

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 174

**Lukmos**  
communications

24 JANUARY 2014

TRANSCRIPT PAGES 20673 TO 20769

1 **[PROCEEDINGS ON 24 JANUARY 2014]**

2 **[09:16] CHAIRPERSON:** The Commission resumes. I

3 was approached in chambers this morning by Adv. Semanya, who

4 requested an extension until Monday as the date for filing

5 statements. In view of the fact that I am prepared to give

6 him that extension, I give it to everybody else, but it

7 must be understood that the extension is until Monday and I

8 expect all statements to be filed by the end of Monday.

9 Brigadier, you are still under oath.

10 **ADRIAAN MARTHINUS CALITZ:** Morning,

11 Commissioner. Thank you very much.

12 **CHAIRPERSON:** Mr Gotz.

13 **CROSS-EXAMINATION BY MR GOTZ (CONTD.):**

14 Good morning, Commissioners, and Brigadier Calitz.

15 **BRIGADIER CALITZ:** Good morning,

16 Advocate.

17 **MR GOTZ:** Perhaps we can start with a

18 matter of housekeeping, Chairperson. The exhibits that we

19 dealt with yesterday did not include two additional videos

20 that I would like to rely upon. The first video is one

21 that is been mentioned I think by Mr Mpofu in these

22 proceedings and it is new ETV footage showing a number of

23 things, but also including a small clip of Mr Mathunjwa's

24 second address, and I would like to be able to introduce that

25 as an exhibit if the –

1 **CHAIRPERSON:** That's been mentioned, and  
2 I understood that we were going to see it. Mr Mpfu  
3 mentioned it, but then I think in his anxiety to finish  
4 reasonably within the time he promised, he did not show it  
5 to us. But obviously we have got to see it. We may as well  
6 see it now, and I understood that we were going to get a  
7 transcript of it – well, more accurately we were going to  
8 get a translation of a transcript of it. I do not know  
9 whether that is available yet.

10 **MR GOTZ:** Chairperson, I am not sure what the  
11 position is, but in any event, I am not going to be relying  
12 upon that transcript for any purposes of my cross-  
13 examination –

14 **CHAIRPERSON:** Alright, well let's find  
15 out if the transcript is available. I think the evidence  
16 leaders were looking into the matter. Mr Budlender, can  
17 you help us on that?

18 **MR GOTZ:** I am told we do have a  
19 transcript, Chairperson, so that can be introduced as an exhibit  
20 as well.

21 **CHAIRPERSON:** You know if we see it and  
22 we hear it and some of us who are more disadvantaged than  
23 others will not be able to follow it and others will, and it is  
24 desirable, I would have thought, that we follow the  
25 transcripts, a translated transcript, while we are seeing

1 it. So I don't know that you need it at this stage of your  
2 cross-examination. Perhaps photocopies can be made, unless  
3 they are available already, of the translated transcript,  
4 and then we can receive that exhibit.

5 **MR GOTZ:** Then the second video that I  
6 would like introduced as an exhibit, Chairperson, is –

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

8 response to the point I made?

9 **MR GOTZ:** No, Chairperson, I agree with that.

10 Sorry, I was nodding and perhaps I should place that on –

11 **CHAIRPERSON:** Alright, we will receive

12 that –

13 **MR GOTZ:** Yes, I agree with that.

14 **CHAIRPERSON:** The transcribers cannot see

15 you nodding and your nods we will not find on the transcript.

16 Let your yea be yea, your nay be nay, but your nods will

17 not be recorded.

18 **MR GOTZ:** We will make it available,

19 Chairperson. The second video that I would like to introduce as an

20 exhibit is in fact material that we have already seen in

21 the Commission. It is however a much clearer copy of the

22 video. So the video that I am referring to is the Reuters

23 shot of the strikers approaching the TRT line. We have seen

24 that on a number of occasions –

25 **CHAIRPERSON:** If what you are saying to us

1 is simply a copy of what we saw before, but a better copy,  
2 then I suggest you give us the exhibit number and then we  
3 will replace the one you are now going to show us by the one  
4 – Sorry, we will replace the one we have already got by the  
5 one that you're going to introduce –

6 **MR GOTZ:** Chairperson, might I make a different  
7 proposal and I shall explain the reason for that. The  
8 original exhibit is UU3. The material that I want to  
9 introduce has a five-second introduction, as it were, which  
10 states that the material that is about to be displayed is  
11 rather graphic. The consequence of that introduction means  
12 that the timing on the two clips is different, even though  
13 when one starts the actual content the content is the same.  
14 I am a bit concerned that parties may have relied upon UU3  
15 to set times and the like, and for that reason I propose  
16 that this new material should not replace UU3 but rather  
17 should be made a new exhibit, as a separate one.

18 **CHAIRPERSON:** Yes, that makes sense.

19 What is the latest exhibit?

20 **MR GOTZ:** Well, if we introduce the ETV  
21 footage, that would be then KK55.

22 **CHAIRPERSON:** Alright, should be –

23 **MR BUDLENDER SC:** Chairperson, would it not be  
24 more convenient to make it UU3.1, so we shall connect the two?

25 **CHAIRPERSON:** Yes, that sounds sensible,

1 otherwise they're separated by thousands of pages among the  
2 exhibits. We shall make it – what did you say? UU3?

3 **MR BUDLENDER SC:** [Microphone off,  
4 inaudible].

5 **CHAIRPERSON:** Sorry?

6 **MR BUDLENDER SC:** [Microphone off,  
7 inaudible].

8 **CHAIRPERSON:** No, it is numbered as UU3.

9 Is that right?

10 **MR GOTZ:** Yes, indeed.

11 **CHAIRPERSON:** So we can either call it

12 UU3 Bis for those who prefer that, or we can call it UU3.1.

13 I prefer Bis myself, but if I am in the minority, I shall go

14 along with UU3.1. I am happy to say that the Commissioners

15 are unanimous that it is going to be UU3 Bis because there's

16 no continuation from 1, and that makes it clear it is the

17 second – no, for the benefit of Mr Mahlangu and those who

18 are interpreting these proceedings into Xhosa, Bis – no-one

19 else needs the explanation – Bis is Latin for twice, and so

20 that is what it will be. Could we see UU3 Bis please?

21 **MR GOTZ:** Do you want us to show that

22 now, Chairperson?

23 **CHAIRPERSON:** Well, when do you want to

24 show it?

25 **MR GOTZ:** During the course of my cross-

1 examination. I do not propose to –

2 **CHAIRPERSON:** Alright, okay. We shall you

3 must –

4 **MR GOTZ:** - show it in advance.

5 **CHAIRPERSON:** You determine the order of

6 your cross-examination. Has the witness seen it? You have

7 seen UU3. Were you told to look at UU3?

8 **BRIGADIER CALITZ:** No, Mr

9 Chairperson, neither the one from the ETV “footage” which

10 I think he said, KK55, the new one. I also do not know

11 what that one is –

12 **CHAIRPERSON:** It is K-K-K?

13 **BRIGADIER CALITZ:** K-K-K.

14 **CHAIRPERSON:** 55.

15 **BRIGADIER CALITZ:** I think it is the

16 new –

17 **CHAIRPERSON:** Yes-no, but he is –

18 **BRIGADIER CALITZ:** There are two that he–

19 **CHAIRPERSON:** But I think he said we had

20 seen it already.

21 **BRIGADIER CALITZ:** No, Mr

22 Chairperson.

23 **CHAIRPERSON:** Have we not seen the KKK55

24 one?

25 **MR GOTZ:** There is a – one has seen most

1 of the material in that exhibit –

2 **CHAIRPERSON:** One has seen most of it,

3 but in fairness to the witness, we may have seen it but if

4 he was not alerted to it, he has not looked at it as part of

5 his preparation, so I think it might be appropriate to –

6 you will introduce it at the appropriate time, but if the

7 appropriate time is after tea he might be given an

8 opportunity – I take it, it won't be long – to look at it

9 during tea -

10 **MR GOTZ:** Yes.

11 **CHAIRPERSON:** - so that he can be

12 prepared. Alright?

13 **MR GOTZ:** Thank you, Chairperson.

14 **BRIGADIER CALITZ:** Thank you, Mr

15 Chairperson.

16 **MR GOTZ:** Brigadier Calitz, we were

17 dealing yesterday with Major General Mpembe's views on

18 your, should we say limitations or weaknesses in crowd

19 management situations, and Major General Mpembe has told –

20 **CHAIRPERSON:** I do not think "weakness" is

21 an appropriate word in this case. It is really an inability

22 to deal, or disadvantage is the right word, disadvantage to

23 deal with a particular situation.

24 **MR GOTZ:** I am happy to use the word

25 "disadvantage" -

1 **CHAIRPERSON:** But to call it a weakness  
2 implies something pejorative, which I don't think you mean,  
3 and if you do I will not allow you to do it anyway. So let's  
4 carry on.

5 **MR GOTZ:** Major General Mpembe has told  
6 the Commission that an understanding of the relevant  
7 language is one of the major factors affecting the success  
8 or failure of a crowd management intervention. I take it  
9 you would agree with Major General Mpembe on that?

10 **BRIGADIER CALITZ:** I did not hear the first part.  
11 You said communications?

12 **MR GOTZ:** Yes, an understanding of the  
13 relevant language, so what I am saying is that the language  
14 of the strikers and an understanding by SAPS, or the  
15 intervener of that striker, or those strikers' language, is  
16 an important factor in the success or failure of the crowd  
17 management intervention.

18 **BRIGADIER CALITZ:** I agree with you.

19 **MR GOTZ:** And I take it you would also  
20 agree that an understanding of the culture or belief  
21 systems of the strikers in the crowd may also be an  
22 important factor affecting the success or favour of the  
23 intervention, correct?

24 **BRIGADIER CALITZ:** This is correct.

25 **MR GOTZ:** The factors that Major General

1 Mpembe mentions, an understanding of language and an  
2 appreciation of culture, were obviously not only important  
3 on the 13<sup>th</sup>, but also in the days following the 14<sup>th</sup>, the  
4 15<sup>th</sup>, and indeed the 16<sup>th</sup>, correct?

5 **BRIGADIER CALITZ:** That is correct.

6 **MR GOTZ:** You have given your evidence  
7 about your knowledge of the language and understanding,  
8 your understanding of the language and culture of the  
9 strikers. Colonel McIntosh was in the same position as you  
10 were, correct?

11 **BRIGADIER CALITZ:** Yes, I do not know if  
12 Colonel McIntosh understands Xhosa, or Fanagolo, so I  
13 cannot tell you, but if he does not understand it,  
14 He would have been in the same position, that is correct.

15 **MR GOTZ:** You have in fact already  
16 testified that he did not understand Fanagolo. Did he have  
17 any understanding of the cultural belief systems of the  
18 strikers?

19 **BRIGADIER CALITZ:** I think my testimony was  
20 that I am not sure if he understands it. I don't think I  
21 said that he definitely does not understand it, as I do not know  
22 him that well; re the cultural differences I  
23 cannot tell. About his background, where he worked, I  
24 will not be able to help you with that. I believe Colonel Macintosh  
25 can give you more clarity on that.

1 **CHAIRPERSON:** I do not know if it would be  
2 necessary for him to give oral evidence, but if you require  
3 this information from him I suggest you send a  
4 communication to the evidence leaders indicating what extra  
5 information you would like him to be requested to give, and  
6 then a supplementary affidavit can be prepared containing  
7 that information.

8 **MR GOTZ:** Let's proceed on the assumption  
9 that he did not have an understanding of the language, of  
10 the relevant language of the strikers, and he also didn't  
11 have an understanding of the culture of the strikers. Can  
12 we proceed on that assumption?

13 **BRIGADIER CALITZ:** "Assumption," as you say  
14 we take it as if it was that way on the day and I will  
15 answer accordingly. It –

16 **CHAIRPERSON:** Why must we proceed on what  
17 may be an incorrect assumption? It may be a total waste of  
18 time to ask a whole series of questions based on something  
19 which may not be correct. Time is precious in this  
20 Commission. I am not prepared to allow you to proceed on an  
21 assumption which may well be incorrect.

22 **MR GOTZ:** Chairperson, we have asked  
23 Brigadier Calitz whether he had any indication whether, or  
24 had any knowledge of whether or not McIntosh –

25 **CHAIRPERSON:** And he doesn't know the

1 answer, so therefore the assumption you ask us to make may  
2 not be correct. I mean if necessary, I don't know how it  
3 could be done, but if he's contactable maybe someone from  
4 the police legal team could contact him quickly and ask for  
5 the information, and if they come back and report that the  
6 assumption you want us to make is correct you can carry on,  
7 on that basis. But absent information of that kind I think  
8 it is a waste of time and I am not prepared to allow further  
9 time to be wasted.

10 **MR GOTZ:** Brigadier, the fact that you  
11 did not understand the language of the strikers placed you  
12 at a disadvantage. One of the disadvantages was manifest,  
13 or that disadvantage was manifested, as it were, in the  
14 fact that you had to use an interpreter, correct?

15 **BRIGADIER CALITZ:** We had the services of  
16 an interpreter, yes.

17 **CHAIRPERSON:** A Tolk.

18 **BRIGADIER CALITZ:** A Tolk. Thank you  
19 Chairperson.

20 **MR GOTZ:** You had need of the  
21 interpreter. Did you get any sense that Colonel McIntosh  
22 had the need for an interpreter?

23 **CHAIRPERSON:** Mr Gotz, you are really  
24 wasting time now. I cannot see why Mr Pretorius cannot go  
25 and telephone Colonel McIntosh quickly. I have an idea

1 that I read somewhere that Colonel McIntosh, or Lieutenant  
2 Colonel McIntosh did have some understanding of Fanagolo,  
3 and Mr Budlender nods his head, so I think that is probably  
4 right. But anyway, be that as it may, Mr Pretorius has  
5 been very helpful up to now. I am sure he can go away,  
6 telephone Colonel McIntosh, find out and come back and  
7 report to us, and depending what he says you can proceed  
8 with this line, but you are wasting time now. Let us carry  
9 on with something else.

10 **MR GOTZ:** Brigadier, it placed you at a  
11 disadvantage in the negotiations, correct?

12 **BRIGADIER CALITZ:** Where I am concerned,  
13 I relied on the Tolk to provide me with relevant  
14 information throughout.

15 **MR GOTZ:** As far as you are, or from your  
16 position you do not know whether the interpreter was  
17 correctly conveying what you had said to the strikers, or  
18 Colonel McIntosh had said to the strikers, correct?

19 **BRIGADIER CALITZ:** Yes-no, as I said, a person  
20 totally relied on – if he used the precise words  
21 I cannot tell you, no.

22 **MR GOTZ:** And similarly, you do not know  
23 whether the interpreter correctly translated what the  
24 strikers had told Colonel McIntosh or yourself, correct?

25 **BRIGADIER CALITZ:** The “flipside” of the

1 "coin," that is so -

2 **CHAIRPERSON:** Of course, there were other

3 people in the Nyala and there was a question last week

4 about some of them were African police officers -

5 **BRIGADIER CALITZ:** This is correct,

6 Chairman.

7 **CHAIRPERSON:** And we do not know whether

8 they could understand what was being said in Fanagolo,

9 which I gather is a mixture of Nguni languages and Sotho

10 language. We do not know what they could understand or not

11 understanding, but did anybody with you in the Nyala say to

12 you, 'Hang on a second, the interpreter is getting it

13 wrong; he's interpreting wrongly'? It does not necessarily

14 mean he was interpreting rightly, but it is a factor to bear

15 in mind. Did anybody say to you, 'No, no, that is not

16 right'?

17 **BRIGADIER CALITZ:** No, Mr

18 Chairperson, most of the communication via the Tolk

19 was through Colonel McIntosh or Warrant Officer Nong, who in

20 turn conveyed it to me.

21 **MR GOTZ:** Perhaps we can move on to a

22 different subject, and that is -

23 **CHAIRPERSON:** Very good idea.

24 **MR GOTZ:** Can I ask you to look at

25 paragraph 32 to 34 of your statement, Brigadier, which is

1 JJJ107 and it is on page 7 of that exhibit.

2 **BRIGADIER CALITZ:** You want me to see

3 paragraph what? 33 to?

4 **MR GOTZ:** Can I ask you to just cast your

5 eye over those paragraphs –

6 **BRIGADIER CALITZ:** 33 to?

7 **MR GOTZ:** 32 to 34.

8 **BRIGADIER CALITZ:** I shall read through it

9 quickly. That is correct, I have read those three

10 paragraphs through again.

11 **MR GOTZ:** Tell me, Brigadier, when you

12 returned to the base, as you put it, I assume what you mean

13 is that that was, you returned to the JOC?

14 **BRIGADIER CALITZ:** Mr Chairman, I apologize,

15 if I may ask, if maybe you would just a bit – I find it difficult

16 to hear you. Maybe my microphone, I am sorry else, I will

17 have to ask you to repeat all the time. I do not hear so well.

18 **MR GOTZ:** When you say in paragraph 33

19 that you returned to the base, I assume what you mean by

20 that is you returned to the JOC?

21 **BRIGADIER CALITZ:** This is correct, yes.

22 **MR GOTZ:** Did you return to the JOC

23 immediately after the helicopter landed?

24 **BRIGADIER CALITZ:** No, from the scene where

25 General Mpembe-them were, we returned and circled,

1 first over the big hill where the other people  
2 were sitting, over that area, partially over Nkaneng,  
3 and then we landed. So, it was not a  
4 direct flight, no.

5 **MR GOTZ:** Brigadier, please listen to my  
6 questions. I said after the helicopter landed, did you  
7 return immediately to the JOC? So what happened before the  
8 helicopter landed is completely irrelevant –

9 **BRIGADIER CALITZ:** Oh, sorry, I thought  
10 you say from after the scene. Yes, that is why I am saying I  
11 cannot hear you properly. You mean from when we landed to  
12 the JOC?

13 **MR GOTZ:** Yes.

14 **BRIGADIER CALITZ:** Yes, we landed on the big clean  
15 open veld where the helicopters stood.

16 I walked – I must tell you honestly I do not remember clearly  
17 if I walked directly to JOC or if I first made a turn  
18 by the CJOC. I know there was a meeting to the right side

19 of the JOC – not a

20 meeting per se, but rather a feedback from where the people were  
21 busy with a meeting, and I think that I is where I got into a discussion  
22 with Brigadier Van Zyl. Maybe we were on the outside  
23 for a while before we went back inside, if  
24 I remember correctly.

25 **[09:36] MR GOTZ:** What you then say in paragraph

1 34 is that, "Whilst at the JOC and approximately 30 minutes  
2 after my arrival, I was informed that the SAPS members who  
3 had accompanied Major-General Mpembe, effectively had been  
4 attacked, but what you don't mention in your statement, nor  
5 in your evidence in chief is that you received a call from  
6 Major-General Mpembe while he was still talking to the  
7 strikers at the railway line. Do you recall that?

8 **BRIGADIER CALITZ:** No, I cannot say now that I can specifically  
9 recall receiving that call no.

10 **MR GOTZ:** I would like to take you to the  
11 evidence that Major-General Mpembe gave on this score, can  
12 we have a look at the transcript, day 103 and it is page  
13 11126?

14 **CHAIRPERSON:** While it is being found I  
15 see Mr Pretorius has returned, are you able to give us any  
16 information, Mr Semanya, on the topic that was under  
17 discussion before Mr Pretorius left.

18 **MR SEMENYA SC:** Indeed, Chairperson, Colonel  
19 McIntosh does not speak Fanagolo but he says he has a fair  
20 understanding of the culture having worked in various  
21 townships over his career life.

22 **CHAIRPERSON:** Thank you. When you  
23 finished this point you can go back to the cross-  
24 examination that you wanted to start on, because I would not  
25 allow it on, because I wasn't satisfied that the assumption

1 was correct and it now appears it is correct and you will be  
2 able to deal with it, but perhaps you want to finish off  
3 this point first?

4 **MR GOTZ:** It is day 103, 11126, if you  
5 can find that and it is commencing at line 23.

6 **CHAIRPERSON:** Sorry, what is the exact  
7 line on the page that you are referring to?

8 **MR GOTZ:** Well, I would like if the  
9 person controlling these matters can take us to 11126?

10 **CHAIRPERSON:** Okay, now we have 11126 and  
11 what line on 11126 do you want?

12 **MR GOTZ:** I am sorry, Chairperson, I seem to –

13 **CHAIRPERSON:** What line do you want?

14 **MR GOTZ:** Sorry, Chairperson, I seem to have  
15 the wrong reference, day 103. Sorry, Chairperson, maybe, –  
16 perhaps I can come back to this, –

17 **CHAIRPERSON:** Yes, obviously when you've  
18 got the reference.

19 **MR GOTZ:** - to this reference. Can we  
20 then look at 16035?

21 **CHAIRPERSON:** Which day is that?

22 **MR GOTZ:** It is day 145.

23 **BRIGADIER CALITZ:** Page?

24 **MR GOTZ:** Chairperson, I see –

25 **CHAIRPERSON:** Would you give him the page

1 -

2 **MR GOTZ:** - it is 16035.

3 **CHAIRPERSON:** 16035. Yes, what line on

4 16035 do you want to refer to?

5 **MR GOTZ:** Yes, it may actually be useful

6 if we go to the end of 16034 so that we can get the content

7 where the line that I want to refer to, the context, I beg

8 your pardon, where Mr Ntsebeza says to Major-General

9 Mpmembe, "No, do you speak to anyone in the JOC and who, if

10 you did," and then Major-General Mpmembe says, "I spoke to

11 Brigadier Calitz and I spoke to General Mbombo and later I

12 spoke to the commanders." The chairperson then comes in

13 and says, "I think the question relates to the telephone

14 conversation that you had, so you had one telephone

15 conversation with General Mbombo and then another one with

16 Brigadier Calitz, is that right? Correct. And was

17 Brigadier Calitz at the JOC at that stage?" The evidence

18 that Major-General Mpmembe gave, Brigadier, was that whilst

19 he was interacting with the strikers at the railway line

20 and having listened to them for some time, he then decided

21 that he would telephone Major-General Mbombo and in

22 addition he would telephone you and he said, this is not

23 the only reference, there is another which we're trying to

24 find, where he says expressly that he spoke to you about

25 these matters.

1 **CHAIRPERSON:** Perhaps we could see the  
2 rest of this page which is on the screen at the moment,  
3 that may give us some information on this point, I do not  
4 know.

5 **MR GOTZ:** Yes.

6 **CHAIRPERSON:** Can we see beyond? Yes, he  
7 says when he spoke to you he gave you the same information  
8 which he had given Major-General Mbombo and then perhaps we  
9 could continue with the evidence after that? No, it  
10 appears from the evidence thereafter he doesn't give the  
11 content of the conversation. Well, unless after line 12 on  
12 page 16037 there is something? No, it is not. Yes, Mr  
13 Ntsebeza suggests to him that he wanted to put to those in  
14 the JOC who knew what his mission was, that there was a  
15 need to change deck, as Mr Ntsebeza put it, not to disarm  
16 the people there at the railway line and Major-General  
17 Mpembe says, no, and then he does not agree with what Mr  
18 Ntsebeza put to him. I do not know what he says thereafter,  
19 that is part of the record we cannot see at the moment. Do  
20 you have a clear passage where Major-General Mpembe shares  
21 to us, because I cannot remember I am afraid, what he said to  
22 Brigadier Calitz in the course of that telephone  
23 conversation?

24 **MR GOTZ:** Chairperson, this is why I am asking  
25 the brigadier the question because it isn't, I am afraid,

1 clear what Major-General Mpembe told Brigadier Calitz.  
2 What we do have and I am afraid, Chairperson, I do not understand,  
3 we have then checked this reference that I had, to transcript  
4 11126 and our version of the transcript has the passage  
5 that I was referring to, I am not sure whether we cannot look  
6 at that again just to make sure that we have the right  
7 thing.

8 **CHAIRPERSON:** But what does that passage  
9 say, - well, maybe at the same time you can tell us what  
10 your version of the transcript says.

11 **MR GOTZ:** Yes.

12 **CHAIRPERSON:** Bring it down to us and

13 then -

14 **MR GOTZ:** So why -

15 **BRIGADIER CALITZ:** Mr Chairperson, -

16 **CHAIRPERSON:** It is a bit unscientific  
17 way of doing it but never mind, put it to the witness and  
18 let us see how he responds. We may be on a ghost trail but  
19 on the other hand this may be an important point, we do not  
20 know if we have heard the brigadier's answers.

21 **MR GOTZ:** The brigadier wants to say  
22 something?

23 **BRIGADIER CALITZ:** No, no, I thought you  
24 just want to go back to your, to the other slide, maybe if  
25 we can just finish what was said on this one and then move

1 to the other one, or else we have to return to this

2 one, Mr Chairman.

3 **MR GOTZ:** Yes.

4 **BRIGADIER CALITZ:** Here he referred to

5 160, ah 11126, I think it is just on the previous

6 line where General Mpenbe said that he communicated

7 with me, I think it is on the other side of the page.

8 where we had first begun.

9 **MR GOTZ:** Brigadier, can we get back to

10 this, sorry, I want to try and cut this as short as

11 possible.

12 **BRIGADIER CALITZ:** I want only, -

13 **MR GOTZ:** Look at -

14 **BRIGADIER CALITZ:** I only wanted to point

15 something out to you there.

16 **MR GOTZ:** I promise you I will return to

17 that, Brigadier.

18 **CHAIRPERSON:** The passage being referred

19 to on 11126, he is being asked about the fact that

20 according to the video he is talking to someone on the

21 telephone, because that is what's put, you're on the

22 telephone, so then he is asked who he was on the telephone

23 to and so on.

24 **BRIGADIER CALITZ:** That is why I asked if

25 we can just look at page 23 again.

1 **MR GOTZ:** Yes, indeed, so if we can go  
2 down to line 23. Mr Ngalwana says, "Can you stop there,"  
3 and what he is referring to there, Brigadier, is the video  
4 that is playing. "Is that you seemingly on the telephone,  
5 General," and the general responds, "Correct, Chairperson,"  
6 and then if we can go to the next page, 11127, Mr Ngalwana  
7 asks, "With whom were you communicating there," and Major-  
8 General Mpembe says, "I was communicating with the JOC and  
9 also informed the Provincial Commissioner about the  
10 situation that I encountered." Now the importance of the  
11 second reference that I gave you is that he tells us that  
12 the person that he was communicating with on the JOC was  
13 you, Brigadier, and then Mr –

14 **CHAIRPERSON:** But I understood the  
15 witness to say he did not dispute that, but he could not  
16 remember it and then we see further on that General Mpembe  
17 says, "I informed the JOC, that means I must informed  
18 Brigadier Calitz, that the strikers seem not to cooperate  
19 the handover of their weapons, precisely the reason I have  
20 given to the Commission. So I have taken the decision that  
21 we will escort them, the same I did communicate to the  
22 Provincial Commissioner and she said to me, I am the best  
23 placed person on the ground to take decisions, and she  
24 agreed with me." Now that is his discussion with General  
25 Mbombo but he had earlier said in a passage that we saw a

1 few minutes ago, that he conveyed the same information to  
2 you as he had conveyed it to General Mbombo. Now he told  
3 us that he could not remember it but now you have seen what he  
4 said. Does it perhaps jog your memory and help you to give  
5 us further evidence on this point?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 Yes, this is correct. On this part he says only to the  
8 JOC and then to Mbombo; where my name was mentioned  
9 was on page 16035 and I think this is the clarity  
10 the Advocate wants.

11 **MR GOTZ:** Indeed, Brigadier.

12 **BRIGADIER CALITZ:** So, if we go to

13 that line –

14 **MR GOTZ:** Just so that we –

15 **BRIGADIER CALITZ:** - then I can show you  
16 in which context General Mbombo meant it and  
17 maybe it will become clearer.

18 **CHAIRPERSON:** Never mind the meaning that  
19 he had, the context and so forth in which he said these  
20 things. The real question is, what is suggested is, he  
21 said he spoke to you and what we want to know is whether  
22 you now can remember something you could not remember  
23 before, but these things happen when one's memory get  
24 jogged by things. Can you now remember that when you had  
25 got back to the JOC you received a telephone call from

1 General Mpembe who said something to you, can you-

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 no, not when I was back at the JOC, no, but that is why I

4 I want to show when I did talk to him, which will

5 clearly show when we go back to line 14.

6 **CHAIRPERSON:** Well, I think you better

7 show us that and tell us about it.

8 **MR GOTZ:** Brigadier, before we move off

9 this page I just wanted you to focus –

10 **CHAIRPERSON:** But, Mr Gotz, I am not

11 stopping you from taking him further on the page, but let

12 him finish off the point he is trying to make now so that

13 we can understand.

14 **BRIGADIER CALITZ:** I think it will be

15 clarified for you –

16 **CHAIRPERSON:** Alright –

17 **BRIGADIER CALITZ:** - if I can just -

18 **CHAIRPERSON:** Well, it may or may not be

19 clear to us, but if you try to make it clear that is –

20 **BRIGADIER CALITZ:** Oh, yes, yes, 16035

21 which you refer to on day 145, line 14 I think we

22 read, there you will see that he said – if we can just go

23 a bit higher, no, on, the other side, up, stop there; General

24 Mpembe, "I spoke to Brigadier Calitz and I spoke to General

25 Mbombo and later I spoke to the commanders that were around

1 me. I think the question relates to the telephone  
2 conversation you had, so you had one telephone conversation  
3 with General Mbombo and the other one with Brigadier  
4 Calitz, is that right?" This is where the General said,  
5 yes' and where he used my name, "And was Brigadier  
6 Calitz at the JOC at that stage? I indicated before he was  
7 at the JOC, he was, he did guide me."  
8 If you can just, at that stage see, and then read  
9 on, the Chairperson said, "Yes," and then General  
10 Mpembe; "And when I arrived he guided me because there was  
11 no chopper which was refuelling , and when the chopper  
12 arrived with Colonel Vermaak, then he went back to the JOC,  
13 but I refer specifically to him because he was at the JOC,  
14 yes." So, I think the time he spoke with me here was when  
15 he referred to the time I had briefed him.  
16 **CHAIRPERSON:** It is not easy to do it,  
17 read on, "But I refer specifically to him because he was at  
18 the JOC, yes. Now I say, yes, and did you say to him what  
19 you also said to General Mbombo?" No, I don't we, - we  
20 know what he said to General Mbombo, he reported that, they  
21 did not want to hand over their arms , and he was now going to  
22 agree to escort them back to the hill and so on. "Did  
23 you say to him what you also said to General Mbombo?" The  
24 answer, "The same information, Chairperson."  
25 **BRIGADIER CALITZ:** This is so -

1 **CHAIRPERSON:** So what he says, he spoke  
2 to you, and you were at the JOC, and he reported to you what  
3 he reported to General Mbombo, that there had been this  
4 discussion with the strikers and they refused to hand over  
5 their arms, weapons, but he had decided , a decision which  
6 was supported by the Provincial Commissioner,  
7 not to try and disarm them there , but to rather  
8 escort them back to the hill. That is what he says. Now  
9 the question is whether you can remember that?  
10 **BRIGADIER CALITZ:** Yes, no, not at all , Mr  
11 Chairperson, this is just what I wanted to point out,  
12 that the conversation was during the time shown  
13 and not when I was by the JOC, no.  
14 **CHAIRPERSON:** I am sorry, can we please  
15 just see what continuous, after line 24, which I have read? Mr  
16 Ntsebeza then says, "So if I understand you," that is the  
17 next page, we have got to go up, no, no, what we need is 36,  
18 Mr Ntsebeza says, "If I understand you, you say to these  
19 personalities in the JOC, look, the situation is such, now  
20 I have to change the deck a little bit. My mission here  
21 was to disarm these people here at this railway line.  
22 There has been an exchange of views between us and them,  
23 they are not handing their weapons. The suggestion they  
24 make about me, and us, accompanying them to the mountain, I  
25 think that is an opportunity that we must give, an

1 opportunity, a chance.”

2 That is the end of Mr Ntsebeza’s purported

3 quotation from what General Mpenbe said and then he

4 continues, “More or less is that how the communication went

5 between you and them?” And Major-General Mpenbe says, “It

6 included that they should disarm, but in case where they

7 do not voluntarily disarm, that is the case, but the main

8 priority was that it could be important for me that they

9 should go there disarmed, and we can just escort them. The

10 reason why I wanted to escort them is with the allegations

11 that they put; that NUM or securities were shooting at them,

12 but the condition I put to them, that was very clear,

13 unequivocally unarmed.” That’s what the answer was, but

14 anyway, the point is if you can’t remember the conversation

15 then we are wasting our time, putting to you what General

16 Mpenbe said. Does it not jog your memory a bit?

17 **BRIGADIER CALITZ:** No, not at all Mr

18 Chairperson, no, I have no recollection of him calling me.

19 I believe the records will refer to this,

20 but in the context it was mentioned here, he might have spoken with JOC

21 or with the General, but to my knowledge he did not

22 mention this subject to me, no.

23 **MR GOTZ:** Brigadier, do you recall any

24 conversation that you had with Major-General Mpenbe in

25 which the reasons for his decision or the decision that was

1 taken on the 13<sup>th</sup> were discussed between you and him?

2 **BRIGADIER CALITZ:** Only after the time –

3 **CHAIRPERSON:** I am sorry to interrupt, Mr

4 Budlender, I know you have got details of certain cell phone

5 records, have you got, do they cover the 13<sup>th</sup>?, because, you

6 need, not now, but you can investigate and tell us, because

7 it may help Mr Gotz with this part of his cross-

8 examination. Sorry, I was interrupting you, Brigadier?

9 **BRIGADIER CALITZ:** No, Mr

10 Chairperson, indeed, I was going to ask the same thing, as I

11 cannot remember that at all. To answer the question was

12 that after that time we did discuss it, but I was not

13 aware of that, no.

14 **MR GOTZ:** I am sorry, Brigadier, I may not

15 have understood your answer in flurry of activity, did you

16 say you had discussed the matter with him, and when I refer

17 to the matter I am talking about –

18 **CHAIRPERSON:** No, I am sorry, he said he

19 could not remember a conversation at all, and when I tried

20 from various angles to see whether his memory have being

21 jogged by the passages in General Mpembe's evidence he said

22 he still could not remember.

23 **MR GOTZ:** No, with respect, Chairperson,

24 I am asking a different question. What I said was, post the

25 events of the 13th, the operation, did Brigadier Calitz have

1 any conversation with General Mpembe in which the reasons  
2 for General Mpembe's decision were discussed with General  
3 Mpembe?

4 **CHAIRPERSON:** I shall allow that question.

5 **BRIGADIER CALITZ:** This is what have answered Mr  
6 Chairperson, what I said that after that time we did  
7 discuss it and indeed also imparted that to the  
8 visiting Generals.

9 **MR GOTZ:** Was that a private conversation  
10 between you and Mpembe?

11 **BRIGADIER CALITZ:** No, it was a discussion  
12 the feedback on what occurred that time , and in that  
13 meeting – if I can call it a meeting -  
14 we received feedback from the  
15 persons who were there.

16 **MR GOTZ:** During that feedback session  
17 Major-General Mpembe, I presume, would have explained his  
18 conduct on the 13th, correct?

19 **BRIGADIER CALITZ:** This is correct insofar  
20 as I remember what he said.

21 **MR GOTZ:** And you would have explained  
22 the reasons he took the decision that he did, correct?

23 **BRIGADIER CALITZ:** This is also correct, yes.

24 **MR GOTZ:** Did he tell the people around  
25 the gathering or at that gathering that he had taken a

1 decision which he described as one of situational  
2 appropriateness, he had listened to the strikers, he had  
3 assessed the situation and he had taken a decision to agree  
4 to their request that he escort them to the hill.

5 **BRIGADIER CALITZ:** I do not remember it in the exact words  
6 you are putting it here, but the broad  
7 understanding was that he would escort the persons  
8 to the hill.

9 **MR GOTZ:** And did he explain to you what  
10 went wrong?

11 **[09:56]** I think at that stage they said the persons wanted  
12 to break away, under correction, to the settlement  
13 and then, when the police wanted to stop them, violence  
14 broke out where they attacked the police, and several  
15 people were injured and killed on  
16 both sides.

17 **MR GOTZ:** Did Major General Mpembe tell  
18 the people gathered there why the strikers had told him  
19 they did not want to relinquish their weapons?

20 **BRIGADIER CALITZ:** No, I can't, I  
21 cannot remember the reasons for that, no.

22 **MR GOTZ:** Did he tell you that the  
23 strikers had asked him to permit them to keep their weapons  
24 until such time as they had reached the hill because they  
25 needed it for their protection?

1 **BRIGADIER CALITZ:** No, I cannot recall that anything was said  
2 about them keeping their weapons

3 for their self-defence, no.

4 **MR GOTZ:** Did he tell you that they

5 believed that two of their members had been shot dead in

6 the preceding days?

7 **BRIGADIER CALITZ:** No, I do not remember,

8 receiving that information.

9 **CHAIRPERSON:** I have difficulty in

10 understanding the value of this cross-examination. The

11 reason I say that is that the conversation between General

12 Mpembe and the strikers representatives, was videoed.

13 We have seen the video, we received the translation of what

14 was said, it was dealt with in Mr Ntsebeza's cross-

15 examination. I am not satisfied that any second hand

16 recital by General Mpembe if he could remember what was

17 said, and if this witness can accurately remember what

18 General Mpembe said, is going to take the matter any

19 further. We have first-hand evidence of what was said

20 which is on the video, and which has been translated for us

21 and which is set out in exhibits. So what's the point of

22 asking this witness about it?

23 **MR GOTZ:** Chairperson, the point and I

24 do not –

25 **CHAIRPERSON:** Alright, perhaps I should

1 give you an opportunity to answer the point I put to you.  
2 What, am I correct in thinking that you are simply asking  
3 questions to get a second hand recital of what we already  
4 have at first hand, if there is a further reason you have of  
5 asking these questions, and it is not covered by the material  
6 we already have, then obviously I shall allow you to ask the  
7 question. I was only concerned that we should be ploughing  
8 over ground at second hand which we, in respect of which we  
9 already have first-hand information. Am I not correct in  
10 that assumption?

11 **MR GOTZ:** Chairperson, with respect my next  
12 question, I think , will reveal the purpose of the cross-  
13 examination.

14 **CHAIRPERSON:** Ask, let us hear your next  
15 question.

16 **MR GOTZ:** Brigadier, do you not think as  
17 the operational commander in charge of the operation on the  
18 ground and indeed as the person centrally involved in the  
19 negotiations that that information ought to have been  
20 conveyed to you?

21 **BRIGADIER CALITZ:** Mr Chairperson, you  
22 must remember, you, you are confusing two issues here;  
23 the Provincial Commissioner at that stage had written in the incidents  
24 report book, where she indicated that she instructed  
25 General Mpembe to oversee, and for me to take over Operational.

1 The incident on the Monday was not planned for,  
2 it was spontaneous. So regarding the  
3 operational command and the planning and  
4 negotiations, where it all began, it actually started on the 14<sup>th</sup>.  
5 That day, I think Colonel Merafe would then assume the purpose  
6 of the Operational Command in his capacity of  
7 the Senior Public Order Policing  
8 on the ground. So I want to point out two  
9 distinctions to you.

10 **MR GOTZ:** Brigadier, I appreciate the  
11 distinction but what I am putting to you is a different  
12 question. I am saying that as the operational commander, but  
13 also the person centrally involved in the negotiations with  
14 the strikers, it was important for you to have an  
15 understanding of what had happened on the 13th and critical  
16 to that understanding, was the reasons that the strikers  
17 were carrying the weapons that they were, why they had  
18 asked the police to escort them and indeed the fact that  
19 they believed that two of their members had been shot dead.  
20 Do you not think that that was important information which  
21 should have been conveyed to you?

22 **BRIGADIER CALITZ:** Yes, you did ask me.

23 The question was if General Mpembe discussed it that  
24 evening, and I can assure you that I do remember him doing  
25 so at that stage. The next day, the 14th, when

1 information started coming in from Crime Intelligence and  
2 all the other places, we established a JOC, and that is when it was  
3 discussed and handed over to the  
4 negotiators and from where the planning started,  
5 you referred to now.

6. **MR GOTZ:** Well I am not sure that I  
7 completely understand that information, but let's, that  
8 answer. Brigadier, when you commenced the negotiations  
9 with the strikers the following day on the 14th were you  
10 aware of certain factors, for instance that they believed  
11 that two of their members had been shot dead, that they  
12 were carrying the weapons they had told Mpembe for their  
13 own protection. Was that information in your mind?

14 **BRIGADIER CALITZ:** Mr Chairperson,  
15 what we were aware of through information given.  
16 about the incidents that occurred before that time; on  
17 the Friday, the Saturday and the Sunday, and that was indeed  
18 shared with us in detail when we were drawing up  
19 the plans.

20 **CHAIRPERSON:** Is it correct that the  
21 strikers themselves when you and Lieutenant Colonel  
22 Macintosh were in conversation with them; did they at any  
23 point during those conversations repeat this allegation  
24 that two of their members had been killed by NUM members on  
25 the Saturday?

1 **BRIGADIER CALITZ:** Mr Chairperson, I  
2 cannot say precisely, I think I showed where they made contact  
3 with us at the beginning, and they had then stated that they did  
4 not want to talk with us,  
5 but with the mine about certain aspects as well as the attack  
6 on their members. I think I referred to –

7 **CHAIRPERSON:** What Mr Gotz, is asking,  
8 what I am interested in as well is more specific than that.  
9 We know that it is not true that two people were killed on  
10 the Saturday.

11 **BRIGADIER CALITZ:** This is correct.

12 **CHAIRPERSON:** That was a story that was  
13 spread around, it was repeated even in the book that was  
14 published after the commission was set up, but we know the  
15 allegation is not true. But there is some suggestion that  
16 it was believed at the time by the strikers. The question  
17 is whether that belief was communicated to you either by  
18 some information you got from some of your colleagues as to  
19 what happened on the 13<sup>th</sup> or whether they communicated it  
20 directly to you in the course of your interchanges or  
21 exchanges with them?

22 **BRIGADIER CALITZ:** Mr Chairman,  
23 thank you. I think the information we received during the  
24 JOCCOM meetings was indeed well shared. I cannot say I remember  
25 correctly if it came from either Crime Intelligence or the

1 Security Company. That such allegations were made is true ,and I had  
2 also, if I can refer under correction, mentioned this  
3 in the statement I made for the Cordon  
4 and Search which would have taken place.

5 and I also referred to the two people who allegedly died, when  
6 in actual fact it was not a true allegation.

7 So, yes, that information was  
8 shared with us.

9 **CHAIRPERSON:** Perhaps I can jog your  
10 memory on this, exhibit GGG13, it is the statement that you  
11 made which we, I think it is your first statement, the one  
12 you made on the 19th of August. In paragraph 7 you talk  
13 about the negotiations, and around the middle of the  
14 paragraph you say later, "the five came right up to the  
15 Nyala, one of them had a green blanket wrapped around him,  
16 climbed onto the bulbar of the Nyala vehicle and spoke to  
17 Lieutenant Colonel Macintosh. This person informed him  
18 that they want to speak to the mine management about their  
19 wages and the killing of their people and they don't want  
20 to talk to the SAPS. So what we can see from that, sorry.  
21 What we can see from that is that certainly the so-called  
22 killing, the alleged killing of their people was raised.  
23 Can you remember that?

24 **BRIGADIER CALITZ:** Mr Chairperson,  
25 if you recall what I just testified; I said

1 that I wanted to investigate it. This is what I referred to;  
2 when they said they did not want to negotiate with the  
3 police, but with Mine Management about their arguments re  
4 their wages and also the threats and the killings of their people.

5 So, this is what I referred to -

6 what I - -

7 **CHAIRPERSON:** Yes, but did they give any

8 more detail about the killing of

9 their people? In other words, the allegation was- we have

10 heard this a number of times in the course of the evidence

11 before this commission- the allegation that they made was

12 that on that occasion on the Saturday morning, when a number

13 of strikers, about 3 000, marched towards the NUM office and

14 shots were fired by members of NUM. We know two people

15 were injured. But the allegation was that two people were

16 killed by NUM members on that occasion. Was that

17 allegation ever conveyed to you as far as you can recall?

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 not in detail from their side. But indeed from

20 Crime Intelligence. We learned through them that five

21 wounded persons were found and three wounded were found

22 during the course of the march. This was Saturday, 11<sup>th</sup>. This is

23 the intelligence we received. But from Mr

24 Noki himself, only that statement.

25 **MR GOTZ:** You see, Brigadier, the concern

1 that I have is that this seems to have been a repeated  
2 statement made by the strikers. It was made to Mpembe on  
3 the 13th namely that, Major General Mpembe had been told  
4 that they were carrying their weapons because they needed  
5 them for their protection, believing that two of their  
6 members had been killed. We see from this statement,  
7 paragraph 7, that they conveyed the same information to you.  
8 It was a repeated statement and it was a concern that was  
9 repeatedly put to SAPS.

10 **BRIGADIER CALITZ:** Yes, this is why I said the detailed  
11 information we did not receive;  
12 and there was no confirmation about the  
13 two people who had allegedly been killed.

14 **MR GOTZ:** But what we –

15 **CHAIRPERSON:** We now know the two people  
16 were not killed. But the question is whether it was  
17 believed by the strikers that they had been. That's the  
18 point Mr Gotz is busy with, and flowing from that was the  
19 further allegation by the strikers that the reason that  
20 they were hanging onto their weapons was to defend  
21 themselves against NUM. The question is whether that  
22 information was conveyed to you, whether you were aware of  
23 it at any stage?

24 **BRIGADIER CALITZ:** No. Only the first part about the persons  
25 they alleged were dead.

1 But not about the details re the reasons they wanted to keep their  
2 weapons – to defend themselves against NUM. No, those reasons were  
3 not conveyed to us. We had, repeatedly, told them this was an illegal  
4 gathering and they had to lay down their weapons.

5. So, there was no further  
6 communications regarding this.

7 **MR GOTZ:** You, despite the fact that you  
8 know that their members had not been killed, you do not  
9 convey to them your knowledge that they are in fact in  
10 hospital, correct?

11 **CHAIRPERSON:** I don't think that is a  
12 fair question. The witness hasn't told us when he  
13 discovered, my recollection is that we only ascertained in  
14 this commission after it had begun that that allegation of  
15 two people had been killed was unfounded. It was for a  
16 long time believed, I think, by the police,  
17 according to the evidence that there may be some substance  
18 in it, but attempts were being made to find out

19 who the two people were. So the question presupposes that  
20 the witness knew at the time he spoke to the strikers that  
21 the information is incorrect, and that assumption on which  
22 the question is founded does not appear to be correct.

23 Perhaps you should ask him whether it is correct first,  
24 before asking questions based on an assumption which has  
25 not yet been established.

1 **MR GOTZ:** Brigadier, I had understood  
2 that you had crafted an  
3 email, which you refer to in your statement, and I am trying  
4 to find when you had indicated that the two people had  
5 not in fact been killed, but had been sent to hospital and  
6 you name the hospitals. If you will bear with me, I can find  
7 it in your statement. But I had understood that you knew  
8 that the two people had been injured but not killed.

9 **CHAIRPERSON:** Well let's ask him about  
10 that. Did you know that no one was killed on the Saturday  
11 morning, that two strikers were injured and were taken to  
12 hospital, do you know that?

13 **BRIGADIER CALITZ:** Mr Chairperson,  
14 no, we did not know about that statement,  
15 and only later learned that the two people did not actually die.  
16 The E-mail which the  
17 Advocate refers to was not grafted by me.

18 If you will just look at this evidence submitted by me;  
19 this is the e-mail I received from Captain Govender,  
20 the Crime Intelligence Officer at the Marikana Police Station.  
21 And this is the first e-mail communication that I had received  
22 from the regarding the situation there, and the  
23 reason why I included this E-mail, is that this is the exact  
24 words and descriptive information upon which we  
25 send the request to NATJOC.

1 I received this E-mail, and about 8 minutes later forwarded  
2 the same E-mail to NATJOC. The purpose  
3 of this e-mail was that they could see what the situation was at that stage,  
4 the allegation that were made and also the seriousness  
5 of the situation, and from that viewpoint to send us  
6 extra personnel. So, this was the purpose of the e-mail  
7 you had referred to.

8 **MR GOTZ:** Yes, indeed, Brigadier. You  
9 refer to this email in paragraph 27 of your statement,  
10 exhibit JJJ107 and that commences on page 5 and you'll see  
11 that in paragraph 2 you specifically refer to the incident,  
12 or rather, the email specifically refers to the incident.  
13 It records that both were shot in the back near the spinal  
14 area, the victims were taken to Andrew Saffy Hospital for  
15 medical attention.

16 **BRIGADIER CALITZ:** This is the e-mail I refer to. As you will see,  
17 it was printed in Italics, and included in my statement,  
18 given as an exhibit – I do not know  
19 the exhibit no.

20 This was forwarded and should you follow  
21 my precise words to the NATJOC, referring to this e-mail,  
22 you will see that I requested aid in terms of more  
23 manpower.

24 **MR GOTZ:** So you did know that they had  
25 not been killed, you received information via email before

1 the 14<sup>th</sup>, correct?

2 **BRIGADIER CALITZ:** No, it was not confirmed,

3 remember it was alleged, and these words were

4 written by the Captain – Officer on the ground

5 So, it can be referred to other persons

6 who were also killed. So, at

7 that stage the detectives tried to follow it up,

8 but we could not get confirmation regarding the

9 persons who allegedly had died.

10 **MR GOTZ:** No, Brigadier, these are the

11 two victims that the strikers believed had been shot and

12 killed. Were you not aware of this?

13 **BRIGADIER CALITZ:** Mr Chairperson, I

14 do not understand you. You asked me if they had let me know,

15 and he referred to the e-mail and I told you I understood the

16 e-mail and because I did, I

17 Forwarded it.

18 **MR GOTZ:** But you were in possession of

19 information which at the very least pointed strongly to the

20 fact that they had not been killed.

21 **CHAIRPERSON:** I understand him to say

22 that he did not know it was the same people. He said there

23 was information two people had been injured that were in

24 hospital, there was information two people

25 were dead. He thought they were two other people but he

1 he could not obtain  
2 confirmation of the fact that these, the same two people,  
3 had been killed. That is my understanding of his  
4 evidence. You're suggesting that he knew that the two  
5 people who were allegedly killed were the same as the two  
6 people who were actually injured, that is the basis on which  
7 the question is asked, and I understood him to say precisely  
8 the opposite, that he thought that there were two other  
9 people who had been killed, they could never get  
10 confirmation about this. Am I summarising your evidence  
11 correctly or have I got it wrong?

12 **BRIGADIER CALITZ:** You have it right,  
13 Mr Chairperson. When you look, you will see on  
14 the Friday, two people were injured  
15 during protests by rival unions. On the Saturday, five  
16 people were wounded, and later yet again, another three people injured.  
17 So, we received information of several people injured during this time,  
18 and reports to the police indicated that two  
19 of these people had died. So, one could never say that the  
20 people who had died are the ones specifically referred to.  
21 So, I agree with you Mr Chairman.

22 **COMMISSIONER TOKOTA:** Sorry, Brigadier,  
23 let me just find out, if you had, let's assume that you had  
24 known that people had been killed on that Saturday, would it  
25 have made any difference as to whether the carrying of

1 pangas and spears there was justified in the circumstances?

2 **[10:15] BRIGADIER CALITZ:** Commissioner, no,

3 definitely not. I refer to the GGG, as did the Chairman, in my

4 consolidated statement, paragraph – paragraph 48,

5 I stated that;

6 “Negotiations informed the five men as well as the

7 strikers”, this is after they informed us about the

8 persons who had died ; “that the gathering is illegal and

9 the carrying of the weapons is illegal, and that SAPS does

10 not want any confrontation with them but wanted to resolve

11 this peacefully.” So, the carrying of pangas and spears would have

12 made no difference. It would still be an illegal

13 gathering where no weapons would be allowed.

14 So this would be then exactly the warnings

15 Commissioner, which we would

16 convey to them..

17 **MR GOTZ:** Major General Mpembe considered

18 it important to find out why the strikers were carrying

19 pangas and other weapons, correct?

20 **BRIGADIER CALITZ:** I think this is what I saw on the

21 video afterwards.

22 **MR GOTZ:** And once he had been informed

23 about that he took a decision based on that knowledge.

24 **BRIGADIER CALITZ:** The decision you refer to,

25 was to escort them to the kopi,

1 which was for him a safer option at that stage. I  
2 do not know if there were enough manpower at that stage to  
3 disarm them right there were they were. And I think there was  
4 a difference of opinions –

5 **CHAIRPERSON:** There were 70 people under  
6 the command of Major General Mpembe. There were about 200  
7 people who were strikers. So that is one aspect of the  
8 matter. The other one was if they could have, if an  
9 attempt had been made to disarm them, even if there had  
10 been 200 policemen or 300 policemen, the other problem was  
11 whether it could have occurred in circumstances where there  
12 would have been no bloodshed, and Major General Mpembe told  
13 us – I don't know if he told you – that he was afraid that  
14 if he tried to disarm them there at the railway line, there  
15 would have been what he called another Tatane incident and  
16 there would have been, at least one person and probably  
17 more could have been killed, and that is why he said – I  
18 do not know whether he told you that, but he told us that –  
19 that he applied the doctrine of situational appropriateness  
20 which is set out in the policy document on Public Order  
21 Policing. That's what he told us, but I don't know if he  
22 told you that.

23 **BRIGADIER CALITZ:** Mr Chairperson, this is what I also wanted  
24 to say – as I believe from his statement there were other  
25 considerations regarding the railway line -

1 also the train in use, and the times the train will be used,

2 and he was not sure. If I can –

3 **CHAIRPERSON:** Yes, there were other

4 subsidiary reasons, but I –

5 **BRIGADIER CALITZ:** - if I remember

6 correctly.

7 **CHAIRPERSON:** I would have thought the

8 Tatane one was the best. But can I ask you this before Mr

9 Gotz continues? If you had known that this reference to

10 two people who'd been killed, if a number was given or

11 simply people had been killed, was actually based on a

12 misunderstanding and was a reference to the two people

13 who'd been shot but not killed by NUM members on the

14 Saturday, would you have conveyed that to the strikers and

15 said, 'No, no, none of your people were killed. They are

16 lying in hospital.' Would you have conveyed that to them

17 if you had known that they were talking about the same

18 people?

19 **BRIGADIER CALITZ:** Most assuredly, yes,

20 Chairperson, as it would have served the purpose of

21 having a position of trust while negotiating between two groups.

22 Yes, it would have been conveyed to them/

23 **MR GOTZ:** My final question on this line,

24 Brigadier, when you commenced negotiations with the

25 strikers on the 14<sup>th</sup>, did you consider it important to find

1 out the reason why they were carrying the weapons, or was

2 it irrelevant to you?

3 **BRIGADIER CALITZ:** No, it was not irrelevant,

4 I think the negotiations continued throughout the entire day.

5 I did not record second by second what was said during

6 the negotiations, but

7 it was important that Colonel McIntosh

8 negotiated with them. They said they had the weapons and

9 we told them that it was illegal,; that it was an illegal

10, gathering and therefore so were the weapons. At no time and

11 under no circumstances were I told that they carried the

12 weapons for self-defence against NUM .

13 I did not have that information.

14 **CHAIRPERSON:** If they had told you that

15 they had the weapons in their possession to protect

16 themselves against NUM, would you have offered them police

17 protection against NUM?

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 if I should have received this information, and in hindsight,

20 and had to make the call, I would do it exactly as I did;

21 I would have told them the police were there to protect them,

22 as well as the NUM people. There would have been negotiations

23 anyway. I would have given it to JOC, to handle the situation and

24 to bring the elements between NUM en AMCU together to

25 sort out the allegations, and would definitely had assured them.

1 Somewhere in the paragraph you will see that we told  
2 them we wanted to resolve this thing peacefully  
3 and that we wanted no violence; the police is not there  
4 to instigate any confrontation. So,  
5 with our presence there and certainly since the 14<sup>th</sup>, you  
6 can see that the incidents were markedly reduced. There  
7 were police protection 24 hours as well as police patrolling  
8 through the night.

9 **CHAIRPERSON:** It sounds from what you say  
10 as if you assumed that, when you were speaking to the  
11 strikers' representatives, you were actually speaking to  
12 AMCU members as such, you talked about inter-union rivalry  
13 and inter-union violence and talked about AMCU. Did you  
14 think that these people who you were talking to were all  
15 AMCU members and that this was in effect an AMCU strike?

16 **BRIGADIER CALITZ:** Mr Chairperson. I  
17 don't say they were all AMCU members, but with information  
18 we received from Criminal Intelligence, it seemed  
19 that the majority of the people were AMCU members.

20 **CHAIRPERSON:** They may have been AMCU  
21 members coincidentally. The question was whether it was an  
22 AMCU strike which, or was the strike by rock drill  
23 operators, some of whom were members of AMCU? There's a  
24 distinction between the two, is not there?

25 **BRIGADIER CALITZ:** Definitely,

1 Mr Chairperson.

2 **MR GOTZ:** Brigadier Calitz –

3 **CHAIRPERSON:** Sorry, Mr Gotz, before you

4 carry on, may I ask you, in order to understand the

5 relevance of some of these questions you ask, is it your

6 case that if the police had told them that these people

7 hadn't died, that they would then have handed over their

8 arms and they would not have considered it necessary to keep

9 them to protect, allegedly to protect themselves?

10 **MR GOTZ:** Chairperson, our case is, we put it

11 no higher than it would have made a difference in the

12 negotiations because what we do see, Chairperson, and I am afraid

13 I am sharing evidence as it were, what we do see even on the

14 16<sup>th</sup>, is the strikers making reference to the fact that two

15 of their members have been killed. So between the 14<sup>th</sup> and

16 the 16<sup>th</sup> they still have not been told that two of their

17 members have not been killed, and they are concerned about

18 it right up until Mr Mathunjwa gives his first address –

19 **CHAIRPERSON:** I understand the relevance

20 now. You may proceed.

21 **MR GOTZ:** Brigadier, can I ask you to

22 have a look at paragraph 23 of –

23 **CHAIRPERSON:** Before he looks at

24 paragraph 23, or whatever the paragraph is you are referring

25 to, Mr Semenya has turned on his light.

1 **MR SEMENYA SC:** I could not follow the  
2 last response, Chairperson, because by the 16th there were already  
3 fatalities that had happened the Monday.

4 **MR GOTZ:** Sorry, Chairperson, I do not  
5 understand the objection.

6 **CHAIRPERSON:** No, it is not an objection.

7 What Mr Semenya says, he doesn't understand the point  
8 you are making and he gives a reason why he does not  
9 understand it, and presumably, he will say he would like to  
10 understand it so that he can follow the evidence, and if he  
11 does not understand it, it should be made clear. So perhaps  
12 you could explain it again so that Mr Semenya can follow  
13 the point you are making.

14 **MR GOTZ:** Chairperson, you had asked a  
15 question about whether or not it is our case that if the  
16 strikers had been informed of the fact that two of their  
17 members had not been killed, that would have made any  
18 difference, and I said indeed it is our case and we had  
19 understood on the basis of the emails that Brigadier Calitz  
20 was in possession of information that the strikers had not  
21 been killed, and it is our case that if Brigadier Calitz  
22 had conveyed that to the people with whom he was  
23 negotiating, it would have made a difference.

24 **CHAIRPERSON:** He answered that to some  
25 extent by saying he did not know the two people who were

1 allegedly killed were the two people who had been wounded,  
2 and that is why he was not able to convey it. So that  
3 point has been dealt with, but you then went on to say  
4 something further, but I think let us find out. Mr Semenya,  
5 are you now on the same page as Mr Gotz? Do you now  
6 understand the point that he is making?

7 **MR SEMENYA SC:** No, he then continues to  
8 say even on the 16th that information was withheld from the  
9 strikers, and I am saying at that stage there would have  
10 been also fatalities on the Monday of those AMCU members.

11 **CHAIRPERSON:** Yes, yes. No, perhaps  
12 putting words in Mr Gotz' mouth, Mr Gotz would say there's  
13 a difference. The people who were killed on the Monday,  
14 some of them were members of the police service; that is not  
15 relevant. As far as the strikers were concerned, they were  
16 killed by the police, well, two of them. We do not know  
17 about the third, but the thrust of Mr Gotz' questions  
18 relates to the alleged desire of the strikers to retain  
19 their weapons to defend themselves not against the police  
20 who were responsible for the killings, were responsible in  
21 the physical sense for the killings on the Monday, but  
22 against NUM who they alleged were responsible for earlier  
23 killings on the Saturday. If I misstated your point, Mr  
24 Gotz, I apologise. Did I get it right?

25 **MR GOTZ:** No, that is absolutely correct,

1 Chairperson, and just to correct one further point; I had simply  
2 said that it appears from the videos that we have seen that  
3 the strikers were still not aware of the fact - on the  
4 Thursday, the 16<sup>th</sup>, they were still not aware of the fact,  
5 and I put it no higher than that when I address the  
6 question.

7 **CHAIRPERSON:** Alright. You know, that  
8 raises all sorts of questions to which we obviously do not  
9 know the answers. I mean either the statement that people  
10 had been killed was a lie, or it was genuinely believed, or  
11 it was true what their genuine belief was earlier on, but  
12 some of them had visited the people in the hospital in the  
13 meanwhile and knew that they had not been killed. We do not  
14 know the answer to any of those questions. All you can say  
15 is they persisted in the statement that people had been  
16 killed. Whether that was a truthful statement made in the  
17 sense of what they genuinely believed, or whether it was  
18 something that they were repeating even though they knew it  
19 was false, is a matter in respect of which we have no  
20 evidence at this stage, and I doubt if we ever will have.

21 **MR GOTZ:** Does that clear things up for  
22 my learned friend? Thank you. Brigadier Calitz, let's  
23 move on to paragraph 23 of your witness statement. You say  
24 in your witness statement at paragraph 23 -

25 **CHAIRPERSON:** Sorry, Mr Gotz, forgive me.

1 There is one other point I want to put to you before you  
2 move on. Would it really have made a difference if they  
3 had been told, as you say they should have been told if  
4 Major Calitz had known, that these two people had not been  
5 killed, they had just been seriously injured and were lying  
6 in hospital, if it is true that they wished to retain their  
7 weapons to protect themselves against NUM, if that is true,  
8 that need would still have existed even if the people  
9 concerned hadn't been killed but had merely been seriously  
10 injured? Is that not so?

11 They had been shot. They might well have died. It  
12 may well be that you will argue at the end of the case that  
13 we must recommend that consideration must be given to  
14 prosecuting the NUM members who fired without giving a  
15 warning or anything of that kind, prosecuting them for  
16 attempted murder, but does it make a difference, did they  
17 need to keep their weapons to protect themselves against an  
18 actual killing? Because there had only been an attempted  
19 killing which was unsuccessful, albeit the victims were  
20 seriously injured, they did not need to keep their weapons.  
21 That sounds like a non-starter, that point. What do you  
22 say to that?

23 **MR GOTZ:** Chairperson, it is difficult for me to  
24 give evidence. It's certainly not our case that there  
25 would have been a difference between the two. What I am

1 probing with the Brigadier is the extent of information  
2 that was shared during the course of the negotiations and  
3 testing as a result the quality of those negotiations, what  
4 substantively was conveyed during the course of those  
5 negotiations with the Brigadier.

6 **CHAIRPERSON:** Alright, perhaps we can  
7 investigate that in depth after we adjourn, the tea  
8 adjournment has been taken, but we will not take the tea  
9 adjournment until Mr Budlender has said something.

10 **MR BUDLENDER SC:** Chairperson, you asked  
11 whether we have the cell phone records of the 13<sup>th</sup> of  
12 August. We do not have it. The records we have commence on  
13 the 14<sup>th</sup>.

14 **CHAIRPERSON:** Yes, that was my impression  
15 also. Alright, well-fortified by that extra information  
16 we shall take tea and you will then proceed with the line that  
17 you are busy with now after tea. Is that right?

18 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

19 **[10:51] CHAIRPERSON:** The Commission resumes,  
20 Brigadier, you are still under oath.

21 **BRIGADIER CALITZ:** Thank you, Mr  
22 Chairperson/

23 **CHAIRPERSON:** Mr Gotz?

24 **MR GOTZ:** Brigadier, I may come back to  
25 this issue in the light of some of your answers, I am afraid

1 I don't think that I am going to be finishing today, so I

2 may come back to it in the light of the answers

3 that you have –

4 **CHAIRPERSON:** Are you not going to finish

5 before the end of the day?

6 **MR GOTZ:** It is very unlikely, Chairperson.

7 **CHAIRPERSON:** Because you did tell me

8 earlier what your estimate of the length of your cross-

9 examination would be, but anyway, how long do you think

10 you will be now, can you give us a revised estimate?

11 **MR GOTZ:** Chairperson, I shall certainly be up

12 until teatime on Monday.

13 **CHAIRPERSON:** Which teatime, morning or

14 afternoon?

15 **MR GOTZ:** No, morning tea, Chairperson.

16 **CHAIRPERSON:** Well, that –

17 **MR GOTZ:** I apologise for that –

18 **CHAIRPERSON:** No, no, I understand –

19 **MR GOTZ:** Chairperson, the things are going

20 slower than I anticipated –

21 **CHAIRPERSON:** I understand, you've got to

22 do your job as you see it, you have got to ask the questions

23 you consider necessary, and it does not help you to be

24 heckled all the time from the Chairperson, so carry on.

25 **MR GOTZ:** I would not put it as strongly

1 as that, Chairperson.

2 **CHAIRPERSON:** No, but I can, carry on, Mr

3 Gotz.

4 **MR GOTZ:** Brigadier, can I ask you a few

5 questions relating to the interactions between yourself and

6 Lonmin and Mr Sinclair in particular? Now I understand

7 that Mr Mpofu has dealt with this quite extensively and in

8 a sense I am just filling in some of the gaps that he did

9 not deal with and we will rely on the evidence that Mr

10 Mpofu extracted. So can I ask you to look at Exhibit

11 JJJ192 which is the transcript of the meeting of the 14<sup>th</sup> of

12 August between Lonmin and the Provincial Commissioner?

13 **BRIGADIER CALITZ:** Is that in my bundle

14 under which point?

15 **MR GOTZ:** It is, - sorry, I would have

16 prepared this bundle for you, Brigadier, you may have to

17 ask -

18 **CHAIRPERSON:** It is an exhibit already,

19 you see? If you look at the screen, you will see the first

20 page of the document that is being referred to, and it is been

21 referred to already during the course of your cross-

22 examination. It is JJJ192, is the conversation which

23 was clandestinely recorded at the offices of Lonmin on

24 Tuesday, the 14<sup>th</sup>, a conversation between Provincial

25 Commissioner Mbombo who is described as SAPS Commissioner

1 and Mr Mokoena and I think Mr Sinclair also took part and  
2 also I think Mr Cardy as well, but anyway people from  
3 Lonmin on the one side and Provincial Commissioner Mbombo  
4 on the other. Do you remember reading that document?

5 **BRIGADIER CALITZ:** No, I do not

6 Commissioner, this is why I asked, it would most probably  
7 have been in his bundle, if I had known he would ask questions from –

8 **MR GOTZ:** Chairperson, we expressly refer to  
9 this document in our –

10 **CHAIRPERSON:** I am sorry, Mr Gotz says you  
11 were given a list of exhibits that would be referred to and  
12 you were also given documents which were not yet exhibits  
13 which are in a red file with the tabs that we went through  
14 yesterday, but there was a list given to you which  
15 contained references to the exhibits to which your  
16 attention was drawn and Mr Gotz says that this one, JJJ192  
17 was one of them, but if you haven't seen it, well, then the  
18 fault is not Mr Gotz' but we shall have to proceed as best we  
19 can.

20 **BRIGADIER CALITZ:** Mr Chairperson,  
21 I have the list here, it consists of four pages,  
22 and is definitely not on this list.

23 **MR SEMENYA SC:** It is not on ours either,  
24 Chairperson.

25 **CHAIRPERSON:** Sorry?

1 **MR SEMENYA SC:** It is not on ours as

2 well.

3 **CHAIRPERSON:** Well, Mr Gotz, I assumed in

4 your favour, erroneously, that it was included.

5 **MR GOTZ:** No, I must apologise for that,

6 Chairperson, I –

7 **CHAIRPERSON:** Well, in view of –

8 **MR GOTZ:** - something that I –

9 **CHAIRPERSON:** No, -

10 **MR GOTZ:** Can I refer the brigadier to –

11 **CHAIRPERSON:** Sorry, these things happen

12 in the best regulated cases, I am afraid. I am not sure

13 whether this is in that category, but in view of the fact

14 that you were going to be cross-examining until morning

15 teatime on Monday, it may be appropriate to leave this

16 point over until Monday morning and the brigadier can spend

17 some of his weekend studying this document and also

18 possibly it might be sensible to check at the end of the

19 day were there any other documents that were left out of

20 this so that the brigadier can also read them if there are

21 any. Is that a suggestion that finds favour with you?

22 **MR GOTZ:** It does with one qualification,

23 Chairperson, it might assist the brigadier if I refer him to the

24 page that I want to ask questions about.

25 **CHAIRPERSON:** I am sure he would be

1 grateful to receive that information.

2 **MR GOTZ:** So, Brigadier, -

3 **CHAIRPERSON:** What is the page?

4 **MR GOTZ:** Brigadier, if you can look at

5 page 14 of that document?

6 **BRIGADIER CALITZ:** I will follow on the screen, I do not

7 have the documents with me now.

8 **MR GOTZ:** Brigadier, I do not want to ask

9 you questions about it now, -

10 **BRIGADIER CALITZ:** It is fine, I just need to get

11 the page, 14, right?

12 **CHAIRPERSON:** Will it take the elements

13 of surprise away from your cross-examination if you tell

14 him what passage on page 14 you're referring to, say if he

15 is spending an anxious half an hour reading the page over

16 and over again?

17 **MR GOTZ:** It probably would, Chairperson, but

18 can I ask you simply to read from page 14 through to the

19 end of the document and I -

20 **BRIGADIER CALITZ:** I will do so, yes.

21 **MR GOTZ:** It -

22 **CHAIRPERSON:** 14 to 18, it will not take too

23 much of your time.

24 **BRIGADIER CALITZ:** I shall read 14 - 18,

25 thank you, Advocate.

1 **MR GOTZ:** Okay, Brigadier, to turn again  
2 to a document with which you are familiar, it is your  
3 witness statement, JJJ107, I would like you to look at  
4 paragraph 23 of your witness statement. Now, Brigadier,  
5 you say in that paragraph that you also instructed Captain  
6 Sefiki to ensure that the Operations Board is kept up to  
7 date with regard to who the group commanders were and what  
8 their contact numbers are. This was to advise anyone  
9 seeking information to know who to contact and where. The  
10 Operations Board was also to contain information of the  
11 details of the deployment and the description of how the  
12 personnel and resources were to be deployed. Do you see  
13 that, Brigadier?

14 **BRIGADIER CALITZ:** I see it, Mr  
15 Chairperson.

16 **MR GOTZ:** One of the pieces of  
17 information which was on the JOC board was a page relating  
18 to Mining Security postings and can I show you that, a  
19 photograph of that board? It is Exhibit HHH60. You will see  
20 that that document or that photograph is of the board which  
21 is headed "Mining Security postings, 16 August 2012," and  
22 it then contains a list of names. It also reflects  
23 information regarding what weapons or arms the relevant  
24 people are carrying, which vehicles they are driving and we  
25 understand that it also indicates where in the vicinity

1 those people were posted. Do you see that, Brigadier?

2 **BRIGADIER CALITZ:** I see it Mr

3 Chairperson.

4 **MR GOTZ:** You do accept that this was

5 part and parcel of the JOC board on the 16<sup>th</sup> of August?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 I wanted to bring your attention to paragraph 23

8 of my statement; when you look at the report in the incident

9 book, the small JOC was initiated on the 12<sup>th</sup>, the Sunday

10 as soon we had arrived there.

11 The small JOC - as you know at Middelkraal, there is a

12 small room which they use for their radios and control room.

13 There was a JOC board which, I told Captain Sefiki, would be

14 used for the deployments on that day, and then would be

15 followed by people as they arrived there.

16 I do not know if you are aware at what stage and where

17 these photos were taken,

18 but to my knowledge this would be when the JOC

19 had moved and another JOC Commander had resumed

20 control,

21 So, -

22 **CHAIRPERSON:** I am not sure that you are on

23 the same point as Mr Gotz. You were talking about the

24 document on 12, I take it, which is the police docket, is

25 that correct?

1 **BRIGADIER CALITZ:** Which document you are  
2 referring to?

3 **CHAIRPERSON:** You're talking about the  
4 Operations board, is that a sort of a black board on which  
5 writing was done in chalk or one of these –

6 **BRIGADIER CALITZ:** It belonged to Security,  
7 I think it was a white board –

8 **CHAIRPERSON:** Yes –

9 **BRIGADIER CALITZ:** This white –

10 **CHAIRPERSON:** A white board, yes.

11 **BRIGADIER CALITZ:** I think so..

12 **CHAIRPERSON:** And the markings on that,  
13 the writing on that, was that what one would call Lonmin  
14 writing or was that police writing?

15 **BRIGADIER CALITZ:** No, it was to  
16 indicate our –

17 **CHAIRPERSON:** It was police writings?

18 **BRIGADIER CALITZ:** Police, yes.

19 **CHAIRPERSON:** Now I do not think it is  
20 suggested, if I am wrong Mr Gotz will correct me, I know, I  
21 don't think it is suggested that this document that we're  
22 looking at now is a police document. It is a Lonmin  
23 document, is that right, Mr Gotz?

24 **MR GOTZ:** Well, I am trying to establish  
25 the origins of the document. I have no basis for

1 suggesting to the brigadier that the document that  
2 contained writing by the police and I do not put that  
3 proposition to him.

4 **CHAIRPERSON:** No, if it is a police  
5 document you can tell us ,but it looks to me like a Lonmin  
6 document, it refers to Lonmin staff, I take it, Lonmin  
7 vehicles, is that right?

8 **BRIGADIER CALITZ:** It –

9 **CHAIRPERSON:** And the positions on the  
10 Marikana property on which Lonmin are mining –

11 **BRIGADIER CALITZ:** If I –

12 **CHAIRPERSON:** - where different people  
13 are going to be posted because that is what the heading is,  
14 "Mining Security postings." So I take it these people are  
15 - part of the Security officers, are members of the  
16 Security staff of Lonmin and this says where they were  
17 supposed to be posted on the 16th. I take it that is what  
18 the document is, if I am wrong you can correct me or Mr Gotz  
19 can.

20 **BRIGADIER CALITZ:** This is how I  
21 also understand it Mr, Chairperson.

22 **CHAIRPERSON:** Alright, okay, Mr Gotz, are  
23 you happy with that?

24 **BRIGADIER CALITZ:** What in the police –

25 **MR GOTZ:** Yes, and perhaps to further

1 assist, perhaps we can give some context to where this  
2 board was located in the JOC, we have photographs which  
3 were taken by Captain Van Heerden. The relevant  
4 photographs are HHH34 and 35 and perhaps we can just simply  
5 put that up on the screen, those photographs up on the  
6 screen so that we can get further information regarding  
7 the, so it will be HHH34, I beg your pardon, I am told it is  
8 35 and 36, I am not sure why mine, - sorry, is there a  
9 concern that they do not have the relevant exhibit?

10 **CHAIRPERSON:** That the witness was  
11 referred to?

12 **MR GOTZ:** Chairperson, -

13 **CHAIRPERSON:** If it is a document he was  
14 referred to you can carry on, but if it is not then it falls  
15 in the same category as the document we referred to earlier  
16 in which case you can deal with it the way we decided that  
17 one will be dealt with. I mean alternatively I could lend  
18 him my copy of HHH35 and 36 because they're just  
19 photographs.

20 **MR GOTZ:** Yes, -

21 **CHAIRPERSON:** But -

22 **MR GOTZ:** They're simply photographs and,  
23 Brigadier, perhaps I can ask the questions in an abstract  
24 way. Have you prior to have seen the photograph that is  
25 reflected as HHH60, have you seen that document, - sorry,

1 had you seen that JOC board before?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 no, not this specific board,

4 that is why I asked you when this photo

5 was taken. Could it be when a bigger JOC was moved there

6 and were other JOC personnel deployed

7 there?

8 **MR GOTZ:** Yes, and in response to that I

9 said, let's look at the background, there were photographs

10 taken by Captain Van Heerden on the 16<sup>th</sup>.

11 **BRIGADIER CALITZ:** No, this is a different JOC, definitely

12 not the one where I gave

13 Captain Skefti orders. At Middelkraal is

14 a small Security room. This is what we refer to then as

15 the JOC. But it is an annexed Lapa – a thatched roof where

16 the JOC was moved to. You

17 will remember when Brigadier Pretorius and the personnel

18 arrived, the Generals gave orders from where the JOC

19 was moved to and they were appointed JOC personnel.

20 They established their own rules and regulations

21 and held their JOCCOM

22 meetings there.

23 **MR GOTZ:** Can you explain to the

24 Commission, Brigadier Calitz, why in a JOC which is

25 established by the SAPS do we find a board which indicates

1 Mining Security postings for the 16<sup>th</sup> of August which  
2 contains information and details of the deployment and  
3 indeed a description of the personnel and resources that  
4 were being deployed by Lonmin?

5 **MR SEMENYA SC:** Chairperson, perhaps before  
6 that, Mr Gotz may want to tell us why he comes to the  
7 conclusion it was in the police JOC, this document?

8 **CHAIRPERSON:** I have looked at HHH, I think  
9 it is HHH35 and 36, I cannot see that Security posting  
10 there.

11 **MR SEMENYA SC:** Yes.

12 **CHAIRPERSON:** You see the foundation of  
13 the question, the assumption on which the question is based  
14 is that this was in the police JOC. Now if that assumption  
15 is established to be correct, obviously the question can be  
16 asked but unless and until it is established, I do not think  
17 the question is a proper one. Now unless when that exhibit  
18 was admitted, received, it was established that it was a  
19 picture of a notice that was up in the police JOC, or the  
20 room that had been allocated to the police from, I think it  
21 is the 13<sup>th</sup> onwards, the 13<sup>th</sup> or it may even be the 14<sup>th</sup>  
22 onwards, for the enlarged police JOC, unless it is  
23 established that that document was there, the question  
24 does not arise. Now do you not need to establish that first  
25 before you can ask the question?

1 **MR GOTZ:** Chairperson, -

2 **COMMISSIONER HEMRAJ:** I seem to recall

3 more than one photograph dealing with the charts or the

4 boards inside the JOC, this is not the only photograph that

5 we have been shown. I am just not sure where they are, but

6 they do show more than one board up.

7 **CHAIRPERSON:** Well, we have the good

8 fortune that Advocate Pillay has returned from abroad and

9 she is normally the one who immediately puts us on the

10 track of the relevant exhibits, perhaps we can take

11 advantage of her return and ask her if she can help us.

12 Can you help us, Ms Pillay?

13 **MR GOTZ:** Chairperson, I have no need for Ms

14 Pillay, as kind as her help may be, my evidence is twofold,

15 Chairperson. The first is that this photograph is one of several

16 which is taken by Captain Van Heerden on the day and that

17 was established during the evidence of, the cross-

18 examination of Scott. The second piece of evidence is

19 HHH36, which shows the JOC board and shows the photograph in

20 the far corner and so I was hoping that we would see HHH, -

21 **CHAIRPERSON:** Maybe copy -

22 **MR GOTZ:** It may be, Chairperson, -

23 **CHAIRPERSON:** I have looked on HHH36 and I

24 couldn't find it, hence my situation to Mr Semanya's

25 objection but if it is in fact there then I shall be happy to

1 allow you to proceed.

2 **MR GOTZ:** I understand that they may be

3 given a copy –

4 **COMMISSIONER HEMRAJ:** Are you in

5 possession of a photograph that shows both boards, Mr Gotz?

6 **MR GOTZ:** Not in –

7 **COMMISSIONER HEMRAJ:** No?

8 **MR GOTZ:** In my head, Commissioner

9 Hemraj, but not, - we understand that that is being done at

10 this moment and we would like to show –

11 **CHAIRPERSON:** Let us –

12 **MR GOTZ:** - HHH36 –

13 **CHAIRPERSON:** Let's bate our breath, if

14 that is the correct verb, while it is being shown to us.

15 **MR GOTZ:** This is actually HHH35, but

16 Commissioner, can you, - now is it possible to brighten

17 that up a little bit? Sorry, can we have HHH36?

18 **CHAIRPERSON:** The question is, this is

19 36?

20 **MR GOTZ:** Yes, Chairperson.

21 **CHAIRPERSON:** HHH36?

22 **MR GOTZ:** Correct.

23 **[11:11] CHAIRPERSON:** On HHH36 there is a

24 gentleman at the back, further of the way into the

25 photograph in the middle, speaking on the telephone and

1 behind his right shoulder is clearly a large piece of paper

2 with some writing on it and behind his left shoulder

3 there's something, I think it is just a refrigerator which

4 is blank, but perhaps we could go to the right again,

5 please. Who is that? Can you recognise that –

6 **MR GOTZ:** Can we pan to the right?

7 That is the left.

8 **CHAIRPERSON:** Brigadier, can you

9 recognise that person on the photo?

10 **BRIGADIER CALITZ:** No, Mr

11 Chairperson, I–

12 **CHAIRPERSON:** Alright, let's go further

13 to the right.

14 **BRIGADIER CALITZ:** It looks like a

15 police officer.

16 **CHAIRPERSON:** Let's go further to the

17 right. Now there is something. There is a piece of paper

18 there with writing on it in – it is white paper with writing

19 on it in red. Can that please be enlarged? Can we zoom on

20 it, because that might be the document that is been referred

21 to.

22 **MR GOTZ:** Can you confirm that that is

23 the board behind –

24 **CHAIRPERSON:** Yes, that is the document.

25 So you are right, Mr Gotz, I apologise. The assumption on

1 which your question is based is established and you can ask  
2 the question.

3 **BRIGADIER CALITZ:** It does look like  
4 the document. Correct.

5 **MR GOTZ:** So it is a board, can we call  
6 it that, which appears in the police's JOC and given the  
7 date, and indeed the timing, of Captain Van Heerden's  
8 photographs ,we know that it was taken on the 16th. So again  
9 I ask my question; can you explain why we find in the JOC  
10 on the 16th a board which shows the deployment of Lonmin  
11 personnel with arms, and a description of where they are to  
12 be deployed?

13 **BRIGADIER CALITZ:** Mr Chairperson, I  
14 shall give you my opinion about the JOC  
15 Commander, Brigadier Pretorius will know better if any  
16 orders were given re deployment. If we can zoom out of the photo  
17 a bit, I will be able to show you where  
18 the CCTV – okay, stop – the blue chairs there,  
19 and the people there, one who has a cross on his  
20 back, a "reflection" , this is the  
21 security personnel sitting there and it was their position  
22 in the JOC. Those were  
23 the CCTV cameras that monitored . So, they were part of  
24 the "joint operational centre." I see the Board of  
25 "deployment" were put above that. I can not

1 say who gave the order to put the board  
2 up there. In any normal operation where  
3 we have a JOC", one will see all the roll players' contact  
4 details, their call signs,  
5 and their equipment  
6 etc., reflect as such.

7 **CHAIRPERSON:** Can I ask you this; do you  
8 know what that room was used for before it was made  
9 available to the police for the enlarge JOC centre?

10 **BRIGADIER CALITZ:** Not at all Mr  
11 Chairperson.

12 **CHAIRPERSON:** When you went into it for  
13 the first time did it appear to be a room that had been  
14 unused by Lonmin, or were there signs of it having been  
15 used by Lonmin, and if so, for what purpose?

16 **BRIGADIER CALITZ:** Mr Chairperson, I  
17 arrived there late and all the equipment and things  
18 were already there. So, I cannot say it was unused,  
19 but it also looks like a Lapa where perhaps classes or  
20 functions could be held. Lonmin  
21 should be able to tell us.

22 **MR GOTZ:** There appears to be a bar in  
23 the corner. Is that a correct assessment?

24 **BRIGADIER CALITZ:** If you refer to the  
25 counter, yes.

1 **MR GOTZ:** Brigadier Calitz, it could not  
2 possibly be that that poster that we see containing  
3 security postings predated your arrival and use of that  
4 room.

5 **BRIGADIER CALITZ:** Yes, but that is not  
6 what I –

7 **CHAIRPERSON:** I do not think you are  
8 suggesting that, are you? Presumably if it is a posting for  
9 the 16<sup>th</sup>, it would have been put up either in the morning of  
10 the 16<sup>th</sup> or possibly late on the 15<sup>th</sup>.

11 **BRIGADIER CALITZ:** It could have been,  
12 Mr Chairman. This is why I said –

13 **CHAIRPERSON:** And inasmuch as it appears  
14 to relate to Lonmin staff, it would have been put up by  
15 some Lonmin official, not by the police. Is that also  
16 right?

17 **BRIGADIER CALITZ:** This is correct, I don't think the  
18 the police will write down their "postings"  
19 details, no.

20 **CHAIRPERSON:** You cannot tell us anything  
21 about how that piece of paper got affixed to the wall  
22 there?

23 **BRIGADIER CALITZ:** Unfortunately not Mr  
24 Chairperson.  
25 Presumably it is a question

1 that Lonmin people can be asked when they come and give  
2 evidence.

3 **MR GOTZ:** Yes, it may well be, but

4 Brigadier, were you aware of where the security personnel

5 were deployed, as it were, on the 16th? Quite apart from

6 the questions of whether you were aware of this board, were

7 you aware of where the security personnel were deployed?

8 **BRIGADIER CALITZ:** No, I cannot tell you that I knew in

9 detail where they were deployed;

10 I know that some of the Lonmin personnel were at the

11 "forward holding area" 1, together with General Naidoo. I

12 think it is the Emergency Services Personnel, but if they included

13. other personnel I cannot say.

14 **MR GOTZ:** You see, what I find a bit

15 strange about your answer, Brigadier, is when you were

16 giving evidence-in-chief there was a question which

17 elicited an answer from you in which you referred to the

18 deployment of "Lonmin Security Personnel at some place

19 on the mine" as a key aspect of the cooperation that you

20 received from Lonmin during that period. Can I take you to

21 that passage? It is 17435 on day 155. So it is day 155 and

22 it is 17435. Can we go up just a little bit to get the

23 context, to 17434, line 18, so go down to line 18. Mr

24 Semenya puts to you that the other criticism is that you

25 should not have used an interpreter, a Fanagolo interpreter

1 from the "enemy camp," and you will recall that, that causes  
2 you some confusion around who we're talking about in the  
3 "enemy camp," and once it is clarified by the Chairperson on  
4 17435 that what is being spoken about is Lonmin you say at  
5 line 14, "No, at first, no" –

6 **CHAIRPERSON:** Could we have line 14,  
7 please?

8 **MR GOTZ:** Line 14, "No, first of all, no,  
9 we didn't see it at all as the words "enemy camp"  
10 being used. No. I had testified on more than one occasion  
11 that Mr Sinclair gave us his one hundred percent  
12 support – cooperation. I note he does not get the 110% grade,  
13 but he certainly gets 100%. And then you give three  
14 examples of the level of cooperation – "collaboration" is  
15 cooperation – between SAPS and Lonmin. The first that you  
16 give is that they provided you with the premises, which is  
17 the JOC. Second, you say, The way they shared information  
18 with us, and thirdly you say, The  
19 Security Personnel who were deployed at certain places on the mine.  
20 Do you see that, Brigadier?

21 **BRIGADIER CALITZ:** Yes, now read a bit  
22 further on.

23 **MR GOTZ:** - which part of their,  
24 their work naturally."

25 **BRIGADIER CALITZ:** Yes, I think there

1 is your answer.

2 **MR GOTZ:** What is the answer, the

3 answer to what, Brigadier? I am asking you a question

4 about –

5 **BRIGADIER CALITZ:** You asked, I think –

6 **MR GOTZ:** Yes?

7 **BRIGADIER CALITZ:** Do you want to finish your question first,

8 or can I answer as I understand it?

9 **MR GOTZ:** I have just, you have asked me to

10 complete the sentence and I have done so.

11 **BRIGADIER CALITZ:** Okay, Mr

12 Chairperson, the first remark about the 110% I will not take

13 personally. I think. Mr Chairperson, you had already mentioned

14 that we will not go over that ground again..

15 So I only ask that we stay away –

16 **CHAIRPERSON:** That's a joke that is been

17 made, it is been recycled so often I think we can put it in

18 the cupboard and leave it there.

19 **BRIGADIER CALITZ:** Yes. I just want to prevent that we

20 do not engage in mutual sarcasm here, then we will

21 be here a long time. The other part I want to show you,

22 the premises they made available to us, and it is

23 been there since our arrival, is the Middelkraal

24 premises. Not just the JOC, but also the JOC that has

25 been moved.

1 The manner in which they shared information with us.  
2 It was the Security Personnel who had shown us on several  
3 occasions – on the CCTV cameras, where there were people,  
4 their movements and the security personnel who were  
5 deployed on certain places  
6 at the mine.  
7 So, what I said, 'read further' is  
8 part of their work, naturally. In other words, the mine personnel  
9 continued with their work.  
10 They showed us where, the smelters said  
11 wires were stolen, and there was a stage when vehicles were  
12 put alight at another place. So, this is where the  
13 the mine personnel continued with their daily work.  
14 and they shared that information with us.  
15 We had a mutual cooperation between us and definitely  
16 also Mr Sinclair, who represented the  
17 Lonmin Security.

18 **MR GOTZ:** Of course the reply is not just  
19 to Mr Sinclair, and your comments relating to the level of  
20 cooperation, or "collaboration" if that is not a perfect  
21 translation, extend to Lonmin as a whole, other people  
22 within the Lonmin company, correct?

23 **BRIGADIER CALITZ:** No, I will not agree with you.  
24 My testimony pertains to what I  
25 said here. I said that I had testified on more than one

1 occasion that he, Mr Sinclair – he, not them – gave 100%  
2 cooperation since the beginning. And the other name  
3 that was mentioned who also cooperated fully, was Mr Dirk  
4 Botes. So these were the two people who gave full cooperation  
5 and whom I believed were members of the  
6 security personnel.

7 **MR GOTZ:** Perhaps we are  
8 misunderstanding –

9 **BRIGADIER CALITZ:** O yes, there was still a third person  
10 a Mr Henry Blaauw, under correction -  
11 these were 3 people negotiating and cooperating with  
12 us – or me.

13 **CHAIRPERSON:** Before Mr Gotz goes further  
14 on that, he says you dealt directly with these three people  
15 you mentioned, but apart from that, over and above that you  
16 got cooperation from Lonmin. They made facilities  
17 available to you, not just those three people, but Lonmin  
18 as such made facilities available to you, shared  
19 information, did various things which indicated that they  
20 were cooperating with you in the work that you were trying  
21 to do there, and that is the point he is concerned with.  
22 It's not only limited to the three; he's asking in the  
23 broader sense, as I understand the question, the nature of  
24 the cooperation you got from Lonmin as a whole, if one can  
25 put it like that. Is that right, Mr Gotz?

1 **MR GOTZ:** Yes, indeed. So to refer to  
2 one or two other examples, the people who were operating  
3 the CCTV cameras, the Coin Security helicopter. Now of  
4 course that was not necessarily being flown by a Lonmin  
5 person, but the fact is that that was something that was  
6 made available to you whenever you-

7 **BRIGADIER CALITZ:** Once more I want to just tell you that  
8 I had- communicated with Mr Sinclair, who - I agree with Mr Chairperson  
9, -"obviously" worked for Lonmin, so  
10 it would obviously then had been with the approval of his superiors/colleagues.  
11 I do not dispute that. But the CCTV camera obviously send  
12 "feedback" to Mr Botes or Mr Sinclair  
13 and they communicated with us. The helicopters requests  
14 went through Mr Sinclair. So that was the liaisons -  
15 he or Mr Botes. I, personally have not had any  
16 dealings with any of the Lonmin staff  
17 that I was aware of.

18 **MR GOTZ:** Can I simply put this to you,  
19 Brigadier; there seems to us on this evidence that we have  
20 dealt with to have been quite a high level of mutual  
21 cooperation between SAPS and Lonmin personnel during the  
22 period 14 August to 16 August 2012. Would you agree with  
23 that?

24 **BRIGADIER CALITZ:** I can testify to it in the operation area  
25 and as I said, we had 100% cooperation with them.

1 We never had problems regarding information from them.

2 They shared all their info with us, where the key points were

3 etcetera. So, yes.

4 **MR GOTZ:** Did you share your plans with

5 Lonmin personnel?

6 **BRIGADIER CALITZ:** I think we had testified about

7 this Mr Chairperson. The Lonmin personnel,

8 especially Dirk Botes, was present at many of these briefings.

9 What it entailed and during detailed tactical manoeuvres they were

10 not present during the planning stage.

11 **MR GOTZ:** It's quite hard to escape the

12 conclusion that this was effectively a joint operation

13 between you and – you as SAPS – and Lonmin, Brigadier.

14 Would you like to respond to that?

15 **BRIGADIER CALITZ:** No, not as far as saying joint operation.

16 This was a "joint operational

17 centre" where the information was shared. This is my

18 answer.

19 **MR GOTZ:** Will you at least accept that

20 Lonmin was integrally involved in SAPS' operation?

21 **BRIGADIER CALITZ:** I am not entirely sure what those word

22 entail. My testimony is that where we needed them

23 operationally, and where the requests were concerned,

24 the helicopter, the information

25 re the key points were shared with us

1 en we had excellent cooperation. This is

2 correct.

3 **MR GOTZ:** And then, Brigadier, I will

4 simply put the evidence which I would like you to read

5 during the weekend – sorry, you had made a note of this

6 already, I just want to contextualise it – which is the

7 meeting of the 14th between Lonmin and the Provincial

8 Commissioner, and we shall deal with that as well, and that

9 forms part of –

10 **BRIGADIER CALITZ:** I will go through it,

11 thank you, Advocate.

12 **MR GOTZ:** Brigadier, can we move on to a

13 separate subject, and that is the alleged threats that were

14 made by the strikers on the police. Can we start with

15 this; would you agree with me that a threat is really a

16 statement of intention to inflict some harm on somebody

17 else if that somebody else does not comply with a request?

18 So to put it in plain English, it is a statement by person X

19 that person Y will be harmed in some way if he or she does

20 not do what X wants him to do.

21 **CHAIRPERSON:** Do you need the last part?

22 If I say to you I am going to kill you, isn't that a threat?

23 If I say to you I am going to kill you, and I do not say what

24 you must do to make sure I do not kill you, I just say I am

25 going to kill you, isn't that a threat, a matter of

1 language?

2 **MR GOTZ:** Well, I would like to have –

3 **CHAIRPERSON:** No, it is a matter of

4 language now. You know you're asking the witness what a

5 word means and I am putting to you the word doesn't mean

6 everything you say it means because the statement "I am

7 going to kill you" is in itself a threat. That is correct,

8 isn't it? I know you are not under oath; you do not have to

9 answer the question.

10 **MR GOTZ:** Chairperson, this is the difficulty

11 that I have, because I would suggest not, but I would like to

12 hear the Brigadier's answer to that question –

13 **CHAIRPERSON:** No, no, no, you are asking

14 him the meaning of a word and I don't think the word means

15 that and I think the dictionaries support me and don't

16 support you. So I suggest you move on to your next point.

17 **MR GOTZ:** Brigadier, let's take a

18 practical example; if somebody says "I don't want you

19 here," is that a threat?

20 **BRIGADIER CALITZ:** That is correct.

21 **MR GOTZ:** If somebody says, "Go away, we

22 don't want you here," on your understanding of the word

23 "threat," is that a threat?

24 **BRIGADIER CALITZ:** I will see it that way

25 yes, 'specially if it is in the line of the person, and you tell it

1 to the police , as the police is present there,  
2 and a person comes to a policeman and says "You, as the  
3 police, I do not want you here, go away" this is logically  
4 a threat.

5 **MR GOTZ:** Surely it is simply a statement  
6 of fact. The person is expressing their views. Why is it  
7 a threat on the police, Brigadier?

8 **BRIGADIER CALITZ:** Mr Chairperson,  
9 I can only give my opinion on this. We can consult the dictionary.

10 There are many threats – many examples.

11 If I can, it just comes to me quickly –

12 let us not take a Marikana – or yes, well, a Marikana

13 example but not directly to do with us. U will remember

14 "in hindsight I saw – you will remember last year

15 last year with the -

16 from the 16th –

17 **CHAIRPERSON:** There was a commemoration

18 of the anniversary of the events of the 16th of August.

19 **BRIGADIER CALITZ:** - there was a program on TV,

20 repeatedly for a week or two

21 with the title "The Marikana Massacre." I think all of us

22 here had seen it, where they -

23 **[11:30] CHAIRPERSON:** I didn't see it but -

24 **BRIGADIER CALITZ:** It is good Mr

25 Chairperson,

1 **CHAIRPERSON:** I do not consider myself  
2 just, I did not want to allow myself to be prejudiced by  
3 anything that is not before the commission.

4 **BRIGADIER CALITZ:** Mr Chairperson,  
5 I just want to say there was a media person,  
6 a black lady who rode in with the media,  
7 they gave a lift to a white lady who had transport problems,  
8 and they say when they came nearer -  
9 an in her own words, the group also told her;  
10 go away, we do not want you here.  
11 she heard there was a white man and they were going  
12 kill him, She testified that they had to run from there, had to run away from her  
13 there. It was on video. We can get it and run away to KZN,  
14. So this is what I am going to say to you; go away let them go,  
15 there are no consequences; if they did not leave at that  
16 stage or the following stage, the video shows  
17 the video shows they felt so threatened they had to run away.

18 **CHAIRPERSON:** Mr Calitz, Brigadier Calitz  
19 sorry forgive me, Brigadier Calitz, I don't think we should  
20 get to involved in the semantic debates. The truth is if I  
21 say I do not want you here, that is not a threat. But it  
22 could be an implied threat if in the circumstances I was  
23 conveying to you what I would do to you if you did not go. So  
24 you can have direct threats, express threats and implied  
25 threats and depending on the circumstances the statement I

1 don't want you here would, could be an implied threat but  
2 in other circumstances it would not be a threat, that must  
3 be right. So I do not think we should waste further time on  
4 that. What Mr Gotz, is leading up is when words of that  
5 kind were said to the police in those particular  
6 circumstances he would contend they did not amount to  
7 threats. Now can you recall those words being used to the  
8 police by some of the strikers, we do not want you here.

9 **BRIGADIER CALITZ:** Mr Chairperson,  
10 Definitely. I have testified in my statement JJJ107  
11 that they said several times they did not want us there. On  
12 the 15<sup>th</sup> and 16<sup>th</sup> during negotiations -, I  
13 can quote my testimonies -

14 **CHAIRPERSON:** We have read your statement,  
15 you do not have to read it again.

16 **BRIGADIER CALITZ:** Mr Chairperson,  
17 Where they said; we do not want you here,  
18 we do not want to speak with you. We want to speak with the  
19 mine personnel. And you know when someone says I do not want  
20 you here, and they have a spear or a panga, then  
21 it is a threat. It is not as if you take it lightly from a peaceful  
22 group watching rugby, and you come and sit next to them and they say  
23 go and sit somewhere else,  
24 well, that will also , at the end of the day, lead to a  
25 confrontation.

1 **MR GOTZ:** Brigadier, in fact you  
2 identified I think in your evidence-in-chief, you were  
3 counting and at the end of the count you had counted what  
4 you called 6 threats and I do want to put it to you that at  
5 least half of those were not threats at all, even on the  
6 most expansive understanding of the word. Let us look at  
7 what you say about the so-called first threat which you say  
8 occurred on the 15<sup>th</sup> of August. It appears at, on day 153  
9 at page 17187 and the line is from line 19. Mr Semanya, my  
10 learned friend says to you Mr Noki again comes to the  
11 Nyala, this is approximately 2 o'clock and he makes it  
12 plain that the police are not wanted there anymore.  
13 Brigadier Calitz, That is correct Mr Chairperson. He  
14 did not want to speak with us at all, and I understood from  
15 that a direct threat as they also insisted the police presence  
16 was not wanted there  
17 So all that Mr Noki says on this version is we  
18 do not want to talk to you, he probably said it in the same  
19 context as we want to talk to management, we do not want you  
20 here anymore. Why do you interpret that as a threat on the  
21 police, Brigadier?

22 **BRIGADIER CALITZ:** I referred to it  
23 in paragraph 63 of my statement which I read to  
24 you. The group approached the Nyalas in a horseshoe  
25 formation, Mr Noki informed us that they did not want to

1 speak to the police and they did not want the police there,  
2 Colonel Macintosh repeatedly told them through the public  
3 address system of our Nyala that the police presence are  
4 there for peaceful purpose and a desire to dissolve this  
5 peacefully. This is what I referred to as the first threat  
6 from that armed group, and their repeated their request that  
7 they did not want to negotiate with us nor have the police  
8 present. So this is what I perceived as the  
9 first threat.

10 **MR GOTZ:** Is this your clear recollection  
11 of the, of what transpired that Mr Noki came to the vehicle  
12 and said we don't want to talk to you any more please go  
13 away?

14 **BRIGADIER CALITZ:** This is correct.

15 **MR GOTZ:** Can we by way of contrast look  
16 at exhibit L on slide 188.

17 **CHAIRPERSON:** 188 on my copy of the L is  
18 a photograph of events which took place around about 15:35,  
19 I think you are got the wrong reference.

20 **MR GOTZ:** Let me just find it. Chairperson,  
21 I shall read the reference. It's in relation to Wednesday the  
22 15th of August 2012 where it says the representatives stated  
23 that they wanted the telephone number of the commander of  
24 the operation.

25 **CHAIRPERSON:** That is 118.

1 **MR GOTZ:** Oh, 118. I beg your pardon, I am

2 slightly dyslexic, Chairperson.

3 **CHAIRPERSON:** I am really not sure if you

4 are or not, if you are I shall express my sympathy. If you're

5 not, let us just carry on.

6 **MR GOTZ:** I beg your pardon, Chairperson.

7 **CHAIRPERSON:** I am not sure whether you

8 really are dyslexic but if you are I express my sympathy to

9 you. But shall we just carry on.

10 **MR GOTZ:** Sorry, Chairperson, I do have a

11 tendency to do this, although I have not been diagnosed as

12 being dyslexic. Just to clarify but thank you, Chairperson. It

13 says, "the representatives stated that they wanted the

14 telephone number of the commander of the operation and if

15 present he or she should come forward as they wanted to

16 provide him her with a telephone number of the Advocate

17 Shapiro. Then it goes on to say the representatives were

18 informed that the request would be forwarded to the JOC. At

19 this point one of the representatives became very

20 aggressive and stated that the police should not be there

21 and that the people in the hippos, referring to the

22 armoured vehicles, would die there and not one Nyala would

23 leave that ground. Now, Brigadier, that I do not think we

24 would quarrel would constitute a threat." But the problem

25 is that there's no evidence that this was ever said on the

1 15<sup>th</sup>.

2 **BRIGADIER CALITZ:** There were witnesses to that and statements

3 and I believe there will also reference to that

4 in my statements.

5 **CHAIRPERSON:** Brigadier Calitz, you

6 described a few moments ago what you said was the first

7 threat. The first threat. Now this is obviously the

8 first threat you are aware of. But were you in the Nyala at

9 the relevant time when this event that is described in slide

10 118 took place which appears if one has regard to slide 117

11 to have been at 10:15 in the morning on the 15<sup>th</sup>, were you

12 in the Nyala at that time?

13 **BRIGADIER CALITZ:** That is correct, Mr Chairperson.

14 It wasn't the first threat, I think it was the

15 second or the third.

16 **CHAIRPERSON:** Oh, I see. Now what you,

17 sorry, I am sorry. What you described early as the

18 the first threat when did that happen?

19 **BRIGADIER CALITZ:** That was with our

20 first contact.

21 **CHAIRPERSON:** Was that on, was it on the

22 14<sup>th</sup> I do not know -

23 **BRIGADIER CALITZ:** The 14<sup>th</sup>.

24 **CHAIRPERSON:** Was it on the 15th?

25 **BRIGADIER CALITZ:** I think it was on the -

1 **CHAIRPERSON:** The Wednesday.

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 yes.

4 **CHAIRPERSON:** The 14<sup>th</sup> -

5 **BRIGADIER CALITZ:** I think the 15<sup>th</sup>,

6 but I speak under correction.

7 **CHAIRPERSON:** The 15<sup>th</sup> was the Wednesday,

8 the 14<sup>th</sup> was the Tuesday. According to exhibit L the event

9 to which Mr Gotz is now referring you in slide 118 took

10 place around about 10:15 on the morning on Wednesday the

11 15th. Now the incident to which you referred to earlier

12 which you call the first threat what time did that happen

13 and on what day?

14 **BRIGADIER CALITZ:** The first incident we

15 refer to was on the 15<sup>th</sup>, around 2 o'clock in the

16 afternoon. This is what I testified to the Chief-in-Evidence.

17 **CHAIRPERSON:** The problem with that is

18 you see is that this one, this alleged incident referred to

19 in the slide took place, so exhibit L is in the morning of

20 the Wednesday at about 10:15. So that would have preceded

21 the event which you describe as the first threat which you

22 say happened at about 2 o'clock in the afternoon on the

23 Wednesday.

24 **BRIGADIER CALITZ:** No Mr, Chairperson,

25 this one of -

1 **CHAIRPERSON:** So that is not -

2 **BRIGADIER CALITZ:** This one of Shapiro – I am just trying

3 to get it here I my statement, then I will be able to

4 tell you how many times it -

5 next threats -

6 **CHAIRPERSON:** All I am saying to you is

7 what you told us about a few minutes ago is the first

8 threat could not have been at 2 o'clock in the afternoon if

9 this incident referred to in slide 118 took place at 10:15

10 the same morning.

11 **MR SEMENYA SC:** Chairperson -

12 **MR GOTZ:** Brigadier, it is correct that

13 you do not **[inaudible]** the Chairperson's question.

14 **CHAIRPERSON:** Before he answers my

15 question. Mr Semenya wants to make a comment.

16 **MR SEMENYA SC:** Chairperson, in leading the

17 witness I did not understand him to be given us a sequence

18 of threats but the number of threats and say this is the

19 first threat and the second threat. Not that they came in

20 a particular chronology.

21 **CHAIRPERSON:** Yes, because there's

22 another problem and that is you look at the consolidated

23 statement of the witness there is a possibility that this

24 is something that happened on the Tuesday, the 14th. So

25 there is a bit of confusion here. It may be it is confusion

1 which you say enables you to find an argument in this  
2 regard, or it may just be genuine confusion that is got to  
3 be cleared up. If you look at paragraph 47 of his  
4 consolidated statement. That appears to be a reference of  
5 something on page 10 of his consolidated statement appears  
6 to be reference to something that happened on the Tuesday.  
7 But there is some confusion but we shall obviously get  
8 clarified during this part of your cross-examination.

9 **MR GOTZ:** Brigadier, I was hoping that  
10 you would be able to provide some clarification.

11 **BRIGADIER CALITZ:** I will be able to get the times.  
12 I just want to consult my paragraphs where I  
13 I noted the Advocate Shapiro incident,  
14 I will definitely get it for you.

15 **MR GOTZ:** Can I offer some assistance in  
16 that regard and that is the occurrence book which is, some  
17 people know it off by heart, it is FFF25.

18 **BRIGADIER CALITZ:** Page, which page?

19 **MR GOTZ:** There is several. It is page 16  
20 and 17. If you can look first of all at items 178 and 179.

21 **CHAIRPERSON:** What are you referring to  
22 in the occurrence book?

23 **MR GOTZ:** It's –

24 **CHAIRPERSON:** FFF25 but which entry on  
25 which day?

1 **MR GOTZ:** 178, 179, and these are

2 entries for the 15<sup>th</sup> of August.

3 **CHAIRPERSON:** I see.

4 **MR GOTZ:** 178 is recorded as having

5 happened at 10:20 and 179 at 10:25. You will see that item

6 178, Brigadier, have you got it?

7 **BRIGADIER CALITZ:** Yes.

8 **MR GOTZ:** You'll see that 178 refers to

9 the interchange in relation to the lawyer, Aubrey Shapiro.

10 I suspect it gets it the wrong way round but be that as it

11 may 179 refers to negotiations, Chopper 2 reports that

12 these people were negotiating with Pappa1 moving back to the

13 group and they want mine management to come and talk to

14 them as they cannot say or discuss anything to the police

15 and they cannot lay down their weapons and they want mine

16 manager. What the occurrence book does not record is

17 anything remotely resembling a threat on the police at that

18 -

19 **BRIGADIER CALITZ:** Okay.

20 **MR GOTZ:** In the morning.

21 **BRIGADIER CALITZ:** Yes, I have found this in my statement.

22 I just scanned through it quickly -

23 The first threat I referred to is in

24 paragraph 63, but the one of Advocate Shapiro is in

25 paragraph 58 of my statement. I will read it out to you;

1 "Mr Noki came forward and said that they were not going to  
2 speak to the SAPS anymore and they wanted to speak to the  
3 mine management through their attorney Shapiro. He walked  
4 back to the group, a short while later the group,  
5 approximately 300 men changed their mood, showed greater  
6 aggression by clapping their weapons together, started  
7 singing and moving up and down as a tight unit". Here I  
8 did not refer to this action as a threat but as a  
9 good change, as I perceived it.

10 **CHAIRPERSON:** What day were you talking  
11 about?

12 **BRIGADIER CALITZ:** That was the 15<sup>th</sup>,  
13 Chairperson.

14 **CHAIRPERSON:** What time?

15 **BRIGADIER CALITZ:** I saw him at 11:30 -  
16 I see in the OB it is 10:20. So refer to paragraph 58  
17 of my statement, Mr Chairperson.

18 **CHAIRPERSON:** Thank you.

19 **COMMISSIONER HEMRAJ:** According to your  
20 statement that is not the first interaction in the  
21 negotiations with the strikers?

22 **BRIGADIER CALITZ:** No. that came later,  
23 after our attempts to try to convince the people  
24 to lay down their arms.

25 That was previously, on the 14<sup>th</sup>,

1 So, this was a follow up. You can see when the  
2 change of mood occurred, when they said they did not  
3 want to talk with us anymore,  
4 see paragraph 56, "Mr Noki again insisted to speak to  
5 mine management. In response, Colonel Macintosh informed him  
6 that mine management was not willing to speak to them, if  
7 they disarmed and returned to work for a two-year wage  
8 agreement, which the unions had proposed, and the strike was  
9 unprotected. This appeared to make Mr Noki agitated and  
10 aggressive". So, according to this testimony, in paragraph 56  
11 Mr Noki came forward, in 58, in my  
12 statement and said that they no longer want to speak to us.  
13 They wanted to speak through their Advocate  
14 and that was not a threat. That was then the mood  
15 change that I immediately noticed in the group. If this will  
16 give you clarity.

17 **MR GOTZ:** You cannot confirm the statement  
18 in exhibit L that during the discussion in relation to  
19 mister, Advocate Shapiro one of the representatives became  
20 very aggressive and then said to people in the hippos,  
21 referring to the armoured vehicles, that they would die  
22 there and not one Nyala would leave that ground. You cannot  
23 confirm that?

24 **BRIGADIER CALITZ:** Not at that stage  
25 from Mr Shapiro, that threat was made with

1 those words at a later stage, on the 16<sup>th</sup>.

2 **CHAIRPERSON:** I understand that but,

3 what is said here in slide 118 of exhibit L where

4 states that, that threat was uttered the same time that

5 Advocate Shapiro's name was mentioned during the discussion

6 about Advocate Shapiro. That statement in exhibit L you

7 cannot confirm as being correct.

8 **BRIGADIER CALITZ:** No, Mr Chairperson,

9 it looks like it was just a summary by the person who

10 who then gave the presentation.

11 This was not said during just the one incident.

12 **CHAIRPERSON:** So one cannot rely then on

13 slide 118 as being an accurate statement of what happened

14 in the discussions at about 10:15 on the Wednesday the 15th

15 between the police negotiating team on the one hand and the

16 group of five strikers on the other, is that correct?

17 **BRIGADIER CALITZ:** This is why I said I think the

18 presentation is perhaps a summary of the

19 information received.

20 **CHAIRPERSON:** But you haven't answered my

21 question. The question was would it be fair to say that we

22 cannot rely on the accuracy of what is contained in slide

23 118 as being what was said during the discussions between

24 the police negotiating team on the one hand and the five

25 strikers on the other.

1 **[11:50]** At 10:15am or thereabout on Wednesday, the 15<sup>th</sup> of  
2 August 2012. We can rely in particular on the last  
3 sentence of the first bullet on slide 180. That did not  
4 happen at 10:15 during that exchange –

5 **BRIGADIER CALITZ:** That is correct –

6 **CHAIRPERSON:** - between the police

7 negotiating team and the strikers, the leaders, at 10:15 on

8 the Wednesday, the 15<sup>th</sup>, that –

9 **BRIGADIER CALITZ:** The last –

10 **CHAIRPERSON:** Do you agree with me what I

11 put to you?

12 **BRIGADIER CALITZ:** The last sentence in

13 paragraph 1, you are correct, Mr Chairperson.

14 **CHAIRPERSON:** Okay, thank you.

15 **MR GOTZ:** Can we, while we're on the

16 Operation's occurrence book, I beg your pardon, also look

17 at the entries in relation to 14:00, and you will find that at

18 page 17, entries 195 and 196. It says, "Pappa1 reporting

19 that they were informed that the groups are going to form a

20 C-shape and come closer to the police vehicles." I think

21 what that is supposed to record is that the group approached

22 you in a horseshoe formation.

23 **BRIGADIER CALITZ:** Yes that group,

24 it is a horseshoe, 'a C-shape, it is about -

25 the same.

1 **MR GOTZ:** And then at 14:05, entry 196  
2 you will see "Chopper 1 reporting that the guy with the green  
3 blanket, the negotiator of the group went to the back of  
4 the group and he is busy talking to them," and you can –  
5 **CHAIRPERSON:** There is obviously a word  
6 missing there, I suspect the word "members" is missing in  
7 front of the words, "of the group," in other words it  
8 should probably read, "Chopper 1 reporting that the guy  
9 with the green blanket, the negotiator, and members of the  
10 group went to the back of the group and he is busy talking  
11 to them."  
12 **MR GOTZ:** I think –  
13 **CHAIRPERSON:** That is probably right,  
14 isn't it, -  
15 **MR GOTZ:** Probably –  
16 **CHAIRPERSON:** - Brigadier?  
17 **MR GOTZ:** But do you see, Brigadier, that  
18 –  
19 **BRIGADIER CALITZ:** I see it like this, Mr  
20 Chairperson.  
21 **MR GOTZ:** There is no –  
22 **CHAIRPERSON:** I do not think what you said  
23 were recorded if Mr Gotz spoke over to you. What do you say  
24 to the question I asked you?  
25 **BRIGADIER CALITZ:** You said there is a

1 word –

2 **CHAIRPERSON:** There is obviously a word

3 missing from entry 196 and I suggest it is probably the

4 word “members” in front of the words “of the group” in the

5 second line, do you agree with that?

6 **BRIGADIER CALITZ:** Mr Chairperson

7 yes, then it is the members of the group, busy talking

8 to them; that could be a feedback. I cannot recall what

9 was said here by

10 Chopper 1.

11 **MR GOTZ:** There is no mention in the

12 occurrence book of any threat on the police, Brigadier, do

13 you see that?

14 **BRIGADIER CALITZ:** What you showed me I

15 cannot see that here that a threat was recorded

16 in the OB no.

17 **MR GOTZ:** Do you not think that if the

18 police had felt that they were threatened, that would

19 have been recorded in the occurrence book at that time? I

20 can understand, Brigadier, let me just finish, I can

21 understand the events of the 16<sup>th</sup>, particularly late in the

22 afternoon when many things were happening, things may not

23 have been accurately recorded, but on the 15<sup>th</sup> when this is

24 the only event that is occurring, do you not think that if

25 a threat had been made on the police it would have been

1 recorded?

2 **BRIGADIER CALITZ:** I cannot tell you why it was not

3 recorded in the incident book. There

4 was constant communication between us and the JOC,

5 so I cannot say why it was not in the OB.

6 No.

7 **MR GOTZ:** You see I want to put it to you

8 that it wasn't a threat, all it was, was at most a

9 statement by Mr Noki that he did not want to talk to you

10 anymore, he wanted to talk to mine management and he did not

11 want the police there, and that is not a threat, Brigadier.

12 **BRIGADIER CALITZ:** I think I had answered you

13 on that already, yes.

14 **MR GOTZ:** And I must put it to you that

15 we will argue that in fact there was no threat that was

16 made on the 15<sup>th</sup> by the strikers.

17 **BRIGADIER CALITZ:** I hear what you say but I

18 do not agree with you.

19 **MR GOTZ:** Can we move then to what you

20 refer to as the second threat and perhaps I can take you to

21 paragraph 81 of your statement where you say a number of

22 things but in the second sentence, can we start there? You

23 say, "Mr Noki and one of the five men approached our Nyala

24 and told us that they did not want us there and went back

25 to the hill singing and displaying aggression." Now,

1 Brigadier, five minutes ago you said that the fact that  
2 they went back to the hill singing and displaying  
3 aggression does not constitute a threat in relation to the  
4 events on the 15th. What makes that a threat if Mr Noki  
5 comes to you and says, they do not want you here?

6 **BRIGADIER CALITZ:** If you see the word  
7 "singing and displaying aggression" –

8 **MR GOTZ:** No, Brigadier, you said five  
9 minutes ago in relation, and the record will reflect this,  
10 in relation to events on the 15<sup>th</sup> that the mere fact that  
11 they were singing and displaying aggression did not  
12 constitute a threat on the police.

13 **BRIGADIER CALITZ:** As my memory serves me,  
14 this is when we detected the "mood change"  
15 in the group.

16 **MR GOTZ:** Indeed in relation to that  
17 event.

18 **BRIGADIER CALITZ:** Yes, the "mood change",  
19 and here they definitely showed aggression with  
20 the banging of their weapons and the manner in which they  
21 moved, so that shows the difference.

22 **MR GOTZ:** Again we shall argue that the mere  
23 fact that Mr Noki comes to you and says, we do not want you  
24 here, does not constitute a threat. Perhaps we can get  
25 some, if you wish to respond to that feel free to do so? I

1 think you have given us your views but if there is anything

2 else –

3 **BRIGADIER CALITZ:** No, -no,

4 **MR GOTZ:** - you want to add?

5 **BRIGADIER CALITZ:** While you are on

6 paragraph 81, I just want to go to the Nyala 6, and where I

7 said to them; “remove the barbed wire, he is not going to

8 ask again,” Those words are an indication that something

9 will happen unless we heed their words.

10 so this is the same 81, I referred to.

11 **MR GOTZ:** We get the sense from your

12 witness statement that this statement was made, first of

13 all in response to or shortly after the arrival of the

14 barbed wire at the scene and we understand that from

15 paragraph 79 of your statement where you described the

16 arrival of the barbed wire.

17 **BRIGADIER CALITZ:** Yes, as I said in paragraph

18 80, we arrived there at about 10:00 o'clock, a group

19 of 600 people - “arriving at the hill heavily

20 armed,”- was the information we received from the observation

21 post. So it was with our arrival on the

22 morning of the 16<sup>th</sup>.

23 **MR GOTZ:** My proposition to you was that

24 this threat, alleged threat let's call it, occurred shortly

25 after the arrival of the barbed wire.

1 **BRIGADIER CALITZ:** I have told you was after our  
2 our arrival on the morning we got there,  
3 that is correct.

4 **MR GOTZ:** You also put a time to this as  
5 10am, do you see that in paragraph 80?

6 **BRIGADIER CALITZ:** Yes, that one refers to the  
7 plus minus 600 armed persons who were arriving, from an Eastern  
8 direction of the hill. That will be from the Nkaneng  
9 side.

10 **MR GOTZ:** Brigadier, a small point, that  
11 the barbed wire only arrived on the scene some 40 minutes  
12 later and in fact was only fully rolled out 50 minutes  
13 after 10am.

14 **CHAIRPERSON:** But it was not, - it was  
15 only rolled out in the afternoon.

16 **MR GOTZ:** I beg your pardon, I beg your  
17 pardon.

18 **CHAIRPERSON:** Pre-positioned, I think  
19 what you mean?

20 **MR GOTZ:** Yes, in other words, let me be  
21 clear, the barbed wire Nyalas arrived on the scene some 40  
22 minutes after 10am, and the barbed wire vehicles were only  
23 prepositioned, I have it at 10:44.

24 **BRIGADIER CALITZ:** Okay, I -  
25 what are you asking me?

1 **MR GOTZ:** Are you sure that you've got

2 the timing of this correct, Brigadier?

3 **BRIGADIER CALITZ:** The time given is the only time

4 I referred to here; "shortly

5 before 10 and upon our arrival at the hill" die "shortly

6 before 10," there was report from the observation

7 post, in the tower, and they observed the armed group,

8 after this I did not give another time referring to the movements re

9 the hill. So the time referred to about the people advancing -

10 I do not know if there is a OB

11 regarding that, but I can check.

12 **MR GOTZ:** Brigadier, I want to try and

13 cut this short, the -

14 **CHAIRPERSON:** Is there something in the

15 occurrence book, it might be helpful if he finds it because

16 it would enable you to proceed with your cross-examination.

17 Have you found the entry in the occurrence book?

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 yes, I see a written report regarding this on

20 page 22.

21 **CHAIRPERSON:** At what time?

22 **BRIGADIER CALITZ:** Report 978 on

23 9:45, OP1, It says; "Observation post 1 reported that 600

24 people arriving at the hill, heavily armed, a lot of the

25 people still coming from the eastern side," so the OB -

1 **CHAIRPERSON:** Yes, but the Nyalas had not  
2 gone there yet with the wire trailers, had they?

3 **BRIGADIER CALITZ:** Yes, so it is – No,  
4 this is the time we referred to –

5 **CHAIRPERSON:** If you read on there are  
6 some entries later on at the next page you might look at.  
7 Look at the next page of the OB, the occurrence book. You  
8 see you say in your statement in paragraph 81, you talk  
9 about this explanation about the, you talk about the story  
10 that Mr Noki wanted you people to remove the barbed wire,  
11 that means the barbed wire trailers, and you say the threat  
12 was relayed to the JOC by you. Now if you look at the  
13 occurrence book, which we were looking at a minute ago, you  
14 will see that there is an entry which was made in the JOC  
15 about that incident but the time is different from the time  
16 you have given us. Could we see a bit more of the occurrence  
17 book, please?

18 **BRIGADIER CALITZ:** That information is -  
19 made at 11:20.

20 **CHAIRPERSON:** Well, that is the point,  
21 isn't it? So what, so it does look as if, I mean unless  
22 they put the, and they may be an entry in the occurrence  
23 book at the wrong time, but that is a but unlikely because  
24 as Mr Gotz says, there wasn't a big flow of report coming  
25 in that had to be converted into entries in the occurrence

1 book. So the probabilities are that 11:20 is more or less  
2 a correct time and if that is correct, entry 998, then that  
3 indicates that the time you gave us previously is totally  
4 wrong, at 10:30, it cannot be right.

5 **MR GOTZ:** Ten o'clock.

6 **CHAIRPERSON:** Not so?

7 **BRIGADIER CALITZ:** Mr Chairperson

8 no, I –

9 **CHAIRPERSON:** There is confusion –

10 **BRIGADIER CALITZ:** I did not give

11 a time –

12 **CHAIRPERSON:** Either the occurrence book  
13 is wrong, I mean that entry, do you agree with me, that  
14 entry, 998, refers to the incident you described in  
15 paragraph 81 of your consolidated statement.

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

17 **CHAIRPERSON:** Which you say you actually  
18 reported to the JOC.

19 **BRIGADIER CALITZ:** This is correct.

20 **CHAIRPERSON:** So that entry clearly  
21 relates to that, because you agree with that?

22 **BRIGADIER CALITZ:** This is correct.

23 **CHAIRPERSON:** Alright, and the  
24 probabilities are that the entry was made more or less  
25 contemporaneously in the occurrence book by Brigadier

1 Pretorius or whoever was making the notes in the occurrence

2 book at that time, is that correct?

3 **BRIGADIER CALITZ:** I think that is right,

4 that should be the right time.

5 **CHAIRPERSON:** That's right.

6 **BRIGADIER CALITZ:** Correct, Mr

7 Chairperson.

8 **CHAIRPERSON:** Now you told us earlier in

9 answer to Mr Gotz' question that this incident took place

10 at 10:30 and what I am saying to you is, it seems to what we

11 now see by reference to the occurrence book that your time

12 is wrong, that there is a bit of confusion at least

13 relating to the time of this incident, will you agree with

14 that?

15 **BRIGADIER CALITZ:** Mr Chairperson,

16 no, I do not agree, I cannot recall testifying

17 that this incident occur at

18 10:30. And this is the only instance where I referred

19 to a time factor here;

20 "shortly before 10" and that was re the information I received

21 from the post. I did not talk about the time

22 the Nyalas arrived there.

23 **MR GOTZ:** Brigadier, will you at least

24 concede that paragraph 79 of your statement is hopelessly

25 incorrect?

1 **BRIGADIER CALITZ:** Paragraph?

2 **MR GOTZ:** 79, in respect of the timing.

3 You refer expressly there to the arrival of the barbed wire

4 and that paragraph cannot be correct.

5 **COMMISSIONER HEMRAJ:** Paragraph 80, Mr

6 Gotz?

7 **MR GOTZ:** No, -

8 **BRIGADIER CALITZ:** Yes, 79.

9 **MR GOTZ:** No, I refer to paragraph 79,

10 the first sentence, Commissioner.

11 **BRIGADIER CALITZ:** Yes, that is 100%, 79

12 referred to the time we had arrived there,

13 observed, and then paragraph 80 referred to the report written in

14 the OB by the observation post.

15 That had nothing to do with the arriving of the Nyalas,

16 and 81 is about 11:20, that is what happened there

17 around the threat to the Nyala 6.

18 **MR GOTZ:** Brigadier, I am going to argue

19 that the level of confusion in your recollection of these

20 events says a lot about whether or not these events

21 actually did occur, because paragraph 79 which you

22 confirmed to me occurred before ten o'clock, could not have

23 occurred before, because it refers to the barbed wire. We

24 know that the barbed wire only arrived 45 minutes later and

25 -

1 **BRIGADIER CALITZ:** Mr Chairperson.

2 See, I did not say that paragraph 79, the rolling out of

3 the wire happened before 10:00. I will like to see where you see this

4 as I did not say it in my

5 statement. The reference to paragraph 80 is totally different

6 reference, not after the arrival of the wire, no.

7 **MR GOTZ:** Well, can you tell us where

8 paragraph 79 must be located in the chronology, because you

9 say in paragraph 80 "shortly before 10am and upon our

10 arrival at the hill certain things happened." Where does

11 79 then fit in?

12 **BRIGADIER CALITZ:** No. 79 is definitely where we said

13 the arrival of the Nyalas was, so, if we must have it in a chronological

14 order, 80 can be placed before 79.

15 But I have told you this is where we received the

16 message that there were people still on the way; "on our arrival

17 at the hill." I did not tell you about the rolling out of

18 the wire – when the wire arrived there.

19 **MR GOTZ:** I then ask you expressly,

20 Brigadier, are you saying that this alleged threat by Mr

21 Noki occurred shortly after the arrival of the barbed wire?

22 **BRIGADIER CALITZ:** The threat from Mr Noki arrived indeed

23 after the wire, when they were

24 positioned, already.

25 **MR GOTZ:** Sorry, Chairperson, I beg your

1 pardon, can you repeat that, Brigadier?

2 **BRIGADIER CALITZ:** Say what?

3 **MR GOTZ:** Can you just repeat your answer

4 to that question, Brigadier?

5 **BRIGADIER CALITZ:** I said Mr Noki came to us and asked what

6 was the purpose of the wire,

7 upon which Colonel McIntosh explained to him;

8 "The commander of Nyala 6, explained to Mr Noki

9 over the public address system the purpose of the wire was

10 for the safety of the police and the media personnel. The

11 explanation was loud enough for every striking group to hear," this

12 is the last part of 81.

13 **MR GOTZ:** Brigadier, quite apart from the

14 questions of confusion relating to timing, there also seems

15 to be some kind of confusion as to what happened with Nyala

16 6 and can I ask you to look at paragraph 81 of your

17 statement again?

18 **CHAIRPERSON:** Sorry, Mr Gotz, I have been

19 asked, it has been suggested to me that we should take a

20 comfort break at this stage.

21 **MR GOTZ:** I would –

22 **CHAIRPERSON:** And may I suggest we do

23 that and then you can, refreshed and comforted you can

24 proceed with this part of your cross-examination? You will

25 be refreshed and comfortable and so will the witness.

1 **MR GOTZ:** Thank you, Chairperson.

2 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

3 **[12:24] CHAIRPERSON:** The Commission resumes.

4 Brigadier, now that you have your jacket on, you're still

5 under oath.

6 **ADRIAAN MARTHINUS CALITZ:** Thank you, Mr

7 Chairperson.

8 **CHAIRPERSON:** Mr Gotz.

9 **CROSS-EXAMINATION BY MR GOTZ (CONTD.):**

10 Thank you, Chairperson. Brigadier, we were dealing with

11 paragraph 81 of your statement in which you describe in the

12 first sentence – I beg your pardon, the second sentence,

13 that "Mr Noki and one of the five men approached our Nyala

14 and told us that they did not want us there, and went back

15 to the hill singing and displaying aggression. They

16 moved towards Nyala 6 where they informed the police that

17 they must remove the barbed wire. Mr Noki informed the

18 police that he was not going to ask them again." And then

19 you say, "The commander of Nyala 6," note the word

20 "commander," "then reported this to me," and then you read

21 through to the end of the paragraph and you say, "The

22 threat was relayed to the JOC by me." Now what I want to

23 put to you, Brigadier, is you describe this in your witness

24 statement as one threat on the police. In your evidence-

25 in-chief you say there are two threats. You describe this

1 as "threat 2 and threat 3." Do you recall that?

2 Should we take this as one threat or two threats, alleged

3 threats?

4 **BRIGADIER CALITZ:** Yes, I think we must just

5 go back and get clarity. This is not the same instant, so I

6 will read back and see where it was I mentioned threats 2 and 3.

7 I cannot just do it off my head and

8 remember it the way you mention it here, no.

9 What I did refer to here is paragraph 81;

10 After our arrival and the rolling out of the wire

11 Mr Noki did say they did not want us there and with further

12 aggression showed to be threatening. Later another

13 threat was made on the Nyala 6, and that commander

14 then conveyed that threat to us,

15 and that is also where Colonel Vermaak

16 took the aerial photo, where I was contacted by

17 the JOC, and the entire testimony around that

18 incident. So that did not all happen simultaneously as it

19 will seem to, here, no.

20 **MR GOTZ:** Brigadier, again you have

21 referred to the statement by Mr Noki that he does not want

22 you there as a threat. I must just put this to you; I want

23 to play you a short clip and the exhibit KKK56 can be found

24 and played, not in its entirety. KKK56 is on the disc that

25 will be new ETV footage, or ETV footage, new.

1 **CHAIRPERSON:** [Microphone off,

2 inaudible] –

3 **MR GOTZ:** No, no, no –

4 **CHAIRPERSON:** KKK56?

5 **MR GOTZ:** Well, yes. We made it an

6 exhibit earlier this morning, Chairperson.

7 **BRIGADIER CALITZ:** Mr Chairman.

8 I think this is the one he said we would not handle today,

9 and I shall have time to view it

10 in its entirety.

11 So I don't know if we – but I will have a look at it,

12 but I do believe I have to view the complete thing before I

13 can give any answers re times etc..

14 **CHAIRPERSON:** Sorry, that is quite right –

15 **BRIGADIER CALITZ:** I was not issued

16 with that material.

17 **CHAIRPERSON:** I am sorry, my notes are

18 wrong. I have KKK55 as being the video of Mathunjwa's

19 second address, and then I have UU3 Bis as the replaced

20 version of UU3. I do not have KKK56, and what is KKK56?

21 **MR GOTZ:** Product of my undiagnosed

22 dyslexia, Chairperson. You are entirely correct.

23 **CHAIRPERSON:** It is 55?

24 **MR GOTZ:** 55.

25 **CHAIRPERSON:** Alright, okay. Alright, so

1 anyway, Mr Gotz, you heard the Brigadier saying he'd like  
2 to see this first, and he was entitled to be told about it  
3 beforehand, and he'd like to look at it before Monday and  
4 deal with it then. Have you any objection to that?

5 **MR GOTZ:** Brigadier –

6 **CHAIRPERSON:** Particularly as I think if  
7 it is Mathunjwa's address we do need the translation as  
8 well, do we not, to follow it. I understand you are probably  
9 relying more on gestures and people's bearing and so forth  
10 than the actual words, but still –

11 **MR GOTZ:** Yes.

12 **CHAIRPERSON:** - it is probably wisest to  
13 look at the video with the translation in front of us,  
14 wouldn't you think?

15 **MR GOTZ:** Chairperson, I wasn't in fact  
16 going to refer to that at this moment, but I am happy to  
17 leave this point –

18 **CHAIRPERSON:** Look, I don't want to make  
19 your cross-examination difficult, or perhaps more difficult  
20 than it is. I understand the points you're dealing with  
21 are of importance and you must be given an opportunity to  
22 do full justice to them, but I hope you don't regard  
23 yourself as being hampered if the matter stands over till  
24 Monday.

25 **MR GOTZ:** And to assist the Brigadier, we

1 will give the time references. It's a rather long clip and  
2 so I am not sure that he needs to deal with the entire,  
3 review the entire clip. We shall give him the relevant parts  
4 to look at –

5 **BRIGADIER CALITZ:** That is all right, thank you,  
6 Mr Advocate.

7 **MR GOTZ:** Thank you, Chairperson. Brigadier,  
8 can we look at what you say in your evidence-in-chief in  
9 relation to these matters? And it is to be found at day 152  
10 on page 17216.

11 **BRIGADIER CALITZ:** Page?

12 **MR GOTZ:** 17216.

13 **BRIGADIER CALITZ:** That cannot be day  
14 152.

15 **MR GOTZ:** It's page –

16 **CHAIRPERSON:** We now have page 17216.

17 What line are you referring to?

18 **MR GOTZ:** 17216.

19 **CHAIRPERSON:** What line are you referring  
20 to?

21 **MR GOTZ:** It is your evidence commencing  
22 on line 13.

23 **CHAIRPERSON:** Thank you.

24 **MR GOTZ:** Perhaps we can read from line 9

25 where Mr Semenya puts what Mr Noki says to you. Mr Semenya

1 says, "Mr Noki had said they don't want the police there  
2 and they explained" – I think there may be a mistake there  
3 – "explained why the police are there, is there any  
4 information given around the barbed wire?" What you then  
5 say is, "Mr Chairperson, yes, I think it was after  
6 the threat was made to Nyala 6, where the driver of the  
7 vehicle informed us of the threat."

8 You will recall, Brigadier, that I asked you to –

9 **CHAIRPERSON:** Perhaps we should translate  
10 that. What the sentence you read reads, "Mr Chairman, yes,  
11 I think it came after the Nyala 6 threat to Nyala 6 where  
12 the driver of the vehicle then informed us of the threat."

13 That is a translation of the sentence you read.

14 **MR GOTZ:** Do you see that, Brigadier?

15 **BRIGADIER CALITZ:** That I see,

16 is correct.

17 **MR GOTZ:** Brigadier, in paragraph 81 of  
18 your statement you said it was the commander of the Nyala

19 that reported it to you, not the driver. The driver and

20 the commander are two different people.

21 **BRIGADIER CALITZ:** Yes, that is correct.

22 **MR GOTZ:** The commander of Nyala 6 was a

23 Lieutenant Mhlongo and the driver was a Constable Malatsi,

24 and to give the reference, we know that from JJJ135, page

25 3, where it is recorded that they are two separate people,

1 Mhlongo and Malatsi. Now Brigadier, you will appreciate that  
2 you are providing hearsay evidence in this regard? You  
3 did not hear this so-called "threat" personally. It's  
4 therefore hearsay evidence, correct?

5 **BRIGADIER CALITZ:** That is what was conveyed  
6 to me, so it will be hearsay. This is correct.

7 **MR GOTZ:** We will argue –

8 **MR SEMENYA SC:** Chairperson, we do not contend  
9 that it is hearsay evidence when it is not offered for the  
10 truthfulness of its contents, but a report received by the  
11 witness. It is not hearsay at that level.

12 **CHAIRPERSON:** The fact that the witness  
13 received the report is a direct fact which can be proved by  
14 giving the report. Whether the report is tendered,  
15 evidence is given to prove the truth of the report is  
16 another matter, and then that involves the question of  
17 hearsay. Your point is that inasmuch as an attempt is  
18 being made to prove that a threat was made, that would be  
19 hearsay, but insofar as the evidence is tendered merely to  
20 indicate that this report was made to the witness, it would  
21 not be hearsay. So that is the distinction to which Mr  
22 Semenya refers. Obviously, you accept that, I take it.

23 **MR GOTZ:** Indeed. Indeed, Chairperson. On  
24 either point through, Brigadier, you'll accept that, I  
25 think that the Commissioners should be very reluctant to

1 accept any of this evidence when you can't even reflect  
2 accurately whether it is the driver or the commander of the  
3 vehicle that reported this to you, and this is compounded,  
4 Brigadier, by the fact that neither Malatsi or Mhlongo have  
5 filed witness statements. We do not have witness  
6 statements for them –

7 **CHAIRPERSON:** Well, you know that the  
8 time for filing witness statements comes to an end on  
9 Monday and it may well be that there will be statements  
10 from them, but all you can say is that up to now statements  
11 have not been filed from them. That is correct, isn't it?

12 **MR GOTZ:** Indeed, Chairperson. There's no  
13 confirmation on record at this point, Brigadier, of a  
14 threat having been made on Nyala 6.

15 **BRIGADIER CALITZ:** All I can say is, I believe  
16 those statements will be obtained and handed in.  
17 This was discussed between us and the commanders,  
18 and we discussed this with Colonel  
19 Makhubela as well.

20 **MR GOTZ:** And Brigadier, you accept that  
21 there's an inconsistency in your evidence in relation to  
22 who gave you the information?

23 **BRIGADIER CALITZ:** No, in my testimony I  
24 said that the driver reported it. I see in my statement  
25 I said "commander." This can be

1 the driver as I recollect. I cannot remember exactly if  
2 if it was said over the radio. And then we discussed it outside the  
3 vehicle with the "commander".

4 So this was anyway the message we received,  
5 and later discussed it with the commander, and  
6 and also his commander, Colonel Makhubela. So, I do not  
7 agree with you.

8 **MR GOTZ:** Well, I am not sure I understand  
9 your answer. Who gave you the information? Was it the  
10 driver or the commander, or both?

11 **BRIGADIER CALITZ:** I think on the outset I believed the  
12 message came from the driver. As I told you, I do not  
13 remember if it was over the radio.

14 We then followed it up with further discussions with  
15 the commander. The commander told me the officer said  
16 that further threats were made. But if the driver reported  
17 it to him, I cannot remember, or  
18 tell you now. It may have been over the radio.

19 **MR GOTZ:** And again, Brigadier, at its  
20 highest the way in which this so-called threat has been  
21 described is Mr Noki coming to the Nyala and saying "We  
22 don't want the police there."

23 **BRIGADIER CALITZ:** Yes. I can only testify as to what the  
24 commander told me. I did not hear that  
25 threat personally. We followed up by explaining to

1 Mr Noki, over the loudspeaker,  
2 the purpose of the wire and tried to restore calm  
3 to the situation.  
4 **MR GOTZ:** And again, I shall put it to you,  
5 Brigadier, that that does not constitute a threat.  
6 Brigadier –  
7 **BRIGADIER CALITZ:** Mr, Chairman, I do not agree  
8 with you. If this is the words they used and said the wires  
9 must be removed, and they will not be told to do  
10 so again, then I see that  
11 as a threat.  
12 **MR GOTZ:** Brigadier, the other – perhaps  
13 it is not an inconsistency, but can we have a look at what  
14 exhibit L says on this? You will find that, if I have it  
15 correctly, on slide 160.  
16 **CHAIRPERSON:** I did not catch the slide  
17 number.  
18 **MR GOTZ:** I beg your pardon, Chairperson –  
19 **CHAIRPERSON:** What is it?  
20 **MR GOTZ:** It's slide 160.  
21 **CHAIRPERSON:** 1-6-0?  
22 **MR GOTZ:** Yes, 1-6-0.  
23 **CHAIRPERSON:** I am afraid your problem is  
24 affecting you again. 160 is a photograph. May I suggest  
25 that you –

1 **MR GOTZ:** No, no, Chairperson –

2 **CHAIRPERSON:** - ask either Ms Barnes or

3 Ms Lewis to read these numbers for you. I mean to be fair,  
4 it is a genuine problem you have.

5 **MR GOTZ:** No, Chairperson, in this respect,

6 with respect, I do want to refer to this slide.

7 **CHAIRPERSON:** I see. Okay, okay.

8 **MR GOTZ:** You see, Brigadier, what

9 exhibit L, slide 160 says is that at 10:56 protesters are  
10 formed up near Nyala 6 which was moved back to avoid it  
11 being isolated, and that is all we find on the question of a  
12 threat on Nyala 6 in exhibit L. Exhibit L does not refer to  
13 threats being made which are reported to you of Mr Noki  
14 coming to the vehicle. It presents a different picture.

15 It says that what happened was that the protesters formed  
16 up as a group near Nyala 6, which was then moved back to  
17 avoid it being isolated.

18 **BRIGADIER CALITZ:** No, I can see what the

19 heading says.

20 **MR GOTZ:** The inconsistency is this,

21 Brigadier; I am not sure that, perhaps I am the only one that  
22 sees this. The inconsistency is this. Exhibit L seeks to  
23 represent that Nyala 6 was moved back out of the way  
24 because it was isolated. It does not record any threat.

25 Your evidence says that the reason that Nyala 6 was moved

1 was because they were threatened by Mr Noki.

2 **BRIGADIER CALITZ:** This is how it was conveyed to

3 me, and yes, these photos were send to the JOC,

4 and the JOC then made the decision to

5 inform us.

6 **MR GOTZ:** I would like you to appreciate what

7 I am attempting to do, Brigadier. You know, you've come to

8 this Commission and you've made allegations about multiple

9 threats made inter alia by people who are part of my, or

10 members of my client. When I look at the objective

11 evidence, and when I try to piece together what actually

12 happened, nothing makes sense. There are a number of

13 inconsistencies between the versions and I simply cannot

14 work out the timing of these matters on the basis of the

15 available evidence, and we are going to argue that very

16 little of this evidence must be taken seriously by the

17 Commission in the light of a number of inconsistencies.

18 **MR SEMENYA SC:** Chairperson, those broad

19 statements do not help us understand and get an informed

20 answer from the witness.

21 **MR GOTZ:** Chairperson, I am entitled to put what

22 my argument is going to be. I am highlighting the

23 inconsistencies in the evidence –

24 **CHAIRPERSON:** Sorry to interrupt you.

25 You say that no threats were made at all. Is that your

1 case?

2 **MR GOTZ:** Chairperson, to be quite

3 honest, I do not know. You will appreciate –

4 **CHAIRPERSON:** Have you looked at exhibit

5 009?

6 **MR GOTZ:** Perhaps you can simply – the

7 reference doesn't in fact make a –

8 **CHAIRPERSON:** 009, if I remember the

9 reference correctly, is a translation of the soundtrack of

10 a video that was made during Mr Mathunjwa's first address,

11 I think, near the end, which formed the basis of cross-

12 examination I think by Mr Semenya of Mr Mathunjwa when he

13 gave evidence, and someone is clearly heard saying on that

14 tape, referring to a senior policeman who came from the

15 homelands that had been killed, and making further other threats

16 as to what would happen. I do not have it in front of me,

17 but that is my recollection of it. I don't know whether Mr

18 Semenya has it, or his junior has it on their laptop;

19 perhaps they can read it to us, because that appears to be

20 – I am not suggesting that it destroys the validity of the

21 cross-examination that we have been listening to this

22 morning, but it is evidence, prima facie at least, of a

23 threat having been made. Mr Semenya, do you have it in

24 front of you?

25 **[12:44] MR SEMENYA SC:** I do, Chairperson. The

1 translation at the relevant portion reads, Speaker, "These  
2 police, if they claim that they have safety, they must go  
3 and apply safety to that white man/boss who sent them here,  
4 they must leave us here and bring this white man/boss. We  
5 do not leave this place without what we want, they must  
6 leave immediately. A police officer from the homelands, if  
7 he/she was fetched to come here will be left here. He/she  
8 will not enter that hippo," is that relevant, and then  
9 there is laughter.

10 **CHAIRPERSON:** The next sentence, "We will  
11 finish them here," – sorry, no, it is further, "We will  
12 finish them here, they must leave here." Now doesn't that  
13 sound like a threat?

14 **MR GOTZ:** Chairperson, what I am testing  
15 is the evidence that Brigadier Calitz has given.

16 **CHAIRPERSON:** No, no, I understand that,  
17 I understand that.

18 **MR GOTZ:** He has not given any evidence –

19 **CHAIRPERSON:** I understood what you were  
20 doing –

21 **MR GOTZ:** - in relation to these events.

22 **CHAIRPERSON:** You were interrogating the  
23 allegations he made about threats, but I asked you, is it  
24 your case that there were no threats and you said you  
25 did not know, so that is why I referred you to this exhibit

1 which appears to indicate that what looks suspiciously like  
2 a threat was made to the police on the occasion when Mr  
3 Mathunjwa delivered his first address, I think, and that is  
4 evidence before us. We have the, I presume that is the  
5 Xhosa on the left hand side?

6 **MR GOTZ:** Yes.

7 **CHAIRPERSON:** And we have a translation

8 on the right, so that is evidence before us. So, there was

9 at least one threat and you have succeeded in showing, I

10 think, this is a prima facie view, succeeded in showing

11 that there is, at the lowest perhaps, an element of

12 confusion in the present evidence, dates, I mean times

13 do not correspond, there are contradictions and so on

14 and that evidence is obviously that you've elicited, to

15 which you've drawn is very important, but the point that I

16 raised is still a relevant one, were there any threats of

17 any kind at all and your answer was, you do not know. Well,

18 no you do know. Shall we carry on?

19 **MR GOTZ:** Brigadier, - thank you, Chairperson.

20 Brigadier, this is not an incident which you testify and I am

21 questioning you in relation to your evidence in relation to

22 the threats. I do want to highlight a few other

23 inconsistencies because it doesn't end in relation to this,

24 Brigadier, but I can simply put this to you, is that you

25 will appreciate that there is a difference between a single

1 threat being made and what you refer to as six threats.

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 there is a difference between 1 en 6, I agree with you.

4 In my evidence -in -chief I did say this is how I observed it.

5 And I explained the first threat to you.

6 we do not need to go over it again. The time

7 Mr Chairperson see as confusion, I think, we will get back to

8 maybe just to explain paragraph 80 and that it refers to

9 something else.

10 This doesn't refer to the deployment of the vehicle, so I

11 do not agree with the time confusion. And then the Nyala 6

12 showed us a OB entry at 11:20, where I said clearly

13 there are those words uttered to Nyala

14 6, which then would be recorded by OB. So, at that stage its clearly defined,

15 and I do not understand where

16 the confusion is.

17 **CHAIRPERSON:** There is time confusion in

18 the sense that Exhibit L suggests that Nyala 6 was moved at

19 10:56 and the occurrence book suggested it was moved at

20 11:20, so that is the time confusion. Whether it is

21 significant confusion, where it takes us at the end is a

22 different question, but you can't say there wasn't any time

23 confusion. I mean that is contradicted by what we see, but

24 anyway you and Mr Gotz can continue with this conversation.

25 Mr Gotz, do you have further questions for the witness?

1 **MR GOTZ:** Well, Chairperson, just with respect  
2 a correction, Exhibit L doesn't in fact refer to the  
3 movement of Nyala 6. It –  
4 **CHAIRPERSON:** It shows an error. Come  
5 on, it shows, there is a yellow red tangle around Nyala 6  
6 and then there is an arrow which points to another spot and  
7 in fact other videos show that Nyala 6 was moved from the  
8 place we see on slide 160 to the place where the head of  
9 the arrow is to be seen. So it does not say in the legend  
10 at the top that it was moved, but those of us who look at  
11 the arrow and its direction you can clearly see that what  
12 is being conveyed is it was moved, so not let's waste time  
13 on a non-point. Shall we move onto a more substantial  
14 points?

15 **MR GOTZ:** The chairperson has highlighted  
16 and I was going to as well, the occurrence book which  
17 records at 11:20 something that you report to the JOC.  
18 Let's look at that, it is FFF25, at 11:20 and it is entry  
19 998. You will see it says there, "Situation report. Pappa1  
20 reported that the group is moving towards the Nyala. The  
21 group leader asked the police official to remove the wires  
22 and said he is not going to ask them again as he is also  
23 aggressive. About 3,500 people gathered." There is  
24 nothing in the occurrence book about Nyala 6 being  
25 threatened, Brigadier?

1 **BRIGADIER CALITZ:** Mr Chairperson Once again I can only say it  
2 must refer to the person who wrote this,  
3 and if he left the no "6" out after the Nyala,  
4 and this being the only Nyala that we can  
5 see in slide 160, whereto the group had moved,  
6 and where the group was threatened, I cannot give you an  
7 explanation as to why he did not put a "6"  
8 after the word, Nyala.

9 **CHAIRPERSON:** Mr Gotz, the problem with  
10 this point is that we do know that Nyala 6 was moved  
11 because we know that from other photographs and we may have  
12 to apply a bit of circumstantial evidence here but the  
13 indications are that something happened in relation to  
14 Nyala 6 which caused Nyala 6 to be moved. It is true, there  
15 isn't a note in the occurrence book which already sends up  
16 a warning sign, don't rely too exclusively on the  
17 occurrence book but never mind, Nyala 6 was moved and there  
18 is an entry that people towards the Nyala. It does not say  
19 which one, but if you put the two together you might get  
20 the answer, but anyway, it doesn't help to say that nothing  
21 happened in relation to Nyala 6 because clearly something  
22 did. What exactly it is, whether this involved a threat,  
23 these are obviously matters that we must investigate and  
24 you may well wish to contend at the end that a threat  
25 hasn't been proved in respect of that, but that is a matter

1 we shall deal with at the appropriate time.

2 **MR GOTZ:** Chairperson, I was just about

3 to go onto evidence which I would like to show the

4 brigadier, which demonstrates the photographs taken with

5 Vermaak's Pentax as well as his BlackBerry, there are two

6 photographs, but particularly a Vermaak photograph which

7 was taken at 11:22 which at that point showed –

8 **CHAIRPERSON:** Shall we see it, shall we

9 see it, let us have a look at it?

10 **MR GOTZ:** Yes, Chairperson.

11 **CHAIRPERSON:** If you want to show it and

12 it is relevant, then let us see it. It is an exhibit

13 already, I take it?

14 **MR GOTZ:** Just for record purposes,

15 Chairperson, the image that we had on screen from Exhibit L is

16 also taken from Vermaak's Pentax camera. It is 4501 in

17 Exhibit JJJ10 taken at Vermaak's Pentax time 10:55, which

18 is ETV time 10:44:16 and then if the brigadier can have a

19 look in that folder at image 4524, if it can be put on the

20 screen, image 4524. Now this photograph was taken at

21 Vermaak Pentax time 11:22:24 which his ETV time 11:20:42.

22 You can see, Brigadier, that there is a Nyala with barbed

23 wire in the top left hand corner of the photograph, the

24 furthest to the left. You'll confirm, Brigadier, that that

25 is?

1 **BRIGADIER CALITZ:** That is correct,

2 the far left-hand side as you look at the photo now.

3 **MR GOTZ:** So by 11:20 has not been

4 moved. What we find is –

5 **CHAIRPERSON:** It will of course explain

6 why the occurrence book entry at 11:20 does not record that

7 Nyala 6 has moved yet, but it is quite clear that it hadn't

8 moved by 11:20. We know it moved later.

9 **MR GOTZ:** We do know that it moved later,

10 what is unclear to us is precisely when it moved because it

11 is at this point that Vermaak appears, returns and lands.

12 The next photograph in the series, 4525, is the first

13 photograph that Colonel Vermaak takes in the afternoon.

14 **CHAIRPERSON:** We see a Nyala close to the

15 kraal which presumably is. I have not counted them

16 but I take it, it is Nyala 6.

17 **MR GOTZ:** Do you confirm that that does

18 show that Nyala 6 has been moved and the timing of this, -

19 sorry, let me ask the question. Will you confirm,

20 Brigadier, that that shows that Nyala 6 has now moved?

21 **BRIGADIER CALITZ:** Yes, that is correct.

22 What is the time of the photo?

23 **MR GOTZ:** It is Vermaak Pentax time

24 15:34:14 which I have as 15:32:32, and we haven't seen,

25 Brigadier, and perhaps you can refer us to something which

1 does indicate when Nyala 6 was in fact moved, because none  
2 of the photographs that we have seen indicates that. I  
3 may have missed something, I am happy to accept that there  
4 is a lot of material there, but certainly on the basis of  
5 the material that I have seen in the exhibits and elsewhere,  
6 there is no indication of when exactly Nyala 6 was moved.

7 **BRIGADIER CALITZ:** Mr, Chairman,

8 We had testified about that and if you should look at the photo  
9 of slide 160- I do not know what the ETV time of that photo is,  
10 it will be more or less the time when the threat was made;  
11 when the driver gave the feedback,  
12 the commander came to discuss it – that threat was  
13 forwarded to JOC , so, I do not know. One must be careful,  
14 unless you say I said it was moved at a specific time  
15 when it could have been anytime during the next half hour  
16 or hour.

17 The photo that Colonel Vermaak send; surely a person can  
18 tell from the photo, when it was taken and when it  
19 was sent. That photo was received in JOC , it  
20 was discussed in JOC. I received a telephone call we can  
21 also look at, and then there is the discussion  
22 with Colonel Makhubela, so a good half an hour to an hour  
23 could have passed by then, and there is the positioning of  
24 that vehicle. So –

25 **CHAIRPERSON:** This is a matter that can

1 presumably be demonstrated by photographs or videos or –

2 **BRIGADIER CALITZ:** I believe so Mr

3 Chairman.

4 **CHAIRPERSON:** - the timing of telephone

5 calls and cell phone calls.

6 **BRIGADIER CALITZ:** That is correct.

7 **CHAIRPERSON:** So that is a matter that the

8 SAPS team can look into, you can only testify from your own

9 knowledge which you have done so far.

10 **BRIGADIER CALITZ:** Correct.

11 **CHAIRPERSON:** It is after or just before

12 one o'clock, Mr Gotz, so when it is convenient for the

13 purpose of your cross-examination, let me know and we will

14 take the, not the lunch adjournment but the weekend

15 adjournment –

16 **MR GOTZ:** Chairperson, -

17 **CHAIRPERSON:** - and we shall resume on

18 Monday, but it is for you to determine when it will be

19 appropriate for purpose of your cross-examination for us to

20 do that.

21 **MR GOTZ:** Chairperson, just to, the brigadier

22 asked the timing of the photograph on Exhibit L, I did

23 actually give that earlier but let me repeat it. It is

24 Vermaak BlackBerry time 10:55:58, which is ETV time

25 10:54:16. So at the very least what we can say is that

1 between 10:44:16 and 11:20 Nyala 6 had not been moved.

2 **BRIGADIER CALITZ:** Yes, I will say that by then

3 one can determine – I said

4 about half an hour,- That is the communication and the information

5 shared on the ground and which was then moved to JOC.

6 So it is very possible that it is correct.

7 **MR GOTZ:** Thank you, Chairperson, and I shall take

8 the weekend to try and shorten my cross-examination.

9 **CHAIRPERSON:** - if you did that, on the

10 other hand I do not expect you to leave anything important

11 out because I can understand the significance of this

12 cross-examination and it hopefully will assist us to arrive

13 at the truth ultimately in relation to the issues that

14 you have been covering. We will now adjourn until Monday

15 morning at nine o'clock.

16 **[COMMISSION ADJOURNED]**

