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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 169

15 JANUARY 2014

PAGES 19711 TO 19929



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<p style="text-align: right;">Page 19711</p> <p>1 [PROCEEDINGS ON 15 JANUARY 2014] 2 [09:18] CHAIRPERSON: The Commission resumes, I 3 hope everybody who has a cell phone has turned it off. 4 Brigadier, you're still under oath. 5 BRIGADIER CALITZ: Dankie, mnr die 6 Voorsitter. 7 CHAIRPERSON: Mr Bizos? 8 MR BIZOS SC: Thank you, Mr Chairman. 9 Brigadier I was busy asking you questions yesterday on the 10 contents of exhibit GGG2, the affidavit of Mr Hendrickx, we 11 reached page 10, do you recall that? 12 BRIGADIER CALITZ: I've got it. 13 MR BIZOS SC: The effect of your answers 14 to my questions in relation to the concepts that Mr 15 Hendrickx described in the first 10 pages and would you 16 accept that in the main your answers were that you disagree 17 with the precepts of Mr Hendricks because of your 18 experience? 19 BRIGADIER CALITZ: Dit is korrek, dit was 20 een van die redes gewees. 21 MR BIZOS SC: Now experience can be good 22 experience and bad experience depending on the purpose. 23 BRIGADIER CALITZ: Dit is seker so. 24 MR BIZOS SC: Your experience during the 25 apartheid regime and thereafter, after the demilitarisation</p>	<p style="text-align: right;">Page 19713</p> <p>1 MR BIZOS SC: Sorry the then deputy 2 minister. 3 CHAIRPERSON: No, no the minister and 4 the then deputy minister. 5 MR BIZOS SC: Deputy. 6 CHAIRPERSON: Who is Ms Shabangu. Those 7 are the statements you're going to refer to? 8 MR BIZOS SC: No, that we have, you're 9 following the proceedings here, kill the bastards, you've 10 got a gun and a bullet use it. This is the sort of thing 11 that were – 12 CHAIRPERSON: You puzzled me here. What 13 counsel is referring to is statements which were quoted 14 earlier in the proceedings, he thinks you may have been 15 aware of them, having been quoted earlier in the 16 proceedings, alternatively you may have been aware of them 17 any way. The statements made by the minister and the then 18 deputy minister, Ms Shabangu which he's quoted which are 19 rather forthright and have been subjected to substantial 20 criticism. Were you aware of the statements of that kind 21 and the fact that there had been a controversy about the 22 minister and the deputy minister having used language of 23 that kind that Mr Bizos has quoted? 24 BRIGADIER CALITZ: Dit is korrek, mnr die 25 Voorsitter. Ek het wel daarvan gehoor.</p>
<p style="text-align: right;">Page 19712</p> <p>1 of the police force was and unhappily is almost 2 dictatorial, would you agree with that? 3 BRIGADIER CALITZ: Net die laaste woord 4 as jy kan net vir my kan verduidelik wat u bedoel? 5 MR BIZOS SC: Yes, dictatorial, more 6 befitting a dictatorship rather than a democratic state. 7 BRIGADIER CALITZ: Nee, mnr die 8 Voorsitter, nee ek volg nie mooi nie. As jy dalk net weer 9 vir my kan die vraag herhaal. 10 MR BIZOS SC: No, let me try and explain. 11 That during the apartheid regime and after the 12 demilitarisation of the police came to an end during Mr 13 Tshwete's ministership the behaviour of the police was 14 dictatorial. You know what that means don't you? 15 BRIGADIER CALITZ: As jy praat na my eie 16 ondervinding, gister se voorbeelde waar jy genoem het ek 17 gesê ek was nooit betrokke by enige van daardie, ek het 18 verduidelik waar ek was in daardie tyd waar u verwys het in 19 die apartheidsjare. So dit is wat my ondervinding aan 20 betref. 21 MR BIZOS SC: Well you know I'm sorry 22 that I have to remind you about the statements made by the 23 minister of police by the – 24 CHAIRPERSON: Mr Bizos, I think you're 25 going to refer, the then deputy minister.</p>	<p style="text-align: right;">Page 19714</p> <p>1 MR BIZOS SC: Yes. 2 CHAIRPERSON: That's what he's referring 3 to, the question he's going to ask you now as a run up to 4 questions he's going to ask you now, I just put that to you 5 so that - 6 BRIGADIER CALITZ: Dankie vir daardie – 7 CHAIRPERSON: That you can follow. 8 BRIGADIER CALITZ: Dankie, mnr die 9 Voorsitter. 10 MR BIZOS SC: And also that you must use 11 maximum force. 12 BRIGADIER CALITZ: Ja, ek kan nie sê 13 presies laat ek kan aanhaal wat gesê is nie, maar ek weet 14 in daardie lyn daar was opmerkings gemaak. Ek nie presies 15 nou onthou op hierdie stadium wat gesê was nie. 16 MR BIZOS SC: Also in the last 10, 12 17 years repeatedly the police force of which you are a senior 18 member has expressed views that they can't really fight 19 crime properly by, because of the provisions of the 20 constitution that have more regard for criminals than the 21 rights of the people. Am I quoting them correctly? 22 CHAIRPERSON: I think it would be more 23 appropriate to ask him were you aware of statements along 24 those lines. 25 BRIGADIER CALITZ: Nee, mnr die</p>

<p style="text-align: right;">Page 19715</p> <p>1 Voorsitter, dis as ek net sê –</p> <p>2 CHAIRPERSON: Then you can't say whether</p> <p>3 the quotation is a correct one.</p> <p>4 BRIGADIER CALITZ: Nee.</p> <p>5 MR BIZOS SC: That's what I mean by a</p> <p>6 dictatorial attitude. That has been primarily your</p> <p>7 experience, Brigadier?</p> <p>8 BRIGADIER CALITZ: Nee, mnr die</p> <p>9 Voorsitter. Dit was nie my ondervinding nie.</p> <p>10 MR BIZOS SC: Well we'll argue about it</p> <p>11 in the, at the end of the case but what I want to put to</p> <p>12 you is this. That having regard to all these statements,</p> <p>13 having regard to what has been happening in various places</p> <p>14 where people were shot dead, where force was, maximum force</p> <p>15 was used I'm going to suggest to you that your experience</p> <p>16 is not something that we should follow in South Africa in</p> <p>17 terms of our constitution and our legislation. So that</p> <p>18 your experience is detrimental rather than beneficial as to</p> <p>19 what the commission should find and express a view as to</p> <p>20 how the situation can be improved in the future.</p> <p>21 MR SEMENYA SC: I don't understand that</p> <p>22 question, Chair.</p> <p>23 CHAIRPERSON: Perhaps you can explain it</p> <p>24 for the benefit of the witness, Mr Semanya and me.</p> <p>25 MR BIZOS SC: What –</p>	<p style="text-align: right;">Page 19717</p> <p>1 huidige demokrasie onder die huidige regering. So my</p> <p>2 ondervinding van die openbare orde polisiëring was onder</p> <p>3 die huidige regering. My bevordering tot waar ek nou is</p> <p>4 was gegee deur die huidige regering en my range wat ek</p> <p>5 geklim het en dan oor die uitlatings wat gemaak is dit is</p> <p>6 nie te sê as ons gehoor het daarvan dit is enigsins my</p> <p>7 opinie gewees of ons opdragte aan lede nie. Ons praat van</p> <p>8 'n minimum geweld in gevalle. Ek het nog nooit opdragte</p> <p>9 gegee van use maximum force en daardie terme nie. So nee,</p> <p>10 glad nie, mnr die Voorsitter.</p> <p>11 MR BIZOS SC: You're aware that your</p> <p>12 address to the assembled police force the day after the 16th</p> <p>13 –</p> <p>14 CHAIRPERSON: Two days after that, Mr</p> <p>15 Bizos.</p> <p>16 MR BIZOS SC: Was two days.</p> <p>17 CHAIRPERSON: The 18th.</p> <p>18 MR BIZOS SC: Was it the 18th, thank you,</p> <p>19 Mr Chairman. But your speech in JJJ82 and the film which</p> <p>20 we saw you addressing the police force would you accept</p> <p>21 that your utterances were of an show that you are an</p> <p>22 authoritarian police officer.</p> <p>23 CHAIRPERSON: What particular passage in</p> <p>24 the address do you rely on for the statement that it shows</p> <p>25 him to authoritarian because I think in order to answer</p>
<p style="text-align: right;">Page 19716</p> <p>1 CHAIRPERSON: In your experience, that</p> <p>2 in itself is a wide expression to cover, I don't know what</p> <p>3 exactly it means. You then say your experience is</p> <p>4 detrimental to the proper functioning of the criminal</p> <p>5 justice system and the, I take it the –</p> <p>6 MR BIZOS SC: What I mean is this –</p> <p>7 CHAIRPERSON: Explain that in more</p> <p>8 detail I'm afraid so that the witness can follow, Mr</p> <p>9 Semanya can follow and I can follow.</p> <p>10 MR BIZOS SC: Yes, let me simplify it.</p> <p>11 Your experience is dependent on what you learnt during the</p> <p>12 apartheid regime and what has been prevalent from</p> <p>13 ministers, police officers, people who are unhappy with the</p> <p>14 provisions of the constitution and that is not the</p> <p>15 experience that really entitles you to pass judgment on the</p> <p>16 correctness or otherwise of the views of Mr Hendrickx.</p> <p>17 CHAIRPERSON: What do you say about</p> <p>18 that, do you agree with that or don't you?</p> <p>19 BRIGADIER CALITZ: Nee, mnr die</p> <p>20 Voorsitter, as ek net kan wys, my experience die eerste een</p> <p>21 wat u genoem het, het ek opgetel deur, gedurende die</p> <p>22 apartheidsjare, dit is glad nie so nie. Ek het gesê my</p> <p>23 eerste ses jaar van my loopbaan was, wat u na verwys het as</p> <p>24 die apartheidsjare ek het 27 jaar diens, so 21 jaar daarvan</p> <p>25 en vandat ek by die openbare orde polisiëring is was in die</p>	<p style="text-align: right;">Page 19718</p> <p>1 you, you've got to draw his attention to the specific</p> <p>2 passage that you rely on. So we can get a meaningful</p> <p>3 answer from him.</p> <p>4 MR BIZOS SC: Mr Chairman, I wanted to</p> <p>5 save time by not actually showing the film.</p> <p>6 CHAIRPERSON: No, you don't have to show</p> <p>7 the film but I take it, no because it was a longish speech,</p> <p>8 several pages of transcripts.</p> <p>9 MR BIZOS SC: Yes.</p> <p>10 CHAIRPERSON: Unless you suggest that</p> <p>11 every single sentence –</p> <p>12 MR BIZOS SC: No –</p> <p>13 CHAIRPERSON: Breathed an authoritarian</p> <p>14 kind of air then there are particular passages in it I take</p> <p>15 it, I know it will take a bit longer and you know how keen</p> <p>16 I am that we should waste the time at all but I think in</p> <p>17 this occasion to be fair to him you must put the specific</p> <p>18 passages to him so that he can answer you properly.</p> <p>19 MR BIZOS SC: Mr Chairman, I am relying</p> <p>20 on my impression, not only of the content but the manner of</p> <p>21 its delivery of, I am entitled to describe it as</p> <p>22 authoritarian. I don't know that I can isolate individual</p> <p>23 sentences but taking the speech as a whole and the manner</p> <p>24 in which it was delivered and you will recall, Mr Chairman,</p> <p>25 that it dealt with a very large extent as to how to deal</p>

<p style="text-align: right;">Page 19719</p> <p>1 with the possible appearance of a certain gentleman during 2 the day. It is in my submission an authoritarian view. If 3 the Commission doesn't share that view of my assessment I 4 will abandon the question.</p> <p>5 CHAIRPERSON: No, I don't think it 6 appropriate for us to form a view on the matter at this 7 stage because that's something we will decide upon if we 8 have to at the end of the evidence. But I was just merely 9 concerned that the witness should be able to answer with, I 10 take it that what you said probably is enough. You heard 11 what Mr Bizos, says. He says having seen you on the video, 12 having had regard to what you said, what came across was an 13 authoritarian attitude. Both the way you spoke and what 14 you said. Now are you able to deal with that, do you agree 15 with that? Did you see yourself because I take it you've 16 seen the video since, did you see yourself as adopting an 17 authoritarian attitude towards the policemen under your 18 command to whom your speech was addressed?</p> <p>19 BRIGADIER CALITZ: Authoritarian, is dit 20 met outoriteit, is dit die regte –</p> <p>21 CHAIRPERSON: There's a difference 22 between authoritative where you speak with authority.</p> <p>23 BRIGADIER CALITZ: As ek dalk net 24 duidelikheid kan kry.</p> <p>25 CHAIRPERSON: Authoritarian is where it's</p>	<p style="text-align: right;">Page 19721</p> <p>1 voorligting aan die lede was vir daardie lede wat vir die 2 eerste keer daar was om hulle almal net in te lig en kalm 3 te hou rondom die gebeure wat twee dae voor dit gebeur het. 4 So ek het niks op hulle afgedwing nie. As mens gaan kyk na 5 die lede se optrede daardie dag en wat gebeur het is daar 6 niks afgedwing op hulle om op 'n manier op te tree wat nie 7 van 'n redelike polisieman verwag word nie. Daardie dag 8 was 'n sukses en as ons gaan kyk na die video's wat wel 9 beskikbaar is van daardie dag, die 18de en wat verloop het 10 die res van die dag was dit 'n baie rustige geordende 11 operasie gewees. So ek het niks op lede afgedwing nie, 12 nee.</p> <p>13 MR BIZOS SC: You had an opportunity of 14 reading the rest of Mr Hendrickx's affidavit overnight.</p> <p>15 BRIGADIER CALITZ: Ek het wel na die 16 punte gekyk, dit wat ek geantwoord het en hoe ek dit 17 geantwoord het.</p> <p>18 MR BIZOS SC: I'm anxious to limit the 19 cross-examination in view of your answers yesterday. Could 20 I ask you to please point out any particular precept which 21 Mr Hendrickx expresses with which you agree so that we can 22 cut short the –</p> <p>23 CHAIRPERSON: It may cut it shorter, 24 even shorter if we ask him to point to things he doesn't 25 agree with, that he may well agree with a good deal of what</p>
<p style="text-align: right;">Page 19720</p> <p>1 overbearing, the authorities were imposed excessively on 2 the people to whom the remarks were addressed or the 3 conduct is addressed to. Would you agree with that, Mr 4 Bizos?</p> <p>5 MR BIZOS SC: Thank you, yes. It's 6 precisely what I had in mind and I submit that it is a view 7 which is not an exaggerated view, I may be wrong but I 8 don't think terribly wrong, having read and having seen the 9 manner in which it was delivered and what was said. I'm 10 entitled to use it but I'm not going to make a big issue 11 out to it.</p> <p>12 CHAIRPERSON: Ja, you put it to the 13 witness. We must give him a chance to reply.</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 baie dankie. Nou dat ek u vraag verstaan. Die eerste 16 gedeelte van my toespraak wat u verwys na 'n sekere persoon 17 wat daarna toe kom, nee dit is 'n gewone operasionele 18 voorligting. Van my as operasionele bevelvoerder wat die 19 JOCCOM vergadering in die oggend bygewoon het en dit is wat 20 oorgedra is aan die lede, die spesifieke take. Ek dink as 21 ons kyk na die video en die rekord spreek vanself het ek 22 presies in detail vir hulle verduidelik wat gebeur die dag, 23 hoe moet ons die draad gaan optel en wat die inligting is 24 tot ons beskikking op daardie dag. So daar het ek niks 25 afgeforseer op die lede nie en die tweede gedeelte van my</p>	<p style="text-align: right;">Page 19722</p> <p>1 Mr Hendrickx says.</p> <p>2 MR BIZOS SC: Yes.</p> <p>3 CHAIRPERSON: Well let's put it this 4 way. Do you agree with most of Mr Hendrickx said or you 5 disagree with most of what he says?</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 met die meeste van die, as ek verwys verder in paragraaf, 8 in bladsy 11 staan daar orde 262 disagree ek, ek verskil 9 van hom daar. Ek dink nie as ek na elke paragraaf toe 10 verwys gaan ons lank wees.</p> <p>11 CHAIRPERSON: All I want to know is 12 before you even get to the paragraphs do you agree with 13 most of what he says and disagree with some parts?</p> <p>14 BRIGADIER CALITZ: Nee.</p> <p>15 CHAIRPERSON: Or do you disagree with 16 most of he says and only agree with a little bit of what he 17 says, which of the two is it?</p> <p>18 BRIGADIER CALITZ: Die presentasie, die 19 gedeeltes wat na my verwys is en wat spesifiek op ons van 20 toepassing is verskil ek met die meeste van sy stellings 21 wat hy gemaak het.</p> <p>22 CHAIRPERSON: The way his statement is 23 drafted he makes certain general propositions based on his 24 knowledge and expertise and academic writers written on 25 police, public order policing. Now I take it you agree</p>

<p style="text-align: right;">Page 19723</p> <p>1 with most of that?</p> <p>2 BRIGADIER CALITZ: Dit is korrek.</p> <p>3 CHAIRPERSON: Alright. Then he descends</p> <p>4 from the general particular and he deals with what happened</p> <p>5 at the Marikana and he makes certain critical comments.</p> <p>6 You say you disagree with most of that?</p> <p>7 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>8 Voorsitter.</p> <p>9 CHAIRPERSON: Alright. Now the one that</p> <p>10 I was interested in, but perhaps I mustn't anticipate Mr</p> <p>11 Bizos's cross-examination. But the one that I was</p> <p>12 interested in is 28.2 but Mr Bizos, are you going to deal</p> <p>13 with 28.2?</p> <p>14 MR BIZOS SC: 20?</p> <p>15 CHAIRPERSON: Page 18.</p> <p>16 MR BIZOS SC: Yes, Mr Chairman, I'm sure</p> <p>17 –</p> <p>18 CHAIRPERSON: That's as far as I can</p> <p>19 see, I may have been wrong but that, the impression I got</p> <p>20 was that was the main paragraph, actually probably the only</p> <p>21 paragraph that I could find that refers specifically to</p> <p>22 you. Am I right in that, Mr Bizos?</p> <p>23 [09:38] MR BIZOS SC: Yes, I have got it</p> <p>24 underlined, Mr Chairman, and for the purposes of record the</p> <p>25 operational commander that's you does not appear to have</p>	<p style="text-align: right;">Page 19725</p> <p>1 het. Daar was wel gevalle, en dit is wat u aan my uitgewys</p> <p>2 het, waar persone wat inbeweeg het na sekere gedeeltes toe</p> <p>3 nie met my kontak gemaak het nie en ek het wel gesê in</p> <p>4 daardie geval dra ek nie kennis wat die redes is nie.</p> <p>5 CHAIRPERSON: Yes, as far as the second</p> <p>6 sentence of 28.2 is concerned it seems to me prima facie,</p> <p>7 obviously subject to what may be said from the other said,</p> <p>8 that the criticism is unfounded because the decision to</p> <p>9 proceed to phase 3 was not your decision. That was</p> <p>10 imposed, according to the other evidence we've had imposed</p> <p>11 on the JOCCOM at its meeting at 1:30 –</p> <p>12 BRIGADIER CALITZ: Dit is waarnatoe –</p> <p>13 CHAIRPERSON: - by the Provincial</p> <p>14 Commissioner.</p> <p>15 BRIGADIER CALITZ: Dit is waarnatoe ek</p> <p>16 nou net wil –</p> <p>17 CHAIRPERSON: Sorry, so I'm interrupting</p> <p>18 you.</p> <p>19 BRIGADIER CALITZ: Ekskuus, mnr die</p> <p>20 Voorsitter –</p> <p>21 CHAIRPERSON: Please proceed.</p> <p>22 BRIGADIER CALITZ: Ek probeer hom net so</p> <p>23 in die sinne antwoord. Ja, maar u is heeltemal reg,</p> <p>24 daardie fase 3 en dan miskien ook sien ek die verklaring is</p> <p>25 opgestel op die 1ste dag van Februarie 2013 en ek dink dalk</p>
<p style="text-align: right;">Page 19724</p> <p>1 been in charge of the operation. The rationale for the</p> <p>2 decision to proceed to phase 3 and the timing of this</p> <p>3 intervention is not apparent from the evidence. And 28.3,</p> <p>4 there is no documented evidence of adequate briefing of –</p> <p>5 CHAIRPERSON: Mr Bizos, I'm sorry –</p> <p>6 MR BIZOS SC: One at a time –</p> <p>7 CHAIRPERSON: 28.2 is a discrete, D-I-S-</p> <p>8 C-R-E-T-E, point of criticism and which relates</p> <p>9 specifically to the witness, so I think to be fair he</p> <p>10 should be given an opportunity to deal with that</p> <p>11 separately. You may want to put other passages to him as</p> <p>12 well, but that one to me is the most important one as far</p> <p>13 as he is concerned, and I would very much appreciate</p> <p>14 hearing his response to it, and obviously in answer to such</p> <p>15 follow-up questions relating to this point which you</p> <p>16 consider appropriate to ask.</p> <p>17 MR BIZOS SC: Yes. We'll await the</p> <p>18 witness's answer, Mr Chairman.</p> <p>19 BRIGADIER CALITZ: Dankie, mnr die</p> <p>20 Voorsitter. Nee, ek verskil van wat mnr Hendrickx hier</p> <p>21 gesê het, dat hy gesê het dat dit wil voorkom dat ek nie in</p> <p>22 beheer van die operasie nie. Ek dink as ons gaan luister</p> <p>23 nie net na die video "transcript" maar ook die lees van die</p> <p>24 verklaring sal u sien dat ek die heeltyd opdragte gegee het</p> <p>25 vir dan die voertuie en die hele operasie sodoende beheer</p>	<p style="text-align: right;">Page 19726</p> <p>1 as hy my gekonsolideerde verklaring gehad het, wat toe</p> <p>2 later, ek dink hy uitsprake gegee op die een wat ek gemaak</p> <p>3 het vir die dossier, as u onthou.</p> <p>4 CHAIRPERSON: But on any basis you were</p> <p>5 out in the field. You didn't attend the JOCCOM meeting at</p> <p>6 1:30.</p> <p>7 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>8 Voorsitter.</p> <p>9 CHAIRPERSON: Where the decision was</p> <p>10 either made or communicated – I think it is more accurate</p> <p>11 to say communicated – and you first heard of it at 2:30.</p> <p>12 There's nothing to indicate that you were involved in any</p> <p>13 way in making the decision to proceed to phase 3 on the</p> <p>14 Thursday afternoon. Is that right?</p> <p>15 BRIGADIER CALITZ: Korrek, mnr die</p> <p>16 Voorsitter.</p> <p>17 CHAIRPERSON: The timing of the</p> <p>18 intervention, that was imposed by – is it 3:30? Or</p> <p>19 actually just after 3:30 by, was it General Annandale's</p> <p>20 decision? It wasn't your decision. You weren't –</p> <p>21 BRIGADIER CALITZ: 15:30.</p> <p>22 CHAIRPERSON: You weren't – yes, you</p> <p>23 speak police language, I speak ordinary language, and the</p> <p>24 time was fixed was General Annandale sitting in the JOC,</p> <p>25 without consultation with you, as far as I understand. Is</p>

<p style="text-align: right;">Page 19727</p> <p>1 that right?</p> <p>2 BRIGADIER CALITZ: Dit is heeltemal</p> <p>3 korrek so, mnr die Voorsitter.</p> <p>4 CHAIRPERSON: So that may or may not be</p> <p>5 valid criticism, but it's not criticism that should be</p> <p>6 addressed to you.</p> <p>7 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>8 Voorsitter.</p> <p>9 CHAIRPERSON: But as far as your being in</p> <p>10 charge of the operation is concerned, I want to put this to</p> <p>11 you because it's again a prima facie view of mine and not</p> <p>12 necessarily leading to a finding of culpability on your</p> <p>13 side, but just as the facts. You weren't quite in charge</p> <p>14 of the operation on your own evidence, I think, at koppie 3</p> <p>15 because you didn't know that some extra forces had arrived</p> <p>16 there and were actually taking part, dealing with the</p> <p>17 situation, firing shots and that kind of thing. Is that</p> <p>18 right? You didn't know General Naidoo was there. You</p> <p>19 didn't know that Captain Kidd was there, did you?</p> <p>20 BRIGADIER CALITZ: [Microphone off,</p> <p>21 inaudible].</p> <p>22 CHAIRPERSON: Sorry?</p> <p>23 BRIGADIER CALITZ: Actually nor the NIU.</p> <p>24 CHAIRPERSON: Nor the NIU?</p> <p>25 BRIGADIER CALITZ: Ja.</p>	<p style="text-align: right;">Page 19729</p> <p>1 Voorsitter.</p> <p>2 CHAIRPERSON: Alright. Mr Bizos, I'm</p> <p>3 sorry if I intervened, but –</p> <p>4 MR BIZOS SC: Thank you, Mr Chairman –</p> <p>5 CHAIRPERSON: I take it you may wish to</p> <p>6 ask further questions in relation to that paragraph.</p> <p>7 MR BIZOS SC: No, I do not wish, Mr</p> <p>8 Chairman, but what I want to say in order to –</p> <p>9 CHAIRPERSON: Sorry, before you say</p> <p>10 whatever you want to say, Mr Semenya would like to say</p> <p>11 something.</p> <p>12 MR SEMENYA SC: Chair, for the record, we</p> <p>13 are going to contend that an operational commander is not</p> <p>14 in charge of everything. He is a coordinator of</p> <p>15 operations.</p> <p>16 MR BIZOS SC: My learned friend can argue</p> <p>17 that, Mr Chairman.</p> <p>18 CHAIRPERSON: It is helpful that he makes</p> <p>19 the point, so we know what the attitude of the SAPS on this</p> <p>20 point is. Thank you, Mr Semenya.</p> <p>21 MR BIZOS SC: Now is there any point in</p> <p>22 my taking you through the rest of this document if in fact</p> <p>23 you believe that most of what Mr Hendrickx said ought to</p> <p>24 have done and ought not to have been done is correct,</p> <p>25 without my going through each one of the statements or</p>
<p style="text-align: right;">Page 19728</p> <p>1 CHAIRPERSON: So you conceded that there</p> <p>2 was a lack of coordination at koppie 3, but the explanation</p> <p>3 you gave was you couldn't set out to coordinate people if</p> <p>4 you didn't know they were there. Am I summarising the</p> <p>5 evidence correctly?</p> <p>6 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>7 Voorsitter.</p> <p>8 CHAIRPERSON: But I mean to be fair, it</p> <p>9 would be fair to say that you weren't exactly in charge of</p> <p>10 the operation at koppie 3 for whatever reason. I mean you</p> <p>11 were in charge of part of it, but not the whole of it.</p> <p>12 BRIGADIER CALITZ: Dit is korrek –</p> <p>13 CHAIRPERSON: I mean you concede that,</p> <p>14 don't you?</p> <p>15 BRIGADIER CALITZ: Ek wou net bygevoeg</p> <p>16 het dat, "the operational commander does not appear to be</p> <p>17 in charge of the operation" – "in charge of the operation"</p> <p>18 sal wees die oorhoofse bevelvoerder en dan my rol sal wees</p> <p>19 dan om die koördinerings en die voorligting te gee. So dit</p> <p>20 is miskien net wat ek net wil byvoeg.</p> <p>21 CHAIRPERSON: Alright, it may be a</p> <p>22 semantic debate, but the fact of the matter was at koppie 3</p> <p>23 you weren't acting in control of everything that was</p> <p>24 happening, but you've given your reason for that.</p> <p>25 BRIGADIER CALITZ: Dit is korrek, mnr die</p>	<p style="text-align: right;">Page 19730</p> <p>1 paragraphs that he made –</p> <p>2 CHAIRPERSON: It's the other way round.</p> <p>3 He says many of the general statements Mr Hendrickx makes</p> <p>4 he agrees with, but when he deals with particular matters</p> <p>5 in relation to what happened at Marikana on the 16th in</p> <p>6 particular, which involved him, he doesn't agree, he says,</p> <p>7 and now there are two aspects to that, I would think. The</p> <p>8 one is points relating to other people and the operation</p> <p>9 generally and the radio equipment and all that sort of</p> <p>10 stuff, which has been covered with other witnesses, and I</p> <p>11 don't know that this witness has anything in particular to</p> <p>12 add to that. If he has something in particular to add,</p> <p>13 obviously he must be given the opportunity, but I wouldn't</p> <p>14 have thought he's got anything in particular to add to many</p> <p>15 of those points of criticism. They have been traversed</p> <p>16 with other witnesses. But of course the parts dealing with</p> <p>17 him directly he must deal with. I thought 28.2 was one</p> <p>18 that dealt with him directly, that's why I put it to him.</p> <p>19 There may be other passages – I'm not aware of them, but</p> <p>20 perhaps he can tell us if he saw something in the report</p> <p>21 which he regarded as being a criticism of him or relating</p> <p>22 to something about which he has a special input that he</p> <p>23 thinks we should have. Perhaps that's the way forward. I</p> <p>24 understand your commendable desire to cut things short, but</p> <p>25 perhaps the way I've suggested may be – I may say so with</p>

<p style="text-align: right;">Page 19731</p> <p>1 my customary modesty – a sensible way to do it.</p> <p>2 MR BIZOS SC: Yes. Did you understand</p> <p>3 the criticisms of Mr Hendrickx of the conduct of not only</p> <p>4 you, but all those who were responsible for formulating the</p> <p>5 plan, those who had to oversee it, and what the unfortunate</p> <p>6 results were? Do you agree with his statements or</p> <p>7 conclusions in relation to any of those matters, or do you</p> <p>8 disagree generally by his conclusions?</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>10 glo my antwoord gaan dieselfde wees, as ek die vraag reg</p> <p>11 verstaan. Meeste van die opmerkings wat mnr Hendrickx</p> <p>12 gemaak het wat pertinent tot die operasie en nie net myself</p> <p>13 nie maar ook die ander lede - twee paragrawe af praat hy</p> <p>14 van "There were no real negotiations with the crowd" -</p> <p>15 sulke tipe van opmerkings wat hy gemaak het, so ek</p> <p>16 "disagree" met die meeste van, of dit wat hy gesê het</p> <p>17 rondom die operasie self. Dit is maar net een vinnige</p> <p>18 voorbeeld wat ek nou net hier sien.</p> <p>19 CHAIRPERSON: Yes, as far as the planning</p> <p>20 is concerned of the actual operation I'm not sure that you</p> <p>21 had anything to do with that. As far as we've heard, the</p> <p>22 first time the detailed plan for the tactical operation was</p> <p>23 explained at the JOCCOM was by Colonel Scott at the 1:30</p> <p>24 meeting when you weren't there, and you first heard about</p> <p>25 it at 2:30 when it was communicated to you as a done deal,</p>	<p style="text-align: right;">Page 19733</p> <p>1 intermediaries between the strikers and Lonmin. Is that</p> <p>2 not right?</p> <p>3 BRIGADIER CALITZ: Dit is so –</p> <p>4 CHAIRPERSON: And when Lonmin dug its</p> <p>5 heels in there was, as Mr Hendrickx says, nothing really</p> <p>6 that the police could go back to the strikers with. That's</p> <p>7 correct, isn't it?</p> <p>8 BRIGADIER CALITZ: Wat betref Lonmin, dit</p> <p>9 is korrek, mnr die Voorsitter.</p> <p>10 CHAIRPERSON: So that's why he says there</p> <p>11 was no real negotiation. Negotiation involves give and</p> <p>12 take on both sides, concessions on both sides, and that</p> <p>13 kind of thing. The police couldn't engage in that kind of</p> <p>14 exercise for the reasons he stated. Isn't that right?</p> <p>15 BRIGADIER CALITZ: Dit is wat betref</p> <p>16 Lonmin, daardie gedeelte, dit is korrek, mnr die</p> <p>17 Voorsitter.</p> <p>18 CHAIRPERSON: Yes, yes, it's not</p> <p>19 necessarily a point for criticising the police. It's just</p> <p>20 a fact. Isn't that right? In fact if anything, I would</p> <p>21 have thought it made the police's task more difficult.</p> <p>22 Would you agree with that?</p> <p>23 BRIGADIER CALITZ: Dit is so, mnr die</p> <p>24 Voorsitter.</p> <p>25 CHAIRPERSON: Ja, okay.</p>
<p style="text-align: right;">Page 19732</p> <p>1 as it were, as an operation that had to be carried out. Is</p> <p>2 that correct?</p> <p>3 BRIGADIER CALITZ: Korrek, mnr die</p> <p>4 Voorsitter.</p> <p>5 CHAIRPERSON: You had no opportunity to</p> <p>6 make any inputs about it at all. Is that right?</p> <p>7 BRIGADIER CALITZ: Nee, nie voor die tyd</p> <p>8 op daardie stadium nie.</p> <p>9 CHAIRPERSON: Alright, then in relation</p> <p>10 to negotiation of course I'm inclined to think – again</p> <p>11 prima facie – that he's making a valid point, but I'm not</p> <p>12 sure it's a criticism of the police. The truth was the</p> <p>13 police had very little to offer. The crowd wanted, the</p> <p>14 strikers wanted to get a response from Lonmin. The police</p> <p>15 very appropriately took that request to Lonmin and put it</p> <p>16 to them. Lonmin weren't interested, as I understand it.</p> <p>17 They didn't agree. So the police had to go back to the</p> <p>18 strikers and say look, we put it to Lonmin but that's it,</p> <p>19 they're not prepared to accede to your request. Whether it</p> <p>20 is a valid request, whether Lonmin were unreasonable in</p> <p>21 turning the request down is not relevant. The fact is the</p> <p>22 police did have nothing to offer the strikers and the</p> <p>23 strikers weren't interested in fighting with the police –</p> <p>24 not initially anyway. Their opponent was Lonmin. The</p> <p>25 police were merely acting almost as mediators or</p>	<p style="text-align: right;">Page 19734</p> <p>1 MR BIZOS SC: Let me take an example.</p> <p>2 Take paragraph 21.6.1 in answer to your contention that</p> <p>3 there were armed protesters. "Armed protesters could have</p> <p>4 been prevented from gathering rather than waiting for them</p> <p>5 to gather before attempting to disperse them." That is his</p> <p>6 view. Do you agree or disagree with him?</p> <p>7 BRIGADIER CALITZ: Nee, mnr die</p> <p>8 Voorsitter.</p> <p>9 MR BIZOS SC: You disagree?</p> <p>10 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>11 Voorsitter.</p> <p>12 MR BIZOS SC: Yes. "A display of force"</p> <p>13 - in 21.6.2 – "as envisaged in stage 2 of the plan can be</p> <p>14 provocative and increase antagonism towards the police."</p> <p>15 Do you agree with that, or do you disagree?</p> <p>16 BRIGADIER CALITZ: Ek dink dit is wat ons</p> <p>17 gister ook hanteer het. Ek het verskil daar, mnr die</p> <p>18 Voorsitter.</p> <p>19 CHAIRPERSON: This was dealt with fully</p> <p>20 yesterday, Mr Bizos, wasn't it?</p> <p>21 MR BIZOS SC: Yes.</p> <p>22 CHAIRPERSON: 21.6.2. 21.6.1 wasn't</p> <p>23 dealt with yesterday.</p> <p>24 MR BIZOS SC: 21.6.3, "The deployment of</p> <p>25 barbed wire has probable effects on the crowd; most will</p>

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1 want to run away, some will want to fight, which were not
2 considered in the planning scenarios." Do you agree with
3 that?

4 BRIGADIER CALITZ: Nee, mnr die
5 Voorsitter.

6 CHAIRPERSON: Well firstly, let's analyse
7 this. The planning scenario I take it means that the
8 planning that went into this decision, the idea that there
9 should be a barrier, this barrier between the police and
10 the media on the one hand and the strikers on the other.

11 BRIGADIER CALITZ: Korrek, mnr die
12 Voorsitter.

13 CHAIRPERSON: Now were you involved in
14 that planning? Or is that something that was suggested and
15 was just -

16 BRIGADIER CALITZ: Nee, dit was -

17 CHAIRPERSON: - by Colonel Scott perhaps
18 and just accepted?

19 BRIGADIER CALITZ: Dit was wel aan ons
20 voorgelê deur Kolonel Scott en bespreek in die JOCCOM en
21 dit is dan so aanvaar, dit is die fase 2.

22 CHAIRPERSON: Now when it was discussed,
23 did anybody say but how are they likely to react, the
24 strikers, how are they likely to react to this uncoiling of
25 the barbed wire, and then various possible ways in which

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1 they could have reacted, might have reacted? Was that
2 discussed?

3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 wat ek onthou van wat bespreek is, is net dat ons gesê het
5 dat die draad sal dien as 'n beskermingsmaatreël sou ons
6 dan uitbeweeg. Waar ons wel 'n konfrontasie, wat ek op
7 getuig het, voorsien het, is dat sou ons die waarskuwing
8 gee en begin met die "dispersion action" dan sou daar
9 konfrontasie wees, maar nie -

10 CHAIRPERSON: Yes, yes, I -

11 BRIGADIER CALITZ: - maar nie ten tye van
12 die -

13 CHAIRPERSON: No, no, I understand that.
14 It sounds to me as if you're really agreeing with what he
15 said, unwittingly. But let's develop it a little bit
16 further. What I asked you was when this idea of uncoiling
17 the wire to create this protective barrier was discussed at
18 the JOCCOM, was there any discussion as to how the strikers
19 might probably react to that? I know you've explained what
20 the idea was, and I understand that, but that's not Mr
21 Hendrickx's point. Mr Hendrickx says as far as he can see
22 the possible, the probable ways in which the strikers might
23 react to that doesn't appear to have been considered.
24 That's his point, as I understand it. Was it considered in
25 the discussion there in the JOCCOM? Did somebody say, hang

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1 on a second, let's consider how the strikers are going to
2 react to this; some of them may do this, some of them may
3 do that? Was there any discussion along those lines?

4 BRIGADIER CALITZ: Mnr die Voorsitter,
5 die spesifieke woorde, as ek nou moet sê wie wat gesê het
6 kan ek nie vir u met sekerheid sê nie. Ek weet dit was wel
7 bespreek gewees en dat ons tot die slotsom gekom het dat
8 die draad sal dan, soos u sê in hierdie geval nie dat hulle
9 sal wil baklei rondom die draad nie. Ek dink dit is uit
10 die ondervinding uit en die meeste van die kere waar ons
11 wel draad gebruik het, dat persone sien daar word 'n
12 "barrier" gemaak en dan die meeste het wegbeweeg. Waar
13 daar wel voorsiening was, was aan die tweede deel. So
14 waarmee ek verskil is miskien "which were not considered in
15 the planning scenarios." Ek dink die konsiderasie was daar
16 gewees.

17 CHAIRPERSON: I understand that. So
18 you've now elaborated on what you said earlier, which gave
19 me the opposite impression when you say it was considered,
20 what he says in 21.6.3 isn't correct.

21 BRIGADIER CALITZ: Dit is korrek. Ek
22 verskil met die sinnetjie daar.

23 MR BIZOS SC: The plan as a whole was
24 considered by all the senior officers and they all agreed
25 that it should be put into operation. Am I right?

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1 BRIGADIER CALITZ: Op watter fase, as ek
2 miskien net kan vra? Tot die oggend van die 16de was ek
3 betrokke daar en kan ek op dit getuig. Dit is korrek, tot
4 by fase 2.

5 CHAIRPERSON: Mr Bizos, the problem with
6 the question is he wasn't there at the 1:30 JOCCOM meeting.
7 That's the occasion when for the first time Colonel Scott
8 said what he, the form that the tactical option should
9 take, and he didn't even have it fully recorded on his
10 computer. There were no hardcopies available to give to
11 the commanders. The commanders who were going to execute
12 it weren't there, and as you know, he then went out at 2:30
13 to forward holding area and showed them on his laptop. The
14 witness, that was the first time the witness heard about
15 it. He wasn't involved in it at all up to that point. So
16 I'm not sure that your question -

17 MR BIZOS SC: I'm not talking about that
18 stage. I am asking whether when the plan was formulated by
19 Colonel Scott, was it approved by you and other senior
20 members of the police?

21 CHAIRPERSON: What aspect of the plan are
22 you talking about?

23 MR BIZOS SC: The whole of it. As a
24 whole, the plan.

25 CHAIRPERSON: Well, you see -

<p style="text-align: right;">Page 19739</p> <p>1 MR BIZOS SC: Was it agreed to, Mr 2 Chairman.</p> <p>3 CHAIRPERSON: The trouble is, you see, 4 that according to Colonel Scott the actual practical 5 implementation of stage 3 was something which he 6 volunteered, he mentioned for the first time at the JOCCOM 7 meeting at 1:30 after nobody else had raised his hand to 8 make any suggestions as to how it should be done, and this 9 witness wasn't there at the time. So when you talk about 10 the plan, the plan as whole –</p> <p>11 MR BIZOS SC: The plan as a whole –</p> <p>12 CHAIRPERSON: - didn't include any 13 detail, according to Scott, any detail relating to the 14 practical implementation of the tactical option until he, 15 Scott, gave those detail at the 1:30 JOCCOM meeting in the 16 absence of the witness. So to ask him about the plan in 17 general –</p> <p>18 MR BIZOS SC: With respect, my question 19 is whether the plan, the plan –</p> <p>20 CHAIRPERSON: Well, what do you mean by 21 the plan?</p> <p>22 MR BIZOS SC: The plan as put down on 23 paper by Colonel Scott, which was going to be followed on 24 the 16th, whether he and the other senior officers agreed to 25 it. If there was any modification, I'm not concerned with</p>	<p style="text-align: right;">Page 19741</p> <p>1 ook nie by "show of force", fase 2 nie. Daar bestaan nie 2 so 'n konsep in daardie twee fases wat ons goedgekeur het 3 op daardie stadium nie.</p> <p>4 MR BIZOS SC: Did you not foresee, did 5 you not foresee that there was going to be maximum force 6 used as a possibility or a probability during the course of 7 that day, the whole lot of you, foreseen?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, ek 9 kan net weereens getuig op waar ek was en dit is die oggend 10 van die 16de, as u na die dag verwys en dit is waar ons 11 gesê het daar gaan oor na 'n "show of force" toe en die 12 onderhandelinge sal voortgaan, so nee, glad nie, mnr die 13 Voorsitter, nie op daardie stadium nie.</p> <p>14 MR BIZOS SC: How did you understand the 15 force to be used or what force to be used would be?</p> <p>16 BRIGADIER CALITZ: Nee, fase 2, "show of 17 force", dit beteken ons sou die prepositioning van die 18 draad karre uiteengesit het en dan ook die deployment van 19 die Papa Nyalas agter hulle, dieselfde as wat ons die 20 vorige dag gedoen het, net met 'n addisionele uit plaas van 21 die draad.</p> <p>22 CHAIRPERSON: You also had a big gun, I 23 can't remember the description of it but according to Mr 24 Mpfu you could blow a building down, but which actually 25 couldn't work which is on the back of a truck of some kind.</p>
<p style="text-align: right;">Page 19740</p> <p>1 it in relation to this question as to whether the plan as 2 written down by Scott and what was going to happen on the 3 16th was agreed by all the senior officers.</p> <p>4 CHAIRPERSON: Were you aware of any plan, 5 when you were in the JOCCOM either on the 15th or the 6 morning of the 16th, any plan which had been put on paper by 7 Colonel Scott?</p> <p>8 [09:58] BRIGADIER CALITZ: Mnr die Voorsitter, 9 die plan waarvan ek bewus was, was vandat Kolonel Scott dit 10 aan ons voorgedra het en dit was fase 1 en 2, die 11 onderhandelingsfase en dan ook die "show of force" fase. 12 Op geen stadium voor dit was ek bewus van die besluite en 13 die detail van die ander –</p> <p>14 CHAIRPERSON: Van fase 3, yes, but I take 15 it you can answer this part of Mr Bizos' question then. In 16 relation to what was suggested and proposed for phases 1 17 and 2, were you in agreement with that?</p> <p>18 BRIGADIER CALITZ: Dit is reg, dit is 19 bespreek in die JOCCOM en al die seniors was teenwoordig en 20 dit is so aanvaar en goedgekeur.</p> <p>21 MR BIZOS SC: Was it foreseen by you and 22 the other senior officers that maximum force may have to be 23 used in implementing that plan?</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, 25 maximum force is nooit ter sprake by onderhandelinge nie,</p>	<p style="text-align: right;">Page 19742</p> <p>1 That was also part of the show of force, it was a scorpion. 2 The evidence was that there was a scorpion that couldn't 3 actually work but looked a fearsome gun and was designed 4 apparently, according to the evidence, as part of the show 5 of force to make the striker terrified. It doesn't appear 6 it succeeded but that was part of the show of force also, 7 wasn't it?</p> <p>8 BRIGADIER CALITZ: Dit was deel van 9 daardie dag, ook daar gewees, mnr die Voorsitter.</p> <p>10 MR BIZOS SC: Did any of you know that 11 there were 4,000 bullets readily available and for what 12 purpose they were readily available?</p> <p>13 MR SEMENYA SC: Objection, there was 14 never any 4,000 bullets available, they were indeed brought 15 there and returned immediately.</p> <p>16 MR BIZOS SC: I didn't hear the last bit, 17 Mr Chairperson?</p> <p>18 CHAIRPERSON: It was brought there and 19 returned immediately, they weren't kept available, they 20 were sent back presumably to the place from which they 21 came, that's what Mr Semanya said, and that was the 22 evidence.</p> <p>23 MR BIZOS SC: I don't understand the 24 objection, Mr Chairman.</p> <p>25 CHAIRPERSON: No, he says you said that</p>

<p style="text-align: right;">Page 19743</p> <p>1 there were 4,000 bullets to shoot people with, he says that 2 isn't right, they had already been sent back, so they 3 didn't have them, they weren't available. 4 MR BIZOS SC: They were available on the 5 16th, Mr Chairman. 6 CHAIRPERSON: No, but I take it by 7 available means some people in the field had 4,000 bullets 8 at their disposal to shoot at the strikers if they wanted 9 to or had considered it necessary. Well, Mr Semenya says 10 that's factually incorrect, that the amount of, - I don't 11 know what the number is but presumably we will be told, but 12 he says the number of bullets available to the forces, if I 13 can call them that in the field, that were taking part in 14 the tactical option, it was nowhere near 4,000, is that 15 right, Mr Semenya? 16 MR SEMENYA SC: That they were not 17 available to be used because they were sent back. 18 CHAIRPERSON: Yes, yes, yes, no, I 19 understand that but I mean obviously some people in the 20 field had bullets, I mean bullets were fired, so we do know 21 that there were bullets, a set number of bullets were 22 available to the TRT and the NIU and these people in the 23 field. 24 MR SEMENYA SC: Oh, certainly but we know 25 what 4,000 is referring to.</p>	<p style="text-align: right;">Page 19745</p> <p>1 point, I overstated the case as well. The position is that 2 in addition to a number which the people in the field had 3 and we don't know what that number is at the moment, an 4 additional 4,000 had been asked for and that additional 5 4,000 were sent back and weren't available. I mean that's 6 the correct position, is it not, Mr Semenya? 7 MR SEMENYA SC: Yes. 8 CHAIRPERSON: That's the correct 9 position, in addition to the bullets which the forces in 10 the field had which is an unknown number at the moment to 11 us, you people can give it to us in due course, in addition 12 to that number, whatever it was, an additional 4,000 had 13 been asked for and that additional 4,000 were sent back. 14 MR SEMENYA SC: That's correct. 15 CHAIRPERSON: Is that the correct 16 position? 17 MR SEMENYA SC: That's correct, Chair. 18 CHAIRPERSON: Alright, so I think we now 19 struggles through to the approximation of the correct facts 20 of the point, so you can reformulate your question and put 21 it to the witness. 22 MR BIZOS SC: Was it foreseen, was it 23 foreseen, irrespective of the number of bullets, by any of 24 the senior officers that the maximum force that may have to 25 be used included bullets to kill people, was that discussed</p>
<p style="text-align: right;">Page 19744</p> <p>1 CHAIRPERSON: No, no, no, I am saying it 2 wasn't anywhere near 4,000, I am saying we don't know the 3 exact number, it is clearly not correct to say they had no 4 bullets at all because they obviously had, but 4,000 is a 5 gross exaggeration because the 4,000 number relates to 6 bullets which were sent back, am I understanding it 7 correctly? 8 MR SEMENYA SC: That's correct, Mr 9 Chairman. 10 CHAIRPERSON: Yes, Advocate Hemraj 11 reminds me that the evidence is as follows, over and above 12 the bullets which the troops, if one can call them that, 13 had in the field, somebody, we don't know who it is, 14 requested an additional 4,000. They came and a decision 15 was taken to send them back, they're not needed, that's the 16 suggestion, but your question requires a bit of 17 modification. 18 MR CHASKALSON SC: Chairperson, can I 19 just respond to a point that you raised because you said 20 they were nowhere near 4,000. I would imagine there were 21 more than 4,000 because there were over 600 that were 22 actually shot and the proportion of what was shot relative 23 to what wasn't shot is probably in terms of the total 24 bullets available, I would hope a low proportion. 25 CHAIRPERSON: Okay, no, I take your</p>	<p style="text-align: right;">Page 19746</p> <p>1 at any of the meetings of the senior persons before it 2 happened on the 16th? 3 BRIGADIER CALITZ: Mnr die Voorsitter, 4 nee, die vergaderings wat ek bygewoon het tot die oggend 5 sesuur van die 16de, was daardie fases nie bespreek nie en 6 daar was ook nie gepraat van maximum force nie. 7 MR BIZOS SC: So the killing of people 8 came as a complete surprise to you? 9 BRIGADIER CALITZ: Ek het wel gesê dat 10 toe ek ingelig is daarvan, dit was 'n skok gewees en dit 11 was 'n aanval op die polisiebeamptes en hulle het in 12 selfverdediging opgetree. 13 MR BIZOS SC: Let's deal with paragraph 14 22, "The objectives of the tactical intervention stage, 15 dispersal, disarmament and unrest are problematic," and 16 then there are four reasons set out for that. Do you agree 17 or disagree with that? 18 BRIGADIER CALITZ: Nee, ek verskil, mnr 19 die Voorsitter. 20 MR BIZOS SC: You disagree? 21 BRIGADIER CALITZ: Korrek, mnr die 22 Voorsitter. 23 MR BIZOS SC: 23, "There should not have 24 been so many different police units in the operation." Do 25 you agree or disagree?</p>

<p style="text-align: right;">Page 19747</p> <p>1 BRIGADIER CALITZ: Ek verskil weereens, 2 mnr die Voorsitter.</p> <p>3 MR BIZOS SC: And you obviously disagree 4 with the sub points, 23.1, 2 and 3, do you disagree?</p> <p>5 BRIGADIER CALITZ: Laat ek net gou deur 6 dit gaan, laat ek net sien? U sien, mnr die Voorsitter, ek 7 verskil, dit is in die konteks wat dit geplaas is, daar mag 8 waarheid in wees dat, "POP specialised training and crowd 9 management which other units apparently do not have." Daar 10 kan waarheid in die stelling wees maar in die konteks wat 11 dit gebruik is wil dit voorkom of ons hulle gebruik het vir 12 uiteendrywing van crowds and dit is waar ek verskil. So, 13 dit is miskien net, mnr Hendrickx het dalk gedink dat 14 hierdie magte, hulle was nie gebruik vir uiteendrywing of 15 die dispersion action nie. Hulle het ander spesifieke take 16 gehad, so in daardie opsig, ek verskil dan weereens.</p> <p>17 MR BIZOS SC: It is a substantial 18 disagreement in the whole of paragraph 23.</p> <p>19 BRIGADIER CALITZ: 23? 20 MR BIZOS SC: 23, yes, you're in general 21 disagreement with –</p> <p>22 BRIGADIER CALITZ: Dit is – 23 MR BIZOS SC: - the view of Mr Hendrickx? 24 BRIGADIER CALITZ: Dit is korrek, met die 25 redes wat ek gegee het.</p>	<p style="text-align: right;">Page 19749</p> <p>1 punte, insidente wat daar gebeur het asook dreigemente en 2 intimidasie wat in daardie gedeeltes was op die dag, so 3 daarom was –</p> <p>4 CHAIRPERSON: It is a different point, 5 the question is whether they were likely to go there, 6 likely to want to go there. It may be undesirable for them 7 to go there but that's a different issue. At the time the 8 wire was being uncoiled, it wasn't been done simultaneously 9 from each Nyala, so there was about nine minutes. During 10 that time, the question I think that Mr Bizos is busy with 11 was, was there the likelihood on the part of the strikers 12 to want to move towards Nkaneng? You weren't driving them 13 away at that stage, I understand you're driving people 14 away, driving them in a particular direction, they are 15 going to just go in the direction which you're driving 16 them, but when you were uncoiling the fire you weren't 17 driving them yet, you weren't even dispersing them. You 18 were putting up a protective barrier and what he is busy 19 with is a different question where he says, he contends, I 20 am not sure he is right but this is what he says, that it 21 was most likely that they wouldn't want to be fenced in as 22 it were and they would want to move towards Nkaneng. Now 23 there may be a number of answers to it but that's the point 24 that he is making. Do you agree with that or not? 25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>
<p style="text-align: right;">Page 19748</p> <p>1 MR BIZOS SC: Yes. 2 BRIGADIER CALITZ: Ook, ek sien nou 23.2 3 en 23.3 praat van dieselfde, so dit is waarna ek verwys 4 het.</p> <p>5 MR BIZOS SC: Do you disagree with 6 paragraph 24? 7 BRIGADIER CALITZ: Ek verskil ook daar, 8 daar word verskeie stellings gemaak maar ek verskil ook 9 daar.</p> <p>10 MR BIZOS SC: Do you disagree with 11 paragraph 25? 12 CHAIRPERSON: This was debated – 13 BRIGADIER CALITZ: Ja – 14 CHAIRPERSON: This was debated fully 15 earlier with you. 16 BRIGADIER CALITZ: Ek verskil ook daar, 17 mnr die Voorsitter. 18 CHAIRPERSON: Are you an expert on 19 negative and positive attraction points? 20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 uit my ondervinding uit in die jare, nee, 20 jaar, weereens 22 Openbare Orde Polisiëring, as ons persone uiteendryf dan is 23 daar altyd 'n positiewe bewegingspunt waarna toe ons hulle 24 beweeg en weg van 'n negatiewe retraction point af. Die 25 negatiewe retraction point verwys dan na sekere sleutel</p>	<p style="text-align: right;">Page 19750</p> <p>1 miskien kan ek net so daarna verwys, dit is die foto's wat 2 ek op 'n vorige geleentheid, ek weet nie of daar 'n 3 bewysstuknommer aan dit gegee is nie, waar ek na groot lug 4 foto's verwys het en gesê het, nee, na my sin het hulle 5 direk na die polisie toe beweeg. Daar was 'n groter 6 gedeelte aan die regterkant wat we loop was vir Nkaneng, so 7 die moontlikheid is daar dat hulle wel beweeg het maar soos 8 ons toegemaak het en dan ook die gesprekke wat daar was met 9 hulle deur die dag, ek dink ek het gister verwys na die 10 aantal 20/25 waar ons hulle vir hulle verduidelik het die 11 neersit van die wapens, die weg beweeg, ek dink die 12 boodskap was duidelik gewees.</p> <p>13 CHAIRPERSON: To get back to the point, 14 it has been debated over and over again here and that is, 15 were they advancing, the group who were involved at scene 16 1, were they advancing towards the police to attack the 17 police or were they advancing in that direction simply to 18 go to Nkaneng and that's a debate we've had and presumably 19 will continue to have. Your view is that they were 20 advancing to attack the police, not to go to Nkaneng but to 21 attack the police. Is that what you're saying? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 dit is die feite wat ek het en dit is wat mnr Noki aan my 24 meegedeel het – 25 CHAIRPERSON: No, no, no, you don't give</p>

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1 the reason –

2 BRIGADIER CALITZ: Laat ek net sê, ja,

3 mnr die Voorsitter.

4 CHAIRPERSON: So it wasn't really a

5 question of Nkaneng being an attraction point, the real

6 attraction point I suppose on your analysis would be the

7 police, that would be the attraction point because they

8 would be the group whom the strikers would which to advance

9 to so that they could attack them. On your analysis is

10 that right?

11 BRIGADIER CALITZ: Dit is op die

12 dreigemente wat ons ontvang het, korrek, mnr die

13 Voorsitter.

14 MR SEMENYA SC: Chair, may we state for

15 the record as far as, at least as the SAPS case is

16 concerned that a positive or a negative attraction point,

17 concepts, don't define where the crowd to be dispersed

18 wants to go, they all define where the police desires the

19 crowd to move to, that's a completely different concept

20 than the one the chair is making.

21 CHAIRPERSON: I am grateful to you for

22 pointing that out. Mr Bizos, shall we take a comfort break

23 now and then we will resume and we'll take the tea at 11

24 o'clock? Well, let's take a short comfort break now,

25 because we've been now at it for some and there may well be

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1 people here who would benefit from the comfort break.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [10:18] CHAIRPERSON: I'm sorry, Brigadier, I

4 came back before making sure you were here. You don't have

5 to apologise, the apology is due from me and I extend it to

6 you. You're still under oath. Mr Bizos, when you're ready

7 you can continue with your cross-examination.

8 MR BIZOS SC: Page 18 of the exhibit,

9 paragraph 28.1 there was no evidence of good command and

10 control important where there are several units operating

11 at once, since no record keeping at a level of the joint

12 operational centre and operating units in the field has

13 been presented so far. Do you agree with that or disagree?

14 BRIGADIER CALITZ: Nee, mnr die

15 Voorsitter, ek disagree. Ek dink die VB en die operational

16 diaries skiet met tye van sy verklaring was hy die bewus

17 daarvan nie.

18 MR BIZOS SC: We have already dealt with

19 28.2 and I don't want to repeat it. There is no documented

20 evidence of adequate briefing of and guidance to the

21 members of the SAPS. It is critical that police officers

22 know who is able to give them a command to fire, that is

23 not only can they not shoot unless commanded but there must

24 be a command only from a specific agreed upon person that

25 should have been made clear at the briefing. Do you agree

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1 or disagree with that?

2 BRIGADIER CALITZ: Weereens maak hy twee

3 stellings. Ek stem nie saam dat daar nie adequate briefing

4 was nie. Die briefing was heeltemal volledig wat aan ons

5 gegee is. Daarna het ek die briefing vir die commanders

6 gegee en hulle vir die lede. So, en almal is opgelei in

7 uiteendrywing so die commanders weet presies wat van hulle

8 verwag word en watse opdragte hulle gegee word tot op die

9 vlak van 'n seksiebevelvoerder.

10 MR BIZOS SC: Do you agree or do you

11 disagree that the standing orders directly provide that

12 there must be a warning, do you disagree with that as well?

13 CHAIRPERSON: For what, before what,

14 based on 28.5 then of course the answer is, to my question

15 to you would be that the warning prior to deployment of the

16 razor wire but I'm not sure that that's the question you're

17 asking. You say there should be a warning but the question

18 –

19 MR BIZOS SC: That we're going to shoot.

20 CHAIRPERSON: The question is

21 incomplete. You mean there must be a warning before shots

22 are fired, is that the question?

23 MR BIZOS SC: No. Command to fire.

24 CHAIRPERSON: There must be a warning

25 before a command is given to fire, there was a warning to

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1 the strikers that the demand is going to be given to the

2 members to fire, is that the question?

3 MR BIZOS SC: Yes, this is what 28.3

4 says.

5 CHAIRPERSON: So what do you say about

6 that, Brigadier?

7 BRIGADIER CALITZ: Mnr die Voorsitter,

8 dit wat ek getuig het en dit waarvan ek bewus is, die

9 openbare orde polisiëring bevelvoerders het ook opdrag

10 gegee en ek spesifiek het opdrag gegee vir die

11 uiteendrywing. So volgens my was daar wel 'n bevel. Wat

12 op die TRT lyn daarby kan ek nie getuig nie.

13 MR BIZOS SC: Do you agree or disagree

14 with the statement of Mr Hendrickx that there should have

15 been?

16 MR SEMENYA SC: Chair, the witness has

17 answered the question to say he did give instructions in

18 relation to the shots for fire of tear gas, etcetera.

19 MR BIZOS SC: I don't think that the

20 statement by Mr Hendrickx then a command to fire actually

21 relates to gas or other matters, Mr Chairman, but we will

22 not, but I will not argue with my learned friend on that.

23 I think we should just proceed. If I may. My learned

24 friend nods that I may proceed, Mr Chairman. The 28.7

25 apparently the radio communications were problematic, do

<p style="text-align: right;">Page 19755</p> <p>1 you agree with that?</p> <p>2 BRIGADIER CALITZ: Daar was wel 'n</p> <p>3 probleem met die radios, ek stem saam.</p> <p>4 CHAIRPERSON: I remember when General</p> <p>5 Annandale was giving evidence it was put to him that there</p> <p>6 was this common international practice which Mr Hendrickx</p> <p>7 refers to in 28.7, he didn't, my impression was he didn't,</p> <p>8 he wasn't aware but he didn't dispute it, but he explained</p> <p>9 that there had, there was a problem in relations to the</p> <p>10 radio equipment that attempts were being made to deal with</p> <p>11 the problem but it was going to cost an enormous amount of</p> <p>12 money and I'm not sure if he said they had budgeted for it</p> <p>13 yet but they were going to do so, but it was going to take</p> <p>14 a large sum of money and in particular as it had to apply</p> <p>15 to POP units throughout the country and all the provinces.</p> <p>16 So his answer was yes the radio communications were</p> <p>17 problematic, we're aware of that but we're busy trying to</p> <p>18 address it, but it's going to cost a large amount of money.</p> <p>19 That was his evidence. I take it you agree with that?</p> <p>20 BRIGADIER CALITZ: Ek stem 'n 100% saam</p> <p>21 met die, mnr die Voorsitter.</p> <p>22 MR BIZOS SC: Can we look at 28.8, the</p> <p>23 operation was not filmed or photographed completely. "It</p> <p>24 appears that some crucial recorded evidence of the flash</p> <p>25 point at the kraal is lacking between 15:45 and 16:05. The</p>	<p style="text-align: right;">Page 19757</p> <p>1 problems about that. But I'm not sure this witness can add</p> <p>2 any value and I'm not being disrespectful, I'm not sure</p> <p>3 that he can add any value to the evidence on that point.</p> <p>4 MR BIZOS SC: I'm tempted to ask whether</p> <p>5 this is another coincidence but I won't, Mr Chairman.</p> <p>6 CHAIRPERSON: If you want to, I won't</p> <p>7 stop you.</p> <p>8 MR BIZOS SC: Thank you.</p> <p>9 CHAIRPERSON: The question is whether</p> <p>10 the answer will be helpful.</p> <p>11 MR BIZOS SC: Well, thank you. This is</p> <p>12 yet another unfortunate coincidence, isn't it that what</p> <p>13 happened at a vital period was not recorded, was just one</p> <p>14 of those coincidences that have occurred.</p> <p>15 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>16 dink gister het ons die woord coincidence en toe het u vir</p> <p>17 my gesê dis nie coincidence was dit deliberate. So ek wil</p> <p>18 antwoord dit was nie deliberate nie. Volgens wat ek geweet</p> <p>19 het, volgens my het hulle terug beweeg tot by die lyn. So</p> <p>20 daar was redes voor gegee. Na die tyd het ek nou wel bewus</p> <p>21 geword laat hulle wel terug beweeg het na die JOC toe. So</p> <p>22 daar is redes wat daardie persone daarvoor aangegee het.</p> <p>23 MR BIZOS SC: - that what you say,</p> <p>24 Brigadier, but I might as well put to you what we will</p> <p>25 argue. That too many coincidence which exculpate the</p>
<p style="text-align: right;">Page 19756</p> <p>1 necessary equipment was either not working or not</p> <p>2 available. The whole operation should have been filmed</p> <p>3 especially if the intention was to charge people later."</p> <p>4 Do you agree with that?</p> <p>5 BRIGADIER CALITZ: Ekskuus, mnr die</p> <p>6 Voorsitter, daar was wel die video persone wat gedreig was</p> <p>7 en dit is die enigste twee wat ek bewus was wat dan later</p> <p>8 tot my kennis gekom het, dat hulle gedeelte nie volledig</p> <p>9 gefilm was nie. Maar wat betref die ander persone wat</p> <p>10 daarmee getaak met was, was daar wel recordings gewees op</p> <p>11 die dag.</p> <p>12 MR BIZOS SC: Do you agree that we do not</p> <p>13 have any recordings from the police between 15:45 –</p> <p>14 CHAIRPERSON: Mr Bizos, sorry to</p> <p>15 interrupt, I'm not sure it's necessary to put this point to</p> <p>16 the witness. I think it's common cause that there's a lack</p> <p>17 of video recording, many of them which we would like to</p> <p>18 have aren't there, there's various reasons for it. The</p> <p>19 witness himself said he didn't know that the people had</p> <p>20 been threatened or allegedly threatened, had left</p> <p>21 completely and had gone back to the JOC, he thought they</p> <p>22 had moved to an area, a safe area from which they could go</p> <p>23 on filming, which they didn't. But it's common cause I</p> <p>24 think the, what video material is available, what video</p> <p>25 material isn't available, what should be available, the</p>	<p style="text-align: right;">Page 19758</p> <p>1 police from any liability create a probability that they</p> <p>2 are not telling the truth.</p> <p>3 CHAIRPERSON: I take it's noted that</p> <p>4 you're going to advance that argument.</p> <p>5 MR BIZOS SC: Yes.</p> <p>6 CHAIRPERSON: Of course the lack of</p> <p>7 video material doesn't necessarily exculpate the police, it</p> <p>8 will create difficulties with the police as well. It means</p> <p>9 that if things were done correctly by the police, if they</p> <p>10 were, there's no video record to indicate that that's so.</p> <p>11 So there's room for disputes, issues of fact and so forth.</p> <p>12 So that the fact that the video material isn't available or</p> <p>13 enough video material isn't available, the kind that the</p> <p>14 standing order envisages should be available, that fact</p> <p>15 actually can cut both ways. It can prejudice the police as</p> <p>16 much as others. So I'm not sure that it will fall in the</p> <p>17 same category as the other so-called coincidences to which</p> <p>18 you've referred.</p> <p>19 MR BIZOS SC: Well I will merely give it</p> <p>20 notice, Mr Chairman, that too many coincidences lead to</p> <p>21 inferences to be drawn that if they favour the police</p> <p>22 version, their absence favours the police version we will</p> <p>23 argue and I hope successfully that the police version</p> <p>24 cannot be accepted and this is why I am asking the witness</p> <p>25 whether he has anything to say about that line of argument,</p>

<p style="text-align: right;">Page 19759</p> <p>1 whether he agrees or disagrees.</p> <p>2 CHAIRPERSON: I don't know that it's for</p> <p>3 him to comment on an argument you're going to advance. I'm</p> <p>4 sure he can leave that to Mr Semenya to deal with at the</p> <p>5 appropriate time and again without any, tendering any</p> <p>6 disrespect I'm not really interested in his answer to the</p> <p>7 question because I don't, simply because I don't think it</p> <p>8 will take it any further. One way or the other.</p> <p>9 MR BIZOS SC: Do you agree that the</p> <p>10 standing orders expect you to have a debriefing before any</p> <p>11 event of the nature that we are dealing with?</p> <p>12 CHAIRPERSON: The thing is, Mr Bizos,</p> <p>13 this is a point that's been covered very fully with other</p> <p>14 witnesses. We know what the evidence is, we know what the</p> <p>15 standing orders say. The decision not to have a, as I</p> <p>16 understand it, not to have a debriefing as envisaged in the</p> <p>17 standing order was not made by the witness. They have the</p> <p>18 reason which they've given which may or may not be</p> <p>19 adequate, you may criticise it, others will defend it. But</p> <p>20 again I don't know this witness can add any value to that</p> <p>21 discussion.</p> <p>22 MR BIZOS SC: Yes, well I –</p> <p>23 CHAIRPERSON: It wasn't his decision you</p> <p>24 see.</p> <p>25 MR BIZOS SC: I was going to ask him</p>	<p style="text-align: right;">Page 19761</p> <p>1 looked into later, that they had to act on the Thursday,</p> <p>2 they couldn't act until fairly late in the day, they</p> <p>3 couldn't act at 9 o'clock. They were only really able to</p> <p>4 act appropriately after 12 as I see it and that was the</p> <p>5 situation in which he found himself. Subject to an</p> <p>6 instruction from above which was then conveyed to him via</p> <p>7 the JOCCOM at half past 2, I take it his point is in those</p> <p>8 circumstances the answer is no but it involves a wider</p> <p>9 question, but I don't know whether they're worth exploring</p> <p>10 with him.</p> <p>11 MR BIZOS SC: Be it or other additional</p> <p>12 step identify all probable responses from the crowd and</p> <p>13 plan for all these possibilities, do you agree with that?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>15 dit is presies wat ons gedoen het. Die responses van die</p> <p>16 crowd het ons in ag geneem en dit is dan ook in die plan in</p> <p>17 gewerk.</p> <p>18 MR BIZOS SC: Do you agree with what he</p> <p>19 says or disagree?</p> <p>20 BRIGADIER CALITZ: Dit hang af of hy dit</p> <p>21 in 'n negatiewe sin bedoel het. As hy sê identify all</p> <p>22 probable responsibilities of crowd and to plan for all</p> <p>23 these possibilities, as hy bedoel het ons het dit gedoen</p> <p>24 dan stem ek saam. As hy bedoel ons het dit nie –</p> <p>25 CHAIRPERSON: He says he would have</p>
<p style="text-align: right;">Page 19760</p> <p>1 whether he agrees or disagrees with Mr Hendrickx's</p> <p>2 conclusion at 28.10 but I suppose it's a, it's surplusage,</p> <p>3 Mr Chairman. I will leave it. Let's come to the</p> <p>4 recommendations. Based on my experience I would have</p> <p>5 expected the SAPS involved at Marikana to at least have</p> <p>6 been the below listed additional steps. Explore other less</p> <p>7 confrontational risky options, do you agree or disagree?</p> <p>8 BRIGADIER CALITZ: Weereens, mnr die</p> <p>9 Voorsitter, die stelling is baie wyd. Soos hy hier staan</p> <p>10 disagree ek, verskil ek want ons het begin van dag een af</p> <p>11 met onderhandelinge, ek dink die polisie was drie dae</p> <p>12 betrokke met onderhandelinge voor na die volgende fases toe</p> <p>13 oorgegaan het. So die een het gelei na 'n ander. So ek</p> <p>14 verskil van die stelling hier.</p> <p>15 MR BIZOS SC: Do you agree that you could</p> <p>16 have adopted less confrontational and risky options?</p> <p>17 BRIGADIER CALITZ: Op die dag van die</p> <p>18 gebeure en soos dit uitgespeel het sal ek sê op hierdie</p> <p>19 stadium verskil ek, mnr die Voorsitter.</p> <p>20 MR BIZOS SC: Disagree?</p> <p>21 BRIGADIER CALITZ: Dit is korrek.</p> <p>22 CHAIRPERSON: The answer is limited to</p> <p>23 the day in question as things developed. You'll remember</p> <p>24 the evidence they had an order from a provincial</p> <p>25 commissioner or possibly even higher that's a matter to be</p>	<p style="text-align: right;">Page 19762</p> <p>1 expected you to have done the following which I take is</p> <p>2 implicitly means he accepts you didn't do that.</p> <p>3 BRIGADIER CALITZ: Oh in daardie geval –</p> <p>4 CHAIRPERSON: That's why it's in a</p> <p>5 paragraph headed recommendations. So he's recommendation</p> <p>6 is you should have done that and he says you didn't do it.</p> <p>7 BRIGADIER CALITZ: In daai -</p> <p>8 CHAIRPERSON: That's the point you have</p> <p>9 got to deal with.</p> <p>10 BRIGADIER CALITZ: In daardie geval</p> <p>11 verskil ek, mnr die Voorsitter, dankie.</p> <p>12 MR BIZOS SC: - to avoid any confusion as</p> <p>13 a result of the guidance of the Chairman, that you didn't</p> <p>14 ensure that units involved in operations provide their</p> <p>15 written record keeping, do you agree with him or do you</p> <p>16 disagree with him?</p> <p>17 BRIGADIER CALITZ: Nee, mnr die</p> <p>18 Voorsitter, dis 'n absolute leuen. Dit is gedoen.</p> <p>19 CHAIRPERSON: No, don't use a word like</p> <p>20 that. You remember this statement is made in February</p> <p>21 2013.</p> <p>22 BRIGADIER CALITZ: Ek het voorheen daarna</p> <p>23 verwys, dit is korrek.</p> <p>24 CHAIRPERSON: And various documentation I</p> <p>25 think was produced afterwards, he wasn't aware of it. So I</p>

<p style="text-align: right;">Page 19763</p> <p>1 don't think you can accuse him of telling a lie. The 2 statement may well be inaccurate whether it is or not the 3 matter we needn't debate at the moment. But it may well be 4 inaccurate but the inaccuracy would appear, if it is 5 inaccurate would have been based upon the limited 6 information available to him in February when he made the 7 statement. We're going to get another statement which I 8 understand is going to be considerably longer than this 9 one. But we can't deal with it because we haven't seen it, 10 it that right, Mr Bizos?</p> <p>11 MR BIZOS SC: That is so, Mr Chairman. 12 CHAIRPERSON: So it is correct that at 13 the time, it would be your case I take it, the time the 14 statement was made Mr Hendrickx wasn't aware of various 15 record keeping document which some of which at least has 16 been produced. 17 MR BIZOS SC: Yes, some were discovered 18 and produced later on by the evidence keepers, Mr Chairman. 19 CHAIRPERSON: How adequate or complete 20 it was is a matter we can't go into at the moment. But the 21 fact is here is a statement made by Mr Hendrickx in 22 February last year – 23 MR BIZOS SC: Information - 24 CHAIRPERSON: It's been overtaken by 25 quite a lot of information.</p>	<p style="text-align: right;">Page 19765</p> <p>1 you that during the course of the Commission Mr Semenya 2 undertook, in response to a request from the Commission, to 3 provide a document setting out the lessons which the police 4 accept they've learnt. He undertook that as soon as that 5 document is ready he would make it available to us. It 6 hasn't been done yet, but I'm confident that we'll receive 7 it in due course. So that would seem to dispose of that 8 point. 9 MR CHASKALSON SC: Chairperson, just to 10 go back to 29.4, we haven't seen any written or audio 11 records of any operational debriefing, so I wonder if SAPS 12 could confirm that none exist, or if they do exist, 13 indicate that they'll be made available to us? 14 CHAIRPERSON: I take it Mr Semenya will 15 take instructions on that and revert to us. 16 MR SEMENYA SC: I will, Chair. 17 MR BIZOS SC: Well, perhaps one would 18 have expected, if regard was had to the Standing Orders, 19 that some of it would have been done at Potchefstroom. 20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 waarna ek verwys het hier, die "operational debriefings," 22 dit is waarna ons verwys het en ek dink ons het dit 23 deurtrap met die vorige getuienis, is dat ons het 'n "hot 24 debriefing" gehad waar die lede hulle inligting vir die 25 "commanders" gegee het. Dan het ons 'n "second level</p>
<p style="text-align: right;">Page 19764</p> <p>1 MR BIZOS SC: Correct. 2 CHAIRPERSON: Alright. 3 MR BIZOS SC: There will be, as I 4 indicated a supplementary statement, Mr Chairman, with 5 which regard is had to all the matters. He says 6 operational debriefings should have been held at all levels 7 of commanders and units involved in the operation. In it 8 there is a suggestion that there were not operational 9 debriefings that should have been held. Do you agree or 10 disagree? 11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 weereens ek verskil. Ses maande later weet ek nie of mnr 13 Hendrickx wel ingelig was daarvan nie, maar operational 14 debriefings was gedoen op daardie selfde aand nog. So ek 15 verskil van wat hy hier sê. 16 MR BIZOS SC: And lessons learnt were 17 examined, documented and proposed WITH the SAPS leadership, 18 was that done? 19 [10:38] BRIGADIER CALITZ: Mnr die Voorsitter, 20 nee daar kan ek, tot my wete saamstem dat dit wat ons 21 gedoen het was by Roots in Potchefstroom en dit is om die 22 feite bymekaar te kry. Ek het nog nie bewus gewees van 23 enige dokument wat uiteengesit is van "lessons learnt" wat 24 dan aan die topstruktuur van die polisie voorgelê is nie. 25 CHAIRPERSON: Well, perhaps I can tell</p>	<p style="text-align: right;">Page 19766</p> <p>1 debriefing" gehad waar die "commanders" daardie inligting 2 gebring het na die JOC toe. Ek het nie gesê daar was 'n 3 formele JOCCOM "meeting," 'n vergadering nie. Ek dink een 4 van die vorige advokate het vir my gevra wie sou die notas 5 geneem het en ek sê ek het gedink dit is die bevelvoerders 6 saam met Kolonel Scott. So ek dink nie dit was in 'n 7 formele "minute" vorm nie. As dit bestaan dan praat ek 8 onder korreksie, maar dit is die enigste manier hoe ons die 9 inligting wel kon kry, waarop dan die "media briefing" en 10 al die ander dokumente saamgestel is. 11 MR BIZOS SC: Well, would you agree that 12 exhibit L does not show what one would have expected in 13 terms of the Standing Orders? It was really the putting 14 together of an exculpatory statement absolving the police 15 from any responsibility. 16 BRIGADIER CALITZ: Nee, mnr die 17 Voorsitter, ek stem nie saam met u nie. 18 CHAIRPERSON: There are a number of 19 points, Mr Bizos. The first is I think it's been the 20 attitude of the SAPS that L wasn't intended to be a 21 debriefing in that sense. It was a presentation to the 22 Commission of the facts that they gathered. Whether it's 23 exculpatory, whether it's inaccurate, these are matters 24 that obviously will be debated, have formed the subject of 25 extensive evidence and may well continue to do so, but I</p>

<p style="text-align: right;">Page 19767</p> <p>1 don't think we can take it any further than that at this 2 stage. Is that right? 3 BRIGADIER CALITZ: Korrek, mnr die 4 Voorsitter. 5 MR BIZOS SC: We're still waiting for a 6 reason why there were no operational debriefings once you 7 spend nine days in putting together exhibit L at 8 Potchefstroom. 9 CHAIRPERSON: Mr Bizos, I'm not sure this 10 witness can answer that, and he wasn't in charge of the 11 Potchefstroom exercise. There were people who were senior 12 to him involved in organising the Roots operation. The 13 Provincial Commissioner was there some of the time, the 14 National Commissioner at other times. The decision to hold 15 the Roots exercise wasn't his. So I'm not sure that he's 16 the appropriate person to ask this. I'm not saying they're 17 not valid questions, but I don't know that he's the 18 appropriate person to ask them. 19 MR BIZOS SC: Was it discussed at all 20 there that we are obliged to have a debriefing? Was that 21 discussed in your presence, or did you as a senior officer 22 say that the Standing Orders require a debriefing, let us 23 have a debriefing of what maybe have been wrong and do 24 that, instead of putting exhibit L together, which doesn't 25 deal with that? Did you or anyone else make that proposal</p>	<p style="text-align: right;">Page 19769</p> <p>1 analysis happened yet? 2 BRIGADIER CALITZ: Nee, mnr die 3 Voorsitter – 4 CHAIRPERSON: It's going to happen after 5 you get our Commission report? 6 BRIGADIER CALITZ: Dit is wat ek nou net 7 oor getuig het – 8 CHAIRPERSON: Is that right? That's what 9 you said, as far as I understood. 10 BRIGADIER CALITZ: Dit het nie gebeur. 11 Dit was my getuienis, ja. 12 CHAIRPERSON: What I can say is I hope 13 that no unfortunate incident takes place between now and 14 the time the report comes out which could have been solved 15 by a SWOT analysis, prevented by a SWOT analysis, but 16 anyway, that's just a comment I make; I don't expect you to 17 respond to it. 18 MR SEMENYA SC: And also for the record, 19 sorry Chair, there are no audio or written operational 20 debriefings that we have. 21 MR BIZOS SC: [Microphone off, inaudible] 22 hear that, Mr Chairman? 23 CHAIRPERSON: Mr Semanya was responding 24 to the request made by Mr Chaskalson that if there are 25 written or video or audio recordings of operational</p>
<p style="text-align: right;">Page 19768</p> <p>1 at Potchefstroom? 2 BRIGADIER CALITZ: Mnr die Voorsitter, 3 waarna ek hier verwys het, "operational debriefing," is wat 4 ek vir die "commanders" gegee het die dag van die 16de, die 5 aand. Daar is drie verskillende "debriefings" wat uitgesit 6 word. Dit is die "hot debriefing" van die lede, miskien 7 net tot – as ek u kan, u miskien help in daardie rigting, 8 en dan is daar "commanders" wat dit moet terugbring na die 9 bevelvoerders toe, en dan die een waarna u verwys is die 10 formele "debriefing" waar ons dan praat van ons doen 'n 11 "SWOT analysis," your strengths, weaknesses, opportunities, 12 threats. Daardie "SWOT analysis" het ons saamgestel uit 13 "exhibit" L en daardie, daar is bespreking dat die 14 Kommissie sy werk gaan voltooi en dan sal ons sien uit wat 15 voortvloei, en dan glo ek ook uit die polisie se, die 16 taking wat gegee is, dat soos dit aangaan sal ons sien 17 "lessons learnt," en dan daardie sal gebruik word vir 18 toekomstige, indien nodig regstellings waar foute gemaak is 19 en hulp ook aan die operasionele lede. 20 MR CHASKALSON SC: Sorry, Chair, I wonder 21 if I could also add to that previous request any records of 22 the SWOT analysis? Because again we haven't seen anything 23 like that. 24 CHAIRPERSON: I thought the witness said 25 the SWOT analysis hasn't happened yet. Has the SWOT</p>	<p style="text-align: right;">Page 19770</p> <p>1 debriefings which he says took place, could they please be 2 made available. Mr Semanya said he'd take instructions. 3 He's done so. He now says there are no such records or 4 recordings, so the request cannot be complied with. That's 5 what I understood to be what he said. 6 MR BIZOS SC: We'll draw some inference 7 from that, Mr Chairman, in due course. Now Mr Hendrickx 8 was asked, because he had seen the terms of reference which 9 we showed him and he thought fit to say, "On a general 10 level I would recommend," and then there are four 11 recommendations made. Do you agree that those 12 recommendations should be made by the Commission? 13 BRIGADIER CALITZ: Can I go one by one, 14 or – 15 MR BIZOS SC: If you think that you can, 16 having regard to what happened – 17 BRIGADIER CALITZ: Mnr die Voorsitter – 18 MR BIZOS SC: - whether you as a senior 19 officer would want to make some recommendation so that we 20 do not have another Marikana tragedy in the near or distant 21 future. 22 BRIGADIER CALITZ: As ons nie een-een 23 deurgaans nie, gee my net 'n geleentheid dat ek net gou al 24 vier of vyf lees, dan sal ek u antwoord. 25 CHAIRPERSON: [Microphone off, inaudible]</p>

<p style="text-align: right;">Page 19771</p> <p>1 sure there are five. I think he's on the level of general 2 recommendations. Is that right, Mr Bizos? 3 MR BIZOS SC: I beg your pardon? 4 CHAIRPERSON: Are you busy with paragraph 5 30? 6 MR BIZOS SC: Paragraph 30, yes. 7 CHAIRPERSON: Yes, you see, paragraph 30 8 is general recommendations and what he suggests is that 9 working groups be established to research and review 10 certain matters. The one, the first is the foundations of 11 problem-solving levels of crowd management. The second is 12 existing police practices within the framework of the crowd 13 management model, and the third is levels of constant 14 interaction between lessons learnt and future police 15 actions. So do you agree with those? 16 BRIGADIER CALITZ: Ek stem – 17 CHAIRPERSON: Any harm in having working 18 groups established to do those things? 19 BRIGADIER CALITZ: Geen argument nie. Ek 20 stem saam daarmee, mnr die Voorsitter. 21 CHAIRPERSON: And there should be 22 positive results flowing from such an exercise, surely. 23 BRIGADIER CALITZ: Dit is waarvoor ons 24 hoop, mnr die Voorsitter. 25 CHAIRPERSON: Ja.</p>	<p style="text-align: right;">Page 19773</p> <p>1 MR BIZOS SC: The question following it, 2 Mr Chairman – 3 CHAIRPERSON: Alright, well ask the 4 question following rather than the first question. 5 MR BIZOS SC: Yes. Have you been made 6 aware that on behalf of the South African Police Mr De 7 Rover has made a statement? 8 BRIGADIER CALITZ: Dit is korrek, mnr die 9 Voorsitter. 10 MR BIZOS SC: With certain exceptions 11 towards the end of his report, do you agree that he is in 12 substantial agreement with the views of Mr Hendrickx? 13 CHAIRPERSON: Mr Bizos, I'm sorry, I 14 don't think I can allow that question. Whether he's in 15 agreement or not is a matter for us to decide when we've 16 read the reports. We have read the reports. We don't have 17 to rely on the Brigadier to tell us he's read the reports 18 and this is what he thinks they amount to. I think, with 19 respect, that is not a helpful – 20 MR BIZOS SC: They are an introduction to 21 the final question that I have to put to him. 22 CHAIRPERSON: Well, ask the final 23 question and if amplification is required, you can give it 24 then. 25 MR BIZOS SC: Yes. What makes you think</p>
<p style="text-align: right;">Page 19772</p> <p>1 MR BIZOS SC: In conclusion, Brigadier, 2 you find yourself in substantial disagreement with Mr 3 Hendrickx and his interpretation of the events as presented 4 in documents shown to him. Is that correct? Substantial 5 disagreement. 6 BRIGADIER CALITZ: In soverre dit die 7 gebeure aangaan soos wat ons dit bespreek het, dit is 8 korrek, mnr die Voorsitter. 9 MR BIZOS SC: Are you aware that another 10 expert, Mr White, has made a report? 11 BRIGADIER CALITZ: Ek is bewus van mnr 12 White se rapport, ja. 13 MR BIZOS SC: Have you read it? 14 BRIGADIER CALITZ: Ek het deur dit 15 gegaan, dit is korrek. 16 MR BIZOS SC: Do you agree that Mr White, 17 another international expert, is in substantial agreement 18 with – 19 CHAIRPERSON: Mr Bizos, do we have to 20 have this witness's opinion as to whether Mr White agrees 21 with Mr Hendrickx? I mean it's a matter, if they're in 22 agreement, they're in agreement. We will form an opinion 23 on it. If he says they are in agreement, then that will be 24 interesting. If he says they aren't in agreement, well, 25 and if we don't agree with him –</p>	<p style="text-align: right;">Page 19774</p> <p>1 that you are qualified to contradict these experts? 2 BRIGADIER CALITZ: Mnr die Voorsitter, 3 dit is presies waarop ek getuig het. My 21-jaar 4 ondervinding in die huidige demokrasie onder die huidige 5 regering, my kursusse wat ek deurloop het, die bevorderings 6 wat ek gekry het, die panele waarvoor ek, waar ek verskyn 7 het, en die rang wat ek tans beklee, dit het nie verniet 8 gekom nie. Dit het gekom deur harde werk, 'n skoon rekord, 9 en soos ek verwys het, meer as ek dink 3 900 gevalle van 10 "crowd management" wat ek hanteer het, en ek kan amper sê 11 met honderd persent sukses "rate." 12 So in hierdie geval, dit was 'n unieke geval, die 13 eerste wat ons van weet in Suid-Afrika. Ons weet nie van 14 nog so 'n geval nie, en daarom as daar dan iets is wat 15 fouteer is, "lessons learnt" is, sal ek die eerste een wees 16 om daarby in te stem en te sê reg, kom ons maak hier en 17 daar goeters reg. Maar wat betref my ondervinding dink ek 18 die vyf jaar of 10 jaar wat mnr Hendrickx wel hier 19 gespandeer het, het hy dalk nie met almal in kontak gewees 20 en met sekere mense, en sy afleidings is daarvolgens 21 gemaak. Ek dink wat Suid-Afrika betref in die situasie, in 22 die "crowd management" in Suid-Afrika het ek meer 23 ondervinding as die persoon. Dit sal my afleiding wees. 24 MR BIZOS SC: Is the sanctity of human 25 life not a universal principle?</p>

<p style="text-align: right;">Page 19775</p> <p>1 BRIGADIER CALITZ: As ek u vraag reg 2 verstaan - mnr die Voorsitter, as ek die vraag verstaan, 3 die reg op lewe, dit word altyd vooropgestel en ek stem 4 saam, dit is 'n grondwetlike beginsel en dit is beslis so. 5 CHAIRPERSON: I think Mr Bizos's point is 6 that principle applies in Belgium, it applies in Northern 7 Ireland, and it applies in South Africa, and so experts to 8 Northern Ireland and from Belgium can also express expert 9 opinions on, particularly Public Order Policing experts, on 10 what the police should do to uphold the sanctity of human 11 life. I think that's really your point, Mr Bizos. Is that 12 right? 13 MR BIZOS SC: I'm indebted to you, Mr 14 Chairman. 15 CHAIRPERSON: So when you say to – 16 MR BIZOS SC: That is what I intended and 17 it's the last question that I had for the – 18 CHAIRPERSON: So what answer do you want 19 to give to Mr Bizos's last question? 20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 nee, ek stem saam, die reg op lewe word vooropgestel nie 22 net in die dag vir die "protesters" nie, maar ook vir die 23 polisie. Ons almal is onder dieselfde grondwet en die reg 24 op lewe is definitief die belangrikste vir almal op daardie 25 dag. Ek dank u, Advokaat.</p>	<p style="text-align: right;">Page 19777</p> <p>1 BRIGADIER CALITZ: Dit was al die lede. 2 Dit was Openbare Orde Polisiëring, TRT, NIU, K9, selfs nuwe 3 lede wat vir die eerste keer daar was. So dit was 'n hele 4 groepering van lede, asook die onderhandelaars. 5 COMMISSIONER HEMRAJ: Thank you. 6 MR MPOFU: Thank you, Chairperson. Good 7 morning, Brigadier. 8 BRIGADIER CALITZ: Mnr die Voorsitter, as 9 ek net 'n versoek kan rig dat ek net die lêers bêre en u 10 lêer uithaal? 11 CHAIRPERSON: Is that going to take a bit 12 of time? Shall we – 13 BRIGADIER CALITZ: Nee, nee, ek het – 14 CHAIRPERSON: Shall we take the tea 15 adjournment now to enable you to set yourself up? 16 BRIGADIER CALITZ: Ek het die lêer by my, 17 so ek sien dis 11 uur amper, so dit is – ek wil nie 18 voorskryf nie, mnr die Voorsitter – 19 CHAIRPERSON: Mr Mpfu, let's take the 20 tea adjournment now, then you'll have a witness who's got 21 all the documents in front of him, ready to – 22 MR MPOFU: Attentive. 23 CHAIRPERSON: - answer all your questions 24 fully. 25 MR MPOFU: Thank you, Chairperson.</p>
<p style="text-align: right;">Page 19776</p> <p>1 CHAIRPERSON: Thank you, Mr Bizos. I 2 think Mr Mpfu, you're next. We have been given - 3 MR MPOFU: Yes, I am, Chairperson. 4 CHAIRPERSON: We have been given a list 5 of the exhibits, documents to which you're going to refer. 6 MR MPOFU: Yes, Chairperson. 7 CHAIRPERSON: And you've got five minutes 8 before we take the tea adjournment. 9 MR MPOFU: Yes, I would appreciate – 10 CHAIRPERSON: I'm not sure you'll be 11 finished by then, but do try. 12 MR MPOFU: Somehow I don't think I will 13 be, Chairperson, but I'd appreciate to use the few minutes 14 because there are some preliminary – 15 CHAIRPERSON: Mr Mpfu, before you ask 16 your questions, Adv Hemraj wants to ask something. 17 MR MPOFU: Yes. 18 CHAIRPERSON: And then you can – 19 MR MPOFU: Thank you, Chairperson. 20 CHAIRPERSON: - commence your cross- 21 examination. 22 COMMISSIONER HEMRAJ: Brigadier, can you 23 just clarify, please, the talk you gave on the 18th, the 24 members present, were they only POPS members or were there 25 members from other units present as well?</p>	<p style="text-align: right;">Page 19778</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 kan ek miskien tydens die tee-breek, die – ek wil nie amper 3 sê die belofte wat gister gemaak is nie. U het gepraat van 4 daar is foto's of iets wat u ontdek het wat u sou gegee het 5 vir ons regspraak. Ek het niks gekry nie. Ek het wel die 6 versoek gekry van, dit is omtrent 80 video's wat ek moes 7 deurgaan. So dit is wat in die dokument is, maar nie die 8 foto's nie. So as ek dit miskien kan kry oor teetyd gaan 9 dit my dalk help, dankie. 10 CHAIRPERSON: That's a housekeeping 11 matter that can be dealt with during the, while the rest of 12 us are drinking tea. 13 MR MPOFU: It can. I can dispose of it 14 very quickly, Chairperson. Ja, I just spoke to Mr Semenya 15 about it. We haven't been able to give the photos yet. 16 They are few, but we'll make sure that we don't use them 17 until such time that you are comfortable. 18 BRIGADIER CALITZ: Baie dankie. 19 CHAIRPERSON: That sounds encouraging. 20 Let's take the tea adjournment. 21 [COMMISSION ADJOURNS COMMISSION RESUMES] 22 [11:22] CHAIRPERSON: The Commission resumes, 23 Brigadier, you're still under oath. Mr Mpfu? 24 BRIGADIER CALITZ: Dankie, mnr die 25 Voorsitter.</p>

<p style="text-align: right;">Page 19779</p> <p>1 CROSS-EXAMINATION BY MR MPOFU: Thank you</p> <p>2 very much, Chairperson. Brigadier Calitz, I am just going</p> <p>3 to start with preliminary material, just to situate where I</p> <p>4 am going with the cross-examination, it won't take long.</p> <p>5 You –</p> <p>6 CHAIRPERSON: Before we get to that can I</p> <p>7 ask a question?</p> <p>8 MR MPOFU: Yes.</p> <p>9 CHAIRPERSON: I see item 26 on your list</p> <p>10 that you gave us is Mr Mathunjwa's second address and you</p> <p>11 describe it as a new video. Do you know whether there is a</p> <p>12 transcript of the address and the translation of what he</p> <p>13 said in the second address?</p> <p>14 MR MPOFU: No, there isn't, Chairperson.</p> <p>15 Actually I was not intending to use this anymore but I –</p> <p>16 CHAIRPERSON: Well, I would like</p> <p>17 nevertheless –</p> <p>18 MR MPOFU: Yes –</p> <p>19 CHAIRPERSON: - to have it at some stage,</p> <p>20 because it is quite important what he said.</p> <p>21 MR MPOFU: Yes, I would like, - I'll find</p> <p>22 an opportunity to submit it because I was aware that the</p> <p>23 Commission didn't have it. It has been referred to many</p> <p>24 times but –</p> <p>25 CHAIRPERSON: I understood that there was</p>	<p style="text-align: right;">Page 19781</p> <p>1 a first summary of what we are about in this exercise?</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>3 ja, net een plekkie waar ek verskil, ek weet nie of dit 'n</p> <p>4 vraag is en of dit net 'n stelling is nie, maar ek stem</p> <p>5 saam dat ons agter die waarheid moet kom. Die word wat net</p> <p>6 gebruik is, massacre volgens my is 'n massacre 'n brutale</p> <p>7 slagting, blindelings, onoordeelkundig. Ek wil net sê</p> <p>8 hierdie was 'n veelvoudige polisie reaksie op 'n aanval van</p> <p>9 individuele lede, so miskien net omsigtigheid rondom die</p> <p>10 woordjie –</p> <p>11 MR MPOFU: Ja –</p> <p>12 BRIGADIER CALITZ: - massacre want ons</p> <p>13 weet dit is nie wat dit was nie.</p> <p>14 MR MPOFU: No, that's fine. Well, for</p> <p>15 the record we are going to argue at the end that it is a</p> <p>16 massacre but I'll use, for your cross-examination I'll use</p> <p>17 whatever word you are comfortable with, because I don't</p> <p>18 want to quibble on semantics with you.</p> <p>19 BRIGADIER CALITZ: Dankie, Meneer.</p> <p>20 MR MPOFU: Okay, now underneath or</p> <p>21 underlying all these purposes that you and I have agreed on</p> <p>22 is obviously the need, the truth to be told, particularly</p> <p>23 by witnesses, those who were fortunate enough to be able to</p> <p>24 enlighten the Commission because they were there or because</p> <p>25 they collected the evidence, correct?</p>
<p style="text-align: right;">Page 19780</p> <p>1 unfortunately no record of it, but I am pleased to see</p> <p>2 that, I think we may having heard later that a record had</p> <p>3 been found.</p> <p>4 MR MPOFU: Ja.</p> <p>5 CHAIRPERSON: But I haven't seen it, but</p> <p>6 that maybe reflects, you say you're not going to deal with</p> <p>7 it in cross-examination, so I don't have to discuss it with</p> <p>8 you now.</p> <p>9 MR MPOFU: Yes.</p> <p>10 CHAIRPERSON: I'm sorry for interrupting</p> <p>11 you.</p> <p>12 MR MPOFU: Thank you very much,</p> <p>13 Chairperson. Brigadier, I just want talk to you a little</p> <p>14 bit about the purposes of this Commission in very broad</p> <p>15 terms. Mr Bizos took you to the terms of reference, so I</p> <p>16 won't do that since it was done with you yesterday, but</p> <p>17 just so that we understand the issues together or in the</p> <p>18 same way. You do realise that one of the purposes of this</p> <p>19 Commission is to get the truth for various reasons,</p> <p>20 including the people that I represent who were the</p> <p>21 survivors of the massacre to know what happened and of</p> <p>22 course the families of those who passed away, to know what</p> <p>23 happened but even more broadly for the country to know what</p> <p>24 happened and lastly, and maybe most importantly to prevent</p> <p>25 such a thing ever happening again. Would you take that as</p>	<p style="text-align: right;">Page 19782</p> <p>1 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>2 Voorsitter.</p> <p>3 MR MPOFU: And you also understand that</p> <p>4 when you speak under oath, I'm not going to deal with Mr</p> <p>5 Chairperson's long thing about the importance of the oath,</p> <p>6 but you do understand that when you speak under oath you</p> <p>7 speak mainly about things that are within your personal</p> <p>8 knowledge, obviously there are exceptions if you are</p> <p>9 referring to something that you were told by someone else,</p> <p>10 you'll indicate so, but mainly things within your</p> <p>11 knowledge, correct?</p> <p>12 BRIGADIER CALITZ: Mnr die Voorsitter, as</p> <p>13 ek onder eed getuig is dit wat ek wel waargeneem het, asook</p> <p>14 dele wat aan my meegedeel is en dan na die beste van my</p> <p>15 vermoë soos ek dit onthou 18 maande later, dit is korrek.</p> <p>16 MR MPOFU: Yes, and when you are</p> <p>17 testifying about things that someone else told you, you</p> <p>18 know, as an officer you know that you should so indicate,</p> <p>19 those two must not be mistaken against each other, in other</p> <p>20 things that are within your personal knowledge and things</p> <p>21 that you were told by others, correct?</p> <p>22 BRIGADIER CALITZ: Ek dink ons het</p> <p>23 daardie onderwerp al aangeraak, ja, mnr die Voorsitter ook</p> <p>24 op 'n stadium met die ander ondervraging.</p> <p>25 MR MPOFU: Ja, and at the risk of stating</p>

<p style="text-align: right;">Page 19783</p> <p>1 the obvious the work of this Commission, all the money that 2 is spent on it and the time that is spent on it would go to 3 waste if this Commission is going to be fed with lies, 4 because firstly we won't be able to know what happened, but 5 secondly we won't be able to prevent it from happening 6 again, correct? 7 BRIGADIER CALITZ: Ek sal saam met u 8 stem, ja. 9 MR MPOFU: Alright, I am saying this 10 because and I don't want to be unfair to you, I think, 11 depending on some of your answers but already on what I've 12 heard already, that I am going to be probably suggesting at 13 the end that you are not completely truthful with the 14 Commission and it is unfair for me to put that statement 15 blindly without illustrations, but I am just giving you the 16 broad parameters of my cross-examination at this stage. Do 17 you understand that, so you don't have to quibble, rather, 18 well, you can say you've only spoken the truth and so on 19 and so on, but let's not get into the details yet. 20 CHAIRPERSON: You shouldn't prejudge, Mr 21 Mpofu, let him give his evidence and you may find to your 22 surprise that you accept his evidence as truthful, 23 alternatively if you don't you can make submissions but I 24 think it is a bit offside to say in advance before he even 25 has testified that he is not going to tell the truth, but</p>	<p style="text-align: right;">Page 19785</p> <p>1 to put it as an exhibit but in this morning's paper there 2 is an article on page 15 of the – 3 CHAIRPERSON: Which newspaper? 4 MR MPOFU: I'm sorry, it is the Sowetan, 5 Chairperson. 6 CHAIRPERSON: The Sowetan? 7 MR MPOFU: Yes, page 15 of today's 8 Sowetan. The heading is, "South Africa becoming a killing 9 State" and it is written by respected analyst Pmumelela 10 Makubela and I'll just read you one or two paragraphs of 11 what he says. Effectively what he does, he has a picture 12 of the Marikana massacre, there is a picture of – 13 CHAIRPERSON: I thought we were going to 14 avoid that word massacre for this – 15 MR MPOFU: Oh, I'm sorry, well, in fact 16 if I use it again you'll forgive me, it is a strategy or 17 whatever. I think Mr Semenya calls it an incident, ja, so 18 we will – 19 CHAIRPERSON: Tragedy is probably an 20 accurate description that everyone would agree with. 21 MR MPOFU: Ja. 22 CHAIRPERSON: It is tragic for all – 23 MR MPOFU: It is halfway, ja – 24 CHAIRPERSON: All sorts of points of 25 view, it is a tragedy.</p>
<p style="text-align: right;">Page 19784</p> <p>1 anyway, you can carry on. 2 MR MPOFU: Well, Chairperson, that's 3 exactly why I used the word advisably on what I have 4 already heard because I didn't, if I haven't heard anything 5 then I would be prejudging but be that as it may. Insofar 6 as this cross-examination is concerned the chairperson is 7 correct, I'm yet to support what I am saying. I'll just 8 give you one little example, or before we do that, you also 9 are aware that the outcomes of this Commission are very 10 important for the image of the police and their ability to 11 maintain law and order, if it still called that, agree? 12 BRIGADIER CALITZ: Dit is korrek, mnr die 13 Voorsitter. 14 MR MPOFU: And that there is a view out 15 there that the police are just a killing machine which 16 either needs to be confirmed or corrected, do you agree? 17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 nee, ek kan nie sê agree nie, as u sê "view" glo ek daar is 19 wel van die media berigte – 20 MR MPOFU: Ja – 21 BRIGADIER CALITZ: - maar van die 22 algemene publiek dink ek dit is 50/50. Ek kan nie 23 heeltemal saam met u stem daar nie. 24 MR MPOFU: Alright, fair enough. Well, 25 just to illustrate what I am saying to you, I am not going</p>	<p style="text-align: right;">Page 19786</p> <p>1 MR MPOFU: Yes, no, I think that's a good 2 compromise between my massacre and Mr Semenya's incident, 3 we'll take tragedy. 4 MR SEMENYA SC: It is off record, Mr 5 Mpofu. 6 MR MPOFU: Okay, off the record, okay, 7 we'll settle for it. I think it is on the record but I 8 might be wrong. It has a picture of the Marikana strategy, 9 a picture of Tatane, a dying Mr Tatane and a picture of 10 someone who died two days ago in the tragedy that happened 11 in Brits, a couple of days ago, and what I'm getting at is 12 that this kind of view is something that should be worrying 13 to SAPS and which should be corrected if it is not correct. 14 This is what Mr Makubela says about it. 15 BRIGADIER CALITZ: Mnr die Voorsitter, 16 ja, soos ek vir u miskien voorheen gesê het, dit is soos 17 die media berig het. 18 MR MPOFU: Ja. 19 BRIGADIER CALITZ: Ek weet nie of ek moet 20 uitbrei nie, ek het menigde gevalle vir u genoem waar ek 21 heeltemal verkeerd aangehaal was in die media. Ek weet nie 22 watter koerant is daardie nie, die Sowetan? 23 MR MPOFU: Ja. 24 BRIGADIER CALITZ: Dit is die presiese 25 koerant wat my verkeerd aangehaal het en woorde uitgehaal</p>

<p style="text-align: right;">Page 19787</p> <p>1 het en my totaal verkeerd ge-quote het, so ek wil net sê 2 die Marikana is belangrik, die Kommissie is aan die gang en 3 ek dink die media en die publiek kan dit respekteer, dat 4 hier wel die waarheid sal uitkom. Die Tatane insident weet 5 ek daar was 'n hofsitting gewees op die hoogste vlak en ek 6 verstaan daardie uitslag is ook bekend, so ek weet nie of 7 daar twyfel is oor die Justisie in die geval nie en so ver 8 ek weet, Brits word ondersoek deur die OBOD, wat ons 9 bekend, in Engels die IPID.</p> <p>10 MR MPOFU: Ja.</p> <p>11 BRIGADIER CALITZ: So ek dink miskien om 12 te verwys na u verslag toe, nee.</p> <p>13 MR MPOFU: Okay, no, I have not asked you 14 a question yet here.</p> <p>15 BRIGADIER CALITZ: O, ekskuus, ek tog het 16 u gevra wat is my view.</p> <p>17 MR MPOFU: No, this is what I wanted to 18 read to you. After analysing all the incidents which 19 you've touched on he says, "Is this strategy of shooting 20 fling protestors part of the new measures to manage 21 protestors? In 2012 the police shot and killed 34 miners 22 in Marikana, in apparent retaliation for the killing of two 23 police officers. Circumstantial evidence suggests the 24 police confronted the striking mineworkers with one aim, to 25 kill. Fast forward 2013, two people have been killed and</p>	<p style="text-align: right;">Page 19789</p> <p>1 MR MPOFU: Ja, fine. Okay, now as I said 2 to you, Brigadier, there are views out there and I did that 3 exactly, I did it also to prevent the comment made by the 4 chairperson, that these are views out there which may be 5 right or might be wrong, but all I am saying to you, which 6 I've already said, I'll repeat it, it is in the interest of 7 SAPS that these views that are flying around should be 8 corrected if they are incorrect or confirmed if they are 9 correct and that it is also in the interest of the citizens 10 of this country. Would you agree with that?</p> <p>11 BRIGADIER CALITZ: Dit is korrek, ja, die 12 regte boodskap moet uitgedra word na die publiek toe daar 13 buite.</p> <p>14 MR MPOFU: Thank you very much, 15 Brigadier, and if it is necessary, let me emphasise that 16 I'm saying these are views held by the person whose name I 17 quoted. I didn't say they are my views or your views or 18 even worse, the views of the Commission. Okay, now I just 19 want to just deal with one issue as an illustration of the 20 importance of telling the truth to this Commission. You'll 21 remember yesterday the chairperson asked you and if I'm not 22 wrong, he asked you repeatedly about exactly when you 23 became aware that there was a decision to go to stage 3 and 24 your answer was that it was at about half past two on the 25 16th. Do you remember that?</p>
<p style="text-align: right;">Page 19788</p> <p>1 there is a possibility of a third victim after the police 2 opened fire at them during a service delivery protest at 3 Mutholong near Brits." That's the –</p> <p>4 CHAIRPERSON: Mr Mpofu, forgive me 5 interrupting you, we haven't asked a single question yet, 6 you've read it very provocative and it is a very critical 7 comment by a journalist, which obviously deals with a 8 number of the matters which we have to decide in the 9 Commission and I'm not saying that we won't necessarily 10 make findings which support what he says, but it is also 11 possible, we make findings that don't, but I don't know how 12 our process is helped by reading that unless you have a 13 particular purpose in putting that to the witness by way of 14 a preliminary to a question.</p> <p>15 MR MPOFU: Yes.</p> <p>16 CHAIRPERSON: Because I can't have you 17 just standing there reading lots in newspaper columns, 18 views on matters that are before us without any question 19 linking to it at some stage.</p> <p>20 MR MPOFU: No, Chairperson, with respect 21 that's completely unnecessary. I've just said to the 22 witness I haven't asked you a question yet, so that means 23 there is a question coming.</p> <p>24 CHAIRPERSON: We look forward to the 25 question.</p>	<p style="text-align: right;">Page 19790</p> <p>1 BRIGADIER CALITZ: Dit was tydens die 2 voorligting gewees, korrek.</p> <p>3 MR MPOFU: Alright, and as we know now 4 that decision was taken among other places at the National 5 Management Forum on the 15th, correct?</p> <p>6 MR SEMENYA SC: That's not a fact, Chair, 7 and that proposition cannot be put.</p> <p>8 MR MPOFU: Okay, well, alright.</p> <p>9 CHAIRPERSON: He said, taken at.</p> <p>10 MR SEMENYA SC: But not even taken at the 11 Management Forum meeting.</p> <p>12 MR MPOFU: Alright, let's call it 13 whatever.</p> <p>14 CHAIRPERSON: Alright, no, I understand 15 the distinction that –</p> <p>16 MR MPOFU: Yes –</p> <p>17 CHAIRPERSON: - Mr Semenya is going to 18 try to draw. You should ask the question to avoid the 19 objection to avoid waste time.</p> <p>20 MR MPOFU: Yes, I think, ja, in fairness 21 there is some controversy, not that I understand it, about 22 whether this was a decision and so on, so I'll call it an 23 endorsement. So there was an endorsement of a view to move 24 the tactical phase which endorsement had occurred at the 25 National Management Forum. You are aware of that now?</p>

<p style="text-align: right;">Page 19791</p> <p>1 MR SEMENYA SC: Even the record I think 2 properly stated it, Mr Mpofo must say it is minuted as an 3 endorsement – 4 MR MPOFU: Ja – 5 MR SEMENYA SC: - but it also the 6 evidence of the PC on the point. 7 MR MPOFU: Okay, whatever, ja, it is 8 minuted as an endorsement as Mr Semenya puts it, but you 9 are aware of that minuted endorsement, correct? 10 BRIGADIER CALITZ: Ek het u tydens my 11 getuienis, in hindsight het ek wel bewus geword, ek dink 12 dit is mnr Semenya of iemand wat gemeld het die datum 13 waarop hierdie fase bespreek was, ja. 14 MR MPOFU: And when the chairperson was 15 asking you this which was flowing from a question asked by 16 Mr Bizos, you do understand it is important for us to know 17 exactly when the operational commander was made aware that 18 the dangerous part of the operation was, it is an important 19 thing, would you agree? 20 BRIGADIER CALITZ: Ek stem saam. 21 MR MPOFU: Ja, and if the Commission is 22 left with an impression that that important thing happened 23 at one time, I mean while it happened at another time, then 24 we would all go through a whole, a lot of consequences 25 flowing from that incorrect fact which might change the</p>	<p style="text-align: right;">Page 19793</p> <p>1 meeting when, according to the minutes a proposal was 2 endorsed. It is not suggested unless we can ask it 3 directly, but I didn't understand that he knew that. 4 [11:42] What he knew I think we'll find, well let's ask 5 him, did you know that, Brigadier, or, I know, you see 6 there's two points. The one is you say you first heard at 7 2:30 in the afternoon that the decision had been taken to 8 proceed to phase 3. That was communicated to you by 9 Colonel Scott. Lieutenant Colonel Scott as he then was, at 10 forward holding area 1, correct? 11 BRIGADIER CALITZ: Dit is korrek, mnr die 12 Voorsitter. 13 CHAIRPERSON: Which comes from the 14 meeting of the JOC, at the JOCCOM which you hadn't attended 15 at 1:30. 16 BRIGADIER CALITZ: Dit is korrek, mnr die 17 Voorsitter. 18 CHAIRPERSON: Mr Mpofo, is busy with 19 another question at the moment, whether you were told that 20 that decision had been taken the previous evening or 21 certainly that decision had been discussed the previous 22 evening by people who were present at the venue at which 23 the National Management Forum Meeting had been held and had 24 been minuted involving an endorsement by those present of 25 the Provincial Commissioner's proposal. That's a separate</p>
<p style="text-align: right;">Page 19792</p> <p>1 report, correct? 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek 3 wil miskien net die onderskeid tref, waarop ek geantwoord 4 het is waarop ek ingelig was en waarop ek bewus geword het 5 van die volgende fase wat fase 3 was. So dit is 'n feit 6 dat ek eers op 14:30 op die 16de bewus geword het daarvan. 7 So ek dink nie daar is, ek neem aan, ek weet nie, as ek die 8 vraag reg verstaan, iets vals voor die Kommissie, maar vir 9 ander getuienis na my wat dit kan weerlê, van ander persone 10 wat van ander geweet het, het ek nie 'n probleem nie maar 11 ek getuig maar net op wat vir my gesê is en wanneer ek 12 bewus geword het daarvan. 13 MR MPOFU: Okay, so effectively what you 14 are saying is that it was only at 2:30 that afternoon that 15 you became aware of a decision/minuted endorsement from the 16 National Management Forum – 17 CHAIRPERSON: Mr Mpofo, I think you are 18 now going further than the evidence indicates. There is no 19 suggestion, I believe you could ask him directly, but there 20 is no suggestion that the witness knew that the Management 21 Forum had, - well, put differently, there is no suggestion 22 that the witness knew that during or after the Management 23 Forum meeting on the previous evening that the matter had 24 been discussed by the Provincial Commissioner, the National 25 Commissioner and the persons remaining at the venue of the</p>	<p style="text-align: right;">Page 19794</p> <p>1 issue, did you know about that? How much did you know 2 about this decision to proceed to phase, the tactical 3 option otherwise known as phase 3? 4 BRIGADIER CALITZ: Nee, glad nie, mnr die 5 Voorsitter. Ek dink daardie, wat u verwys die nasionale 6 management forum vergadering vind plaas in Pretoria by 'n 7 venue wat die Nasionale Kommissaris vasstel en ek is nie 8 deel van daardie vergadering en dit word deur die 9 provinsiale kommissaris bygewoon sover dit my kennis trek. 10 So ek het glad nie kennis gedra van enige besluit of iets 11 wat daar bespreek is of 'n decision wat daarna geneem is. 12 MR MPOFU: Yes, thank you. I think it's 13 clear now. So by that, enige, you mean you knew absolutely 14 nothing about this matter of the minuted endorsement or 15 even the discussions for that matter that might have taken 16 place? 17 BRIGADIER CALITZ: Nee, nie op daardie 18 stadium enigsins nie glad nie. 19 MR MPOFU: Well at what stadium, at what 20 stage did you know about this for the first time? Anything 21 to do with - 22 BRIGADIER CALITZ: Ek het vir u getuig 23 daarvoor dat toe ek het hier begin getuig het, ek dink Adv 24 Semenya het daarna verwys op 'n stadium dat die polisie wel 25 op die 15de toe dit eerste op my kennis gekom. So kan ek</p>

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1 sê 18 maande later.

2 MR MPOFU: Okay, ja, that's exactly the

3 point. So according to you the first time you knew

4 anything about this matter was 18 months later here in

5 Centurion, correct?

6 BRIGADIER CALITZ: Dit is my getuienis,

7 mnr die Voorsitter.

8 MR MPOFU: Yes. Okay well can you then

9 explain your evidence in, on page 17204 from line 6 -

10 BRIGADIER CALITZ: Ekskuus ek net nou nie

11 my transkripsie by my nie.

12 CHAIRPERSON: I think we will ask those

13 responsible for putting up things on the screen for us to

14 see, to put the transcript up for us.

15 BRIGADIER CALITZ: Was dit in my evidence

16 in chief of wat was dit?

17 MR MPOFU: Ja, it was your evidence-in-

18 chief, it's the 22nd of November which is probably day 153.

19 BRIGADIER CALITZ: Ek het een lêer, laat

20 ek kyk.

21 CHAIRPERSON: Is there something been

22 done to put that, oh it looks as if it is, alright. What

23 is the page again, Mr Mpofu?

24 MR MPOFU: 17204, Chairperson.

25 CHAIRPERSON: We now have that page

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1 before us, what line?

2 MR MPOFU: Ja, from line 6.

3 CHAIRPERSON: Thank you.

4 MR MPOFU: Okay, I'll read it out to you.

5 Mr Semenya says to you, "we know now from the evidence of

6 the National Commissioner that the Wednesday evening

7 subsequent to the national forum meeting it communicated to

8 that forum that in the event this disarmament does not

9 happen they would have to go tactical to disarm the people,

10 were you privy to this information. Brigadier Calitz, nie

11 die vorige aand nie maar ons is daardie eers later die

12 oggend daarvan in kennis gestel."

13 CHAIRPERSON: Maybe I must translate

14 that.

15 MR MPOFU: Yes.

16 CHAIRPERSON: After Mr Semenya said what

17 Mr Mpofu Brigadier Calitz's answer amounted to this, not

18 the previous evening but we were informed I take it of

19 this, of that first later in the morning.

20 MR MPOFU: Yes. Okay. So that to me

21 unless if you give an explanation indicates that you were

22 informed of that endorsement, whatever it's called, these

23 days, in the morning.

24 BRIGADIER CALITZ: Mnr die Voorsitter,

25 nee, ek dink as ons dan net verder lees, miskien is daar

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1 net 'n misverstand. Adv Semenya het my toe net daarna

2 gevra are you saying because of that that after the address

3 of General Annandale in the morning there was a decision to

4 have a contingency plan as you call it in paragraph 76, ek

5 het uit my verklaring uit getuig en ek het dan wel gesê dit

6 is korrek, mnr die Voorsitter. So in my verklaring het ek

7 bedoel that the decision was taken that we must have a

8 contingency plan in place should the strikers fail to

9 disarm and it was indicated by the AMCU President that

10 police would be in a position to disperse the crowd into

11 smaller groups, encircle them and disarm them in order to

12 arrest. Dit is die eerste keer wat dit bespreek is en dit

13 is daardie, die draad wat ons dan sou uitgesit het as 'n

14 tweede fase.

15 MR MPOFU: No, Brigadier, I'm afraid it's

16 not that easy. You didn't know what that what Mr Semenya

17 was going to ask a separate question about the contingency

18 plan when you answered that first question. I'm saying to

19 you that you were asked a question about when you became

20 aware or rather which, whose answer seems to indicate when

21 you became aware of the goings on in the national forum

22 meeting and the going tactical is basically phase 3 as we

23 know now and you said you became aware of that in the

24 morning. Unlike the answer you gave to me earlier now and

25 the answer you gave to the Chairperson yesterday. That

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1 you, that knowledge came to you only in the afternoon.

2 MR SEMENYA SC: Chair, If we go back to

3 my question. There are two elements about it. The first

4 part is I say we know now from what the evidence of the

5 National Commissioner is saying and it's about the

6 implementation of stage 3. What the witness must, the two

7 must be separated as to which element of that aspect I'm

8 putting is he reacting to. Clearly he did know about

9 implementation of stage 3 the following day. That has been

10 his consistent evidence. I do not read that transcript to

11 mean he is confirming knowledge about what the National

12 Commissioner, the forum meeting did the day before.

13 CHAIRPERSON: Mr Mpofu, it does look as

14 if the question was a double question that Mr Semenya asked

15 him and so I'm not sure that the answer is necessarily in

16 agreement with both legs of the double question.

17 MR MPOFU: It's not necessary,

18 Chairperson. You can take any leg you like. Let's take

19 the leg about going tactical and forget the national

20 management forum. The thrust of the question is still the

21 same. I asked this question carefully for that reason

22 because I anticipated that objection. Whether, forget

23 about national management forum for the purposes of what

24 I'm going to ask you now. Is it still your evidence that

25 the decision to go tactical which is stage 3 was only known

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1 to you in the afternoon or not?

2 BRIGADIER CALITZ: Dit is beslis so, mnr

3 die Voorsitter. Om 14:30 toe ek voorgelig was deur Kolonel

4 Scott. As dit in die oggend beskikbaar was sou dit dan in

5 die oggend daardie fases bespreek gewees in die beplanning

6 gedoen gewees het. Dan was daar nie 'n nodigheid vir

7 Kolonel Scott om uit te kom, al die bevelvoerders in te

8 roep en dit dan oor te dra aan hulle nie. So dit is my

9 antwoord, ja.

10 MR MPOFU: Well then the, my question

11 then stands. As I say forget about the National Management

12 Forum. How do you explain from the fact that from this

13 answer it would seem that you knew in the oggend, in the

14 morning that the decision to go tactical which is phase 3

15 or rather you were put, you said you were daarvan in kennis

16 gestel, that you were –

17 CHAIRPERSON: Informed about it.

18 MR MPOFU: Informed about it, thank you,

19 Chairperson.

20 BRIGADIER CALITZ: Mnr die Voorsitter,

21 nie tactical nie, die contingency plan en dit is die fase 2

22 waar ons dan oorgaan na die show of force toe. Dit is wat

23 ek oor getuig het.

24 CHAIRPERSON: Could we see the question

25 please, I think it starts about line 10. Could we see the

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1 questions which you were answering. They would have go to

2 –

3 MR MPOFU: Starts at 6.

4 CHAIRPERSON: It starts at 6. We now

5 know from the evidence of the National Commissioner, I'm

6 quoting the question that the Wednesday evening subsequent

7 to the National Forum Meeting it communicated, I take it,

8 it was communicated to that forum that in the event that

9 disarmament doesn't happen they would have to go tactical

10 to disarm the people, were you privy to this information.

11 The answer given it's not the previous evening but we were

12 informed thereof I suppose first later in the morning.

13 MR MPOFU: Answer the question,

14 Brigadier.

15 CHAIRPERSON: Perhaps you should repeat

16 the question.

17 MR MPOFU: Oh yes.

18 CHAIRPERSON: Just in fairness to the

19 witness.

20 MR MPOFU: Can you for the benefit of the

21 Commission try to reconcile that answer if it is a truthful

22 answer with the information that you gave me this morning

23 after I asked you again and the information that you gave

24 the Chairperson when he asked you repeatedly yesterday as

25 to what point you first became aware of this.

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1 BRIGADIER CALITZ: Mnr die Voorsitter, ja

2 ek het u verwys na die volgende vraag van mnr Semenya, maar

3 om terug te kom op daardie spesifieke antwoord, tactical to

4 disarm, dit is waar ons 'n contingency plan moes in plek

5 gesit het. So dit is waar ek u verwys na fase 2, paragraaf

6 76 van my verklaring asook as ons afgaan en ons lees dan

7 die daarop volgende kommunikasie, as ek net, ek weet nie of

8 mnr die Voorsitter dit kan translate of moet ek maar net,

9 and then you say because of that after the address by

10 General Annandale in the morning there was a decision to a

11 contingency plan as you call it in paragraph 6 you say. So

12 dit is die takties gedeelte waar ons dan fase 2 in plek sou

13 sit en daarna sou die res volg en ek het gesê dit is korrek

14 mnr die Voorsitter en hy het vir my dan gevra wat behels

15 hierdie contingency plan en het ek dan verder uiteengesit

16 daar van die groep wat in alle waarskynlikheid 9 uur sou

17 toe gee, hulle wapens sou neergelê word en, maar sou dit

18 nie gebeur nie dan moet daar 'n polisie posisie wees om die

19 groep uiteen te dryf wat ons noem isoleer, ontwapen, arres,

20 sou dit die voorsiening wees. So daardie is fase 2 wat ons

21 dan in plek gesit het. So die antwoord bly dat wat betref

22 fase 3 was dit eers die middag 14:30.

23 MR MPOFU: Alright, look for the sake of

24 progress I'm not going to belabour the point but in

25 fairness I must tell you that I'm going to argue at the end

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1 that your evidence in this regard is irreconcilable and

2 untruthful and that you could not, if Mr Semenya's

3 examination in chief had ended there after your answer you

4 can't rely on a subsequent question to try and justify your

5 answer which was clearly about two things, fair enough as

6 the Chairperson said, it was the National Management Forum,

7 so I'm prepared to scratch that out, but it was certainly

8 about going tactical as well. That's what I'm going to

9 argue, that you are being untruthful to the Commission in

10 that regard on an important point. A point that you and I

11 have agreed is very important.

12 BRIGADIER CALITZ: Mnr die Voorsitter, al

13 wat ek daarop kan antwoord is dat ek dink daar's genoeg

14 getuienis in hierdie geval. Almal wat teenwoordig was by

15 die JOC, die persone, die kommunikasie daar's verskeie

16 opsies in hierdie geval. So as daar enige evidence is wat

17 dit kan weerlê miskien in daardie geval maar ek weet dat

18 daar genoegsame getuienis rondom hierdie is waar ek was,

19 wanneer ek was, en wanneer die besluit geneem was om oor te

20 gaan na daardie fase toe.

21 MR MPOFU: Yes, and I think in fairness

22 to you I must say now that when I advance that argument I

23 will support it with the fact that you were indeed present

24 in the 6 o'clock meeting when it was declared by someone

25 that this was D day and of that reason as well your answer

<p style="text-align: right;">Page 19803</p> <p>1 about only becoming aware of that tactical phase in the 2 afternoon is also untruthful. So I'll use that when the 3 time comes as an additional reason to say your answer in 4 this regard is untruthful because you were present in the D 5 day meeting or in the 6 o'clock meeting.</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, ja 7 ek was wel teenwoordig op die 6 uur meeting en die vraag 8 rondom D day was al aan my gevra deur, ek's nie seker 9 watter advokaat nie, asook mnr die Voorsitter, waarop ek te 10 kenne gegee het dat ek nie daarvan kennis gedra het nie.</p> <p>11 MR MPOFU: Right. I'd like you to just 12 explain, I'm sure you've done this before or rather to 13 confirm my understanding of the hierarchy. We know what 14 the overall commander does and so on. We've dealt with 15 that with General Mpmembe. But would it be fair to say that 16 generally speaking the structure of an operation such as 17 this would pick someone like either the operational 18 commander as the second in charge as it were, there's an 19 overall commander and then the operational commander, those 20 are the big guns if you excuse the pun, correct?</p> <p>21 BRIGADIER CALITZ: Miskien as ek net vir 22 u kan differensieer. Die CJOC is dan die overall 23 commander, ek lees maar net uit die staande orde uit who is 24 in overall command of a specific operation for which he/she 25 is designated and is responsible for all actions taken.</p>	<p style="text-align: right;">Page 19805</p> <p>1 waar nie tyd is om 'n JOC te stig nie. Die oorhoofse 2 bevelvoerder kan ook op die grond wees. So daar's niks 3 meer fout daarmee nie.</p> <p>4 MR MPOFU: Okay. Let's, okay I'll, 5 before I find that passage let's assume you are correct. 6 If in fact the CJOC is in the JOC would it be correct that 7 on the ground at the operation itself the highest ranking 8 person as far as the operation is concerned, okay sorry 9 highest ranking is confusing because there are also the 10 formal ranks. Let me put it this way, the most senior and 11 most responsible person on the ground would be the 12 operational commander?</p> <p>13 BRIGADIER CALITZ: As u verwys spesifiek 14 na die dag van die 16de toe sal ek saam met u stem. In 15 algemene terme nee. Die senior of die persoon, big chief 16 soos u dit genoem het sal nog steeds die oorhoofse 17 bevelvoerder wees.</p> <p>18 [12:02] MR MPOFU: Yes but, Brigadier, I did say 19 putting aside the CJOC. That's why I prefaced my question 20 by saying I understand that the CJOC is above you, saying 21 putting that person aside and on the ground, and assuming 22 that the CJOC is not physically responsible, for that 23 operation the big chief is the operational commander, 24 correct?</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>
<p style="text-align: right;">Page 19804</p> <p>1 Dit is die overall commander. Die operational commander is 2 om te koordineer en dit het ek vir u gesê om die briefings 3 te gee, seker te maak dat die lede wel gebrief word tot op 4 die seksie vlak. As daar genoegsame tyd is dat die 5 beplannings kan terug kom en dan seker te maak dat die 6 mense dit verstaan het en die vrae soos te vra. So daardie 7 vier, vyf funksies is wat die operasionele bevelvoerder 8 aanbetref. So om u vraag te antwoord, ja die aanstelling 9 dink ek nie daar was mee 'n probleem.</p> <p>10 MR MPOFU: Ja, that's fine, don't worry 11 we'll get to that order. But I'm just saying if I was just 12 talking to somebody in the street would I be correct in 13 saying that the person in charge of the operation on the 14 ground, the big chief there is the operational commander, 15 correct?</p> <p>16 BRIGADIER CALITZ: Nee, dit sal die 17 oorhoofse bevelvoerder wees.</p> <p>18 MR MPOFU: No. The oorhoofse 19 bevelvoerder or the overall commander according to the 20 standing order has to stay at the JOC correct, all the 21 time?</p> <p>22 BRIGADIER CALITZ: Nee, mnr die 23 Voorsitter. Daar is niks wat dit vir hom sê dat hy moet in 24 die CJOC bly al die tyd nie. Dit is onmoontlik, ons het 25 baie gevalle waar, gevalle in die straat plaasvind weg van</p>	<p style="text-align: right;">Page 19806</p> <p>1 het dit geantwoord. As u verwys na die 16de toe was ek die 2 operasionele bevelvoerder op die grond, die senior, ja. 3 Maar die "big chief," soos u dit stel, verantwoordelik vir 4 al die aksies op die grond, bly die oorhoofse bevelvoerder. 5 Of daar 'n JOC gestig is of nie 'n JOC gestig is nie, die 6 oorhoofse bevelvoerder is die persoon wat die operasie, kan 7 ek maar sê beheer.</p> <p>8 CHAIRPERSON: No, as a fact did you – can 9 I ask you, did you receive any instructions at all during 10 the course of the operation from General Mpmembe?</p> <p>11 BRIGADIER CALITZ: Nee, mnr die 12 Voorsitter.</p> <p>13 CHAIRPERSON: And you had authority, I 14 take it, as the operational commander to give instructions 15 to the various units or sections that were in the field 16 performing various functions.</p> <p>17 BRIGADIER CALITZ: Dit is beslis so, mnr 18 die Voorsitter.</p> <p>19 CHAIRPERSON: And you had the power to 20 issue commands, the authority to issue commands. He 21 obviously had the authority to issue commands to you, but 22 he didn't avail himself, or didn't exercise that authority 23 because he sent – whether it's a point of criticism or not 24 is another matter, but as a fact he didn't give you any 25 instructions at all during the whole of the operation. Is</p>

<p style="text-align: right;">Page 19807</p> <p>1 that correct?</p> <p>2 BRIGADIER CALITZ: Nie op daardie dag,</p> <p>3 nee glad nie, mnr die Voorsitter.</p> <p>4 CHAIRPERSON: We're talking about that</p> <p>5 day.</p> <p>6 BRIGADIER CALITZ: Ja.</p> <p>7 CHAIRPERSON: Did General Annandale give</p> <p>8 you any instruction -</p> <p>9 BRIGADIER CALITZ: Nee -</p> <p>10 CHAIRPERSON: - during that day while you</p> <p>11 were in the field and he was in the JOC?</p> <p>12 BRIGADIER CALITZ: Nee, glad nie, mnr die</p> <p>13 Voorsitter.</p> <p>14 CHAIRPERSON: So you were left very much</p> <p>15 on your own basically, without any guidance or instructions</p> <p>16 from above. Can I put it correctly, is that right?</p> <p>17 BRIGADIER CALITZ: Die enigste opdragte</p> <p>18 wat ons gekry het was na die 13:30 en dit is aan ons</p> <p>19 oorgedra deur Kolonel Scott, wat direkte opdragte was van</p> <p>20 die JOC af en waar daar sekere stellings, of opdragte aan</p> <p>21 ons gegee is hoe ons van daar af voort moet gaan na die</p> <p>22 15:30 tydperk. So daardie was opdragte wat van die JOC af</p> <p>23 kom.</p> <p>24 CHAIRPERSON: No, that was in fact the</p> <p>25 tactical option as it had been -</p>	<p style="text-align: right;">Page 19809</p> <p>1 MR MPOFU: Ja.</p> <p>2 BRIGADIER CALITZ: Ek sal nie sê die</p> <p>3 "highest power available to the troops" nie, nee. Hulle</p> <p>4 kon nog steeds dit gerapporteer het aan die JOC waar die</p> <p>5 bevelvoerder dan was. So -</p> <p>6 MR MPOFU: Ja.</p> <p>7 BRIGADIER CALITZ: - u vraag, net dit te</p> <p>8 antwoord -</p> <p>9 MR MPOFU: No, no, thank you, yes. No, I</p> <p>10 was now asking this question not from a theoretical point</p> <p>11 of view, but from the reality that they could have reported</p> <p>12 to an empty JOC if they wanted. I'm just saying that the</p> <p>13 reality is that since Major General Mpembe was</p> <p>14 incapacitated either by the fact that he was in a</p> <p>15 helicopter or his radio was not working, or whatever, you</p> <p>16 de facto became the highest authority, correct?</p> <p>17 BRIGADIER CALITZ: Ek was die senior op</p> <p>18 die toneel gewees. As dit u vraag is, dat ek daarmee</p> <p>19 saamstem.</p> <p>20 MR MPOFU: Ja.</p> <p>21 BRIGADIER CALITZ: Ek het net verwys na u</p> <p>22 vorige stelling waar u gesê het die senior ten opsigte van</p> <p>23 die lede, dit is nie so nie, nee. Hulle het nog steeds -</p> <p>24 MNR MPOFU: Wat beskikbaar was.</p> <p>25 BRIGADIER CALITZ: Nee -</p>
<p style="text-align: right;">Page 19808</p> <p>1 BRIGADIER CALITZ: Dit is -</p> <p>2 CHAIRPERSON: - agreed to by the JOCCOM,</p> <p>3 right?</p> <p>4 BRIGADIER CALITZ: Dit is korrek.</p> <p>5 CHAIRPERSON: That was conveyed to you in</p> <p>6 the manner that's been described, without any hardcopies,</p> <p>7 just being shown on a laptop with certain words that were</p> <p>8 later added to what is in exhibit L, weren't even there at</p> <p>9 the time. So it was basically, the instructions you got</p> <p>10 were what was on the laptop and oral amplification by</p> <p>11 Colonel Scott. Is that correct?</p> <p>12 BRIGADIER CALITZ: Dit is wat -</p> <p>13 CHAIRPERSON: And from that time on no</p> <p>14 further instructions, no further guidance, you were on your</p> <p>15 own effectively. Is that right?</p> <p>16 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>17 Voorsitter.</p> <p>18 MR MPOFU: Thank you. Yes, so for all</p> <p>19 intents and purposes and for the reason that Major General</p> <p>20 Mpembe was not available, for all the reasons that we know,</p> <p>21 you during the time of the killings were the head, the</p> <p>22 power-that-be, as it were, the highest power available to</p> <p>23 the troops. Correct?</p> <p>24 BRIGADIER CALITZ: Ek was die</p> <p>25 operasionele bevelvoerder gewees op daardie stadium.</p>	<p style="text-align: right;">Page 19810</p> <p>1 MR MPOFU: Who were available.</p> <p>2 BRIGADIER CALITZ: Nee, mnr die</p> <p>3 Voorsitter, ek verskil. Ons weet wel daar sal getuienis</p> <p>4 kom dat die lede wel gerapporteer het aan die JOC en daar</p> <p>5 was wel "reports" gemaak aan die JOC rondom van die TRT</p> <p>6 personeel, ensovoorts. So dit is nie waar nie.</p> <p>7 MR MPOFU: Okay, but would you agree then</p> <p>8 with this proposition, that on the ground at the operation</p> <p>9 there the buck stopped with you?</p> <p>10 BRIGADIER CALITZ: As u verduidelik vir</p> <p>11 my wat bedoel u by die "buck stop" met my?</p> <p>12 MR MPOFU: Well, okay, we don't have the</p> <p>13 - if you don't know that expression, then we'll just move</p> <p>14 on then.</p> <p>15 BRIGADIER CALITZ: In daardie geval sal</p> <p>16 ek net vir u sê ek verskil van u.</p> <p>17 CHAIRPERSON: Basically you were the last</p> <p>18 port of call from a practical point of view. In theory you</p> <p>19 could, I suppose if you weren't certain about something and</p> <p>20 wanted guidance, have communicated with the JOC and say</p> <p>21 look, we've got this problem, what must we do, and when</p> <p>22 General Mpembe went into the helicopter General Annandale</p> <p>23 remained behind. He was not only the chairman of the</p> <p>24 JOCCOM, but he was I think described as the chief of staff.</p> <p>25 BRIGADIER CALITZ: Korrek.</p>

<p style="text-align: right;">Page 19811</p> <p>1 CHAIRPERSON: So he was effectively 2 General Mpembe's deputy as overall commander, I would 3 assume. So if General Mpembe didn't hear you because he 4 was in the helicopter, but you got through to the JOC, the 5 people in the JOC heard you over the radio, General 6 Annandale could then have given you instructions, and for a 7 lot of the time according to the evidence the Provincial 8 Commissioner herself was in the JOC. She was there from 9 3:20, I think she says in her statement. So she could also 10 have given you instruction, but they didn't give you 11 instructions. You were left to deal with the matter as you 12 thought best, using your discretion as operational 13 commander. Would that be a correct description? 14 BRIGADIER CALITZ: Ja, mnr die 15 Voorsitter, laat ek saam met u stem. Ja, dis 'n nadere 16 beskrywing. 17 MR MPOFU: Ja, thank you. Okay, that's 18 good enough. Now let's get to the issue that the 19 Chairperson has just touched on, which is the issue of the 20 discretion. That's really where this questioning is going 21 to, and before I ask you the question I want to say that 22 one of the issues that we're going to be contending is that 23 whatever failings might have been on the side of the units 24 and what have you, but that there was also a failure of 25 leadership in this operation. So that's why I'm placing</p>	<p style="text-align: right;">Page 19813</p> <p>1 you and said okay, I've now told them to lay down their 2 arms, I've told them to go back to work, or whatever the 3 demands of Lonmin were, and they say ja, Mr Mathunjwa, now 4 that you mention it, we're going to lay down the arms and 5 go back to work, you would have had the discretionary power 6 to then stop the movement to the dangerous tactical phase, 7 correct? 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 dit is waaroor ek in die begin ook getuig het. Ek dink as 10 ons gaan kyk na die "transcript" het ek gesê mnr Mathunjwa 11 het om 15:40 wegbeweeg en hy het nie na my toe gekom soos 12 met die vorige kere nie – 13 CHAIRPERSON: No, but I – 14 BRIGADIER CALITZ: So om die vraag – 15 CHAIRPERSON: I'm sorry, Brigadier. You 16 and Mr Mpofo are talking past each other. This is a 17 hypothetical question. I think Mr Mpofo knows very well 18 that Mr Mathunjwa didn't come back to you and say what he 19 said. It's hypothetical. He's saying if he had done that, 20 if he'd come back to you and said look here, I've spoken to 21 them, I've finally persuaded them, they're laying down 22 their arms and they're going to go back to work, you would 23 then have had the authority on your, acting on your own, 24 without referring back to the JOC to say right, to the 25 members, we're stopping the operation at this stage in the</p>
<p style="text-align: right;">Page 19812</p> <p>1 you where you are in the pecking order as far as the 2 leadership is concerned. Now that we've done that, would I 3 be correct to say that the discretion that you had as the 4 main person on the ground – and I know that there were 5 other people higher than you who were not there, but the 6 main person on the ground, as you've agreed with the 7 Chairperson, that discretion was very wide indeed? Would 8 that be fair? 9 BRIGADIER CALITZ: Die diskresie sou 10 afgehang het wat voor my afspeel en die gebeure op die dag 11 wat daar gebeur. Ek dink u het 'n vorige stelling gemaak 12 wat u nie my opinie gevra het nie, maar dat ek net sê ek 13 verskil van u daar. 14 MR MPOFU: Yes, but that discretion was 15 so wide that you could have called the operation off if the 16 circumstances allowed you to do so, correct? 17 BRIGADIER CALITZ: As die "policies," of 18 die opdragte of die Staande Orders waarvolgens ons werk dit 19 wel so vervat het en dit wel in my ondervinding was en die 20 inligting tot my beskikking was, dat ek so gevoel het dat 21 'n operasie gestop moet word, dan kon ek dit op daardie 22 stadium, dit wel daardie opdrag gegee het, ja. 23 MR MPOFU: Yes, and I think your evidence 24 was for example that – or no, forget your evidence. Let me 25 just put a proposition to you. If Mr Mathunjwa had come to</p>	<p style="text-align: right;">Page 19814</p> <p>1 light of what I'd been told by Mr Mathunjwa. That's his 2 question. I've elaborated a bit, but I think that's the 3 thrust of it. Do you agree with that? 4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 met respek, ek sou daar gekom het, as ek net gou miskien 6 daardie sin klaarmaak. Ek het net verwys na die vorige 7 keer toe Mr Mathunjwa na my toe gekom het en ons het 'n 8 gesprek gehad rondom die vorige dag. Nou ek het gesê as 9 hy, om 15:40 weet ons dat hy wegbeweeg het en nie na my toe 10 gekom het nie. Indien hy wel na my toe gekom het – en dit 11 is waaroor ek, die volgende stap wat ek wil getuig, mnr die 12 Voorsitter – indien hy wel na my toe gekom het en vir my 13 gesê het sy onderhandelinge met die persone was suksesvol, 14 hulle het ooreengekom om in plaas van 9 uur die oggend maar 15 nou hulle wapens neer te lê en uiteen te gaan en dan 16 vreedsaam verder die betoging ongewapend mee voort te gaan, 17 dan sou ek beslis die JOC gekontak het, mnr die Voorsitter, 18 en dis nie dat ek die besluit op my eie nie. Onthou dan 19 kon ek die besluit wat deur die JOC gemaak is, iets 20 positief vir hulle teruggegee het en gesê het luister, wag 21 'n bietjie, op hierdie stadium is die volgende inligting 22 tot die beskikking, so heroorweeg en miskien – want ek weet 23 daar was 'n gesprek, selfoongesprekke tussen die generale 24 en – so dan kon ons dit verder gemonitor het en gesien het 25 die groep doen dit wel, en op daardie stadium sou dit</p>

<p style="text-align: right;">Page 19815</p> <p>1 totaal en al uitgedraai het. Ons sou geen optrede verder 2 as "stage" 2 hoef te gedoen het nie. Ons sou nie die 3 persone hoef uiteen te gedryf het op die koppie nie want 4 daar was dan verder geen onwettige byeenkoms wat wapens 5 betref nie. Hulle sou hulle wapens neerlê, hulle sou 6 vreedzaam weggaan, wat ons van die oggend af met hulle 7 versoek het. Daardie wapens sou bymekaar gemaak gewees 8 het en daar sou verdere vreedsame onderhandeling 9 plaasgevind het. So niemand sou op die dag gesterf het nie 10 sou dit gebeur het, maar ons weet dit het nie gebeur nie, 11 maar ja, ek kon die JOC gekontak het en ek het, sou wel 'n 12 invloed gehad het op die uitvoer –</p> <p>13 CHAIRPERSON: Before you actually 14 contacted the JOC, I take it you would have had the 15 authority to do the following. Assuming the wire was 16 already in the process of being uncoiled, the first Nyala 17 was moving with the wire from the power station, and if at 18 that point you got a message from Mathunjwa along the lines 19 that have been discussed, obviously you would have 20 contacted the JOC. But I take it you would in the meantime 21 have said to the Nyala, stop the action while we wait for 22 the decision I'm going to get from the JOC because I'm 23 going to consult with them and contact them immediately. 24 That will be fair, is it?</p> <p>25 BRIGADIER CALITZ: Dit sou heeltemal</p>	<p style="text-align: right;">Page 19817</p> <p>1 diskresie, as daardie inligting tot my beskikking was - ek 2 wil net sê op die dag, dit was nie drie of vier keer die 3 woorde van mnr Noki nie; hy het beslis vir my gesê ons gaan 4 daardie dag doodgaan, ons gaan ons voertuie daar los, hulle 5 gaan die voertuie brand. Die dreigemente van dood is wel 6 deur mnr Noki gedoen. So net miskien om vir u aan te dui, 7 maar sou hy dit anderste om doen, nie dreigemente aan ons 8 toegevoeg het nie maar wel met 'n wit vlag, wit bord, iets 9 geloop het, dan ja, kon ons dit raakgesien het en ons sal 10 van ons kant af met hom weer 'n keer begin kommunikeer het, 11 soos met die onderhandeling.</p> <p>12 MR MPOFU: Yes, so I'll take that, that's 13 a yes. The limits of your discretion would have allowed 14 you to stop or at least suspend the operation at that stage 15 of the white flag, correct?</p> <p>16 BRIGADIER CALITZ: Dit sal, hang af wat 17 gebeur het voor my op daardie stadium.</p> <p>18 MR MPOFU: Ja, but I've just told you 19 what would be happening in front of you.</p> <p>20 BRIGADIER CALITZ: Dit is –</p> <p>21 MR MPOFU: Mr Noki would be holding a 22 board that says, 'Okay, we give up,' or 'We're going to 23 work,' or waving a white flag. That's what would be 24 happening in front of your eyes. Would you at that point 25 have the discretion to stop the operation or to even</p>
<p style="text-align: right;">Page 19816</p> <p>1 regverdig wees, mnr die Voorsitter, sou hulle dan hulle 2 wapens en goed neerlê en sou hulle vreedzaam deurbeweeg 3 het, sou hulle toegelaat geword het. Ons het van die begin 4 af vir hulle gesê oor die "public address system" dat 5 indien hulle hulle wapens neerlê, die wat vrylik huis toe 6 wil gaan sou toegelaat word, en ons weet ook uit die 7 arrestasies uit later die wat wel hulle wapens neergesit 8 het, het ons laat deurgaan. Dit was nooit die bedoeling om 9 3 000 te arresteer nie, nee, glad nie. So beslis so, mnr 10 die Voorsitter.</p> <p>11 MR MPOFU: Right, we'll get into the 12 merits of the issues. Right now I'm busy just trying to 13 see the outer limits of your discretionary powers, and 14 forgive me for making these hypothetical examples, but it's 15 just to make the point. So let's say now then that the – I 16 accept your answer as far as Mathunjwa is concerned. Let's 17 say now that at the stage where Nyala 4 was closing the 18 gap, Mr Noki now - because Mr Mathunjwa was gone - 19 approaching that gap there was holding a big board that 20 says 'Okay, we will go back to work,' at that point you 21 would also have had the discretion to stop the operation, 22 correct?</p> <p>23 BRIGADIER CALITZ: As ek wel geweet het 24 mnr Noki hou die bord en hy wys dit vir ons, of enigiemand 25 het probeer kommunikeer in daardie geval, dan kon die</p>	<p style="text-align: right;">Page 19818</p> <p>1 momentarily change the course of the operation? Yes?</p> <p>2 BRIGADIER CALITZ: Dit is hoekom ek vir u 3 gesê het, Advokaat, dat as die persone op my Nyala, en dit 4 was in my sig en ek kon dit wel sien, sou ek daarop 5 gereageer het. Dit is korrek.</p> <p>6 MR MPOFU: Ja, thank you. And in fact it 7 was in the exercise of that discretion that despite the 8 fact that you had been given an instruction to start the 9 operation at half past 3, you only started it at 20 to 4 10 because of, as you put it, what was happening in front of 11 your eyes, namely that Mr Mathunjwa was still addressing 12 the people.</p> <p>13 BRIGADIER CALITZ: En ander faktore 14 waaroor ek getuig het, soos byvoorbeeld die media wat saam 15 met hom daar voor was en dat hulle in gevaar sou gewees 16 het.</p> <p>17 MR MPOFU: Ja, no that's exactly what I'm 18 saying. You didn't think dogmatically, look, I've been 19 told half past 3, at half past 3 I'm shooting. You were 20 able to see that –</p> <p>21 MR SEMENYA SC: Chair, can we use proper 22 language for these questions?</p> <p>23 CHAIRPERSON: The use of the word "shoot" 24 is a bit unfortunate in the context. I think you meant it 25 metaphorically.</p>

<p style="text-align: right;">Page 19819</p> <p>1 MR MPOFU: I didn't mean it that way, 2 but – 3 CHAIRPERSON: You meant it 4 metaphorically. There was no intention, according to the 5 evidence, to shoot anybody at half past 3. They were going 6 to proceed with phase 3, and we know what phase 3 was 7 supposed to contain, but shooting wasn't part of it. So 8 reformulate your question and don't use a word which is 9 ambiguous, which could lead to misunderstanding in certain 10 quarters. 11 MR MPOFU: Ja, I think both the witness – 12 CHAIRPERSON: You see, if the witness 13 says yes to the answer because he understands the 14 metaphorical sense in which you're using the word, that 15 could be reported in the press as if he meant literally 16 that shooting was going to start at 3:30, which is not what 17 you intended, not what he would intend. So anyway, just 18 keep an eye on that, please. 19 MR MPOFU: Ja, so – 20 CHAIRPERSON: We're all I'm afraid 21 inclined to use loose language of a sort of military 22 metaphorical nature, which could lead to misunderstandings, 23 particularly on this part of the factual complex we're busy 24 with. 25 MR MPOFU: That's fine, Chairperson. I</p>	<p style="text-align: right;">Page 19821</p> <p>1 funksies is daar miskien net 'n verskil. Maar ek was 2 verantwoordelik vir die koördinerings van die operasie, ja. 3 MR MPOFU: Ja. 4 [12:22] BRIGADIER CALITZ: Maar die funksie is 5 was ek vir u nou-nou uitgelees het. 6 MR MPOFU: Ja, okay, if you have to do, 7 you are free to use it. Now- 8 CHAIRPERSON: You're also free to amplify 9 if you consider it necessary. 10 MR MPOFU: Well, let's not encourage him, 11 Chairperson. 12 BRIGADIER CALITZ: Ek moet net die 13 waarheid voor die Kommissie getuig en dit is net wat ek op 14 feite het voor my, asseblief. 15 MR MPOFU: Ja, alright, and just for my 16 own understanding, part of the coordination of all the 17 units would involve coordinating their movement in the 18 terrain, as you call it, correct? 19 BRIGADIER CALITZ: Die koördinerings 20 waarna hier nou verwys word is presies wat ek gesê het my 21 funksies is, miskien kan ek dit net herhaal dat daar nie 'n 22 misverstand is nie. Die koördinerings is, "To personally 23 brief all members on the command structure." Dit is die 24 bevelvoerders. Die volgende een is, "To ensure that all 25 members in the command structure communicate the objectives</p>
<p style="text-align: right;">Page 19820</p> <p>1 think both the witness and Mr Semenya know exactly what I 2 meant, and I would appreciate it if my cross-examination is 3 not unnecessarily interrupted. 4 CHAIRPERSON: No, but I was concerned 5 about the way it might be reported, you see, so that's why 6 – so it was a necessary interruption, I'm afraid, Mr Mpofo, 7 but would you now proceed? 8 MR MPOFU: Okay, thank you, Chairperson. 9 Brigadier, I was busy saying you did not simply because you 10 had been given an instruction that the operation must start 11 at half past 3 by your seniors, in spite of the fact that 12 you could see objectively in front of your eyes that Mr 13 Mathunjwa was still addressing the strikers, say well, it's 14 half past 3 now, all systems go. You, in the exercise of 15 the discretion that we are busy discussing, decided to wait 16 for him to finish. He could have taken another 20 minutes, 17 he could have taken 15 minutes, and only thereafter did you 18 give your instruction. Is that correct? 19 BRIGADIER CALITZ: Dit is korrek. 20 MR MPOFU: Another important function of 21 yours as operational commander is that of coordinating all 22 the units that have been deployed for that particular 23 operation, correct? 24 BRIGADIER CALITZ: Ja, die funksies - as 25 die definisie, as 'n ou kyk tussen die definisie en die</p>	<p style="text-align: right;">Page 19822</p> <p>1 of the operation clearly to all the members deployed under 2 their command at the event." Die volgende funksie sal 3 wees, "To instruct all the commanders, all section leaders 4 to furnish detailed written plans where possible to the 5 specific task and then during the briefing the task of the 6 role-players involved in the operation must be defined in 7 detail," so dit was my funksie. 8 "The communication channel must also be 9 thoroughly explained to the members," and then lastly, 10 regarding the briefing that was given, "The section leaders 11 must be identified, briefed in accordance and then asked 12 questions if they understand that." So ek het dit nou in 13 die Engels gelees dat daar nie 'n misverstand is nie, dit 14 is die funksies van die, hoe om te koördineer. Met ander 15 woorde om die vraag direk te antwoord, ek sou dan vir die 16 bevelvoerders voorligting gegee het. Sou daar enige iets 17 wees wat die bevelvoerders sien of wat voor hulle gebeur of 18 enige voorval, as ek dit so kan noem, dan moet dit aan my 19 gerapporteer word of dan aan die JOC gerapporteer word 20 sodat daar dan aksie daarop kan of 'n opdrag daarop kan 21 volg. 22 MR MPOFU: Now, Brigadier, I am begging 23 you, if you are going to carry on like this it is going to 24 take us a long time to do this cross-examination. You 25 don't have to read all these things or, I've got that</p>

<p style="text-align: right;">Page 19823</p> <p>1 exhibit, everyone has got it. I've just asked you a simple 2 question and if I'm wrong, actually I'm putting it as a 3 leading question so that you can say I'm wrong or I'm 4 right. I'm saying part of the coordination which you and I 5 have agreed was your function, would involve ensuring that 6 the units among each other as it were, let me put it this 7 way, maybe to give an example, the Dog Unit might be 8 expected to do something at a particular time and the 9 Mounted Unit might be expected to do something at a 10 particular time, but the two units themselves don't know 11 what the other one has to do. It is your job as the 12 coordinator to make sure that they do whatever it is in the 13 correct sequence. In other words if the plan was, the Dog 14 Unit must come first and then the Mounted Unit, it should 15 not be the Mounted Unit come first and then the Dog Unit. 16 That, your job is to, - that's what coordination is, do you 17 understand? 18 BRIGADIER CALITZ: Mnr die Voorsitter, 19 weereens ek hoor wat u sê maar ek het dit so pas vir u 20 uitgelees en die stelling wat u nou aan my maak is presies 21 die teenoorgestelde as wat ek vir u gesê het. Kan ek 22 klaarmaak? Die voorbeeld wat u nou gebruik het, die honde, 23 die K9 en die horses, dit sou nie vir my gewees het, as my 24 opdrag aan hulle, nou moet julle beweeg nie, nee. Die 25 eerste een en dit is hoekom ek dit pertinent vir u gelees</p>	<p style="text-align: right;">Page 19825</p> <p>1 coordination. Now if something unexpected happened and you 2 have the plan, die voorligting, so that's been 3 communicated, people must do what they're told to do in 4 terms of the plan, but something happens which is not dealt 5 with in the plan, which is unexpected. Now I suppose 6 ideally some of the commanders would then report to you and 7 say, what do we do now, but if they don't or you think 8 urgent action is required by a particular section, surely 9 you had the authority to say, okay, go and do that, it must 10 be otherwise, you know - coordination, you could say to one 11 group, you go and do this and the other group, you go and 12 do that, something unforeseen has turned up requiring 13 immediate action. You could do that without consulting 14 them and waiting for them to come back to you and say, what 15 do we do now. That must be right, surely. 16 BRIGADIER CALITZ: Nee, mnr die 17 Voorsitter, ek stem saam met u, daardie was net 'n 18 voorbeeld om dit uit te lig, operasioneel hoe dit werk, ek 19 stem saam met u. Dit wat voor ons gebeur en die persone 20 saam met, daar het ek wel opdragte wel gegee, in die geval. 21 COMMISSIONER HEMRAJ: But, Brigadier, 22 what about the discretion that rests with each of those 23 section commanders should something untoward happen or 24 something unexpected happen? 25 BRIGADIER CALITZ: Kommissaris, die</p>
<p style="text-align: right;">Page 19824</p> <p>1 het om te verstaan en u het gesê u het dit, u verstaan dit, 2 maar dit is duidelik dat volgens my, u dit miskien nie 3 verstaan nie, "It is to personally brief all the members 4 and command," en dan die commanders van daardie eenhede sal 5 dan verantwoordelik wees vir al hulle eenhede. Mnr die 6 Voorsitter, ek weet nie of ek dit net makliker miskien met 7 iets anders kan verduidelik, as u my net die vergunning 8 gee? 9 MR MPOFU: Ja. 10 BRIGADIER CALITZ: Kom ons sê die 11 operasionele bevelvoerder, met die Wêreld Beker, met 'n 12 sokker byeenkoms, as ek net vinnig vir u kan sê, wat ook 13 dan daar rond beweeg, hy kan nie weet wat by die hek 14 aangaan, wat by die search points aangaan, wat by die 15 ticket booth aangaan, wat binne in die veld self aangaan 16 nie en dit is onmoontlik vir hom om na elke een toe te roep 17 en sê, hoor hier, is daar nog iets, is daar nog iets, is 18 daar nog? Daardie commanders word voor, hoe kan ek sê, 'n 19 voorbeeld gegee dat hulle sal weet indien daar enige iets 20 plaasvind op enige van die plekke sou hulle dit dan 21 rapporteer en dit is die koördinerer. Met ander woorde al 22 die inligting wat na my toe kom kan ek dan koördineer en 23 dit met die JOC bespreek en sê, dit is hoe. 24 CHAIRPERSON: I take it, it can't be 25 quite as limited as that. What was required was</p>	<p style="text-align: right;">Page 19826</p> <p>1 discretion sal ook vir hulle wees, hulle hoef nie te wag 2 vir 'n opdrag voordat hulle, as hulle sien iets speel af 3 voor hulle dan kan hulle ook daardie opdrag gee. Dit is in 4 ons nasionale instruksie vervat tot op die vlak van 'n 5 seksie bevelvoerder wat dan 'n adjudant-offisier is, kan 6 dan ook 'n opdrag gee hoe om op te tree. 7 MR MPOFU: Ja, no, that's understood. I 8 mean none of them are not automatons or robots, but the 9 point – 10 BRIGADIER CALITZ: Ek het nie nou u 11 verstaan nie, u sê? 12 MR MPOFU: I'm saying none of them are 13 robots who can't – 14 BRIGADIER CALITZ: O – 15 MR MPOFU: - exercise – 16 CHAIRPERSON: It is not robots, it is not 17 robots in the sense of traffic lights, but you know what a 18 robot means. 19 BRIGADIER CALITZ: Ja. 20 CHAIRPERSON: It is on the traffic light, 21 that's right. 22 BRIGADIER CALITZ: Ek het net nie gehoor 23 wat hy gesê het nie, dankie, mnr die Voorsitter. 24 MR MPOFU: Ja, but the point apropos that 25 if you like, the width of the discretion cascades down with</p>

<p style="text-align: right;">Page 19827</p> <p>1 the level of responsibility. In other words the leaders 2 have a wider discretion as we have already established, 3 which could even amount to stopping or delaying the 4 operation. The people down there couldn't very well say, 5 oh well, I'm just going to the loo now, can you start the 6 operation ten minutes later. So as it goes down the ladder 7 the discretion gets smaller and smaller, I mean in any 8 hieratical organisation, is that correct? 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 verhoed om 'n lang antwoord te gee, kom ek sê net, nee, dit 11 is nie korrek nie. 12 MR MPOFU: So for the constable and for 13 the brigadier the extent of the discretion, for example as 14 to when the operation should start is the thing. 15 BRIGADIER CALITZ: U verwys nou 16 operation, u het nou-nou verwys in die algemeen en kan ek 17 my punt maak wat ek miskien nie sien nie, ons gaan op 'n 18 lang gesprek. 'n Konstabel wat in normale omstandighede op 19 'n patrollie voertuig is en patrollie ry en hier gebeur 'n 20 incident voor hom, daardie konstabel het die reg om sy 21 vuurwapen te gebruik, sy vuurwapen te gebruik en iemand te 22 dood as dit sy diskresie is, of as hy voel dit is nodig in 23 daardie geval. Daardie konstabel gaan nie nou eers wag en 24 terug rapporteer na sy stasie bevelvoerder of iemand in 25 enige geval nie, so ook die seksie bevelvoerders wat op die</p>	<p style="text-align: right;">Page 19829</p> <p>1 looking at that as an example, that doesn't mean that each 2 Nyala commander had the discretion to say, well, I am going 3 to do my one now, number 4, I'm going to do my one now, I'm 4 not going to wait until 3 arrives here, but you as the 5 operation commander would actually have been the only 6 person who would have done that in the interest of 7 coordination, because it would have been chaos if the one 8 Nyala said, alright, I'm going to start now, I mean, sorry, 9 number 4, I'm going to start now together with number 1 and 10 number 2 says, no, no, no, I'm going to wait until 1 comes 11 to me and do the same, there would have been chaos. So 12 that example illustrates that there were certain matters 13 where the discretion was only yours. People below you 14 couldn't exercise their discretion because it would have 15 undermined the very principle of coordination. That must 16 be right? 17 BRIGADIER CALITZ: U voorbeeld is 100% 18 reg, mnr die Voorsitter, dit is egter nie hoe ek dit bedoel 19 het deur dit te sê nie, die lede werk nog steeds onder 20 opdrag en elke groep het nog sy eie groep bevelvoerder. Ek 21 het maar net bedoel wat voor hom afspeel, maar u voorbeeld 22 is 100% reg ook. 23 MR MPOFU: Ja, for example I'm just going 24 to read, I don't have to refer you even to the exhibit, it 25 is just to illustrate this point, well, I have to I</p>
<p style="text-align: right;">Page 19828</p> <p>1 voertuie is, as hulle iets sien wat voor hulle is kan hulle 2 die opdrag selfs gee om te disperse, om 'n opdrag te gee om 3 rubber te gebruik wat fisies is, non lethal wapens. 4 So die diskresie vlak sou ek sê speel af oor 5 watsse omstandighede is en wat die omstandighede is voor jou 6 wat afspeel, nie so seer dat 'n brigadier meer diskresie 7 het as 'n konstabel nie. Ons is nie altyd teenwoordig waar 8 die junior lede beweeg nie en hulle is die meeste van die 9 tyd daar. 10 CHAIRPERSON: Ja, of course it is not 11 quite as simple, let's take a practical example that arose 12 here. Colonel Scott said that his plan involved the 13 simultaneous uncoiling of the wire by all the Nyalas, I 14 think you said you weren't aware of that, but that's what 15 he said. He pointed out that's not what happened, it was 16 done consecutively and his answer to that was, yes, but you 17 have the discretion as operational commander to do that if 18 you consider it necessary and you in fact demonstrated to 19 us that from a practical point of view they tried to uncoil 20 all the wire simultaneously from all the Nyalas, a 21 difficult task and it had to be done consecutively. That's 22 - 23 BRIGADIER CALITZ: Korrek, mnr die 24 Voorsitter. 25 CHAIRPERSON: Now clearly applying that,</p>	<p style="text-align: right;">Page 19830</p> <p>1 suppose, HHH20, but you don't have to go there, you can 2 just listen to me because it is not for the content, it is 3 just to make the point I'm making. At 13.8 of - 4 CHAIRPERSON: I think 20 is one of the 5 documents that you were referred to. 6 MR MPOFU: Yes, this is - 7 CHAIRPERSON: It is the 13th document in 8 the bundle. 9 MR MPOFU: Okay. 10 CHAIRPERSON: What paragraph? 11 MR MPOFU: Colonel Scott, - oh, statement 12 13.8, Chairperson. 13 CHAIRPERSON: You'll find it on page 83, 14 I think? 15 MR MPOFU: Okay, so I'm just using that 16 as an illustration of the point that I felt was obvious. 17 He says there, "The further dispersion action, the strikers 18 were to be warned of the dispersion. This is some time 19 after the razor wire had been deployed. As I can recall I 20 did not elaborate on when but left the decision to the 21 operational commander." In other words he left the finer 22 details to your discretion, he couldn't have left it to 23 some low ranking constable, that decision, that's the point 24 I was really making, correct? 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>

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1 is nou versigtig om uit te brei en dit so kort as moontlik
 2 te hou. U voorbeeld hier is, ja.
 3 MR MPOFU: Ja.
 4 BRIGADIER CALITZ: Hy kon nie vir my sê
 5 waar nie, onthou dit is 'n opdrag van die JOC af dat ons
 6 sou eers moet uitbeweeg met ons voertuie, ons sal in 'n lyn
 7 moet kom en dat dit wel na die uitrol van die draad is, so
 8 hy kon nie vir my sê op watter stadium nie. Ek sou dan
 9 eers seker gemaak het dat my voertuie in plek is en dan die
 10 opdrag gegee het, so ek weet nie of dit heeltemal van pas
 11 is nie, hy kon nie vir my daardie tyd, dit is onmoontlik om
 12 so 'n tyd te gee.
 13 MR MPOFU: No, -
 14 BRIGADIER CALITZ: Ek kan dit nie verder
 15 vat as dit nie, ja.
 16 CHAIRPERSON: But the corollary is that
 17 the people who were doing it to you couldn't decide to
 18 start dispersing before you as the operational commander
 19 and the person, effectively the only power or authority –
 20 BRIGADIER CALITZ: Dit is korrek –
 21 CHAIRPERSON: - ordered the dispersion
 22 action, they had to wait for you, they couldn't take it
 23 upon themselves to start dispersing earlier. That wasn't
 24 allowed either.
 25 BRIGADIER CALITZ: Dit is miskien wat ek

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1 probeer verduidelik het hier.
 2 CHAIRPERSON: So that's the other side of
 3 the same coin.
 4 MR MPOFU: Thank you.
 5 BRIGADIER CALITZ: Ek dink miskien dat
 6 ons het dieselfde punt, dankie, mnr die Voorsitter.
 7 MR MPOFU: Thank you very much and that's
 8 the side I'm interested in, of the coin that the
 9 chairperson, it is not so much that he could not dictate to
 10 you what time and so on, that I understand. I'm saying he
 11 could not, given his limitations of not being able to
 12 dictate he couldn't then delegate that function to a
 13 constable, but to an operational commander.
 14 BRIGADIER CALITZ: Ja, nee, dit is
 15 logies, ja.
 16 MR MPOFU: Ja.
 17 BRIGADIER CALITZ: Ek is die operasionele
 18 bevelvoerder.
 19 MR MPOFU: Alright, now there was a
 20 general instruction which was issued that people should
 21 only act on command in this operation, correct?
 22 BRIGADIER CALITZ: As u miskien net vir
 23 my verwys waarna u verwys dan kan ek u antwoord?
 24 MR MPOFU: No, I'm asking you, you're the
 25 operational commander, to your memory was there or not,

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1 such a general instruction?
 2 BRIGADIER CALITZ: Ek dink nie dit is 'n
 3 general instruction, ek dink dit is tydens die voorligting
 4 waar elke bevelvoerder dan voorgelig is wat die plan is en
 5 dan sou die opdrag gegee word wanneer om die draad uit te
 6 gooi en dan sou die opdrag gewees het wanneer om te
 7 disperse. So die dispersion action moet in opdrag wees en
 8 dit is ook in ons Staande Ordes vervat, lede kan nie net
 9 self net optree nie, nee.
 10 MR MPOFU: Alright, now before I move on
 11 to the next topic I just want to round off something and
 12 just to understand. Did I understand you correctly that
 13 even under the first part of your experience, what Mr Bizos
 14 calls the apartheid regime, that even then only once do you
 15 recall a situation where a mortuary van was called before
 16 an operation was executed?
 17 BRIGADIER CALITZ: Nee, during die
 18 apartheid regime, daardie ses jaar wat mnr Bizos na verwys
 19 het, het ek gesê was ek 'n sersant adjudant offisier by die
 20 Spesiale Wageenheid. Ons was getaak om sekere sleutel
 21 punte op te pas, ons het glad nie met crowds enige iets
 22 gedeel nie, so ek was glad nie bewus daarvan in daardie tyd
 23 nie, nee, glad nie.
 24 MR MPOFU: Okay, so the previous incident
 25 where a mortuary van arrived before the operation was

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1 rolled out, happened in the new regime, correct?
 2 BRIGADIER CALITZ: Ek het wel getuig en
 3 ek het nou nie die jaartal voor my nie, ek het gepraat van
 4 daardie vyf, ses jaar toe ek in Pretoria was. Ek het wel
 5 getuig dat ons by 'n myn voorval waar ek en Luitenant-
 6 Kolonel Vermaak, dink ek het ek gesê, saamgewerk het, was
 7 daar wel, oor 'n dag of twee het dit gebeur dat daar
 8 persone gedood is die eerste dag en daar gesukkel is om
 9 genoegsame lykswaens te kry en daarom is die hospitale en
 10 die lykswaens op bystand geplaas vir die volgende dag, want
 11 dit het oorgeloopt deur die nag na die volgende dag toe, die
 12 myn onluste in Klerksdorp. Onder korreksie praat ek van,
 13 ek dink daar was ook so 18 plus mense oorlede op daardie
 14 stadium, as dit nie meer is nie.
 15 MR MPOFU: Brigadier, it would help you
 16 if you listen to the question. You've already testified
 17 about that incident, all I'm asking you is whether it
 18 happened before 1994 or after 1994?
 19 BRIGADIER CALITZ: Ja, ek kan nie vir u
 20 presies sê wanneer daardie myn insident plaasgevind het
 21 nie, dit was my getuienis.
 22 MR MPOFU: So you don't know whether it
 23 happened under the apartheid regime or after?
 24 BRIGADIER CALITZ: Ek dink kom ons
 25 aanvaar dit so, ek sal moet gaan naslaan en miskien die

<p style="text-align: right;">Page 19835</p> <p>1 rekords gaan trek en kyk daarna. 2 MR MPOFU: Did you work with Vermaak 3 before, both under the apartheid regime and after? 4 BRIGADIER CALITZ: Ek het in 1992 in 5 Potchefstroom, is ek soontoe verplaas na die Onluste 6 Eenheid toe waar ek begin het, so effektief van 1993 af het 7 ons operasioneel saamgewerk. Ek was ook peloton 8 bevelvoerder in Potchefstroom en Kolonel Vermaak was die 9 Eenheidsbevelvoerder op Klerksdorp en ons het saamgewerk 10 tot en met, ek dink 1999 waar ek dan weg verplaas is. 11 MR MPOFU: Okay, but in any event on your 12 part as the operational commander you did not see a need to 13 order mortuary vans because you did not anticipate any 14 deaths, correct, in this operation? I'm not talking about 15 the old one now, I'm talking about Marikana. 16 BRIGADIER CALITZ: Nee, ek het glad nie 17 daarvoor gepraat nie en ek het dit ook nie ge-order nie, 18 nee. 19 MR MPOFU: Now the question is, one of 20 the reasons you did not order it or you could not have 21 ordered the mortuary van was because you did not anticipate 22 any deaths, so the mortuary vans would be redundant? 23 BRIGADIER CALITZ: Laat ek sê korrek. 24 MR MPOFU: Yes. 25 CHAIRPERSON: It is more complicated than</p>	<p style="text-align: right;">Page 19837</p> <p>1 as wat ek gehad het op daardie stadium, u is reg, mnr die 2 Voorsitter. 3 MR MPOFU: And as the coordinator of 4 proceedings you would be expected to know if someone 5 ordered mortuary vans, if someone took such a drastic step 6 and to make it clear I'm not suggesting that you knew, 7 you've already answered that. I'm just saying under normal 8 circumstances if such a drastic decision was being taken 9 one would expect that the operational commander should be 10 informed, is that fair? 11 BRIGADIER CALITZ: Miskien voor die tyd, 12 as dit die oggend gedoen is kon dit dan die vergadering al 13 bespreek gewees het. Dit is korrek. 14 MR MPOFU: And have you taken any steps 15 to find out what, who ordered mortuary vans before the 16 operation commenced and why, sorry. 17 CHAIRPERSON: We've got the evidence, 18 names have been mentioned as to who ordered them. So he 19 doesn't have to find out – 20 MR MPOFU: Why. 21 CHAIRPERSON: The why is a different 22 matter. 23 MR MPOFU: Yes. 24 CHAIRPERSON: A further question of 25 course presumably as operational commander who should be</p>
<p style="text-align: right;">Page 19836</p> <p>1 that, according to your evidence you didn't know that you 2 were going to move over to a tactical option, phase 3, 3 until half past two in the afternoon. 4 [12:41] I take it there wasn't much risk of anyone being 5 hurt in phase 1 or phase 2. It does look though as if 6 somebody, whoever ordered those, tried to get, they didn't 7 get the, tried to get four mortuary vans, must have had 8 information to the effect that the tactical option was 9 going to be pursued, that there was going to be a move over 10 to phase 3 already at the time when the mortuary vans were 11 ordered or an attempt was made to order them. Because 12 clearly the person who ordered them foresaw the possibility 13 that someone might be killed, not necessarily even 14 strikers, it could be policemen who were killed or possibly 15 both, strikers and policemen but the point is the person 16 who ordered the mortuary vans, it was quite early in the 17 morning as far as I recall, had more, knew more about 18 where, about the tactical option and what's going to happen 19 later the day than you did. That must be so. 20 BRIGADIER CALITZ: Die persoon wat dit 21 gedoen het in hindsight weet ek daar's name genoem en nou 22 in hindsight weet ek daar's redes gegee daarvoor maar die 23 persoon sal, ek weet nie of hy kom getuig maar daar sal 24 redes gegee word hoekom hulle dan die voertuie op bystand 25 op geroep het. Maar seer sekerlik moet daar meer rede wees</p>	<p style="text-align: right;">Page 19838</p> <p>1 kept in, kept up with everything that's happening – 2 MR MPOFU: Yes. 3 CHAIRPERSON: I would imagine it would 4 have been appropriate to have told by the way you don't 5 have to worry about mortuary vans we've – 6 MR MPOFU: We've covered that. 7 CHAIRPERSON: It's unnecessary but any 8 way it's your cross-examination, I mustn't interject. 9 MR MPOFU: Thank you, Chairperson, no I 10 appreciate. The Chairperson is correct, Brigadier, you've 11 already answered the question as to the identity of the 12 people. But did you make any inquires as to why anyone 13 ordered mortuary vans? 14 BRIGADIER CALITZ: Nou in hindsight, het 15 ons gevra toe dit bekend geword aan my. Op daardie stadium 16 was dit glad nie bekend aan my laat dit op bystand geplaas 17 is nie. 18 MR MPOFU: Oh. Now I want to move into 19 something that's also in the, I'll start with some preface, 20 you'll accept that one of the key constitutional 21 imperatives for a police force or a police service, 22 whatever you call it, to operate in circumstances like this 23 is the issue of impartiality and not taking sides and on 24 the positive side I can tell you I was a beneficiary of an 25 impartial police service recently. So I think it's very</p>

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1 important. But you accept that if a police get into some
2 kind of dispute and take sides that on its own might have
3 disastrous consequences?
4 BRIGADIER CALITZ: Dit is korrek.
5 MR MPOFU: And therefore in a situation
6 such as this, or let me put it this way. You are aware or
7 you were aware that the underlining or the root conflict or
8 dispute in this matter was between the protestors and
9 Lonmin, correct?
10 BRIGADIER CALITZ: Dit is underlying, ja.
11 MR MPOFU: Yes.
12 BRIGADIER CALITZ: As ek dit so kan stel,
13 nie net Lonmin nie, maar ja.
14 MR MPOFU: No, I accept that, I mean
15 there was also talk of inter-union rivalry and so on.
16 BRIGADIER CALITZ: Dit is korrek.
17 MR MPOFU: Yes. Okay.
18 CHAIRPERSON: The strike action was
19 directed against Lonmin.
20 MR MPOFU: Ja.
21 CHAIRPERSON: Not against one or other
22 union.
23 MR MPOFU: Yes, yes he has conceded that,
24 thank you Chairperson and that's what is described
25 somewhere in exhibit L, I don't know where but as the root

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1 conflict but you and I agree on that. Now as far as that
2 root conflict is concerned and in relation to the topic I'm
3 dealing with which is impartiality, the absence of which
4 you and I have agreed can have disastrous consequences. It
5 would be important that neither of the two sides quote
6 unquote to that conflict perceives the police as having
7 taken sides, correct?
8 BRIGADIER CALITZ: Dit is korrek, as ek u
9 reg verstaan.
10 MR MPOFU: Ja. Now the next section of
11 my cross-examination will seek to demonstrate –
12 CHAIRPERSON: I want to ask the question
13 about that. That means in practical terms here that your
14 function I take it was not to break the strike, if the
15 strike continued peacefully the police would not have
16 considered it necessary to take any action, is that
17 correct?
18 BRIGADIER CALITZ: Mnr die Voorsitter,
19 nee dit byeenkoms of die gathering was nog steeds onwettig
20 gewees.
21 CHAIRPERSON: No, I'm saying if the
22 strike continued peacefully, I'm not talking about the
23 gathering, I'll talk about the gathering in a minute. But
24 if the strike continued peacefully the police wouldn't have
25 considered it necessary to take any action, is that right?

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1 BRIGADIER CALITZ: Korrek, mnr die
2 Voorsitter.
3 CHAIRPERSON: And I understand the
4 problems in relation to regulation of gatherings act and
5 notices and that kind of thing, but the main objection to
6 this particular gathering was there were people were armed?
7 BRIGADIER CALITZ: Dit is korrek.
8 CHAIRPERSON: You have a constitutional
9 right to gather, assemble but you don't have a
10 constitutional right to gather with arms.
11 BRIGADIER CALITZ: Dit is korrek, mnr die
12 Voorsitter.
13 CHAIRPERSON: So if the arms were no
14 longer a problem and the strikers said well okay we've
15 given you our arms, you've asked us for them and here they
16 are, but we want to carry on with our strike because we
17 still want R12 500 a month, the police would have folded
18 with their arms and taken no further action, at most just
19 stay there to make sure there weren't, there wasn't an
20 outbreak of further violence and that kind of thing. But
21 they wouldn't have done anything to stop the strike?
22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 nee in teendeel ons sou hulle gehelp het wat in menige
24 gevalle gebeur waar persone 'n strike dan gaan ons
25 information managers en ons assist hulle met die nodige

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1 section 4 vorms om die gatherings act dan, ons sal nie net
2 noodwendig teen hulle optree nie. Ons sal hulle gehelp het
3 om die byeenkoms wettig te maak en dan dit net gemonitor
4 het.
5 MR MPOFU: Ja, but this, that's a very
6 important issue. This issue of the carrying or not
7 carrying of arms was mightily irrelevant as in relation to
8 the, what you and I have said was the underlying conflict,
9 the labour conflict between Lonmin and the strikers,
10 correct? For example For example if I'm fighting with
11 somebody the police don't have to take sides against that
12 somebody simply because he also happens to be an illegal
13 immigrant. That's irrelevant to the conflict that you
14 would be mediating at that particular point, correct?
15 BRIGADIER CALITZ: Meneer, as ek u vraag
16 nou reg verstaan. Die onderhandelaars se mandaat was
17 duidelik wees. Ons kon nie onderhandel oor enige loon
18 geskille nie. Met ander woorde die 12 en 'n half duisend
19 rand teen Lonmin. Ons was merely daar om die boodskap oor
20 te dra. Maar wat die doel was is om vir die persone te sê
21 om hulle wapens neer te lê en laat ons kan voortgaan met 'n
22 peaceful gathering. Dit was die doel van die
23 onderhandeling. So ja ek stem saam met u die impartiality
24 waarna u verwys het maar die kruks van die saak is die
25 onderhandelinge het begin waar ons hulle ook meegedeel het

<p style="text-align: right;">Page 19843</p> <p>1 dit is onwettig en die wapens, as hulle die wapens neersit 2 kan ons dan verder gaan en ons weet later dat dis een van 3 die vereistes ook gewees van die myn, dat indien hulle, 4 hulle wapens neersit en terug keer dan sou hulle met hulle 5 onderhandel. 6 MR MPOFU: Yes. 7 CHAIRPERSON: Assuming they had said 8 we'll put our arms down but we're not going to return to 9 work, we're carrying on with our strike that would have 10 been, would that have been a matter for the police to have 11 been involved in? 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 dan is my antwoord dieselfde die vorige keer. As daar geen 14 wapens betrokke was nie, sou ons hulle gehelp het, hierdie 15 ding sou volgens die gatherings act op die regter manier 16 gedoen het, section 4 met, daar sal net conditions opgestel 17 word. Met ander woorde dat hulle op een plek gather, 18 gedra, marshals het en, en, en. So dit sou dieselfde 19 uitwerking gehad het op my vorige antwoord. 20 MR MPOFU: Ja but surely, Brigadier, the 21 issue is not so much the arms okay. The issue must be 22 police would have been there insofar as there was a threat 23 of violence or anything, if they said we will kill the 24 people with our bare hands, you wouldn't have packed your 25 Nyalas and left, correct?</p>	<p style="text-align: right;">Page 19845</p> <p>1 MR MPOFU: Yes, well my point is that in 2 the conflict which - as between Lonmin and the strikers the 3 police were under a constitutional imperative of 4 impartiality not to be seen to have taken sides, to be 5 favouring one of the sides, correct? 6 BRIGADIER CALITZ: Dit is korrek, en dit 7 is ook so oorgedra aan die, mnr Noki. 8 MR MPOFU: And if the police did take 9 sides that would almost surely have disastrous 10 consequences, correct? 11 BRIGADIER CALITZ: Ja, nee die polisie 12 kan nie kant kies nie. Ek stem saam met u. 13 MR MPOFU: Alright. Well I was about to 14 just to say that I'm now going to demonstrate, either now 15 or after lunch that the police failed dismally in that 16 regard and by taking side - 17 CHAIRPERSON: Forgive me, just give me 18 the early part of that question. 19 MR MPOFU: The question? 20 CHAIRPERSON: You said in that regard 21 the police failed dismally, I didn't catch the regard 22 because I was worrying about the time. But please repeat 23 that so that I can hear you. 24 MR MPOFU: Okay, Chairperson. 25 CHAIRPERSON: I see we've got ample time</p>
<p style="text-align: right;">Page 19844</p> <p>1 BRIGADIER CALITZ: Ek dink die polisie se 2 teenwoordigheid juis daar was oor dat daar 'n aantal 3 persone gedood is en oor die geweld wat in die gebied 4 aangegaan het en dit is hoekom die polisie ingeroep was en 5 vandaar af besluit om met die strikers dan te kommunikeer 6 is die beste moontlike manier om te begin met 7 onderhandeling. So die geweld aspek is wat die polisie 8 genoodsaak het om soontoe te gaan. Want ons hoof doel is 9 lewe en eiendom te beskerm, maak nie saak aan watter kant 10 nie. 11 CHAIRPERSON: It does look as if the 12 deaths to which you refer which had occurred earlier might 13 well have taken place in a background of attempts to 14 enforce an unprotected strike by violence and intimidation 15 leading in certain circumstances to death. That does seem 16 from the evidence we've had to have been the case. So the 17 weapons weren't entirely irrelevant to the strike. But in 18 the sense that they may well have been used to enforce an 19 unprotected strike illegally so by violence and 20 intimidation. But the main point was you weren't concerned 21 to stop the strike as such, you were concerned to stop the 22 violence, intimidation and illegal gatherings with 23 dangerous weapons, is that correct? 24 BRIGADIER CALITZ: Dit is heeltemal 25 korrek, mnr die Voorsitter.</p>	<p style="text-align: right;">Page 19846</p> <p>1 on the screen which misled me. We are going to by ETV time 2 which I think is five minutes earlier. 3 MR MPOFU: Yes. 4 CHAIRPERSON: But, so that's why, I was 5 listening, so please repeat the early part of the question. 6 MR MPOFU: Yes, unfortunately Chairperson 7 it was just one of the parameter setting issues. I was 8 simply saying - 9 CHAIRPERSON: It's important to know the 10 parameters we're busy with. 11 MR MPOFU: Yes, I was saying that now 12 that we've agreed, the Brigadier and I that the lack of 13 impartiality in this context would lead to disastrous 14 consequences and a breach of the constitutional imperative 15 for impartiality. I was now going to proceed to show him 16 why the, why SAPS failed the test of impartiality dismally. 17 Understand, you don't - 18 BRIGADIER CALITZ: Nee ek - 19 MR MPOFU: If you say yes, it doesn't 20 mean you agree with me. Just that you understand. 21 BRIGADIER CALITZ: Dis hoekom ek 22 versigtig is. Ek wou gevra het is dit 'n vraag of nie. 23 MR MPOFU: Ja. Okay. 24 CHAIRPERSON: I'm waiting for the 25 demonstration.</p>

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1 MR MPOFU: Yes.

2 CHAIRPERSON: As to why it is contended

3 that the police failed the test dismally and yes, you say

4 yes I'm waiting for that.

5 BRIGADIER CALITZ: Op rekord, ja, dis

6 daarvoor ek wag, mnr die Voorsitter.

7 CHAIRPERSON: How long is it going to

8 take you to get the demonstration, Mr Mpofo?

9 MR MPOFU: A little bit long but I don't

10 mind giving it the first jab, Chairperson.

11 CHAIRPERSON: Alright, let's start with

12 the first building block in this building that you're going

13 to erect.

14 MR MPOFU: Yes. Thank you. Now let's

15 start on the 13th. Would you agree that that operation was

16 instigated and I'm using that word advisedly, by

17 information given to you by Lonmin?

18 MR SEMENYA SC: What does that mean?

19 MR MPOFU: I think the witness knows

20 this, Mr Semenya doesn't know.

21 MR SEMENYA SC: No, I have to follow the

22 answer.

23 MR MPOFU: Which words don't you

24 understand, instigated, it means assisting in –

25 CHAIRPERSON: Commotion initiated.

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1 General Mpebe went with the POP members that he took with

2 him to the railway line on the basis of information that he

3 had been given, that he had received from Lonmin and

4 through the close circuit TV cameras which Lonmin had which

5 they showed to the police as to what was happening. That's

6 correct isn't it?

7 MR MPOFU: That's exactly that I was

8 asking.

9 CHAIRPERSON: Is that not, you've got

10 that building brick in place. Can we have lunch?

11 MR MPOFU: Well if the nodding can just

12 be confirmed by, ja.

13 BRIGADIER CALITZ: The nodding doesn't

14 mean a ja. You say the information that has been supplied

15 to by Lonmin, that refer to the CCTV cameras that were in

16 the JOC that were observed, that will be my testimony.

17 That those were observed on the CCTV cameras and it was

18 brought to the attention and from there the tasking –

19 MR MPOFU: Can you just –

20 CHAIRPERSON: Brought to the police

21 attention by whom? By Lonmin I take it?

22 BRIGADIER CALITZ: Ek dink hulle -

23 CHAIRPERSON: - looks what's happening on

24 our CCTV cameras, somebody must have said.

25 BRIGADIER CALITZ: Ja, we all returned

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1 back, ek dink dis net na die vergadering gewees met die

2 Lonmin management, mnr die Voorsitter, ek dink ons het

3 ingestap, my getuienis was onder korreksie as ek my

4 getuienis, ek dink my getuienis was dat ons het ingestap en

5 mnr Sinclair, ek weet ook meneer, wie is sy, Botes en daar

6 was nog 'n persoon Hein of Horn, daar was persone gewees

7 wat saam met hom daar was. Maar ek dink dit is ultimately

8 mnr Sinclair wat vir ons verduidelik waar die plekke is en

9 dit is hoekom ons besluit het, u weet die geskiedenis is

10 reeds bespreek.

11 MR MPOFU: No, sorry just one question.

12 You're quite right your evidence was that it was Mr

13 Sinclair but I'm not talking about Mr Sinclair assisting

14 you later which he did. I'm talking about the first person

15 who sparked, who pointed the whole thing out to you, it was

16 Mr Sinclair or another Lonmin official, correct?

17 BRIGADIER CALITZ: Dit sal een van die

18 persone wees wat die monitor, die CCTV gemonitor het. Dit

19 is korrek.

20 MR MPOFU: Thank you. Thanks,

21 Chairperson.

22 CHAIRPERSON: We'll take the tea

23 adjournment at this stage, I mean the lunch adjournment at

24 this stage and we will try very hard to recommence at

25 quarter to 2.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [13:57] CHAIRPERSON: The Commission resumes.

3 Brigadier, you're still under oath.

4 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

5 die Voorsitter.

6 CHAIRPERSON: Mr Mpofo.

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

8 Thank you very much, Chairperson. Brigadier, I was saying

9 really that when there's a conflict situation, obviously

10 the police have to communicate with both sides, but in so

11 doing, would you agree with me it would be important for

12 them to keep an open mind, as it were, and not allow

13 themselves to be influenced by the one side or the other to

14 that conflict, which can be done, correct?

15 BRIGADIER CALITZ: Ja, ek het gesê die

16 polisie moet onpartydig wees, korrek.

17 MR MPOFU: Yes, and if the one side or

18 the other says something about the other side, you must

19 take it with a pinch of salt because they might have other

20 motives to do with their own conflict and trying to

21 influence the police one way or the other. That would be

22 expected, correct?

23 BRIGADIER CALITZ: As dit wel voorkom en

24 dan behoort die polisie seker dit in ag te neem met hulle

25 besluite, ja.

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1 MR MPOFU: Ja.

2 BRIGADIER CALITZ: As dit tot hulle – as
3 dit bekend word, stel dit so.

4 MR MPOFU: Ja, and it's something to be
5 expected. I mean you know, if it's a domestic fight you're
6 going to, if you only talk to the husband he's going to
7 blame the wife, and you speak to the wife, she's going to
8 blame the husband. That goes without saying, but the
9 police must be careful in interacting with both, correct?

10 BRIGADIER CALITZ: Yes, but if the case
11 is registered by the wife then the husband will be arrested
12 on that case. So we won't ask him his view; he will be
13 arrested on that probability. So dis –

14 MR MPOFU: Even if whatever she's saying
15 is clearly improbable?

16 BRIGADIER CALITZ: Dit is die –

17 MR MPOFU: Well, I hope that is not our
18 police force –

19 BRIGADIER CALITZ: That is not for the
20 police to decide improbable – as daar 'n saakdossier is dan
21 sal dit –

22 MR MPOFU: You “sommer” arrest them, ja,
23 okay.

24 BRIGADIER CALITZ: Nee, dis nie wat ek
25 gesê het nie. Dit sal verder ondersoek word na die

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1 arrestasie.

2 Nee, dis nie wat ek gesê het nie. Dit sal verder
3 ondersoek word na die arrestasie.

4 MR MPOFU: Okay. I hope people who hold
5 that view in our police force are in the minority. But we
6 agree that there is this need to detach yourself, correct?

7 BRIGADIER CALITZ: Dit is korrek, mnr die
8 Voorsitter.

9 MR MPOFU: Okay, now let's come back to
10 this situation. In line with that duty it was incumbent
11 upon you as the police not to swallow everything that
12 Lonmin says to you line, hook, and sinker. Or is it line,
13 hooker and Sinclair? Correct?

14 BRIGADIER CALITZ: Ek sal “refrain” om
15 daardie een te antwoord in daardie geval, maar ek verstaan
16 wat u –

17 CHAIRPERSON: A very wise and appropriate
18 response.

19 BRIGADIER CALITZ: Dankie, mnr die
20 Voorsitter.

21 MR MPOFU: You accept? You know what I
22 mean?

23 BRIGADIER CALITZ: For the record, die
24 polisie sal reageer op die inligting tot hulle beskikking.

25 MR MPOFU: Ja.

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1 MR CHASKALSON SC: Chairperson, sorry to
2 interrupt. We've just been told that the projector has
3 broken down. If we're going to need to project images of
4 exhibits or videos, we'll need an adjournment to attend to
5 it. Should we wait until the point, the moment arises?

6 CHAIRPERSON: Mr Mpofo, you heard the
7 problem.

8 MR MPOFU: Yes, Chairperson.

9 CHAIRPERSON: If you can proceed for the
10 moment simply by referring to documents which are in your
11 bundle –

12 MR MPOFU: Yes.

13 CHAIRPERSON: - then we'll do that, and
14 possibly during the tea adjournment or something we can
15 have the projector attended to.

16 MR MPOFU: Yes.

17 CHAIRPERSON: But if we reach the stage
18 before the tea adjournment where you need to show
19 something, we'll have to take the tea adjournment early.

20 MR MPOFU: Thank you, Chairperson. No, I
21 have sufficient material to avoid any videos until it's
22 sorted out. Thank you, Chairperson. Anyway, before lunch
23 we were at the stage where the very operation, the very
24 genesis of the operation on the 13th was as a result of Mr
25 Sinclair pointing out to the police, using the Lonmin CCTV,

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1 a group of strikers, correct?

2 BRIGADIER CALITZ: Hulle het vir ons 'n
3 groep uitgewys wat gewapen was en wat op 'n sekere plek
4 vergader het, ja.

5 MR MPOFU: Yes, they didn't stop, the
6 Lonmin management didn't stop there, but they assisted you
7 in locating that group, correct?

8 BRIGADIER CALITZ: As u verwys na die
9 helikopter, is dit waarna u verwys? Ek wil net die – of
10 herhaal miskien die vraag dan kan ek –

11 CHAIRPERSON: Strictly speaking,
12 Brigadier, you can't ask questions, but I think the
13 evidence was that General Mpembe was guided to the place
14 where the people were by you and somebody else in a
15 helicopter which was provided by Lonmin, I think. Am I
16 correct?

17 BRIGADIER CALITZ: Daar was twee gevalle,
18 mnr die Voorsitter, dis hoekom ek miskien net die vraag wil
19 reg hê, maar ek wil nou nie dit stel en dan was dit nie die
20 vraag nie.

21 CHAIRPERSON: Well, answer my question.
22 How did General Mpembe find his way to the place where
23 these people were? They were coming back from Karee,
24 weren't they?

25 BRIGADIER CALITZ: Yes.

<p style="text-align: right;">Page 19855</p> <p>1 CHAIRPERSON: About 200-odd, carrying 2 dangerous weapons. 3 BRIGADIER CALITZ: Ja, eerstens – 4 CHAIRPERSON: How did General Mpembe find 5 his way there with his – I think he had about 70 POP people 6 with him, didn't he? 7 BRIGADIER CALITZ: Die twee gevalle 8 waarna ek verwys, mnr die Voorsitter, wat ek nou wou seker 9 gemaak het, dis op die CCTV kameras was daar twee duidelik 10 uiteen groepe gewees; die een op die groter koppie wat ons 11 nou van bewus is, en dan was daar ook wat ek verwys het 12 agter 'n pyplyn, ek dink dit was Karee nommer 4, ek praat 13 onder korreksie, en dit is waar dit vir ons uitgewys is. 14 So dit is my vraag aan u – 15 MR MPOFU: Ja. 16 BRIGADIER CALITZ: - op watter stadium, 17 en daarna is dit myself gewees wat saam met mnr Sinclair in 18 die helikopter was om Generaal Mpembe in te beduie omdat 19 ons nie bewus was, of die gebied so goed geken het nie. 20 MR MPOFU: Ja. Okay, okay, Brigadier. 21 Okay, when I talk about the 13th, the group I'm talking 22 about is the smaller group that was next to the pipeline. 23 So just so that we don't have to go through it again, for 24 me to explain which group I'm talking about. That group 25 was identified and located for you – and when I say you, I</p>	<p style="text-align: right;">Page 19857</p> <p>1 Okay, and in that helicopter – 2 BRIGADIER CALITZ: Sorry for laughing. 3 MR MPOFU: Okay, sorry. I'm just trying 4 to limit you here, but sorry, Brigadier. In that 5 helicopter you and Mr Sinclair, Mr Sinclair didn't just 6 provide you with the – or Lonmin didn't just provide you 7 with the helicopter but Mr Sinclair actually came with you 8 into that helicopter to go and locate the people, correct? 9 BRIGADIER CALITZ: Mnr Sinclair was die 10 persoon wat geweet het op die CCTV waar die persone was. 11 Ek weet nie of die helikopter vlieënier bewus was, of hy 12 was nie saam met ons nie, so ek – ja, mnr Sinclair was saam 13 met my. 14 MR MPOFU: Ja, and one of the reasons 15 that were offered for you – in the broad sense – or for 16 SAPS to have to intervene was that these people might pose 17 a danger to the Karee Hospital. That was mentioned, 18 correct? 19 CHAIRPERSON: Is it Karee Hospital or 20 Hostel? 21 MR MPOFU: Hostel, I'm sorry, yes. 22 Correct? 23 BRIGADIER CALITZ: Ek dink op daardie 24 stadium toe die voorligting gegee was, was dit die 25 Provinsiale Kommissaris, as ek kan reg onthou, wat gesê het</p>
<p style="text-align: right;">Page 19856</p> <p>1 mean for SAPS – by Lonmin management, correct? 2 BRIGADIER CALITZ: Ek het voorheen getuig 3 die sekuriteitspersoneel van Lonmin. 4 MR MPOFU: Ja. 5 BRIGADIER CALITZ: Ek weet nie of hulle 6 kan geklassifiseer word onder "management" nie. Ek dra nie 7 kennis of hulle deel is van die bestuur nie. 8 MR MPOFU: Okay, Lonmin personnel. 9 BRIGADIER CALITZ: Dit is korrek. 10 MR MPOFU: Ja, okay. And not only did 11 they locate the group, but Mr Sinclair – or firstly, they 12 issued you with a Coin or whatever helicopter. 13 CHAIRPERSON: That's completely the wrong 14 word. Made available – 15 MR MPOFU: Ja. 16 CHAIRPERSON: - or provided the services 17 of the Coin – 18 MR MPOFU: That's a better – 19 CHAIRPERSON: - helicopter, which is I 20 think under contract to Lonmin. 21 MR MPOFU: Ja, they provided you with the 22 helicopter, correct? 23 BRIGADIER CALITZ: Dit is as gevolg van 24 die redes wat ons reeds verduidelik het, ja. 25 MR MPOFU: Ja, whatever the "redes" were.</p>	<p style="text-align: right;">Page 19858</p> <p>1 die persone moet dan "ge-intercept" en ontwapen word. Wat 2 die spesifieke strekking van die woorde was hoekom hulle 3 daar "assemble," ek dink dit kon te doen gehad het met die 4 intimidasie of iets, maar nie 'n aanval op 'n – ek is nie 5 seker. Ek gaan nie, ek kan nie met sekerheid vir u sê wat 6 daar gesê is nie. 7 MR MPOFU: Well, I thought your evidence 8 – and unfortunately I don't have the reference, I'll find 9 it for you later, but my recollection is that your evidence 10 was that one, at least one of the reasons that was offered 11 was that they might pose some danger to the Karee Hostel. 12 Am I correct – 13 BRIGADIER CALITZ: Ja, ek – 14 MR MPOFU: Or rather, am I incorrect in 15 my – 16 BRIGADIER CALITZ: Ek sou sê 'n 17 dreigement, ja. Ek wou net die woord "aanval," ek was nie 18 seker of ek dit wel gebruik het nie – 19 MR MPOFU: A threat. 20 BRIGADIER CALITZ: En dit is net daardie 21 deeltjie, maar ja, 'n dreigement. 22 MR MPOFU: Thanks. And as I say, you 23 never – you as the operational commander, or no-one else 24 questioned Lonmin's motives as to why they wanted you to 25 intercept these people, apart from the stated reason of for</p>

<p style="text-align: right;">Page 19859</p> <p>1 example a threat to Karee Hostel?</p> <p>2 BRIGADIER CALITZ: Ja, ek dink nie dit</p> <p>3 was Lonmin wat wou gehad het ons moes dit "intercept" nie.</p> <p>4 Hulle het vir ons net die verskeie groepe uitgewys. Soos</p> <p>5 ek vir u gesê het, daardie opdrag is deur die Provinsiale</p> <p>6 Kommissaris gegee.</p> <p>7 MR MPOFU: Right. Did the Lonmin people</p> <p>8 tell you that actually the Lonmin Security had the</p> <p>9 situation under control?</p> <p>10 BRIGADIER CALITZ: Nee, ek dink op</p> <p>11 daardie stadium is gesê dat hulle het persone in die</p> <p>12 omgewing wat die groep monitor. Ek praat weereens onder</p> <p>13 korreksie, maar ek dink dit is wat gesê is.</p> <p>14 MR MPOFU: Yes. Well, if necessary I can</p> <p>15 tell you the evidence will be that the Lonmin Security had</p> <p>16 actually intercepted the group next to the pipeline that</p> <p>17 you were referring to. You can't dispute that.</p> <p>18 BRIGADIER CALITZ: Ja-nee, ek was nie</p> <p>19 bewus dan daarvan nie, nee.</p> <p>20 MR MPOFU: The evidence will also be that</p> <p>21 after a stalemate, which was the stage at which you were</p> <p>22 shown the people next to the pipeline and the Lonmin</p> <p>23 Security effectively blocking them from proceeding, the</p> <p>24 group turned back, or the Lonmin Security asked them to go</p> <p>25 back to the koppie and they obliged. You can't dispute</p>	<p style="text-align: right;">Page 19861</p> <p>1 will be that the Lonmin Security for a number of minutes,</p> <p>2 having intercepted the group, were monitoring them, as you</p> <p>3 put it, and they were radioing reports which are audible on</p> <p>4 that footage, and ultimately the group agreed to turn back</p> <p>5 to Wonderkop and abandon their mission. That's the – and</p> <p>6 you said you can't dispute it because you don't know. I'm</p> <p>7 just telling you that that's the objective evidence.</p> <p>8 BRIGADIER CALITZ: Nee, mnr die</p> <p>9 Voorsitter, ek het nie gesê "I can't dispute," want ek weet</p> <p>10 nie. Ek het gesê ek stem nie saam met u nie omdat ek dit</p> <p>11 nie gesien het nie. So dis nie dat ek dit nie "dispute"</p> <p>12 nie. Dit is net dat –</p> <p>13 MR MPOFU: Okay.</p> <p>14 BRIGADIER CALITZ: - dit wat vir my gewys</p> <p>15 is – as ek sê "my," die polisie – die CCTV "footage," was</p> <p>16 daar geen sekuriteit naby nie. Ons het gesê wel dat hulle</p> <p>17 gesê het hulle monitor dit. Toe ek met die helikopter</p> <p>18 gevlieg het kon u sien dat daar waar die pyplyn is naby die</p> <p>19 K, kom ons noem dit maar K4 – ek praat onder korreksie; ek</p> <p>20 weet nie hoe verwys die myn daarna nie – is daar 'n –</p> <p>21 CHAIRPERSON: [Microphone off, inaudible]</p> <p>22 4-skag.</p> <p>23 BRIGADIER CALITZ: Skag 4, as ek reg is.</p> <p>24 Ek sien –</p> <p>25 VOORSITTER: Ek dink daar is twee Karee</p>
<p style="text-align: right;">Page 19860</p> <p>1 that.</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>3 nee, ek stem nie saam met u nie. Soos ek vir u gesê het,</p> <p>4 dit was ons op die CCTV kameras gesien het was daar geen</p> <p>5 sekuriteit wat naby hulle was, of soos u sê, "can't</p> <p>6 dispute" dat hulle geblok is. As u getuienis tot daardie</p> <p>7 effek het, dit mag so wees. Ek sal nie dit betwis nie,</p> <p>8 maar dit is glad nie wat aan my bekend was -</p> <p>9 MR MPOFU: Yes.</p> <p>10 BRIGADIER CALITZ: - as ek sê "my" bedoel</p> <p>11 ek die polisie – bekend was op daardie stadium. Die CCTV</p> <p>12 het nie so gewys nie en seer sekerlik ook nie die inligting</p> <p>13 wat vir ons gegee is dat hulle, hulle probeer blok het nie.</p> <p>14 MR MPOFU: Ja.</p> <p>15 BRIGADIER CALITZ: Ek was nie –</p> <p>16 MR SEMENYA SC: We'll make the</p> <p>17 observation, Chair, that we haven't come across a statement</p> <p>18 bearing that evidence.</p> <p>19 MR MPOFU: Well, that means Mr Semenya</p> <p>20 has not read the statements of Mr Booi and Mr Nzuzza, but</p> <p>21 that's not my problem. The evidence, and I don't think</p> <p>22 there will be a dispute on this, to be honest. Even on the</p> <p>23 Lonmin side, if there was no statement to that effect, it's</p> <p>24 a gap that we can close, but I can assure you that the</p> <p>25 evidence will be that, the objective evidence on the video</p>	<p style="text-align: right;">Page 19862</p> <p>1 skagte in daardie omgewing, K3, Karee 3, en K4. Dis een</p> <p>2 van die twee.</p> <p>3 BRIGADIER CALITZ: Kom ons praat van 4,</p> <p>4 onder korreksie, maar die een waar die pyplyn is, daar naby</p> <p>5 is 'n voertuig brug oorgang, so met ons helikopter vlug het</p> <p>6 ek bo-op die brug sekuriteits voertuie waargeneem. Mnr</p> <p>7 Sinclair het dan met hulle in kontak gewees.</p> <p>8 MR MPOFU: Ja, okay, Brigadier, you'll</p> <p>9 forgive me - maybe it's my Afrikaans – when you said "Ek</p> <p>10 kan nie dit betwis nie," I thought you meant you can't</p> <p>11 dispute it. But be that as it may, the objective evidence</p> <p>12 that I'm talking about agrees with part of what you are</p> <p>13 saying. This standoff, if you like, between Lonmin</p> <p>14 Security and those 100 or so marchers happened next to</p> <p>15 those pipelines and there was a bridge. Actually my</p> <p>16 instructions are that the Lonmin Security were on top of</p> <p>17 the bridge. So it might well be that you couldn't see them</p> <p>18 on the CCTV. That I won't dispute with you.</p> <p>19 CHAIRPERSON: I understood the witness to</p> <p>20 say he did see them on the bridge.</p> <p>21 MR MPOFU: I thought he said he –</p> <p>22 CHAIRPERSON: Did I hear you correctly?</p> <p>23 You saw the –</p> <p>24 MR MPOFU: He said he "verskil" with me.</p> <p>25 CHAIRPERSON: You saw Lonmin Security,</p>

<p style="text-align: right;">Page 19863</p> <p>1 unless I misheard, on the bridge.</p> <p>2 BRIGADIER CALITZ: Heel bo –</p> <p>3 CHAIRPERSON: On the footbridge of the</p> <p>4 pipeline.</p> <p>5 BRIGADIER CALITZ: Dit is 'n voertuig,</p> <p>6 dit is 'n pad, mnr die Voorsitter, wat voertuie gebruik om</p> <p>7 te ry.</p> <p>8 CHAIRPERSON: It's a bridge with a road</p> <p>9 over it?</p> <p>10 BRIGADIER CALITZ: Dit is 'n pad. Dit is</p> <p>11 'n pad, 'n teerpad wat daar loop.</p> <p>12 CHAIRPERSON: And there were Lonmin</p> <p>13 Security people on the bridge?</p> <p>14 BRIGADIER CALITZ: Daar was, toe ons met</p> <p>15 die helikopter daar gekom het, was daar 'n voertuig, ek</p> <p>16 dink een of twee wat bo-op die brug, wat mee gekommunikeer</p> <p>17 is. Maar ek het geen "standoff" tussen sekuriteit en</p> <p>18 Lonmin – daarvan weet ek nie. Soos u sê –</p> <p>19 MR MPOFU: Ja, fair enough. The simple</p> <p>20 point really is that the journey – or the only point</p> <p>21 really, Brigadier, I'm not suggesting that you are aware of</p> <p>22 all the finer details; I'm saying to you that the journey,</p> <p>23 or the intended journey of this group towards Karee was</p> <p>24 blocked, successfully blocked by Lonmin Security to such an</p> <p>25 extent that by the time General Mpembe came to them they</p>	<p style="text-align: right;">Page 19865</p> <p>1 we have to get entangled in detail here. What obviously</p> <p>2 happened was they were advancing - or proceeding –</p> <p>3 proceeding towards one of the two Karee shafts. In the</p> <p>4 vicinity of the bridge for some reason or other they turn</p> <p>5 around and started walking back. What the reason was isn't</p> <p>6 relevant for the present purposes, I wouldn't have</p> <p>7 thought -</p> <p>8 MR MPOFU: Well, it's very relevant.</p> <p>9 That's what this questioning is all about. It is that we –</p> <p>10 CHAIRPERSON: The witness doesn't know,</p> <p>11 if the witness can't tell you why they turn around, then</p> <p>12 it's pointless asking him. You may have to get the</p> <p>13 information from other witnesses.</p> <p>14 MR MPOFU: No, Chairperson, I've accepted</p> <p>15 that he doesn't know. That's why I said he must for now</p> <p>16 accept that they were intercepted by Lonmin Security. All</p> <p>17 I'm canvassing with him now is simply that by the time</p> <p>18 General Mpembe intercepted them they were on their way back</p> <p>19 to Wonderkop, for whatever reason. Whether they were</p> <p>20 stopped by Lonmin Security or the SPCA –</p> <p>21 CHAIRPERSON: That's what I'm putting to</p> <p>22 you. The detail, that detail as to why they turned around,</p> <p>23 whether they turn around because of some communication with</p> <p>24 Lonmin isn't, I take it isn't directly relevant at the</p> <p>25 moment. What is relevant is they turned around and they</p>
<p style="text-align: right;">Page 19864</p> <p>1 had already travelled some distance on their way back to</p> <p>2 Wonderkop. You can't dispute that?</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>4 nee, dit is beslis nie so nie. Ek was ten tye van daardie</p> <p>5 voorval in die lug en my getuienis is duidelik uit die</p> <p>6 helikopter uit, die persone was gehurkend gewees agter</p> <p>7 daardie pyplyn en toe ek bo hulle gesirkel het – nie ek</p> <p>8 nie, die helikopter – toe het hulle oor die treinspoor</p> <p>9 beweeg na die grondpad toe, en toe het hulle terug begin</p> <p>10 beweeg. Ten tye van die voorval wat ek by hulle was, was</p> <p>11 hulle nog staties, gehurkend agter die pyplyn. Dit was my</p> <p>12 getuienis gewees. So as u sê hulle was reeds op pad terug</p> <p>13 toe ek – ek stem nie daarmee saam nie.</p> <p>14 MR MPOFU: Okay, you accept that General</p> <p>15 Mpembe did not find them near the pipeline where you had</p> <p>16 initially seen them, correct?</p> <p>17 BRIGADIER CALITZ: Ja, dit is 'n ander</p> <p>18 stelling.</p> <p>19 MR MPOFU: Good.</p> <p>20 BRIGADIER CALITZ: Ja.</p> <p>21 MR MPOFU: So they must have moved</p> <p>22 somehow, whether on foot or by aeroplane, from the place</p> <p>23 with the pipelines to where General Mpembe met with them.</p> <p>24 That follows, correct?</p> <p>25 CHAIRPERSON: Mr Mpofo, I don't know if</p>	<p style="text-align: right;">Page 19866</p> <p>1 started walking back more or less in line with the railway</p> <p>2 line, and that's the point at which General Mpembe –</p> <p>3 MR MPOFU: Correct.</p> <p>4 CHAIRPERSON: That seems to be common</p> <p>5 cause, isn't it?</p> <p>6 [14:16] MR MPOFU: Ja, anyway the point I am</p> <p>7 driving at, is that by the time, whether you know it or</p> <p>8 not, by the time General Mpembe intercepted them they were</p> <p>9 on their way back to Wonderkop without having reached their</p> <p>10 destination because of the interception by the Lonmin</p> <p>11 Security and I am not suggesting that you know that, I am</p> <p>12 telling you that's what the evidence will be. It will be</p> <p>13 because they were turned back by the Lonmin Security and</p> <p>14 they were on their way back to Wonderkop and the police</p> <p>15 intercepted them. So all you have to know is that they</p> <p>16 were on their way back to Wonderkop and no longer on their</p> <p>17 way to Karee.</p> <p>18 BRIGADIER CALITZ: U het nou 'n lank</p> <p>19 stelling gemaak met 'n paar feite, watse vraag wil u hê</p> <p>20 moet ek antwoord?</p> <p>21 MR MPOFU: When I say all that, you must</p> <p>22 know that's what I want you to answer. All that I want you</p> <p>23 to accept is that they were on their way back to Wonderkop.</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>25 nee, ek kan nie dit sê nie, op daardie stadium, Wonderkop</p>

<p style="text-align: right;">Page 19867</p> <p>1 was, al sou die lyn reguit trek op 'n ander rigting, hulle 2 was in die grondpad wel op pad, toe ek bo hulle sirkel en 3 ek het General Mpembe ingeppraat van, ek kan nie, sê nou 4 maar 'n suidelike, westelike rigting af, van vooraf sodat 5 General Mpembe-hulle oor die treinspoor gery het en ek het 6 vir hom dadelik gesê draai links en hy het die groep van 7 voor af bereik waar hulle besig was op die grondpad terug 8 te beweeg, dit is korrek.</p> <p>9 MR MPOFU: Okay, and if I'm correct that, 10 or if they are correct when they come here, that they were 11 on their way to Wonderkop already, having turned back, 12 nobody from Lonmin informed you that they have now turned 13 to Wonderkop and there is no longer any threat to Karee 14 Hostel because they've turned their backs towards it?</p> <p>15 BRIGADIER CALITZ: Niemand van Lonmin of 16 laat ek so sê, mnr Sinclair het geen so 'n boodskap aan my 17 oorgedra nie, so as daar so iets was, was dit nie bekend 18 gemaak aan ons, as ek sê ons, die polisie nie, nee.</p> <p>19 MR MPOFU: And if the reason for your 20 intervention or one of the reasons of concern was that they 21 might pose a threat to Karee Mine, that threat was no 22 longer there because they were now walking away from that 23 spot, correct, but the point of my question is that nobody 24 informed you of this major elimination of that threat.</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>	<p style="text-align: right;">Page 19869</p> <p>1 and reaching some kind of agreement, correct?</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter, 3 die video, een van die 80 wat u my gegee het om deur te 4 kyk, ek dink ek het gisteraand, ek dink die video is so 28 5 minute lank, as ek onder korreksie kan praat, waar General 6 Mpembe met hulle onderhandel het, so min of meer die tyd 7 onder korreksie. So dit is presies wat u nou sê wat wel 8 gebeur het, ek weet daar was 'n lang onderhandeling tussen 9 die general en die leier van hierdie groep.</p> <p>10 MR MPOFU: Okay, I'll take that as a yes.</p> <p>11 BRIGADIER CALITZ: Dit is nie wat ek gesê 12 het nie, mnr die Voorsitter.</p> <p>13 MR MPOFU: Now, and yet according to 14 General Mpembe and I don't know if you are aware of this, 15 if you are not you are not, when he wanted to embark on 16 those negotiations to resolve the impasse, Lonmin refused 17 to give an interpreter for that purpose. Were you aware of 18 that?</p> <p>19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, -</p> <p>21 MR VAN AS: Sorry, we've traversed this 22 ground, Mr Chairman, in detail.</p> <p>23 CHAIRPERSON: Asking why this point was 24 being pursued but I think Mr Mpofu just wanted to get it on 25 record as part of the picture he is building up, that</p>
<p style="text-align: right;">Page 19868</p> <p>1 het reeds vir u gesê niemand het vir ons daardie deel gegee 2 nie en ons het gereageer op 'n opdrag wat gesê het die 3 persone moet, as ek die woorde kan in Engels gebruik, to be 4 intercepted and disarmed, want dit is 'n groep gewapende 5 mense wat met 'n onwettige optog, as ek dit so kan noem, 6 besig was. So die polisie sou hulle in elk geval, in 7 daardie geval hanteer het.</p> <p>8 MR MPOFU: And would it be fair to say 9 that had somebody pointed out that threat to Karee Hostel 10 was now eliminated due to the direction of the movement of 11 the people, and that the police might have acted 12 differently?</p> <p>13 BRIGADIER CALITZ: Mnr die Voorsitter, 14 nee, ek kan nie vir u sê dit sou gebeur het nie, ek weet 15 General Mpembe het dadelik in onderhandelinge ingegaan met 16 die leier wat daar teenwoordig was en ek glo as enige sulke 17 feite op die tafel was sou hulle vir hulle gesê het dit is 18 wat gebeur het en dan dieselfde. Hulle kan nie voortgaan 19 om in 'n gewapende groep te beweeg nie, dit kan nie 20 toegelaat word nie en dat hulle hulle wapens sou neerlê. 21 So indien hulle dit sou wel doen was hulle vrylik, kon 22 hulle enige plek heen beweeg.</p> <p>23 MR MPOFU: And, ja, whatever the 24 differences that might have been between the strikers and 25 the police, would have been best resolved by negotiation</p>	<p style="text-align: right;">Page 19870</p> <p>1 Lonmin declined to provide an interpreter, a Fanagalo 2 interpreter, so I think the request was directed to Mr 3 Blaauw and Blaauw declined it. It was gone into fully, 4 I'll be surprised if Mr Mpofu wants to re-plough that 5 ground.</p> <p>6 MR MPOFU: No.</p> <p>7 CHAIRPERSON: If he tries I'll stop him, 8 but he has got the facts on record, I think he wanted, so I 9 don't know how much of that was recorded but -</p> <p>10 MR VAN AS: Thank you, Mr Chairman.</p> <p>11 MR MPOFU: Were you aware of that, 12 Brigadier?</p> <p>13 BRIGADIER CALITZ: Nee, mnr die 14 Voorsitter, ek was nie bewus van dit nie.</p> <p>15 MR MPOFU: Apart from their possession of 16 dangerous weapons the strikers having turned back and no 17 longer being a threat to Karee, were posing no danger to 18 anyone, would you agree with that?</p> <p>19 BRIGADIER CALITZ: Nee, ek sal nie 20 daarmee saamstem nie.</p> <p>21 MR MPOFU: To whom where they posing 22 danger?</p> <p>23 BRIGADIER CALITZ: Enige groep wat 24 gewapen loop, pose, soos u sê 'n threat vir enige persoon 25 wat hulle teëkom op die pad, 'n gewapende groep wat met</p>

<p style="text-align: right;">Page 19871</p> <p>1 pangas, ensovoorts, beweeg is onwettig en dit kan nie 2 toegelaat word nie.</p> <p>3 MR MPOFU: But once again if you accept 4 that long debate we had about them turning back, you would 5 accept that the ground that they were now traversing was 6 exactly the same ground that they had covered coming from 7 the koppie to the pipeline and they were now going back to 8 the koppie, correct?</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, al 10 hoekom ek sê nee is dat gegewe die feit die Maandag was 11 daar alreeds persone gedood en daar was verskille tussen 12 unies gewees en dreigemente, so om 'n groep so te los dat 13 hulle kan loop sou die ander groep wat teen hulle pose van 14 vooraf kom op enige stadium of een of twee persone, kan ek 15 glad nie sê dit sou nie gevaarlik gewees het nie, dit sou 16 beslis gevaarlik gewees het en daarom glo ek het General 17 Mpembe probeer om die wapens te laat neerlê en dat hulle 18 daar sonder dan vrylik na die koppie toe kon beweeg het.</p> <p>19 MR MPOFU: Alright, anyway the thrust of 20 what I'm putting to you is that without the interventions 21 of Lonmin, either in the first instance pointing out the 22 group, providing you with a helicopter, accompanying you, 23 pointing them out, locating them out, alleging that they 24 were a threat to Karee, without all those interventions, 25 that operation would not even have taken place.</p>	<p style="text-align: right;">Page 19873</p> <p>1 are talking past each other. I am not suggesting by any 2 stretch of the imagination that the police being aware of 3 an armed group would just kind of carry on as if nothing 4 has happened. That's not what I'm saying. I'm saying to 5 you without these interventions from Lonmin, pointing out 6 the people on their CCTV screens, giving you the 7 helicopter, flying with you to locate them, without those 8 interventions that operation would not have taken place at 9 all.</p> <p>10 BRIGADIER CALITZ: Nee, ek stem nie saam 11 met u nie, Meneer.</p> <p>12 MR MPOFU: And in that answer I'm not 13 including what you say, miskien this, miskien that, I'm 14 saying factually on that day at that spot, on that time it 15 happened because of those series of interventions.</p> <p>16 BRIGADIER CALITZ: Daar kan ek saam met u 17 stem, factually dit het gebeur as gevolg van die inligting 18 daar.</p> <p>19 MR MPOFU: Ja, thank you.</p> <p>20 BRIGADIER CALITZ: Maar u vorige vraag 21 was, sou dit nie gebeur het nie dat die polisie geen 22 intervensie gehad het nie en dit is waarop ek u geantwoord 23 het, nee, ek kan nie saam nie –</p> <p>24 MR MPOFU: Now we understand each other. 25 BRIGADIER CALITZ: Net op die feit dat</p>
<p style="text-align: right;">Page 19872</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 nee, ek verskil. Dit sou in elk geval op die CCTV skerms 3 opgetel word. Onthou die JOC is op die Sondag gestig en 4 hierdie was die Maandag gewees waar hulle dit opgetel het, 5 so indien die sekuriteit personeel dan versuim het om dit 6 vir ons te rapporteer sou een van ons beamptes in die JOC 7 dit wel gesien het en miskien vir ons uitgewys het. So ek 8 kan nie saam met u stem dat dit, as dit nie deur die 9 sekuriteit aan ons gerapporteer is dat die polisie niks 10 daaraan sou doen nie, as die inligting wel tot ons 11 beskikking gekom het op watter ander mate sou dit self so 12 hanteer gewees het.</p> <p>13 Die tweede deel van die vraag is, die helikopter 14 wat vir ons beskikbaar gestel is, u het voorheen gesê wat 15 ook al die rede, ek wil net miskien op record plaas dat op 16 daardie stadium toevallig altwee ons helikopters was besig 17 om te re-fuel, sou Lonmin glad nie die helikopter vir ons 18 beskikbaar gestel het nie, vir watter rede ook al, sou ons 19 daardie paar minute langer gewag het en dan ons eie 20 helikopter gebruik het om dan die persoon in te verduidelik 21 op 'n stadium uit die lug uit.</p> <p>22 MR MPOFU: Now –</p> <p>23 BRIGADIER CALITZ: So ek kan nie met die 24 hele stelling saamstem nie.</p> <p>25 MR MPOFU: Okay, Brigadier, I think we</p>	<p style="text-align: right;">Page 19874</p> <p>1 dit wel gebeur het op die dag.</p> <p>2 MR MPOFU: No, not op die dag, as gevolg 3 van, you've just said, you agree with me that it happened 4 as a result of those –</p> <p>5 BRIGADIER CALITZ: Dit is die feitlike –</p> <p>6 MR MPOFU: Correct?</p> <p>7 BRIGADIER CALITZ: Dit is feitlik korrek.</p> <p>8 MR MPOFU: Thank you, and if as you agree 9 that it should not have happened as a result of those 10 interventions from Lonmin then Warrant-Officer Monene, 11 Warrant-Officer Lepaaku and those three persons would be 12 alive today, correct, if that operation did not happen?</p> <p>13 BRIGADIER CALITZ: Mnr die Voorsitter, -</p> <p>14 MR VAN AS: Mr Chairman, sorry Mr 15 Chairman, that's pure speculation and there is no legal 16 basis for coming to that conclusion.</p> <p>17 CHAIRPERSON: No, the fact –</p> <p>18 MR VAN AS: Or a factual basis for that 19 matter.</p> <p>20 CHAIRPERSON: Let the question be put to 21 the witness, if the answer is, it is a bad question and 22 produces an answer that doesn't agree with the question, I 23 don't see how I can disallow the question. It seems to me 24 to be a false premise, but let me ask a few questions 25 myself. Am I correct in thinking there was already a JOC</p>

<p style="text-align: right;">Page 19875</p> <p>1 functioning on the Lonmin premises? 2 BRIGADIER CALITZ: Dit is korrek, mnr die 3 Voorsitter. 4 MR MPOFU: And there was a CCTV camera 5 there, is that correct, or not camera, a screen, a screen 6 receiving material from the CCTV cameras, is that correct? 7 BRIGADIER CALITZ: Korrek, mnr die 8 Voorsitter. 9 MR MPOFU: So it is correct that the 10 Lonmin officials drew your attention to what could be seen 11 on the TV screen, that there was this group of people with 12 dangerous weapons, with illegal possessions as you call it. 13 Now if Lonmin hadn't referred you to that there are two 14 possibilities, I take it. The one is, you wouldn't have 15 seen it and General Mpembe wouldn't have gone to deal with 16 the situation. The other possibility is, yes, one of the 17 police members at the JOC would have seen it, is that 18 correct? 19 BRIGADIER CALITZ: Dit is korrek, mnr die 20 Voorsitter. 21 CHAIRPERSON: And what would have 22 happened in that event? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 dan sou ons dieselfde uitgewys het en ek vertrou die 25 Provinsiale Kommissaris sal dan dieselfde opdrag gegee het</p>	<p style="text-align: right;">Page 19877</p> <p>1 BRIGADIER CALITZ: Dit is waaroor ons 2 getuig het, die spesifieke plek waar dit is was ons nie van 3 seker om op die grond soontoe te ry nie en uit die lug uit 4 was dit makliker om die voertuie in te beduie in daardie 5 rigting. 6 MR MPOFU: Yes, that is what I am saying, 7 he was not just going for the joy ride, he was going 8 because he was to locate the offending group for you and 9 that's exactly what he did, that's how you found them, 10 otherwise you would have been wondering around the whole 11 area of Marikana, correct? 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 nee, ek verskil van u. Ons eie helikopter vlieëniers was 14 al daar van vroeg af, so die persone in daardie helikopters 15 uit die lug uit het ook die area en daar kon gekommunikeer 16 gewees het, so dit is nie dat ons sal, soos u dit stel 17 wandering around nie, ek glo die helikopters uit die lug 18 uit kon dit maklik vasgestel het. 19 MR MPOFU: Ja, but what – 20 CHAIRPERSON: Sorry, Mr Mpofu – 21 MR MPOFU: Sorry, Chairperson? 22 CHAIRPERSON: Can I just ask this, the 23 first point is, you only used the helicopter that was on 24 hire to Lonmin at the time because your own helicopters 25 were refuelling?</p>
<p style="text-align: right;">Page 19876</p> <p>1 dat dit is 'n gevaarlike groep wat intercept en ge-disarm 2 moet word. 3 CHAIRPERSON: So in other words if you 4 remove the intervention, if one can call it that, of Lonmin 5 in drawing your attention to what was on the screen, if we 6 draw that and nothing else comes in, then Mr Mpofu is 7 right, the whole problem on the field, the engagement 8 between the police and the strikers wouldn't have occurred, 9 but if a policeman who was at the JOC, it seems, then of 10 course those consequences that follow would have followed 11 as well. 12 BRIGADIER CALITZ: Dit is korrek, mnr die 13 Voorsitter. 14 MR MPOFU: Ja, well, surely that is 15 totally incorrect. If you had seen the persons 16 nevertheless you would not have known where they are 17 geographically, correct? 18 BRIGADIER CALITZ: Nee, ek het gesê daar 19 is 'n JOC gestig en 'n JOC staan vir 'n Joint Operational 20 Centre, so as die polisiebeampte dit dan sou waarneem sou 21 daar seer sekerlik kommunikasie binne in daardie JOC 22 plaasgevind het. 23 MR MPOFU: Yes, but the reason why you 24 needed a Sinclair to go and locate the people for you, it 25 is because you did not know their allocation, correct?</p>	<p style="text-align: right;">Page 19878</p> <p>1 BRIGADIER CALITZ: Dit is korrek, mnr die 2 Voorsitter. 3 CHAIRPERSON: If the Lonmin hired 4 helicopter had not been made available you could have gone 5 up in the air with your own helicopter once the refuelling 6 was finished? 7 BRIGADIER CALITZ: Dit is korrek, Meneer. 8 CHAIRPERSON: And how long would that 9 have taken? 10 BRIGADIER CALITZ: Mnr die Voorsitter, ek 11 weet nie op watter stadium het hulle begin refuel nie maar 12 'n re-fuelling kan in minute afgehandel word. 13 CHAIRPERSON: Alright, so you would then 14 have got up in a Lonmin helicopter. Now how big is the 15 area, if a helicopter goes up reasonably high and circles 16 around, would it be easy or difficult to have seen from the 17 helicopter this group of people on the ground? 18 BRIGADIER CALITZ: Dit is hoekom ek sê, 19 mnr die Voorsitter, daar is 'n Joint Operational Centre en 20 daar sal seer sekerlik kommunikasie wees tussen die JOC en 21 die helikopter dan wat dan vir hulle 'n aanduiding sal gee 22 dat hierdie na die ooste se kant toe is, so as 'n 23 helikopter op 500 voet is, die area wat u kan sien is nogal 24 wyd. Ek dink ek het getuig in my verklaring dit is 7 25 kilometer of 8 kilometer, die afstande, ek weet nie of ek</p>

<p style="text-align: right;">Page 19879</p> <p>1 korrek is presies oor dit nie, maar dit is waarneembaar 2 veral die teerpad en die K4, as hulle byvoorbeeld 'n baken 3 gegee het soos K4, sou die helikopter geweet het want hulle 4 het vroeër al die gebied gevlieg. 5 MR MPOFU: Yes, look, even if you knew 6 that they were 8 kilometres away which by the way you were 7 also informed by Lonmin, but let's put that aside? 8 BRIGADIER CALITZ: Nee, dit is nie korrek 9 nie, mnr die Voorsitter, dit was my skatting gewees, so – 10 MR MPOFU: No, according to your 11 statement or General Mpenbe's statement, at the time when 12 they were spotted whoever, Sinclair I suppose said they are 13 on their way to Karee, they are about 8 kilometres away and 14 so on, but that's not important. The point of the matter 15 is at that point they could have been anywhere within a 350 16 degree radius and that's why Sinclair had to come with you 17 to identify them and if you had to look for them they might 18 have been intercepted at a different place and the people 19 would be alive. That's the point I'm making. The point 20 I'm making is that for the operation to happen as it 21 happened, the interventions that you and I had agreed which 22 was the spotting, the CCTV itself, the helicopter, the 23 flying with Sinclair and locating the people, those 24 interventions were essential for the operation as we know 25 it today to have happened, where it happened at the time</p>	<p style="text-align: right;">Page 19881</p> <p>1 [14:36] MR SEMENYA SC: But Chair I'm making is a 2 different one. Despite the police being told where the 3 group is, despite a helicopter being given to them, if 4 Warrant Officer Lepaaku was not chopped with the panga he 5 wouldn't have died. 6 CHAIRPERSON: No, that's correct, but if 7 the police hadn't met up with the group in the first place 8 there wouldn't have been an engagement and he wouldn't be 9 chopped with a panga. 10 MR MPOFU: Ja. 11 CHAIRPERSON: That's the point. I'll 12 allow you to continue but – 13 MR MPOFU: Yes, Chairperson, I won't – 14 CHAIRPERSON: You squeezed virtually 15 every drop of juice out of this lemon but there's a little 16 bit more you can carry on, but not to for too long. 17 MR MPOFU: Thank you, Chairperson, no I'm 18 not intending to carry on except to say this, I don't want 19 to get involved in this unnecessary intervention. Quite 20 frankly – 21 CHAIRPERSON: Wait, wait, wait. 22 Sometimes you intervene and if you intervene I won't allow 23 anyone to say it's an unnecessary intervention. Mr 24 Semenya's entitled to raise objections, if they're good 25 I'll uphold them, if they're bad I'll dismiss them. But</p>
<p style="text-align: right;">Page 19880</p> <p>1 that it happened. 2 MR SEMENYA SC: Chair, Mr Mpofu is 3 persisting with this. We do know that Warrant-Officer 4 Lepaaku was killed by a panga, regardless of the 5 interventions of Lonmin of whatever nature and I think the 6 – 7 CHAIRPERSON: No, no, no, I don't think 8 that's right, Mr Mpofu's point is, I'm not sure whether it 9 is in accordance with the probabilities but that's a 10 different matter. What Mr Mpofu says is, Lonmin hadn't 11 said, look here, look on the screen, look what's happening, 12 we will take you in the helicopter that is on hire to us to 13 that place, but that hadn't happened. Then you've got to 14 speculate a little bit to see what would have happened 15 absent that intervention by Lonmin. What the witness has 16 said is on the probabilities, the police would have picked 17 it up anyway on the screen and they would have gone in 18 their own helicopter and they would have circled around and 19 seen where it happened, but Mr Mpofu is contending that, he 20 will argue in due course that that's not as probable as the 21 witness says and if you take out the Lonmin intervention 22 then this group of people might well succeeded in walking 23 peacefully back to the koppie and without meeting up with 24 the police, without the engagement that took place which 25 led to the deaths of the policemen, that's his point.</p>	<p style="text-align: right;">Page 19882</p> <p>1 it's not necessary for you to say they're unnecessary it 2 just raises the temperature which is not a good idea. So I 3 suggest you carry on with a lower – 4 MR MPOFU: Well, Chairperson, let's not 5 blame the victim. He raised the temperature, I'm 6 responding. I'm saying the point of the matter here is 7 that the, it's no use for Mr Semenya to say – 8 CHAIRPERSON: Mr Mpofu, I've made – 9 MR MPOFU: But I want to – 10 CHAIRPERSON: I've made the ruling in 11 your favour. Remember when you were here last time, before 12 I used to say to you it's unnecessary to give us concurring 13 judgments when I've already given a ruling in your favour 14 and that's what you're doing - 15 MR MPOFU: Chairperson – 16 CHAIRPERSON: Just carry on without the 17 concurring judgments. 18 MR MPOFU: Okay. Anyway, Brigadier, 19 would you agree that although Warrant Officer Lepaaku was 20 hacked by a panga the point is that if these interventions 21 had not happened he would not have been there in the first 22 place, near that panga? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 ons is om hierdie punt. Laat ek sê nee ek stem nie saam 25 nie.</p>

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1 MR MPOFU: Fine.

2 CHAIRPERSON: There's enough on record

3 to argue the point you want to argue.

4 MR MPOFU: Thank you.

5 CHAIRPERSON: Whether it's a good point

6 or not we'll find out later.

7 MR MPOFU: Well I'm sure we'll find that

8 in due course.

9 BRIGADIER CALITZ: As ek net kan sê ek

10 dink ons verwys na Lepaaku, miskien moet ons nie vergeet

11 Adjudant Offisier Monene ook op daardie toneel nie. So net

12 laat ons hulle altwee hulle name noem.

13 CHAIRPERSON: There were two strikers who

14 died as well and there's a third striker who we're not

15 quite sure how he died but he was also killed.

16 BRIGADIER CALITZ: Dit is korrek.

17 CHAIRPERSON: In that vicinity, we

18 mustn't forget them either. But any way I think we've

19 looked at this point thoroughly from all angles.

20 MR MPOFU: Ja.

21 CHAIRPERSON: I trust Mr Mpofo is going

22 to move on to another point.

23 MR MPOFU: I will, Chairperson, but

24 apropos your remark that's why I said those five persons

25 would be alive today. I was including the three strikers.

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1 BRIGADIER CALITZ: Dankie, mnr die

2 Voorsitter.

3 MR MPOFU: Thank you, and I don't want to

4 canvas this particular point with you because I canvassed

5 it with other witnesses but in relation to what you and I

6 are discussing if, I'll also argue that if SAPS had

7 complied with its duty of impartiality by not setting up

8 the JOC at the Lonmin premises again all these other things

9 that I've said would follow. Then there would have been no

10 CCTV, no Sinclair, no helicopter.

11 CHAIRPERSON: Mr Mpofo, I don't

12 understand, you say you've dealt with this already. I

13 don't understand, I know you've raised a contention but I

14 just want to know why Lonmin permitting or giving

15 permission to the police to set up their JOC on their

16 premises necessarily involved abandonment by the police or

17 a breach by the police of their duty of impartiality?

18 MR MPOFU: Okay, I'll let –

19 CHAIRPERSON: That's something that I'll

20 imagine you'll argue later.

21 MR MPOFU: No, but I can make –

22 CHAIRPERSON: I may not understand at

23 the moment but you may succeed in persuading me and helping

24 me to understand it.

25 MR MPOFU: Yes, thank you, Chairperson.

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1 Well just in case I forget. The reason, I'm not blaming

2 Lonmin for it, Chairperson. I'm saying it's a duty of the

3 police to act in such a way that the both sides so to speak

4 don't perceive them as impartial and setting up a JOC with

5 one of the two sides is definitely and obviously not one of

6 the ways to instil the air of impartiality on the other

7 side. I thought that would have been obvious.

8 CHAIRPERSON: That's a contention you'll

9 raise and we will deal with it in due course.

10 MR MPOFU: Yes. I thought you said you

11 don't understand. Okay, that's the contention that we'll

12 deal with it later. Now okay –

13 BRIGADIER CALITZ: You raise it, is it a

14 question to me or?

15 MR MPOFU: No, you can say whatever you

16 want to say. I'm saying, I'm not going to canvas with you

17 the advisability or otherwise of the police setting up the

18 JOC at Lonmin because I've canvassed that with the National

19 Commissioner and I think with one other person, probably

20 General Mpembe.

21 BRIGADIER CALITZ: Mnr die Voorsitter, ek

22 dink dan in daardie geval as ek kan aandring ek weet jy sê

23 dis partykeer nie wys nie maar as 'n operasionele oogpunt

24 uit, met wie ook al u hierdie punt opgevat het, ek is

25 miskien die eerste operasionele witness, 'n joint

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1 operational centre word soos na as moontlik aan waar die

2 gebeure plaasvind opgesit. Kom ons vat die Nedbank Million

3 Dollar Golf toernooi, ons gaan nie die JOC opsit in die

4 middel van Rustenburg nie, ons sit dit op by Sun City. As

5 daar 'n strike is van die personeel van Sun City dan sit

6 ons die JOC op by Sun City se sekuriteits kantore. Hulle

7 het die fasiliteite, hulle het die radio kommunikasie, die

8 televisies, gewoonlik die CCTV, ons het nie daardie

9 fasiliteit of die luukshede in die polisie om 'n voertuig

10 te trek, dit sou baie nice gewees het, of jy weet as ons

11 dit kan, kon gehad het met hierdie satelliet links en ons

12 kon ons eie goed opsit, fantasties, maar ongelukkig werk

13 dit nie so nie. Daar waar daar 'n probleem is, die naaste

14 moontlike plek sit ons dan die JOC op, impartial.

15 MR MPOFU: Okay, so you favoured the side

16 that has the best technology, if the strikers at the koppie

17 had CCTV you would have set the JOC there at the koppie,

18 please Brigadier.

19 BRIGADIER CALITZ: Nee, ek gee net die,

20 vir die feite deur hoe die polisie werk en wat die

21 ondervinding is op die grond. So dit is 'n feit. Dis nie

22 'n vergissing nie.

23 MR MPOFU: Anyway to put it bluntly for

24 all intents and purposes this operation Platinum as it was

25 called was for all intents and purposes a joint operation

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1 between SAPS and Lonmin, correct or they were your partners
2 in it.

3 BRIGADIER CALITZ: As jy na partners
4 verwys miskien moet ons net sê watter rol, ek dink in die
5 beplanning van Kolonel Scott is elke een se role and
6 responsibility uiteen geskryf en ek dink die rol van
7 Lonmin, die CCTV footage en die persone wat dit vir ons
8 gemonitor het was dan binne die JOC gewees. So as dit is
9 waarna u verwys partners, daardie geval.

10 MR MPOFU: Daardie geval wat? Ja.

11 BRIGADIER CALITZ: Ek sal nie met die
12 woord partners nie, dit is hoekom ek vir u gesê dit is die
13 enigste persone wat dan in die JOC teenwoordig was saam met
14 'n sekuriteits verteenwoordiger wat vir ons die inligting
15 dan deurgegee het.

16 MR MPOFU: Yes. But what I want to know
17 is what your reaction is to my contention, I'm putting to
18 you that for all intents and purposes this operation was
19 being carried out in partnership with Lonmin or as a joint
20 operation between the two entities?

21 BRIGADIER CALITZ: In cooperation. Dit
22 sal my woorde wees, in samewerking met die partye.

23 MR MPOFU: Samewerking is fine.

24 BRIGADIER CALITZ: Dankie, mnr die
25 Voorsitter.

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1 MR MPOFU: Samewerking is, ja, alright.
2 We'll leave that for argument, ja and from your perspective
3 and I'm now talking about you as operational commander but
4 also as SAPS, Lonmin was effectively one of the units which
5 were an integral part of the JOC or the JOCCOM or both,
6 correct?

7 BRIGADIER CALITZ: Miskien verstaan ek
8 nie u vraag korrek nie. Integral part, as u net vir my sê
9 wat u bedoel daarby?

10 MR MPOFU: Integral part means an
11 inseparable part of a thing. So I'm saying that from the
12 perspective of someone who was, who's looking on Lonmin was
13 part, was an integral part of the JOC and the JOCCOM,
14 correct?

15 BRIGADIER CALITZ: Mnr die Voorsitter,
16 weereens nee. Lonmin se sekuriteitspersoneel het die CCTV
17 gemonitor. Onthou dit is hulle eie sisteme. So hulle kyk,
18 ek dink hulle noem dit die smelters waar die hostels is,
19 persone soos diefstal van hulle koper, daai tipe van
20 goeters, hulle moes nog steeds dit monitor. Dit was in
21 dieselfde vertrek gewees en dan tydens die JOCCOM
22 vergaderings het ek gesê daai persoon van die sekuriteit,
23 mnr Sinclair of mnr Botes gewoonlik ingesit en dan van
24 hulle kant af input, ek dink dit sal in die minutes miskien
25 wees gesê watse sekuriteits probleme ondervind hulle, as

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1 hulle iets ondervind. Sou daar enige besluite geneem
2 geword het soos op die dag van die 16de is die persone van
3 Lonmin gevra om te verlaat en die polisie se, kan ek maar
4 sê taktiese beplanning is dan in hulle afwesigheid gedoen.

5 MR MPOFU: I'm going to assume, I'm not
6 sure whether you're disagreeing with my contention. But
7 I'll assume that you are and then –

8 CHAIRPERSON: He has conceded that there
9 was cooperation between Lonmin and the police and he's now
10 describing for you the nature of the cooperation that
11 existed. That's his evidence.

12 MR MPOFU: Yes.

13 CHAIRPERSON: But he said when it came
14 to decisions, tactical decisions the cooperation didn't
15 extend that far and in fact the Lonmin people were asked to
16 leave the room at that point. I think that's the summary
17 of what he said. If I misunderstood you, Brigadier, you'll
18 correct me.

19 BRIGADIER CALITZ: Dit was korrek, mnr
20 die Voorsitter.

21 MR MPOFU: Can you go to HHH20 again.

22 CHAIRPERSON: That's document 13 in the
23 bundle to which -

24 MR MPOFU: Oh sorry paragraph 8.4.1.
25 Page 56. That's a statement of Colonel Scott and it says

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1 what the JOCCOM was at that time and the representatives
2 being informed of the meeting represented the following
3 disciplines and then he lists the disciplines that were
4 involved there from Mpembe, Crime Intelligence, Detectives
5 and so on up to the next page 8.4.17 Lonmin Mine Security
6 representative. Before that South African Air Force
7 representative. That's what I'm saying, I'm saying it was
8 viewed by yourselves as an integral part of the units that
9 were there, do you understand now?

10 BRIGADIER CALITZ: Mnr die Voorsitter,
11 met alle respek, nee ek moet vir u verstaan, gevra het of u
12 die vraag, my antwoord verstaan soos ek vir u gegee het
13 voorheen. Die Voorsitter het ook vir u, dit is presies wat
14 ek vir u gesê het. So dit was eintlik onnodig om u hierna
15 toe verwys, want dit is presies wat ek vir u gesê het.

16 MR SEMENYA SC: But also Chair, it's
17 about a particular meeting, as the sentence opens.

18 CHAIRPERSON: The meeting on the
19 Wednesday 8 o'clock in the morning.

20 MR MPOFU: Okay well in that, if that is
21 the issue then can you, can we have JJJ129 on the screen
22 please. It's not on the list General, I mean Brigadier.

23 CHAIRPERSON: It's on JJJ129. The
24 screen is now, the projectors are now working again. Can
25 you just tell us what you want to say.

<p style="text-align: right;">Page 19891</p> <p>1 MR MPOFU: Except for the main screen, 2 yes. All the other screens I think are working. JJJ129. 3 Can you use the small – 4 BRIGADIER CALITZ: Where is in my file, 5 in your – 6 MR MPOFU: It is not, I've just said it's 7 not in your file. Look at the screen. You see that 8 document says JOC structure Marikana. 9 BRIGADIER CALITZ: Mnr die Voorsitter, ja 10 dit is nou nuwe evidence wat nie in sy bundel was nie. So, 11 versoek ek om dan tyd te hê om net deur hierdie dokumente 12 te werk. Sodat ek my kan vergewis wat die hele dokument 13 is. 14 CHAIRPERSON: Maybe there's a specific 15 line or sentence that you can look at. Is there a 16 particular line or sentence that's relevant? 17 MR MPOFU: Yes, Chairperson. 18 CHAIRPERSON: Lets scroll down a bit and 19 see what we see. 20 MR MPOFU: Just start from where it says 21 the following role players were part of the JOC structure 22 and were available for decision taking and then let's look 23 whatever follows after that. 24 CHAIRPERSON: Just scroll down a bit 25 more please.</p>	<p style="text-align: right;">Page 19893</p> <p>1 Chaskalson. Even better. 2 MR CHASKALSON SC: The date of the 3 document is 28 August. 4 BRIGADIER CALITZ: Dankie, mnr die 5 Voorsitter. Ek sien egter nou nie wie dit opgestel of 6 geteken hier so ek kan nie vir u sê wie die dokument 7 beskikbaar gestel nie. Maar net – 8 CHAIRPERSON: We were told it was a 9 Roots' document. The document compiled at Roots towards 10 the end of August. 11 BRIGADIER CALITZ: Ja, ek hoor so, mnr 12 die Voorsitter, maar ek sê maar net, ek kan nie sien wie 13 het hom opgestel of dit iemand was wat betrokke was by die 14 JOC en of dit na die tyd deur 'n - 15 CHAIRPERSON: While you're there, can I 16 ask you a question. You were at most of the JOCCOM 17 meetings weren't you? You weren't at the last one but, at 18 1 o'clock. 19 BRIGADIER CALITZ: Dit is korrek. 20 CHAIRPERSON: On the 16th but you were 21 there at earlier ones. Now there were, is it correct that 22 there either was one or were more Lonmin people in 23 attendance, is that right? 24 BRIGADIER CALITZ: Dit is waaroor ek 25 getuig het, dit is korrek, mnr die Voorsitter.</p>
<p style="text-align: right;">Page 19892</p> <p>1 MR MPOFU: Operational commander, warrah, 2 warrah, warrah and then representative – 3 CHAIRPERSON: The second last one, the 4 penultimate one is representative of mine security. 5 MR MPOFU: And before that 6 representatives of mine management. 7 CHAIRPERSON: Representative of mine 8 management and then emergency services probably is Lonmin 9 as well. So it does look as if, according to this document 10 there were at times three people from Lonmin there, is that 11 right? 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 dis hoekom ek sê ek weet nie eers watse dokument dit uit 14 kom nie. So as ek dalk net die dokument uit geprint of as 15 dit my kan gee dan kan ek sien waaruit dit kom. My net 16 vergewis watter dag dit was of waarna dit hier verwys. 17 Maar ek ontken nie dat - 18 MR MPOFU: I can give you my - 19 BRIGADIER CALITZ: Dankie. Maar - 20 MR MPOFU: 1 July. 21 MR CHASKALSON SC: Chairperson, I may be 22 able to help Brigadier Calitz. This is a document that was 23 prepared at Roots apparently to describe what the JOC 24 structure was. 25 MR MPOFU: Thank you. Thank you, Mr</p>	<p style="text-align: right;">Page 19894</p> <p>1 CHAIRPERSON: And presumably they were 2 there to provide assistance when asked to do so, asked for 3 information, asked for assistance and they would do their 4 best to provide it, is that correct? 5 BRIGADIER CALITZ: Mnr die Voorsitter, ja 6 ek wil vra as ons na die tweede bladsy toe gaan, dis maar 7 net wou gaan kyk het, is dit, of daar beskryf is wat die 8 doel is en een van dit is maps of the whole area of the 9 mining area as well the greater Rustenburg available at the 10 JOC. So hulle het vir ons dan daardie gegee asook die CCTV 11 gedeelte wat daar beskryf is, ek wou net seker gemaak het 12 dit was die feite. 13 CHAIRPERSON: Now I want to ask you this. 14 When there was a discussion of any kind in the JOC, in the 15 JOCCOM did the Lonmin people sometimes participate? Did 16 they also take part in the discussion? 17 BRIGADIER CALITZ: Mnr die Voorsitter, ek 18 vertrou so ja, ek dink die JOC, die sekuriteitpersoneel of 19 die verteenwoordiger was meerderheid van die kere gewees 20 daar. Ek het net gesê as ons verwys het na 'n taktiese 21 operasie of ons het verwys na iets wat hulle sal doen soos 22 'n deursoeking of die speurders miskien verdagtes gaan, in 23 daardie gevalle is die persone dan verskoon. Maar die 24 meerderheid van die kere was daar wel en dit is wat ek 25 voorheen getuig het.</p>

<p style="text-align: right;">Page 19895</p> <p>1 CHAIRPERSON: I see. When tactical 2 decisions were taken you say were they asked to leave? 3 [14:56] BRIGADIER CALITZ: Dit was op daardie dag 4 van die 16de. Dit is hoe dit aan my meegedeel was. 5 CHAIRPERSON: Yes, Mr Tokota has drawn my 6 attention to a paragraph TT4, which is the minutes of the 7 meeting at 6 o'clock on the 17th of August. Now those 8 minutes are minutes which were prepared, it went through a 9 long period of gestation and drafting at roots. They were 10 not contemporaneous notes at all. We have the original 11 manuscript notes, so I'll treat these notes always with 12 great caution, but never mind that, if one looks at the 13 last page, paragraph 3.3.11 – have you got that? 14 BRIGADIER CALITZ: Dit is nou nie in my 15 bundel nie, so ek het dit nie voor my nie, maar ek – 16 CHAIRPERSON: No, it should be, TT4. 17 It's one of the documents that Mr Mpofu referred to. 18 MR MPOFU: I think it's the first one, 19 Chair. 20 CHAIRPERSON: It's in fact the second 21 one. The first thing he referred to is exhibit L, then the 22 next thing – 23 BRIGADIER CALITZ: Oh double T, I was 24 looking for TTT. Ekskuus, Mnr die Voorsitter. 25 CHAIRPERSON: TT4.</p>	<p style="text-align: right;">Page 19897</p> <p>1 the exhibit number, there was a board in the JOC where the 2 cell numbers of various important role-players was put up 3 and once again Lonmin, Mr Botes' details were listed there, 4 together with General Mpembe and other people like that. 5 If you are aware of it, then we move on, if you're not, 6 we'll find the exhibit. 7 BRIGADIER CALITZ: Nee, ek glo nie dit is 8 nodig vir 'n exhibit nie. Dit sal in enige operasionele 9 sentrum sal al die rolspeleers daar, wat betrokke is, kontak 10 nommers daar wees, indien hulle benodig word. So ek vat u 11 woord daarvoor. 12 MR MPOFU: Yes, but the point I'm making 13 is – you know what I'm trying to say, Brigadier – the point 14 I'm making is that that board of police contacts would 15 normally contain no civilians as such, but members of the 16 police, but in this case Mr Botes or the Lonmin security 17 were regarded as – I'm still on the point of being an 18 integral part of both the structure and the meetings. 19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 weereens moet ek miskien net u verwys hoe dit operasioneel 21 werk. Die name van sekuriteit personeel, ensovoorts, is 22 altyd op 'n – wat ons na verwys, 'n gevegsbord in 'n 23 operasionele sentrum. Al die partye wat daar is, die 24 nommers is daar. 25 MR MPOFU: Okay, yes, the board I'm</p>
<p style="text-align: right;">Page 19896</p> <p>1 BRIGADIER CALITZ: Ja, nee, ek het na 2 triple T – 3 CHAIRPERSON: Right, now these are the 4 minutes of the 6 o'clock meeting on the Thursday which went 5 through a long period of gestation and substantial drafting 6 and redrafting, so I treat with great caution. And we have 7 the manuscript notes made at the time of the meeting, but 8 allowing for caution to which I have referred, if you look 9 at paragraph 3.3.11 on the last page, which is headed, 10 "Mine Security," there it says, "Mr Dirk Botes indicated 11 that no serious challenges are being experienced." So he 12 certainly took part in the meeting and was indeed asked, 13 presumably by the chairman, to inform the meeting as to 14 anything that there was to be reported regarding mine 15 security. 16 BRIGADIER CALITZ: Dit was wat hy getuig 17 het, ja, mnr die Voorsitter, dit is korrek. Ek dink ek het 18 ook sy naam genoem as een van die persone wat wel daar was. 19 MR MPOFU: And that was the meeting at 20 which Mr Botes stated where D-day was referred to, correct? 21 BRIGADIER CALITZ: Dit was u stelling 22 gewees. Ek het getuig my getuienis reeds daarvoor 'n vorige 23 keer. 24 MR MPOFU: Yes, and also, and here I'm 25 just going to rely on your memory, because I can't remember</p>	<p style="text-align: right;">Page 19898</p> <p>1 referring to is GGG40 just for the sake of completion. 2 BRIGADIER CALITZ: Ja, nee, ek het gesê 3 dis nie nodig nie, ek stem saam met u, ek vat die woord 4 daarvoor so, maar as u die bord wil wys, u is welkom. 5 MR MPOFU: Well, since it's there in 6 front of you, you might as well look at it. You see that 7 Mr – it starts with General Annandale, General Naidoo and 8 so on and so on. Scroll down please, and the negotiator 9 whatever, and then Dirk Botes with his cell number there. 10 That is the board at the JOC and the heading is, "JOC 11 Control," agreed? 12 BRIGADIER CALITZ: Ek sien sy naam daar, 13 dis korrek. 14 MR MPOFU: Ja. 15 CHAIRPERSON: Perhaps, sorry, after tea 16 we can possibly look at one of the documents that Mr Mpofu 17 referred us to, unless he wants to deal with it at a later 18 stage in the cross-examination, in which case obviously he 19 must run the cross-examination he wants to, but there's an 20 affidavit which is exhibit GGG19, which is in the bundle 21 that Mr Mpofu referred us to. It's the witness statement 22 of Mr Botes, and he deals at various points in the 23 statement with the role he played in the JOC and in 24 discussions and decisions and so forth, but presumably Mr 25 Mpofu will get there at his own good time.</p>

<p style="text-align: right;">Page 19899</p> <p>1 MR MPOFU: You read my mind, Chairperson, 2 it was - actually I was going to make reference to it, but 3 - 4 CHAIRPERSON: Alright, let's have tea 5 first and then you can - 6 MR MPOFU: After tea, yes. 7 CHAIRPERSON: - and then you can take us 8 to the relevant part of the document. 9 MR MPOFU: Thank you, Chairperson. 10 [COMMISSION ADJOURNS COMMISSION RESUMES] 11 [15:24] CHAIRPERSON: The Commission resumes. 12 Brigadier, you're still under oath. 13 ADRIAAN MARTHINUS CALITZ: Dankie, mnr 14 die Voorsitter. 15 CHAIRPERSON: Mr Mpofo, do you have 16 anymore questions for the witness? 17 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 18 Yes, thank you, Chairperson. Brigadier, you've already 19 been referred to GGG19, which is Mr Botes' statement. 20 Firstly before we deal with the topic that I'm busy with 21 now, just for the sake of completion I'll refer to some 22 statements which refer to the debate that you and I had 23 about the intervention with - I'm not going to question you 24 on it; I'll just point you to certain passages. 25 If you start at paragraph 29 of Botes, you'll see</p>	<p style="text-align: right;">Page 19901</p> <p>1 before where you start now. 2 MR MPOFU: Pardon? 3 BRIGADIER CALITZ: Just read the sentence 4 before. I think you start there, "As most of the police 5 officers." 6 MR MPOFU: Yes. That's the part I want 7 to read. 8 BRIGADIER CALITZ: Yes, I'm just 9 referring to the sentence before that. "Colonel Vermaak 10 told us that we should use the police helicopter in order 11 to try and locate the group," and then, "As most of the 12 police officers" - you missed that part, but it's fine. 13 I'm with you. 14 MR MPOFU: Ja, no, I don't want to read 15 it. All that this shows is that there was Sinclair in your 16 helicopter and Botes was in Vermaak's helicopter. That's 17 all. Is that correct? 18 BRIGADIER CALITZ: Nie ten tye van 19 dieselfde voorval nie, nee. Ek dink as hier 'n tyd by 20 gekoppel was dan moes hierdie seker vroeër gewees het. 21 Miskien het u die tyd vir my. 22 MR MPOFU: No, okay, put it this way - 23 CHAIRPERSON: [Microphone off, inaudible] 24 was said in para 33 indicates that Mr Mpofo is right, that 25 Mr Botes, who is the, it's his affidavit we're looking at,</p>
<p style="text-align: right;">Page 19900</p> <p>1 that he says he is the person who noticed the surveillance 2 equipment, through the surveillance equipment rather, a 3 group of what he estimated to be 200 people breaking away 4 from the koppie, and so on, and then this group were 5 heading in a westerly direction towards Karee, and having 6 regard to the events of the 12th he was concerned that this 7 group may proceed and attack another shaft, and then he 8 sent out security, Lonmin Security obviously, with a task 9 of finding them. You see that part? 10 BRIGADIER CALITZ: Ek sien hom sover. 11 MR MPOFU: Yes, and then he says in 12 paragraph 31 in the middle of it, "The SAPS were not aware 13 of the layout of the area of the mine and consequently if 14 there was a situation developing we would direct them to 15 where it was occurring." You see that part? 16 BRIGADIER CALITZ: Korrek, ja. 17 MR MPOFU: Okay, and then paragraph 32 - 18 no, paragraph 32 is not relevant for this. Paragraph 33 in 19 the middle of that, "As most of the police officers had not 20 been to the Lonmin area previously they did not know their 21 way around. Consequently I joined the pilot of the 22 helicopter, together with Colonel Vermaak and the pilot's 23 assistant in the helicopter, in order to locate the group." 24 You see that part? 25 BRIGADIER CALITZ: Just read the sentence</p>	<p style="text-align: right;">Page 19902</p> <p>1 he says, "I joined the pilots of the helicopter, together 2 with Colonel Vermaak and the pilot's assistant in the 3 helicopter, in order to locate the group." So Botes was in 4 Vermaak's helicopter and I think Sinclair was in the same 5 helicopter as you were. Is that right? 6 BRIGADIER CALITZ: Mnr die Voorsitter, ek 7 betwis glad nie daardie feit nie. Ek het net gesê dit is 8 nie op dieselfde tydperk gewees nie. Wat ek gesê het, 9 hierdie moes heel vroeër in die dag gewees het, glad nie, 10 dit het niks te doen met die insident op die grondpad nie. 11 MR MPOFU: Ja, no, I accept that. Nobody 12 is saying it happened at the same time. We are busy with 13 the - 14 BRIGADIER CALITZ: No, that is just what 15 I - 16 MR MPOFU: - with the collusion, whether 17 that it happened more than once. All I am saying is that 18 at some stage you were with Sinclair in one helicopter, the 19 Coin helicopter, and at another stage around the same event 20 Vermaak was with Botes in the police helicopter, which is a 21 different helicopter. 22 BRIGADIER CALITZ: Dis wat sy verklaring 23 sê, ja. 24 MR MPOFU: Ja, okay. And then it says, 25 "The police helicopter flew over a number of areas, but</p>

<p style="text-align: right;">Page 19903</p> <p>1 could not spot the breakaway group." Sorry, I'm reading 34 2 now. You see that part? 3 BRIGADIER CALITZ: Korrek. 4 MR MPOFU: "Eventually PW Botes contacted 5 me and said that the group was headed towards, or in the 6 direction of railway line," and so on. You see that part 7 in 34? 8 BRIGADIER CALITZ: I see the 9 communication, ja, then from security to the chopper, the 10 direction, and then they were found. 11 MR MPOFU: Ja. Then 35, which is 12 important, "The presence of Lonmin Security personnel 13 stopped the breakaway group," which is what I had put to 14 you, you were not aware of, and I accept you were not aware 15 of, but I'm just saying that's what Mr Botes says. 16 BRIGADIER CALITZ: Ja, ek sien sy 17 verklaring. Ek weet egter nie wat hy bedoel by "stopped 18 the breakaway group" nie. 19 MR MPOFU: Ja. And then there's another, 20 a third partnership. Then in 35 at the bottom, "I 21 understand that a significant police contingent then moved 22 out in order to intercept the breakaway group. I was 23 advised that Hendrik Blaauw, who is also a Lonmin person, 24 had accompanied the police." You see that? 25 BRIGADIER CALITZ: Ek sien dit, mnr die</p>	<p style="text-align: right;">Page 19905</p> <p>1 uit die lug uit gesien en ek weet waar die groep was toe 2 ons daar kom, en ek het dan so getuig dat ek hulle sien 3 begin beweeg het en op daardie stadium was die sekuriteit 4 bo-op die brug. Dit kon wees dat die sekuriteit miskien 5 hulle gestop het om verder te beweeg met daardie pad, of in 6 daardie geval – dis hoekom ek gesê het ek weet nie wat hy 7 bedoel by "security personnel managed to stop the breakaway 8 group." Dit sal interessant wees om net verklarings van 9 die sekuriteit te sien wat het hulle bedoel. Ja, niks het 10 tot my kennis gekom op hierdie stadium nie, so ek kan net 11 getuig as 'n fisiese ooggetuie wat ek gesien het uit die 12 lug uit en waar die groep dan begin beweeg het. Ek het 13 aangeneem oor die gesirkel van ons helikopter. 14 MR MPOFU: Okay, no fair enough. 15 Whatever they mean by they successfully stopped them, but 16 that feat was achieved, the thrust of my question is that 17 that stopping - whatever it means, and I don't expect you 18 to know – was achieved by a group of four, of security 19 personnel in four vehicles. I don't know how many they 20 were. We will find that out in due course, but I'm saying 21 would you agree with me that those four vehicles were a 22 much lesser contingent, or force, than what we know, which 23 is the 70 policemen, the teargas, the R5s, the Nyalas, and 24 what have you, that the police sent there? That's the only 25 point I'm making. Correct?</p>
<p style="text-align: right;">Page 19904</p> <p>1 Voorsitter. 2 MR MPOFU: Yes, and then, "At the Lonmin 3 JOC we monitored the breakaway group as they returned to 4 the eastern side of the railway line." And the last 5 sentence, "I was involved only in advising the SAPS of 6 risks to Lonmin and the positioning of the breakaway group, 7 as and when I was able to do so." Okay, I'm just pointing 8 those in relation to our earlier discussion, but I'm not 9 going to go back to that. You understand the context in 10 which I'm showing you those particular passages? 11 BRIGADIER CALITZ: Ek het dit gelees soos 12 ek dit verstaan het, ja. 13 MR MPOFU: Ja, thank you. Or maybe the 14 only remark that I can make is that from this account, 15 including our discussion, I'm going to argue that it was 16 possible for – I don't know the – oh, it's vehicles, I 17 thought it was four people – for four Lonmin vehicles 18 successfully to divert the group without using any 19 violence whatsoever, and presumably – this is an assumption 20 on my part, admittedly – presumably there were fewer of 21 them than the contingent of 70 policemen and Nyalas and 22 what have you, R5s, that were with the police group. Would 23 you argue with that? 24 BRIGADIER CALITZ: Ek sal nie sê "argue" 25 nie, maar ek gaan nie saam met u stem nie want ek het dit</p>	<p style="text-align: right;">Page 19906</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek 2 kan nie met alles saam met u stem nie. Ek weet nie hoeveel 3 voertuie hulle was of wat daar was nie. 4 MR MPOFU: Okay, fair enough. 5 BRIGADIER CALITZ: Ek weet ook nie 6 waarmee hulle uitgereik was nie. So, maar ek glo die 7 polisie se kontingent wat ons soontoe gestuur het is groter 8 gewees as wat die sekuriteit gehad het. 9 CHAIRPERSON: According to this 10 affidavit, paragraph 34, they had four soft-skin vehicles. 11 The police had, we can see that from the video, more Nyalas 12 than that, and of course they had arms and there were 70 13 people. Now I don't know how many people you can squeeze 14 into a soft-skin vehicle, but let's assume it's five 15 maximum, you've then got 20 people, probably fewer, but 20 16 people, whereas General Mpembe had a contingent of about 70 17 people I think on the evidence. That's the point Mr Mpofu 18 is making. Of course the point was of course that I take 19 it the security people were simply wishing to turn the 20 strikers back, away from Karee. They weren't trying to 21 disarm them and get their weapons from them, which may make 22 the difference, but anyway, that's speculation too, I 23 imagine. 24 BRIGADIER CALITZ: Ek het op daardie punt 25 saam met hom gestem na sy vraag, mnr die Voorsitter.</p>

<p style="text-align: right;">Page 19907</p> <p>1 MR MPOFU: Yes, and whatever it is that 2 the security might have asked from them, the point of the 3 matter is that they complied therewith and returned to 4 Wonderkop. But once again you have no personal knowledge 5 of that. I'm just saying that's what the evidence will be. 6 BRIGADIER CALITZ: Ek lees dit so in 7 hierdie verklaring. 8 MR MPOFU: Ja, and in any event, by the 9 time the trouble started, General Mpembe himself had 10 accepted that they should go back to the koppie. You're 11 aware of that? 12 BRIGADIER CALITZ: Nee, ek kan u nie 13 daarmee help nie. 14 MR MPOFU: No, you can help me because 15 you've read the statements, and I'm not saying you were at 16 the scene. I'm saying are you aware that in any event by 17 the time the trouble started where the killings happened, 18 even General Mpembe had accepted, or agreed that they 19 should be escorted back to Wonderkop - to the koppie, while 20 they were still carrying their arms? 21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 onder eed kan ek nou nie sê dat ek presies weet – 23 MR MPOFU: Okay. 24 BRIGADIER CALITZ: - wat Generaal Mpembe 25 se getuënis was nie. Ek weet hy het onderhandel en ek</p>	<p style="text-align: right;">Page 19909</p> <p>1 I take your point, Chairperson. I'm simply saying I was 2 not doing it to establish that fact obviously, because he 3 wasn't there. 4 CHAIRPERSON: [Microphone off, 5 inaudible]. 6 MR MPOFU: Yes, thank you, Chairperson. 7 Well, by the way, your friend Colonel Merafe, or whom you 8 have worked with for along time, as you described it, must 9 have told you almost blow by blow - he was the one who was 10 emotional and going on about this incident - must have told 11 you blow by blow what happened and what went wrong in the 12 course of his outpourings. 13 BRIGADIER CALITZ: Nee, mnr die 14 Voorsitter, ek verskil van u. Kolonel Merafe, ja, hy is 'n 15 vriend van my, 'n kollega. Hy is een van my 16 eenheidsbevelvoerders op Rustenburg. Hy het my wel 17 meegedeel dat hy oppad is met een van die lede wat gekap 18 is. 19 MR MPOFU: Ja. 20 BRIGADIER CALITZ: Hy was baie emosioneel 21 en het gesê daar was 'n aanval en hy jaag met hierdie 22 persoon. Sy asem het gejaag. Hy het half gepraat/skreeu 23 oor die selfoon, en toe was dit af, en ek het toe in my 24 verklaring getuig dit is waar ek toe weer na die helikopter 25 toe is saam met die speurhoof –</p>
<p style="text-align: right;">Page 19908</p> <p>1 weet hulle is van daar af koppie toe en daar het 'n 2 konfrontasie plaasgevind. Maar wat presies sy woorde was 3 onder getuënis kan ek nie nou vir u onder eed sê nie. 4 MR MPOFU: Yes, but surely your friend Mr 5 Merafe – 6 CHAIRPERSON: I'm sorry, Mr Mpofo, any 7 evidence he's going to give on this point would be hearsay 8 in any event. We've heard direct evidence from General 9 Mpembe. We're going to hear evidence, I take it, from some 10 of the others who were with him. You're going to call your 11 two witnesses who you've filed statements to deal with it. 12 We will be able to make – I would hope – to make findings 13 about that. We don't need some hearsay from this witness. 14 MR MPOFU: No, Chairperson, it – 15 CHAIRPERSON: So there's no point in 16 following it up. 17 MR MPOFU: Yes, that's true, Chairperson, 18 but of course I was only asking whether he was aware, not – 19 CHAIRPERSON: Yes, yes, I know, but his 20 awareness isn't going to take us much further, because if 21 he became aware it would only have been much later. He 22 wouldn't have been aware of it, I take it, at the time it 23 was happening. 24 MR MPOFU: I don't know that, 25 Chairperson. It might be relevant to my next enquiry, but</p>	<p style="text-align: right;">Page 19910</p> <p>1 MR MPOFU: Ja, but – 2 BRIGADIER CALITZ: - om na die toneel toe 3 te gaan. 4 MR MPOFU: Sorry, sorry, sorry, 5 Brigadier. Ja. No, that's why I'm suggesting that you are 6 being untruthful when you say you did not know that General 7 Mpembe escorted them, because that was the exact point of 8 difference between Colonel Merafe and Mpembe as to whether 9 they should be escorted back to the koppie with their arms, 10 or disarmed right there, and that's why some of the people 11 wanted to kill Mpembe, because they thought he'd made the 12 wrong call on that exact point. 13 BRIGADIER CALITZ: Ja, ek en Merafe het 14 nie die verskillende bespreek op daardie stadium toe hy my 15 gebel het nie. Sy belange het toe gelê by die lid wat hy 16 gedra het na die voertuig toe en wat ernstig beseer is en 17 wat later beswyk het. 18 MR MPOFU: So Kolonel Merafe didn't say 19 to you at any stage during this emotional period that, "All 20 this would have been prevented if Mpembe had listened to 21 me," or something like that? 22 BRIGADIER CALITZ: Nee – 23 MR MPOFU: Because that seems to be the 24 contention between the two of them. 25 BRIGADIER CALITZ: Soos ek vir u sê, nie</p>

<p style="text-align: right;">Page 19911</p> <p>1 op daardie stadium het Kolonel Merafe glad nie oor, gepraat 2 wat daar gebeur het nie. Ek het die inligting nie by hom 3 gekry nie. Ek dink op 'n stadium ek het met Kolonel 4 Vermaak geskakel. As ek onder korreksie praat, die persoon 5 op die toneel, mnr Blaauw of iemand dink ek ook op 'n 6 stadium, so daar was telefoniese gesprekke gewees en dit is 7 waar ons dit gehoor het op 'n latere stadium. 8 MR MPOFU: And you also didn't take any 9 interest, given your position and what Mr Bizos described 10 as mutinous behaviour, to find what the root of the 11 disagreement was between the one mutineering group and the 12 General? 13 BRIGADIER CALITZ: My getuienis was dat 14 ek onmiddellik toe ek die inligting gekry het, het ek die 15 speurhoof gekontak en ons is met die eerste helikopter, wat 16 toevallig weer 'n Coin helikopter was, is ons na die toneel 17 toe en van daar af het ons wel vasgestel en soveel as 18 moontlik probeer uitvind wat het aangegaan en wat het 19 gebeur. 20 MR MPOFU: Good, and in the course of 21 that investigation surely, surely Brigadier, you were then 22 told that the bone of contention was the fact that General 23 Mpembe proposed and did allow the people to proceed to the 24 koppie while their arms were in their hands, surely? 25 BRIGADIER CALITZ: Ek het met Kolonel</p>	<p style="text-align: right;">Page 19913</p> <p>1 kon dit nie hoor nie; hy was in die helikopter, maar hy het 2 wel vir my die detail, toe ek land op die grond vir ons dit 3 deurgegee wat sy besluit was, hy het die Generaal laat 4 verwyder en dat die lede onder aanval was. Hy het vir my 5 beskryf uit die lug uit presies wat hy gesien het toe hy 6 die "stun" granate gegooi het, die lede wat doodgekap was 7 onder hom, daardie beskrywing het hy vir my – het ons 8 gesprek oor gehad, ja. 9 MR MPOFU: Yes, well you really want the 10 Commission to believe that here's this situation which 11 unfortunately for two reasons – (1), it has had very tragic 12 consequences both for the police and the community; but 13 secondly, it has generated the mutinous behaviour of the 14 people that you are working with, and with all that 15 background you didn't bother to say ja but why did they 16 want to kill him in the first place, and then get into the 17 reason, which was really only the difference between what 18 should be done. Is that really what you want the – 19 BRIGADIER CALITZ: Nee, ek het glad nie 20 gesê – dit was nie die gesprek tussen, of ons, dat ons nie 21 daaroor gepraat het nie. Ek het net gesê Kolonel Vermaak 22 het vir my gesê hy het nie self gehoor wat die gesprekke 23 was nie. Dit is net die lede wat vir hom gesê het dat 24 hulle is ongelukkig met die besluite wat geneem was en dat 25 daar dreigemente was en hy het besluit om die Generaal weg</p>
<p style="text-align: right;">Page 19912</p> <p>1 Vermaak gepraat wat in die helikopter was en geland het, so 2 ek dink nie hy kon rêrig gehoor het wat Kolonel, ag 3 Generaal Mpembe bespreek het met die mense nie. Kolonel 4 Merafe was nie op die toneel nie en daar was baie geskokte 5 lede daar rond. So die senior persoon op die toneel was 6 Kolonel Vermaak toe ek daar aankom en hy het ons dan deur 7 die toneel gevat, waar ek dan die oorledenes gesien het en 8 van daar af het ek die lede uitgeplaas om die toneel te 9 beveilig. 10 MR MPOFU: Okay, I'm going to argue that 11 your evidence in this regard is highly improbable and 12 actually farfetched. 13 BRIGADIER CALITZ: Ek verstaan nie wat – 14 u stelling "farfetched," wat bedoel u daarby? 15 MR MPOFU: Okay, let's stick with 16 improbable. 17 CHAIRPERSON: I think "vergesog." 18 Vergesog. 19 BRIGADIER CALITZ: Ek sê maar net wat op 20 daardie dag Kolonel Vermaak, die inligting wat hy my gegee 21 het is nie wat hy self waargeneem het nie. Dit is wel wat 22 hy gehoor het en die redes wat hy my gegee het daarvoor dat 23 hy Kolonel, ag Generaal Mpembe van die toneel af verwyder 24 het, maar u vraag was dat hulle kon hoor wat die 25 onderhandeling, en in daardie geval, ek sê Kolonel Vermaak</p>	<p style="text-align: right;">Page 19914</p> <p>1 te vat. Hy kon nie vir my sê op watter stadium, wie die 2 lede was, hulle uitwys nie. Ek dink tot tans is daardie 3 name nie aan hom bekend nie, volgens my kennis. Miskien as 4 hy kom getuig kan hy sê dat hy wel die persone kon onthou 5 het. So ek sê glad nie dat ons dit nie bespreek het nie. 6 Dit is wel bespreek op daardie stadium. 7 [15:44] MR MPOFU: Okay, fine, I'll argue what I 8 argue. We'll come back to this statement in a different 9 context. 10 BRIGADIER CALITZ: Mnr die Voorsitter, as 11 ons weg beweeg van hierdie verklaring af kan ek miskien net 12 ietsie wys, net uit dieselfde verklaring uit waaroor ek 13 getuig het? Dit is paragraaf 50, maar net vir die record, 14 bladsy 15. 15 CHAIRPERSON: It presumably has to be 16 read also with 48.4, it covers the similar point. 17 BRIGADIER CALITZ: So dit is maar net 18 waarna ek verwys het dat as daar 'n taktiese besluit geneem 19 is op die dag dat hulle gevra is, die Security sowel as the 20 Surveillance personnel, om die JOC te verlaat wat mnr Botes 21 dan duidelik ook hier in sy eie verklaring sê die gebeure 22 was. So dit is, ek wil dit maar net op rekord sit, dit is 23 uit sy eie verklaring uit. 24 MR MPOFU: Okay, well, now that you've 25 raised it let me correct you. That is exactly what Mr</p>

<p style="text-align: right;">Page 19915</p> <p>1 Semenya was correctly asking me to refrain from doing. 2 That paragraph you are reading is in respect of a 3 particular meeting, do you understand, which lasted 4 approximately 45 minutes. So you can't stretch it to what 5 you've just said. 6 CHAIRPERSON: Yes, that's why it is 7 helpful to look at 48.4. 8 MR MPOFU: Absolutely and in any event in 9 context you have to read it with 48.4. 10 BRIGADIER CALITZ: Ek het – 11 CHAIRPERSON: 48.4 specifically deals 12 with Wednesday. 13 MR MPOFU: Yes. 14 CHAIRPERSON: But it says that there were 15 times when I was asked for information about a particular 16 situation on the ground. In this regard I provided factual 17 information to SAPS, and he gives what it was, layouts of 18 hospitals, number of residents, ventilations, access roads, 19 etcetera, and then he goes on how to deal with that 20 situation, it was a decision within the purview of SAPS. 21 MR MPOFU: Yes. 22 CHAIRPERSON: But I don't think it is a 23 matter that can be dealt with further with him. 24 MR MPOFU: Correct, ja, in other words, 25 ja, my contention to you earlier is covered by 48.4 or has</p>	<p style="text-align: right;">Page 19917</p> <p>1 BRIGADIER CALITZ: Dit is korrek, 2 Generaal Annandale en Brigadier Chilwane. 3 MR MPOFU: On the 13th, yes. 4 BRIGADIER CALITZ: Op Maandag, die 13de. 5 MR MPOFU: That is correct. 6 BRIGADIER CALITZ: Korrek. 7 MR MPOFU: Because, - anyway, that's not 8 for you, ja. I seem to remember his own evidence being 9 different but don't quote me on that. The removal of 10 General Mpembe, you see I want to, I'm just going to, - I'm 11 not going to belabour this point, I'll ask you maybe one or 12 two questions, so for that reason I would play open cards 13 and tell you where I am going with it. I'm going to argue 14 at the end that the removal of General Mpembe from the 15 scene as described by Vermaak, that that removal was not as 16 temporary as it seemed, that actually from that point on he 17 was removed effectively from his position and that General 18 Annandale took over the overall command of the operation. 19 What would be your comment on that? 20 BRIGADIER CALITZ: Nee, glad nie, nie van 21 my observasie punt af nie. Ek dink daardie selfde aand het 22 General Mpembe nog terugvoer gegee, ek dink aan die 23 Nasionale Kommissaris en die goed verduidelik en die 24 vergaderings nog steeds bygewoon en Generaal Annandale, wat 25 ons gepraat het, ek dink mnr die Voorsitter het die term</p>
<p style="text-align: right;">Page 19916</p> <p>1 been indicated by 48.4, because I was saying that, - I was 2 not saying that Lonmin took over the whole operation, I was 3 saying that they participated and made certain significant 4 or decisive contributions. Obviously how the situation got 5 dealt with as it happened on the 13th was left to SAPS, that 6 I agree. So the situation described at 48.4 is more in 7 line with what usually happened, correct? 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, ek en u was nog, die advokaat het saamgestem die 10 heeltyd. Ek het gesê daar was 'n samewerking ooreenkoms en 11 ek het net 'n punt gemaak dat wanneer 'n taktiese besluit 12 geneem was, dat hulle, - so dit is net die paragraaf wat ek 13 dan na wou verwys het, maar ek het ook saam met die 14 voorsitter gestem oor paragraaf 48.4, korrek. 15 MR MPOFU: Okay, I am not going to go 16 back to that, to TT4 and all that, but you get my point, 17 ja. Okay, are you happy now that you've pointed your part 18 on the statement, we can move on to something else? 19 BRIGADIER CALITZ: You've got permission. 20 MR MPOFU: Thank you, I don't know what I 21 would do without you, Brigadier. Okay, we've dealt with 22 the issue of whether Merafe told you about the removal. 23 Just another issue very quickly, do I understand you 24 correctly that General Annandale arrived at the scene on 25 the 13th and that's where you first saw him as it were?</p>	<p style="text-align: right;">Page 19918</p> <p>1 gebruik, chief of staff, wat uit die Wêreld Beker uitgekóm 2 het. So dit is meer om die JOCCOM vergaderings te 3 fasiliteer. 4 MR MPOFU: Ja, well, that's property the 5 point. You know Annandale, nobody really knows what he was 6 doing, one day he is chief of staff or he is the deputy or 7 he is the chairman or whatever. The point of the matter 8 is, from that point on, whether one looks at your statement 9 or Scott's statement or the others I will argue and I'm not 10 going to refer you to those passages. The thrust of all 11 those statements from that point on is that every major 12 decision, you refer to General Annandale, right up to the 13 point at which he instructs Colonel Scott to come and brief 14 you and determine that the operation must start at half 15 past three. 16 BRIGADIER CALITZ: I don't think every 17 major instruction or what you refer to, definitely the one 18 of the 13:30 was General Annandale chairing that meeting, 19 maar ek weet nie of die generaal, soos u dit sê, nie deel 20 was daarvan nie en so ver ek weet was Generaal Mpembe, hy 21 het 'n integrale deel gehad met die onderhandeling, met die 22 Lonmin Mynbestuur as ek reg is, hy het opdrag gegee daardie 23 Maandagaand dat die mense moet bystaan, ek dink vir Kolonel 24 Scott om die beplanning, om voorligting te gee, om die 25 beplanning en goed te begin doen. So hy het sekere</p>

<p style="text-align: right;">Page 19919</p> <p>1 definitiewe opdragte gegee nog steeds as 'n oorhoofse 2 bevelvoerder, so ek het dit nie so ondervind nie, miskien 3 weet u van iets wat u kan – 4 CHAIRPERSON: But surely the decision 5 that the operation's tactical option, stage 3 operation 6 should have been implemented or put into operation at 3:30, 7 - sorry, 15:30 on the Thursday afternoon. That was quite 8 an important decision and he made that. In fact the 9 evidence I think is that the Provincial Commissioner 10 instructed General Annandale to proceed with the operation 11 and he then fixed the time. Now General Mpembe was 12 present, I must say, this is obviously a prima facie view I 13 am putting to you so that you can deal with it, I would 14 have expected General Mpembe to have given, fixed the time 15 or at the very least have been referred to. The impression 16 we get in the evidence is this is not what happened. 17 General Annandale just said, right, implement it at 15:30 18 and General Mpembe sat there in the corner and did nothing. 19 That's the impression I must tell you I get, it may be 20 wrong, the prima facie view which may require revision, but 21 I would like to hear your comment on it. 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 soos ek General Mpembe ken, ek werk 19 jaar plus saam met 24 hom, is hy nie 'n persoon wat stil sit in die hoek en geen 25 kommentaar lewer nie. Hy is nogal 'n op die grond,</p>	<p style="text-align: right;">Page 19921</p> <p>1 but on the other hand there may be other explanations and 2 there may be other areas in which he did truly function as 3 overall commander. It is too early to make a definitive 4 finding on that obviously. 5 BRIGADIER CALITZ: Ek stem saam met u, 6 mnr die Voorsitter, ek dink die generaal sal die beste weet 7 wat die omstandighede was in daardie dag, ek was nie daar 8 nie. 9 MR MPOFU: Ja, and once again, I mean not 10 to belabour the point, as the chairperson correctly pointed 11 out, you were not at that meeting and I did put this to 12 General Mpembe but I would like to hear your remark, I mean 13 your own observation given what you've described that he is 14 an outgoing character. Remarkably in, I think it is EEE, 15 are the minutes of that meeting. It is all Annandale, 16 Annandale, Annandale, up to the point that we've just 17 discussed and Mpembe says nothing, at the most decisive 18 meeting before the biggest operation probably in South 19 Africa, arguably, the overall commander who is an outgoing 20 and a person who gets involved, is mute. 21 BRIGADIER CALITZ: Mnr die Voorsitter, ek 22 sal net kan getuig dat die generaal self sal kan antwoord 23 op daardie een, ek was glad nie daar nie. Ek het net 24 kommentaar gelewer op die vorige opmerking van dat hy hande 25 gevou in die hoekie sit.</p>
<p style="text-align: right;">Page 19920</p> <p>1 definitiewe betrokke offisier. Ek weet nie wat sy 2 getuienis was in die verband nie, so ek was nie by daardie 3 vergadering nie, ek kan maar net sê soos ek General Mpembe 4 ken. Hy sal miskien 'n rede gehad het, as hy dan erken dat 5 hy dit nie bespreek het nie, wat ook al die geval was en of 6 dit 'n opdrag was van die PK af, dat hy dit dalk so aanvaar 7 het, ek weet nie, mnr die Voorsitter. Ek ken nie General 8 Mpembe se karakter as iemand wat net in die hoekie gaan sit 9 en niks sê nie. 10 MR MPOFU: Ja, well, - 11 CHAIRPERSON: You see the evidence you're 12 giving actually, I'm sorry to say, strengthens the prima 13 facie view that I have. If he is an op and wakker kind of 14 a person, you know active, forceful, he takes the lead and 15 that kind of thing, which I think to be fair based on my 16 impression of him in the witness seat is correct. You 17 would have expected him with that character to have said, 18 right, we're going to do it at 15:30, not to sat quietly 19 when, and let Annandale fix the time, but obviously it is 20 peripheral point as far as you were concerned because you 21 weren't there. 22 BRIGADIER CALITZ: Ek was glad nie daar 23 nie, mnr die Voorsitter. 24 CHAIRPERSON: It is something that is an 25 indication perhaps that the point being made is correct,</p>	<p style="text-align: right;">Page 19922</p> <p>1 MR MPOFU: Yes, okay, thank you, and just 2 to complete that point, General Mpembe really, the only 3 place that he featured in the period that I've described is 4 in the evening of the 15th where he was engaging the union 5 bosses and as we know even that effort was, it came to 6 naught because Lonmin refused to see Mr Mathunjwa in the 7 morning. 8 CHAIRPERSON: I'm sure that that act, we 9 know that. The evidence of the Lonmin people which of 10 course we're going to hear in due course and the tape 11 recording which has been, the transcripts which have been 12 put before us, indicates that there were discussions 13 between Mr Mathunjwa and some of the Lonmin people and the 14 problem was of a different nature but what you have put 15 accurately to the witness is Mr Mathunjwa's version. 16 MR MPOFU: Yes, correct. 17 CHAIRPERSON: Whether we know that Mr 18 Mathunjwa's version is correct is a different matter. 19 MR MPOFU: Fair enough. 20 CHAIRPERSON: And it may well be, 21 certainly Lonmin is going to argue that Mr Mathunjwa's 22 version is not correct, so we can't prematurely make a 23 finding on that but what you have done correctly is to put, 24 but you didn't put it like that, is to put Mr Mathunjwa's 25 version to the witness.</p>

<p style="text-align: right;">Page 19923</p> <p>1 MR MPOFU: Yes, no, thank you, 2 Chairperson. What we know and that includes you now is 3 that when Mr Mathunjwa came back at 12 o'clock to talk to 4 the strikers he reported to you that he was once again 5 going to engage management and he came back again at 15:35 6 and management had still not engaged with him. 7 BRIGADIER CALITZ: Ja, ek kan u help net 8 met die eerste gedeelte van die vraag, dit kan ek bevestig 9 dat hy wel 12 uur by my was. Daar was 'n redelike gesprek 10 tussen ons en dat hy het gesê hy gaan na Lonmin management 11 toe en dat hy sal terugkeer. Die tweede deel weet ek nie 12 van nie, ek was nie teenwoordig toe hy die tweede keer 13 teruggekom het nie, dit is toe ons by forward holding area 14 2 was, - ag, forward holding area 1, ekskuus tog. 15 CHAIRPERSON: Mr Mpofo, when you're 16 finished with this point we'll take the adjournment until 17 tomorrow morning, so it is for you to tell me when we can 18 adjourn. 19 MR MPOFU: Yes, Chairperson, I'm just 20 going to round off this point. I'm just checking, I 21 thought it was you, Brigadier, who said that Mr Mathunjwa 22 addressed the strikers for the first time on the 16th at 23 about 12, but some time before the main action. 24 BRIGADIER CALITZ: Mnr Mpofo, dit is wat 25 ek saam met u gestem het, ek het vir u gesê ek kan daardie</p>	<p style="text-align: right;">Page 19925</p> <p>1 het. Ek dink dit is uit die gesprek uit van Kolonel 2 McIntosh, General Mpmembe en die ander persone so vroeg soos 3 vyf uur dink ek op die vorige oggend, as ek my feite korrek 4 het nou. So dit is wat ons dan vir hulle die terugvoer 5 gegee het, maar op daardie dag wat u verwys, dit was die 6 16de na mnr Mathunjwa by ons was, so ek was bewus dat hy 7 Management toe is en miskien as ek dan kan sê, dit is 8 hoekom ek van hom verwag het op die stadium toe hy hulle 9 wel toegesprek het die tweede keer, om na my toe terug te 10 kom, want dit was ons verstandhouding gewees dat daar 'n 11 gesprek sal plaasvind. 12 MR MPOFU: Yes, no, fair enough and would 13 you confirm as other police witnesses did, that that 14 refusal to engage the strikers on the part of Lonmin for 15 all the reasons that they put, was frustrating to SAPS? 16 MR VAN AS: Mr Chairman, one witness, 17 General Mpmembe indicated that he felt that Lonmin should 18 have engaged with the strikers but he also qualified that 19 answer by saying he understood why they didn't engage with 20 the strikers. 21 CHAIRPERSON: Yes, the question is 22 whether it was frustrating to SAPS and as far as I can 23 remember, even from the opening statement of SAPS before 24 this Commission, SAPS adopted, I think it was there, at 25 some point SAPS adopted a critical attitude towards Lonmin</p>
<p style="text-align: right;">Page 19924</p> <p>1 deel saam met u stem. Hy het teruggekom en wel gesê dat hy 2 na die mynbestuur toe gaan en weer sal terugkeer. Ek het 3 net gesê die tweede deel van die stelling kan ek u nie mee 4 help nie en dit is dat u gesê het hy het om, ek dink u tyd 5 was 14:30, wat het u gesê, teruggedaan na die koppie toe. 6 Dit is waar ons besig was met die voorligting by forward 7 holding area 1, so ek het nie weer met mnr Mathunjwa 8 gepraat die tweede deel nie. Ek weet VBN was Papa1 gewees 9 maar dit was my voertuig, Kolonel McIntosh wat toe daar 10 was. 11 MR MPOFU: Okay, but in any event it was 12 known to you as operational commander and through your 13 interactions with the negotiators and even the five Madoda, 14 that the management had consistently refused to engage the 15 strikers and had put, they had basically said that they 16 would only do so if they capitulate, in other words if they 17 come back to work. 18 BRIGADIER CALITZ: Wat ek vir u kan 19 getuig wat ons wel weet en uit die negotiations, na van 20 hulle weg getuig het of gesê het was dat Lonmin Management 21 sê daar is 'n twee jaar loon ooreenkoms aan die gang en dat 22 hulle nie bereid is om met gewapende strikers in gesprek te 23 tree nie en dat indien die persone hulle wapens sal neerlê, 24 vreedsaam en terugkeer werk toe, dan sal hulle met hulle 25 onderhandel. Dit is die terugvoer wat ons vir hulle gegee</p>	<p style="text-align: right;">Page 19926</p> <p>1 and felt that if Lonmin had been more flexible things might 2 have been different, so I think – 3 MR MPOFU: Yes – 4 CHAIRPERSON: - the question is a 5 permissible question, the witness can be asked to answer 6 it. 7 MR MPOFU: Thank you, Chairperson. 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ongelukkig was ek nie deel van daardie gespreksvoeringe 10 tussen die generale of die Lonmin Management nie, so ek kan 11 nie presies sê of dit vir hulle frustrerend was of wat daar 12 gesê is nie, ek kan net sê die boodskap wat ons aan die 13 groep oorgeda het en dat die strikers op daardie stadium 14 nie gelukkig was daarmee nie en nie verder met ons wil 15 onderhandel het nie, so ek kan net die reaksie van die 16 strikers daarop gee en nie die van die polisie nie. Seer 17 sekerlik van ons kant af, van my kant af, ons het 18 onderhandelinge probeer vreedsaam voortgaan, dit het nie 19 ons onderhandelinge beïnvloed op daardie stadium nie. 20 MR MPOFU: My last question and it is 21 meant to just prepare you for where we are going to move to 22 tomorrow which is the 16th, is whether you would agree that 23 them, I'll avoid the word eulogy that Mr Bizos used, the 24 congratulatory message that you gave about the 110% and all 25 that, whether you agree that now, knowing what you know</p>

<p style="text-align: right;">Page 19927</p> <p>1 now, you agree that it was incorrect and inappropriate, 2 insensitive?</p> <p>3 CHAIRPERSON: I thought that was covered 4 because Mr Bizos cross-examined quite extensively. I have 5 a feeling you are trying to re-plough part of the field –</p> <p>6 MR MPOFU: No, I'm not –</p> <p>7 CHAIRPERSON: - that has been ploughed 8 already.</p> <p>9 MR MPOFU: I am not, Chairperson.</p> <p>10 [16:04] CHAIRPERSON: Alright, let's get his 11 answer. The proposition is being put to you that with the 12 benefit of hindsight, having based on extra information you 13 received and so on, having seen the video of, who depicts 14 whose speaking, having read the transcript of what you 15 said, whether you don't think that it was inappropriate to 16 say what you said, or some of the things you said, what you 17 said is totally in order and Mr Mpofu wouldn't, even Mr 18 Mpofu wouldn't criticise it but the passages that have been 19 singled out the suggestion is you should agree that it with 20 hindsight these remarks were inappropriate?</p> <p>21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 nou met die benefit van hindsight, as ons praat van die 23 110%, die gedeelte wat ons gesê ons het die mense geluk 24 gewens, ek het vir u verduidelik presies in watter konteks 25 dit bedoel was en dit is net met die opvolg lyn, so as –</p>	<p style="text-align: right;">Page 19929</p> <p>1 separate from what Mr Bizos dealt with which I won't 2 traverse but from the point of view that that statement 3 amongst other things was irregular in that it was intended 4 to influence the members to support the false theory of 5 self defence.</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, ek 7 dink dit is reeds bespreek, daardie selfde vrae is aan my 8 gevra. So, maar ons sal dit vir u -</p> <p>9 CHAIRPERSON: We'll face it with such 10 fortitude as we can muster on the morrow. We will now 11 adjourn until tomorrow.</p> <p>12 BRIGADIER CALITZ: Dankie. 13 [COMMISSION ADJOURNED] 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 19928</p> <p>1 CHAIRPERSON: You don't - 2 BRIGADIER CALITZ: Nee, nee, nee. 3 CHAIRPERSON: You don't have to repeat is 4 all over again.</p> <p>5 BRIGADIER CALITZ: Ja. 6 CHAIRPERSON: It's just a general 7 proposition put to you by Mr Mpofu and I indicated to him 8 that I thought he was re-ploughing ground that had been 9 ploughed already but I allowed him to put the general 10 question to you and I'd appreciate a general answer from 11 you without all the details which we had before when Mr 12 Bizos questioned you.</p> <p>13 BRIGADIER CALITZ: Miskien daardie 14 gedeelte, mnr die Voorsitter, as ek net kan sê net op wat 15 die bedoel was met die lyn en die opvolg van die lyn, dit 16 is wat ek die bevelvoerders geluk gewens het met die 110%. 17 Nou met die benefit van hindsight laat ek weet daar is 18 video materiaal en van alle kante af en gesien het die 19 hoeveelheid doppies en die hoeveelheid skietery sou ons 20 dalk die skiet voorval ook bespreek het en dan vir die lede 21 met omsigtigheid daarna verwys het en gesê het kom ons kyk 22 wat het hier gebeur. So dit sal seerskerlik deel gewees 23 het van my voorligting aan daardie groep op die 18de.</p> <p>24 MR MPOFU: Yes, and my questioning to you 25 tomorrow will deal with that. From the point of view that</p>	

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