

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 173

23 JANUARY 2014

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1 [PROCEEDINGS ON 23 JANUARY 2014]  
 2 [09:07] CHAIRPERSON: The Commission resumes.  
 3 Brigadier, you're still under oath.  
 4 ADRIAAN MARTHINUS CALITZ: Thanks.  
 5 CHAIRPERSON: Mr Mpofu, I take it this is  
 6 the last –  
 7 MR MPOFU: Leg.  
 8 CHAIRPERSON: - lap.  
 9 BRIGADIER CALITZ: Mnr die Voorsitter,  
 10 ekskuus tog, as ek mag –  
 11 VOORSITTER: Ja, u mag.  
 12 BRIGADIER CALITZ: Kan ek dalk net sê,  
 13 net vir die mense wat dit miskien volg op die  
 14 "transcripts," ek wil net in die afwesigheid sê my klein  
 15 dogtertjie verjaar vandag en ek kan nie by haar wees nie,  
 16 maar ek weet sy volg die "transcripts" en ek wil maar net  
 17 vir haar sê gelukkige verjaarsdag. Dankie, mnr die  
 18 Voorsitter.  
 19 CHAIRPERSON: You'll get the bill for  
 20 that message from YouTube in due course.  
 21 BRIGADIER CALITZ: They can bill me  
 22 anytime for that, but she's small and she understands.  
 23 CHAIRPERSON: Alright, well I think we'll  
 24 all join in sending her our best wishes, including Mr  
 25 Mpofu.

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1 MR MPOFU: Including me, Chairperson.  
 2 CHAIRPERSON: Right, Mr Mpofu, don't  
 3 spoil the –  
 4 MR MPOFU: The party.  
 5 CHAIRPERSON: - the young lady's birthday  
 6 too much, but nevertheless, finish off the witness as  
 7 quickly as you can.  
 8 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 9 Yes, thank you. Brigadier, yes, we wish your daughter  
 10 happy birthday.  
 11 BRIGADIER CALITZ: Baie dankie.  
 12 MR MPOFU: I just wanted to start with  
 13 just something that I've been specifically instructed to  
 14 ask you, given circumstances that I will explain to you  
 15 now, which is something I think we asked from one or two of  
 16 the leadership of the police, and that is whether any of  
 17 you, the lessons of Marikana have been learned by SAPS, and  
 18 if so, what those lessons might be.  
 19 And maybe while you are settling with your  
 20 papers, let me explain the context as to why I'm asking  
 21 that questions, why I've been asked to ask that question.  
 22 It is because as you might know that today we have a  
 23 situation where some of my clients are going to be involved  
 24 in a massive strike in the Marikana area and the chances  
 25 are that the very same Marikana POP, or the same units, POP

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1 and TRT and so on will somehow be involved, hopefully not  
 2 to the same extent, but the reality is that those two  
 3 groups, one which I represent and one which you represent  
 4 in a different sense, might be facing each other again, and  
 5 that's why I was asked to asked whether lessons have been  
 6 learned from what happened, on your side. Obviously that  
 7 doesn't mean no lessons to be learned on both sides. I'm  
 8 not suggesting –  
 9 CHAIRPERSON: Before the Brigadier  
 10 answers the questions, may I ask you whether your clients  
 11 who are going to be there, are going to be in possession of  
 12 dangerous weapons?  
 13 MR MPOFU: Well, I won't answer that  
 14 question, Chairperson, for two reasons; (1), because I  
 15 don't know, but secondly because I think it might  
 16 trivialise a serious concern about possible problems.  
 17 CHAIRPERSON: It wasn't intended as a  
 18 trivial question at all. Whatever –  
 19 MR MPOFU: Well, I don't know –  
 20 CHAIRPERSON: Whatever the ultimate –  
 21 MR MPOFU: The short answer is I don't  
 22 know.  
 23 CHAIRPERSON: Whatever the ultimate  
 24 finding – that's an answer I can understand.  
 25 MR MPOFU: Ja.

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1 CHAIRPERSON: Whatever the ultimate  
 2 findings of this Commission will be, there can be no doubt  
 3 that the fact that people were in possession of dangerous  
 4 weapons and wouldn't hand them over was a factor which has  
 5 to be borne in mind. There may well be a lot of other  
 6 factors which affect other participants in the events; that  
 7 is clearly a factor that we all must be aware of.  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: But anyway, be that as it  
 10 may, let's see, hear what the Brigadier's answer is.  
 11 Before he answers I must say Mr Semenya undertook some time  
 12 ago, in response to a question we asked him, to provide us  
 13 with a document setting out what lessons the police  
 14 considered they've learned and what steps they are taking,  
 15 because I said it wasn't any good to wait till our report  
 16 comes out because incidents may happen before the report  
 17 comes out.  
 18 MR MPOFU: That's the issue.  
 19 CHAIRPERSON: He said they were aware of  
 20 that and they were preparing a document. So perhaps before  
 21 the Brigadier answers we can ask Mr Semenya what progress  
 22 he can report in regard to that document.  
 23 MR SEMENYA SC: Chair, I have also made  
 24 enquiries yesterday with client and I'm told Mr De Rover is  
 25 working on it.

<p style="text-align: right;">Page 20443</p> <p>1 CHAIRPERSON: Thank you. So do you know 2 when we're likely to get it? 3 MR SEMENYA SC: My instructions yesterday 4 were that they made contact with Mr De Rover to establish 5 the timelines for that report to be here. 6 CHAIRPERSON: Thank you. Brigadier, now 7 is your chance to answer Mr Mpfu's question. 8 BRIGADIER CALITZ: Dankie, mnr die 9 Voorsitter. Van my oogpunt af, as ons kan sien tot wat op 10 hede getuig is, dink ek die grootste probleem wat ek sal 11 graag wil sien regstel is die kommunikasie, nie net soseer 12 die radio's nie, maar ook die "recordings" en dan die 13 videografering van die insidente, vreedsaam of nie 14 vreedsaam, en daarom dink in my afwesigheid die persone wat 15 by die kantoor is seker te maak dat daar genoeg 16 videokameras is sodat ons presies kan sien en hierdie 17 goeters "record." En dan natuurlik ook die intelligensie 18 verslae van Crime Intelligence af, sodat ons betyds die 19 nodige inligting kry in watter rigting gaan wat. 20 En dan baie belangrik wat u verwys het na die 21 "strike" is dat dit is op hierdie stadium miskien op 'n 22 regte kanaal dat daar kommunikasie tussen die partye is en 23 dat hulle dan insit in die JOCCOM, met ander woorde 24 verteenwoordigers van AMCU sal dan insit in 'n "joint 25 operational centre" waar almal teenwoordig is sodat ons met</p>	<p style="text-align: right;">Page 20445</p> <p>1 by violence and intimidation. These are matters that of 2 course we haven't come to an opinion on yet, but we'll have 3 to consider when we consider our report. 4 But that factor doesn't operate here today 5 because as I said this is a protected strike. AMCU have 6 obtained the relevant certificate from the CCMA, and I 7 would assume – I hope I can assume the two factors I've 8 mentioned may make all the difference. But anyway, the 9 question you asked was a legitimate question and you got an 10 interesting answer. 11 MR MPOFU: Yes, thank you, Chairperson, 12 and just to follow up on that for the citizenry of South 13 Africa who are not schooled in matters of law, the point is 14 that today the same units, POP and TRT maybe, of the North 15 West will be facing the same strikers more or less. 16 Obviously there are more people. I think estimates go from 17 70 000, but I'm just saying theoretically, and that's the 18 reason for the apprehension both on the part of my clients 19 and I suspect on the part of all the citizens of South 20 Africa. Is it correct firstly that the same POP people and 21 the same TRT people have today been deployed in the North 22 West? 23 BRIGADIER CALITZ: Mnr die Voorsitter, as 24 ek verwys na Noordwes personeel, dit is net logies dat die 25 Openbare Orde Polisiëringseenheid al die –</p>
<p style="text-align: right;">Page 20444</p> <p>1 mekaar kan kommunikeer, anders as wat die geval van 2 Marikana waar dit 'n totale – kan ek sê daar was nie 3 verteenwoordiging gewees. Dit was 'n onwettige byeenkoms 4 en die manier wat hulle dit doen. 5 En dan miskien laastens ook dat dit 'n vreedsame 6 protesaksie is. Ons weet die wetgewing het gewysig, maar 7 dat daar nog steeds nie enige gevaarlike wapens "display" 8 word en dat dit vreedsaam is, en sodoende alles deur die 9 JOC gekommunikeer word. So dit is miskien as ek dan sê in 10 my oogpunt. 11 CHAIRPERSON: Thank you. Before Mr Mpfu 12 asks his next question, because he's raised a question of 13 what might happen today, we're of course not directly 14 concerned with that but there are two important 15 differences, I suppose, between today and August 2012. 16 Firstly the new Dangerous Weapons Act has come into 17 operation, which one assumes that all concerned will 18 endeavour to obey the provisions of that act, and secondly 19 this strike is a protected strike, that AMCU have got a 20 certificate from the CCMA in respect of this strike. This 21 is not an unprotected strike with all the things that flow 22 from that, including possibly the findings that we will 23 have to consider making, but in certain circumstances with 24 unprotected strikes of course they are accompanied by 25 attempts by some people to enforce the unprotected strike</p>	<p style="text-align: right;">Page 20446</p> <p>1 MR MPOFU: Yes, yes. 2 BRIGADIER CALITZ: - onlus, of "crowd 3 management" voorvalle in die provinsie hanteer. Ek was vas 4 met die Kommissie se sake, so ek is nie bewus, maar ek glo 5 dat daar deur die NATJOC, wat ek verneem ook ek dink 6 Gauteng betrokke is. So ek is, maar ek praat heeltemal 7 onder korreksie nou. 8 CHAIRPERSON: I think it's been said, 9 seeing this matter is being raised, because it's considered 10 to be a matter of public concern to the citizenry – I think 11 it's been said for the police side that they do not intend 12 to do anything to break the strike. They respect the right 13 of the strikers to strike. They will do nothing to stop 14 them from striking. Presumably if the new law in respect 15 of dangerous weapons is not complied with, then they may 16 have to act to enforce that law, but I take it, it will be 17 clear, as attempts are being made to make it clear, that 18 there will be no action on the part of the police intended 19 to break the strike or interfere with the exercise by the 20 strikers of their constitutional right to strike in 21 appropriate circumstances. 22 BRIGADIER CALITZ: Dit is honderd persent 23 reg, mnr die Voorsitter. 24 MR MPOFU: And once again the reasonable 25 South African citizen would gain cold comfort from that</p>

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1 assurance, given the fact that those same policemen who are  
 2 going to be facing the people today, last week killed four  
 3 people who were not in possession of dangerous weapons.  
 4 Correct?

5 MR SEMENYA SC: Chair –

6 CHAIRPERSON: I don't understand the  
 7 relevancy of that question. I won't ask the witness to  
 8 answer it.

9 MR MPOFU: Well –

10 CHAIRPERSON: Please proceed to your next  
 11 point.

12 MR MPOFU: Well, Chairperson, you raised  
 13 the issue of dangerous weapons. I have to ask this  
 14 question. If the question demonstrates that the presence  
 15 or absence of dangerous weapons is irrelevant, which you  
 16 raised, then I have to ask the question, I'm afraid. I'm  
 17 afraid I have to ask that question, Chairperson, based on  
 18 your implication that the big decisive thing is dangerous  
 19 weapons.

20 CHAIRPERSON: No, no –

21 MR MPOFU: So the absence of dangerous  
 22 weapons where people were killed must be relevant.

23 CHAIRPERSON: I said that that question  
 24 was a matter in respect of which our minds were open, and  
 25 merely said it was something we'd have to consider at the

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1 end of the hearing. But I see Mr Semenya has turned his  
 2 light on. Do you have anything to say in response to that  
 3 question?

4 MR SEMENYA SC: I also register an  
 5 objection, Chair. The events of last week have nothing to  
 6 do with the terms of reference.

7 CHAIRPERSON: What is your answer to  
 8 that –

9 MR MPOFU: My answer is the events of  
 10 last week have everything to do with the question asked by  
 11 the Chairperson, namely whether the absence or presence of  
 12 dangerous weapons should allay the fears of citizens. It  
 13 has absolutely everything to do with that.

14 CHAIRPERSON: Let's get the witness's  
 15 answer and then move on. What do you say about that,  
 16 Brigadier?

17 BRIGADIER CALITZ: Mnr die Voorsitter,  
 18 soos ek vir u gesê het, ek is hier by die Kommissie  
 19 betrokke. Ons sal moet gaan kyk op die SAP15s. Volgens my  
 20 kennis wat ek in "hindsight" verneem het is daardie persone  
 21 wat betrokke was by laas week ek dink opgeneem vir  
 22 behandeling. So dieselfde persone waarna u verwys in  
 23 Mothotlung glo ek nie is vandag "deploy" nie, tensy hulle  
 24 al uit die hospitaal is. Maar dit is "hindsight." Dit is  
 25 die inligting wat tot my beskikking is op hierdie stadium.

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1 Maar dit is die Noord Wes Openbare Orde Polisiëring onder  
 2 die bevel van die bevelvoerder, eenheidsbevelvoerders, wat  
 3 daar sal wees en tereg soos u gesê het, in hierdie geval is  
 4 dit 'n "protected strike." Dis totaal iets anderste as wat  
 5 op die dag van Marikana gebeur het. So daar is geen  
 6 intensies, dit gaan net gemonitor word en gevideografeer  
 7 word.

8 MR MPOFU: Anyway, thanks. That's what I  
 9 was asked to ask you, based specifically on those  
 10 incidents. Now I just want to clarify something, or rather  
 11 – yes, before we go back to the whole kraal situation,  
 12 which is where we'll probably end up today, I want to  
 13 clarify a few, just sweep up as it were, a few of the  
 14 issues that we've already dealt with. You would agree with  
 15 me that the issue of the rollout of the – I just said we're  
 16 not going to go to the kraal, but I've gone exactly there.  
 17 You'll agree with me that the issue of the rollout of the  
 18 barbed wire, particularly the difference between it being  
 19 in the concave shape that we've discussed and being rolled  
 20 to the kraal and so on, that that is part of phase 3 of the  
 21 phase-3 operation, correct? Rather, phase 3 of the  
 22 operation.

23 BRIGADIER CALITZ: Dit is korrek, ja.

24 MR MPOFU: Ja, and that issue of the  
 25 rollout of phase 3 according to you was – or rather, that

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1 aspect of the rollout of phase 3 was discussed by Scott  
 2 over the phone in respect of that particular change round  
 3 about elevenish. That's your evidence from last week,  
 4 correct?

5 BRIGADIER CALITZ: Nee, mnr die  
 6 Voorsitter, ek dink u is nou op 'n ander voorval. U praat,  
 7 die 11 uur het net gegaan oor die skuif van Nyala 6, en nie  
 8 oor die uitrol van die draad nie.

9 MR MPOFU: Yes, your evidence last week –  
 10 you're quite right; I think, I suspect we are both right.  
 11 Your evidence was as soon as Nyala 6 was moved, you got  
 12 this message - I don't think you were a hundred percent  
 13 sure whether it was Scott or whoever, but you got this  
 14 message from the JOC that there was now this change  
 15 occasioned by that shift, and I asked you specifically and  
 16 you placed it at around 11.

17 BRIGADIER CALITZ: Ja, ek sê net weer dit  
 18 het niks met die uitrol van die draad te doen nie. Dit het  
 19 net met die skuif, die posisie van Nyala 6 te doen -

20 MR MPOFU: Yes, yes, okay.

21 BRIGADIER CALITZ: - en die dreigement.

22 MR MPOFU: Yes, I'm sorry, yes. No, no,  
 23 I was not saying the rollout happened at 11. The telephone  
 24 call about the change happened at about 11, correct?

25 BRIGADIER CALITZ: "The change" verwys ek

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1 weer net na die skuif van die posisie.  
 2 MR MPOFU: Ja.  
 3 BRIGADIER CALITZ: Net dit, ja.  
 4 MR MPOFU: Yes, but that was shortly – I  
 5 don't want us to cover what we've already covered. That  
 6 was shortly followed by the telephone call from Scott or  
 7 someone else about the change in the rollout itself,  
 8 correct?  
 9 BRIGADIER CALITZ: Nee, dit is nie korrek  
 10 nie, mnr die Voorsitter.  
 11 MR MPOFU: Well, when did that telephone  
 12 call come then?  
 13 BRIGADIER CALITZ: Soos ek sê, die  
 14 gesprek tussen my en Luitenant Kolonel Scott was op die,  
 15 wat hulle gesien het, waaroor ek reeds getuig het, die foto  
 16 van Kolonel Vermaak dat die Nyala 6 geïsoleer was en dat  
 17 hulle 'n dreigement was, so hulle het gesê hulle moet  
 18 naderbeweeg in die lyn van die polisie en hy is nader  
 19 geskuif aan die klein kraal, in daardie posisie. Die  
 20 uitrol van die draad was nie op daardie stadium bespreek  
 21 nie. Daardie voorligting is eers later gegee.  
 22 MR MPOFU: No, I'm sure you didn't  
 23 understand the question. I accept what you're saying. All  
 24 I'm asking you is when did it happen. When then did you  
 25 receive the telephone call that said because of the

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1 movement of Nyala 6 the wire will no longer be concave but  
 2 will go to the kraal?  
 3 BRIGADIER CALITZ: Ek dink dit was  
 4 rondom, ek het gesê die tyd was tussen 11 en 12, maar ek  
 5 kan vir u seker maak.  
 6 MR MPOFU: Okay. No, then we agree.  
 7 BRIGADIER CALITZ: Maar dit –  
 8 CHAIRPERSON: I'm sorry, I'm not sure  
 9 we're on the same – I understood you to say when you got  
 10 the phone call initially in relation to the movement of  
 11 Nyala 6 because it was isolated and so on, the question of  
 12 the implication of the move for the rollout of the barbed  
 13 wire wasn't discussed. That's what you said a minute or  
 14 two ago.  
 15 BRIGADIER CALITZ: Dit is reg.  
 16 CHAIRPERSON: So at what stage was there  
 17 – there must have been a follow-up call thereafter, I take  
 18 it, dealing with the fact that the planned rollout, the  
 19 originally planned rollout couldn't take place because of  
 20 the fact that Nyala 6 had been moved. Was there such a  
 21 follow-up call dealing with the implications for the  
 22 proposed rollout of the removal of Nyala 6 from its  
 23 original position to the position near the kraal?  
 24 BRIGADIER CALITZ: Mnr die Voorsitter,  
 25 nee, dit is eers toe ons die voorligting gekry het wat

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1 daardie detail bespreek was.  
 2 CHAIRPERSON: The answer is you didn't  
 3 get a separate call, but when the briefing was done at 2:30  
 4 the change was then communicated. Is that correct?  
 5 BRIGADIER CALITZ: Dit was –  
 6 CHAIRPERSON: I think that's the  
 7 information you want, Mr Mpofo.  
 8 BRIGADIER CALITZ: Dit is korrek.  
 9 MR MPOFU: Well, Chairperson, that's even  
 10 worse now. This is a third version. The witness has just  
 11 changed his answer. I asked him very specifically before  
 12 your intervention, Chairperson, that I'm separating the  
 13 event itself from him being informed and he says "Dit was  
 14 tussen 11 en 12." So I don't know now what's going on.  
 15 [09:27] BRIGADIER CALITZ: Mnr die Voorsitter,  
 16 die vraag wat u my gevra het is wanneer is ek ingelig oor  
 17 die skuif van Nyala 6, die posisie. Ek het herhaaldelik  
 18 vir u gesê dit gaan net oor die skuif, nie vir die rollout  
 19 nie, en daardie was tussen 11:00 en 12:00. Ek het dit in  
 20 my verklaring, ek kan nou my vinger daarop lê.  
 21 MR MPOFU: Brigadier, yes, you're quite  
 22 right and I even said then it's my mistake, maybe I didn't  
 23 ask the question clearly. I accept that that's when it  
 24 happened. I'm asking you a separate question as to when,  
 25 when, wanneer you received the telephone call that the

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1 thing should not concave? We can play the tape. It should  
 2 not be concave, but must go to the kraal, and you said  
 3 tussen 11:00 and 12:00. Did that not happen in the past  
 4 three minutes?  
 5 MR SEMENYA SC: Chair, the debate, the  
 6 record will speak for itself. There's no point in being  
 7 argumentative.  
 8 CHAIRPERSON: Mr Mpofo, I think Mr  
 9 Semenya is right. You say he said something, he said he  
 10 didn't, but the record will indicate which of the two of  
 11 you is correct and depending upon that, the matter will be  
 12 approached one way or the other, but I must confess I got  
 13 an impression that there was a misunderstanding between you  
 14 and the witness, which is why I intervened to clear it up.  
 15 So it may be that if the record supports you, it may  
 16 nevertheless be as a result of a misunderstanding on the  
 17 part of the witness, but I don't know if there's any point  
 18 in investigating that further. You've got on record, I  
 19 assume, what you want to argue the matter.  
 20 MR MPOFU: No, I don't, Chairperson.  
 21 It's cold comfort that one day next year the record might  
 22 show I was right. I want to know, because my next question  
 23 is depending on the answer.  
 24 CHAIRPERSON: I don't want to hear a  
 25 suggestion we'll be here until next year.

<p style="text-align: right;">Page 20455</p> <p>1 MR MPOFU: Or next month even.</p> <p>2 CHAIRPERSON: If you really want to send</p> <p>3 me in the wrong direction, that's the way to do it. Let's</p> <p>4 just concentrate –</p> <p>5 MR MPOFU: I hear you, Chairperson. Even</p> <p>6 next week - all I'm saying is that when the witness is not</p> <p>7 here. The point I'm making is that my next question is</p> <p>8 dependent on which of those answers it is. So if I'm right</p> <p>9 or wrong, then we'll have to play the record.</p> <p>10 CHAIRPERSON: Hasn't he told you what his</p> <p>11 position is now, whether he –</p> <p>12 MR MPOFU: Well, he told me two different</p> <p>13 ones.</p> <p>14 CHAIRPERSON: Now, what is your position?</p> <p>15 Did you receive a phone – we know you received a phone call</p> <p>16 about the removal of Nyala 6 from its original position to</p> <p>17 a position near the kraal. We know that.</p> <p>18 BRIGADIER CALITZ: Dit is korrek.</p> <p>19 CHAIRPERSON: Did you receive a</p> <p>20 subsequent phone call about the implications of that move</p> <p>21 for the rollout and the shape of the barbed wire barrier</p> <p>22 that was going to be uncoiled?</p> <p>23 BRIGADIER CALITZ: Not a phone call, mnr</p> <p>24 die Voorsitter, dit was tydens die voorligting gegee en dit</p> <p>25 was hoekom ek van die begin af die twee, die rollout en die</p>	<p style="text-align: right;">Page 20457</p> <p>1 He'll argue these points and maybe the record will bear him</p> <p>2 out.</p> <p>3 MR MPOFU: Chairperson, I understand what</p> <p>4 Mr Semenya is saying, and I would be happy, but the point</p> <p>5 is my next question is dependent on the answer.</p> <p>6 CHAIRPERSON: Okay, let try to sort the</p> <p>7 thing out. You heard the point that Mr Semenya is making.</p> <p>8 Now what comments have you got on that point? Sorry, I</p> <p>9 expressed it badly. You heard the point that Mr Mpofu is</p> <p>10 making. Do you wish to comment on that point? He says</p> <p>11 that you've changed your story. He says you now are</p> <p>12 fabricating, because you're contradicting yourself. Now</p> <p>13 what do you say about that?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>15 nee, ek het van die begin af die twee verskille uitgewys.</p> <p>16 In die begin het hy dit gevra as een vraag. Ek het vir hom</p> <p>17 gesê duidelik dit gaan nie oor die uitrol nie, dit gaan net</p> <p>18 oor die plasing, net dit, en ek het – dit was my enigste</p> <p>19 antwoord. Daarna het hy gevra oor die tyd en ek het</p> <p>20 verstaan die tyd van die plasing, die skuif van Nyala 6, en</p> <p>21 dit was tussen 11:00 en 12:00. So ek het nog niks ge-</p> <p>22 fabricate of niks anders gesê as dit nie. So, nee, ek bly</p> <p>23 by wat ek gesê het.</p> <p>24 MR MPOFU: Well, I'm sorry, Chairperson,</p> <p>25 I just have to put this again to you just to show it to</p>
<p style="text-align: right;">Page 20456</p> <p>1 position, duidelik die twee verskille uitgewys het.</p> <p>2 MR MPOFU: And that briefing was done by</p> <p>3 Colonel Scott, correct?</p> <p>4 BRIGADIER CALITZ: Dit is korrek, ja.</p> <p>5 MR MPOFU: We know that that briefing was</p> <p>6 done by Colonel Scott, so there can be no doubt to who did</p> <p>7 the briefing, correct?</p> <p>8 BRIGADIER CALITZ: Dit is korrek, ja.</p> <p>9 MR MPOFU: Ja. So if - what you busy</p> <p>10 fabricating and changing your evidence, if what you're</p> <p>11 saying is quite correct, you wouldn't have been – you're</p> <p>12 not sure who did the phone call. It could have been Scott,</p> <p>13 maybe you're wrong, that's because your testimony from last</p> <p>14 week and this morning was exactly that. If it was about</p> <p>15 the briefing, you could see Scott's figure there, you</p> <p>16 couldn't be doubtful as to who it is. The only reason that</p> <p>17 you said last week that information I received from</p> <p>18 someone. I think it was Scott. I'm not sure, is because</p> <p>19 according to that version which you are changing came from</p> <p>20 the JOC. Now you are suggesting that it was done at the</p> <p>21 briefing. There could never be any doubt as to who did</p> <p>22 that briefing. So you are busy changing your evidence.</p> <p>23 I'm sorry.</p> <p>24 MR SEMENYA SC: Chair, this is still</p> <p>25 argument. Mr Mpofu must just put questions to the witness.</p>	<p style="text-align: right;">Page 20458</p> <p>1 you. When I asked you this question last week, you even</p> <p>2 said – I said to you, "Did you keep that information to</p> <p>3 yourself?" You said, "No, I relayed it only to Makhubela.</p> <p>4 I'm not sure if he relayed it to the other Nyala drivers."</p> <p>5 Do you remember that?</p> <p>6 BRIGADIER CALITZ: Ja, dit gaan oor die</p> <p>7 skuif van die Nyala 6.</p> <p>8 MR MPOFU: No, I asked you, Brigadier,</p> <p>9 please, I asked you –</p> <p>10 BRIGADIER CALITZ: Ek wil net weet</p> <p>11 waarvan praat ons, oor die skuif, of die rollout. Waarvan</p> <p>12 praat julle?</p> <p>13 MR MPOFU: I asked you – look, Brigadier</p> <p>14 Calitz, I said to you this important information and I</p> <p>15 think the chairperson said it was not important at that</p> <p>16 stage, "This important information that this is no longer</p> <p>17 going to be concave, it's going to the kraal, did you keep</p> <p>18 it to yourself or did you relay it to anyone else?" You</p> <p>19 said you only relayed it to Makhubela, you're not sure</p> <p>20 whether he relayed it to the Nyala drivers. That could</p> <p>21 never have been a reference to the Scott briefing of a few</p> <p>22 hours later.</p> <p>23 BRIGADIER CALITZ: Ja.</p> <p>24 MR MPOFU: Do you remember that</p> <p>25 discussion?</p>

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1 BRIGADIER CALITZ: Nee, u is heeltemal  
 2 reg. Die skuif van die Nyala 6 het ons gekommunikeer met  
 3 Kolonel Makhubela, want hy's die groep bevelvoerder, en  
 4 hy't dit dan so oorgedra en daardie bevelvoerder op daardie  
 5 voertuig van Nyala 6 is dan so opdrag gegee om te gaan  
 6 posisioneer wat ons dan bespreek het.

7 CHAIRPERSON: Mr Mpofo, you've got his  
 8 answer on record. If it's contradictory, if your criticism  
 9 is justified, you are going to argue it later. I'm not  
 10 prepared to allow anymore questions on it. I think you've  
 11 got enough to argue the matter. You must move on to the  
 12 next one.

13 MR MPOFU: Right, thank you very much.  
 14 Then I'd like to deal with the – Chair, also just a bit of  
 15 clarification from some of the things we dealt with last  
 16 week. You would agree that the rollout of the barbed wire  
 17 is quite a dangerous undertaking. The people who do it  
 18 have to have protective gloves, I'm saying dangerous, from  
 19 that point of view. It's quite a delicate thing to do, as  
 20 you demonstrated to us across the road.

21 BRIGADIER CALITZ: In daardie sin van die  
 22 woord, u is korrek.

23 MR MPOFU: And you remember my criticism  
 24 about doing it in the presence of a hostile crowd? I'm not  
 25 going back to that. I'm just using it to situate the next

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1 question. Do you remember that discussion?

2 BRIGADIER CALITZ: Ek kan vaag weg  
 3 onthou. U sal my nou herinner waarna u verwys. Ek kan nie  
 4 presies die detail onthou nie.

5 MR MPOFU: Now, isn't it true that one of  
 6 the reasons why it would be even more dangerous or  
 7 foolhardy, as it were, to do it in the presence of a  
 8 hostile crowd, what was demonstrated to us across the road  
 9 on the 21st of November, namely that some of the people, or  
 10 rather there are two groups, am I correct? There are two  
 11 groups who must mind the A-frame. One is that side of the  
 12 A-frame, the other is one is the other –

13 CHAIRPERSON: That side, you point –  
 14 going in the one direction and your right hand going in the  
 15 other.

16 MR MPOFU: Yes. Well, there are only two  
 17 sides. One is on the one side and on the other side of the  
 18 A-frame, correct?

19 BRIGADIER CALITZ: Dit hang af waar hy  
 20 afgegooi word en die omstandighede. Dit kan net aan die  
 21 een kant wees. Ek dink die demonstrasie was hulle ook aan  
 22 albei kante, so daar's nie 'n voorskryf aan albei kante  
 23 nie, dis moontlik vir albei.

24 MR MPOFU: No, Brigadier, please, I  
 25 thought the reason you took us to the demonstration was to

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1 show us how it is done. Is your evidence now that what  
 2 we've observed there can be done by people who are only on  
 3 one side of the A-frame and the other side was left  
 4 hanging?

5 BRIGADIER CALITZ: Nee, jy het gevra of  
 6 dit die enigste opsie is? Ek het net gesê dit is moontlik,  
 7 maar wat jy daar gesien het, glo ek is ook op die dag wat  
 8 gebeur het.

9 MR MPOFU: Okay, good. In other words –

10 CHAIRPERSON: Last question, the way the  
 11 wire was uncoiled on the 16th of August, was it done in a  
 12 way which was potentially dangerous, both for the police  
 13 who were uncoiling it, and for the strikers, if they had  
 14 approached it while it was being uncoiled.

15 BRIGADIER CALITZ: Sou daar dan polisie  
 16 lede aan die strikers se kant wees, dit sal so wees, mnr  
 17 die Voorsitter, dan is dit gevaarlik.

18 CHAIRPERSON: I see, and if the strikers  
 19 had approached the barrier while it was being uncoiled, was  
 20 there a possibility of danger for them?

21 BRIGADIER CALITZ: Net as hulle –

22 CHAIRPERSON: If they come close enough  
 23 to –

24 BRIGADIER CALITZ: Net as hulle fisies  
 25 aan die draad moet kontak maak, want dit is

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1 lemmetjiesdraad. So dit kan sny en dit kan beskadig. Dit  
 2 is korrek, mnr die Voorsitter.

3 MR MPOFU: Yes. So you agree it's  
 4 dangerous in that sense, and that's why I spoke about the  
 5 glass, but my question is on something quite different.  
 6 I'm saying the – and you've fortunately confirmed how it  
 7 was done across the road and how it was done on the 16th.  
 8 Now, I'm saying if that is so, then you were creating a  
 9 situation where, let's say there were – I can't remember  
 10 how many across the road, let's say there were 8 people  
 11 doing the physical rollout. Four would be this side and  
 12 four would be – four would be on the one side of the A-  
 13 frame and four will be on the other, according to what we  
 14 saw. Now, what I'm saying would have been dangerous in the  
 15 circumstances you've described, is the fact that the four  
 16 people who were on the eastern side of the wire, would  
 17 obviously be safe, but the other four would be on the  
 18 western side of the wire, would be exposed to the strikers.  
 19 Is that correct?

20 BRIGADIER CALITZ: Mnr die Voorsitter,  
 21 soos u dit beskryf, ek het gesê ek glo dit is miskien, ek  
 22 het nie gesê dit is presies wat op daardie dag gebeur het  
 23 nie, ek het gesê glo dit is hoe dit uitgerol is, punt  
 24 nommer 1, en dan wil net reageer om te sê dat as 'n Nyala  
 25 tot by die draad kom en hy word gedrop, kan ek nou maar so

<p style="text-align: right;">Page 20463</p> <p>1 sê, of afgegooi by die Nyala, is dit 'n kwessie van om hom 2 net vas te maak. Die lid bly nie aan daardie kant nie, 3 want hoe sal hy terugkom. So dit is 'n kwessie van hulle 4 maak hom vas, skuins, en hulle beweeg die kant toe. As ek 5 sê die kant toe is dit na die veilige gedeelte binne in die 6 draad, so nee dis nie dat hulle ge-expose is heeltemal aan 7 daai kant nie, nee.</p> <p>8 MR MPOFU: Alright. Then, could you then 9 go I think it's KKK2, the photos of the demonstration. 10 Okay, it's a video, I'll stop it at a particular time.</p> <p>11 COMMISSIONER HEMRAJ: Brigadier, the 12 actual unrolling of the wire, wouldn't it require the 13 policemen to be – wouldn't this require policemen on either 14 side of the wire? The actual unrolling of it, apart from 15 the A-frame being affixed.</p> <p>16 BRIGADIER CALITZ: Nie die unrolling 17 daarvan nie, nee, Kommissaris, ons het getuig, behalwe die 18 A-frame wat vasgemaak word, sal daar dan mense aan die 19 binnekant saam met die – kan ek sê die uncoiling beweeg, 20 maar aan die binnekant, aan die polisie se kant en dan 21 seker maak met die hakke laat die draad nie hak aan die 22 draadkar en dan sal daar 'n persoon wees wat met die drywer 23 kommunikeer om te sê, bietjie vinniger, bietjie stadiger, 24 dit hak, en dan sal die ander persone dan dophou wat ook al 25 gebeur, maar van die binnekant af, glad nie aan die</p>	<p style="text-align: right;">Page 20465</p> <p>1 perhaps we must go on a bit further until we've reached a 2 point where we start seeing the wire being uncoiled. 3 MR MPOFU: I'm told the relevant part 4 starts at 6 minutes. 5 CHAIRPERSON: So that initial reading I 6 gave was wrong. 7 MR MPOFU: Yes. Now, what I'm saying is 8 that – 9 CHAIRPERSON: It stopped at 7 minutes, 12 10 seconds. 11 MR MPOFU: 7.12, yes. What I'm trying to 12 say to you, Brigadier, there are two things. One is from 13 the video, the second - for illustration. It is that the 14 policeman who is nearest to us, on the outside of photo, or 15 the one side of the A-frame, is doing exactly what I was 16 describing to you, which is to mind, so to speak, the one 17 end of the A-frame. That's the first point I want you to 18 observe. The second one is to illustrate what I was saying 19 to you, those of us who are standing there, including the 20 chairperson, for the purposes of this question, you must 21 assume that we are the strikers. So what I'm saying is 22 that those other policemen who are on the other side of the 23 A-frame, are directly exposed to us. If we wanted to do 24 something to them, it would be unsafe for them. Do you get 25 the gist of what I'm saying? If the Chairperson was so</p>
<p style="text-align: right;">Page 20464</p> <p>1 buitekant beweeg nie, nee.</p> <p>2 MR MPOFU: Sir, I'm assuming that we are 3 going to shown KKK2. Okay, I must apologise, Chairperson, 4 I didn't calibrate the exact point. Can you just fast 5 forward and I'll tell you where to stop?</p> <p>6 CHAIRPERSON: Get the fast forward point, 7 indicate what it is for the record.</p> <p>8 MR MPOFU: Thanks, Chair. Okay, round 9 about there. Okay, stop.</p> <p>10 CHAIRPERSON: That's 2 minutes 56 seconds 11 into the video.</p> <p>12 MR MPOFU: Thank you, Chairperson. 13 Alright, you can play it normally now.</p> <p>14 [VIDEO SHOWN]</p> <p>15 CHAIRPERSON: We're not seeing anything 16 at the moment. Perhaps we should go further.</p> <p>17 MR MPOFU: There's a problem, 18 Chairperson, I'm not seeing anything at all, because I've 19 lost my glasses. Okay, I think I have got a spare.</p> <p>20 CHAIRPERSON: You're leading the blind at 21 the moment.</p> <p>22 MR MPOFU: Oh, I left them there.</p> <p>23 CHAIRPERSON: I see you've now got your 24 spectacles on again, so you're with us and now we can see, 25 but we still haven't come to anything that is relevant, so</p>	<p style="text-align: right;">Page 20466</p> <p>1 minded to attack them?</p> <p>2 BRIGADIER CALITZ: Nee, die Chairperson 3 se kant is juis die veilige kant. Dit sal die polisie se 4 kant wees en dan die protestors, as jy sê "us" dan sal dit 5 ons miskien in die saal wees wat dit dan sal observeer van 6 die kant af.</p> <p>7 MR MPOFU: Good. So the safe side is 8 where we are and the unsafe side is where the grass is, 9 this side, correct?</p> <p>10 BRIGADIER CALITZ: Ek dink nie op daardie 11 dag het ons regtig die safe en die unsafe bespreek nie, 12 maar dit gaan meer oor die vas maak van die draad. Ek nou 13 maar net gereageer op wat u sê u sien. Dit sal my antwoord 14 wees op wat ek hierdie foto sien.</p> <p>15 MR MPOFU: Yes, but, Brigadier, you're 16 the one who introduced the idea of safe side, sorry.</p> <p>17 MR SEMENYA SC: Chair, we have no 18 appreciation of where this cross-examination is going. We 19 are told, Chair, that the version of Mr Mpofo's clients, is 20 they were not going to attack the police. I don't see what 21 danger the police would have been during the uncoiling of 22 the wire.</p> <p>23 [09:47] CHAIRPERSON: I think he is entitled to 24 ask the question on the assumption that the police version 25 as opposed to his clients' version is correct and that his</p>



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1 clients might well on the police version have attacked the  
 2 police, so I think I'll allow the question, but I think Mr  
 3 Semenya is right, it is not quite clear where we're we  
 4 going but wherever we're going I hope we get there quickly  
 5 and move on to the next point.  
 6 MR MPOFU: Ja.  
 7 CHAIRPERSON: So take us there quickly,  
 8 please?  
 9 MR MPOFU: Thank you, Chairperson. Well,  
 10 Mr Semenya is definitely not right, I am entitled to ask  
 11 the question –  
 12 CHAIRPERSON: But –  
 13 MR MPOFU: It is on the version –  
 14 CHAIRPERSON: I've already upheld you,  
 15 you don't have to give a concurring judgment –  
 16 MR MPOFU: Well, -  
 17 CHAIRPERSON: - as to why you agree with  
 18 me, alright?  
 19 MR MPOFU: Ja.  
 20 CHAIRPERSON: Let's carry on.  
 21 MR MPOFU: No, I'm actually disagreeing  
 22 with you, you said Mr Semenya is right, I'm saying he is  
 23 wrong. That is hardly concurring.  
 24 CHAIRPERSON: Mr Mpofo, let's not waste  
 25 time, I said he is right in the sense that we, it is not

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1 clear where you're going to with the cross-examination but  
 2 I allowed you to ask the question, I overruled his  
 3 objection but I said, please ask your question, get to the  
 4 point you're going to as quickly as you can and move on to  
 5 the next point, that's what I said. Let's carry on?  
 6 MR MPOFU: Brigadier, you have just  
 7 introduced what you call the safe side, so that must imply  
 8 there is an unsafe side, correct?  
 9 BRIGADIER CALITZ: Mnr die Voorsitter, om  
 10 terug te kom na u vraag toe, u vraag was dat ons is die  
 11 strikers en die ander kant is die polisie, so toe het ek  
 12 vir u net gesê wat verstaan ek watter kant is ons kant en  
 13 watter kant is die protestors se kant. So die "ons" kant,  
 14 die polisie se kant is waar ons dan staan en verduidelik  
 15 saam mnr die Voorsitter en almal van u wat daardie dag daar  
 16 was, ek glo, jy weet as ek dit so kan verduidelik.  
 17 MR MPOFU: Alright, let's continue with  
 18 the video.  
 19 [VIDEO SHOWN]  
 20 Okay, now you would agree with me that if what  
 21 you called, where we were standing, if you call that the  
 22 unsafe side then the policeman to whom I referred you to  
 23 the very first time, the one nearest to us to the photo,  
 24 would have been exposed to the unsafe side at the point at  
 25 which I paused before, correct?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 2 dink dit is miskien wat ons na verwys as "slip of the  
 3 tongue." U het verwys na 'n "unsafe side" daardie kant  
 4 en 'n "unsafe side" hierdie kant, so ek is, daardie kant is  
 5 wat ek gesê het die binnekant van die polisie se kant, so  
 6 dit sou die "safe side" wees. Die rekord sal wys, ek sien  
 7 u verskil met my, ek wil net seker maak dat ons weerspreek  
 8 nie mekaar weer nie, so hierdie kant waar ons nou kyk, waar  
 9 die kameraman staan met die rooi en swart T-shirt, dit sal  
 10 dan die kant wees van die protestors, in die geval van die  
 11 draad wat vasgemaak is.  
 12 MR MPOFU: In other words the unsafe  
 13 side?  
 14 BRIGADIER CALITZ: Wel, as daar enige  
 15 dreigemente is sal dit van hierdie kant afkom, dit is wat  
 16 ons na verwys het, daardie neutrale zone, ja.  
 17 MR MPOFU: Well, I don't understand that,  
 18 you say "ja" which suggested you agree with me. If you  
 19 call that one the safe side is this one with the cameraman  
 20 the unsafe side, yes or no?  
 21 BRIGADIER CALITZ: Ek het saam met u  
 22 gestem, ek het my redes ook gegee hoekom ek so sê.  
 23 MR MPOFU: Yes, so my simple question is,  
 24 if the cameraman instead of holding a camera there was  
 25 holding a spear then that policeman to whom I referred to

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1 at the beginning, would have been exposed to the unsafe  
 2 side, to the cameraman, a spear wielding cameraman,  
 3 correct?  
 4 BRIGADIER CALITZ: Ja, ek kon nie op  
 5 daardie stadium sien dat die polisieman heeltemal aan  
 6 hierdie kant beweeg het nie, ek sien hy het die hoek van  
 7 die draad getrek en dadelik terugbeweeg aan die binnekant,  
 8 na die binnekant toe en ek het ook getuig dat daar nie al  
 9 die lede betrokke is by die uitrol van die draad nie. Ek  
 10 het getuig dat daar sal wel 'n groep wees wat dan die skare  
 11 sal dophou, so indien daar enige dreigement van die skare  
 12 se kant afkom sal dan daardie polisiemanne wat buitekant  
 13 saam met die draad beweeg dan ook daardie waarskuwing gegee  
 14 het vir daardie polisieman, so dit is my antwoord op die  
 15 vraag.  
 16 MR MPOFU: Yes, well, to cut it short  
 17 what I'm going to argue on this point is that for the sake  
 18 of people like that policeman, would have been exposed,  
 19 that is exactly the reason why it is, at least we agreed on  
 20 this, unusual and dangerous on your version, that the  
 21 rollout of barbed wire be done in the presence of a hostile  
 22 crowd, what would you say to that?  
 23 BRIGADIER CALITZ: Nee, mnr die  
 24 Voorsitter, ek dink nie, wat u nou sê het ek glad nie oor  
 25 getuig nie en –

<p style="text-align: right;">Page 20471</p> <p>1 CHAIRPERSON: He is not suggesting that  2 you testified that, he is putting it to you as a fact. He  3 says, his basic proposition is, you shouldn't roll or  4 unroll barbed wire in the presence of the crowd, if you  5 want to put up a partition the safest thing to do is to do  6 it beforehand, so that's his main point and by way of  7 supporting that point he says to you that one of the things  8 that happens in the unrolling is, there will always be a  9 time when a person whom we saw here attaching the unsafe  10 side of the A-frame, if you understand what I mean, the A-  11 frame on the unsafe side, attaching that to the Nyala to  12 which it was attached. There was a period of time when he  13 was close to the unsafe side and someone on the unsafe side  14 could have attacked him. Your answer to that is, there  15 were other people keeping an eye on things, they would have  16 warned him, they would have done what they could to protect  17 him and Mr Mpfu's point is, never mind those points, it is  18 nevertheless correct that there would be a time when some  19 or other of the police members who were fastening the A-  20 frame to the adjacent Nyala would have been close to the  21 unsafe side and to that extent for a period at least in  22 danger, and I take it you have to agree to that. You say  23 there are ways of dealing with the danger but that would be  24 correct, and then he said that, and a further reason why,  25 you shouldn't uncoil, as a good practice, you shouldn't</p>	<p style="text-align: right;">Page 20473</p> <p>1 manier wees, hoe dit op daardie dag gedoen word. Ek sê nie  2 dit is presies net so nie, maar ons kan sien hy is in die  3 binnekant vasgemaak en dit is genoegsaam dat die draad dan  4 kan vloei. Ek dink die demonstrasie was om te demonstreer  5 die verskil tussen die direk uitgooi en dan die afstand  6 uitgooi wat miskien 'n opvolg is.  7 MR MPOFU: Okay, then let's move to 9, 9  8 minutes.  9 [VIDEO SHOWN]  10 MR MPOFU: Stop, that's 9:18,  11 Chairperson. So now it would be safe to say that those two  12 policemen, the one nearest to the camera, are right on the  13 unsafe side, correct?  14 BRIGADIER CALITZ: Mnr die Voorsitter,  15 weereens, as ons kyk na, ek dink hulle is aangespreek deur,  16 ek dink dit was Kaptein Dolf aan die anderkant en hy het  17 hulle gesê om, om te kom. Ek weet nie wat volgende, ek  18 dink dit was weer die terug rol of die teruggooi van die  19 draad, so hulle is spesifiek gesê om, om te beweeg, so ek  20 weet nie wat is daar gesê. Dit is nie die normale praktyk  21 dat jy nadat dit uitgereg is sal ombeweeg en daar gaan  22 staan nie, nee.  23 MR MPOFU: No, you're wrong again,  24 Brigadier, actually they were finishing the rollout as  25 you'll see, let's play on?</p>
<p style="text-align: right;">Page 20472</p> <p>1 uncoil the wire when the crowd is there, you should do it  2 beforehand. Is that a summary of –  3 MR MPOFU: That's correct, Chairperson.  4 CHAIRPERSON: Is that right? Now how do  5 you deal with that, if at all?  6 BRIGADIER CALITZ: Mnr die Voorsitter,  7 ja, van die gedeeltes wat u nou beskryf het, die A-frame is  8 nou nie vasgemaak aan hierdie kant nie en weereens soos u  9 tereg gesê het, dat ek gesê het die persone sou gewaarsku  10 gewees het en weg beweeg, ek stem egter nie saam dat dit  11 nie uncoil moet word in die teenwoordigheid van 'n crowd  12 nie, dit hang alles af van jou afstand en in hierdie geval  13 dink ek dit was 80 of, ek is nie seker, 100 meter, 80  14 meter, wat daardie foto wys, so daar was genoegsame tyd  15 gewees en ook is dit bespreek dat ons dit glad nie, daardie  16 dinamika van die groep verwag om hom te storm op daardie  17 stadium nie. So jou afstand speel 'n rol en ek dink dit  18 was veilig genoeg gewees om dit op so 'n manier te doen.  19 Daar was nie 'n ander manier nie.  20 MR MPOFU: Yes, but one thing where you  21 and I agree on is how it was done at the demonstration is  22 how it was done on the 16th, that one, we agreed, you don't  23 quarrel.  24 BRIGADIER CALITZ: Ek dink ek het twee of  25 drie keer daarvoor gesê dat ek sê ek glo dit sal dieselfde</p>	<p style="text-align: right;">Page 20474</p> <p>1 [VIDEO SHOWN]  2 Okay, and even the, - okay, we'll leave out the  3 other gentleman who is obviously doing the recoiling, but  4 at the point, the point I'm asking is, that the two  5 gentlemen were on the so called unsafe side, correct?  6 BRIGADIER CALITZ: Mnr die Voorsitter, as  7 ek net breedvoerig hierop kan antwoord, nadat ek die  8 antwoord gegee het dat hulle is om gestuur om dan nou die  9 draad weer terug te rol, –  10 CHAIRPERSON: Mr Mpfu, don't –  11 BRIGADIER CALITZ: - of ekskuus tog, nee,  12 ek sien –  13 CHAIRPERSON: - look like that, don't  14 look as if what we saw is Mr Pretorius, the attorney for  15 the SAPS legal team, speaking to the police officer  16 concerned, whose name I can't remember, and thereafter we  17 saw these people coming around and what obviously happened  18 is the demonstration is now over and they are now taking  19 the A-frame with the barbed wire back to the trailer. That  20 seems to be what we're seeing at the moment.  21 BRIGADIER CALITZ: Mnr die Voorsitter,  22 ja, ekskuus, as ek net kan klaarmaak, ek sien mnr Mpfu  23 praat met die kliënt agter hom, so ek wag net, as hy klaar  24 is dan kan ons my antwoord gee.  25 MR MPOFU: Okay, I think –</p>

<p style="text-align: right;">Page 20475</p> <p>1 BRIGADIER CALITZ: Ekskuus tog, Advokaat, 2 ek was besig met die antwoord, ek het gesien u is besig – 3 MR MPOFU: Oh, I am sorry, oh yes, thank 4 you, thank you – 5 BRIGADIER CALITZ: - so u gaan nie hoor 6 wat ek sê nie. 7 MR MPOFU: I appreciate that, ja. 8 BRIGADIER CALITZ: Die twee lede wat om 9 gestuur is, het ek vir u gesê is om gestuur om dan die 10 draad nou terug te vat. U het gesê, nee, ek dink die 11 woorde was, "Ek is weereens, vertel 'n leuen of ek is 12 weereens verkeerd," maar die video wys presies dit, ons is 13 nou besig om die draad weer op te rol. 14 MR MPOFU: Ja, - 15 BRIGADIER CALITZ: - so dit is presies 16 wat ek getuig het, so ek wil dit net op rekord stel, ek was 17 nie verkeerd nie. 18 MR MPOFU: Okay, okay, Brigadier, let's 19 move to 12 minutes and then we'll see if that is going to 20 last long. Okay, let's go to 12? 21 [VIDEO SHOWN] 22 CHAIRPERSON: What we see is the A-frame 23 now being fastened to the trailer and now it's being 24 dropped down again. This is 13 minutes and 1 second? 25 MR MPOFU: Yes, sorry, Chairperson.</p>	<p style="text-align: right;">Page 20477</p> <p>1 enough here, thank you. Thank you, Chairperson, I think 2 we've seen enough on this. 3 CHAIRPERSON: We stop at 13:50? 4 MR MPOFU: Up to 13:50, there could be 5 there but this is enough to make the point I am making 6 here. 7 BRIGADIER CALITZ: Mnr die Voorsitter, ek 8 wil net weet, gaan daar 'n vraag wees hieroor of kan ek 9 net 'n opmerking maak? 10 MR MPOFU: Yes, of course, Brigadier. 11 BRIGADIER CALITZ: Nee, ek wil net weet 12 is u klaar met die punt of gaan u nog vrae oor die foto – 13 MR MPOFU: Yes, I am finished for now. 14 Just to remind you, with the pointer I was saying I am 15 going to argue so that you comment properly. The point I 16 was going to argue is that from the videos of, or rather 17 the shots of the rollout, both the first and the second 18 rollout, it will be clear that policemen were for 19 relatively a long period exposed to what you've described 20 as the unsafe side, that's all, one. Two, that that is one 21 of the reasons why it is unwise to roll out the barbed wire 22 in the presence of a hostile crowd, unlike those other 23 situations that you and I discussed of Bloemfontein and 24 what have you, where it was rolled out the night before or 25 whatever, thank you.</p>
<p style="text-align: right;">Page 20476</p> <p>1 Sorry, is this a rollout again? 2 BRIGADIER CALITZ: Dit is korrek, hierdie 3 is die uitrol van draad. 4 MR MPOFU: Ja, stop right there? 5 CHAIRPERSON: We're stopping at 13 6 minutes 15 seconds. 7 MR MPOFU: Yes, that gentleman where we 8 can read from his back the words, "Police" is on the unsafe 9 side, correct? 10 BRIGADIER CALITZ: U is korrek. 11 MR MPOFU: Okay, continue with the 12 rollout? 13 [VIDEO SHOWN] 14 Stop, sorry, Chairperson, that is – 15 CHAIRPERSON: Stopping at 13:35. 16 MR MPOFU: Yes, and a different person, 17 the white gentleman pulling is now on the unsafe side, 18 correct? 19 BRIGADIER CALITZ: U is – 20 MR MPOFU: The white policeman? 21 BRIGADIER CALITZ: U is weer korrek, mnr 22 die Voorsitter. 23 MR MPOFU: Okay, carry on? 24 [VIDEO SHOWN] 25 MR MPOFU: Anyway, I think we've seen</p>	<p style="text-align: right;">Page 20478</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 dankie. Op u punt een dink ek het ons klaar verskil, wat 3 ek gesê het dit is nie onwys om dit te doen nie. Op 4 daardie 10 minute iets waar die eerste persoon vasgemaak is 5 was hy vir 'n sekonde of so waar ons gesê het dan hy sou 6 deur ander lede gewaarsku gewees het, sou daar enige groep 7 genader het, so ek het nie 'n probleem met daardie 8 antwoorde nie, dit is klaar op rekord. Wat ons wel hier 9 gewys het en hoekom ek saam met u stem is dat hierdie 10 tweede deel van die video was juis wat ons probeer bewys 11 het, hoekom dit nie-gelyktydig uitgegooi kon geword het 12 nie, en dat indien dit gelyktydig – 13 MR MPOFU: You can carry on, I am 14 listening. 15 BRIGADIER CALITZ: O, dankie, mnr die 16 Voorsitter. Indien dit wel dan gelyktydig uitgegooi word 17 sou ons dan die geval hê wat ons presies hier sien, dat dit 18 sou nodig gewees het vir al twee lede, ek dink as ons 19 verder gaan in die video sal u sien dat die lede probeer 20 trek met alle mag en krag van hulle, maar hulle kom nie by 21 die Nyala uit nie. Dit is hoekom ons gesê het dat dit kon 22 nie gelyktydig gedoen geword het nie, maar meer op die 23 eerste deel dat dit van punt na punt na punt, so hierdie 24 sou onveilig gewees het heeltemal. Dit is net die punt wat 25 ek wil maak, mnr die Voorsitter.</p>

<p style="text-align: right;">Page 20479</p> <p>1 MR MPOFU: Thank you, Brigadier. The 2 next point is about, you've said, when I asked you about 3 lessons learned you mentioned something about the 4 importance of having good reliable information and 5 intelligence, correct? 6 BRIGADIER CALITZ: Ja, ek het genoem 7 Crime Intelligence, die inligting tot die beskikking en wat 8 hulle gaan doen is van uiterste belang. 9 MR MPOFU: Ja, and in fact that makes 10 sense because your job, if you look at Standing Order 262, 11 your job as operational commander really, and as a 12 coordinator can be summarised as communication, 13 communication, communication, correct? In other words for 14 communication you need reliable information, that stands to 15 reason, correct? 16 BRIGADIER CALITZ: As u verwys na 17 kommunikasie, dit is die voorligting wat ek vir die persone 18 moet gee en indien daar iets wel gebeur in hulle nabye 19 omgewing dan moet dit aan my gerapporteer word op die 20 gronde, dit is korrek. 21 [10:06] MR MPOFU: Ja, fair enough, the point I 22 am making is, the quality of that communication can only be 23 as good as the quality of the information you receive, 24 correct? So I'm agreeing with you; good information and 25 intelligence is important.</p>	<p style="text-align: right;">Page 20481</p> <p>1 BRIGADIER CALITZ: In daardie sin wat ek 2 u nou net verduidelik het, dit is hoe ek dit verstaan het. 3 CHAIRPERSON: You see, if you look at 4 exhibit TT4, which are the belatedly produced minutes of 5 the 6 o'clock meeting on Thursday morning, there are 6 problems with them but on this particular issue I think we 7 can accept them as correct. Paragraph 2.1, there's set out 8 Crime Intelligence. Perhaps it could be shown on the 9 screen. TT4. Now it's agreed there's a problem in 10 relation to the number 3 000 in the second line of that 11 paragraph, it should be 300, but we don't have – that 12 indicates this was written up after, because 3 000 was the 13 figure at 1 o'clock, but we won't worry about that. 14 The rest of it appears to be correct, this was 15 the information you received. "Many of the mineworkers" - 16 that's those gathered at the koppie – "are in possession of 17 dangerous weapons, spears, assegais and pangas. According 18 to information received the group will decline to surrender 19 these dangerous weapons to the police. Information also 20 indicates the mineworkers will not leave the koppie and are 21 prepared to fight if their demands are not met, which 22 includes resisting the police." That was the information 23 you received. Is that correct? 24 BRIGADIER CALITZ: Dit is waarna ek 25 verwys het, dit is korrek, mnr die Voorsitter.</p>
<p style="text-align: right;">Page 20480</p> <p>1 BRIGADIER CALITZ: Dit is wel belangrik, 2 ja. 3 MR MPOFU: Ja, now on the 16th one of the 4 pieces of intelligence that you had received was that the 5 strikers would refuse to leave the koppie, correct? 6 BRIGADIER CALITZ: Ek het nie nou die 7 verslag voor my nie, maar ek dink dit het iets gesê van 8 "They will refuse to lay down," en hulle gaan nie die 9 koppie verlaat, ek dink so iets, maar ek kan – 10 MR MPOFU: Ja, words to that effect, not 11 the precise – 12 BRIGADIER CALITZ: Die presiese woorde 13 kan ek nie nou vir u aanhaal nie. 14 MR MPOFU: Yes, thanks. And we know now 15 that that intelligence was wrong, or bad, because they left 16 the koppies, correct? 17 BRIGADIER CALITZ: Nee, ek dink die 18 intelligensie het verwys na die neerlê van die wapens, as 19 ek dit onder korreksie kan sê, die moontlikheid dat hulle 20 wel hulle wapens sou neergelê het ek dink daardie oggend 9 21 uur en dan van daar af vreedsaam sou wegbeweeg. 22 MR MPOFU: I thought you and I have just 23 agreed that yes, it dealt with the issue of weapons, but 24 you said "dat hulle sal nie die koppies verlaat." That 25 means they would not leave the koppies, correct?</p>	<p style="text-align: right;">Page 20482</p> <p>1 CHAIRPERSON: Ja. 2 MR MPOFU: So we will now agree that the 3 "intelligence" was that they will refuse to leave the 4 koppie? 5 BRIGADIER CALITZ: Ja, ek het dit net 6 saam geles met die punte van bespreking, so paragraaf 2 en 7 paragraaf 3 verwys nie na, soos ek dit het, aparte gevalle 8 nie maar wat op daardie dag sou gebeur het. 9 CHAIRPERSON: This is the information you 10 received at 6 o'clock in the morning on the 16th of August, 11 right? 12 BRIGADIER CALITZ: Dit is korrek – 13 CHAIRPERSON: From Criminal Intelligence. 14 Now Mr Mpofo wants to ask you some questions about that and 15 depending what he asks or what he doesn't ask, I may have a 16 question or two to ask as well. 17 MR MPOFU: Yes. 18 CHAIRPERSON: Carry on. 19 MR MPOFU: Thank you, Chairperson. The 20 only question I'm asking at this stage, and then we'll let 21 the Chairperson ask his question, relates to what I call 22 bad intelligence. So I'm saying to the extent that you 23 were told that they were going to refuse to leave, I accept 24 what you're saying; the first part is that they have 25 dangerous weapons. That's correct, obviously. The second</p>

<p style="text-align: right;">Page 20483</p> <p>1 one, that they will decline to surrender their weapons, 2 we've dealt with. It's neutralised by the fact that you 3 were prepared to allow people to go because you knew that 4 phase 6 was going to come. 5 CHAIRPERSON: Mr Mpofu, I'm not sure that 6 that's – 7 MR MPOFU: Well, that's the evidence – 8 CHAIRPERSON: - that neutralises the 9 intelligence. It may well confirm it. The fact is the 10 information was that they won't want to surrender their 11 dangerous weapons and they'll refuse to do so. 12 MR MPOFU: Yes. 13 CHAIRPERSON: The fact that the police 14 then allowed some of them to leave with their weapons 15 because they were relying on stage 6 – 16 MR MPOFU: Phase 6. 17 CHAIRPERSON: - later on, doesn't 18 neutralise the accuracy of the information. But I don't 19 think you need that point for the point that you're 20 building up to. 21 MR MPOFU: No, no, I'm actually – there's 22 a point, I'm building up to the point. I'm saying let's 23 put all those aside. The question I'm asking you has to do 24 with the third point, namely that they would refuse to 25 leave the koppie, and I'm saying to that extent that was</p>	<p style="text-align: right;">Page 20485</p> <p>1 observe the strikers resisting the police? 2 BRIGADIER CALITZ: Toe ons die 3 uiteendrywing gedoen het en dan wel met "non-lethal force" 4 teen hulle opgetree het. In plaas van om weg te beweeg van 5 die polisie af en gehoor te gee aan dit, het hulle steeds 6 na al daardie pogings naderbeweeg en nog steeds die 7 polisielyn aangeval, wat heeltemal abnormaal is vir enige 8 groeperinge wat ek hanteer het in my afgelope 27 jaar. 9 Indien ons 'n groep uiteendryf, veral met rubber, "stuns," 10 dan beweeg hulle weg na 'n veiliger area toe. 11 MR MPOFU: Alright, we're going to deal 12 with that, I can assure you, just now. In any event, in 13 JJJ, I think it's 82 – yes, I'm at 1.21, once again your 14 actions were conditioned and premised on what the Crime 15 Intelligence had informed you, correct? 16 BRIGADIER CALITZ: As u net vir my die 17 gedeelte wys waarna u verwys? Ek is – 18 MR MPOFU: 1.21, first page of JJJ82. 19 BRIGADIER CALITZ: 1.21? 20 MR MPOFU: Ja. 21 BRIGADIER CALITZ: "Op daardie dag," dit 22 is korrek. 23 MR MPOFU: And the information you 24 received was that, "Mr Julius Malema will visit us today. 25 The purpose of the visit is that they want to take the</p>
<p style="text-align: right;">Page 20484</p> <p>1 bad intelligence because we now know as we are sitting here 2 that they left the koppies, they vacated the koppies, 3 correct? 4 BRIGADIER CALITZ: Dit is die inligting 5 wat ons ontvang het op daardie dag, korrek. 6 MR MPOFU: Ja, and then I'm going to give 7 you another piece of bad intelligence, but for now the 8 Chairperson will ask his question. 9 CHAIRPERSON: Of course the question is 10 what koppie means in that context. You can't answer that. 11 Koppie either means the actual physical koppie, or it may 12 include the area in front of the koppie, but you can't 13 answer that. You don't know what they meant. But it goes 14 on, "They are prepared to fight if their demands are not 15 met, which includes resisting the police." Now have you 16 any comment on whether in the light of what happened 17 subsequently that intelligence proved to be incorrect? 18 BRIGADIER CALITZ: Mnr die Voorsitter, 19 nee, nou in "hindsight" het ons wel gesien dat hulle was 20 "prepared" om te "fight if their demands are not met." Ek 21 glo dit is die terugvoer wat hulle gekry het, dat die 22 persone nie met hulle wil verder onderhandel nie, en dan 23 "includes resisting the police," in "hindsight" het ons 24 gesien dit is wat gebeur het. 25 MR MPOFU: Well, at what point did you</p>	<p style="text-align: right;">Page 20486</p> <p>1 koppie back." That was the intelligence, correct? 2 BRIGADIER CALITZ: Dit is wat in die 3 JOCCOM bespreek was daardie oggend, korrek. 4 MR MPOFU: And you said that the people 5 want to regroup from the village, that is the Crime 6 Intelligence information, correct? 7 BRIGADIER CALITZ: Dit is korrek, dat 8 daar weer 'n groepering moontlik kan plaasvind. 9 MR MPOFU: And the information is that Mr 10 Malema will come, regroup the mine and then inform them to 11 go back to the koppie, go back to the strike, and then 12 information is that they are going to provoke the police. 13 That was the intelligence, correct? 14 BRIGADIER CALITZ: Dit is die inligting 15 wat voorsien is. 16 MR MPOFU: "Alright," so you say, "so you 17 will definitely be provoked." That was from the 18 intelligence, correct? 19 BRIGADIER CALITZ: Dit is korrek wat ek 20 gesê het. 21 MR MPOFU: All that intelligence was 22 nonsense; it didn't happen, correct? 23 BRIGADIER CALITZ: Op daardie dag, nee. 24 MR MPOFU: Ja. 25 BRIGADIER CALITZ: Dit is, die besoek is</p>

<p style="text-align: right;">Page 20487</p> <p>1 gedoen en mnr Malema is toegelaat om die groepe, ek dink hy 2 het 'n dossier gaan aanlê by die polisieestasie. 3 MR MPOFU: Okay, thank you. The next 4 issue that I want to deal with is I'm going to propose to 5 you that you should have used the discretion that you had 6 to halt the operation before anybody had died. That's what 7 I'm going to deal with now, but I'm going to ask you 8 questions about it so that Mr Semenya doesn't say I must 9 lay the basis, okay. 10 Right, now you knew when the people – let's take 11 it at the very least at the point at which they would have 12 gone through had they not been closed off by Nyala 4. 13 Let's just take it there, just a random point. As at that 14 point you knew that there is a crisis of communication, and 15 by that I mean you knew that here we have the strikers who 16 are either following the other people to go to Nkaneng or 17 to do dangerous things, whatever your version is. But one 18 thing that you knew is that the opportunity to communicate 19 to them has been lost. In other words the warnings that 20 would have said look, stay where you are, you have nothing 21 to fear, those who want to go home must go home, and so all 22 the nice things, that opportunity had been lost. It was 23 clear at that stage, correct? 24 BRIGADIER CALITZ: Die fase 2 waarna u 25 verwys van "stage" 3, die waarskuwing aan hulle en die</p>	<p style="text-align: right;">Page 20489</p> <p>1 leaving of the koppie were the triggers that needed to be 2 satisfied before stage 3 is rolled out, correct? 3 BRIGADIER CALITZ: Mnr die Voorsitter, as 4 ek dit so kan antwoord; die doel was en die taak was dat 5 die persone gewaarsku sou gewees het om hulle wapens neer 6 te lê, dit is korrek, en dan die wat vrywillig wou padgee 7 van die koppie af en na die nedersetting toe beweeg sou dan 8 so toegelaat gewees het, ja. So daardie geval stem ek saam 9 met u. 10 MR MPOFU: Yes, thank you. 11 CHAIRPERSON: If they hadn't laid down 12 their arms but left the koppie carrying their arms, would 13 stage 3 have not been implemented, or – 14 BRIGADIER CALITZ: Ja, definitief – 15 CHAIRPERSON: - what would have happened? 16 BRIGADIER CALITZ: Ja, definitief, mnr 17 die Voorsitter, dan sou die waarskuwing die tweede keer 18 herhaal word en as ons gesien het hulle lê nie hulle wapens 19 neer nie en hulle beweeg nog steeds met die wapens, dan sou 20 die uiteendryf aksie beslis voortgegaan het. Met ander 21 woorde die "non-lethal force" tot op 'n stadium en dan die 22 uiteendrywing en dan die fisiese ontwapening en arresteer 23 van die groepe sou dan plaasgevind het sou hulle nie gehoor 24 gegee het aan die waarskuwings by fase 3 nie. 25 MR MPOFU: Yes, but I thought we agreed</p>
<p style="text-align: right;">Page 20488</p> <p>1 rede, dit kon ons nie by uitkom nie, nee, weens die aksie 2 van die "protesters." 3 MR MPOFU: Yes, now the other thing that 4 you knew is that according to the plan there were two 5 preconditions, so to speak, for stage 3. One was that they 6 would refuse to hand over their weapons. We've dealt with 7 that last week, and the other one would be that they would 8 also refuse to leave the koppie. Those were the two 9 triggers, correct? 10 BRIGADIER CALITZ: Ek wil net seker maak 11 ek verstaan u reg. Dit sou nou wees as ons dan met hulle 12 die waarskuwing gegee het, as u sê "trigger," sou dit die 13 rede dan wees hoekom hulle agtergebly het. Is dit waarna u 14 verwys? 15 MR MPOFU: Well, whatever the conditions 16 were, but that stage 3 would be rolled out if, (a), they 17 refused – I think we dealt with this last week. I said to 18 you for example when I was asking you about your 19 discretion, if they just said, 'Oh, Mr Calitz, why didn't 20 you say so? We're just going to lay down the arms and we 21 are going to leave the koppie,' then you would have had the 22 discretion to stop the operation. You agreed with me last 23 week at least. Now I'm turning that situation around. I'm 24 saying you knew that if those two things, or rather that 25 those two things, the laying down of the arms and the</p>	<p style="text-align: right;">Page 20490</p> <p>1 last week that your attitude was that – and I want to say 2 this carefully, Brigadier, I'm not saying that you would 3 condone or encourage them to go with their arms; all I'm 4 saying is that your attitude was that if they leave with 5 their arms there is a comfort that phase 6 will ensue and 6 those arms will be recovered. So it was not really a big 7 deal, or was that a privilege not extended to the so-called 8 militant group? 9 BRIGADIER CALITZ: Ja, ek dink, mnr die 10 Voorsitter, die gedeelte waarna u verwys wat ons laas week 11 bespreek het was dat mnr die Voorsitter het gevra maar as 12 daar sou dan 'n groep gewees het wat verder wegbeweeg het, 13 wat van hulle. Toe het ek gesê ja, dit is nie te sê ons 14 sou almal gekry het wat wel gewapen was nie. So daar kon 15 moontlik, en ons weet na die noordweste kant toe was baie 16 mense wat wegbeweeg het, so dit is 'n moontlikheid gewees. 17 MR MPOFU: Ja. 18 BRIGADIER CALITZ: Maar daar sou wel 19 aksie gewees het teen die persone sou hulle die waarskuwing 20 verontagsaam het, die tweede waarskuwing, en dan die 21 uiteendrywing, "encircling," ontwapening, en dan die 22 arrestasies sou gevolg het van die wat dan in die bereik 23 was daarvan. 24 MR MPOFU: Yes, I'm sorry, I have to ask 25 this again because it's important. I accept what you're</p>

<p style="text-align: right;">Page 20491</p> <p>1 saying, that you wouldn't go out of your way to encourage 2 them to leave with weapons. All I'm saying to you is that 3 from what you and I discussed last week, that was something 4 that you were prepared to let go, in the safe knowledge 5 that stage 6 would have recovered those arms, or was that a 6 privilege extended to some and not to all of the 7 protesters?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 nee, die persone wat wel sou weggekome het met hulle wapens 10 sou die wees wat dan buite ons bereik was, of dan in 'n 11 verdere afstand, en dan sodoende in 'n oostelike rigting of 12 heeltemal westelike rigting in Karee se kant, soontoe 13 beweeg het. Ons sal "obviously" daardie persone nie in die 14 hande kan gekry het nie.</p> <p>15 MR MPOFU: No, we're not talking about 16 people in Karee and what have you. Remember when we had 17 this discussion we were talking about photo, I think 191, 18 of people who were walking exactly in the area that we are 19 discussing, and I'm asking you for the last time, I 20 promise, those people that we saw in those photos, if they 21 had arms with them you would have overlooked – maybe that's 22 a strong word – you would have let them go on the safe 23 knowledge that phase 6 you'll recover the arms, yes or no?</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, ek 25 wil net seker maak op watter fase is ons nou. Praat hy van</p>	<p style="text-align: right;">Page 20493</p> <p>1 You asked that question and the record will show that I 2 said to you at any stage, so that we eliminate this as 3 "hierdie stadium" or what-what. 4 [10:26] I am saying to you were you at any stage and now 5 let's not go to, when I said any stage, say the whole day, 6 I'm talking about the period, take the trigger point being 7 the point at which the first Nyala, the rolled out is, 8 because that as far as I know is the beginning of phase 3, 9 the rolled out its wire. Now at any stage within that 10 period were you or were you not prepared to let the 11 strikers pass the period, rather the area where they were 12 subsequently killed with weapons in the safe knowledge that 13 those weapons would be recovered in stage 6?</p> <p>14 BRIGADIER CALITZ: Okay, mnr die 15 Voorsitter, nee, ek het hom nou so. Ek sal u dan in al 16 twee dele antwoord, die eerste een is die uitrol van die 17 draad, nee, definitief nie in die uitrol van die draad nie. 18 Toe ons gesien het dat die persone afbeweeg in die rigting 19 van die draad en dat hulle wil insny voor Nyala 4 het ons 20 wel dan die opdrag gegee om die persone uiteen te dryf. 21 Dit was die doel gewees van die dag omdat ons nie 'n 22 gewapende groep wat besig was met 'n onwettige strike, ag, 23 staking op daardie stadium, 'n gewapende groep kon hulle 24 laat verder rondbeweeg op daardie dag, gegewe die 25 geskiedenis en alles wat tot op daardie dag gebeur het. So</p>
<p style="text-align: right;">Page 20492</p> <p>1 nadat ons sou uitbeweeg het en die waarskuwing gegee is, of 2 praat die Advokaat van met die "rollout" van die "barbed 3 wire" toe die persone met die wapens nader gekom het? Want 4 dit is twee verskillende, heeltemal verskillende scenarios.</p> <p>5 CHAIRPERSON: He's entitled to get 6 clarity on the question you asked –</p> <p>7 MR MPOFU: Ja, I think he's evading the 8 question –</p> <p>9 CHAIRPERSON: No, no, no, you can argue 10 that later if you want to –</p> <p>11 MR MPOFU: Ja -</p> <p>12 CHAIRPERSON: I'm not sure he's evading 13 the question.</p> <p>14 MR MPOFU: Okay.</p> <p>15 CHAIRPERSON: I think it would be helpful 16 if you'd put the question clearly to him, indicating the 17 basis of the question. Whether, it may be you want the 18 point relate, the question you're asking relates to both 19 times, but anyway, make that clear to him -</p> <p>20 MR MPOFU: Yes.</p> <p>21 CHAIRPERSON: - so he understands.</p> <p>22 MR MPOFU: Ja.</p> <p>23 CHAIRPERSON: And then let's see whether 24 he evades when the question has been put clear to him.</p> <p>25 MR MPOFU: Okay, thank you. Thank you.</p>	<p style="text-align: right;">Page 20494</p> <p>1 nee, daar sou ons definitief en dit was my opdrag gewees, 2 die dispersion van die groep.</p> <p>3 Sou ons die geleentheid gehad het om uit te 4 beweeg en hulle het vreedsaam op die koppie gebly sit, die 5 polisie het uitbeweeg, ons het 'n linie gevorm en ek sou 6 met hulle dan in gesprek getree het en die waarskuwing. 7 Gewoonlik in so 'n geval sal die leier elemente met ons 8 kommunikeer, dit hang af wat sou gebeur het. Sou daar geen 9 reaksie wees nie, soos u sê en die persone dan met hulle 10 wapens van die koppie afkom en ook in ons rigting, sou die 11 opdragte dieselfde gewees het, mnr die Voorsitter, dan sou 12 daar ook 'n dispersion action gewees het presies volgens 13 die voorligting, die waterkanonne, less lethal en dan 14 daarna sou die arrestasies gevolg het. Sou daar wel van 15 hulle op daardie stadium weg gekom het in 'n noord 16 westelike rigting of 'n verdere rigting, weet ons sou dit 17 dan opvolg operasies tot gevolg gehad het.</p> <p>18 CHAIRPERSON: Ja, I'm going to take the 19 tea adjournment now, I would just like to ask you a 20 question before we do that. Going back to the time when 21 the uncoiling of the wire section began, when Nyala1 22 started uncoiling the wire, if at that stage and some of 23 the strikers had realised something is happening that they 24 don't like and assuming they were people who had weapons, 25 dangerous weapons with them and they had started moving in</p>

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1 a westerly direction with the intention of getting back to  
 2 Nkaneng but via the western boundary of Nkaneng rather than  
 3 the northern one in front of which your vehicles were,  
 4 would you have done anything to them?  
 5 BRIGADIER CALITZ: Mnr die Voorsitter,  
 6 dit is 'n totale ander geval, as hulle wel weg beweeg het  
 7 in 'n westelike rigting en nie op ons polisie lyn nie, seer  
 8 sekerlik kon ek dan nou nie daardie aksie geloods het nie.  
 9 CHAIRPERSON: The point is, you weren't  
 10 in a position to do anything, were you? You didn't have  
 11 any, what Colonel Scott calls assets, you didn't have any  
 12 assets in place to deal with that contingency –  
 13 BRIGADIER CALITZ: Aan daardie kant, so  
 14 nee, dan sou, soos u dit gestel het, 'n volgende dag  
 15 miskien waar hulle sou terug gewees het of dan later sou  
 16 ons daardie fases opgevolg het. Sou hulle wel gehoor gegee  
 17 het, soos ek sê in al ons gevalle en ondervinding en weg  
 18 beweeg het, sou ek definitief nie daardie opdragte gegee  
 19 het nie, om te –  
 20 CHAIRPERSON: Alright, at this point  
 21 we'll take the tea adjournment.  
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 23 [10:57] CHAIRPERSON: The commission resumes.  
 24 Brigadier you're still under oath.  
 25 BRIGADIER CALITZ: Dankie, mnr die

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1 Voorsitter.  
 2 CHAIRPERSON: Mr Mpofo.  
 3 MR MPOFU: Thank you, Chairperson.  
 4 CHAIRPERSON: This is the last part of  
 5 the last lap.  
 6 MR MPOFU: Final. Brigadier, just to  
 7 follow on, on the Chairperson's question and I want you to  
 8 listen carefully. From what you say to the Chairperson  
 9 would I be correct in saying that in principle therefore,  
 10 in principle you were prepared to let people go, let's  
 11 assume they've taken the route that, let's assume the  
 12 militant group so-called had taken the route that the  
 13 Chairperson envisaged. In principle you were allowed to  
 14 let them go home with their –  
 15 CHAIRPERSON: You were prepared –  
 16 MR MPOFU: Prepared, yes, you were  
 17 prepared to let them go with their weapons but I qualify  
 18 that deliberately by saying you were not prepared to let  
 19 them go permanently forever? It was only in the safe  
 20 knowledge that phase 6 would be used to recover those  
 21 weapons, is that correct?  
 22 BRIGADIER CALITZ: In beginsel en met die  
 23 persone wat ons nie aan daardie kant gehad het nie, na die  
 24 weste toe, mnr die Voorsitter, sou ons wel weer probeer  
 25 kontak maak het. Ek sê nie in dieselfde sin dat ek dalk

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1 nie sou opvolg met die leiers, jy weet 'n ou sou probeer  
 2 kontak het om te hoor hoe en waar en wat en die chopper  
 3 gevra het en kyk of daar hergroeperings is. So ons sou  
 4 hulle, dit gevolg het en gesien wat gebeur, waarna toe gaan  
 5 hulle, waar hergroepeer hulle, miskien weer, miskien dan op  
 6 daardie stadium dan weer probeer kommunikeer het. Maar om  
 7 u vraag kortliks te antwoord, ja.  
 8 MR MPOFU: Thank you. Now we then go  
 9 back to what I was saying to you about, so let's - then the  
 10 issue of the carrying of weapons. The other pre-condition,  
 11 okay before I, we'll put it aside, what I'm saying is that  
 12 you, that, the first pre-conditions that is offering under  
 13 weapons presumably you'd have wanted it to be complied with  
 14 but if it was not it was okay because there will be follow-  
 15 ups. Now I'm going to the other pre-condition which was  
 16 that they should leave the koppie. Would you agree that  
 17 that pre-condition was fulfilled, they left the koppie?  
 18 BRIGADIER CALITZ: Tegnies, met die  
 19 uncoiling van die barbed wire het hulle begin die koppie  
 20 verlaat, ja.  
 21 MR MPOFU: Ja. Thanks and can we go to,  
 22 alright I'll ask you some questions, while I'm asking the  
 23 questions can you show JJJ194.9 please, it's a very short  
 24 couple of seconds.  
 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 wil net, ek het gedog daar gaan 'n opvolg wees in watter  
 2 rigting, ek wil net sê nie soos, ekskuus tog, mnr die  
 3 Voorsitter, ek wil net sê nie soos in die sin verlaat, weg,  
 4 soos, mnr die Voorsitter, verwys het weg nie. U vra ten  
 5 tye van die, dat hulle wel beweeg het weg van die koppie af  
 6 en dit is in daardie sin wat ek sê hulle het wel beweeg van  
 7 die koppie af maar in die rigting van die polisie lyn ja,  
 8 met die aanval.  
 9 MR MPOFU: Triple, again I just want us  
 10 to be on the same page. If you go to, I'm sorry, alright  
 11 leave that with the one that I've asked for, JJJ194.9, yes,  
 12 Chairperson, if you can just, it's a short clip.  
 13 CHAIRPERSON: It's a short clip starting  
 14 at 24 seconds.  
 15 MR MPOFU: At 24 seconds, yes. According  
 16 to Mr Chaskalson, he kindly gave me the time it's 15:46:28.  
 17 CHAIRPERSON: 15:46:28?  
 18 MR MPOFU: In terms of time. Thank you,  
 19 you can roll it on.  
 20 [VIDEO SHOWN]  
 21 Thank you. It would be correct to say that's a  
 22 picture of the protestors busy leaving the big koppie,  
 23 correct?  
 24 BRIGADIER CALITZ: Dit lyk na koppie 1 as  
 25 ek korrek is.



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1 MR MPOFU: Ja.

2 BRIGADIER CALITZ: En hulle beweeg af

3 teen die koppie. Mnr die Voorsitter, ekskuus ek het net

4 die tyd van die foto, ag van die video gemis.

5 MR MPOFU: 15:46:28 or rather 28 sub

6 seconds.

7 BRIGADIER CALITZ: Ekskuus dis bietjie

8 onduidelik.

9 MR MPOFU: 15:46:28.

10 BRIGADIER CALITZ: 46:28 baie dankie.

11 MR MPOFU: Okay now the, thank you for

12 that confirmation.

13 CHAIRPERSON: These seem to be people

14 who weren't part of what you would describe as the militant

15 group. These were the, the scene, these were the people on

16 the koppie itself, not on the plain in front of the koppie?

17 BRIGADIER CALITZ: Ja, mnr die

18 Voorsitter. Hierdie is, dit lyk vir my dis mense wat bo

19 van die koppie af beweeg. As ek na die koppie self kyk lyk

20 dit soos na koppie 1, van die bokant af afbeweeg, nie laat

21 hulle nie gewapen is nie maar hulle was nie deel van die

22 voorste plat militante groep nie.

23 MR MPOFU: Ja but I mean honestly your

24 evidence is that everybody, whether they were on, next to,

25 above whatever, everybody left their positions, correct, I

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1 thought we had agreed on that. That everyone, laat hulle –

2 CHAIRPERSON: He's simply saying what we

3 can see on the koppie.

4 MR MPOFU: Yes.

5 CHAIRPERSON: I mean on the video,

6 that's all. I don't think you need to have a fight with

7 him about that. It is what's on the video. But other

8 points arise which you've been making and you're going to

9 go on making. But –

10 CHAIRPERSON: Okay.

11 MR MPOFU: Anyway, I'll accept that we

12 agree that everyone left their position. Now the, let's go

13 to L175 as a follow up and this is the part that I'm going

14 to use to suggest that you, you could have and should have

15 halted the operation. If you look at L175 the last, the

16 first bullet and the last dash that really sums up the,

17 what I call the pre-conditions or the triggers for stage 3

18 and it is if the protestors one refuse to put their weapons

19 down and two leave the koppies stage 3 of the operation

20 would be implemented as a last resort, would you agree with

21 that statement, that was the plan?

22 BRIGADIER CALITZ: Ja, dit was die fase

23 wat fase 2 sou opgevolg het indien hulle dan nou nie, soos

24 ek dit hier verstaan hulle wapens neerlê vrywillig die

25 oggend nie sou dan oorgegaan word na fase 3 toe.

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1 MR MPOFU: So, and you understand the

2 concept of a last resort, it's something you don't want to

3 do. It's something that you are reluctant to do but if the

4 conditions force you to do it you do it, understand?

5 BRIGADIER CALITZ: Dit is soos ek dit

6 verstaan, ja.

7 MR MPOFU: Ja. Now here we have a

8 situation where the weapons, the issue of the weapons we've

9 dealt with but what we know for sure is that everyone has

10 left the koppies and yet you still implemented the tactical

11 phase on the dangerous phase of the operation despite the

12 fact, so you can hardly describe that as a last resort when

13 neither of the two conditions have been met as it were, the

14 first one is one where we've agreed may or may not be met

15 because of phase 6, the second done has certainly been met.

16 So on that basis you could and should have halted the

17 operation before anybody died. What is your comment?

18 BRIGADIER CALITZ: Mnr die Voorsitter,

19 hierdie is net 'n, wat seker in die spesiale JOCCOM meeting

20 gesê is, as ek dan na die tyd kyk, die stage 3 operasie het

21 wel van die JOC af gekom. So daar moes al hierdie in ag

22 geneem gewees het en dan as 'n laaste resort is opdrag

23 gegee laat Kolonel Scott ons kom brief en die uitrol van

24 die draad was dan reeds deel van daardie fase 3.

25 MR MPOFU: Okay, that's not an answer to

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1 my question but I'll move on.

2 CHAIRPERSON: Isn't what he says correct

3 to some extent. That stage 3 included the uncoiling of the

4 wire. So you start implementing stage 3 by uncoiling the

5 wire but that –

6 MR MPOFU: Yes, with –

7 CHAIRPERSON: Has been their case all

8 along, whether, I understand all sorts of arguments may

9 follow from that, but we're not busy with that now. Simply

10 with the point that he's now making that he wasn't there

11 remember, this is what was said at the special JOCCOM

12 meeting at 1:30 which he couldn't attend because he was in

13 the field with the forces. So he could only respond to

14 this because or he was told subsequently I take it, am I

15 right?

16 BRIGADIER CALITZ: Dit is korrek, mnr die

17 Voorsitter. Ons het net die opdrag gekry van, laat fase 3

18 geïmplementeer word en ons is daar volgens gebrief wat fase

19 3 betref en dit is begin, soos u gesê het met die uitrol

20 van die draad en van daar af die waarskuwing wat sou gegee

21 geword het.

22 MR MPOFU: Okay, well my response really

23 is so what. That's my response. But I'll explain why I

24 say so what. You remember last week I said you and I

25 agreed that your discretion would have turned to a

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1 situation where you could halt the operation if in your  
 2 view it's need was no longer there and I think you  
 3 qualified that to be fair, by saying you would have halted  
 4 it and then consulted and so on. Obviously you didn't just  
 5 take any unilateral decisions. But if the conditions were  
 6 conducive and the people said to you here's the white flag,  
 7 here's the weapons, here's all this, there would have been  
 8 no sense in doing such a dangerous thing, a potentially  
 9 dangerous thing? I thought we had agreed with that.

10 BRIGADIER CALITZ: Ek onthou, dis daaroor  
 11 getuig.

12 MR MPOFU: Yes.

13 BRIGADIER CALITZ: En wat my getuienis  
 14 was.

15 MR MPOFU: Thanks. Now all I'm saying to  
 16 you is this, given what I've explained to you as the  
 17 conditions one having been met, the other one being pliable  
 18 if I can use that word. At that point you could and should  
 19 have stopped the operation. The fact that it had started  
 20 earlier is irrelevant quite frankly, I don't know what the  
 21 relevance of that is, I'm saying you could have stopped it  
 22 at any stage, I'm not saying you could have stopped it at  
 23 the beginning or in the middle or at the end. So I don't  
 24 care what stage we are talking about, I'm saying at the  
 25 point at which you realised that A they may be going with

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1 weapons but I'll deal with it later and they have left the  
 2 koppie which is the second condition, at that point you  
 3 could have and should have stopped the operation.

4 BRIGADIER CALITZ: Mnr die Voorsitter, u  
 5 verwys na die conditions, as die conditions was soos Mnr  
 6 die Voorsitter dit vroeëre gesê het, weg beweeg in 'n ander  
 7 rigting ja, logies, as daar 'n wit vlag was, as daar  
 8 kommunikasie met my was, eider van mnr Mathunjwa of mnr  
 9 Noki of enige van daardie ek stem saam met ja, maar daar  
 10 was nie. Daar was net 'n direkte aanval op die polisie lyn  
 11 en daarop die opdragte van die uiteendrywing wat less  
 12 lethal minimum force op daardie stadium was.

13 MR MPOFU: Okay, alright, well I can say  
 14 then is, my criticism of your omission to halt the  
 15 operations at that stage will be based on the fact that at  
 16 the very least one of the conditions had been met, they had  
 17 left the koppie and the other one was negotiable. So we  
 18 could also say it was met or it would have been met later  
 19 with stage 6 and that your failure despite on top of it  
 20 knowing that there has been a breakdown in communication in  
 21 the sense that they don't know what is expected of them  
 22 that all those should have, a reasonable person in your  
 23 position should have said look let's, these people don't  
 24 know, they've left the koppie as they were expected to do,  
 25 they don't know what we are up to and the arms we can get

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1 in stage 6 later. Then you would have, a reasonable  
 2 policeman in your position should have stopped the  
 3 operation. What will be your comment?

4 BRIGADIER CALITZ: Mnr die Voorsitter,  
 5 nee ek verskil van u. As operasionele bevelvoerder en  
 6 gegewe weereens die ondervinding die opdrag was gegee en  
 7 die opdrag was duidelik gewees oor die uiteendrywing en die  
 8 doel van die uiteendrywing en sou daardie persone verkies  
 9 het om vreedsaam wel gehoor te gegee het en vreedsaam weg  
 10 te beweeg of enige kommunikasie is dit heeltemal iets  
 11 anderste as wat daar gebeur het. Hulle het besluit hulle  
 12 gaan die polisielyn aanval en daar's genoegsame bewyse  
 13 daarvan en dit is waarom ek die opdrag gegee het van 'n  
 14 dispersion action met less lethal force, omdat hulle die  
 15 polisielyn aangeval het. Nie omdat hulle enigins  
 16 vreedsaam huis toe wou beweeg nie, nee glad nie.

17 MR MPOFU: And that, the final point I  
 18 will make in that argument will be that the attitude you  
 19 took in omitting to do as I've just described is  
 20 inconsistent with the notion of rolling out stage 3 as a  
 21 last resort because if something is done as a last resort  
 22 the slightest excuse so to speak for not doing it where  
 23 some of the conditions have been met and so on then you  
 24 don't do it, if it's a last resort truly.

25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 stem nie saam met u nie. Ons, die uiteendrywing opdrag is  
 2 gegee plain weg oor die aanval op die polisielyn en dat  
 3 hulle in die rigting van die polisie gekom het en waar ons  
 4 toegemaak het en nadat ons hulle herhaaldelike kere met  
 5 less lethal force teen hulle opgetree het wat 'n gewone  
 6 uiteendryf aksie was oor die wapens wat hulle gedra het,  
 7 het hulle nog steeds besluit om die polisielyn herhaaldelik  
 8 aan te val. So dit is, dit is glad nie as operasionele  
 9 bevelvoerder moes ek daardie opdragte gee om dan hulle  
 10 uiteen te dryf.

11 MR MPOFU: Okay. We'll move to something  
 12 else. Is there any reason why nobody or let me put it this  
 13 way, to your knowledge has anyone been arrested or  
 14 questioned from Lonmin about the people who were killed  
 15 with pellet guns and injured with pellet guns?

16 BRIGADIER CALITZ: Nee, ek het glad nie,  
 17 ek kan glad nie help daarmee nie, ek dink die provinsiale  
 18 hoof speurdiens kan miskien daar vraag na toe verwys word.

19 MR MPOFU: Yes, and did you, does it  
 20 concern you or did it concern you and does it concern you  
 21 now as operational commander that some of the people who  
 22 died and were injured died from force, a method of force  
 23 that the police does not possess?

24 BRIGADIER CALITZ: As u verwys terug na u  
 25 vorige vraag toe en u verwys daarna dit is en ek het ook my

<p style="text-align: right;">Page 20507</p> <p>1 verduideliking gegee wat ek dan vermoed op daardie stadium  2 ek dink ek het getuienis daarvoor gegee dat die sekuriteit  3 haelgewere wapens en ammunisie, ek dink ons het breedvoerig  4 daarvoor getuig –  5 CHAIRPERSON: Mr Mpofu, I just want to  6 say, I think this point was covered in earlier cross-  7 examination by other counsel.  8 MR MPOFU: No, it was not.  9 CHAIRPERSON: I understand, yes it was  10 and I understand that there was, there's ongoing  11 investigation being done, I think inter alia by the  12 investigators who work for the evidence leaders as a  13 question as to where those pellet, who fired those pellets  14 and if so what action must be taken in consequence thereof.  15 I think perhaps Mr Budlender can confirm that that is so,  16 is that correct, Mr Budlender?  17 MR BUDLENDER SC: That is correct,  18 Chairperson.  19 CHAIRPERSON: Talk in your microphone.  20 MR BUDLENDER SC: That is correct,  21 Chairperson, we're still carrying out investigations on  22 that matter.  23 MR MPOFU: Ja.  24 CHAIRPERSON: Covered with the witness  25 before by other counsel. I think Mr Ntsebeza questioned</p>	<p style="text-align: right;">Page 20509</p> <p>1 which you were the operational commander, who do not appear  2 to have died as a result of anything done by the police,  3 because they died as a result of pellets that were fired at  4 them and the police, according to the evidence, haven't got  5 pallets, they have rubber balls that they fire from the  6 shotguns, but they don't have pellets anymore and they  7 haven't had them for some years. So therefore the  8 indications are that these people were killed in the course  9 of the operation by persons other than the police.  10 Now you said, your theory is they may well have  11 been killed by pellets fired by some of their fellow  12 strikers who were in possession of shotguns that were taken  13 from the Lonmin Security people on the Sunday morning. Of  14 course there is another possibility and which is being  15 investigated as we sit here, namely that there may well  16 have been Lonmin people who were, and we know there were  17 Lonmin people at scene 2 because you saw them afterwards,  18 who were in possession of shotguns and there is a distinct  19 possibility, you know one can't necessarily put it higher  20 than that, but there is a distinct possibility that they  21 may or one or other of them, may have been responsible for  22 these deaths without saying, that's even a probability but  23 it is a possibility. Now Mr Mpofu says if that possibility  24 is correct or may be correct, because it is a possibility,  25 is it a matter that gives, causes you to be concerned, even</p>
<p style="text-align: right;">Page 20508</p> <p>1 him about, and Mr Budlender.  2 MR MPOFU: Ja, I know, I was here,  3 Chairperson. All I'm asking is –  4 CHAIRPERSON: The points been dealt with  5 before. I think it's repletion, you're re-ploughing part  6 of the fields been ploughed already.  7 [11:17] MR MPOFU: No, I'm not. I'm asking a  8 completely different thing namely whether the operational  9 commander has, is, what his - whether he is concerned about  10 people having died in his operation from force that is not  11 possessed by the police and nobody asked that. I know that  12 the issue about the possibilities, whether it was the  13 strikers, warra, warra, that was done, but that's not what  14 I'm asking you. Yes, can you answer the question?  15 BRIGADIER CALITZ: Mnr die Voorsitter, as  16 operasionele bevelvoerder is ek concerned vir enige persoon  17 wat doodgaan in 'n operasie, ongeag wat die omstandighede  18 is. Dit is net menslik.  19 CHAIRPERSON: Yes, but Mr Mpofu is busy  20 with a slightly different point. What he says to you is  21 that, you know I take that he would say if he was asked, he  22 understands that you're concerned about anybody who died in  23 the course of the operation in which you were the  24 operational commander of, but he says this is a special  25 case. Here people died in the course of their operation of</p>	<p style="text-align: right;">Page 20510</p> <p>1 more concerned than you would be perhaps in a case of other  2 people who died in the course of a police operation in  3 circumstances where you were satisfied, amounted to self  4 defence or private defence. That's his point. Now am I  5 summarising your point correctly?  6 MR MPOFU: 100%, Chairperson, 110%.  7 CHAIRPERSON: Well, I'm not allowed to  8 give more than a 100%. Well, now you can respond to Mr  9 Mpofu's question as I have summarised it to you?  10 BRIGADIER CALITZ: Mnr die Voorsitter,  11 soos u beskryf het is dit 'n logiese bekommernis, ek is  12 100% bekommerd as daar enige iets anders uitkom, dat dit  13 nie die strikers is nie. As dit die myners was of die myn  14 personeel, soos u na hulle verwys, dan was ek nie bewus van  15 hulle op daardie stadium nie, so dit is vir my 'n erge  16 bekommernis en as dit van die polisie se kant afkom beteken  17 dit dan was daardie persone onwettig in besit daarvan. So  18 dit is nog 'n erger bekommernis vir my, so nee, dit is  19 definitief 'n bekommernis, mnr die Voorsitter.  20 CHAIRPERSON: And of course if, and I  21 emphasise the fact with an if, if the relevant shots were  22 fired from the position which members of the police would  23 have been aware of, in other words if members of the Force  24 had, sorry, of the Service had seen other people, strangers  25 as it were, using shotguns, firing pellets at the strikers,</p>

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1 that's a matter which should have been dealt with at the  
2 time and should have been reported to you.  
3 BRIGADIER CALITZ: Definitief so –  
4 CHAIRPERSON: That's a further reason for  
5 concern, I would take?  
6 BRIGADIER CALITZ: Daar is n groep  
7 bevelvoerder op elke voertuig, 'n seksie bevelvoerder en as  
8 hy dit waargeneem het, selfs sy lede, rus daar 'n plig op  
9 hulle om dit aan my oor te dra, dat daardie persone wel met  
10 daardie vuurwapens geskiet het en dit sal definitief dan  
11 ondersoek word.  
12 MR MPOFU: Yes, -  
13 MR SEMENYA SC: Chair –  
14 MR MPOFU: I'm sorry.  
15 MR SEMENYA SC: Just for the record, the  
16 police are in possession of pellet rounds. They have been  
17 stockpiled since such time, there have been national  
18 instructions for non-use of pellet guns, I just don't want  
19 the record to read as though we are not in possession of  
20 them but they never are issued to members for use.  
21 CHAIRPERSON: Yes, when I say, they  
22 weren't in possession, I was actually stating the  
23 proposition inaccurately. The police have them but they  
24 don't issue them to the members for use, because the use by  
25 members is forbidden as I understand it, ja.

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1 MR SEMENYA SC: Yes.  
2 CHAIRPERSON: I think Mr Mpofu accepts  
3 that.  
4 MR MPOFU: I accept that, Chairperson,  
5 ja. In other words, Brigadier, what we can accept is that  
6 to your knowledge as an operation commander no policemen,  
7 no member of SAPS was in possession of pallet guns on the  
8 15th of August.  
9 BRIGADIER CALITZ: Volgens my kennis en  
10 wat aan my gerapporteer –  
11 CHAIRPERSON: No, no, it is phrased  
12 incorrectly. It is –  
13 MR MPOFU: In Marikana –  
14 CHAIRPERSON: No member of the Police  
15 Service who was active at Marikana on the day was in  
16 possession of a shotgun and pellets, they were in  
17 possession of shotguns and they used them to fire stun  
18 grenades and teargas canisters and rubber balls, but  
19 apparently they didn't have any or shouldn't have had and  
20 if they had them they were being privately obtained, they  
21 wouldn't have had or shouldn't have had any pellets to fire  
22 from the shotguns. You said they were in possession of a  
23 pellet gun. The gun is just a shotgun and it is used for  
24 firing various projectors I think, including pellets. It  
25 is the pellets that they hadn't been issued with. So I'm

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1 sorry to –  
2 MR MPOFU: I –  
3 CHAIRPERSON: I know what you meant but  
4 I'm just –  
5 MR MPOFU: I apologise –  
6 CHAIRPERSON: - trying to state it  
7 accurately.  
8 MR MPOFU: I apologise profusely. To  
9 your knowledge there no member of SAPS on that day in  
10 Marikana was in possession of pellets?  
11 BRIGADIER CALITZ: Volgens my kennis tot  
12 op hede waar ek vandag sit, was geen lid operasioneel  
13 uitgereik gewees met haelgeweer pellets nie en volgens my  
14 kennis en wat die bevelvoerders gerapporteer het, niemand  
15 was in besit gewees daarvan nie. Dit het nog nie tot my  
16 kennis gekom nie, tot vandag hier waar ek sit.  
17 CHAIRPERSON: Just while we're busy with  
18 it, assuming, again it is an "if", assuming that a member  
19 of the Service had his own pellets which he had acquired  
20 privately and he had them with him on the day and after he  
21 used his shotgun for firing rubber balls or perhaps even  
22 before he used his shotgun for any other purpose, he had  
23 loaded his shotgun with his own pallets and fired, would it  
24 have been the duty for his commander if they had been seen,  
25 to have taken steps, reported that and taken disciplinary

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1 steps against any member who did that?  
2 BRIGADIER CALITZ: Mnr die Voorsitter,  
3 beslis so, die klank verskil tussen, wat ons noem rubber  
4 balls, die shells en tussen pellets is 'n groot verskil.  
5 Ons kan dit dalk eendag vir u demonstreer. Dit sou  
6 definitief opgetel gewees het, veral, tensy die persoon nou  
7 buitekant die Nyala was en die bevelvoerder het nie gehoor  
8 nie, maar dit moet definitief gerapporteer word en dan  
9 stappe geneem word teen so 'n persoon want hy is onwettig  
10 in besit daarvan. Daar is nie 'n manier dat dit  
11 operasioneel regverdig kan word nie.  
12 MR MPOFU: Thank you. Okay, we'll move  
13 to something else quickly. If you can just clarify me on  
14 this, in your evidence, I think you clarified the  
15 difference between NATJOC and PROVJOC and I just want to  
16 understand whether I understand this properly. What was  
17 based at Lonmin was the PROVJOC, correct?  
18 BRIGADIER CALITZ: Ja, in terms of, we  
19 say a JOC, it is well in a provincial but it is a Joint  
20 Operational Centre, different from a NATJOC wat by  
21 nasionaal is, wat staan vir a National Joint Operational  
22 Centre.  
23 MR MPOFU: And the NATJOC –  
24 CHAIRPERSON: What Mr Mpofu wants to know  
25 from you is whether the JOC, the Joint Operational Centre

<p style="text-align: right;">Page 20515</p> <p>1 which we had at Marikana, whether that was a Provincial 2 Joint Operational Centre, because he said if it wasn't a 3 NATJOC was it a PROVJOC, which is a Provincial Joint 4 Operational Centre. He wants to know from you whether this 5 JOC that we had here at Marikana could correctly be 6 described as a Provincial Joint Operational Centre, that's 7 his question, am I right, Mr Mpofo?</p> <p>8 MR MPOFU: That's correct, Chairperson. 9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 dit het die hele rol en doel en funksie van 'n PROVJOC 11 aangeneem. Ons het 'n permanente PROVJOC wat gesetel is in 12 Potchefstroom wat al die toerusting, en, en, en het.</p> <p>13 MR MPOFU: Yes. 14 BRIGADIER CALITZ: Wat ons gewoonlik doen 15 as ons dan by 'n toneel kom of enige, ek het laas die 16 voorbeeld van Sun City gebruik, dan stig 'n mens 'n JOC met 17 die Joint Operational Centre, maar die rolspelers daar is 18 nog steeds van almal, sodat hy dieselfde vorm aanneem dan 19 as die PROVJOC.</p> <p>20 MR MPOFU: Okay, no, that I understand. 21 So to accommodate that situation we could call the one that 22 was at Lonmin an ad hoc PROVJOC? 23 BRIGADIER CALITZ: Ja, of die JOC, ja. 24 MR MPOFU: Alright, and that is not to be 25 mistaken to the other structure that sits in Valhalla</p>	<p style="text-align: right;">Page 20517</p> <p>1 nee, ek is nie deel van die NATJOC struktuur nie, maar ek 2 sal sê miskien as u praat van "only" sal ek sê nee, daar 3 sal niks fout wees van een Provinsiale Kommissaris om 'n 4 ander Provinsiale Kommissaris te skakel oor grens operasie 5 en daardie skakeling, byvoorbeeld dit sal nou nie deur die 6 NATJOC, so daar kan so 'n kommunikasie wees en ek glo dan 7 selfs miskien die Nasionale Kommissaris kan ook 'n besluit 8 en sê, ek wil die persone soontoe deploy.</p> <p>9 CHAIRPERSON: There was evidence that the 10 National Commissioner has the power to do it, I take it is 11 a matter of practice if the National Commissioner is likely 12 to seek advice from people in the NATJOC before he 13 exercises the power. I'm not saying he is obliged to do 14 it, but I take it, it is a matter of practice, he is likely 15 to do that, is that correct?</p> <p>16 BRIGADIER CALITZ: Dit is 'n 17 moontlikheid, mnr die Voorsitter, ja. 18 MR MPOFU: Okay, look, it is not a big 19 point but I'm certain that your evidence earlier was that 20 they were the only people so empowered but the record, as 21 Mr Semanya will say, will speak for itself. Alright, let's 22 move on, I just wanted to clarify that. Do you remember I 23 asked you about possible assault on the protestors between 24 the time of phase 1 and phase 2 inclusive, let's say from 25 the time of phase 1 to phase 2 and you said you were not</p>
<p style="text-align: right;">Page 20516</p> <p>1 around the corner here, which is the NATJOC, correct? 2 BRIGADIER CALITZ: Dit is korrek, by 3 Valhalla by die basis is die NATJOC gesetel. 4 MR MPOFU: Yes, and the NATJOC as it 5 were, that is based here in Gauteng, is according to you 6 the only structure that is empowered to deploy assets, as 7 you call it, which are not from that particular province. 8 Do I understand it correctly? 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 kan so getuig dat die NATJOC het die funksie en die vermoë 11 en die magte om resources wat nodig is oor 'n grens van 12 provinsies te verskuif op versoek dan van die Provinsiale 13 Kommissaris of die versoek wat hulle ontvang. So die 14 NATJOC het daardie vermoë om dan die verskillende 15 provinsies te kontak, te taak en dan daardie taak so te 16 laat uitvoer. 17 MR MPOFU: Yes, I accept that and I 18 understand that, but that's not my question. I understand 19 that they have those powers. My question is more pointed 20 and the emphasis is on the word "only". Is the NATJOC that 21 sits here in Gauteng the only structure, according to you, 22 that is empowered to deploy policemen and other assets from 23 outside a particular province where a particular situation 24 arises, yes or no? 25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>	<p style="text-align: right;">Page 20518</p> <p>1 aware of any such assaults or allegations about that, 2 correct? 3 BRIGADIER CALITZ: Dit is korrek. 4 MR MPOFU: Okay, now I just want to show 5 you a photo which I would like to elicit a comment from 6 you, it is JJJ6.12:47, it is the Nel photos. 7 BRIGADIER CALITZ: It is not in my 8 bundle? 9 MR MPOFU: No, it is the one that we 10 spoke about last week, the one that I gave to your team 11 last week. 12 BRIGADIER CALITZ: Oh, that photograph, 13 ja. 14 MR MPOFU: Ja. 15 BRIGADIER CALITZ: No, I haven't received 16 it but it is fine, I can look at it. 17 MR MPOFU: Well, I gave it to your team. 18 Okay, JJJ6.12:47. Can you zoom into the policemen who are 19 just on the western side of that Nyala? 20 CHAIRPERSON: I don't know where west and 21 east and north and south are on this, but – 22 MR MPOFU: Ja, well – 23 CHAIRPERSON: Do you mean to the left of 24 the photograph? 25 MR MPOFU: Thank you, thank you, well, it</p>

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1 looks like the operator knows that, thank you.  
 2 CHAIRPERSON: What you are doing is, you  
 3 are pointing to a position which is above this Nyala which  
 4 is Papa 5, towards the rear of the vehicle and there is a  
 5 shadow in the veld?  
 6 MR MPOFU: Ja.  
 7 CHAIRPERSON: And to the right of that  
 8 there is an item of white, I think it is white clothing.  
 9 MR MPOFU: That's correct, Chairperson.  
 10 CHAIRPERSON: A white cloth of some kind  
 11 anyway.  
 12 MR MPOFU: Yes.  
 13 CHAIRPERSON: Is that what you're  
 14 referring to?  
 15 MR MPOFU: That's correct, Chairperson.  
 16 Well, if necessary evidence will be led but the allegation  
 17 that I want to put to you is that, can we zoom further into  
 18 the policeman, the one who is bending? Yes, the evidence  
 19 of the witnesses will be that he is holding, that is the  
 20 butt of a shotgun, can you at least agree to that?  
 21 BRIGADIER CALITZ: Dit wil vir my  
 22 voorkom, dit lyk soos die vorm van 'n haelgeweer, korrek.  
 23 MR MPOFU: Yes, and on that scene, those  
 24 buds of guns were used to hit people on their heads in the  
 25 process of forcing them to lie down.

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1 CHAIRPERSON: Can we perhaps be told  
 2 where precisely this happened?  
 3 MR MPOFU: Yes.  
 4 CHAIRPERSON: And at what stage?  
 5 MR MPOFU: Yes, thank you, Chairperson.  
 6 Do you remember your Nyala is not far from this, correct?  
 7 BRIGADIER CALITZ: Ja, mnr die  
 8 Voorsitter, ek onthou die foto, dit was deur 'n vorige  
 9 advokaat gevra rondom die arrestasie proses en die TRT wat  
 10 Rondom Verdediging gegee het, so dit is nie die eerste keer  
 11 wat ons die foto sien nie. Dit was daar, ek dink die  
 12 evidence leaders het gesê 150, 155 meter weg van die koppie  
 13 af, koppie 3 in 'n westelike rigting toe daardie  
 14 arrestasies gemaak was. Papa5 is die Nyala van Colonel  
 15 Pitsi en dan my Nyala sou uit ge-zoom het uit die foto, dit  
 16 het 'n bietjie meer verder links gestaan.  
 17 MR MPOFU: Yes, -  
 18 MR SEMENYA SC: Chair, -  
 19 MR MPOFU: I'm sorry.  
 20 MR SEMENYA SC: Chair, I know that the  
 21 timeline for all statements to be in is tomorrow but can Mr  
 22 Mpofo point us to the statement of witnesses we are talking  
 23 about being beaten by butts of guns?  
 24 MR MPOFU: Chairperson, my answer is that  
 25 if, that's exactly why I am canvassing this with the

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1 witness. If the witness for example confirms that that's  
 2 the butt of a gun, then I'm not going to call anyone to say  
 3 what is common cause.  
 4 CHAIRPERSON: The answer to Mr Semenya's  
 5 question is a statement hasn't been filed yet, whether it  
 6 will be filed will depend upon whether it is necessary and  
 7 when it is necessary it will depend upon the answers  
 8 witnesses are going to give -  
 9 MR MPOFU: That's correct -  
 10 CHAIRPERSON: - to questions you're now  
 11 going to ask him, is that right?  
 12 MR MPOFU: Yes, thank you, Chairperson.  
 13 CHAIRPERSON: Alright, carry on.  
 14 MR MPOFU: Thanks. Okay, let me just put  
 15 it like this, since your Nyala was not very far from this  
 16 scene and, Chairperson, the witness is quite correct, this  
 17 is the situation where there were those few arrests before  
 18 the big group. If the evidence is that during those  
 19 arrests, I think it was 26 people, those people were  
 20 assaulted with butts of guns as it is depicted on that  
 21 picture, and I don't want us to get into that thing now, -  
 22 MR SEMENYA SC: No, Chair, -  
 23 MR MPOFU: - the movement of the walky-  
 24 talky and all that, so did you observe it or did you not  
 25 observe it?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, u  
 2 het nou twee stellings gemaak en toe die vraag gevra, so as  
 3 u my toelaat.  
 4 CHAIRPERSON: You can answer both  
 5 questions at the same time.  
 6 BRIGADIER CALITZ: Dankie, mnr die  
 7 Voorsitter. Wat ek sien op die foto, ek is nog nie gevra  
 8 wat ek sien nie, dat die persoon se bene met die wit  
 9 tekkies, dit is op die regterkant van hierdie foto, die  
 10 persoon se middelrif gedeelte is tussen die persoon se, hoe  
 11 kan sê, se bene, die polisieman se bene en dan sy kop  
 12 behoort te wees waar die linker voet is. As ek kyk na die  
 13 haelgeweer lyk dit meer of hy in 'n 45 grade, of dit verder  
 14 weg is in 'n ligte kol. Ek kan nie sien dat daar 'n  
 15 persoon se kop of enige liggaamsdeel onder daardie  
 16 haelgeweer is nie, so die foto wys dit nie vir my nie, maar  
 17 om terug te kom na u vraag toe, ek is nie bewus nie en ek  
 18 het ook niks waargeneem op hierdie spesifieke stadium, ook  
 19 later by koppie 3 het ek geen aanrading of enigsins so  
 20 iets waargeneem dat daar persone - so dit lyk meer vir my  
 21 of hy probeer kyk wat die persoon by hom het, of deursoek  
 22 of iets.  
 23 [11:37] MR MPOFU: Okay, sorry -  
 24 CHAIRPERSON: It doesn't appear to me  
 25 that the butt is necessarily resting on any part of the

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1 body of anyone –

2 MR MPOFU: Not here –

3 CHAIRPERSON: It may well be resting on

4 the ground, in which case there may be a reason for it.

5 But it's certainly cannot be said that this slide, taken by

6 itself, evidences an assault by any member of the police

7 service on any arrested person.

8 MR MPOFU: Well, Brigadier, would you

9 agree that the butt of that gun is in the air?

10 BRIGADIER CALITZ: Nee, op hierdie

11 stadium lyk dit vir my of die haelgeweer se kolf, soos ek

12 vir u getuig het, op 'n wit kol op die grond 45 grade rus.

13 As u die lengte van die haelgeweer vat en die stukkie loop

14 wat by die kop verbysteek, sal ek sê daardie geweer is dan

15 fisies op die grond self. As mens 45 grade, soos hierdie

16 persoon gebuk is vorentoe, of 90 grade altans, en u sit die

17 haelgeweer so op die grond, sal u die afstand kan sien.

18 MR MPOFU: So if that is true then what's

19 likely to be happening is that that man is bending down and

20 having his rifle on the ground, "sommer" bending down?

21 BRIGADIER CALITZ: Soos ek vir u getuig

22 het, soos hierdie foto vir my lyk is hulle besig, soos die

23 persone in 'n lyn lê, om hulle te deursoek.

24 MR MPOFU: Okay, thank you. Thank you.

25 CHAIRPERSON: I see that we can't see

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1 what the person concerned is doing with his left hand

2 because that appears to be obscured by his left leg, I

3 think, unless there's a little bit of the hand visible to

4 the right of the upper part of his leg. The rifle, or the

5 shotgun actually, shotgun, appears to be held in the right

6 hand of the person. There are various possibilities. One

7 possibility I take it is that he's using it to prevent

8 himself from falling over while he leans forward in a

9 crouching position and does something with his left hand,

10 but that's one possible interpretation of the slide. There

11 may be others as well.

12 MR MPOFU: Okay, can we –

13 CHAIRPERSON: Would you agree with that?

14 MR MPOFU: I'm sorry, Chairperson.

15 BRIGADIER CALITZ: Ek stem saam met u,

16 mnr die Voorsitter, asook as mens kan sien die rigting waar

17 die persoon op die grond lê maak dit ook sin wat u sê.

18 MR MPOFU: Okay, I don't want to spend

19 too much time on this. Can you go to 12:48, which is the

20 next picture? Okay, firstly, is that your Nyala at the top

21 of the picture on the left-hand corner?

22 BRIGADIER CALITZ: Ja, dit is korrek.

23 Dit is Pappa1.

24 MR MPOFU: And it's facing exactly where

25 that action, if we can call it that, is happening that

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1 we've just been discussing, correct?

2 BRIGADIER CALITZ: In daardie rigting,

3 dit is korrek.

4 MR MPOFU: Ja, okay, now can you zoom

5 again onto the alleged assailant. Okay, you see that this

6 is a different – he's no longer bending in the same way as

7 the previous picture, and first if you can kind of un-zoom

8 but not totally, because it gets clearer, and the point I

9 want to canvass with you – yes, is that you see now there,

10 that the man is half standing, half bending, and the butt

11 is in the air, correct?

12 BRIGADIER CALITZ: Ja, wat ek op hierdie

13 foto sien is dat daardie persoon, ek weet nie, die

14 "evidence leaders" kan vir ons sê of die tyd voor of na die

15 tyd geneem is. My, ek weet nie, my raaiskoot sou wees voor

16 die tyd, maar dit lyk of hy die haelgeweer met sy

17 linkerhand vashou en op sy nek laat rus, en dan met sy

18 regterhand besig is dan die persoon, en miskien dan

19 lateraan dit oorgesit het, geleun het, en dan so verder

20 voortgegaan het met die deursoeking. Dis wat ek op hierdie

21 foto sien is dat hy hou hom vas met die linkerhand en hy

22 leun die haelgeweer teen die nek. Op hierdie stadium lyk

23 dit vir my of die haelgeweer kolf wel in die lug is.

24 MR MPOFU: Yes, but all I'm asking you,

25 Brigadier, is from your own experience, the rest of that

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1 butt that is facing down, for a man who is half standing,

2 half crouching, would be suspended in the air, correct?

3 BRIGADIER CALITZ: Miskien sê net weer,

4 "suspended in the air," ek verstaan nie wat u bedoel nie.

5 MR MPOFU: Never mind. Okay, we'll move

6 to –

7 CHAIRPERSON: He's already said that the

8 butt, he thinks the butt wasn't on the ground, he thinks

9 the butt is in the air.

10 MR MPOFU: That's fine.

11 CHAIRPERSON: I think that's what you

12 were trying to get from him. He's already answered that

13 question.

14 MR MPOFU: Ja, that's fine.

15 BRIGADIER CALITZ: O, ek wou nou net sê

16 dit is wat ek u geantwoord het, dankie, mnr die Voorsitter.

17 MR CHASKALSON SC: Chairperson –

18 CHAIRPERSON: I take it "kolf" is butt.

19 BRIGADIER CALITZ: Ja-nee, ek het net nie

20 verstaan nie, "suspended in the air," wat –

21 CHAIRPERSON: Well, if it's not on the

22 ground then it's suspended in the air, isn't it?

23 BRIGADIER CALITZ: Dit is wat ek – ja, ek

24 het net gedog dis 'n opvolg vraag op my vorige antwoord,

25 mnr die Voorsitter, wat ek wel saamgestem het.

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1 MR MPOFU: Yes, and then –

2 CHAIRPERSON: Sorry, Mr Mpofu, Mr

3 Chaskalson indicated he wanted to say something.

4 MR MPOFU: Sorry, Chairperson, I missed

5 that.

6 CHAIRPERSON: Mr Chaskalson wants to say

7 something.

8 MR CHASKALSON SC: Chairperson, this

9 photograph is approximately a second after the preceding

10 photograph, so this photograph is later, not earlier. It's

11 about a second after the previous photograph.

12 MR MPOFU: Yes.

13 MR CHASKALSON SC: I mean the time

14 difference is a second, but when you're talking about one

15 second between two shots it could be anything from .6 to

16 1.4.

17 MR MPOFU: Yes, thank you. So based on

18 that then and your earlier answer, one second it was on the

19 ground, the other second it was in the air. One second it

20 was on the ground, the other second it was in the air.

21 What do you think was happening –

22 MR SEMENYA SC: No, Chairperson –

23 BRIGADIER CALITZ: Nee, mnr die

24 Voorsitter, ek dink nie daar is "consecutive" foto's soos

25 wat u probeer beweer nie. As dit na die tyd was, goed en

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1 wel, dan het die persoon dalk besig gewees om op te staan.

2 Hierdie foto wys absoluut vir ons niks nie.

3 MR MPOFU: Anyway –

4 CHAIRPERSON: What it appears to show

5 actually is that in the previous photograph apparently the

6 shotgun was being held with the right hand and the member

7 was leaning forward doing something with his left hand. He

8 then appears to have changed position, moved, and his left

9 hand then gripped the shotgun and his left hand then – so

10 in other, so he was firstly using his left hand in the

11 first picture and the right hand was holding the, was

12 gripping the shotgun. This one he's changed position.

13 It's now his left hand that's holding the shotgun. What

14 his right hand is doing we can't see, and it may well be in

15 that change of position that the shotgun butt was lifted

16 from the ground, if it was on the ground in the first

17 picture. Is that correct?

18 BRIGADIER CALITZ: Dit is 'n "fair" –

19 CHAIRPERSON: It's speculation, but that

20 seems to be what was taking place.

21 BRIGADIER CALITZ: Dit is, ja, dit is,

22 kan korrek wees, mnr die Voorsitter.

23 MR CHASKALSON SC: Chairperson, to throw

24 some light on this, we do have two pictures taken in the

25 two seconds preceding the first picture, which may be of

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1 assistance. I don't know if that would help. I don't know

2 if they're accessible.

3 CHAIRPERSON: I take it you're talking

4 about 12:46 and 12:47? Sorry, 12:45 and 12:46.

5 MR CHASKALSON SC: That's correct,

6 Chairperson, and they're within two seconds of 12:47.

7 CHAIRPERSON: Well, do you mind our

8 looking at them now, Mr Mpofu, or do we wait for Mr Semenya

9 to call for them in re-examination?

10 MR MPOFU: I think I'm happy to do

11 whatever – I think it speaks for itself, Chairperson. I'm

12 happy -

13 CHAIRPERSON: So we're now looking at – I

14 think we should look at 12:45 first, should we? 12:45 is

15 the first one in the series. [Microphone off, inaudible]

16 person bending over is the same person we saw in the other

17 photographs. He's doing something with his right hand to

18 the arrested person who's lying on the ground. The shotgun

19 is to the left of him. We can't see exactly whether he's

20 holding it, but I take it it's a fair inference that he is,

21 because we can't see his left arm properly. And then the

22 next one is 12:46. What does that show us? Again he's

23 leaning forward, still doing something with his right hand,

24 but he's obscured, as far as his left arm is concerned and

25 even the shotgun is concerned, that's obscured by the

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1 member who is standing to this left, or behind him to his

2 left. So I think Mr Chaskalson's prediction that we might

3 learn something from the preceding photographs isn't

4 accurate. Should we perhaps move on and look at 12:49 in

5 the hope that further light is shown?

6 MR CHASKALSON SC: We won't get anything

7 from 12:49. Chairperson, I don't want to contradict you,

8 or even Mr Mpofu, but I think if you look closely -

9 CHAIRPERSON: You can if you wish. I

10 mean I was just saying what I thought I saw.

11 MR CHASKALSON SC: If we look closely,

12 what we see is that the shotgun is not in his arm at all,

13 it's resting against his shoulder, and that in fact the

14 first of the two photographs it's still resting against his

15 shoulder.

16 CHAIRPERSON: That certain seems –

17 MR CHASKALSON SC: Because his two hands

18 in 12:45 are bent over in front of him.

19 BRIGADIER CALITZ: Watter foto is

20 hierdie, mnr die Voorsitter?

21 CHAIRPERSON: This is 12:47.

22 BRIGADIER CALITZ: 12:47.

23 MR MPOFU: Ja, can you move slightly to

24 the left, I think. Okay, then it's to the right. Okay, do

25 you see that other policeman who's holding a stick at its



<p style="text-align: right;">Page 20531</p> <p>1 tip?</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>3 ja, as ons net teruggaan miskien die eerste, die 12:47, net</p> <p>4 wat mnr Chaskalson gesê het. Ek weet nie of ek "comment"</p> <p>5 moet gee daarop, of ek gevra is nie.</p> <p>6 MR MPOFU: Ja, if you want.</p> <p>7 BRIGADIER CALITZ: Nee, ek wil net sê</p> <p>8 soveel te meer u sê dat die persone met die hael, met die</p> <p>9 kolf geslaan is. Hierdie is geen hand op die kolf of op</p> <p>10 die haelgeweer nie. So hy het deursoek met altwee hande.</p> <p>11 So –</p> <p>12 CHAIRPERSON: No, but that's Mr</p> <p>13 Chaskalson's point. Mr Chaskalson says in fact my</p> <p>14 description was wrong, that what we see on 12:47 is a</p> <p>15 shotgun –</p> <p>16 BRIGADIER CALITZ: Resting –</p> <p>17 CHAIRPERSON: - resting on the shoulder</p> <p>18 next to the, near the neck, I take it, of the policeman</p> <p>19 who's bending over. If that's so then the probabilities</p> <p>20 would be that the butt would be resting on the ground.</p> <p>21 BRIGADIER CALITZ: Nee, dan stem ek saam.</p> <p>22 Dankie, Adv Chaskalson.</p> <p>23 MR MPOFU: Okay, well what is that, in</p> <p>24 your experience? A shotgun hanging from the neck, facing</p> <p>25 him? What?</p>	<p style="text-align: right;">Page 20533</p> <p>1 just –</p> <p>2 CHAIRPERSON: I'm sorry, the policeman</p> <p>3 who we see with a stick in his right hand, his hand seems</p> <p>4 to be holding the stick about a third of the way up, isn't</p> <p>5 it? Possibly a third of the way down, depending which is</p> <p>6 the bottom of the stick and which is the top. He's</p> <p>7 certainly not holding it at the tip. He's holding it</p> <p>8 either a third of the way down or two-thirds of the way up,</p> <p>9 whichever way one looks at it.</p> <p>10 MR MPOFU: Yes, and would you agree,</p> <p>11 Brigadier, that if he's holding it not at its tip,</p> <p>12 somewhere a third way round or halfway through, it would</p> <p>13 indicate that he's not intending to assault anybody?</p> <p>14 BRIGADIER CALITZ: Ja, ek dink nie waar</p> <p>15 hy vashou, soos ek sien, is daar vir my geen intensie hier.</p> <p>16 Ek sien die persoon loop en wat ek aflei van die foto is as</p> <p>17 daardie knopkierie is iets wat hy van die persone</p> <p>18 gekonfiskeer het en dat hy net stap verder in die rigting</p> <p>19 waarnatoe hy gaan. Daar is geen indikasie dat hy enige</p> <p>20 aanduiding het van aanranding hier nie, nee.</p> <p>21 MR MPOFU: Yes, no that's good. That's</p> <p>22 exactly how Mr Magidiwana was holding his stick when he was</p> <p>23 almost killed, but we'll get to that just now. The other</p> <p>24 point that I wanted to ask you is about – and I know Mr</p> <p>25 Bizos canvassed this so I'm not going to take long on it.</p>
<p style="text-align: right;">Page 20532</p> <p>1 BRIGADIER CALITZ: Nee, ek dink nie ons</p> <p>2 moet sarkasties wees. Wat ons, u gesê het is presies wat</p> <p>3 mnr die Voorsitter gesê het, is dat die haelgeweer rus op</p> <p>4 die grond teen sy nek en hy is besig met altwee hande om te</p> <p>5 deursoek. So ek sê maar net u stelling van met die</p> <p>6 haelgeweer op die kop slaan –</p> <p>7 MR MPOFU: Yes, and in the picture where</p> <p>8 it is in the air, it's resting on his neck and suspended in</p> <p>9 the air? Is that what your evidence is?</p> <p>10 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>11 nee, daardie foto het vir ons absoluut niks gewys nie. Dis</p> <p>12 'n persoon wat die haelgeweer in sy linkerhand hou vas en</p> <p>13 dalk met sy regterhand weer besig is om te deursoek.</p> <p>14 COMMISSIONER HEMRAJ: Brigadier, can I</p> <p>15 just ask you, is a shotgun carried on a sling around the</p> <p>16 body as a rifle sometimes is?</p> <p>17 BRIGADIER CALITZ: They do have slings,</p> <p>18 but in this case I can't see a sling on the photograph, but</p> <p>19 they do have shotgun slings, Kommissaris.</p> <p>20 MR MPOFU: Anyway, okay, can you move on?</p> <p>21 I asked you a question whether you saw the other man</p> <p>22 holding a stick on its tip.</p> <p>23 BRIGADIER CALITZ: Ek sien die, lyk meer</p> <p>24 soos 'n knopkierie.</p> <p>25 MR MPOFU: Okay. Alright, the other,</p>	<p style="text-align: right;">Page 20534</p> <p>1 You would agree with, I think it was Colonel Scott, that</p> <p>2 effectively because of the break in between the two scenes,</p> <p>3 scene 2 was almost a separate and discrete operation. I</p> <p>4 know it was part of the dispersal and so on and so on, but</p> <p>5 that it almost had a life of its own in the sense that</p> <p>6 there was a break of I think seven minutes or whatever in</p> <p>7 between the two scenes, correct?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>9 ja-nee, ek sal nie dit beskryf as twee aparte nie. Dit is</p> <p>10 een operasie. Die breek waarna u verwys was die</p> <p>11 hergroepering gewees om dan verder vorentoe te beweeg. Dit</p> <p>12 is een operasie en een uiteendryf aksie. So dit bly een</p> <p>13 operasie, nie twee nie.</p> <p>14 MR MPOFU: Yes, but what I'm coming to is</p> <p>15 that the reason why you did not give the warning at scene 1</p> <p>16 was because the strikers, contrary to your expectations,</p> <p>17 which I say were unreasonable, had moved too quick. Let's</p> <p>18 put it that way. And the question that I want to ask you,</p> <p>19 because of that break there was nothing now stopping you</p> <p>20 from giving a warning for scene 2, correct?</p> <p>21 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>22 nee, ek dink ons het al breedvoerig hieroor getuig. Die</p> <p>23 eerste geval was daar geen kans gewees nie, hulle het die</p> <p>24 polisielyn aangeval, en hierdie, soos ek vir u gesê het, is</p> <p>25 'n opvolgaksie. So daar is nie weer van stop, weer van</p>

<p style="text-align: right;">Page 20535</p> <p>1 voor af begin onderhandel, weer van voor af – hierdie is 'n 2 hergroepering en dan van daar af 'n verdere uiteendryf 3 aksie.</p> <p>4 MR MPOFU: And would you agree – I'm 5 saying this because I'm going to criticise the evidence in 6 that respect – would you agree that once again your 7 omission to issue a warning this time for scene 2 as 8 opposed, even if we understand why you didn't issue it at 9 scene 1, your omission – or let me put it this way; if you 10 had issued such a warning and told the people what the 11 intentions of the police are and what they should do, those 12 further 18 deaths may have been prevented.</p> <p>13 BRIGADIER CALITZ: Mnr die Voorsitter, 14 nee, ek glo nie dit sou hulle "prevent" het nie. Op 15 hierdie sewe sekondes was ons besig – ag, sewe minute. Ek 16 het gesê wat ons aksies was, die kommunikasie met die 17 helikopter. Ek wil nie weer deur al die getuienis gaan 18 nie. So ons was besig vir die hele sewe minute en daarna 19 het ons dan vir die persone gesê om op te volg en verder 20 die uiteendryf aksie, dit was 'n gewone "dispersion action" 21 en dit sou nie gelei het tot enige dood nie, nee.</p> <p>22 MR MPOFU: No, Brigadier, maybe we don't 23 understand each other. All I'm saying is this; the 24 evidence of Mr Phatsha is that when he and other people 25 moved to koppie 3, the majority of them were hiding behind</p>	<p style="text-align: right;">Page 20537</p> <p>1 encircle, was dit my verstandhouding dat die openbare orde 2 polisiëringsele in die Nyalas wel hulle so in geboks het, 3 en toe het ek vir die persone gesê klim uit, waarop daar 4 dan arrestasies gemaak is. In hindsight, as ek geweet het 5 van die persone wat van verskillende kante af gekom het, en 6 dis met my gekommunikeer, logies, nou is daar baie goed wat 7 mens kon gedoen het. Vir die persone gesê stop, gee vir my 8 'n sitrap, almal hou op, want dan sou ons mos gesien het 9 daar is dan van die verskillende rigtings afgevuur. Ek 10 dink, mnr die Voorsitter, het my ook al voorheen daardie 11 vraag gevra, wat ek dan so verduidelik het.</p> <p>12 MR MPOFU: Yes. And, sorry, I forgot to 13 add, and on top of it, I am now rehearsing the warning, 14 we've got these four helicopters that are hovering above 15 you, so you have no chance, and my argument is going to be 16 that your omission to do such a thing when it is prescribed 17 in your standing orders, was an omission of such a nature 18 that you and whoever failed to, or omitted to take that 19 step should be, for that reason alone, held responsible for 20 those further 18 deaths. What will your comment be?</p> <p>21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 dieselfde wat vir u gesê het. Volgens ons policy dokument, 23 ek dink dis paragraaf 5.2.8, onder korreksie, staan daar 24 nadat enige offensiewe aksie geloods is, moet daar opvolg 25 aksies wees om die persone te verhoed om verder te groepeer</p>
<p style="text-align: right;">Page 20536</p> <p>1 rocks or behind bushes and all that kind of thing. Now all 2 I'm saying to you is would you quarrel with me when I argue 3 at the end that had you given the break, proceeded to give 4 a warning and say listen here, you are now surrounded, 5 we've got K9, we've got TRT, we've got NIU, we've got STF, 6 we've got water tanks, we've got dogs, we've got horses, 7 there's no way you're going to come out, as you have seen 8 we've now sprayed you with blue water and all sorts of 9 things, so please come out, or whatever you would have said 10 to them, and there is just now way out now, you are 11 completely surrounded by the entire 600-strong police 12 force, that had you given such a warning those deaths at 13 koppie 3 may have been prevented. Yes or not?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, u 15 stelling gaan oor die persone binne-in koppie 3, soos u 16 gesê het, sou ek daardie waarskuwing vir hulle gegee het 17 van al hierdie mannekrag wat ons gehad het. My getuienis 18 is en bly dat ek was nie bewus van enige van die K9, die 19 TRT, die NIU, die STF.</p> <p>20 [11:56] Dit was 'n gewone uiteendryf aksie gewees met 21 openbare orde polisiëring wat ons policy vir ons voorskryf 22 dat ons 'n opvolgaksie hê, vandaar af sal die persone in 23 kleiner groepies opgebreek word en dan gearresteer word. 24 So koppie 3, volgens my, sou suksesvol gewees het met 25 uiteendrywing en toe ek uit die lug verneem die persone is</p>	<p style="text-align: right;">Page 20538</p> <p>1 met die uiteendryfaksie. Ek was net bewus van die openbare 2 orde polisiëringseenheid wat opgevolg het. Soos ek vir u 3 wel gesê het, in hindsight, sou daar enigsins met my 4 gekommunikeer gewees het en ek bewus was van hierdie ander 5 mense wat ingekom het, was daar baie opsies wat mens dan 6 kon uitvoer. So ek verskil van u in daardie opsig dat dit 7 waarvan ek bewus was op daardie stadium.</p> <p>8 MR MPOFU: Alright. I hear that. Then 9 if Mr Semenya gives me a similar answer when I do argue 10 this, then I will then take it further and say that a 11 reasonable operational commander, who is after all the 12 coordinator of all the units, ought to have known that the 13 people are completely and thoroughly surrounded. Around 14 them are policeman units – are police units. Beneath them 15 is the soil, above them are the helicopters. That you 16 should have known?</p> <p>17 MR SEMENYA SC: At what stage, Chair?</p> <p>18 MR MPOFU: Yes, fair question. At any 19 stage during that seven and a half minutes or whatever the 20 correct time is, before anybody died at scene 2.</p> <p>21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 nee, ek sal verskil van u. Weereens dat ek gesê het ek was 23 nie bewus nie, nie van een van die partye wat inbeweeg het 24 nie, en dat dit duidelik in die voorligting was wat elkeen 25 se doel en funksie was. Ek dink dit is ook in exhibit – in</p>

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1 die slides presies waar forward holding area 1 sou gewees  
 2 het, wat hulle doel en funksie was, onder Generaal Naidoo.  
 3 Die NIU wat hulle doel en funksie was, is om net die koppie  
 4 te sweep, en nie deel te wees van enige uiteendryfaksie  
 5 nie. Die doel van forward holding area 2, die TRT, wat sou  
 6 as 'n filter lyn by die nedersetting aan die suid westelike  
 7 kant, as ek die rigting reg het, sou daar gebly het. So  
 8 weereens my antwoord bly dieselfde.  
 9 Sou ek op enige stadium van daardie persone  
 10 inligting gekry het, of dan van die helikopter in daai  
 11 geval, van hier beweeg nou TRT of die honde eenheid, of die  
 12 – dan sou 'n mens kommunikasie daarvan gemaak het en daarom  
 13 is dit vir my belangrik dat ek die heelyd mee  
 14 gekommunikeer moes gewees het. So dit is wat ek vir u gesê  
 15 het, een van die leemtes was kommunikasie definitief.  
 16 MR MPOFU: Thank you. I'd be fair about  
 17 that. That conduct of failing to give that warning is  
 18 evidence that even in respect of scene 1, the police never  
 19 had any intention of complying with standing order 262,  
 20 because the excuse given for not giving the warning, 262,  
 21 does not hold water in relation to scene 2. What will you  
 22 say?  
 23 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 24 dink toneel 1 se – hoekom ons nie die waarskuwing gegee het  
 25 nie, is baie duidelik, die plan is onderbreek en die lyn is

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1 aangeval, so daar's glad nie 'n geleentheid gewees om eers  
 2 die persone te waarsku nie op daardie stadium nie. Ek het  
 3 wel vir gesê dat ek weet nie van die Papa Nyalas voor die  
 4 draadkarre of hulle dan wel met die persone gekommunikeer  
 5 het nie. Ek sê ek het dit iewers raak gelees, ek is nie  
 6 seker, Adjudant Offisier Senobi het wel gesê hy het vir die  
 7 persone gesê stop, sit neer, gaan uiteen. So daar was wel  
 8 kommunikasie gewees tussen die Nyalas. Wat betref toneel  
 9 koppie 3, kan ek nie vir u sê of verder help wat het binne  
 10 daar gebeur of watse waarskuwings daar gegee is nie. Vir  
 11 my is net die kommunikasie gewees met die helikopter en die  
 12 inligting wat ek van die helikopter gekry het, daarop het  
 13 ons reageer.  
 14 MR MPOFU: And I'll argue further and  
 15 finally in that respect that that behaviour and that  
 16 omission also indicates that the murder or the killing of  
 17 those people at scene 2 was not performed as a last resort,  
 18 because if it was performed as a last resort, what is  
 19 consistent with a last resort theory, would have been to do  
 20 everything to avoid that calamity, including making it  
 21 clear to them that the game was up, which you failed to do.  
 22 BRIGADIER CALITZ: Mnr die Voorsitter,  
 23 die persone wat gedood was by koppie 3, het ek in hindsight  
 24 eers verneem en op daardie stadium – totdat ek op daardie  
 25 toneel gekom het, het ek geen kennis gehad van die skietery

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1 of eers die omstandighede waarin daai skietery plaasgevind  
 2 het nie, en tot op hier, nou weet ons nou in hindsight, die  
 3 persone wat inbeweeg het en wat hulle verklaring sê. So op  
 4 daardie stadium glad nie bewus gewees van enige skerp punt  
 5 ammunisie in daardie geval nie.  
 6 MR MPOFU: And that the sum total of this  
 7 then is that, for the reasons that we canvassed last week  
 8 and the reasons that I've just put to you now, that you and  
 9 the others, we will recommend, ought to be charged with the  
 10 murders of all 34 persons and, once again, I say not you  
 11 alone, our list now of accused persons is at about 60, and  
 12 you would be somewhere around accused number 6, and below  
 13 you would be the TRT – the shooters, what we in the  
 14 Commission call the shooters, and above you some of the  
 15 more senior people going right up, who I am not at this  
 16 stage at liberty to mention.  
 17 CHAIRPERSON: Now, what's the question?  
 18 MR MPOFU: It's the same as all the other  
 19 five questions, which is, what is your comment to – what  
 20 will your comment be when I argue that?  
 21 BRIGADIER CALITZ: Mnr die Voorsitter,  
 22 weereens, as die advokaat daai argument maak, ek verstaan  
 23 hy verdedig sy kliënte en dit is sekerlik 'n argument wat  
 24 hy moet maak. Ek verskil heeltemal ten opsigte van al die  
 25 feite wat voor ons is. Die getuies, die video materiaal,

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1 my getuienis tot op hede, my ondervinding wat ek gehad het,  
 2 alles waaroor ons tans getuig het, ek dink nie daar's enige  
 3 element van moord waaraan ek myself skuldig gemaak het of  
 4 sou wou skuldig gemaak het, of enige doel gehad, of  
 5 intensie gehad het nie. Ja, ons is na die tyd in  
 6 hindsight, dit is so. Dit is 'n tragiese gebeurtenis wat  
 7 nooit moes gebeur het nie, en dat mens staan nie koud  
 8 daarteen nie. Ek het myself ook baie mee gevoel met baie  
 9 van die mense wie se geliefdes nie meer met hulle is nie,  
 10 maar dit is op daardie stadium wat ek geweet het en wat ek  
 11 tot my kennis was, het ek na die beste van my vermoë  
 12 daardie operasie probeer beheer en volvoer.  
 13 MR MPOFU: Yes, you are – and, Brigadier,  
 14 I'm now going towards my last topic, but just for your –  
 15 CHAIRPERSON: Last topic, can we then –  
 16 I've been asked for a comfort break, so shall we have a  
 17 comfort break now? And then you can return comforted and  
 18 refreshed and finish your cross-examination on a suitable  
 19 note.  
 20 MR MPOFU: Thank you, Chairperson. In a  
 21 comfortable position.  
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 23 [12:12] CHAIRPERSON: The Commission resumes, I'm  
 24 sorry, Brigadier, I thought you were in the Chamber. If I  
 25 had realised you weren't I wouldn't have started, I

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1 wouldn't have come in when I did.

2 BRIGADIER CALITZ: No, my apologies.

3 CHAIRPERSON: You're still under oath.

4 BRIGADIER CALITZ: My apology.

5 CHAIRPERSON: Mr Mpofu?

6 MR MPOFU: Thank you, Chairperson.

7 CHAIRPERSON: It is the last lap.

8 MR MPOFU: The last lap, yes, thank you,

9 Chairperson. Yes, what I was saying, Brigadier, is that we

10 are moving back to scene 1 just so that, because this last

11 questioning was about scene 2. It would be correct that

12 because of the absence of the warning at scene 1 now, as

13 I've said the protestors did not know what the intentions

14 of the police were simply because not through a fault of

15 your own on your version, you had not been able to

16 communicate those intentions.

17 BRIGADIER CALITZ: Not the warning, but I

18 think the intentions that the gathering was illegal and

19 they must put down their arms, those were communicated over

20 three days to them, so they exactly knew.

21 MR MPOFU: Ja, well, I'm not talking

22 about them, I'm talking about the, - so are you saying the

23 warning would have been unnecessary?

24 BRIGADIER CALITZ: Dit is nie wat ek sê

25 nie, nee.

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1 MR MPOFU: Oh, alright. Now insofar as

2 the warning would have been necessary they were not aware

3 of your intentions, correct?

4 BRIGADIER CALITZ: Hulle was nie ingelig

5 oor die uiteendryf aksie en wat daarop gaan volg nie, nee.

6 MR MPOFU: And more ominously, the so

7 called militant group did not know that you had different

8 designs for them as opposed to the other protestors,

9 correct?

10 BRIGADIER CALITZ: As u miskien net u

11 vraag duidelik vir my stel?

12 MR MPOFU: Yes, do you remember last week

13 we had a discussion about the fact that, I think it is

14 17,440 or something like that of the record, where you had

15 said that that group "wou nie toegelaat word" or something

16 like that, -

17 BRIGADIER CALITZ: Wel, ek is nou met u –

18 MR MPOFU: - to maybe proceed.

19 BRIGADIER CALITZ: Ja, nee, die groep wat

20 aangeval is, die meer militante groep was die fokus punt

21 gewees. Ek het gesê die ander groep het vreedzaam weg

22 beweeg. Daar was wel van die groepering aan die bokant, as

23 ons kan sien hulle is ver meer as 200, die groep wat

24 gestorm het, so hulle is wel –

25 MR MPOFU: Toegelaat?

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1 BRIGADIER CALITZ: Hoe kan ek sê, nee, ek

2 wou gesê het ge-join met die ander groep, maar 'n groter

3 meerderheid het wegbeweeg.

4 MR MPOFU: Yes, and the simple point I'm

5 making now is that there was no way of the protestors

6 knowing that you had different designs or intentions, I

7 don't know how I have to put it, in the sense that, just in

8 the sense that the peaceful group would be allowed to

9 proceed and the other group would not be allowed to

10 proceed.

11 BRIGADIER CALITZ: Mnr die Voorsitter,

12 soos wat ek sê, daardie waarskuwing en daardie sou, daardie

13 woorde van my aan hulle, "Sou julle, julle wapens neerlê,"

14 selfs die militante groep, as hulle, hulle wapens sou

15 neergelê het sou hulle ook toegelaat gewees het om dan te

16 beweeg, so in daardie sense, nie twee verskillende maar

17 almal wat die waarskuwing sou gekry het sou dit so verstaan

18 het.

19 CHAIRPERSON: Yes, you see they hadn't

20 got any warning yet, we know why but they hadn't got a

21 warning yet. So what Mr Mpofu is concerned with is their

22 knowledge at the time when the important events happened,

23 which is of course before any warning could have been

24 given. Now we that from the basic planning, I think there

25 was something like a 176 cells available and it looks as if

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1 the, - and we've heard other evidence to the effect it

2 wasn't even intended to arrest the militant group, that it

3 wouldn't have been possible to have done so because there

4 would have been serious problems if there had been, and

5 what was envisaged as I understand the evidence is the

6 peaceful lot would have all gone away peacefully, some of

7 the militant group would also have gone away and so you

8 would have been left with a portion of the militant group,

9 with the ones you were expecting to have trouble with and

10 you were expecting to arrest. I think that's the evidence,

11 I take it you agree with that?

12 BRIGADIER CALITZ: Dit is korrek en ek

13 stem saam daarmee, mnr die Voorsitter.

14 CHAIRPERSON: Now Mr Mpofu's point as I

15 understand it is of course that was your intention at the

16 time, the way you saw things would pan out, you and your

17 colleagues, senior colleagues, but the strikers didn't know

18 that. They weren't aware of that at all, that must be

19 right, I take it, do you agree with that?

20 BRIGADIER CALITZ: Nee, dit is so, mnr

21 die Voorsitter, ons het nooit by die waarskuwing gekom –

22 CHAIRPERSON: Okay.

23 MR MPOFU: Thank you.

24 CHAIRPERSON: I've cleared some way

25 through the bush for you, you can now carry on.

<p style="text-align: right;">Page 20547</p> <p>1 MR MPOFU: Thank you, Chairperson, and 2 Brigadier, please forgive me for jumping quickly to 3 something else which arises from the chairperson's 4 question. We'll come back to this. As far as the arrests 5 are concerned which the chairperson referred to, and we 6 know the numbers now, the militant group according to your 7 estimate was about 400, the Canters would have catered for 8 about 170 something and in actual fact about 250 people or 9 259, to be exact, were arrested. So those are just the 10 cold statistics.</p> <p>11 BRIGADIER CALITZ: Ja.</p> <p>12 MR MPOFU: Now the question that I want 13 to ask you about that is, specifically to do with your 14 role, why were those people arrested as far as you know as 15 the operational commander, these other people I represent?</p> <p>16 BRIGADIER CALITZ: Die 259 wat 17 gearresteer was, was gearresteer vir besit van gevaarlike 18 wapens asook, ek dink dit is openbare geweld, dit is 19 MAS134, as ek dit nie het nie.</p> <p>20 MR MPOFU: Ja, no, that may well be what 21 the NPA decided to charge them with subsequently. I am 22 saying why did the police arrest them on the 16th before the 23 NPA –</p> <p>24 CHAIRPERSON: Do you mean why or on what 25 charge?</p>	<p style="text-align: right;">Page 20549</p> <p>1 I'm saying to you –</p> <p>2 BRIGADIER CALITZ: Nee, ek backtrack 3 definitief nie, ek sê vir u dat ek nie kan help nie en ek 4 was nie teenwoordig toe die persone, soos u gesê het, toe 5 die wapens gelaai is nie.</p> <p>6 MR MPOFU: Ja, no, what I'm saying, if 7 you had given me that answer when I asked you why they were 8 arrested then I would have moved to something else, but you 9 ventured to say why they were arrested. So now –</p> <p>10 CHAIRPERSON: I'm sorry, Mr Mpofu, it is 11 not as simple as that. The question is reformulated, it 12 was on what charges were they arrested and I think if one 13 looks at the docket one sees on what charges they were 14 arrested.</p> <p>15 MR MPOFU: Ja.</p> <p>16 CHAIRPERSON: Whether those charges would 17 stand in court, whether there was evidence to justify the 18 arrests on particularly the dangerous weapon charge is a 19 different matter. The question he was asked in a question 20 immediately reformulated by me was, on what charges were 21 they arrested? Whether there was evidence for the charge, 22 whether they stood up in court is a different matter. All 23 he was asked and all he can tell us about, because he 24 wasn't there when they were arrested is, what as far as he 25 knows was the charge or what were the charges in respect of</p>
<p style="text-align: right;">Page 20548</p> <p>1 MR MPOFU: Yes, ja, well, the same thing.</p> <p>2 CHAIRPERSON: It isn't necessarily the 3 same thing.</p> <p>4 MR MPOFU: No, the reason, they must have 5 broken a law or it is a charge, yes.</p> <p>6 CHAIRPERSON: Ja, they were arrested on a 7 charge or in respect of a suspicion that they had committed 8 an offence or offences. Now what were those offences? I 9 think you've told us, public violence and possession of 10 dangerous weapons, is that correct?</p> <p>11 BRIGADIER CALITZ: Dit is korrek, mnr die 12 Voorsitter.</p> <p>13 MR MPOFU: Now it cannot be true that 14 they were arrested for possession of dangerous weapons 15 because to your knowledge they were loaded onto those vans 16 without having been linked to any dangerous, or not even, 17 non dangerous weapons, correct?</p> <p>18 BRIGADIER CALITZ: Mnr die Voorsitter, ek 19 was nie teenwoordig toe die persone in die canters gelaai 20 is of toe daar rekord geneem is nie, so ek kan nie vir u sê 21 of daar enige links is nie. Ek sal dit, die speurder sal 22 dit kan vasstel.</p> <p>23 MR MPOFU: Well, I'm saying to you, I was 24 also not there, but you were competent enough to answer the 25 question as to what charge, so you can't backtrack now.</p>	<p style="text-align: right;">Page 20550</p> <p>1 which these people were arrested. Is that correct, 2 Brigadier?</p> <p>3 BRIGADIER CALITZ: Dit is korrek, mnr die 4 Voorsitter, ja. Ons weet wel dat daardie groep gewapende 5 persone soontoe beweeg het en dat daar wel 'n klomp wapens 6 op beslag gelê is, maar die link, ek kan hom nie verder 7 help daarmee nie.</p> <p>8 MR MPOFU: So you did not as a reasonable 9 operational commander say, these South African citizens who 10 are being taken away for among other things, possession of 11 dangerous weapons, have they been linked to specific 12 dangerous weapons or not, did you?</p> <p>13 BRIGADIER CALITZ: Nie terwyl ek daar by 14 koppie 3 was nie, nee, mnr die Voorsitter. Daar was wel 15 van forward holding area 1 die speurders en die Crime 16 experts daar en dit was verder hulle taak gewees.</p> <p>17 MR MPOFU: And now with the benefit of 18 hindsight, as your favourite expression goes, if I tell you 19 that those people were arrested as you correctly say, for 20 the possession of dangerous weapons and I also tell you 21 that they have never been linked to any specific weapon, 22 would you agree that that is nonsensical to proceed with 23 that?</p> <p>24 MR SEMENYA SC: No, Chair, the witness 25 cannot express an opinion –</p>

<p style="text-align: right;">Page 20551</p> <p>1 CHAIRPERSON: No, the witness' opinion on 2 the point is one that can't help us at all in deciding the 3 questions we're going to ask to advise the President on. 4 He may have his own views about whether it was nonsensical, 5 whether the charges are good or bad, I'm not interested in 6 it and I say that with great respect to him, I'm not 7 interested in what his views are on those points. 8 MR MPOFU: Ja, Chairperson, - 9 CHAIRPERSON: So I disallow the question. 10 MR MPOFU: Okay, well, you're a 11 policeman, I'm sure you wouldn't like South African 12 citizens to be arrested for nonsensical reasons, correct? 13 BRIGADIER CALITZ: Vir watse redes? 14 CHAIRPERSON: Again that is really an 15 attempt to circumvent or perhaps circumnavigate the ruling 16 I gave. I'm equally not interested in his answer to that 17 question and I disallow the question. 18 MR MPOFU: Okay, I'll make a third and 19 final attempt. Are you aware that or let me put it this 20 way, were those people arrested for the murder of their 21 fellow strikers, to your knowledge? 22 BRIGADIER CALITZ: Mm - 23 CHAIRPERSON: No, I understand where that 24 question comes from and I'll allow it. We know that at 25 some stage when the arrested persons appeared in court on</p>	<p style="text-align: right;">Page 20553</p> <p>1 MR MPOFU: And insofar as, you talked 2 about public violence. To your knowledge were those people 3 arrested in a public place or at koppie 3? 4 CHAIRPERSON: A public place, are you 5 referring to a public place in terms of some or other 6 statute or are you referring to the kind of place where the 7 crime and public violence can be committed in terms of the 8 common law definition of that crime? 9 MR MPOFU: Yes, Chairperson, that's 10 correct, I was vague. What I'm referring to is, I think it 11 is in that Common Law as the chairperson has said. The 12 place where they were arrested was a public vicinity or was 13 it an isolated koppie in the veld? 14 CHAIRPERSON: I'm not sure if the law of 15 public violence doesn't apply to public, to isolated 16 koppies in the veld. I can understand, I haven't looked at 17 the law of public violence for some years now, but - 18 MR MPOFU: I have - 19 CHAIRPERSON: I would, - ja, I take you 20 have done more recently than I, but I'm not sure that the 21 law doesn't apply to isolated koppies in the veld, but 22 anyway I don't know if the witness can help us. Can you, 23 never mind what the definition on the crime of public 24 violence is, are you able to assist us to whether the place 25 where they arrested these people or places where these</p>
<p style="text-align: right;">Page 20552</p> <p>1 the charge sheet in respect of which they were appearing, 2 there was a charge of murder and in fact when there was a 3 bail application I think one of the reasons why bail was 4 refused was because of the fact that there was a murder 5 charge in a part schedule, I think it is Schedule 6 of the 6 Criminal Procedure Act applied. What Mr Mpofo wants to 7 know from you is when they were arrested were they arrested 8 on a murder charge or was that a charge that was added 9 later? That's the question, isn't it, Mr Mpofo? 10 MR MPOFU: That's correct, Chairperson. 11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 nee, ek sal u nie kan help daar nie. 13 CHAIRPERSON: You can you know, because I 14 take it that when they were arrested there was no talk of a 15 murder charge, that only surfaced later. So as far as you 16 know and what you - 17 BRIGADIER CALITZ: Sover ek weet - 18 CHAIRPERSON: - as operational commander 19 knew about the people who were arrested as a follow up to 20 the operation was, they weren't arrested on murder charges, 21 they were arrested on the other charges you've mentioned, 22 is that right? 23 BRIGADIER CALITZ: Dit is korrek, mnr die 24 Voorsitter. 25 CHAIRPERSON: Ja.</p>	<p style="text-align: right;">Page 20554</p> <p>1 people were arrested, constitute the kind of places where 2 the crime of public violence can be committed? Can you 3 help us on that or can't you? 4 BRIGADIER CALITZ: Mnr die Voorsitter, ek 5 sal sê, ja, dit is 'n plek waar enige publiek toegang tot 6 het en vir daardie rede, ja. 7 MR MPOFU: Okay, that's fine. Now the 8 last question in that line is and I think to illustrate 9 this question I'll use Mr Magidiwana as an example. You 10 know who Mr Magidiwana is, he is he 23 year old child who 11 was riddled with bullets at scene 1? 12 CHAIRPERSON: He was a child? 13 MR MPOFU: Yes, he was 23, that's a child 14 to me. 15 BRIGADIER CALITZ: Ek verstaan nie u 16 vraag nie, as u net weer sê, as u sê ken ek hom? Ek ken 17 hom glad nie, ek sal hom nie kan uitken nie, ek weet nie, 18 nee. 19 MR MPOFU: Okay, maybe I'm revealing my 20 age indirectly. What I'm saying to you is, you know about 21 Mr Magidiwana, I don't mean you know him personally, you 22 know he gave evidence, you can see him on the video, so I'm 23 just trying to circumvent all that to say to you, do you 24 know about Mr Magidiwana? 25 BRIGADIER CALITZ: As dit die persoon is</p>

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1 wat evidence gegee het voor die Kommissie en wat beseer  
 2 was, dra ek wel kennis van hom maar ek sal nie sê ek sal  
 3 hom kan uitken as ek hom nou sien nie, nee.  
 4 MR MPOFU: Sure, now the question is, and  
 5 I want you to tell me if, when I argue this once again, as  
 6 a policeman and an operational commander you would be able  
 7 to quarrel with it. We have a situation where Mr  
 8 Magidiwana who as I've said earlier, the only thing he was  
 9 carrying was a stick in the manner that you said it was  
 10 nonthreatening and then he was shot dead, well, shot,  
 11 almost left for dead actually, shot there and he was  
 12 strolling as you may see on the videos, at scene 1 and then  
 13 as we know there was about 30 minutes or so before scene 2  
 14 occurred, and Mr Magidiwana has been lying there and he was  
 15 taken by ambulance to the hospital where he was in a coma  
 16 for a couple of weeks.  
 17 MR SEMENYA SC: In fairness the evidence  
 18 by Mr Magidiwana is that he had [African language] at a  
 19 certain point but it is not his.  
 20 MR MPOFU: No, no, no, please –  
 21 CHAIRPERSON: It was the evidence, Mr  
 22 Mpofo.  
 23 MR MPOFU: Well, Chairperson, let's not  
 24 play games here. I'm talking about when he was killed –  
 25 CHAIRPERSON: I don't think anyone else

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1 is either.  
 2 MR MPOFU: Well, I think Mr Semenya is  
 3 playing games. I'm not talking about some historical thing  
 4 which may have happened on the 14th or the 15th or whatever.  
 5 I'm talking about the 16th when the man was killed, the  
 6 evidence is –  
 7 CHAIRPERSON: No, he wasn't killed.  
 8 MR MPOFU: Well, he was left for dead by  
 9 the police at least.  
 10 CHAIRPERSON: Well, that's a different  
 11 matter.  
 12 MR MPOFU: At that point, yes, when he  
 13 was mowed with seven bullets on his body to the extent that  
 14 he can no longer have children. Now I'm saying at that  
 15 point, not at some other historical point, Mr Magidiwana  
 16 only had in his possession and I'll play the videos if  
 17 anyone is doubting it, a stick which he was carrying in the  
 18 middle thereof and which he was carrying with the wrong  
 19 hand. He is right handed, that stick was on the left hand.  
 20 Okay, now I'm saying that Mr Magidiwana having been left  
 21 there for dead was subsequently charged with the murder of  
 22 the people at scene 2, does that make sense to you?  
 23 CHAIRPERSON: I'm not interested in what  
 24 makes sense to this witness on that issue, this is another  
 25 attempt to circumvent the ruling I made.

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1 MR MPOFU: No, this is –  
 2 CHAIRPERSON: I'm not interested in  
 3 whether it is a good charge or a bad charge, that's a  
 4 matter for the prosecution authorities. Certainly I'm not  
 5 interested in what this witness thinks about the charge.  
 6 You may well be able to say later in argument that it  
 7 didn't make sense to them to be charged with this. I can  
 8 understand a number of submissions you wish to raise in  
 9 that regard and I'm not stopping you from raising the  
 10 arguments, but with respect I'm not interested in what this  
 11 witness thinks about the point –  
 12 MR MPOFU: Okay, Chairperson, -  
 13 BRIGADIER CALITZ: - and I'm not going to  
 14 allow the question.  
 15 MR MPOFU: Well, Chairperson, I'm  
 16 surprised, I'll accept the ruling but my understanding is  
 17 that what we did in –  
 18 CHAIRPERSON: The ruling and what are you  
 19 addressing me on –  
 20 MR MPOFU: No, I address you on whether I  
 21 can ask a further question which is different, because this  
 22 is your ruling, if you –  
 23 CHAIRPERSON: The ruling is, sorry, my  
 24 ruling is, I'm not interested in this witness' views on  
 25 whether it is surprising whether he was arrested on a

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1 murder charge.  
 2 [12:32] It's surprising he was charged with possessing a  
 3 weapon when he didn't have a weapon, whether it's  
 4 surprising he could be charged in respect of things that  
 5 happened at scene 2. There may well be substance in the  
 6 contentions you wish to raise in that regard, there may  
 7 well be, I don't know.  
 8 MR MPOFU: Ja, no.  
 9 CHAIRPERSON: But I'm not interested with  
 10 respect, in this witness's views on that point. It's a  
 11 point on which if necessary we will form our own views  
 12 based on the material before us.  
 13 MR MPOFU: Yes.  
 14 CHAIRPERSON: And our, we won't be  
 15 interested in any way by what Brigadier Calitz thinks about  
 16 it. Whether his views are in favour of the police or in  
 17 favour of the prosecution or against, whatever they are we  
 18 will exclude them from our minds when we consider the  
 19 question if we have to.  
 20 MR MPOFU: Yes.  
 21 CHAIRPERSON: And that's the basis for  
 22 the ruling.  
 23 MR MPOFU: Yes, I'm addressing you now,  
 24 Chairperson, not the witness and I was saying that the, to  
 25 remind you that the, what we did in Rustenburg was to

<p style="text-align: right;">Page 20559</p> <p>1 redefine phase 1 of this commission and I'm paraphrasing  2 here so you'll forgive me. My understanding of phase 1 was  3 that the first point actually or the second point or  4 whatever was that this commission in phase 1 among other  5 things is going to determine as to whether or not the  6 arrest of the protestors was or was not justifiable. Now  7 and I'm busy trying to find the actual formulation of phase  8 1. That being the case, Chairperson, I cannot see why you  9 would not be interested as you put it in the, in a person  10 in the position of this witness who was overall in charge  11 which means even the people who arrested there, I know I'm  12 not suggesting that he did the arrest physically, but they  13 fell under him as it were. That the people effected those  14 arrests which were planned with Canters prepared and so on,  15 why the Chairperson of a commission that is defined as  16 phase 1 that would not be interested in that question is  17 what puzzles me.</p> <p>18 CHAIRPERSON: The evidence, I'm not  19 interested in the opinion of this witness, whether he's  20 qualified to give an opinion on the matter I doubt but even  21 if he is I'm not interested in his opinion. The facts that  22 are relevant will be before us when you argue the matter.  23 We will be able to form our own opinion and we won't arrive  24 any assistance one way or the other from the views of this  25 witness on that issue.</p>	<p style="text-align: right;">Page 20561</p> <p>1 uiteengedryf het, ge-encircle het, ontwapen het en dan  2 gearreesteer het en –</p> <p>3 CHAIRPERSON: This is positive to me,  4 it's affirmative to the question. You answer yes to the  5 question.</p> <p>6 BRIGADIER CALITZ: En dan sou daardie  7 arrestasie, gearreesteerde persone afgevoer word na 'n  8 process centre toe.</p> <p>9 CHAIRPERSON: It was part of your  10 responsibilities amongst other things, the area of  11 responsibility of you was, included the dispersion,  12 dispersal, disarmament and arrest of the -</p> <p>13 BRIGADIER CALITZ: Dit is korrek, mnr die  14 Voorsitter.</p> <p>15 MR MPOFU: Okay. I'm sorry and did you  16 in fact direct any of the arrests?</p> <p>17 BRIGADIER CALITZ: Nee, mnr die  18 Voorsitter.</p> <p>19 MR MPOFU: Then is, can you at, was it  20 you or was it not you who said make some arrests, make some  21 arrests or words to that effect? Did you in that sense  22 direct the arrests by saying, I'll play you the video or  23 the, I'll show you the transcript where you directed the  24 arrests, are you sticking with your denial?</p> <p>25 BRIGADIER CALITZ: As u verwys na die</p>
<p style="text-align: right;">Page 20560</p> <p>1 MR MPOFU: Even if –</p> <p>2 CHAIRPERSON: As simple as that?</p> <p>3 MR MPOFU: Even if the arrests were  4 directed by him, we'll say for argument sake –</p> <p>5 CHAIRPERSON: Did you direct any arrests?</p> <p>6 BRIGADIER CALITZ: Dit is negatief.</p> <p>7 CHAIRPERSON: So –</p> <p>8 MR MPOFU: No, I was making that as an  9 example to show the, it's an illustration, what I'm saying  10 is that or maybe can I ask him with your permission,  11 Chairperson, whether the arrests were performed as part of  12 his, of the activities that he was supposed to coordinate  13 or not?</p> <p>14 CHAIRPERSON: I'll allow that because  15 that would be relevant in relation to his responsibilities,  16 isn't it so.</p> <p>17 MR MPOFU: Thank you, Chairperson. The,  18 what we know now is that the parts of the plan as I said  19 earlier was that Canters must be made available, I think  20 police stations were phoned and all that. So this was not  21 some impromptu thing. It was part of the plan. Given that  22 background were the arrests of my clients included in the  23 number of activities that you were enjoined to coordinate?</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, my  25 taak was duidelik gewees. Ons sou in fase 3 die persone</p>	<p style="text-align: right;">Page 20562</p> <p>1 gesprek van die Coin helikopter, as dit waarna u verwys.</p> <p>2 MR MPOFU: Yes.</p> <p>3 BRIGADIER CALITZ: Het Kolonel Vermaak  4 uit die lug uit gesê Brigadier die waterkanonne moet wag,  5 die persone is nou omsingel en ons kan arrestasies maak.  6 Daarop het ek vir die persone gesê engage, get out of your  7 vehicles under protection engage, dis is korrek.</p> <p>8 MR MPOFU: Brigadier Calitz, did you  9 direct any of the arrests yes or no?</p> <p>10 BRIGADIER CALITZ: Ja, ek het groepe  11 opdrag gegee om in te beweeg en dan die volgende fase uit  12 te voer.</p> <p>13 MR MPOFU: So why did you say to the same  14 question two minutes ago you did not direct the arrests.</p> <p>15 BRIGADIER CALITZ: Ek het dit verstaan u  16 verwys na die persoon wat u nog die heelyd verwys en dat  17 daardie moordklag waaroor die verskil was.</p> <p>18 MR MPOFU: Any way –</p> <p>19 CHAIRPERSON: Mr Mpofo, if you want to  20 argue on the point, you got enough on record to argue it.  21 You don't have to –</p> <p>22 MR MPOFU: I do now.</p> <p>23 CHAIRPERSON: You don't have to worry  24 about it further, you've got material on record -</p> <p>25 MR MPOFU: Yes.</p>



<p style="text-align: right;">Page 20563</p> <p>1 CHAIRPERSON: To argue.</p> <p>2 MR MPOFU: Thank you. Well I didn't have</p> <p>3 that material before you stopped me, Chairperson. I had to</p> <p>4 find a –</p> <p>5 CHAIRPERSON: Well I allowed a</p> <p>6 permissible question –</p> <p>7 MR MPOFU: Thank you.</p> <p>8 CHAIRPERSON: And rejected a number of</p> <p>9 impermissible questions.</p> <p>10 MR MPOFU: Thank you, Chairperson.</p> <p>11 CHAIRPERSON: Shall we carry on.</p> <p>12 MR MPOFU: Ja. Alright now we then go</p> <p>13 back to the issue we were busy with. We also know, sorry</p> <p>14 in fairness let me remind you, what I said is that and I</p> <p>15 think you had agreed that because you were prevented from</p> <p>16 issuing warnings they did not know that you, what you had</p> <p>17 planned for the militant group, you remember that</p> <p>18 discussion?</p> <p>19 BRIGADIER CALITZ: Ek onthou wat u daar</p> <p>20 gesê het, ja.</p> <p>21 MR MPOFU: Ja. Now I'm saying that what</p> <p>22 unfortunately happened is that and probably unwittingly</p> <p>23 because Mr Noki asked the group that was close to him to</p> <p>24 walk rather than to run that assisted the police in further</p> <p>25 distinguishing that group so that could be targeted for</p>	<p style="text-align: right;">Page 20565</p> <p>1 CHAIRPERSON: Yes, no, no I know, they</p> <p>2 were walking, they may not have walked the way you and I</p> <p>3 normally walk down the street but they were walking weren't</p> <p>4 they, they weren't running so. So let's carry on with the</p> <p>5 questions that he's asking you and answers to them.</p> <p>6 MR MPOFU: Are you, okay we'll come to</p> <p>7 that. The point that I'd like you to comment and I always</p> <p>8 preface it by saying I'm not a witness as such but would it</p> <p>9 be fair to say that it's, one would have thought that the</p> <p>10 safest thing from the point of view of the police is not to</p> <p>11 run but to walk, in other words normally you'd be safer in</p> <p>12 that position of, because if you are running you could be</p> <p>13 attacking, you could be doing various things but if you are</p> <p>14 walking that should indicate that you are or rather you</p> <p>15 should be, safer then the people who are running, in a</p> <p>16 nutshell, is that –</p> <p>17 CHAIRPERSON: Safer from what?</p> <p>18 MR MPOFU: From –</p> <p>19 CHAIRPERSON: I think I know what you –</p> <p>20 MR MPOFU: From murder.</p> <p>21 CHAIRPERSON: But you haven't put it to</p> <p>22 him.</p> <p>23 MR MPOFU: From being murdered by the</p> <p>24 police.</p> <p>25 MR SEMENYA SC: Chair, that is -</p>
<p style="text-align: right;">Page 20564</p> <p>1 whatever it was targeted for, correct?</p> <p>2 BRIGADIER CALITZ: Ek dra nie kennis wat</p> <p>3 mnr Noki se woorde vir mense was nie.</p> <p>4 CHAIRPERSON: The question maybe more</p> <p>5 difficult to follow by some introductory material which</p> <p>6 wasn't relevant. What is relevant is that because the</p> <p>7 people were walking, why they were walking didn't matter,</p> <p>8 because the people were walking and not running Mr Mpofu</p> <p>9 says that made it possible for the police to deal with them</p> <p>10 as they did, is that right?</p> <p>11 MR MPOFU: Yes, to distinguish, to deal</p> <p>12 with them as a separate entity.</p> <p>13 CHAIRPERSON: Ja.</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>15 dit sal seker moontlik wees in die verduideliking dat Nyala</p> <p>16 4 hulle afgesny het. Die postuur en die formasie waar in</p> <p>17 hulle was dit het ons reeds verduidelik dit is nie net</p> <p>18 normaal weg stap, vreedsaam stap in 'n rigting nie. Hulle</p> <p>19 was in 'n spesifieke -</p> <p>20 CHAIRPERSON: You weren't asked that.</p> <p>21 BRIGADIER CALITZ: Ja, nee ek wil net</p> <p>22 seker –</p> <p>23 CHAIRPERSON: You weren't asked that. No</p> <p>24 just -</p> <p>25 BRIGADIER CALITZ: Hy verwys na walking.</p>	<p style="text-align: right;">Page 20566</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>2 -</p> <p>3 CHAIRPERSON: Mr Semenya wants to say</p> <p>4 something before you answer if you have to.</p> <p>5 MR SEMENYA SC: Mr Mpofu can't be allowed</p> <p>6 to put a proposition that the police were murdering</p> <p>7 anybody.</p> <p>8 CHAIRPERSON: I don't think the</p> <p>9 proposition he put was that the police were murdering</p> <p>10 people, he's simply putting a general proposition that if</p> <p>11 you are walking as opposed to running –</p> <p>12 MR SEMENYA SC: Chair –</p> <p>13 CHAIRPERSON: You are safer from being, I</p> <p>14 take it means dealt with in any way at all by the police.</p> <p>15 Mr Mpofu, I didn't put that, the use of the word murder</p> <p>16 this introduces irrelevant considerations which don't help</p> <p>17 you to advance the point you're making. May I suggest you</p> <p>18 reformulate the question. Avoid, Mr Semenya's objection</p> <p>19 and you'll get an answer I would imagine which you can use</p> <p>20 for your argument later.</p> <p>21 MR MPOFU: Well can you go to slide L84.</p> <p>22 At the bottom of that slide what do the police mean by the</p> <p>23 scene of the murdered mine supervisor is dealt with, will</p> <p>24 they withdraw that statement?</p> <p>25 CHAIRPERSON: You were asking a question</p>

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1 which I then suggested you reformulate. You're now going  
 2 on to something totally different. There was a person who  
 3 was clearly killed in extraordinary circumstances whose  
 4 body was found on the Tuesday a 100 metres I think it was  
 5 from the koppie with the skull of a cow on him. All the  
 6 indications are that he didn't meet his death in a manner  
 7 which was lawful and all the indications are that he was  
 8 killed but we don't know by whom, but in circumstances  
 9 which may well have amounted to murder. This witness in  
 10 any event isn't responsible for what is said in this slide.  
 11 Whether that last bullet under 1720 is correctly formulated  
 12 is not in any way relevant to any evidence he can give. So  
 13 I suggest you carry on with the question you were asking in  
 14 reformulated form and don't introduce irrelevancies which  
 15 only waste time.

16 MR MPOFU: Well, Chairperson, it doesn't  
 17 waste time. Murder is not a waste of time. I'm saying  
 18 that if the police are entitled to use –

19 CHAIRPERSON: I'm sorry, Mr Mpofo -

20 MR MPOFU: If the police are entitled to  
 21 use murder –

22 CHAIRPERSON: Give me an opportunity.

23 MR MPOFU: I'm responding to Mr Semenya,  
 24 Chair.

25 CHAIRPERSON: The incident relating to

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1 the mine supervisor whose dead body was found in the  
 2 circumstances that had been described in evidence is not in  
 3 any way relevant to what this witness is testifying about  
 4 or the questions you're asking him about. I suggest you  
 5 confirm yourself to what is relevant and proceed.

6 MR MPOFU: Thank you, Chairperson. Yes,  
 7 can you answer the question, would it normally be safer to  
 8 be walking then to be running in a situation like that?

9 BRIGADIER CALITZ: Mnr die Voorsitter, in  
 10 hierdie geval sal ek nie saam met u stem nie. As ek my eie  
 11 opinie kan gee dit sou baie veiliger gewees het as hulle,  
 12 soos u voorheen voorgestel het in 'n westelike rigting  
 13 weggehardloop het.

14 CHAIRPERSON: The distinction isn't about  
 15 the direction, the distinction is about the speed of moving  
 16 and the point being made I take it is that normally if a  
 17 person is walking down the street and there are police  
 18 nearby and the police that there's something untoward  
 19 happening they're more likely to deal proactively with  
 20 somebody who's running in those circumstances then someone  
 21 is who's simply walking down the street, that's right isn't  
 22 it? It's a matter, it's a general proposition, there may  
 23 be other factors and so on. But that's the thrust of Mr  
 24 Mpofo's point and I take it you'd agree with that, wouldn't  
 25 it?

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1 BRIGADIER CALITZ: As hulle normaalweg  
 2 gestap het, mnr die Voorsitter, sal ek saam stem.

3 CHAIRPERSON: Ja.

4 BRIGADIER CALITZ: Dan was dit -

5 CHAIRPERSON: You haven't asked that,  
 6 remember only answer questions you've been asked. You'll  
 7 be out of here much quicker then otherwise. Mr Mpofo, you  
 8 want to build on the answer that I got to that question I  
 9 asked on your behalf?

10 MR MPOFU: Thank you, Chairperson. After  
 11 thanking you Chairperson, yes. Well I'm going to argue,  
 12 Brigadier, that the police ought to have known or let me  
 13 take one step back. So far the only evidence that you have  
 14 of this so-called attacked is based on the manner in which  
 15 these people were walking or crouch walking. You yourself  
 16 did not observe the people at scene 1 attacking the TRT,  
 17 correct?

18 BRIGADIER CALITZ: Nie die TRT lyn nie,  
 19 nee.

20 MR MPOFU: Ja and you yourself never  
 21 observed them or the TRT itself on your version defending  
 22 itself against such an attack, correct?

23 BRIGADIER CALITZ: Nie op daardie dag  
 24 nie, nee.

25 MR MPOFU: Ja. So we're back to square

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1 one where this so-called attack up to now the best evidence  
 2 we have about it is about the manner of walking and that's  
 3 what I'm going to deal with now and I'm going to say to you  
 4 that the police particularly because of the events of the  
 5 13th and I'll also show you because of even some of the  
 6 events preceding the killings on the 16th knew, actually  
 7 knew or at best ought to have known that that manner of  
 8 walking that we have colloquially called crouch walking was  
 9 not intended as a threat, on the contrary it was intended  
 10 as a sign of submissiveness. On their own actual  
 11 experience of what had happened on the 13th before the  
 12 disaster and on the 16th before the disaster, I know it's a  
 13 long question but if you understand then answer, if not  
 14 I'll break it down.

15 BRIGADIER CALITZ: Ek kan maar net sê ek  
 16 stem nie maar nie, mnr die Voorsitter.

17 MR MPOFU: Okay.

18 CHAIRPERSON: There's two halves. Two  
 19 points, two halves. The first is the police knew that this  
 20 was a sign of submissiveness and not aggressiveness, that's  
 21 effectively the first half of the question. Did you know  
 22 that?

23 BRIGADIER CALITZ: Mnr die Voorsitter,  
 24 nee dit is nooit so bespreek of –

25 CHAIRPERSON: Alright, you didn't know

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1 it.

2 BRIGADIER CALITZ: Ja.

3 CHAIRPERSON: The second half of the

4 question is if you didn't know it you should have known it.

5 Now what do you say about that?

6 BRIGADIER CALITZ: Ek stem nie saam nie,

7 mnr die Voorsitter.

8 CHAIRPERSON: Thank you.

9 BRIGADIER CALITZ: Dit is wat op die 13de

10 gebeur het en wat ons gesien het, het gebeur, dis maar al

11 wat ons gehad het.

12 MR MPOFU: And some of the shooters, some

13 of the shooters were participants on the 13th, on the events

14 of the 13th, correct?

15 BRIGADIER CALITZ: U praat van die 16de?

16 MR MPOFU: Ja, ja, sorry when I say the

17 shooters, I mean the 16th, sorry, ja.

18 BRIGADIER CALITZ: Ek glo daar was van

19 hulle wat op die 13de betrokke was, ek sal dit van u kan

20 vasstel.

21 MR MPOFU: Right. Now I want to show

22 you, I think it's HHH17, I'll just pause it, it's almost

23 like a photo but I'll pause at the right time and please

24 look out, just to save time, look out for the, where the

25 strikers are walking in that crouch walking manner.

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1 Clanking or slapping their arms, their weapons as it were

2 past a group of policemen. Okay. Mr Operator.

3 BRIGADIER CALITZ: Wat is u verwysing van

4 die video, ek hom nou net nie -

5 MR MPOFU: As I said I think it's HHH17.

6 BRIGADIER CALITZ: Hy is nie in my bundel

7 nie of is hy?

8 MR MPOFU: No, dis nie daar nie.

9 [VIDEO SHOWN]

10 CHAIRPERSON: As you can see on the

11 screen is footage taken on Monday the 13th near the railway

12 line and I think you're going to see a group of miners

13 walking away from General Mpembe while he was in - busy

14 counting.

15 [12:52] MR MPOFU: Ja.

16 CHAIRPERSON: And you're going to see the

17 way they walked and you're going to see what they did with

18 their weapons. I think that's what's going to be his -

19 whether we've got the right exhibit is not clear yet, but

20 we will see in a moment.

21 MR MPOFU: Just fast forward.

22 CHAIRPERSON: You've got to move on some

23 distance from here, haven't you?

24 MR MPOFU: Yes. Okay, rewind a little

25 bit. Play.

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1 CHAIRPERSON: What's the reading? It

2 looks like 9:49.

3 MR MPOFU: Chairperson, yes, let's start

4 at 9:40 then. Ja, it's fine. Okay, you see on that

5 picture there's one policeman who's just disappeared from

6 the picture, but you can at least at this stage see one,

7 two, three, four policemen who are being passed by that

8 crowd, correct?

9 BRIGADIER CALITZ: Ja, wat ek op die foto

10 sien is die polisiemanne in die voorgrond en die groep wat

11 oppad is.

12 MR MPOFU: Yes, okay, carry on. Sound.

13 Okay, are those people in the manner that they are walking

14 in which you people call a tight formation, is that the

15 manner, a similar manner in which they were walking on the

16 16th?

17 BRIGADIER CALITZ: Dit is korrek gewees,

18 ja.

19 MR MPOFU: Okay, carry on.

20 [VIDEO SHOWN]

21 Okay, stop, and you can hear the clanking of the

22 firearms, correct?

23 CHAIRPERSON: No, not firearms -

24 MR MPOFU: I'm sorry, of the arms.

25 CHAIRPERSON: Arms.

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1 MR MPOFU: I was just checking if

2 everyone is awake, Chairperson. The clanking of the

3 traditional weapons, correct?

4 BRIGADIER CALITZ: Ek onthou iets van

5 "slip of the tongue" wat, maar ek gaan nie teruggaan

6 soontoe. Nee, dit is korrek, ek hoor die pangas of ysters

7 wat teen mekaar geslaan word, of spiese, maar die klank van

8 metaal.

9 MR MPOFU: Yes, and now we have one -

10 okay, let's not count, double count those two. In fact,

11 alright, now I'm really taking a chance here. The tall

12 person standing in front of the policeman who's wearing a

13 beret, does it not look like General Mpembe to you?

14 BRIGADIER CALITZ: Nee, ek sal nie kan sê

15 nie. Daar is 'n -

16 MR MPOFU: Okay, no that's fine.

17 BRIGADIER CALITZ: - die lig wat skyn op

18 die pet, dit kan wees dat dit die rang is of dit kan net 'n

19 refleksie van die son wees.

20 MR MPOFU: That's fine.

21 BRIGADIER CALITZ: Ek sien die -

22 MR MPOFU: I'm sorry, Brigadier, ja in

23 any event -

24 CHAIRPERSON: - the beret, if you look at

25 the picture you will see about a third of the way from the

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1 left on the picture there are, at the top of the picture  
 2 there are what appears to be two poles, or pylons of some  
 3 kind, and if one goes down from the middle of those pylons  
 4 one sees a man standing, we can only see his back, tall  
 5 person, and he certainly is taller than General Mpembe, who  
 6 is a very tall man, as you know, but the question Mr Mpofu  
 7 asks you is – he's taking a chance, he concedes, but does  
 8 that look to you like General Mpembe? That's your  
 9 question?  
 10 MR MPOFU: Yes, Chairperson.  
 11 BRIGADIER CALITZ: Ekskuus, mnr die  
 12 Voorsitter, ek het na totaal 'n ander persoon verwys aan  
 13 die voorkant van die groep –  
 14 CHAIRPERSON: I could see that, that's  
 15 why I intervened.  
 16 MR MPOFU: Ja.  
 17 BRIGADIER CALITZ: Ekskuus, nee, met die  
 18 rug na my toe, die persoon lyk nie of hy 'n pet op het nie  
 19 en as ek na sy liggaamsbou kyk, ek dink hy is bietjie  
 20 groter as Generaal Mpembe. Generaal Mpembe is maar 'n lang  
 21 skraal persoon, so ek – maar ek kan nie vir u sê nie, nee,  
 22 ek raai maar.  
 23 MR MPOFU: Okay, no that's fine. That's  
 24 fine. Sorry, as I said, I was taking a chance. But in any  
 25 event, on that picture you can see I think one, two, three,

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1 four, five, six, seven, seven or eight policemen on that  
 2 shot, correct?  
 3 BRIGADIER CALITZ: Ja, ek sal sien so  
 4 sewe op hierdie stadium.  
 5 MR MPOFU: And the crowd of people,  
 6 walking as they were on the 16th, is not threatening or  
 7 killing or attacking or all these bad things, on those  
 8 seven policemen, correct?  
 9 BRIGADIER CALITZ: Ja, ek dink die doel  
 10 hiervan was dat hulle sou "ge-escort" word, as ek dit kon  
 11 reg verstaan. Dit verskil heeltemal van die gebeure op die  
 12 16de.  
 13 MR MPOFU: Okay, just carry on a little  
 14 bit.  
 15 [VIDEO SHOWN]  
 16 Okay, stop. Okay, you see there are other  
 17 policemen. Okay, we don't have to belabour the point. But  
 18 both from this scene and the previous scenes it would be  
 19 fair to say the policemen were very close to that crowd,  
 20 within a couple of metres, correct?  
 21 BRIGADIER CALITZ: Ja, die drie  
 22 polisiemanne wat ek hier in die voorgrond sien sou ek sê  
 23 hulle is relatief naby, ja.  
 24 MR MPOFU: Yes, you agree with me?  
 25 BRIGADIER CALITZ: Dis korrek.

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1 MR MPOFU: Ja, thank you. Now let's go  
 2 to JJJ194 –  
 3 CHAIRPERSON: Can we go there after  
 4 lunch, Mr Mpofu? Or is it necessary for this point to be  
 5 dealt with now before we adjourn? I'm in your hands, to  
 6 some extent.  
 7 MR MPOFU: Chairperson, because it  
 8 involves a video it might be a longish point. We can do it  
 9 after lunch.  
 10 CHAIRPERSON: We'll take the lunch –  
 11 MR MPOFU: Longish in the sense of a  
 12 couple of minutes.  
 13 CHAIRPERSON: We'll take the lunch  
 14 adjournment. We're having a meeting in chambers with the  
 15 evidence leaders, so we will resume at 2 o'clock.  
 16 MR MPOFU: Thank you, Chairperson.  
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 18 [14:21] CHAIRPERSON: Sorry we're starting later  
 19 than I indicated, but the meeting I mentioned took longer  
 20 than we thought. Brigadier, you're still under oath.  
 21 ADRIAAN MARTHINUS CALITZ: Dankie, mnr  
 22 die Voorsitter.  
 23 CHAIRPERSON: Mr Mpofu.  
 24 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 25 Final lap. That's the old story of in conclusion and

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1 finally and lastly. Now lastly, Brigadier, I said I was  
 2 just going to show you a shortish clip which complements  
 3 this one, but before I do that I just want to – or rather,  
 4 complements the SABC clip that we saw earlier. But just  
 5 one or two things on that. You would agree that from what  
 6 we saw on that clip, the members of SAPS that we observe  
 7 there were not looking threatened. Correct?  
 8 BRIGADIER CALITZ: Korrek.  
 9 MR MPOFU: And you do know that the – and  
 10 I'm asking you this carefully because I know you were not  
 11 there, and so on, but insofar as you know, are you aware  
 12 that that part of the walk – let me put it this way; the  
 13 version of SAPS is that about 500 metres – and don't hold  
 14 me to that measurement – onwards then some trouble started,  
 15 and there's a whole dispute about whether it was started by  
 16 the strikers or the police. I don't want to debate that  
 17 with you, but that part of the walk, had that trouble not  
 18 occurred the walking, the clamping of arms, past policemen  
 19 within metres of them, not feeling any threat, that would  
 20 have carried on for about eight kilometres had there not  
 21 been trouble. Is that your understanding of the case for  
 22 SAPS?  
 23 BRIGADIER CALITZ: Soos ek verstaan het,  
 24 mnr die Voorsitter, ja, hulle het hulle "ge-escort" in die  
 25 rigting van die, kan ons sê die koppie.

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1 MR MPOFU: Okay, thank you. Alright, now  
 2 we can go to the other clips, and I think once again to  
 3 save time, on this one again watch out for the situations  
 4 where the strikers are walking - this is now the 16th –  
 5 where they are walking and there are policemen, and I won't  
 6 put it higher than who are within their reach if they  
 7 wanted to attack them, and they walk in, almost ignoring,  
 8 if I can put it that way, those members and walk in a  
 9 different direction. I'll ask you specific questions, but  
 10 I want you to just look out for that kind of thing.  
 11 Understand?  
 12 BRIGADIER CALITZ: Reg. Wat is die  
 13 verwysing?  
 14 MR MPOFU: Ja, thank you. Alright, let's  
 15 have JJJ194. We'll play from 12 to 16, just to save time,  
 16 back to back and I'll pause at 13 points. They're all,  
 17 it's a collection of short clips, Chairperson. Okay, stop  
 18 right there before you even start. Right, you can see  
 19 there that there are, this is the point where the strikers  
 20 are moving northwards, northwest I think, and the point I  
 21 want to remark about is that at that stage the wire,  
 22 there's no wire that's separating the police from the  
 23 strikers, and there's at least one member who's outside of  
 24 his vehicle. Am I correct?  
 25 BRIGADIER CALITZ: Ja, mnr die

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1 Voorsitter, wat ek sien op hierdie foto, dit is 'n foto wat  
 2 uit 'n – nou weet ek nie wat is die rigting nie – kan ek  
 3 maar skuins links van agter af geneem is want jy kan nie  
 4 die koppie waarneem op hierdie foto nie, behalwe 'n klein  
 5 gedeelte van koppie 2. So dit moet 'n baie skuins "angle"  
 6 wees waarop die foto geneem is, ja.  
 7 MR MPOFU: Ja, fair –  
 8 BRIGADIER CALITZ: En daar is een persoon  
 9 buitekant en hulle beweeg, ja. Dit lyk soos die voorste  
 10 militante groep wat daar beweeg.  
 11 MR MPOFU: Yes, but the point really is  
 12 that they're not moving in any threatening way towards that  
 13 member. They're moving in a different direction.  
 14 BRIGADIER CALITZ: Ja-nee, hulle kom nie  
 15 na hierdie lid toe wat hier loop nie, maar ek kan glad nie  
 16 die draad sien in vergelyking met hierdie foto nie.  
 17 MR MPOFU: Well, okay, you either have to  
 18 accept it from me or look very carefully at the picture,  
 19 that at that stage the wire was not there.  
 20 BRIGADIER CALITZ: Ja, dis hoekom ek sê  
 21 die hoek waaruit dit geneem is, dit is korrek ja, ons kan  
 22 nie waarneem –  
 23 MR MPOFU: Okay.  
 24 CHAIRPERSON: Do we know what time this  
 25 picture was taken?

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1 MR MPOFU: Chairperson, I'm afraid I'll  
 2 ask Mr Chaskalson to assist me. I didn't ask him on this  
 3 one, but we'll get it in the next few minutes. It's  
 4 JJJ194.12. Okay, in the meantime let's carry on.  
 5 [VIDEO SHOWN]  
 6 To answer your question, Chairperson, that  
 7 previous one was 15:49:06. Okay, carry on.  
 8 [VIDEO SHOWN]  
 9 Stop. Alright, and on this one you'll observe  
 10 again that the –  
 11 CHAIRPERSON: - stopped at 05.  
 12 MR MPOFU: Stops at –  
 13 CHAIRPERSON: - 00:05.  
 14 MR MPOFU: 00:05, yes. Once again the  
 15 strikers are moving in the same direction, or well, as  
 16 previously, in that tight format, correct?  
 17 BRIGADIER CALITZ: Ja, ek kan glad nie  
 18 sien uit watter hoek of watter stadium hierdie foto geneem  
 19 is nie, maar ek glo dit sal nog steeds seker die voorpunt  
 20 van daardie groep wees.  
 21 MR MPOFU: And that's Nyala 5 that they  
 22 are walking parallel to, correct?  
 23 BRIGADIER CALITZ: Ek sien nie die draad  
 24 nie, maar dit kan moontlik wees.  
 25 MR MPOFU: Okay, let it go a little bit

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1 more.  
 2 [VIDEO SHOWN]  
 3 Okay, look, just carry on anyway. It's not  
 4 important which Nyala it is.  
 5 CHAIRPERSON: We stopped at 00:11.  
 6 MR MPOFU: Yes, no, no, they can carry  
 7 on, Chairperson. For the purposes of this questioning it  
 8 doesn't matter which Nyala it was.  
 9 CHAIRPERSON: I just want to get the  
 10 times on record where we stop.  
 11 MR MPOFU: Oh, yes. Okay, once again  
 12 there, can you see that the strikers are walking, at least  
 13 the ones at the back of the – when I say the back, I mean  
 14 just in terms of this photograph – are walking past the  
 15 Nyala, or some of them are just about to reach it, but to  
 16 the front of that is another group which has somewhat  
 17 turned towards the kraal, if you have those bearings. Can  
 18 you see that?  
 19 BRIGADIER CALITZ: Mnr die Voorsitter,  
 20 ja, ek, as daardie Nyala 5 is waarby hulle verby kom, ek  
 21 sien nog nie Nyala 4 toemaak nie, so dan neem ek aan dis  
 22 nog voor daardie stadium wat hulle by die kraal gekom het.  
 23 Ek kan nie duidelik die kraal sien op hierdie foto, of as u  
 24 verwys daardie Nyala 5 nie, ja.  
 25 MR MPOFU: No, thanks. I understand that

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1 answer, ja. I'm not saying they had reached, I am saying  
 2 towards, so it could have still been a bit of a distance,  
 3 but towards the direction of the kraal, correct?  
 4 BRIGADIER CALITZ: Ek sien – ja wel –  
 5 MR MPOFU: The front group.  
 6 BRIGADIER CALITZ: Front group, en dan  
 7 word hulle gevolg. Daar is persone wat agter die Nyala aan  
 8 die linkerkant nog uitsteek, so dis seker die groep wat dan  
 9 nog opvolg van die ander wat agterna gekom het.  
 10 MR MPOFU: Yes, okay. Thank you, let's  
 11 move on a bit. Oh, I'm sorry, this is now, the previous  
 12 one was JJJ194.14. We're now going to JJJ194.15. They are  
 13 very short clips.  
 14 CHAIRPERSON: It looks as if we're  
 15 starting at 00:10.  
 16 MR MPOFU: Yes, so that's 00:01 of – or  
 17 yes, it's 00:10 of JJJ194.15. Thank you, Chairperson.  
 18 [VIDEO SHOWN]  
 19 Stop. Alright, now you can see that there is the  
 20 front group again here, is on one of the paths. I'm not  
 21 sure which one, but from your knowledge of the area that is  
 22 still towards the kraal, and I agree with you they have not  
 23 reached the kraal and the Nyala 4 has not closed the path,  
 24 and that's why I'm using the word "towards." Is that  
 25 correct?

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1 BRIGADIER CALITZ: Ja, as ek op hierdie  
 2 foto kan kyk, die Nyalas aan die regterkant neem ek aan  
 3 hulle wys neus in die rigting van die kraal. So daardie  
 4 groepie is dan die voorste groep wat dit lyk of hulle wil  
 5 om daardie – wel as ek sê "daardie" is dit die Nyala met  
 6 die blou merk op die neus, of hulle daar probeer deurkom,  
 7 maar ek weet nie of dit Nyala 4 is wat hulle afgesny het  
 8 nie. Aan die agterkant kan u sien daar is 'n verdere groep  
 9 wat agter die kragrade aanbeweeg. Ek neem aan dit is in  
 10 die rigting van, meer in die rigting van die kraal.  
 11 MR MPOFU: Yes, ja, now –  
 12 CHAIRPERSON: We appear to be five  
 13 seconds into that video.  
 14 MR MPOFU: Thank you, Chairperson. Yes,  
 15 okay, let's move on again a little bit. Okay, that's the  
 16 end of 15. Let's go to 16.  
 17 [VIDEO SHOWN]  
 18 Stop. Sorry, just go back a little bit. A  
 19 little bit back, ja. Now I want to –  
 20 CHAIRPERSON: This is 01:13 –  
 21 MR MPOFU: Of JJJ194.16, yes,  
 22 Chairperson. Thank you. Now here, Brigadier, this is a  
 23 bit tricky because this is only for a few seconds. I want  
 24 you to observe that you can see the heads of the protesters  
 25 on the other side of the kraal. In other words you see the

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1 kraal and you see their heads, and that at that time as you  
 2 see that, there's someone shouting "Basic line," and by  
 3 that I want to show that while they were circumnavigating  
 4 the kraal the basic line was already forming. Ja, you see  
 5 it will come immediately after the – when the shot is  
 6 played. Okay, can we do it frame by frame at this point,  
 7 yes. Ja, okay, it's a bit fuzzy on the – yes, can you see  
 8 between the A-frame and that Nyala that there are human  
 9 beings on the extreme part of that photo whose heads you  
 10 can see? And if you can't see them because of the  
 11 stillness of the photo, we'll just replay it up until this  
 12 point. If you can, then it's fine –  
 13 BRIGADIER CALITZ: Ja-nee, ek sien daar –  
 14 CHAIRPERSON: Sorry, before you speak.  
 15 How do we describe this position on the video? I see the  
 16 right-hand corner says 01:13 –  
 17 MR MPOFU: Yes.  
 18 CHAIRPERSON: - and the left-hand corner  
 19 says 00:19.  
 20 MR MPOFU: Yes.  
 21 CHAIRPERSON: Now how will one  
 22 describe this position?  
 23 MR MPOFU: Yes, Chairperson, actually  
 24 you're right. I think we must read the left-hand side one.  
 25 In other words it's 00:19 of JJJ194.16. I think that other

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1 one is just the total of what we've played with the two or  
 2 three clips.  
 3 MR CHASKALSON SC: Chairperson, the left-  
 4 hand side indicates the point in the video.  
 5 MR MPOFU: Yes.  
 6 MR CHASKALSON SC: The right-hand side  
 7 indicates the total length of the video.  
 8 MR MPOFU: Yes, thank you.  
 9 CHAIRPERSON: So what we've got to do is  
 10 we've got to look at the left-hand side one –  
 11 MR MPOFU: Ja.  
 12 CHAIRPERSON: - and record that whenever  
 13 there's something being specifically looked at –  
 14 MR MPOFU: Exactly.  
 15 CHAIRPERSON: And we're now looking at  
 16 00:19.  
 17 MR MPOFU: Exactly. Thanks, Chairperson.  
 18 I'm sorry, Brigadier, I missed your answer in the  
 19 discussion.  
 20 CHAIRPERSON: He hasn't given his answer  
 21 yet. I asked him not to give it until I put on record what  
 22 exactly we're looking at.  
 23 MR MPOFU: Yes, can you see what I was  
 24 referring you to?  
 25 BRIGADIER CALITZ: Ja, dit is korrek,

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1 tussen die Nyala en die draad aan die agterkant kan mens  
2 sien daar is persone wat beweeg. Ek kan net nie op hierdie  
3 stadium sien watter kant is die kraal nie, of hulle nog -  
4 ek dink dis agter die Nyala op hierdie stadium.

5 MR MPOFU: Okay, well as you can see from  
6 this frame the Nyala, or maybe the next frame, the Nyala is  
7 moving in front of the kraal. Would you agree with that?

8 BRIGADIER CALITZ: Ek sal die video kyk.  
9 Ja, ek neem aan hierdie is dan Nyala, moet Nyala 6 wees, as  
10 ons -

11 MR MPOFU: Ja.  
12 BRIGADIER CALITZ: - as ons korrek is.  
13 MR MPOFU: Mr Chaskalson agrees. Okay,  
14 can we move on just again frame by - oh, sorry, okay, the  
15 frame by frame is no longer necessary because that was just  
16 for you to recognise those people. Now what I want you to  
17 listen to is the fact that as we see those people there,  
18 the shouts of "Basic line" are happening. So just move  
19 back a little bit. Okay, now you can play it as a video,  
20 not frame by frame.

21 [VIDEO SHOWN]  
22 Stop.

23 CHAIRPERSON: [Microphone off, inaudible]  
24 at 00:39 on the reading on the left-hand side of the  
25 screen.

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1 MR MPOFU: Thank you, Chairperson. Now  
2 the Nyala whose nose we can see is your Nyala on the right-  
3 hand side of the photo, correct?

4 BRIGADIER CALITZ: Ek dink dit is die een  
5 waaroor ek en Adv Chaskalson die vraag gevra het rondom  
6 hierdie aspek, dit is korrek.

7 MR MPOFU: Yes.  
8 BRIGADIER CALITZ: As dit dieselfde  
9 "frame" is -

10 MR MPOFU: Yes, and so at that point you  
11 are crossing the road to Nkaneng and behind you is the  
12 basic line which has just been formed, correct?

13 BRIGADIER CALITZ: Ja, ek het gesien  
14 hulle is nog besig om op te kom -

15 MR MPOFU: Ja.  
16 BRIGADIER CALITZ: So hulle is besig om  
17 te vorm.

18 MR MPOFU: The important thing about this  
19 photo, or rather this frame, is that at this stage the  
20 strikers have not emerged from the corner of the kraal. I  
21 think I asked you this earlier, but I didn't play a video,  
22 but with the assistance of the video can you confirm what  
23 I'm saying?

24 BRIGADIER CALITZ: Mnr die Voorsitter,  
25 ja, ek dink hierdie gedeelte is breedvoerig hanteer met Adv

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1 Chaskalson, so dit is klaar op rekord waar hy wel gesê het  
2 aanvanklik van daar af kon mens dit sien en ek het ook  
3 verwys dat hulle het nog nie om gekom nie.

4 MR MPOFU: Ja.  
5 BRIGADIER CALITZ: Daar was 'n hele lang  
6 gesprek daaroor, so dit is op rekord.

7 MR MPOFU: So the answer is yes?  
8 BRIGADIER CALITZ: Ek het hulle nog nie  
9 gesien om die "corner" kom daar nie, ja.

10 MR MPOFU: Ja, okay. Okay, carry on.  
11 [VIDEO SHOWN]  
12 CHAIRPERSON: The reading on the left-  
13 hand side is 01:05.

14 MR MPOFU: Okay, and this is what one  
15 would call the front group. You can see Mr Noki on the  
16 right-hand side of that group, and Mr - his nickname is  
17 Bayi - I just forgot his name now, the one who had the red  
18 shirt who was trying to stand up, on the other extreme of  
19 the photo. Can you see that?

20 BRIGADIER CALITZ: Ek sien die groep  
21 persone, die groep, persoon met die groen kombes op die  
22 regterkant, waarna u verwys.

23 MR MPOFU: Yes, okay. Carry on. Carry  
24 on playing - oh, is that it?  
25 [14:41] CHAIRPERSON: I'm asked to warn you,

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1 those present in the auditorium, that we're now going to  
2 see images that are described as sensitive. Those who were  
3 close to some of those who died at the scene may find  
4 watching them will cause them a great deal of pain and  
5 anguish and so I ask that the images not be shown for a  
6 minute until, after a minute has elapsed from the time that  
7 what I now said is being translated into Xhosa.

8 MR MPOFU: Thank you, Chairperson.  
9 CHAIRPERSON: Those who are listening on  
10 the headphones, would someone please indicate when the  
11 translation of the warning is over? He is saying there are  
12 signs of leaving so I take it that it is safe to proceed  
13 without the fear that anyone will be caused distress by the  
14 images that we're going to see.

15 MR MPOFU: Thank you, Chairperson. Okay,  
16 please carry on?  
17 [VIDEO SHOWN]  
18 MR MPOFU: Stop please.  
19 CHAIRPERSON: The reading now is 00:03.  
20 MR MPOFU: Yes, at this point first we  
21 saw them walking along but the point I want to emphasise is  
22 once again here, Brigadier, is that they are walking  
23 towards, I think it is the south now and not towards the  
24 members of the police who are outside of their van.  
25 Agreed?

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1 BRIGADIER CALITZ: Ja, dit lyk of hulle  
2 langs die kraal af beweeg.  
3 MR MPOFU: Against the kraal, ja.  
4 BRIGADIER CALITZ: As hulle tussen die  
5 voertuie en die kraal beweeg is dit in 'n suidelike rigting  
6 weg van die Nkaneng Village af, weg van die –  
7 MR MPOFU: Towards the road in front of  
8 the kraal?  
9 BRIGADIER CALITZ: Na die suidekant toe.  
10 MR MPOFU: Yes, but towards that path  
11 that runs in front of the kraal.  
12 BRIGADIER CALITZ: Hulle sal dan wel op  
13 daardie stadium by daardie pad kan uitkom –  
14 MR MPOFU: Ja –  
15 BRIGADIER CALITZ: - as hulle in daardie  
16 rigting beweeg, dit is korrek.  
17 MR MPOFU: Yes, thank you. Okay, carry  
18 on?  
19 [VIDEO SHOWN]  
20 MR MPOFU: Stop?  
21 CHAIRPERSON: The reading at the bottom  
22 left hand corner is now 00:17.  
23 MR MPOFU: And shortly after we saw them  
24 walking towards the direction of that road we heard the  
25 best of what I'll call for now, TRT fire, is that correct?

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1 BRIGADIER CALITZ: 'n Mens kan dit hoor  
2 op die video, dit is korrek.  
3 MR MPOFU: Yes. Okay, carry on?  
4 [VIDEO SHOWN]  
5 MR MPOFU: Okay, thank you very much.  
6 Now what I'm going to argue is clear from those visuals,  
7 including the video that we saw before lunch. Firstly, is  
8 that in agreement with you, that manner of walking that we  
9 saw in all the videos where it was depicted was the same as  
10 between the 13th and the 16th, do you agree with that? In  
11 other words tight formation, crouch walking, that?  
12 BRIGADIER CALITZ: In daardie manier wat  
13 u dit beskryf, dit is korrek.  
14 MR MPOFU: Yes, and that nobody or let me  
15 put it this way. It would not have been reasonable for  
16 anybody, more so those who had seen this kind of walking in  
17 a nonthreatening way on the 13th, but including those who  
18 might have even been seeing it for the first time, given  
19 the fact that at various stages they passed other  
20 policemen, to read from that manner of walking any threat  
21 or perceived threat, that's what I'm going to argue. What  
22 will you say to that?  
23 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
24 het getuig daaroor, dat op die 13de, daar was ooreengekom  
25 om saam met hulle te escort, soos ek dit gehad het, op die

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1 16de was dit totaal iets anderste en dit het oorgegaan na n  
2 fase 3 toe waar 'n opdrag gegee is om hierdie groep uiteen  
3 te dryf. So die doel was dan om hulle te keer met die  
4 voortgesette onwettige besit van wapens en vertoon van  
5 wapens en dreigemente van geweld, so dit was die doel van  
6 die uiteendrywing gewees.  
7 MR MPOFU: Ja.  
8 BRIGADIER CALITZ: Dit is die verskil.  
9 MR MPOFU: No, that I understand but  
10 remember that "verskil" or that difference, because of the  
11 unfortunate fact that there has been no communication was  
12 only known by your side, as it were. I'm now saying aside  
13 the strikers that are concerned, they are walking and their  
14 behaviour past the vans was in the same nonthreatening way  
15 that it has been on the 13th. If, - sorry, and I want to  
16 say, if, let's say you had said, you had had an opportunity  
17 to say to them, look, I know you've walked policemen doing  
18 this crouch walking of yours, but today is not the 13th, it  
19 is not allowed, that would be a different thing but we know  
20 you never had an opportunity to say things like that. So  
21 from their point of view there was no difference between  
22 this and what happened on the 13th, correct?  
23 MR SEMENYA SC: That can't be correct,  
24 Chair. This time, even amongst some of them, they are  
25 shooting at the police.

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1 MR MPOFU: Yes, Chairperson, okay, not  
2 Chairperson, Brigadier, the evidence will be that of Mr  
3 Magidiwana who was in that front group, you can accept, is  
4 that he was asked by Mr Ngalwana, is that he did not even  
5 see what was happening behind him in relation to that one  
6 person who is pointing a gun. We don't know if he is  
7 shooting or not.  
8 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
9 kan dit maar net antwoord soos wat ons dit waargeneem het  
10 en dit is die aanval op daardie lyn en die opdrag om goed  
11 te disperse, non lethal force was gebruik gewees om hierdie  
12 groep uiteen te dryf. Die doel daarvoor was, soos ek vir u  
13 reeds gesê het, dat hierdie groep nie in daardie gewapende  
14 formasie verder kon toegelaat geword het om rond te beweeg  
15 met daardie dreigemente, gegewe die insidente wat tot op  
16 daardie dag plaasgevind het nie. So dit was die opdrag  
17 gewees van die JOCCOM af en om daardie rede is hulle met  
18 haelgeweer rubber en stuns, ensovoorts, verdryf. My  
19 getuienis aan u, die verskil is, as u my opinie vra, is dat  
20 hulle het voortgegaan nadat op hulle gevuur is met rubber  
21 en uiteengedryf is om, om die kraal te beweeg dan en weer  
22 in dieselfde formasie te kom en nie uiteen te dryf. Met  
23 ander woorde daardie aanval en selfs voor die voorval wat  
24 ons nou net gesien het waar daar duidelik geskiet word op  
25 die polisieman, of in die rigting van die polisie, as ek



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1 dit so kan stel, het ek ook getuig oor Papa11 wat voor was,  
 2 die aksie wat teen daardie Nyala was.  
 3 Daar sal getuienis, ek glo Kolonel Pitsi wat vir  
 4 my gesê het later by insident 2, waar ons na verwys is op  
 5 sy Nyala gevuur. Ons het verklarings van die polisiemanne  
 6 wat sê hulle het gesien hoe die persone op hulle skiet uit  
 7 die Nyalas uit, so daar was definitief 'n aanval gewees op  
 8 die polisie lyn en dit is die verskil. Nadat ons  
 9 uiteendryf, met ander woorde as ek dit eenvoudig kan stel,  
 10 as daar 'n groep is en ons arriveer en hulle gee ons nie 'n  
 11 kans nie, kom ons vat net uit ondervinding uit as ek kan,  
 12 mnr die Voorsitter, 'n pad wat geblokkeer is en ons  
 13 arriveer daar en die polisie beweeg uit en daar word geen  
 14 kans gegee eers vir kommunikasie en ons word dadelik  
 15 aangeval, sal ons dan van uiteendryf tegnieke gebruik maak,  
 16 en daardie groep sal dan omdraai en wegbeweeg in, wat ons  
 17 gesê het 'n veiliger rigting of dan selfs die Nkaneng  
 18 nedersetting.  
 19 Hierdie groep het dit nie gedoen nie, hulle het  
 20 aangehou en verkies om die polisie lyn aan te val waarvan  
 21 daar meer as genoeg voorbeelde is dat hulle wel aangeval  
 22 het.  
 23 MR MPOFU: No, Brigadier, I think that's  
 24 a slight exaggeration, even if we put aside now the  
 25 question of the person who was pointing a gun of shooting

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1 or whatever, and I don't want to argue that point with you  
 2 now, when you talk about the "groep", the group, you can  
 3 clearly see on that video that the group itself was moving  
 4 towards the road that I have indicated, the majority of the  
 5 group itself for that one person, can you deny that?  
 6 BRIGADIER CALITZ: Nee, ek sal nie saam  
 7 met u stem nie, ek sê nie die majority van die groep nie,  
 8 ek dink dit is die voorste bietjie van die groep wat  
 9 aangehou het. Die majority van die groep het verkies om  
 10 gehoor te gee aan die uiteendrywing en het agteruit beweeg  
 11 na die nedersetting toe.  
 12 MR MPOFU: No, Brigadier, please, I'm  
 13 sorry, you know I'm using your word "die groep" because  
 14 when you are talking about the "groep" you are not talking  
 15 about all those people who had left. We are talking about  
 16 the group that is on the video, please. I'm saying to you  
 17 that as far as that group that we can see on JJJ194.16 is  
 18 concerned, would you deny that apart from the person who  
 19 points what looks like a firearm, the group itself is  
 20 moving towards the road to Nkaneng, can you deny that?  
 21 BRIGADIER CALITZ: Nee, mnr die  
 22 Voorsitter, hulle gaan wel in daardie rigting, ja.  
 23 MR MPOFU: Thank you, now the next point  
 24 then that I'm going to say to you is, that effectively or  
 25 no, no, let me rephrase it by saying this. The other thing

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1 that comes out of this video is that if indeed the basic  
 2 line was formed as we have seen on the video, long before  
 3 the people even emerged from the corner of the kraal, then  
 4 I will argue that it was not only reasonably but it was  
 5 indeed foreseen by SAPS that that group would move towards  
 6 that road, or in the direction that they did. What would  
 7 be your comment?  
 8 BRIGADIER CALITZ: Mnr die Voorsitter,  
 9 ons is reeds oor hierdie onderwerp, ek dink dit is op  
 10 rekord. My kort antwoord gaan daarop wees, TRT was daar in  
 11 support van die Openbare Orde Polisiëring en hulle het die  
 12 voertuie gevolg. Op daardie stadium het ons geweet die  
 13 Openbare Orde Polisiëring het reeds met rubber, non lethal  
 14 force gebruik en het reeds begin met die uiteendrywing  
 15 aksie, so sekerlik het TRT dit gehoor en nader beweeg in  
 16 support van die Openbare Orde.  
 17 MR MPOFU: Yes, no, that's fine, I'm  
 18 making a different point. I'm saying to you due to the  
 19 fact that that formation of the basic line was done before  
 20 the strikers could even emerge from the corner, that I'm  
 21 going to argue indicates that the TRT basic line at least  
 22 or SAPS in general had not only reasonably but indeed did  
 23 foresee that the strikers will want to access that gap or  
 24 the road to Nkaneng via that gap, otherwise there would  
 25 have been no reason to mine that gap, so to speak, by that

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1 basic line. What will you say to that?  
 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 3 verskil maar net van u in die opsig van as die Openbare  
 4 Orde Polisiëring se uiteendrywing suksesvol was en die  
 5 persone het omgedraai en weggehardloop sou daar 'n opvolg  
 6 aksie gewees het en TRT sou dan in support van die Openbare  
 7 Orde gewees het en daardie is die enigste uitgang, roete  
 8 tussen die kraal en die shack wat daar was om uit te  
 9 beweeg. So hulle het nie net daar opgevorm wetende,  
 10 vooruit geweet dat die persone gaan op hierdie pad kom nie.  
 11 Dit kon net sowel anderster om as hulle gereageer het op  
 12 die uiteendrywing en nie besluit het om aan te val nie, dan  
 13 het hulle omgedraai en wegbeweeg.  
 14 MR MPOFU: And what we didn't observe in  
 15 this video and other videos which have been shown to you,  
 16 the cocking of those R5s and other ammunition, rather  
 17 firearms, indicates further that it was reasonably foreseen  
 18 or even worse, indeed foreseen that the strikers would come  
 19 towards that road to that position where the basic line had  
 20 formed.  
 21 CHAIRPERSON: It was covered before –  
 22 MR MPOFU: Yes –  
 23 CHAIRPERSON: - when questioned by other  
 24 counsel. I don't see any point in going over the ground  
 25 again and repeating it. It is just wasting time, covering

<p style="text-align: right;">Page 20599</p> <p>1 ground that's been covered extensively before and time is a 2 precious commodity here and you're not advancing your cause 3 at all by just going over this ground over and over again. 4 I'm not going to allow that question, please move on to the 5 next point. 6 MR MPOFU: And that, - well, the time at 7 which you must have given the instruction and I can assure 8 you this is the crucial part of the case, according to the 9 theory we spoke about last week, to engage which for me you 10 know includes the use of live ammunition, would have been 11 between that cocking of arms that I've spoken about and the 12 last few steps of the strikers towards the road to Nkaneng. 13 What is your comment thereto? 14 BRIGADIER CALITZ: Nee, ek verskil van u, 15 mnr die Voorsitter. 16 MR MPOFU: Alright. 17 CHAIRPERSON: Whom do you say gave that 18 command engage, engage, in relation to the two points that 19 Mr Mpofo has put to you? 20 BRIGADIER CALITZ: Mnr die Voorsitter, - 21 CHAIRPERSON: The cocking of the firearms 22 and the last few steps of the strikers in the direction 23 they were moving? 24 BRIGADIER CALITZ: Ek sal sê 'n hele 25 rukkie voor dit, toe ek nog staties was agter Nyala 3, waar</p>	<p style="text-align: right;">Page 20601</p> <p>1 MR MPOFU: No, not with this witness. 2 CHAIRPERSON: Oh, I thought you did. 3 MR MPOFU: Well, what – please answer the 4 question? 5 BRIGADIER CALITZ: Mnr die Voorsitter, ek 6 sal eenvoudig 'n antwoord gee dat ek weet nie wat sy 7 getuienis was nie, ek het dit nie gevolg nie. 8 CHAIRPERSON: The evidence has been 9 summarised for you that they couldn't see that the TRT line 10 had been formed, they had just come around the kraal and 11 they couldn't see at that stage that the TRT line, that's 12 what he said. Now you're asked to comment on that. 13 BRIGADIER CALITZ: My kort antwoord 14 daarop sal wees, mnr die Voorsitter, u het nie nodig om die 15 TRT lyn te sien om bedreig te voel nie. U het nodig om die 16 Openbare Orde Polisiëring wat 'n paar honderd rubber 17 rondtes afgevuur het op daardie stadium, dit is tog, dit 18 moet vir jou 'n indikasie gee van jy kan nie hiernatoo gaan 19 nie, jy word uiteengedryf, jy word gestop. So die groep 20 voor, insluitende u kliënt, sou die Openbare Orde 21 Polisiëring gesien het en hy sou die polisiëmanne 22 gesien het en daar sou op hom opgetree gewees het en nog 23 steeds het hulle besluit, as ek dit so kan stel, die 24 belangrikheid van die voetpad is belangriker as lewens want 25 die hele groot Nkaneng lê agter hulle om na heen te gaan.</p>
<p style="text-align: right;">Page 20600</p> <p>1 4 begin deploy het met die barbed wire, toe ons sien die 2 groep val die lyn aan het ek wel vir die persone gesê, 3 engage, engage, engage, en daarna was daar gesprekke op die 4 radio gewees van "move forward, block and disperse" en 5 ombeweeg en weer 'n keer toe ek met die Nyala ombeweeg het 6 vorentoe waar ek dan verder vir hulle gesê het, gaan blok 7 en disperse with the vehicles. So dit was lank voor die, 8 hoe kan ek sê, tussen die cocking van die firearms en die 9 skietvoerval wat dan sekondes was. 10 MR MPOFU: Anyway I'm not going to cover 11 that because we covered it last week, I just wanted to 12 demonstrate that this pertains to you rather than, it is 13 not a waste of time as it were, as far as you as a witness 14 is concerned and what I have accused you of. What I'm 15 saying, - okay, now Mr Magidiwana's evidence and I think 16 we've covered this the other day. You would not be able to 17 refute Mr Magidiwana's evidence that neither he nor the 18 people who were with him were in a position to even see 19 that while they had been negotiating the kraal, the basic 20 line of TRT had formed there. In other words they did not 21 even know that the TRT line was there, let alone to attack 22 it. 23 BRIGADIER CALITZ: Mnr die Voorsitter, - 24 CHAIRPERSON: But you've made that point 25 before, Mr Mpofo, last week.</p>	<p style="text-align: right;">Page 20602</p> <p>1 MR MPOFU: Ja, well, I'm not going to go 2 into that, you know that there was a wire there, you know 3 that but – 4 BRIGADIER CALITZ: Nee, mnr die 5 Voorsitter, ek het op die foto gewys daar was duidelik nie 6 wires gewees wat hulle gekeer het nie, daar is ingange, ek 7 dink ek het vier of vyf ingange vir u gewys in die village. 8 MR MPOFU: Brigadier, please, okay. So 9 what you are effectively saying is that that group, as you 10 and I have agreed, proceeded on the way to the road to 11 Nkaneng. 12 [15:00] Even if on your version which I don't accept, 13 even if you say there were other people in front of them 14 they ignored the other members that were outside of their 15 vans and proceeded to attack a group of people that they 16 did not even know were there? 17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 net 'n regstelling. Die ander persone is nie outside their 19 vans nie maar buitekant die Nyalas, daar was nie sagte 20 voertuie nie. 21 MR MPOFU: Sorry Nyalas whatever. 22 BRIGADIER CALITZ: U sê self nou ignored 23 the other people outside the Nyalas, u kan nie die polisie 24 lyn wat op die vuur en uiteendryf ignoreer nie. Dit is 25 ongehoord. Dit is nog nooit tevore gebeur nie. As jy</p>

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1 uiteengedryf word met non lethal force beteken dit jy gaan  
 2 nie soontoe gaan nie. Dit is, jy word uiteengedryf in 'n  
 3 teenoorgestelde rigting. So dis nie iets wat mens kan  
 4 ignoreer en besluit ek ignoreer hierdie polisieaanvalle ek  
 5 gaan verder en as ek geweet het die TRT sou daar gewees het  
 6 dan sou ek dit nie gedoen het nie. Dit kan nie -  
 7 MR MPOFU: Ja.  
 8 BRIGADIER CALITZ: Dit maak nie sin nie  
 9 wat u vir my sê nie.  
 10 MR MPOFU: Well if you've been told by Mr  
 11 Mathunjwa that you are going to be killed and you think and  
 12 you've seen all the activity that is happening and you've  
 13 seen that other people who have not been killed have  
 14 proceeded on their way to Nkaneng and you then proceed to  
 15 access that road to Nkaneng irrespective of the fact that  
 16 there might be other lesser calamities than being killed  
 17 then there's nothing unreasonable about that, correct? The  
 18 question is correct -  
 19 CHAIRPERSON: You're arguing with the  
 20 witness, you're putting the arguments to him but what  
 21 exactly is the question?  
 22 MR MPOFU: Is that correct, question  
 23 mark.  
 24 BRIGADIER CALITZ: Mnr die Voorsitter, as  
 25 hy dan miskien sy argument kan herhaal ek het nie die

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1 stelling of die, miskien net weer vir my sê wat is die  
 2 vraag. Ek het dit nie duidelik nie.  
 3 MR MPOFU: No, Brigadier, I'm asking you  
 4 this again. I'm, you said, you've just said to the  
 5 commission that and that may well be so, that it, to you it  
 6 would be strange for someone who, let's say has been fired  
 7 with teargas and is being dispersed in those fashions to  
 8 nevertheless proceed onto a road to Nkaneng as I'm alleging  
 9 to you. I'm saying I can at face value I hear what you're  
 10 saying and I was just reacting to that, to say that but  
 11 remember the actual circumstances is that these are not  
 12 just people who are walking up and down the street. These  
 13 are people who have been told that they're going to be  
 14 killed. These are people whose colleagues had indeed been  
 15 killed a few days before. These are people who have seen  
 16 the wire being dragged and therefore and these are people,  
 17 fourthly we have seen other people accessing that road and  
 18 surviving the oncoming death. I'm saying on that basis  
 19 would you stick with your analysis that it would still be  
 20 strange for them to forge ahead to the road to Nkaneng?  
 21 BRIGADIER CALITZ: Mnr die Voorsitter, ja  
 22 die redes wat u nou gegee het, drie van julle des te meer u  
 23 bevestig net presies wat ek gesê het. Des te meer moet  
 24 hulle weg beweeg van die lyn af gegewe wat hulle geweet het  
 25 die vorige dag aan hulle kollegas, die draad wat uitgegooi

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1 word, die dispersion op hulle, des te meer die rede om  
 2 gehoor te gee aan wat die polisie is, ag polisie besig is  
 3 om te doen en dan weg te beweeg sou hulle dan wou vlug.  
 4 MR MPOFU: In other words instead of  
 5 trying to escape the looming death and promised death they  
 6 must go back and sacrifice their lives in, in fact rather  
 7 than escape as the others, is that really what you're  
 8 saying?  
 9 BRIGADIER CALITZ: Mnr die Voorsitter,  
 10 nee dis nie wat ek gesê het nie. Maar wat u nou stel is  
 11 presies wat gebeur het. Hulle het gekies om aan te val en  
 12 soos u dit stel hulle lewens te sacrifice om na die voetpad  
 13 toe te gaan eerder as om soos die meerderheid te maak van  
 14 die ander groepe en na die nedersetting toe te beweeg wat  
 15 die veiliger gebied was.  
 16 MR MPOFU: Okay, I'll leave -  
 17 CHAIRPERSON: Mr Mpofo, I think you've  
 18 covered the point.  
 19 MR MPOFU: Yes, I have.  
 20 CHAIRPERSON: Very thoroughly several  
 21 times.  
 22 MR MPOFU: Thank you.  
 23 CHAIRPERSON: But have you got another  
 24 point to come to or is this the end of your cross-  
 25 examination?

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1 MR MPOFU: No, I'm afraid it's not.  
 2 CHAIRPERSON: How long is this point  
 3 going to be?  
 4 MR MPOFU: No, it's not a point I'm just  
 5 going to put a few propositions.  
 6 CHAIRPERSON: How long is it going to  
 7 take?  
 8 MR MPOFU: It should be ten minutes.  
 9 There's a few propositions, if the, okay maybe let's do  
 10 this. Brigadier, Brigadier -  
 11 BRIGADIER CALITZ: U kan praat, ek hoor  
 12 u.  
 13 MR MPOFU: Ja, I'm going to put a few  
 14 propositions to you. It's not necessary for you to argue  
 15 and to give long answers, with a few exceptions and I'll  
 16 indicate when I'm making a point to justify what I'm  
 17 putting to you. If you agree, you agree, if you disagree  
 18 you disagree. Some of it has been covered in the evidence  
 19 and if that rule is followed, Chairperson it should taken  
 20 less 10 minutes.  
 21 CHAIRPERSON: Yes, proceed then.  
 22 MR MPOFU: Thank you.  
 23 CHAIRPERSON: You don't have to put  
 24 points that's already been covered but any way put the  
 25 points you want to put as briefly as you can and answer as

<p style="text-align: right;">Page 20607</p> <p>1 briefly as you can please, Brigadier. But obviously you 2 must do justice to the evidence you want to give. But Mr 3 Mpofo I'm sure will put the points as crisply as he can and 4 I'll be grateful if you'd reply with equal crispness. 5 BRIGADIER CALITZ: Ek sal so maak, mnr 6 die Voorsitter. 7 MR MPOFU: Yes, I'm trying to cut out 8 some of the points, Chairperson. Brigadier I just want to 9 put to you that, sorry Chairperson, I'm looking for, yes, 10 okay let's talk about the, given the evidence and what you 11 and I have covered I want to put to you that the exercise 12 at Roots was just a whitewash to school the members and to 13 concoct the version contained in exhibit L. What do you 14 say to that? 15 BRIGADIER CALITZ: Ek stem nie saam met 16 u, meneer. 17 MR MPOFU: And that is why the earlier 18 drafts of that exhibit were concealed or not revealed to 19 the commission. 20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 nee ek kan net in hindsight sê as jy 'n presentation op tel 22 kom jy nooit met die finale projek te voorskyn die eerste 23 keer nie. Jy beruik materiale en materiale, materiale en 24 uiteindelik het jy 'n finale produk. So niks is geconceal 25 nie en dit is soos die ding saamgestel is. So ek verskil</p>	<p style="text-align: right;">Page 20609</p> <p>1 summarised to block them, channel them and kill them which 2 meant that you'd block them with Nyala 4, knowing that they 3 would circumnavigate the kraal, you channelled them through 4 that passage that we saw and then killed them as soon as 5 they get close to the road. 6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 dit was en sal nog nooit die polisie se doel wees om iemand 8 aspris te channel of te funnel wat hy gebruik en dan dood 9 te skiet nie. Daar bestaan nie so iets nie, dit het nog 10 nooit in my 27 jaar se loopbaan nie en ek as 'n senior 11 offisier in die polisie ontken dit ten sterkste. 12 MR MPOFU: Sorry, yes now this one you 13 are free to answer as you wish. 14 CHAIRPERSON: He must answer all your 15 questions as he wishes. 16 BRIGADIER CALITZ: Dankie. 17 MR MPOFU: In other words you can suspend 18 that rule which you have followed nicely, thank you. Do 19 you stick by your, as this is your final chance now, do you 20 stick by your evidence that an instruction to engage does 21 not include live ammunition? 22 BRIGADIER CALITZ: Dit is wat ek getuig 23 het onder eed en dit is wat dit presies is, mnr die 24 Voorsitter. 25 MR MPOFU: Okay now then can you go to</p>
<p style="text-align: right;">Page 20608</p> <p>1 weer van u. 2 MR MPOFU: I'm going to, I put it to you 3 that also it is both unfair and inhuman or biased and 4 vindictive for the police to have arrested 259 people while 5 not acting at all on prima facie evidence of murder on the 6 part of police and Lonmin. 7 BRIGADIER CALITZ: Ek verskil van u, mnr 8 die Voorsitter. 9 MR MPOFU: And I'm going to also argue 10 that the police by commission, in other words by positive 11 action actively colluded with Lonmin and in concert with 12 them caused the deaths of five people on the 15th and at 13 least those people who were killed by pellets six on the 14 16th. 15 BRIGADIER CALITZ: Ek verskil van u, mnr 16 die Voorsitter. 17 MR MPOFU: And I also put to you that the 18 police by omission condoned and turned a blind eye to the 19 presence of Lonmin, armed Lonmin guards at scene 2 armed 20 with pellet shotguns. 21 BRIGADIER CALITZ: Ek was nie daar nie, 22 ek kan jou nie help nie. Ek het dit na die tyd op die 23 fotos gesien. 24 MR MPOFU: And I'm going to say based on 25 the last discussions that we had that your strategy can be</p>	<p style="text-align: right;">Page 20610</p> <p>1 L182. You see that slide deals specifically with the TRT, 2 correct? 3 BRIGADIER CALITZ: Dit is korrek. 4 MR MPOFU: And further down it talks 5 about what you call rules of engagement were emphasised, 6 you see that? 7 BRIGADIER CALITZ: Ek sien dit, mnr die 8 Voorsitter. 9 MR MPOFU: Rule 1 of engagement is 10 advancing on command to perform a planned role during the 11 dispersion, do you see that? 12 BRIGADIER CALITZ: Ek sien hom, mnr die 13 Voorsitter. 14 MR MPOFU: And I would think that covers 15 the point that you and I had discussed of the people having 16 advanced or ran towards the basic line, that's what is 17 meant by that advancing on command, correct? 18 BRIGADIER CALITZ: Dit is waar - 19 MR MPOFU: It covers that, I don't mean 20 it's confined to that. 21 BRIGADIER CALITZ: Dit is deel daarvan. 22 MR MPOFU: Ja, thanks and the second rule 23 of engagement, clarifying private defence which I suppose 24 it also covers self defence, when to engage without 25 instruction. Do you see that?</p>

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1 BRIGADIER CALITZ: Dit is korrek, mnr die  
 2 Voorsitter.  
 3 MR MPOFU: And you'd agree that the talk  
 4 of private defence or self defence is associated with  
 5 killing by legal force, correct? Justified killing,  
 6 correct.  
 7 BRIGADIER CALITZ: Sê net weer, jy het  
 8 nou oor gepraat.  
 9 MR MPOFU: Yes, sorry.  
 10 CHAIRPERSON: The doctrine of defence,  
 11 self defence or private defence is all about is dealing  
 12 with a threat directed to you or someone else by a violence  
 13 from you, otherwise if necessary killing the person who's  
 14 attacking you or attacking your comrades, your companion,  
 15 that's the point that he says. That's part of private and  
 16 self defence.  
 17 BRIGADIER CALITZ: Ja, so wat –  
 18 MR MPOFU: Thank you.  
 19 BRIGADIER CALITZ: So wat is u vraag?  
 20 MR MPOFU: That was the vraag, so you've  
 21 answered it. I'm saying that, it's the one that was  
 22 rephrased by the Chairperson that private defence is  
 23 something to do with killing –  
 24 CHAIRPERSON: Be using violence, not  
 25 necessary to kill in self defence but it's using violence

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1 which would otherwise be illegal but using it legally in  
 2 particular circumstances covered by the doctrine.  
 3 MR MPOFU: Yes, but killing is  
 4 inescapable, correct.  
 5 CHAIRPERSON: It isn't inescapable you  
 6 can act in self defence, use violence against someone and  
 7 not kill the person. But –  
 8 MR MPOFU: Ja, well in context of –  
 9 CHAIRPERSON: Killing can be –  
 10 MR MPOFU: The Marikana Commission –  
 11 CHAIRPERSON: Killing can be included but  
 12 not necessarily inescapably so and some people were injured  
 13 as you know without being killed and other people were  
 14 killed. So but any way, it's not correct to say that death  
 15 is inescapable because some people like Mr Magidiwana  
 16 escaped death but what private defence and self defence  
 17 necessarily involves as I've said is the use of violence  
 18 against someone who is attacking you or your companion or  
 19 person with.  
 20 MR MPOFU: Yes, in relation to the people  
 21 who were actually killed, who died there the issue of  
 22 private defence would entail the manner in which they were  
 23 killed, correct?  
 24 BRIGADIER CALITZ: Dit is hoe ek dit nou  
 25 verstaan het, ja.

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1 MR MPOFU: Thank you, and that, would you  
 2 deny then that or at the very least this, whatever the fate  
 3 of the target as you guys call it, whatever the fate of the  
 4 target that in the, in that sentence of clarifying private  
 5 defence, when to engage with that instruction, that is  
 6 reference to the actions of someone who might be defending  
 7 themselves including live ammunition?  
 8 BRIGADIER CALITZ: Mnr die Voorsitter,  
 9 soos ek dit hier lees en dit is weereens 'n presentation ek  
 10 glo wat deur Kolonel Scott opgestel is when to engage  
 11 without instruction, wanneer om toe te tree sonder  
 12 opdragte, so dit verwys nie vir my noodwendig na die skiet  
 13 of die dood of iets nie.  
 14 CHAIRPERSON: In this context -  
 15 BRIGADIER CALITZ: So dit is hoe ek dit  
 16 lees.  
 17 CHAIRPERSON: I'm sorry to interrupt you,  
 18 in the context in which we see it instruction given to the  
 19 members of the TRT regard being had to their duties and  
 20 responsibilities and so forth the, all they had to defend  
 21 themselves with was their assault rifles. So when you tell  
 22 someone who's going to perform a function that what self  
 23 defence is all about and that you can engage in self  
 24 defence even if you're not instructed to do so and when the  
 25 people are people who can only defend themselves or defend

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1 others with assault rifles you're clearly talking about the  
 2 use of assault rifles in that context aren't you?  
 3 MR SEMENYA SC: No, Chair, with respect –  
 4 CHAIRPERSON: Are you objecting to my  
 5 question, Mr Semenya?  
 6 MR SEMENYA SC: Well I'm trying to set  
 7 the record straight as, at least as far as the SAPS is  
 8 concerned.  
 9 CHAIRPERSON: Of course you have the  
 10 fullest right to do so.  
 11 MR SEMENYA SC: That there are other  
 12 tactical manoeuvres they're trained with, other than the  
 13 assault rifle.  
 14 CHAIRPERSON: Alright, regard being had  
 15 to the fact that the TRT people might be able to do other  
 16 things in self defence or private defence apart from using  
 17 their assault rifles, the fact remains that a major part of  
 18 what they would have been doing would have been using the  
 19 assault rifle, that's correct, isn't it?  
 20 BRIGADIER CALITZ: Mnr die Voorsitter, ja  
 21 as ek net kan verduidelik soos ek dit sien daar.  
 22 CHAIRPERSON: It's pointed out to me that  
 23 they also had 9 millimetre rifles, that would be pistols, 9  
 24 millimetres would be pistols.  
 25 BRIGADIER CALITZ: Hulle is uitgereik met

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1 verskeie van daardie, ja 9 millimeter sowel as R5s, dit is  
2 korrek, mnr die Voorsitter.

3 CHAIRPERSON: Ja. Sharp ammunition in,  
4 was being talked about in relation to both 9 millimetre and  
5 R5 rifles.

6 BRIGADIER CALITZ: Dit is, ek sê weereens  
7 die presentation wat opgestel is, ek dink deur Kolonel  
8 Scott onder korreksie, dink ek is die presentation, the  
9 clarifying of private defence dit is sou hulle dan toe tree  
10 en die beskerming van POP and when to engage without  
11 instruction, met ander woorde daar's vele ander takke wat  
12 ook aan hulle toegedeel is, wanneer om toe te tree as hulle  
13 bevelvoerders dan nie vir hulle opdrag gee nie. So dit is  
14 maar net hoe ek dit hier lees en nie net bedoelende op vuur  
15 nie. Want hulle doel was ook om by te staan met  
16 arrestasies, om op te volg om te sweep. So hulle kon daai,  
17 al daai ander aksies gedoen het sonder om opdrag te kry van  
18 hulle bevelvoerder.

19 [15:20] MR MPOFU: And all those other things  
20 would be, would constitute private defence by people who  
21 are armed with rifles, in the context of what we know now  
22 actually happened in Marikana? Is that your evidence,  
23 seriously?

24 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
25 – oor "private defence" het ek gesê en die tweede gedeelte

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1 het ek gesê hoe ek dit verstaan in die sin wat dit hier  
2 staan.

3 MR MPOFU: Alright, we can't go through  
4 it again for hours like we did on Friday. So I'll just  
5 short-circuit it by saying that this is yet another – that  
6 your ridiculous refusal, or denial of the clear meaning of  
7 "engage," which clearly includes the use of live  
8 ammunition, is not because of a linguistic problem, but it  
9 is because you know, like every person, that if these  
10 people were instructed to kill then that is incompatible  
11 with the official line of self-defence because you don't  
12 normally instruct or command a person to defend themselves;  
13 it's something that they themselves would perceive, when  
14 they perceive a threat to their life would –

15 MR SEMENYA SC: Chair, we request –

16 MR MPOFU: What would you say to that?

17 MR SEMENYA SC: Chair, we request the  
18 witness to be protected. There is nothing like his  
19 ridiculous refusal.

20 MR MPOFU: Well, he's the one who used  
21 that word –

22 CHAIRPERSON: I think the word  
23 "ridiculous" was used in another context. It's not  
24 necessary –

25 MR MPOFU: By the witness.

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1 CHAIRPERSON: I know, but in another  
2 context. It's not necessary to characterise his refusal to  
3 agree with the proposition you're putting to him as  
4 ridiculous when you question him about it. You can argue  
5 things at the end of the day if you wish, but anyway, what  
6 is being suggested to you is that you denied that "engage"  
7 in this context meant use live ammunition, for the reason  
8 that was put to you by counsel. Do you agree with that or  
9 not?

10 BRIGADIER CALITZ: Nee, mnr die  
11 Voorsitter, ek staan by wat ek gesê het. Ten tye wanneer  
12 ek dit gesê het, het ek nou nie soos die Advokaat miskien  
13 voorstel hierdie "crystal ball" gehad om te weet dit en dit  
14 en dit gaan gebeur nie. So jy kan nie 'n opdrag gee  
15 wetende die persone gaan om die kraal kom, daar gaan 'n  
16 skietvoorval wees, en so dis onmoontlik vir my gewees om  
17 vir hulle op daardie stadium te gee, en op 'n latere  
18 stadium het ek wel vorentoe beweeg en ek het glad nie  
19 gesien wat agter aangaan nie. Weereens kon ek nie vir  
20 hulle daardie opdrag gegee het nie. Dit is so duidelik  
21 soos dit. Maar ek verstaan wat hy sê en ek stem nie saam  
22 met die Advokaat nie.

23 MR MPOFU: And that because, exactly  
24 because the word "engage" which you used points to the  
25 opposite direction, it is for that reason that, (1); (2),

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1 because of what I said to you before lunch, which is your  
2 omission, your failure to give warnings in respect of scene  
3 2, and probably also in respect of scene 1, which  
4 unreasonably – and I won't explain that again, you know  
5 what I said earlier. Because of that, it is for that  
6 reason that you and the shooters, about 50 of them, and  
7 other people who make up the number of 60 that I said to  
8 you, which makes you accused number 6, that all of you  
9 should be charged with the murder of all 34 people and I  
10 was asked during lunch who was accused 1 to 5; I'm not yet  
11 at this stage able to give those names, but that you are at  
12 least one of those people for the reasons that I've given  
13 and that – well, firstly that you should be charged with  
14 murder, but secondly the mere fact that those people have  
15 not even been suspended, have not –

16 CHAIRPERSON: [Microphone off, inaudible]  
17 is a second question. I –

18 MR MPOFU: Yes, sorry, that's correct.

19 CHAIRPERSON: One question at a time.

20 MR MPOFU: That's correct, Chairperson.

21 CHAIRPERSON: The first point is a point  
22 I think you dealt with yesterday. It was put to you that  
23 on the basis of what counsel suggests this Commission  
24 should recommend that you be prosecuted on a charge of  
25 murder, and I think you said yesterday that you don't agree

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1 with that. I take it you still persist in not agreeing?  
 2 BRIGADIER CALITZ: Definitely so, mnr die  
 3 Voorsitter, op die feite wat in die "transcripts" is.  
 4 CHAIRPERSON: You agree. Then you're  
 5 moving on to another point, which, and when I interrupted  
 6 you –  
 7 MR MPOFU: Yes, which is closing off.  
 8 Yes, Chairperson, and as the Chairperson always says, I was  
 9 not here yesterday, but that's another matter.  
 10 CHAIRPERSON: Touché.  
 11 MR MPOFU: Touché, that's exactly it,  
 12 thank you, Chairperson. Rounding off that point,  
 13 Brigadier, is to say that moreover the mere fact that those  
 14 people, including yourself, who on the basis of the  
 15 evidence you have given should at the very least prima  
 16 facie be suspects, murder suspects, the mere fact that they  
 17 were not even suspended for the 18 months or so since this  
 18 event has happened is partly responsible for the fear of my  
 19 clients that those very same people, as I said earlier this  
 20 morning, whom they might come face to face with today, are  
 21 capable of killing again as they did last week.  
 22 CHAIRPERSON: I'm not sure that that's a  
 23 proper question, but what's your answer to it? Do you  
 24 agree?  
 25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 dis 'n lang stelling.  
 2 CHAIRPERSON: Don't you agree with it?  
 3 BRIGADIER CALITZ: Nee, glad nie, mnr die  
 4 Voorsitter –  
 5 CHAIRPERSON: Okay, that's enough. Thank  
 6 you.  
 7 MR MPOFU: Thank you, Chairperson, that's  
 8 the end of the cross-examination. Thanks.  
 9 CHAIRPERSON: [Microphone off, inaudible]  
 10 tea.  
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 12 [15:45] CHAIRPERSON: The Commission resumes.  
 13 Brigadier, you're still under oath.  
 14 ADRIAAN MARTHINUS CALITZ: Thank you,  
 15 Chair.  
 16 CHAIRPERSON: Mr Gotz, I believe you're  
 17 now going to cross-examine on behalf of AMCU.  
 18 CROSS-EXAMINATION BY MR GOTZ: Yes, good  
 19 afternoon, Commissioners, and good afternoon Brigadier  
 20 Calitz.  
 21 BRIGADIER CALITZ: Good afternoon,  
 22 Advocate.  
 23 MR GOTZ: I'll be asking you a few  
 24 questions on behalf of AMCU. I do promise that I will be  
 25 shorter than Mr Mpofo. I don't promise that I'm going to

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1 be any less brutal than he was. Brigadier Calitz –  
 2 BRIGADIER CALITZ: That I can take is the  
 3 long –  
 4 CHAIRPERSON: No, brutality we do not  
 5 allow in this Commission. Let that be clear. I don't  
 6 think Mr Mpofo was brutal. He asked some hard questions,  
 7 but he wasn't guilty of brutality. If he had been I would  
 8 have dealt with him, and if you try brutality, I will deal  
 9 with you. The first thing you've got is a supplementary  
 10 affidavit from Mr Mathunjwa in your bundle. Do you want to  
 11 put it in, have it marked now as a piece of housekeeping?  
 12 What's the next exhibit number?  
 13 MR GOTZ: Chairperson, I'm happy to do  
 14 housekeeping matters and perhaps we can just make those –  
 15 CHAIRPERSON: We can do it perhaps  
 16 tomorrow morning.  
 17 MR GOTZ: - make all of those documents  
 18 exhibits. The first document then is the affidavit by Mr  
 19 Mathunjwa. Chair, we do now have a signed version of that.  
 20 CHAIRPERSON: Yes, alright.  
 21 MR GOTZ: And we can –  
 22 CHAIRPERSON: Well, you can hand that in  
 23 later, but how are we going to describe these exhibits?  
 24 MR GOTZ: Well, if we can get the next  
 25 exhibit number from the evidence leaders?

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1 CHAIRPERSON: Do we stay in the KKK-  
 2 series?  
 3 MR GOTZ: Yes, it will be the KKK-series.  
 4 CHAIRPERSON: So the last, according to  
 5 my notes the last KKK exhibit was 45. Is that correct?  
 6 MR GOTZ: So the affidavit of Mr  
 7 Mathunjwa would be KKK46.  
 8 CHAIRPERSON: Alright, and then after  
 9 that we have an extract from – it looks like some kind of  
 10 police manual on tactical options.  
 11 MR GOTZ: Yes, Chair, that will be KKK47  
 12 and it's –  
 13 CHAIRPERSON: And then we can perhaps  
 14 number the pages internally when we get there, right.  
 15 MR GOTZ: Yes, I did –  
 16 CHAIRPERSON: And under tab 3 in your  
 17 bundle you gave us we've got, it looks like another –  
 18 MR GOTZ: Chair, then this will be KKK48  
 19 and it will be tactical options to –  
 20 CHAIRPERSON: That will be KKK48. I'm  
 21 asked by the transcribers for you to put yourself on  
 22 record. So tell the transcribers who you are so that they  
 23 can then describe you in future correctly on the record.  
 24 MR GOTZ: My name is Anthony Gotz.  
 25 That's spelt G-O-T-Z. I'm acting on behalf of AMCU and

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1 instructed by the Socio-Economic Rights Institute, SERI.  
 2 CHAIRPERSON: Under tab 4 we have  
 3 tactical options to encircle. That's KKK49, is it?  
 4 MR GOTZ: Indeed, Chair.  
 5 CHAIRPERSON: Under tab 5 we have a  
 6 document –  
 7 MR GOTZ: Chair, we can ignore this.  
 8 It's a document –  
 9 CHAIRPERSON: I understand that's an  
 10 exhibit already. Is that correct?  
 11 MR GOTZ: Yes, indeed. I was mistaken  
 12 when I inserted it into the file.  
 13 CHAIRPERSON: Alright, you'll tell us in  
 14 due course what the correct exhibit number is of that.  
 15 MR GOTZ: So the document headed STF is  
 16 already an exhibit.  
 17 CHAIRPERSON: Alright, we'll move on to  
 18 the next tab, which is tab 6, which is "Crowd management,  
 19 platoon members, prepare for crowd management incidents."  
 20 This is also a police document, I take it?  
 21 MR GOTZ: Yes, indeed.  
 22 CHAIRPERSON: And you'll tell us what it  
 23 is when we get there, but it is KKK50. Then under tab 7 we  
 24 have – all I've got is a piece of paper that says, "The  
 25 positions of the SAPS vehicles at the time of the TRT

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1 volley." Have we not got that document yet?  
 2 MR GOTZ: Yes, Chair, we had previously  
 3 given you copies. I do have more copies available and I  
 4 will give that to you.  
 5 CHAIRPERSON: Alright, if you've given  
 6 them to us already they've got exhibit numbers already?  
 7 MR GOTZ: No, it hasn't yet been made an  
 8 exhibit. It's a rather lengthy document –  
 9 CHAIRPERSON: Alright, so this will be  
 10 KKK51. Tab 8 is the "Movement of SAPS vehicles relative to  
 11 the strikers." That will be –  
 12 MR GOTZ: Exhibit KKK52.  
 13 CHAIRPERSON: KKK52. The ninth tab is  
 14 the shot fired by the striker, a series of materials on  
 15 that. That's KKK53, and then under tab 10 I have just a  
 16 tab and nothing in it. Is that something you're going to  
 17 give us later?  
 18 MR GOTZ: Chair, I suspect it was simply  
 19 my secretary numbering all of the tabs. I don't have  
 20 anything to offer you at this point, nor can I –  
 21 CHAIRPERSON: 10 can be a report which  
 22 you told me in chambers you're going to have prepared and  
 23 hand in, which is going to explain the bases on which some  
 24 of the earlier documents which place certain vehicles at  
 25 certain times, on which basis that document was compiled.

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1 MR GOTZ: Yes.  
 2 CHAIRPERSON: So we'll use tab 10 for  
 3 that, and that will be KKK54. Is that correct?  
 4 MR GOTZ: Indeed, Chair.  
 5 CHAIRPERSON: So I'll call that KKK54,  
 6 "Report on positioning of vehicles." Is that correct?  
 7 MR GOTZ: Yes, Chair.  
 8 CHAIRPERSON: Alright. So now we've done  
 9 a little bit of housekeeping, let's do a bit of cross-  
 10 examination for a while.  
 11 MR GOTZ: Brigadier Calitz, have you  
 12 followed all of that? You numbered your exhibits?  
 13 BRIGADIER CALITZ: Ja, mnr die  
 14 Voorsitter, dankie. Ek het die lêer, behalwe u "tab 7,"  
 15 maar u sê u het "copies" daarvan, so dan sal ek dit net by  
 16 Adv Semenya kry.  
 17 MR GOTZ: Yes.  
 18 BRIGADIER CALITZ: Dan kan ons daardeur  
 19 gaan.  
 20 CHAIRPERSON: I won't allow him to ask  
 21 you any questions on that until tomorrow, and I take it  
 22 you'll get the documents before 6 o'clock tonight.  
 23 BRIGADIER CALITZ: Ek glo hy het gesê hy  
 24 het dit teenwoordig, so ek sal dit by hom kry, dankie,  
 25 Meneer. Dan het ek nog 'n bundel van vorige –

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1 CHAIRPERSON: Yes, there's another  
 2 bundle, but this relates to previous exhibits. So they've  
 3 already been marked. All I was doing was marking –  
 4 BRIGADIER CALITZ: Okay.  
 5 CHAIRPERSON: - the new material that we  
 6 haven't got yet, and in respect of the last one under tab  
 7 10, the document hasn't been compiled yet, it will only be  
 8 compiled tonight. We indicated in chambers to Mr Gotz it  
 9 would be required consistently with rulings we gave in  
 10 respect of some of the other parties and some of their  
 11 cross-examination material. So you'll get that when we get  
 12 it, presumably tomorrow.  
 13 BRIGADIER CALITZ: Dankie, mnr die  
 14 Voorsitter.  
 15 CHAIRPERSON: Alright, Mr Gotz, you're  
 16 ready to commence?  
 17 MR GOTZ: Brigadier Calitz, on Thursday  
 18 last week during the course of your cross-examination by Mr  
 19 Mpfu you gave us some important information about Major  
 20 General Mpembe's character. Now I don't want to revisit  
 21 the issue, but I'd simply like to remind you about certain  
 22 things that you said during that cross-examination. You'll  
 23 recall that you described Major General Mpembe as a person  
 24 in your opinion who did not sit on the sidelines or in the  
 25 corner, but was a person who let his views be known. Do



<p style="text-align: right;">Page 20627</p> <p>1 you recall that evidence?</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>3 ja, wat ek weet is ek is gevra, ek wil dit net onder</p> <p>4 korreksie, daar was beweer gewees dat hy "ge-sideline" was,</p> <p>5 as ek die woorde kan reg onthou, Adv Mpofu, en dat hy</p> <p>6 armpies gevou in die hoek gesit het, en ek is gevra om te</p> <p>7 "comment" daarop en ek het gesê op daardie, op daardie</p> <p>8 stelling het ek gesê nee, ek ken Generaal Mpembe glad nie</p> <p>9 so as 'n persoon wat arms gevou in die hoek sal sit en</p> <p>10 stilbly nie; ek ken hom as 'n aktiewe operasionele – ek kan</p> <p>11 nie onthou my presiese woorde nie, maar aktief</p> <p>12 operasioneel.</p> <p>13 MR GOTZ: For reference purposes that</p> <p>14 appears on the transcript on day 169 at page 19919.</p> <p>15 Brigadier, it's not necessary that we look at it. I need</p> <p>16 to –</p> <p>17 BRIGADIER CALITZ: Sorry, just repeat,</p> <p>18 169 on page?</p> <p>19 MR GOTZ: 19919, so it's day 169 and the</p> <p>20 page number is 19919, a lot of nines in there.</p> <p>21 BRIGADIER CALITZ: Line number?</p> <p>22 MR GOTZ: And your evidence in this</p> <p>23 regard appears at line 23 -</p> <p>24 BRIGADIER CALITZ: No, it's fine, I will</p> <p>25 find it, thank you.</p>	<p style="text-align: right;">Page 20629</p> <p>1 wat ons saam werk, kollegas, dit is korrek.</p> <p>2 MR GOTZ: On the other side I presume</p> <p>3 then that Major General Mpembe would know you just as well?</p> <p>4 BRIGADIER CALITZ: Ek glo hy sal my</p> <p>5 dieselfde ken, dit is korrek.</p> <p>6 MR GOTZ: He is your superior officer.</p> <p>7 BRIGADIER CALITZ: Hy is 'n generaal en</p> <p>8 ek is die brigadier in die polisie hiërargie, dit is</p> <p>9 korrek.</p> <p>10 MR GOTZ: He knows your strengths when it</p> <p>11 comes to the work that you do, correct?</p> <p>12 BRIGADIER CALITZ: Ek vertrou en glo so,</p> <p>13 ja.</p> <p>14 MR GOTZ: And similarly he knows what</p> <p>15 your weaknesses and limitations are, correct?</p> <p>16 BRIGADIER CALITZ: Ek vertrou hy sal kan</p> <p>17 getuig daaroor.</p> <p>18 MR GOTZ: Now Major General Mpembe has</p> <p>19 shared with the Commission some important information about</p> <p>20 your limitations, and that's contained in a statement that</p> <p>21 he has filed and confirmed in his evidence-in-chief, and</p> <p>22 the statement is exhibit HHH3, if we can project the</p> <p>23 statement on the screen, and the –</p> <p>24 BRIGADIER CALITZ: Ekskuus tog, is dit in</p> <p>25 die bundel wat u my –</p>
<p style="text-align: right;">Page 20628</p> <p>1 MR GOTZ: - and onwards. During that</p> <p>2 explanation of Major General Mpembe's characteristics,</p> <p>3 shall we say, you indicated that you had worked with Major</p> <p>4 General Mpembe for some 19 years. In fact the words you</p> <p>5 used were "Ek werk 19 jaar plus saam met hom."</p> <p>6 BRIGADIER CALITZ: Ek dink toe ek in die</p> <p>7 Noord Wes provinsie gekom het, dis is korrek, mnr die</p> <p>8 Voorsitter, onder korreksie, 92/93 is Generaal Mpembe, as</p> <p>9 ek kan reg onthou. Die jare, as ek nou verkeerd was met my</p> <p>10 wiskunde dan vra ek verskoning, maar dit is omtrent, as ek</p> <p>11 dit reg opsom.</p> <p>12 MR GOTZ: You have worked with him for</p> <p>13 many, many years. Is that correct?</p> <p>14 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>15 Voorsitter.</p> <p>16 MR GOTZ: Brigadier, as I understand your</p> <p>17 evidence also, if I'm understanding the Afrikaans, you've</p> <p>18 worked with him on the ground, so to speak, in other words</p> <p>19 in operations. Would that be correct?</p> <p>20 BRIGADIER CALITZ: In operasies, Generaal</p> <p>21 Mpembe was die operasionele, kan ek sê die generaal in</p> <p>22 beheer van die provinsie, Deputy Provincial Commissioner,</p> <p>23 Operations, as ek dit so kan stel.</p> <p>24 MR GOTZ: You know him reasonably well?</p> <p>25 BRIGADIER CALITZ: Operasioneel-gewys en</p>	<p style="text-align: right;">Page 20630</p> <p>1 MNR GOTZ: Dis net een paragraaf wat ek</p> <p>2 wou verwys, en dit is die –</p> <p>3 CHAIRPERSON: You were asked whether it</p> <p>4 was in the bundle –</p> <p>5 MNR GOTZ: Dit is nie in die bundel –</p> <p>6 CHAIRPERSON: Was it one of the exhibits</p> <p>7 to which he was referred?</p> <p>8 MR GOTZ: It was not - I'm not sure that</p> <p>9 it was one of the exhibits. There's a small paragraph –</p> <p>10 CHAIRPERSON: Alright, so he may not have</p> <p>11 had an opportunity to see it beforehand. But anyway, what</p> <p>12 paragraph number are you referring to?</p> <p>13 MR GOTZ: It's paragraph 6 on page 3.</p> <p>14 CHAIRPERSON: You've gone past 6. There</p> <p>15 we are, 6 on page 3. Pause a moment and read it quietly to</p> <p>16 yourself and then when you're ready indicate, then Mr Gotz</p> <p>17 can ask you a question. Is all that he needs to read on</p> <p>18 the screen?</p> <p>19 MR GOTZ: It may go down two lines on</p> <p>20 the –</p> <p>21 CHAIRPERSON: [Microphone off, inaudible]</p> <p>22 more lines down then.</p> <p>23 MR GOTZ: Ja.</p> <p>24 CHAIRPERSON: One more line, I think,</p> <p>25 please.</p>

<p style="text-align: right;">Page 20631</p> <p>1 MR GOTZ: Until the end of that 2 paragraph. 3 CHAIRPERSON: Have you had an opportunity 4 to read it? 5 BRIGADIER CALITZ: Ek het dit gelees, mnr 6 die Voorsitter. 7 CHAIRPERSON: Are you in a position to 8 answer questions on it? 9 BRIGADIER CALITZ: Ja, dit hang af wat 10 die vrae sal wees, of ek moet sien wat hy voor of na die 11 tyd gesê het. Dis moeilik om net een paragrafie in 'n 12 verklaring te – maar ek sal probeer sover ek kan. As daar 13 iets is wat onduidelik is, sal ek dan vra om die verklaring 14 te kry. 15 CHAIRPERSON: Adv Gotz, would you like to 16 proceed? 17 MR GOTZ: If for any reason, Brigadier, 18 you need more time to read the paragraph, I'll certainly be 19 able to afford that to you, given that we have a minute 20 left of the day. 21 BRIGADIER CALITZ: Nee, die paragraaf is 22 duidelik vir my, die paar lyne wat ek gelees het, tot aan 23 die einde van daardie paragraaf. 24 MR GOTZ: Brigadier, let's test some of 25 the things that Major General Mpembe says about you. It is</p>	<p style="text-align: right;">Page 20633</p> <p>1 differently, would you accept that he understands their 2 "culture" of belief systems better than you do? 3 BRIGADIER CALITZ: Die woord is "beter," 4 beslis so, mnr die Voorsitter. 5 CHAIRPERSON: And the also says, "I have 6 extensive experience in crowd management interventions." I 7 think you've told us already that you also have extensive 8 experience in crowd management situations. You've repeated 9 that over and over again in your evidence. You don't have 10 to repeat it again, but that's correct, isn't it? 11 BRIGADIER CALITZ: Dit is korrek, mnr die 12 Voorsitter, ja. 13 CHAIRPERSON: Would you say that your 14 experience is as extensive as his, or would you say his 15 experience in crowd management interventions is more 16 extensive than yours? 17 BRIGADIER CALITZ: Ek sal getuig dat ek 18 dink my ondervinding in "crowd management" is meer 19 ekstensief. Die Generaal het oor, kan ek maar sê 20 "oversee," verskillende faktore waarvan "crowd management" 21 een is, en dan die ander operasionele gedeeltes. So beslis 22 die Generaal is saam met ons op die grond, maar ek is 23 voltyds deel van "crowd management." 24 MR GOTZ: You would agree with the Major 25 General that language is one of the major factors in the</p>
<p style="text-align: right;">Page 20632</p> <p>1 correct that you do not speak any of the languages with 2 which the marchers, or the strikers were conversant, 3 correct? 4 BRIGADIER CALITZ: Dit is korrek, ja. 5 MR GOTZ: He also implies in that 6 paragraph that you do not understand their culture or 7 belief systems. Would that be a correct assessment of you, 8 Brigadier? 9 BRIGADIER CALITZ: Ek sien hier wat hy 10 verwys het dat, hy verwys na homself, "I speak their 11 language and understand their culture and belief systems." 12 Ek sien nie dat hy sê dat ek dit nie verstaan nie. So ek 13 sien in hierdie paragraaf hy verwys na homself. 14 MR GOTZ: Brigadier, it's one of the – 15 CHAIRPERSON: Do you regard yourself as 16 understanding their culture and belief systems? 17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 uit die ondervinding uit wat ek het werk ons in die gebied 19 en ek sal sê seker nie honderd persent soos wat mens moet 20 nie, maar daar is tog gedeeltes wat mens kan verstaan, 21 kultuur verskille, geloofsverskille, en dan het mens altyd 22 die ondersteuning van jou kollegas by jou. So ek sal nie 23 sê dit is "entirely" korrek as hy gesê het dat dit is ek 24 nie, maar ek verstaan hier hy sê dat hy verstaan dit beter. 25 CHAIRPERSON: Perhaps to put the question</p>	<p style="text-align: right;">Page 20634</p> <p>1 success or failure of intervention in crowd management 2 events, correct? 3 BRIGADIER CALITZ: Bedoel u in die 4 algemeen, of in die aspek wat hy die verklaring gemaak het 5 rondom die 13de? 6 MNR GOTZ: Ek het bedoel altwee, maar – 7 BRIGADIER CALITZ: Okay, in die geval van 8 die 13de beslis, want die inligting wat ons gehad het is 9 dat die persone is op die myn en hulle praat – wat is die 10 regte uitspraak? – Fanagalo – 11 CHAIRPERSON: Fanagalo is the word your 12 looking for. 13 BRIGADIER CALITZ: Dit is, ja. Dankie, 14 mnr die Voorsitter, en dan in die algemeen sou kommunikasie 15 'n baie belangrike medium wees vir enige groepering wat ons 16 benader, maar in my ondervinding is die medium Engels deur 17 die meeste persone wat ons gewoonlik "approach" en dan met 18 onderhandel, onderhandel ons in Engels. So – 19 CHAIRPERSON: Has your crowd management 20 experience been almost exclusively in the North Western 21 province? 22 BRIGADIER CALITZ: Mnr die Voorsitter, my 23 werk en my uitvoering "mainly," kan ek sê, hoofsaaklik in 24 die Noord Wes provinsie. Ek was op afgedeelde diens gewees 25 in die Oos-Kaap, in die Wes-Kaap –</p>

<p style="text-align: right;">Page 20635</p> <p>1 CHAIRPERSON: How long was that for?</p> <p>2 BRIGADIER CALITZ: Noord-Kaap –</p> <p>3 CHAIRPERSON: How long was that for?</p> <p>4 BRIGADIER CALITZ: Dit was meer basis</p> <p>5 bevelvoerder, sekere spesifieke takings gewees.</p> <p>6 CHAIRPERSON: The reason I ask is I</p> <p>7 assume for the fact that your experience to be largely in</p> <p>8 the North Western province, that insofar as the customs and</p> <p>9 belief systems of the local people are concerned, local</p> <p>10 African people are concerned, it's been insofar as this is</p> <p>11 relevant, been with Tswana-speaking people. Is that so?</p> <p>12 BRIGADIER CALITZ: Ek dink meerderheid</p> <p>13 met die Tswana-sprekende, alhoewel daar meer 'n gemengde</p> <p>14 groep ook is, maar –</p> <p>15 CHAIRPERSON: No, no, I understand, and I</p> <p>16 think the evidence is that a large number of the rock drill</p> <p>17 operators are from Pondoland, so they're Xhosa-speaking and</p> <p>18 they come from an Nguni background.</p> <p>19 BRIGADIER CALITZ: Dit is wat ek verstaan</p> <p>20 het.</p> <p>21 CHAIRPERSON: Now General Mpembe I think</p> <p>22 is originally a Zulu –</p> <p>23 BRIGADIER CALITZ: He's a –</p> <p>24 CHAIRPERSON: So he also comes from an</p> <p>25 Nguni background.</p>	
<p style="text-align: right;">Page 20636</p> <p>1 BRIGADIER CALITZ: Hy's 'n Zoeloe, wat</p> <p>2 dit –</p> <p>3 CHAIRPERSON: So insofar as there are</p> <p>4 differences – I don't know there are necessarily</p> <p>5 significantly ones, but insofar as there are differences in</p> <p>6 belief systems and culture and so on between Setswana-</p> <p>7 speaking people and people of Nguni background, he would be</p> <p>8 better able to deal with that than you would.</p> <p>9 BRIGADIER CALITZ: Dit is beslis so, mnr</p> <p>10 die Voorsitter.</p> <p>11 MR GOTZ: Chair, I see it's after 4</p> <p>12 o'clock. I'm happy –</p> <p>13 CHAIRPERSON: When you are finished with</p> <p>14 this point then we can take the adjournment until tomorrow.</p> <p>15 Have you finished with this?</p> <p>16 [16:05]</p> <p>17 MR GOTZ: Chair, it will probably take me</p> <p>18 another 10, 15 minutes. I suspect that it would be a good</p> <p>19 idea to –</p> <p>20 CHAIRPERSON: I think we, that's a</p> <p>21 pleasure that we must postpone until tomorrow. We will</p> <p>22 take the adjournment until 9 'o clock tomorrow.</p> <p>23 [COMMISSION ADJOURNED]</p> <p>24 .</p> <p>25 .</p>	

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