</p> <p>3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter.</p> <p>5 CHAIRPERSON: Yes, Mr BIZOS, the evidence 6 was that this was reported to either the Provincial 7 Commissioner or the National Commissioner or both and 8 clearly they would have been the appropriate, whichever one 9 it was reported to, would have been the appropriate person 10 to have taken an initiative in investigating it, but I 11 don't know that it was a necessary matter for the 12 operational commander, knowing that the information had 13 been conveyed to, it was either the Provincial Commissioner 14 or the National Commissioner or both, necessary then to 15 take steps himself.</p> <p>16 BRIGADIER CALITZ: Dit is wat ek sou gesê 17 het, mnr die Voorsitter, maar ek probeer maar, net nou 18 probeer op die ja of nee.</p> <p>19 CHAIRPERSON: That's why I intervened.</p> <p>20 BRIGADIER CALITZ: Dankie, mnr die 21 Voorsitter.</p> <p>22 MR BIZOS SC: On page or paragraph 67 of 23 Exhibit L the designated command positions are set out. 24 Commander JOC CJOC, Major-General Mpembe, it would appear 25 that his role was the overall command of the operation</p>	<p style="text-align: right;">Page 19568</p> <p>1 CHAIRPERSON: He was removed from his 2 physical position, from a geographical point of view he was 3 on the ground, on the field of engagement on the 13th and he 4 was removed there from by Colonel Vermaak for his own 5 safety. In that sense he was removed from his position, 6 any other sense does not apply.</p> <p>7 BRIGADIER CALITZ: Dit is net wat ek wil 8 seker maak, mnr die Voorsitter. Ja, in daardie oopsig as 9 daar 'n dreigement was, die kolonel wat, hy kon dit doen.</p> <p>10 MR BIZOS SC: He went up into a 11 helicopter, is that right?</p> <p>12 BRIGADIER CALITZ: Na wie verwys u, mnr 13 die Voorsitter?</p> <p>14 MR BIZOS SC: On the 16th, General Mpembe.</p> <p>15 BRIGADIER CALITZ: Hy was die 16de wel in 16 die helikopter gewees.</p> <p>17 MR BIZOS SC: Who sent him there?</p> <p>18 BRIGADIER CALITZ: Ek dra nie kennis nie, 19 mnr die Voorsitter.</p> <p>20 MR BIZOS SC: This was in the field at 21 the time when General Mpembe decided to leave the JOC, so 22 he can't answer who sent General Mpembe there, if anybody, 23 he sent himself in fact, he doesn't know, he wasn't there.</p> <p>24 MR BIZOS SC: Yes, what role could 25 General Mpembe play in relation to the operation as an</p>
<p style="text-align: right;">Page 19567</p> <p>1 according to that document, you've got it in front of you.</p> <p>2 BRIGADIER CALITZ: Ek het die dokument 3 voor my, mnr die Voorsitter.</p> <p>4 MR BIZOS SC: It is a correct description 5 that he was the overall commander of the operation?</p> <p>6 BRIGADIER CALITZ: Korrek, mnr die 7 Voorsitter.</p> <p>8 MR BIZOS SC: He was removed.</p> <p>9 BRIGADIER CALITZ: Op die 13de, mnr die 10 Voorsitter.</p> <p>11 MR BIZOS SC: By whom?</p> <p>12 BRIGADIER CALITZ: So ver my kennis strek 13 Kolonel Vermaak, ek weet nie deur wie nie. Ek weet Kolonel 14 Vermaak het gerapporteer wie hom weggevat het, ek dra nie 15 kennis nie.</p> <p>16 MR BIZOS SC: Do I understand you 17 correctly that a colonel can overturn the position of a 18 general?</p> <p>19 BRIGADIER CALITZ: As u vir my 20 verduidelik wat u by overturn bedoel?</p> <p>21 MR BIZOS SC: I beg your pardon?</p> <p>22 BRIGADIER CALITZ: Wat bedoel u by 23 overturn, as u net vir my dit kan verduidelik?</p> <p>24 MR BIZOS SC: Remove him from his 25 position.</p>	<p style="text-align: right;">Page 19569</p> <p>1 overall commander from a helicopter?</p> <p>2 BRIGADIER CALITZ: Presies waarvoor dit 3 staan, mnr die Voorsitter, to overall command, die 4 operasie.</p> <p>5 MR BIZOS SC: How could you do that from 6 a helicopter with the communication system not being what 7 it ought to have been?</p> <p>8 BRIGADIER CALITZ: Ek dra nie kennis op 9 daardie stadium, of hy kennis gedra het dat die 10 kommunikasie system nie gewerk het nie.</p> <p>11 MR BIZOS SC: In truth and in fact he was 12 really removed from any authority in relation to the 13 command of the operation on the ground.</p> <p>14 BRIGADIER CALITZ: Ek stem nie saam met u 15 nie, mnr die Voorsitter.</p> <p>16 MR BIZOS SC: Well, what could he do?</p> <p>17 BRIGADIER CALITZ: Ekskuus tog, mnr die 18 Voorsitter?</p> <p>19 MR BIZOS SC: If a colonel told him to 20 withdraw for his own safety what could –</p> <p>21 CHAIRPERSON: No, no, no, -</p> <p>22 MR SEMENYA SC: No, no, Chair.</p> <p>23 CHAIRPERSON: Mr BIZOS, you're now busy 24 conflating the 13th and the 16th. On the 13th the colonel 25 came to him and said, you must remove for your own safety,</p>

		Page 19570	Page 19572
1	I take it technically he could have said, well, never mind		
2	that, I'm staying here, but he accepted the proposal of		
3	Vermaak and left. On the 16th a different proposition		
4	altogether, he was in the JOC, he got into the helicopter		
5	for the reasons which he explained, but the operation as		
6	such was over on the 13th in any event or generally		
7	speaking. I think there may have been a bit of a pursuit		
8	still going on, but most of the operation was over on the		
9	13th and he at that stage went away in a helicopter, is that		
10	right, but we must keep the 13th separate from the 16th.		
11	MR BIZOS SC: Before you left scene 1 and		
12	before General Mpembe went onto the helicopter where was		
13	General Mpembe on the 16th? Was he near you when you were		
14	the operational commander of scene 1?		
15	BRIGADIER CALITZ: Ek dra nie kennis nie,		
16	mnr die Voorsitter.		
17	MR BIZOS SC: Well, presumably if he was		
18	the overall commander and you were operational commander		
19	didn't you have to associate with one another for the		
20	peaceful resolution of the issues? Don't you know, did you		
21	see him there at all?		
22	BRIGADIER CALITZ: Ek het hom glad nie		
23	gesien nie, mnr die Voorsitter.		
24	MR BIZOS SC: If he was there where would		
25	you have expected him to be as General Mpembe, hiding		
		Page 19571	Page 19573
1	somewhere in the crowd of policemen or to be prominent?		
2	BRIGADIER CALITZ: Mnr die Voorsitter, as		
3	oorhoofse bevelvoerder kan hy, dit is sy prerogatief waar		
4	hy op daardie stadium wil wees, definitief nie hiding		
5	amongst the crowd nie. Dit sou belaglik wees.		
6	MR BIZOS SC: What time did you leave		
7	scene 1 again?		
8	BRIGADIER CALITZ: Ek dra nie kennis nie,		
9	mnr die Voorsitter.		
10	MR BIZOS SC: Try and give us an		
11	approximate time?		
12	BRIGADIER CALITZ: Mnr die Voorsitter, ek		
13	het gister gevra, Advokaat Le Roux-hulle het dit in hulle,		
14	ek het daardie dokument ongelukkig nie voor my nie, hulle		
15	het gesê ten tye van die volley van vuur het my voertuig		
16	vorentoe beweeg. Ek dink hulle het gekyk na die document,		
17	ek sien sy is vandag nie hier nie, as ek, - ek praat		
18	heeltemal onder korreksie, 11:57, 11, iets in daardie, net		
19	voor die volley of fire het my voertuig vorentoe beweeg, -		
20	ag, 16 -		
21	CHAIRPERSON: It wasn't 11 anything, it -		
22	BRIGADIER CALITZ: 15:15.		
23	CHAIRPERSON: It was around about 10 to 4		
24	but Mr Chaskalson has got these things on his fingertips.		
25	What time was the volley, the fusillade, Mr Chaskalson?		

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1 opdrag gegee en vandaar af beweeg na hierdie, so dit sal 2 tussen 15:40 en 15:53 wees.	1 If he means near koppie 1 in the area opposite, near that 2 mast and so on, then the answer would of course be 3 different. Mr Bizos, what do you want from him?
3 MR BIZOS SC: Yes, for my benefit could 4 you please tell me how many hours or minutes did you spend 5 at scene 1 on the 16th?	4 MR BIZOS SC: Let me put the question, 5 during the 16th did you see General Mpembe anywhere near you 6 wherever you may have been on the 16th? Did you see him at 7 all anywhere near scene 1, at scene 1, take your choice, 8 did you see General Mpembe during the course of the 16th?
6 BRIGADIER CALITZ: Vandat ek die opdrag 7 gegee het om die draad uit te gooi, 15:40 tot by 15:53:50, 8 as hulle sê ek het beweeg sal dit wees 10, 13 minute, as ek 9 na die tyd kyk en ek is reg.	9 CHAIRPERSON: I take it you're excluding 10 seeing him at the JOC?
10 MR BIZOS SC: So how much time is that? 11 BRIGADIER CALITZ: Ek het nou net gesê 13 12 minute.	11 MR BIZOS SC: No, the JOC met in a 12 building some distance away, I don't mean there.
13 MR BIZOS SC: 13 minutes, is that the 14 only time that you spent on scene 1 the whole day?	13 CHAIRPERSON: No, what you mean is –
15 BRIGADIER CALITZ: Nee, mnr die 16 Voorsitter, ek wou antwoord op die whole day. Mnr die 17 Voorsitter het vir my verduidelik dat u is besig met die 18 toneel, so die whole day is nie wat ek verstaan het die 19 vraag was nie.	14 MR BIZOS SC: I mean –
20 MR BIZOS SC: How much time did you spend 21 at or near scene 1 the whole day?	15 CHAIRPERSON: What you mean is –
22 CHAIRPERSON: Mr Bizo, near is a bit 23 ambiguous, that's the trouble. May I intervene and just 24 ask the same question in a different way? We here in the 25 Commission talk about scene 1 as being the place where the	16 MR BIZOS SC: Where, in the veld? 17 CHAIRPERSON: What you mean is, in the 18 veld opposite koppie 1, at what we call scene 1, near 19 koppie 2 or near koppie 3 which is what we call scene 2, 20 anywhere there?
	21 MR BIZOS SC: Anywhere there? 22 CHAIRPERSON: Did you see General Mpembe? 23 MR BIZOS SC: This is why I said at or 24 near, Mr Chairman. 25 BRIGADIER CALITZ: Nie by, at or near
Page 19575	Page 19577
1 first shootings took place and that's the place in the 2 vicinity of the kraal, or actually between the kraal and 3 that shack, the corrugated iron shack. At any point in the 4 day before you gave the order for the uncoiling of the wire 5 were you there?	1 toneel 1, scene 1, ook nie by koppie 3, scene 2 nie, nee, 2 mnr die Voorsitter.
6 BRIGADIER CALITZ: Dit is korrek, mnr die 7 Voorsitter.	3 MR BIZOS SC: You never saw him? 4 BRIGADIER CALITZ: Ek het hom nie gesien 5 nie, nee, mnr die Voorsitter.
8 CHAIRPERSON: Were you there at any point 9 during the day, before you gave the order for the wire to 10 be uncoiled, the barbed wire to be uncoiled, were you at 11 scene 1?	6 MR BIZOS SC: So he was the overall 7 commander in name only in relation to the - 8 [11:16] MR SEMENYA SC: Objection, objection, 9 Chair.
12 MR SEMENYA SC: Chair, maybe can we 13 distinguish between scene 1 and koppie 1?	10 MR BIZOS SC: On the 16th. 11 MR SEMENYA SC: Objection, Chair. This
14 CHAIRPERSON: I tried to explain to him 15 what scene 1 is. Scene 1 is the place between the kraal 16 and that, there is a corrugated iron shack where the 17 shooting took place, the first fusillade took place at 18 15:57, that's what we call scene 1 in this Commission. 19 Scene 2 of course is the place in the vicinity of koppie 3, 20 that's a different matter, but the evidence was that, he 21 explained at the time, before 15:50 in a different 22 position, near the mast which we see on the photographs, 23 opposite koppie 1 and there were negotiations and various 24 things happened thereafter. Now Mr Bizo talked about 25 scene 1, I take it he means scene 1 as I have defined it.	12 is very surprising to us because even the expert witness 13 White says there was nothing wrong in being overall 14 commander – 15 CHAIRPERSON: Yes, I know that but 16 that's not objecting to the question. The question is 17 asked the witness can give an answer to it. I think the 18 answer is pretty obvious but let's see what the answer is, 19 I don't think you can object to it. Would you agree with 20 the proposition that General Mpembe who was the overall 21 commander most of the time was in the JOC and thereafter 22 left the JOC and went into a helicopter and was in a 23 helicopter circling above and able to communicate if he 24 wished subject to certain problems with the radio, but 25 generally speaking able to communicate if he considered it

	Page 19578		Page 19580
1 necessary or if someone asked him for advice would you		1 operation on the ground, do you agree with that?	
2 regard it as correct to say that he had, was no longer in		2 BRIGADIER CALITZ: Korrek, mnr die	
3 overall command?		3 Voorsitter.	
4 BRIGADIER CALITZ: Nee, glad nie, mnr die		4 MR BIZOS SC: Who was responsible for the	
5 Voorsitter.		5 requirements of the police force on the day out of these	
6 MR BIZOS SC: During the same period		6 commanders, who was responsible, that was, that what was	
7 chief of staff Major-General Annandale was supposed to		7 needed was provided?	
8 coordinate the running of the operation by managing the JOC		8 BRIGADIER CALITZ: Dit hang af van watse	
9 with the designated role, role players representing each		9 sense die vraag gestel is, requirements rondom?	
10 field. Did you see General Annandale outside the JOC		10 MR BIZOS SC: Well let us come down to	
11 office on the 16th?		11 the, there were 4 000 rounds of live ammunition, who	
12 BRIGADIER CALITZ: Nee, mnr die		12 decided that 4 000 rounds of ammunition were needed, which	
13 Voorsitter. Ook nie by een van die twee tonele as ons weer		13 of the commanders decided that?	
14 na die tonele verwys nie.		14 BRIGADIER CALITZ: Ek dra nie kennis, mnr	
15 MR BIZOS SC: And Brigadier Pretorius who		15 die Voorsitter.	
16 was to manage the information flow and record, record		16 MR BIZOS SC: I beg your pardon.	
17 keeping in the JOC did you see him anywhere near –		17 BRIGADIER CALITZ: Ek sê ek dra nie	
18 CHAIRPERSON: Brigadier Pretorius is a		18 kennis nie, mnr die Voorsitter.	
19 lady, Mr Bizos.		19 MR BIZOS SC: But you were in charge of	
20 MR BIZOS SC: I beg your pardon. I'm		20 the operation. Surely you will be the person that would	
21 sorry, Mr Chairman?		21 have been consulted how many rounds of live ammunition do	
22 CHAIRPERSON: Brigadier Pretorius is a		22 we need.	
23 lady, you said did you see him referring to Brigadier		23 BRIGADIER CALITZ: Ek stem nie saam, mnr	
24 Pretorius.		24 die Voorsitter.	
25 MR BIZOS SC: Yes.		25 CHAIRPERSON: No, Brigadier, it's not as	
	Page 19579		Page 19581
1 CHAIRPERSON: Brigadier Pretorius is a		1 simple as that. Somebody must have said look we better	
2 lady.		2 make sure that there is enough ammunition because shots may	
3 MR BIZOS SC: Oh I see. Her, I beg your		3 be fired and we don't want people to run out of ammunition	
4 pardon. Yes, thank you, Mr Chairman. Did you see her at		4 as I think they did in an early incident, that Colonel	
5 all?		5 Vermaak wrote a letter about, you remember. Somebody must	
6 BRIGADIER CALITZ: Mnr die Voorsitter, as		6 have said we've got to make sure they've got enough	
7 die forward holding area is near scene 1 dan is die		7 ammunition. Now we, so presumably that person said we	
8 antwoord ja.		8 better send them 4 000 rounds of ammunition so that they've	
9 MR BIZOS SC: And General Naidoo who was		9 got enough. Is that right, would that, would one person	
10 to manage the reserve and support forces kept in the		10 have made that decision?	
11 forward holding area releasing resources as required by		11 BRIGADIER CALITZ: Nee, mnr die	
12 their operational command, did you see him around?		12 Voorsitter, rondom die 4 000 rondtes wie daardie opdrag	
13 BRIGADIER CALITZ: Ja, mnr die		13 gegee het dra ek nie kennis nie.	
14 Voorsitter.		14 CHAIRPERSON: No, no I'm not asking you	
15 MR BIZOS SC: Was he there with you		15 that. I'm asking you would one person have made that	
16 throughout the period that you were there?		16 decision? It wasn't, it didn't happen that one person said	
17 BRIGADIER CALITZ: Nee, mnr die		17 we better give the STF some ammunition and give them so	
18 Voorsitter.		18 much. Someone else said we'd better make sure the NIU have	
19 MR BIZOS SC: When did you see him and		19 got ammunition we'll give them so much. In other words was	
20 what was he doing?		20 it a decision by one person that there will be 4 000 rounds	
21 BRIGADIER CALITZ: Ek het hom gesien op		21 of ammunition which will have to be provided or was it a	
22 koppie 3, toneel 2 waar hy dan bevel gevat het oor die		22 combination of decisions by a number of people, that's the	
23 persone saam met hom op forward holding area 1.		23 question.	
24 MR BIZOS SC: Then Brigadier Calitz		24 BRIGADIER CALITZ: Dit kan al twee wees,	
25 yourself you were to the, to do the coordination of the		25 mnr die Voorsitter. Ek dra nie kennis nie.	

<p style="text-align: right;">Page 19582</p> <p>1 CHAIRPERSON: You can't help us on this 2 point?</p> <p>3 BRIGADIER CALITZ: Ek het vroeër in die, 4 in my getuienis getuig toe ek gevra was rondom dit waarna 5 ek iets, na iets anders verwys het, maar in hierdie geval 6 dra ek nie kennis nie, nee.</p> <p>7 CHAIRPERSON: Perhaps the police can get 8 that information for us, to who made the decision, whether 9 it was one person or a number and who they were.</p> <p>10 MR BIZOS SC: Well –</p> <p>11 CHAIRPERSON: Because it would be 12 interesting to know if it was one person why he or she 13 thought that as many as 4 000 rounds were required but 14 that's a matter we can't deal with, with this witness, he 15 doesn't know.</p> <p>16 MR BIZOS SC: May I suggest that with due 17 respect that we should give this task to the evidence 18 leaders, Mr Chairman.</p> <p>19 CHAIRPERSON: You can, but I mean you 20 just, I've already asked the police team to get the 21 information for us and I suppose if they don't do it 22 promptly the evidence leaders will follow it up. But I 23 have no reason to believe they won't do it promptly. So 24 we've asked, I've asked them, Mr Chaskalson, you want to 25 say something?</p>	<p style="text-align: right;">Page 19584</p> <p>1 instruction?</p> <p>2 BRIGADIER CALITZ: Nee, mnr die</p> <p>3 Voorsitter.</p> <p>4 CHAIRPERSON: You didn't consider it 5 necessary?</p> <p>6 BRIGADIER CALITZ: Nee, mnr die</p> <p>7 Voorsitter.</p> <p>8 MR BIZOS SC: Who would have considered 9 it necessary?</p> <p>10 MR SEMENYA SC: No, Chair, the witness 11 can't be expected to answer a question like that.</p> <p>12 CHAIRPERSON: He says he doesn't know. 13 So he said he didn't do it, he didn't think it necessary, 14 someone else did it, he doesn't know who it is. I don't 15 know if that question you've asked by way of a follow up 16 question is really appropriate in the circumstances.</p> <p>17 MR BIZOS SC: Yes. Well may I appeal to 18 my learned friend if he has objections to speak a little 19 loudly because I can't hear him. But the Commissioner, the 20 Commissioner and other who was the - were you aware that 21 Commissioner Mbombo and Captain Adriaan referred to the 16th 22 as D day.</p> <p>23 MR SEMENYA SC: Chair, the Provincial 24 Commissioner did not use the word D day.</p> <p>25 CHAIRPERSON: Captain Adriaan –</p>
<p style="text-align: right;">Page 19583</p> <p>1 MR CHASKALSON SC: A part of the problem 2 is there doesn't seem to be a single consistent version 3 coming out of the SAPS because the report from Lieutenant 4 Colonel Merafe was that the instruction came from Brigadier 5 Calitz, Brigadier Calitz has now denied that. So I don't 6 think that this is something that can come from the police. 7 I think it's something that the evidence leaders need to do 8 their best to investigate.</p> <p>9 CHAIRPERSON: Well I reverse my request, 10 withdraw my request to the SAPS team and I ask the evidence 11 leaders as you suggest Mr Bizo to follow this up.</p> <p>12 MR BIZOS SC: Vehicles to transport 13 corpses should be made available for the morning of the 14 16th.</p> <p>15 BRIGADIER CALITZ: Ek dra nie kennis wie 16 daardie opdragte gegee het nie.</p> <p>17 MR BIZOS SC: Who would know? Who would 18 know that corpses would be needed as a result of any 19 actions that may have been, may be taken either by the 20 police or the crowd that vehicles to transport corpses from 21 the scene, who made that decision if you the operational 22 commander didn't know anything about it?</p> <p>23 BRIGADIER CALITZ: Ek dra nie kennis wie 24 daardie opdrag gegee het op daardie dag nie.</p> <p>25 CHAIRPERSON: You didn't give such an</p>	<p style="text-align: right;">Page 19585</p> <p>1 MR BIZOS SC: Or words to that effect 2 that today we will finish this business, were her words. 3 I'm sorry if I -</p> <p>4 CHAIRPERSON: Sorry let's not talk over 5 each other. The record will be a mess. The, you are 6 asking about the remarks made by the Provincial 7 Commissioner at her press conference at 09:30 and you're 8 also referring I think to a briefing to the police 9 thereafter by Captain Adriaan. I think Captain Adriaan used 10 the word D day. What the Provincial Commissioner said was, 11 she had mentioned the possibility, I'm not sure she called 12 it possibility, the probability of arms being laid down 13 voluntarily but she said that if it didn't happen then 14 whatever happened the matter would be dealt with, would be 15 disposed of that day, namely the Thursday. That's what 16 he's referring to. The question he wants to know did you 17 know about that?</p> <p>18 BRIGADIER CALITZ: Nee, op daardie 19 stadium van die dag nie, nee.</p> <p>20 MR BIZOS SC: Have you heard the 21 expression D day before?</p> <p>22 BRIGADIER CALITZ: Before, bedoel u voor 23 die -</p> <p>24 MR BIZOS SC: No, generally speaking. 25 You know you're a senior officer -</p>

		Page 19586	Page 19588
1	BRIGADIER CALITZ:	Oh generally speaking	1 CHAIRPERSON: Did you hear that said,
2	dit is korrek, mnr die Voorsitter.		2 you were at the meeting?
3	MR BIZOS SC:	You have heard it? What	3 BRIGADIER CALITZ: Ja, nee, ek was.
4	does it mean?		4 CHAIRPERSON: You were the operational
5	BRIGADIER CALITZ:	D dag in my terme is	5 commander, I take it you were listening very carefully to
6	dat vandag gaan daar opgetree word soos dit stop vandag dit		6 what the Chairman said.
7	is D dag.		7 BRIGADIER CALITZ: Dit is korrek, mnr die
8	MR BIZOS SC:	In what sort of activity is	8 Voorsitter.
9	it used D Day?		9 CHAIRPERSON: Did you hear it?
10	BRIGADIER CALITZ:	Mnr die Voorsitter,	10 BRIGADIER CALITZ: Nee, ek kan glad nie
11	nee ek kan nie regtig in watter aktiwiteit nie. Dit kan in		11 recall dat ek dit op daardie dag, soos ek sê ek het in, na
12	enigets plaasvind. Vandag is die dag wat -		12 die tyd op geskrewe notas het ek vir die eerste keer bewus
13	MR BIZOS SC:	Let's be honest with one	13 geword van daardie woord. Mnr die Voorsitter, as ek dalk
14	another. It really means the day on which a battle would		14 mag net op my vorige vraag, toe ek besig was of hoe
15	take place.		15 verskillende persone dit sien. Ek kan maar net verwys na
16	BRIGADIER CALITZ:	Mnr die Voorsitter, ja	16 die sokker wêreld beker in 2010, het ons ook gepraat D
17	ek weet nie, ek dink dit is maar hoe elke persoon sy		17 minus 1, D minus 5, D minus 10. So dus dui die dae aan
18	aflleiding maak van hoe jy dit sien. Ek sien dit nie net as		18 voor die D day.
19	'n battle verwys na oorlog of daarna nie nee.		19 CHAIRPERSON: Metaphorical use.
20	CHAIRPERSON:	- language that's correct.	20 BRIGADIER CALITZ: Dit is wat ek net wou
21	I think D day very often means decisive day, the day where		21 getuig of op, hoe ek dit sien, ja.
22	a decisive event will take place. Some operation will take		22 MR BIZOS SC: And who, were you party to
23	place, is intended to target to take place on a particular		23 a decision that the matter had to be dealt with on the 16th
24	day and people would as a matter of ordinary language call		24 and not postponed to any other day because that was going
25	that D day. I'm not sure that D day necessarily means the		25 to be D day.
		Page 19587	Page 19589
1	day of the battle.		1 BRIGADIER CALITZ: As jy praat waarvan ek
2	MR BIZOS SC:	Used metaphorically but I'm	2 teenwoordig was, was dieoggend van die 6 uur vergaderings
3	usually carefully by looking it up in the dictionary, Mr		3 waar ons dan besluit het om oor te gegaan het na fase 2
4	Chairman, if I remember correctly D-day is a military term		4 toe. Dit is wat bespreek is en dit is wat ons gedoen het.
5	on which the day on which the battle will begin and it's		5 MR BIZOS SC: I want to go back because I
6	called D-day because the generals don't want to fix a date		6 didn't have the reference to the question of resources.
7	so that the enemy can hear of the day. They say the D-day		7 CHAIRPERSON: Before you go back to
8	is going to be the day on which our battle is going to take		8 resources, can I ask a question relating to the topic we've
9	place.		9 just been covering.
10	CHAIRPERSON:	That may be so but of	10 MR BIZOS SC: Of course, Mr Chairman.
11	course it's also used metaphorically and in the sense that		11 CHAIRPERSON: Do I understand you to say
12	I referred to and whether it was used metaphorically or in		12 that you were not aware until a relatively late stage, I'll
13	a military sense by Captain Adriaan is not clear, if he		13 define relatively late stage in a moment, you were not
14	comes, when he comes we can ask him. But of course that		14 aware until a relatively late stage that the 16th had been
15	phrase was used earlier at the JOCCOM meeting at 6 o'clock		15 chosen to be the day when decisive action, this positive
16	in the morning which you attended I think, Brigadier,		16 action was to be taken to deal with the problem of the
17	didn't you?		17 strikers on the koppie? Did I understand you correctly?
18	BRIGADIER CALITZ:	Dit is korrek, mnr die	18 BRIGADIER CALITZ: Ja, dit is korrek, mnr
19	Voorsitter.		19 die Voorsitter.
20	CHAIRPERSON:	According to the	20 CHAIRPERSON: Thank you, when did you
21	manuscript notes the first speaker who I suspect was Major-		21 hear, when did you learn for the first time that such a
22	General Annandale used that phrase, did you hear it?		22 decision had been taken?
23	BRIGADIER CALITZ:	Ek dink ek het van die	23 BRIGADIER CALITZ: Met die voorligting by
24	notas bekend, bewus van een van die persone wat in hand		24 forward holding area 1 tydens die voorligting 14:30.
25	geskrewe notas gemaak het.		25 CHAIRPERSON: That was 2:30 in the

<p style="text-align: right;">Page 19590</p> <p>1 afternoon?</p> <p>2 BRIGADIER CALITZ: Dit was 2:30 in the</p> <p>3 afternoon on the 16th.</p> <p>4 CHAIRPERSON: Alright, the evidence is</p> <p>5 that that the [inaudible] announced to certain persons who</p> <p>6 had remained present after the meeting of the National</p> <p>7 Management Forum on the Wednesday, the evening of the 15th</p> <p>8 whether that was a continuation of the management forum is</p> <p>9 a matter of controversy but we would assume for the sake of</p> <p>10 this that it wasn't. The provincial commissioner announced</p> <p>11 that and those present who were the other provincial</p> <p>12 commissioners and the national commissioner and someone</p> <p>13 else from head office endorsed the proposal. Thereafter</p> <p>14 the provincial commissioner made a number of telephone</p> <p>15 calls, according to the phone records, to people at</p> <p>16 Marikana including General Annandale, General Naidoo I</p> <p>17 think General Mpembe, I don't recall a phone call to you.</p> <p>18 If, obviously it's an if, it's a hypothetical question to</p> <p>19 which an objection might be taken and overruled, but if the</p> <p>20 provincial commissioner communicated to any of the persons</p> <p>21 to whom she spoke on the Wednesday night in those phone</p> <p>22 calls that this was her decision, a proposal which had been</p> <p>23 endorsed by those present at the meeting the question</p> <p>24 arises whether any of them would have considered it</p> <p>25 necessary to communicate that to you as the operational</p>	<p style="text-align: right;">Page 19592</p> <p>1 thereafter by the Provincial Commissioner to high-ranking</p> <p>2 officers at Marikana. This witness says that he heard for</p> <p>3 the first time at half past 2 that, the next day, of what</p> <p>4 had been decided in effect. So that's clear now beyond</p> <p>5 debate, I would think. Mr Bizos, if you want to carry on?</p> <p>6 MR BIZOS SC: Yes, I'm going to –</p> <p>7 CHAIRPERSON: You were moving to another</p> <p>8 topic, I think.</p> <p>9 MR BIZOS SC: I want to refer back, you</p> <p>10 remember that I asked you what your functions were as the</p> <p>11 operational commander in relation to resources? You</p> <p>12 remember that?</p> <p>13 BRIGADIER CALITZ: Korrek, mnr die</p> <p>14 Voorsitter.</p> <p>15 MR BIZOS SC: Yes, I missed at the time</p> <p>16 that I asked you that question what I knew to be there, but</p> <p>17 obviously didn't realise it was what I had already referred</p> <p>18 to in paragraph 67 of exhibit L where it says under</p> <p>19 commander of the reserve and support forces, Major General</p> <p>20 Naidoo, role, "Manage the reserve and support forces kept</p> <p>21 at a forward holding area; releasing resources as required</p> <p>22 by the operational commander." That seems to identify you</p> <p>23 as that you had something to do with resources, or am I</p> <p>24 wrong?</p> <p>25 BRIGADIER CALITZ: Dit was wel so en dit</p>
<p style="text-align: right;">Page 19591</p> <p>1 commander? Whether they did or didn't consider the matter</p> <p>2 your evidence is clear they never told you that. The first</p> <p>3 time you heard such a decision had been taken was at 2:30</p> <p>4 on the Thursday afternoon is that clear?</p> <p>5 BRIGADIER CALITZ: Dit is duidelik.</p> <p>6 CHAIRPERSON: Right, thank you.</p> <p>7 MR SEMENYA SC: Chair, Chair, you make</p> <p>8 the comment that the evidence is, we have heard a statement</p> <p>9 of the PC about giving that word of endorsement. I think</p> <p>10 the record must reflect that to.</p> <p>11 CHAIRPERSON: Well I was quoting from</p> <p>12 the resolution. If the wording of the resolution was</p> <p>13 inexact then, we will see that evidence in due course, it</p> <p>14 may be that the phrase has to be, the words I used would</p> <p>15 have to be amended in the light of what you've said.</p> <p>16 [11:35] But what is clear is according to the statements</p> <p>17 we've received is the Provincial Commissioner communicated</p> <p>18 her decision, and you in fact confirmed that yourself, Mr</p> <p>19 Semenza, at the meeting, or at the venue where the National</p> <p>20 Management Forum meeting had been held on the Wednesday</p> <p>21 evening, and those present then agreed that if necessary</p> <p>22 extra resources that were required would be made available.</p> <p>23 That we know. The technical description to that</p> <p>24 interchange may be a matter for debate, but I summarise the</p> <p>25 effect of it correctly. A number of phone calls were made</p>	<p style="text-align: right;">Page 19593</p> <p>1 het ook die vorige twee dae gebeur.</p> <p>2 CHAIRPERSON: Those were the resources</p> <p>3 that were under Major General Naidoo's control at the time,</p> <p>4 which presumably means the reserve and support forces.</p> <p>5 BRIGADIER CALITZ: Dit is die reserwe</p> <p>6 Openbare Orde Polisiéringsmagte wat ons kan help –</p> <p>7 CHAIRPERSON: Ja, but your phrase</p> <p>8 "resources" refers to members of the service.</p> <p>9 BRIGADIER CALITZ: Korrek -</p> <p>10 CHAIRPERSON: Police –</p> <p>11 BRIGADIER CALITZ: Korrek, ja.</p> <p>12 CHAIRPERSON: Policemen and women, right?</p> <p>13 BRIGADIER CALITZ: Korrek.</p> <p>14 CHAIRPERSON: And medics and fire-</p> <p>15 fighters and various people of that kind. Is that right?</p> <p>16 He had the fire-fighters and the medics under his control</p> <p>17 too, didn't he?</p> <p>18 BRIGADIER CALITZ: Ja, ek het dit</p> <p>19 verstaan, meer die "reserve forces" wat my kan help, die</p> <p>20 operasionele personeel.</p> <p>21 CHAIRPERSON: The word "resources" then</p> <p>22 refers to all those people. They were under his control</p> <p>23 and if you needed them you would tell him I need the</p> <p>24 police, release them, send them to me, or send them</p> <p>25 somewhere, and they'd have to go. Is that right?</p>

<p style="text-align: right;">Page 19594</p> <p>1 BRIGADIER CALITZ: Die operasionele 2 gedeelte daarvan.</p> <p>3 CHAIRPERSON: Yes.</p> <p>4 MR BIZOS SC: But what about things that 5 they needed, like bullets? Who do they go to for the 6 bullets that they need?</p> <p>7 BRIGADIER CALITZ: Mn die Voorsitter, 8 dit sal elke bevelvoerder self weet as daar persone is wat 9 rondtes kort en daardie bevelvoerder sal dan daardie 10 versoek rig.</p> <p>11 MR BIZOS SC: Now I want to deal with the 12 liability of commanders and I want you to please listen 13 carefully. Military commanders, political leaders and 14 other civilians in position of authority and from a 15 judgment, as soon as a superior has been put on notice of 16 the risk of illegal acts by subordinates, he or she is 17 expected to stay vigilant and to enquire about additional 18 information rather than doing nothing or remaining wilfully 19 blind. There must not be a lack due to diligence in 20 supervising the conduct of subordinates. Do you agree that 21 superior - criminal responsibility imposes a duty to do 22 things if you are a superior officer?</p> <p>23 BRIGADIER CALITZ: As u miskien net die 24 vraag kan herhaal? Die "criminal," ek het nie u mooi 25 gehoor nie.</p>	<p style="text-align: right;">Page 19596</p> <p>1 MR SEMENYA SC: No, Chair, that's not 2 my -</p> <p>3 CHAIRPERSON: No, Mr Bizos, come on; 4 that's not a good point. On the 13th you will remember that 5 General Mpembe left him behind because he went himself, and 6 he conceded that he was functioning both as overall 7 commander and operational commander in the field on the 8 13th, for the reasons he gave, and this witness in fact 9 stayed behind and in fact clearly wasn't involved directly 10 at all in what happened on the 13th -</p> <p>11 MR MPOFU: Chairperson -</p> <p>12 CHAIRPERSON: So at that stage if there 13 was any responsibility in respect of what happened, 14 certainly what happened in relation to General Mpembe, you 15 can't put that responsibility at the door of this witness. 16 General Mpembe was of course functioning as operational 17 commander, but how he could have been responsible for the 18 acts of people who wanted to kill him is something that 19 "gaan my verstand te bowe." But I suggest that question be 20 withdrawn and you proceed to another point.</p> <p>21 MR MPOFU: Chairperson, just factually 22 that is not completely correct. The witness did not stay 23 behind. He went into the Lonmin chopper with Mr Sinclair.</p> <p>24 CHAIRPERSON: No, well he certainly 25 wasn't in the field of engagement at the time.</p>
<p style="text-align: right;">Page 19595</p> <p>1 MR BIZOS SC: Do you accept as a -</p> <p>2 BRIGADIER CALITZ: Miskien net nader -</p> <p>3 MR BIZOS SC: - senior officer, as a 4 senior officer with a specific task in relation to an 5 operation, that you are responsible for the acts of your 6 underlings?</p> <p>7 CHAIRPERSON: Mr Bizos, I don't quite 8 understand the question. If you're asking him - because 9 you use the word "criminal responsibility" - if you're 10 asking him what the law is, and I don't know that I should 11 allow that question; we decide what the law is for the 12 purposes of our report and if there's any litigation 13 thereafter those who are hearing those cases will decide. 14 The witness's views on the law aren't really relevant. I 15 can understand if you want to ask him, do you accept 16 responsibility in the fullest sense as it can be for what 17 the people under you did.</p> <p>18 BRIGADIER CALITZ: Dit wat aan my opgedra 19 is, en ek dink in my vorige getuenis het ek die vier, vyf 20 pligte genoem wat ek voor verantwoordelik is en daarvoor is 21 ek verantwoordelik en ek aanvaar daardie 22 verantwoordelikheid.</p> <p>23 MR BIZOS SC: You've already told us that 24 the threat to the life of a general was a criminal act by 25 people over who you were a commander.</p>	<p style="text-align: right;">Page 19597</p> <p>1 MR MPOFU: Ja, that's also true.</p> <p>2 CHAIRPERSON: Alright, okay. Thank you 3 for that correction. Anyway Mr Bizos, you've heard what I 4 have to say on that. I can understand your arguments which 5 you're going to advance, I'm sure, at the end in great 6 detail as to why this witness is responsible for a number 7 of the things that happened on the 16th, but I think an 8 attempt to make him liable for what happened on the 13th 9 isn't really one that will be dealt with in the same way, 10 and I think you'll be -</p> <p>11 MR BIZOS SC: [Microphone off, inaudible] 12 why does it have to be confined to the 13th if in fact he 13 was one of the operational commanders -</p> <p>14 CHAIRPERSON: I'm sorry, Mr Bizos -</p> <p>15 MR BIZOS SC: - and a crime came to his 16 notice.</p> <p>17 CHAIRPERSON: I'm sorry to interrupt you, 18 but the evidence is that on the 13th in the field, as it 19 were, General Mpembe himself said he was functioning both 20 as overall commander and operational commander. So what 21 happened then is something which he would have been able to 22 deal with in both those capacities, and this witness was 23 not functioning as operational commander at that stage, 24 but -</p> <p>25 MR MPOFU: Chairperson, I'm sorry to do</p>

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<p>1 this, but with respect, I've made two, at least one      2 submission. The one is that this witness was involved on      3 the 13th, albeit in the chopper with Mr Sinclair. But      4 secondly, if this death threat involved General Mpembe you      5 can hardly expect him to be the one who's going to do      6 something about it. He was personally involved, so the      7 next in line was this witness.</p> <p>8 CHAIRPERSON: [Microphone off, inaudible]      9 point for argument. Whether it's good or not we can decide      10 later, but certainly in the helicopter wherever he was, he      11 wasn't in control of the men on the ground and so what the      12 men on the ground were doing was something that he had no      13 control over. But in any event, I can understand the      14 arguments you want to advance in this regard, but I don't      15 know that our time is being profitably used in going down      16 that avenue, investigating that point in relation to what      17 he did or didn't do in relation to the threats, or the plot      18 as it were, against General Mpembe on the 13th, and I don't      19 think that any –</p> <p>20 MR BIZOS SC: We will deal with that –      21 CHAIRPERSON: - any matter within our      22 terms of reference can really be in a valuable fashion      23 dealt with by addressing that issue.      24 MR BIZOS SC: We will deal with the terms      25 of reference in due course, the further terms of reference.</p>	<p>1 Voorsitter.      2 MR BIZOS SC: And you signed it under      3 oath. You took the oath that what you said was correct.      4 BRIGADIER CALITZ: Korrek, mnr die      5 Voorsitter.      6 MR BIZOS SC: And in relation to Tuesday      7 the 14th you say that, in paragraph 7, "A group of 4 500      8 aggressive armed men waving weapons at us." Did you say      9 that?      10 BRIGADIER CALITZ: Ja, ek dink my woorde      11 was "There were approximately four and a half thousand men      12 on the koppie," en dan die volgende sin, "The group was      13 aggressive and waving their weapons at us," ja.      14 MR BIZOS SC: You said that, and you      15 stand by that?      16 BRIGADIER CALITZ: Dit is die inligting      17 op daardie stadium tot my beskikking. Ek het wel daarna 'n      18 "supplementary" gegee.      19 MR BIZOS SC: I know about the      20 supplementary. Is that statement correct?      21 BRIGADIER CALITZ: Tot die inligting tot      22 my beskikking toe, ja.      23 CHAIRPERSON: Mr Bizos, this whole issue      24 about the statement and that paragraph and subsequent      25 paragraphs was dealt with very fully by Mr Budlender in his</p>
Page 19599	Page 19601
<p>1 Have you had any legal training, Brigadier?      2 BRIGADIER CALITZ: As u sê "legal      3 training," waarna verwys u?      4 MR BIZOS SC: Did you attend any law      5 courses?      6 BRIGADIER CALITZ: Nee, mnr die      7 Voorsitter.      8 CHAIRPERSON: I take it as part of your      9 training as a policeman you have, there are courses in such      10 topics as Criminal Law and so on, on which you have to      11 write exams. Isn't that right?      12 BRIGADIER CALITZ: Ja, ja, dit is normale      13 polisie, ja. Ek het dit nou net verstaan –      14 CHAIRPERSON: No, no, no, so in that      15 sense you've studied aspects of the law and probably      16 written exams on them, but legal training of the kind that      17 is received by people who registered for a LLB or a B.Iuris      18 or something of that kind, that's something you haven't      19 had?      20 BRIGADIER CALITZ: Dit is korrek, mnr die      21 Voorsitter.      22 MR BIZOS SC: Yes. Now you made a      23 statement – I'll give you the exhibit number – GGG13, you      24 remember that?      25 BRIGADIER CALITZ: Dit is korrek, mnr die</p>	<p>1 cross-examination.      2 MR BIZOS SC: I'm sorry, I didn't hear –      3 CHAIRPERSON: I say this paragraph and      4 subsequent paragraphs in the statement GGG13 were very      5 extensively dealt with by Mr Budlender, as far as I can      6 recall, in his cross-examination of the witness. So I hope      7 that what you're going to ask won't amount to a repetition      8 of that.      9 MR BIZOS SC: I'm sorry, I was not here,      10 but I will not take a long time because I don't know      11 precisely what Mr Budlender dealt with, but I want to go to      12 a following paragraph and ask him questions –      13 MR BUDLENDER SC: [Microphone off,      14 inaudible]. The microphone I gather is not working. I      15 didn't deal with the [inaudible], I dealt with what was      16 seen on the [inaudible] –      17 CHAIRPERSON: So it wasn't dealt with.      18 Alright, so I withdraw what I said, Mr Bizos. Carry on.      19 MR BIZOS SC: Yes. Thank you.      20 CHAIRPERSON: Please keep it as brief as      21 you can.      22 MR BIZOS SC: And in paragraph 19 you      23 deal with what you said about the 16th of August.      24 BRIGADIER CALITZ: Ja, dit is korrek.      25 MR BIZOS SC: Please turn to paragraph</p>

<p style="text-align: right;">Page 19602</p> <p>1 16.</p> <p>2 BRIGADIER CALITZ: 16 or 19?</p> <p>3 MR BIZOS SC: I beg your pardon, 19,</p> <p>4 paragraph 19 relating to the 16th of August.</p> <p>5 CHAIRPERSON: This was extensively dealt</p> <p>6 with before by Mr –</p> <p>7 MR BIZOS SC: I beg your pardon –</p> <p>8 CHAIRPERSON: - Mr Budlender as I recall,</p> <p>9 so if there's a short little point you want to make I'll</p> <p>10 let you do it because –</p> <p>11 MR BIZOS SC: Yes.</p> <p>12 CHAIRPERSON: - it will probably be</p> <p>13 easier to let you do it than debate it with you.</p> <p>14 MR BIZOS SC: Yes. "The crowd that</p> <p>15 assembled on the koppie was unruly and very aggressive.</p> <p>16 They were all" – and I want to underline all – "armed with</p> <p>17 extremely dangerous homemade and bought weapons which they</p> <p>18 clearly intended using to injure or kill SAPS members.</p> <p>19 They acted as one group and all of them associated</p> <p>20 themselves with the actions of each other. All of them had</p> <p>21 the same intention and goal. Their actions threatened law</p> <p>22 and order and constituted a crime of public violence. They</p> <p>23 disturbed public order and peace." Did you say that?</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, as</p> <p>25 ek net kan versoek, soos u gesê het, hierdie paragraaf 19,</p>	<p style="text-align: right;">Page 19604</p> <p>1 wasn't time to do it. That point was made. There may be</p> <p>2 criticisms which flow from that in relation to the decision</p> <p>3 to act only being communicated to the witness - if his</p> <p>4 evidence on the point is correct - at half past 2 and so</p> <p>5 forth, but that point was fully dealt with already. I</p> <p>6 think you can leave it. I think you'll find that the point</p> <p>7 you're wishing to make was fully covered already.</p> <p>8 MR BIZOS SC: Mr Chairman, I'm sorry that</p> <p>9 I was, I happened not to be here, but I accept that it is</p> <p>10 not necessary to traverse the – except one question. The</p> <p>11 reason why I asked you whether you had any legal training</p> <p>12 was because you seem to be well informed in relation to the</p> <p>13 principle of common purpose, which I found somewhat strange</p> <p>14 because it's quite a difficult concept for well-trained</p> <p>15 lawyers. I just thought I would ask you whether you set</p> <p>16 yourself up as a cognoscenti or a knowledgeable person</p> <p>17 about what common purpose means.</p> <p>18 [11:55] BRIGADIER CALITZ: Ek hoor wat u sê, mnr</p> <p>19 die Voorsitter.</p> <p>20 CHAIRPERSON: I take it that the course</p> <p>21 you did on criminal law for the police exams would have</p> <p>22 covered the doctrine of common purpose.</p> <p>23 BRIGADIER CALITZ: Dit is so, mnr die</p> <p>24 Voorsitter, asook die jare se openbare orde polisiëring,</p> <p>25 dit is waarmee ons werk.</p>
<p style="text-align: right;">Page 19603</p> <p>1 ek het sin by sin het ek verduidelik wat ek daarby bedoel</p> <p>2 het aan mnr Budlender, en ek dink daarna is dit ook</p> <p>3 toegelaat met Adv Ntsebeza waar ek dit in detail –</p> <p>4 CHAIRPERSON: This was extensively –</p> <p>5 BRIGADIER CALITZ: - bespreek het. So ek</p> <p>6 dink dis klaar op rekord, as ek dit mag versoek.</p> <p>7 CHAIRPERSON: This was extensively</p> <p>8 covered and a number of points were put to him as to</p> <p>9 whether that statement related to everybody, all 3 000, or</p> <p>10 only related to the militant group and so on. That field</p> <p>11 has been ploughed and re-ploughed. I don't think it</p> <p>12 appropriate for you to try to plough it a third time</p> <p>13 because I don't think you'll add, if I may so say with</p> <p>14 respect, it's likely to take the matter any further.</p> <p>15 MR BIZOS SC: I don't know whether it was</p> <p>16 put or not. Section 10(2) of the Standing Order require</p> <p>17 you, "the operational commander, to personally brief all</p> <p>18 members in the command structured, ensure that all members</p> <p>19 in the command structure communicate the objectives of the</p> <p>20 operation clearly to all members deployed for the event,</p> <p>21 and instruct all commanders or section leaders to furnish</p> <p>22 detailed written plans for their specific tasks."</p> <p>23 CHAIRPERSON: That was dealt with as well</p> <p>24 previously and the point was taken that in the</p> <p>25 circumstances it was not practical to do that because there</p>	<p style="text-align: right;">Page 19605</p> <p>1 MR BIZOS SC: Thank you for that, it may</p> <p>2 be an explanation which we have to accept but I want to</p> <p>3 turn to the terms of reference other than the one issue</p> <p>4 that we have dealt with.</p> <p>5 CHAIRPERSON: Sorry to interrupt you, Mr</p> <p>6 Bizos, at one stage you were going to take us to scene 2</p> <p>7 just before we adjourned for tea.</p> <p>8 MR BIZOS SC: Oh yes, yes.</p> <p>9 CHAIRPERSON: But –</p> <p>10 MR BIZOS SC: Let me –</p> <p>11 CHAIRPERSON: You must do your cross-</p> <p>12 examination the way you wish obviously but –</p> <p>13 MR BIZOS SC: Yes, let me deal with scene</p> <p>14 2 and come back to the –</p> <p>15 CHAIRPERSON: I would have thought the</p> <p>16 point that you were talking about a moment ago is something</p> <p>17 you do near the end by way of a sort of general gathering</p> <p>18 of material.</p> <p>19 MR BIZOS SC: Yes. I'll deal with scene</p> <p>20 2 –</p> <p>21 CHAIRPERSON: If it seems appropriate</p> <p>22 now, but it's your cross-examination –</p> <p>23 MR BIZOS SC: I'll deal with scene 2, Mr</p> <p>24 Chairman. Now, the koppie in which people gathered, what</p> <p>25 is referred to as scene 2, has rocks, bushes, fairly</p>

	Page 19606	Page 19608
1	difficult terrain when we inspected it. The people that ran to this koppie obviously did so to use it as a place of refuge, would you agree?	1 weggehardloop van – weggevlug van die aanval op hulle.
2		2 That's his point. Now do you agree with it or not?
3		3 BRIGADIER CALITZ: In principle kan ek
4	BRIGADIER CALITZ: Mnr die Voorsitter, ek dink dit is omtrent presies die woorde wat Adv Chaskalson met my deurgegaan het, die terrein van die koppie, hoe dit daar gelyk het en beweringe dat die mense daar weggekruipt het, so ek sal maar net verwys na my antwoorde wat ek dan op daardie stadium gegee het.	4 dan sê nie, mnr die Voorsitter, dit was net 'n uiteendryfaksie. Dieselfde sal ek sê het met die mense na die noordwestelike rigting waar die meerderheid weggehardloop het, dit was maar net 'n scattered, dit is maar net die volgende plek waar die persone dan heen gegaan het.
5	MR BIZOS SC: Just repeat it for my benefit please, what your answer was.	5
6		6
7	BRIGADIER CALITZ: Ek het gesé op daardie stadium dat dit is 'n koppie waarnatoe die persone beweeg het. Die groter groep het dan ook na die noordwestelike rigting beweeg en dit is waarnatoe ek beweeg het en ons het wel te kenne gegee dat daar bosse en klippe was en my antwoord daarop was dat ek het die waterkanon in daardie rigting gestuur. Ek dink die woorde wat ons toe gebruik het is om hulle uit te flush, met ander woorde om voort te gaan met die uiteendryfaksie. Dit is hoekom ek die waterkanon in daardie rigting gestuur het.	7
8	MR BIZOS SC: It was not a place which they chose as a convenient place to attack the police.	8
9	MR SEMENYA SC: I don't understand how the witness can know -	9
10		10 MR BIZOS SC: Please confine yourself to the koppie itself. People went there to hide because of what happened at scene 1. Do you agree with that?
11		11
12		12 BRIGADIER CALITZ: Ek sal sê dit is 'n moontlikheid, mnr die Voorsitter.
13		13
14		14 MR BIZOS SC: Yes, because if people went there in order to attack the police, they would not have chosen a place in which it was difficult for them to move.
15		15 They went there in order to hide away from the police.
16		16
17		17 BRIGADIER CALITZ: Ek kan nie saam met u stem nie, mnr die Voorsitter.
18		18
19		19 MR BIZOS SC: I'm sorry, I didn't hear what you said?
20		20
21		21 BRIGADIER CALITZ: Ek sê ek kan nie saam met u stem nie, mnr die Voorsitter.
22		22
23		23 MR BIZOS SC: Why not?
24		24
25		25
	Page 19607	Page 19609
1	MR BIZOS SC: A place of refuge.	1 BRIGADIER CALITZ: Die redes wat ek vir u
2	MR SEMENYA SC: - the mental state of those -	2 gegee het hoekom ek gedink het –
3		3 MR BIZOS SC: What are the reasons?
4	CHAIRPERSON: No, Mr Semenya, he is asking his opinion, whether he agrees with the proposition.	4 BRIGADIER CALITZ: Ek het dit reeds genoem in die vorige vraag –
5	I don't think you can object to it. Let's see what the answer is. If he can't answer it, he'll say so. what Mr Bizos is suggesting to you, regard being had to the terrain, it wasn't a place from which Mr Bizos suggests they, it appears that the strikers were intending to launch an attack against the police. It looks more like a place to which they ran by way of taking refuge. We know they'd moved there and he's suggesting to you that it was a place of refuge rather than a launching pad for an attack. Do you agree with that or don't you agree or are you unable to comment?	5
6		6 MR BIZOS SC: Please repeat them.
7		7 CHAIRPERSON: I think you should repeat the reasons. It'll help us to move forward.
8		8
9		9 BRIGADIER CALITZ: Ek sal dit weer herhaal, mnr die Voorsitter. Ek het gesé ek dink dit was die volgende plek waarheen die persone beweeg het na die uiteendryfaksie. U stel dit as 'n plek waar hulle net weggekruipt het en waarvan hulle nie 'n aanval kon loods nie. Ek dink u woorde was omdat dit difficult vir hulle was om te beweeg. Ek stem glad nie daarmee saam nie. 'n Aanval kon daaruit ook geloods gewees het. Dit is die gedeelte, as ek miskien kan verduidelik –
10		10
11		11
12		12
13		13
14		14
15		15
16		16
17		17
18	BRIGADIER CALITZ: Nee, ek stem nie saam nie, mnr die Voorsitter, ek dink dis maar net die naaste plek waar hulle heen gehardloop het in daardie rigting.	18 MR BIZOS SC: Well, what I am going to put to you is this, that the place that they chose to run to was a confined space. It wasn't an open space, do you agree with that?
19		19
20	CHAIRPERSON: Mr Bizos is suggesting to you, you see they ran there as you say but they ran there to get away from all the shots that were being fired at them at scene 1 and the further actions that I think took place at koppie 2. So it looks like, he says, like a place to which they had taken refuge, skuiling gesoek daarso,	20
21		21
22		22 BRIGADIER CALITZ: Dit was nie 'n oop spasie nie, u is korrek.
23		23
24		24 MR BIZOS SC: Did you consider, as the operational commander, to use your megaphone? Did you have
25		25

	Page 19610	Page 19612
1 one?		
2 BRIGADIER CALITZ: Die voertuie het 'n		1 MR BIZOS SC: Whenever, you were the
3 public address system wat ek gehad het.		2 operational commander. What may have happened before, your
4 MR BIZOS SC: Right. If it was a		3 duty, constitutional duty was not – was to avoid the
5 confined place, did you have sufficient members of the		4 killing of people. If anything happened before, as soon as
6 police force to surround at least the easy entrance and the		5 you arrived as the operational commander, say stop
7 exit portions, the way I remember it, and announce, "We		6 shooting, surround them, let them come out one by one by
8 have surrounded you, put down your arms one by one and come		7 dropping their arms. Did you take any such step? If not,
9 through these passages and we will arrest you," or have		8 why not?
10 said that, come out of it or otherwise we may do this or		9 BRIGADIER CALITZ: Dit is korrek, mnr die
11 the other. Did you give any, consider giving any such		10 Voorsitter.
12 warning to the people that I say sought refuge in the		11 MR BIZOS SC: What is correct?
13 koppie?		12 BRIGADIER CALITZ: Wat u my gevra het.
14 BRIGADIER CALITZ: Mnr die Voorsitter,		13 MR BIZOS SC: No, the question was did
15 die voorligting was aan die bevelvoerders gegee en die papa		14 you take any such step, yes or no?
16 Nyalas soos hulle vorentoe beweeg het om dan voort te gaan		15 BRIGADIER CALITZ: Ek het gesê dit is
17 – u sal onthou dit is 'n opvolg van 'n dispersion action.		16 korrek, mnr die Voorsitter.
18 Met ander woorde daar was klaar opgetree en hierdie was 'n		17 MR BIZOS SC: So you say you did take
19 opvolg, met ander woorde van die uiteendryfaksie. So die		18 that step?
20 voorligting was aan die bevelvoerders gegee om dan voort te		19 BRIGADIER CALITZ: Sodra dit tot my
21 gaan met die uiteendrywing en dit wat u nou gesê het is,		20 kennis gekom het dat die persone daar was het ek opdrag
22 kan deel vorm van die uiteendryfaksie.		21 gegee, ja.
23 MR BIZOS SC: You did not give them an		22 MR BIZOS SC: What did you say on the
24 opportunity to stop hiding and surrender themselves,		23 public address system for the people to hear?
25 putting their arms down. No such opportunity was given to		24 BRIGADIER CALITZ: Nee, mnr die
		25 Voorsitter, ons beweeg nou terug na die public address
1 them.	Page 19611	Page 19613
2 BRIGADIER CALITZ: Ek stem nie saam nie,		1 system toe. Ek is – die goed is ook reeds met Adv
3 mnr die Voorsitter.		2 Chaskalson deurgegaan, ek weet nie of ek net kan verwys na
4 MR BIZOS SC: Well, did you say this is a		3 my getuenis nie.
5 course for you to follow or did you not say anything to		4 CHAIRPERSON: No – no, there is a
6 them and send in men with sharp ammunition to kill them?		5 repetition aspect but – sorry to interrupt you. There is a
7 MR SEMENYA SC: Chair, again to the		6 repetition aspect but I think Mr Bizo is busy with a
8 assistance of the witness, we know that when the witness		7 precise point. You didn't use a public address system,
9 arrived at koppie 3 the arrests had already been started		8 that we know. You didn't make an announcement to these
10 and effected, so he could not have given a warning before		9 people that they could hear. The point made by Mr Semenya
11 those arrests had happened.		10 was that by the time you got there to the edge of koppie 3,
12 CHAIRPERSON: Correct, but you'll		11 the time for making public announcements over an address
13 remember his evidence was there was an instruction given		12 system had gone, that's correct. You had of course earlier
14 over the radio before that, arising from something Colonel		13 given certain instructions over the radio to your forces,
15 Vermaak had said. I don't think we should discuss it in		14 to your men, but that's a different matter. Is that
16 great detail at this point as the witness is being cross-		15 correct?
17 examined on it but you are correct when you talk about what		16 BRIGADIER CALITZ: Ja, ek het dit
18 happened when he arrived in the vicinity of koppie 3		17 verstaan as deel van mnr Bizo se vraag, so dit is waarna
19 because there are other aspects which perhaps we should		18 ek verwys het.
20 allow Mr Bizo to explore without interruption. The point		19 CHAIRPERSON: Mr Bizo, do you understand
21 made is that if you're confining your question to the time		20 the distinction? Before he got to the vicinity of koppie 3
22 when he arrived in the vicinity of koppie 3, things had		21 he had given certain instructions over the radio to his
23 already happened, which I think is a correct point but if		22 men. That followed something he had been told, according
24 you are dealing with things that happened before that then		23 to his evidence, been told by Colonel Vermaak and things
25 you can carry on.		24 then happened. He then went eventually to the vicinity of
		25 koppie 3. His case is that by that time the things that

<p style="text-align: right;">Page 19614</p> <p>1 had happened, had happened and it wasn't appropriate or 2 necessary or possible, I suppose, to give, to make any 3 address to the people over a public address system but now 4 the question is are you asking about what happened when he 5 got to the vicinity of koppie 3 or are you referring to 6 what happened earlier before he got there, when he gave 7 certain instructions over the radio?</p> <p>8 MR BIZOS SC: I didn't ask him about what 9 happened on the radio. Was any notice given to anyone, to 10 his knowledge, by him or anyone else, give an opportunity 11 to the people that sought refuge in koppie 3, to surrender?</p> <p>12 CHAIRPERSON: I thought he'd answer that 13 already in the negative, saying that that didn't happen. 14 Did I understand correctly? As far as you know, no-one got 15 on a public address system or use a loudhailer or anything 16 like that and said to the people, you people on the koppie 17 I'm giving you a warning now, we've surrounded it, 18 surrounded the koppie, you must leave your weapons behind 19 and come out through that opening over there and we'll 20 arrest you or let you go or whatever. Nothing of that kind 21 was said. In fact nothing was said to them by the police 22 which they could hear which gave them an instruction or 23 warning as to what was going to happen. That's as far as 24 you know, is that correct?</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>	<p style="text-align: right;">Page 19616</p> <p>1 got out of the Nyala, according to his evidence, and went 2 back to the area where events took place in relation to 3 what's been called body C. Now, so he moved around quite a 4 lot, so when you want to know the distance you must specify 5 at what time you are talking.</p> <p>6 MR BIZOS SC: At any time did you hear 7 any shots being fired within the koppie?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 nee, ek dink ons het – twee, drie advokate het my al 10 daardie vraag gevra en ek het dit alreeds meer as een keer 11 geantwoord, nee.</p> <p>12 CHAIRPERSON: The answer you gave, you 13 didn't hear shots.</p> <p>14 BRIGADIER CALITZ: Live fire, nee.</p> <p>15 CHAIRPERSON: Ja.</p> <p>16 MR BIZOS SC: Isn't it another example of 17 being wilfully blind and deaf?</p> <p>18 BRIGADIER CALITZ: Mnr die Voorsitter, 19 nee, ek dink ek het duidelike redes gegee waar ek was, 20 hoekom ek daar was en wat gebeur het op sekere stadiums, so 21 glad nie wilfully nie en seer sekerlik ook nie deaf nie.</p> <p>22 MR BIZOS SC: Is it a coincidence that 23 the operational commander, when 34 people were killed, by 24 coincidence he didn't hear a single shot and didn't see a 25 single shot being fired?</p>
<p style="text-align: right;">Page 19615</p> <p>1 tot my kennis weet ek nie of dit kon gebeur nie. Ek 2 kan nie sê dit het nie gebeur nie. Soos ek getuig het – 3 CHAIRPERSON: As far as you know.</p> <p>4 BRIGADIER CALITZ: Ja, that's correct.</p> <p>5 MR BIZOS SC: How far away were you from 6 the koppie?</p> <p>7 MR SEMENYA SC: When? When, Chair? 8 When, when? The question is how far were you from the 9 koppie. We are asking when?</p> <p>10 CHAIRPERSON: Yes, that seems appropriate 11 because he moved around. So if you want a distance between 12 him and the koppie you must specify at what time you are 13 talking about.</p> <p>14 MR BIZOS SC: When you were going around 15 the koppie, how far away from the centre of the koppie were 16 you?</p> <p>17 BRIGADIER CALITZ: As u met –</p> <p>18 CHAIRPERSON: Mr Bizo, I don't know if 19 it's going to help because he moved around in that area. 20 You remember we had, Mr Chaskalson dealt with it very 21 fully, the place where body C was and the way the Nyala 22 moved and all that kind of thing. Now he'd first gone 23 round the koppie to the north-western part, certain things 24 happened there, people were arrested. He then, the Nyala 25 then went down to a spot close to the koppie and he then</p>	<p style="text-align: right;">Page 19617</p> <p>1 MR SEMENYA SC: Chair, again Mr Bizo 2 dealt with this matter yesterday to a great extent.</p> <p>3 CHAIRPERSON: He didn't deal with scene 2 4 but the suggestion is that the fact that you didn't hear 5 anything at scene 2, he wants to know whether that's links 6 with what had happened yesterday, which was discussed with 7 you, that you didn't hear the shots at scene 1 – he says is 8 that just a coincidence? The suggestion is that it wasn't 9 a coincidence, it was deliberate evasion and wilful 10 deafness and so on, on your part. What do you say about 11 that?</p> <p>12 BRIGADIER CALITZ: Ja, beslis nie 13 deliberate nie. Coincidence, toevallig, ek het dit net 14 verder verduidelik as net die woordjie toevallig. Daar was 15 redes daarvoor.</p> <p>16 MR BIZOS SC: Now, I want to ask you some 17 questions that I did not ask you about the speech that you 18 made –</p> <p>19 CHAIRPERSON: Mr Bizo, before we get 20 onto the speech, is it the speech of the 18th, I take it?</p> <p>21 MR BIZOS SC: Yes.</p> <p>22 CHAIRPERSON: I've been asked for us to 23 take a comfort break at this stage.</p> <p>24 MR BIZOS SC: Thank you, Mr Chair.</p> <p>25 CHAIRPERSON: And let's do that and then</p>

<p style="text-align: right;">Page 19618</p> <p>1 you can deal with the speech.</p> <p>2 MR BIZOS SC: Yes, yes. Thank you, Mr</p> <p>3 Chair.</p> <p>4 CHAIRPERSON: We will now take a comfort</p> <p>5 break.</p> <p>6 [COMMISSION ADJOURS COMMISSION RESUMES]</p> <p>7 [12:31] CHAIRPERSON: The Commission will resume,</p> <p>8 Brigadier, you're still under oath.</p> <p>9 BRIGADIER CALITZ: Dankie, mnr die</p> <p>10 Voorsitter.</p> <p>11 CHAIRPERSON: Mr Bizos?</p> <p>12 MR BIZOS SC: Can we return to the terms</p> <p>13 of reference? The terms of reference say that the police</p> <p>14 are to conduct, to look into or rather the Commission is to</p> <p>15 look into the conduct of the South African Police Service</p> <p>16 and more particularly, the precise facts and circumstances</p> <p>17 –</p> <p>18 CHAIRPERSON: What is on the screen is in</p> <p>19 fact an earlier portion of the terms of reference, the</p> <p>20 passage you're quoting was later on in paragraph 1.2.2.</p> <p>21 MR BIZOS SC: Yes, the precise facts and</p> <p>22 circumstances which gave rise to the use of all or any</p> <p>23 force and whether this was reasonable and justifiable in</p> <p>24 the particular circumstances. Now were you at</p> <p>25 Potchefstroom?</p>	<p style="text-align: right;">Page 19620</p> <p>1 the Commission, you know that's his question. Did you come</p> <p>2 to a conclusion on the point?</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>4 conclusion, as ek dit reg verstaan, ons het die inligting</p> <p>5 by die bevelvoerders gekry waarop hulle die circumstances</p> <p>6 vir ons verduidelik het waaronder dit gebeur het en dan</p> <p>7 daaruit het hulle gesê dit is self defence wat die</p> <p>8 justifiable en die reasonability daarvan aanspreek en dan</p> <p>9 op die rise of use of force, hoe het dit gebeur dat hulle</p> <p>10 wel hulle wapens moes gebruik het, het elkeen sy</p> <p>11 verduideliking gegee. So dit is wat daar bespreek was, as</p> <p>12 ek dit so op kan breek.</p> <p>13 MR BIZOS SC: Do I understand you to say</p> <p>14 that you actually discussed whether the use of force was</p> <p>15 reasonable in the particular circumstances and did you come</p> <p>16 to a conclusion which was what?</p> <p>17 BRIGADIER CALITZ: Ek het gesê die groep</p> <p>18 het opgebreek, die verskillende bevelvoerders het met hulle</p> <p>19 lede –</p> <p>20 MR BIZOS SC: What was the conclusion,</p> <p>21 Sir?</p> <p>22 MR SEMENYA SC: No, Chair, the witness</p> <p>23 must be given an opportunity to answer.</p> <p>24 CHAIRPERSON: Mr Bizos, let him finish</p> <p>25 his sentence before you pepper him with the next question.</p>
<p style="text-align: right;">Page 19619</p> <p>1 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>2 Voorsitter.</p> <p>3 MR BIZOS SC: Did you discuss the</p> <p>4 circumstances which gave rise to the use of all or any</p> <p>5 force and whether this was reasonable and justifiable in</p> <p>6 the particular circumstances? Did you give any attention</p> <p>7 to it at Potchefstroom?</p> <p>8 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>9 Voorsitter.</p> <p>10 MR BIZOS SC: And what was the conclusion</p> <p>11 that you came to?</p> <p>12 BRIGADIER CALITZ: Dit was die</p> <p>13 samestelling van Exhibit L gewees.</p> <p>14 MR BIZOS SC: No, specifically in answer</p> <p>15 to this question what conclusion did you come to?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, -</p> <p>17 CHAIRPERSON: It is whether the force</p> <p>18 that was used, which led to the deaths was justifiable or</p> <p>19 the use of the force which led to the deaths of the 34</p> <p>20 people on the 16th and presumably the other two on the 13th,</p> <p>21 whether that was justified in the circumstances? This</p> <p>22 relates to the use of force by the police and what Mr Bizos</p> <p>23 wants to know is, did those of you who were engaged in the</p> <p>24 Potchefstroom exercise at Roots, did you come to a</p> <p>25 conclusion on that question which you then would convey to</p>	<p style="text-align: right;">Page 19621</p> <p>1 Carry on with your answer and then when you're finished Mr</p> <p>2 Bizos will then ask the question he wants to ask.</p> <p>3 BRIGADIER CALITZ: Dankie, mnr die</p> <p>4 Voorsitter. Die groepe was opgebreek in die verskillende</p> <p>5 bevelvoerder groepe en daar het die lede dan vir hulle</p> <p>6 bevelvoerders gesê in die omstandighede wat dit plaasgevind</p> <p>7 het en dat dit in selfverdediging was, so dit is die</p> <p>8 antwoord op die vraag.</p> <p>9 MR BIZOS SC: What was the conclusion?</p> <p>10 BRIGADIER CALITZ: Dat hulle opgetree het</p> <p>11 in selfverdediging in daardie omstandighede, die lede wat –</p> <p>12 MR BIZOS SC: And that no one was to</p> <p>13 blame?</p> <p>14 MR SEMENYA SC: Chair, -</p> <p>15 BRIGADIER CALITZ: Ek kan nie hoor as u</p> <p>16 vir my vrae vra en ek antwoord nie, mnr die Voorsitter, dan</p> <p>17 gaan ons mekaar nie verstaan nie, so –</p> <p>18 MR BIZOS SC: It was the conclusion that</p> <p>19 the police were not in any way responsible for what</p> <p>20 happened, was that the conclusion?</p> <p>21 BRIGADIER CALITZ: Nee, ek kan nie dink</p> <p>22 dat ons gesê het die polisie is glad nie responsible for</p> <p>23 what happened, daardie pertinente woordie kan ek nie dink</p> <p>24 dat dit gebruik was nie, nee.</p> <p>25 CHAIRPERSON: Somebody is responsible is</p>

	Page 19622	Page 19624
1	a bit vague, I may they may well have been physically	1 executed by using, if necessary water cannons, stun
2	responsible in the sense that policemen pulled the triggers	2 grenades, tear grenades and so on. The unfortunate reality
3	of the firearms that killed 34 people, but that would be	3 was that the aggression of the crowd left the SAPS with no
4	physical responsibility. You are referring more to legal	4 other choice than to act in private defence, defending
5	responsibility which will either be civil or criminal or	5 their own lives and the lives of others." So that's
6	possibly, but I suppose moral responsibility but the	6 clearly the conclusion of the Potchefstroom exercise,
7	question as phrased isn't sufficiently clear. Perhaps you	7 whether it is right or wrong, obviously we challenge it but
8	could clarify it for the purposes of the witnesses so that	8 –
9	we get a meaningful answer from him.	9 CHAIRPERSON: Yes, thank you, Mr Mpofu.
10	MR BIZOS SC: Was there in-depth	10 Yes, I must confess I thought the earlier answer the
11	discussion at Potchefstroom as to whether anyone was	11 witness gave you covered the same ground, that the police,
12	responsible for any wrongdoing in relation to the people	12 they came to the conclusion at Potchefstroom that the use
13	that had been killed or injured?	13 of force was justified because of self defence, his words,
14	BRIGADIER CALITZ: Mn̄r die Voorsitter,	14 self defence. If it was justified then obviously no one
15	nee, ek dink ons het net die feite gevat soos dit vir ons	15 was responsible for any wrong for that and the same point
16	gegee is en toe is besluit dat dit sal, die Kommissie sal	16 is captured in the last sentence of Exhibit L to which Mr
17	dan eers sy werk afhandel en dit is hoekom ek die rede	17 Mpofu has appropriately referred us.
18	gegee het waarom daar nie 'n formele debriefing, waarna ons	18 MR BIZOS SC: Yes, thank you to my
19	verwys het, op daardie stadium plaasgevind het nie.	19 colleague. You agree that that was the conclusion that was
20	MR BIZOS SC: I still haven't got an	20 arrived at?
21	answer but let's assume that what you have said is	21 BRIGADIER CALITZ: Dit is korrek.
22	accepted, which I interpret that you said that no one was	22 MR BIZOS SC: Yes.
23	responsible for any wrong that may have been done to any of	23 BRIGADIER CALITZ: Dankie, mn̄r Mpofu.
24	the people that were killed or injured.	24 MR BIZOS SC: But now the question was, -
25	BRIGADIER CALITZ: As u die vraag vra	25 MR MPOFU: Don't thank me yet.
	Page 19623	Page 19625
1	soos ek u reg verstaan is, niemand is aangewys en gesê die	1 MR BIZOS SC: The question was whether
2	persoon is verantwoordelik daarvoor en hy word aangekla	2 there was any sort of earnest enquiry at Potchefstroom as
3	daarvoor nie. Daardie deel, soos ek u vraag reg verstaan,	3 to whether or not anyone was responsible for the killings
4	nee, dit was nie gedoen nie.	4 or wounding of people. Was there a responsible debate
5	MR BIZOS SC: It was not done?	5 among you as to whether or not anyone was responsible?
6	BRIGADIER CALITZ: Dit is hoekom ek sê,	6 BRIGADIER CALITZ: Mn̄r die Voorsitter,
7	nee, die Kommissie is, eers dat sy werk afgehandel word en	7 nee, die kort antwoord is, nee, nie wat ek so kan onthou op
8	dan sal ons van hier af dan kyk indien daar enige	8 hierdie stadium nie, nee.
9	wrongdoings hier uitkom, glo ek daar sal die nodige gedoen	9 MR BIZOS SC: Yes, well, of course your
10	word.	10 speech on the 18th and the speech of the National
11	MR MPOFU: Chairperson, I'm doing this	11 Commissioner would have made any sort of such questions
12	reluctantly but particularly I have to intervene for the	12 being asked at Potchefstroom quite out of place, because
13	first time in favour of the witness.	13 you both had made public statements that nothing wrong
14	BRIGADIER CALITZ: Dankie, Meneer.	14 happened and there was 100% congratulate –
15	CHAIRPERSON: This becomes habit forming.	15 CHAIRPERSON: I'm sorry to interrupt you,
16	MR MPOFU: It is my duty to do so, but I	16 Mr Bizo, but I am not sure that his speech on the 18th was
17	think this point, the witness, the first answer he gave was	17 intended to be a public speech, but certainly the remarks,
18	that, as it is indicated in Exhibit L, and I just wanted to	18 the comments you make in relation to the National
19	read the very last paragraph in Exhibit L, it seems to	19 Commissioner is correct. Perhaps we should ask him you
20	answer this, the very, very last slide L283 where they	20 know whether his speech was intended to be a public speech.
21	claim that this obviously is the conclusion. "Even when	21 Your speech on the 18th, I seem to remember you took a
22	stage 3 of the operational plan was implemented the use of	22 rather bold and possibly unauthorised action in relation to
23	live ammunition was never an option and the use of minimum	23 somebody who was making a video of the speech. Did you
24	force if negotiations were not successful was the next	24 regard it as a public speech you were making or were you
25	alternative, where encirclement and dispersion would be	25 just addressing the troops, if I can call them that?

<p style="text-align: right;">Page 19626</p> <p>1        BRIGADIER CALITZ:     Nee, mnr die      2        Voorsitter, dit is operasionele voorligting aan die lede      3        wat op daardie dag sou gebeur het en die groot deel van die      4        toespraak het gegaan op 'n motivering om die lede weer op      5        'n standaard te kry dat ons kan aangaan.      6        CHAIRPERSON:     You're answering questions      7        you were not asked but was it intended to be a public      8        speech?      9        BRIGADIER CALITZ:     Glad nie, mnr die      10      Voorsitter.      11      CHAIRPERSON:     But of course you had said      12      things which were recorded, which gave a big clear      13      statement of your view, I don't think it was done for      14      motivational purposes but nevertheless it is your view. If      15      you get a 110% for an examination paper you're doing      16      substantially better than most of the people who wrote      17      matric, is that correct?      18      BRIGADIER CALITZ:     Dit is korrek, mnr die      19      Voorsitter.      20      CHAIRPERSON:     And of course the National      21      Commissioner already made his speech which Captain Dreyer      22      appears to assisted in drafting which also, I think it was      23      Captain Dreyer, I may be wrong on that, perhaps I should      24      withdraw that. She made two speeches actually, the one was      25      the press conference on the 17th and then subsequently she</p>	<p style="text-align: right;">Page 19628</p> <p>1        can argue, but I don't see how it helps to question him      2        about it. It is a matter for argument, I understand that.      3        MR BIZOS SC:     No, with respect, I am      4        entitled to ask the witness how difficult it must have been      5        to have a proper inquiry at Potchefstroom if the      6        commissioner of Police and the operational commander had      7        already exculpated the police from any blame. I think that      8        it is a legitimate question which the witness is called      9        upon to answer.      10      CHAIRPERSON:     Because he denies that his      11      own speech amounted to exculpation. He says he has      12      explained that –      13      MR BIZOS SC:     Well, -      14      CHAIRPERSON:     - and we don't have to go      15      over all that ground again, but perhaps we can ask the      16      question from a slightly different angle and get the answer      17      I think hereafter, if I'm wrong you will stop me or correct      18      me. Did you find that you and your fellow participants at      19      Roots, did you find it inhibiting that you were called upon      20      to discuss the justification or justifiability of the      21      police action when there already were statements on record      22      indicating that the police, the official stance was that      23      what it done did not amount to wrongdoing of any kind?      24      BRIGADIER CALITZ:     Nee, mnr die      25      Voorsitter, glad nie. Daar was geen invloed gewees deur my</p>
<p style="text-align: right;">Page 19627</p> <p>1        spoke again, I think on another occasion as well where she      2        expressed very strong views that the police had correctly      3        and congratulated them and so on, and Mr Bizo's point is      4        really the police attitude on the matter was already clear,      5        that they thought, the police attitude was that the action      6        was justified. Is that your point, Mr Bizo's?      7        MR BIZOS SC:     It is so, Mr Chairman. Do      8        you agree that the exculpation of the whole police force      9        was already preordained by the commissioner and endorsed by      10      you?      11      BRIGADIER CALITZ:     Ek stem nie saam nie,      12      mnr die Voorsitter.      13      MR BIZOS SC:     Why not?      14      BRIGADIER CALITZ:     Die redes wat ek gegee      15      het in my toespraak op die 18de, ek was breedvoerig daaroor      16      ondervra en ek het punt vir punt verduidelik wat ek bedoel      17      het met die 110% en hoe ons op die punt gekom het dat dit      18      'n motivering was vir die lede. Ek weet nie of ek dit weer      19      moet herhaal nie, mnr die Voorsitter.      20      CHAIRPERSON:     Mr Bizo's, I've got another      21      problem with your questions, he wasn't responsible for      22      calling together the people at Roots, he wasn't responsible      23      for that whole exercise, he was there as one of the      24      participants. Now whether the conclusion was foregoing one      25      in the light of what had gone before, is a matter which you</p>	<p style="text-align: right;">Page 19629</p> <p>1        toespraak op dit wat gebeur het op Roots nie.      2        MR BIZOS SC:     The Minister's statement      3        was published before yours, was it?      4        CHAIRPERSON:     The Minister or the      5        National Commissioner?      6        MR BIZOS SC:     The National Commissioner.      7        CHAIRPERSON:     The National Commissioner,      8        not the Minister.      9        MR BIZOS SC:     What did I say, I am sorry?      10      CHAIRPERSON:     You said the Minister.      11      MR BIZOS SC:     No, the National      12      Commissioner.      13      CHAIRPERSON:     It is now clarified.      14      MR BIZOS SC:     Yes, I'm sorry. That was      15      published before you made your speech, is that correct?      16      BRIGADIER CALITZ:     Korrek, mnr die      17      Voorsitter.      18      MR BIZOS SC:     Did you read the Minister's      19      speech before you made your-      20      MR SEMENYA SC:     Not the Minister –      21      CHAIRPERSON:     The Commissioner, Mr Bizo's.      22      MR BIZOS SC:     I beg your pardon?      23      CHAIRPERSON:     The National Commissioner.      24      MR BIZOS SC:     The National Commissioner,      25      I beg your pardon. Did you read it before you made your</p>

<p style="text-align: right;">Page 19630</p> <p>1 speech?</p> <p>2 BRIGADIER CALITZ: No, I did not read it.</p> <p>3 MR BIZOS SC: Did you hear it?</p> <p>4 BRIGADIER CALITZ: Yes.</p> <p>5 MR BIZOS SC: Were you in any way</p> <p>6 influenced by the exculpation by the Commissioner of all</p> <p>7 blame of the police at Marikana?</p> <p>8 BRIGADIER CALITZ: Nee, glad nie, mnr die</p> <p>9 Voorsitter.</p> <p>10 MR BIZOS SC: Did you ignore it?</p> <p>11 BRIGADIER CALITZ: Ek sal nie sê ek het</p> <p>12 dit ignore nie, as ek die vraag reg verstaan, exculpation,</p> <p>13 of dit my beïnvloed het en wat ek gesê het, dit het my</p> <p>14 geensins beïnvloed nie, myne het gegaan oor die</p> <p>15 operasionele voorligting en dan ook 'n motivering vir die</p> <p>16 lede vir daardie dag se gebeure.</p> <p>17 MR BIZOS SC: Insofar as there may be</p> <p>18 substantial similarities between the two speeches is that</p> <p>19 also a coincidence?</p> <p>20 BRIGADIER CALITZ: Miskien as ek daarop</p> <p>21 gewys kan word dan kan ek dit antwoord, mnr die Voorsitter.</p> <p>22 Ek dra nie kennis nie.</p> <p>23 MR BIZOS SC: No, you know what you said</p> <p>24 and you remember what the Commissioner said. Do you deny</p> <p>25 that there are substantial, there is substantial</p>	<p style="text-align: right;">Page 19632</p> <p>1 [12:51] In those circumstances it wouldn't be surprising</p> <p>2 if two speeches both made on the basis of feedback from</p> <p>3 people who were there, revealed a substantial degree of</p> <p>4 identity, and if the motive in, or partial motive in each</p> <p>5 case was at least to do something to raise the morale of</p> <p>6 the police, again you would expect a substantial degree of</p> <p>7 similarity. That seems to be obvious. I don't know how</p> <p>8 helpful this further exploration along this line is going</p> <p>9 to prove. I say that not by way of stopping you, but by</p> <p>10 indicating my <i>prima facie</i> response to the point you're busy</p> <p>11 with.</p> <p>12 MR BIZOS SC: Mr Chairman, with due</p> <p>13 respect, to say that things are said by the Commissioner of</p> <p>14 Police and a brigadier publicly, exculpating people from</p> <p>15 the deaths of 34 people and the injury of approximately 80</p> <p>16 people, that they cannot be cross-examined as to why they</p> <p>17 did it and what effect did their statements have on the</p> <p>18 supposed inquiry that was entered into at Potchefstroom,</p> <p>19 and also how, to what extent these officials if they</p> <p>20 operated on hearsay failed to comply with the expressed</p> <p>21 provisions of the Standing Orders. These are vital</p> <p>22 issues -</p> <p>23 CHAIRPERSON: Mr Bizos, I wasn't –</p> <p>24 MR BIZOS SC: - which in my submission –</p> <p>25 CHAIRPERSON: Mr Bizos, I'm sorry –</p>
<p style="text-align: right;">Page 19631</p> <p>1 concurrence between the Commissioner's speech and your</p> <p>2 speech, congratulations, you did well, is that a</p> <p>3 coincidence?</p> <p>4 BRIGADIER CALITZ: As u verwys na die</p> <p>5 congratulations, you did well, my woorde aan hulle was, die</p> <p>6 operasie het 110% verloop en ek het my redes gegee, so ek</p> <p>7 kan nie nou hier waar ek sit onthou presies wat die</p> <p>8 Nasionale Kommissaris gesê het nie.</p> <p>9 CHAIRPERSON: I'm not sure how far this</p> <p>10 line of inquiry is going to take us, there are two obvious</p> <p>11 points that arise. The one is, both speeches appear to</p> <p>12 have been directed to some extent at least to raising the</p> <p>13 morale of the police and therefore you can understand the</p> <p>14 comments, whether the comments went too far is a matter</p> <p>15 we'll debate later. The second point is that it has became</p> <p>16 apparent over and over again during her cross-examination,</p> <p>17 the National Commissioner wasn't at Marikana on the 16th</p> <p>18 until much later in the evening and she had to rely on the</p> <p>19 information she received from those who were there at the</p> <p>20 time. This witness, as we've covered it extensively in the</p> <p>21 cross-examination, the two critical moments, wasn't</p> <p>22 personally able to see what was happening. You've dealt</p> <p>23 with that and you commented on that. So he was also</p> <p>24 dependent as was the National Commissioner on feedback</p> <p>25 information from those who were there.</p>	<p style="text-align: right;">Page 19633</p> <p>1 MR BIZOS SC: - the Commission has to –</p> <p>2 CHAIRPERSON: I'm sorry to interrupt you.</p> <p>3 I wasn't intending to stop you from covering any of those</p> <p>4 issues. I was only concerned with the fact that you were</p> <p>5 hammering on the point that was it a coincidence, and I'm</p> <p>6 suggesting to you there were obvious reasons why you would</p> <p>7 expect substantial similarity between the two. That</p> <p>8 similarity of course doesn't help us in answering the other</p> <p>9 questions which do arise for decision, some of which are</p> <p>10 covered by the other points that you made in replying to</p> <p>11 me, and I'm not stopping you investigating those. I was</p> <p>12 only concerned with the hammering on the coincidence when</p> <p>13 it seemed to me that the circumstances were such that you'd</p> <p>14 expect similarity to some extent in the content of both</p> <p>15 speeches. That was all I was saying to you.</p> <p>16 MR BIZOS SC: But Mr Chairman, the issue</p> <p>17 is where does the truth lie. Where does the truth lie, and</p> <p>18 the fact that there are these coincidences shows that, not</p> <p>19 that they were truthful and corroborative, but that a false</p> <p>20 version was made public before either of them really knew –</p> <p>21 or so they say, in particular to the witness – of what</p> <p>22 happened. We are entitled to actually expose by drawing</p> <p>23 attention to the incidents, the coincidences, in order to</p> <p>24 enable us to argue that they are not telling the truth.</p> <p>25 CHAIRPERSON: The coincidences are a</p>

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1 matter of record and can be argued. Whether they lead to a 2 conclusion that the underlying information upon which the 3 two speeches were made was correct or not, different 4 matter. We obviously are investigating all the 5 circumstances, all the feedback that all the people 6 received, all the information that's put before us. We are 7 interrogating them as thoroughly as we can because we have 8 only one objective and that's to get the truth. We're 9 appreciative of all efforts that counsel may make to assist 10 us to do that. I was solely concerned with your hammering 11 on the point of coincidence, which I thought for the 12 reasons I gave wasn't going to help us. But I see Mr 13 Semenya turned his light on. Do you want to say something, 14 Mr Semenya?	1 the 18th – 2 CHAIRPERSON: Yes, we've covered that 3 already. It wasn't intended to be a public speech. He 4 explained that. It was a speech made to the, what I call 5 the troops, which may be a term that can cause trouble as 6 well, but the members of the force who were present who 7 were going to take part in an operation which was due to 8 take place later that day. That wasn't a public speech. 9 That's the point raised by Mr Semenya and that's a 10 correct – 11 MR BIZOS SC: I'm indebted to my learned 12 friend for the correction. I will change the question. 13 When you made the speech to your forces who were going to 14 truthfully try and persuade the people of South Africa and 15 the world at large as to what happened, what you told them 16 in praise of their conduct would have a very important 17 influence as to whether they were going to speak the truth 18 or not. Did you realise that? Even though if it was 19 intended only for their ears.
15 MR SEMENYA SC: Purely to say, Chair, 16 that whether the explanations are false or not, it's a 17 matter ultimately to be decided by yourselves. 18 MR BIZOS SC: I am entitled to ask 19 questions, whether they are the truth or coincidental 20 falsehoods, Mr Chairman. 21 CHAIRPERSON: Well, carry on, but you 22 know what I think about the – 23 MR BIZOS SC: Yes. 24 CHAIRPERSON: - the coincidental – 25 MR BIZOS SC: Yes.	20 BRIGADIER CALITZ: Mn die Voorsitter, 21 hier dink ek moet ek net so bietjie uitbrei. U het nou-nou 22 self gelees en ek glo die dokument is voor u. As u daar 23 18:07 wat u vir my gelees het, sal u sien die woordjie - 24 miskien moet ek u die geleentheid gee om die dokument net 25 voor u te kry.
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1 CHAIRPERSON: - or allegedly coincidental 2 similarity between the two speeches covering the same 3 ground. 4 MR BIZOS SC: Yes, I'll try and avoid the 5 coincidence if the Commission is of the view that it is not 6 fair to remind the persons concerned about the 7 coincidences – 8 CHAIRPERSON: Mr Bizo, I'm sorry, I 9 didn't say it was unfair. I said it was unhelpful because 10 the reasons I gave you, you'd expect a degree of 11 similarity. Whether the underlying reasons for the 12 similarity are because the information is correct or 13 incorrect is a different matter and you have the fullest 14 right to interrogate that issue. 15 MR BIZOS SC: Thank you, Mr Chairman. 16 Brigadier, when you made your speech did you know what the 17 medical evidence would be about the nature of the wounds 18 and the entry points, whether in the back or in the side, 19 before pronouncing for the world that your men did 110% the 20 correct thing? 21 MR SEMENYA SC: That was also not a 22 pronouncement to the world, Chair. 23 CHAIRPERSON: Mr Semenya, I didn't hear. 24 MR SEMENYA SC: That was not a 25 pronouncement to the world, as Mr Bizo says happened on	1 MR BIZOS SC: Yes? What do you want to 2 say about it? 3 BRIGADIER CALITZ: Die 18:07 wat u gelees 4 het, daar waar ek gesê het "The police will give hundred 5 percent full cooperation," so u sal onthou dit is nou nadat 6 ek verduidelik het watse dag die gebeure gaan gebeur. So 7 daar het ek vir hulle gesê ons gaan honderd persent 8 samewerking gee. 9 Die volgende woordjie, die eerste drie woordjies 10 is baie belangrik; "At this stage we did nothing wrong." 11 So dit was met die inligting op daardie oomblik tot my 12 beskikking en dit is daarna waar ek verwys het, "the 13 planning and execution," en as jy gaan kyk na so drie sinne 14 later waar die sin eindig, "exactly we executed it in that 15 line," dit het ek duidelik verduidelik is dit is die lyn 16 van die voertuie, die formasies wat die lede gehou het. 17 Onder geen omstandighede het ek hier gepraat oor die dooies 18 nie. 19 U het drie stellings gemaak oor die "publicly," 20 dit het ons klaar aangespreek. Die "deaths" wat ek goed 21 gepraat het, ek het onder geen omstandighede verwys dat dit 22 iets goed was of dat dit enigsins is dit wat ons bespreek 23 het hier nie. En dan in die paragraaf wat sê 10:44, net 24 bietjie af, so in die middel het ek vir die lede gesê, "You 25 got nothing to hide. Please do not," ek het vir hulle

<p style="text-align: right;">Page 19638</p> <p>1 verduidelik dat IPID die ondersoek gaan doen, dat hulle 2 wapens oorgehandig gaan word aan ballisties, en dan het ek 3 ook afgesluit met, "You got nothing to hide." So volgens 4 my as 'n operasionele bevelvoerder, ek het in detail vir my 5 mense gesê wat ek van hulle verwag, dat ons honderd persent 6 samewerking gaan gee, en onder geen omstandighede het 7 enigsins dit gesinspeel dat indien daar iemand is wat iets 8 het om weg te steek, dat hy dit moet doen nie.  9 Ek het ook gesê daardie mense wat nog hulle 10 SAP15s moet inhandig en hulle rondtes verklaar, dit was 'n 11 proses wat van daardie dag af gevolg het. So, en soos ons 12 weet IPID het ook dan begin met hulle ondersoek. So ons 13 het honderd persent samewerking gegee presies waar dit 14 nodig was. So as u sê dat ek het dit probeer "hide" van 15 iemand af, dit is glad nie so nie, nee.</p> <p>16 CHAIRPERSON: Mr Bizos, when you reach an appropriate stage we'll take the lunch adjournment. It may be you've reached it, but if there's another question or a few questions you want to ask on this topic before we adjourn, I'm in your hands.</p> <p>21 MR BIZOS SC: I want to ask this question. Do I understand you correctly that if you had known that most of the people had been shot in the back or the side and most of the people – that is the people who died, and if you knew then that most of the injured people</p>	<p style="text-align: right;">Page 19640</p> <p>1 hulle gedeel het en gesê het daar is persone wat so en so 2 en so gewond is, of wat so en so en so, presies dieselfde. 3 Ons sou honderd persent samewerking gegee het – amper het 4 ek nou weer gesê 110% - en dit is wat ek bedoel het waar ek 5 gesê het "We got nothing to hide." Ek het vir hulle 6 verduidelik hulle wapens gaan gevat word.  7 Miskien die regte antwoord op u vraag sal wees ek 8 het op 'n stadium gesê "So unless that you say no, I fired 9 two shots but there were 500 or 400 cartridges picked up, 10 you understand, that's why I'm saying we got nothing to 11 hide." Dit was my presiese woorde.  12 So indien ek wel geweet het van hierdie uitslae 13 en van persone wat gedood of gewond is sou ek presies 14 dieselfde hier vir die persone gesê het en vir hulle 15 gemotiveer het om nog steeds met die waarheid vorendag te 16 kom want "ultimately" gaan die doppies en die wapens 17 "gelink" word met van die persone wat gedood is en dit is 18 wat 'n bevelvoerder gedoen het en dit is wat ek in daardie 19 omstandighede gedoen het.  20 MR BIZOS SC: Now that you have heard the evidence and you have read the medical reports, would you admit that it would appear from the evidence, and particularly the medical reports, that many could not possibly have been shot in self-defence?  25 CHAIRPERSON: Mr Bizos, aren't you asking</p>
<p style="text-align: right;">Page 19639</p> <p>1 were shot in the back, you wouldn't have said that they had 2 done 115%, or 110% of their work. Do I understand you 3 correctly or not?</p> <p>4 CHAIRPERSON: Mr Bizos, I don't think 5 it's factually correct that most of the people were shot in 6 the back, but I think it's fair to say that a substantial 7 number were shot in the back, but subject to that 8 correction the question can proceed.</p> <p>9 MR BIZOS SC: Well, if you had the 10 information of the doctors about the places in which people 11 were shot and killed, or shot and injured, leaving aside 12 the percentages, would you still have said that you acted 13 100%, and would you have said it if you knew then what the 14 doctors are going to tell the Commission?</p> <p>15 BRIGADIER CALITZ: Mnr die Voorsitter, 16 weereens as ek dit net kan bietjie langer maak en nie net 17 'n ja of 'n nee nie, die 100% was samewerking met die 18 polisie, waarna u verwys as die 110%, en weereens terug te 19 kom na my rede hoekom ek dit gesê het was glad nie ten 20 opsigte van die persone wat opgetree het, die skietery nie. 21 Ek het dit bedoel van die bevelvoerders en die lyne en die 22 uitvoering van die uiteendryf aksie wat plaasgevind het. 23 Om terug te kom na u vraag toe, sou ek geweet het 24 enige van hierdie wat u vir my hier in die bundel gegee het 25 van die mediese personeel, dan sou ek die inligting ook met</p>	<p style="text-align: right;">Page 19641</p> <p>1 him for an opinion on a matter which we really have to 2 decide? He's not an expert on the matter, and I've already 3 on a number of occasions ruled that I won't allow questions 4 of that kind asked of witnesses to give their opinions on 5 matters which we have to decide, unless they're experts. 6 But perhaps we can reformulate your question differently. 7 In the light of what Mr Bizos has now put before you and 8 the information you've got, would you have said precisely 9 what you said on the 18th to the assembled members, or would 10 you have been more cautious and phrased what you did in 11 relation to their conduct and so on in a slightly more 12 careful and less dogmatic way?</p> <p>13 BRIGADIER CALITZ: Mnr die Voorsitter, as 14 ek verwys na die doktersverslae, Dr Perumal, Dr Naidoo, die 15 wat ek gesien het, die "medical reports," ek sien hulle het 16 nie al die "bodies" persoonlik nagegaan. Ek bedoel dit is 17 die "independent" persone wat daarna verwys het. Ek sien 18 ook in hulle verklarings dat daar is baie teenstrydighede, 19 dat hulle party net oop "gezip," party is net "geview." So 20 daar is baie goed wat uit hierdie mediese verslae verder 21 kon – so dit sal ek nie honderd persent sê as feitlik op 22 hierdie stadium nie want dis baie, dis afleidings wat 23 gemaak is.</p> <p>24 Maar ek sou definitief vir die lede gesê het dat 25 daar is by, as ons nou vat, dan sou die mediese verslae en</p>

<p style="text-align: right;">Page 19642</p> <p>1 die "LRC reports" sou die "bodies" in die goed geplaas het.      2 So dan sou ek vir die ouens gesê het dat by "scene" 2 is      3 soveel persone in daardie omstandighede so gewond; so ver      4 moontlik die wat dit kan bevestig, of die wat dit, daar      5 betrokke was, en ek dink dit is die proses wat ons wel na      6 die tyd gevolg het, mnr die Voorsitter, soos die lede erken      7 het en hulle het wapens geskiet, die skietverslae sal dan      8 aandui waar hulle dit gevuur het. So om terug te kom na      9 die antwoord toe, ja dit sou deel gewees het van my –</p> <p>10 CHAIRPERSON: So you would have put      11 things, you might well have put things slightly differently      12 if you'd had that information at your disposal when you      13 made your speech. Is that right?</p> <p>14 BRIGADIER CALITZ: Ja, ek –</p> <p>15 CHAIRPERSON: - something to your speech,      16 and you didn't really – part of the problem is you didn't      17 really deal with scene 2, did you?</p> <p>18 BRIGADIER CALITZ: Uh-uh.</p> <p>19 CHAIRPERSON: You know you talked about      20 they kept the line.</p> <p>21 BRIGADIER CALITZ: The dispersion action.</p> <p>22 CHAIRPERSON: That was a big point you      23 stressed.</p> <p>24 BRIGADIER CALITZ: Die uiteendrywing –</p> <p>25 CHAIRPERSON: And that of course only</p>	<p style="text-align: right;">Page 19644</p> <p>1 BRIGADIER CALITZ: Dit is –      2 CHAIRPERSON: - which he's now agreed      3 relates to scene 1, you see, anyway. But that comment he      4 made –</p> <p>5 MR BIZOS SC: - he said they were      6 justified to keep the line, Mr Chairman. He said that what      7 you did was justified, if the English language is to be      8 followed, Mr Chairman.</p> <p>9 CHAIRPERSON: What line is that? Perhaps      10 we can look at that quickly before we take the lunch      11 adjournment.</p> <p>12 MR BIZOS SC: The second-last sentence in      13 the middle of the page. "It was justified, and that is      14 exactly the commitment and the cooperation that we are      15 going to give to the people." It was justified.</p> <p>16 CHAIRPERSON: That was the point you said      17 you gave him to think about over lunch.</p> <p>18 MR BIZOS SC: Yes.</p> <p>19 CHAIRPERSON: So perhaps he can think      20 about it over lunch –</p> <p>21 MR BIZOS SC: Yes.</p> <p>22 CHAIRPERSON: - and give us the benefit      23 of his conclusions –</p> <p>24 MR BIZOS SC: And how consistent it is      25 with his explanations.</p>
<p style="text-align: right;">Page 19643</p> <p>1 relates to scene 1, doesn't it? There wasn't a line kept      2 at scene 2. I'm not saying it by way of criticism, but      3 there wasn't a line to be kept at scene 2, was there?</p> <p>4 BRIGADIER CALITZ: Korrek, mnr die      5 Voorsitter.</p> <p>6 CHAIRPERSON: You didn't deal really with      7 scene 2.</p> <p>8 BRIGADIER CALITZ: Nee, mnr die      9 Voorsitter.</p> <p>10 CHAIRPERSON: I understand. Perhaps we      11 can continue the discussion after lunch, Mr Bizos, if      12 that –</p> <p>13 MR BIZOS SC: May I just put to the      14 witness for his consideration during that, you know, did      15 you say "So on that nothing, nothing, nothing was wrong,      16 okay. You acted. It was justified and that is exactly the      17 commitment and the cooperation that we are going to give      18 the people." Did you say that?</p> <p>19 BRIGADIER CALITZ: Ek weet nie van watter      20 lyn u nou gelees het nie, maar ja, dit klink soos wat ek      21 gesê het, ja.</p> <p>22 CHAIRPERSON: The question was that that      23 was to do with his point that they kept the line.</p> <p>24 MR BIZOS SC: Yes.</p> <p>25 CHAIRPERSON: The dispersal line -</p>	<p style="text-align: right;">Page 19645</p> <p>1 CHAIRPERSON: Well, he can tell us the      2 benefit of his thoughts on the matter after lunch. We'll      3 take the lunch adjournment.</p> <p>4 [COMMISSION ADJOURS COMMISSION RESUMES]</p> <p>5 [14:03] CHAIRPERSON: The Commission resumes.      6 Brigadier, you're still under oath.</p> <p>7 ADRIAAN MARTHINUS CALITZ: Dankie, mnr      8 die Voorsitter.</p> <p>9 CHAIRPERSON: Mr Bizos, you're cross-      10 examining, but I think you asked the witness to think about      11 something over the lunch adjournment and to give us his      12 comments after lunch. Would you like to remind him of what      13 it was and then we can hear his answer?</p> <p>14 MR BIZOS SC: To be honest, I don't      15 remember what it is that I asked him. I thought that he      16 was –</p> <p>17 CHAIRPERSON: Perhaps he's got a better      18 memory than you have. Brigadier, can you help Mr Bizos,      19 remind him of the question he asked you and then give us      20 your answer?</p> <p>21 BRIGADIER CALITZ: Ek sal, mnr die      22 Voorsitter, met plesier. Advokaat, u het verwys na die      23 laaste deel, as ek kan gaan na, as u 'n verwysing JJJ82,      24 die woorde wat u gelees het is die tweede paragraaf van bo      25 af, net na die 9:20 tyd. Ja, daardie wat nou bo-aan die</p>

<p style="text-align: right;">Page 19646</p> <p>1 skerm verskyn, en dit is – as ek net bietjie vroeér kan      2 gaan, u het my gevra, "And that is where the TRT line, NIU      3 line was formed." U het aan die einde van dit na die      4 "Alright?" het u gesê, "So on that nothing, nothing,      5 nothing was wrong, okay? You acted, it was justified and      6 that is exactly the commitment and the cooperation we're      7 going to give the people." So u het gevra het ek dit gesê      8 dat "nothing, nothing, nothing was wrong," dat dit      9 "gejustify" is, en oor die "commitment," en u het gevra wat      10 het ek daarby bedoel.</p> <p>11 As ons net kan opgaan so entjie daar by 29, net      12 voor dit het ek gepraat met die "Public Order Police      13 members" wat dan "tactically retreat" het terug na hulle      14 voertuie toe en net voor 9:20 miskien daardie sinnetjie,      15 "By retreating and going back to your safe haven," dit is      16 die Nyalas, "therefore we got over to the second phase."      17 So die deel wat die Voorsitter vir my gevra het oor die      18 110%, die gelukwens en dit, dit was die boonste deel wat      19 geëindig het "exactly where we executed in that line," dit      20 het verwys na die "dispersion action."</p> <p>21 Waarna ons hier verwys het, 29, en ek het reeds      22 ook hieroor in my vorige "evidence," ek het net nie die      23 "transcripts" by my nou nie anders kon ek daarna verwys      24 het, die bladsy, maar ek het dit reeds breedvoerig      25 geantwoord, en onder korreksie wat ek toe gesê het, "That</p>	<p style="text-align: right;">Page 19648</p> <p>1 use the word again, but is it a coincidence that there were      2 34 dead and 80 seriously injured and not a single scratch      3 on any policeman? How do you explain that? If this was a      4 fight, a self-defence fight, how come that there isn't a      5 single scratch on any policeman, 34 dead, 80 seriously      6 injured? The self-defence has got to be balanced. You      7 know, the people fight. How come that one side comes out      8 of it completely unscathed and there are so many casualties      9 on the other side? Can you explain that possibly?</p> <p>10 BRIGADIER CALITZ: Mnr die Voorsitter –</p> <p>11 CHAIRPERSON: He wasn't there. He wasn't      12 there, Mr Bizos. He's told us that he only received      13 feedback and what he said was based upon what he'd been      14 told. He was already on his way ultimately to koppie 3      15 when these things happened. So how can you expect him to      16 explain? He can tell you what he was told. He assumed it      17 was in order obviously, but I don't see how you could ask      18 him to explain things that happened when he didn't see      19 them.</p> <p>20 MR BIZOS SC: But did you accept whatever      21 you were told on face value, or as a commander was it your      22 duty to try and evaluate what you were told?</p> <p>23 BRIGADIER CALITZ: Mnr die Voorsitter, op      24 daardie stadium – en dit is wat ek vir u daar bo gewys het      25 waar die lyn staan 18, ek dink dis net die paragraaf bo</p>
<p style="text-align: right;">Page 19647</p> <p>1 is where the TRT line and the NIU line was formed" - dit      2 praat van die opvolg – "and when they become under attack"      3 – dit is wat hulle dan vir my gesê het en wat ons gesien      4 het op die "footage" – "the command was given by their      5 commanders." Dit is waar ek getuig het dat jy kan hoor      6 "basic line, basic line, basic line," dit is jou "command,"      7 "and then some of them acted in self-defence." Hoekom ons      8 gesê het "some of them" is dat nie almal van hulle het      9 hulle vuurwapens gebruik nie. So dis wat ek in daardie sin      10 getuig het.      11 "So on that" – met ander woorde daardie inligting      12 tot my beskikking op daardie stadium, daar is niks verkeerd      13 nie. Dit was "gejustify" rondom "self-defence," en dan het      14 ek vir hulle gesê, "Exactly the same commitment we're going      15 to give the cooperation, to give the people." "The      16 people," ek dink mnr die Voorsitter of iemand het vir my op      17 daardie stadium gevra na wie verwys ek, en dit is die      18 Kommissie. So daar het ons vir almal gesê maak nie saak      19 wat daar gebeur het nie, ons gaan daardie "commitment" hê      20 en ons gaan dan samewerking gee met die Kommissie. Ek hoop      21 dit antwoord u vraag.      22 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):      23 Please look at the line that you say that the command was      24 given by their commanders, as some of them act in self-      25 defence. Now if they acted in self-defence – I'm sorry to</p>	<p style="text-align: right;">Page 19649</p> <p>1 hierdie een waar hy begin en ek sê, "At this stage," – nog      2 so bietjie op, daar heel bo – "the police will give the      3 hundred percent full cooperation, okay. At this stage we      4 did nothing wrong." Dit is op daardie stadium wat ek die      5 inligting gegee het en dit is op daardie stadium twee dae      6 na die voorval die inligting tot ons beskikking gewees. So      7 op daardie stadium was daar niks wat vir ons as      8 bevelvoerders, of vir my dan as operasionele bevelvoerder,      9 net vir myself te praat, gedui het op enigiets wat gebeur      10 het wat ons 'n vinger kon op lê en sê maar hierdie persoon,      11 dit en dit en dit het verkeerd gegaan nie. Die      12 verklarings, of die, kan ek sê die "hot debriefing" wat die      13 lede dan gegee het, dit het gebruik, asook die inligting      14 wat tot ons beskikking was. So dit is waarop ons gegaan      15 het en dit is waarop die uitsprake dan, of die – as ek sê      16 die woorde gesê is.      17 MR BIZOS SC: Before you spoke did you      18 try to evaluate the truthfulness of what you had been told?      19 Did you question if you're telling me the truth, how did it      20 come about that we have 34 people dead, 80 seriously      21 injured, and not one of you has a single scratch; how did      22 that happen? It's improbable.      23 CHAIRPERSON: Mr Bizos, that's three      24 questions I think you're asking. Maybe you should ask them      25 one by one, to be fair to the witness. The first question</p>

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1 you asked him, did you evaluate what you were told? And 2 then the second question was, there was this question about 3 injuries all on one side and not the other, did you ask 4 them about that, and the third question relates to 5 improbability, but perhaps, seeing I'd broken the questions 6 up you don't have to repeat them. Brigadier, you heard the 7 three questions that Mr Bizos asked you. Would you like to 8 answer them one by one?  9 BRIGADIER CALITZ: Mnr die Voorsitter, as 10 ek net weer kan hier vra – met respek, u het gesê die 11 eerste, die "evaluate," en die tweede een –  12 CHAIRPERSON: The first one was did you 13 evaluate what you had been told?  14 BRIGADIER CALITZ: Ja?  15 CHAIRPERSON: The second one was, did you 16 say to the members how did it happen that the injuries were 17 all on one side, that 34 are dead and no-one, not a 18 policeman has got a scratch, and thirdly, is that not an 19 improbable tale? It's really linked, I suppose, to the 20 question that he says you should have asked the members, or 21 asked you whether you asked the members about the lack of 22 scratch on one side and 34 deaths on the other. Anyway, 23 those are the three questions. Is that right, Mr Bizos?  24 BRIGADIER CALITZ: So drie –  25 MR BIZOS SC: That's correct, yes.	1 lynreg in mekaar. 2 So ek dink, as ek die woorde kan gebruik, dit is 3 Godsgenade dat daar nie op daardie dag polisiemanne beseer 4 is nie. Miskien die manier wat hulle opgevorm het, ons het 5 nie in detail gegaan hoekom hulle nie beseer is, maar ek 6 weet daar is wel op die polisiemanne gevuur en daar het 7 verskeie van hulle gesê dat hulle het gesien hoe daar op 8 hulle geskiet word. So dit kom miskien neer op opleiding 9 of op hoe hulle beweeg het tussen die voertuie, maar dit is 10 'n afleiding wat ek sal maak en dit is nie wat ek self 11 gesien het nie.  12 MR BIZOS SC: Well, you know, what I am 13 going to put to you is this; that you voluntarily 14 swallowed –  15 BRIGADIER CALITZ: Ek kan –  16 MR BIZOS SC: You swallowed and accepted 17 whatever was said to you uncritically and unreasonably and 18 came to a false conclusion.  19 BRIGADIER CALITZ: Ek stem nie saam met u 20 nie, mnr die Voorsitter.  21 MR BIZOS SC: Also you are expected to 22 examine the role played by SAPS through its representative 23 units individually and collectively in dealing with this 24 incident. Was this done at any time?  25 BRIGADIER CALITZ: Ek het nou nie u vraag
Page 19651	Page 19653
1 BRIGADIER CALITZ: So vraag 3 en vraag 2 2 is omrent die, in een –  3 CHAIRPERSON: They go together.  4 BRIGADIER CALITZ: As ek u reg verstaan.  5 Mnr die Voorsitter, op die eerste een, "evaluate," dit is 6 presies wat ek gesê het wat ek gedoen het. Ons het van die 7 17de af en tot die oggend van die 18de, daar was amper 8 deurnag gesit - ek dink daar is minimum geslaap – waar met 9 die lede dan gesprek gevoer is, met die bevelvoerders, om 10 te probeer uitvind presies wat het gebeur, wie het geskiet, 11 waar, watter posisies. Die bevelvoerders het inligting 12 ingebring. So alle moontlike fasette van die aspek het ons 13 in ag geneem. As dit is rondom die "evaluate," voor ek dan 14 vir hulle gesê het, "At this stage," tot, inligting tot my 15 beskikking op daardie stadium.  16 En dan die tweede een wat miskien hand-aan-hand 17 loop met die derde een oor beserings, ek kan net sê dat 18 daar wel van die polisiebeamptes was wat vir ons gesê het 19 daar is op hulle geskiet, nie net die TRT nie, maar ook van 20 die Openbare Orde Polisiërslede, en dit het ons nou wel 21 na die tyd gesien - ek dink dis 'n Al Jazeera video, as ek, 22 ek praat onder korreksie – waar die lede dan, waar ons dan 23 fisies sien daar word met 'n pistool op die polisiemanne 24 gevuur, en as ons gaan kyk die rigting wat die pistool 25 gevuur is en waar die Openbare Orde lid staan, is dit	1 verstaan nie. As u net weer vir my kan herhaal? 2 MR BIZOS SC: The terms of reference 3 provide that you should examine the role played by SAPS 4 through its representative units individually and 5 collectively in dealing with this incident. Was that done?  6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 jammer vir my onkunde; miskien as ek net daardie deel kan 8 kry, dat ek daarna kan kyk waarna u verwys as u sê dit was 9 my plig. Ek weet nie waar u –  10 CHAIRPERSON: You see, it's one of the 11 terms of reference – perhaps we can get the terms of 12 reference back on the screen. One of the terms of 13 reference was, as Mr Bizos read it to you, that we are 14 charged, we the Commission are charged with investigating 15 the role of each of the units and so forth of the police, 16 and we're going to look at that now. There we go.  17 BRIGADIER CALITZ: O, is dit die "terms 18 of reference."  19 CHAIRPERSON: We can go a bit further 20 down on that page, please. The first part relates to 21 Lonmin. We have to go to the next page. Now we come to 22 paragraph –  23 MR BIZOS SC: 1.2.3 – 24 CHAIRPERSON: - 1.2 of the terms of 25 reference, the conduct of the SAPS, you see. The first one

<p style="text-align: right;">Page 19654</p> <p>1 deals with the Standing Orders, policy consideration, that 2 doesn't arise necessarily.</p> <p>3 BRIGADIER CALITZ: Ja.</p> <p>4 CHAIRPERSON: 1.2.2 is the one that Mr 5 Bizos put to you before lunch, "Precise facts and 6 circumstances which gave rise to the use of all and any 7 force and whether this is reasonable and justifiable in the 8 particular circumstances." You say people had regard to 9 that at Roots because you were going to make a presentation 10 to us dealing with that.</p> <p>11 BRIGADIER CALITZ: Korrek.</p> <p>12 CHAIRPERSON: The third one is the one 13 that Mr Bizos is busy with now, "To examine the role played 14 by SAPS through its respective units, individually and 15 collectively in dealing with this incident." So I take it 16 that means we've got to look at what the NIU did –</p> <p>17 BRIGADIER CALITZ: O ja.</p> <p>18 CHAIRPERSON: - what the STF did, what 19 the TRT did, what the POP did.</p> <p>20 BRIGADIER CALITZ: Ek verstaan.</p> <p>21 CHAIRPERSON: We've got to look at those 22 individually and then collectively, and what he wants to 23 know is at Roots did you do that? Did you examine the role 24 played by the SAPS through its respective units? That's 25 your question, Mr Bizos?</p>	<p style="text-align: right;">Page 19655</p> <p>1 die Voorsitter, dit wat die bevelvoerders vir ons gegee het 2 op daardie dag het niks daarop gedui. Elke aksie wat 'n 3 bevelvoerder gesê het, het hulle gedoen. Alhoewel dit op 4 die voorligting was of nie op die voorligting was nie, het 5 hulle redes daarvoor gegee hoekom hulle dan in daardie, kan 6 ek sê manier opgetree het.</p> <p>7 MR BIZOS SC: And finally, the Commission 8 is to decide whether by act or omission it directly or 9 indirectly caused loss of life when –</p> <p>10 CHAIRPERSON: Harm.</p> <p>11 MR BIZOS SC: - or harm to persons or 12 property. This is what the Commission is enjoined to try 13 and find out. Did you either at Potchefstroom or elsewhere 14 find any act, or decide whether any act or omission was 15 committed which may have avoided the loss of life or – 16 well, I don't, damage to property I think is secondary in 17 these proceedings.</p> <p>18 BRIGADIER CALITZ: Nee, mnr die 19 Voorsitter, nie wat op hierdie stadium tot my kennis is 20 nie.</p> <p>21 CHAIRPERSON: I mean you know they're not 22 talking about culpability. The drafters of these terms of 23 reference, paragraph 1.2.4, aren't talking about 24 culpability, blameworthiness. They want us to say whether 25 by act or omission the SAPS directly or indirectly caused</p>
<p style="text-align: right;">Page 19655</p> <p>1 MR BIZOS SC: That is so.</p> <p>2 BRIGADIER CALITZ: Ekskuus, mnr die 3 Voorsitter, ja, nee ek het nie geweet u verwys weer terug 4 na die "terms of reference" toe nie. Ek dog dit kom uit 5 die bundel uit as my take. Dit is presies wat gedoen was 6 by Roots waar ek vir u gesê het dat die groepe opgebreek 7 het en die verskillende groepe en groepbevelvoerders en dan 8 is dit dan spesifiek die "respective units individually" en 9 "collectively in dealing with the incident," en dit is waar 10 die inligting dan saamgestel is in die dokument.</p> <p>11 MR BIZOS SC: In exhibit L?</p> <p>12 BRIGADIER CALITZ: Ja, ek dink daar is 'n 13 "narrative" ook saam met "exhibit L."</p> <p>14 MR BIZOS SC: Yes, and is it correct that 15 you found nothing that anyone, nothing wrong that anyone 16 had done, either individually or collectively?</p> <p>17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 niks wat tot my kennis gekom het op hierdie stadium, dat 19 iemand "deliberate" iets verkeerd gedoen het waarvan ek 20 bewus is op daardie stadium nie.</p> <p>21 MR BIZOS SC: So that the answer to you 22 is that you know nothing that anyone did which was shown to 23 be the responsibility of any police officer or any 24 commander or group of commanders?</p> <p>25 BRIGADIER CALITZ: Ek sê weereens, mnr</p>	<p style="text-align: right;">Page 19657</p> <p>1 loss of life or harm to persons or property. Now the 2 factual position, now let's leave the property out for a 3 moment. I mean there's no doubt that a number of members 4 of the SAPS pulled the trigger of their weapons -</p> <p>5 BRIGADIER CALITZ: Dit is korrek.</p> <p>6 CHAIRPERSON: - and killed people and 7 injured others, right?</p> <p>8 BRIGADIER CALITZ: Dit is korrek, mnr die 9 Voorsitter.</p> <p>10 CHAIRPERSON: So a number of acts were 11 committed by members of the SAPS which directly caused 12 either loss of life or harm to persons. Is that right?</p> <p>13 BRIGADIER CALITZ: Ek verstaan nou. Ek 14 verstaan wat u – ja, dit is heeltemal korrek, mnr die 15 Voorsitter.</p> <p>16 CHAIRPERSON: Ja.</p> <p>17 BRIGADIER CALITZ: Ja.</p> <p>18 MR BIZOS SC: So particularly in relation 19 to omissions, you have been cross-examined by my colleagues 20 and to some extent by me about other things that could have 21 been done that could have avoided the loss of life. I 22 don't want to go into details, but generally do you accept 23 that, that it was put to you for instance that at scene 2 24 you could have taken an alternative way of calling on 25 people to surrender before they were shot, either you or</p>

<p style="text-align: right;">Page 19658</p> <p>1 someone else? You know what the difference between a deed 2 and an omission, that if you had done something else there 3 may have been a different result, that none of them that 4 have been put to you are well-founded according to you? 5 You didn't omit to do anything that you could have done to 6 avoid loss of life? Is that what your case is?</p> <p>7 BRIGADIER CALITZ: Mnr die Voorsitter, as 8 u na my getuienis verwys, ja, ek het vir u getuig dat ek 9 het op niks, soos u dit sê, "admit" om iets anders te 10 gedoen het om te verhoed. Wat ons wel getuig het is oor 11 wat ek gehoor het en wat ek op daardie stadium verstaan het 12 en hoe die uiteendrywing plaasgevind het.</p> <p>13 [14:23] Dit is wat u nou-nou ook vir my gevra het oor, 14 het dit gebeur? Ek kan egter nie getuig op scene 2, wat 15 deur die bevelvoerders, wat daar plaasgevind het nie, nee.</p> <p>16 MR BIZOS SC: Well, that was only one 17 example. Among the documents that you have in that file is 18 a report by Mr Hendrickx, GGG2, have you got it?</p> <p>19 BRIGADIER CALITZ: Ek het die dokument 20 voor my.</p> <p>21 MR BIZOS SC: Have you read it?</p> <p>22 BRIGADIER CALITZ: Ek het daar 23 deurgegaan, ja, mnr die Voorsitter.</p> <p>24 MR BIZOS SC: Have you read that 25 carefully?</p>	<p style="text-align: right;">Page 19660</p> <p>1 ek sy kwalifikasies is alles wat hy oor – 2 MR BIZOS SC: His qualifications and his 3 experience, have you got any reason to doubt his 4 qualifications and his experience and his judgment in 5 relation as to how crowds should be managed, not 6 controlled, managed in a democratic society?</p> <p>7 BRIGADIER CALITZ: Dit was sy opinie 8 gewees en ek het dit so gelees.</p> <p>9 MR BIZOS SC: Do you disagree with his 10 opinion or opinions?</p> <p>11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 nee, ek kan nie my vinger nou op spesifieke punte lê nie, 13 daarom sê ek as ons deur die verslag gaan kan u dit vir my 14 wys.</p> <p>15 MR BIZOS SC: Well, have you any reason 16 to doubt that he is correct when he sets out his wide 17 experience and fortunately for the benefit of the 18 Commission and those of us representing the victims, he has 19 had considerable South African experience.</p> <p>20 BRIGADIER CALITZ: Dit het ek so gesê, 21 ja, mnr die Voorsitter.</p> <p>22 MR BIZOS SC: You accept that?</p> <p>23 BRIGADIER CALITZ: Korrek, ja, Meneer.</p> <p>24 MR BIZOS SC: Now do you agree that in 25 this document, may I indicate Mr Chairman, that it will be</p>
<p style="text-align: right;">Page 19659</p> <p>1 BRIGADIER CALITZ: Ek sal nie sê ek het 2 soveel tyd gehad om vreeslik baie aantekeninge te maak nie, 3 maar as u my verwys na sekere paragrawe behoort ek vir u te 4 kan antwoord.</p> <p>5 MR BIZOS SC: Well, we will come to the 6 detail. First of all Mr Hendrickx sets out his 7 qualifications, have you any reason to doubt that he is 8 qualified to express opinions as to how a crowd should be 9 managed?</p> <p>10 BRIGADIER CALITZ: Ja, wat ek sy 11 kwalifikasies verstaan is dat dit is wel in die buiteland 12 en nie in Suid-Afrika onder ons omstandighede nie, so dit 13 is –</p> <p>14 MR BIZOS SC: No, that's not quite right, 15 you didn't read it properly, you see because he actually 16 was called to South Africa and spent almost five years, 17 trying to change the South African habits by the police as 18 to how to deal with crowds.</p> <p>19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, as –</p> <p>21 MR BIZOS SC: Did you read that?</p> <p>22 BRIGADIER CALITZ: As ek net die 23 geleentheid gegee geword het om klaar te maak, u het 24 gepraat van sy kwalifikasies en nie die ondervinding nie, 25 so ek wou nog daarby kom deur te sê die kwalifikasies, sien</p>	<p style="text-align: right;">Page 19661</p> <p>1 amplified by a further document having regard to matters 2 that have come up but I will confine myself only on matters 3 dealt with in GGG2. Have you any reason to believe that he 4 is much more experienced than you and possibly many others 5 as to how crowds should be managed even in conflict 6 situations, would you agree with that?</p> <p>7 BRIGADIER CALITZ: Mnr die Voorsitter, as 8 u praat van sy opleiding of sy experience, ek het getuig 9 oor, ek het vir die afgelope 19, 20 jaar ondervinding met 10 Openbare Orde Polisiëring.</p> <p>11 MR BIZOS SC: Yes, but –</p> <p>12 BRIGADIER CALITZ: U het gemeld hy was 13 vyf jaar in Suid-Afrika waar hy sy ondervinding kon opgetel 14 het oor wat aangaan in Suid-Afrika en hoe hy die polisie 15 bygestaan het, miskien met sekere aspekte, so in daardie 16 gevalle, nee, ek sou nie sê 100% dat ek saamstem nie, nee.</p> <p>17 MR BIZOS SC: He has been in and out of 18 South Africa for almost 20 years and he spent almost 10 19 years as an advisory to the South African Democratic 20 Government as to how to re-educate, if I may use the word, 21 the South African Police Force from a militarised force to 22 a non militarised force. Have you any reason to doubt his 23 competence or experience in that regard?</p> <p>24 BRIGADIER CALITZ: Nee, mnr die 25 Voorsitter.</p>

<p style="text-align: right;">Page 19662</p> <p>1        MR BIZOS SC:     Do you agree that when you 2 joined the South African Police Force it was a militarised 3 police force? Do you agree with that?</p> <p>4        BRIGADIER CALITZ:     Dit is van die 5 terminologie wat gebruik was in daardie tyd.</p> <p>6        MR BIZOS SC:     Well, terminology has a 7 meaning and you understand what I mean. He describes it as 8 a militarised police force and he was called in at the 9 instance of the new government led by Mr Mandela and 10 Minister Mufamadi in order to change the character of the 11 South African Police Force from a militarised force to a 12 non militarised force.</p> <p>13        BRIGADIER CALITZ:     Dit is waar, dit kan 14 saam met u stem, ja.</p> <p>15        MR BIZOS SC:     Do you accept that it was a 16 militarised force for the first seven years of your 17 membership of the police force?</p> <p>18        BRIGADIER CALITZ:     Soos ek vir u gesê het 19 dit is die terminologie wat daarna verwys is, ja.</p> <p>20        MR BIZOS SC:     Do you agree with Mr 21 Hendrickx that for the seven years that you were trained as 22 a South African policeman it was a militarised force?</p> <p>23        BRIGADIER CALITZ:     Miskien as ons dit dan 24 net kan afbreek, wat u presies bedoel met militarised. Ons 25 het militêre range gehad en in daardie mate, ek het vir u</p>	<p style="text-align: right;">Page 19664</p> <p>1 for which they were used and that Casspirs during the 2 apartheid years were used as, in particular and to a lesser 3 extent that Nyals, were used as tanks used in warfare, 4 with one important difference. The Casspirs had movable 5 arms and the tanks had immovable cannons in order to deal 6 with the enemy.</p> <p>7        MR SEMENYA SC:     Chair, -</p> <p>8        BRIGADIER CALITZ:     Mnr die Voorsitter, ek 9 kan nie saamstem –</p> <p>10        CHAIRPERSON:     Brigadier, Mr Semenya has 11 turned his light on.</p> <p>12        MR SEMENYA SC:     Just so that we follow, 13 is the case that legal resources is making that armoured 14 vehicles are not appropriate in crowd management 15 situations?</p> <p>16        MR BIZOS SC:     No, no, no, we don't say 17 that they are not, we are going to talk about their use 18 during the apartheid regime, if my learned friend –</p> <p>19        MR SEMENYA SC:     No, no, Mr Chair, -</p> <p>20        CHAIRPERSON:     I'm sorry but I don't quite 21 know where it gets you, if you've got a vehicle which has 22 been used for the militaristic purpose but you could also 23 use for what one can call a peaceful non militaristic 24 purpose.</p> <p>25        MR BIZOS SC:     Yes.</p>
<p style="text-align: right;">Page 19663</p> <p>1 getuig waar ek die eerste vyf, ses jaar was van my 2 loopbaan, miskien was ek dan nie so direk betrokke by, 3 waarna u verwys nie.</p> <p>4        MR BIZOS SC:     Well, you know words have a 5 meaning but for your benefit perhaps I should give you some 6 of the examples of what a militarised force used. 7 Unfortunately I have lived through it for many more years 8 than you did. First of all Casspirs and their smaller 9 sisters are hardly suitable vehicles to manage crowds, 10 would you agree?</p> <p>11        BRIGADIER CALITZ:     'n Casspir, dit is die 12 voertuig waarna u verwys.</p> <p>13        MR BIZOS SC:     Yes, yes.</p> <p>14        BRIGADIER CALITZ:     Mnr die Voorsitter, -</p> <p>15        MR BIZOS SC:     The massive, the massive 16 one and the smaller sister.</p> <p>17        BRIGADIER CALITZ:     Nee, ek verstaan nie?</p> <p>18        MR BIZOS SC:     Die Nyala.</p> <p>19        BRIGADIER CALITZ:     Ek hoor wat u sê, die 20 Casspir voertuig was daardie jare gebruik en miskien vir u 21 inligting, die Casspir voertuig is vandag nog in gebruik. 22 Ons het twee Casspir voertuie op die dag gehad en dit is 23 nog steeds in gebruik vandag, die Casspir voertuie.</p> <p>24        MR BIZOS SC:     Casspirs and Nyals are 25 akin to tanks with one important difference for the purpose</p>	<p style="text-align: right;">Page 19665</p> <p>1        CHAIRPERSON:     The fact that you still use 2 those vehicles but for non militaristic, peaceful purposes 3 doesn't indicate that the police is still militarised 4 because the use of the vehicle for non militaristic 5 purposes means that the fact that the vehicles are still 6 retained by the police is a neutral fact, isn't it? There 7 may be other bases for saying the police were militarised 8 then and there has been an element of re-militarisation 9 since the agreement between the Belgian Government and the 10 South African Government in which Colonel Hendrickx was 11 involved in and there are, as you know the matter is dealt 12 with in the National Planning Commission report which was 13 put to the National Commissioner when she gave evidence, 14 but I don't know if it is fruitful to traverse this matter 15 in great detail with the present witness but –</p> <p>16        MR BIZOS SC:     Not in great detail, Mr 17 Chairman, but in answer to my learned friend, we do not say 18 that Casspirs should be taken away. It is what our 19 reputation was during the apartheid regime when they were 20 used in order to put full speeder ahead on the streets of 21 Soweto and elsewhere in order to disperse crowds.</p> <p>22        CHAIRPERSON:     Yes, I understand that, but 23 how did that help us to decide the matters which were 24 brought to our attention under the terms of reference, the 25 fact that Casspirs were used for those nefarious purposes</p>

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1 in the pre 94 days and are now still retained by the SAPS 2 but used, one assumes for non nefarious purposes. How does 3 that help us to answer the questions which arise under the 4 terms of reference?	1 MR BIZOS SC: - relying on that I have 2 put the situation, the evidence that I know of which is 3 here, that there were two people who allegedly heard 4 firearms and the rest had the worst possible panga and a 5 couple of assegais. What I say was that having 20 odd such 6 vehicles is counterproductive –
5 MR BIZOS SC: I will explain, Mr 6 Chairman. Our expert will say that the bringing to the 7 notice of a crowd force may be counterproductive and the 8 expert says so and what I am going to put to the witness is 9 that what is in the mind of the people in the crowd, or 10 particularly of people of the disadvantaged group that were 11 there up to 1994, that these Casspits, Mr Chairman, were 12 used in order to bulldoze people off the streets of Soweto 13 and elsewhere that had to jump fences in order not to be 14 run over and that is the image that a Casspir has for the 15 vast majority of the people of South Africa –	7 CHAIRPERSON: Yes, I heard you saying it, 8 don't you think the time has come now to put that 9 proposition to the witness and let's get him comment on it? 10 What is suggested, well, you know what is suggested, that 11 there was an excessive show of force, there were far too 12 many armoured vehicles there, that a message was being sent 13 out to the crowd of strikers which was a counterproductive 14 kind of a message which was calculated, I use calculated in 15 the objective sense, not the subjective sense, which was 16 calculated to evoke some kind of violent response from 17 them. Is that what you're putting, Mr Bizo?
16 CHAIRPERSON: Sorry, Mr Bizo, - 17 MR BIZOS SC: - and having Casspits and 18 Nyalas, about how many, 20 of them in all, in a crowd 19 controls a situation is counterproductive?	18 MR BIZOS SC: Yes, Mr Chairman. 19 CHAIRPERSON: And what, before you answer 20 let me read you what Colonel Hendrickx says in Exhibit GGG2 21 at page 15. I don't think, you've got a copy, haven't you? 22 Page 15 of that exhibit, in paragraph 21.6.2, what Colonel 23 Hendrickx says is the following. He is talking about the 24 plan and I know you weren't responsible for the plan but 25 you were involved in it. He says, "A display of force as
20 CHAIRPERSON: Alright, now I don't 21 remember that I see that in Exhibit GGG2, it may be in the 22 amplified version unless it is somewhere here that I've 23 missed, but really the point you're putting is a wider 24 point than that. It is the fact that the police used 25 armoured vehicles because that's really what Casspits and	
20 Nyalas are. Armoured vehicles were inappropriate in a 21 crowd management situation, I don't want to debate it with 22 you but presumably when Colonel Hendrickx comes the point 23 will be fully covered. I am not sure if it is appropriate 24 to debate it with this witness, but if you have a crowd, it 25 depends on the crowd surely, if you have a crowd which has got firearms, which has got dangerous weapons of other kinds and it manifests the intention to use them against others, then is it possible even in a modern democratic system to manage such a crowd without armoured vehicles and if the answer to that is, no, then how does it help us because –	20 MR BIZOS SC: Yes. 21 CHAIRPERSON: You would mind? 22 MR BIZOS SC: No, no, not at all. 23 CHAIRPERSON: Alright, so you understand 24 the point that's being put and the views that Colonel 25 Hendrickx has expressed. Are you able to give us your views on these points?
23 MR BIZOS SC: Yes, our expert is not 24 going to say that they should not be used generally, but 25 where we have a situation that it is alleged that two people had firearms and for that reason it was necessary to have 20 such vehicles, is an excessive use of force which is counterproductive.	23 BRIGADIER CALITZ: Mnr die Voorsitter, ek 24 sal so kort as moontlik probeer wees om dan te verwys na 25 die Casspits of die Nyalas. Soos ek vir u gesê het ek het 27 jaar diens waarvan 19, 20 jaar in die Openbare Orde 27 Polisiëring, 21 jaar in die nuwe demokrasie en in hierdie huidige omstandighede is dit die enigste pantser voertuie wat tot die beskikking van die Suid-Afrikaanse Polisiediens is, so daar is niks anders nie. Ek weet daar is verwys na vuurwapens of miskien pangas, maar selfs al gaan ons net na 'n pad toe wat geblokkeer is, selfs klippe en die persone gooi ons, dit is hoekom daar pantser voertuie moet wees. Jou sagte dop voertuie is nie bestand teen so iets nie en die skade sal baie hoog wees as ons net in sagte dop
23 MR SEMENYA SC: At – 24 CHAIRPERSON: Where do we see that in the 25 report or is it just going to be the subsequent report that we haven't seen yet? 23 MR BIZOS SC: And what he is saying, that excessive force is counterproductive and – 25 CHAIRPERSON: Okay, can we –	

<p style="text-align: right;">Page 19670</p> <p>1 voertuie beweeg. So die Openbare Orde Polisiëringseenhede,      2 dit is die eenhede wat dan uitgereik is met die Nyalas en      3 ek glo daar is omvattende studies gedoen en ek glo die      4 Generaal Annandale, the persone wat nasional is kan      5 daardie studies vir ons, hoe hulle op die voertuie afgekom      6 het.</p> <p>7 [14:43] Om te sê dit is counterproductive, soos ek vir u      8 sê dit is baie effektief en ons gebruik dit vandag en      9 miskien is dit en van die redes waarom ons kan verduidelik      10 dat, waarom daar nie polisiemanne besoer was op die dag      11 nie. U verwys na twee vuurwapens. Die bewys van die      12 polisie in exhibit L verwys na vyf vuurwapens wat op die      13 dag gevind is. Dit is net wat gevind is, ons weet ook dat      14 die twee sekuriteitsbeamptes se wapens gevat is, wat      15 haelgewere was, ons weet dat ons eie polisieman se      16 haelgeweer gevat is, ons weet dat sy R5 gevat is asook die      17 pistole van die polisiemanne wat dan gedood is op die 13de.      18 So nie net die wapens wat gekry is op die toneel nie, maar      19 daar was baie ander vuurwapens ook. Ons weet dat die      20 aanloop tot en met die, as ek sê display of force as      21 envisaged in stage 2 of the plan, dit is waar ons dan      22 oorgaan het, can provoke the people. Ons weet tot op      23 daardie dag was daar tien mense vermoor en dit is waar die      24 polisie dan toegetree het. So dit was nie hierdie rustige      25 kalm situasie wat miskien geskets word nie, so – en dan</p>	<p style="text-align: right;">Page 19672</p> <p>1 pantervoertuie waar die skare dan baie minder was en ons      2 suksesvol was met die uiteendrywing. Indien ons dalk      3 sagtedop voertuie gebruik het, glo ek daar sou baie meer      4 beserings gewees het, die skade sou hoér gewees het en die      5 voertuie sou dan in so 'n posisie oneffektief geraak het om      6 dan enigsins op te volg. Daarom ook die laaste ding wat ek      7 wil sê oor die Nyala voertuig, dit is 'n voertuig wat gebou      8 is as 'n 4X4 pantervoertuig en ek kan dit glad nie      9 vergelyk met wat u gesê het, 'n tank. Dit is twee      10 wêreldwyse verskille tussen die twee. So dit is miskien wat      11 mnr Hendrickx in sy tien jaar, vyf jaar, 20 jaar in Suid-      12 Afrika ondervind het, maar dit is nog steeds wat ons      13 gebruik. Dit, in kort –</p> <p>14 MR BIZOS SC: Well, we have the evidence      15 of someone who resented the fact that the crowd was      16 addressed from a Casspir or a Nyala. Do you remember that      17 evidence?</p> <p>18 BRIGADIER CALITZ: Ek was ongelukkig –      19 MR BIZOS SC: Because I'm going to put to      20 you –</p> <p>21 BRIGADIER CALITZ: - nie teenwoordig      22 gewees nie, so as u miskien vir my kan wys kan ek daarna      23 gaan kyk.</p> <p>24 MR BIZOS SC: Because it's not what the      25 police think the effect of these vehicles may have, it's</p>
<p style="text-align: right;">Page 19671</p> <p>1 stage van die plan can be provocative and increase the      2 antagonism towards the police. Dit is van dag 1 af met die      3 onderhandeling het ek verwys in my verklaring daarna dat      4 toe ons met die voertuie daar opdaag en oor die public      5 address system met die groep gekommunikeer het, mnr Noki      6 self het geen probleem gehad om na ons toe te kom nie en      7 was bereid om te onderhandel en sy eerste onderhandeling      8 was nie dat, u weet, die voertuie pla ons nie, die      9 onderhandeling was dat hulle wil met die myn praat. Hulle      10 het met ons gedeel, daar was 'n suksesvolle      11 vertrouensposisie opgebou tot die volgende dat wat ons nou      12 vir hulle die feedback gegee het. Ek het so rofweg gesê      13 dit is, 13 keer in my verklaring, het ek in my consolidated      14 verklaring verwys waar ons dan met die public address      15 system gepraat het met die skare en dan die doel      16 verduidelik het van dan die fase 2 op die 16de waar ons dan      17 die Nyalas ge-preposition het met die draad daarby. So ek      18 dink daar was veelvuldige, menigte kommunikasie gewees tot      19 die groep en dan ek dink vir die afgelope 21 jaar, al die      20 situasies op die televisie, die voorvalle. Ek het genoem,      21 as ek so vinnig kan kyk na my statistiek wat hulle vir my      22 getrek het van die IRIS sisteem af, het ek so 3 900 om en      23 by 58 gevalle hanteer in my loopbaan en ons het nog nooit      24 enige probleme, waar die voertuie die skuld was nie. Ons      25 het wel baie sukses gehad as gevolg van die gebruik van die</p>	<p style="text-align: right;">Page 19673</p> <p>1 the experience of the oppressed people because these      2 vehicles were used in order to suppress them during the      3 apartheid regime. I'm not to be understood that Mr      4 Hendrickx is going to say that you shouldn't use Nyalas and      5 Casspurs in appropriate circumstances but it's a fact of      6 life for the people that were oppressed for so many years,      7 that you do not converse with them or try and control them      8 with such vehicles.</p> <p>9 MR SEMENYA SC: I'm tempted to say that      10 that is evidence of no accurateness, given my own      11 background.</p> <p>12 CHAIRPERSON: Is that an objection, Mr      13 Mpofu – sorry, I beg your pardon Mr Mpofu – is that an      14 objection, Mr Semenya?</p> <p>15 MR SEMENYA SC: It is an objection,      16 Chair. That's not an historical fact. It's not something      17 that is of sufficient notoriety for judicial –</p> <p>18 CHAIRPERSON: I think, Mr Bizos, I think      19 Mr Semenya is right that it's not something one can take      20 judicial notice of and if there's going to be evidence to      21 that effect, well, so be it, we'll deal with it but I'm not      22 sure it's evidence you can give us from the bar and I'm not      23 able to say whether what you're saying is accurate or not.</p> <p>24 MR BIZOS SC: Yes.</p> <p>25 CHAIRPERSON: And I like to have a</p>

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1 presumption in your favour when I approach these matters 2 but it does sound like –  3 MR BIZOS SC: I usually have good grounds 4 for what I say and I would suggest that my learned friend 5 should visit the apartheid museum where there is a Casspir, 6 there is a Casspir in the museum with an explanation as to 7 what use it was put for and then perhaps if he has limited 8 experience, the apartheid museum has something to teach 9 him.	1 shocked the next morning to realise that they did that. I 2 take it that's your experience too, as an experienced 3 public order policing officer.  4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 heeltemal in u woorde. Ek sal net wil byvoeg, en baie kere 6 word hulle dan geïntimideer om dan saam met die groep te 7 gaan. So ordinary members of the public who do not 8 otherwise – ek wou net die woorde gelees het – commit, not 9 otherwise commit criminal acts. So in baie gevalle is dit 10 dan persone wat, die gevalle wat ons het en wat gearresteer 11 is, baie, baie van daardie gevalle sê die persone ons was 12 geïntimideer gewees, as ons nie sou gaan nie sal hulle ons 13 huise afbrand, as ons nie dit doen nie gaan hulle dit doen 14 en hulle gaan weet. So hulle probeer dié verskoning, wat 15 in baie gevalle so is. Ons sien menigde male voorbeeldie, 16 tans in die media ook, oor service delivery en die meeste 17 van daardie mense sweep maar en vat maar mense saam op die 18 dag – as dit die antwoord is. Ek weet op die dag van die 19 16de byvoorbeeld het hulle die mense bymekaar gemaak en 20 gesê al die mans moet koppies toe, die vrouens was verbied 21 en so, dit is ook een van die voorbeeldie dat hulle het baie 22 van die mense gedwing om soontoe te gaan.
10 CHAIRPERSON: Alright, Mr Bizos, that's a 11 very interesting point but it's not helping us very much, 12 so may I suggest we move on and deal with questions to the 13 witness that he can answer –  14 MR BIZOS SC: I didn't intend to be so 15 long on it, on the point, but –  16 CHAIRPERSON: That would be called a 17 frolic of your own, Mr Bizos.	23 CHAIRPERSON: You and I are having a 24 conversation, Mr Bizos isn't involved but anyway he'll join 25 us in due course. Mr Bizos, are you ready to ask the next
18 MR BIZOS SC: Yes.  19 CHAIRPERSON: But we won't go there now.  20 MR BIZOS SC: Yes.  21 CHAIRPERSON: Let's carry on with the 22 case.  23 MR BIZOS SC: I'm going to put a number 24 of general propositions as set out by Dr, by Mr Hendrickx. 25 Please turn to page 5 where he lists with the opening, "The	
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1 crowd management model is based on five theoretical 2 building blocks" and then turn over to page 5 and have a 3 look at 14.2.3. "Disorder often involves ordinary members 4 of the public who do not otherwise commit criminal acts." 5 Would you agree with that?  6 CHAIRPERSON: I take it, Brigadier, you 7 can deal with that because in your extensive experience in 8 public order policing you would have encountered crowds and 9 I think – again I don't want to give evidence but we are 10 sometimes -  11 BRIGADIER CALITZ: Ek verstaan, mnr die 12 Voorsitter.  13 CHAIRPERSON: - some of us appeared in 14 cases involving crowd violence and so on and one of the 15 interesting things was, I ask you whether this is your 16 experience, I can't give evidence on the point, that 17 sometimes in the emotion of the moment a whole lot of 18 people were swept up into the crowd and did things totally 19 out of character and there were theories about 20 deindividuation and so forth that applied. You've probably 21 heard of those in the past but it does seem to be true, 22 does it not, that disorder does often involve ordinary 23 members of the public who somehow get swept up in the 24 excitement of the moment and participate in acts by crowds 25 which they wouldn't normally do and some of them are quite	1 question? Did you hear what the witness was telling me? 2 MR BIZOS SC: Sorry, I – 3 CHAIRPERSON: No, thought you weren't. I 4 asked a question which was designed to be a follow-up to 5 your question to help you and he agreed with me that 6 sometimes in crowd management situations you find people 7 who are normally law-abiding, doing things which are 8 totally out of character, swept up in the excitement of the 9 moment and so forth and we had lots of those cases in the 10 past. Remember there were theories of deindividuation and 11 that kind of thing. He agreed with all that but he said in 12 many cases in his experience the people concerned have 13 given the explanation for their conduct, when asked about 14 it, that they had been intimidated and I take it that 15 that's also true but it wouldn't necessarily apply to 16 everybody. The general proposition then, 14.2.3 may also 17 apply to people who weren't intimidated. I take it you'd 18 agree with that as something that does happen from time to 19 time, is that right?  20 BRIGADIER CALITZ: Mnr die Voorsitter, en 21 dan miskien die laaste enetjie wat tot my mind gekom het 22 nou net, baie van die kere indien daar wel – ek praat nou 23 van service delivery of in soos hierdie geval daar wel 24 optogte is – is daar wel die kriminele element wat dit 25 uitbuit. So hulle wag spesifieker vir hierdie tipe van, noem

	Page 19678		Page 19680
1 dit vreedsame protes, noem dit, as ek kan sê iets wat mens 2 kan verstaan soos oor water, hulle protes oor water. So 3 daar is wel 'n kriminele element wat hierdie ding uitbuit 4 en vir hulle gaan dit glad nie oor die water of hoe die 5 ding is nie, maar hulle wil wel dan misdaad pleeg. So dit 6 is miskien net die opposite van wat hier ook staan, is ook 7 waar.		1 net op rekord plaas, my vrou is nie vandag hier nie, so ek 2 is nie deel van die gesprek, dat dit net op rekord is. 3 MR BIZOS SC: Yes. 14.2.4 "Not all 4 members of the crowd or community participated. They saw 5 the –" 6 BRIGADIER CALITZ: Ekskuus tog, ekskuus 7 tog meneer – 8 MR BIZOS SC: "- but those who do often 9 have the tacit" – 10 CHAIRPERSON: No, Mr Bizos, sorry – 11 MR BIZOS SC: "- support of the rest." 12 CHAIRPERSON: Mr Bizos, we want the 13 Brigadier with us. I think he wasn't with us for a moment. 14 What is happening is he is reading 14.2.4, can you see that 15 – which is on the screen, which is on the screen and which 16 is on page 5 of Colonel – 17 BRIGADIER CALITZ: Ek het hom, mnr die 18 Voorsitter. 19 CHAIRPERSON: Are you now with us? 20 Right. Mr Bizos, proceed. We'll finish 14.2.4 and his 21 answer and then we'll take the tea adjournment. 22 MR BIZOS SC: Yes. What do you say to 23 that? Do you accept that? 24 BRIGADIER CALITZ: Soos ek dit hier lees, 25 as ek nou net reg is, "Not all members of the crowd or	
1 the three or four days that we had these incidents. 2 CHAIRPERSON: There was evidence – 3 BRIGADIER CALITZ: Dit is presies – 4 CHAIRPERSON: He's referring to an item 5 of evidence that we had. It's in the occurrence book, I 6 think, that it's suggested that on the 16th the women in 7 Nkaneng, I think it was, were going around saying to the 8 men that they must go to the koppie, the suggestion being – 9 remember there was a strike on so there wasn't any activity 10 – saying they mustn't lie in bed at home, they must get up 11 and get out and go to the koppie. I think that was the 12 thrust of one or other of the entries in the occurrence 13 book and that's what he is referring to. So it is relevant 14 to the 16th but it doesn't necessarily detract from the 15 force of what you put to him, which I understood him also 16 to agree. 17 MR BIZOS SC: We must be careful, Mr 18 Chairman, that we do not consider suggestions made by wives 19 as intimidation. 20 CHAIRPERSON: I don't propose addressing 21 that point in the report of the Commission. If the 22 President wants advice on that he must appoint a special 23 separate commission and he must not appoint me to it. 24 MR BIZOS SC: Yes. 25 BRIGADIER CALITZ: Mnr die Voorsitter,	Page 19679	1 community participated in disorder but those who do, often 2 have a tacit or an open support of the rest." Met ander 3 woorde dat hulle mekaar steun en dat daar 'n gesamentlike 4 doel is. Is dit reg soos ek dit verstaan? 5 CHAIRPERSON: I must point out to you 6 before we carry on that this is expert evidence really 7 which is being put to you and you of course are, from a 8 practical point of view, an expert in public order 9 policing. You've got the experience which gives rise to 10 the expertise. The passages being put to you from Colonel 11 Hendrickx's report are based upon the work of an expert who 12 has been referred to previously in this Commission, 13 Professor David Waddington, an international expert on 14 public order policing and he talks about the empirical 15 realities of gatherings and disorder and he says these 16 stipulate that all current public gatherings manifest a 17 number of empirical realities which are common to all 18 crowds and disorder and then he gives these examples. The 19 one we've dealt with, that's 14.2.3 and now 14.2.4. So 20 what Colonel Hendrickx is saying is that he is supported by 21 empirical research by an international authority on public 22 order policing, Professor David Waddington, who says that 23 research indicates that this is true really of all crowds 24 and disorder, the statement in 14.2.4. Now you've got 19 25 years' experience, I take it, dealing with this kind of	Page 19681

<p style="text-align: right;">Page 19682</p> <p>1 thing. I take it your experience coincides with the 2 general findings of Professor Waddington, is that right? 3 BRIGADIER CALITZ: Ja, mnr die 4 Voorsitter, dit is wat ek verstaan het onder hierdie een, 5 is dan die common purpose waar hulle mekaar ondersteun. 6 MR BIZOS SC: Well, I don't know that it 7 means what you purport to say in the document, being 8 paragraph 19 of your statement, that they acted as one 9 group and all of them associated themselves with the 10 actions of each other, all of them had the same intention 11 and goal, their actions threatened law and order and 12 constituted the crime of public violence, they disturbed 13 public order and peace. You can't reconcile 12, 14.2.4 14 with your generalisation in this paragraph, can you? Can 15 you reconcile what you purported to say, what you said in 16 paragraph 19 of your statement with 14.2.4?</p> <p>17 BRIGADIER CALITZ: Soos ek dit verstaan 18 het, kan ek dit sê, mnr die Voorsitter. Dit is wat ek 19 verstaan het onder hierdie sinnetjie, as common purpose. 20 Die wat dan wel deelneem, hulle is in support van mekaar en 21 beïnvloed mekaar dan sodanig.</p> <p>22 CHAIRPERSON: Quite a number of 23 spectators of these public disturbances in the past were 24 acquitted on the basis of the argument that the mere fact 25 that they were there didn't indicate tacit support, but I'm</p>	<p style="text-align: right;">Page 19684</p> <p>1 I spoke to an official during the adjournment and reported 2 about the air conditioning. Whether there's any 3 improvement I can't tell from where I'm seated. I hope 4 there is. I hope it's not gone drastically too much the 5 other way, but anyway, if the shop steward and his members 6 are happy – I won't say members of what –</p> <p>7 MR MPOFU: Thank you, Chairperson. 8 CHAIRPERSON: - then we can – 9 MR MPOFU: The members are happy, 10 Chairperson. 11 CHAIRPERSON: Then we can carry on. 12 [Microphone off, inaudible] appears we've reached the end 13 of that saga, but we won't go there now. Brigadier, you're 14 still under oath. 15 ADRIAAN MARTHINUS CALITZ: Thank you, 16 Chair. 17 CHAIRPERSON: Mr Bizos. 18 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.): 19 Thank you, Mr Chairman. May I make an appeal to the 20 witness? Brigadier Calitz, what I am reading to you are 21 general principles. There are always exceptions to general 22 principles. I'm appealing to you in listening carefully to 23 what I read out to be the general principles. If you're in 24 general agreement, say so, and we can leave the odd example 25 out. If you disagree you say you disagree with the</p>
<p style="text-align: right;">Page 19683</p> <p>1 not sure that this is a line that will help us very much. 2 Can we take the tea adjournment now, Mr Bizos?</p> <p>3 MR BIZOS SC: Thank you, Mr Chair.</p> <p>4 MR MPOFU: Chairperson, during the 5 adjournment can something be done about the air 6 conditioning which is killing many people? I'm just a shop 7 steward.</p> <p>8 CHAIRPERSON: What's the problem with the 9 air conditioning?</p> <p>10 MR MPOFU: It's too strong, apparently 11 Chairperson. I thought –</p> <p>12 CHAIRPERSON: Too strong?</p> <p>13 MR MPOFU: Ja, it's affect –</p> <p>14 CHAIRPERSON: I will ask those –</p> <p>15 MR MPOFU: Affecting those of us who have 16 sinus problems.</p> <p>17 CHAIRPERSON: I'll ask those responsible 18 for the administration of this building to have a look at 19 the matter.</p> <p>20 MR MPOFU: Thank you, Chair.</p> <p>21 CHAIRPERSON: I hope that if we can't 22 deal with this particular point, there isn't going to be a 23 strike.</p> <p>24 [COMMISSION ADJOURSNS COMMISSION RESUMES] 25 [15:25] CHAIRPERSON: The Commission continues.</p>	<p style="text-align: right;">Page 19685</p> <p>1 principle, so that we can really expedite the pace, but I 2 don't want you to feel that I'm preventing you from if you 3 disagree, why you disagree. I thought that I would try and 4 expedite matters.</p> <p>5 CHAIRPERSON: And if there's a 6 significant exception which you think is applicable to the 7 events that we're busy investigating, then obviously you 8 will say that too.</p> <p>9 BRIGADIER CALITZ: Dis wat ek probeer – 10 dankie, mnr die Voorsitter.</p> <p>11 CHAIRPERSON: Right. Okay, Mr Bizos, 12 shall we carry on?</p> <p>13 MR BIZOS SC: Yes. The next one is 14 14.2.7. "Far from being innocent bystanders or victims, 15 the police usually play a significant role in forestalling 16 or provoking disorder." Would you agree with that as a 17 general principle?</p> <p>18 BRIGADIER CALITZ: Disagree, mnr die 19 Voorsitter.</p> <p>20 MR BIZOS SC: You disagree?</p> <p>21 BRIGADIER CALITZ: Dit is korrek.</p> <p>22 MR BIZOS SC: Do you disagree that the 23 police may provoke disorder?</p> <p>24 BRIGADIER CALITZ: Ja, die sinnetjie van 25 "usually play a significant role in provoking," so ek stem</p>

<p>1 nie daarmee saam.</p> <p>2 CHAIRPERSON: Do you agree with the forestalling part? "Far from being innocent bystanders or victims" - bystanders just mean you stand by, do nothing; victim means you actually suffer harm because of it – "the police usually play a significant role in forestalling or provoking disorder." Now very often they forestall disorder, surely. They prevent it. The police, because they're there, stop the disorder. They bring the disorder to an end.</p> <p>11 BRIGADIER CALITZ: Dit is reg, mnr die Voorsitter.</p> <p>13 CHAIRPERSON: Sometimes, however, they don't apply the doctrine of situational appropriateness, which we've heard about in this Commission, and unwittingly in many cases they actually make things worse by acting too drastically or inappropriately. That's also true, isn't it? Isn't it?</p> <p>19 BRIGADIER CALITZ: Dit is korrek, mnr die Voorsitter.</p> <p>21 CHAIRPERSON: Ja, okay. Okay, Mr Bizos –</p> <p>22 BRIGADIER CALITZ: Ja, dit is hoekom ek maar net verhoed het om te probeer verduidelik. Ek wou weer 'n voorbeeld – maar dit is reg so.</p> <p>25 CHAIRPERSON: Give your example. I don't</p>	<p style="text-align: right;">Page 19686</p> <p>1 CHAIRPERSON: I don't want to be accused of giving evidence, but I must tell you that in my experience it has happened that the police used teargas unnecessarily and too early and teargas sometimes makes crowds very angry and that makes things worse. So that's also a case where the police have actually made things worse. I'm not saying it happens very often, but it does happen. It has happened in the past and I'm not sure it applies even to this case. I'm not suggesting it is applying here. It may or may not; there's no evidence, but certainly that was my experience in the past and I take it you probably encountered similar cases as well in your years of experience.</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, ja, dit is ongelukkig die stappe van die force kontinuum en ons kan nie net oorgaan het en "gedisperse" het, soos u sê in die verlede, en dit is maar een van die minimum goed om te gebruik is om 'n skare – ja, ek stem saam dit sal 'n skare, soos u dit stel "provoke," of daar sal 'n reaksie van die skare wees, maar dit is die eerste stap. Dieselfde met 'n "stun grenade," dit is 'n "non-lethal" metode in Suid-Afrika in die huidige demokrasie. Vir die afgelope 21 jaar wat ek daar is, is dit al wat ons het buiten onderhandelinge.</p> <p>25 CHAIRPERSON: The trouble with the stun</p>
<p>1 want to stop you.</p> <p>2 BRIGADIER CALITZ: Nee, mnr die Voorsitter, nee, nee, nee, ek probeer tyd spaar in samewerking wat versoek is. Die meeste van die kere, ek wil weer net noem, is soos in my ondervinding van die 20 jaar "service delivery," die persone wat die probleem het, dit is nie te sê daar is nie 'n probleem nie. Dan beweeg hulle van een punt tot 'n ander. Die polisie word geroep en ons word - met alle respek die, ek wil amper sê - nee, die speel bal gaan verkeerdewoord wees. Die "mediator," die persoon wat tussen geplaas word, dit is gewoonlik nie die polisie wat die probleem begin het nie, maar ons moet iemand anderste se "fight" wat begin is eindig, as ek dit vir u so kan stel.</p> <p>15 So die polisie is in die meerderheid van die kere, sou ons vir die "protesters" sê jy kan nie soontoe gaan van punt A na punt B nie want die optog is onwettig, en dan instede van die persone om dit "orderly" te doen in Suid-Afrika volgens wat die demokrasie verlang, besluit hulle om dit nie "orderly" te doen en dan te begin gooi met klippe of – en dit is die groepering tussenin, en dan het die polisie geen keuse as om op te tree en uiteen te dryf en, so ek dink ons word gesien in daardie lig maar dit word nooit geïnisieer. As ons aan albei kante samewerking het sal – en dit is hoekom ek net gesê het, "disagree."</p>	<p style="text-align: right;">Page 19687</p> <p>1 grenade of course – and this may be of application in this case, but I'm not discussing it with you in that context now. The trouble with the stun grenade is people who don't know what stun grenades are think it's actually live ammunition that's being fired and they react accordingly. That's also true, isn't it?</p> <p>7 BRIGADIER CALITZ: Mnr die Voorsitter, ek kan net –</p> <p>9 CHAIRPERSON: When a stun grenade goes "bang, bang," I mean if you've never encountered a stun grenade before and suddenly you hear "bang, bang" and the police are there, you think they're shooting at you, isn't that so?</p> <p>14 BRIGADIER CALITZ: Dit is hoekom ons 99.9% in die verlede in my geval wat ek kan getuig, die effek daarvan is die persone hardloop weg van die geluid af. Dieselfde met die traangas, hulle beweeg weg, en dit is die effek –</p> <p>19 CHAIRPERSON: Ja, they run away because they think they're being shot at –</p> <p>21 BRIGADIER CALITZ: Dit is die effek wat dit moet hê.</p> <p>23 CHAIRPERSON: They run away because they think they're being shot at, but some people, they think they're being shot at, might react differently. But</p>

<p style="text-align: right;">Page 19690</p> <p>1 anyway, we don't have to debate that in detail. You agree 2 with the thrust of what I'm putting to you. Is that right? 3 BRIGADIER CALITZ: Dankie, mnr die 4 Voorsitter.</p> <p>5 CHAIRPERSON: I take it, I'm reminded 6 that what I'm putting to you is really general knowledge, I 7 take it, so would you agree with that?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, ek dink almal wat televisie kyk kan presies sien en 10 afleidings maak van wat gebeur en ek moet net –</p> <p>11 CHAIRPERSON: You've put it very well. 12 Exactly. Yes, Mr Bizos.</p> <p>13 MR BIZOS SC: I want to turn to 14.3.2.1 14 on page 6. "Sudden or overdramatic police interventions 15 which suggest overkill and will draw other people to the 16 scene," I don't know about the draw other people to the 17 scene, but what about "Sudden or overdramatic police 18 interventions which suggest overkill are 19 counterproductive," would you agree with that?</p> <p>20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 weereens nee. Net in kort, dit is een van die beginsels 22 wat gewerk het – wel, ek verwys nou na die verlede – toe 23 Openbare Orde Polisiëring baie sterker was. Ons was 'n 24 paar duisend man en as jy opdaag met genoegsame, soos dit 25 hier staan, 'n "overkill" van personeel, dan verhoed jy</p>	<p style="text-align: right;">Page 19692</p> <p>1 understanding of the evidence was that stun grenades were 2 thrown from helicopters but not onto the koppie, onto the 3 open veld. I think that's the evidence. Is that your 4 point, Mr Semenya?</p> <p>5 MR BIZOS SC: Well, near enough to be 6 heard, if you –</p> <p>7 CHAIRPERSON: I don't think even that's 8 correct, but – there is a passage somewhere in Colonel 9 Hendrickx's statement –</p> <p>10 MR BIZOS SC: Shall we put it on a 11 hypothetical basis –</p> <p>12 CHAIRPERSON: - where he deals with the 13 inadvisability of throwing stun grenades from helicopters.</p> <p>14 MR BIZOS SC: Well, can we put it on a –</p> <p>15 CHAIRPERSON: I'm trying to find that. 16 Perhaps you or your junior can find it for me.</p> <p>17 MR BIZOS SC: Can we put it on a 18 hypothetical basis that using stun grenades may in certain 19 circumstances suggest overkill? I'll be happy with an 20 answer to that.</p> <p>21 BRIGADIER CALITZ: Nee, mnr die 22 Voorsitter, ek stem nie saam nie.</p> <p>23 MR BIZOS SC: You don't agree. Okay. 24 14.3.3.2, officers deployed in high-profile and provocative 25 formations with reinforcements, weaponry, dogs, horses,</p>
<p style="text-align: right;">Page 19691</p> <p>1 enigiemand, hulle sien af van hulle aksies omdat hulle sien 2 hier is 'n groot groep mense. Juis die teenoorgestelde 3 gebeur; indien jy te min mense daar het dan sien die mense 4 kans vir jou en hulle vat dan kans en dan "result" dit in 5 aksie wat gevat moet word wat onnodig was sou daar meer 6 mense gewees het.</p> <p>7 MR BIZOS SC: Well, would you propagate 8 that throwing stun grenades from helicopters, perhaps 9 sudden overdramatic police interventions which suggest 10 overkill and may be counterproductive?</p> <p>11 BRIGADIER CALITZ: Is ons nou by 12 dieselfde punt, mnr die Voorsitter?</p> <p>13 MR BIZOS SC: Well, I don't know. You 14 say –</p> <p>15 BRIGADIER CALITZ: Ekskuus, ek dog –</p> <p>16 MR BIZOS SC: You say that sometimes we 17 do this and it may be considered overkill, but it's 18 necessary, and what I'm asking you is on the facts of this 19 case would you consider throwing stun grenades from a 20 helicopter into the koppie behaviour which can be described 21 as overkill?</p> <p>22 MR SEMENYA SC: Chair, that is not the 23 evidence. There's no –</p> <p>24 CHAIRPERSON: Mr Bizos, I was going to – 25 sorry, Mr Semenya. I was going to say to you that my</p>	<p style="text-align: right;">Page 19693</p> <p>1 etcetera, all on public display, would they be – would you 2 agree with that sort of behaviour on the part of the 3 police? 14.3.3.2.</p> <p>4 BRIGADIER CALITZ: Ek sien die opskrif 5 van hierdie is, u praat van "Interactional context can be 6 triggered by," so as ek dit in daardie konteks lees dan kan 7 ek sê daar dit kan wel "getrigger" word, alhoewel ek 8 dieselfde wil verduidelik dat die persone, dit hang af in 9 watse omstandighede - soos op hierdie dag weet ons dat 10 daardie "dogs, horses," al daardie, dit was buite sig 11 gewees van die groep op die koppie.</p> <p>12 MR BIZOS SC: 14.3.5.1, "Officers from 13 outside the locality who are unfamiliar with local customs 14 and sensibilities and do not have a commitment to 15 maintaining good long-term relationships," do you agree 16 with that or disagree with it?</p> <p>17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 nee ek stem glad nie saam hier nie.</p> <p>19 MR BIZOS SC: Well, you seem to be 20 contradicting not only Mr Hendrickx, but also Mr David 21 Waddington whose name appears on paragraph 14.3. You have 22 a right to disagree, but are you questioning either the 23 good faith or the expert knowledge of both Mr Hendrickx and 24 Mr David Waddington?</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>

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<p>1 kan ek dit net so kort as bondig antwoord. My eie      2 ondervinding, 20 jaar, ek was in hierdie afgelope 19, 20      3 jaar, die hele land vol en ek dink nie daar is 'n provinsie      4 waarin ek nie "gedeploy" was nie of afgedeelde diens gedoen      5 het net - ons mense in die Openbare Orde Polisiëring word      6 baie rondgeskuif, en op die dag was daar ook "officer from      7 outside the locality, unfamiliar with local" – en ons het      8 'n honderd persent samewerking van daardie persone. Ja,      9 dit vat 'n rukkie om hulle georiënteer te kry sodat hulle      10 kan sien hoe die gebied is en wat daar aangaan, maar dit is      11 nie te sê as ek van Noordwes af Mpumalanga werk, nou gaan      12 ek my wangedra net omdat dit in 'n ander provinsie is, as      13 ek dit reg verstaan nie. So ek stem nie saam met daardie      14 stelling nie, glad nie.</p> <p>15 CHAIRPERSON: It maybe just can happen      16 that if you have a police member from another area who      17 comes in, doesn't know the local people, knows he's going      18 to be gone tomorrow, so he doesn't really bother about what      19 they think of him because it won't be relevant to him, he      20 might behave inappropriately in his interaction with some      21 of the locals. I take it that does happen from time to      22 time.</p> <p>23 BRIGADIER CALITZ: Die laaste stukkie      24 stem ek saam, "to maintain long-term relationships,"      25 daardie gedeelte.</p>	<p>1 MR BIZOS SC: 14.3.4.2, "A history of      2 routinising and neutralising protest in such a way as to      3 enhance political resentment and indignation." Would you      4 agree with that?</p> <p>5 BRIGADIER CALITZ: Ekskuus, mnr die      6 Voorsitter, u het die paragraaf bietjie vinnig gelees en      7 toe begin lees, as ek net weer die paragraaf kry?</p> <p>8 MR BIZOS SC: Top of page 7, 14.3.4.2.</p> <p>9 BRIGADIER CALITZ: 14.3 punt? Gaan u nou      10 terug? 14.3.4.2, of –</p> <p>11 MR BIZOS SC: 14.3.4.2 –</p> <p>12 CHAIRPERSON: He's going back to the top      13 of the page. He'd been previously dealing with something      14 lower down the same page. It's the top of page 7.</p> <p>15 MR BIZOS SC: I'm sorry, I went      16 backwards, yes.</p> <p>17 BRIGADIER CALITZ: Ekskuus, ja so ons      18 begin onderaan bladsy 6 –</p> <p>19 MR BIZOS SC: Once we are there, what do      20 you say about that one?</p> <p>21 BRIGADIER CALITZ: Ek het dit nou nog nie      22 gelees nie, as u net weer vir my lees, is dit onderaan      23 bladsy 6 en dan bo-aan bladsy 7? Mnr die Voorsitter, nee,      24 ek kan my nie rērig uitlaat hierop nie. Ek het dit nog      25 nooit ondervind nie. So –</p>
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<p>1 CHAIRPERSON: Now in this particular      2 case, I know a lot of people were brought in from outside;      3 presumably they had to be because there weren't enough      4 local people to deal with the situation, but is there any      5 evidence that they were interacting with the locals in a      6 way which gives rise to the kind of problem that's set out      7 in this paragraph?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter,      9 nee, ons weet dat op die Dinsdagoggend het ons – ek praat      10 nou onder korreksie – mense uitgestuur vir      11 sektorpolisiëring, daardie persone wat gekom het van      12 buitekant af. Ons weet ook dat die mense van NIU wat van      13 buitekant af gekom het sekere sleutelpunte beman het, en      14 daar was sekerlik interaksie gewees met die publiek die      15 hele tyd en daar was geen klagte gewees of niks ingebring      16 teen ons teenwoordigheid op die mynperseel - wel, dit is      17 die Dinsdag, Woensdag, tot en met die Donderdag nie, en die      18 persone het, kan ek sê 24/7 gewerk, dag en nagskof. So      19 selfs die nagskof mense. Ek sê nie daar is verklarings      20 daartoe nie, maar die mense het eintlik daaroor gespraak dat      21 hulle is bly om die polisie te sien in die omgewing want      22 almal vereenselwig hulle nie met wat aangegaan het daar      23 nie. So dit is in my oog meer 'n beskermingspunt as wat      24 dit 'n – wat staan hier? – ja, meer 'n beskermingspunt as      25 wat hier gemeld word.</p>	<p>1 MR SEMENYA SC: Chair, I was not going to      2 be able to follow the answer because I don't understand      3 14.3.4.2. I don't know what is "routinising".</p> <p>4 MR BIZOS SC: I'll give you an example.      5 People that have a quarrel with their employer want to      6 demonstrate at its door, its yard or its square or its      7 football field and the police preventing people to get into      8 direct contact with the employer to register their protest      9 may be what the experts had in mind in 14.3.4.2.</p> <p>10 BRIGADIER CALITZ: Mnr die Voorsitter,      11 nee, dit is nie wat ek lees hier nie. Wat ek lees hier is      12 dat hierdie is net die teenoorgestelde. "A history of      13 routinising and neutralising protest in such a way to      14 enhance political resentment and indignation." Wat ek hier      15 verstaan is, as ek reg is, is dat 'n groep wat sê maar oor      16 "service delivery protest," hulle weet dat sê nou maar die      17 "local" munisipaliteit of die distrik luister nie na hulle      18 nie, so dan gaan brand ons die kliniek af want as ons die      19 kliniek afbrand, dan kry ons skielik aandag.      20 [15:45] Gee nie om, 'n mens stel nie belang om te weet      21 dat die volgende dag gaan die kinders die kliniek weer      22 nodig hê nie of ons, kom ons gaan brand die skool af omdat      23 ons nie water het nie, dit is wat ek hier lees. Dit het      24 niks met die polisie te doen nie en dit is groepe wat dan      25 dit doen om meer, as ek kan sê politieke aandag te kry, dit</p>

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1 groter uit te blaas en dan weet hulle as hulle dit doen sal 2 daar aandag gegee word aan die probleem. So dit het niks 3 met die polisie te doen nie, dit is die way wat die 4 groepering –	1 waar hulle kla oor 'n water probleem maar dan gooi hulle 2 rotse en klippe van die br?e af op 'n persoon wat verby ry, 3 dit maak nie saak wie daardie persoon is nie, dit kan u 4 wees, dit kan ek wees, dit kan enige persoon wees, dit gee 5 nie om nie. Dit is waarna hier verwys word, so hulle weet 6 as hulle na die ergste toe gaan en hulle gaan brand 'n 7 kliniek af of hulle gaan beskadig die skool dan kry hulle 8 meer aandag. Dit word in die media gedek en skielik raak 9 die politieke party of die MEC betrokke en gee opdrag dat 10 daar dan iets gedoen moet word daaraan.
5 CHAIRPERSON: I think if one looks at the 6 previous page, beginning with your paragraph 14.3.4, it is 7 clear that this is not a stone that's being thrown at the 8 police, if I can call it that, it talks about how a 9 particular event can become history, the behaviour of 10 participants and incidents during similar events in the 11 past, a common knowledge, amongst all those preparing for 12 it in those presence. The historical context includes, 13 one, the history of previous incidences or negative 14 encounters with possible scores to be settled and a history 15 of routinising and utilising protests in such a way as to 16 enhance political resentment of indignation. I don't 17 understand that necessarily to be criticism of the police 18 at all, it is just the kind of things that happen, the way 19 protests had been dealt with in the past and now either old 20 scores that have to be settled or protesters become routine 21 or they'd been utilised in a way that causes resentment, 22 that's all that's being said. Mr Semenya, do you still 23 want to say something?	11 Noordwes word geteister deur baie, baie service 12 delivery and crowd management aksies. Ek het dit genoem en 13 as ons dit vergelyk met die ander provinsies wil ek amper 14 sê ons is tweede of derde meeste in die land. So my 15 ondervinding in die sake van hierdie 3,000 plus wat ek 16 hanteer het, dit is wat ek experience en dit is ongelukkig 17 wat die polisie dan moet polisieer en te probeer daardie 18 mediator rol speel om alles weer terug te kry na 'n kalm 19 posisie dat die partye vreedsaam kan onderhandel en dit is 20 presies wat ons probeer het in hierdie geval, mnr die 21 Voorsitter, van die 14de af, die 15de. Ons het gaan 22 probeer onderhandel, ons het die partye probeer bymekaar 23 kry, daar is verskeie oopsies, goed wat ons probeer het tot 24 op 'n stadium dat dit nie kon nie en daar 'n aanval op ons 25 was.
24 MR SEMENYA SC: Chair, my difficulty is 25 not that it is associated with the police, I just don't	
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1 know how neutralising protests, the history of neutralising 2 protests and hence –	1 MR BIZOS SC: In fact prevented the crowd 2 from going to their employer's football ground, prevented 3 them from going to their offices, isn't that what this may 4 refer to? Isn't that counterproductive?
3 CHAIRPERSON: It is neutralising protests 4 in such a way as to enhance political resentment and 5 indignation.	5 BRIGADIER CALITZ: Nee, dit is glad nie 6 wat op die dag gebeur het nie en dit is nie feite of 7 evidence sover ek weet nie.
6 MR SEMENYA SC: The sort I don't 7 understand –	8 CHAIRPERSON: Sorry, Mr Bizos, that's an 9 over simplification of what happened. It was possible for 10 the vast majority of the strikers who wanted to go to 11 Nkaneng to do so, because all what happened was a 12 particular route or routes were no longer available and 13 that is what happened but it is not correct to say that 14 they were prevented totally from going to Nkaneng.
8 CHAIRPERSON: If you neutralise protests 9 in a way which makes people cross and indignant they 10 protest about something and you close off a road, so they 11 can't go there and protest, there are all sorts of examples 12 he can give us from his practical experience where protests 13 were dealt with by saying municipalities or local 14 government people, you know if the protest was neutralised, 15 rendered ineffective by heavy handed action which made 16 people very angry and indignant, is that –	15 MR BIZOS SC: But they were not allowed 16 to go near their employer's premises. That's clear on the 17 evidence as a whole, this is why the koppies or the open 18 ground was chosen, this is how I have understood the facts.
17 BRIGADIER CALITZ: Mnr die Voorsitter, -	19 MR SEMENYA SC: No, that's not correct,
18 CHAIRPERSON: Is that the way you 19 understand it?	20 Chair. The evidence is that they abandoned the stadium 21 because of the looming problem they would have had with NUM 22 members.
20 BRIGADIER CALITZ: Die meeste van die 21 kere waar daar protes is en groeperinge bymekaar is, of ons 22 dit nou wil weet of nie, erken of nie, 80, 90% is die 23 persone aan die ontvang kant die publiek, die onskuldige 24 publiek. As ons 'n pad toepak dan pak hulle byvoorbeeld 25 die N4 toe, ek sal 'n voorbeeld noem, in Noordwes by Bapong	23 CHAIRPERSON: Well, there was also some 24 suggestion that the stadium was locked as well, but –
	25 MR SEMENYA SC: By the police, Chair.

<p style="text-align: right;">Page 19702</p> <p>1 CHAIRPERSON: No, it is correct that 2 they, the evidence seems to indicate that they or they 3 certainly claimed that they were afraid that they would be 4 killed by NUM and they were afraid they would be attacked 5 by NUM.</p> <p>6 MR SEMENYA SC: There is no evidence, 7 Chair, that the police locked the stadium.</p> <p>8 CHAIRPERSON: No, no, no, sorry, this 9 point I'm putting to you, it is a point in your favour, so 10 don't fight with me about it.</p> <p>11 MR BIZOS SC: But we're dealing with 12 general positions, Mr Chairman, if they didn't apply they 13 didn't apply, but these are the opinions of the experts as 14 to how employers and the police should behave vis-a-vis 15 their workers.</p> <p>16 CHAIRPERSON: I understand that, Mr 17 Bizos, but you know if they, these are general propositions 18 which of course apply –</p> <p>19 MR BIZOS SC: Yes –</p> <p>20 CHAIRPERSON: - in wide variety of 21 circumstances. Those who don't apply to this case, there 22 is not much point in putting them because –</p> <p>23 MR BIZOS SC: Yes –</p> <p>24 CHAIRPERSON: - they just waste our time.</p> <p>25 MR BIZOS SC: Very well, I will proceed</p>	<p style="text-align: right;">Page 19704</p> <p>1 ander police personnel, police personnel, beslis, dit hang 2 af, jou senior, in my geval een van my generale, to apply 3 uncompromising tactics and strategies. Dit was nog nooit 4 vir my gegee deur enige generale, in my geval kan ek daarop 5 getuig nie en ondertoe, ek het beslis ook nie as 'n police 6 personnel van enige van my lede verwag om tactics and 7 strategies te gebruik wat hulle dan so in die moeilikheid 8 kan kry, kan ek dit so stel nie. As dit wel gebeur is dit 9 individuele gevalle. Ons hoor baie van arrestasies, ons 10 hoor baie van polisie persone wat gearresteerd word oor een, 11 twee, drie, vier, vyf en korruptsie, miskien daardie 12 individue, maar glad nie in hierdie konteks nie, nee.</p> <p>13 MR BIZOS SC: The document also deals, I 14 want to cut it short, the document also deals on page 11 15 and subsequent pages with how the standing orders are to be 16 observed. You've been through that?</p> <p>17 BRIGADIER CALITZ: Ek is op bladsy 11.</p> <p>18 MR BIZOS SC: You've been through to how 19 the opinion of the experts, the standing order should be 20 interpreted and how they should be adhered to?</p> <p>21 BRIGADIER CALITZ: Vra u vir my of ek 22 saamstem of net of ek deur dit gegaan het?</p> <p>23 MR BIZOS SC: No, have you been through 24 it?</p> <p>25 BRIGADIER CALITZ: Ek het deur dit</p>
<p style="text-align: right;">Page 19703</p> <p>1 with the next point, Mr Chairman. 14.3 we've already dealt 2 with. Different, - 14.3.6, "Different perceptions and past 3 conflicts contribute to the political or ideological 4 context with the issues and their manifestations are 5 debated by politicians and pressure groups, especially in 6 the media, factors that exacerbate the political or 7 ideological context of the this order include hard line 8 government willing to sanction police repression, an 9 explicit pressure on the police from government and other 10 politicians, interest groups, the general public, the media 11 or police personnel to apply uncompromising tactics and 12 strategies." Would you in principle agree with all or some 13 of those matters?</p> <p>14 BRIGADIER CALITZ: Mngr die Voorsitter, ek 15 dink ek kan miskien net op die laaste een comment lewer, 16 oor die 4.3.6 kan ek glad nie op kommentaar lewer nie en 17 3.6.1 ook nie. Government willing to sanction police 18 repression, ek verstaan nie regtig nie, so ek het dit nog 19 nooit ondervind nie en dan die 6.2, explicit pressure on 20 the police from government and other politicians, interest 21 groups in general public, the media, the police to apply 22 uncompromising tactics and strategies. In my 20 jaar 23 ondervinding in Openbare Orde Polisiëring het ek nog nooit 24 toegelaat dat enige MEC, interest groups, politieke partye, 25 definitief nie die publiek nie, beslis nie die media nie of</p>	<p style="text-align: right;">Page 19705</p> <p>1 gegaan, ja.</p> <p>2 MR BIZOS SC: Do you find yourself, do 3 you find authority of their view to substantiate your view 4 that you didn't have to observe certain of the standing 5 orders because of the special circumstances?</p> <p>6 BRIGADIER CALITZ: Mngr die Voorsitter, 7 nee, daar is verskeie punte in hierdie –</p> <p>8 CHAIRPERSON: Mr Bizos, I don't think 9 that question can be permitted in that general form. You 10 say in his view he didn't have to comply with certain of 11 the standing orders. Now I take it, it would be 12 appropriate to put the particular instances to him. I mean 13 there was one example where they had to come back, 14 commanded to come back with plans which couldn't be done in 15 this case because of the time problem. That's one instance 16 where he said it wasn't practical. I can't remember the 17 others, there may be others but I can't remember any 18 others, but I think in fairness to him you should put to 19 him what you say are the instances where he says he was 20 free to depart from the terms of the standing order so that 21 he can deal with them.</p> <p>22 MR BIZOS SC: Do you contend that you 23 didn't have to observe certain of the standing orders 24 because of the special circumstances of this case? I know 25 that Colonel Scott did but I have been asked to ask you</p>

<p style="text-align: right;">Page 19706</p> <p>1 directly whether you share the view that you could ignore 2 the standing orders.</p> <p>3 BRIGADIER CALITZ: Ek weet nie wat 4 Kolonel Scott se view was, of dit enige getuienis was nie, 5 ek is nie bewus daarvan nie, beslis nie ignore enige 6 Staande Orde nie. Hoekom ons op Staande Orde 262 werk is 7 dat dit is die enigste Staande Orde na genoeg om te beskryf 8 hoe crowd management gedoen moet word, maar ons weet op die 9 dag dat hierdie was nie 'n normale crowd management 10 situasie nie en daar nie 'n ander dokument in the polisie 11 bestaan vir die unieke omstandighede wat daar plaasgevind 12 het nie. So hoekom Staande Orde 262 gebruik word is, as ek 13 miskien vir u dit so kan stel, Staande Orde 262 is van 14 toepassing waar u sal aansoek doen vir 'n optog na 'n 15 spesifieke plek, die Apartheids Museum en dan u is die 16 organiseerde daarvan en dan sal ons sit, wat ons noem 'n 17 Section 4 en in die Section 4 meeting sal u vir my sê 18 hoeveel mense gaan deelneem, wie sal die marshals wees, 19 sulke tipe van en dan gaan ons op 'n ooreenkoms skriftelik 20 saam met die munisipaliteit en saam met die organiseerde 21 en saam met die polisie 'n ooreenkoms teken en nadat die 22 ooreenkoms geteken is gaan u terug na u party toe en dan 23 daarna sal dit dan 'n wettige byeenkoms wees. So dit is 24 wat Staande Orde 262 behels.</p> <p>25 Dit is geskryf vir omstandighede waar ons 'n</p>	<p style="text-align: right;">Page 19708</p> <p>1 CHAIRPERSON: I won't disappoint you, 2 what I said was, I take it you're going to be the next 3 cross-examiner?</p> <p>4 MR MPOFU: Yes, you take it correctly, 5 Chairperson.</p> <p>6 CHAIRPERSON: Okay, that's right. So Mr 7 Bizos is going to be a little while tomorrow.</p> <p>8 MR MPOFU: Oh.</p> <p>9 CHAIRPERSON: And then if your other 10 commitments allow you you'll be here to cross-examine on 11 behalf of your clients, is that right?</p> <p>12 MR MPOFU: Yes, Chairperson. Well, my 13 understanding is Mr Bizos says that I was going to come in 14 today but –</p> <p>15 CHAIRPERSON: But you know lex non cogit 16 ad impossibilia, I'm not sure we've got a Latin interpreter 17 here but it means the law doesn't compel people to do the 18 impossible.</p> <p>19 MR MPOFU: Yes.</p> <p>20 CHAIRPERSON: And Mr Bizos was doing his 21 best, but there was a fair degree of injury time for which 22 he is not responsible. So I'm sure you'll forgive him.</p> <p>23 MR MPOFU: Yes.</p> <p>24 CHAIRPERSON: And let's hope you don't 25 pick up too much injury time tomorrow, so we'll start</p>
<p style="text-align: right;">Page 19707</p> <p>1 Section 4 kan hê, waar daar vooraf gesit kan word saam met 2 al die rolspelers om die tafel, daar genoeg tyd is vir elke 3 persoon om die tafel om te gaan voorligting gee, terug te 4 kom met 'n behoorlike plan wat ons dan van praat van 'n OCD 5 plan en dan van daar af daarop te werk. So dit was die 6 naaste moontlike dokument wat ek sê nie geignoreer is nie, 7 maar sekere dele van toepassing wou gemaak het op die dag 8 van die 16de wat nie kan gebeur nie.</p> <p>9 CHAIRPERSON: Now, Mr Bizos, it is now 10 practically four o'clock, I take it you are not going to 11 finish today?</p> <p>12 MR BIZOS SC: I have a few more specific 13 things –</p> <p>14 CHAIRPERSON: Yes, may I suggest that we 15 –</p> <p>16 MR BIZOS SC: - that I want to refer to.</p> <p>17 CHAIRPERSON: - that we have a look at 18 them tomorrow morning?</p> <p>19 MR BIZOS SC: Relating to –</p> <p>20 CHAIRPERSON: Will you have a look at 21 them tomorrow morning?</p> <p>22 MR BIZOS SC: Yes.</p> <p>23 CHAIRPERSON: And then the next cross- 24 examiner is going to be Mr Mpofu.</p> <p>25 MR MPOFU: I'm sorry, Chairperson?</p>	<p style="text-align: right;">Page 19709</p> <p>1 tomorrow morning. So we'll carry on tomorrow but let me 2 just ask the witness something, have you got all Mr Mpofu's 3 documents?</p> <p>4 BRIGADIER CALITZ: Mnrr die Voorsitter, 5 ja, ek wou net seker gemaak het die dokumente wat hy wel 6 deurgegee het na ons administratiewe kantore, of dit nog 7 steeds daardie bundel is?</p> <p>8 MR MPOFU: Ja.</p> <p>9 BRIGADIER CALITZ: Of daar van dit is wat 10 ons kan, want dit is baie koste effektief om, u sal sien 11 die pakke bundels wat ons bind en dan gebruik ons 2% 12 daarvan, dit is nogal redelike moeite en koste effektief 13 vir die personeel wat dit saamstel.</p> <p>14 CHAIRPERSON: I think what we will try to 15 do is to ensure that he uses 110%.</p> <p>16 BRIGADIER CALITZ: I will love the 10%.</p> <p>17 MR MPOFU: Chairperson, I can only give 18 this assurance that, yes, it is a document that I listed, 19 any other documents that I might refer to would be 20 documents that might have been referred to, let's say by Mr 21 Bizos or someone else. There is one picture which I have 22 just found, so I will share it with Mr Semenza and –</p> <p>23 CHAIRPERSON: And regard being had to the 24 fact that Mr Bizos' bundle is quite thick.</p> <p>25 MR MPOFU: Yes.</p>

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1 CHAIRPERSON: It is very difficult for  
2 the witness if he has got to bring that bundle along as  
3 well.

4 MR MPOFU: Yes.

5 CHAIRPERSON: If there is something  
6 specific in Mr Bizos' bundle I think you should tell him so  
7 that he can take it out and have it ready with his bundle  
8 of your documents.

9 MR MPOFU: Yes, Chair.

10 CHAIRPERSON: Together with this new  
11 photograph that you are going to give to him.

12 MR MPOFU: Thank you, Chairperson.

13 CHAIRPERSON: Alright, we'll adjourn now  
14 until nine o'clock tomorrow morning.

15 [COMMISSION ADJOURNED]

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