

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 176

28 JANUARY 2014

PAGES 20958 TO 21126



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



<p style="text-align: right;">Page 20958</p> <p>1 [PROCEEDINGS ON 28 JANUARY 2014] 2 [09:14] CHAIRPERSON: The Commission resumes. I 3 understand that the families of the deceased are on their 4 way and they will be arriving in the course of the day. We 5 will obviously welcome them when they return. I understand 6 they've been delayed and they're at the moment still in 7 Johannesburg, so we have to start, I'm afraid, without 8 them. So they will be deprived of the opportunity of 9 hearing what I hope will be the end of Mr Gotz's cross- 10 examination, but I'm sure that if they are particularly 11 interested Mr Nichol or somebody will be prepared to read 12 the relevant bits to them from the transcript. 13 MR GOTZ: In his best Afrikaans. 14 MR GOTZ: Mr Gotz, are you ready to 15 proceed with your cross-examination? 16 MR GOTZ: Thank you, Chair, and good 17 morning, Commissioners. Good morning, Brigadier Calitz. 18 BRIGADIER CALITZ: Good morning, 19 Commissioners, and good morning Advocate. 20 CROSS-EXAMINATION BY MR GOTZ (CONTD.): 21 Brigadier, you'll recall we ended yesterday with us 22 debating a point that I'd made that it was not that easy 23 for the strikers to retreat, as it were. You'll recall 24 that? 25 BRIGADIER CALITZ: Ek onthou wat u gesê</p>	<p style="text-align: right;">Page 20960</p> <p>1 KKK57. Is that right? 2 MR GOTZ: Yes. 3 CHAIRPERSON: So we have two – it's two 4 photographs, isn't it? 5 MR GOTZ: Two photographs, Chair. We can 6 make them KKK57.1 – 7 CHAIRPERSON: Alright, so how do I 8 describe them in the exhibits, in my book? KKK57.1 is 9 what? 10 MR GOTZ: An aerial – 11 CHAIRPERSON: I didn't check them. Are 12 they – no, they're not the same photograph. 13 MR GOTZ: They're not the same 14 photograph. 15 CHAIRPERSON: So the easiest way to do it 16 will be to say marked copy of exhibit so-and-so. Now of 17 course, and if you knew what exhibit – 18 MR GOTZ: Yes, indeed, although I will 19 need to get that underlying exhibit number for you, and I 20 don't have that at my fingertips, Chair. 21 CHAIRPERSON: Alright, well never mind; 22 we will provisionally just mark them 57.1 and 2, and then 23 when you have got the information at your fingertips, as 24 you put it, you will then announce it. 25 MR GOTZ: Alright, thank you, Chair.</p>
<p style="text-align: right;">Page 20959</p> <p>1 het. 2 MR GOTZ: And it was suggested to me that 3 I should produce some evidence underlying my proposition. 4 I'd like to take a slight step back so that we can 5 orientate ourselves, because I fear that we may be at 6 slight cross purposes. I provided you with a series of two 7 photographs – Chair, they should also be in the 8 Commissioners' bundles. The photographs have lines drawn 9 on them. They're aerial shots. 10 CHAIRPERSON: You explained to us in 11 chambers that these were exhibits that were already before 12 the Commission, but what you've done is you've added to the 13 exhibits certain lines which – I'm not quite sure where I 14 put them – certain lines which indicated something which 15 you're going to deal with in cross-examination. 16 MR GOTZ: Yes. 17 CHAIRPERSON: Am I – 18 MR GOTZ: Chair, for the purposes of – 19 CHAIRPERSON: - recollecting correctly? 20 MR GOTZ: Yes, indeed. Chair, for the 21 purposes of the people operating the screen, it's a 22 document on my disc called "Barbed wire and fences." 23 CHAIRPERSON: If you're going to put them 24 in we have to give them exhibit numbers because the lines 25 will be in effect an exhibit. The next exhibit I think is</p>	<p style="text-align: right;">Page 20961</p> <p>1 Brigadier, have you got copies of the two photographs 2 KKK57.1 and 57.2? 3 BRIGADIER CALITZ: I found them yesterday 4 lying on my table here. So ek het nie geweet nie, maar ek 5 het aangeneem dit is u span wat dit vir my hier neergesit 6 het. 7 CHAIRPERSON: Have you marked them? Het 8 u hulle gemerk KKK57.1 en KKK57.2? 9 BRIGADIER CALITZ: Ek het hom so gemerk, 10 dankie, mnr die Voorsitter. 11 MR GOTZ: Brigadier, the first photograph 12 you will confirm is, or demonstrates really what the effect 13 of the planned rollout of the barbed wire coupled with the 14 fences to the southern side of the squatter camp would do. 15 You'll see that there is a, from the line of Nyala 1 16 through to Nyala 5 and then on to the kraal, and then on 17 the other side there are barbed wire fences which 18 effectively, as it were, block access to a large group of 19 people. I'm not suggesting that individuals couldn't climb 20 under a fence or over a fence, but I'm sure you would agree 21 if a large group of people tried to go through that fence 22 they would have difficulty? 23 CHAIRPERSON: This isn't it at the 24 moment, is it? My one has got red lines on it. 25 MR GOTZ: Ja.</p>

<p style="text-align: right;">Page 20962</p> <p>1 CHAIRPERSON: What we see on the screen 2 hasn't got it. 3 MR GOTZ: Chair, I'm not sure whether my 4 learned friend has copies of this document. 5 MR SEMENYA SC: No, we don't. 6 CHAIRPERSON: Well, I see his red light 7 is on which probably means he hasn't got a red line 8 photograph. Is that right? 9 MR SEMENYA SC: I don't have photographs 10 at all, Chair. 11 CHAIRPERSON: Well, I think it's – 12 MR GOTZ: Do you have – 13 CHAIRPERSON: Before we carry on, Mr 14 Semenya should get them because he must be able to follow 15 the cross-examination. 16 MR GOTZ: I do have copies available, 17 Chair. 18 CHAIRPERSON: Alright, what we had on the 19 screen didn't have the red markings. 20 MR GOTZ: I'm not sure what happened to 21 them on the screen, Chair, but certainly when we gave – 22 CHAIRPERSON: Perhaps a further attempt 23 can be made to find the relevant slide for screening for 24 us. 25 MR GOTZ: Chair, if you'll just bear with</p>	<p style="text-align: right;">Page 20964</p> <p>1 CHAIRPERSON: We've then got at an angle 2 of about 45 degrees – 3 MR GOTZ: I think that's more – 4 CHAIRPERSON: - moving towards - or 5 slightly more – moving towards the middle of the page we've 6 got the wire barrier. Then we've got almost a right 7 angle – 8 MR GOTZ: Yes. 9 CHAIRPERSON: - moving to the right to 10 the vicinity of the kraal. We've then got a red line going 11 around the kraal, which I presume that is really the fence 12 of the kraal. 13 MR GOTZ: Yes. 14 CHAIRPERSON: The kraal fence. 15 MR GOTZ: Yes, indeed. 16 CHAIRPERSON: The thorn trees, whatever 17 they were, that made up the fence of the kraal. 18 MR GOTZ: Yes. 19 CHAIRPERSON: And then beyond that we've 20 got a line running from a position, I suppose about a 21 quarter of the way down and about a third of the way in 22 from the left-hand side of the picture, which – is that 23 supposed, what's that supposed to be? 24 MR GOTZ: Chair, so on our understanding, 25 having visited the scene as well as having looked at these</p>
<p style="text-align: right;">Page 20963</p> <p>1 me for two minutes. 2 CHAIRPERSON: Is this going to take some 3 time, Mr Gotz, or are we waiting for the families to arrive 4 before it's screened, or what – 5 MR GOTZ: No, no, not at all, Chair. 6 We've given a copy to the person. 7 SPEAKER: [Microphone off, inaudible]. 8 CHAIRPERSON: [Microphone off, inaudible] 9 rivalry between the computer firms of course is the trouble 10 we had previously in relation to time, if you will 11 remember. 12 MR GOTZ: Indeed. Ah, there we go. 13 CHAIRPERSON: There we've got it. You 14 see the red line there, Brigadier? 15 BRIGADIER CALITZ: Ek sien dit, mnr die 16 Voorsitter. 17 CHAIRPERSON: The red line at the bottom 18 of the page, the foot of the page is also, is obviously not 19 part of the barrier, I take it. It's presumably the fence 20 around the power station. Is that right, Mr Gotz? 21 MR GOTZ: Yes, indeed, Chair. 22 CHAIRPERSON: So we've got a red line at 23 the foot of the page which is effectively the fence of the 24 power station. 25 MR GOTZ: Yes.</p>	<p style="text-align: right;">Page 20965</p> <p>1 photographs, those are barbed wire fences. So if one sees 2 the kraal to the, on the top left-hand side and the kraal 3 to the top right-hand side, the small kraal being at the 4 bottom, surrounding those two kraals at the top would be a 5 series of barbed wire fences in the position as marked on 6 the red line. 7 CHAIRPERSON: Well, Mr Gotz, we've got 8 other photographs. I can't remember that, but I'm not 9 quarrelling with you. You may well be right, but after a 10 few more witnesses have testified I'm proposing that we're 11 going to have another inspection and we will then be able 12 to verify whether you are correct in saying that there is 13 indeed a series of barbed wire fences which are along the 14 route covered by what one can call the upper red line on 15 your photograph. But you assure me that you've inspected 16 it and you've seen it yourself and without putting you 17 under oath in the witness box I'll accept what you say 18 provisionally, and obviously you realise you proceed at the 19 risk that if this is wrong then your whole cross- 20 examination on this point will be nullified, but if you're 21 prepared to take that risk, I am. I will provisionally 22 allow you to ask the questions on that basis. 23 MR GOTZ: Safe to say that I think things 24 may have changed on the scene quite dramatically, but Mr 25 Chaskalson wants to –</p>

<p style="text-align: right;">Page 20966</p> <p>1 MR CHASKALSON SC: That was the point I 2 was about to make. For instance the kraal has been 3 completely demolished. 4 SPEAKER: [Microphone off, inaudible]. 5 MR CHASKALSON SC: I take that back. 6 But – 7 CHAIRPERSON: We did [inaudible] these 8 conflicts of testimony don't have to be resolved by oral 9 evidence, but alright, which kraal has been demolished? 10 You say the so-called small kraal – 11 MR CHASKALSON SC: No, no, I withdraw 12 that comment. My informant has repudiated his information. 13 So I think there has to be a caution in relation to 14 inspection. It is 18 months down the line, or it will be 15 18 months down the line. Things may have changed, but the 16 dramatic changes that I was informed about apparently have 17 not taken place. 18 CHAIRPERSON: Yes, well Adv Hemraj wants 19 to say something. Could I just ask this, though? The red 20 line we're talking about, the upper red line – 21 MR GOTZ: Yes. 22 CHAIRPERSON: - that's intended to be, I 23 suppose, the outer boundary on presumably more or less the 24 southern side of Nkaneng. Do we have contemporaneous 25 photographs which indicate those barbed fences, or that</p>	<p style="text-align: right;">Page 20968</p> <p>1 worthless, but you're prepared to take that risk, Mr Gotz. 2 MR GOTZ: Chair, I'm comfortable – 3 CHAIRPERSON: On your assurance I'm 4 prepared to as well. 5 MR GOTZ: I'm comfortable that the 6 representation is accurate, perhaps with one qualification 7 is that I'm not seeking to represent every kink and twist 8 in the barbed wire is accurately – I mean this is a general 9 depiction of where the barbed wires run. In other words 10 the barbed wire fences as opposed to the barbed wire 11 Nyalas. Brigadier, just so that we can orientate 12 ourselves, on the top right-hand corner of the photograph 13 you'll see a built-up area. That is Wonderkop, correct? 14 BRIGADIER CALITZ: As u na die 15 nedersetting verwys, dit, volgens my is dit Nkaneng. 16 MR GOTZ: Yes, I mean just so that we're 17 clear, this sort of less built-up section above the top red 18 line is what SAPS refers to as the greater squatter camp. 19 The more built-up section to the right is Nkaneng and then 20 as part of that you'll find Wonderkop, and indeed just to 21 the right of this built-up section of Wonderkop the 22 hostels, correct? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 nee, ek kan nie vir u met sekerheid sê nie. Ek glo Lonmin 25 sal ons seker beter kan help met waar die skeidslyn is.</p>
<p style="text-align: right;">Page 20967</p> <p>1 barbed wire fence? Because if we have then the point we're 2 debating will fall away and Mr Gotz will be able to proceed 3 triumphantly on the basis of his marked exhibit. 4 MR GOTZ: Yes, indeed, and one can see 5 the barbed wire fences in many of the videos as well. So 6 I'm not sure, Brigadier, I mean just by way of 7 illustration, you were parked, as it were, at the point of 8 the - you'll see where the top line creates a point, that's 9 where your Papa1 was located. You'll confirm that there 10 are barbed wire fences going in that V-shape, as I've 11 indicated. 12 COMMISSIONER HEMRAJ: Just before that, 13 Mr Gotz – Mr Chaskalson, there are close-up photographs of 14 these fences. I recall, I think it was during Mr 15 Magidiwana's evidence that showed the fence with horizontal 16 strands. Can you perhaps help us identify those 17 photographs? It might help if this cross-examination is 18 going in the direction one envisages it might. 19 MR CHASKALSON SC: There's a wide range 20 of them, but I'll identify a few and then we can – 21 CHAIRPERSON: But in the meanwhile to 22 save time, I think we can let Mr Gotz proceed - 23 MR CHASKALSON SC: Yes. 24 CHAIRPERSON: - on the basis that if it's 25 not so then the cross-examination will be rendered</p>	<p style="text-align: right;">Page 20969</p> <p>1 Volgens my is daardie nedersetting aaneen gewees, so ek 2 weet nie rêrig waar die waterlyn, die skeidslyn is tussen 3 Wonderkop en Nkaneng nie. 4 MR GOTZ: Brigadier, what we've also 5 sought to represent on this diagram is the movement of the 6 protesters, or strikers off the koppie towards the small 7 kraal. 8 MR SEMENYA SC: That, Chair, we do not 9 accept as accurate. 10 MR GOTZ: Perhaps I can assist, Chair. 11 I'm not suggesting, I'm not debating at the moment whether 12 or not incident 1 occurred or incident 2 occurred. 13 CHAIRPERSON: May I interrupt you? There 14 were of course two – or so the evidence seems to indicate, 15 there appear, or this may be denied but I mean there appear 16 prima facie anyway to have been two groups of - or perhaps 17 the strikers could be classified in, broadly speaking into 18 two groups. There were those who were actually on the 19 koppie itself, and there were those who tended to 20 congregate on the plain, as it were, the flat area in front 21 of the koppie, and that's obviously not a watertight 22 distinction between the two, but it's a broad proposition 23 that appears to be correct. 24 Now I take it your arrow indicates presumably the 25 direction taken by some at least of the people on the</p>

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1 koppie. I suspect Mr Semenya is concerned about the, what
 2 he would say was an inaccuracy in respect of the group who
 3 tended to congregate on the flat area in front because you
 4 know, we have all the arguments about the incident 1 and 2
 5 and all that sort of thing, but the arrow is accurate
 6 insofar as I take it, it relates to some of the people on
 7 the koppie. It's not accurate in respect of the, some of
 8 the people who had congregated on the flat area in front of
 9 the koppie. That's correct, isn't it?

10 MR GOTZ: That is so, and perhaps I can
 11 rephrase the question as follows –

12 CHAIRPERSON: So anyway, but do you need
 13 your white arrow? You can express what you want to express
 14 in words, I would imagine, without referring to a
 15 misleading arrow.

16 MR GOTZ: Yes. Brigadier, you'll see
 17 that the diagram on the screen represented by the two red
 18 lines, you'll see that there's almost a funnel that's
 19 created between the barbed wire Nyalas, the line
 20 represented by the barbed wire Nyalas and the line of the
 21 barbed wire fences. Do you see that? As it were, it's
 22 almost a funnel, a triangle. I prefer to call it a funnel.

23 BRIGADIER CALITZ: Miskien as ek u kan
 24 vra om met 'n pointer vir my, dan gaan dit dalk makliker
 25 werk, die hier en die daar, en dan miskien net terug te

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1 kom, u het my nou-nou 'n vraag gevra, ek weet nie, mnr die
 2 Voorsitter, daar was 'n vraag aan my gestel dat ek getuig
 3 het dat ek op die hoek, die boonste hoek van die kraal, dit
 4 my posisie was, soos u dit gestel het, asook dat dit die
 5 "barbed wire" was. Ek wil maar net dit antwoord dat nee,
 6 ek het nie daarvoor getuig nie. My voertuig was nie op die
 7 punt soos u dit aandui nie en daar was ook beslis nie
 8 "barbed wire" nie.

9 [09:34] MR GOTZ: Brigadier, sorry, I don't
 10 understand your evidence. Our understanding is that your
 11 Papa Nyala during the line up as it were of the Nyalas as
 12 the protestors came around the kraal was located at that
 13 point which I'm now marking, which is the point and that
 14 point as it were is created by two barbed wire fences which
 15 come together at a point.

16 BRIGADIER CALITZ: Ek kan miskien,
 17 miskien is u, die manier wat –

18 MR SEMENYA SC: Mr Chair, -

19 CHAIRPERSON: Mr Semenya wants to say
 20 something, just give him a chance.

21 MR SEMENYA SC: Chair, those solid lines
 22 we know are not representative of the true evidence because
 23 the witness told us he drove over that wire with his Nyala.

24 MR GOTZ: No, but Chair, that simply
 25 confirms my point. His Nyala could drive over a barbed

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1 wire fence.

2 CHAIRPERSON: Yes, there was a fence, if
 3 you were in a Nyala you could drive over it, if you were a
 4 pedestrian and you were a striker you wouldn't be able to
 5 drive over it, you might or might not have been able to
 6 climb through it or under it but, so I'm not sure how much
 7 you need these red lines, except by way of a general
 8 indication.

9 MR GOTZ: Ja.

10 CHAIRPERSON: But –

11 MR GOTZ: It is a general indication,
 12 Chair.

13 CHAIRPERSON: Well, may I suggest you
 14 carry on with your cross-examination, using the red lines
 15 as little as possible and let's see how we do.

16 MR GOTZ: Alright, Brigadier, what I want
 17 to put to you is that what we do know, I want to leave
 18 aside questions of whether there was incident 1 and
 19 incident 2, but at a particular point –

20 BRIGADIER CALITZ: Kan ek u miskien net
 21 onderbreek, as ek mag, net om terug te kom vir duidelikheid
 22 op die vorige antwoord, mnr die Voorsitter, waar u gesê het
 23 my voertuig was op die punt, u verwys na die punt, in other
 24 words where they meet, en dit is nie die posisie van my
 25 Nyala nie. U rooi kolletjie het nou aangedui en dit was in

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1 die middel van daardie, so it is not at the point, it is in
 2 the middle of that fence, dit is net waar ek met u verskil
 3 het.

4 MR GOTZ: Thanks for that clarification,
 5 Brigadier.

6 CHAIRPERSON: Mr Gotz, sorry, can I just
 7 ask you this question? This evidence has all been gone
 8 over very fully in the past, but you'll remember, I'm not
 9 sure if you were at the time but Mr Chaskalson spent a long
 10 time with the witness and we had a representation, an
 11 enlarged, a blown up photograph of the area and it was all
 12 recorded on video, these movements of where all the
 13 vehicles were and what he did and so on. Now, there is no
 14 point in repeating that. If you got another point that
 15 you're coming to soon I'll allow you to carry on, but if
 16 this is just going to be reploughing that field then I'm
 17 not going to allow it.

18 MR GOTZ: Chair, I have no intention of
 19 reploughing that field and unfortunately it is taking far
 20 longer than I expected, I simply wanted to present this
 21 photograph by way of orientating ourselves. Perhaps we can
 22 –

23 CHAIRPERSON: You can assume we are
 24 orientated.

25 MR GOTZ: Okay.

<p style="text-align: right;">Page 20974</p> <p>1 CHAIRPERSON: So can we now proceed?</p> <p>2 MR GOTZ: Brigadier, can I then in</p> <p>3 further evidence of my point refer you to a photograph from</p> <p>4 Vermaak's Blackberry series? That will be Exhibit JJJ, I</p> <p>5 beg your pardon, it is Exhibit JJJ –</p> <p>6 CHAIRPERSON: KKK57.2?</p> <p>7 MR GOTZ: No, no, no, Chair, let's move</p> <p>8 on from this because I think we're going to have the same</p> <p>9 problem in relation to 57.2, so I wanted to move on without</p> <p>10 reference to barbed –</p> <p>11 CHAIRPERSON: Well, move on, move on. If</p> <p>12 you've got a good point you want to make I don't want to</p> <p>13 stop you but on the other hand if this is going to be</p> <p>14 repetition and it is going to be one that is difficult to</p> <p>15 establish without all sorts of collateral things, then</p> <p>16 you'll have to reconsider it.</p> <p>17 MR GOTZ: Can we look at Exhibit JJJ10</p> <p>18 and the photograph is 1515?</p> <p>19 CHAIRPERSON: Was the witness given</p> <p>20 notice of your intention to rely on this photograph?</p> <p>21 MR GOTZ: He was indeed, Chair, - sorry,</p> <p>22 it is Exhibit JJJ11, not 10 and it is 1515 and I sent these</p> <p>23 references through by way of an email last night.</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, om</p> <p>25 net aan te dui, ek dink ons moet net, ek is onder eed, so</p>	<p style="text-align: right;">Page 20976</p> <p>1 given it an exhibit number.</p> <p>2 MR GOTZ: Chair, it was originally made</p> <p>3 an exhibit number, so –</p> <p>4 CHAIRPERSON: The report that you handed</p> <p>5 in, the explanatory report that you handed in, that wasn't</p> <p>6 give an exhibit number.</p> <p>7 MR GOTZ: Chair, you'll recall that at</p> <p>8 the commencement of my cross-examination we marked the</p> <p>9 actual document movements of SAPS –</p> <p>10 CHAIRPERSON: Yes –</p> <p>11 MR GOTZ: - vehicle as Exhibit 52.</p> <p>12 CHAIRPERSON: Yes.</p> <p>13 MR GOTZ: And then there was another</p> <p>14 exhibit, a shot fired by the striker which is Exhibit 53</p> <p>15 and then we provisionally marked the report which I –</p> <p>16 CHAIRPERSON: Okay, -</p> <p>17 MR GOTZ: - produced as Exhibit 54.</p> <p>18 CHAIRPERSON: Okay, I was, my apology is</p> <p>19 withdrawn, I was also misinformed it hadn't been given a</p> <p>20 number.</p> <p>21 MR GOTZ: Okay.</p> <p>22 CHAIRPERSON: I appreciate it has and so</p> <p>23 all the housekeeping is in order.</p> <p>24 MR GOTZ: Absolutely.</p> <p>25 CHAIRPERSON: And have we now got the</p>
<p style="text-align: right;">Page 20975</p> <p>1 ek moet die waarheid praat, is dat ek het reference gekry</p> <p>2 na JJJ10 toe en na 'n foto verwysing, asook die email in</p> <p>3 paragraaf, Exhibit JJJ10 en 'n foto verwysing. Daardie</p> <p>4 foto's kom glad nie voor in JJJ10 nie, soos u nou net sê</p> <p>5 dit is JJJ11, so die inligting, ek weet nie of dit aspris</p> <p>6 vir my verkeerd deurgegee is nie, maar ek sal nog steeds</p> <p>7 kyk die foto's en dan daarop antwoord.</p> <p>8 MR GOTZ: I do apologise for that,</p> <p>9 Brigadier, but –</p> <p>10 CHAIRPERSON: Thank you, Brigadier, I –</p> <p>11 MR GOTZ: - these are photographs that</p> <p>12 you've seen before, I don't think that –</p> <p>13 CHAIRPERSON: I appreciate that, let's do</p> <p>14 the best we can with JJJ11 and if you have difficulty and</p> <p>15 you need a bit of time, then we'll accommodate that.</p> <p>16 BRIGADIER CALITZ: Dankie, mnr die</p> <p>17 Voorsitter.</p> <p>18 MR GOTZ: So if we can have Exhibit</p> <p>19 JJJ11, 1515 up on the screen? It seems to be bedevilled by</p> <p>20 technological failures.</p> <p>21 CHAIRPERSON: While we're waiting, Mr</p> <p>22 Gotz, it has been pointed out to me that we omitted</p> <p>23 yesterday, it was my fault but I hope to remedy my</p> <p>24 omission. We sort of marked the report that you handed in</p> <p>25 to us by way of explaining certain things. We should have</p>	<p style="text-align: right;">Page 20977</p> <p>1 photograph on the screen that you were referring to?</p> <p>2 MR GOTZ: Yes, Brigadier, -</p> <p>3 CHAIRPERSON: Okay, you may now carry on.</p> <p>4 MR GOTZ: You have seen this photograph</p> <p>5 before of course.</p> <p>6 BRIGADIER CALITZ: Dit is korrek, waar</p> <p>7 ons na insident 2 verwys.</p> <p>8 MR GOTZ: You'll agree with me that what</p> <p>9 this photograph shows is the lead group of protestors</p> <p>10 almost in the centre of the photograph, but perhaps just</p> <p>11 off to the left, correct?</p> <p>12 BRIGADIER CALITZ: As u na die punt van</p> <p>13 die groep verwys, dit sal die voorste, die lead group wees,</p> <p>14 ja.</p> <p>15 MR GOTZ: Now we do know that, and I</p> <p>16 really don't want to debate the issues of incident 2,</p> <p>17 etcetera, what we do know is that the direction that the</p> <p>18 strikers moved was downwards on the photograph, so if one</p> <p>19 draws a line between the kraal on the left hand side and</p> <p>20 the kraal on the right hand side, they moved down that</p> <p>21 line, correct?</p> <p>22 BRIGADIER CALITZ: Die voorste groep dink</p> <p>23 ek het na die kraal toe beweeg en dit is waar Nyala 4 die</p> <p>24 punt toe gemaak het, so ek dink dit was die eerste attempt,</p> <p>25 of waarna ons verwys as insident 2, om daar deur te gaan en</p>

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1 toe Nyala 4 toe maak, toe is daar om beweeg, om die kraal.
 2 MR GOTZ: And you'll agree with me also
 3 and, Chair, I will be indicating it with the red dot on the
 4 screen, that the lines that you see here are effectively,
 5 so it is a bit indistinct, but this is a barbed wire fence
 6 that runs –
 7 CHAIRPERSON: You're going have to
 8 describe that for the record.
 9 MR GOTZ: Yes.
 10 CHAIRPERSON: Those who read the record
 11 in future time won't know what this and that mean.
 12 MR GOTZ: Indeed, so there is –
 13 CHAIRPERSON: At least try to describe, I
 14 mean otherwise I'll have to do it but you are marking it,
 15 you know exactly which you want to mark, so please do it
 16 for me, if you don't mind?
 17 MR GOTZ: There is a barbed wire fence
 18 which runs at a 45 degree angle from the left hand corner
 19 of the photograph up towards the small kraal.
 20 CHAIRPERSON: The left hand bottom
 21 corner?
 22 MR GOTZ: Yes, the left hand bottom
 23 corner. It runs upwards towards the small kraal. You will
 24 then see a darkish patch in the middle of the earth section
 25 below the small kraal and at a probably 65 degree angle the

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1 barbed wire fence then runs towards the top section of the
 2 large kraal on the right hand side. Would you agree with
 3 that description, Brigadier?
 4 BRIGADIER CALITZ: Ek weet daar het 'n
 5 draad geloop, u verwys na barbed wire, die barbed wire is
 6 wat ons gebruik in ons terme wat ons uitgooi as barbed
 7 wire, so in daardie opsig verskil ek as ons na dieselfde
 8 verwys en dan die draad loop, u het gewys op die foto, ek
 9 probeer nou net kyk en vergelyk met die rooi lyn, u sê dit
 10 loop tot by die punt van daardie kraal, daardie een is die
 11 groot een aan die onderkant wat net suid lê van die paar
 12 sinkhuisies. Op die foto het u dit wel baie verder
 13 aangedui, dat daardie draad reguit aanbeweeg in 'n, sê
 14 westelike rigting.
 15 MR GOTZ: Brigadier, I'm not sure what
 16 our points of differences are but I think you've given
 17 sufficient clarification for my purposes.
 18 BRIGADIER CALITZ: Miskien as u die
 19 pointer gebruik en net weer vir my sê, u het gesê, "and the
 20 barbed wire started there up to the corner" en dan het u
 21 gesê "it runs up to", nee, "up to", u gaan nou terug, "it
 22 runs up to", met ander woorde waarnatoe gaan die draad?
 23 MR GOTZ: So the barbed wire runs from a
 24 position –
 25 BRIGADIER CALITZ: Ek het die begin

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1 posisie, ek wil net weer die eind posisie –
 2 MR GOTZ: Ja, it runs up to a position
 3 where you see a dark patch.
 4 BRIGADIER CALITZ: Dit is ek met u.
 5 MR GOTZ: Just below the small kraal.
 6 BRIGADIER CALITZ: And from there?
 7 MR GOTZ: And then at a 65 degree angle,
 8 probably, - sorry, more than that, so it -
 9 CHAIRPERSON: No, it looks like a 110
 10 actually, it is slightly more than –
 11 MR GOTZ: Yes, at a 110 degree angle –
 12 CHAIRPERSON: Have you, I won't go there,
 13 so you start at the bottom left hand corner, you go up to
 14 the corner that you've referred to, the dark patch looks
 15 like a tree, I think. That's below what will be the bottom
 16 left hand corner of the kraal. At that point it turns
 17 right, probably about a 100 degrees, just more than a right
 18 angle and it proceeds then across the veld, more or less
 19 parallel with the bottom of, the foot of the photograph and
 20 it goes in the direction of a point just above the larger
 21 kraal, and I think what the witness is interested in is
 22 where do you say it ended?
 23 MR GOTZ: Well, it is immaterial for my
 24 purposes, Chair, but I'm suggesting that the barbed wire
 25 runs past the large kraal and then divert it probably at a

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1 175 degree angle down to the bottom, to the right of the –
 2 CHAIRPERSON: Anyway, it sounds as if,
 3 for Mr Gotz' purposes we only have to concentrate on the
 4 area between the left hand corner, as it were which is
 5 opposite the bottom end of the small kraal, to the point
 6 where it is close to the large kraal and what happens
 7 thereafter to the right of that on the photograph is a
 8 matter that we need not concern ourselves with, because it
 9 is not relevant for the purposes for this cross-
 10 examination, is that right, Mr Gotz?
 11 MR GOTZ: Indeed.
 12 CHAIRPERSON: Okay, so we're now at a
 13 stage where you can put your point to the witness.
 14 MR GOTZ: Now, Brigadier, this photograph
 15 was taken with Vermaak's Blackberry at 15:50:47, so it is
 16 some three minutes before the TRT opens fire and you will
 17 agree with me that the position to the left of the kraal,
 18 of the small kraal is where the Nyalas ultimately ended up,
 19 is at this point in time completely open, correct?
 20 BRIGADIER CALITZ: Daardie gedeelte is
 21 oop, so ook die hele westelike gedeelte waarna die
 22 voorsitter verwys het, ek dink 160 grade.
 23 MR GOTZ: Now if the protestors or
 24 strikers thought that they wanted to go onto the road to
 25 Nkaneng the most natural way to accomplish that would be to

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1 head towards the gap between –

2 MR SEMENYA SC: That's also contested,

3 there was no natural way of going anywhere.

4 CHAIRPERSON: Well, there are two points

5 about that. The one is, it is contested and the second one

6 has been raised before. I mean there is nothing about this

7 point really. We've got over and over again the suggestion

8 that if they wanted to go to Nkaneng they could have gone

9 straight there and this is where they could have gone and

10 there were big arguments about whether it is the most

11 natural way, were there other ways, but this is a part of

12 the field that's been ploughed more than once already.

13 MR GOTZ: Chair, thank you very much.

14 Can we look at the next photograph which, in the series

15 which is 1516?

16 CHAIRPERSON: The fact that you hadn't

17 seen that photograph before didn't really put you at a

18 disadvantage.

19 BRIGADIER CALITZ: Nee.

20 CHAIRPERSON: But let's hope the same

21 will happen with the next one.

22 BRIGADIER CALITZ: Mnr die Voorsitter, ek

23 is gemaklik met die foto's, baie dankie.

24 MR GOTZ: Now, Brigadier, here we get to

25 the point where it seems to us that the lead group of

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1 strikers has committed to trying to get through the gap

2 between the Casspir that you see on the top left hand side,

3 - oh, sorry, well, let me put it this way. At the top of

4 the photograph you will see the small kraal, you will see

5 the top left hand corner of the kraal and just simply to

6 the left of that you'll see what is the point or the head

7 of the lead group of strikers, correct?

8 BRIGADIER CALITZ: Ek sien die voorste

9 punt van die groep, ja.

10 MR GOTZ: And just to the left of the

11 lead group of strikers you will see the STF Casspir,

12 correct?

13 [09:53] BRIGADIER CALITZ: Ek sien eers vir

14 Pappa11 en dan die STF Casspir, dit is korrek.

15 MR GOTZ: Now this photograph is taken at

16 eTV time 15:53:21, so it's 29 seconds before the TRT opens

17 fire. Brigadier, you'll agree with me that for a person

18 who is at the front of that group of strikers it is

19 incredibly difficult now reverse –

20 MR SEMENYA SC: No, we're back again at

21 the same point, Chair. I would like a witness who'll come

22 and say these things.

23 CHAIRPERSON: Sorry, what's the point you

24 say witnesses must come and say?

25 MR SEMENYA SC: That at the point of that

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1 group it is very difficult for them to turn back.

2 MR GOTZ: I used the word "reverse" and –

3 MR SEMENYA SC: Or reverse.

4 CHAIRPERSON: It's the same thing, means

5 the same.

6 MR GOTZ: Chair, I'm putting a

7 proposition on the basis of a photograph which shows a

8 crowd of people. The Commissioners are of course entitled

9 to accept or reject the proposition in due course, but I'm

10 not, I don't see why I need to call a witness to testify to

11 this fact. I'm looking at objective evidence –

12 CHAIRPERSON: Well, let me suggest

13 [inaudible] media, if there's a column of people proceeding

14 in one direction and what you're talking about, I imagine,

15 is changing direction radically, in other words completely

16 reversing the direction in the space of a few seconds, I

17 would imagine one can infer using common sense and

18 knowledge of human behaviour that it might not be easy for

19 the person in front to bark out what sound like a military

20 command, "About turn, advance, proceed in opposite

21 direction." If he'd done that I'm not sure everyone would

22 have heard him and even if they had heard him, you've got

23 to allow for reaction time and all that kind of thing. So

24 I would have thought that you put the proposition too

25 highly, but if you put the proposition on a reduced scale

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1 that I have suggested, the difficulty in all the

2 circumstances for the person or persons who were leading

3 this group of people to change direction by 180 degrees in

4 a relatively short time, I would allow the question on that

5 basis and I would think we could move forward even if the

6 people couldn't move backwards. So –

7 MR SEMENYA SC: Chair, with respect, we

8 know that even according to Mr Mpofu Mr Noki is in control

9 of this group. He says we've done nothing wrong, we're

10 going to walk very slowly and if he'd said to them we'd

11 done nothing wrong, we're going to turn slowly, there's no

12 reason why that wouldn't happen.

13 CHAIRPERSON: Sorry, let me respond to

14 that. I'm not sure that we're necessarily going to accept

15 what Mr Magidiwana said about what Mr Noki said. It's

16 obviously part of the evidence. At the end of the day

17 we'll have to decide whether that was said, whether that

18 was the reason for these people advancing, but I'm not

19 prepared at this stage to accept that that statement is

20 necessarily correct.

21 MR SEMENYA SC: No, but Chair, with

22 respect, the question is whether Mr Gotz is able to produce

23 factual evidence that even reflects negatively on that

24 weight of evidence which we have been given is the say-so

25 by Mr Noki. There's nothing to gainsay that, whatever

<p style="text-align: right;">Page 20986</p> <p>1 weight we place on it.</p> <p>2 CHAIRPERSON: The mere fact that evidence</p> <p>3 cannot be gainsaid directly doesn't mean it has to be</p> <p>4 accepted. There's a case of Segune versus Banks in the</p> <p>5 Appellate Division, you'll remember, which decided that</p> <p>6 point very clearly. I'm prepared to allow the question in</p> <p>7 the modified form I've suggested it, but before I do that I</p> <p>8 understand Adv Hemraj wants to say something too which I'd</p> <p>9 better listen to first before I make a final ruling.</p> <p>10 COMMISSIONER HEMRAJ: Mr Gotz, is the</p> <p>11 question that you're perhaps not wanting to put is that as</p> <p>12 it appears on the photograph that there appears to be no</p> <p>13 opportunity for them to turn around, is that perhaps what</p> <p>14 you want to say?</p> <p>15 MR GOTZ: Commissioner, I wouldn't put it</p> <p>16 as highly as no opportunity. I think I've made it</p> <p>17 absolutely clear and it will be on record that I've never</p> <p>18 suggested that it's impossible. What I'm suggesting is</p> <p>19 that it is not as easy as the Brigadier has sought to</p> <p>20 suggest for the crowd, for the people in the front of that</p> <p>21 crowd to do, as has been helpfully suggested by the Chair</p> <p>22 of the Commission, a dramatic turnaround given the</p> <p>23 circumstances, including for instance the fact that you've</p> <p>24 got a whole group of people behind you. Knowing the</p> <p>25 psychology of crowds and the direction that they were</p>	<p style="text-align: right;">Page 20988</p> <p>1 it. Even if you bark out a command in your best</p> <p>2 militaristic, or para-militaristic voice, it isn't</p> <p>3 necessarily going to help. Anyway, you've heard the point,</p> <p>4 Brigadier. Mr Gotz doesn't have to repeat it. I'll allow</p> <p>5 that question. What do you say about that?</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, as</p> <p>7 u my net sal toelaat, ek dink my antwoord gaan net 'n paar</p> <p>8 goedjies insluit wat dit dalk sal duidelik maak. Tussen</p> <p>9 die eerste foto en hierdie foto moet ons nie uit die oog</p> <p>10 uit verloor nie dat reeds by Nyala 4 was daar optrede</p> <p>11 geloods deur die polisie met 'n uiteendryf aksie. So reeds</p> <p>12 by, in, waarna ons verwys insident 2, het hulle 'n</p> <p>13 doelbewuste keuse uitgeoefen om dan om te beweeg, wat</p> <p>14 hierdie, ons na verwys insident 3.</p> <p>15 Op hierdie stadium weet ons dat Pappa11, die</p> <p>16 Casspirs, die POP-lede, reeds ook 'n aksie besig is om uit</p> <p>17 te voer. Ons weet daar is 'n paar honderd – ek het nie nou</p> <p>18 die spesifieke getal nie – haelgeweer rubber rondtes op</p> <p>19 hulle gevuur.</p> <p>20 Mnr die Voorsitter, my punt wat ek wil maak is</p> <p>21 kom ons gaan net vir 'n oomblik terug na ondervinding toe,</p> <p>22 dat ek miskien vir u sê in die polisie operasioneel hoe dit</p> <p>23 werk. As daar 'n groep op u afkom en die polisie dryf</p> <p>24 daardie groep uiteen, die, 99.999% het die groepe wegbeweeg</p> <p>25 van die polisielyn af. In hierdie geval het daar 'n</p>
<p style="text-align: right;">Page 20987</p> <p>1 moving, it's not that easy to simply turn around and that's</p> <p>2 the proposition that I want to put to the Brigadier.</p> <p>3 CHAIRPERSON: Mr Semenya, anything else</p> <p>4 you want to add on the point? It seems to me prima facie,</p> <p>5 subject to what you may say, that the way it's now put</p> <p>6 avoids many of the difficulties which you raised before.</p> <p>7 MR SEMENYA SC: Well, Chair, I'll abide</p> <p>8 the ruling. I don't agree.</p> <p>9 CHAIRPERSON: Yes well, good counsel</p> <p>10 never says whether he or she agrees with what the –</p> <p>11 MR SEMENYA SC: [Microphone off,</p> <p>12 inaudible].</p> <p>13 CHAIRPERSON: No, I'm saying something</p> <p>14 else. Good counsel doesn't say to the court I agree with</p> <p>15 you or I disagree. I had a number of passages with Mr</p> <p>16 Mpfu on that. Please, counsel make submissions; they</p> <p>17 don't give courts or commissions the benefit of their own</p> <p>18 views. So please bear that in mind. I will allow the</p> <p>19 question on the modified basis which you've now put it,</p> <p>20 therefore from a practical common sense point of view if</p> <p>21 you're at the front of a column of a large number of people</p> <p>22 and you want to change direction, you can't do it in a -</p> <p>23 the question is you can't do it in a short period of time</p> <p>24 unless you can be certain that everybody behind you will</p> <p>25 make the same about-turn at the same time you were doing</p>	<p style="text-align: right;">Page 20989</p> <p>1 "deliberate" ombeweeg – en selfs as u nou kan sien</p> <p>2 waarnatoe hulle gaan, en dit is wat ek voorheen getuig het,</p> <p>3 wat u na verwys het, ek het gepraat van die 45 "angle."</p> <p>4 Mnr die Voorsitter het my gevra as ek aan die voerpunt van</p> <p>5 daardie groep was, wat sou ek voor my sien, en ek het</p> <p>6 getuig dat ek sou omtrent vier, vyf, ses pantser voertuie</p> <p>7 sien wat my uiteendryf. Dit is nou met traanrook, "stun"</p> <p>8 granate, rubber. So dit is – ek weet nie wat is die woord</p> <p>9 om te gebruik nie – miskien die "muti," miskien die geloof</p> <p>10 wat hulle gehad het, miskien die – ek kan nie dink dat die</p> <p>11 voetpad so belangrik is dat jy jou eie lewe in gevaar stel</p> <p>12 en om te probeer 'n polisielyn aanval terwyl jy</p> <p>13 uiteengedryf word nie. Dit werk nie so nie en dit het nog</p> <p>14 nooit so gewerk in die geskiedenis waarby ek betrokke was</p> <p>15 in Suid-Afrika nie.</p> <p>16 Om terug te kom na u vraag toe, mnr die</p> <p>17 Voorsitter, is dat ek glo nie dit is net gebaseer op wat</p> <p>18 die persoon voor sê van ons gaan nou – ek dink woorde is</p> <p>19 gebruik, "about turn," en dat almal hom gaan hoor nie. Die</p> <p>20 leier elemente was aan die voorkant. Ons weet self dat</p> <p>21 hierdie persone geloop het in 'n formasie naby aan mekaar,</p> <p>22 en selfs al het hulle gaan stilstaan op daardie stadium en</p> <p>23 mnr Noki het sy hand in die lug gehou, soos wat menigte</p> <p>24 kere van die 14de, 15de, 16de, toe ons met hulle</p> <p>25 onderhandel het en die persone heen en weer beweeg het.</p>

<p style="text-align: right;">Page 20990</p> <p>1 Daar was 'n konstant leier element waaraan hierdie groep 2 gehoor gegee het. So die heelyd het hulle soort van 3 gedoen wat die leier sê. As die leier sê sit, dan sit 4 hulle. As die leier sê stap, of ons gaan in die rigting, 5 dan doen hulle spesifiek so iets.</p> <p>6 So die punt wat ek vir u wil maak is daar was 'n 7 doelbewuste ombeweeg en dit was enige tyd moontlik gewees 8 vir mnr Noki op daardie stadium om te sê, sy hand in die 9 lug te sit of net selfs vir die leier element te sê kom ons 10 stop, hier word uiteengedryf en ons draai om. My opdrag 11 sou dieselfde gewees het. U sal onthou dat ek op 'n latere 12 stadium vir die voertuie gesê het "Do not shoot unless they 13 engage," toe ons aanbeweeg het, en ons het hulle 14 uiteengedryf. Presies dieselfde opdragte sou hier gevolg 15 het. As hierdie persone op daardie stadium gestop het, 16 omgedraai het en net wegbeweeg het dan sou die vuurlyn 17 opdrag dadelik gewees het stop die "dispersion," dit is nie 18 meer nodig nie. Hierdie persone het nou gehoor gegee. Wat 19 moet gebeur in Suid-Afrika, enige groep wat uiteengedryf 20 word wat onwettig in besit en teen regulasies gewapen 21 bymekaar kom, moet uiteengedryf word en ons kan nie dit 22 toelaat nie. Dit is net absoluut dat – ek weet nie, mnr 23 die Voorsitter, of ek my uitdruk dat hy kan verstaan nie, 24 maar ek hoop dit antwoord u vraag.</p> <p>25 CHAIRPERSON: No, no, well I understand</p>	<p style="text-align: right;">Page 20992</p> <p>1 achieve quickly. But you don't dispute that it would have 2 been difficult, as I understand you, it would have been 3 difficult but you say it never actually arose. That's your 4 answer really. Is that a fair summary?</p> <p>5 BRIGADIER CALITZ: Dit is a "summary," 6 mnr die Voorsitter. Ek wil net sê in 29 sekondes kan 'n 7 leier element 'n groep laat omdraai. Ek was in my 8 operasionele ondervinding baie, baie groepe wat ons 9 uiteengedryf het wat gestorm het en sodra die uiteendrywing 10 begin het die voorste leier omgedraai en gehardloop. Ja, 11 party mense gaan oor mekaar val en dan, maar dit gaan 12 definitief nie fatale gevolge hê soos wat ons in hierdie 13 geval gehad het nie.</p> <p>14 MR GOTZ: Can we look at some of the 15 videos which show the movement around the kraal, and I 16 think it will be somewhat enlightening. Chair, if we can 17 look at exhibit JJJ194.16. This is one of the videos from 18 the so-called Al Jazeera series.</p> <p>19 CHAIRPERSON: While they're getting this 20 slide for us, can I ask you this; I take it one can accept 21 that the time that photograph – I take it not because I 22 really take it, I'm asking the question, can one accept 23 that when this photograph was taken those in the very front 24 could have seen the TRT line in front of them? Is that 25 reasonable to accept?</p>
<p style="text-align: right;">Page 20991</p> <p>1 your answer, which is not quite an answer to the question. 2 Let me tell you how I sum it up. As I understand you don't 3 really deny that if an order had been given "about turn and 4 proceed in the opposite direction," it wouldn't have been 5 easy to have achieved that in a few seconds because of the 6 circumstances that were sketched.</p> <p>7 But your argument, your answer is that that's 8 really an unrealistic question because you say, for the 9 reasons you've given, that that was clearly never something 10 in the mind of the leaders of the group, so that even – you 11 don't dispute, I take it, that if they tried to do it, it 12 couldn't have been achieved in a couple of, in a few 13 seconds, but what you say is, your argument is they 14 wouldn't have tried to do it. You contend that all the 15 evidence indicates that they were "vasberade," they were 16 determined to proceed forward, never mind the fact that 17 there were rubber balls being fired at them. I think there 18 were some water cannon at that stage, was there? And were 19 there stun grenades as well?</p> <p>20 BRIGADIER CALITZ: Dit is korrek, mnr die 21 Voorsitter.</p> <p>22 CHAIRPERSON: And despite all that they 23 were determined to advance forward and therefore no 24 question actually arose on your contention of them seeking 25 to do what Mr Gotz puts to you would have been difficult to</p>	<p style="text-align: right;">Page 20993</p> <p>1 BRIGADIER CALITZ: Die vraag was al 2 gevra, mnr die Voorsitter, definitief. Hulle is nog 3 heeltelmal op die noordwestelike hoek van die kraal. So 4 hulle kon nog nie daardie TRT-lyn sien op vorm daar nie.</p> <p>5 CHAIRPERSON: So they couldn't have seen 6 it?</p> <p>7 BRIGADIER CALITZ: Nie die –</p> <p>8 CHAIRPERSON: I mean if this is a few 9 seconds before the shots were fired the TRT line had 10 formed, isn't it?</p> <p>11 BRIGADIER CALITZ: Ja, hulle –</p> <p>12 CHAIRPERSON: And just above the picture 13 I take it, and the front members who are more or less in 14 line with the north-western corner of the kraal, could they 15 have seen the TRT line at that stage?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, as 17 ek dan kan vra net omdat ek onder eed is dat ek, ons kan 18 miskien in zoom gou na die boonste en kyk of daar 'n 19 persoon is wat al verby die hoek is, maar soos dit vir my 20 lyk op hierdie ver afstand lyk dit of hulle nog nie om 21 daardie hoek van die kraal gekom het nie. So op hierdie 22 stadium sou dit die Openbare Orde Polisiëring gewees het 23 wat net teen hulle opgetree het. Mnr die Voorsitter, ek 24 weet nie of dit u vraag antwoord nie. Die groep kon –</p> <p>25 CHAIRPERSON: If it's correct, I'm asking</p>

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1 this on the assumption which it may be wrong, but if it's
 2 correct that this photograph was taken at a second or two
 3 or three before the firing started –
 4 MR GOTZ: Chairperson, it's 29 seconds
 5 before –
 6 BRIGADIER CALITZ: 29 seconds.
 7 CHAIRPERSON: Sorry, 29 seconds, I see.
 8 So in those – so you say that in those 29 – you see, you
 9 remember the evidence we have is there was a line of Nyalas
 10 and there were members of the POP who were standing between
 11 the Nyalas and were shooting their rubber balls from there.
 12 Now I don't see that here on this picture. I don't know,
 13 so I'm not sure that it's correct, but if it is, if the
 14 evidence indicates that that's so obviously I must accept
 15 it. I'm not sure that was quite as much as 29 seconds
 16 before the fatal volley, but is it correct – was it 29
 17 seconds?
 18 MR CHASKALSON SC: It was 29 seconds.
 19 CHAIRPERSON: I see, alright.
 20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 daardie wat ons op die video sal sien is die Nyalas wat uit
 22 beeld uit is. Daar is 'n klein Nyala'tjie wat uitsteek aan
 23 die noord oostekant, of die oostekant van die kraal. Ek
 24 dink daardie Nyala is waar u verwys waar die persone tussen
 25 staan, hulle staan tussen die wit Casspir, die Nyala wat

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1 dan volg, daardie wat ons op die video sien. So dis net
 2 uit beeld uit van hierdie foto, maar ons weet dat Nyala 4
 3 se persone wat die "barbed wire" insluit, asook Pappa11,
 4 daardie persone het reeds al ook aksie geloods op die
 5 groep. So sover as drie minute voordat hulle hier gekom
 6 het.
 7 CHAIRPERSON: Ja, what I'm trying to get
 8 clear in my mind is what was the time interval between the
 9 stage when the leaders of the group for the first time
 10 could see the TRT group in front of them, and the moment
 11 when the fatal volley began? Are you able to help me on
 12 that? I know it's an estimate, but you can't do better
 13 than that.
 14 BRIGADIER CALITZ: Nee, ek hoor wat u sê,
 15 mnr die Voorsitter, daarom vra ek, ek dink dis moontlik as
 16 ons gou kan in zoom en ons weet die spoed wat die persone
 17 loop, so dit sal 'n sekonde of twee miskien na hierdie foto
 18 wees. Is dit moontlik om in te zoom net op die boonste
 19 gedeelte, dat ons net kan sien waar is die voerpunt
 20 presies? Maybe if I can repeat my request, if we can just
 21 zoom in on the top of the photograph at the kraal to the
 22 front portion of the – well, I call them the militant
 23 group, or the strikers.
 24 CHAIRPERSON: I think attempts are being
 25 made to zoom in to the part that you want us to zoom in to.

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1 MR GOTZ: Brigadier, to assist you,
 2 although this obviously won't be put up on the screen, is
 3 if you look at exhibit KKK51 and have a look at slide 6 of
 4 exhibit KKK51, you'll see the zoom I think that you're
 5 wanting.
 6 [10:13] BRIGADIER CALITZ: Slide 6, dit is bladsy
 7 5, as ek hom so reg het.
 8 MR GOTZ: It's a slide headed "Close-up
 9 of image 1515," so it will either be slide 5 or 6.
 10 BRIGADIER CALITZ: Ja, dis bladsy 5. Hy
 11 is baie uit fokus uit, so as ons miskien met hierdie een
 12 kan net – ek sien aan die linkerkant van daardie groep sien
 13 ek 'n pertinente wit hemp of baadjie of 'n figuur, so ek
 14 wil net kyk of daardie persoon, hoe ver hy van die hoek van
 15 die kraal af is.
 16 CHAIRPERSON: We're now looking at a
 17 photograph –
 18 MR GOTZ: Brigadier, if you look at the
 19 next –
 20 CHAIRPERSON: Please put on record what
 21 this is, Mr Gotz.
 22 MR GOTZ: Yes, this is part of the
 23 presentation that we've prepared for the purposes of
 24 identifying where the Nyalas were located at the time of
 25 the TRT volley. This is in fact a copy of the photograph

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1 that we saw from JJJ11, 1505 – I beg your pardon, 1515. On
 2 the following slide we have zoomed up the section which is
 3 relevant, which is the head of the group as well as the
 4 formation of the barbed wire Nyalas – I beg your pardon,
 5 the Nyalas around the small kraal. So if we can go to the
 6 next slide of this exhibit –
 7 CHAIRPERSON: Where exactly is this
 8 taking us? Are you going to take us to the point that I'm
 9 interested in? How many seconds elapsed between the time
 10 when the front group, the front people among the strikers
 11 could have seen for the first time the TRT group in front
 12 of them? From what the witness has told us, and I think
 13 you accepted it, at 29 seconds before they couldn't see,
 14 but are we able with any degree of accuracy to ascertain
 15 what the time difference would have been between them, the
 16 front people seeing this TRT line in front of them with
 17 their rifles and so on, and the beginning of the volley?
 18 MR GOTZ: Chairperson, this is actually,
 19 Brigadier Calitz had requested that we show the close-up.
 20 So it's not what I'm –
 21 CHAIRPERSON: No, no, I understand that.
 22 I'm just asking you where you're going. Are you going
 23 there, or are you going somewhere else?
 24 MR GOTZ: It's not where I'm taking him,
 25 but I can answer, I can venture an answer to the question.

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1 I would submit that they only see the TRT line three
2 seconds before the TRT shooting begins.
3 CHAIRPERSON: Alright, okay. Is this the
4 enlargement, the zooming in picture that you asked to see,
5 Brigadier?
6 BRIGADIER CALITZ: Dis korrek, mnr die
7 Voorsitter. Ek wou net gesien het hoe ver is hulle van die
8 hoek af, en dan as mens om daardie hoek sal beweeg sal mens
9 tussen die voertuie deur wel die TRT-lyn kan sien op vorm.
10 Daardie Nyala wat ek dink Pappa10 wat mnr Gotz miskien na
11 verwys wat wegbeweeg het, ek dink nie hy het die hele TRT-
12 lyn geblok nie. Ons weet die TRT-lyn het uit 80-plus mense
13 bestaan, so hulle sou definitief aan weerskante van daardie
14 Nyala uitgesteek het. So dit kon nie drie sekondes gewees
15 het nie, mnr die Voorsitter.
16 CHAIRPERSON: What would you say it would
17 have been?
18 BRIGADIER CALITZ: Ek sal sê dit sal – as
19 ons kyk na die spoed wat die persone beweeg en hulle om
20 hierdie hoek gekom het, so miskien kom ons gee hulle nog
21 vyf of ses sekondes om, om hierdie hoek te kom en dan kon
22 hulle definitief tussen die Nyalas deur gesien het daar is
23 nog polisielede wat op vorm.
24 CHAIRPERSON: As far as I remember there
25 is a video slide where one can see an Nyala moving just

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1 before the volley begins, and while it's technically
2 possible I suppose to see between some of the Nyalas before
3 that, what really clears the line of sight, as it were, is
4 the removal of that Nyala. Is that your recollection as
5 well?
6 BRIGADIER CALITZ: Dit is Pappa10 waarna
7 ek verwys het, ja. Ek dink dit is die drie sekondes waarna
8 mnr Gotz verwys, maar ek sê daardie een Nyala kon nie die
9 hele TRT-lyn versper het nie. Dit is onmoontlik, want ons
10 weet 80 persone as ons hulle in 'n lyn gaan sit, u sal
11 definitief verby dit kan sien.
12 CHAIRPERSON: So it sounds as if, while
13 we're looking for this slide that's being looked for, we
14 got some clarity. You concede, if that's the right word,
15 that there was a clear view for the front strikers three
16 seconds before the volley began because Nyala 10 had gotten
17 out of the way, but you say that despite the fact that
18 Nyala 10 was in the way before that, it didn't completely
19 block – I mustn't use the word "block" – it didn't
20 completely obstruct the line of sight of the advancing
21 group and they could have seen between the Nyalas that
22 behind them there was this group of TRT people in line. Is
23 that so?
24 BRIGADIER CALITZ: Mnr die Voorsitter,
25 dit is korrek. Miskien net –

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1 CHAIRPERSON: Yes, it seems – sorry, it
2 seems as if this is a suitable stage for us to take the
3 comfort break and – alright, let's take a comfort break now
4 and then we can presumably carry on until 11 o'clock or
5 thereabouts to take the tea adjournment, but let's take the
6 comfort break now and whatever has to be found to be shown
7 to you at Mr Gotz's request can be looked at, can be found
8 and got ready while we have the comfort break.
9 [COMMISSION ADJOURNS COMMISSION RESUMES]
10 [10:29] CHAIRPERSON: The Commission resumes. Mr
11 Gotz, have you got all your ducks in a row now?
12 MR GOTZ: Chair, it was never my ducks
13 out of row, but Chair –
14 CHAIRPERSON: Sorry?
15 MR GOTZ: It wasn't my ducks out of the
16 row, but I –
17 CHAIRPERSON: No, I wasn't being –
18 MR GOTZ: Yes, I know.
19 CHAIRPERSON: The things that you're
20 going to use by way of advancing your cross-examination,
21 slides and photographs and so on, are they now all in, all
22 ready in order, we can proceed without further
23 interruption?
24 MR GOTZ: Yes, indeed.
25 CHAIRPERSON: Fine, that's all I meant.

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1 I didn't –
2 MR GOTZ: Chair, we do –
3 CHAIRPERSON: I haven't reminded him he's
4 under oath yet. Brigadier, you're still under oath.
5 ADRIAAN MARTHINUS CALITZ: Dankie, mnr
6 die Voorsitter.
7 CHAIRPERSON: Yes, Mr Gotz.
8 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
9 Chair, we do recognise that these are important questions
10 for the Commission and because of that we have sought to
11 assist the Commission by preparing a document which has
12 been made exhibit KKK52, which is the movement of SAPS
13 vehicles relative to the strikers from 15:53:13 to
14 15:53:50, and at the request of the Commission we've
15 prepared a report which explains how we arrive at these
16 representations, which –
17 CHAIRPERSON: You want to hand that in?
18 MR GOTZ: It's already been made KKK54,
19 Chair.
20 CHAIRPERSON: Oh, I see. That's right,
21 yes.
22 MR GOTZ: Yes, KKK54. Brigadier, have
23 you had a chance to look at KKK52?
24 BRIGADIER CALITZ: Ja, dit is korrek.
25 MR GOTZ: And the report which underlies

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1 the conclusions set out in the various slides, have you had
2 a chance to look at that?

3 BRIGADIER CALITZ: Praat u van die
4 onderskrifte wat saam met dit gaan?

5 MR GOTZ: No, all I'm saying is the
6 representations made on the various pages, we've prepared a
7 report which explains how we get there. Have you had an
8 opportunity to look at that?

9 BRIGADIER CALITZ: Wat myne betref,
10 dieselfde dokument het net foto's in en onderaan elke foto
11 is daar 'n byskrif wat sê, die eerste een, "Papa19, 10, are
12 the same." So dit is die dokument wat ek het.

13 MR GOTZ: Yes, Brigadier, so there's a
14 report which explains each page, which is exhibit KKK54.
15 Have you had an opportunity to look at that?

16 BRIGADIER CALITZ: 54?

17 MR SEMENYA SC: Chair, it appears we
18 don't have the report.

19 BRIGADIER CALITZ: Mnr die Voorsitter, ek
20 dink dit is die een waarna u verwys het, die laaste blou
21 bladsy wat KKK54 –

22 CHAIRPERSON: No, I understand that, it
23 was given to us in chambers but I'm not sure Mr Semenya has
24 got one.

25 BRIGADIER CALITZ: Nee, dit is nog nooit

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1 vir ons gegee nie.

2 CHAIRPERSON: He says he hasn't got it,
3 so have you got a spare one for him?

4 MR GOTZ: Chair, I can make mine
5 available to –

6 CHAIRPERSON: Well, he can have my one in
7 the meanwhile. You probably need yours to cross-examine –

8 MR GOTZ: No, no, no, I don't need the
9 report.

10 CHAIRPERSON: He can have my own.

11 COMMISSIONER HEMRAJ: That's the 46-page
12 document that you handed to us, Mr Gotz?

13 MR GOTZ: Indeed. Chair, just for the
14 record, this was in a –

15 MR SEMENYA SC: I can't look at a 46-page
16 document now, Chair.

17 CHAIRPERSON: I beg your pardon?

18 MR SEMENYA SC: It will be difficult to
19 look at a 46-page document now.

20 CHAIRPERSON: Well, in other words you're
21 rejecting my offer of lending you mine. Okay, I accept
22 that. When an offer is rejected it falls away.

23 MR SEMENYA SC: No Chair, I'm not
24 rejecting your offer –

25 CHAIRPERSON: No, no, I'm just reminding

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1 you of the Law of Evidence – offer is rejected, it falls
2 away. That's the Law of – sorry, the Law of Contract. But
3 if you still want my copy and I reinstate my offer I will
4 do so with pleasure.

5 MR SEMENYA SC: More an opportunity to
6 peruse the document so that I can protect the interests of
7 my client.

8 MR GOTZ: But Chair, with respect to my
9 learned friend, this document was emailed to my learned
10 friend's junior and my learned friend's attorney over the
11 weekend.

12 CHAIRPERSON: Mr Gotz, there's a problem
13 here. Have you got a copy of this document?

14 BRIGADIER CALITZ: Mnr die Voorsitter,
15 daardie dokument is nie – ek het die "email" gekry wat aan
16 Advokaat, my advokate gestuur is, en daardie een was beslis
17 nie daar by nie. Die Vrydag, dit is waarna ek u verwys
18 het, het u gesê die bladsy is nog "blank" en mnr Gotz het
19 dan gesê hy sal daardie gedeelte inhandig. Hierdie
20 dokument is nog nooit "ge-email," tensy hy vir hulle kan
21 wys waar dit, die bewyse van daardie "email," maar ek het
22 hom nog nooit gesien nie en ek het hom ook nog nie gekry
23 nie. Dis die eerste keer wat ek hom nou ontvang.

24 CHAIRPERSON: No, Mr Gotz, are there
25 other matters that you can deal with in cross-examination

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1 for the moment?

2 MR GOTZ: Yes, Chair, perhaps what we can
3 do is deal with some other small matters which –

4 CHAIRPERSON: Is this matter the last big
5 matter –

6 MR GOTZ: Yes.

7 CHAIRPERSON: - in your cross-
8 examination?

9 MR GOTZ: Yes.

10 CHAIRPERSON: So okay, and would you be
11 prejudiced – now from what you've told me it sounds you
12 won't be – if you deal with your other matters now –

13 MR GOTZ: No, Chair, not at all.

14 CHAIRPERSON: - we'll then adjourn and I
15 don't know how long the witness needs to study the
16 document, but we will then adjourn and give him an
17 opportunity to read it and his counsel to do so, and then
18 when they tell us they're ready we'll carry on. I must
19 announce now, because I was going to announce it later but
20 it may be relevant to those who have to make plans, that we
21 will adjourning at 1 until 2; we have a meeting we have to
22 attend to between 1 and 2, and we have to adjourn at 3:30.
23 So we will then run straight through from 2 to 3:30 without
24 any comfort break or tea break or anything of that sort.
25 But I had assumed, and I hope the assumption still stands

<p style="text-align: right;">Page 21006</p> <p>1 that that time will be used for the evidence of the next 2 witness, but if it can't be done, it can't be done, but 3 anyway, let's proceed as I've suggested. Come with your 4 minor points now and when you're finished we'll give the 5 Brigadier and his counsel a chance to study the report; 6 they've now got copies, and you can then revert to your 7 final "big point" in your cross-examination. 8 MR GOTZ: Chair, if you'll just bear 9 with – 10 CHAIRPERSON: Unless of course another 11 way to do it might be – no, it doesn't help because they've 12 got to study it, because I thought Mr Gumbi could also ask 13 his questions, but it's probably best to stick to what I've 14 suggested. 15 MR GOTZ: Chair, if you'll just bear with 16 me for a few seconds to reorder my papers. 17 CHAIRPERSON: Adv Tokota points out to me 18 that I think Mr Gumbi is covering totally different 19 matters, so we might get an adjournment which approximates 20 to the lunch adjournment so we don't waste time. So if 21 when you've finished your minor points Mr Gumbi will be 22 ready to present his cross-examination, I'll allow him to 23 interpose. We'll then by the end of that be closer to the 24 lunch adjournment, so the lunch adjournment and this 25 adjournment to enable the witness and his counsel to read</p>	<p style="text-align: right;">Page 21008</p> <p>1 them stopped a long time ago. Now if this allegation is 2 correct it would mean that it may have a bearing on our 3 inquiry, that pellets were in the possession of a member of 4 POPS, the North West POPS "nogal," which he fired in his 5 shotgun in a crowd management situation. Now are you aware 6 of that allegation and are you aware of the fact that a, 7 one at least member, at least one member has been suspended 8 on the basis of such an allegation? Are you aware of that? 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 is bewus van die voorval. Ek het dit gevolg in die media. 11 Volgens my kennis weet ek nie dat daardie lid, of daardie 12 lede tans onder skorsing is nie. Volgens my kennis die 13 lede wat wel gedien is, is daardie lede wat met die Nyala 14 vervoer is waar die persoon dan uit die Nyala voertuig uit, 15 ek dink daardie lede. Die ander is "still" volgens my 16 kennis onder behandeling en ek weet nie of daar 'n 17 bediening op hulle gedoen is nie. Dit is my kennis wat ek 18 op hierdie stadium het. 19 CHAIRPERSON: Did you hear of an 20 allegation that pellets were used by, allegedly by a member 21 of the police service in his police shotgun? 22 BRIGADIER CALITZ: Ek het dit gehoor in 23 die media en ek het dit so gevolg, ja. Ek het dit 24 persoonlik nie opgevolg omdat ek tans getuig en onder eed, 25 so ek wou nie dit bespreek met iemand nie.</p>
<p style="text-align: right;">Page 21007</p> <p>1 the report will more closely coincide. So we'll carry on 2 in that way. 3 MR GOTZ: Brigadier, a few minor 4 questions that I've got on other topics, and then to come 5 back to some issues in relation to your examination over 6 the last couple of days. Over the weekend there were a 7 number of press reports that we read concerning the use of 8 shotgun pellets in crowd management operations in the 9 Rustenburg area during the course of last week, 10 Brits/Rustenburg area. Are you aware of what happened in 11 Rustenburg and are you aware of the reports which said that 12 POPS members had used shotgun pellets? 13 CHAIRPERSON: Can I reformulate the 14 question, Mr Gotz? I hope you won't mind. I think we 15 don't want to get involved in investigating what happened 16 over the last week, but what I presume would be common 17 cause is that certain members of the POPS group, section, 18 in the North West have been suspended for various reasons, 19 on various charges, which are disciplinary matters I think 20 from the reports that I have – one at least is alleged to 21 have used pellets in his shotgun and the point was made 22 that pellets were, the issue of pellets to members of the 23 police force ceased in 2006, I think or 2007, that was your 24 evidence also, and so this member allegedly was using 25 pellets which he shouldn't have had because the issue of</p>	<p style="text-align: right;">Page 21009</p> <p>1 CHAIRPERSON: A number of questions arise 2 from that, which I take it Mr Gotz now wants to ask you. 3 MR GOTZ: Well, there are questions; I'm 4 sure the Chairperson has questions as well, Brigadier. 5 Brigadier, but just to take a step back, we read in the 6 press reports that the Minister had come out and condemned 7 the use of shotgun pellets, indicating that they had been 8 discontinued – was the word use in the press report – since 9 2006. First of all, are you aware that the Minister had 10 made such a statement? 11 BRIGADIER CALITZ: Ek het dit wel op die 12 nuusberig gesien op die TV, dit is korrek. 13 MR GOTZ: And can you confirm that my 14 date of 2006 is correct, in other words that they had 15 discontinued – 16 CHAIRPERSON: That evidence has been 17 given already. I don't think you were here, but at the 18 time the question of the fact that pellets had been used 19 and in fact some of the deceased had apparently died as a 20 result of being shot by pellets, that question was raised. 21 There was something of a debate as to who was responsible 22 for that and one suggestion was it was some of the strikers 23 who were in possession of shotguns, they might have been 24 responsible, killed some of their colleagues. The other 25 suggestion was it may have been members of the police. The</p>

<p style="text-align: right;">Page 21010</p> <p>1 witness said no, no, no, it couldn't be because they 2 haven't been in possession of them since 2006, and then 3 there was a suggestion that Lonmin security people might 4 have been responsible, and that allegation, the last one, 5 is currently being investigated by the investigators for 6 the evidence leaders. But that's all been covered, you 7 see, so to some extent you're going over ground we've 8 covered already.</p> <p>9 MR GOTZ: Yes.</p> <p>10 CHAIRPERSON: But proceed if you can find 11 some new ground to cover.</p> <p>12 MR GOTZ: I simply wanted some clarity on 13 this notion of pellets being discontinued and not being in 14 possession of SAPS, because we understand from my learned 15 friend Mr Semenya that SAPS' case is not that SAPS is not 16 in possession of these shotgun pellet cartridges, simply 17 that they're not issued to the members.</p> <p>18 BRIGADIER CALITZ: Ja, dit is tydens 2006 19 – ek dink dit was toe die Staande Order 262 uitgekom het, 20 was die opdrag gewees daardie rondtes is totaal van 21 operasioneel gebruik onttrek en mag glad nie meer in besit 22 wees van enige polisiebeampte operasioneel nie. Met ander 23 woorde ons gebruik dit glad nie meer buitekant in die 24 aanwending van ons dienste nie.</p> <p>25 MR GOTZ: So would it be correct to say</p>	<p style="text-align: right;">Page 21012</p> <p>1 BRIGADIER CALITZ: Dit is onttrek na die 2 wapenkluis toe wat dan groot instapkluis is en daardie 3 persone wat in beheer is van daardie kluis het dan, kan ek 4 sê toegang tot daardie kluis en al die uitreikings wat aan 5 die lede gedoen is word dan gedoen in terme van 'n 6 uitreikingregister, kan ek maar so sê, die wapens wat 7 uitgereik word en die ammunisie. Daar is behoorlike 8 kontrole rondom dit, maar dit SSGAAA, die "pellets" waarna 9 u verwys word glad nie meer vir operasioneel nie, nee.</p> <p>10 CHAIRPERSON: You say they're not used 11 for operational purposes. Are they issued to members of 12 the service for perhaps target practice or things of that 13 sort?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 ja, dit is gebruik in verskeie geleenthede op opleiding, 16 "training," net om dit dan uit te skiet.</p> <p>17 MR GOTZ: Well, let's be clear on that, 18 Brigadier. Are you saying that POPS members are trained in 19 the use of shotgun pellets?</p> <p>20 BRIGADIER CALITZ: Nee, dit is nie wat ek 21 getuig nie.</p> <p>22 MR GOTZ: But are you then saying that 23 they are used during the course of training of POPS 24 members?</p> <p>25 BRIGADIER CALITZ: Dit is korrek gewees.</p>
<p style="text-align: right;">Page 21011</p> <p>1 that SAPS is in possession and still is in possession of 2 these shotgun cartridges, but an individual police officer 3 cannot be found in possession of them, it would be unlawful 4 to do so, to have them in his or her possession?</p> <p>5 BRIGADIER CALITZ: Ja, dit is korrek, en 6 sou die polisiebeampte dan wel in besit daarvan wees is dit 7 teenstrydig met die opdragte, en dit is definitief so.</p> <p>8 So –</p> <p>9 CHAIRPERSON: Does that mean there's an 10 arsenal somewhere, a rubber pellet arsenal where all the 11 rubber pellets that the police –</p> <p>12 MR GOTZ: Shotgun pellets.</p> <p>13 CHAIRPERSON: Sorry, shotgun rubber, they 14 are rubber pellets, aren't they?</p> <p>15 MR GOTZ: No, they're steel.</p> <p>16 CHAIRPERSON: Oh, sorry.</p> <p>17 BRIGADIER CALITZ: Shotgun pellets.</p> <p>18 CHAIRPERSON: Shotgun. Anyway, just as 19 well I've been corrected so I've got it right. So 20 somewhere there is an arsenal or perhaps a number of 21 arsenals where all the shotgun pellets which the police 22 were in possession of in 2006 are still being kept, but 23 they are one presumes kept under lock and key and they're 24 not to be issued to members of the service. Is that what 25 you say?</p>	<p style="text-align: right;">Page 21013</p> <p>1 Ek sê sover my kennis strek het die "training division" 2 daardie rondtes gebruik en dit is dan onder beheer aan die 3 persone uitgereik. U moet onthou om 'n haelgeweer, dit is 4 die metode van 'n haelgeweer laai en 'n haelgeweer 5 uitskiet. Dit gaan nie oor hoe om "pellets" te gebruik of 6 hoe om rubber te gebruik nie. Dit gaan oor die 7 operasionele laai van 'n haelgeweer, die metode van onder 8 af, so daardie rondtes word dan, kan vir so 'n doel dan 9 aangewend word.</p> <p>10 MR GOTZ: In the light of the facts which 11 have emerged in the last week, or rather the allegations 12 that have emerged in the last week that at least one and 13 perhaps more of the POPS members who were deployed in the 14 Rustenburg/Brits area to deal with a protest action there 15 were in fact in possession of shotgun pellets and shotgun 16 pellet cartridges and had in fact used them, so on the 17 basis that that is ultimately proved - I think I need to 18 make that clear, Brigadier - on the basis that that is 19 ultimately proved as correct, would you be prepared to 20 accept that the same might have happened at Marikana on the 21 16th of August –</p> <p>22 MR SEMENYA SC: Objection -</p> <p>23 CHAIRPERSON: No, no, no, I'm not 24 prepared to allow that question. I think it's based on a 25 hypothesis which may never come about. Clearly if it is</p>

<p style="text-align: right;">Page 21014</p> <p>1 so, and I think you need evidence on it; if it's so that 2 someone, if the charges are established and it's shown that 3 particular members of the POP in the North West province 4 were in possession of shotgun pellets - however they got 5 them is not clear, but presumably it's possible then that 6 members of the POP here at Marikana could also have been in 7 possession of shotgun pellets. But that would follow, I 8 would imagine, but I don't think we need to ask the witness 9 a hypothetical question. But of course there is another 10 possibility, isn't there, that shotgun pellets can freely 11 be purchased by members of the public.</p> <p>12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 ja, ek het net gewag, ek het gedog die vraag sal kom. 14 Enige persoon met 'n lisensie vir 'n haelgeweer kan dit 15 bekom en dan as jy nie 'n lisensie het nie kan jy dit nog 16 steeds onwettig bekom as jy 'n vriend het wat sulke 17 ammunisie het, en ons weet, ek dink die Lonmin se 18 sekuriteit het ook gesê hulle gebruik van die "pellets." 19 So dit is beskikbaar as 'n lid rêrig so oneerlik wil wees, 20 of op 'n manier dit so wil bekom, as ek dit so kan stel. 21 Maar dit bly onwettig. Dit kan nie in daardie lid se besit 22 wees nie.</p> <p>23 [10:49] CHAIRPERSON: It is also clear, is it 24 not, that there's been expressed actually in, I'm not sure 25 publicly but it's certainly been expressed in the police</p>	<p style="text-align: right;">Page 21016</p> <p>1 "double layer of clothing" glo ek nie sou die donshael kon 2 keer nie. So van daardie voorstel is ek bewus, en dat 3 hulle wil graag hê daar moet iets teruggebring word, of 4 iets meer tegnologies tussen rubber en R5, op hierdie 5 stadium is dit die leemte.</p> <p>6 MR GOTZ: Brigadier, I had understood 7 your evidence to be – rather you had indicated in relation 8 to earlier questions, questions posed by other cross- 9 examiners, that you didn't believe that the shotgun pellets 10 could have been fired by the police on the 16th of August 11 2012, and the basis of that statement was that shotgun 12 pellets are not issued to the members of POPS. Do you 13 remember that evidence?</p> <p>14 BRIGADIER CALITZ: Dit is korrek, ja. 15 MR GOTZ: But in the light of what we now 16 know that these shotgun pellets can be purchased readily 17 and freely by anybody with a gun licence, are you prepared 18 to change your view?</p> <p>19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 nee, glad nie. Ek dink nie die inligting dat ons dit kan 21 bekom met 'n lisensie het nou te voorskyn gekom nie. Ek 22 glo vandat u opgegroeï het as 'n jongman en ek, 23 haelgeweerrondtes was nog altyd beskikbaar gewees om te 24 koop as jy 'n lisensie het. So dit is nie nuwe "evidence" 25 nie. Al wat ek gesê het is dat dit word nie operasioneel</p>
<p style="text-align: right;">Page 21015</p> <p>1 service that there are members who are dissatisfied with 2 the decision to withdraw pellets from issue for operational 3 purposes. There's a group in the police who feel that that 4 was a wrong decision. Whether that's, it's not for us to 5 decide whether that decision was a right or wrong one, but 6 it's correct, is it not, that there is a dissention group 7 who think that it could and should be used still in 8 operation activities. Is that right?</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 moet dalk net versigtig wees as ek antwoord. Ek is nie 11 bewus van 'n groep nie. Ek is bewus van –</p> <p>12 CHAIRPERSON: [Microphone off, inaudible] 13 BRIGADIER CALITZ: Ja, ek is bewus van 14 individue wat dit gestel het en dan ook met voorstelle 15 gekom het dat na die verandering van die polisiemag na 'n 16 polisie diens is ons rondtes onttrek. Ons moet net onthou 17 daar is verskillende "pellets." Dit is die SSG wat dan – 18 ek praat heeltemal onder korreksie, die 18 balletjies in 19 het, metaal balletjies, dan die AAA wat so iets soos 75, en 20 dan het ons die donshael en ek dink die groep wat vra dat 21 daar moet iets wees tussen rubber en R5 praat meer van die 22 donshael. Dit is so iets soos 270 klein fyn, kan ek sê 23 balletjies, maar dit is nie ten doel om te dood nie; dit is 24 ten doel om meer effektief te stop as wat die rubber doen 25 op hierdie stadium. Dit sou byvoorbeeld die kombes en die</p>	<p style="text-align: right;">Page 21017</p> <p>1 uitgereik nie en daarom glo ek, en ek glo steeds dat die 2 polisie nie kan in besit wees wettig en dit gebruik het 3 nie.</p> <p>4 CHAIRPERSON: No, no, I understand that, 5 but the point being made, I take it, is look, we have a 6 serious problem in this case because some of the deceased 7 died because of shotgun pellets, alright, and you concede 8 that no policeman should have – or policewoman for that 9 matter, should have been in possession of shotgun pellets. 10 So anyone who was, if one was and used them to kill some of 11 the deceased here, that would have been unauthorised 12 conduct by the police person concerned. You said you 13 didn't think that that's the way these people were killed, 14 by the shotgun pellets. You didn't think it was as a 15 result of action by any member of the police service 16 because they're not issued to members of the police. But 17 now we know that police can be in possession of them, then 18 one can't entirely exclude these deaths as having been 19 caused by members of the police service. It is a 20 possibility, but I presume you would say it's improbable 21 because the police person concerned, if there was someone 22 who did it, would have illegally been in possession of the 23 pellets. Is that basically your case?</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, 25 ja, ek stem saam met u. Ek dink u het my 'n vroeëre vraag</p>

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1 ook gevra sou iemand dit gehoor het, dit het 'n totale
 2 ander klank, so dit sou gerapporteer gewees het, die
 3 bevelvoerders, die persone saam met daardie persoon. Ek
 4 glo sulke doppies sou gevind gewees het op die toneel.
 5 So –
 6 CHAIRPERSON: So all those factors you
 7 rely on –
 8 BRIGADIER CALITZ: Ja.
 9 CHAIRPERSON: - support your contention
 10 that it's overwhelmingly improbable that these deaths could
 11 have been caused by members of the police service. I take
 12 it technically it's possible, but you think it highly, and
 13 you contend it is highly improbable for the reasons you've
 14 given. Would that be a fair summary of your evidence?
 15 BRIGADIER CALITZ: Heeltemal, mnr die
 16 Voorsitter, ja.
 17 MR GOTZ: But just picking up on one of
 18 those points, Brigadier, assume that the shots were fired
 19 by somebody who was inside one of the Papa Nyalas, just
 20 take by way of example Papa, what we've indicated Papa19 or
 21 Papa10 at the back of the row of Nyalas, you wouldn't find
 22 "doppies," as you put it, or the used cartridges on the
 23 scene because they would have been discharged inside of the
 24 Nyala and when the SAPS officer or POPS officer reloaded
 25 the used cartridge would simply be kicked out into the

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1 Nyala and it wouldn't then be found on the scene, correct?
 2 BRIGADIER CALITZ: U is korrek daarmee,
 3 ja.
 4 MR GOTZ: Conversely if one of the
 5 strikers had been firing the shotgun cartridges, you would
 6 likely have found them on the scene, correct?
 7 BRIGADIER CALITZ: Ons is al oor die
 8 getuienis. Ons het gesê sou daar net een skoot wees, ons
 9 weet daar is drie haelgewere vermis gewees op die dag, twee
 10 van die sekuriteit en een van die polisiebeampte, sou ons
 11 een rondte en een rondte hê, en ek het ook getuig dat daar
 12 is ander maniere om 'n haelgeweerrondte af te vuur as net
 13 met 'n haelgeweer. So sou daardie een rondte gevuur word
 14 dan sou daardie doppie ook nie uitgespan gewees het nie, so
 15 u sal dit ook nie kan kry op die toneel nie.
 16 MR GOTZ: Brigadier, again you know, I
 17 don't want to cover ground that has been covered. I think
 18 Mr Ntsebeza, Adv Ntsebeza covered this with you. So I
 19 think let's move on to a different topic. Brigadier,
 20 another presentation that we prepared for you was one which
 21 was entitled "The shot fired by the striker." We prepared
 22 it on the assumption that you would be able to assist us
 23 with this issue. It has been made an exhibit and it is
 24 exhibit KKK53.
 25 CHAIRPERSON: Have you seen that

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1 presentation, Brigadier?
 2 BRIGADIER CALITZ: Dit is korrek, mnr die
 3 Voorsitter.
 4 CHAIRPERSON: So he can ask you about
 5 that now.
 6 MR GOTZ: Well Brigadier, I presume
 7 you've had an opportunity to go through the presentation.
 8 It simply is a series of frames or screenshots from a
 9 second in one of the videos, and leading up to a conclusion
 10 or observations which you find then on the last page of the
 11 presentation. Have you had an opportunity to go through
 12 the presentation and consider the observations?
 13 BRIGADIER CALITZ: Ek het daarna gekyk,
 14 ja.
 15 MR GOTZ: So let me just take you briefly
 16 through these observations. It has been suggested on
 17 various occasions in these proceedings that the striker
 18 fires two shots. Our analysis is that the striker only
 19 fires once and the basis of that observation is the
 20 breakdown into the various screenshots and the fact that
 21 one only sees one shot being discharged when one does a
 22 frame by frame analysis. Would you agree with our
 23 observation that the striker only fires once?
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 nee, in die video dink ek wat ons in "hindsight" gekyk het

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1 dink ek daar was twee, iemand het getuig – dit was nie my
 2 getuienis nie, so ek, want ek het dit nie gesien nie, maar
 3 ek het dit ook as twee. So, maar ek glo die "frame by
 4 frame," ons eksperts kan daarna kyk en kyk of hulle dan
 5 saam met u stem met die geval.
 6 MR GOTZ: Is this something that we
 7 should engage the SAPS experts with, Brigadier? I mean if
 8 you're not able to assist us I'm happy for us to move on.
 9 The following observations are of a similar nature, but
 10 this is material that can be agreed between SAPS and us.
 11 MR SEMENYA SC: I would propose that
 12 avenue, Chair.
 13 MR GOTZ: Brigadier, just to be clear,
 14 you didn't actually see the –
 15 CHAIRPERSON: No, you know, he's not an
 16 expert in this kind of thing. He wasn't there at the scene
 17 at the time. So he's really drawing inferences as a
 18 layman, I would imagine, from these various frames that
 19 you've reproduced, without any expertise of his own. The
 20 suggestion of Mr Semanya is this is a really a matter for
 21 an expert and they've got an expert who's going to give
 22 evidence and he can be asked these questions. Isn't that a
 23 sensible way to proceed?
 24 MR GOTZ: Yes, Chair, that in fact is
 25 what I was proposing. Brigadier, after having asked the

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1 first question I realised that that is the appropriate way
2 forward rather than to torment you with the following
3 questions.
4 CHAIRPERSON: An interesting point arises
5 from this, that you yourself say on page 32 of this part of
6 your presentation, "Despite the fact that two shots can be
7 heard on the clip's audio, the striker only fired once."
8 Now if there were two shots and this striker only fires one
9 of them, then somebody else has fired the other. Now that
10 can't be seen on the video clip. There are two
11 possibilities. We might say that the one that was fired by
12 a member of the police service, the other is it was fired
13 by another striker who isn't on the video clip. If the
14 police evidence is that none of them fired at that stage,
15 and if that evidence is accepted – and these are all ifs, I
16 know – then it means that there were two strikers in
17 possession of firearms, if your presentation is right, two
18 strikers who fired beforehand, and that intensifies the
19 threat which the police presumably will say that they
20 anticipated was facing them. But anyway, these are all
21 matters that can be debated when the expert comes.
22 MR GOTZ: Yes, Chair, but I do think to
23 respond to that, first of all, the Human Rights Commission,
24 my learned friend Adv Le Roux in fact put statements to the
25 Brigadier from SAPS which prima facie do indicate that a

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1 number of them who were actually there did fire, and when I
2 say "there" I mean close to the striker, fired before the
3 TRT volley. I think there are three statements which were
4 put to the Brigadier which make that point.
5 CHAIRPERSON: Yes, alright, obviously
6 it's not the appropriate place to debate now.
7 MR GOTZ: I simply don't want to –
8 CHAIRPERSON: There's something to be
9 said, I think, for the proposition and I say that on a
10 very, very prima facie basis, on the basis that something
11 can be said for the proposition that those people may have
12 been talking about the so-called incident 2, or incident 1.
13 You know, so, and there's a debating about those incidents,
14 so we won't go there either. But anyway, the point you
15 make is that – I put that to you initially there's a
16 possibility that the second shot we hear was fired by a
17 member of the police service, but there's also a
18 possibility that it was fired by a striker, and if it was a
19 striker, not the one we see on the video clip, then certain
20 things follow. But we don't have to go into that now.
21 MR MPOFU: Sorry, Chairperson, from a
22 different angle, I'm just following this debate. I thought
23 it was quite clear on the video, and not even on
24 statements, that the shooting striker, so to speak, was at
25 the very least responding to the person wearing a blue

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1 helmet that we see shooting.
2 CHAIRPERSON: Mr Mpofu, I'm going to rule
3 you out of order. What Mr Gotz and Mr Semanya and I agree
4 is this whole topic won't be dealt with now, but will be
5 dealt with later when an expert gives evidence.
6 MR MPOFU: Ja, well Chairperson, once
7 you've just postulated a situation, now one of my clients,
8 the so-called "other striker" shot, I'm explaining that the
9 shot that we saw on the video was from a policeman. So I
10 think that must be put into the record as well. Thank you.
11 CHAIRPERSON: We'll get there later. I
12 didn't say one of your clients necessarily fired the second
13 shot; I said it was a possibility. But anyway, that's the
14 possibility we will investigate at the appropriate time.
15 MR GOTZ: And Mr Mpofu has in fact –
16 CHAIRPERSON: [Microphone off,
17 inaudible] –
18 MR GOTZ: - anticipated something that I
19 wanted to place on record, Chair. I think there is a need
20 to look at the videos carefully, and as you pointed out to
21 us yesterday, we don't need to deal with it with this
22 witness because the videos properly looked at are obvious.
23 But it is quite apparent to us, Chair, that what is
24 happening in that video is that he is responding to being
25 shot not once, but in fact twice with rubber bullets, at

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1 the every least, but which are not skip fired, but fired
2 directly at him and his head, and we do want to place on
3 record that that is our observation as well –
4 CHAIRPERSON: Well, Mr Gotz, I don't
5 think you can carry on with that. This is a matter that
6 can be dealt with at the appropriate time. Whether he's
7 being fired at with rubber bullets or rubber balls and so
8 on are also matters that we can debate later, but let's
9 deal with that at the appropriate time and not make all
10 these statements on the record which can more appropriately
11 be dealt with later, but certainly we will deal with it
12 later. The points have been flagged, as it were, and they
13 require attention and it's an important part of the inquiry
14 with which we are busy. You want to move on – but you want
15 to say something, Brigadier, before we carry on?
16 BRIGADIER CALITZ: Mnr die Voorsitter,
17 nee, ek wou miskien na iets verwys het, maar ek dink ek sal
18 dit vir die regspraak gee en dit mag dalk net die eksperts
19 "assist" want ek dink iewers is bewyse daarvan, maar ek sal
20 dit los dat die eksperts daarna kyk en dan kan ons miskien
21 terugkom op 'n latere stadium daarvan.
22 CHAIRPERSON: Alright, let's carry on
23 with what Mr Gotz wants to deal with. Mr Gotz, next point?
24 MR GOTZ: Brigadier, earlier on in my
25 cross-examination I asked you certain questions about your

<p style="text-align: right;">Page 21026</p> <p>1 knowledge of whether or not people had in fact been killed 2 or seriously injured by NUM members on the Saturday, the 3 11th. I'd understood your evidence to be that you didn't in 4 fact know the true position. I did want to put a document 5 which we found subsequent to that evidence. It's exhibit 6 SS3 which I would like to take you to in the light of your 7 evidence. So if you could have a look at exhibit SS3. 8 CHAIRPERSON: Can we have SS3 on the 9 screen, please? 10 MR GOTZ: I beg your pardon, Chair, 11 they're waving at us in the background. I'm not sure what 12 the concern is. 13 CHAIRPERSON: Your assistant is 14 proceeding to deal with the situation and she has in the 15 past dealt with similar situations very efficiently; I'm 16 sure she'll repeat her success on this occasion. 17 [11:09] Thank you very much, I'm happy that my prediction 18 of success came true. 19 MR GOTZ: Brigadier, this is the South 20 African Police Service Rustenburg POP Contingency Plan. If 21 you page down through the document you'll ultimately come 22 to a signature page. Can you find that? Unfortunately 23 these pages aren't numbered in a particularly coherent 24 way – 25 CHAIRPERSON: We've got the signatures</p>	<p style="text-align: right;">Page 21028</p> <p>1 CHAIRPERSON: I'm sorry to interrupt you, 2 Mr Gotz. It's actually 6 o'clock. 3 MR GOTZ: 6 o'clock. 4 CHAIRPERSON: Sometimes a 6 does look 5 like an 8. This one, my screen is closer to me than the 6 one you're looking at and it is 6. "At around 6:00 on 7 Saturday 2012-08-11, a group of approximately 3 000 8 employees," it carries on like that, and then near the end 9 of that paragraph it said, "On their way through the hostel 10 it appears they met a group of NUM members, resulting in a 11 confrontation. Shots were fired. Two employees of Lonmin 12 were injured. Both were shot in the back near the spinal 13 area. The victims were taken to the Andrew Saffy Hospital 14 for medical attention." The point is that they were 15 described as having been injured. That's the point you're 16 making. 17 MR GOTZ: Yes, indeed, and Brigadier, it 18 does seem to me that you know their condition in fact 19 because you say in the very next paragraph, "At about 11:30 20 whilst the victims were visited at Andrew Saffy Hospital" – 21 I take it that means visited by somebody from POPS or SAPS? 22 BRIGADIER CALITZ: If you can just read 23 further on you will see who visited them. 24 MR GOTZ: "The duty officer was informed" 25 – does that mean that the duty officer visited them?</p>
<p style="text-align: right;">Page 21027</p> <p>1 now. 2 MR GOTZ: And then Brigadier, then you'll 3 see that that first document is dated the 10th of August 4 2012. What I'd like to do is to look at the next document, 5 which is the contingency plan that was actually formulated 6 by you, we suspect, on the 13th. It's the next page of this 7 lengthy document. So it is headed "South African Police 8 Service Rustenburg POP Amended Contingency Plan" and, 9 Brigadier, this is a document which seems to have been put 10 together by yourself. Would that be correct? 11 BRIGADIER CALITZ: Ja, by the planners. 12 We don't do it actually self. The planners is doing the 13 document, give it to us, and then myself as operational 14 commander will endorse it with a signature. It will be 15 recommended by one of the seniors and ultimately approved 16 by the overall commander, General Mpembe. 17 MR GOTZ: So you'll see at the end of 18 this section of the document, you'll see that your 19 signature does appear seven or eight pages later. 20 BRIGADIER CALITZ: Dit is wat ek nou net 21 vir u getuig het, ja. 22 MR GOTZ: Can we look at paragraph 1.1 of 23 the document, and look at the second paragraph? It says, 24 "At around 8 o'clock on Saturday 11th of August 2012, a 25 group of plus-minus 3 000" –</p>	<p style="text-align: right;">Page 21029</p> <p>1 BRIGADIER CALITZ: That's presumably how 2 it works normally. Na 'n skietvoorval sal die offisier 3 aangewese dan die toneel besoek, asook van die lede om uit 4 te vind wat het gebeur. 5 MR GOTZ: And will you also confirm that 6 this plan was the one prepared either late on the 13th or 7 early in the morning of the 14th of August 2012? 8 BRIGADIER CALITZ: Ja, dit is korrek 9 gewees, ongeveer daardie tyd. 10 MR GOTZ: So contrary to what I'd 11 understood you to have testified on Friday last week, by 12 the time you encounter the strikers in the negotiations on 13 the afternoon of the 14th of August, you in fact know what 14 the position is in relation to these workers, the strikers. 15 These two strikers had been injured, not killed, on the 16 basis of the information that is available to you. 17 BRIGADIER CALITZ: Mnr die Voorsitter, as 18 ek miskien net mag mnr Gotz miskien help dat ons vinniger 19 net hier deur kan gaan, dit was alreeds oor getuig. As u 20 hierdie presiese, wat die opskrif sê "Nature of operation," 21 1.1 gaan vergelyk met my verklaring JJJ107, paragraaf 27, 22 dit is die "italic bold," as ek dit so kan noem, gedeelte 23 wat ek in my verklaring ingesit het. Ek weet nie of dit u 24 was of die vorige advokaat nie wat my daarvoor ook ondervra 25 het. Ek dink dit was u gewees wat gesê het dit is my</p>

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1 woorde. Ek het vir u verduidelik nee, dit is Kaptein
 2 Govender wat dit aan ons gerapporteer het. So dit is die
 3 presiese, presiese woorde. U kan dit woord vir woord gaan
 4 vergelyk. Dit is die "Nature of operation," dit is die
 5 inligting tot ons beskikking gewees tot op daardie stadium
 6 en ek het vir u getuig dat ek dit uit my verklaring uit dan
 7 so, dis presies wat op daardie dag dan in die beplanning
 8 vervat is en dit is die inligting tot ons beskikking
 9 gewees.

10 U het verder gegaan en vir my gevra of ek bewus
 11 was van die persone wat gedood is. Ek het vir u gesê nee,
 12 daardie bewering is wel gemaak en ons kon dit nie bevestig
 13 nie. So ek kan nie dit uitsluit dat ek kon vir hulle gesê
 14 het julle mense is beslis nie dood nie want daardie
 15 bewering is gemaak, die eerste persone wat ons geweet het
 16 was dood was die twee sekuriteitspersone, asook die Sondag
 17 die twee myn "employees," saam met daardie nege voertuie
 18 wat gebrand is. Dit is waarvan ons die eerste keer bewus
 19 geword het. Maar die vorige, die Vrydag was twee persone
 20 gewond, die Saterdag vyf persone gewond –

21 VOORSITTER: Vrydagaand en Saterdag –
 22 BRIGADIER CALITZ: Saterdag, ja, was daar
 23 vyf persone gewond en dan later weer drie persone gedurende
 24 die optog. So ons praat van – as my wiskunde nou reg is,
 25 vyf, ses, sewe, agt, nege, 10 persone gewond tot op daardie

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1 stadium, en ek dink ons het al hieroor gepraat, so dis niks
 2 nuuts nie, en dit miskien het ons al oor getuig, mnr die
 3 Voorsitter.

4 MR GOTZ: But Brigadier, what's quite
 5 clear from this – and perhaps it is a repetition of
 6 something that you had repeated, or had received from Mr
 7 Govender, but my point is this; the information at your
 8 disposal by the time you meet with the strikers is that
 9 nobody has been killed by NUM.

10 BRIGADIER CALITZ: Mnr die Voorsitter,
 11 ja, ons het al daarvoor getuig. Soos ek vir u sê, die
 12 beweringe wat gemaak is, ons kan nie vir daardie persone sê
 13 met sekerheid nee, julle is verkeerd, julle persone is nie
 14 gedood nie. Ons het op daardie stadium, die ondersoek het
 15 aangegaan.

16 MR GOTZ: The strikers had repeatedly
 17 said to you that they thought that two people had been
 18 killed by NUM, correct?

19 BRIGADIER CALITZ: Nee, ek kan nie onthou
 20 dat hulle "repeatedly" dit vir ons gesê het nie, nee.

21 CHAIRPERSON: But they definitely said it
 22 at least once, didn't they?

23 BRIGADIER CALITZ: Dit is korrek –

24 CHAIRPERSON: But did they say 'Two of
 25 our people were killed by NUM on Saturday morning?' If

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1 they had said that you would have been able to say, 'No,
 2 no, no, our information is that people were indeed injured
 3 on Saturday morning by NUM, but they weren't killed,
 4 they're still alive, they're in hospital.' But if they had
 5 simply made the general allegation that 'Two of our members
 6 were killed by NUM,' and you weren't able to tie it up with
 7 what happened on the Saturday morning, then of course it
 8 would be different. So did they say to you when they said
 9 that two of their members had been killed by NUM, did they
 10 say that that happened on the Saturday morning, or did they
 11 just make the general allegation without further
 12 particulars as to time and place?

13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter, ek dink dit was net 'n algemene stelling gewees
 15 en nie pertinent soos u daarna verwys nie.

16 MR GOTZ: But even if it was a general
 17 statement and they didn't specify the Saturday morning, did
 18 you not have an obligations or a duty to find out from them
 19 what they were referring to, Brigadier? This is the reason
 20 that they were carrying the weapons that they were.

21 BRIGADIER CALITZ: Al was dit die rede
 22 vir die dra van die wapens, was dit nog steeds geen
 23 verskoning gewees om onwettig in beheer van wapens te wees
 24 terwyl mens "gather" nie. Dis teenstrydig met die
 25 Grondwet, dis teenstrydig met die "Gatherings Act," so, en

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1 dit is wat ons vir hulle gesê het, dit is "illegal," sit
 2 neer die wapens, ons sal hierdie ding "peaceful" verder
 3 hanteer. So hulle kon nie wettig in besit gewees het van
 4 daardie wapens, maak nie saak wat die rede wat hulle
 5 aangevoer het.

6 MR GOTZ: Brigadier, doesn't the
 7 Dangerous Weapons Act which was applicable at the time
 8 allow a person to be in possession of a dangerous weapon if
 9 they can demonstrate that they are doing, or have
 10 possession for a lawful purpose?

11 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 12 is nie heeltemal 'n regskenner nie, maar sover ek weet, die
 13 vorige wapens "act" was daar ook 'n afkondiging gewees deur
 14 die Minister en hy het sekere verbod geplaas op sekere
 15 items, waarvan definitief pangas, knopkieries en daardie
 16 deel sou gewees het daarvan. So volgens my was daar 'n
 17 verbod gewees. Ek kan die dokument trek, maar ek is amper
 18 seker ek is reg.

19 CHAIRPERSON: It is not necessary to
 20 cross-examine the witness about what the state of the law
 21 was at the time. We can ascertain that ourselves, but
 22 unless it's relevant for something – are you moving on to
 23 another point now? Is it appropriate to take the tea
 24 adjournment at this point?

25 MR GOTZ: Okay, we can take the tea

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1 adjournment now.

2 CHAIRPERSON: I see some of the families

3 have arrived. I don't know whether they've all arrived. I

4 think after tea when presumably all of them will have

5 arrived, if they haven't all arrived yet, I will be able to

6 address some words of welcome to them. But we'll take the

7 tea adjournment now.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [11:49] CHAIRPERSON: The Commission resumes.

10 Brigadier, you're still under oath.

11 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

12 die Voorsitter.

13 CHAIRPERSON: Mr Gotz.

14 CROSS-EXAMINATION BY MR GOTZ (CONTD.):

15 Brigadier, just a few follow-up questions from the debate

16 that we were having before the tea adjournment. Brigadier,

17 your knowledge of the law and whether or not the strikers

18 were acting unlawfully surely must have been relevant

19 during the course of the negotiations?

20 BRIGADIER CALITZ: Ja, dit is, kan ek met

21 u saamstem.

22 MR GOTZ: You also have a duty to

23 establish whether or not the strikers may have had a

24 defence under the relevant law to the accusation that they

25 were acting unlawfully, correct?

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1 BRIGADIER CALITZ: Ja, ek dink nie die

2 "negotiations" se doel was enigsins om betrokke te raak met

3 loongeskille of die argumente nie, bloot om, wat ons vir

4 hulle gesê het is dat ons sal hulle boodskap oordra aan

5 die, ek dink dis die "mine employees," en dan het ons begin

6 deur vir hulle dadelik te sê – ek verwys daarna in my

7 paragraaf 57 – dat – ag, 47 – dat ons is daar om die

8 situasie "peaceful" te "resolve" en hulle daardeur te help.

9 MR GOTZ: You see the simple fact is that

10 they were carrying the weapons for their own protection, on

11 their version. We've seen that in the videos. That is not

12 necessarily a contravention of the Dangerous Weapons Act as

13 it existed at the time.

14 BRIGADIER CALITZ: Nee, ek verskil van u.

15 Die bietjie wat ek weet van die Dangerous Weapons Act, soos

16 ek vir u gesê het daar was 'n afkondiging gewees deur die

17 Minister en ons kan daarna gaan kyk; ek dink dis, ek het

18 nie die wet nommer nie, van 1971, en hy is gewysig hierdie

19 jaar, wat geïmplementeer is in Februarie. Daardie

20 afkondigings is gemaak dat daar sekere gevaarlike wapens

21 nie tentoongestel moet word tydens enige optog, byeenkoms,

22 en waaronder dan knopkieries, pangas, spiese, yster – ek

23 kan amper sê ek is 100% seker dat dit so is, maar ek kan

24 dit vir u kry.

25 MR SEMENYA SC: Chair, for what it is

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1 worth, that would have been inconsistent with the

2 constitutional right to assemble peacefully in the first

3 place. I can't see how the subsequent legislation would

4 then authorise that which the Constitution doesn't

5 authorise. I'm not familiar with what section Mr Gotz is

6 referring to.

7 CHAIRPERSON: We won't debate the law

8 now, but I can understand an argument that you have a

9 constitutionally entrenched right to gather without

10 weapons. That's your constitutionally entrenched right.

11 If you gather with weapons you're obviously not exercising

12 a constitutionally entrenched right. If your possession of

13 the weapon is in fact lawful because you have it for

14 purposes of self-defence, for example, and if there is no

15 absolute prohibition in respect of the possession of that

16 weapon, then the fact that you're not covered by the

17 constitutionally entrenched right in the Bill of Rights

18 doesn't mean that what you were doing is necessarily

19 illegal, but anyway, we can debate all that at the

20 appropriate time.

21 The debate at the moment is a bit artificial

22 because the witness says as far as he's aware there is

23 legislation on the point which he relied on and he can get

24 it if necessary. But I don't know it's necessary, or

25 indeed appropriate for Mr Gotz to debate the law with the

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1 witness. That's a matter he can debate with us later on.

2 Of course what he's suggesting is it was a duty of the

3 witness to ascertain what the law was and if he can in fact

4 show that the law authorised them to do what they were

5 doing and they were urging them to refrain from doing what

6 was lawful, then of course that will be another point. But

7 I'm not sure that you are armed with the actual legal

8 provisions either that the witness is promising to bring

9 us. Am I right, Mr Gotz?

10 MR GOTZ: Well Chair, I'm certainly not

11 armed with all the legislation. I'm actually testing this

12 witness's knowledge of the law and we may have to argue

13 this in –

14 CHAIRPERSON: You know, this is not an

15 examination for promotion from brigadier to major general

16 where they may have to pass some law exam, I don't know,

17 but I'm not interested in his knowledge of the law. I

18 understand you can argue, if you're right in what you think

19 may be the law you can argue that the police acted

20 inappropriately because they should have acted in

21 accordance with what you say the law is, but is that really

22 a matter that you – he doesn't know what the law is. He's

23 got an idea. He's going to produce something, if

24 necessary, but he'll give it to his counsel and he'll give

25 to us in due course. But I'm not sure that this is a line

<p style="text-align: right;">Page 21038</p> <p>1 of enquiry which is going to help us very much to answer 2 the questions in the terms of reference. So it might be 3 advisable to step off it. I'm not going to stop you 4 arguing it later on, you understand that, but I don't know 5 whether we're going to profit much by a sort of oral 6 examination of the witness, conducted by you, as we 7 acknowledge the law in relation to dangerous weapons. 8 I see a number of people have arrived and your 9 colleague Adv Lewis undertook to find out for me whether 10 the whole party have come back from the Eastern Cape, but 11 perhaps I can ask her to address me now. 12 MS LEWIS: Mr Chair, I believe that all 13 of the families have not returned as yet. There are a 14 number who are still en route, as it were, and I – Chair, 15 apparently the Lesotho families have not arrived back yet. 16 CHAIRPERSON: Are they expected soon? 17 Are they going to come today? Because if all the Eastern 18 Cape people are here then it may be appropriate for us to 19 welcome them. What is the position? 20 MS LEWIS: Mr Chair, my understanding is 21 that I think they will return during the course of the 22 week. I'm not sure that they will be back with us today. 23 CHAIRPERSON: I think I'll ask Mr Tokota 24 in his best Xhosa to translate what I'm going to say. I 25 see the families who were away for the Christmas break in</p>	<p style="text-align: right;">Page 21040</p> <p>1 you will succeed in obtaining closure and also it will be 2 clear to you and to everybody else what the true facts 3 were. 4 I understand Mr Mahlangu interpreted it and they 5 all appear to have headphones on so they all heard what was 6 being said. So Mr Gotz, I think you may now proceed. 7 MR GOTZ: Thank you, Chair. Brigadier, I 8 had a question or two about one final document that we 9 provided to you. It's exhibit 50 and it's entitled "Crowd 10 management for platoon members, CMPM, prepare for crowd 11 management incidents." Chairperson, in attempting to get 12 my ducks in a row I sought to make sure that the exhibit 13 could be projected on screen. It seems that it's not 14 possible because the version of the software that is loaded 15 on the computer cannot read the version on the disc, so 16 unfortunately it's not going to be – 17 CHAIRPERSON: We'll just have to do the 18 best we can without the actual projection of what's 19 contained in this exhibit. 20 MR GOTZ: Brigadier, this is a SAPS 21 training document dealing with crowd management and how to 22 understand crowds. Would you confirm that? 23 BRIGADIER CALITZ: Ek sien die dokument, 24 ja. 25 MR GOTZ: Well, Brigadier, have you</p>
<p style="text-align: right;">Page 21039</p> <p>1 the Eastern Cape have now returned. I understand why they 2 were not able to return as soon as we recommenced our 3 activities; there were questions of children going to 4 school and so forth, but we are pleased to see them back. 5 We are pleased that they appear to have had a safe journey 6 and are back with us and I hope that they will continue to 7 see that we are endeavouring to the best of our ability to 8 ascertain the true facts in relation to the matters covered 9 by our terms of reference, in particular in relation to the 10 deaths at Lonmin over the period from the 12th of August 11 onwards, and also we're concerned about some of the events 12 that preceded that. 13 But I hope they will have seen when they were 14 here previously that we are endeavouring to leave no stone 15 unturned to get to the truth and I hope they will see that 16 we will continue to do that, and I'm sure that if there's 17 anything that they wish to convey to us which is relevant 18 to our work, they will do so through the counsel who are 19 representing them. Welcome back and we hope that you have 20 a comfortable stay while you're here. 21 We understand that the matters being traversed 22 here are issues which cause you pain and distress for 23 reasons that are obvious, and that I'm afraid is a 24 necessary part of what's happening, but we have sympathy 25 and empathy for you and as we say we hope that in the end</p>	<p style="text-align: right;">Page 21041</p> <p>1 received this training? 2 BRIGADIER CALITZ: Ek dink hierdie 3 opleiding dokument is opgestel – ek kan nie onthou wanneer 4 nie, ek dink dit is nadat ek my "crowd management" kursus 5 gedoen het, maar ek is bewus daar is "refresher" kursusse 6 wat aangebied word waar hierdie materiaal gebruik word. 7 MR GOTZ: As we read this document it 8 makes a particularly important point, and I'm going to make 9 the point to you and get your response. The point that it 10 makes is that the way you view a crowd determines 11 ultimately how you deal with the crowd. So if you view a 12 crowd as threatening, almost always that will result in you 13 dealing with a crowd in a repressive way. The way that you 14 view a crowd determines the outcome of the intervention. 15 BRIGADIER CALITZ: Ja, dit is een van die 16 faktore is hoe u dit sien. Daar is verskeie ander faktore, 17 hoe die "crowd" reageer en wat daarop volg. 18 MR GOTZ: And I do want to put to you 19 that it seems to us on the basis of simply the way in which 20 you dealt with the situation on the ground both on the 14th 21 and the 15th, and indeed on the 16th, failed to take account 22 of some of the fundamental principles which are articulated 23 in this document. So for example you went into the 24 situation viewing the crowd as threatening and dangerous. 25 BRIGADIER CALITZ: Nee, ek stem nie saam</p>

<p style="text-align: right;">Page 21042</p> <p>1 met u nie.</p> <p>2 MR GOTZ: And you interpreted much of</p> <p>3 what the crowd did as a threat against the police.</p> <p>4 BRIGADIER CALITZ: Ek het na enkele</p> <p>5 gevalle gewys waar daar wel dreigemente gemaak was op ons,</p> <p>6 maar dit is nie die geheelbeeld van die skare wat ons gehad</p> <p>7 het vandat ons daar aangekom het op die 12de nie, nee.</p> <p>8 MR GOTZ: And in essence the way that you</p> <p>9 approached dealing with crowd management on the 14th and the</p> <p>10 15th ultimately prevented you from moving down what they say</p> <p>11 in these documents is the five Cs to a position where you</p> <p>12 had comprehension, cooperation, and building an</p> <p>13 understanding with the crowd which would ultimately avoid</p> <p>14 conflict.</p> <p>15 BRIGADIER CALITZ: Ja, miskien kan ek u</p> <p>16 net help daar. Die "five Cs" begin by "cooperation," so</p> <p>17 daardeur het ons met die persone wat daar by Lonmin was</p> <p>18 vanaf die 12de, het ons aangekom en ons het 'n samewerking</p> <p>19 bewerkstellig wat dan die "cooperation" gedeelte is. Die</p> <p>20 tweede stap is jou "communication." In daardie geval het</p> <p>21 ons dan wel kommunikasie begin tussen die verskillende</p> <p>22 partye en ons het dit dan verder gevat. "Comprehension" is</p> <p>23 die "understanding," met ander woorde daar het ons die</p> <p>24 inligting gekry van al die partye af en ook "ge-review" tot</p> <p>25 wat op daardie dag gebeur het.</p>	<p style="text-align: right;">Page 21044</p> <p>1 with that opinion and it's based on partly the way in which</p> <p>2 you've given evidence in these proceedings. For instance</p> <p>3 the repeated reference to things that were done as</p> <p>4 threatening, or threats against the police, is just by way</p> <p>5 of one example. If I can give you another example, you</p> <p>6 negotiated with the STF Scorpion vehicle behind you. The</p> <p>7 STF Scorpion vehicle was paraded around Marikana and was</p> <p>8 present on the afternoon of the 14th, correct?</p> <p>9 BRIGADIER CALITZ: Ek kan nie onthou, toe</p> <p>10 ons gaan opdaag het met die onderhandelinge was dit my</p> <p>11 Nyalas gewees wat begin het met die onderhandeling. Ek kan</p> <p>12 glad nie dink dat die Scorpion op daardie dag op daardie</p> <p>13 toneel was nie. Ek kan heeltemal verkeerd wees, so as daar</p> <p>14 foto's is, maar sover ek weet is hulle ingebring met 'n</p> <p>15 spesifieke doel van waar hulle "ge-deploy" was.</p> <p>16 MR GOTZ: No, Brigadier, you testified</p> <p>17 that the STF went with you to investigate the body behind</p> <p>18 the kraal. That was shortly after the negotiations and on</p> <p>19 the scene. The STF must have been present.</p> <p>20 BRIGADIER CALITZ: Ja, nee, nee, dit is</p> <p>21 nie deel van die "negotiations" wat u nou net gesê het nie.</p> <p>22 U sien u verwar miskien die twee gevalle. My getuienis was</p> <p>23 dat die Spesiale Taakmag het vir ons rondom-verdediging</p> <p>24 gegee waar die liggaam van daardie ouer persoon wel op die</p> <p>25 grond gelê het. Ek is jammer, ek het nie sy naam nou nie,</p>
<p style="text-align: right;">Page 21043</p> <p>1 So as u vat die polisie se teenwoordigheid daar</p> <p>2 en die feit dat ons nie net ingegaan het en van dag 1 af</p> <p>3 vir hulle gesê het, 'Luister, hierdie is 'n onwettige</p> <p>4 byeenkoms, ons gee julle 10 minute, 15 minute, om uit</p> <p>5 mekaar uit te gaan en dan 'disperse' ons julle,' dit was</p> <p>6 ook 'n opsie gewees. Die polisie het nie daardie opsie</p> <p>7 gekies nie. Die polisie het die opsie gekies om te</p> <p>8 onderhandel. Ek verneem die generale, waarby ek nie self</p> <p>9 bewus was – teenwoordig was nie, het met die bestuur</p> <p>10 onderhandel. Ek verneem daar is met die AMCU leierskap,</p> <p>11 met die NUM leierskap onderhandel. So daardie</p> <p>12 kommunikasies is breedvoerig gedoen om die "understanding,"</p> <p>13 soos u dit sê die "comprehension" te kry van wat aan die</p> <p>14 gang was daar.</p> <p>15 Daarna is daar besluit oor die gebeure tot op</p> <p>16 daardie dag, dat die persone nie meer so gewapen kan</p> <p>17 rondbeweeg onbeheersd nie as gevolg van die nie-samewerking</p> <p>18 en die dood tot op daardie stadium, en dit het oorgegaan na</p> <p>19 'n konflik situasie toe waar ons dan oorgegaan het na fase</p> <p>20 3 toe, en na die konflik kry mens dan konfrontasie. Dit</p> <p>21 hang af hoe jou groepe reageer, of hulle wegbeweeg of nie.</p> <p>22 So dit is basies vir u vinnig miskien opsom die vyf Cs</p> <p>23 waarna u verwys, en dit is presies die stappe wat ons</p> <p>24 gevolg het tot op daardie stadium.</p> <p>25 MR GOTZ: Well, Brigadier, we do differ</p>	<p style="text-align: right;">Page 21045</p> <p>1 mnr die Voorsitter.</p> <p>2 CHAIRPERSON: I think you're referring to</p> <p>3 Mr Twala.</p> <p>4 BRIGADIER CALITZ: Mr Twala. Ek, net in</p> <p>5 respek aan sy familie, waar hulle dan vir ons rondom-</p> <p>6 verdediging gegee het op daardie stadium en dit is duidelik</p> <p>7 sigbaar. Maar hulle was nie deel gewees van die</p> <p>8 "deploying" en van die onderhandelinge op daardie stadium</p> <p>9 nie, nee.</p> <p>10 MR GOTZ: No, but my point is a different</p> <p>11 one. The STF was present on the scene. That was your</p> <p>12 evidence, that the STF was there.</p> <p>13 BRIGADIER CALITZ: Mnr Gotz, as u die</p> <p>14 toneel bekyk, ek dink nie ons moet teruggaan soontoe nie –</p> <p>15 CHAIRPERSON: Stop, stop, stop. Look,</p> <p>16 those people who have cell phones must please turn them</p> <p>17 off. Turn your cell phone off immediately, or leave the</p> <p>18 room. And please, all cell phones must be turned off. Let</p> <p>19 me just make sure my own is turned off. Yes, it is. All</p> <p>20 cell phones must be turned off. It disturbs the</p> <p>21 proceedings; we can't allow it, and of there's anyone here</p> <p>22 whose cell phone – please leave the room. Please leave the</p> <p>23 room. Leave the room. You can come back after lunch.</p> <p>24 Leave the room immediately. Whose cell phone went off?</p> <p>25 The person whose cell phone went off must please leave the</p>

<p style="text-align: right;">Page 21046</p> <p>1 room. I asked you to turn them off. Would the person 2 whose cell phone went off please stand up? Would you 3 please leave the room now? I asked you to turn cell phones 4 off; you didn't, it went off. So would you please go out? 5 MR GOTZ: Chair, I do think that the – 6 MR MPOFU: Chairperson, I think it was in 7 the bag and he was trying to fiddle – 8 CHAIRPERSON: It doesn't matter where it 9 was. I asked them to turn them off. I didn't say only 10 turn those off that aren't in bags, I said please turn cell 11 phones off. We can't have cell phones going off all the 12 time; it disturbs the proceedings. So please leave. You 13 can come back after lunch. Please proceed, Mr Gotz. 14 MR GOTZ: I'd understood your evidence to 15 be that the STF Scorpion was present on the afternoon of 16 the 14th of August. 17 BRIGADIER CALITZ: Ja, dit is korrek. U 18 moet net kwalifiseer die toneel waarna u verwys. U sê 19 "present on the scene," en u het duidelik gemeld dat hulle 20 in die agtergrond was tydens die onderhandelinge. Ek sê 21 vir u dit is twee verskillende tonele. Die een is waar ons 22 na die koppie toe kyk, met ander woorde van 'n oostelike 23 rigting wes na die koppie toe, en waar die dood van mnr 24 Twala was aan die suidekant van die koppie gewees. So dit 25 is om die hoek, en dan die STF het met daardie grondpad –</p>	<p style="text-align: right;">Page 21048</p> <p>1 u gesê het. So ek dink ons het daarin geslaag om die 2 boodskappe oor te dra. Selfs die feit van die 15de, die 3 oggend het ons teruggekom en ons het dan die terugvoer vir 4 hulle gegee wat die mynbestuur dan gesê het, die kondisies 5 waaronder – so ons het, as ons dit kan miskien so noem, 'n 6 "mediation" rol gespeel en dit is hoekom ek van u verskil. 7 Daar was wel 'n verstandhouding, of 'n "understanding," 8 soos u dit stel. 9 MR GOTZ: Major General Mpembe was rather 10 candid and clear that he believed that if Lonmin had come 11 to the party, as it were, and agreed to go and speak to the 12 workers, the strikers, this incident on the 16th would not 13 have happened at all. Would you agree with that? 14 MR VAN AS: Sorry, Mr Chairman, before 15 the witness answers the question, I understood General 16 Mpembe to say the incident may not have happened, not would 17 not have happened. 18 CHAIRPERSON: My recollection is the same 19 as Mr Van As'. Mr Gotz, maybe you should reformulate it, 20 unless you've got a passage in the record that shows that 21 my recollection and Mr Van As' recollection is wrong, 22 unless you've got that you must reformulate it along the 23 lines that coincides with what Mr Van As and I – 24 MR GOTZ: I'm happy to reformulate it in 25 that way, Chair, that it may well not have happened.</p>
<p style="text-align: right;">Page 21047</p> <p>1 ek weet nie hoe om dit beter te verduidelik nie – wat agter 2 die substasie verby gaan, dit is seker waar hulle dan 3 "access" gekry het en dan rondom-verdediging gegee het 4 daar. 5 [12:09] Selfs die speurders was op die toneel; die 6 helikopter het daar geland om die speurders af te laai. 7 Die PKRS mense was op die toneel gewees. So dit was 'n 8 misdaadtoneel wat moes beveilig geword het. 9 MR GOTZ: The other thing that you did 10 was you always "negotiated" behind the protection of the 11 Nyala, or in other words from within the protection of the 12 Nyala. You never got out and spoke to them face to face, 13 correct? 14 BRIGADIER CALITZ: Ja, dit is korrek. 15 Ons het uit die Nyala uit met hulle onderhandel. 16 MR GOTZ: You never sought true 17 comprehension or understanding of what their grievances 18 were, correct? 19 BRIGADIER CALITZ: Ek verstaan nie u 20 stelling nie. Die twee wat aan ons gegee is dat hulle nie 21 met die polisie wil onderhandel nie en met die mynbestuur, 22 en dat hulle is ongelukkig oor die dood van hulle twee 23 persone, dit is wat hulle vir ons gegee het en daardie 24 boodskappe is beide oorgedra aan die bestuur van Lonmin 25 self. So, en die ondersoek het verder gegaan, soos ek vir</p>	<p style="text-align: right;">Page 21049</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek 2 kan net met, miskien die, waarna Adv Mpofu verwys het, my 3 "favourite" woorde is "benefit of hindsight," sê dat die 4 gesprekke – en ons sien dit nou, daar is tans nog steeds 5 die AMCU "protected strike" wat aan die gang is, die 6 loongeskil van R12 500 dink ek is voorop. Ek sal nie sê ek 7 stem nie saam nie. Dit kon 'n bydraende faktor gewees het, 8 maar of hulle tot 'n ooreenkoms sou gekom het en wel hulle 9 wapens neergelê het en wel gehoor gegee het en teruggegaan 10 het werk toe, as ek sien wat tans gebeur, en dit is 11 algemene kennis in die nuus media dat mnr Mathunjwa vir die 12 mense gevra het asseblief, wees rustig, wees vreedsaam, 13 protes sonder gevaarlike wapens, en ons sien dit gebeur 14 nie. Tot huidige gebeur dit nie. Daar is insidente elke 15 dag amper. So ek kan nie vir u sê dat, met sekerheid dat 16 dit sou nie gebeur het nie. Dit gaan nog aan soos ons op 17 hierdie stadium praat. Dit kon 'n bydraende faktor gewees 18 het om die gemoedere te verlaag. Dit is maar my 19 persoonlike opinie. 20 CHAIRPERSON: Can I ask you a question 21 flowing from that? What General Mpembe said was reported 22 to you, not entirely accurate originally, but it was 23 reported to you by Mr Gotz. Did you sense, or did you 24 yourself experience a measure of frustration in that you, 25 in negotiating with the strikers you had because of the</p>

<p style="text-align: right;">Page 21050</p> <p>1 attitude that Lonmin had adopted, very little to offer them 2 by way of a response to their specific point that they 3 wanted to deal with, wanted to negotiate with Lonmin, and 4 Lonmin weren't making any concession in that regard as far 5 as you could see. Now did you or any of your colleagues in 6 the police who were involved in the negotiations feel any 7 sense of frustration about that?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 frustrasie is miskien 'n sterk woord, omdat ons nie 10 betrokke geraak het met "labour negotiations" nie. Maar 11 dit kon wel 'n bydrae gegee het en die onderhandelinge 12 makliker gemaak het in die sin van dat ons hulle miskien 13 ietsie meer kon bied in die sin van dat – wat ons weet het 14 later gebeur, na Marikana het ons voortgegaan met dieselfde 15 onderhandelinge en ons weet dat toe het ons gereël dat die 16 persone by, ek dink dis een of ander hospitaal, ek is nie 17 seker waar op die perseel het die leiersgroepe, vyf, ses, 18 wel met sekere van die mense begin praat en onderhandel en, 19 so miskien kon dit 'n bydraende faktor gewees het. 20 Frustrasie is miskien 'n sterk woord, mnr die Voorsitter, 21 maar –</p> <p>22 CHAIRPERSON: I think it is correct that 23 at some point the strikers' spokesperson said we want to 24 talk to our employer; we want to speak to the employer 25 about our wage demand, and they were faced, as far as one</p>	<p style="text-align: right;">Page 21052</p> <p>1 say well we're not interested in that, we're only prepared 2 to negotiate through the union, which is the majority 3 union, which has adopted this particular stance. Obviously 4 that wasn't said in terms, but that's what it was all 5 about.</p> <p>6 Now that, I would have thought that stance – and 7 this is a prima facie view which I'm sure the Lonmin people 8 will deal with very comprehensively, but I would have 9 thought that in the light of the facts I've stated, or the 10 facts which are going to be possibly established later, it 11 was very difficult for the police to get any concessions 12 out of the strikers because there was no movement at all. 13 Is that correct?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 baie van die feite wat u nou genoem het is ek nie rêrig van 16 bewus nie. Dit, maar ek verstaan dit kom uit getuienis 17 uit. Wat ons van bewus is, is dat dit wat vir ons 18 teruggegee is daardie oggend gedeeltelik is dat die 19 mynbestuur – en ek het in paragraaf 56 van my verklaring 20 daarna verwys – bereid sal wees om met hulle te praat as 21 hulle dan "disarm" en "return to work." Dit was een wat 22 ons vir hulle gegee het, maar dan is u ook korrek daar is 23 'n twee-jaar loonooreenkoms en die "strike" was 24 "unprotected." So oor daardie twee redes is u korrek, dit 25 is so. Maar lyk vir my hulle wou gehad het dat die persone</p>
<p style="text-align: right;">Page 21051</p> <p>1 can make out, with what amounted to a brick wall. All that 2 Lonmin said was we're prepared to negotiate through the 3 usual channels, and the usual channels meant through NUM, 4 and according to some evidence we've heard the NUM stance 5 at that stage was – incorrectly as it turned out, and Mr 6 Zokwana concedes that – that nothing could be done; the 7 two-year agreement was in place. And furthermore there's 8 some evidence – it's not yet clear yet what the exact 9 position is, but there's some suggestion that NUM was in 10 any event not in favour of specific increases for 11 particular groups of employees. If there was an increase 12 it should be across the board. So if that's correct - 13 that's still a matter that's being investigated, but if 14 that's correct NUM wouldn't have been prepared to argue for 15 special increases for RDOs, and in any event their attitude 16 was nothing could be done for two years because the two- 17 year agreement stands, which turns out to have been 18 incorrect. So it was a bit of a hollow offer to say to the 19 strikers no, you can negotiate with us through the usual 20 channels, through NUM, who have adopted this particular 21 stance and are not, who don't agree with your demand, and 22 to tell them that, we're not prepared to speak to - the 23 rock drill operators had said they weren't proceeding 24 through the unions, they were proceeding as individual rock 25 drill operators, they didn't want the unions involved, to</p>	<p style="text-align: right;">Page 21053</p> <p>1 moet terugkeer werk toe, die wapens neerlê en dan deur die 2 normale kanale –</p> <p>3 CHAIRPERSON: Yes, well that's the point, 4 you see. It's the "normale kanale" and the "normale 5 kanale" were the ordinary usual negotiation channels which 6 were, as I understand it – and if I'm wrong I'm sure I'll 7 be corrected – through, the only party who was entitled to 8 negotiate wages was the union, the majority union at that 9 stage, which was NUM, which had not only not supported the 10 unprotected strike, which may well have been an insensible 11 stance on their part because people who took part in the 12 unprotected strike could have been dismissed without 13 recourse, but had also taken the view that the two-year 14 agreement was binding and nothing could be done, even 15 negotiations couldn't be engaged in with a view to 16 obtaining an increase in wages until the two-year period 17 was up. But anyway, if you weren't aware of that, it's 18 pointless discussing it with you further.</p> <p>19 MR GOTZ: The Chairperson has asked all 20 of the questions that constituted my last point, but I'm 21 not sure that you've answered the question. In effect you 22 had nothing to offer the strikers.</p> <p>23 BRIGADIER CALITZ: Gedurende die 24 onderhandelinge wat ons wel die "strikers" kon bied is om 25 hulle boodskap oor te dra, en dan baie beslis het ons op</p>

<p style="text-align: right;">Page 21054</p> <p>1 die tafel gesit dat indien hulle, hulle wapens sou neerlê 2 en vreedsaam uiteengaan, daar nie teen hulle opgetree word 3 nie. So ek stem glad nie saam met u stelling nie. Ons het 4 wel onderhandel en sou dit gebeur het was die polisie 5 bereid om geen aksie te loods op daardie stadium, maar dat 6 hulle, hulle wapens neersit en dan vrylik wegbeweeg en dan 7 aansoek te doen volgens die wetgewing en dat ons hierdie 8 ding op 'n ordentlike manier volgens die wet wat beskikbaar 9 is gehanteer het.</p> <p>10 MR GOTZ: The simple point I think that's 11 being made is that Lonmin's stance put you at a 12 disadvantage in the negotiations because you couldn't meet 13 anything that the workers required, or wanted.</p> <p>14 BRIGADIER CALITZ: Daar was pertinent 15 gesê die "negotiations," ons raak nie betrokke by die 16 loongeskille nie. Die polisie kan nie onderhandel met, oor 17 arbeidsgeskille nie, glad nie. Ons is net daar vir die 18 veiligheid van, beskerming van lewe en eiendom en daarom 19 het ons die wapen-gedeelte aangespreek en ons 20 teenwoordigheid in die gebied het ons hulle ook verseker, 21 vanaf die 10de het ons begin met ekstra "deployments" in 22 die gebied en die getalle is beskikbaar; ons was 24 uur om 23 die beurt teenwoordig in die gebied gewees.</p> <p>24 COMMISSIONER TOKOTA: Brigadier, if I 25 understand you and also understood the evidence of General</p>	<p style="text-align: right;">Page 21056</p> <p>1 Calitz. 2 BRIGADIER CALITZ: Goeiemiddag, Advokaat. 3 Gee my net so 'n sekonde dat ek net my lêers toemaak en die 4 ander een kry, asseblief. Dankie, Advokaat. 5 MR GUMBI: Thank you very much, Brigadier 6 Calitz. 7 CHAIRPERSON: Am I correct in thinking 8 that we were given an extract from the pocketbook of 9 Constable Msiza, and we were also given the diary of 10 Captain – 11 MR GUMBI: Makukule. 12 CHAIRPERSON: Ja, that's it, Makukule. 13 Are those the documents that you are relying on? 14 MR GUMBI: And the pocketbook of 15 Brigadier Calitz himself. I mean the diary of Brigadier 16 Calitz himself. 17 CHAIRPERSON: Officers have diaries and 18 non-commissioned people have pocketbooks. 19 MR GUMBI: Yes. 20 CHAIRPERSON: An important distinction. 21 MR GUMBI: Yes, Chairperson. Brigadier 22 Calitz, as you know that I represent the family of the late 23 Warrant Officer Lepaaku who was hacked to death on the 13th 24 of August 2012 – 25 CHAIRPERSON: Mr Gumbi, forgive my</p>
<p style="text-align: right;">Page 21055</p> <p>1 Mpembe, these people were engaged in an illegal gathering 2 in that they had in their possession the dangerous weapons. 3 So you could have arrested them, but you offered them that 4 you are not going to arrest them, 'Give us your dangerous 5 weapons, then you can deal with the rest. We're not 6 interested in the labour issues. All we are interested in 7 is the dangerous weapons.' Is that what you were –</p> <p>8 BRIGADIER CALITZ: Dit is heeltemal wat 9 ek getuig, Kommissaris, u is korrek.</p> <p>10 MR GOTZ: Chair, I mean safe for this 11 part, this portion –</p> <p>12 CHAIRPERSON: The part where he's got to 13 have a chance to study the report –</p> <p>14 MR GOTZ: Yes.</p> <p>15 CHAIRPERSON: - you're finished with 16 cross-examination. Alright. Mr Gumbi, are you in a 17 position now to proceed with your cross-examination on the 18 point that you, or point or points that you want to cover?</p> <p>19 MR GUMBI: Yes, Chair.</p> <p>20 CHAIRPERSON: And then we'll go back to 21 Mr Gotz when you're finished, after the witness and his 22 counsel have had an opportunity to study the report that 23 he's made available.</p> <p>24 CROSS-EXAMINATION BY MR GUMBI: Yes, 25 Chairperson. Yes, I'm ready. Good afternoon, Brigadier</p>	<p style="text-align: right;">Page 21057</p> <p>1 interrupting you. Should we not as a matter of good 2 housekeeping –</p> <p>3 MR GUMBI: Yes. 4 CHAIRPERSON: - mark your exhibits while 5 we're, before you proceed. 6 MR GUMBI: Yes, Chairperson. 7 CHAIRPERSON: I think the next exhibit 8 will be KKK58, so should we make Constable Msiza's 9 pocketbook exhibit KKK58. 10 MR GUMBI: Yes. 11 CHAIRPERSON: And the diary of Captain 12 Maluleke, is it? 13 MR GUMBI: Yes, Makukule. 14 CHAIRPERSON: Makukule rather, that will 15 be KKK59. 16 MR GUMBI: Yes, Chair. 17 CHAIRPERSON: And am I correct in 18 thinking that Brigadier Calitz's diary is already before us 19 as an exhibit? 20 MR GUMBI: Yes. 21 CHAIRPERSON: Alright. So let me just 22 write those in my book and then you can start. 23 MR GUMBI: Thank you very much, 24 Chairperson. 25 COMMISSIONER HEMRAJ: Ms Pillay, is</p>

<p style="text-align: right;">Page 21058</p> <p>1 Brigadier Calitz's diary already an exhibit? I don't 2 recall this. 3 MR GUMBI: It's not yet an exhibit, 4 Commissioner. 5 COMMISSIONER HEMRAJ: Oh, it's not? 6 MR GUMBI: Yes, we distributed it. 7 CHAIRPERSON: Well, we haven't been given 8 copies, not in this file we've got. 9 MR GUMBI: Yes, it's only one page. I 10 can – 11 CHAIRPERSON: Oh, it's one page. It's 12 one page in here, in this file you gave us? 13 MR GUMBI: Yes. It should be there, 14 Chairperson. 15 CHAIRPERSON: Alright. So anyway that 16 then will be KKK60, is it? 17 MR GUMBI: Yes, KKK60. 18 CHAIRPERSON: Alright, now sorry, let me 19 just – is this, the last page we've got – I'm not sure that 20 I follow how this file of yours works. Let's go through it 21 so we can mark the things correctly. 22 MR GUMBI: Yes, Chair. 23 CHAIRPERSON: We start off with the diary 24 of – I'm sorry, the pocketbook of Constable Msiza. 25 MR GUMBI: Yes.</p>	<p style="text-align: right;">Page 21060</p> <p>1 the diary of – 2 MR GUMBI: Captain Makukule. 3 CHAIRPERSON: How do you spell the 4 Captain's surname? It's written there, but I can't read 5 his handwriting. 6 MR GUMBI: It's M-A-K-U-K-U-L-E. 7 CHAIRPERSON: Makukule? 8 MR GUMBI: Yes. 9 CHAIRPERSON: Alright, thank you very 10 much. 11 MR GUMBI: Those are the documents I'll 12 rely on in my cross-examination. Brigadier, hence I was 13 telling you that I represented the family of the late 14 Warrant Officer Lepaaku, who was hacked to death on the 15 13th, and Lieutenant Baloyi, who was injured on the 13th. I 16 have a few questions for you, Brigadier, and all these 17 documents I will make use of it just as a point of 18 reference so that you'll understand the basis of my 19 proposition, where I'm coming from. 20 I understand that on the 13th of August you 21 directed General Mpembe to those protesters that they were 22 marching, and you didn't go with General Mpembe. So I 23 wanted to check with you, Brigadier, as to why you didn't 24 accompany General Mpembe to those protesters, if I can 25 check with you.</p>
<p style="text-align: right;">Page 21059</p> <p>1 CHAIRPERSON: That's clear from the front 2 page, it actually refers, it's got his name on it. 3 MR GUMBI: Yes. 4 CHAIRPERSON: And then there are a number 5 of pages that have been stapled together. These I take it 6 are the extracts over the period beginning on, it looks 7 like Tuesday the 14th, is it, of August, through to a little 8 bit of Friday the 17th of August. That's all the pocketbook 9 of Constable Msiza. 10 MR GUMBI: Yes. 11 CHAIRPERSON: And that's all exhibit 12 KKK58. 13 MR GUMBI: KKK58. 14 CHAIRPERSON: Alright, we then have a 15 page which is actually a double page from a diary which 16 deals with the 12th and 13th of August. 17 MR GUMBI: Yes. 18 CHAIRPERSON: What is that? 19 MR GUMBI: That's the diary of Brigadier 20 Calitz, that one. 21 CHAIRPERSON: I see, that's Brigadier 22 Calitz's – so we'd better make that KKK59, KKK59. 23 MR GUMBI: Yes, Chairperson. 24 CHAIRPERSON: I see, and then we have 25 another document which is, that will be KKK60 and that's</p>	<p style="text-align: right;">Page 21061</p> <p>1 [12:29] BRIGADIER CALITZ: Mnr die Voorsitter, op 2 daardie dag het ons die inligting gekry op die CCTV kameras 3 wat in die JOC was en die Provinsiale Kommissaris het dan 4 gesê dat die persone moet, ek dink die woorde was 5 "intercept and disarm" word, waarop Generaal Mpembe dan vir 6 my gesê het hy sal saam met die lede gaan, die taal wat 7 hulle praat op daardie stadium het hulle gepraat van die 8 Fanagalo en dan het Kolonel Merafe, Luitenant Kolonel 9 Merafe die rol vertolk van die operasionele bevelvoerder. 10 Ek het tussen my en Generaal Mpembe ooreengekom, 11 omdat hy nie geweet het waar die gebied is nie, sou ons dan 12 opgaan in die lug met die helikopter. Ons helikopters het 13 "refuel" op daardie stadium en ons het van Lonmin se – of 14 nie Lonmin nie, ek dink dis 'n Coin helikopter maar wat 15 deur mnr Sinclair gereël was, het ons opgegaan en ek het 16 hom in daardie rigting, kan u sê dan beduie waar hulle moet 17 links en regs draai, tot hulle by die protesgroep gekom 18 het. 19 MR GUMBI: Thanks very much. So before 20 General Mpembe confronted those protesters, did you brief 21 any members before that confrontation? 22 BRIGADIER CALITZ: Nee, mnr die 23 Voorsitter, ek, die voorligting was gegee deur Generaal 24 Mpembe aan daardie persone. 25 MR GUMBI: When you arrived at the scene,</p>

<p style="text-align: right;">Page 21062</p> <p>1 Brigadier, immediately after the killing of two police 2 officers and other civilians there, at the scene when you 3 arrived did you talk to any police officers or sectional 4 commanders who were there, in trying to understand what 5 transpired before the killing of these two police officers 6 and the other civilians? 7 BRIGADIER CALITZ: Dit is korrek, mnr die 8 Voorsitter. Die eerste persoon wat ek mee gekontak het toe 9 ek daar aankom kon ek die persoon, wat Adjudant Offisier 10 Lepaaku op die grond, of Adjudant Offisier Monene, wat op 11 die grond was naby 'n Nyala voertuig, en ek is genader deur 12 Luitenant Kolonel Vermaak – ek probeer nou net die 13 “sequence” onthou – wat my dan meegedeel het wat op daardie 14 stadium plaasgevind het, dat die persone was, volgens wat 15 ek verstaan het, ge-escort in 'n sekere rigting. Hulle wou 16 wegbreek, en toe daar teen hulle opgetree is was daar 'n 17 aanval direk op die polisie gewees. 18 Ek is meegedeel dat twee van die polisieman, 19 beamptes, een was op die toneel oorlede en later is ek 20 meegedeel dat die ander polisiebeampte in die hospitaal 21 oorlede is en beswyk het. Daar was ook 'n derde, die 22 luitenant wat beseer was, en ek is meegedeel deur Kolonel 23 Vermaak dat hulle die helikopter gebruik het om die persoon 24 uit te vlieg. Een persoon is met die, ek dink Adjudant 25 Offisier Lepaaku is met die voertuig gery kliniek toe, en</p>	<p style="text-align: right;">Page 21064</p> <p>1 al daardie inligting het hulle met my gedeel op daardie 2 stadium. 3 Ek het van my kant af die toneel probeer 4 beveilig. Ek moet dit vir u sê dat dit was moeilik gewees 5 onder die omstandighede want die polisiebeamptes – ek wil 6 nie die woord “bang” gebruik nie, maar dit was versigtig. 7 U kan sien dat dit was 'n groot traumatiese gebeurtenis vir 8 hulle gewees want toe ek hulle plaas spesifiek binne-in die 9 woongebied om beveiliging te gee rondom daardie sinkhuisie 10 waar die persoon gelê het, daar is 'n huiwering gewees wat 11 ek toegeskryf het maar net aan die erge trauma en die skok 12 wat daar gebeur het. 13 MR GUMBI: Thank you very much, 14 Brigadier. General Mpembe testified in evidence before 15 this Commission that after the incident on the 13th of 16 August 2012 there was a debriefing between the members, the 17 platoon commanders, and operational commanders, and you 18 will see that when you look at his evidence-in-chief, that 19 is day 108, 18 June 2013. It's just a point of reference. 20 And furthermore you'll see when you check the diary of 21 Captain N Makukule, that's exhibit KKK60, when you check at 22 page 1, that is the 13th of August 2012. 23 MS PILLAY: Chair, I'm sorry to 24 interrupt. If I can just indicate that the diary of 25 Captain Makukule is already an exhibit. It's exhibit</p>
<p style="text-align: right;">Page 21063</p> <p>1 dan Luitenant Baloyi is uitgevlieg met die helikopter ek 2 dink na, as ek korrek is, Ferncrest en miskien later 3 oorgeplaas. 4 Toe het ek verder gegaan en toe ek deur die 5 toneel stap het ek met die bevelvoerders gekommunikeer 6 daar. Ek wil amper sê die TRT bevelvoerder, onder 7 korreksie sê ek nou, was Kaptein Thupe gewees wat daar was, 8 en die luitenant, daar was iemand van Openbare Orde 9 Polisiëring, ek kan nie presies onthou wie dit was nie. 10 Kolonel Merafe was nie meer op die toneel nie. Daardie 11 luitenant het dan ook na my toe gekom en gesê dat hulle is 12 aangeval en hulle het hulself probeer verdedig; die persone 13 het gevlug, en toe het hulle vir ons dan gaan uitwys. Ek 14 het self deur die toneel gestap en die drie siviele persone 15 – of “actually” net die twee gesien, die een by die, wat in 16 die veld lê en dan een wat by 'n sinkhuisie oorkant, 17 oorkant 'n grondpad was daar 'n persoon wat erg gebloei het 18 wat ook daar oorlede is, en dan was daar 'n verdere persoon 19 verder af by die rivier waar Kolonel Vermaak en een van die 20 persone, ek dink Adv Moolman na toe gestap het. Ek het 21 hulle egter teruggedroep en gesê, want die persone, die – ek 22 sal nie sê die “protesters” nie, maar die gemeenskap het 23 begin hergroepeer in die agtergrond en ons was bewus op 24 daardie stadium dat die wapens wat gevat is, die 25 haelgeweer, die R5, die twee 9mms, asook die hand radio, so</p>	<p style="text-align: right;">Page 21065</p> <p>1 HHH27. 2 CHAIRPERSON: Thank you, Ms Pillay. We 3 will then, we'll cancel the reference to it as KKK60 and 4 I'll mark it – what is it? You say HHH? 5 MS PILLAY: HHH27. 6 CHAIRPERSON: 27, thank you very much. 7 MR GUMBI: I do apologise, Chairperson. 8 I didn't notice that it's already in evidence. I do 9 apologise. 10 MS PILLAY: And it was marked as KKK59, 11 not KKK60, today. KKK60 is the diary – 12 CHAIRPERSON: It was marked 59 and then I 13 changed it to 60. 14 MR GUMBI: Yes. 15 MS PILLAY: No, KKK60 is the diary of 16 Brigadier Calitz. 17 CHAIRPERSON: No, no, we changed it. 18 Originally I made Makukule's one 59 and then I changed it 19 to 60 because Brigadier Calitz's diary apparently comes 20 before in the bundle and I didn't know that. So we've now 21 changed Brigadier Calitz to 59. This one was 60, but it's 22 now jumping out of its letter category of KKK and it's 23 among the HHHs as 27. 24 MR GUMBI: Thanks, Chairperson. When we 25 check HHH27, that's the diary of Captain Makukule, on the</p>

<p style="text-align: right;">Page 21066</p> <p>1 13th, when you go down there around 14, you'll see that 2 debriefing by Brigadier Calitz at Lonmin offices. Do you 3 see that, Brigadier? 4 BRIGADIER CALITZ: Dit is korrek. 5 MR GUMBI: And again when you compare 6 that with the diary of Constable Msiza, MJ, that should be 7 KKK58, when you go to page 3, entry number 43 around half 8 past 7 in the afternoon, do you see that? 43, entry number 9 43. 10 BRIGADIER CALITZ: Is it the pocketbook, 11 page 43? 12 MR GUMBI: Yes. 13 BRIGADIER CALITZ: The time? 14 MR GUMBI: 19:30. 15 CHAIRPERSON: Mr Gumbi, I must tell you 16 that something has gone wrong here because we haven't been 17 given, in the files we were given we haven't been given 18 pages 43 and 44. The document we've got starts with the 19 cover with his name and then the next page is 45 and 46 20 which contains entries for Tuesday, the 14th, and Wednesday, 21 the 15th. So there's something missing from what we've got, 22 but that I'm sure can be rectified. 23 MR GUMBI: Yes. Yes, I do apologise 24 about that mistake, Chairperson. But when you compare 25 these, Brigadier, it's written there "Departure from scene</p>	<p style="text-align: right;">Page 21068</p> <p>1 het hom as Makukule. So hier op bladsy 12 as ons die 2 spelling kan sien, dis – 3 CHAIRPERSON: Well, it's either wrongly 4 recorded originally as Malelenle and should be Makukule, or 5 vice versa. But do you know the captain? Do you know what 6 his name is? 7 BRIGADIER CALITZ: Nie persoonlik nie, 8 nee. 9 CHAIRPERSON: Well, we can find out. 10 Let's not delay about that. 11 BRIGADIER CALITZ: Dit is korrek. 12 CHAIRPERSON: It's detail that can be 13 sorted out later. 14 MR GUMBI: Thanks, Chairperson. 15 CHAIRPERSON: But can I interrupt? You 16 were asked about the entry about the debriefing. 17 MR GUMBI: Yes. 18 CHAIRPERSON: And it says, "All the 19 members were called for initial," is that word "debriefing 20 by Reverend Lieutenant Colonel," I can't read his name. 21 BRIGADIER CALITZ: Dit sal wees Setsedi, 22 mnr die Voorsitter. 23 CHAIRPERSON: Now what sort of debriefing 24 would the lieutenant colonel have given them? I see he's a 25 chaplain, I take it. Now it was explained to us that there</p>
<p style="text-align: right;">Page 21067</p> <p>1 to JOC as per SAPS118B for briefing." Do you see that, 2 Brigadier? 3 BRIGADIER CALITZ: Ja-nee, ek sien 4 daardie inskrywing om 19:30. 5 MR GUMBI: So Brigadier, do you confirm 6 that on the 13th there was a debriefing on that afternoon 7 between platoon sectional commanders and their members and 8 you participated in those debriefing as alleged by Captain 9 Makukule in his pocketbook? 10 BRIGADIER CALITZ: Ekskuus, mnr die 11 Voorsitter, ek het net – 12 CHAIRPERSON: We've got a problem about 13 the name of the captain. When it was introduced before as 14 exhibit HHH27 it was recorded as the diary of Captain 15 Malelenle, and we think that if you look at the name on the 16 document before us it is Malelenle and not Maluluke, but we 17 want to get the captain's name right, Mr Gumbi. That's 18 what Mr Tokota and I were discussing. The document that 19 you've given us in the file is indeed a copy of HHH27. 20 MR GUMBI: Yes. 21 CHAIRPERSON: But the question is what is 22 the name of the captain? Well anyway, the Brigadier should 23 know. Brigadier, what's the name of the captain which 24 we're talking about? Is it Malelenle or Maluluke? 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>	<p style="text-align: right;">Page 21069</p> <p>1 are two kinds of debriefing; there's what amounts to a kind 2 of therapeutic debriefing where people are given 3 counselling almost for a traumatic experience that they've 4 gone through, and there's another kind of debriefing where 5 people are asked, almost factual debriefing, asked to 6 report what happened. Now this debriefing by the 7 lieutenant colonel, the chaplain, what sort of debriefing 8 was that? 9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 dit is my vraag miskien op die advokaat se vraag gewees. 11 Dit is waarby ek myself betrokke was waar ons die lede 12 bymekaar gekry het en waar ons gereël het vir ons "employee 13 health and wellness," dit is die sosiale werkers en 14 sielkundiges wat dan deur, die Reverend Setsedi was die 15 hoof van hulle gewees, so dit is waar die persone trauma 16 "counselling" kry en met hulle kommunikeer en – 17 CHAIRPERSON: That's what I call 18 therapeutic debriefing as opposed to factual debriefing. 19 BRIGADIER CALITZ: Dit is korrek, mnr die 20 Voorsitter. So dit is waarby ek betrokke was. Die lede 21 het dan seker gemaak, en dan die EHW personeel wat wel daar 22 was daardie aand seker gemaak dat die lede wel by hulle 23 uitkom. As daar operasionele "debriefing," dit was miskien 24 dan vir, deur Generaal Mpembe aan die lede self gegee wat 25 dan daardie feite vir hom teruggegee het.</p>

<p style="text-align: right;">Page 21070</p> <p>1 CHAIRPERSON: That seems to be borne out 2 by the following sentence, "Members from Springs were all 3 okay; they cope with the situation," so the ability to cope 4 with the situation obviously is a result that you want to 5 achieve by what I call therapeutic debriefing. Is that 6 correct?</p> <p>7 BRIGADIER CALITZ: Dit is korrek, mnr die 8 Voorsitter. As hulle aangedui het dat - nie almal is 9 gedwing nie. Dit is 'n vrywillige proses. So ons kan nie 10 iemand verplig nie, maar die persone is daargestel om hulle 11 wel by te staan.</p> <p>12 MR GUMBI: Thank you very much, 13 Brigadier. In those debriefings you participated in - let 14 us focus on you, Brigadier Calitz – was it ever, ever 15 alleged that certain members acted without instruction at 16 the scene on the 13th?</p> <p>17 BRIGADIER CALITZ: Nie wat ek kan onthou 18 nie, nee.</p> <p>19 MR GUMBI: Okay, again when you check the 20 occurrence book of the 13th, that is FFF25, it doesn't 21 indicate that on that day there was ever, ever any 22 debriefing. Do you have a knowledge as an operational 23 commander why that information is not reflected there?</p> <p>24 BRIGADIER CALITZ: Ekskuus, mnr die 25 Advokaat, u het gesê FFF25, dis die VB, dat wat daarin</p>	<p style="text-align: right;">Page 21072</p> <p>1 the end of the question. Neither the Brigadier nor I heard 2 the end of your question. So repeat your question again, 3 please.</p> <p>4 MR GUMBI: Yes, Chairperson. I'm saying 5 in your presence when General Mpembe briefed the National 6 Commissioner, did he make any allegation, or did he inform 7 the National Commissioner that on the 13th certain members 8 fired without his instruction as an operational commander?</p> <p>9 BRIGADIER CALITZ: Nee, mnr die 10 Voorsitter, nie waarvan ek bewus is nie.</p> <p>11 MR GUMBI: Then in your presence, 12 Brigadier, when General Mpembe briefed the National 13 Commissioner, can you tell this Commission what did he 14 inform the National Commissioner about the incident of the 15 13th?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, 17 dit was laat daardie aand, as dit nie vroeg die oggend is 18 nie. Ek weet die Provinsiale Kommissaris, Nasionale 19 Kommissaris en die persone wat daar teenwoordig was, ek was 20 in en uit gewees, deel van hierdie goed, so die dele wat ek 21 wel kon miskien getuig oor is dat hy vir die Nasionale 22 Kommissaris miskien die detail gegee het van wat 23 geobserveer is op die dag, dat hy met die groep onderhandel 24 het en dat hulle in "agreement" was om die persone te 25 eskort, ek dink na die groter koppie toe, en dat daar dan</p>
<p style="text-align: right;">Page 21071</p> <p>1 vervat is nie? Die dreigement? Ekskuus, ek het nie u 2 vraag gehoor nie. Ek is jammer.</p> <p>3 MR GUMBI: The occurrence book of the 13th 4 is not reflected that later on that afternoon there was 5 sort of a debriefing. Do you know as an operational 6 commander why that information is not reflected?</p> <p>7 BRIGADIER CALITZ: Ek sal u nie kan help 8 daarmee nie, nee. Ek het nie spesifiek daarna gekyk nie, 9 maar as u sê, ek sal u woord vat daarvoor dat daar nie so 10 'n inskrywing is nie.</p> <p>11 MR GUMBI: Okay, thanks very much. Let's 12 move on to another topic again. According to General 13 Mpembe, again it was his testimony before this Commission, 14 he testified that he briefed the National Commissioner with 15 you, that is Brigadier Calitz, on the 13th, immediately 16 after the – I mean later on after the incident, and you 17 will see that when you go to his evidence-in-chief, for 18 your record that is day number 104, that is his evidence on 19 the 18th of June 2013. So in your presence did General 20 Mpembe when he briefed the National Commissioner, in your 21 presence inform the National Commissioner that on the 13th 22 certain members fired without instruction?</p> <p>23 BRIGADIER CALITZ: Dat sekere lede wat 24 gedoen het? Ekskuus tog, as u net u vraag kan herhaal – 25 CHAIRPERSON: You dropped your voice at</p>	<p style="text-align: right;">Page 21073</p> <p>1 afgewyk was van die roete af en 'n konfrontasie ontstaan 2 het waar daar dan "fatal injuries" was, as ek dit so kan 3 stel.</p> <p>4 MR GUMBI: At Potchefstroom meeting when 5 you were preparing for this Commission, in your presence, 6 in any of the sessions in your presence, Brigadier, this 7 topic of members firing without instruction was ever, ever 8 discussed there, on the 13th?</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 toe ons by Roots was, was daar wel die groepe het 11 opgebreek, elkeen in sy eie groepering, en daardie groep 12 van Generaal Mpembe was dan saam gewees by hulle en ek weet 13 dit is daar bespreek rondom die opdrag gegee. Ek het 14 verneem dit is bespreek gewees in hulle groep.</p> <p>15 MR GUMBI: Not in your group, will I be 16 clear?</p> <p>17 BRIGADIER CALITZ: Nee, nee, my groep was 18 die, meer die onderhandeling saam met Kolonel McIntosh en 19 die onderhandelinge, en dit is hoe ons die "exhibit" L 20 probeer saamstel het. Elke groep het apart gegaan in hulle 21 aparte dele en dan teruggekome en die terugvoer is dan gegee 22 in die groter groep self.</p> <p>23 MR GUMBI: Thank you very much, 24 Brigadier. Let me move now on my last topic. When we were 25 cross-examining General Mpembe on behalf of the family of</p>

<p style="text-align: right;">Page 21074</p> <p>1 the late Warrant Officer Lepaaku and Lieutenant Baloyi, we 2 presented evidence in the form of a pocketbook and 3 statement of those police officers who were there, and 4 their statement and their pocketbook just describe what 5 happened before Warrant Officer Lepaaku was hacked to death 6 and before Lieutenant Baloyi was injured by those strikers. 7 [12:49] So we analysed the pocketbook and the statement. 8 Your pocketbook of the 13th before this Commission that has 9 been marked as KKK59, are you in possession of that 10 pocketbook, your pocketbook, Brigadier, or diary? Diary, I 11 mean. 12 BRIGADIER CALITZ: Dit is my dagboek, dit 13 is korrek. Die inskrywing van die 13de en dan – 14 MR GUMBI: Yes, it's written there duty 15 on and duty off. Do you see that? 16 BRIGADIER CALITZ: Dit is korrek, ek het 17 6 uur die oggend aan diens en 3 uur daardie volgende oggend 18 van diens af gegaan. 19 MR GUMBI: Yes, when one analyses your 20 diary and when you compare it with other police officers 21 that were involved during the operation of the 13th there, 22 you will see that what transpired on that day, your diary 23 is blank. It doesn't reflect what transpired on that day. 24 So can you give us an explanation, Brigadier, as to why you 25 didn't record your activities on the 13th of August 2012?</p>	<p style="text-align: right;">Page 21076</p> <p>1 dit was nie vir my moontlik gewees om elke uur daardie 2 inskrywings te maak nie. 3 MR GUMBI: But is it possible to complete 4 your diary even after the incident? Is it practically 5 possible to do that in terms of SAPS policy? 6 BRIGADIER CALITZ: Dit is prakties 7 moontlik. Ek weet net nie of dit korrek sal wees want dit 8 sal wees met "benefit" van weereens "hindsight," goed wat 9 na die tyd gebeur het. Dit was maklik gewees vir my om 10 "exhibit" L te vat en die verklaring en die VB en my 11 dagboek te gaan opskryf na die tyd, maar ek dink nie dit 12 sou 'n ware – nie kan sê nie ware gebeure nie, maar soos ek 13 dit op daardie stadium ontvang het nie. Dit sou uit ander 14 materiaal uit dan gekom het as ek dit na die tyd opgeskryf 15 het, of soos ek dit na die tyd dan in my gedagte het. So 16 nee, dit is hoekom ek dit nie gedoen het nie. 17 MR GUMBI: Thank you very much, 18 Brigadier. As an operational commander are you aware 19 whether is there any internal inquiry within the SAPS 20 probing the circumstances surrounding the death of the 21 police officers who were involved there on the 13th near the 22 railway line? 23 BRIGADIER CALITZ: Ek kan u ongelukkig 24 nie daarmee help en sê – ek glo miskien die Kommissaris sal 25 vir u kan sê of daar 'n ondersoek is intern in daardie</p>
<p style="text-align: right;">Page 21075</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 hoe dit werk gewoonlik, jy het jou dagboek by jou of jou 3 sakboek en dan soos die dinge gebeur deur die dag, so 4 notuleer mens. "Either" uurliks of soos die opdragte kom, 5 so skryf jy die dagboek op. Ek moet vir u sê as u gaan kyk 6 na my dagboek van jare toet af tot nou toe, ek skryf my 7 dagboek baie, baie volledig op, omtrent elke uur vir uur, 8 maar vanaf die 11de tot en met die 24ste het ek net 'n 9 diens aan, diens van, so my dagboek is heeltemal "blank" in 10 daardie week. Die – 11 CHAIRPERSON: When you speak about the 12 11th onwards you're referring to the 11th of August 2012? 13 BRIGADIER CALITZ: Dit is korrek, ja. Ek 14 praat van die tydperk van die Marikana wat ek "deploy" was. 15 Dit is die enigste tydperk in my dagboek wat heeltemal 16 skoon is. Enigste rede wat ek daarvoor het is dat ek het 17 omtrent een en 'n half uur na twee ure slaap gehad per dag, 18 per nag, so ons is vroeg die oggend uit, ons is besig 19 gewees met takings, dan is ek in die veld. As ons terugkom 20 was ons met die lede betrokke tot omtrent elke, u kan my 21 dagboek deurgaans, 3 uur, half 4 die oggende. So vir 22 daardie week het ons minimum slaap gehad. So miskien was 23 dit nalatig gewees aan daardie kant, maar ek vind dat ek 24 het op daardie stadium net nie dagboek bygehou van elke 25 dingetjie wat gebeur het nie, nee. Laat ek dit so sê net,</p>	<p style="text-align: right;">Page 21077</p> <p>1 geval. Ek is nie bewus van dit op hierdie stadium nie. 2 CHAIRPERSON: Is it normally the practice 3 when a member of the police service dies on duty, is killed 4 on duty – never mind dies, is killed on duty, in the course 5 of performing his or her duties as a member of the service, 6 is it the practice to have an internal inquiry? 7 BRIGADIER CALITZ: Mnr die Voorsitter, 8 daar is 'n kriminele saak wat oopgemaak word, maar sou daar 9 enige beweringe wees in enige geval dat iemand 10 verantwoordelik daarvoor is of so, dan sal dit wel lei tot 11 'n interdepartementele ondersoek. 12 CHAIRPERSON: So if there was an internal 13 departmental investigation into the death of the member of 14 the service for whose family Mr Gumbi is appearing, that's 15 something that the Provincial Commissioner would know 16 about, although you don't? 17 BRIGADIER CALITZ: Ek glo sy sal wees, 18 mnr die Voorsitter, ja. Ek dra nie kennis nie. 19 MR GUMBI: Lastly, Brigadier, exhibit L 20 was presented before this Commission explaining what 21 transpired before the death of the late Warrant Officer 22 Lepaaku and injury of Lieutenant Baloyi. So the final 23 product of this document, exhibit L, did you participate 24 when it was finalised, or during the compilation of it? 25 BRIGADIER CALITZ: Ek was teenwoordig</p>

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1 gewees, by Roots gewees terwyl dit opgestel was, die
2 "drafts" tot met die finale produk, dit is korrek.
3 MR GUMBI: Do you know, are you aware
4 that the allegation, this allegation that certain members
5 fired without instruction, do you know whether, why it was
6 not included in this document?
7 BRIGADIER CALITZ: Nee, ek kan nie vir u
8 sê waarom dit nie ingesluit is in die dokument nie. Ek sê
9 dit was wel by Roots bespreek en ek het verstaan in die
10 Generaal se getuienis het hy ook daarvoor getuig, sy
11 weergawe, of sy getuienis daarvoor gegee, maar ek kan nie
12 vir u sê waarom dit nie ingesluit is as daar 'n dispuut was
13 nie.
14 MR GUMBI: General Mpembe, do you know
15 whether he participated during the compilation of this
16 document, final product?
17 BRIGADIER CALITZ: Generaal Mpembe was
18 wel teenwoordig gewees ook by Roots. Ek sal nie sê al die
19 dae nie. Die generale is ook getaak met ander belangrike
20 sake, maar hy was wel teenwoordig gewees met die
21 groepbespreking rondom die opdrag wat gegee is of nie gegee
22 is nie.
23 MR GUMBI: Thank you very much,
24 Chairperson, and the Commissioners. No further cross-
25 examination.

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1 CHAIRPERSON: Thank you, Mr Gumbi. Mr
2 Gotz is not here, but the position is that we're going to
3 take the lunch adjournment now until 2 o'clock. That gives
4 you an opportunity, Brigadier, and your counsel, to study
5 the report which was made available to you during the
6 course of the sitting this morning, and if at 2 o'clock
7 you're still not ready to deal with the matter you'll let
8 me know, but if you don't we will start again at 2 o'clock.
9 Mr Semenya, I don't think you heard that. Let me repeat
10 it.
11 MR SEMENYA SC: I did hear that.
12 CHAIRPERSON: Sorry? We're adjourning
13 now till 2 o'clock. That gives you and the Brigadier
14 chance to study these reports that you were given and he
15 was given. If you're not ready to proceed at 2 o'clock,
16 please let me know, otherwise we'll start again at 2
17 o'clock or as soon thereafter as we can.
18 MR SEMENYA SC: We'll do so, Chair.
19 CHAIRPERSON: We will now adjourn for
20 lunch.
21 [COMMISSION ADJOURNS COMMISSION RESUMES]
22 [14:23] CHAIRPERSON: The Commission resumes. I
23 understand, Mr Semenya and Brigadier, that you've now had
24 an opportunity to study the report, and you won't be
25 disadvantaged – you won't be at a disadvantage if you're

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1 questioned about it by Mr Gotz. Mr Gotz.
2 BRIGADIER CALITZ: Dankie, mnr die
3 Voorsitter –
4 CHAIRPERSON: You're still under oath,
5 Brigadier.
6 BRIGADIER CALITZ: Dankie, Mnr die
7 Voorsitter.
8 MR GOTZ: Thank you, Commissioners, and,
9 Brigadier, can we set the backdrop, as it were, to my final
10 piece of cross-examination by playing a small portion of
11 one of the video clips? It's JJJ194.16, and if we can
12 commence that at 25 seconds?
13 CHAIRPERSON: Are there any warnings
14 required?
15 MR GOTZ: Not in this piece, Chair.
16 CHAIRPERSON: Sorry?
17 MR GOTZ: Not in this piece, Chair.
18 CHAIRPERSON: Not in this piece.
19 [VIDEO SHOWN]
20 MR GOTZ: Can we stop there?
21 CHAIRPERSON: Stopping at 39.
22 MR GOTZ: 39. Brigadier, what you've
23 seen up until that point is the formation of a basic line
24 by the TRT. You've been cross-examined by Mr Mpfu on
25 those issues. So the TRT basic line has essentially formed

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1 at this moment and it's behind the road. Can I ask you to
2 look at the centre of the screen, you'll see Nyala 6, and
3 what you'll see also is a group of POPS members to the
4 right of that – to the right of Nyala 6. They essentially,
5 Brigadier, they're essentially hiding behind Nyala 6 and
6 moving with Nyala 6 as Nyala 6 moves up. Brigadier –
7 CHAIRPERSON: Do you agree with that?
8 BRIGADIER CALITZ: Ek sal die video volg,
9 mnr die Voorsitter, ek sien op hierdie stadium –
10 CHAIRPERSON: What counsel put to you
11 that on the screen, in the middle of the screen, we see
12 Nyala 6, it's still got its trailer of wire at the back,
13 the wire not having been uncoiled, and to the right of this
14 Nyala there's a group of POP members, and he suggests that
15 they are walking along in such a way that they are hidden
16 by the Nyalas. In other words, people, I take it, on the
17 other side of the Nyala. You won't be able to see them,
18 because the Nyala is in their line of sight. Is that the
19 point you're making, Mr Gotz?
20 MR GOTZ: Yes, exactly. We can take it
21 back a bit and show beyond that point as well, Brigadier,
22 if it's helpful. So let's play it from here. Keep your
23 eye on the Nyala with the barbed wire.
24 [VIDEO SHOWN]
25 MR GOTZ: And we can stop there. Can we

<p style="text-align: right;">Page 21082</p> <p>1 go back to 39 seconds or even 38 would be – do you agree 2 with me that essentially the POP members to the right of 3 the Nyala are hiding, as it were, behind the barbed wire 4 Nyala? 5 BRIGADIER CALITZ: Ek sal - nie wegkruip 6 daar nie, nee, ek sal sê hulle beweeg onder beskerming van 7 daardie voertuig voorentoe, vir daardie breukdeel van 'n 8 sekonde, en dan wat ons dan sien net hierna is dat Nyala 6 9 vorentoe ry. Ek kan nie daarna sien waar daardie lede dan 10 is nie. 11 MR GOTZ: Well, Brigadier, if it was 12 simply, as you put it, under the protection of, wouldn't 13 you expect to see some of those members on the left-hand 14 side of the Nyala? The point is that they are all on the 15 right-hand side of the Nyala and therefore obscured from 16 sight by the strikers, correct? 17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 dit is wat ek vir u sê in hierdie breukdeel van 'n sekonde 19 of 'n sekonde of twee, maar definitief nie vir die hele tyd 20 nie. Nyala 6 het vorentoe beweeg. Ons kan kyk na die 21 verdere beeldmateriaal om te sien of hulle die heel tyd 22 agter daai kar is, maar op hierdie stadium, vir daardie 23 sekonde of twee, was hulle agter daardie voertuig. Dit is 24 korrek. 25 CHAIRPERSON: Mr Gotz, I've got a problem</p>	<p style="text-align: right;">Page 21084</p> <p>1 themselves, they could as easily have protected themselves 2 on the left, doesn't make sense, if the persons against 3 whom they are potentially seeking to protect themselves, 4 are further to the left. So that's my problem with the 5 question you asked. 6 MR GOTZ: Perhaps I can ask the 7 Brigadier, when you say they're moving under the protection 8 of the Nyala, I had understood that simply to mean in close 9 proximity to the Nyala, so that if they needed to get into 10 the Nyala in a hurry, they could do so. It didn't mean 11 that the Nyala was effectively shielding them from an 12 onslaught, as it were, or am I incorrect? 13 BRIGADIER CALITZ: Nee, jy is glad nie 14 reg nie, Mnr Gotz. Operasioneel sal ons daardie taktiese 15 beweging onder beskerming van 'n Nyala voertuig, of dan 'n 16 pantser voertuig, presies soos wat mnr die Voorsitter dit 17 nou net vir u verduidelik het. Dit is operasioneel. 18 Onthou ten tye van hierdie video, weet ons dat daar was 19 klaar opgetree, wat ons verwys na, waar Nyala 4 toegemaak 20 het, insident 2. So op hierdie stadium, is die lede baie 21 bewus van daar is reeds 'n non-lethal force gebruik gewees, 22 daar is reeds aksie en hulle kan definitief sien daar's 23 persone wat dan in daardie rigting om kom en om beweeg, so 24 in daardie geval is, dan sal die lede onder taktiese 25 beskerming van 'n voertuig of van 'n pantser voertuig, soos</p>
<p style="text-align: right;">Page 21083</p> <p>1 with the question you've asked. You suggest that they were 2 hiding. Well, let's not decide what the – go into the 3 question what their intention was, the effect of their 4 being were they are on this clip, which we see at 39 5 seconds, is they certainly would have been not capable of 6 being seen by people to the left of Nyala, because the 7 Nyala would have blocked the line of sight of those people. 8 Whether the POP people were deliberately taking advantage 9 of that and hiding, or whether they were there for another 10 reason, we don't have to go into at the moment. The 11 problem I've got with your question is, you suggest, if 12 they were in hiding, they would also be on the left side, 13 but of course if they're on the left-hand side, and the 14 people that we are concerned about are people who would 15 have not been able to see them on the right-hand side, 16 because the Nyala would be in the way, then they certainly 17 wouldn't be protected against the potential people to see 18 them, if they had been on the left-hand side, because if 19 the - the people we're talking about are strikers - if they 20 are on left-hand side of the Nyala, and the POP people want 21 to be protected from in case they've got firearms or 22 something, so the Nyala would protect them against fire. 23 Then it's not going to help them to be on the left-hand 24 side, because then the Nyala will no longer protect them. 25 So your question was, even if they were protecting</p>	<p style="text-align: right;">Page 21085</p> <p>1 in hierdie geval, nader beweeg. Dit is net goeie opleiding 2 en goeie uitvoering. 3 MR GOTZ: Then I must be correct on that, 4 but in any event, you would agree with the chairperson that 5 in effect they are hidden from sight from the strikers in 6 their position? 7 BRIGADIER CALITZ: Mnr die Voorsitter, as 8 jy vir my tyd kan gee wat hierdie – ek dink op hierdie 9 stadium toe hierdie sekonde waar ons nou stop, as ons gaan 10 na die foto verwysing, is die persone nog nie om die kraal 11 nie. So ek dink nie hidden from sight gaan die regte 12 stelling wees nie, nee, want die persone, ek dink is 13 getuig, dat hulle was nog nie om die kraal op hierdie 14 stadium gewees nie. Tensy jy vir my sê hulle is om die 15 kraal, wat ek nie kan sien op hierdie insetstel nie. 16 MR GOTZ: Brigadier, they're indeed not – 17 they haven't rounded the corner of the kraal at that point, 18 but as the Nyala moves, as you'll see now in the video, as 19 the Nyala 6 moves up, they come into sight of the strikers. 20 In other words, the strikers can see Nyala 6. 21 BRIGADIER CALITZ: Dit is hoekom ek vir u 22 sê, ons kan kyk as die video aangaan, as die strikers om 23 kom en hulle is nog steeds aan daardie kant van Nyala 6, 24 dan sal ek saam met u kan stem dat hulle die Nyala gebruik 25 het as beskerming en dat die strikers hulle nie kon sien</p>

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1 nie, as dit u stelling is, maar op hierdie stadium, nee,
 2 glad nie. Op hierdie stadium sal die strikers in die kraal
 3 vas gekyk het, so –
 4 MR GOTZ: The lone officer that you see
 5 to the left of Nyala 6 is Warrant Officer Kuhn, correct?
 6 BRIGADIER CALITZ: Dit is Adjutant
 7 Offisier Kuhn.
 8 MR GOTZ: Spelt K-U-H-N?
 9 BRIGADIER CALITZ: K-H-U-N.
 10 MR GOTZ: K-U-H-N.
 11 CHAIRPERSON: It's fine, it's K-U-H-N,
 12 actually.
 13 BRIGADIER CALITZ: He just pronounced
 14 Kuhn not Koen, not K-O-E-N, for the record.
 15 CHAIRPERSON: Ja, but it's spelt K-U-H-N.
 16 You said K-H-U-N, it's –
 17 BRIGADIER CALITZ: Okay, no, no, sorry,
 18 sorry.
 19 CHAIRPERSON: No, I understand. Mr Gotz
 20 did pronounce it differently, but you've corrected him.
 21 MR GOTZ: Brigadier, I'd like your
 22 comment on this. Warrant Officer Kuhn, as you pronounce
 23 it, and I may be mispronouncing it now, is approximately 10
 24 metres in front of the TRT basic line. He does not move
 25 from that position until 3 seconds before the TRT opens

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1 fire, at which point he backs up slightly and opens fire.
 2 Why –
 3 CHAIRPERSON: Is that correct? I must
 4 confess I thought, but we'll see if I'm right or wrong, my
 5 impression is he fired first and they fired afterwards, but
 6 anyway let's look at the video and see whether you were
 7 right or I'm right.
 8 MR GOTZ: Ja, I don't necessarily want to
 9 focus on the second part of my proposition, what I'm
 10 focussing on is the fact that Warrant Officer Kuhn is
 11 standing in that position. He doesn't in fact move from
 12 that position for what is effectively a full minute after
 13 this shot.
 14 CHAIRPERSON: - see the video, then we'll
 15 see the video to see if that is correct. I've got a
 16 feeling your proposition is correct, but anyway let's see
 17 what the video show.
 18 MR GOTZ: Chairperson, I'm hesitant to
 19 break it at this point, so can we – I'm willing to show the
 20 video. It will need to be shown, subject obviously to a
 21 warning -
 22 CHAIRPERSON: It's your cross-
 23 examination, as long as the cross-examination is fair for
 24 the witness so he can follow it, you do it the way you want
 25 to do it. I can't dictate to you how to cross-examine.

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1 MR GOTZ: Can you also see, Brigadier,
 2 that to the left of the officer's head, you'll see Papa11
 3 driving around the tree, and the STF Casspir, as it were,
 4 moving into position. Would you agree with that?
 5 BRIGADIER CALITZ: Ja, op hierdie slide
 6 kan ons nie sien of dit Papa11 is nie, maar ek vertrou so.
 7 As ons na die fotos toe gaan en die bewysstukke, ek sal u
 8 woord aanvaar daar voor.
 9 MR GOTZ: It is at this moment in front
 10 of the STF Casspir, slightly ahead of it. You'd agree with
 11 me that is by that reason alone likely to be Papa11?
 12 BRIGADIER CALITZ: Dit is my vorige
 13 antwoord vir u gewees, dit is korrek.
 14 MR GOTZ: Now, just so that we get our
 15 timing correct, this moment in the clip is eTV time
 16 15:52:52, which means that it's almost a full minute, in
 17 fact to be exact, 58 seconds before the TRT opens fire.
 18 Brigadier, you'll agree with me that at this moment in
 19 time, 58 seconds, there is no semblance of any order in the
 20 positioning of the Nyalas?
 21 BRIGADIER CALITZ: As u net die vraag kan
 22 vir my duidelik stel, wat –
 23 MR GOTZ: There's no order or form in the
 24 positioning of the Nyalas. They're spread about, it looks
 25 rather chaotic, correct?

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1 BRIGADIER CALITZ: Nee, ek sal glad nie
 2 saam met u stem met die woorde chaoties nie. Die voertuie
 3 is nog in op beweging, met ander woorde, na insident 2 en
 4 dat hulle gesien het die aksie wat hulle daar uitgevoer het
 5 was onsuksesvol, die groter groep het om beweeg om die
 6 kraal aan die agterkant en hierdie voertuie is dan op pad
 7 soontoe om te kyk of hulle, hulle daar kan verder
 8 uiteendryf en dan so te stop.
 9 MR GOTZ: They're not in any formation at
 10 this point in time, correct?
 11 BRIGADIER CALITZ: Mnr die Voorsitter,
 12 nee, dit is ook nie die opdrag gewees dat hulle in enige
 13 formasie moet wees nie. Soos ek vir u sê, dit is voertuie
 14 wat nog in die op beweeg is om, om die kraal te beweeg.
 15 Dit is die enigste uitgang is aan die linkerkant van die
 16 kraal, aan die regterkant waar jy daai klip sien uitsteek,
 17 waar die sinkhuisie was. So dis die enigste uitgang en dis
 18 waar die voertuie nou op beweeg het.
 19 MR GOTZ: But, Brigadier, is that
 20 agreement with my proposition? They're not in any
 21 formation at this point. As a matter of fact, they're not
 22 in formation.
 23 BRIGADIER CALITZ: Ek kan met u stry. Ek
 24 kan vir sê die formasie is, hulle ry agter mekaar. Hulle
 25 is besig met 'n opvolg van 'n dispersion action. So ek

<p style="text-align: right;">Page 21090</p> <p>1 weet nie van watse formasie praat u nie.</p> <p>2 MR GOTZ: Well, perhaps we can compare</p> <p>3 this to the formation that they ultimately end up in, one</p> <p>4 minute later, which you have described as a perfect block.</p> <p>5 I would describe that as a formation.</p> <p>6 BRIGADIER CALITZ: Dit is presies wat ek</p> <p>7 vir u sê, hulle is nou in op beweging in opvolg van 'n</p> <p>8 uiteendryfaksie. Met ander woorde, die voertuie is nog op</p> <p>9 pad soontoe. U kan sekerlik nie verwag hulle moet op die</p> <p>10 oomblik by insident 2 wees en dan met die klap van 'n</p> <p>11 vinger alreeds op 'n ander plek wees nie. Hulle moet tog</p> <p>12 soontoe beweeg.</p> <p>13 MR GOTZ: But the point is that within</p> <p>14 one minute, they move from this position, where there</p> <p>15 doesn't appear to me to be any formation, into the perfect</p> <p>16 block – those are your words, "the perfect block" at the</p> <p>17 time of the TRT shooting.</p> <p>18 BRIGADIER CALITZ: Mnr Gotz, ons is weer</p> <p>19 terug waar ons gister was, met die woorde van perfect</p> <p>20 block. Ek het vir mnr die Voorsitter verduidelik, en ek</p> <p>21 dink dis Advokaat Chaskalson, ons is oor en oor, oor</p> <p>22 dieselfde punt. Waarna ek verwys het, die perfect block,</p> <p>23 was toe die groepering aangekom het, en dink dis op die</p> <p>24 Kolonel Vermaak foto op die 45 angle, wat hulle voor hulle</p> <p>25 sou gesien het en ek dink dit is die deel in die</p>	<p style="text-align: right;">Page 21092</p> <p>1 CHAIRPERSON: That's Nyala 1?</p> <p>2 MR GOTZ: It's Papa1, and Brigadier</p> <p>3 Calitz' Nyala. Would you confirm that, Brigadier?</p> <p>4 BRIGADIER CALITZ: Dit is korrek, ja, ek</p> <p>5 dink dit is my voertuig wat daar beweeg. Ons sal sien as</p> <p>6 die video aan gaan, as hy regs om Nyala 6 gaan is dit my</p> <p>7 voertuig.</p> <p>8 MR GOTZ: So let's continue to play and</p> <p>9 stop around 1 minute, 20 seconds.</p> <p>10 [VIDEO SHOWN]</p> <p>11 MR GOTZ: Stop there. Well, I was hoping</p> <p>12 that you would be able to get the license plate, but that</p> <p>13 is –</p> <p>14 CHAIRPERSON: Are we going to get to</p> <p>15 point where it's necessary for me to give a warning, in</p> <p>16 which case –</p> <p>17 MR GOTZ: No, not in this clip, Chair.</p> <p>18 That is your Nyala, correct?</p> <p>19 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>20 ja, ek dink daar is al seker vier keer hieroor getuig, oor</p> <p>21 die nommerplaat, so laat ons maar weer daarvoor gaan. Dit</p> <p>22 is korrek, Mnr die Voorsitter, maar die getuienis is op</p> <p>23 rekord, al hoeveel keer.</p> <p>24 MR GOTZ: Yes, it was the chairperson who</p> <p>25 asked the question.</p>
<p style="text-align: right;">Page 21091</p> <p>1 transkripsie waarna ons verwys het wat hulle sou gesien</p> <p>2 het, en dit het ek gesê daar was 'n groepering wat hulle</p> <p>3 sou gestop het van openbare orde polisiëring. Ons kan</p> <p>4 daarnatoe gaan. Ons was al oor en oor op dieselfde punt</p> <p>5 gewees.</p> <p>6 MR GOTZ: I don't want to have to go and</p> <p>7 debate something that Mr Chaskalson has established, but</p> <p>8 just to give you the reference, it's day 160 at 18270,</p> <p>9 lines 6 to 7. Brigadier, just to remind you, you and Mr</p> <p>10 Chaskalson were debating – discussing whether or not a</p> <p>11 block formation could be established where you presently</p> <p>12 see Papa11, and you'll remember that there was a debate</p> <p>13 about whether you drew the line, or whether you had drawn</p> <p>14 the red line there, etcetera, etcetera. I don't want to</p> <p>15 traverse that. And in the context of that discussion, you</p> <p>16 describe the formation of the Nyalas at the time of the TRT</p> <p>17 shooting as the perfect block, and you do so at line 6 to 7</p> <p>18 of 18270. Brigadier, let's continue to play this video.</p> <p>19 There's another point that I want to make just at</p> <p>20 approximately a minute –</p> <p>21 CHAIRPERSON: Can I ask you a question?</p> <p>22 You may have said already, and I've forgotten. We see the</p> <p>23 front portion of another Nyala on the right-hand side, what</p> <p>24 Nyala was that.</p> <p>25 MR GOTZ: That says Nyala Papa1.</p>	<p style="text-align: right;">Page 21093</p> <p>1 CHAIRPERSON: It's my fault. Don't shunt</p> <p>2 him, it was my fault. I wasn't sure whether it was your</p> <p>3 Nyala, and I just wanted confirmation.</p> <p>4 BRIGADIER CALITZ: Dan is ek jammer, Mnr</p> <p>5 die Voorsitter, ekskuus, ek het in my transcript lêers</p> <p>6 geblaai, so ek het nie gevolg nie. Ek is jammer dan.</p> <p>7 [14:43] MR GOTZ: Well lets continue to play.</p> <p>8 [VIDEO SHOWN]</p> <p>9 MR GOTZ: Now, Brigadier, lets stop the</p> <p>10 video here. This is one minute, one second, Brigadier,</p> <p>11 that Etv time 15:53:18 you can see at that point that the</p> <p>12 strikers are still, the strikers are visible on the left</p> <p>13 hand side of the screen, just to the left of the Casspir.</p> <p>14 Will you confirm that?</p> <p>15 BRIGADIER CALITZ: Ekskuus, ek wil net in</p> <p>16 die dokument, op die fotos wat u vir my gesê het om deur te</p> <p>17 gaan, so 15:53:13 sien ek u het aangedui op die fotos dat</p> <p>18 daardie persoon op die linkerkant wel strikers is.</p> <p>19 MR GOTZ: Now, Brigadier, let's just play</p> <p>20 for a couple of seconds on.</p> <p>21 BRIGADIER CALITZ: Sê u hulle is reeds om</p> <p>22 die hoek van die kraal hier of -</p> <p>23 MR GOTZ: No, I didn't say that</p> <p>24 Brigadier, I just wanted you to note the position.</p> <p>25 BRIGADIER CALITZ: Nee, ek vra.</p>

<p style="text-align: right;">Page 21094</p> <p>1 MR GOTZ: I just wanted you to note the 2 position and then lets continue to play for two or three 3 seconds. 4 [VIDEO SHOWN] 5 MR GOTZ: Okay, you can stop there. You 6 can see that the strike - 7 CHAIRPERSON CALITZ: One minute and four 8 seconds? 9 MR GOTZ: One minute and four seconds. 10 Brigadier, you will confirm that the strikers have at that 11 point not yet reached the corner of the kraal? 12 BRIGADIER CALITZ: Dit was uit die hoek 13 van waaruit hy geskiet is wat ek vir u vir u gevra of u 14 weet die presiese tyd, as hulle nie die hoek van die kraal 15 bereik het op hierdie stadium nie, volgens u en dit is u 16 video, kom dit terug na die vorige vraag toe waarom mnr 17 die Voorsitter gevra het, die Vermaak foto 29 sekondes voor 18 hulle om die kraal gekom het, en op daardie stadium as u 19 kan reg onthou was dit gesê dit was baie moeilik vir hom 20 om, om te draai. Ek dink u het die woorde gebruik daar is 21 'n groot groep agter hulle ensovoorts. As ek, mnr die 22 Voorsitter, miskien net kan terugvat en dan verwys nou 23 hier, dit is u eie beeld materiaal. U kan sien dit sal 24 glad nie moeilik wees vir hierdie groepie, as daardie 25 voorste groep besluit het om, om te draai en selfs die</p>	<p style="text-align: right;">Page 21096</p> <p>1 been? They are the cloud, are they? 2 MR GOTZ: Yes, indeed. So what, at 3 15:53:13 which is measured by the ETV time, what we have 4 estimated on the basis of the video material is that the 5 strikers would have been in the position of the blue cloud, 6 at that point. 7 CHAIRPERSON: So you say they couldn't 8 have gone right because they would then have come close to 9 Nyala 4, which were firing rubber balls at them, do I 10 understand you to say that? 11 MR GOTZ: Well the one proposition is 12 that turning right would bring them into contact again with 13 the people in Nyala 4, and they can't turn left because of 14 the fence at that point in time. Would you agree with 15 that? 16 BRIGADIER CALITZ: Mnr die Voorsitter, as 17 dit, ekskuus laat mnr die Voorsitter net klaarmaak. Net in 18 antwoord op u vraag, as dit die enigste twee rigtings is 19 wat vir u duidelik is regs en links, dan kan u dalk net 20 verwys daar is iets soos stop en daar is iets soos omdraai 21 en agter toe. 22 MR GOTZ: Yes, but we have debated that, 23 Brigadier. 24 BRIGADIER CALITZ: So as, nee asseblief 25 ek is nog besig. So as ons nou na die video gekyk het sou</p>
<p style="text-align: right;">Page 21095</p> <p>1 leier elemente, u sou nie eers oor mekaar geval het nie en 2 hulle sou kompleet net gaan sit het waar hulle is of 3 omgedraai het en weggehoop het, maar dankie vir die clip 4 dit help met die vorige antwoord. 5 MR GOTZ: Well, Brigadier, I disagree 6 with you fundamentally, they can't turn right, because if 7 they were to turn right they would be heading towards Nyala 8 4, and Nyala 4 we know has at this point being firing 9 rubber bullets at them. They can't turn left because there 10 is a fence there, it's not particularly clear from this 11 video but there is a fence there. So I don't agree with 12 your proposition that the lead group can simply turn 13 around. 14 CHAIRPERSON: I'm sorry, I'm sorry, Mr 15 Gotz. Is that correct, if we look at the photographs that 16 you have of ETV time 15:53:13, where would they have been, 17 because the difficulty if this, the actual photograph is 18 taken, on which you have superimposed the positions of the 19 vehicles is taken after the shooting, though we see the 20 bodies lying there. But where would the strikers have been 21 on this photograph 15:53:13? 22 MR GOTZ: Chair, are you now referring to 23 Exhibit KKK52? Perhaps we can have it up on screen so that 24 everybody, ja. So can we go to slide 2? 25 CHAIRPERSON: Now where would they have</p>	<p style="text-align: right;">Page 21097</p> <p>1 u gesien het dat die persone baie stadig beweeg uit u eie 2 footage wat u nou vir my gewys het. So dit is baie, baie 3 moontlik, hierdie, dit is waarnatoe ek wou gekom het, 4 15:53:13 die Vermaak foto wat ons na verwys het was 21, so 5 dit gee 'n verdere 8 of 9 sekondes voor hulle by daardie 6 stadium gekom het waar, mnr die Voorsitter, die vraag gevra 7 het. Selfs op hierdie vroeër stadium waarna u nou verwys, 8 het u reeds gewys in watse formasie die mense stap en hoe 9 versprei hulle was en dat daar glad nie 'n druk op die 10 voorste groep was soos u beweer het dat hulle nie kon 11 omdraai nie. So des te meer sê ek vir u hulle kon links 12 gedraai het, daardie draad ek was self daardie dag teen 13 daardie draad, dit bestaan uit 'n drie lyn draad uit, nie 14 'n lemmetjiesdraad barbed wire, soos wat die polisie 15 gebruik, wat ondeurdringbaar is nie. As jy gaan kyk na lug 16 fotos is daar baie van die persone wat wel deur daardie 17 drade na Nkaneng toe is, so my vraag is hoe het daardie 18 persone dan daardeur gekom. Dit is net die voorste punt 19 van hierdie groep, die militante groep wat besluit het ons 20 gaan aanval en ons gaan aanval en ons gaan nie gehoor gee 21 aan die uiteendrywing van die polisie nie. As hulle regs 22 gedraai het en hulle het wegbeweeg van Papa4 af sou daar 23 geen konfrontasie verder gewees het nie want Papa4 sal net 24 op hulle gereageer het sou hulle na die polisie lyn toe 25 kom. Sodra hulle omdraai en wegbeweeg het sou daar net 'n</p>

<p style="text-align: right;">Page 21098</p> <p>1 opvolg aksie gewees het sonder enige non-lethal force. 2 MR GOTZ: Brigadier, the one point in 3 response to that is that this is some seven or eight 4 seconds before the photograph that we were looking at, 5 which was Vermaak Blackberry photograph, and they are at 6 that point quite close, a lot closer to the corner of the 7 kraal. The second point of course is that at this point in 8 time, the lead group of strikers is simply seeing the 9 Casspir moving into position. That's the central focus. 10 They can't in fact see the TRT line. I think you have 11 conceded that, and I would suggest to you that they are 12 certainly not seeing, they may be able to see Papa2 but 13 they certainly can't see Papa4, Papa5, Papa19 or Nyala 5, 14 and a lot of those other vehicles your Papa as well as the 15 two to the left or above the SGF Casspir are probably quite 16 out of sight as well. 17 BRIGADIER CALITZ: Mnr die Voorsitter, al 18 wat sê ek hoor u het voorheen ook gesê hulle het drie 19 sekondes voor hulle die TRT gesien het. Dit is, ons sal 20 later daar bykom. Wat ek vir u sê op hierdie foto waar jy 21 hulle hier kan sien, Papa11, Papa7, Papa18, die Casspir, 22 die ander Casspir, Nyala 6 daar is verskeie polisievoertuie 23 wat sigbaar is, en wat u bly uit die oog uit verloor is dat 24 ek vir u sê reeds by Nyala 4 is daar opgetree teen hulle. 25 Hier op hierdie stadium was daar stun granate gegooi, die</p>	<p style="text-align: right;">Page 21100</p> <p>1 CHAIRPERSON: They had only formed up 2 relatively recently hadn't it? 3 BRIGADIER CALITZ: Heeltemal korrek, mnr 4 die Voorsitter. 5 CHAIRPERSON: So they wouldn't have, they 6 had no reason to know that as they were coming in the 7 position we see them on this slide, to know that the TRT 8 line was where it was. They didn't, they had no reason to 9 know that there was a line formed there, is that right? 10 BRIGADIER CALITZ: Nee, nee dit is nie 11 waarteen ek sry nie, mnr die Voorsitter. Ek sê nee dit 12 gaan oor die TRT lyn nie, ek sê dit gaan oor die 13 polisielyn. 14 CHAIRPERSON: No, no I'm eliminating the 15 TRT line first because they didn't know it was there. 16 BRIGADIER CALITZ: Ek stem saam met u 17 daar. 18 CHAIRPERSON: Now as far as I can recall 19 the evidence is that the POP people, with the exception of 20 Kuhn, were on the side there between the Nyala is that 21 right? 22 BRIGADIER CALITZ: Dit is korrek, mnr die 23 Voorsitter. 24 CHAIRPERSON: Now did the, as the 25 strikers came past, did they attack the POP people as they</p>
<p style="text-align: right;">Page 21099</p> <p>1 rubber rondtes wat op hulle gevuur is en dit is wat ek vir 2 u sê is dat die lede, indien u uiteengedryf word, dan val u 3 nie 'n polisielyn aan nie. Jy gee gehoor uit die 4 uiteendrywing, u draai om en beweeg in 'n teenoorgestelde 5 rigting. Daar is nie iets soos jy verdedig jouself teen 'n 6 regmatige uiteendrywing nie. Daar bestaan nie so iets nie, 7 of jy besluit om daardeur te gaan nie. As die pad geblok 8 is end ie verkeer pak daar normaalweg cones en hulle sê u 9 kan nie daardeur ry nie, dan gaan jy nie met jou voertuig 10 daardeur omdat jy wil jou huis is daai kant nie, u volg die 11 ompad. Dieselfde hier, die persone is uiteengedryf en dit 12 is waaraan hulle gehoor moes gegee het. So die blote feit 13 dat u sê hulle kan nie die TRT lyn sien nie, beteken die 14 openbare orde polisiëring en die ander polisievoertuie, is 15 dit nie dieselfde polisie diens nie. Dit is polisie lede wat 16 besig is om op te tree teen hulle. So ek kan nie die 17 verskoning sien hoekom hulle die TRT lyn moes sien nie 18 voordat hulle retreat het nie. 19 CHAIRPERSON: Whom do you say were the 20 strikers going to attack? 21 BRIGADIER CALITZ: Op hierdie stadium die 22 polisielyn, mnr die Voorsitter. 23 CHAIRPERSON: Well they couldn't see the 24 TRT line there. 25 BRIGADIER CALITZ: Korrek.</p>	<p style="text-align: right;">Page 21101</p> <p>1 were standing between the Nyalas? 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek 3 dink hulle was ge, kan ek sê onder dekking gewees agter 4 die, u sal sien as die video gespeel word, ek glo ons gaan 5 na daardie video toe, dat daar waar die lede op hulle 6 gevuur het, het hulle net aan daardie kant verbybeweeg. 7 Hulle het nie tussen die Nyalas deurgekom nie, maar daar 8 was wel 'n aksie gewees op Papa11 waar hulle begin het 9 aanvanklik waar daardie lede nie buitekant die voertuig was 10 nie maar binne in die voertuig. So dieselfde sou gebeur 11 het, as ons 'n linie met openbare polisiëring en die lede 12 het nie tactically retreat soos ons daarna verwys nie, sou 13 daar definitief 'n aanval gewees het, as hulle die linie 14 van openbare orde gehou het. 15 CHAIRPERSON: Well you know when you're 16 in the area of what would have happened, it's not quite as 17 objectively clear as some of the other things that did 18 happen. Now if there were POP people standing on the 19 ground between the STF Casspir and the other Casspir, and 20 the Casspir, what I call the other Casspir, and Papa2 and 21 others between Papa2 and Papa4, they would have been 22 attacked by the strikers if they were minded to attack a 23 police line because that would have been the only police 24 line that they would have been aware of, is that right? 25 BRIGADIER CALITZ: Al wat ek vir u kan sê</p>

<p style="text-align: right;">Page 21102</p> <p>1 is dat die, al waaroor openbare polisiëring wel aangeval 2 was, was waar Nyala 4 toegemaak het waar Papa 5 getuig het 3 daar was op hulle gevuur. Asook wat ons kan sien op die 4 video omtrent tussen Casspir 2 en Papa2 op die openbare 5 orde polisiëringslid wat buite op die grond gestaan het 6 waar die striker dan wel op hom geskiet het met die 7 vuurwapen. 8 CHAIRPERSON: Okay, so your answer is 9 that there was an attack on the police line, as you have 10 described the police line between these vehicles we have 11 discussed. 12 BRIGADIER CALITZ: Dit is die skietery 13 waarna ek verwys definitief, mnr die Voorsitter. 14 CHAIRPERSON: There is the skietery, one 15 shot I think, one or two. Well we have seen a photograph 16 which appears to give us the line of travel as it were of 17 one of the shots and there was another shot, we don't know 18 where it was shot. All we know is we hear it on the video, 19 is that right? 20 BRIGADIER CALITZ: Ek dink dit is die 21 dispuut wat ooreengekom is dat die experts vir ons gaan kyk 22 na die beskikbare bewysstukke, mnr die Voorsitter. 23 CHAIRPERSON: Apart from that shot, which 24 is into the ground, as far as I can recall, the one we can 25 see, was there anything else, now this is quite an</p>	<p style="text-align: right;">Page 21104</p> <p>1 van die ander kant af, van agter af en van agter die TRT 2 lyn geneem. So ek dink nie daar was enige beeldmateriaal 3 op hierdie stadium van die kraal se kant af toe hulle daar 4 verby gekom het nie, nie waarvan ek bewus is nie. 5 MR GOTZ: Brigadier, can we go to slide 3 6 and you will be thankful that I'm not going to go through 7 all of them in great detail. But slide 3 of this 8 presentation is ETV time 15:53:21. Now, Brigadier, this is 9 the configuration of the Nyalas or the SAPS vehicles at the 10 time that the Vermaak Blackberry photograph that we were 11 looking at earlier in the day was taken. You can see that 12 the strikers have moved on our representation closer to the 13 edge of the kraal but certainly have not got to the corner 14 of the kraal and that the Papa2, Papa4, Papa5 have, Papa2 15 and Papa4 have started to move into formation. The Casspir 16 as well has moved from its position on the previous page 17 seven seconds later into position behind the STF Casspir. 18 BRIGADIER CALITZ: Ja, wat is die vraag? 19 MR GOTZ: Would you agree with my 20 description of what was occurring or what had occurred by 21 15:53:21? 22 BRIGADIER CALITZ: Ja, ek dink ons kan 23 dit duidelik sien op die foto van Kolonel Vermaak ook. 24 MR GOTZ: And, Brigadier, we have 25 included 15:53:30 although there is not much difference</p>
<p style="text-align: right;">Page 21103</p> <p>1 important one, I'm asking not because I know the answer but 2 because I want to know the answer. Is there any other 3 evidence which indicates that any of the strikers attacked 4 the people, the POP members that were standing in the 5 positions that you have mentioned? 6 BRIGADIER CALITZ: Nie van wat ek weet op 7 hierdie stadium wat buitekant die voertuie was nie, maar 8 daar was verklarings gewees van lede wat in die voertuie 9 was wat sê die persone het probeer die Nyala se deure en 10 daar was met aksie teen die voertuie gewees. So definitief 11 'n aanval. 12 MR GOTZ: Well, Brigadier, we honestly 13 don't see any of that in the videos. There are two angles, 14 we have got the Al Jazeera angle which is effectively taken 15 from where you see your Papa1 and where your Papa1 is 16 located on this diagram, which is effectively where the Al 17 Jazeera camera was, and where you see the white bakkie, 18 second from the right, is effectively where the Reuters and 19 ETV cameras were. We just don't see these attacks on the 20 Nyalas that your members talk about. 21 BRIGADIER CALITZ: Ek het nog geen video 22 footage van myself gesien toe die groep verby Papa11 is wat 23 daar gebeur het nie, as u daardie video footage het sal ons 24 bly wees as ons dit kan sien, want u sê daar was nie. 25 Asook die angle wat die Reuters of na wie u verwys het is</p>	<p style="text-align: right;">Page 21105</p> <p>1 between the two, which is significant for a different 2 reason, which I will come to in a moment, but essentially 3 all that happens in that time, is that the strikers move 4 closer to the corner of the kraal and papa2 and papa4 come 5 to the positions where they stop. They halt there and they 6 remain in that position until the TRT line opens fire. 7 BRIGADIER CALITZ: Ja, ek dink dit is 8 waar Papa2 en Papa4 waar ons dan die lede buitekant die 9 voertuie sou sien as ons die video speel. Ek dink u het 10 verwys op dieselfde tyd 53:21 of 53:30, dit is so 'n paar 11 sekondes na die Vermaak video. 12 MR GOTZ: Yes, it's nine seconds, you 13 mean the Vermaak Blackberry photograph, it's in fact nine 14 seconds after the Vermaak Blackberry photograph. 15 BRIGADIER CALITZ: Ja, kan ons miskien 16 net, toe maar nee dit is reg, ek wou net verwys het, ek 17 dink u is op 'n dokument wat die ander dokumente as wat ek 18 nou deur gewerk het, so ons bladsye kom nie so lekker 19 ooreen nie. Maar dit is korrek, ek weet nie of u daardie 20 dokument ook op transcript het nie. 21 MR GOTZ: Are you talking about the 22 report that - 23 BRIGADIER CALITZ: Die rapport, ja. 24 MR GOTZ: Brigadier, if there is a 25 question that, what is it that you want to refer to?</p>

<p style="text-align: right;">Page 21106</p> <p>1 BRIGADIER CALITZ: Nee, nee die vorige 2 een van 53:21 Vermaak se foto, ek dink die kommissaris se 3 vraag was, hoe ver was hulle op daardie stadium of hoe die 4 voorste punt gelyk. Onthou ek het gevra hulle moet in zoom 5 en u het 'n ander foto gehad, so as dit moontlik is kan ons 6 van bladsy 18 van daardie foto dat ons miskien al twee die 7 dokumente het, die rapport wat u nou vir my gegee het om 8 deur te werk, want ek glo dit is die 46 bladsye wat ek nou 9 deur gewerk het. 10 [15:03] MR GOTZ: Well, Brigadier, I hadn't 11 intended to, but if KKK54 can be put up on the screen, 12 slide 18 if you wanted to make a point of that. 13 BRIGADIER CALITZ: Nee, ek is net gevra 14 om die document deur te werk en die vrae sou gegaan het oor 15 die dokument. So dit was - 16 MR GOTZ: Brigadier, sorry do you want 17 make a point about Exhibit KKK54 in slide 18? 18 BRIGADIER CALITZ: Bladsy 18, ek wil net, 19 soos ons aangaan met die tyd sal ons na al twee verwys as 20 dit vir u reg is. 21 CHAIRPERSON: Is KKK54 already available 22 to the operator? 23 MR GOTZ: It should be. 24 CHAIRPERSON: I didn't see it on the, he 25 says no.</p>	<p style="text-align: right;">Page 21108</p> <p>1 MR GOTZ: Brigadier, are you disputing 2 our analysis that as at this moment that the strikers 3 reached the edge of the kraal? 4 BRIGADIER CALITZ: Ekskuus, mnr die 5 Voorsitter, nee advokaat dit is glad nie dat ons betwis dat 6 die strikers die hoek van die kraal genader het nie, maar 7 daar is net 'n ander punt wat ek wil maak wat ek dink baie 8 belangrik is. Daarom is die belangrik om 54 vir my op te 9 sit. Ek dink u het die dokument vir my gegee om deur te 10 gaan so dit moet beskikbaar wees seer sekerlik anders was 11 daar geen doel vir my - 12 CHAIRPERSON: That's true - 13 MR GOTZ: But understand that we are 14 wasting time. 15 BRIGADIER CALITZ: Ons mors glad nie tyd, 16 mnr die Voorsitter. 17 CHAIRPERSON: Now come, Mr Gotz, he is 18 entitled to say you gave him a report to go through, which 19 he did. He is entitled to say at page 54 of that report 20 contains material that he would like to demonstrate to the 21 commission which illustrates the point he wants to make, he 22 is entitled to do that and that is not time wasting. It 23 may turn out in the end the point he wants to show us isn't 24 a good point, but it may turn out that it is a good point. 25 But we don't know the answer to that until we know what it</p>
<p style="text-align: right;">Page 21107</p> <p>1 MR GOTZ: Mr Chair, we had given 2 everything but - 3 BRIGADIER CALITZ: Ekskuus, mnr die 4 Voorsitter, vir die vermorsing van tyd. Ek het gedog dit 5 was die taak gewees, ek moes deur die dokument gaan en dan 6 sou dit beskikbaar wees vir vrae. 7 CHAIRPERSON: No, no I assumed it was and 8 when there was a hesitation and they tried to find it for 9 us, they didn't, so I thought they mightn't have it, but 10 they haven't got it. But anyhow - 11 MR GOTZ: Brigadier, I don't want to 12 waste time so while the video people are being given that 13 can we turn to 15:53:35 which is slide 5 of this 14 presentation. Brigadier, it's at this moment we say that 15 the lead group of strikers headed by Mr Noki reaches the 16 north west corner of the kraal, in other words the corner 17 of the kraal between, well the kraal and the Casspirs, and 18 that's 15 seconds before the TRT opens fire. Would you 19 agree with that? 20 BRIGADIER CALITZ: Ja, as ons na die 21 fotos kan gaan, ek dink dit is belangrik om miskien nou na 22 daardie dokument te verwys so, dan kan ons net gou-gou 23 soontoe gaan. Die eerste bladsy waarna ek verwys het was 24 18, net om vir mnr die Voorsitter die punt te maak en dan 25 hierdie sal begin op bladsy 23 as ek u miskien kan help.</p>	<p style="text-align: right;">Page 21109</p> <p>1 is and it certainly can't be described as time wasting. 2 BRIGADIER CALITZ: Mnr die Voorsitter, 3 terwyl ons wag kan ek miskien sê wat op daardie bladsy is, 4 miskien om die tyd te verminder en dan - 5 VOORSITTER: Ja, u kan meneer, gaan voort 6 gerus. 7 BRIGADIER CALITZ: Dit sal nou nie 'n 8 verrassing wees of iets nie. Op bladsy 18 is net die foto 9 wat uit die Vermaak se kamera hoek geneem is en dit is 'n 10 foto wat baie nader beskryf oor hoe die voerpunt gelyk het 11 op daardie stadium. So as ons op bladsy 18 kom sal u kan 12 sien die formasie - 13 CHAIRPERSON: I haven't got one, I think 14 you have got mine, but never mind, I will take your word 15 for it. 16 BRIGADIER CALITZ: Sorry, en dit is op 17 bladsy 18 wat ek dan vir u wil wys hoe maklik dit was vir 18 hulle om, om te draai en dat daar glad nie so, hoe kan ek 19 sê, tight formasie was soos wat die advokaat beweer nie. 20 Maar u sal dit duidelik sien, ek gaan nie tyd mors op 21 daardie foto nie. Ek wil net die punt gemaak het, bladsy 22 18. U sien daardie is die ETV tyd 15:53:21 wat ooreenstem 23 met die Kolonel Vermaak se lug foto, en toe het u gevra hoe 24 lyk die voerpunt, ek het gevra laat ons in zoom en u het 25 vir ons 'n baie slegte foto gegee. Nie 'n slegte foto nie</p>

<p style="text-align: right;">Page 21110</p> <p>1 wat 'n bietjie uit fokus was, van 'n ander angle af. Ek 2 dink hierdie was dalk 'n beter foto om te gee en op hierdie 3 punt het ek al gesê dat as die leier elemente wel kon 4 omdraai en te beweeg, ek dink die mnr die Voorsitter het 5 gesê about turn, daar is ten minste meters spasie tussen 6 die persone wat voor beweeg en verder 'n paar meter tussen 7 hulle en dan die groepe wat volg so dit was vir hulle baie, 8 baie moontlik om te stop, in hierdie geval of om, om te 9 draai. Dit is al wat ek wil bewys op daardie foto, en dan 10 is ons nou op bladsy 23 net aan. U vraag oor die 30 11 sekondes, u sê vyf sekondes later het hulle by die hoek van 12 die kraal gekom. Dit betwis ek nie. As ons dalk net die 13 volgende foto sien, sal u sien dit is die hoek van die 14 kraal waar die POP lid buitekant staan, nog steeds 15 dieselfde tyd 15:53:35 en dan net die volgende een dit is 16 die vyf sekondes waarna u verwys wat ek sê ek betwis glad 17 nie, dat hulle om die hoek van die kraal is nie. Maar wat 18 ek pertinent hier wil uitwys vir mnr die Voorsitter, en dit 19 is op rekord dat u gesê het daar is net drie sekondes 20 gewees voordat hierdie mense die TRT lyn kon sien, ek het 21 gesê 29 minus omtrent ses of tien sekondes, so ek het hulle 22 'n langer tyd gegee. Mnr die Voorsitter, as u kan sien 23 waar die strikers is en dit is so duidelik dat hierdie TRT 24 lyn sigbaar is, en volgens u eie getuienis, nee u is nie in 25 die getuiebank nie, volgens u stelling het hulle net drie</p>	<p style="text-align: right;">Page 21112</p> <p>1 gebukkend is met die groen, dit is op hierdie posisie waar 2 hy dan ook op die polisie gevuur het. As ons na die video 3 kyk sal dit baie duidelik wees. So daar was 'n besliste 4 aanval gewees op hierdie lede dan op hierdie foto. 5 CHAIRPERSON: I understand that, and if 6 that is so, and it may well be so, that's a very important 7 point. 8 BRIGADIER CALITZ: Dankie, mnr die 9 Voorsitter, en dan net die volgende foto wat in die 10 sequence is - 11 MR GOTZ: Sorry before you go there, the 12 point is that - 13 BRIGADIER CALITZ: Ekskuus tog, ek wil 14 net my punt klaarmaak as ek mag? 15 CHAIRPERSON: Let him make his point, and 16 then you can make your point. 17 BRIGADIER CALITZ: Ek is nog steeds op 18 dieselfde punt. Ek bereik en beweeg nie, die 15:53:15 dit 19 is toe hulle om die kraal gekom het. So u volgende foto, 20 dit is dieselfde tyd, die vyf sekondes screenshot at five 21 seconds, met ander woorde waar hulle om die kraal gekom 22 het. My enigste punt wat ek hier wil maak, wat ek glo is 23 'n belangrike punt, die strikers kan gesien word. Openbare 24 orde polisiëringslede kan gesien word aan die regterkant, 25 hier is een man in die voorgrond wat tactically retreat</p>
<p style="text-align: right;">Page 21111</p> <p>1 sekondes gehad. 2 CHAIRPERSON: No, that's an interesting 3 point but, because the previous slide we saw showed the 4 strikers moving forward and not, that's the one ja, they 5 are moving forward moving from right to left on the slide, 6 they don't appear to be focusing any attention on the one 7 POP person whom we can see between the two Nyalas and - 8 BRIGADIER CALITZ: Die persoon - 9 CHAIRPERSON: They don't seem to be 10 focusing any attention in fact on anything between the 11 Nyalas, they are looking straight ahead and marching 12 straight forward of course towards the TRT line but - 13 BRIGADIER CALITZ: Behalwe die persoon - 14 CHAIRPERSON: But I was concerned with 15 the question whether there was any evidence to indicate 16 apart from entries and so on, any evidence to indicate that 17 they were actually attacking the people who were on their 18 left between the Nyalas. Of course this photograph doesn't 19 show them doing that but of course you may well be right, 20 there may well be other, there may well have been other 21 attacks happening further down the line. But this one 22 doesn't show that, that seems to be the - 23 BRIGADIER CALITZ: Mnr die Voorsitter, ek 24 dink hulle sal dit ook in hulle, as dit kom by die striker 25 wat geskiet het, onder korreksie die persoon wat so</p>	<p style="text-align: right;">Page 21113</p> <p>1 terug. Adjudant-offisier Kuhn kan gesien word asook die 2 hele TRT lyn. So as dit die enigste beskikbare foto is op 3 hierdie stadium, dan was die tyd 14 sekondes wat hulle die 4 TRT lyn in hulle visie gehad het en nie drie sekondes soos 5 beweer nie. 6 CHAIRPERSON: That's seems to, prima 7 facie to establish the point you wished to make. But can I 8 ask you this is that Kuhn with his sort of left foot, sort 9 of up in the air with his toe - 10 BRIGADIER CALITZ: Nee, mnr die 11 Voorsitter. 12 CHAIRPERSON: Which is Kuhn? 13 BRIGADIER CALITZ: Kuhn is die een net, 14 waarna die rooi pyltjie wys. Sê maar die strikers, die 15 rooi pyltjie wys direk in sy rigting. 16 CHAIRPERSON: That's Kuhn? 17 BRIGADIER CALITZ: Dit is die man. 18 CHAIRPERSON: And there is two other 19 members of the police service near him is that correct? 20 BRIGADIER CALITZ: Ja. 21 CHAIRPERSON: One of them is leaning 22 forward and he has his left toe on the ground but his heel 23 in the air, is that right? And then there is another 24 policeman ahead of him to his left, is that correct? 25 BRIGADIER CALITZ: Dit is openbare orde</p>

<p style="text-align: right;">Page 21114</p> <p>1 polisiëringslede wat ge-retreat het na die Nyala toe. 2 CHAIRPERSON: So effectively there was 3 three, at this moment, there were three POP people directly 4 in front of the advancing strikers, Kuhn and a person to 5 his left, more or less in line with him, and the other one, 6 the one with his left toe on the ground. I mean the toe 7 portion, the front part of his left foot on the ground, he 8 is slightly behind. 9 BRIGADIER CALITZ: Dit is korrek. 10 CHAIRPERSON: A metre or two probably, 11 two metres probably - 12 BRIGADIER CALITZ: Dit is korrek. 13 MR GOTZ: Behind, is that right? 14 BRIGADIER CALITZ: Dit is korrek, mnr die 15 Voorsitter. 16 MR GOTZ: Brigadier, just a couple of 17 other points the person who has his toe on the ground as it 18 were, is looking at the Papa19, Papa10 Nyala. If you watch 19 the videos, he from this moment walks over to the Nyala and 20 climbs into it. The other man just above him as it were, 21 standing closer to the strikers at this point turns and 22 runs away, leaving Warrant-officer Kuhn standing there on 23 his own. Warrant-officer Kuhn has not moved from the 24 position that we saw him in some 45 seconds earlier. 25 BRIGADIER CALITZ: U is heeltemal korrek,</p>	<p style="text-align: right;">Page 21116</p> <p>1 seksie 1 per seksie dan daardie volgende wapen is al wat 2 hulle het. 3 CHAIRPERSON: Your point simply is this, 4 that Warrant-officer Kuhn was able to defend himself 5 because he had an R5, the other two if they were only 6 equipped with less than lethal weapons couldn't defend 7 themselves so they had to beat a tactical retreat. I know 8 you don't like the word retreat but that's what it means, a 9 tactical retreat. 10 BRIGADIER CALITZ: Korrek, mnr die 11 Voorsitter. 12 CHAIRPERSON: Right, now can I just ask 13 you this, I think I, I think what I'm putting to you is 14 right, I just want to make sure, if one looks at the slide 15 we have been looking at, the 15:53:31 as an example, the P5 16 is presumably in the correct position. It looks to me as 17 if the man with the front part of his left foot is standing 18 in the road, would that be correct, in the roadway there 19 and it looks to me, it's difficult to estimate I suppose it 20 looks as if Warrant-officer Kuhn and the man on his left 21 are probably about two metres or so ahead of the man with 22 the front part of his left foot on the ground. Would that 23 be correct? 24 BRIGADIER CALITZ: Dit is - 25 MR GOTZ: So we can more or less place</p>
<p style="text-align: right;">Page 21115</p> <p>1 as ons aan die linkerkant kyk vir Papa10 wat nie 9, maar 10 2 was, het hy dan in daardie voertuig se rigting beweeg en in 3 geklim. Die ander een wat u sê het weggehardloop daar 4 bestaan nie so iets in die polisie nie. Ons noem dit 5 tactically retreat en ek het dit by hoeveel geleenthede 6 gesê, dit is hoe 'n openbare orde lid wat uitgereik is met 7 non-lethal force, sy rubber gaan geen verskil maak op die 8 aanvallers nie en hy het geen ander keuse, tensy hy sy lewe 9 wil verloor om daar te bly staan nie. Adjudant-offisier 10 Kuhn was in besit gewees van 'n R5. Een seksie lid per 11 openbare orde is uitgereik daarmee en hy kon wel die R5 12 gebruik dan vir waarskuwingskote of selfverdediging in 13 daardie geval. Die openbare orde polisiëringslede is wat 14 onttrek het of tactically retreat het kan nie daar gebly 15 staan het nie. 16 MR GOTZ: Are you say Kuhn, Warrant- 17 officer Kuhn was not particularly concerned and stood his 18 ground there because he was carrying an R5 rifle? 19 BRIGADIER CALITZ: Ek sê net waarmee hy 20 uitgereik is en ek sê waarom die ander persone teruggegaan 21 het na die voertuie toe. Die R5 geweer is 'n meer lethal 22 wapen wat jy kan gebruik vir self verdediging waar die 23 haelgewere en die non-lethal, as dit nie werk nie en die 24 persone kom al nader is daar geen ander maniere as om terug 25 te val en dan die TRT wat hulle moet beskerm of dan die</p>	<p style="text-align: right;">Page 21117</p> <p>1 Kuhn and the other two on this photograph, which I'm using 2 number 4 but they are all the same, but we can see where P5 3 is and we can see P5 in the photograph, and we work out to 4 a fair degree of accuracy I would hope where Kuhn and these 5 other two POP people were at the time this photograph was 6 taken, is that right? 7 BRIGADIER CALITZ: Dit is korrek, mnr die 8 Voorsitter. 9 MR GOTZ: Chairperson, just to highlight 10 that the Nyala 5, I mean Papa5 at 15:53:35 is in fact 11 moving into position, so it shouldn't be regarded as being 12 stationary at that point in time, and if you wanted to 13 place Warrant-officer Kuhn it would probably be best to do 14 it from 15:53:40, in other words slide 6 and following. 15 Because then at least you have got the - 16 CHAIRPERSON: This picture is taken at 17 what time? 18 MR GOTZ: So if we are looking at 15:53 - 19 CHAIRPERSON: The one on the screen at 20 the moment, what time is this one taken? 21 MR GOTZ: This is 15:53:35. 22 CHAIRPERSON: Yes, so that's why it is 23 better to look at the other one which is number 5 in your 24 series. If the position of Papa5 is right on this slide, 25 then we can see it on the slide that is being shown on the</p>

<p style="text-align: right;">Page 21118</p> <p>1 screen and we can see these three POP people and we can 2 place them because that's the relevant time to do it, isn't 3 it? 4 BRIGADIER CALITZ: Mnr die Voorsitter, as 5 ek dalk kan help, as ons twee aangaan, 15:53:40 waarna die 6 advokaat verwys, bladsy 27 as ons dit net kan ophaal, dit 7 is vyf sekondes later, nee nie op hierdie, op die ander, 8 bladsy 27 daar waar ons was en dan net die volgende een, om 9 die tyd vir u te gee dit is 15:53:40 en dan bladsy 28 is 10 waarna die advokaat verwys, u sal Kuhn se kop net sien 11 uitsteek bo die polisieman tweede van regs af. Sy skaduwee 12 kan u sien in daardie posisie so hy is nog steeds voor die 13 voetpad en u sal sien dat die openbare orde polisiëringlid 14 ge-tactically retreat het en hy is besig om in die Nyala te 15 klim aan die linkerkant. En selfs hier is die drie 16 sekondes wat ek nou-nou vir u gewys het na 14, hier het dit 17 verminder na 10 sekondes, so dit is vier sekondes later en 18 die TRT lyn is nog steeds sigbaar. Net om 'n punt daarvan 19 te maak ook. 20 MR GOTZ: Brigadier, the one point that 21 does need to be made of course is that Warrant-officer Kuhn 22 doesn't follow the other POP member and climb into the 23 Nyala. 24 BRIGADIER CALITZ: Nee, maar dit is 25 duidelik. Ons het mos reeds gesê hoekom hy daar staan.</p>	<p style="text-align: right;">Page 21120</p> <p>1 hulle is, ek dink na die CALS en die tydlyn is daar ooreen 2 gekom dat die experts sal gaan kyk na die spesifieke tye en 3 plasinge. So dit is maar net waarna ek verwys. 4 MR GOTZ: It's also at this moment that 5 the first teargas canister of the day gets shot and it's 6 fired roughly between, in amongst the strikers but between 7 where you see Papa11 and the STF Casspir? 8 [15:23] BRIGADIER CALITZ: Ek sal nie vir u kan 9 sê of dit die eerste is nie, ek weet die videos wat ek 10 gesien het en soos die mense om die kraal kom het ons 11 gesien daar is wit rook aan die agterkant, so ek glo nie 12 dit is heeltemal korrek wat u, die stelling wat u maak nie. 13 MR GOTZ: Well, I said roughly, I didn't 14 meant right at this moment, as I understand it, the first 15 teargas canister gets fired around this time. It doesn't 16 get fired in front of the crowd of strikers as they move 17 around the corner of the kraal, but gets fired behind them 18 roughly where, between Papa11 and the STF Casspir is. 19 BRIGADIER CALITZ: Ek sal nie vir u met 20 sekerheid dit kan sê nie, ek sal u nie daar kan help nie. 21 Ek het dit dat hulle reeds by insident 2, aan die 22 linkerkant van die kraal was daar reeds die stun grenades 23 sowel as die rook. Ek dink op 'n ver afstand het ons die 24 video gesien en u kan sien dat dit is aan die linkerkant 25 van die kraal en nie aan die regterkant soos wat u nou</p>
<p style="text-align: right;">Page 21119</p> <p>1 MR GOTZ: Armed with a R5 rifle is the 2 only thing that a TRT line seems to have done is brace 3 themselves. So if you compare the earlier photograph, what 4 they have done is they braced themselves for something, if 5 you compare the two photographs. They haven't moved at all 6 either, correct? 7 BRIGADIER CALITZ: Ja, dit is korrek. 8 Adjutant-offisier Kuhn beweeg nie en dan die TRT lyn ook 9 nie op daardie stadium nie. 10 MR GOTZ: Now, Brigadier, I did want to 11 go back to make a few points about 15:53:35 on the Exhibit 12 KKK52. You will agree with me that at this point in time 13 Papa5 is in fact moving, so it starts out from the 14 position, a fraction of a second later it has moved past 15 the bush as it were and it is moving into position behind 16 Papa4. 17 BRIGADIER CALITZ: Ek dink die experts is 18 besig met die tydlyn en presiese plasing van die voertuie 19 maar as ons na die video kan kyk kan u sien dat hy beweeg 20 wel maar of dit die presiese posisie is kan ek nou nie vir 21 u sê op hierdie tyd 15:43:35 dat hy daar was nie. 22 MR GOTZ: Well we may have to show that 23 video if you request it. 24 BRIGADIER CALITZ: Nee, ek versoek dit 25 nie ek het net gesê die experts, ons het ooreen gekom dat</p>	<p style="text-align: right;">Page 21121</p> <p>1 beweer nie. 2 CHAIRPERSON: That's the left hand side 3 as one is advancing in the way of, the strikers were 4 moving. As the strikers were moving the kraal was 5 initially, it was on their right hand side throughout, but 6 you know we say the left, the right, we didn't know – 7 BRIGADIER CALITZ: Ekskuus, mnr die 8 Voorsitter, ja, - 9 CHAIRPERSON: - which direction you're 10 facing. 11 BRIGADIER CALITZ: Nee, ek praat – 12 CHAIRPERSON: So for purposes of accuracy 13 one has got to make it clear. So if you talk about the 14 strikers left then we have no problem. 15 BRIGADIER CALITZ: Ja, nee, ek verwys van 16 die polisie se kant af, so ekskuus daarvoor, mnr die 17 Voorsitter. As ek sê linkerkant van die kraal bedoel ek 18 waar Nyala4 teen die kraal staan, waar ons verwys het na 19 insident 2. 20 MR GOTZ: So what I want to put to you is 21 that if I'm correct that that is the position of the 22 teargas canister and the rough timing, that is a factor 23 which contributes to the inability of the front group of 24 strikers from turning around, as it were, and making their 25 way back outside of the –</p>

<p style="text-align: right;">Page 21122</p> <p>1 MR SEMENYA SC: Chair, we are at that 2 point where again a fact is stated which does not have any 3 witness to it. 4 MR GOTZ: No, Chair, I'm putting – 5 CHAIRPERSON: Repeat the question – 6 MR GOTZ: I'm putting a simple 7 proposition. 8 CHAIRPERSON: Repeat the question? 9 MR GOTZ: If I'm correct that the teargas 10 canister is fired at this point of time or just slightly 11 before it and if I'm correct that the position of the 12 teargas canister is below Papa11 and not in front of the 13 crowd, in front of the lead crowd, that is a factor which 14 would contribute to the inability of the front group of 15 strikers from moving around, of moving backwards, correct? 16 People move away from teargas, they don't move towards it – 17 CHAIRPERSON: That sounds right, it is a 18 hypothetical question but I think the hypothesis is one 19 that we can allow him to put, and on the probabilities if 20 there was teargas behind the group of strikers, it would be 21 a factor which would have encouraged them not to turn 22 around and go back because they were marching into a cloud 23 of teargas. Okay, you can put that, and that must be right 24 surely. 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>	<p style="text-align: right;">Page 21124</p> <p>1 because he wants to attack anybody, but because teargas is 2 designed to induce an unpleasant sensation, that's why 3 teargas is used. So – 4 MR SEMENYA SC: Chair, but the case 5 before the Commission is, we are not dealing with that 6 situation. We are told once you throw a teargas instead of 7 people going in that particular direction they attack the 8 police, that's what happened on the 13th, that's the 9 evidence so far. 10 CHAIRPERSON: Yes, no, no. Well, the 11 question of course is, you've got a choice, you're going to 12 be caught between two fires as it were, but the real 13 question is, what is put is, there is teargas behind 14 people, not that it necessarily affected them, but that if 15 they move in such a way that they come within range of it 16 then they will be affected by it. We are not dealing with 17 a situation which is actually affecting them and possibly 18 makes them cross and makes them advance more aggressively 19 forward. So I think that's the answer, but anyway, it is 20 merely half past three, let's just round this point off and 21 then adjourn. Hierdie is net 'n bydraende factor, it is 22 fact. 23 BRIGADIER CALITZ: Mnr die Voorsitter, as 24 ek dit kan – 25 CHAIRPERSON: It is not a conclusive</p>
<p style="text-align: right;">Page 21123</p> <p>1 wil amper sê dan kan ons enige scenario afspeel hier, maar 2 dit kan 'n bydraende factor wees, maar dit is nie gebeur 3 het nie. 4 CHAIRPERSON: No, no, no, perhaps I put 5 it wrongly, I mean Mr Gotz has put it wrongly too. 6 Generally speaking someone doesn't voluntarily walk into a 7 cloud of teargas unless he has got a gas mask, right? So 8 if he has got a choice to go in forward and there is no 9 teargas and going backwards where there is teargas he is 10 likely to go forward, unless of course there is greater 11 discomfort of some kind awaiting in front of him, that must 12 be right? 13 MR SEMENYA SC: Chair, I don't – 14 BRIGADIER CALITZ: Mnr die Voorsitter, as 15 ek mag – 16 MR SEMENYA SC: For the record we know 17 there is a version that teargas makes people attack the 18 police, so these probabilities and hypothesis with respect 19 do not – 20 CHAIRPERSON: I'm not talking about 21 attacking the police at all, I'm talking about an ordinary 22 person wouldn't go on the road, he has got teargas in front 23 of him and no teargas behind him, he is likely to go behind 24 him and not in front of him and vice versa. If there is 25 teargas in front of him he is not likely to go forward, not</p>	<p style="text-align: right;">Page 21125</p> <p>1 factor, but you give Mr Gotz about 2 out of 10 for the 2 point he has put, it is 'n bydraende factor, is that 3 correct? 4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 nee, ek sal hom 0 uit 10 gee. As ek mag, u laat my toe in 6 drie sekondes, 'n normale man in die straat af loop en daar 7 is traangas wat sal hy doen, - hy sal weg beweeg. As 'n 8 normale man in die straat afloop en daar word op hom 9 geskiet met rubber wat gaan hy doen, hy gaan weg beweeg. 10 Dit is dieselfde, so ek – 11 CHAIRPERSON: Yes, that's the two fires 12 that these people were caught in. 13 BRIGADIER CALITZ: Die mense moes weg 14 beweeg het na insident 2 toe, mnr die Voorsitter. 15 CHAIRPERSON: Alright, it is now half 16 past three, I did indicate we would have to adjourn at half 17 past three, so I'd hoped you could finish this, this 18 afternoon, but I'm not criticising you, Mr Gotz, you 19 couldn't, so we'll carry on at nine tomorrow morning. How 20 long, I know I've asked this before and I haven't always 21 got accurate information but not to any fault of yours, how 22 long do you think you're likely to be tomorrow? 23 MR GOTZ: Chair, - 24 CHAIRPERSON: Allowing for a bit of 25 injury time?</p>

1 MR GOTZ: I really was going to finish in
2 five, ten minutes, but I understand that you need to
3 adjourn.

4 CHAIRPERSON: No, we have to adjourn at
5 3:30. Anyway, so it sounds as if there is a fair prospect
6 that five or ten minutes after nine you will be finished.

7 MR GOTZ: I will certainly finish within
8 that time, Chair.

9 CHAIRPERSON: Alright, we will adjourn
10 now until nine o'clock tomorrow morning.

11 [COMMISSION ADJOURNED]

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