

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

Lukmos
communications

28 JANUARY 2014

TRANSCRIPT PAGES 20958 to 21126

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 am 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 am 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 **CHAIRPERSON:** Mr Gotz, are you ready to

15 proceed with your cross-examination?

16 **MR GOTZ:** Thank you, Chairperson, 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 will recall we ended yesterday with us

22 debating a point that I had made that it were not that easy

23 for the strikers to retreat, as it were. You will recall

24 that?

25 **BRIGADIER CALITZ:** Remember what you

1 said.

2 **MR GOTZ:** And it was suggested to me that

3 I should produce some evidence underlying my proposition.

4 I would 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 – Chairperson, they should also be in the

8 Commissioners' bundles. The photographs have lines drawn

9 on them. They are aerial shots.

10 **CHAIRPERSON:** You explained to us in

11 chambers that these were exhibits that was already before

12 the Commission, but what you've done is you've added to the

13 exhibits certain lines which – I am not quite sure where I

14 put them – certain lines which indicated something which

15 you are going to deal with in cross-examination.

16 **MR GOTZ:** Yes.

17 **CHAIRPERSON:** Am I –

18 **MR GOTZ:** Chairperson, for the purposes of –

19 **CHAIRPERSON:** - recollecting correctly?

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

1 KKK57. Is that right?

2 **MR GOTZ:** Yes.

3 **CHAIRPERSON:** So we have two – it is two
4 photographs, isn't it?

5 **MR GOTZ:** Two photographs, Chairperson. 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 did not check them. Are
12 they – no, they are not the same photograph.

13 **MR GOTZ:** They are 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 do not have that at my fingertips, Chairperson.

21 **CHAIRPERSON:** Alright, well never mind;
22 we will provisionally just mark them 57.1 and 2, and then
23 when you have the information at your fingertips, as
24 you put it, you will then announce it.

25 **MR GOTZ:** Alright, thank you, Chairperson.

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. I did not know, but I

5 presumed that it was your team putting it here

6 for me.

7 **CHAIRPERSON:** Have you marked them? Did you

8 mark them as KKK57.1 en KKK57.2?

9 **BRIGADIER CALITZ:** I marked it like that,

10 thank you, Mr Chairperson.

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 am not suggesting that individuals could not climb

20 under a fence or over a fence, but I am 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:** Yes.

1 **CHAIRPERSON:** What we see on the screen

2 have not got it.

3 **MR GOTZ:** Chairperson, I am not sure whether my

4 learned friend has copies of this document.

5 **MR SEMENYA SC:** No, we do not.

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 do not have photographs

10 at all, Chairperson.

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 Chairperson.

18 **CHAIRPERSON:** Alright, what we had on the

19 screen did not have the red markings.

20 **MR GOTZ:** I am not sure what happened to

21 them on the screen, Chairperson, 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:** Chairperson, if you will just bear with

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 is screened, or what –

5 **MR GOTZ:** No, no, not at all, Chairperson.

6 We have 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 have got it. You
14 see the red line there, Brigadier?

15 **BRIGADIER CALITZ:** I see it, Mr

16 Chairperson.

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 is presumably the fence
20 around the power station. Is that right, Mr Gotz?

21 **MR GOTZ:** Yes, indeed, Chairperson.

22 **CHAIRPERSON:** So we have 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.

1 **CHAIRPERSON:** We have then got at an angle

2 of about 45 degrees –

3 **MR GOTZ:** I think that is more –

4 **CHAIRPERSON:** - moving towards - or

5 slightly more – moving towards the middle of the page we have

6 got the wire barrier. Then we have got almost a right

7 angle –

8 **MR GOTZ:** Yes.

9 **CHAIRPERSON:** - moving to the right to

10 the vicinity of the kraal. We have 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 have

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 is that supposed to be?

24 **MR GOTZ:** Chairperson, so on our understanding,

25 having visited the scene as well as having looked at these

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 have got
8 other photographs. I cannot remember that, but I am not
9 quarrelling with you. You may well be right, but after a
10 few more witnesses have testified I am proposing that we are
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 have inspected
16 it and you've seen it yourself and without putting you
17 under oath in the witness box I shall 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 –

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 do not 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 are 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

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 am 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 Pappa1 was located. You will confirm that there
10 are barbed wire fences going in that V-shape, as I have
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 is a wide range
20 of them, but I shall 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

1 worthless, but you are prepared to take that risk, Mr Gotz.

2 **MR GOTZ:** Chairperson, I am comfortable –

3 **CHAIRPERSON:** On your assurance I am

4 prepared to as well.

5 **MR GOTZ:** I am comfortable that the

6 representation is accurate, perhaps with one qualification

7 is that I am 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 will see a built-up area. That is Wonderkop, correct?

14 **BRIGADIER CALITZ:** If you refer to the settlement,

15 according to me it is Nkaneng.

16 **MR GOTZ:** Yes, I mean just so that we are

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:** Mr Chairperson,

24 I am not sure. I believe Lonmin would be

25 able to assist us better on where the separation line was.

1 According to me the settlement
2 was one place, so I do not know where the separation line between
3 Wonderkop and Nkaneng will be.

4 **MR GOTZ:** Brigadier, what we have also
5 sought to represent on this diagram is the movement of the
6 protesters, or strikers off the hill towards the small
7 kraal.

8 **MR SEMENYA SC:** That, Chairperson, we do not
9 accept as accurate.

10 **MR GOTZ:** Perhaps I can assist, Chairperson.
11 I am not suggesting, I am 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 hill itself, and there were those who tended to
20 congregate on the plain, as it were, the flat area in front
21 of the hill, and that's obviously not a watertight
22 distinction between the two, but it is 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

1 hill. 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 hill. 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 hill. That is 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:** Maybe if I may ask for a pointer
24 it will make it easier,
25 just to get back to the question you asked earlier,

1 the question asked
2 that I gave evidence that the
3 top corner of the kraal was
4 position and that it was also where the
5 "barbed wire" was. I just want to answer ,
6 that I cannot testify to that, my vehicle was
7 not at that point as they indicate and there were no
8 "barbed wire" where I was.

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 am 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:** Maybe,
17 maybe it is the manner –

18 **MR SEMENYA SC:** Mr Chairperson, -

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

21 **MR SEMENYA SC:** Chairperson, 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 Chairperson, that simply
25 confirms my point. His Nyala could drive over a barbed

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 am not sure how much

7 you need these red lines, except by way of a general

8 indication.

9 **MR GOTZ:** Yes.

10 **CHAIRPERSON:** But –

11 **MR GOTZ:** It is a general indication,

12 Chairperson.

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:** May I interrupt,

21 just to get back to the previous point,

22 Mr Chairperson you said my vehicle was at the point,

23 in other

24 words where they meet, that was not the position of my

25 Nyala. The red dot just showed

1 that it was in the middle, so it is not at the point, it is in
2 the middle of that fence, I disagree with you
3 there.

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 am 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 shall allow you to carry on, but if
16 this is just going to be ploughing that field then I am
17 not going to allow it.

18 **MR GOTZ:** Chairperson, I have no intention of
19 ploughing 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.

1 **CHAIRPERSON:** So can we now proceed?

2 **MR GOTZ:** Brigadier, can I then in

3 further evidence of my point refer you to a photograph from

4 Vermaak's BlackBerry series? That will be Exhibit JJJ, I

5 beg your pardon, it is Exhibit JJJ –

6 **CHAIRPERSON:** KKK57.2?

7 **MR GOTZ:** No, no, no, Chairperson, let's move

8 on from this because I think we're going to have the same

9 problem in relation to 57.2, so I wanted to move on without

10 reference to barbed –

11 **CHAIRPERSON:** Well, move on, move on. If

12 you've got a good point you want to make I don't want to

13 stop you but on the other hand if this is going to be

14 repetition and it is going to be one that is difficult to

15 establish without all sorts of collateral things, then

16 you'll have to reconsider it.

17 **MR GOTZ:** Can we look at Exhibit JJJ10

18 and the photograph is 1515?

19 **CHAIRPERSON:** Was the witness given

20 notice of your intention to rely on this photograph?

21 **MR GOTZ:** He was indeed, Chairperson, - sorry,

22 it is Exhibit JJJ11, not 10 and it is 1515 and I sent these

23 references through by way of an email last night.

24 **BRIGADIER CALITZ:** Mr Chairperson,

25 remember, I am under oath,

1 I have to talk the truth, I got the reference
2 JJJ10 after referring to a photo and also the email
3 Exhibit JJJ10. Those photos does not
4 exist in JJJ10 as you said now, it is in
5 JJJ11, I know it was not given incorrect to be
6 deliberately, but it is incorrect, I shall still look at the photos though,
7 and answer the questions.

8 **MR GOTZ:** I do apologise for that,

9 Brigadier, but –

10 **CHAIRPERSON:** Thank you, Brigadier, I –

11 **MR GOTZ:** - these are photographs that

12 you've seen before, I don't think that –

13 **CHAIRPERSON:** I appreciate that, let's do

14 the best we can with JJJ11 and if you have difficulty and

15 you need a bit of time, and then we'll accommodate that.

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

17 Chairperson.

18 **MR GOTZ:** So if we can have Exhibit

19 JJJ11, 1515 up on the screen? It seems to be bedevilled by

20 technological failures.

21 **CHAIRPERSON:** While we're waiting, Mr

22 Gotz, it has been pointed out to me that we omitted

23 yesterday, it was my fault but I hope to remedy my

24 omission. We sort of marked the report that you handed in

25 to us by way of explaining certain things. We should have

1 given it an exhibit number.

2 **MR GOTZ:** Chairperson, it was originally made

3 an exhibit number, so –

4 **CHAIRPERSON:** The report that you handed

5 in, the explanatory report that you handed in, that wasn't

6 give an exhibit number.

7 **MR GOTZ:** Chairperson, you'll recall that at

8 the commencement of my cross-examination we marked the

9 actual document movements of SAPS –

10 **CHAIRPERSON:** Yes –

11 **MR GOTZ:** - vehicle as Exhibit 52.

12 **CHAIRPERSON:** Yes.

13 **MR GOTZ:** And then there was another

14 exhibit, a shot fired by the striker which is Exhibit 53

15 and then we provisionally marked the report which I –

16 **CHAIRPERSON:** Okay, -

17 **MR GOTZ:** - produced as Exhibit 54.

18 **CHAIRPERSON:** Okay, I was, my apology is

19 withdrawn, I was also misinformed it hadn't been given a

20 number.

21 **MR GOTZ:** Okay.

22 **CHAIRPERSON:** I appreciate it has and so

23 all the housekeeping is in order.

24 **MR GOTZ:** Absolutely.

25 **CHAIRPERSON:** And have we now got the

1 photograph on the screen that you were referring to?

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

3 **CHAIRPERSON:** Okay, you may now carry on.

4 **MR GOTZ:** You have seen this photograph

5 before of course.

6 **BRIGADIER CALITZ:** It is correct, we

7 refer to incident 2.

8 **MR GOTZ:** You'll agree with me that what

9 this photograph shows is the lead group of protestors

10 almost in the centre of the photograph, but perhaps just

11 off to the left, correct?

12 **BRIGADIER CALITZ:** The group in front,

13 will be the leading group,

14 yes.

15 **MR GOTZ:** Now we do know that, and I

16 really don't want to debate the issues of incident 2,

17 etcetera, what we do know is that the direction that the

18 strikers moved was downwards on the photograph, so if one

19 draws a line between the kraal on the left hand side and

20 the kraal on the right hand side, they moved down that

21 line, correct?

22 **BRIGADIER CALITZ:** The group in front moved towards

23 the kraal where Nyala 4 closed off the point,

24 this is the first attempt to which we refer to as

25 incident 2, we had to go through and

1 Nyala 4 closed it off and forced them to move around the kraal.

2 **MR GOTZ:** And you'll agree with me also

3 and, Chairperson, 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 shall 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

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:** There was a wire,

5 you referred to barbed wire,

6 barbed

7 wire is what we throw out, so I disagree,

8 you referred to the photo,

9 I just want to check the red line, as you said it goes up to the

10 end of the kraal, that one

11 is just south of the

12 shacks, on this photo you indicated the

13 distance longer, in a

14 westerly direction.

15 **MR GOTZ:** Brigadier, I am not sure what

16 our points of differences are but I think you've given

17 sufficient clarification for my purposes.

18 **BRIGADIER CALITZ:** Maybe if you use the pointed

19 and just repeat what you said, you said, "and the

20 barbed wire started there up to the corner" and then you said,

21 "it runs up to", no, "up to", go back, "it

22 runs up to", in other words where does this wire go to?

23 **MR GOTZ:** So the barbed wire runs from a

24 position –

25 **BRIGADIER CALITZ:** I have the

1 beginning, I just need to get the end position –

2 **MR GOTZ:** Yes, it runs up to a position

3 where you see a dark patch.

4 **BRIGADIER CALITZ:** I am with you.

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, Chairperson, but I am suggesting that the barbed wire

25 runs past the large kraal and then divert it probably at a

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:** That area is open,

21 as well as the whole westerly direction what the

22 chairperson talks bout, about 160 degrees.

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

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 have 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:** Chairperson, 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:** No.

20 **CHAIRPERSON:** But let's hope the same

21 will happen with the next one.

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 I am comfortable with the photos, thank you.

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

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

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:** I can see the
9 front of the group, yes.

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:** I see
14 Pappa11 first and then the STF Casspir, it is correct.

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, Chairperson. 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

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:** Chairperson, I am 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 am

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

11 this fact. I am 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 back out what sound like a military

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

21 direction." If he'd done that I am 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

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:** Chairperson, with respect, we
8 know that even according to Mr Mpofu Mr Noki is in control
9 of this group. He says we have 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 am 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 am not
19 prepared at this stage to accept that that statement is
20 necessarily correct.

21 **MR SEMENYA SC:** No, but Chairperson, 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

1 weight we place on it.

2 **CHAIRPERSON:** The mere fact that evidence

3 cannot be gainsaid directly doesn't mean it has to be

4 accepted. There's a case of *Segune versus Banks* in the

5 Appellate Division, you'll remember, which decided that

6 point very clearly. I am prepared to allow the question in

7 the modified form I have suggested it, but before I do that I

8 understand Adv. Hemraj wants to say something too which I'd

9 better listen to first before I make a final ruling.

10 **COMMISSIONER HEMRAJ:** Mr Gotz, is the

11 question that you're perhaps not wanting to put is that as

12 it appears on the photograph that there appears to be no

13 opportunity for them to turn around, is that perhaps what

14 you want to say?

15 **MR GOTZ:** Commissioner, I wouldn't put it

16 as highly as no opportunity. I think I have made it

17 absolutely clear and it will be on record that I have never

18 suggested that it's impossible. What I am suggesting is

19 that it is not as easy as the Brigadier has sought to

20 suggest for the crowd, for the people in the front of that

21 crowd to do, as has been helpfully suggested by the Chairperson

22 of the Commission, a dramatic turnaround given the

23 circumstances, including for instance the fact that you've

24 got a whole group of people behind you. Knowing the

25 psychology of crowds and the direction that they were

1 moving, it's not that easy to simply turn around and that's

2 the proposition that I want to put to the Brigadier.

3 **CHAIRPERSON:** Mr Semenya, anything else

4 you want to add on the point? It seems to me prima facie,

5 subject to what you may say, that the way it's now put

6 avoids many of the difficulties which you raised before.

7 **MR SEMENYA SC:** Well, Chairperson, I shall abide

8 the ruling. I don't agree.

9 **CHAIRPERSON:** Yes well, good counsel

10 never says whether he or she agrees with what the -

11 **MR SEMENYA SC:** [Microphone off,

12 inaudible].

13 **CHAIRPERSON:** No, I am saying something

14 else. Good counsel doesn't say to the court I agree with

15 you or I disagree. I had a number of passages with Mr

16 Mpofu on that. Please, counsel make submissions; they

17 don't give courts or commissions the benefit of their own

18 views. So please bear that in mind. I will allow the

19 question on the modified basis which you've now put it,

20 therefore from a practical common sense point of view if

21 you're at the front of a column of a large number of people

22 and you want to change direction, you can't do it in a -

23 the question is you can't do it in a short period of time

24 unless you can be certain that everybody behind you will

25 make the same about-turn at the same time you were doing

1 it. Even if you bark out a command in your best
2 militaristic, or para-militaristic voice, it isn't
3 necessarily going to help. Anyway, you've heard the point,
4 Brigadier. Mr Gotz doesn't have to repeat it. I shall allow
5 that question. What do you say about that?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 maybe I need to explain so that some things will be
8 clearer. Between
9 the first photo and this one, we must not forget that
10 Nyala 4 already lodge a
11 dispersing action, which we refer to as
12 incident 2, they made a deliberate choice
13 to move in, which we refer to
14 as incident 3.

15 At this stage Pappa11, the
16 Casspirs, and POP members were also busy lodging
17 action. We know there were a few hundred – I do not have
18 the specific number – rubber bullets shot at
19 them.

20 Mr Chairperson,

21 to get back to

22 how police operations work,

23 if the police disperse a group,

24 99.999% will move away from the police line.

15 In this case, they deliberately moved

1 around –
2 as I testified earlier,
3 I talked about an 45 “angle.”
4 Mr Chairperson asked me what
5 I would see if I was in that front group,
6 I replied, that I would have seen four, five or six armoured
7 vehicles dispersing, with teargas, “stun”
8 grenade and rubber bullets. I do not
9 know what to say – it might have been the “muti,”
10 their believes, I cannot think that a
11 footpath can be so important that you will
12 offer your life.
13 It have never
14 been like this ever before in any event that I was part of
15 in South Africa.
16 To get back to your question, Mr
17 Chairperson, _____communications_____
18 I think the words
19 “about turn,” was used, everybody did not hear it, but the leaders
20 leaders were in front and we even know they
21 walked in a close-knit formation
22 and even if they came to a standstill and
23 Mr Noki held his hand in the air, as he did
24 on the 14th, 15th and 16th, when we negotiated with them,
25 there were

1 constant leader element to which this group adhered to.
2 They did what the leaders told them to do.
3 If the leader said sit, they sat, if
4 he said we are going in this direction,
5 they would do it,
6 the point I want to make is that they
7 deliberately moved around and
8 Mr Noki could put his hand in the air at any time,
9 or even the leader element,
10 to say, stop, they are dispersing, let us move away. My orders
11 would be the shame,
12 at a later stage I instructed my members, "Do not shoot unless they
13 engage," we continued dispersing.
14 Exactly the same order would have been given here.
15 If the people stopped and turned and
16 moved away,
17 the orders would be, stop the "dispersion,"
18 These people did not adhere.
19 In South Africa, any group that gathers illegally
20 with weapons,
21 has to be dispersed.
22 Mr Chairperson,
23 I do not know how to put it so that he can understand,
24 but I hope it answers your question.
25 **CHAIRPERSON:** No, no, well I understand

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.

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 "determined," 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?

20 **BRIGADIER CALITZ:** It is correct, Mr
21 Chairperson.

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

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?

5 **BRIGADIER CALITZ:** It is a "summary,"

6 Mr Chairperson. In 29 seconds

7 the leaders can make a group turn around. In my
8 operational experience, we dispersed of many people,
9 and the minute the dispersing started, the front leaders
10 turned around and ran away. Yes,
11 some people may fall over each other,
12 there will be injuries, but surely no fatalities as in
13 this case.

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. Chairperson, if we can
17 look at exhibit JJJ194.16. This is one of the videos from
18 the so-called Al Jazeera series.

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 am 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?

1 **BRIGADIER CALITZ:** The question have been asked,
2 Mr Chairperson. They were still in the north-westerly
3 corner of the kraal. So
4 they would not be able to see the TRT line forming.

5 **CHAIRPERSON:** So they couldn't have seen
6 it?

7 **BRIGADIER CALITZ:** Not the –

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?

11 **BRIGADIER CALITZ:** Yes, they –

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?

16 **BRIGADIER CALITZ:** Mr Chairperson, I
17 am under oath, may we
18 please zoom in to the top to see if there is
19 a person passed the corner already,
20 but from here it does not seem like they are around the
21 corner of the kraal yet. At this stage
22 it would only be the POP acting
23 against them. Mr Chairperson, I
24 do not know if it answer your question. The group –

25 **CHAIRPERSON:** If it's correct, I am asking

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 am 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 am 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:** Mr Chairperson,

21 what we see on the video is the Nyalas, out of

22 focus, there is a small Nyala visible on the north-eastern, or

23 the eastern side of the kraal.

24 That is where the people are standing

25 between the white Casspir and the Nyala that

1 follows, so it is just out of visibility on
2 this photo, but we know Nyala 4,
3 the "barbed wire", as well as Pappa11,
4 already lodged action,
5 about three minutes before getting
6 here.

7 **CHAIRPERSON:** Yes, what I am 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:** No, I hear you,
15 Mr Chairperson that is why I am asking
16 if we can zoom in,
17 we know the people are walking, so it might be a second or two after
18 this photo. If
19 we can zoom in at the top, please?
20 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.

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, page
7 5, if I am correct.

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:** Yes, page 5. It is
11 very out of focus -
12 on the left-hand side of that group, I
13 see a person with the white shirt or jacket,
14 I just want to see how far that person is from
15 the kraal.

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 have 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

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 am
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 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 am –

21 **CHAIRPERSON:** No, no, I understand that.
22 I am 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 am taking him,
25 but I can answer, I can venture an answer to the question.

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:** It is correct, Mr
7 Chairperson. I just wanted to see how far they were
8 from the corner, because if you are around the corner,
9 you would be able to see the TRT-line forming.
10 That Nyala, which Mr Gotz are referring to, is moving away, it is Pappa10,
11 I do not think he blocked the whole TRT-
12 line. The TRT-line was about 80 members,
13 so they would have been visible on the side of that
14 Nyala, so it could not have been three seconds,
15 Mr Chairperson.

16 **CHAIRPERSON:** What would you say it would
17 have been?

18 **BRIGADIER CALITZ:** I shall say -
19 if we look at the speed the people are coming around
20 the corner, and we give them another
21 five to six seconds to get through this corner,
22 they would definitely be able to see through the Nyala
23 that more police were lining up.

24 **CHAIRPERSON:** As far as I remember there
25 is a video slide where one can see an Nyala moving just

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:** It is Pappa10, which
7 I referred to and I think it is the three seconds
8 Mr Gotz are referring to, but I am also saying that one Nyala
9 could not block the TRT-line, it is impossible,
10 as they were 80 in the line, so you would
11 see them on the sides.

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:** Mr Chairperson,
25 it is correct. Maybe just –

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:** Chairperson, it was never my ducks
13 out of row, but Chairperson –

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.

1 I didn't –

2 **MR GOTZ:** Chairperson, 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:** Thank you, Mr

6 Chairperson.

7 **CHAIRPERSON:** Yes, Mr Gotz.

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

9 Chairperson, 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 have

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 Chairperson.

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:** Yes, it is correct.

25 **MR GOTZ:** And the report which underlies

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

3 **BRIGADIER CALITZ:** Are you talking
4 about the subtitles?

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

9 **BRIGADIER CALITZ:** My document
10 has photos and at the bottom of each photo is a
11 subtitle saying, "Pappa19, 10, are
12 the same", that is the document I have.

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:** Chairperson, it appears we
18 don't have the report.

19 **BRIGADIER CALITZ:** Mr Chairperson,
20 I think it is the one you are referring to, the last blue page
21 marked KKK54 –

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

25 **BRIGADIER CALITZ:** No, it

1 was never given to us.

2 **CHAIRPERSON:** He says he hasn't got it,

3 so have you got a spare one for him?

4 **MR GOTZ:** Chairperson, 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. Chairperson, just for the

14 record, this was in a –

15 **MR SEMENYA SC:** I can't look at a 46-page

16 document now, Chairperson.

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 Chairperson, I am not

24 rejecting your offer –

25 **CHAIRPERSON:** No, no, I am just reminding

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 Chairperson, 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:** Mr Chairperson,
15 I got the “email” which was sent to my
16 Advocate and that one was not included.
17 On the Friday, you said the
18 page is “blank” and Mr Gotz said he would hand
19 in that part. We never received this document via
20 email, if he might give us the proof that
21 it was emailed, but I have never seen
22 this document before
23 now.

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

1 for the moment?

2 **MR GOTZ:** Yes, Chairperson, 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, Chairperson, 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

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 have 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:** Chairperson, 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 have
14 suggested.

15 **MR GOTZ:** Chairperson, 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 shall 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

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 have 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

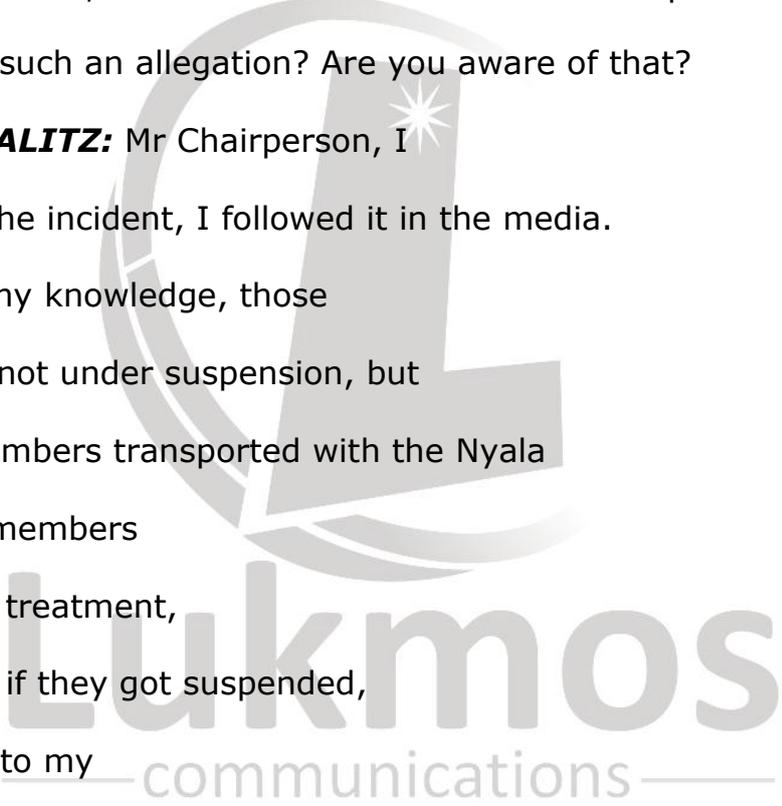
22 that pellets were, the issue of pellets to members of the

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

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," 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:** Mr Chairperson, I
10 am aware of the incident, I followed it in the media.
11 According to my knowledge, those
12 members are not under suspension, but
13 I think the members transported with the Nyala
14 I think those members
15 are still under treatment,
16 I do not know if they got suspended,
17 not according to my communications
18 knowledge.

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:** I heard it in the
23 media and followed it, yes. I did not
24 follow it up, as I am testifying under oath,
25 so I did not discuss it with anyone.

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 am
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:** I did see it
12 on the TV new, it is correct.

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 might have been members of the police. The

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 have
8 covered already.

9 **MR GOTZ:** Yes.

10 **CHAIRPERSON:** But proceed if you can find
11 some new ground to cover.

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.

18 **BRIGADIER CALITZ:** Yes, during 2006

19 – I think it was when Standing Order 262 was issued,

20 all live rounds was

21 withdrawn from any operational

22 police officers, in other words,

23 we never use it anymore outside the

24 utilization of our services

25 **MR GOTZ:** So would it be correct to say

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?

5 **BRIGADIER CALITZ:** Yes, it is correct, and
6 if we find it in the possession of a police officer,
7 it is indeed.

8 So –

9 **CHAIRPERSON:** Does that mean there's an
10 arsenal somewhere, a rubber pellet arsenal where all the
11 rubber pellets that the police –

12 **MR GOTZ:** Shotgun pellets.

13 **CHAIRPERSON:** Sorry, shotgun rubber, they
14 are rubber pellets, aren't they?

15 **MR GOTZ:** No, they're steel.

16 **CHAIRPERSON:** Oh, sorry.

17 **BRIGADIER CALITZ:** Shotgun pellets.

18 **CHAIRPERSON:** Shotgun. Anyway, just as

19 well I have been corrected so I have 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?

1 **BRIGADIER CALITZ:** It was withdrawn and
2 put into the weapon safes, which is a big walk in safe,
3 specific people are in charge of those safes
4 and all the issues to
5 members by means of a
6 issuing register.

7 It is all well controlled,
8 by SSGAAA, the "pellets" you
9 are referring to is not used anymore.

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?

14 **BRIGADIER CALITZ:** Mr Chairperson,
15 yes, it was used during
16 "training," just to get rid of it.

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?

20 **BRIGADIER CALITZ:** No, it is
21 not my evidence.

22 **MR GOTZ:** But are you then saying that
23 they are used during the course of training of POPS
24 members?

25 **BRIGADIER CALITZ:** It is correct.

1 I said that the "training division"
2 used those rounds and it was issued to them under
3 a controlled environment, to know how to load
4 and shoot a shotgun.
5 It is not how to use the "pellets" or
6 the rubber, but
7 to learn the use of a
8 shotgun, so those rounds was used for that
9 purpose.
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 -

22 **MR SEMENYA SC:** Objection -

23 **CHAIRPERSON:** No, no, no, I am 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

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.

12 **BRIGADIER CALITZ:** Mr Chairperson,

13 yes, I waited for the question.

14 Any person with a licence for a shotgun

15 can obtain it, and even if you do not have a licence

16 you can obtain it illegally from a friend for instance,

17 we know that Lonmin

18 security still uses the "pellets."

19 It is therefore available if a members wants to

20 obtain it dishonestly, but it

21 remains unlawful and not permitted

22 to be in possession of a member.

23 **[10:49] CHAIRPERSON:** It is also clear, is it

24 not, that there's been expressed actually in, I am not sure

25 publicly but it's certainly been expressed in the police

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?

9 **BRIGADIER CALITZ:** Mr Chairperson, maybe
10 I must be careful with my answers, there is
11 no such group that I am aware of –

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

13 **BRIGADIER CALITZ:** Yes, I am
14 aware of individuals that was in possession thereof,
15 but after the change from a police force to a police service,
16 it was withdrawn, just remembers there
17 are various "pellets." The SSG which have –

18 I think it has 18 metal balls,
19 then the AAA with about 75 balls and then we have
20 birdshot,
21 this contains about
22 270 very small balls,
23 but it is not intended to kill,
24 just to stop more effective than the rubber bullets,
25 The blanket and the

1 "double layer of clothing" would not be able to
2 stop the birdshot,
3 there is people that want this back or something
4 that could be seen between rubber and R5, at this stage
5 it is negated.

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?

14 **BRIGADIER CALITZ:** It is correct, yes.

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?

19 **BRIGADIER CALITZ:** Mr Chairperson,
20 nee, not at all.
21 Since I was growing up,
22 shotgun rounds
23 were always available to buy if you have a licence,
24 so it is not new "evidence".
25 All I am saying is that it is not

1 issued operationally, so

2 the police cannot have been issued with it and have it in

3 their possession.

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 police officer should have – or police officer 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?

24 **BRIGADIER CALITZ:** Mr Chairperson,

25 yes, I agree with you.

1 It has a different sound and
2 would have been reported to the commanders
3 and we would have
4 found those shell casings on the scene.

5 So –

6 **CHAIRPERSON:** So all those factors you
7 rely on –

8 **BRIGADIER CALITZ:** Yes.

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:** Totally, Mr

16 Chairperson, yes.

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 have indicated Pappa19 or
21 Pappa10 at the back of the row of Nyalas, you wouldn't find
22 "shell casings," 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

1 Nyala and it wouldn't then be found on the scene, correct?

2 **BRIGADIER CALITZ:** It is correct,

3 yes.

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:** We testified on this already,

8 we know that three

9 shotguns were missing on that day, two of the security and

10 one of the police officer,

11 I also testified that there

12 are other ways and means to shoot a shotgun bullet, other

13 than with a shotgun. If that

14 one shot was fired, it would not have

15 been found at the scene.

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

1 presentation, Brigadier?

2 **BRIGADIER CALITZ:** It is correct, Mr

3 Chairperson.

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:** I looked at it,

14 yes.

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:** Mr Chairperson,

25 nee, in video, what we saw in "hindsight"

1 there were two – it was my not my evidence,

2 I did not see it.

3 I believe if we watch it “frame by

4 frame,” our experts will be able to

5 agree with you in this regard.

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 am 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, Chairperson.

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 Semenya 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, Chairperson, that in fact is

25 what I was proposing. Brigadier, after having asked the

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, Chairperson, 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

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 am 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

1 helmet that we see shooting.

2 **CHAIRPERSON:** Mr Mpofu, I am 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:** Yes, well Chairperson, once

7 you've just postulated a situation, now one of my clients,

8 the so-called "other striker" shot, I am explaining that the

9 shot that we saw on the video was from a police officer. 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, Chairperson. 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, Chairperson, 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

1 the very 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:** Mr Chairperson,
17 no, I wanted to refer to something, but
18 I will refer it to the legal team, it might be able to
19 "assist", but I will
20 leave it to the experts and then we can come back
21 to it at a later stage.

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

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, Chairperson,
11 they're waving at us in the background. I am 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 am
16 sure she'll repeat her success on this occasion.

17 **[11:09]** Thank you very much, I am 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 have got the signatures

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:** Yes, 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:** That was my testimony

21 just now, yes.

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" –

1 **CHAIRPERSON:** I am 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?

1 **BRIGADIER CALITZ:** That's presumably how
2 it works normally. After a shooting incident,
3 the commander and police officers investigate the scene
4 in order to establish what happened.

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:** Yes, it is correct,
9 it was approximately that time.

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:** Mr Chairperson,
18 if I may assist Mr Gotz so that we can go through it quicker,
19 I already gave testimony on this,
20 the heading says, "Nature of operation,"
21 1.1 – you can compare it with my statement - JJJ107, paragraph 27,
22 in "italic bold," in
23 my statement. I do not know if it was you
24 or the previous advocate that questioned me on it.
25 I think it was you who said it was my words,

1 and I said no, it was Captain
2 Govender that reported it to us.
3 You can go and compare it word for word,
4 "Nature of operation," it was the information
5 in our possession at that stage,
6 and I testified from my statement
7 as the plan that
8 was briefed to us and the information we had
9 had available.
10 You went on to ask me I was aware
11 of the people that died, and I replied, no,
12 that allegation was made, but could not be confirmed.
13 I cannot deny that I did
14 not tell them that there people did not die,
15 the first two deaths we became aware of was the
16 two security guards and on the Sunday, the two mine
17 "employees," together with the nine vehicles
18 that was burned.
19 On the previous Friday, two people were wounded and
20 on the Saturday, five were wounded –
21 **CHAIRPERSON:** Friday night and Saturday –
22 **BRIGADIER CALITZ:** Saturday
23 five people were injured and later during the riot three more.
24 If my maths are correct, we are talking about
25 five, six, seven, eight, nine, ten people wounded

1 up to that stage,

2 we already testified to that matter, Mr

3 Chairperson.

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:** Mr Chairperson,

11 yes, we did testify on that, the

12 allegations was made,

13 we cannot say with surety, no you people did not die,

14 at that stage the investigations still

15 continued.

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:** No, I cannot recall

20 them "repeatedly" saying that to us.

21 **CHAIRPERSON:** But they definitely said it

22 at least once, didn't they?

23 **BRIGADIER CALITZ:** It is correct –

24 **CHAIRPERSON:** But did they say 'Two of

25 our people were killed by NUM on Saturday morning'? If

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:** No, Mr
14 Chairperson, I think it was a general
15 statement.

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:** Even though it was the
22 reason for carrying the weapons, it was still not a
23 excuse to be in possession of illegal weapons, while people
24 were "gathered". It is in contradiction with the
25 Constitution and the "Gatherings Act," and

1 we told them, it is "illegal," put
2 down the weapons, let us handle this "peacefully".
3 They could never be legally in possession of those
4 weapons, not matter what their reason was
5 for such.

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:** Mr Chairperson,
12 as far as my knowledge goes, during the previous
13 weapons "act" there was an announcement by
14 the Minister and he placed a prohibition on certain
15 items, which definitely included pangas, knopkieries and
16 so forth.
17 I can get the document, but I am almost completely
18 sure I am correct.

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

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:** Thank you, Mr

12 die Chairperson.

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:** Yes, I agree with

21 you

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?

1 **BRIGADIER CALITZ:** Yes, I do not think the purpose of the
2 "negotiations" was to get involved in
3 loan disputes,
4 we just said we would convey the
5 messages of the "mine employees," and
6 we did it immediately, I refer to that in
7 paragraph 57 – I mean, 47 – which we are there
8 to resolve the situation peacefully and to assist them.

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 have 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:** No, I disagree.
15 What I know of the Dangerous Weapons Act,
16 there were an announcement by the
17 Minister, I think it was the Act of
18 1971, and it was changed this year and
19 implemented in February.
20 It was announced that dangerous
21 weapons may not be displayed during riots or strikes, etcetera and
22 it included knopkieries, pangas, spears, iron, etcetera and I am
23 almost 100% sure about my facts, but I can get the act for
24 you.

25 **MR SEMENYA SC:** Chairperson, for what it is

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 am 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

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 am 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 Chairperson, I am certainly not
11 armed with all the legislation. I am 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 am 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 am not sure that this is a line

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 am 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 Chairperson, 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 – Chairperson,
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 Chairperson, my understanding is
21 that I think they will return during the course of the
22 week. I am not sure that they will be back with us today.

23 **CHAIRPERSON:** I think I shall ask Mr Tokota
24 in his best Xhosa to translate what I am going to say. I
25 see the families who were away for the Christmas break in

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 am 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 am 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

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, Chairperson. 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, CPM, 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:** I see the document,
24 yes.

25 **MR GOTZ:** Well, Brigadier, have you

1 received this training?

2 **BRIGADIER CALITZ:** I cannot

3 recall when this training document was compiled.

4 but I think it was after I completed my "crowd management" course,

5 I am aware that they use these material in the "refresher"

6 courses.

7 **MR GOTZ:** As we read this document it

8 makes a particularly important point, and I am 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:** Yes, one of the factors is

16 how you see it, there is various factors on how

17 the "crowd" reacts, etcetera.

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:** No, I disagree

1 with you.

2 **MR GOTZ:** And you interpreted much of
3 what the crowd did as a threat against the police.

4 **BRIGADIER CALITZ:** I referred
5 to various incidents where we were threatened,
6 but it was not the general feeling of the crowd since
7 we arrived on the 12th, no.

8 **MR GOTZ:** And in essence the way that you
9 approached dealing with crowd management on the 14th and the
10 15th ultimately prevented you from moving down what they say
11 in these documents is the five Cs to a position where you
12 had comprehension, cooperation, and building an
13 understanding with the crowd which would ultimately avoid
14 conflict.

15 **BRIGADIER CALITZ:** Yes, maybe I can assist.

16 The "five Cs" starts with "cooperation,"

17 since the 12th we gave our cooperation

18 between Lonmin and the people.

19 The second step is

20 "communication" and we started with

21 communication with the different parties.

22 "Comprehension" is

23 the "understanding," in other words we got the information

24 from the parties and reviewed what happened up to

25 that day.

1 There were police presence,
2 we did not go in from day one and said,
3 this is an illegal gathering, we give
4 you 10 to 15 minutes to break up,
5 or we would start to 'disperse', that
6 was an option, but the police did not
7 take this option, we chose to negotiate.

8 I know that
9 the Generals negotiated with
10 the management and the AMCU and,
11 NUM leaders, communication was
12 done extensively to get the "understanding,"
13 and "comprehension" of what was
14 happening.

15 After that - it was decided that
16 that the people cannot walk
17 around with weapons due to non-cooperation from their side,
18 and the deaths, which resulted in a conflict situation,
19 which forced us to go on to phase
20 3 toe, and after conflict we got confrontation. It
21 depends on how the groups react,
22 that is the five C's in short,
23 and the exact steps we
24 followed up to that stage.

25 **MR GOTZ:** Well, Brigadier, we do differ

1 with that opinion and it's based on partly the way in which
2 you've given evidence in these proceedings. For instance
3 the repeated reference to things that were done as
4 threatening, or threats against the police, is just by way
5 of one example. If I can give you another example, you
6 negotiated with the STF Scorpion vehicle behind you. The
7 STF Scorpion vehicle was paraded around Marikana and was
8 present on the afternoon of the 14th, correct?

9 **BRIGADIER CALITZ:** I cannot recall,
10 when we arrived my
11 Nyalas was the one involved with negotiations. I cannot
12 recall the Scorpions being at the scene on that day.
13 I might be wrong, but if there is
14 photos to show the contradictory,
15 please provide them, but they were not deployed for that reason.

16 **MR GOTZ:** No, Brigadier, you testified
17 that the STF went with you to investigate the body behind
18 the kraal. That was shortly after the negotiations and on
19 the scene. The STF must have been present.

20 **BRIGADIER CALITZ:** Yes, no, it was
21 not part of the "negotiations".
22 I think you are confusing the two matters.
23 The Special Forces gave us protection
24 where the body of the older person were lying on the ground.
25 I am sorry, I cannot recall his name.

1 Mr Chairperson.

2 **CHAIRPERSON:** I think you're referring to

3 Mr Twala.

4 **BRIGADIER CALITZ:** Mr Twala. In respect to

5 his family, they gave us support at that stage -

6 and it is clearly visible.

7 They were not part of the

8 "deploying" and the negotiations at that

9 stage, no.

10 **MR GOTZ:** No, but my point is a different

11 one. The STF was present on the scene. That was your

12 evidence, that the STF was there.

13 **BRIGADIER CALITZ:** Mr. Gotz, if

14 you look at the scene, I do not think we must go back there.

15 **CHAIRPERSON:** Stop, stop, stop. Look,

16 those people who have cell phones must please turn them

17 off. Turn your cell phone off immediately, or leave the

18 room. And please, all cell phones must be turned off. Let

19 me just make sure my own is turned off. Yes, it is. All

20 cell phones must be turned off. It disturbs the

21 proceedings; we can't allow it, and if there's anyone here

22 whose cell phone - please leave the room. Please leave the

23 room. Leave the room. You can come back after lunch.

24 Leave the room immediately. Whose cell phone went off?

25 The person whose cell phone went off must please leave the

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:** Chairperson, 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:** Yes, it is correct.
18 Just be clear to what scene you are referring to, you said,
19 "present on the scene," and clearly stated that they
20 were in the background during the negotiations, I am
21 telling you it is two different scene. Scene one,
22 we look from an easterly to westerly side to the hill,
23 the death of Mr
24 Twala occurred on the south side of the hill,
25 it was around the corner, the STF gained access with –

1 the gravel road behind

2 the substation

3 to come and assist us with

4 protection at the scene.

5 **[12:09]** Even the detectives were at the scene,

6 they were dropped off by the helicopters.

7 PKRS was at the scene, it was a crime scene

8 and needed to be protected.

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:** Yes, it is correct.

15 We negotiated with them from my Nyala.

16 **MR GOTZ:** You never sought true

17 comprehension or understanding of what their grievances

18 were, correct?

19 **BRIGADIER CALITZ:** I do not understand your statement,

20 They told us they did not want

21 to negotiate with the police, but with the management of the mine,

22 and that they were unhappy about the deaths

23 of their people, both these

24 messages were conveyed to the management of Lonmin.

25 The investigations continued and

1 we managed to convey the messages.

2 On the morning of the 15th

3 we gave them feedback from the management of the mine,

4 we played,

5 of one can call it that, a

6 "mediation" roll and that is where I disagree with you.

7 There was an "understanding,"

8 between us.

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. —communications—

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 am happy to reformulate it in

25 that way, Chairperson, that it may well not have happened.

1 **BRIGADIER CALITZ:** Mr Chairperson,
2 regarding to what Adv. Mpofu refers,
3 in the "benefit of hindsight,"
4 the
5 AMCU "protected strike" is still on-going with a loan disagreement
6 of R12 500, I am not agreeing,
7 it could be a contributing factor,
8 but if they came to an agreement,
9 I do not know if they would lay down their weapons and returned to work,
10 currently in the new,
11 Mr Mathunjwa asked the people
12 to be patience and peaceful and
13 protests without weapons, but we see it is not happening.
14 Incidents are occurring on a daily basis.
15 I cannot tell you with surety that it would not have happened.
16 As we are speaking it is still continuing.
17 It could be an contributing factor to get
18 them to calm down, but that is
19 just my personal opinion.

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

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?

8 **BRIGADIER CALITZ:** Mr Chairperson,
9 frustration might be a strong word, as we did not
10 get involved in "labour negotiations",
11 and it might have made the
12 situation easier if we could
13 give them something more,
14 after Marikana we went ahead
15 with the same negotiations
16 but I know they
17 started negotiations
18 with the leader groups,
19 so it could have been a contributing factor.

20 Frustration is a strong word, Mr Chairperson,
21 but –

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

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 have 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

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.

6 Now that, I would have thought that stance – and
7 this is a prima facie view which I am sure the Lonmin people
8 will deal with very comprehensively, but I would have
9 thought that in the light of the facts I have 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?

14 **BRIGADIER CALITZ:** Mr Chairperson,
15 some of the facts you mentioned, I was not even aware of,
16 but I accept that it comes out of
17 evidence, ———communications———
18 what we did give through to them, was that mine management
19 was willing to talk to them – in paragraph 56 of my statement,
20 I referred to that, if they
21 would “disarm” themselves and “return to work.”
22 You are also correct, the lone negotiations is
23 going on for two-years and the “strike” was
24 “unprotected.” They
25 wanted the people to lay

1 down their weapons, return to work, and follow
2 the normal channels –
3 **CHAIRPERSON:** Yes, well that's the point,
4 you see. It's the "normal channels" and the "normal
5 channels" were the ordinary usual negotiation channels which
6 were, as I understand it – and if I am wrong I am sure I shall
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.

19 **MR GOTZ:** The Chairperson has asked all
20 of the questions that constituted my last point, but I am
21 not sure that you've answered the question. In effect you
22 had nothing to offer the strikers.

23 **BRIGADIER CALITZ:** All we could do
24 for the "strikers" during the negotiations
25 was to convey their messages,

1 and it was said that if they lay down their weapons and
2 disband peacefully, no action would be taken against them.

3 I disagree with your statement.

4 We negotiated

5 and asked them to lay down their weapons

6 disband peacefully and

7 go through the correct

8 legal channels to get this

9 matter resolved in the right manner.

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.

14 **BRIGADIER CALITZ:** We pertinently said that

15 we will be involved in the "negotiations," but not with the

16 loan disagreements, as we are not allowed to negotiate on that.

17 We are there for the _____communications_____

18 protection and safety of people and property,

19 we talked about the weapons,

20 and from the

21 10th we started with extra "deployments" in

22 the areas; we had a 24-hour presence

23 in the area.

24 **COMMISSIONER TOKOTA:** Brigadier, if I

25 understand you and also understood the evidence of General

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 –

8 **BRIGADIER CALITZ:** That is my testimony,
9 Commissioner, correct.

10 **MR GOTZ:** Chairperson, I mean safe for this
11 part, this portion –

12 **CHAIRPERSON:** The part where he's got to
13 have a chance to study the report –

14 **MR GOTZ:** Yes.

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?

19 **MR GUMBI:** Yes, Chairperson.

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.

24 **CROSS-EXAMINATION BY MR GUMBI:** Yes,
25 Chairperson. Yes, I am ready. Good afternoon, Brigadier

1 Calitz.

2 **BRIGADIER CALITZ:** Good afternoon, advocate, just

3 give me a second to close my file and get the other one.

4 Thank you, advocate.

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:** Yes, 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

1 interrupting you. Should we not as a matter of good

2 housekeeping –

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 Maluleka, is it?

13 **MR GUMBI:** Yes, Makukule.

14 **CHAIRPERSON:** Makukule rather, that will

15 be KKK59.

16 **MR GUMBI:** Yes, Chairperson.

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

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 have 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 have got – I am 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, Chairperson.

23 **CHAIRPERSON:** We start off with the diary

24 of – I am sorry, the pocketbook of Constable Msiza.

25 **MR GUMBI:** Yes.

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

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 shall

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 am 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.

1 **[12:29] BRIGADIER CALITZ:** Mr Chairperson, on
2 that day we got the information from the CCTV cameras
3 in the JOC and the Provincial Commissioner said,
4 I think the words was,
5 "intercept and disarm" to which General Mpembe informed
6 me that he will accompany the members,
7 and he understood their
8 Fanagolo language. Colonel Merafe and Lieutenant Colonel
9 Merafe was the operational commanders.
10 General Mpembe and myself agreed
11 that he will go up with the helicopter as he did not know the area.
12 Our helicopters was
13 "refuelling" at that stage and we used a helicopter of Lonmin -
14 not Lonmin, I think it was a Coin helicopter, which as
15 arranged by Mr Sinclair and I
16 directed them until
17 they reached the protestors.

18 -

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:** No, Mr
23 Chairperson, General
24 Mpembe did the briefing.

25 **MR GUMBI:** When you arrived at the scene,

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:** It is correct, Mr

8 Chairperson. The first person I made contact when
9 I got there was W/O
10 Lepaaku on the ground and W/O Monene, which
11 was on the ground near a Nyala vehicle, and I was approached by
12 Lieutenant Colonel Vermaak – I am trying to recall the
13 “sequence” – who informed me on what
14 happened up to that stage. They escorted the people
15 in a specific direction, they wanted to break away
16 and when they acted against them, they attacked
17 the police.

18 I was informed that two police officers died,
19 one at the scene and
20 one later on
21 in the hospital. The
22 lieutenant was injured and Colonel
23 Vermaak informed me that they used the helicopter to fly the
24 member out. I think W/O
25 Lepaaku was taken to the clinic via vehicle,

1 Lieutenant Baloyi was flown out by helicopter
2 to Ferncrest and transferred at a
3 later stage.
4 I walked through the scene
5 and communicated with the commander.
6 I think the TRT commander was
7 Captain Thupe and there was a
8 lieutenant from POP,
9 but I cannot recall who,
10 Colonel Merafe was not at the scene anymore. The
11 lieutenant came to me and informed me that they were
12 attacked and when they tried to defend themselves,
13 the people ran away. I walked
14 through the scene and
15 - "actually" saw two people in the field and
16 one at a shack,
17 on the other side of the gravel road, who bled severely and
18 also died,
19 Colonel Vermaak and
20 I think Adv. Moolman walked, I called them
21 back and informed them,
22 that the community regrouped
23 in the background and I was informed that
24 the weapons were stolen,
25 the R5, the two 9mms, and hand radio.

1 From my side I tried
2 to
3 protect the scene.
4 It was difficult under the
5 circumstances, because the police officers – I do not
6 want to use the word scared, but they were cautious.

7 It was a traumatic event for
8 them and I placed them
9 in the settlement and around the shack,
10 where the person was lying,
11 but I attributed their
12 stress due to what happened.

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:** Chairperson, I am sorry to
24 interrupt. If I can just indicate that the diary of
25 Captain Makukule is already an exhibit. It's exhibit

1 HHH27.

2 **CHAIRPERSON:** Thank you, Ms Pillay. We

3 will then, we'll cancel the reference to it as KKK60 and

4 I shall 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 have 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

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:** It is correct.

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 have 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 have got,

22 but that I am 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

1 to JOC as per SAPS118B for briefing." Do you see that,

2 Brigadier?

3 **BRIGADIER CALITZ:** Yes-no,

4 I see the note at 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:** Sorry, Mr

11 Chairperson, I just –

12 **CHAIRPERSON:** We have 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 Maluleka, 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 Maluleka?

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

1 have him as Makukule. On page 12 -

2 can see the spelling -

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:** Not personally,

8 no.

9 **CHAIRPERSON:** Well, we can find out.

10 Let's not delay about that.

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

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:** It will be Setsedi,

22 Mr Chairperson.

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

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:** Mr Chairperson,
10 it was my question on the question of the advocate.
11 I was involved in getting the personnel together,
12 and we arranged for our "employee
13 health and wellness," by the social workers and
14 psychologists, Reverent Setsedi was the
15 in charge and the members got
16 "counselling" –

17 **CHAIRPERSON:** That's what I call
18 therapeutic debriefing as opposed to factual debriefing.

19 **BRIGADIER CALITZ:** It is correct, Mr
20 Chairperson, that is what I was involved with,
21 I had to assure that the members that were there
22 got to the EHW personnel.
23 The operation "debriefing,"
24 was given by General Mpenbe
25 to the members.

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?

7 **BRIGADIER CALITZ:** It is correct, Mr
8 Chairperson, they were not forced,
9 it was a voluntarily process,
10 but the people were there to help and
11 support them.

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?

17 **BRIGADIER CALITZ:** Not that I can recall,
18 nee.

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?

24 **BRIGADIER CALITZ:** Sorry=s, Mr
25 Advocate, you said FFF25, it is the OB,

1 I did not hear your question,

2 sorry.

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?

7 **BRIGADIER CALITZ:** I cannot assist

8 with that, I did not look at that specifically,

9 but I will take your word for the fact that there is no

10 such note made.

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?

23 **BRIGADIER CALITZ:** That some

24 members did it, just repeat your question –

25 **CHAIRPERSON:** You dropped your voice at

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.

4 **MR GUMBI:** Yes, Chairperson. I am 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?

9 **BRIGADIER CALITZ:** No, Mr
10 Chairperson, not what I am aware of.

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?

16 **BRIGADIER CALITZ:** Mr Chairperson,
17 if not early morning, it was late night,
18 the Provincial Commissioner, National
19 Commissioner was present and I were
20 in and out,
21 I can testify that he gave the National
22 Commissioner the detail on what he observed on the day,
23 that he negotiated with them and had
24 and "agreement" to escort them
25 to the bigger hill,

1 they deviated from the route and a confrontation

2 with "fatal injuries"

3 occurred.

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?

9 **BRIGADIER CALITZ:** Mr Chairperson,

10 when we were at Roots,

11 we did regroup in smaller groups,

12 General Mpmembe was there and it was

13 discussed in their

14 group.

15 **MR GUMBI:** Not in your group, will I be

16 clear?

17 **BRIGADIER CALITZ:** No, my group

18 was on the negotiations with Colonel McIntosh

19 and that is how we tried to compile "exhibit" L.

20 Every group went into their

21 corners and gave feedback to the

22 bigger group.

23 **MR GUMBI:** Thank you very much,

24 Brigadier. Let me move now on my last topic. When we were

25 cross-examining General Mpmembe on behalf of the family of

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:** It is in my diary,
13 correct, it is the note made on the 13th –

14 **MR GUMBI:** Yes, it's written there duty
15 on and duty off. Do you see that?

16 **BRIGADIER CALITZ:** It is correct, I came on duty at
17 6 in the morning and came off duty at 3 the
18 next morning.

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?

1 **BRIGADIER CALITZ:** Mr Chairperson,
2 you have your diary on you, and you note everything
3 happening during the day.
4 Either hourly, or as the orders comes in.
5 If I look at my diaries
6 for the past years,
7 I make notes almost hourly, but
8 from the 11th to the 24th – I just wrote
9 on duty – off duty – so it was
10 totally blank -
11 **CHAIRPERSON:** When you speak about the
12 11th onwards you're referring to the 11th of August 2012?
13 **BRIGADIER CALITZ:** It is correct, yes. I am talking
14 about the period I was deployed at Marikana, it was
15 the only part in my diary, which as totally clean.
16 The reason for this was due to the fact
17 that I had an hour and a half to two and a half hours sleep per
18 night, we left early mornings, we had our orders and
19 we were busy in the field and when we got back
20 we were busy with the members until
21 3 to half past 3 in the morning. During that week
22 we got minimal sleep and maybe that
23 was neglect on my side,
24 but at that stage I did not keep diary of each and everything
25 happening. It was not

1 possible to make notes each

2 hour.

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:** It is practically possible.

7 I do not know if it will be correct,

8 but with the benefit of hindsight I am aware of things happening

9 afterwards. It would have been easy to take

10 "exhibit" L, the statement, and the OB and write

11 everything in my diary,

12 but it would not be a reflection of the truth.

13 It would have come from

14 other material if I have written it from any

15 material as from my recollection of events,

16 that is why I did not do it that way.

17 **MR GUMBI:** Thank you very much,

18 Brigadier. As an operational commander are you aware

19 if there are 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:** I cannot assist you

24 with – I believe the Commissioner

25 will be able to say if there is an internal investigation

1 on the matter, but I am not aware of any such investigation.

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:** Mr Chairperson,

8 they opened a criminal case,

9 to see if one person is responsible or not,

10 and it will lead to

11 interdepartmental investigation.

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:** I believe she will be,

18 Mr Chairperson, yes, I have no knowledge on that.

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:** I was present

1 at Roots while the

2 "drafts" was compiled up to the final product, correct.

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:** No, I cannot say

8 why it was not included in the document.

9 It was discussed at Roots and I understand in the evidence of the

10 General he also testified to it,

11 but I cannot tell you on why

12 it was not included if there was

13 a dispute on the matter.

14 **MR GUMBI:** General Mpembe, do you know

15 whether he participated during the compilation of this

16 document, final product?

17 **BRIGADIER CALITZ:** General Mpembe was

18 present at Roots, not all the day,

19 as the generals are also tasked with other important matter,

20 but he was present during the

21 group discussion on the matter if the order was given or

22 not.

23 **MR GUMBI:** Thank you very much,

24 Chairperson, and the Commissioners. No further cross-

25 examination.

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, Chairperson.

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

1 questioned about it by Mr Gotz. Mr Gotz.

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

3 Chairperson –

4 **CHAIRPERSON:** You're still under oath,

5 Brigadier.

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

7 Chairperson.

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, Chairperson.

16 **CHAIRPERSON:** Sorry?

17 **MR GOTZ:** Not in this piece, Chairperson.

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 Mpofu on

25 those issues. So the TRT basic line has essentially formed

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:** I will follow up on the video,
9 Mr Chairperson, at this stage I see –

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

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:** I shall – I shall not hide there

6 I shall move them forward under the protection

7 of that vehicle,

8 and just after that we see Nyala 6

9 moving forward, but I cannot see those

10 members anymore.

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:** Mr Chairperson,

18 it could be in a second or two,

19 but not the whole time.

20 Nyala 6 moved forward, we can look at the

21 rest of the video material to see if they remained

22 behind that vehicle the whole time, but for that second or two,

23 they were behind that vehicle, it is

24 correct.

25 **CHAIRPERSON:** Mr Gotz, I have got a problem

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 where 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 have 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

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:** No, it is not
14 correct, Mr Gotz, Operational we will do the
15 tactical movement under the protection of a Nyala vehicle or an
16 armoured vehicle, exactly the way Mr Chairperson just
17 explained. Remember, at the time
18 of this video, we know that there were already action taken,
19 as we referred to where Nyala 4 closed the gap
20 at incident 2. At this stage the members are aware
21 of the fact that non-lethal force was used,
22 action was taken and
23 people were moving in that direction,
24 the other members will move under
25 protection of a Nyala or an armoured vehicle.

1 It all comes to proper training and proper
2 execution.

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:** Mr Chairperson, if I
8 can have some time – at this stage where we stop
9 now, if we look at the photo,
10 the people are still not around the kraal.
11 I do not think hidden from site will be the
12 correct statement,
13 as the evidence proofed that the people were still not around the
14 kraal at this stage, if you cannot
15 proof they were around the kraal at this stage, I disagree.

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:** That is why I say,
22 if we look at the video and strikers come
23 around and they are still on the side of Nyala 6,
24 then I will agree that they used the Nyala
25 for protection,

1 but at this stage I disagree.

2 At this stage the strikers will look directly

3 at the kraal –

4 **MR GOTZ:** The lone officer that you see

5 to the left of Nyala 6 is Warrant Officer Kuhn, correct?

6 **BRIGADIER CALITZ:** It is Warrant

7 Officer 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:** Yes, 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

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 am 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 am right.

8 **MR GOTZ:** Yes, I don't necessarily want to

9 focus on the second part of my proposition, what I am

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 have got a

16 feeling your proposition is correct, but anyway let's see

17 what the video show.

18 **MR GOTZ:** Chairperson, I am hesitant to

19 break it at this point, so can we – I am 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.

1 **MR GOTZ:** Can you also see, Brigadier,
2 that to the left of the officer's head, you'll see Pappa11
3 driving around the tree, and the STF Casspir, as it were,
4 moving into position. Would you agree with that?

5 **BRIGADIER CALITZ:** Yes, on this
6 slide we cannot see if it is Pappa11.

7 I will have to take your
8 word for it.

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 Pappa11?

12 **BRIGADIER CALITZ:** It was my previous
13 answer, it is correct.

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:** If you will just
22 make the question clear –

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?

1 **BRIGADIER CALITZ:** No, I disagree
2 with your word chaotic. The vehicles are moving,
3 after incident 2 and
4 they saw their action there was unsuccessful,
5 the bigger group moved around the kraal at the back,
6 and these vehicles were on their way
7 to see if they could disperse them further and
8 stop the strikers.

9 **MR GOTZ:** They're not in any formation at
10 this point in time, correct?

11 **BRIGADIER CALITZ:** Mr Chairperson,
12 there were no order for them to be in a specific
13 formation, the vehicles were still busy moving
14 around the kraal.

15 The only exit was on the left-hand side of the
16 kraal, on the right-hand side was the shock.

17 It was the only exit and where the
18 vehicles were moving to..

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:** I disagree,
24 they are driving behind each other, they
25 are busy with the follow up of a dispersion action,

1 I do not know which formation you are talking about.

2 **MR GOTZ:** Well, perhaps we can compare

3 this to the formation that they ultimately end up in, one

4 minute later, which you have described as a perfect block.

5 I would describe that as a formation.

6 **BRIGADIER CALITZ:** It is exactly what I told you,

7 they were in the follow up of a dispersing action,

8 in other words, the vehicles were still on their way there.

9 You cannot expect them to be at

10 incident 2 and with the snap of a finger they

11 will appear at another place, they need time to

12 get there.

13 **MR GOTZ:** But the point is that within

14 one minute, they move from this position, where there

15 doesn't appear to me to be any formation, into the perfect

16 block – those are your words, “the perfect block” at the

17 time of the TRT shooting.

18 **BRIGADIER CALITZ:** Mr Gotz we are

19 back where we were yesterday with the words, perfect

20 block. I explained to you Mr Chairperson and

21 Advocate Chaskalson, we are going over and over on the same point.

22 The perfect block,

23 was when the group was approaching and we can see it on the photo of

24 Colonel Vermaak at the 45 degree angle,

25 and I think it is part of the

1 transcript,

2 I also said there were a group of POP that would

3 have stopped them. We can go there and

4 we were on this point over and over

5 again.

6 **MR GOTZ:** I don't want to have to go and

7 debate something that Mr Chaskalson has established, but

8 just to give you the reference, it's day 160 at 18270,

9 lines 6 to 7. Brigadier, just to remind you, you and Mr

10 Chaskalson were debating – discussing whether or not a

11 block formation could be established where you presently

12 see Pappa11, and you'll remember that there was a debate

13 about whether you drew the line, or whether you had drawn

14 the red line there, etcetera, etcetera. I don't want to

15 traverse that. And in the context of that discussion, you

16 describe the formation of the Nyalas at the time of the TRT

17 shooting as the perfect block, and you do so at line 6 to 7

18 of 18270. Brigadier, let's continue to play this video.

19 There's another point that I want to make just at

20 approximately a minute –

21 **CHAIRPERSON:** Can I ask you a question?

22 You may have said already, and I have forgotten. We see the

23 front portion of another Nyala on the right-hand side, what

24 Nyala was that.

25 **MR GOTZ:** That says Nyala Pappa1.

1 **CHAIRPERSON:** That's Nyala 1?

2 **MR GOTZ:** It's Pappa1, and Brigadier

3 Calitz' Nyala. Would you confirm that, Brigadier?

4 **BRIGADIER CALITZ:** It is correct, yes, I

5 think it is my vehicle moving there.

6 We will see if the video continues, if it goes around Nyala 6,

7 then it is my vehicle.

8 **MR GOTZ:** So let's continue to play and

9 stop around 1 minute, 20 seconds.

10 **[VIDEO SHOWN]**

11 **MR GOTZ:** Stop there. Well, I was hoping

12 that you would be able to get the license plate, but that

13 is –

14 **CHAIRPERSON:** Are we going to get to

15 point where it's necessary for me to give a warning, in

16 which case –

17 **MR GOTZ:** No, not in this clip, Chairperson.

18 That is your Nyala, correct?

19 **BRIGADIER CALITZ:** Mr Chairperson,

20 yes, I think we testified four times on this issue of the

21 number plate. It is

22 correct, Mr Chairperson, but the evidence is on record,

23 so many times already.

24 **MR GOTZ:** Yes, it was the chairperson who

25 asked the question.

1 **CHAIRPERSON:** It's my fault. Don't shunt
2 him, it was my fault. I wasn't sure whether it was your
3 Nyala, and I just wanted confirmation.

4 **BRIGADIER CALITZ:** Then I am sorry, Mr
5 Chairperson, sorry, I paged through my transcript file,
6 and did not follow, sorry.

7 **[14:43] MR GOTZ:** Well lets continue to play.

8 **[VIDEO SHOWN]**

9 **MR GOTZ:** Now, Brigadier, let's stop the
10 video here. This is one minute, one second, Brigadier,
11 that ETV time 15:53:18 you can see at that point that the
12 strikers are still, the strikers are visible on the left
13 hand side of the screen, just to the left of the Casspir.
14 Will you confirm that?

15 **BRIGADIER CALITZ:** Sorry,
16 referring to the document at the photos, at
17 15:53:13, I see you indicated on the photo that the
18 person on the left-hand side is a striker.

19 **MR GOTZ:** Now, Brigadier, let's just play
20 for a couple of seconds on.

21 **BRIGADIER CALITZ:** Do you say they
22 are already around the corner – or -

23 **MR GOTZ:** No, I didn't say that
24 Brigadier, I just wanted you to note the position.

25 **BRIGADIER CALITZ:** No, I am asking.

1 **MR GOTZ:** I just wanted you to note the
2 position and then let's 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 **BRIGADIER 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:** It was out of the corner
13 from where he shot,
14 if they did not reach the corner of the kraal at this stage,
15 and it is your video,

16 video, then we come back to the question of the
17 Chairperson - the Vermaak photo was taken 29 seconds
18 before they came around the kraal

19 and if I recall correctly you said it would be difficult for them to

20 turn around. I think you used the words that there were

21 a large group behind them, if I may take you back, Mr

22 Chairperson, and refer you to your own video

23 material, you will see it would not be difficult

24 for this group to turn around if the

25 group in front decided

1 to turn around, they would not even stumble over each other,
2 they could just sit down
3 or turn around and run away,
4 but thank you for the clip, it assisted with the previous question.

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 am sorry, I am 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:** Chairperson, are you now referring to
23 Exhibit KKK52? Perhaps we can have it up on screen so that
24 everybody, yes. So can we go to slide 2?

25 **CHAIRPERSON:** Now where would they have

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:** Mr Chairperson, sorry

17 you may finish, Mr Chairperson, the answer to

18 your question,

19 if you talk about the directions of left or right,

20 there is also such a thing of turn around, and moving

21 to the back.

22 **MR GOTZ:** Yes, but we have debated that,

23 Brigadier.

24 **BRIGADIER CALITZ:** So – no, I am still available.

25 On the video,

1 we could see the people were moving slowly.
2 So it is quite possible,
3 that the time of,
4 15:53:13 the photo of Vermaak, which we referred to
5 gave them another 8 to 9 seconds to get to that point
6 Mr Chairperson.
7 Even in the early stages,
8 you could see in which format the police line was moving,
9 and there were no pressure on the group
10 in front to the extent that they could not turn around.
11 They could turn left,
12 that wire was not a barbed wire,
13 I was there myself that day,
14 it was possible to get through the wire.
15 If you look at the aerial photos,
16 there is a lot of people that went through those wires to
17 Nkaneng – how did they get through?
18 The group in front,
19 the militant group decided to attack
20 and not react on the dispersing.
21 If they turned right
22 and moved away from Pappa4, no confrontation
23 would have occurred as Pappa4 would only
24 acted against them if they got near the police line.
25 When they turned around and moved away,

1 there would be an follow up action with 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 Pappa2 but

13 they certainly can't see Pappa4, Pappa5, Pappa19 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:** Mr Chairperson, all

18 I said was that they had three seconds to see

19 the TRT line, but we get to that later.

20 On this photo you can see

21 Pappa11, Pappa7, Pappa18, the Casspir,

22 the Casspir, Nyala 6 and various other police vehicles

23 and what you keep forgetting is that I mentioned

24 that Nyala 4 already acted against them.

25 At this stage stun grenades were thrown

1 and rubber rounds shot at them,
2 if you are dispersed you are not attacking the
3 police line, you turn
4 around and move in the opposite direction.
5 There is no such thing as acting against a dispersing action,
6 there is no such thing.
7 If the road is blocked,
8 and they say you are not allowed to drive through,
9 you are not going to drive through it because you
10 want to go home, you take the detour,
11 the same occurred here, the people were dispersed and
12 had to act on it. The fact that they said they could not see
13 the TRT line, does not mean the POP members and
14 police vehicles are not in the same police service.
15 The police were busy
16 acting against them, so I
17 understand the excuse that they had to see the TRT line
18 before they could retreat.

19 **CHAIRPERSON:** Whom do you say were the
20 strikers going to attack?

21 **BRIGADIER CALITZ:** At this stage the
22 police line, Mr Chairperson.

23 **CHAIRPERSON:** Well they couldn't see the
24 TRT line there.

25 **BRIGADIER CALITZ:** Kerrey.

1 **CHAIRPERSON:** They had only formed up

2 relatively recently hadn't it?

3 **BRIGADIER CALITZ:** Correct, Mr

4 Chairperson.

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:** No, I am not

11 arguing, Mr Chairperson. I am saying it is not about

12 the TRT line, but the police

13 line.

14 **CHAIRPERSON:** No, no I am eliminating the

15 TRT line first because they didn't know it was there.

16 **BRIGADIER CALITZ:** I agree

17 with you.

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:** It is correct, Mr

23 Chairperson.

24 **CHAIRPERSON:** Now did the, as the

25 strikers came past, did they attack the POP people as they

1 were standing between the Nyalas?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 I think they were under protection at the back,

4 when we look at the video,

5 where the members shot at them,

6 they moved around on the other side.

7 They did not move between the Nyalas,

8 but there was an action against Pappa11 and

9 initially the members was not outside the vehicles,

10 but inside. The same would have happened

11 if we had a POP line, which did

12 not tactically retreat, we would

13 definitely been an attack if the POP line

14 was held in formation.

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 Pappa2 and

21 others between Pappa2 and Pappa4, 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:** All I can say is

1 that the POP members were attacked,
2 Nyala 4 closed the gap and Papa 5 testified that
3 they got shot at. On the video we can see
4 Casspir 2 and Pappa2 near the POP
5 member outside where
6 the striker fired at him with
7 the firearm.

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:** It is definitely the shooting
13 I referred to, Mr Chairperson.

14 **CHAIRPERSON:** There is the shooting, 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:** I think
21 we decided that the experts will go and
22 look at the available evidence, Mr Chairperson.

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

1 important one, I am 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:** I do not know

7 who was outside the vehicles at that stage,
8 but there were statements from members stating
9 that the people tried to open the doors of Nyala and
10 there were definitive attacks against
11 the vehicles.

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 Pappa1 and where your Pappa1 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:** I have not seen any
22 footage of myself when the group passed Pappa11,
23 if you have those video footage, I will be glad
24 to see it, as you were not there.
25 We also need to see the angle of Reuters photo taken from

1 the other side, behind the TRT

2 line. I do not think there were any footage

3 at this stage from the side of the kraal,

4 which I am aware of.

5 **MR GOTZ:** Brigadier, can we go to slide 3

6 and you will be thankful that I am 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 Pappa2, Pappa4, Pappa5 have, Pappa2

15 and Pappa4 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:** Yes, what is the question?

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:** Yes, I think it is clearly

23 visible on the photo of Colonel Vermaak, as well.

24 **MR GOTZ:** And, Brigadier, we have

25 included 15:53:30 although there is not much difference

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 Pappa2 and Pappa4 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:** Yes, I think it is
8 Pappa2 and Pappa4 where we could see the people at the outside
9 of the vehicles when we played the video. I think you referred to
10 the time of 53:21 or 53:30, it is a few
11 seconds after the 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:** Yes, maybe,
16 no, it is okay,
17 I think the pages of your document and
18 my document does not correspond.

19 But it is correct, I do not know if you have
20 that document on transcript.

21 **MR GOTZ:** Are you talking about the
22 report that -

23 **BRIGADIER CALITZ:** The rapport, yes.

24 **MR GOTZ:** Brigadier, if there is a
25 question that, what is it that you want to refer to?

1 **BRIGADIER CALITZ:** No, the previous one
2 of 53:21 Vermaak's photo, the Commissioner asked,
3 how far we were and how the front point looked.

4 If you recall they had another photos,
5 so if possible if we refer to
6 page 18, may we use both documents,
7 as well as the report you just gave me,

8 I believe it is the 46
9 I just gone through.

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:** No, I was
14 just asked to review the document as the questions would be based
15 on the document – So it was -

16 **MR GOTZ:** Brigadier, sorry do you want
17 make a point about Exhibit KKK54 in slide 18?

18 **BRIGADIER CALITZ:** Page 18,
19 as we proceed I will refer to both if it is in order with
20 you.

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.

1 **MR GOTZ:** Mr Chairperson, we had given

2 everything but -

3 **BRIGADIER CALITZ:** Sorry, Mr

4 Chairperson, for the wasting of your time,

5 I thought I had to go through the document so that

6 it could be available for questions.

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:** Yes, if we look at the

21 photos

22 we have to refer to that document.

23 The first page I referred to was page

24 18, Mr Chairperson and then

25 we will continue on 23.

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:** Sorry, Mr
5 Chairperson, no advocate we are not disagreeing with
6 the fact that the strikers approached the corner of the kraal,

7 I just have a point that is very important,
8 that is why I want us to put 54 up,
9 you gave me the document to review,
10 so it must be available, otherwise I cannot see
11 why you gave it to me -

12 **CHAIRPERSON:** That's true -

13 **MR GOTZ:** But understand that we are
14 wasting time.

15 **BRIGADIER CALITZ:** We are not wasting time

16 Mr Chairperson.

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

1 is and it certainly can't be described as time wasting.

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 while we are waiting I can try

4 and explain this page -

5 **CHAIRPERSON:** Yes, sir, you may, please

6 proceed.

7 **BRIGADIER CALITZ:** It will not be a surprise,

8 on page 18 is the photo that

9 Vermaak took with his camera

10 which shows a better picture of what happened

11 at that stage, so on page 18

12 you can see the formation -

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, it is on

17 page 18, where you can see how easy it was

18 for them to turn around and that they

19 were not in the tight formation as suggested by the advocate.

20 It is clearly visible and I am not going to waste time on that photo.

21 On page 18, you will see

22 the ETV time is 15:53:21, which is the same as that of the aerial

23 photograph of Colonel Vermaak. When you asked me about

24 the point in front, I requested that we zoom in,

25 you gave us a photo

1 out of focus from another angle,
2 there might have been a better photo,
3 and I did say that at this stage the leaders could still
4 turn around and move away, there is
5 about ten meters between
6 the people in front and another few
7 meters between them and the people following,
8 so it was very easy to stop and turn around.
9 Then if we go to
10 page 30 regarding your question about the 23 seconds,
11 you said they came to the corner of the kraal 5 seconds later,
12 but if you look at the next photo,
13 you will see it is the corner of the kraal where
14 POP member is standing and the time is
15 15:53:35 and then on the next one it is
16 five seconds later,
17 but what I want to point out here
18 Mr Chairperson, and I want to place it on record,
19 they just needed three seconds to
20 see the TRT line,
21 I gave them more time.
22 Mr Chairperson, you can see the
23 strikers and the TRT
24 line is clearly visible, but
25 according to your statement hey just had

1 three seconds.

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 yes, 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:** The person -

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:** Except the person -

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:** Mr Chairperson, if

24 it comes to the strikers that shot,

25 the person sitting

1 crouched in green, which is the position from where they shot

2 at the police. If we watch the video, it is clearly visible.

3 According to that photo there was a

4 definite attack on the members.

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:** Thank you, Mr

9 Chairperson, then the next photo in the

10 sequence is -

11 **MR GOTZ:** Sorry before you go there, the

12 point is that -

13 **BRIGADIER CALITZ:** Sorry,

14 may I just complete my point?

15 **CHAIRPERSON:** Let him make his point, and

16 then you can make your point.

17 **BRIGADIER CALITZ:** I am still on the same point,

18 the time of 15:53:15 is

19 when they came around the kraal,

20 the five seconds screenshot,

21 The only point

22 I want to make is the fact,

23 is that the strikers can be seen and the POP members

24 can be seen on the right-hand side,

25 there is one man in front, busy to tactically retreat

1 W/O Kuhn and the
2 whole TRT line can be seen. If this is the only photo available,
3 then it means they had the
4 TRT line in their vision for 14 seconds and not
5 3 seconds.

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:** No, Mr
11 Chairperson.

12 **CHAIRPERSON:** Which one is Kuhn?

13 **BRIGADIER CALITZ:** Kuhn is the one to whom,
14 the red arrow is pointed, from the strikers the red
15 is pointing directly in his direction.

16 **CHAIRPERSON:** That's Kuhn?

17 **BRIGADIER CALITZ:** That is the man.

18 **CHAIRPERSON:** And there is two other
19 members of the police service near him is that correct?

20 **BRIGADIER CALITZ:** Yes.

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 police officer ahead of him to his left, is that correct?

25 **BRIGADIER CALITZ:** It is POP

1 members that retreated to the Nyala.

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:** It is correct.

10 **CHAIRPERSON:** A metre or two probably,

11 two metres probably -

12 **BRIGADIER CALITZ:** It is correct.

13 **MR GOTZ:** Behind, is that right?

14 **BRIGADIER CALITZ:** It is correct, Mr

15 Chairperson.

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 Pappa19, Pappa10 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:** Correct,

1 if we look at Pappa10 on the left-hand side,
2 he moved in the direction of that vehicle and got inside.
3 The one you said ran away, that does not occur in the police,
4 we call it
5 tactically retreat and I said on various occasions
6 a POP member are issued with
7 non-lethal force, his rubber bullets are not going to have any
8 effect on the attackers.
9 W/O
10 Kuhn was issued with a R5, one member per POP
11 are issued with a R5,
12 which he could use for self-defence or warning shots at that stge.
13 The POP members that
14 tactically retreated could not remain
15 standing there.
16 **MR GOTZ:** Are you saying 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:** I am just saying with
20 what he was issued and why the other members returned
21 to the vehicles. The R5 is a more lethal weapon
22 which can be used for self-defence
23 and the shotguns are non-lethal,
24 if the people keep coming forward, then you have to fall back
25 and then the TRT has to provide

1 protection, with the

2 next weapon to their disposal.

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:** Correct, Mr

11 Chairperson.

12 **CHAIRPERSON:** Right, now can I just ask

13 you this, I think I, I think what I am 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:** It is -

25 **MR GOTZ:** So we can more or less place

1 Kuhn and the other two on this photograph, which I am 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:** It is correct, Mr

8 Chairperson.

9 **MR GOTZ:** Chairperson, just to highlight
10 that the Nyala 5, I mean Pappa5 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 Pappa5 is right on this slide,
25 then we can see it on the slide that is being shown on the

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:** Mr Chairperson, if I

5 may assist, 15:53:40 is what the advocate

6 refers to, page 27, it is

7 five seconds later,

8 just to give the time,

9 it is 15:53:40 and then page 28 is

10 what the advocate is referring to, you can see the head of Kuhn

11 just above that of the police officer second from the right. You can

12 see his shadow in that position, which means he is still in the

13 footpath and the POP members

14 tactically retreated and he is busy getting into the Nyala

15 on the left-hand side and here

16 there three seconds

17 is now ten seconds, so it is four seconds later and the

18 TRT line is still visible.

19 Just to point that out.

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:** No, but it is clear,

25 and we already testified to why he was standing there.

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:** Yes, it is correct.

8 neither W/O Kuhn nor the TRT line
9 moved at that stage.

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 Pappa5 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 Pappa4.

17 **BRIGADIER CALITZ:** I think the experts are
18 busy with the timeliness and the specific placements,
19 if you look at the video you can see it move,
20 but I am not sure of his specific position at
21 15:43:35.

22 **MR GOTZ:** Well we may have to show that
23 video if you request it.

24 **BRIGADIER CALITZ:** No, I am not requesting it,
25 I just said that we agreed that,

1 if I think at the CALS and timelines,
2 we agreed that the experts would investigate the timeline.

3 That is what I referred to.

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 Pappa11 and the STF Casspir?

8 **[15:23] BRIGADIER CALITZ:** I am not able to

9 say if it was the first one, the videos I have seen

10 was people moving around the kraal with

11 white smoke on the right-hand side, I do not

12 believe your statement is completely correct.

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 Pappa11 and the STF Casspir is.

19 **BRIGADIER CALITZ:** I will not be able to

20 answer with surety.

21 I know that during incident 2, they

22 were at the left-hand side of the kraal and they used stun grenades

23 and teargas. From a distance,

24 if you look at the video, you will see they are on the left-hand side

25 of the kraal and not the right-hand side as you

1 alleged just now.

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:** Sorry, Mr

8 Chairperson, yes, -

9 **CHAIRPERSON:** - which direction you're

10 facing.

11 **BRIGADIER CALITZ:** No, I am talking –

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:** Yes, no, I am referring from

16 the side of the police, Mr

17 Chairperson. If I say at the left-hand side of the kraal, I mean

18 Nyala⁴ is positioned next to the kraal, or what we refer to as

19 incident 2.

20 **MR GOTZ:** So what I want to put to you is

21 that if I am 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 –

1 **MR SEMENYA SC:** Chairperson, 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, Chairperson, I am putting –

5 **CHAIRPERSON:** Repeat the question –

6 **MR GOTZ:** I am putting a simple
7 proposition.

8 **CHAIRPERSON:** Repeat the question?

9 **MR GOTZ:** If I am correct that the teargas
10 canister is fired at this point of time or just slightly
11 before it and if I am correct that the position of the
12 teargas canister is below Pappa11 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:** Mr Chairperson, I

1 am tempted to say that we could act out any scenario here,
2 it can be an contributing factor
3 here.

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:** Chairperson, I don't -

14 **BRIGADIER CALITZ:** Mr Chairperson, if

15 I may -

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 am not talking about

21 attacking the police at all, I am 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

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:** Chairperson, 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, and 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. This is a contributing factor, it is a
22 fact.

23 **BRIGADIER CALITZ:** Mr Chairperson, if
24 I may –

25 **CHAIRPERSON:** It is not a conclusive

1 factor, but you give Mr Gotz about 2 out of 10 for the
2 point he has put, it is a contributing factor, is that
3 correct?

4 **BRIGADIER CALITZ:** Mr Chairperson,

5 I will give him 0 out of 10,

6 if you walk down the road, and they throw teargas,

7 a normal man will move away. If a normal

8 walks down the street and they shoot at him with rubber bullets,

9 he will move away.

10 It is the same -

11 **CHAIRPERSON:** Yes, that's the two fires

12 that these people were caught in.

13 **BRIGADIER CALITZ:** The people had to move away

14 to incident 2, Mr Chairperson.

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 am not criticising you, Mr Gotz, you

19 couldn't, so we'll carry on at nine tomorrow morning. How

20 long, I know I have 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:** Chairperson, -

24 **CHAIRPERSON:** Allowing for a bit of

25 injury time?

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, Chairperson.

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

11 **[COMMISSION ADJOURNED]**

