

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 156 27 NOVEMBER 2013 PAGES 17586 TO 17774



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1 [PROCEEDINGS ON 27 NOVEMBER 2013]
 2 [09:09] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath.
 4 ADRIAAN MARTHINUS CALITZ: s.u.o.
 5 CHAIRPERSON: Mr Budlender.
 6 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
 7 Thank you, Chair. Chair, with the leave of the Commission
 8 I've asked Mr Chaskalson to deal with movement of vehicles
 9 at scene 1 and I think he'll be able to be of more
 10 assistance to the Commission, and he'll deal at the same
 11 time with scene 2. So I'm going to move on to other
 12 aspects of the cross-examination and he'll come back to
 13 that in due course.
 14 Brigadier, I want to take you now to the JOCCOM
 15 meeting which was held on the morning of the 16th of August
 16 2012. There are different times which were given to us, 6
 17 o'clock, 6:30, 7 o'clock, but we know the early morning
 18 meeting on the Thursday. You're with me?
 19 BRIGADIER CALITZ: Ek is met u, mnr die
 20 Voorsitter.
 21 MR BUDLENDER SC: Thank you. You were at
 22 that meeting?
 23 BRIGADIER CALITZ: Korrek, mnr die
 24 Voorsitter.
 25 MR BUDLENDER SC: Was Brigadier Van Zyl

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1 at that meeting?
 2 BRIGADIER CALITZ: I cannot recall
 3 Brigadier Van Zyl, no.
 4 MR BUDLENDER SC: Now would you go to
 5 exhibit TT5? Can we now have TT5 on the screen, please?
 6 You have TT5, Brigadier?
 7 BRIGADIER CALITZ: Ek het hom, mnr die
 8 Voorsitter.
 9 MR BUDLENDER SC: Could you go to –
 10 CHAIRPERSON: Before you start with this,
 11 Mr Van As, I understand you have instructions to report to
 12 us relating to the Lonmin security people who were
 13 [microphone off, inaudible].
 14 MR VAN AS: Thank you, Mr Chairman. Yes,
 15 Mr Chairman, the two individuals, as I indicated yesterday
 16 which were seen on the video footage at the koppie are in
 17 fact Lonmin security. They were armed with firearms,
 18 including shotguns. My instructions are that they were
 19 issued with ammunition which consisted of both rubber
 20 bullets and pellets.
 21 CHAIRPERSON: Thank you.
 22 MR BUDLENDER SC: Thank you, Chair, may I
 23 proceed?
 24 CHAIRPERSON: Yes, please do, Mr
 25 Budlender.

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1 MR BUDLENDER SC: Now Brigadier, would
 2 you go to page 2 of TT5, and we see at paragraph 9 that
 3 [microphone off, inaudible] this is recorded. On 2012-08-
 4 15 at the [inaudible] a discussion [inaudible] myself.
 5 Could you go back to page 1 for a moment? This is a
 6 summary by Crime Intelligence on the information which they
 7 provided to the JOC at various times. Is that correct?
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 ja, ek sien dit is 'n dokument deur Crime Intelligence
 10 opgestel.
 11 MR BUDLENDER SC: Ja, thank you. Now
 12 then if we go to paragraph 9, what Brigadier Engelbrecht
 13 says is the following. "On 2012-08-15 at the PROVJOC
 14 meeting a discussion took place with regards to the
 15 disarming and dispersion of the striking mineworkers.
 16 Brigadier Engelbrecht held a view in favour of the
 17 negotiations with the group who always gather at the koppie
 18 and disperse during the evenings. The view was further
 19 based on an analysis of the striking workers' behaviour.
 20 During the incident of 13 August 2012 where the police
 21 officials were killed they were all armed with different
 22 kinds of dangerous weapons. They became agitated when
 23 their comfort zone was threatened and made it clear that
 24 they will never surrender their weapons as they needed the
 25 weapons to protect themselves against NUM members." Can

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1 you recall that report being made?
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 nie spesifiek soos hy in detail hier staan nie. Wat ek wel
 4 "record" is die vorige een waarna u verwys het, TT4, waar
 5 Crime Intelligence dan vir ons wel gesê het dat daar is
 6 reeds 3 000 mense op die koppie, gewapen, en dan hulle gaan
 7 nie hulle wapens neerlê nie. Hulle gaan die polisie
 8 "resist" en hulle is "prepared" om te baklei. Dit is wat
 9 gerapporteer is die oggend op die 6de.
 10 VOORSITTER: Van die 16de –
 11 BRIGADIER CALITZ: Ag, die 16de. Die
 12 16de.
 13 CHAIRPERSON: Sorry, I broke into
 14 Afrikaans for a moment.
 15 BRIGADIER CALITZ: Die 16de.
 16 CHAIRPERSON: This is essentially what is
 17 set out in paragraph 10 of the statement to which Mr
 18 Budlender is referring you, exhibit TT5. Is that right?
 19 You've seen it on the screen.
 20 BRIGADIER CALITZ: Dit is korrek, mnr die
 21 Voorsitter.
 22 MR BUDLENDER SC: And that is consistent
 23 with the reports which crime intelligence gave during that
 24 week after the incident of the 13th of August. That was
 25 their consistent report that the strikers will not hand in

<p style="text-align: right;">Page 17590</p> <p>1 their weapons and they will resist if an attempt is made to 2 disarm them.</p> <p>3 BRIGADIER CALITZ: Dit is wat 4 gerapporteer is in die JOC, mnr die Voorsitter.</p> <p>5 MR BUDLENDER SC: Now the standard way of 6 dealing, the standard Public Order Policing way of dealing 7 with an unlawful gathering if the people will not disperse 8 is to compel them to disperse and if necessary to disarm 9 them. We discussed that yesterday.</p> <p>10 BRIGADIER CALITZ: Ekskuus tog, kan u net 11 herhaal?</p> <p>12 MR BUDLENDER SC: The standard way of 13 dealing with gatherings where the gathering is unlawful and 14 the people refused to disperse is to disperse them and if 15 necessary to disarm them.</p> <p>16 BRIGADIER CALITZ: Dit is korrek, mnr die 17 Voorsitter.</p> <p>18 MR BUDLENDER SC: I want to take you to 19 HHH18. Could we have that on the screen, please? Do you 20 have it, Brigadier?</p> <p>21 BRIGADIER CALITZ: Korrek, mnr die 22 Voorsitter.</p> <p>23 MR BUDLENDER SC: Now this is the 24 application which was made under section 13(7) of the SA 25 Police Service Act for authorisation for a cordon and</p>	<p style="text-align: right;">Page 17592</p> <p>1 and you set out the crimes, and then you say, paragraph 5, 2 "The situation has now taken on very serious proportions 3 and it is clear that conventional policing methods cannot 4 be applied to stabilise the situation or prevent further 5 serious incidents, including possible bloodshed, from 6 taking place." And then if we look at the next page we see 7 that you signed it before Warrant-officer Schutte at 8 8 o'clock on the morning of the 16th of August. That's all 9 correct, is it?</p> <p>10 BRIGADIER CALITZ: Korrek, mnr die 11 Voorsitter.</p> <p>12 MR BUDLENDER SC: So that means that you 13 signed this immediately after, or shortly after the JOCCOM 14 meeting of that morning.</p> <p>15 BRIGADIER CALITZ: Korrek, mnr die 16 Voorsitter.</p> <p>17 MR BUDLENDER SC: So you said under oath 18 after that JOCCOM meeting that "Conventional policing 19 methods cannot be applied to stabilise the situation or 20 prevent further serious incidents, including possible 21 bloodshed, from taking place." Correct?</p> <p>22 BRIGADIER CALITZ: U verwys na my 23 verklaring?</p> <p>24 MR BUDLENDER SC: Yes. Correct? 25 BRIGADIER CALITZ: [Mikrofoon af,</p>
<p style="text-align: right;">Page 17591</p> <p>1 search operation.</p> <p>2 BRIGADIER CALITZ: Korrek, mnr die 3 Voorsitter.</p> <p>4 MR BUDLENDER SC: Now I want to take you 5 to the second document of HHH18. Can you see page 3 of 6 that document is an affidavit by you?</p> <p>7 BRIGADIER CALITZ: Korrek, mnr die 8 Voorsitter.</p> <p>9 MR BUDLENDER SC: And this is what you 10 say; let's read some parts of it. Paragraph 1 you say, 11 "Application is hereby made for authority in terms of 12 section 13(7) of the South African Police Service Act 68 of 13 1995 to conduct a cordon and search operation at the 14 Wonderkop and Karee Mine hostels and adjacent squatter camp 15 in the Marikana policing area on Wednesday, 15 August 2012 16 from 12 o'clock to 16 August 2012 at 12 o'clock." 17 Paragraph 2, "Due to the ongoing labour related unrest 18 experienced at the Lonmin Mine in Marikana where the area 19 to be cordoned off is situated, the current circumstances 20 warrant the conducting of the operation to attempt to 21 stabilise the area and to restore public order." I'll skip 22 paragraph 3. Paragraph 4 you say, "Dangerous weapons are 23 being carried by the striking employees, who refuse to 24 surrender the weapons, and serious crimes have been 25 committed during this unrest, which include the following,"</p>	<p style="text-align: right;">Page 17593</p> <p>1 onhoorbaar]</p> <p>2 MR BUDLENDER SC: Yes. Now we know - I 3 want to suggest to you that this is consistent, what you 4 said there is consistent with what General Mpembe had said 5 the night before to leadership of the NUM at a meeting he 6 had with them. Would you go to GGG4? Do you have it, 7 General - Brigadier? I promoted you prematurely.</p> <p>8 BRIGADIER CALITZ: Ek sê "demotion" want, 9 not accepted. Dankie, mnr die Voorsitter.</p> <p>10 MR BUDLENDER SC: Brigadier, have you 11 seen this document before? Well, it was part of the bundle 12 which you were given, yes.</p> <p>13 BRIGADIER CALITZ: Op u inligting het ek 14 dit nou vir die eerste keer, ek het nog nie deur die 15 dokument gewerk nie, nee, mnr die Voorsitter.</p> <p>16 MR BUDLENDER SC: Alright, well let me 17 take you to – there are only two passages I want to refer 18 you to. Would you go to page 5 at the foot of the page. I 19 can tell you that it's common cause that this is a 20 transcript of a meeting which General Mpembe had with the 21 leadership of the NUM the evening before, on the evening on 22 the 15th of August.</p> <p>23 BRIGADIER CALITZ: Mnr die Voorsitter, ek 24 sal u woord moet vat daarvoor. 25 MR BUDLENDER SC: If I'm wrong Mr Semenya</p>

<p style="text-align: right;">Page 17594</p> <p>1 will be very quick to say that I'm wrong. He doesn't delay 2 on those matters. Then at the foot of page 5 – we have to 3 have a different page 5. Could you go to the next page on 4 the screen, please? At the foot of that page, right. You 5 see there General Mpembe says, "Thanks, President. Lastly 6 then it will be a process, this is a process and I need to 7 communicate. You said to us the members, they are – now I 8 need to do my job and you all also call me to remove 9 firearms. I cannot go there and disarm people. It would 10 be bloodshed. So then I need to, and go in a specific 11 house, disarm them. That is the only way. Beating" – then 12 a few lines, line 8, "Beating," I think that should be 13 eating, "this elephant bit by bit because me going there to 14 the mountain disarming people, it is going to be bloodshed. 15 It is going to be bloodshed. That one I can assure you." 16 Then he goes further on line 22 on that page, "If you were 17 there, President, you could count how many people, between 18 3 to 4 000. So if you charge those people with the number 19 of police you have, with what they have cut the people they 20 are also psyched up. Definitely anyone would come up with 21 that whatever thing. They will have to act and we are also 22 not prepared to use less bullets, and I know that you do 23 not want us to shoot-shoot. Here it is that the police are 24 shooting, are killing people and we do not want to go that 25 route, but at the same time we are also not prepared that</p>	<p style="text-align: right;">Page 17596</p> <p>1 Provincial Commissioner did sign the authorisation 2 document, granted the authorisation requested, which was 3 requested on the strength of your affidavit and an 4 affidavit I think by General Mpembe. So we do know that. 5 But that's something that presumably you'll take further 6 with Mr Budlender. 7 MR BUDLENDER SC: The purpose of these 8 questions, Brigadier, is to establish that what the cordon 9 and search operation would involve would be a searching of 10 the area, but you obviously couldn't search every house or 11 every bed in every hostel. You would try to target it with 12 the assistance of intelligence which you hoped to obtain 13 from others. 14 BRIGADIER CALITZ: Dit sou die doel wees 15 van 'n deursoekingsoperasie, mnr die Voorsitter. 16 MR BUDLENDER SC: And the reason for 17 going that route was that the conventional method of going 18 onto the koppie and trying to disarm people on the koppie, 19 as General Mpembe said, was highly risky and could lead to 20 bloodshed. 21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 dit was Generaal Mpembe se woorde, nie myne nie, nee. 23 MR BUDLENDER SC: But you, Brigadier, you 24 said that conventional methods would not work. 25 BRIGADIER CALITZ: Dit is in 'n</p>
<p style="text-align: right;">Page 17595</p> <p>1 our members should die, but we have a duty to disarm." Now 2 what General Mpembe was asking the NUM leaders in that 3 meeting was to identify who were the people who had the 4 arms and where they lived so that a search could be 5 targeted at those specific places. That's a long preamble, 6 Brigadier, but it seems to me that is consistent with what 7 you said in your affidavit that if you could cordon and 8 search and you knew where you were searching, then you 9 would be able to find the weapons without being able to, 10 having to confront the people on the koppie. 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek 12 lees dit wat Generaal gesê het. As u sê hy het hulle ook 13 versoek om dan mense te identifiseer moet ek u woord vat 14 daarvoor. Ek lees dit egter nie hier nie. 15 MR BUDLENDER SC: That would be the 16 purpose of the cordon and search operation, to go to the 17 houses, if possible identified houses, and take away the 18 weapons. 19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 die doel van 'n cordon en deursoeking operasie word 21 goedgekeur slegs as daar positiewe inligting is. Ons noem 22 dit "intelligence," nie "information" nie, wat omgeskakel 23 is in "intelligence" wat dan beaam is, en slegs dan kan ons 24 reageer op 'n deursoekingsbevel. 25 CHAIRPERSON: Well, we know that the</p>	<p style="text-align: right;">Page 17597</p> <p>1 verklaring, mnr die Voorsitter, dat indien ons – 2 CHAIRPERSON: A statement under oath. 3 BRIGADIER CALITZ: Dit is hoekom ek sê 4 dit is in my verklaring, mnr die Voorsitter, en dit sou dan 5 wees indien die inligting oorgeskakel was na intelligensie 6 toe, wat ons dan kon bevestig het sou die "cordon and 7 search" dan uitgevoer is. Mnr die Voorsitter, ek kan 8 miskien verwys, ek het gister, eergister getuig dat die 9 deursoekingsoperasie kon nie plaasvind nie. Daar was nie, 10 wat ek genoem het "sufficient intelligence" nie. Ons het 11 op daardie stadium nie geweet waar die 2 tot 300 mense wat 12 die teikengroep was bly nie, in watter hostelle hulle was 13 nie, en ons het ook nie geweet waar hulle bly nie. Daar is 14 aangeneem dat hulle slaap by die hostelle, wat later wel 15 verkeerd bewys is, dat hulle op die koppie geslaap het. 16 Dit was my getuieis ook gewees. 17 MR BUDLENDER SC: I understand that. But 18 what you said in your affidavit at 8 o'clock on the 16th of 19 August was the truth. You wouldn't have said it otherwise. 20 BRIGADIER CALITZ: Dit was in my 21 verklaring gewees, mnr die Voorsitter. 22 CHAIRPERSON: You haven't answered the 23 question. The question, I think perhaps to be fair, you 24 didn't quite grasp the meaning of the question, so I think 25 Mr Budlender must ask it again.</p>

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1 MR BUDLENDER SC: Brigadier, sorry, I
2 think I asked you a double question. What you stated in
3 your affidavit on the morning of the 16th of August was the
4 truth?

5 BRIGADIER CALITZ: Dit is in my
6 verklaring onder eed, dit was korrek, mnr die Voorsitter.

7 COMMISSIONER HEMRAJ: Brigadier, what was
8 the reasoning behind that statement?

9 [09:29] BRIGADIER CALITZ: Kommissaris, die
10 verklaring is opgestel in die teenwoordigheid van ons
11 regsbeampte wat dan hierdie verklaring na die Provinsiale
12 Kommissaris sou neem. Wat ons gewoonlik doen is 'n
13 verklaring word afgeneem en ons gee alle moontlike
14 inligting wat in 'n verklaring kon beskikbaar wees op
15 daardie stadium vir voorlegging aan die Provinsiale
16 Kommissaris wat dan 'n magtiging gee. Die cordon and
17 search is nie te sê as die Provinsiale Kommissaris dit
18 teken dat dit moet uitgevoer word nie, dit is glad nie so.
19 Dit sou tot die beskikking gewees het sou ons op enige
20 stadium daardie inligting gekry het dan het ons hierdie
21 dokument gehad om dan onmiddellik 'n cordon and search uit
22 te voer.

23 COMMISSIONER HEMRAJ: My question really
24 is what was your assessment of the situation that led you
25 to make that statement, that the normal methods would not

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1 work?

2 BRIGADIER CALITZ: Kommissaris, dit is
3 wat ek gesê het in die eerste paragraaf, as ek kan lees,
4 "the situation has now taken very serious proportions and
5 is clear that conventional policing methods cannot work"
6 dit is die onderhandeling wat op daardie stadium, die 15de
7 as dreigemente aan ons wat plaas gevind het asook hulle het
8 'n totale, die gemeenskap of die crowd het a change of mood
9 gehad op die 15de. Daarom het ons die verklaring voorberei
10 sou ons dan, die inligting gekry het wie die persone was,
11 was dit makliker gewees om oor te gaan tot 'n
12 deursoekingsaksie, a cordon and search.

13 COMMISSIONER HEMRAJ: Now what is
14 conventional police methods mean?

15 BRIGADIER CALITZ: In my taal, soos ek
16 verstaan is dat ons normale polisie, polisie-optredes wat
17 ons gevolg het tot op daardie stadium, dit is die sektor
18 polisiëring, die sigbaarheid, die onderhandeling, al die
19 nodige wat ons gepoog het tot op daardie stadium.

20 COMMISSIONER HEMRAJ: Did that include a
21 dispersal?

22 BRIGADIER CALITZ: Dit is glad nie voor
23 die tyd gedoen nie, Kommissaris, dit is eers die oggend van
24 die 16de is daar toe met die inligting is daar in die
25 JOCCOM vergadering is daar 'n besluit geneem dat ons dan

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1 sou oorgaan tot 'n verdere stap en dit is die show of force
2 wat nog nie op daardie stadium ge-probeer is nie. So dit
3 was 'n volgende conventional metode. So ek dink ons het by
4 ver, die polisie het eers probeer om sover as moontlik alle
5 moontlike, conventional methods as ek dit so kan noem te
6 doen alvorens ons oorgegaan het tot hierdie stap.

7 COMMISSIONER HEMRAJ: What I really want
8 to know is that when you say that conventional methods
9 would not work, did you include, did you mean to include
10 that a dispersal would not work as well?

11 BRIGADIER CALITZ: Nee, nee, Kommissaris.

12 COMMISSIONER HEMRAJ: It would have been
13 those actions that were taken up to that stage as at the
14 morning of the 16th, is that how I understand?

15 BRIGADIER CALITZ: Dit is die aksies wat
16 in my verklaring wat ek bewus was op daardie stadium. Die
17 dispersion is eers vir ons op stage 3, dit het eers later
18 die middag gekom. So tot op die 15de dit was net die
19 aksies wat ons uitgevoer het tot op daardie stadium en dan
20 het ons die geleentheid gebied op die 16de omdat Generaal
21 Annandale ons meegedeel het dat hulle in alle
22 waarskynlikheid hulle wapens sou neerlê op die 16de, sou
23 dit ook nie gewerk het om dan direk oor te gaan na 'n
24 deursoekingsaksie en die geleentheid moes eers vir hulle
25 gegee word om dit deur te voer. Dit was die bespreking in

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1 die JOCCOM vergadering die oggend. Daarom is die
2 deursoekingsbevel nie uitgevoer op daardie stadium.

3 COMMISSIONER HEMRAJ: Thank you.

4 CHAIRPERSON: I would like to ask you
5 about an answer you gave a moment ago. Dispersal and
6 disarmament operation is that a conventional police
7 operation? I'm not interested in what conventional method
8 you used up to the, up to then but as a general statement
9 is a dispersal and disarmament operation conventional
10 police operation? I understood you earlier to say yes.
11 Did I misunderstand you?

12 BRIGADIER CALITZ: Mnr die Voorsitter,
13 nee alles wat tot op daardie stadium, toe ek die verklaring
14 gemaak het, tot my beskikking was -

15 CHAIRPERSON: No, no, no.

16 BRIGADIER CALITZ: Ek glo die dispersion
17 sal dan 'n volgende -

18 CHAIRPERSON: No, that's a different
19 matter. I understand what you say about what had been
20 tried up to that point. I understand that. But I'm busy
21 with a different point. As a general proposition is a
22 dispersal and disarmament operation a conventional policing
23 operation?

24 BRIGADIER CALITZ: Mnr die Voorsitter,
25 miskien kan ek so vra, as ek dan net 'n verklarende woord

<p style="text-align: right;">Page 17602</p> <p>1 kan kry, conventional policing method is wat ek bedoel het 2 is alle stappe wat op daardie stadium gevolg is. 3 CHAIRPERSON: No, but – 4 BRIGADIER CALITZ: Oorgaan tot 'n stap 5 wat, hoe kan ek sê, tot 'n konflik sou lui, conventional 6 methods is onderhandelinge, sigbaarheid, daardie tipe van 7 aksies, volgens my was conventional methods. 8 CHAIRPERSON: If you were dealing with a 9 crowd which is not responding to what you've done up to 10 that point, you know non lethal, less lethal methods and so 11 on, tear gas and stun grenades and so forth, you would then 12 move to dispersal and disarmament would you? 13 BRIGADIER CALITZ: Dit is die volgende 14 stap gewees - 15 CHAIRPERSON: Yes. 16 BRIGADIER CALITZ: Daai middag. 17 CHAIRPERSON: It's the following step and 18 would it be regarded as part of the conventional policing 19 way of dealing with that kind of situation? 20 BRIGADIER CALITZ: Dit sou dan gewees 21 het, ja. 22 CHAIRPERSON: Ja, thank you. 23 BRIGADIER CALITZ: Ek verstaan u nou. 24 CHAIRPERSON: You didn't say in your 25 statement, your affidavit that you were only talking about</p>	<p style="text-align: right;">Page 17604</p> <p>1 stadium aangegaan het. Fase 3 of die vorige fase was nog 2 nie tot my kennis op daardie stadium nie. 3 MR BUDLENDER SC: Yes, no I understand 4 that. But what you're saying to the Commission, to the 5 Provincial Commissioner is we can't use conventional 6 methods, we've got a serious situation here, conventional 7 methods are not going to work therefore we're going to need 8 something special, we would like a cordon and search 9 operation. 10 BRIGADIER CALITZ: Dit is korrek, mnr die 11 Voorsitter. 12 MR BUDLENDER SC: Can I move on then. 13 Now we know and I'm not sure whether you're aware but again 14 I will be corrected if what I say is wrong. That at about 15 half past 9 that morning, the 16th of August the Provincial 16 Commissioner held a media briefing. Have you heard, I know 17 you weren't there, have you heard subsequently about the 18 media briefing? 19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, dit was ook my getuie dat ek nie daarvan 21 bewus was tot na die tyd nie. 22 MR BUDLENDER SC: Yes, you've since heard 23 about it. But you didn't know about it at the time is that 24 right? 25 BRIGADIER CALITZ: Ek dra nou kennis daar</p>
<p style="text-align: right;">Page 17603</p> <p>1 what you had done up to that point, did you? I understand 2 you had a number, done a number of things. You've tried 3 very hard to solve the problem and you had done various 4 things which are part of conventional policing, you've done 5 that. 6 BRIGADIER CALITZ: Korrek, Meneer. 7 CHAIRPERSON: But you didn't in your 8 statement indicate that you were confining your reference 9 to conventional policing, only to those steps that you had 10 already taken or did you? I haven't the statement in front 11 of me so I, but am I right or wrong? 12 BRIGADIER CALITZ: Kommissaris, u is, ag, 13 mnr die Voorsitter, u is korrek. 14 CHAIRPERSON: Thank you. 15 MR BUDLENDER SC: Now your statement was 16 about what methods could be used in the future, it's not 17 about what methods had been used in the past. You were 18 talking about what needed to be done in the future and you 19 said conventional methods cannot be applied. Therefore we 20 need a cordon and search authorisation. Is that a fair 21 interpretation? 22 BRIGADIER CALITZ: Mnr die Voorsitter, ja 23 paragraaf 5 weereens het ek verwys die huidige 24 omstandighede daarom die woordjie now, the situation has 25 taken now taken this, so ek het bedoel wat op daardie</p>	<p style="text-align: right;">Page 17605</p> <p>1 was wel so iets. 2 MR BUDLENDER SC: And she announced, if I 3 can summarise, I hope accurately that the situation at the 4 koppie would be brought to an end that day. Are you aware 5 now that that is what she said at that time? 6 BRIGADIER CALITZ: Mnr die Voorsitter, ek 7 het, dit wat ek gesien het was die deeltjie wat op die TV 8 uitgebeeld was. So ek kan nie presies haar woorde, ek kan 9 nie daarop getuig nie. Maar ek moet iewers vat as u dit in 10 'n transkripsie. 11 MR BUDLENDER SC: I'm not quoting her 12 exact words, but that is the effect of what she was saying, 13 in fact she said at one stage the strike will be brought to 14 an end but she in any event said this is what she, the 15 essence of what she was saying is that the situation at the 16 koppie would be brought to an end, she hoped with the 17 agreement of the strikers, if not other steps would be 18 taken. 19 BRIGADIER CALITZ: Ek dra nie kennis van 20 enige, laat sy sê ander stappe gaan plaasvind nie, mnr die 21 Voorsitter. Ek glo sy sal beter daarvoor kan getuig. 22 MR BUDLENDER SC: I want to, would you go 23 to JJJ168. 24 BRIGADIER CALITZ: 186 or? 25 MR BUDLENDER SC: 168.</p>

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1 BRIGADIER CALITZ: It was not in your
 2 bundle but you, but maybe let me just check.
 3 MR BUDLENDER SC: I'm sorry if you don't
 4 have it. If you don't have it, Brigadier, we can arrange
 5 another copy for you.
 6 BRIGADIER CALITZ: I've got a 186. This
 7 one.
 8 CHAIRPERSON: [inaudible, microphone
 9 off].
 10 MR BUDLENDER SC: That is so Chair, that
 11 is so Chair.
 12 CHAIRPERSON: [inaudible, microphone
 13 off].
 14 BRIGADIER CALITZ: Mnr die Voorsitter, my
 15 fout ek het dit.
 16 CHAIRPERSON: [inaudible].
 17 MR SEMENYA SC: Chair, can you have your
 18 mike on.
 19 CHAIRPERSON: Have you read the, have you
 20 read the document?
 21 BRIGADIER CALITZ: Mnr die Voorsitter,
 22 nee dit was addisioneel wat na die tyd aangebring is.
 23 CHAIRPERSON: What I'm going to do is I'm
 24 going to adjourn now for 10 minutes, give you an
 25 opportunity to read the document.

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1 BRIGADIER CALITZ: Dankie, baie.
 2 CHAIRPERSON: It's only fair that you
 3 should have an opportunity to read the document before
 4 you're questioned about it. Otherwise you know it's,
 5 you're at a disadvantage, you hadn't read it. So were you
 6 given other documents recently which you haven't had
 7 before, Mr Budlender, has he been given, apart from this
 8 one, has he given other documents recently. Are there
 9 other documents that I should give him an opportunity to
 10 read before you cross-examine further.
 11 MR BUDLENDER SC: No, Chair, I don't
 12 believe so. Most of the documents relate, no, the short
 13 answer is no.
 14 CHAIRPERSON: Alright, okay. We'll have
 15 a, how long do you think you need, let's be generous and
 16 give him 10 minutes.
 17 MR BUDLENDER SC: Chair, perhaps I can,
 18 to assist the witness, I'm only going to ask him about, the
 19 five pages, the first five pages.
 20 CHAIRPERSON: No, well he –
 21 MR BUDLENDER SC: He's welcome to read
 22 the lot of course.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [09:55] CHAIRPERSON: The Commission resumes. I
 25 trust you've had an opportunity to read the exhibits, have

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1 you?
 2 BRIGADIER CALITZ: Korrek, mnr die
 3 Voorsitter, eerste vyf bladsye soos aangedui.
 4 CHAIRPERSON: Alright, so you're ready to
 5 answer the questions that Mr Budlender is going to ask you?
 6 BRIGADIER CALITZ: Ek het die geleentheid
 7 gehad, dankie, Mnr die Voorsitter.
 8 CHAIRPERSON: Okay.
 9 MR BUDLENDER SC: Thank you, Chair.
 10 Brigadier, during this short adjournment you very helpfully
 11 pointed out to me that in fact the minutes TT4 of the
 12 JOCCOM on the morning of the 16th of August show that
 13 Brigadier Van Zyl was in fact at that meeting.
 14 BRIGADIER CALITZ: Dit is korrek, mnr die
 15 Voorsitter. Ek het voorheen getuig ek kan nie onthou, maar
 16 toe ek deur die minutes gaan is dit wel so. Ek kan dit nou
 17 onthou.
 18 MR BUDLENDER SC: Thank you for that.
 19 Now, can we go to this document –
 20 COMMISSIONER HEMRAJ: May I just ask a
 21 question about cordon and search before do you that. What
 22 is the purpose of the cordon and search? Are you looking
 23 for firearms and then arrest or what exactly is the purpose
 24 of that?
 25 BRIGADIER CALITZ: Kommissaris, die doel

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1 van koördinerings en deursoekingsoperasie word nie net
 2 sommer toegestaan nie. Dit is as alle metodes van
 3 polisiëring op daardie stadium in 'n gebied wat baie
 4 gevaarlik is en ons kan nie met gewone polisiëringmetodes
 5 die gebied van huis tot huis, soos verwys is, kry wat ons –
 6 die inligting tot ons beskikking nie. Wat misdaad
 7 intelligensie dan doen, hulle word getaak om spesifiek
 8 vooraf inligting vir ons in te samel. Die informasie deur
 9 information managers, en dit dan om te skakel na
 10 intelligensie toe deur middel van beriggewers, fotos. Daar
 11 word ook vooraf 'n span gestuur en dan word daar lugfotos
 12 en stil kamera fotos, videos van spesifieke gebiede dan
 13 gevat waar ons die operasie gaan uitvoer. Die cordon and
 14 search operasie word dan deeglik vir sekere spanne voor
 15 gelig en die doel van so 'n operasie is om gevaarlike
 16 persone, persone wat geïdentifiseer is wat normaalweg nie
 17 in die hande gekry kan word deur die polisie, om sulke
 18 persone op te spoor, om gevaarlike wapens op te spoor,
 19 enige inligting tot die beskikking wat die polisie het wat
 20 misdaad intelligensie vir ons gee, deur so 'n operasie gee
 21 dit dan die polisie die magte om 'n gebied, sê maar 'n
 22 woongebied of 'n groot blok van 'n paar huise dan te
 23 omsingel en van huis to huis fisies dan dit deursoek, wat
 24 die magte dan gee. Sommige van die huise sal daar niks
 25 gekry word, maar dit word beheersd dan gedoen onder die

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1 bevelvoerder van die verskillende seksie bevelvoerders.
 2 COMMISSIONER HEMRAJ: Thank you. I'm
 3 sorry to have interrupted you, Mr Budlender.
 4 CHAIRPERSON: Before you carry on, just
 5 on this point, I think it would be helpful if we could be
 6 given at some stage a copy of the section, because I think
 7 that sets out what the circumstances are in which the
 8 authorisation can be granted by the provincial
 9 commissioner. I'd like to ask a further question about
 10 that. You're talking about how a procedure of this kind is
 11 done on the basis of intelligence obtained normally by
 12 criminal intelligence. Now, we know – I think that passage
 13 that I'm referring to hasn't been referred to yet, but that
 14 piece of the interview between General Mpmembe and Mr
 15 Zokwana of NUM, after the general said what was put to you,
 16 he then went on to ask Mr Zokwana, having said what
 17 couldn't be done. He then asked Mr Zokwana whether he
 18 could ask the NUM people to report the people whom they
 19 knew, because they live in the hostels and they live in the
 20 informal settlement, if they knew people who had arms and
 21 weapons and so on, and then this could be reported back.
 22 So then searches and seizures and so on could take place.
 23 And Mr Zokwana undertook to do that on the basis that such
 24 information as was given would – the identity of the
 25 informant would be kept secret. And of course that was on

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1 the Wednesday night. I take it there wasn't yet time for
 2 this information, if it was going to be forthcoming, to
 3 come back, but it would it have been additional source, I
 4 take it – I'm putting something to you, if it's wrong you
 5 must tell me – but it would have been an additional source
 6 which could have been used, in addition to material
 7 obtained by criminal intelligence, if there'd been - enough
 8 time had been given for a response. Would you agree with
 9 that?
 10 BRIGADIER CALITZ: Heeltemal korrek, mnr
 11 die Voorsitter.
 12 CHAIRPERSON: Thank you.
 13 MR BUDLENDER SC: Now, Brigadier, can we
 14 go then to JJJ168? It's common cause that those are notes
 15 that were made by Advocate Moolman, then Captain Moolman,
 16 but now I understand Colonel Moolman at the JOCCOM meeting
 17 on the morning of the 16th of August.
 18 BRIGADIER CALITZ: Ek verstaan dit so.
 19 MR BUDLENDER SC: The first page is a
 20 cover page. It says notes made, 16 August, 06:00. Can we
 21 then go to the next page? And I want to read out what is
 22 on that page number 2, it's really the first page of the
 23 notes. It says, "D-Day, terms and conditions not to
 24 continue. Constitutional rights, but boundaries. Ten
 25 killed, two SAPS. Firearms missing. Given opportunity to

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1 lay down weapons. Mine gave opportunity to work. Unions
 2 talked, laid down and return. Denounced violence. Will
 3 reaffirm today. Weapons to be left at koppie. Reality, in
 4 position to act in case weapons not left. Specific
 5 policing act to take place, not limited to both hostels.
 6 Phase 2 today. Further deployment while unions talk
 7 approximately 9h00. SAPS to phase 2. Biggest presence POP
 8 and TRT frontline. Cordon intensified and out to bigger
 9 areas. Any person with weapon will be approached and
 10 arrested." You see all of that?
 11 BRIGADIER CALITZ: Korrek, mnr die
 12 Voorsitter.
 13 MR BUDLENDER SC: Right. Now, who was it
 14 who made the announcement that using the term D-Day? Can
 15 you recall?
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 nee, die term D-Dag, ek het dit probeer vergelyk met TT4,
 18 die minutes wat tot my beskikking was en waarvan ek kennis
 19 dra, maar die term D-Dag, nee, ek kan nie daai deel onthou
 20 –
 21 MR BUDLENDER SC: You can't remember who
 22 said it or you can't remember whether it was said, or you
 23 say it wasn't said?
 24 BRIGADIER CALITZ: Mnr die Voorsitter, as
 25 ek nou moet sê dan sê ek dit was nie gesê nie, maar ek sien

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1 die notas is gevat, so in daardie geval moes iemand dit
 2 gesê het. Waar ek was, ek het dit nie gehoor nie.
 3 CHAIRPERSON: It looks like introductory
 4 remarks, because I think it's right near the beginning.
 5 Who spoke first at the meeting? Can you remember?
 6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 gewoonlik is dit die voorsitter van die JOCCOM vergadering
 8 wat dan Generaal Annandale is wat gewoonlik die mense
 9 welkom en 'n oorhoofs briefing gee en dan soos die persone
 10 dan geposisioneer is om die tafel. Ek sien byvoorbeeld die
 11 minutes dui aan crime intelligence. So dan begin ons met
 12 die intelligensie report en daarna die feedback van die
 13 vorige aand, ensovoorts, maar dit sou Generaal Annandale
 14 glo ek gewees het wat die introductory notas gemaak het, of
 15 comments gemaak het.
 16 MR BUDLENDER SC: And then –
 17 CHAIRPERSON: Thank you.
 18 MR BUDLENDER SC: - Brigadier, could you
 19 go to the fifth page – fifth page, page – the fifth page of
 20 that bundle. That's the one which starts at, it says at
 21 the top Brigadier Scott's briefing, do you have that.
 22 BRIGADIER CALITZ: Ek het dit, Mnr die
 23 Voorsitter.
 24 MR BUDLENDER SC: And I just want to read
 25 that. "Brigadier Scott's briefing, important to follow to

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1 the letter. Important to start with force continuum. They
2 must see it's stopping here and now. SAPS not retreating.
3 Agreement, everything will be done on command, today things
4 will be changed." Do you see that?
5 BRIGADIER CALITZ: Ek sien dit, mnr die
6 Voorsitter.
7 MR BUDLENDER SC: Is that Colonel Scott
8 said?
9 BRIGADIER CALITZ: Mnr die Voorsitter,
10 soos ek dit onthou het, ek sien die woorde at Kolonel
11 Scott, soos ek dit onthou het, het hy vir ons gesê dat die
12 show of force – die prepositioning van die voertuie sal
13 daardie dag plaasvind en dit sal die protestors dan
14 ontmoedig, aangesien dit 'n baie groter getal polisiemanne,
15 asook voertuie en toerusting daar sal stel, en ek dink dit
16 is wat hy miskien hier bedoel van "things will change,"
17 want ons het geglo dat die show of force sou dan die hele
18 situasie draai.
19 MR BUDLENDER SC: Did you really think
20 that a show of force would cause the strikers to drop their
21 weapons and leave?
22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 wat aan ons gesê is op die dag is dat die generale en die
24 unie president was daar 'n gesprek tussen hulle en hulle
25 het gesê in alle waarskynlikheid sal dit gebeur. So ek het

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1 geen rede gehad om te twyfel. Wat ons wel gedoen het is
2 omdat die show of force daar te sit indien dit wel nie
3 gebeur nie. Ek dink dit is ook gesê in die minutes, moet
4 die polisie in posisie te wees om dit verder te vat.
5 CHAIRPERSON: Well, the intelligence
6 people weren't as confident, isn't that right? In the
7 report from criminal intelligence which was given to the
8 meeting seemed indicate that their information was that
9 this wasn't going to happen.
10 BRIGADIER CALITZ: Die inligting is wel
11 so, mnr die Voorsitter. Dit is al van vroeër af wat hulle
12 gesê het die -
13 CHAIRPERSON: Okay, I know they said that
14 earlier and that's consistently been their information, but
15 a new thing had happened since then, Mr Mathunjwa had
16 spoken to them and had agreed to come back the following
17 morning at 9 o'clock, and had come back to the JOC and had
18 indicated, in fairly confident terms, I think, that he
19 thought that all would be well and that they would lay down
20 their arms. So there was a debate as to whether he said it
21 would definitely happen or in all probability and so, but
22 we don't have to go into that now. The criminal
23 intelligence people's information was still that that
24 wasn't going to happen. That seems to be the case, isn't
25 it?

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1 BRIGADIER CALITZ: Korrek, Mnr die
2 Voorsitter.
3 CHAIRPERSON: Now, that presumably was
4 the factor which had to be borne in mind by the members of
5 the JOCCOM that there is this one indication that they may
6 lay down their arms voluntarily, on the other hand,
7 criminal intelligence say it's not going to happen. So
8 we've got to bear in mind that it may happen, it may not
9 happen. Is that fair?
10 BRIGADIER CALITZ: Korrek, Mnr die
11 Voorsitter.
12 MR BUDLENDER SC: Brigadier, could you go
13 to exhibit GGG13?
14 COMMISSIONER HEMRAJ: Are you moving away
15 from this?
16 MR BUDLENDER SC: No, this is on the same
17 issue.
18 COMMISSIONER HEMRAJ: On the same D-Day
19 issue?
20 MR BUDLENDER SC: On the issue of what
21 was anticipated as to what would happen.
22 COMMISSIONER HEMRAJ: Can I just raise a
23 few things about the D-Day issue, when the last time it
24 came up in cross-examination, we enquired that there was a
25 statement from Colonel Moolman about it, and secondly, does

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1 that comment appear in any of the other officer's diaries?
2 Those that I have been able to read – trying to navigate
3 the electronic exhibits, I haven't seen it, but do you
4 perhaps know?
5 MR BUDLENDER SC: I don't believe – I
6 haven't seen it in any diary and we do not yet have a
7 statement from Colonel Moolman.
8 COMMISSIONER HEMRAJ: Thank you.
9 MR BUDLENDER SC: - statement from
10 Colonel Moolman, but not addressing that issue. We still
11 have to do that.
12 CHAIRPERSON: Of course you're not
13 responsible for producing a statement from Colonel Moolman,
14 the police are. Mr Semenya, while we're on this point, may
15 I ask you this, obviously this statement is outstanding, we
16 were promised, it hasn't come yet. I'm not being critical.
17 I understand that there are problems and so on.
18 MR BUDLENDER SC: In fairness to my
19 colleagues, I don't think we've asked for that –
20 CHAIRPERSON: I think we asked for it –
21 MR BUDLENDER SC: I think you may have
22 asked. There has been a statement, earlier statement by
23 Colonel Moolman which doesn't address this, subsequent
24 issue arose.
25 CHAIRPERSON: I'm not blaming anybody. I

<p style="text-align: right;">Page 17618</p> <p>1 just want to say this that if there are any statements 2 outstanding, which are going to be provided and haven't 3 been provided yet, I think it's very important that they be 4 provided quite soon. I mean, the time for filing 5 statements has long since passed, but as I say, I'm not in 6 a blaming mood at the moment. We are adjourning at the end 7 of the hearing on Thursday of next week, and we having a 8 recess, which is intended to be a reading and working 9 recess, and speaking for myself, I'd appreciate it very 10 much if all the statements could be – that are outstanding, 11 insofar as there are any, will be made available to the 12 evidence leaders in time for them to put them onto a CD Rom 13 or load them onto my computer or whatever these clever do 14 these days, so that when we leave here on Thursday I can 15 take with me to my home materials with which to work during 16 the recess, and I'm sure I'm not alone in wanting this 17 material in that form. So anyway I'm conveying that to Mr 18 Semanya. I'm not sure what the position is in respect of 19 statements from other parties, but the same obviously would 20 apply. Sorry, Advocate Hemraj wants to say something. 21 Yes, yes, this is not directed solely at the 22 police, that's why I added that insofar as there are other 23 things outstanding, we – statements and so forth 24 outstanding, it's very important I think that we should get 25 them before we leave on Thursday of next week so that we</p>	<p style="text-align: right;">Page 17620</p> <p>1 and also of course of the evidence leaders. 2 CHAIRPERSON: I think the evidence 3 leaders has got to keep an eye on them and make sure that 4 they do it, because to be fair the parties may well, 5 perfectly understandably, forget something or overlook 6 something. It's not something that's necessarily a basis 7 for blaming people, just we would like this sort of thing 8 to be sorted out by the end of – what I can call the term, 9 which comes to then next Thursday. 10 MR BUDLENDER SC: Yes, I'm sure, Chair, 11 we all accept that we all have a responsibility to see that 12 this happens. 13 CHAIRPERSON: Yes. 14 MR BUDLENDER SC: Now, Brigadier, you 15 explained in response to the question from the chairperson 16 – well, let me put it differently, the – 17 BRIGADIER CALITZ: Ekskuus tog, Mnr die 18 Voorsitter, u het verwys na GGG. Ek het dit nie mooi 19 gehoor nie, waar – 20 MR BUDLENDER SC: GGG13. That's your 21 first statement. Before we go there, Brigadier, the 22 chairperson put it to you that there were really two 23 alternative versions of what might happen. On the one 24 hand, crime intelligence were saying they will not 25 surrender their weapons and they will fight, if necessary,</p>
<p style="text-align: right;">Page 17619</p> <p>1 can work on them during the recess, and if there are any 2 other things that we haven't got, we'll ask them, but 3 that's a matter we needn't deal with here in the chamber, 4 we deal with the evidence leaders separately, but there are 5 quite a lot of the things, as far as I know, that I 6 certainly haven't got, I'm not blaming anyone, but I'm 7 expressing the hope which I take it will not be dashed, 8 that when we leave here on Thursday, all the material we 9 need from now on will be available to us, so we can spend a 10 fruitful and profitable time during the recess. I know 11 it's an interruption, I know, but it's important to say. 12 COMMISSIONER HEMRAJ: Mr Budlender, at 13 various stages during the cross-examination you've asked if 14 there's a statement available from a particular person, 15 depending on what the point of cross-examination was, and 16 none of those have been forthcoming. So I don't know 17 whether someone's going to do the exercise to go through 18 the record and identify them or whether we're required to 19 do it, but at the time that they arose, they were germane 20 to the issue on which the cross-examination was taking 21 place, and I think that this request extends to the expert 22 reports and all of that as well. 23 MR BUDLENDER SC: Yes, I'm sure it's not 24 the commissioner's task to do that, I think it's the 25 responsibility of the parties whose witnesses they would be</p>	<p style="text-align: right;">Page 17621</p> <p>1 and on the other hand, there was the hope that the 2 discussions and the negotiations would bear some fruit, and 3 that the show of force, if necessary, would encourage that. 4 Is that fair? 5 BRIGADIER CALITZ: Dit is wat Mnr die 6 Voorsitter gesê het wat ek verstaan het, ja. 7 CHAIRPERSON: Never mind what I said, the 8 question is whether you agree – 9 BRIGADIER CALITZ: Ek het gesê – 10 CHAIRPERSON: - don't mean anything, 11 because I'm not witness, you are. Do you agree with what I 12 said or not? 13 BRIGADIER CALITZ: My response was dis 14 korrek, mnr die Voorsitter. 15 CHAIRPERSON: Okay, thanks. 16 MR BUDLENDER SC: Now, I want you to look 17 at paragraph 19 of GGG13. Perhaps we can identify first. 18 GGG13 is of course the first statement you made on the 19th 19 of August 2012. And the first part of the statement sets 20 out the events, you describe them, and paragraph 19 is 21 really your summary of looking back on the week. 22 BRIGADIER CALITZ: Nee, mnr die 23 Voorsitter, dis 'n – die 19de is 'n samevatting van my 24 verklaring. 25 MR BUDLENDER SC: Exactly. And would you</p>

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1 go to the sentence which starts five lines from the foot of
2 that page? There's a sentence starting, "At no stage."
3 Can you see that? And let me read to you what you said in
4 that statement. You say in that statement, "At no stage
5 during the whole negotiating process did I get the
6 impression that the crowd was willing to listen to reason
7 and lay down their weapons.
8 [10:15] Instead, I came to the conclusion that they will
9 never surrender their weapons and that they were preferred
10 to fight with the police and to die." That's your
11 statement.
12 BRIGADIER CALITZ: Dit is my verklaring,
13 mnr die Voorsitter.
14 MR BUDLENDER SC: Now can I move on;
15 after these events, after the Marikana events –
16 CHAIRPERSON: Can I just follow up on the
17 point you've made? So would I be correct in saying that it
18 does look as if as far as your own attitude was concerned -
19 never mind what Mr Mathunjwa conveyed to the Generals - as
20 far as you were concerned your conclusion was that they're
21 not going to surrender. That's what the information may
22 be, but you were really on the side of the Crime
23 Intelligence people in expressing, or not expressing
24 possibly, but in having in your mind an opinion as to which
25 of those two possibilities was likely to eventuate. Would

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1 that be a fair summary?
2 BRIGADIER CALITZ: Dit is korrek, mnr die
3 Voorsitter.
4 COMMISSIONER HEMRAJ: Can I just ask,
5 when you say that they will never surrender their weapons,
6 in what circumstances did you mean?
7 BRIGADIER CALITZ: Kommissaris, dit is
8 presies wat ons hulle gevra het om te doen en wat hulle
9 glad nie gedoen het nie, asook dan die dreigemente wat mnr
10 Noki na my Nyala toe gekom het en gesê het dat ons sal
11 vandag doodgaan. So die enigste manier hoe so iets was
12 moontlik is dat hulle bereid was om hulle wapens op te neem
13 en ons aan te val.
14 COMMISSIONER HEMRAJ: The question is
15 what did you mean when you said that they would not
16 surrender their weapons? In terms of which process would
17 they not surrender it? Would they not surrender it in
18 terms of negotiations? Would they not surrender it if
19 there was a dispersal? What did you mean?
20 BRIGADIER CALITZ: Op daardie stadium was
21 dit tydens ons onderhandelingsproses tot op daardie
22 stadium, Kommissaris, en dan sou ons dan oorgaan tot 'n
23 "dispersion action" kon ons nie doen nie. So die
24 verklaring het gemaak, gebaseer op wat daar gebeur het. So
25 my antwoord was tydens die onderhandelingsproses het ek

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1 gesê het hulle sou dit nie "surrender" nie.
2 CHAIRPERSON: You use a strong word, you
3 know; you use the word "never." Never normally means in no
4 circumstances. Is that right? Nooit.
5 BRIGADIER CALITZ: Korrek –
6 CHAIRPERSON: Never.
7 BRIGADIER CALITZ: Korrek, mnr die
8 Voorsitter.
9 CHAIRPERSON: No circumstances, and then
10 you went on to say that they were prepared to fight with
11 the police and to die, which indicates that it wasn't just
12 that they weren't going to lay down their arms if they were
13 asked nicely to lay down their arms, or there was a force
14 continuum, or show of force; they were prepared to go so
15 far as to fight with the police and even die, if necessary.
16 So you put it as strongly as that, didn't you?
17 BRIGADIER CALITZ: Kommissaris, heeltemal
18 korrek. Daardie dreigemente is in my gesig reguit vir my
19 gesê, so dit is aan my as persoon gedoen en ek kon sien dat
20 die persoon dit wel bedoel.
21 CHAIRPERSON: And you were in fact in a
22 very good position, I take it, as the person who was
23 dealing with them and to whom they were saying these things
24 directly, to sum up their mood and their likely conduct.
25 Is that correct?

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1 BRIGADIER CALITZ: Beslis so, mnr die
2 Voorsitter.
3 MR BUDLENDER SC: Now Brigadier, moving
4 on from that, after these events you heard that the
5 situation at Marikana had been discussed at a meeting of
6 the National Management Forum –
7 CHAIRPERSON: I'm sorry, Mr Budlender,
8 the phrase "after these events" is rather vague. I don't
9 quite know what you mean, what events you're referring to.
10 I don't know what date you're referring to. I think to be
11 fair to the witness you should tell him that.
12 MR BUDLENDER SC: Let me put it more
13 clearly. After the week which ended on the 16th of August
14 2012 you subsequently heard that the position at Marikana
15 was discussed at a National Management Forum meeting on the
16 night of 15 August 2012.
17 BRIGADIER CALITZ: Mnr die Voorsitter,
18 dit is korrek. Ek het eers onlangs, ek dink hierdie jaar
19 iewers daarvan verneem.
20 MR BUDLENDER SC: And what were you told
21 was the outcome of that meeting of the National Management
22 Forum?
23 BRIGADIER CALITZ: Nee, mnr die
24 Voorsitter, dis glad nie met my bespreek nie. Ek het net
25 gehoor die persone praat daarvan. Ek het ook nie gevra

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1 nie.

2 MR BUDLENDER SC: It would have been

3 helpful for the JOCCOM on the morning of the 16th of August

4 to have known what happened at the National Management

5 Forum the night before.

6 BRIGADIER CALITZ: Mnr die Voorsitter,

7 weereens, as daar so 'n vergadering was glo ek die JOCCOM

8 kon dalk – ek, die tydsverloop, so ek kan glad nie daarop

9 getuig nie, nee. Ek weet nie van die vergadering dat dit

10 wel daardie vorige aand was nie, so ek kan nie daarop

11 antwoord nie.

12 MR BUDLENDER SC: Well, you can accept

13 that the meeting was held the previous evening. It started

14 at about 25 past 9 on the evening of the 15th of August – or

15 let me put it differently; it was an extraordinary session

16 of the National Management Forum which started at about 25

17 past 9 on the night of the 15th of August. Now you can

18 accept that that is the case.

19 BRIGADIER CALITZ: Mnr die Voorsitter, ek

20 sal u woord daarvoor moet vat.

21 MR BUDLENDER SC: Now it would have been

22 helpful to the JOCCOM the next morning to have known what

23 the outcome of that discussion was of the National

24 Management Forum.

25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 weereens, ek weet nie weet is daar bespreek nie, watse

2 voorvalle daar bespreek is nie. So ek kan nie daarop

3 kommentaar lewer nie.

4 MR BUDLENDER SC: Well, the minutes of

5 that meeting say – I don't have them here, but they say

6 that the Provincial Commissioner proposed that the strikers

7 be disarmed and that the National Management Forum endorsed

8 that proposal. It would have been helpful for the JOCCOM

9 to have known that on the morning of the 16th of August.

10 MR SEMENYA SC: Mr Budlender is repeating

11 this "helpful," but I don't understand what he's seeking to

12 obtain –

13 CHAIRPERSON: I wanted to make the same

14 point, if I may say so, Mr Semanya. If I may, without

15 intending a pun, it would have been helpful if you told us

16 and the witness why you suggest it would have been helpful

17 for the JOCCOM to have known that.

18 MR BUDLENDER SC: The JOCCOM on the

19 morning of the 16th of August had to make decisions about

20 what was going to happen that day, correct?

21 BRIGADIER CALITZ: Dit is korrek, mnr die

22 Voorsitter.

23 MR BUDLENDER SC: The National Management

24 Forum is a very senior organ of the South African Police

25 Service.

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1 BRIGADIER CALITZ: Korrek, mnr die

2 Voorsitter.

3 MR BUDLENDER SC: It would have been

4 helpful to the JOCCOM on the morning in making its decision

5 to know what the view of the National Management Forum was.

6 MR SEMENYA SC: Again, Chair, we do know

7 that the National Forum concluded its meeting. There were

8 subsequently other people who sat in what is called

9 extraordinary meeting. To be calling this a National Forum

10 meeting decision and endorsement is not accurate.

11 CHAIRPERSON: We've been given minutes,

12 as I understand, the exhibit as I understand it is – if I'm

13 wrong I'll be corrected – purports to be a minute of what

14 happened at an extraordinary meeting of the body concerned,

15 which is the forum, and as far as I can recall this

16 particular item is described as item 7 on the agenda. So

17 it does seem prima facie as if the question is in order,

18 but I'll give you an opportunity to address me further if

19 I've stated anything wrong.

20 MR BUDLENDER SC: Chair, it's –

21 CHAIRPERSON: No, no, I'm not –

22 MR BUDLENDER SC: I'm sorry, I thought

23 you were speaking to me.

24 CHAIRPERSON: - to Mr Semanya. Mr

25 Semanya?

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1 MR SEMENYA SC: It is not on the agenda,

2 definitely. It is on the minute as number 7 –

3 CHAIRPERSON: Yes –

4 MR SEMENYA SC: - of an extraordinary

5 meeting, but it is not the meeting of the National Forum,

6 Chair. We can go to the document and look at it.

7 CHAIRPERSON: What is the heading –

8 perhaps Mr Budlender can tell us. What is the heading of

9 the document?

10 MR BUDLENDER SC: Chair, I don't –

11 MR SEMENYA SC: [Microphone off,

12 inaudible] of the document, Chair, is the document of the

13 National Forum because it is a minute of that, but after

14 the session was held there was an extraordinary session of

15 special people, comprising the Provincial Commissioners and

16 others.

17 CHAIRPERSON: [Microphone off,

18 inaudible]. What's the heading of the document? Mr

19 Budlender, can you tell us what's the heading of the

20 document?

21 MR BUDLENDER SC: The heading of the

22 document is "Minutes of the meeting of the National

23 Management Forum."

24 CHAIRPERSON: So prima facie – maybe

25 you've got other information which you'll give us the

<p style="text-align: right;">Page 17630</p> <p>1 benefit of later, but prima facie as I understand it, the 2 SAPS were asked for the relevant minute of the National 3 Management Forum and were given that, and it says "National 4 Management Forum, 7," and gives the decision. Now you may 5 in fact have information to the effect that that was 6 incorrect, that it wasn't the National Management Forum as 7 such, it was some other body and that the heading is wrong, 8 but for the moment there's no such evidence before us at 9 the moment, but the documents before us says what I've said 10 and prima facie I think Mr Budlender continues with the 11 questioning. Maybe it must be done subject to the 12 reservation that there may be other evidence later on this 13 point, but – 14 MR BUDLENDER SC: Well Chair, I'd like to 15 shortcut – 16 CHAIRPERSON: Let me give Mr Semenya a 17 chance – sorry, you want to say something first? 18 MR BUDLENDER SC: I'd like to shortcut 19 this then we can avoid the debate about whether this was 20 the National Management Forum, an extraordinary session of 21 the Management Forum, or something else. Perhaps let me 22 just not refer to it as that; let me describe who was there 23 and when it happened, without giving it a label. There was 24 a meeting, Brigadier, at about 9:25PM on Thursday the 15th, 25 which was attended by the following –</p>	<p style="text-align: right;">Page 17632</p> <p>1 JJJ177, then we can't have any argument at all about it. 2 Have you got – no, you don't have it, but could we have it 3 on the screen. It's very short. Could we get JJJ177 on 4 the screen? Could you blow it up a bit, please? Thank 5 you. Right, and you'll see it says "7, extraordinary 6 session," and then it says "Attendance," and it's the 7 people I've listed, the National Commissioner, all 8 Provincial Commissioners, Divisional Commissioner 9 Operational Response Services, Deputy National 10 Commissioner, Operational Services, and Acting Divisional 11 Commissioner, CI. Now that's a meeting of very senior 12 people in the South African Police Service, headed by the 13 National Commissioner herself, correct? 14 BRIGADIER CALITZ: Ek het dit so reeds 15 geantwoord. 16 CHAIRPERSON: May I ask you how many 17 Provincial Commissioners are there? 18 BRIGADIER CALITZ: Daar is nege, mnr die 19 Kommissaris. 20 CHAIRPERSON: So National Commissioner, 21 one, plus nine Provincial Commissioners, 10, Divisional 22 Commissioner ORS is 11, Deputy National Commissioner, 23 Operational Services, is 12, Acting Divisional Commissioner 24 CI is 13. So there were 13 people there. 25 BRIGADIER CALITZ: Volgens die verslag</p>
<p style="text-align: right;">Page 17631</p> <p>1 CHAIRPERSON: No, that's Wednesday the 2 15th. 3 MR BUDLENDER SC: Wednesday, sorry, 4 Wednesday the 15th 9:25, it was attended by the following 5 persons; the National Commissioner, all nine Provincial 6 Commissioners, the Divisional Commissioner for Operational 7 Response Services, the Deputy National Commissioner for 8 Operational Services, and the Acting Divisional 9 Commissioner, Crime Intelligence. They were the people who 10 were at the meeting, at that session, if I can call it 11 that. They had a discussion about what should happen at 12 Marikana. Now that is a meeting of the most senior people, 13 or many of the most senior people in the South African 14 Police Services, headed by the National Commissioner 15 herself, correct? 16 BRIGADIER CALITZ: Dit is senior 17 personeel, korrek, mnr die Voorsitter. 18 CHAIRPERSON: In fairness to the witness 19 I think you should read to him, unless he's seen it 20 already, the exact words of the resolution. I won't call 21 it a decision, but it was a resolution. 22 MR BUDLENDER SC: Let me read to you what 23 they said. I won't call it a resolution or anything else; 24 I'll just read the words. It says, "After deliberations" – 25 I'm sorry, let me start from the beginning. Could we go to</p>	<p style="text-align: right;">Page 17633</p> <p>1 wat ek sien, korrek, mnr die Voorsitter. 2 CHAIRPERSON: Ja, and we've already 3 conceded it's very, very senior people. 4 BRIGADIER CALITZ: Korrek, mnr die 5 Voorsitter. 6 CHAIRPERSON: And it's agenda item number 7 7, as described, and next to that is the word 8 "extraordinary session". Alright, and then we have – now 9 you see the wording of the, I'm not sure it's a resolution 10 but it certainly amounts to an endorsement of something. 11 Anyway, you've seen that now. I think now Mr Budlender can 12 ask you whatever he wants to ask you. 13 MR BUDLENDER SC: Let's just read it out. 14 You may not have had a chance to read it properly, 15 Brigadier. Under "Discussion" it says, "That National 16 Commissioner opened the meeting and requested the 17 Provincial Commissioner North West, Lieutenant-General 18 Mbombo, to brief the attendees on issues of the labour 19 unrest in Lonmin Mine in Marikana, North West. After 20 deliberations the meeting endorsed the proposal to disarm 21 the protesting masses, and further indicated that 22 additional resources must be made available upon need 23 identification by the Provincial Commissioner North West." 24 Now my question to you is this; this was a view expressed – 25 I won't call it a resolution because I don't want to have</p>

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1 an argument –

2 CHAIRPERSON: Well, the heading is

3 “Discussions and decision/resolution,” so it was either a

4 decision taken after discussions, or a resolution, if one

5 can go by the heading.

6 MR BUDLENDER SC: Yes. Whatever it was,

7 this large group of very senior people in the South African

8 Police Services had endorsed the proposal that disarming

9 the protesting masses should – I’m sorry, let me start

10 again. This large meeting of very senior people endorsed

11 the proposal that the protesting masses should be disarmed.

12 You see that?

13 BRIGADIER CALITZ: Ek sien die sin, mnr

14 die Voorsitter.

15 MR BUDLENDER SC: And my question again

16 is it would have been very helpful to the JOCCOM the

17 following morning to know that these senior people had met

18 and that this was the view that they had taken as to the

19 way forward.

20 BRIGADIER CALITZ: Mnr die Voorsitter, ek

21 glo dat hulle kon dit in ag geneem het as dit met hulle

22 gedeel was. Ek weet ons Provinsiale Kommissaris was deel

23 van die – hoe kan ek sê? – Noordwes JOCCOM, so of dit

24 gedeel is weet ek nie.

25 MR BUDLENDER SC: It was not conveyed to

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1 the JOCCOM.

2 BRIGADIER CALITZ: Ek sal nie kan sê of

3 dit gedeel is met hulle nie.

4 CHAIRPERSON: It wasn’t conveyed to the

5 JOCCOM when you were there at the 6 o’clock meeting?

6 BRIGADIER CALITZ: Nie die spesifieke

7 vergadering nie, nee.

8 MR BUDLENDER SC: And you weren’t told

9 what was the view of the National Commissioner, all the

10 Provincial Commissioners and these other senior people?

11 BRIGADIER CALITZ: Nee, mnr die

12 Voorsitter, ek was glad nie meegedeel wat die inligting was

13 wat van die vergadering af kom nie. Die naaste was die

14 “force continuum” wat ons in plek gesit het die oggend.

15 MR BUDLENDER SC: Now we also know that

16 the Provincial Commissioner announced –

17 COMMISSIONER HEMRAJ: Are you moving away

18 from this document?

19 MR BUDLENDER SC: Yes, I am.

20 COMMISSIONER HEMRAJ: This document has

21 got either a draft watermark or a draft stamp across it.

22 Is it different from the final product?

23 MR BUDLENDER SC: No, we’ve been advised

24 by the Secretariat, which we interviewed two days ago, that

25 this is, the way it works is that this is a draft which is

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1 prepared, it goes then, it’s part of the agenda of the next

2 meeting, the agenda papers of the next meeting, and then

3 it’s then adopted with or without modification, and we’re

4 told there was no modification. So this appears to be the

5 final version. Now we know that the Provincial

6 Commissioner announced at the media briefing at about 9:30,

7 “This thing is going to end today,” words to that effect.

8 We’ve discussed that already. You didn’t know that at the

9 time of the JOCCOM meeting?

10 BRIGADIER CALITZ: Ek was nie bewus

11 daarvan nie, nee, mnr die Voorsitter.

12 MR BUDLENDER SC: And again I suggest to

13 you it would have been helpful to the JOCCOM in making its

14 decision to know that it was the view of the Provincial

15 Commissioner that things must end that day.

16 BRIGADIER CALITZ: Weereens, mnr die

17 Voorsitter, ek weet nie of dit gekommunikeer was nie, nee.

18 MR BUDLENDER SC: But the JOCCOM wasn’t

19 told that this was the view of the Provincial Commissioner?

20 BRIGADIER CALITZ: Die woorde van die

21 Provinsiale Kommissaris by die media, dat sy dit gesê het

22 was nie bespreek op die 6 uur oggend “meeting” nie.

23 MR BUDLENDER SC: No, the words couldn’t

24 be discussed because they hadn’t been said yet, but the

25 fact that this was her view of the matter was not

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1 communicated to the JOCCOM at its 6 o’clock meeting?

2 BRIGADIER CALITZ: Ek verstaan dan so,

3 mnr die Voorsitter.

4 MR BUDLENDER SC: Now if I can move on,

5 we know that at some point a decision was made to undertake

6 an operation on the 16th of August to disperse and disarm

7 the strikers on the koppie. I’m not going to debate when

8 the decision was taken, but a decision was taken.

9 BRIGADIER CALITZ: Dit is so aan my

10 meegedeel rondom die 14:30 voorligting.

11 MR BUDLENDER SC: And we know that the

12 participants in the operation would include the TRT, the

13 NIU, and the STF.

14 BRIGADIER CALITZ: Dit is korrek, mnr die

15 Voorsitter.

16 MR BUDLENDER SC: [Microphone off,

17 inaudible]

18 BRIGADIER CALITZ: Korrek, mnr die

19 Voorsitter.

20 MR BUDLENDER SC: I’m sorry, that’s an

21 answer without a question.

22 CHAIRPERSON: What you said wasn’t

23 recorded, so would you please repeat the question, this

24 time with your microphone on.

25 [10:35] MR BUDLENDER SC: The question to which

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1 you agreed, Brigadier, was that the TRT and NIU and STF
2 were armed with R5 rifles, that's correct.
3 BRIGADIER CALITZ: Ek verstaan so, Mnr
4 die Voorsitter.
5 MR BUDLENDER SC: Well you know that they
6 were so, don't you, you know they were armed with R5s?
7 BRIGADIER CALITZ: Normaal weg -
8 MR BUDLENDER SC: You were the
9 operational commander.
10 BRIGADIER CALITZ: Onder normale
11 omstandighede ek het wel nie almal van hulle inspekteur
12 omdat, maar dit is normale uitreiking.
13 MR BUDLENDER SC: That's what you
14 expected they would be armed with?
15 BRIGADIER CALITZ: Korrek, mnr die
16 Voorsitter.
17 MR BUDLENDER SC: An R5 rifle is a weapon
18 which is designed to kill? It is a, ja.
19 BRIGADIER CALITZ: Dit is wat hulle noem
20 a assault rifle.
21 MR BUDLENDER SC: You use it to kill not
22 to injure or subdue, it's a very dangerous weapon?
23 BRIGADIER CALITZ: Nee, meneer
24 MR SEMENYA SC: - Chair, no.
25 BRIGADIER CALITZ: U kan -

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1 CHAIRPERSON: The question is put, the
2 witness can agree or disagree, what's wrong with it. The
3 witness doesn't have to agree. It's a question, not a
4 statement, am I right?
5 BRIGADIER CALITZ: Mnr die Voorsitter ek
6 het gesê nee, die wapen was nie ontwikkel net om te dood
7 nie. U kan wel beseer, u kan wel waarskuwing skote skiet.
8 So daar's verskeie opsies. Die wapen is nie ontwerp net om
9 te dood nie, nee.
10 MR BUDLENDER SC: But I understand you
11 can use, you can fire warning shots but if you shoot
12 somebody, it's a very high velocity weapon, correct?
13 BRIGADIER CALITZ: Dit is korrek, mnr die
14 Voorsitter.
15 MR BUDLENDER SC: And if you fire it and
16 you strike somebody with it there is a very real risk that
17 the person will be killed.
18 BRIGADIER CALITZ: Weereens, mnr die
19 Voorsitter, dit hang af waar op die liggaam die persoon
20 getref word, nie noodwendig gedood nie, nee.
21 MR BUDLENDER SC: No, not necessarily.
22 Some people are lucky. But the R5 bullet is designed to
23 spread on impact and cause large damage, correct?
24 CHAIRPERSON: Do you know whether that is
25 correct?

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
2 nee ek is nie 'n kundige op daardie gebied nie nee. Ek kan
3 dit nie -
4 MR BUDLENDER SC: Have you never heard
5 that, heard it said that an R5 bullet is designed to
6 spread, to fragment on impact?
7 BRIGADIER CALITZ: Ek weet die woord
8 fragmenteer maar ek weet nie op impak of hoe dit gebeur, ek
9 kan nie daarop getuig nie, nee.
10 MR BUDLENDER SC: Well it doesn't
11 fragment in the air. You heard that it's designed to
12 fragment?
13 BRIGADIER CALITZ: Nee, mnr die
14 Voorsitter, laat dit nie so ontwerp is nie, nee. Maar dit
15 is al bespreek.
16 CHAIRPERSON: - what it's designed to do,
17 do you know as a fact based on your own experience that
18 when someone is shot with a R5 and the bullet penetrates
19 the body of the person but generally speaking the bullet
20 then disintegrates, fragments do you know that?
21 BRIGADIER CALITZ: Dit is al met ons
22 bespreek, ja.
23 CHAIRPERSON: You see that I think is the
24 reason why in this case there isn't any ballistic evidence
25 because there wasn't an intact bullet inside any of the

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1 bodies they were all fragmented. Now whether it was
2 designed to do that is something you've got no knowledge
3 of, is that what you've said?
4 BRIGADIER CALITZ: Dit is korrek, mnr die
5 Voorsitter.
6 MR SEMENYA SC: Chair, maybe we'll have
7 to await the expert ballistic opinion on the matter. As we
8 know it and as my instructions go the bullets spins, it
9 doesn't fragment.
10 CHAIRPERSON: Anyway the proposition was
11 put to the witness of which he didn't agree insofar,
12 there's no evidence on record on the one way or the other
13 whether it was so designed the, if there is going to be
14 evidence on it presumably we'll have it in due course and
15 you will then be able to deal with it. But at the moment
16 there's no evidence on record to that affect so you can
17 keep your powder dry if I may say so until such evidence is
18 forthcoming, if it does come.
19 MR BUDLENDER SC: Chair, I'll move on
20 from that.
21 COMMISSIONER HEMRAJ: If there can be
22 some learning that can be put before the witness, an
23 extract from one of the texts on it.
24 CHAIRPERSON: Yes.
25 MR BUDLENDER SC: I'm not going to deal

<p style="text-align: right;">Page 17642</p> <p>1 with it, we'll deal with it with another witness or a 2 statement in due course. 3 CHAIRPERSON: The witness doesn't know so 4 if, I intend no disrespect to him to say that he's answer 5 therefore will take the matter no further. He told us he, 6 what he knows and what he doesn't know and that's it. 7 BRIGADIER CALITZ: Dit is korrek, mnr die 8 Voorsitter. 9 MR BUDLENDER SC: Now, Brigadier, we have 10 been, we have obtained the telephone records of various 11 members of the South African Police Service for the 15th and 12 16th of August including your own, are you aware of that? 13 BRIGADIER CALITZ: Dit is korrek, dit was 14 in die bundel wat aangevra is. 15 MR BUDLENDER SC: And that document shows 16 that on the 16th of August – 17 CHAIRPERSON: That document, Mr 18 Budlender, isn't going to mean anything for people reading 19 the record later. You're referring to exhibit HHH64. 20 MR BUDLENDER SC: No. 21 CHAIRPERSON: And I think also 65, which 22 relates to a selection of calls to and from Major-General 23 Mpembe but HHH64 is the one you're referring to now which 24 is headed selection of calls by senior SAPS officers on the 25 night of 15 August, am I correct, Mr Budlender? Mr</p>	<p style="text-align: right;">Page 17644</p> <p>1 MR BUDLENDER SC: Sure, thank you. The 2 police, the telephone records show that on the 16th of 3 August, Chair, perhaps quarter to 11 is, we should stop 4 now, this is going to take me more than three minutes and 5 it will also give us an opportunity to show the Brigadier 6 the records and then there can be no argument about it. So 7 can I suggest we take the adjournment now. 8 CHAIRPERSON: That sounds a sensible 9 suggestion. I'm sure Mr Semenya won't oppose it. We'll 10 take the tea adjournment now. 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek 12 wil net sê dankie vir die bevordering, Generaal genoem. 13 CHAIRPERSON: You're very welcome, 14 Brigadier. Hopefully these remarks are made prophetically. 15 [COMMISSION ADJOURNS COMMISSION RESUMES] 16 [11:19] CHAIRPERSON: The Commission resumes, 17 Brigadier, you're still under oath. Mr Budlender? 18 MR BUDLENDER SC: Chair, I've given to 19 the commissioners and the witness a printout of phone calls 20 which will be KKK4. 21 CHAIRPERSON: Before we get there, I 22 understood you to say that you didn't want all the details 23 of all of these phone calls to become part of, to get into 24 the public domain, because many of them have nothing to do 25 with our work at all.</p>
<p style="text-align: right;">Page 17643</p> <p>1 Budlender, am I right? 2 MR BUDLENDER SC: Chair, no that is a 3 selection and not all of the calls to which I'm going to 4 refer are on this, this is a selection. We've got a large 5 printout. 6 CHAIRPERSON: I understand. But as far 7 as the witness is concerned documents that he's got, did he 8 get HHH64 and 65? 9 MR BUDLENDER SC: Yes. 10 CHAIRPERSON: He did but of course he, 11 he, presumably is equally disadvantaged to the Commission 12 because he hasn't seen details of the other calls that are 13 not on the list that you're going to put to him. 14 MR BUDLENDER SC: I'm going to ask him 15 about a call and he can either say he made it or he didn't 16 make it. 17 CHAIRPERSON: Yes, fine. 18 MR BUDLENDER SC: And if necessary we'll 19 produce the records. The reason we're not distributing, 20 Chair, is for the benefit of the SAPS we don't want to put 21 out into the public arena all of this material. 22 CHAIRPERSON: I understand. The, I'm 23 proposing to take the tea adjournment at about quarter to 24 11, around about then. But so when you reach a suitable 25 stage will you let me know.</p>	<p style="text-align: right;">Page 17645</p> <p>1 MR BUDLENDER SC: Yes, Mr Chair, - 2 CHAIRPERSON: I see that there aren't 3 telephone numbers, so there aren't mobile phone numbers, so 4 if you and Mr Semenya are happy that this document goes in, 5 fine, but if tells us, it gives us far more information 6 than we actually need, then maybe it shouldn't go into 7 exhibits, but I just raised that as a caveat, you people 8 know better than I. 9 MR BUDLENDER SC: Mr Chair, what we have 10 done is, we have taken out the phone numbers of the persons 11 concerned and we have taken out all personal calls, in 12 other words calls that are not identified as being from one 13 police officer to another police officer, so it seems to me 14 there can be no difficulty with this. 15 CHAIRPERSON: Mr Semenya, are you happy? 16 MR SEMENYA SC: I am happy, Chair. 17 CHAIRPERSON: So what do we call it? 18 MR BUDLENDER SC: KKK4, Chair. 19 CHAIRPERSON: Alright, I now have to put 20 it in my book, I'll describe it, it is Exhibit KKK4, a list 21 of selected, are these all mobile phone calls? 22 MR BUDLENDER SC: They are. 23 CHAIRPERSON: Selected mobile telephone 24 calls between members of the SAPS? 25 MR BUDLENDER SC: That's correct, Chair.</p>

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1 CHAIRPERSON: From 15 August, 15/08/2012
 2 to, - well, I don't think we need the time, to, when is the
 3 last one?
 4 MR BUDLENDER SC: 16/08, Chair.
 5 CHAIRPERSON: So perhaps we're seeing it
 6 from day to day we better have the time, from 4am –
 7 MR BUDLENDER SC: From 15/08/2012 –
 8 CHAIRPERSON: Sorry, from 4am on
 9 15/08/2012 to 11:53pm on 16/08/2012. Okay, so Exhibit KKK4
 10 is a list of selected mobile telephone calls between
 11 members of the SAPS from 4am on 15 August 2012 to 11:53pm
 12 on 16 August 2012.
 13 MR BUDLENDER SC: Thank you, Chair. Now,
 14 Brigadier, before we go there I would like you to look at
 15 Exhibit HHH26.
 16 CHAIRPERSON: HHH26 appears to be the
 17 diary of Colonel Merafe, is that correct, Mr Budlender?
 18 MR BUDLENDER SC: That's correct, Chair.
 19 CHAIRPERSON: Covering the period from
 20 the 13th to the 16th of August 2012?
 21 MR BUDLENDER SC: That's correct, Chair.
 22 Brigadier, would you look at the page, the second page of
 23 that document which is the entries for 16 August, do you
 24 have that?
 25 BRIGADIER CALITZ: Ja.

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1 MR BUDLENDER SC: And on the right hand
 2 column, that's the 16th of August, the last entry, Part 1
 3 says, "Lieutenant Kgwadibana sent 4,000 R5 to Marikana," it
 4 looks like, "for Lonmin conflict."
 5 CHAIRPERSON: Sorry to interrupt you, Mr
 6 Budlender, on the screen is the previous page, we now have
 7 the correct page and the entry to which you're referring to
 8 is now being enlarged. It is an entry made against 15:30,
 9 whether 15:30 was the time that the event took place, that
 10 it is recorded is no matter, but against the space for
 11 15:30, I take it Colonel Merafe has written what you read
 12 up, and because I interrupted you is because the wrong page
 13 was being displayed, perhaps you could read it again so
 14 that everyone can follow.
 15 MR BUDLENDER SC: Thank you, Chair, it
 16 says, if I read it correctly, "Lieutenant Kgwadibana sent
 17 4,000 R5 to Marikana for Lonmin conflict." Do you see
 18 that, Brigadier?
 19 BRIGADIER CALITZ: Ek sien dit, mnr die
 20 Voorsitter.
 21 MR BUDLENDER SC: We have had a
 22 consultation with Colonel Merafe and we've asked him about
 23 this. We don't get other signed statements, - that's in
 24 process, but I need to put it to you and you can tell me in
 25 due course whether you agree with what he told us. Colonel

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1 Merafe was asked about this diary statement and he said,
 2 this diary entry, and he said that you asked him to send
 3 4,000 R5 rounds to Marikana immediately and that he
 4 arranged for Lieutenant Kgwadibana to do so. Do you hear
 5 what I say?
 6 BRIGADIER CALITZ: I hear the statement,
 7 I don't agree. Ek stem nie daarmee saam nie, mnr die
 8 Voorsitter.
 9 MR BUDLENDER SC: You say that didn't
 10 happen?
 11 BRIGADIER CALITZ: Ek het nie daardie
 12 opdrag vir Kolonel Merafe gegee daardie dag soos hier
 13 aangedui nie, nee.
 14 MR BUDLENDER SC: Did you ever make that
 15 request or instruction of Colonel Merafe that you wanted
 16 4,000 R5 rounds?
 17 BRIGADIER CALITZ: Nee, mnr die
 18 Voorsitter, glad nie.
 19 CHAIRPERSON: Did you make the request to
 20 anybody else?
 21 BRIGADIER CALITZ: Nie vir die 4,000
 22 rondtes daardie dag na Marikana nie, nee, mnr die
 23 Voorsitter.
 24 CHAIRPERSON: Was there a shortage of R5
 25 ammunition at that time which caused you to request further

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1 supplies to be made available, during that week?
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 ja, wel gedurende die week, soos u reg onthou op die
 4 Maandag, die 13de was daar 'n voorval gewees waar daar
 5 rondtes afgevuur was deur onderskeie die Openbare Orde
 6 Polisiëring, die TRT, van die mense wat daar was. Ek het
 7 op daardie stadium wel vir Kolonel Merafe gesê dat die
 8 ammunisie moet vervang word en ek dink ek het dit ook in my
 9 transcript of die video van die 18de, het ek dit wel vir
 10 die lede gesê sodat ons verklarings kan kry, die 15s kan
 11 korrek maak en daardie rondtes het ek wel vir hulle gesê,
 12 daar was nooit 'n getal genoem nie. Ek het net gesê dat al
 13 die ammunisie wat afgevuur is moet ons dan vervang.
 14 MR BUDLENDER SC: But that was well
 15 before the 16th?
 16 BRIGADIER CALITZ: Daardie gesprek tussen
 17 my en hom was op did 13de gewees, laat in die aand.
 18 COMMISSIONER HEMRAJ: Mr Budlender, did
 19 the colonel say when this arrangement was made or when this
 20 request was made, is that 15:30 a reliable time in the
 21 diary or –
 22 MR BUDLENDER SC: What the colonel says
 23 to us is, he says he was not sure of the time, he thought
 24 it was the morning or it might be the morning and that's
 25 what he says and he said, and we said we will get the cell

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1 phone printout to get the times, and that takes me then to
 2 Exhibit KKK4.
 3 COMMISSIONER HEMRAJ: Yes.
 4 CHAIRPERSON: KKK4, you will notice that
 5 if you look at Colonel Merafe's diary, the entry that we
 6 have been referred to is 15:30. Now as I said I'm not sure
 7 whether that actually, what is there recorded happened at
 8 15:30 but it is there, it is recorded, but what we see
 9 further up on the page is an entry against noon, 12:00, as
 10 it is called in police parlance and it reads, "Departure to
 11 Klipgat for memorial service of the late Warrant Officer
 12 Lepaaku." So I take it you'll agree with me, the
 13 probability is that that is a correct time based entry,
 14 will you agree with me on that?
 15 BRIGADIER CALITZ: Die oggend se
 16 vergadering, mnr die Voorsitter, -
 17 CHAIRPERSON: No, no, no, no, departure
 18 to Klipgat.
 19 BRIGADIER CALITZ: Die oggend?
 20 CHAIRPERSON: 12:00, departure to Klipgat
 21 for memorial service of the late Warrant Officer Lepaaku.
 22 It looks if that's the correct time base entry, in other
 23 words it looks as if, whether the 15:30 is right doesn't
 24 matter, but it looks as if Merafe left at about noon to go
 25 to Klipgat for the memorial service of the late Warrant

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1 Officer Lepaaku, would you agree with me?
 2 BRIGADIER CALITZ: Dit –
 3 CHAIRPERSON: That that's right?
 4 BRIGADIER CALITZ: Dit kan reg wees, mnr
 5 die Voorsitter.
 6 CHAIRPERSON: So the later entry, the
 7 15:30 one, may or may not be right but certainly it appears
 8 to be made, whether before or after the memorial service,
 9 was it, appears to be made while he wasn't at Marikana,
 10 while he was either at or coming back from the memorial
 11 service for late Warrant Officer Lepaaku, is that right?
 12 BRIGADIER CALITZ: Ek verstaan so, dit
 13 sal seker die inskrywing wees, mnr die Voorsitter.
 14 CHAIRPERSON: Ja, okay, now the 15:30
 15 entry says, send. Now of course I am not sure whether the
 16 present tense is correct, I'm not quite sure what it means
 17 but perhaps Mr Budlender can tell us what the colonel says,
 18 but it either means that he was asked to do it and if it
 19 was at 15:30 then those rounds played no roll in what
 20 happened. Alternatively it is a late entry as it were,
 21 recording something that happened earlier, that actually
 22 had been sent at an earlier stage but of course then we
 23 have to probe further to find out what exactly happened,
 24 was he just asked for them, were they sent, how many were
 25 sent, when did they arrive, all those are questions which

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1 he may have to be asked but you can't help us and just by
 2 looking at the diary we know what is it really, am I right?
 3 BRIGADIER CALITZ: Korrek, mnr die
 4 Voorsitter.
 5 MR SEMENYA SC: Can I for the record say,
 6 Chair, that the protocol has always been that these
 7 consultations with the evidence leaders were obtained in
 8 the presence of the SAPS legal team and after that, the two
 9 teams would then agree whether the draft is a correct
 10 recordal of those interviews and if yes, the individual
 11 interviewee would then sign a statement with which we can
 12 work. This is not happening and I'm uncomfortable about
 13 it.
 14 CHAIRPERSON: It is a matter we may have
 15 to look into, but Mr Budlender will tell us whether the
 16 interview with Lieutenant Colonel Merafe, to which he
 17 referred, is he a lieutenant or a full colonel? If he is a
 18 full colonel I apologise according to the certificate, but
 19 whether the interview with Colonel Merafe took place in the
 20 absence of legal representatives of SAPS?
 21 COMMISSIONER HEMRAJ: No, that's not the
 22 point.
 23 MR BUDLENDER SC: But, Chair, our learned
 24 friend is correct, the protocol he describes and a
 25 statement is being prepared, but it seems to me it was

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1 necessary that I should put it to the witness so that he
 2 has an opportunity to deal with it and to say that,
 3 disclose to him we don't have a signed statement yet and he
 4 can either say that's correct or it is not correct, but it
 5 would be unfair for this statement to come afterwards,
 6 after Brigadier Calitz has given his evidence, but –
 7 CHAIRPERSON: It sounds to me that's a
 8 matter, I can understand there are practical problems and I
 9 can understand the SAPS attitude to this problem as well.
 10 It is also of course undesirable to get this witness back
 11 later once the statement has come from Lieutenant Colonel
 12 Merafe, sorry, Colonel Merafe, but insofar as this problem
 13 may recur I suggest we have discussions outside the
 14 Chambers to sort it out. Of course if by request that all
 15 statements that are outstanding be available soon then
 16 hopefully this problem won't recur, but in any event the
 17 point has been raised. The witness has in any event said
 18 it is not correct as far as he is concerned, so no harm is
 19 being done on either side as I see it at this stage, but we
 20 must try to deal with these things outside the Chambers if
 21 they arise.
 22 MR BUDLENDER SC: I accept that, Chair,
 23 and it is unfortunate that we don't yet have it.
 24 CHAIRPERSON: Mr Semenya?
 25 MR SEMENYA SC: If my learned colleague

<p style="text-align: right;">Page 17654</p> <p>1 intends to be using those consultations further, I think it 2 is proper that we are given those portions which are 3 intended to be used so that we can verify it with the 4 colonel and be able to object if those notes are not 5 correct.</p> <p>6 CHAIRPERSON: But of course there is a 7 further point that in fairness to the witness, we've worked 8 out a procedure whereby a witness is given copies of 9 statements before he testifies so that he knows what is 10 coming. Now in this case I understand why it was done, I'm 11 not suggesting any impropriety but that of course doesn't 12 happen where something from what is anticipated to be a 13 statement is put to the witness and I take it he wasn't 14 told about it beforehand. So anyway, it has happened, the 15 views of the SAPS have been expressed and I'm quite sure 16 that if we approach the matter in the cooperative spirit 17 that has prevailed so far outside the Chambers in 18 discussions, this problem won't arise again.</p> <p>19 MR BUDLENDER SC: And of course I 20 understand the difficulty that our colleagues are raising, 21 Chair.</p> <p>22 COMMISSIONER HEMRAJ: Is there a 23 statement from the person of whom the request was made?</p> <p>24 MR BUDLENDER SC: I beg your pardon?</p> <p>25 COMMISSIONER HEMRAJ: Is there a</p>	<p style="text-align: right;">Page 17656</p> <p>1 your job to do this or was there someone else whose job it 2 would normally have been to attend to a matter of that 3 kind?</p> <p>4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 nee, ek is Operasionele bevelvoerder indien daar wel aflei 6 rondtes afgevuur is sal ek dan net die opdrag gee dat dit 7 moet vervang word, dan sal dit tussen die bevelvoerders van 8 die verskeie, kan ek sê, soos die hot briefing of die 9 secondary briefing, hulle sal dan terugkom met die lyste en 10 dan het ons wat ons noem 'n Supply Chain Management wat dan 11 die proses sal fasiliteer, dit sal nie weer deur my gaan 12 nie, nee.</p> <p>13 CHAIRPERSON: So what you're saying is, 14 you weren't really part of what you call the Supply Chain 15 Management, am I understanding correctly or have I got it 16 wrong?</p> <p>17 BRIGADIER CALITZ: Dit is korrek, mnr die 18 Voorsitter, nee, daar is mense wat by Supply Chain werk en 19 wat dan dit sou hanteer. Ek weet nie waar Luitenant 20 Kgwadibana, ek is nie seker of hy –</p> <p>21 CHAIRPERSON: I take it that a suitably 22 phrased request sent to the SAPS legal team by the evidence 23 leaders will produce the information, we don't have to 24 spend time on it now.</p> <p>25 BRIGADIER CALITZ: Hulle sal kan,</p>
<p style="text-align: right;">Page 17655</p> <p>1 statement from the person of whom this request was 2 allegedly made?</p> <p>3 MR BUDLENDER SC: Lieutenant Kgwadibana, 4 no, we don't have a statement from him or her. Now, 5 Brigadier, I would now like you to look at Exhibit KKK4 6 which is in front of you or before you get there, so am I 7 correct in understanding that there was never a request 8 for, as far as you're aware, - let me start again. You're 9 not aware of any request which was made for an additional 10 4,000 R5 rounds on the 16th of August?</p> <p>11 BRIGADIER CALITZ: Dit is korrek, mnr die 12 Voorsitter, nie vir 4,000 rondtes R5 op die 16de nie nee.</p> <p>13 MR BUDLENDER SC: And are you aware of 14 any request for additional rounds on the 16th of August?</p> <p>15 BRIGADIER CALITZ: Nee, mnr die 16 Voorsitter, net wat ek aan u verduidelik het, op die 13de.</p> <p>17 MR BUDLENDER SC: Thank you, now could 18 you go to K –</p> <p>19 CHAIRPERSON: Sorry, before we move on, 20 is there something that would normally have been a matter 21 you have attended to personally or was there someone on 22 staff, as it were, whose job it was to see that there was 23 enough ammunition and if there was a shortage a request 24 should be addressed to the appropriate people to get 25 replacements of what was not there? In other words was it</p>	<p style="text-align: right;">Page 17657</p> <p>1 sekerlik.</p> <p>2 COMMISSIONER HEMRAJ: The procedure to 3 get ammunition is it something that generally has a quick 4 turnaround time, would you be able to ask on the 16th and 5 get it right there and then?</p> <p>6 BRIGADIER CALITZ: Kommissaris, nee, 7 alhoewel ons baie voorraad het in die gewapende, - ag, in 8 ons kluipe, moet ons op 'n proses werk van 'n verklaring of 9 'n insident registrasie sisteem waar ons dan die rondtes 10 verklaar onder eed of in 'n verklaring en sodra ons dan van 11 die lid daardie verklaring kry, in daardie geval kan ons 12 die rondtes uitreik, anders mag dit gebeur dat 'n lid sê, 13 ek het 10 rondtes afgevuur, wat hy nie gedoen het nie en 14 dan sit hy met 'n 10 addisionele rondtes in sy besit wat 'n 15 gevaar situasie kan skep. So daar is altyd 'n beheer en 16 dit word in die logistieke kantore dan ge-record, wat 17 uitgaan en wat inkom.</p> <p>18 MR BUDLENDER SC: Okay, Brigadier, can we 19 then go to KKK4 and could you turn to the fifth page of 20 that document?</p> <p>21 CHAIRPERSON: Can I just before we get 22 there, I just cast my eye down on this thing and I see 23 there are a number of references to, on the first page, in 24 fact there are three, (NIU at NUM officers). Now that's 25 obviously the National Intervention Units and if NUM is the</p>

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1 NUM we met, that means the National Union of Mineworkers,
2 but is it officers or just offices without the "R"?

3 MR BUDLENDER SC: Chair, I don't know, I
4 can't answer that, we'll have to find out, I'm not sure
5 what that means.

6 CHAIRPERSON: Okay, it may be that those
7 phone calls are irrelevant in anyway but my eye fell on it.

8 MR BUDLENDER SC: Not of any relevance to
9 my cross-examination in anyway. Brigadier, if you go to
10 the fifth page you'll see that the third entry from the
11 bottom is the 16th of August 2012 at 12:50:05 and it records
12 a cell phone call from you to Colonel Merafe of 1 minute
13 and 6 seconds, do you see that?

14 [11:39] BRIGADIER CALITZ: Ek sien dit, mnr die
15 Voorsitter.

16 MR BUDLENDER SC: Now what was the
17 purpose of that phone call?

18 BRIGADIER CALITZ: Mnr die Voorsitter, ek
19 dink dit is meer as 'n jaar terug, so wat die presiese
20 gesprek is kan ek nie sê nie. Wat ek wel kan sê is ek weet
21 Kolonel Merafe is daardie middag deur my gestuur; ek het
22 hom verskoon by die operasie en hy het dan vertrek na 'n
23 "memorial service" van een van ons lede, Adjutant-offisier
24 Lepaaku, wat af gesterf het. So dit, ek sien in sy
25 voorvalleboek inskrywing, so dit kan gewees het dat ons

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1 gepraat het daaroor. Ek skakel met Kolonel Merafe op 'n
2 daaglikse basis; hy is my eenheidsbevelvoerder.

3 MR BUDLENDER SC: And then you'll see two
4 entries down, you'll see that five minutes later you sent
5 him an SMS. Can you tell us what that was about?

6 BRIGADIER CALITZ: Weereens, mnr die
7 Voorsitter, ek dink nie geen persoon kan 'n jaar plus terug
8 onthou wat in 'n SMS gestaan het nie. Miskien as ons dit
9 kan kry kan ons dit verifieer, maar ek kan glad nie onthou
10 nie, nee.

11 MR BUDLENDER SC: So your evidence is
12 that on the 16th of August there was no need as far as you
13 were concerned for additional R5 rounds at Marikana?

14 BRIGADIER CALITZ: Mnr die Voorsitter,
15 nee, op die 16de, die lede waarna u verwys het, die TRT,
16 die NIU, die STF, ek glo daar was geen tekorte aan ons
17 gerapporteer van enige rondtes op daardie dag nie, en ek
18 glo nie dat die 4 000 rondtes op daardie stadium enige
19 verskil sal maak nie.

20 MR BUDLENDER SC: Brigadier, how many
21 rounds does an R5 magazine contain?

22 BRIGADIER CALITZ: Ek is weer nie 'n
23 ekspert nie; ek praat onder korreksie, mnr die Voorsitter,
24 ek – 35, 30, 35 rondtes.

25 MR BUDLENDER SC: Thank you. And I want

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1 to place it on record, I don't imagine you're able to
2 comment, but for the benefit of the Commission; we've asked
3 the SAPS how many R5 rifles were on the scene at Marikana
4 on that day and we've been advised it was 225.

5 CHAIRPERSON: How many rounds per – a
6 fully loaded R5 contains how many rounds?

7 MR BUDLENDER SC: That's what I'm asking
8 the Brigadier. He thinks 30 to 35. I have less knowledge
9 than he does, Chair.

10 CHAIRPERSON: Alright, so and how –

11 MR BUDLENDER SC: We believe it's 30,
12 Chair.

13 CHAIRPERSON: Alright, and how many,
14 according to the SAPS how many R5s were on the scene on the
15 day?

16 MR BUDLENDER SC: 225, Chair.

17 CHAIRPERSON: 6 750 rounds were – if each
18 of those R5s was fully loaded there were 6 750 rounds in
19 the barrels, as it were, or magazines, whatever it is, of
20 the R5s. If they were all fully loaded at the time.

21 MR BUDLENDER SC: Chair, just for the
22 sake of completeness, I don't want to – following from a
23 question which I think Commissioner Hemraj asked, I don't
24 to mislead; it's not suggested by us that those rounds were
25 ever used. If rounds were ordered, additional rounds, it's

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1 not suggested that those additional rounds were in fact
2 used. Our information is that they were sent back, but
3 we'll get a statement from Colonel Merafe who will deal
4 with the matter.

5 CHAIRPERSON: So your information, for
6 what it's worth, at this stage is that they obviously were
7 ordered but they arrived and then they were sent back
8 because they weren't used. Is that –

9 MR BUDLENDER SC: That's what we've been
10 told, Chairperson.

11 CHAIRPERSON: That's what you've been
12 told, but it seems as if the Brigadier doesn't know
13 anything about that. Am I right? Do you know anything
14 about R5 rounds being sent back to the place from whence
15 they came after the events on the Thursday afternoon?

16 BRIGADIER CALITZ: Mnr die Voorsitter,
17 nee, ek was op die koppie tot baie laat.

18 CHAIRPERSON: Yes, yes, no I understand
19 that, but I take it if they were sent –

20 BRIGADIER CALITZ: Ek dra nie kennis.

21 CHAIRPERSON: If they were sent back they
22 probably wouldn't have been sent back on Thursday
23 afternoon –

24 BRIGADIER CALITZ: On the same –

25 CHAIRPERSON: So if this information is

<p style="text-align: right;">Page 17662</p> <p>1 correct they would have been sent back on, you know, later, 2 the 17th or 18th. Do you know anything about R5 rounds, you 3 know, a substantial number of them being sent back from 4 Marikana after the events, not immediately after, but after 5 the events of the 16th? Do you know anything about that? 6 BRIGADIER CALITZ: Dis glad nie aan my 7 gekommunikeer nie. 8 CHAIRPERSON: Thank you. 9 COMMISSIONER HEMRAJ: Mr Budlender, any 10 issue of ammunition of, especially of that amount and 11 returned would be accompanied by a great deal of paperwork, 12 many registers. I'm sure that's very easy to track. 13 MR BUDLENDER SC: Yes, we'll enquire, 14 Chair. 15 CHAIRPERSON: If this happened there will 16 be, as has been put, a paper trail of some sort. 17 MR BUDLENDER SC: Can I say, Chair, that 18 the information we have is that they were sent back the 19 same day in fact, but nothing turns on that. I'm then 20 planning to move on to a new subject, Brigadier. Could you 21 go to HHH66? 22 CHAIRPERSON: Triple H? 23 MR BUDLENDER SC: HHH66. 24 BRIGADIER CALITZ: Was this under your 25 new request? Because I don't see it in your –</p>	<p style="text-align: right;">Page 17664</p> <p>1 in my bundle of exhibits either, but I have a loose copy, 2 so – and have you studied the document before coming here? 3 BRIGADIER CALITZ: Nie rêrig nie, maar 4 dit is kort. Ek sal – 5 CHAIRPERSON: I suggest you – I don't 6 want any suggestions later that you didn't get a chance, 7 you know, to deal with things. So may I suggest we give 8 you two minutes to read it; I don't think you'll need much 9 longer than that. If you need longer, let me know. So 10 just read it quietly to yourself. 11 BRIGADIER CALITZ: I'll do so, thank you. 12 MR BUDLENDER SC: Perhaps while the 13 witness is doing that he could also look at exhibit HHH67, 14 which is the statement of Lieutenant-Colonel Claassens, 15 which is the next one. Lieutenant-Colonel Claassens, 16 HHH67. 17 CHAIRPERSON: Might I suggest, we might 18 actually save time if you read Colonel Madoda's statement 19 first, that's HHH66, then read Lieutenant-Colonel Claassen's 20 statement, HHH67, and when that's finished tell us and then 21 Mr Budlender will ask you questions. There's also an 22 investigation diary, or there's a diary of some kind, I 23 think it's – I'm not sure if it's an investigation diary, I 24 think there may be a mortuary diary or something. Maybe we 25 should get that as well.</p>
<p style="text-align: right;">Page 17663</p> <p>1 MR BUDLENDER SC: It was there all along. 2 BRIGADIER CALITZ: - the bundle that was 3 sent to me. 4 CHAIRPERSON: Are you sure this is HHH66? 5 Because I've got a bundle of exhibits which seems to stop 6 at HHH59, because the next thing is JJJ1, but – 7 MR BUDLENDER SC: HHH66, Chair, is a 8 statement by Colonel Madoda. 9 COMMISSIONER HEMRAJ: Was it handed in at 10 some stage in cross-examination? 11 MR BUDLENDER SC: Yes, it was, 12 Commissioner, it has an exhibit number. That's the 13 exhibits dealing with the mortuary vehicles. 14 CHAIRPERSON: You happen to be correct; 15 it is marked HHH66. If the witness hasn't seen it – 16 MR BUDLENDER SC: No, he has – 17 CHAIRPERSON: - we'll hand him my copy – 18 MR BUDLENDER SC: He has it, Chair. He 19 has it. 20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 ja, daar was net nie 'n "exhibit" nommer op my lys nie. 22 Daar het net gestaan "Madoda statement" en op my nota staan 23 net "Madoda statement." 24 CHAIRPERSON: Well, you and I suffered 25 under similar but not identical problems, because it's not</p>	<p style="text-align: right;">Page 17665</p> <p>1 MR BUDLENDER SC: There's one entry in 2 the diary which I'll refer to in due course, but I don't 3 think that requires any prior study, Chair. 4 CHAIRPERSON: Alright. 5 BRIGADIER CALITZ: Ek is klaar met die 6 twee verklarings, mnr die Voorsitter. 7 MR BUDLENDER SC: Thank you, Brigadier. 8 Then can we look at HHH66, paragraph 3, that's Colonel 9 Madoda. He says, "On the 16th of August 2012 I was on duty 10 at Marikana together with other detective members. Then 11 between 08:00 and 09:30 Brigadier Van Zyl arrived for our 12 daily briefings. He requested me to task Lieutenant- 13 Colonel Claassens, commander of Phokeng Detective Office, 14 to go to Phokeng Mortuary and to ask them to be on standby 15 for in case they would be needed at Marikana." You see 16 that? 17 BRIGADIER CALITZ: Ek sien dit, mnr die 18 Voorsitter. 19 MR BUDLENDER SC: And then the next one 20 is Lieutenant-Colonel Claassen's account of what happened. 21 BRIGADIER CALITZ: Ek sien dit, mnr die 22 Voorsitter. 23 MR BUDLENDER SC: HHH67, and paragraph 4 24 Lieutenant-Colonel Claassens says, "Colonel Madoda asked to 25 arrange for four mortuary vehicles to be placed on standby</p>

<p style="text-align: right;">Page 17666</p> <p>1 at Marikana Police Station. He explained that there is 2 going to be a cordon and search and the place is volatile.” 3 You see that? 4 BRIGADIER CALITZ: Ek sien dit, mnr die 5 Voorsitter. 6 MR BUDLENDER SC: And then if we follow 7 the trail, if you'll go to JJJ183, that's a statement of Ms 8 Ngake – 9 BRIGADIER CALITZ: Ek het hom, mnr die 10 Voorsitter. 11 MR BUDLENDER SC: And could you look at 12 the second paragraph, we can read it together, now we've 13 heard what Colonel Madoda and Colonel Claassens – now we 14 have Ms Ngake and she says, “Colonel Claassens informed me 15 that they are going to close down the miners at the koppie 16 in Marikana and he requested four mortuary vehicles to be 17 sent at Marikana for standby. I indicated that I can only 18 send one vehicle and I further requested Claassens to send 19 me a letter of request. I then received an email from” – 20 it's look like Elmarie – “of Phokeng SAPS for the request.” 21 You see that? 22 BRIGADIER CALITZ: Ek sien dit, mnr die 23 Voorsitter. 24 MR BUDLENDER SC: So would it be fair – 25 do you know anything about these requests that were made?</p>	<p style="text-align: right;">Page 17668</p> <p>1 then you needed mortuary vehicles to come and fetch them. 2 BRIGADIER CALITZ: Korrek. 3 CHAIRPERSON: If you were putting, the 4 question relates to putting them on standby. If you put 5 them on standby because you think it possible – not that 6 you intended it should happen, but you foresee the 7 possibility because of what had happened before, that it 8 might happen again. There may be dead bodies and it's very 9 embarrassing to sit around with dead bodies and no mortuary 10 vehicles come and fetch them. So the sensible thing to do 11 is to arrange for mortuary vehicles to be on standby in 12 case it happens, not because you think it necessarily is 13 going to happen, but in case it happens. That's right, 14 isn't it? 15 BRIGADIER CALITZ: Ek stem saam, mnr die 16 Voorsitter. 17 CHAIRPERSON: Now what you did on the 18 previous occasion that you were telling us about, I take it 19 because of what had happened on the day before where people 20 were killed, you thought despite your best efforts to 21 prevent it, some people may die the next day as well, 22 depending on how, what happens, and so on, and therefore 23 because you'd battled to get mortuary vehicles the day 24 before, you'd better put one on standby that day, in 25 anticipation, in case it may happen, not because, or for</p>
<p style="text-align: right;">Page 17667</p> <p>1 BRIGADIER CALITZ: Ek dra geen kennis 2 daarvan nie, mnr die Voorsitter. 3 MR BUDLENDER SC: Have you ever been 4 before involved in a police operation in which mortuary 5 vehicles are ordered in advance of the operation? 6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 ja, soos ek getuig het, ek was in die laat, vroeë 90s 8 betrokke by myn onluste by Klerksdorp waar daar oor 'n paar 9 dae wel voorvalle was, waar ons dan geskakel het met die 10 departement en hulle het dan vir ons die voertuie op 11 bystand geplaas, asook met die hospitale in die omgewing 12 wat ons dan op 'n “alert,” op 'n bystand plaas en net vir 13 hulle sê dat daar gaan 'n groot geleentheid wees. So dit 14 het al voorheen gebeur in my loopbaan. 15 MR BUDLENDER SC: In that instance you 16 arranged for mortuary vehicles in advance because you 17 anticipated that people might be killed? 18 BRIGADIER CALITZ: Nee, mnr die 19 Voorsitter, hoekom ons dit in daardie geval gedoen het is 20 die, nie “anticipated” nie; dit was die geval waar daar wel 21 mense gedood was die vorige dae en waar ons gesukkel het en 22 op 'n tydperk lank gewag het, so dis hoekom ek dit gedoen 23 het. 24 CHAIRPERSON: No, no, no, there are two 25 points, aren't there? If there were already dead bodies</p>	<p style="text-align: right;">Page 17669</p> <p>1 any other reason. Is that a fair summary of what happened 2 then? 3 BRIGADIER CALITZ: Mnr die Voorsitter, 4 dis korrek, ek het saam met Kolonel Vermaak gewerk en ons 5 het inderdaad, daar was te min voertuie, so ons moes op 6 bystand sit op daardie stadium. 7 MR BUDLENDER SC: I'm not sure I followed 8 completely. Are you saying that the one you were referring 9 to was an operation when you ordered the mortuary vehicles 10 to be placed on standby before people had died? 11 CHAIRPERSON: No, no, what he says is 12 they died the previous day and there was a problem with 13 mortuary vehicles being available, and so because he 14 thought it might happen the next day that people would be 15 killed, and it would be embarrassing to have the same 16 problem again, waiting for mortuary vehicles, on that 17 occasion he asked for one at least I think to be on 18 standby. That's his evidence as I understand it. 19 MR SEMENYA SC: No, Chair, can – 20 CHAIRPERSON: Did I misunderstand it? 21 Please correct me. 22 MR SEMENYA SC: The witness said firstly 23 he did not know of any of these requests – 24 CHAIRPERSON: No, no, no, no, we're 25 talking about the previous incident that he's talking about</p>

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1 at Klerksdorp where there was – it was Klerksdorp, wasn't
 2 it, Brigadier?
 3 BRIGADIER CALITZ: Die vraag was my
 4 vorige ondervinding –
 5 CHAIRPERSON: Yes, that's right. He's
 6 talking about the previous incident. He's not talking
 7 about Marikana at all. [Microphone off, inaudible] my
 8 summary was correct, with respect.
 9 MR BUDLENDER SC: I just want to put it
 10 to you, Brigadier, that the only reason to order mortuary
 11 vehicles in advance before people have been killed is
 12 because you anticipate that people may be killed. Is that
 13 fair?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 dit is op die geskiedenis wat die vorige dag gebeur het en
 16 as mens op daardie stadium gesukkel het, wat op daardie
 17 stadium, ek praat van in die omgewing van 30 liggeme was en
 18 te min voertuie en die myn geweld gaan aan en mense, plaas
 19 mense op bystand. Dit is hoe ons die hospitale op bystand
 20 plaas.
 21 MR BUDLENDER SC: Yes, because you
 22 anticipated that some more people might be killed.
 23 BRIGADIER CALITZ: Uit die geskiedenis
 24 van die vorige dag, dit is korrek.
 25 MR BUDLENDER SC: Yes, I understand.

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1 Have you ever been involved in a crowd dispersal operation
 2 in which mortuary vehicles were ordered in advance?
 3 BRIGADIER CALITZ: Ek kan nie nou so iets
 4 "recall" nie, nee.
 5 MR BUDLENDER SC: Then I'm moving on to
 6 another subject now and that relates to what happened at
 7 the koppie 1. We know that Colonel Scott worked over an
 8 extended period, some weeks, preparing the presentation
 9 which was ultimately made to this Commission. Are you
 10 aware of that?
 11 BRIGADIER CALITZ: Dit is korrek, mnr die
 12 Voorsitter.
 13 MR BUDLENDER SC: Now could you go to
 14 JJJ34?
 15 BRIGADIER CALITZ: Ek het hom, mnr die
 16 Voorsitter.
 17 MR BUDLENDER SC: You have it? This is
 18 the presentation as it stood on the – this is Colonel
 19 Scott's evidence - the presentation as it stood on the 27th
 20 of August 2012, which was the first day of the Roots
 21 meeting. You can just accept that from me, and Colonel
 22 Scott was asked about this presentation.
 23 [11:58] Well, could you go to slide 31? I'm sorry,
 24 before we go there, I want to show you on the screen the
 25 transcript of what Colonel Scott said about this. Could we

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1 have day 137 on the screen, please? Page 14594, day 137,
 2 page 14594. I just want to show you what Colonel Scott
 3 said about this so that you appreciate the context. Right,
 4 so this is what - Colonel Scott is being cross-examined by
 5 Adv Chaskalson. If we could go to line 17 you'll see Adv
 6 Chaskalson says to him, "Now we've managed in one of the
 7 very early drafts of the presentation, which is JJJ34, can
 8 we call up JJJ34?" The Chairperson says, "Is this an
 9 exhibit yet?" and Mr Chaskalson says, "It will be an
 10 exhibit, JJJ34." Chairperson, "JJJ34, how do I describe
 11 it? Early draft of SAPS presentation, must I describe it
 12 more particularly than that?" and Mr Chaskalson says, "Last
 13 saved on 27 August 2012," and Colonel Scott does not
 14 disagree with that explanation of the document. Now if you
 15 can continue a bit further down on, continue on page 14595,
 16 line 16, Mr Chaskalson says, "Did you present it at Roots
 17 on the first day?" Colonel Scott, "I don't recall."
 18 Chairperson, "Did you compile it?" Colonel Scott, "I would
 19 have, Chairperson. I know I started already the week
 20 before Roots with the presentation, so I was working on it
 21 from then." Chairperson, "Based upon not only your own
 22 information obviously, but information received from
 23 others?" and Colonel Scott says yes. Now I want to show
 24 you what is said on JJJ34, slide 31. Could we go back to
 25 that, please? Do you have that, Brigadier?

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1 BRIGADIER CALITZ: Ek het "slide 31."
 2 MR BUDLENDER SC: Right, you'll see the
 3 third bullet says the following. "At 15:37 the leader of
 4 the militant group approached the police armoured vehicle
 5 line, telling Brigadier Calitz, 'The protesters have made a
 6 contract that they would not lay down their arms and were
 7 willing to die there that day. There was no turning
 8 back.'" Now Colonel Scott was asked who had told him that
 9 and I'll just read you the passage, it's page 14598 of the
 10 record. Perhaps 14597 would be best, line 21. Mr
 11 Chaskalson says to Colonel Scott, "I have two responses to
 12 that; the first is that somebody told you that Mr Noki
 13 conveyed to Brigadier Calitz," and here's the quotation,
 14 "the protesters have made a contract that they would not
 15 lay down their arms and were willing to die there that day.
 16 There was no turning back,' because you put that in there.
 17 You accept that?" Colonel Scott, "Yes." Mr Chaskalson,
 18 "Who was that person? Who reported Mr Noki's statements in
 19 these terms?" and Colonel Scott, "Well look, you're asking
 20 a question of now over a year ago, but I can only imagine
 21 it would have been somebody from that vehicle, possibly
 22 Brigadier Calitz himself." Now what I'd like to know is
 23 was it you who gave that information to Colonel Scott?
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 nee, nie soos dit hier staan nie, nee.

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1 MR BUDLENDER SC: So it must have come
2 from somebody else in your vehicle?
3 BRIGADIER CALITZ: Nee, my woorde was,
4 mnr die Voorsitter, die inligting soos dit hier staan, nee.
5 Ek het wel getuig daaroor gister, eergister, waar die
6 dreigemente op twee verskillende tye gemaak was.
7 MR BUDLENDER SC: No, I understand that,
8 Brigadier. What I'm saying is Colonel Scott says it must
9 have – he can only imagine it must have been told to him by
10 somebody from that vehicle, possibly Brigadier Calitz. You
11 say it wasn't you, so it's fair to assume it must have been
12 somebody else in the vehicle?
13 BRIGADIER CALITZ: Nee, mnr die
14 Voorsitter, dis nie wat ek gesê het nie. Ek het gesê dat
15 ek het –
16 CHAIRPERSON: No, no, he's not saying
17 that's what you said. He said that's what Colonel Scott
18 said. He's putting Colonel Scott's version before this
19 Commission to your for your comment, you see, and in that
20 draft, I think they showed you, or Mr Budlender showed you
21 what appeared originally in respect of that exchange
22 between Noki and the occupants of the Nyala, and it differs
23 from what we've now got in exhibit L and so Mr Chaskalson
24 was asking Colonel Scott well, where did this information,
25 which differs from what we got later, where did it come

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1 from, and he said well, you know, he wasn't there so he
2 obviously got it from somebody else. He got it either from
3 you, or someone else in the Nyala. Now you say it wasn't
4 from you, okay. So now Mr Budlender is saying to you, well
5 if that's so, and if Colonel Scott is right – he doesn't
6 say that, but that's implied – if it wasn't you and what
7 Colonel Scott says is correct, then it follows, does it
8 not, that it must have been somebody else. That's what
9 he's putting to you. That's what he's asking you to
10 comment on. He's not suggesting that you've said anything
11 like that.
12 BRIGADIER CALITZ: Ek het dit so
13 verstaan, mnr die Voorsitter. Wat ek net gesê het is dat
14 nee, ek het nie gesê dat ek dit nie aan Kolonel Scott
15 oorgedra het nie. Die "negotiation" groep was ek en
16 Kolonel McIntosh met die onderhandelaars. So die inligting
17 is wel aan Kolonel Scott oorgedra, maar nie soos dit hier
18 staan nie. Dit is my getuienis.
19 CHAIRPERSON: No, we understand that, but
20 the problem is – if it is a problem, we'll decide that
21 later, but the point is that Colonel Scott originally wrote
22 something else down in his first draft and he saved it I
23 think on the first day of Roots, and that was that
24 something else was said. When he was asked "Who told you
25 that?" he said, and you've heard, either Brigadier Calitz

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1 or somebody else in the Nyala. Now we know it wasn't you.
2 So if Colonel Scott was correct in what he said, it follows
3 that somebody else must have told him that. I know you
4 don't agree with what was said; you've got your own
5 version, but that's the point being put to you. Do you
6 understand?
7 BRIGADIER CALITZ: Ek verstaan, mnr die
8 Voorsitter, maar –
9 CHAIRPERSON: May I ask you this –
10 BRIGADIER CALITZ: Dis korrek.
11 CHAIRPERSON: What was said by Noki, I
12 take it was said in Fanagalo or Xhosa or as far as we know,
13 I think Fanagalo was the medium of communication. Is that
14 correct?
15 BRIGADIER CALITZ: Korrek, mnr die
16 Voorsitter.
17 CHAIRPERSON: And you had an interpreter
18 with you in the Nyala.
19 BRIGADIER CALITZ: Korrek, mnr die
20 Voorsitter.
21 CHAIRPERSON: So he would have
22 interpreted what Mr Noki had said. Is that right?
23 BRIGADIER CALITZ: Korrek.
24 MR BUDLENDER SC: Thank you. I don't
25 intend to pursue this further. You say that you don't know

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1 who said that to Colonel Scott, but it wasn't you.
2 BRIGADIER CALITZ: Mnr die Voorsitter, om
3 dit maklik te maak, dit kan net ek en Kolonel McIntosh wees
4 wat vir hom die inligting gegee het.
5 MR BUDLENDER SC: Unless he spoke to one
6 of the other people who was in the Nyala with you. There
7 were a number of others?
8 BRIGADIER CALITZ: Dit kan wees, maar die
9 inligting is bekend en ek het dit op twee, ek het dit as
10 dreigement 5 en dreigement 6. So dis op twee verskillende
11 tye gemaak.
12 CHAIRPERSON: Of course on either basis,
13 on any basis it's a threat. The detail of the threat is
14 different, but it's still a threat. There's no doubt about
15 that.
16 COMMISSIONER HEMRAJ: Did you
17 subsequently correct that, those details with the Colonel?
18 BRIGADIER CALITZ: Kommissaris nee, ek
19 het, die wat ek nou sien is die eerste wat ek – ek dink dis
20 "exhibit L," die weergawe wat ek nou sien is vir die eerste
21 keer. Daarom het ek net probeer sê dit was nie my woorde
22 nie, maar wel ek het die inligting oorgedra.
23 CHAIRPERSON: No, but you're being asked
24 something else really. When you were at Roots at the very
25 beginning, because we know when that document was saved on

<p style="text-align: right;">Page 17678</p> <p>1 Colonel Scott's computer, you see, so at the very beginning 2 of Roots did he present for the benefit of those attending, 3 or that group, those attending, of which you were a member, 4 did he produce this draft that we've now seen in the 5 exhibits? In other words, were you aware that this 6 information of this kind had been conveyed to him or to 7 someone else and put in the initial draft, and were you 8 present when someone, you or perhaps someone else, said no, 9 no, no, no, that's not what was said, it was this, and what 10 we now have in exhibit L and what you've given us in your 11 evidence. That I think is the point you're being asked. 12 BRIGADIER CALITZ: Dit is korrek - 13 CHAIRPERSON: So what is your answer to 14 that? 15 BRIGADIER CALITZ: Dit is korrek, mnr die 16 Voorsitter. Ek was deel van daardie groep gewees. Die 17 spesifieke "slide" kan ek nou nie onthou, maar soos hy 18 aangegaan het, het ons 'n "narrative" en die "exhibit L" 19 gevorder. So waar die inligting dan nie korrek "ge- 20 display" was, het ons dan vir hom die korrekte - 21 CHAIRPERSON: Yes, no, I understand that. 22 BRIGADIER CALITZ: Ek was daar 23 teenwoordig. 24 CHAIRPERSON: The question you've been 25 asked, and if you haven't been asked already I'm asking you</p>	<p style="text-align: right;">Page 17680</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [12:31] CHAIRPERSON: The Commission resumes, 3 Brigadier, you're still under oath. Mr Budlender? 4 MR BUDLENDER SC: Mr Semenya would like 5 to address the Commission, Chair. 6 MR SEMENYA SC: Chair, can I place on 7 record something that I conferred with Mr Budlender about, 8 it relates to the minutes of the National Management Forum. 9 Because the Commission has only been given excerpts 10 relating to the extraordinary session - 11 CHAIRPERSON: The rest of it is 12 confidential, it has nothing to do with us anyway, so - 13 MR SEMENYA SC: I have shown that above 14 the 13 people we indicated to have been part of the 15 extraordinary session the Management Forum itself on 16 attendance were six additional people, there were 19 in 17 all, and in item 6.2, at the end of that meeting there is 18 an item reading "date of next meeting" and against 19 "discussion, decision and resolution" it says, "The meeting 20 was closed at 21:15, at the end of September 2012 will be 21 the next meeting," and only then comes attendance of the 22 extraordinary people in relation to the Marikana matter. I 23 thought I should place that on record, so the endorsement 24 is not an endorsement of the National Management Forum. 25 CHAIRPERSON: Well, that may be a matter</p>
<p style="text-align: right;">Page 17679</p> <p>1 now, was can you remember a correction of that kind being 2 raised, someone saying no, no, no, no, it's not what you've 3 got there in your draft, this is the way it is, and then 4 Colonel Scott or Lieutenant-Colonel Visser or whoever it 5 was then changing it to bring it in line with what we now 6 see in exhibit L and in your evidence. Can you remember 7 that? 8 BRIGADIER CALITZ: Nie spesifiek so nie, 9 nee, mnr die Voorsitter. 10 CHAIRPERSON: Is it possible? 11 BRIGADIER CALITZ: Dit is heeltemal 12 moontlik, mnr die Voorsitter. 13 MR BUDLENDER SC: Brigadier, you've 14 already given evidence-in-chief of what you say Mr Noki 15 said, and I don't propose to re-travel that ground. Now 16 I'm now moving to a separate point which is the 17 implementation of the rollout of the barbed wire, and I 18 want to stop briefly, before getting there, at the briefing 19 by Colonel Scott at 14:30. 20 CHAIRPERSON: I'm sorry, Mr Budlender, 21 you're moving on to a new point, the rollout of the barbed 22 wire, so in accordance with the practice we've been 23 following, I think we'll take a comfort break now, five to 24 10 minutes. I ask everyone please to come back here within 25 10 minutes, if that's possible.</p>	<p style="text-align: right;">Page 17681</p> <p>1 for interpretation but I understand the point you're 2 making. You have a meeting and then you reconvene at 3 probably around there, it may or may not be the same body. 4 Your contention is that it isn't, so that's the point 5 you've made and you put it on record and I take it Mr 6 Budlender will confirm that what you said is entirely 7 correct. That's what the minutes show, that an extra six 8 people would have been there earlier, they weren't there 9 when this extraordinary session took place and what exactly 10 the nature of those 13 people was, whether they were a 11 continuation of the forum or some other body, formal or 12 informal, is a matter that can be dealt with later, am I 13 understanding it correctly? 14 MR SEMENYA SC: Chair, as an 15 investigation we are doing here, I'm trying to come along 16 with my evidence leaders, if those matters become matters 17 of contention then I'm able to deal with them, but as 18 evidence leaders, if they are with me, that that was not an 19 endorsement of the National Management Forum, then I would 20 be comfortable to know that. If we hold different views as 21 you say it might be open to interpretation, then I might 22 deal with it with evidence, that's what I want to clear. I 23 don't want a grey area, it would disturb me. 24 CHAIRPERSON: It seems a very fair 25 approach, what is your approach, Mr Budlender?</p>

<p style="text-align: right;">Page 17682</p> <p>1 MR BUDLENDER SC: Chair, -</p> <p>2 CHAIRPERSON: Are you in a position now</p> <p>3 to give an answer to the point raised by -</p> <p>4 MR BUDLENDER SC: Obviously we weren't</p> <p>5 there and we don't have instructions, we can only go by</p> <p>6 what's in the document and what is told us by the witnesses</p> <p>7 whom we interview. It seems to me that nothing much turns</p> <p>8 on whether that was actually a meeting of the National</p> <p>9 Management Forum or a meeting of a breakaway part of the</p> <p>10 National Management Forum. The question is, the</p> <p>11 significance is the people who were there and what they</p> <p>12 did, so we don't make a big issue of it. It is obvious</p> <p>13 that it appears as part of the minutes and it appears to be</p> <p>14 described as an extraordinary session of the National</p> <p>15 Management Forum, but we make no big issue of it and of</p> <p>16 course we don't know, because we weren't there.</p> <p>17 CHAIRPERSON: If the script is incorrect</p> <p>18 and something turns on it then obviously Mr Semenya will be</p> <p>19 able to lead evidence on it, but at the moment you say</p> <p>20 nothing turns on it and so he doesn't have to worry himself</p> <p>21 to get extra evidence to prove that there was a misleading</p> <p>22 heading or something like that.</p> <p>23 MR BUDLENDER SC: Absolutely, Chair.</p> <p>24 Chair, I can say we have two days ago interviewed the head</p> <p>25 of the Secretariat who was there and who took the minutes.</p>	<p style="text-align: right;">Page 17684</p> <p>1 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>2 Voorsitter.</p> <p>3 MR BUDLENDER SC: And we know that there</p> <p>4 were no JOC commanders present at that meeting, - I beg</p> <p>5 your pardon, there were no POP commanders present at that</p> <p>6 meeting?</p> <p>7 BRIGADIER CALITZ: Myself was not there,</p> <p>8 ja.</p> <p>9 MR BUDLENDER SC: And -</p> <p>10 CHAIRPERSON: There were no other POP</p> <p>11 people there either, they were all out in the field?</p> <p>12 BRIGADIER CALITZ: As far as I know, yes,</p> <p>13 mnr die Voorsitter.</p> <p>14 CHAIRPERSON: Ja, ja.</p> <p>15 CHAIRPERSON: They should have been and</p> <p>16 they were.</p> <p>17 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>18 Voorsitter.</p> <p>19 MR BUDLENDER SC: And then at 14:30 there</p> <p>20 was the briefing by Lieutenant Colonel Scott and he briefed</p> <p>21 you and the other JOC commanders?</p> <p>22 BRIGADIER CALITZ: Korrek, mnr die</p> <p>23 Voorsitter.</p> <p>24 CHAIRPERSON: Not JOC commanders, it is</p> <p>25 the POP commanders?</p>
<p style="text-align: right;">Page 17683</p> <p>1 Perhaps we can clarify that with her and get a statement in</p> <p>2 due course, but this issue wasn't specifically addressed -</p> <p>3 CHAIRPERSON: Yes, at the moment it rests</p> <p>4 here at this point, that it doesn't matter whether it was</p> <p>5 the formally constituted National Management Forum or as</p> <p>6 you say a breakaway group or a portion of that body,</p> <p>7 whether it was the forum and whether it was quorate and so</p> <p>8 on, these are all matters that aren't relevant for us at</p> <p>9 this stage and may never be so.</p> <p>10 MR BUDLENDER SC: So -</p> <p>11 CHAIRPERSON: So Mr Semenya can relax, he</p> <p>12 doesn't have to gather his troops, but that's probably an</p> <p>13 inappropriate word, gather his forces in order to deal</p> <p>14 further with this point unless and until he is told that</p> <p>15 something turns on it. At the moment you say nothing turns</p> <p>16 on it?</p> <p>17 MR BUDLENDER SC: That is so, Chair.</p> <p>18 CHAIRPERSON: Are you happy with that, Mr</p> <p>19 Semenya?</p> <p>20 MR SEMENYA SC: I am, Chair.</p> <p>21 MR BUDLENDER SC: Brigadier, we're now</p> <p>22 talking about the rollout, before we get there I just want</p> <p>23 to recap on the JOCCOM meeting which took place before</p> <p>24 that. There was a JOCCOM at 1:30 on the afternoon of</p> <p>25 Thursday, the 16th of August, is that correct?</p>	<p style="text-align: right;">Page 17685</p> <p>1 MR BUDLENDER SC: I beg your pardon, POP</p> <p>2 commanders, POP commanders.</p> <p>3 COMMISSIONER HEMRAJ: All the commanders,</p> <p>4 not just POP commanders.</p> <p>5 MR BUDLENDER SC: Yes, but I'm focussing</p> <p>6 on the POP commanders.</p> <p>7 COMMISSIONER HEMRAJ: Oh.</p> <p>8 MR BUDLENDER SC: Now by the time that</p> <p>9 briefing took place at 14:30 the JOCCOM had already decided</p> <p>10 what was going to be done, correct?</p> <p>11 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>12 hulle het so aan my meegedeel om 14:30, dit is korrek.</p> <p>13 MR BUDLENDER SC: And they had decided</p> <p>14 when it was going to be done, they said it would be at</p> <p>15 3:30, subject to variation by the Operational commander.</p> <p>16 BRIGADIER CALITZ: Die tyd aan my gegee</p> <p>17 was 15:30, korrek.</p> <p>18 MR BUDLENDER SC: And those decisions had</p> <p>19 been made without the POP commanders being present?</p> <p>20 BRIGADIER CALITZ: Ek verstaan so, korrek</p> <p>21 so, mnr die Voorsitter.</p> <p>22 MR BUDLENDER SC: And the simple -</p> <p>23 MR SEMENYA SC: Chair, -</p> <p>24 MR BUDLENDER SC: - point is this that</p> <p>25 when you were briefed, - I'm sorry?</p>

<p style="text-align: right;">Page 17686</p> <p>1 CHAIRPERSON: Mr Semenya wants to say 2 something, yes, Mr Semenya? 3 MR SEMENYA SC: Chair, the correct 4 complexion of the evidence is, there was no decision taken 5 at 13:30, it was the implementation of a decision taken by 6 the Provincial Commissioner who already announced that 7 extraordinary session the night before. 8 CHAIRPERSON: Thank you. 9 MR BUDLENDER SC: Chair, there are so 10 many different versions – 11 CHAIRPERSON: No, no, no, Mr Budlender, - 12 MR BUDLENDER SC: I don't want to go 13 there – 14 CHAIRPERSON: Mr Budlender, that's 15 obviously the police case – 16 MR BUDLENDER SC: Yes - 17 CHAIRPERSON: - as put to us 18 unequivocally now – 19 MR BUDLENDER SC: Yes – 20 CHAIRPERSON: - by Mr Semenya. 21 MR BUDLENDER SC: Alright, okay. It was 22 not open to the POP commanders at the briefing at 14:30 to 23 say, we don't think this is a good plan and it shouldn't be 24 implemented, that decision has already been made. 25 BRIGADIER CALITZ: Nee, ek stem nie saam</p>	<p style="text-align: right;">Page 17688</p> <p>1 geopper deur hom nie, maar hy het wel vir ons geleentheid 2 gegee tydens die presentation om vrae te vra. 3 CHAIRPERSON: I understand that, but – 4 BRIGADIER CALITZ: Daardie woorde nie, 5 nee. 6 CHAIRPERSON: I think you made it clear, 7 he said if anyone wanted extra information or any questions 8 to ask to go ahead, I understand he said that. 9 BRIGADIER CALITZ: Ek stem saam. 10 CHAIRPERSON: But he never said at the 11 beginning or even later expressly, I'm giving you the 12 opportunity to say that stage 3 shouldn't be implemented 13 now and if so, please say why, you confirm that was never 14 said? 15 BRIGADIER CALITZ: Ek verstaan dit, - 16 nee, mnr die Voorsitter, dit was nie gesê nie. 17 MR BUDLENDER SC: And we are told by our 18 colleagues that the decision had in fact been made 19 previously by the Provincial Commissioner to proceed, if I 20 understand it correctly. 21 CHAIRPERSON: He heard that, he heard Mr 22 Semenya saying that. 23 MR BUDLENDER SC: Yes. 24 CHAIRPERSON: Unequivocally, that no 25 decision was taken by the JOCCOM at 1:30, he wasn't there</p>
<p style="text-align: right;">Page 17687</p> <p>1 nie, mnr die Voorsitter, daar was wel geleentheid gegee vir 2 almal van ons daar teenwoordig en ek het reeds so getuig, 3 dat toe die plan aan ons voorgelê is het Kolonel Scott vir 4 ons gevra, sou ek enige verdere inligting gehad het, iets 5 positief kon ek dit nog steeds ingevoer het daar. 6 MR BUDLENDER SC: Well, can I ask you 7 this? What do you think would have happened if one of the 8 POP commanders had said, this is a terrible plan to 9 disperse and disarm, it is going to lead to deaths, I 10 suggest we wait until tomorrow morning and encircle the 11 koppie? What do you think the response would have been at 12 the briefing by Colonel Scott? 13 BRIGADIER CALITZ: Dit sou seer sekerlik 14 bespreek gewees het tussen ons bevelvoerders, waarby ek dan 15 persoonlik betrokke sou gewees het, dit sou aandag gekry 16 het as daar so 'n opmerking kon gewees het. 17 CHAIRPERSON: Can I ask a question which 18 really goes before the one Mr Budlender asked? Did Colonel 19 Scott, Lieutenant Colonel as he then was, did Lieutenant 20 Colonel Scott say expressly when he started the briefing, 21 I'm going to give you a briefing but if anyone has any 22 objection to the plan, particularly if anyone has an 23 objection to proceeding to phase 3 at this stage, would 24 they please indicate that? Did that ever happen? 25 BRIGADIER CALITZ: Daardie woorde was nie</p>	<p style="text-align: right;">Page 17689</p> <p>1 anyway, so he wouldn't know, he is being told now, and 2 there not entire clarity up to now but now we have it, so 3 we don't have to worry anymore. Mr Semenya has made it 4 absolutely clear that the SAPS case is, the decision had 5 already been taken the night before by the Provincial 6 Commissioner and it was endorsed after discussions and 7 deliberations by, I take it, I can correctly say, 13 8 members of the National Management Forum and it was decided 9 that if or resolves, that if extra forces, forces is the 10 wrong word, if extra assets and members and so forth were 11 required the relevant, I suppose the Provincial 12 Commissioners were instructed to do the necessary and make 13 them available if they were asked for. So there was a 14 decision to make available extra, I think the word you 15 people use is assets, to make extra assets available if 16 required, that must have been the decision, right, and 17 apart from that there was an endorsement of what the 18 Provincial Commissioner had said, is that right? 19 BRIGADIER CALITZ: Ek aanvaar dit so. 20 CHAIRPERSON: Whether a rump or a portion 21 of the National Management Forum had the power, unless they 22 exercising the powers of the National Management Forum, to 23 make a decision like that in relation to making the 24 availability of assets, police assets, is a matter we don't 25 have to go into because Mr Budlender said for the moment he</p>

<p style="text-align: right;">Page 17690</p> <p>1 is not going there, but the clear point is that the 2 Provincial Commissioner had already made a decision and she 3 had the support of 13 members of the National Management 4 Forum the night before, that's clear, do you understand 5 that? 6 BRIGADIER CALITZ: Ek neem nou kennis, 7 dankie, mnr die Voorsitter. 8 MR SEMENYA SC: Chair, the 13, I must say 9 for the record, were members of the South African Police 10 Service and I must – 11 CHAIRPERSON: Are you suggesting they 12 weren't members, - I'm not suggesting they – 13 MR SEMENYA SC: They would not be sitting 14 in that capacity, Chair. 15 CHAIRPERSON: That's the question I'm 16 going to ask you, I'm not suggesting that they were 17 sitting, wearing their National Management Forum hats 18 because that's your point, they weren't, right? I raised 19 the question which this witness can't help us in anyway, 20 whether, if they were not sitting with their National 21 Management Forum hats they would have had, - or helmets or 22 whatever they were, they would have had the power to make a 23 decision relating to the making available of police assets 24 to support the operation, and that's a matter on which we 25 have no evidence at the moment and this witness can't help</p>	<p style="text-align: right;">Page 17692</p> <p>1 it to you, this is a document which you'll, - well, perhaps 2 let's go to the start at the top of the document, you'll 3 see that it has date columns with a date and occurrence 4 book number, a time and a description of what is there and 5 so it is copies of what's in the occurrence book, but 6 you'll see there are some things in red, if you can just go 7 down that page a little bit, to below, to entry 264, you'll 8 see there is an entry which has been put in there. 9 This came from Colonel Scott's hard drive and 10 what has happened here is that somebody has taken the 11 occurrence book entries and has slotted in other events 12 which weren't mentioned there to create a full sequence of 13 events, did you see that? For example there is no 14 occurrence book entry for 0700 Crime Intelligence report, 15 etcetera, that's been put in because that had been 16 received, so it is somebody creating, Colonel Scott I 17 think, creating a full sequence. Do you understand what 18 I'm showing you? 19 BRIGADIER CALITZ: Ek verstaan, mnr die 20 Voorsitter, ek weet egter nie dat u sê dit is gedoen om 21 daardie rede nie, dit dra ek nie kennis nie, maar ek sien 22 dit op die skerm. 23 MR BUDLENDER SC: Yes, let's go to the 24 top of page 6 of that document. 25 BRIGADIER CALITZ: Wat is die verwysing,</p>
<p style="text-align: right;">Page 17691</p> <p>1 us anyway, that's all I will say, but I understand your 2 point very clear. It wasn't a decision of these people 3 although they all were members of the National Management 4 Forum, they weren't functioning as such. They were in fact 5 a fraction as it were, 13 over, how many were there 6 altogether, 90? 7 MR SEMENYA SC: No, they were a fraction 8 of 200,000 odd members of the South African Police 9 Services. 10 CHAIRPERSON: Yes, so it also a fraction, 11 the 90 members, that is the Manpower Forum, the Management 12 Forum, but anyway let's not debate that now, let's get on 13 with the witness, with the brigadier. Mr Budlender, would 14 you and the witnesses like to carry on with his evidence? 15 MR BUDLENDER SC: Well, that would be 16 nice, Chair, yes. Brigadier, I am now coming to what 17 happened before the rollout started which was the 18 withdrawal of the media, the withdrawal of the media from 19 the scene. I'm going to ask that we, would you have a look 20 at Exhibit JJJ128 which is described as, I'm not sure 21 whether you've got it, the exhibit number in your bundle, 22 occurrence and notes of 16 August 2012, it is very short 23 and if you haven't got it I'll be able to show you but it 24 is on the screen. It was one of the last documents which 25 was indicated to the SAPS. Alright, perhaps I can describe</p>	<p style="text-align: right;">Page 17693</p> <p>1 mnr die Voorsitter? 2 MR BUDLENDER SC: There is a JJJ128. 3 Perhaps I can, if we can go to the last entry on the 4 previous page just to get the context, so at the foot of 5 page 5 you'll see there is an entry, 1015 at 15:10, that's 6 an entry from the occurrence book, a report by Brigadier 7 Pretorius and various other things, we don't, I'm not going 8 to ask you about that, and then somebody has inserted after 9 occurrence book entry 10:15 this one which doesn't have a 10 number. Can you go to the top of page 6, and then it goes 11 on with occurrence book entry 10:16, so it has been slipped 12 in. Do you understand the point I'm making? 13 BRIGADIER CALITZ: Ek sien dit nou, mnr 14 die Voorsitter. 15 CHAIRPERSON: You know you say it slipped 16 in, I think that implies something – 17 MR BUDLENDER SC: No, I don't mean, no, 18 no, no, I didn't mean anything. 19 CHAIRPERSON: No, I think, you'll forgive 20 me if I say it is an unhappy choice of words. 21 MR BUDLENDER SC: Inserted. 22 CHAIRPERSON: Ja. 23 MR BUDLENDER SC: Inserted, yes. 24 CHAIRPERSON: Somebody added it. 25 MR BUDLENDER SC: Yes.</p>

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1 CHAIRPERSON: I think we've had evidence
2 as to who it is, but we won't go there, but somebody added
3 it, I take it it will be said, because it was necessary to
4 make the occurrence book complete, but ja.
5 MR BUDLENDER SC: Yes, I'm not suggesting
6 anything sinister about it.
7 CHAIRPERSON: Slipped sound, - but anyway
8 you've withdrawn the word, you inserted the word inserted
9 instead.
10 MR BUDLENDER SC: Alright, now let's read
11 -
12 COMMISSIONER HEMRAJ: Sorry, wasn't it
13 suggested that it was Brigadier Pretorius who actually
14 added those portions in red from the handwritten note,
15 that's how I understood the position.
16 MR BUDLENDER SC: My colleagues tell me
17 that is so and I accept that.
18 COMMISSIONER HEMRAJ: Yes.
19 MR BUDLENDER SC: Ja, I thought it was
20 Colonel Scott, I was wrong.
21 CHAIRPERSON: But the problem came, it
22 was on his computer.
23 MR BUDLENDER SC: Yes.
24 CHAIRPERSON: They say you found it, but
25 I think the evidence always was that it was Brigadier

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1 Pretorius who has added it, it was supplemented -
2 MR BUDLENDER SC: Yes -
3 CHAIRPERSON: - within, to make it
4 complete.
5 MR BUDLENDER SC: In order to create a
6 full note.
7 CHAIRPERSON: Ja, ja.
8 MR BUDLENDER SC: Now the entry at 15:13
9 which has been inserted there, 15:30 I beg your pardon,
10 says, "Major General Annandale informed JOC to inform
11 Brigadier Calitz that the media are at its own risk as it
12 is a dangerous situation, they must be given final notice
13 to leave the area," do you see that?
14 BRIGADIER CALITZ: Ek sien dit, mnr die
15 Voorsitter.
16 MR BUDLENDER SC: Now did that happen,
17 were you informed to advise the media that they're at their
18 own risk, it is a dangerous situation and they must be
19 given final notice to leave the area?
20 BRIGADIER CALITZ: Mnr die Voorsitter,
21 ja, ons het 'n media skakelpersoon gehad met die naam van
22 Kaptein Adriaio, daardie boodskap is dan deur hom oorgedra
23 aan die media. Ek glo daar is ook 'n video uittreksel.
24 MR BUDLENDER SC: Was it you who
25 instructed Captain Adriaio to inform the media accordingly?

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1 BRIGADIER CALITZ: Ek het, toe ons
2 teruggekom het van die voorligting sessie award's function,
3 14:30, het ek wel kontak gehad met Kaptein Adriaio, dit is
4 korrek. Ek moet hom altyd inlig oor wat die volgende
5 aksies is wat gaan gebeur.
6 [12:51] CHAIRPERSON: But I think this point goes
7 a bit further, you see. What is suggested is that this
8 extra note is correct, is that at 15:30, half past three
9 the JOC, so it would appear, the JOC then informed you that
10 you must tell the media they're at their own risk because
11 it's a dangerous situation and they're being given final
12 notice to leave the area. Now what's being asked, can you
13 remember whether you received such an instruction or
14 request or such information from the JOC at 3:30 so that
15 Adriaio could give that warning or an instruction to the
16 media?
17 BRIGADIER CALITZ: Nee, mnr die
18 Voorsitter, ek onthou nie spesifiek dit van die JOC af nie,
19 nee. Ons was net, ek het met Kaptein Adriaio gepraat na die
20 14:30 toe ek teruggegaan het. Ek onthou nie spesifiek die
21 opdrag van die JOC nie, nee.
22 MR BUDLENDER SC: Is it correct that -
23 leaving aside when you were told about this, is it correct
24 that you told Captain Adriaio that the media must be told
25 they're at risk, at their own risk, it's a dangerous

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1 situation and they must leave the area? Did you convey
2 that to Captain Adriaio?
3 BRIGADIER CALITZ: Mnr die Voorsitter, ek
4 het wel vir Kaptein Adriaio gesê wat 14:30 aan ons oorgedra
5 is, dat ons na die volgende fase toe oorgaan en dit sal
6 veilig wees vir die media om terug te beweeg sodat hulle
7 agter die polisielinie stelling kan inneem en nie meer voor
8 by die "protesters" nie.
9 MR BUDLENDER SC: And as you said I think
10 in your evidence, but we can see what was said, it can be
11 played. Can we just have that, JJJ194.5? It's a short
12 clip. Could you just play that, please?
13 CHAIRPERSON: [Microphone off, inaudible]
14 know what time this is? Not time on the clip; we must
15 record obviously where it is on the clip so that those who
16 are following later in the record will know where it is,
17 but that's the first question.
18 MR BUDLENDER SC: Well, it's a very short
19 clip.
20 CHAIRPERSON: The second question is -
21 unless this is the whole clip we're looking at, the second
22 question is do we know at what time Captain Adriaio said
23 what we're now going to hear him say.
24 MR BUDLENDER SC: We'll get the time
25 shortly.

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1 CHAIRPERSON: Are we seeing the whole
 2 clip, so we don't have to bother about where on this clip –
 3 MR BUDLENDER SC: No, 2 minutes and 27
 4 seconds, so before that, Chair.
 5 CHAIRPERSON: Thank you.
 6 [VIDEO SHOWN]
 7 MR BUDLENDER SC: So now can we go to –
 8 CHAIRPERSON: Do we know yet what –
 9 MR BUDLENDER SC: Yes, I'm sorry, Chair –
 10 CHAIRPERSON: On the timeline.
 11 MR BUDLENDER SC: This is at 15:41:31.
 12 CHAIRPERSON: So this was not just after
 13 2:30, but it was actually after, in fact if the extra
 14 inserted entry in the occurrence book is correct, it was
 15 after the JOC gave that instruction.
 16 MR BUDLENDER SC: 11 minutes after that,
 17 Chair.
 18 CHAIRPERSON: Yes. So ja, okay.
 19 MR BUDLENDER SC: Could you now go to –
 20 do you have exhibit L, the police presentation? Could you
 21 go to L189, please? Do you have it, Brigadier?
 22 BRIGADIER CALITZ: Ek het hom, mnr die
 23 Voorsitter.
 24 MR BUDLENDER SC: You'll see that in L189
 25 the time given is 15:35 on the 16th of August, and then the

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1 second bullet is as follows, "Some media reported to
 2 Captain Adriaio that they sensed a change in the protesters'
 3 mood and were withdrawing out of fear for their own safety.
 4 They also reported to him that they saw a protesters in the
 5 group concealing a firearm in a blanket. The media
 6 retreated to a neutral area behind the police lines." You
 7 see that?
 8 BRIGADIER CALITZ: Ek sien dit, mnr die
 9 Voorsitter.
 10 MR BUDLENDER SC: Now if we're to go by
 11 the video that we've just seen of that discussion between
 12 Captain Adriaio and the media, in fact he advised them to
 13 withdraw behind the police lines.
 14 BRIGADIER CALITZ: Ek het dit gesien, mnr
 15 die Voorsitter.
 16 MR BUDLENDER SC: Ja, alright. Let me
 17 move on.
 18 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 19 wil net noem, in my getuienis het ek dit wel genoem dat
 20 Kaptein Adriaio, ek dink dis paragraaf 90 van my "original"
 21 getuienis het Kaptein Adriaio my gekontak en die media,
 22 dieselfde inligting, het dan begin onttrek by die koppie.
 23 "They felt unsafe amongst the strikers and something was
 24 about to happen." Dit was net na ons skakeling en dat daar
 25 is ook in my verklaring gemeld van die vuurwapen wat aan

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1 hom gewys is, toegedraai. Die media wou dit afneem, maar
 2 hulle was nie toegelaat. So ek het dit ook reeds in my
 3 getuienis gehad soos in "exhibit L."
 4 CHAIRPERSON: The reference in para 90 of
 5 course is to something that happened much earlier, isn't
 6 it? Because that relates to what happened roughly at the
 7 time when the media people left, which is dealt with in
 8 para 87, and it appears to be followed by another approach
 9 from Noki and the group of five. So that's his reference
 10 to signing the piece of paper and so on. So that was
 11 earlier, wasn't it?
 12 BRIGADIER CALITZ: Ek het hom ook vroeër,
 13 mnr die Voorsitter, as u kyk paragraaf 87, toe mnr Adriaio
 14 my gebel het oor die video-operateurs, dit was so rondom
 15 13:25, so dit kan wees enige tyd voor 2, half 2, 2.
 16 CHAIRPERSON: We're now talking about
 17 something that happened apparently round about 25 to 4,
 18 after 3:30.
 19 BRIGADIER CALITZ: Ek sien dit is die tyd
 20 op "exhibit L." Ek het net gesit die insident het dan aan
 21 my gerapporteer –
 22 CHAIRPERSON: And we were told that what
 23 we saw in the video –
 24 BRIGADIER CALITZ: Was 'n vroeër –
 25 CHAIRPERSON: - Captain Adriaio addressing

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1 them was slightly after that. I think you said 15:40, did
 2 you, Mr Budlender?
 3 MR BUDLENDER SC: 15:41. Right, now I'm
 4 coming to the rollout itself –
 5 CHAIRPERSON: Is this going to be big
 6 topic, Mr Budlender, or you think you can finish it in the
 7 two minutes that are available before we have lunch?
 8 MR BUDLENDER SC: No, Chair.
 9 CHAIRPERSON: Even if you do it
 10 simultaneously, not sequentially, you can't do it in two
 11 minutes.
 12 MR BUDLENDER SC: It will be an
 13 extraordinary feat of both the Brigadier and myself, even
 14 if we're unassisted. I don't think we'll manage.
 15 CHAIRPERSON: We will adjourn until
 16 quarter to 2, taking lunch.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [14:07] CHAIRPERSON: The Commission resumes. I
 19 may say that you will have noticed that there's no TV
 20 camera here at the moment. So what is happening now is not
 21 being broadcast on YouTube, or telecast on YouTube, but I
 22 was concerned that the people who are across the way there,
 23 in the room with the interpreters' booths would be missing
 24 out, but I'm assured that the interpreters there are able
 25 to hear obviously what's being said through the oral feed

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1 and the people there – so that's why the people in the
 2 chamber are getting interpretation into English in some
 3 cases and into Xhosa in others, and the people in the room
 4 there are people who speak Sesotho, and they are getting an
 5 interpretation, so that even though the TV Camera is not
 6 here, it would seem that those who are particularly
 7 interested are getting the information that they require.
 8 Brigadier, you're still under oath. Mr Budlender.
 9 BRIGADIER CALITZ: Yes.
 10 MR BUDLENDER SC: Thank you, Chair.
 11 Brigadier, we're now finally at the rollout. Colonel Scott
 12 told the Commission that his plan was that the Nyalas would
 13 simultaneously deploy the barbed wire and that he said this
 14 at the briefing which he gave at 2h30 on the 16th of August,
 15 and I think you've already said you can't recall that he
 16 said that at the briefing.
 17 BRIGADIER CALITZ: Korrek, Mnr die
 18 Voorsitter.
 19 MR BUDLENDER SC: You've also already
 20 told the Commission – and we know that in fact the Nyalas
 21 did not deploy simultaneously. Correct?
 22 BRIGADIER CALITZ: Korrek, Mnr die
 23 Voorsitter.
 24 MR BUDLENDER SC: And you've given
 25 evidence and you've explained the reasons for the evidence,

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1 why it was not practical to deploy them simultaneously.
 2 BRIGADIER CALITZ: Dit is korrek, Mnr die
 3 Voorsitter.
 4 MR BUDLENDER SC: In fact, you said that
 5 it would be a dangerous thing to do.
 6 BRIGADIER CALITZ: If there's
 7 simultaneous deployment with the gaps created, in that
 8 sense, yes.
 9 MR BUDLENDER SC: Ja. Now, if
 10 simultaneous deployment was a significant element of
 11 Colonel Scott's plan, then it was a defect in the plan,
 12 because you say it couldn't work and it could have been
 13 dangerous.
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 dit is waarom ek gesê het, ek het glad nie gehoor dat dit
 16 hy wel gesê het nie. Ek het dit ook nie opgemerk in die
 17 exhibit L, in ons presentation nie. So as dit sy woorde
 18 was is dit sy getuienis.
 19 MR BUDLENDER SC: No, I understand that.
 20 My point really is a different one, Brigadier. You say you
 21 didn't hear him say that. I understand that. What I'm
 22 saying to you is that if that is what he had in mind,
 23 whether or not he said it - if that is what he had in mind
 24 as significant part of his plan, then that was a defect in
 25 his plan.

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1 BRIGADIER CALITZ: As jy miskien net kan
 2 sê "defect," wat jy bedoel?
 3 MR BUDLENDER SC: A flaw or a fault or it
 4 was part of the –
 5 VOORSITTER: Gebrek is miskien die
 6 korrekte woord, iets wat daarmee verkeerd was.
 7 BRIGADIER CALITZ: Mnr die Voorsitter,
 8 ja. Ek kan nie sê dis verkeerd nie. Hy het die afstande
 9 op die Google map, soos ek dit verstaan uit gemerk, en sy
 10 verstandhouding op daardie stadium, of wat hy oorgedra het
 11 is dat die lengte van die draad sal dan 100 meter wees. So
 12 ek glo hy het dit dan so bedoel.
 13 MR BUDLENDER SC: No, I understand that,
 14 but if he had said to you it's important that the Nyalas
 15 should be rolled out simultaneously, you would immediately
 16 have said, "Look, that is a very difficult thing to do. It
 17 is not likely to work and it might be dangerous."
 18 BRIGADIER CALITZ: Operasioneel is dit
 19 altyd 'n probleem, mnr die Voorsitter, en as hy dit gesê
 20 het, sou die gesprek wel plaasgevind het tussen ons.
 21 MR BUDLENDER SC: And you would have told
 22 him that, if he had said that to you?
 23 BRIGADIER CALITZ: Mnr die Voorsitter, my
 24 voorstel sou gewees het dat ons dit sal los vir die
 25 taktiese lede op die grond, veral Kolonel Makhubela, gegewe

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1 die terrein en gegewe die omstandighede op die dag. Die
 2 plan kan werk as dit 'n oop terrein is. Daar's niks
 3 waaraan gehak kan word nie, maar dis wat ek sou gedoen het.
 4 MR BUDLENDER SC: Alright. I don't want
 5 to belabour the point, Brigadier, but simply this, that
 6 you're experienced in these sorts of operations and if he
 7 had said to you it must be done simultaneously, you would
 8 have said to him that will be a problem?
 9 BRIGADIER CALITZ: As hy dit vir my gesê
 10 het, mnr die Voorsitter.
 11 MR BUDLENDER SC: That's fair enough.
 12 Now, of course, there is a problem with the sequential
 13 rollout. You know what I mean by sequential, one after the
 14 other. There is a problem with rolling out one after the
 15 other in that the people who were on the other side can see
 16 what you're doing and they've got a longer time to react
 17 before your protection line is in place.
 18 BRIGADIER CALITZ: Die protestors op die
 19 koppie kon presies gesien het wat ons doen. Dit is 'n
 20 rustige proses wat minute neem.
 21 MR BUDLENDER SC: It made it – in other
 22 words, it gave them the time to come forward if they wanted
 23 to come forward?
 24 BRIGADIER CALITZ: Die geleentheid was
 25 altyd daar vir hulle om vorentoe te kom as hulle wou.

<p style="text-align: right;">Page 17706</p> <p>1 BRIGADIER CALITZ: Yes, but the rollout 2 on the evidence takes – took something over nine minutes. 3 So they're sitting on the koppie watching what's going on. 4 They had ample opportunity, if they wanted, to move forward 5 past the line. 6 BRIGADIER CALITZ: Mnr die Voorsitter – 7 MR BUDLENDER SC: Sorry to interrupt. Or 8 to try to move forward past the line. 9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 ja, dit is wat ons presies gesien het op die dag, alhoewel 11 dit die kleiner groepie was. Die groter groep van 2 000 12 tot 3 000 het dan ook gekies om na die nedersetting daar 13 naby te beweeg. 14 MR BUDLENDER SC: Could we go to your 15 statement, your consolidated statement? 16 CHAIRPERSON: That's JJJ107. 17 MR BUDLENDER SC: JJJ107. Could you go 18 to paragraph 108? And there you say that Lieutenant- 19 Colonel McIntosh explains to Mr Noki over the public 20 address system that the purpose of the barbed wire is for 21 the protection of the police, the media and the community. 22 Do you see that? 23 BRIGADIER CALITZ: Ek sien dit, Mnr die 24 Voorsitter. 25 MR BUDLENDER SC: And by the community –</p>	<p style="text-align: right;">Page 17708</p> <p>1 die protestors in daardie geval, want hulle sou dan 2 afbeweeg het in die rigting van die media, en dit is wat 3 ons bedoel het – 4 CHAIRPERSON: It might have been unsafe 5 for the media, but would it have been unsafe for the 6 protesters? 7 BRIGADIER CALITZ: Meneer – 8 CHAIRPERSON: Normally one is protected 9 against some kind of a threat or attack. Now, I can 10 understand why the police required protection, so they 11 couldn't be attacked by the strikers. I can understand why 12 the media required protection, same reason. If by the 13 community is meant the people in Nkaneng, I can also 14 understand why it would protect them, also from the 15 strikers, but I don't understand, I'm afraid, but perhaps 16 you can explain it to me, is against whom did the strikers 17 require protection? Who was going to hurt them if the wire 18 wasn't there? That's the question that's being asked, I 19 think. 20 BRIGADIER CALITZ: Mnr die Voorsitter, in 21 daardie geval, sou die draad nie daar gewees het nie en 22 hulle wel deur gebreek het na die, soos ek gesê het, die 23 media gedeelte toe, dan was die gevaar dat hulle ook in die 24 nedersetting sou inbeweeg, agter ons. Dit was juis – 25 CHAIRPERSON: Ja, I understand that.</p>
<p style="text-align: right;">Page 17707</p> <p>1 I think you explained in your evidence-in-chief that by the 2 community, you were referring to the strikers. 3 BRIGADIER CALITZ: Dit was my getuienis, 4 mnr die Voorsitter. 5 MR BUDLENDER SC: From whom was the 6 barbed wire going to protect the strikers? Against – if 7 the strikers were going to be protected, against whom were 8 they being protected by the barbed wire? 9 BRIGADIER CALITZ: Wat ons bedoel by 'n 10 beskermingslyn, dit is wat ek in 'n vorige gedeelte van my 11 verklaring ook gesê het, Mnr die Voorsitter, dit sou wees 12 as ons die geleentheid gehad het om uit te beweeg en dan 13 die opdrag gegee het om uiteen te dryf, en sou daardie 14 aksie dan vorentoe gegaan het, dan was dit 'n linie wat as 15 beskerming gedien het na die media aan die kant, en dan ook 16 die protestors, aangesien hulle dan in 'n westelike rigting 17 kon weg beweeg. 18 MR BUDLENDER SC: I'm afraid I don't 19 understand that. Who was it who might injure the strikers, 20 but who would not be able to injure the strikers because of 21 the barbed wire barricade? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 sou die draad nie daar gewees het nie, dan was die hele 24 gebied, as ek my rigting reg het, na 'n noord oostelike 25 rigting oop en dit sou definitief onveilig gewees het vir</p>	<p style="text-align: right;">Page 17709</p> <p>1 That means – I'm sorry to interrupt you – I can understand 2 why the community there means the people in Nkaneng, they 3 were being protected. I haven't got a problem with that. 4 The question is in what way would the strikers be protected 5 by the wire? And if they were being protected against 6 themselves, so they wouldn't do something silly, which 7 would cause them to be attacked, but I take it that's not 8 what you mean. 9 BRIGADIER CALITZ: Nee, mnr die 10 Voorsitter, ja, dis waarnatoe ek – miskien 'n langer manier 11 – maar dis waarnatoe ek op pad was. Indien hulle nie dan 12 na die nedersetting toe gegaan het. Dit is wat ons gesien 13 het as a negative attraction point, juis oor die 14 dreigemente en die gebeure die afgelope vorige dae, sou ons 15 glad op daardie stadium gehad het dat die protestors in die 16 gebied inbeweeg, want daar kon moontlik 'n konflik gewees 17 het. Daar kon weer verdere aksie gewees teen die mense wat 18 glad nie die protesaksie ondersteun het nie. Soos ons 19 geweet het op hierdie stadium, daar was baie mense wat nie 20 deelgeneem het aan die protesaksie nie en wat weg gewys is. 21 Die ander opsie is dat die positive traction 22 point was vir ons 'n veiliger opsie gewees, omdat dit is 'n 23 oop gebied en dit is baie makliker, waar dan geen beserings 24 aan geen persone, persele, voertuie, daai tipe van ding, 25 kon plaasgevind het nie.</p>

<p style="text-align: right;">Page 17710</p> <p>1 MR BUDLENDER SC: Brigadier, I'm afraid I 2 still don't understand. You said yesterday that after the 3 dispersal, it was possible for the strikers to move in a 4 north, north-westerly direction in order to get to Nkaneng, 5 and that was not a problem. Correct? 6 BRIGADIER CALITZ: Dit was so en dit is 7 waar die 2 000 tot 3 000 weg beweeg het. 8 MR BUDLENDER SC: Now, why was there 9 going to be problem for them to move directly from the 10 koppie into Nkaneng? If they could move around to the side 11 of Nkaneng, why couldn't just come in the front of Nkaneng? 12 BRIGADIER CALITZ: Dit was die groter 13 deel van die gemeenskap wat nie die deel van protester 14 groep was wat voor beweeg het nie, wat in daardie rigting 15 inbeweeg het. Dit was my getuienis gewees. 16 MR BUDLENDER SC: Well, I'm sorry, I 17 don't understand that. Perhaps I'm not listening properly. 18 It was fine for the strikers, after dispersal, to move into 19 Nkaneng from the side, the north, northwest side, correct? 20 You said that's what they could have done if they came 21 round the - 22 BRIGADIER CALITZ: Noordwes. Die fotos 23 wat ek gister gewys, dit is korrek. 24 MR BUDLENDER SC: Yes. Why was it more - 25 why was it potentially harmful for the strikers to go</p>	<p style="text-align: right;">Page 17712</p> <p>1 CHAIRPERSON: And I take it some of them 2 had weapons. We don't know whether they did or they 3 didn't, but some people on the koppie did have weapons. 4 BRIGADIER CALITZ: Tradisionele wapens. 5 CHAIRPERSON: Well, we're not quite sure 6 whether they only had sticks and things, or whether some of 7 them had spears - 8 BRIGADIER CALITZ: Ek glo hulle het meer 9 gehad. Dit is korrek. 10 CHAIRPERSON: Now, no attempt, as far as 11 I could see, and if I'm wrong, you'll obviously correct me, 12 no attempt appears to be made to do anything in relation to 13 the people who were leaving during phase 2. So if they had 14 spears and assegais and that kind of thing, they would have 15 been able to get via the side to Nkaneng without any 16 attempt being made to stop them. Isn't that right? 17 BRIGADIER CALITZ: Dit is heeltemal 18 korrek, mnr die Voorsitter. So dan sal ons dit op 'n 19 volgende dat verder opgevolg het. 20 CHAIRPERSON: Of course, if they got up 21 to mischief in the meanwhile in the township with it, then 22 there would have been unfortunate consequences, that would 23 - but, as far as you were concerned, those weapons, you 24 hoped, would have been dealt with the following day with 25 the cordon and search, if I understand that correctly?</p>
<p style="text-align: right;">Page 17711</p> <p>1 directly into Nkaneng from the koppie, instead of following 2 that route around to the side? 3 BRIGADIER CALITZ: Mnr die Voorsitter, u 4 sal onthou, my getuienis op daardie stadium was, dit is wat 5 ons vir die protesters gesê het. Die hele idee was dat ons 6 sou uitbeweeg het en dat hulle dan vreedsaam hulle wapens 7 sou neergelê het en dan daarnatoe beweeg het. Ten tye van 8 wat ek hier gesê het vir mnr Noki was die idee gewees dat 9 ons sou nog kon uitbeweeg. Hulle die nodige waarskuwings 10 gegee het. Hulle sou neergelê het en dan sou hulle 11 vreedsaam uiteen gegaan het en daar sou geen aksie teen 12 hulle gewees het nie. So dit is die plan wat hier 13 onderbreek was. So ten tye van hierdie uitlating van my of 14 wat ek hier gesê het vir mnr Noki, is dit presies wat ons 15 bedoel het wat fase 2 nog moes plaasvind. 16 MR BUDLENDER SC: Alright, well the 17 record will speak for itself, Chair, I don't want to 18 belabour the point. 19 CHAIRPERSON: Can I ask a question about 20 it? Something's been puzzling me for a long time. When 21 the barbed wire rollout started, and I think we can see 22 from the video, can we not, that some people are already 23 leaving the koppie. Am I right? 24 BRIGADIER CALITZ: Korrek, mnr die 25 Voorsitter.</p>	<p style="text-align: right;">Page 17713</p> <p>1 BRIGADIER CALITZ: Dit is korrek, mnr die 2 Voorsitter. Ons het uitkyk punte gehad, asook 3 misdaadintelligensie, wat ons dan die - kan ek sê images 4 tot ons beskikking kon gebruik het om dan oor te gaan later 5 tot 'n deursoekingsaksie. Dit sou 'n veiliger opsie - 6 CHAIRPERSON: No, I understand. 7 MR BUDLENDER SC: Brigadier, there was 8 evidence given by, I think by Brigadier Mkhwanazi and I 9 think also by Colonel Scott that it's not usual to give a 10 warning before you take a defensive action, because you 11 don't want to inform the other side in advance of what 12 you're going to do. I think you may also have given 13 evidence to that effect, in chief. 14 BRIGADIER CALITZ: Dit is korrek, Mnr die 15 Voorsitter. 16 MR BUDLENDER SC: And that was given as 17 the reason why there was no warning before the barbed wire 18 was rolled out. The idea was that the warnings would be 19 given after the barbed wire was rolled out, before the 20 dispersal started. 21 BRIGADIER CALITZ: As ons praat van die 22 uiteendrywing, die waarskuwing vir die uiteendrywing, dit 23 was nie gegee nie. Daar was vele ander waarskuwings gegee 24 wat betref die draad. 25 MR BUDLENDER SC: Yes, you didn't give</p>

<p style="text-align: right;">Page 17714</p> <p>1 the warning for the dispersal, because you never reached 2 that point. It was disrupted.</p> <p>3 BRIGADIER CALITZ: Dit is was staande 4 orde 262 voor staan.</p> <p>5 MR BUDLENDER SC: My puzzle is this, 6 Brigadier Mkhwanazi was shown a book written by Professor 7 Waddington, who is an expert, an English expert if Public 8 Order Policing. And one of the things he says about Public 9 Order Policing is you should try to avoid giving surprises 10 – doing things which take people by surprise, because it 11 can lead to unpredictable outcomes. And Brigadier 12 Mkhwanazi agreed with that. I take it that in general you 13 would also agree with that.</p> <p>14 BRIGADIER CALITZ: Dit is hoekom ons die 15 12, 13 kere, Mnr die Voorsitter, met hulle gekommunikeer 16 het, rondom die draad, sodat daar geen verrassing kon wees 17 nie.</p> <p>18 MR BUDLENDER SC: Yes. And under those 19 circumstances, the special circumstances that existed at 20 Marikana that day that you had a crowd on a koppie, some of 21 whom were very hostile and some of whom were very 22 hostile to the barbed wire, and you had already said quite 23 openly, "This is what we have in mind, this is what the 24 barbed wire is for." Wouldn't it have been wise, with the 25 benefit of hindsight, to say, "We are now going to rollout</p>	<p style="text-align: right;">Page 17716</p> <p>1 ook waarskuwings pertinent na die draad, asook na die AMCU 2 voorsitter, dat dan ook dieselfde dreigement na hom toe 3 gevra het om ook die mense te adresseer. So selfs hulle 4 leier was daarvan ingelig.</p> <p>5 CHAIRPERSON: Brigadier, am I correct in 6 saying, the relevant passages in your statement, 81, 91, 7 and 108. 81 deals with what happens around about 10 8 o'clock in the morning. That, I take it, is when the 9 Nyalas came, or shortly after they came with the wire 10 trailers, and according to 81, Lieutenant-Colonel McIntosh 11 tried to negotiate with the men.</p> <p>12 [14:27] Noki then came – one of the five - approached the 13 Nyala, your Nyala, said they didn't want you there and went 14 back to the koppie, singing and displaying aggression.</p> <p>15 They then moved towards Nyala 6 where they informed police 16 where they informed the police they must remove the barbed 17 wire, presumably in the trailer at that stage, and then 18 Noki said he wasn't going to inform the police about this 19 again and then Colonel MacIntosh explained the purpose, the 20 way it is put 81 was, this was said to the police and the 21 media personnel. Then in 91 you're dealing with what 22 happened later on, this was some time after Mr Mathunjwa 23 had left for the first time and again Noki and the group of 24 five, well, no, that's the whole group of five, not just 25 Noki one, approached the Nyalas again, demanded to know why</p>
<p style="text-align: right;">Page 17715</p> <p>1 the barbed wire, as we told you, this is solely to provide 2 a protection barrier, it is not to encircle you and it is 3 not to harm you in any way." Wouldn't have that been a 4 good thing to do?</p> <p>5 BRIGADIER CALITZ: Mnr die Voorsitter, 6 dit is inderdaad die paragraaf wat u aangehaal het, 108, 7 ten tye van die uitrol het ons presies gedoen wat u nou net 8 voorgestel het. Die eerste draad was uitgerol. Mnr Noki 9 het na ons toe gestap. Ons het vir hom dan en daar weer 10 verduidelik en die tweede laaste sin is, "He told him that 11 it was not intended against the strikers." So dit is 12 presies wat ons gedoen het.</p> <p>13 MR BUDLENDER SC: It seems to me that – 14 but you – from what you say, if Mr Noki had not approached 15 the Nyala and been aggressive, you wouldn't have made this 16 announcement at all, because it was a defensive measure.</p> <p>17 BRIGADIER CALITZ: Die laaste een sou 18 daar nie gemaak gewees het nie, maar wel die vorige 10, 12, 19 ten opsigte van die draad sou wel gemaak gewees het, mnr 20 die Voorsitter.</p> <p>21 COMMISSIONER HEMRAJ: Was there not a 22 conversation you had with Mr Noki when the Nyalas with the 23 wire were actually deployed on the scene?</p> <p>24 BRIGADIER CALITZ: Ek probeer net gou kyk 25 na my verklaring. Ek dink paragraaf 81 en 91 verwys dan</p>	<p style="text-align: right;">Page 17717</p> <p>1 the barbed wires were there on the carts, again he 2 explained what the purpose was and he then spoke about the 3 piece of paper and killing and so on, and then at 108, this 4 is now around about 3:40, I suppose, this is when the 5 barbed wire is being deployed now.</p> <p>6 Up to now there had been two discussions with 7 Noki about the barbed wire but the barbed wire is not 8 uncoiled, it is simply on the trailers, but they're 9 prepositioned, and they're all over the PA system, the same 10 discussion. Then the third time when the moment has come 11 now for the barbed wire to be uncoiled, just as the first 12 one was deploying Noki comes again, very aggressive and 13 says, you will die, and then MacIntosh explains again, 14 according to your statement, what the purpose was and those 15 are the passages that Mr Budlender was discussing with you. 16 So from already around about ten o'clock it would seem that 17 Noki certainly and the people with him, but I take it, 18 because the public addresses haven't been used, at least 19 some or others of the strikers would have known, (a), would 20 have seen the barbed wire trailers there and would have 21 been told it is there to protect the police and the media 22 and later the community was added to it, and then the same 23 thing happened after one o'clock between, the interval 24 between Mathunjwa's two visits and then the third one is 25 the one that talks about 108.</p>

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1 So they were told, whether they believed it was
2 maybe another matter, but they were told the wire is not
3 intended as a threat to them and presumably they would have
4 realised or should have realised that the wire is going to
5 be used at some stage, because it isn't able to do anything
6 by way of protecting anybody if it is on the trailers,
7 which were attached to the Nyalas and there was a
8 substantial distance between them, that's correct, isn't
9 it?

10 BRIGADIER CALITZ: Korrek, mnr die
11 Voorsitter.

12 MR BUDLENDER SC: Brigadier, just finally
13 on this aspect, you knew that Mr Noki was extremely hostile
14 to the positioning of the barbed wire in the trailers, and
15 that made him very angry, correct?

16 BRIGADIER CALITZ: Mnr die Voorsitter, as
17 ek net sê, dit is nie wat hom aanvanklik, hy was reeds van
18 die Woensdag af omdat die personeel en die bestuur van die
19 myn nie met hulle wil onderhandel nie en dat hulle nie te
20 kenne gegee het dat hulle gaan toegee aan hulle eise nie,
21 dit het hom al ongelukkig gemaak. Ek dink die barbed wire
22 was maar net die laaste een gewees, maar hy was aggressief
23 al van die Woensdag af, was my getuienis.

24 MR BUDLENDER SC: Yes, -
25 BRIGADIER CALITZ: Dit is die 15de.

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1 MR BUDLENDER SC: I understand that but
2 your evidence is and it is in your statement, that when the
3 barbed wire trailers were placed there, that also made him
4 angry.

5 BRIGADIER CALITZ: Dit is korrek, ja.

6 MR BUDLENDER SC: And you said in your
7 statement, I referred it to you and I won't take you there
8 again, I can just remind you of what you said in your first
9 statements, you said, "At no stage during the whole
10 negotiating process did I get the impression that the crowd
11 was willing to listen to reason and to lay down their
12 weapons. Instead I came to the conclusion that they will
13 never surrender their weapons and they were prepared to
14 fight with the police and to die," do you remember that?

15 BRIGADIER CALITZ: Dit is korrek, mnr die
16 Voorsitter.

17 MR BUDLENDER SC: Now given that and
18 given the Crime Intelligence which you'd received, did you
19 really think that the militant group of strikers would just
20 sit there and watch quietly while the barbed wire enclosure
21 was rolled out, not enclosure, that the barbed wire fence
22 was rolled out?

23 BRIGADIER CALITZ: Mnr die Voorsitter,
24 ja, dit is waaroor ons ek dink 'n dag of twee terug getuig
25 het. Ons het wel voorsien dat die protesteer groep sou

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1 hulle teësit sou dit kom by die arrestasie, ag, die
2 uiteendrywing nadat ons die bevel aan hulle gegee het.
3 Daarvoor het ons wel voorsien, maar ons het glad nie
4 voorsien dat, nadat ons vir soveel kere vir hulle gesê het
5 en hulle op 'n hoër afstand was en kon gesien het die
6 heeldag die voertuie staan daar, as dit rustig uitgerol
7 word in 'n rigting weg van hulle af, dat hulle enige rede
8 het om die polisie dan aan te val nie, nee, dit was nie
9 voorsien nie, Meneer.

10 CHAIRPERSON: You told us before that
11 there were about six threats to attack the police, is that
12 right?

13 BRIGADIER CALITZ: Ses dreigemente.
14 CHAIRPERSON: Six threats to attack,
15 which was at various stages.

16 BRIGADIER CALITZ: Ja, nie om aan te val
17 nie, maar dreigemente, hulle soek die polisie nie daar nie
18 en verskeie –

19 CHAIRPERSON: Well, they said you will be
20 killed.

21 BRIGADIER CALITZ: Die laaste drie, vier,
22 ja, definitief.

23 CHAIRPERSON: Okay, there were six
24 threats.
25 BRIGADIER CALITZ: Ja.

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1 CHAIRPERSON: And the last three or four
2 of them contained threats to kill the police.

3 BRIGADIER CALITZ: Beslis so.

4 CHAIRPERSON: Burn the hippos, I think
5 they said.

6 BRIGADIER CALITZ: Hulle het dit aan ons
7 –

8 CHAIRPERSON: To drive people away from
9 the scene.

10 BRIGADIER CALITZ: Dit is korrek, mnr die
11 Voorsitter.

12 CHAIRPERSON: Now if they were serious in
13 those threats then presumably once they could see the wire
14 being rolled out, which would be a barrier which would
15 indeed protect the police from them and make it impossible
16 for them to implement their threats, then what would one
17 have expected them to do, to stand by, watch the wire being
18 rolled out so that they can't implement their threats, or
19 would you expect them to take advantage of the opportunity
20 before the wire is out, to get through and implement their
21 threats and attack the police as they threatened to do?

22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 met die benefit of hindsight nou kan 'n mens beslis daardie
24 afleiding maak. Toe ons daar gesit het, het ons glad nie
25 verwag op daardie stadium dat hulle die draad sou storm

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1 nie. Dit was net glad nie voorsien nie. Die dreigemente
 2 was wel gemaak maar ek het geglo dat die draad sou uitgerol
 3 gewees het en hulle sou wel aan daardie kant gewees het en
 4 ons sou 'n geleentheid gekry het om dan uit te beweeg en
 5 met hulle te kommunikeer.

6 CHAIRPERSON: Yes, I can understand that
 7 that's the way you saw it, because it is not quite accurate
 8 to say they would be storming the wire. The fact that they
 9 would be running for the gap before the wire closed it so
 10 that they could implement their threat to attack, but you
 11 say that with hindsight one can see that that may well have
 12 been the case, but you say that you didn't foresee it would
 13 happen and presumably if you had foreseen it you would have
 14 acted differently, is that fair?

15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 ja, nou in hindsight, acted differently, ek weet net nie
 17 hoeveel ander opsies daar regtig beskikbaar was nie want
 18 sou hulle daar deur breek sou die resultaat dieselfde
 19 gewees het.

20 MR BUDLENDER SC: Then if I can go on to
 21 the next part of this, I would like to discuss with you the
 22 positioning of the Nyalas. Would you go to JJJ91, please,
 23 JJJ91? Could we also try to get that on the screen,
 24 because I think we all have black and white copies, yes,
 25 that's easier, thank you. Now let me just explain to you

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1 what this document is, this is slide 152 of the police
 2 presentation superimposed on that onto slide 152 of the
 3 police presentation which Colonel Scott accepted as a
 4 correct representation of what happened, and let me show
 5 you what it is intended to depict. We see six dark red
 6 Nyalas on the curve, on the yellow curve which goes across
 7 the screen, can you see that, six dark red Nyalas?

8 BRIGADIER CALITZ: Korrek, mnr die
 9 Voorsitter.

10 MR BUDLENDER SC: And those are where
 11 Colonel Scott agreed, that was where the barbed wire Nyalas
 12 were intended to be deployed according to the plan, do you
 13 accept that?

14 BRIGADIER CALITZ: Dit was die, - ja, op
 15 daardie stadium die plan.

16 MR BUDLENDER SC: Yes, and then he also
 17 agreed that the six bright red ellipses show where the six
 18 barbed wire Nyalas were actually deployed at the time that
 19 implementation took place, do you see that?

20 BRIGADIER CALITZ: Ek sien, mnr die
 21 Voorsitter.

22 MR BUDLENDER SC: And he accepted that
 23 they were -

24 BRIGADIER CALITZ: Dit is egter nie
 25 korrek nie, want die sesde een sou na die kraal toe wees,

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1 so ek dink Kolonel Scott het 'n fout gemaak met die rooi
 2 kolletjies, want Nyala 6 was geskuif na die regterkant waar
 3 die kraal, die foto's wys dit duidelik, maar as dit sy
 4 getuienis was is dit korrek, mnr die Voorsitter.

5 MR BUDLENDER SC: If I understand
 6 correctly, number 6 started there but then was moved across
 7 towards the kraal in order to protect it because it was
 8 under threat, is that correct?

9 BRIGADIER CALITZ: Ek sal kom by die nuwe
 10 plan, laat ons eers klaarmaak met die een.

11 CHAIRPERSON: It is correct that
 12 originally the six Nyalas were put out in particular
 13 positions and then the evidence is that Noki and some of
 14 the others went up to 6 and uttered threats and generally
 15 misbehaved, one would say -

16 BRIGADIER CALITZ: Rondom die -

17 CHAIRPERSON: There was a concern about
 18 the position in which 6 was, it was felt it was dangerous
 19 for it to stay there. I think that was communicated to the
 20 JOC and as far as I can remember General Annandale, I think
 21 you communicated it to the JOC, but General Annandale gave
 22 permission for it to be moved or I can't remember whose
 23 idea it was and where it should go, but certainly whether
 24 the initiative came from you or came from him is neither
 25 here nor there, the two of you agreed that 6 should be

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1 moved and indeed it was moved, that's correct, isn't it?

2 BRIGADIER CALITZ: Die getuienis was so.

3 CHAIRPERSON: So what is being put to you
 4 is that this was the initial position of 6 and the others
 5 before 6 was moved in the circumstances that I have
 6 summarised, would that be correct?

7 BRIGADIER CALITZ: Dit was die eerste
 8 plan wat opgestel is, mnr die Voorsitter.

9 CHAIRPERSON: Actually Nyala 6, I think
 10 I'm correct in saying, was there, it was in this position
 11 or that position and then because there was this dangerous
 12 situation because of the approach to it, you and Allandale
 13 agreed it would be moved and indeed was moved out of harm's
 14 way, as it were, is that correct?

15 BRIGADIER CALITZ: Dit is korrek, om
 16 11:30 na die foto van Kolonel Vermaak, ek en Kolonel Scott,
 17 Generaal Annandale en toe is die plan gewysig.

18 MR BUDLENDER SC: And as a result Nyala 6
 19 was moved from where we see it there to a position closer
 20 to the small kraal?

21 BRIGADIER CALITZ: Ja, daar is 'n nuwe
 22 plan opgestel na die een, ja.

23 MR BUDLENDER SC: No, I'm not talking
 24 about the plan, I'm saying, what I'm saying is, that's the
 25 six where they were actually positioned for the

<p style="text-align: right;">Page 17726</p> <p>1 prepositioning and then number 6 was moved because of the 2 difficulty which it was in.</p> <p>3 BRIGADIER CALITZ: Dit is korrek, mnr die 4 Voorsitter.</p> <p>5 MR BUDLENDER SC: Now Colonel Scott also 6 accepted that if you compare the six bright red ellipses 7 with the six dark red ellipses where they were initially 8 positioned, where the six dark red Nyalas which is where 9 they were on the plan, each of them was about 40 to 50 10 metres from where it was originally planned to be, but we 11 can see that on the diagram, on the plan.</p> <p>12 BRIGADIER CALITZ: Ek sal net die 13 afstande weet op die Google map, ek het dit nie gemeet nie 14 maar ek kan sien daar is 'n verskil, mnr die Voorsitter.</p> <p>15 CHAIRPERSON: But it seems to be, if you 16 look at slide 160 in Exhibit L, that makes it clear to us, 17 (a), what the initial position of Nyala 6 was, and (b), the 18 position to which it was moved, the picture taken at 10:56 19 or so Exhibit L says, am I correct?</p> <p>20 BRIGADIER CALITZ: Dit is korrek, mnr die 21 Voorsitter. As ons miskien, voor ons teruggaan na die 22 vorige slide toe, as ons die Nyala 6, as u sien op hierdie 23 skematiese voorstelling die posisie van Nyala 6 en waar hy 24 oorspronklik was, hy was tussen koppie 2 en die klein 25 kraal. So die is maar net 'n skematiese, hy dui baie</p>	<p style="text-align: right;">Page 17728</p> <p>1 path because if we just look to the bright red, 1, 2, 3, 4, 2 5, there is still free access to that path but Nyala 6 has 3 come across to alongside the small kraal and it is, if 4 anything is blocking access to the path it is only that 5 one.</p> <p>6 BRIGADIER CALITZ: Nee, ek stem nie saam 7 nie, mnr die Voorsitter, as ons na die her-skrifte plan 8 kyk, as ons dalk later daarby kan kom dan sal ek vir u die 9 verskil kan wys.</p> <p>10 MR BUDLENDER SC: No, I'm not looking at 11 the plan, I'm looking at what happened. The bright red 12 shows where they were actually deployed. Now I'm saying –</p> <p>13 BRIGADIER CALITZ: Kan ek –</p> <p>14 MR BUDLENDER SC: - where they were 15 actually deployed, 1, 2, 3, 4 and 5, didn't block access to 16 the footpath, it was only 6 which was going to block access 17 to the footpath.</p> <p>18 BRIGADIER CALITZ: Are you talking about 19 the red circles?</p> <p>20 MR BUDLENDER SC: The red, the bright red 21 circles, yes.</p> <p>22 BRIGADIER CALITZ: Die bright red 23 circles, I'm referring to the bright red circles on, not 24 the plan, also the same like this which is also a plan and 25 I say maybe we must refer to that, it will make it much</p>
<p style="text-align: right;">Page 17727</p> <p>1 verder aan op hierdie stadium as wat dit kon wees in die 2 werklikheid.</p> <p>3 MR BUDLENDER SC: Alright, now if one 4 just have regard to the original plan of the six dark red 5 Nyalas, we can see that Nyalas 4, 5 and 6 would block off 6 access by the strikers, - sorry, let me take a step back, 7 sorry, my apologies, Brigadier. If we look at the small 8 koppie, are you with me, the small kraal, I beg your 9 pardon, the small kraal, we can see that, just to the east 10 of the small kraal is a path which runs from the koppie 11 towards Nkaneng. Do you see the path I'm talking about?</p> <p>12 BRIGADIER CALITZ: Dit is die voetpad.</p> <p>13 MR BUDLENDER SC: Die voetpad, yes.</p> <p>14 BRIGADIER CALITZ: Ek sien hom, mnr die 15 Voorsitter.</p> <p>16 MR BUDLENDER SC: Alright, now if the 17 Nyalas had been in the place originally contemplated, the 18 dark red, then we can see that Nyalas 4, 5 and 6 would have 19 blocked off easy access to that patch to which I've just 20 referred, is that correct?</p> <p>21 BRIGADIER CALITZ: Korrek, mnr die 22 Voorsitter.</p> <p>23 MR BUDLENDER SC: And the way the Nyalas 24 were finally positioned after Nyala 6 was moved, it was 25 actually only Nyala 6 which was blocking access to that</p>	<p style="text-align: right;">Page 17729</p> <p>1 easier for you, Advocate. It is slide 181.</p> <p>2 MR BUDLENDER SC: 181.</p> <p>3 BRIGADIER CALITZ: Then you will see that 4 –</p> <p>5 CHAIRPERSON: Brigadier, - 6 BRIGADIER CALITZ: - Nyala 5 and 6 will 7 block that path and not only 6.</p> <p>8 CHAIRPERSON: 181 I take it shows the 9 plan.</p> <p>10 BRIGADIER CALITZ: Dit is korrek, mnr die 11 Voorsitter.</p> <p>12 CHAIRPERSON: What we were looking at was 13 149 read with 152 and that shows the actual positions of 14 the Nyalas. Now if we go back and I understand, you're 15 absolutely correct, I think, that 181 indicated, the plan 16 indicates or depicts that the plan was going to be that 17 that part was going to be blocked by Nyala 5 and Nyala 6 in 18 its ultimate position when it was moved, right, that's 19 clear, isn't it?</p> <p>20 BRIGADIER CALITZ: Dit is korrek, mnr die 21 Voorsitter.</p> <p>22 CHAIRPERSON: Alright, now let's go back 23 to the superimposed one, 152 on the top of 149, have you 24 got that? What's put to you is that the, what's called the 25 bright red ellipses are where the Nyalas actually were, 6</p>

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1 was initially where it is but it was then moved, but what
 2 you will notice if you look there is, the fifth one doesn't
 3 actually block the path because as I see it, just above
 4 that, the fifth Nyala, the blue line moves off at an angle.
 5 There is a bend in the path at that point and so there is a
 6 definite space between the 5 red Nyala and the path which
 7 actually passes at that angle, the bend in the blue line,
 8 and of course we know that the sixth Nyala was no longer
 9 where it is depicted here. It was moved off and what Mr
 10 Budlender is putting to you is that it was only the sixth
 11 one that was effectively blocking that path because the
 12 fifth one wasn't quite on the path, there was this space we
 13 can see. That seems to be right, isn't it or do I miss
 14 something?
 15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 weereens op hierdie skematiese voorstelling, as u sê
 17 Kolonel Scott het op dit getuig, daarom verwys ek u na
 18 slide 181 wat die briefing aan ons was op die grond om
 19 14:30. Miskien kan ek net –
 20 [14:46] MR BUDLENDER SC: Brigadier, I don't want
 21 to interrupt you but I'm not interested for the moment in
 22 looking at what the plan was and what the briefing was, I'm
 23 interested in looking at what actually happened.
 24 BRIGADIER CALITZ: That is what actually
 25 happened. It's 181.

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1 CHAIRPERSON: Won't it help you,
 2 Brigadier, if you look at the photograph slide 152, would
 3 that affect you?
 4 MR BUDLENDER SC: Thank you very much
 5 Commissioner Hemraj, that's what I, let's look at 152.
 6 BRIGADIER CALITZ: Ek sien, mnr die
 7 Voorsitter.
 8 MR BUDLENDER SC: That's the actual
 9 deployment, not the plan, right?
 10 BRIGADIER CALITZ: Dit was die actual
 11 deployment.
 12 MR BUDLENDER SC: And now we can see the,
 13 we can see the barbed wire Nyalas, 1, 2, 3, 4, 5, 6 and you
 14 can see that number 5 is on the north, on the southern side
 15 of the footpath. In other words it wasn't blocking the
 16 footpath?
 17 BRIGADIER CALITZ: Op hierdie foto, dit
 18 is korrek.
 19 MR BUDLENDER SC: Yes, and that's what's
 20 shown on, the same thing is shown on JJJ91 that we were
 21 looking at a moment ago. That was just on the other side
 22 of the footpath, not blocking the footpath.
 23 BRIGADIER CALITZ: Ek sien dit op hierdie
 24 foto, Meneer.
 25 CHAIRPERSON: The picture is obviously

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1 taken before Nyala 6 was moved?
 2 BRIGADIER CALITZ: Dit moet rondom die –
 3 CHAIRPERSON: That shows the initial
 4 prepositioning because you can see Nyala 1 is right up
 5 against the power station. So that initial prepositioning,
 6 that's where 6 was initially, before there was this trouble
 7 which caused you and General Annandale to move it.
 8 BRIGADIER CALITZ: Korrek.
 9 CHAIRPERSON: Now what's put to you is it
 10 was moved into a position which effectively blocked the
 11 path but says Mr Budlender, it as the only Nyala that
 12 blocked the path because as we can see Nyala 5 was, I don't
 13 know what the exact distance is but it was some distance
 14 away from the path and so people could get, could walk
 15 along the path without bumping into the Nyala, I think
 16 that's the point that's been made, am I right, Mr
 17 Budlender?
 18 MR BUDLENDER SC: Ja, correct, Chair.
 19 BRIGADIER CALITZ: Dit is waar hulle
 20 beweeg het die dag, ja, soos hulle prepositioned was.
 21 MR BUDLENDER SC: Thank you. Now really
 22 the only point I wish to make is that if the Nyalas had
 23 been in their planned position, if we go back to JJJ91, if
 24 they had been in the planned position the dark red line,
 25 dark red semi circle or ellipse of barbed wire Nyalas there

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1 would have been access to, as you've already agreed access
 2 to the small kraal and to that footpath would have been
 3 very difficult indeed. Is that correct?
 4 BRIGADIER CALITZ: Volgens die vorige
 5 plan sou dit wees, mnr die Voorsitter.
 6 MR BUDLENDER SC: When Nyala 6 was moved
 7 can you show us where it was moved on that diagram, to
 8 which side of the footpath was it moved or was it in other
 9 words was it to the east of the footpath, the west of the
 10 footpath or across the footpath? Are you with me?
 11 BRIGADIER CALITZ: Weereens sal ek verwys
 12 na slide 181, dit is -
 13 MR BUDLENDER SC: No, I don't want you to
 14 look at plans, General, ag Brigadier.
 15 BRIGADIER CALITZ: Dit was -
 16 CHAIRPERSON: - help us, the plan, we
 17 want to know well Mr Budlender wants to know the actual
 18 position, if it comes out of the plan, that's fine. But
 19 181 doesn't show us that, it simply shows us what the plan
 20 was. We need a photograph which shows -
 21 BRIGADIER CALITZ: 152 sal ons help, mnr
 22 die Voorsitter, as ons nie na die plan -
 23 MR BUDLENDER SC: I'm told 193 might be
 24 more helpful.
 25 BRIGADIER CALITZ: Laat ons maar by 152

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1 begin.

2 MR BUDLENDER SC: Okay.

3 CHAIRPERSON: 152 with respect I don't

4 think helps, Brigadier.

5 BRIGADIER CALITZ: Ja.

6 CHAIRPERSON: 152 as I understand it

7 indicates where the Nyala 6 was initially.

8 BRIGADIER CALITZ: Ja.

9 CHAIRPERSON: Before you and General

10 Annandale moved it.

11 BRIGADIER CALITZ: Korrek.

12 CHAIRPERSON: That's right. So what Mr

13 Budlender is now interested in is where did you move it to

14 and you say that's in 193?

15 BRIGADIER CALITZ: Mnr die Voorsitter,

16 kan ek sê 160, dit is op die slide en nie 160 dui dit ons

17 spesifiek aan.

18 CHAIRPERSON: Yes, well that of course

19 shows, doesn't say exactly where it ended up, it shows

20 where it as intended to go to. On 160 it's still in its

21 original position. The yellow arrow indicates where it was

22 being moved to. But what I think we'd like is a photograph

23 of it not before it was moved but after it was moved

24 showing its ultimate position.

25 MR BUDLENDER SC: That we'll see on 193,

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1 Chairperson. Do you have 193 General, Brigadier

2 BRIGADIER CALITZ: 191.

3 MR BUDLENDER SC: Could you just have a

4 look at 193 for a moment please.

5 BRIGADIER CALITZ: And 19 -

6 MR BUDLENDER SC: Do you have 193? Now

7 what, that is taken, that is a photograph taken at 15:43.

8 You see that? The time may be slightly wrong. But let me

9 show you what's happening on there, and see if you agree

10 with me. You'll see in the middle of the, of 193 there is

11 a dotted line, a red dotted line going across from left to

12 right, you see that? Did I say red, yellow I beg your

13 pardon. I'm not that colour blind. Do you see a yellow

14 dotted line going from left to right?

15 BRIGADIER CALITZ: Korrek, mnr die

16 Voorsitter.

17 MR BUDLENDER SC: Now what we can see

18 from that line is that the process of the roll out of the

19 barbed wire has already begun. We can see that Nyala 1 has

20 already moved towards Nyala 2.

21 BRIGADIER CALITZ: Dit is korrek, mnr die

22 Voorsitter.

23 MR BUDLENDER SC: Alright, so that's a

24 photograph taken at the time that the Nyala, that the

25 rollout of the barbed wire had started. Now let's look at

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1 where Nyala 6 is. Can you see it? Let me show you.

2 BRIGADIER CALITZ: I can see it.

3 MR BUDLENDER SC: It's on, yes I'm sure

4 you see better than I do, Brigadier. There's, on the right

5 hand side of the photograph there's a long white line with

6 an arrow pointing downwards, you see that?

7 BRIGADIER CALITZ: Korrek, mnr die

8 Voorsitter.

9 MR BUDLENDER SC: And to the left of that

10 white line is Nyala 6, correct?

11 BRIGADIER CALITZ: Dit is waar die

12 pyltjie nou is.

13 MR BUDLENDER SC: Yes.

14 BRIGADIER CALITZ: Van die rekenaar, dit

15 is Nyala 6.

16 MR BUDLENDER SC: To the left of that

17 white line with the arrow.

18 BRIGADIER CALITZ: Korrek, mnr die

19 Voorsitter.

20 MR BUDLENDER SC: And to the right of

21 that barbed, or the line, white line with the arrow is at

22 that point more or less on the footpath, can you see that?

23 BRIGADIER CALITZ: Ek sien so, mnr die

24 Voorsitter.

25 MR BUDLENDER SC: So we know that at the

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1 time that the roll out took place, or the roll out started

2 there was, we see where Nyala 6 was and we see that there

3 was a gap between Nyala 6 and the small koppie and that

4 the, the small kraal and that the footpath was in that gap.

5 You see that and we see in fact on -

6 BRIGADIER CALITZ: Ek sien.

7 MR BUDLENDER SC: The photographs that

8 people are moving past the small kraal through that gap,

9 can you see that?

10 BRIGADIER CALITZ: Ek kan sien, mnr die

11 Voorsitter.

12 MR BUDLENDER SC: Yes, now if Nyala 6, if

13 Nyalas 4, 5 and 6 had been where originally planned that

14 wouldn't have been possible, correct?

15 BRIGADIER CALITZ: In die, ek dink die

16 vraag deur die voorsitter was ook waar ek en Generaal

17 Annandale hom heen geskuif het. Op hierdie stadium is dit

18 nadat hulle alreeds begin beweeg het. So miskien kan ons

19 net na slide 190 ook kyk, gee dalk 'n aanduiding van waar

20 ons hulle getaak het om te wees.

21 COMMISSIONER HEMRAJ: For the sake of the

22 question that, the foot path would not have been accessible

23 once all the barbed wire had been rolled out?

24 MR BUDLENDER SC: Yes, indeed Chair.

25 COMMISSIONER HEMRAJ: But otherwise as it

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1 stands on that picture which is the first Nyala deploying
2 it's still accessible.

3 MR BUDLENDER SC: Correct, Commissioner.
4 COMMISSIONER HEMRAJ: Thank you.

5 BRIGADIER CALITZ: Mnr die Voorsitter,
6 die punt wat ek net hier wil maak u vraag is waar ek en
7 Generaal Annandale die persone getaak het om te wees. Die
8 AMCU, mnr Mathunjwa se voertuig is nog steeds voor, Nyala 5
9 staan op die voetpad en Nyala 6 is inbeweeg in 'n, sou ons
10 sê 'n noord westelike rigting, westelike rigting met sy
11 neus na die, ek meen dit is hoe hulle staties gestaan het
12 tot en met die deploying begin het. Nyala 5 op die
13 voetpad, Nyala 6 rigting na die klein kraal.

14 MR BUDLENDER SC: Yes but, I understand
15 that but if we just go back to 193 we can see from Nyala 3,
16 from 193 that Nyala 5 is also to, is, well where is it?
17 Where is Nyala 5?

18 BRIGADIER CALITZ: Nyala 5 staan nog
19 steeds waar hy gestaan het, mnr die Voorsitter, hy staan
20 nog steeds op die voetpad.

21 MR BUDLENDER SC: Alright.
22 BRIGADIER CALITZ: As ek met die rooi
23 miskien u kan help.

24 MR BUDLENDER SC: No, I see that.
25 BRIGADIER CALITZ: Hy staan nog steeds op

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1 die voetpad.

2 MR BUDLENDER SC: So at that point if
3 the, of course as Commissioner Hemraj has pointed out the
4 barbed wire was in any event not yet rolled out. But it
5 was at that stage possible to move around, to move past
6 Nyala 5 either on the right or on the left and to reach the
7 footpath that way?

8 BRIGADIER CALITZ: Op daardie stadium sou
9 hulle vorentoe beweeg het, sou die opdrag gewees om daardie
10 draad dan uit te gooi en hulle ook te blok. So daai
11 moontlikheid sal ons nie toegelaat het nie.

12 MR BUDLENDER SC: Yes, you can go around
13 it, around Nyala 5 and back onto the path, if you're coming
14 down the path you'll be blocked by Nyala 5 and you're going
15 to go around it, either to the left or the right and back
16 onto the path at that stage?

17 BRIGADIER CALITZ: As ons kyk na die
18 afstand van die protestors, mnr die Voorsitter, op hierdie
19 stadium Nyala 1 wat begin, u sal sien Nyala 6 het in beweeg
20 na die binnekant toe. Hy staan nie met sy neus na die
21 kraal toe nie, maar meer na die binnekant toe en hier was
22 die kommunikasie reeds al dat van daardie mense het begin
23 wegbeweeg so die draad sou net vinniger uitgegooi gewees
24 het na die kraal toe self.

25 MR BUDLENDER SC: I understand that,

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1 Brigadier, well the point is really a simple one and I
2 don't think we need to go further. We can see that at that
3 point people were in fact going past Nyala 5 on the
4 footpath towards Nkaneng.

5 BRIGADIER CALITZ: Dit is die vreedsame
6 groep wat gehoor gegee het, nie die protes groep wat
7 aangeval is, wat nie toegelaat sou gewees het om daar deur
8 te kom nie.

9 MR BUDLENDER SC: Alright and that
10 exhausts that topic, thank you.

11 BRIGADIER CALITZ: Dankie.
12 CHAIRPERSON: We're proposing to take the
13 tea adjournment in the next few minutes. But if the topic
14 you want to move onto is a short one you can do it now.
15 Otherwise we'll do it after tea. But I'm in your hands.

16 MR BUDLENDER SC: As it is a new topic it
17 might be convenient to take the tea adjournment now.

18 CHAIRPERSON: We'll take the tea
19 adjournment now.

20 [COMMISSION ADJOURNS COMMISSION RESUMES]
21 [15:21] CHAIRPERSON: The Commission resumes.
22 Brigadier, you're still under oath.

23 ADRIAAN MARTHINUS CALITZ: s.u.o.
24 CHAIRPERSON: Mr Budlender.
25 EXAMINATION BY MR BUDLENDER SC (CONTD.):

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1 Thank you, Chair. Colonel, I'm now going to move to a
2 discussion of the events at scene 1 and leading up to scene
3 1.

4 BRIGADIER CALITZ: Thanks for the
5 demotion.

6 CHAIRPERSON: What did you call him?
7 MR BUDLENDER SC: Did I make you a
8 colonel now?

9 CHAIRPERSON: What did you call him? I
10 didn't hear.

11 MR BUDLENDER SC: Colonel, but he's been
12 a general three times today, so three –

13 BRIGADIER CALITZ: It's going up and
14 down, I'm assuming there's something coming now and it's
15 not –

16 MR BUDLENDER SC: [Microphone off,
17 inaudible] get to constable then you must be worried.

18 BRIGADIER CALITZ: I left that to the
19 Chairperson.

20 MR BUDLENDER SC: Sorry, Brigadier.
21 BRIGADIER CALITZ: No, it's okay.
22 MR BUDLENDER SC: Brigadier, in order for
23 – well, let me put it this way; the operation of the 16th of
24 August was quite complex, involving several hundred police
25 members and a large number of different police units.

<p style="text-align: right;">Page 17742</p> <p>1 BRIGADIER CALITZ: Dit is korrek, mnr die 2 Voorsitter.</p> <p>3 MR BUDLENDER SC: It's important 4 particularly in a complex situation like that, that the 5 police members should be fully briefed on what is going to 6 be done and why they are doing it.</p> <p>7 BRIGADIER CALITZ: Korrek, mnr die 8 Voorsitter.</p> <p>9 MR BUDLENDER SC: Now you've given 10 evidence that when the operation commenced on the 16th it 11 was not intended to encircle the strikers on the koppie.</p> <p>12 BRIGADIER CALITZ: Morning, ja. No, it 13 wasn't.</p> <p>14 MR BUDLENDER SC: When you started on the 15 afternoon of the 16th there was no intention to encircle the 16 strikers on the koppie.</p> <p>17 BRIGADIER CALITZ: No, there was not. 18 Not with the barbed wire, but with the Public Order Police 19 after dispersion, it was.</p> <p>20 MR BUDLENDER SC: Yes, there would be 21 afterwards dispersions –</p> <p>22 BRIGADIER CALITZ: Ek is jammer, na die 23 uiteendrywing sou ons dit dan gedoen het.</p> <p>24 MR BUDLENDER SC: That would be by small 25 groups, not using barbed wire.</p>	<p style="text-align: right;">Page 17744</p> <p>1 left already. Those who have got cell phones, please make 2 sure they're turned off. Yes, Brigadier, good idea, 3 because if there's a repetition of this, unless it's the 4 Brigadier, I can't order him out of the chamber, but 5 seriously, it's a disturbance and it's not a good idea, and 6 anyway, it's good manners to turn them off when you come 7 into a chamber like this.</p> <p>8 MR BUDLENDER SC: Brigadier, you have 9 GGG9?</p> <p>10 BRIGADIER CALITZ: Ek het, mnr die 11 Voorsitter, baie dankie.</p> <p>12 MR BUDLENDER SC: So could we look at 13 paragraph 2 of that, and there he says, "I also state that 14 I was in command of the armoured vehicles, six in number, 15 which were to spread out barbed wire. There were about 16 five members SAPS per each armoured vehicle." Is that 17 correct?</p> <p>18 BRIGADIER CALITZ: Ekskuus tog, watter 19 paragraaf –</p> <p>20 MR BUDLENDER SC: Paragraph 2.</p> <p>21 BRIGADIER CALITZ: My paragraaf 2 begin 22 met –</p> <p>23 CHAIRPERSON: Paragraph 3, Mr Budlender.</p> <p>24 MR BUDLENDER SC: I'm sorry.</p> <p>25 BRIGADIER CALITZ: My paragraaf 2 sê,</p>
<p style="text-align: right;">Page 17743</p> <p>1 BRIGADIER CALITZ: "Barbed wire" sou 2 nooit gewerk het nie en dit was nooit moontlik nie. Ons 3 kan dit ook nie so doen nie, mnr die Voorsitter.</p> <p>4 MR BUDLENDER SC: And let me say that I 5 accept that is correct. It would have been impossible to 6 encircle that koppie with six Nyalas, and that was not the 7 intention. I accept that. I wouldn't like there to be any 8 confusion between us. But we know that there was 9 previously a plan contemplated to encircle the strikers on 10 the koppie and to leave one exit for them so that they 11 could be disarmed when they left. Correct?</p> <p>12 BRIGADIER CALITZ: Dit was korrek, mnr 13 die Voorsitter.</p> <p>14 MR BUDLENDER SC: Now I want to look at 15 what was understood about the plan, what was understood by 16 members about the plan that was implemented. Colonel 17 Makhubela was the commander of the six Nyalas which had to 18 roll out the barbed wire. Is that correct?</p> <p>19 BRIGADIER CALITZ: Dit is korrek, mnr die 20 Voorsitter.</p> <p>21 MR BUDLENDER SC: Let's have a look at 22 what he describes what he was doing. It's GGG9.</p> <p>23 CHAIRPERSON: I fear someone has got a 24 cell phone on. I was going to ask the owner of the cell 25 phone to leave, but the owner obviously read my mind; he</p>	<p style="text-align: right;">Page 17745</p> <p>1 "During the said operation." 2 MR BUDLENDER SC: I've read the wrong 3 one, I'm sorry. Could you go up to paragraph 2? I read 4 the wrong one, my apologies. "During the said operation my 5 task was to surround the said employers," I think it should 6 be employees, "with barbed wire at the place they had 7 gathered at a small hill near Wonderkop Village." Now if 8 that's what Colonel Makhubela thought they were doing, then 9 he was wrong.</p> <p>10 BRIGADIER CALITZ: Mnr die Voorsitter, 11 ja, ek probeer nou net kyk, sy datum waarna hy verwys het, 12 maar ek sien in paragraaf 1 het hy wel na die 16de verwys. 13 Die doel, al hoe ek dit kan verduidelik is - hy moet maar 14 kom self sê wat het hy hier bedoel. Al hoe ek dink hulle 15 kon, is dat die draad was bedoel om toe te maak sodat daar 16 wel 'n uiteendrywing en isolering kon plaasvind. So die 17 draad, almal in daardie groepe se doel was om toe te maak 18 sodat daar wel "encirclement" kon plaasvind. Dit kon dalk 19 'n misverstand – maar hy sal self moet kom sê wat het hy 20 hier bedoel.</p> <p>21 MR BUDLENDER SC: And then can we go to 22 the next page, paragraph 6? There he says, "I also state 23 that the aim to use barbed wire was to can manage to 24 control the said employees to be searched, as only one 25 entrance or exit was to be made, for the weapons they were</p>

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1 having." Now that's a description of a classic
2 encirclement action, isn't it?
3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 ja, soos ek dit hier lees kan dit dalk verwys na die oggend
5 van die 14de, daardie voorligting wat hulle daar gekry het.
6 So ek weet nie of hy deurmekaar geraak het met dit nie,
7 maar hy sal – ek dra nie kennis wat hy hier bedoel het nie.
8 MR BUDLENDER SC: No, I appreciate that.
9 He's talking there about the 16th; it's quite clear, and I
10 think you and I will agree that he's actually wrong in his
11 description of the aim. It wasn't to encircle them, to
12 create, with leaving only one entrance or exit, to search
13 them for the weapons. In fact it was to create a barrier,
14 or one entrance and one exit there with the barbed wire.
15 BRIGADIER CALITZ: Ja, mnr die
16 Voorsitter, ek weet nie; ek het – ekskuus, soos ek dit nou
17 lees, "The aim of the use of barbed wire was to can manage
18 and control the said employees," dit is die uitgooi van die
19 draad, soos ek dit verstaan, "to be searched," dis soos ek
20 verstaan deur die Openbare Orde Polisiëring na die
21 uiteendrywing, "that only one entrance or exit was to be
22 made for the weapons where they were having." Dit is die
23 deeltjie in die sin waarmee ek dalk nou nie verstaan wat hy
24 daar bedoel nie. Hulle sou wel op die koppie uiteengedryf
25 word en dan sou die koppies, beide 1 en 2, deursoek word.

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1 So ek neem aan die een "exit" was dan na die westekant toe
2 waarnatoe ons hulle sou uiteendryf, as ek my opinie moet
3 gee.
4 MR BUDLENDER SC: I think that's a very
5 generous interpretation, Brigadier, but the words speak for
6 themselves and I'm not going to argue with you about what
7 they mean.
8 BRIGADIER CALITZ: Hy sal maar kom
9 getuig.
10 MR BUDLENDER SC: Ja, but I think it's a
11 generous attempt in favour of Colonel Makhubela. Then can
12 we get to, the next one is Captain Prinsloo –
13 CHAIRPERSON: I'm sorry, if one goes to
14 para 7, "I also state that each vehicle was to spread about
15 100 metres of barbed wires and we were putting them about
16 100 metres away from the place where said employees had
17 gathered." Now is that right? I understood that at
18 maximum I think you could probably get 100 metres, but the
19 plan didn't envisage 100 metres. The plan envisaged – I
20 understand it to be for practical reasons, I think – a
21 shorter distance than that. Is that right? The original
22 encirclement one I think might well have been a hundred
23 each, but the new revised plan, did that envisage 100
24 metres of barbed wire between each Nyala?
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 dit is hoe ek dit verstaan het is dat die draadkarre 100
2 meter uitmekaar uit geplaas sou gewees het om dan die draad
3 uit te rol.
4 CHAIRPERSON: Is that what happened?
5 BRIGADIER CALITZ: Die presiese afstand
6 tussen die draad het ek nie self gemeet nie, mnr die
7 Voorsitter, maar hulle was geposisioneer, ons kan op die
8 Google Map miskien meet en kyk wat was die korrekte
9 afstand.
10 CHAIRPERSON: You see, my question is
11 based upon what I see with the naked eye, which could be
12 misleading, but what is interesting to me is the final one,
13 Nyala 4 went all the way to the small kraal, which I don't
14 think it was intended to do initially, and you can see it's
15 quite a big distance that it actually covered and
16 presumably that was about 100 metres because that would
17 have been the full extent that it could do. But as far as
18 I can see the distance between the other Nyalas does appear
19 to be shorter, quite substantially shorter, and I
20 understood this to be explained on the basis that, you
21 know, there are all – as you explained I think at the
22 demonstration as well, that there are all sorts of
23 difficulties in getting the full distance of the wire in
24 position. So that's why I was surprised to see him talk
25 about 100 for each, but anyway, it sounds as if that's

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1 something we must ask him about and not you, but the real
2 question, my question is, was it your understanding of the
3 revised plan that each Nyala was going to uncoil 100 metres
4 of barbed wire?
5 BRIGADIER CALITZ: Mnr die Voorsitter, as
6 ek eerlik nou sê ek dink nie toe ons, die 14:30 was die
7 afstande bespreek nie. Ek kan dit nie met sekerheid sê
8 nie, maar wat ek wel sien hier is dat paragraaf 6 en 7
9 soort van weerspreek mekaar omdat hy hier sê "away from the
10 place" en hulle moet in 'n, soos ek dit verstaan, in 'n
11 lyn, en wat hy in 6 sê, so die is bietjie 'n weerspreking.
12 Maar soos ek gesê het, hy sal kan kom verduidelik, mnr die
13 Voorsitter.
14 COMMISSIONER HEMRAJ: Whatever he says in
15 this statement, Brigadier, the actual uncoiling of the
16 barbed wire on the 16th under the command of Colonel
17 Makhubela was in the defensive measure.
18 BRIGADIER CALITZ: Dit is korrek, dit was
19 die voorligting gewees, Kommissaris.
20 MR BUDLENDER SC: Right, then can we go
21 to Captain Prinsloo? Could you look at JJJ114?
22 CHAIRPERSON: Mr Budlender, here we've
23 got of course an interesting –
24 MR BUDLENDER SC: I will come to that,
25 Chair.

<p style="text-align: right;">Page 17750</p> <p>1 CHAIRPERSON: You're dealing with that?</p> <p>2 MR BUDLENDER SC: Ja.</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter, hy</p> <p>4 was nie in my bundel van versoeke nie. So ek het hom nie –</p> <p>5 MR BUDLENDER SC: Alright, could we have</p> <p>6 JJJ114 up on the screen? While we're waiting for that, let</p> <p>7 me explain to you, Brigadier, that we have two versions of</p> <p>8 the operational diary of Captain Prinsloo. We have that</p> <p>9 one, which is J114, and then we have another one which is</p> <p>10 J114.1, which on my reading is probably a later one, but we</p> <p>11 can speculate about that and perhaps she'll tell us in due</p> <p>12 course. For the moment I'm looking at J114. Now you'll</p> <p>13 see that Captain Prinsloo was in the Nyala P13. If you</p> <p>14 look under paragraph 11, briefing of operation duties, it</p> <p>15 says, the second line says, "Section Nyala P13 to deploy</p> <p>16 with wire cart. Be ready to deploy wire on command." You</p> <p>17 see that?</p> <p>18 BRIGADIER CALITZ: Korrek, mnr die</p> <p>19 Voorsitter.</p> <p>20 MR BUDLENDER SC: And then paragraph 12</p> <p>21 towards the foot of that page, the specific instructions of</p> <p>22 operation duties, she says, "To deploy wire on command of</p> <p>23 Lieutenant-Colonel Mtimkulu, to encircle protesters for</p> <p>24 purpose to disarm protesters from dangerous weapons." And</p> <p>25 then could we go to the last page of that, you'll see that</p>	<p style="text-align: right;">Page 17752</p> <p>1 the operation that was ultimately decided upon and carried</p> <p>2 out was a blocking and not an encircling.</p> <p>3 BRIGADIER CALITZ: Dit was nooit 'n</p> <p>4 "encirclement" deur die draad nie. Dit was nooit moontlik</p> <p>5 nie, mnr die Voorsitter.</p> <p>6 MR BUDLENDER SC: Then she too seems to</p> <p>7 have been confused at some time as to what she was doing.</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>9 nee, ek sal nie sê "confused" nie. Ek sal sê miskien die</p> <p>10 woorde wat hier op skrif gestel is, sy moet kom verduidelik</p> <p>11 hoe sy dit bedoel het. As hulle "encircle protesters for</p> <p>12 the purpose to disarm the protesters," wat sy ook nie gesê</p> <p>13 het wie moet dit doen nie, dan beteken dit die draad moes</p> <p>14 dan ook, hulle moes dan gaan "disarm" het, wat totaal</p> <p>15 onmoontlik is.</p> <p>16 MR BUDLENDER SC: So then can we move on</p> <p>17 to the next one I want to show you, which I hope is in your</p> <p>18 bundle. This one is a new exhibit, Chair, it's the</p> <p>19 statement of Constable Seeko, S-E-E-K-O.</p> <p>20 CHAIRPERSON: S-E-E-K-O?</p> <p>21 MR BUDLENDER SC: Ja. That I think will</p> <p>22 be KKK5. Do you have that, Brigadier?</p> <p>23 CHAIRPERSON: KKK5?</p> <p>24 BRIGADIER CALITZ: Ek het hom, mnr die</p> <p>25 Voorsitter.</p>
<p style="text-align: right;">Page 17751</p> <p>1 it appears to have been signed by Captain Prinsloo as</p> <p>2 platoon commander. You see all of that?</p> <p>3 BRIGADIER CALITZ: Dit is korrek,</p> <p>4 Voorsitter.</p> <p>5 MR BUDLENDER SC: Now I must immediately</p> <p>6 say to you that in the other version we have of her</p> <p>7 operation diary, which seems to have been rewritten,</p> <p>8 JJJ114.1, she doesn't talk about encircling the protesters,</p> <p>9 she talks about blocking the protesters. The second</p> <p>10 statement would be a more accurate description of what she</p> <p>11 was doing than the first one. It would be accurate to say</p> <p>12 the purpose of the barbed wire was to block, but it would</p> <p>13 not be accurate to say the purpose was to encircle. Is</p> <p>14 that correct?</p> <p>15 BRIGADIER CALITZ: As u na paragraaf 12</p> <p>16 nou verwys, is ek reg so?</p> <p>17 MR BUDLENDER SC: We don't know.</p> <p>18 BRIGADIER CALITZ: Is dit –</p> <p>19 MR BUDLENDER SC: I'm sorry?</p> <p>20 CHAIRPERSON: It looks like it, ja, 12.</p> <p>21 12 is the section, specific instructions of</p> <p>22 operation/duties, and that's where she uses the word</p> <p>23 "encircle" in the one, which is JJJ114, and where she uses</p> <p>24 "blocking" in the other, which is JJJ114A.</p> <p>25 MR BUDLENDER SC: What I'm saying is that</p>	<p style="text-align: right;">Page 17753</p> <p>1 CHAIRPERSON: KKK5 is a statement by</p> <p>2 Constable Seeko, S-E-E-K-O, dated?</p> <p>3 MR BUDLENDER SC: The version I have</p> <p>4 doesn't have a date, but it's September 2012.</p> <p>5 CHAIRPERSON: Dated September 2012.</p> <p>6 MR BUDLENDER SC: Perhaps I can explain</p> <p>7 that these new statements we're introducing, what happened</p> <p>8 was that there was a large number of handwritten statements</p> <p>9 prepared by members of the SAPS, signed by them, and they</p> <p>10 were then subsequently retyped for the convenience of the</p> <p>11 Commission by Mr Pretorius's secretary. This is a retyped</p> <p>12 version, unsigned.</p> <p>13 CHAIRPERSON: Am I supposed to have a</p> <p>14 copy here on the table?</p> <p>15 MR BUDLENDER SC: I apologise; you should</p> <p>16 have had a copy, and you don't have a copy. Can I ask that</p> <p>17 it be seen on the screen?</p> <p>18 CHAIRPERSON: No, I was just worried that</p> <p>19 I'd lost it in the short time that it was on the table, but</p> <p>20 I am pleased to see that I haven't.</p> <p>21 MR BUDLENDER SC: My error, Chair, not</p> <p>22 yours.</p> <p>23 COMMISSIONER HEMRAJ: It's a warning</p> <p>24 statement?</p> <p>25 MR BUDLENDER SC: It's a warning</p>

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1 statement, and can we go to paragraph 5? Now before we get
 2 there, Constable Seeko was in Papa1 with you, Brigadier?
 3 BRIGADIER CALITZ: Dit is korrek, mnr die
 4 Voorsitter.
 5 MR BUDLENDER SC: And this is what
 6 Constable Seeko says, he says, "The Nyala with barbed wire
 7 when started to deploy wire channel crowd to use one exit
 8 and delay if they attack police around." You see that?
 9 BRIGADIER CALITZ: Ek sien dit, mnr die
 10 Voorsitter.
 11 MR BUDLENDER SC: Then can we go to the
 12 next one which I want to refer you to, that's Warrant-
 13 officer Kgosana, and that again I'm afraid, I apologise,
 14 the Commissioners don't have. That will be KKK6. Could we
 15 have –
 16 CHAIRPERSON: And how [microphone off,
 17 inaudible]
 18 MR BUDLENDER SC: K-G-O-S-A-N-A, and
 19 again it's September 2012.
 20 CHAIRPERSON: And is it Warrant-officer
 21 [microphone off, inaudible]
 22 MR BUDLENDER SC: Warrant-officer, and
 23 again it's September 2012. This is the unsigned version,
 24 and if we go to paragraph 4 at the foot of page 1, the
 25 warrant-officer says, "At around 15:30 three guys came

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1 towards the Nyala and one of them, who was wearing a green
 2 blanket, came to the Nyala and ordered that all the Nyalas
 3 and vehicles must leave their place. If not, all the
 4 police are going to die," and then on the next paragraph,
 5 paragraph 5, the top of the next page he then says, "Then
 6 all Nyalas with wires were deployed so as to channel the
 7 participants so they must use one exit to leave their
 8 weapons and to leave the place as their gathering was
 9 illegal." You see that?
 10 BRIGADIER CALITZ: Ek sien dit, mnr die
 11 Voorsitter.
 12 MR BUDLENDER SC: He was also in Papa1
 13 with you that day?
 14 BRIGADIER CALITZ: Korrek, mnr die
 15 Voorsitter.
 16 MR BUDLENDER SC: So is it fair to say
 17 that – I again want to say that there's no dispute that in
 18 fact what you did was in fact what you had planned, what
 19 had been decided at the, or what you'd been instructed,
 20 which was to lay a more or less straight line to act as a
 21 barrier, and that's what you did, but that a number of
 22 people – and I think there are more – seem to think they
 23 were engaged in an encircling action.
 24 BRIGADIER CALITZ: Weereens, mnr die
 25 Voorsitter, die persone kan vir hulle self kom getuig, maar

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1 soos ek dit sien was die draad se doel om die Openbare Orde
 2 Polisiëring toe te laat om dan die "encirclement" toe te
 3 laat. Die "one exit" is miskien die voertuie wat by my
 4 was, het ons pertinent gepraat van die een opening wat oop
 5 gelos is waardeur ons dan sou beweeg het, so dit kan dalk
 6 die one exit wees, maar weereens ek gaan nie namens hulle
 7 getuig nie, dit sal my afleiding wees van wat ek hier sien.
 8 [15:41] MR BUDLENDER SC: Yes, but that one exit
 9 was an exit for the police to be able to be mobile around
 10 the scene, not an exit at which strikers would be allowed
 11 to leave and be disarmed.
 12 BRIGADIER CALITZ: Sou hulle toegelaat
 13 word, ek verskil van u, mnr die Voorsitter, dat indien
 14 hulle, hulle wapens neerlê dit dan, en peaceful, sou hulle
 15 op daardie stadium na ons toe beweeg het, ons sou hulle
 16 toegelaat het, die wapens op die koppie en dit was dan die
 17 exit. Ek dink die gebruikelike woord is die voetpad, so
 18 hulle sou toegelaat gewees het om deur daardie, noem dit
 19 dan nou maar die exit te beweeg sonder wapens.
 20 MR BUDLENDER SC: Brigadier, I don't want
 21 to waste time on this because I think we're in complete
 22 agreement, that the purpose of the, - it was not the
 23 purpose of the barbed wire Nyalas to create a place which
 24 left one exit for which, at which strikers would be
 25 disarmed as they left the scene, that was something

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1 different. I am sure we agree on that. You weren't trying
 2 when you deployed barbed wire Nyalas 1 to 6, to create a
 3 situation where there was only one exit for them from the
 4 koppie and they could then be disarmed at that exit.
 5 BRIGADIER CALITZ: Ek verstaan nou wat u
 6 bedoel, ek stem saam, mnr die Voorsitter.
 7 MR BUDLENDER SC: Ja.
 8 COMMISSIONER HEMRAJ: But, Brigadier,
 9 those of the police members who were with you in Papa1, who
 10 would have briefed them as to what were going to be done
 11 with the barbed wire?
 12 BRIGADIER CALITZ: Dit sou gewees het die
 13 groep bevelvoerder van die Openbare Orde Polisiëring wat
 14 dan Luitenant Kolonel Mere was, wat in beheer was van die,
 15 maar die lede in my voertuig het met my ook gekommunikeer,
 16 so ek het ook maar deel gewees van net my groep in my
 17 voertuig, maar hulle is spesifiek deur die Openbare Orde
 18 Polisiëring, deur Luitenant Kolonel Mere voorgelig.
 19 MR BUDLENDER SC: Alright, now moving off
 20 from that point, you've told the Commission that the first
 21 time you were aware of the shootings at scene 1 was when
 22 you learnt about it from General Annandale at 16:47, is
 23 that correct?
 24 BRIGADIER CALITZ: Dit is korrek, mnr die
 25 Voorsitter.

<p style="text-align: right;">Page 17758</p> <p>1 MR BUDLENDER SC: And in fact the list of 2 phone calls we looked at a bit earlier, KKK4, could you 3 pull that out? 4 COMMISSIONER HEMRAJ: I'm so sorry, I'm a 5 bit lost, Mr Budlender, where are we? 6 MR BUDLENDER SC: We're at KKK4, the list 7 of – 8 COMMISSIONER HEMRAJ: KKK4, thank you – 9 MR BUDLENDER SC: The list of cell phone 10 calls. Do you have that? Could you go to, - I'm not sure 11 you've got the right document? No? 12 BRIGADIER CALITZ: I've summarised my 13 own, I think it is the same. 14 MR BUDLENDER SC: You're ahead of me, 15 Brigadier. 16 BRIGADIER CALITZ: But I will answer 17 yours on your document. 18 MR BUDLENDER SC: No, no, you don't need 19 to, that's fine. 20 BRIGADIER CALITZ: If it is the same 21 question, I'm not – 22 MR BUDLENDER SC: Yes – 23 BRIGADIER CALITZ: - knowing where you're 24 going. 25 MR BUDLENDER SC: Absolutely, could you</p>	<p style="text-align: right;">Page 17760</p> <p>1 dit is die eerste persoon wat ek gesien het wat gedood was 2 en volgens my was dit ernstig en ek het die JOC dan ook 3 daarvoor ingelig per selfoon. 4 MR BUDLENDER SC: So you were phoning 5 General Annandale to inform him of the death of Mr Mpumza 6 and while you were on that call he told you about the 7 shootings at scene 1? 8 BRIGADIER CALITZ: Ek kan nie die 9 spesifieke woorde onthou nie maar dit is waar ek verneem 10 het daar was 'n skietery by toneel 1. 11 MR BUDLENDER SC: And were you very 12 surprised to learn that? 13 BRIGADIER CALITZ: Mnr die Voorsitter, 14 daardie dag was baie dol, so dit was vir my 'n skok op 15 daardie stadium, ja. 16 MR BUDLENDER SC: I'm told that Mr Mpumza 17 was in fact shot about 20 or 25 minutes earlier than that 18 phone call, are you sure that you're remembering correctly 19 why you phoned General Annandale? 20 BRIGADIER CALITZ: Ek het in my 21 getuienis, ek dink dit is rondom wat ons getalle het, mnr 22 die Voorsitter, dat die laaste skote was rondom 16:20 en ek 23 verstaan daar is 'n timeline en dit was die voorval gewees. 24 Onthou ek het getuig dat Kolonel MacIntosh op daardie 25 stadium gesê het dat die persoon aangeval is. Hy het uit</p>
<p style="text-align: right;">Page 17759</p> <p>1 look at what happened, we look at the entry 4, 16/08/2012, 2 a phone call at 16:47:40 on that afternoon, have you got 3 that? 4 BRIGADIER CALITZ: 16:47? 5 MR BUDLENDER SC: 16:47:40. 6 BRIGADIER CALITZ: That is the phone call 7 that they referred to, that they made – 8 MR BUDLENDER SC: Yes – 9 BRIGADIER CALITZ: - to Major General 10 Annandale. 11 MR BUDLENDER SC: Yes, it is a call from 12 you to Major General Annandale which lasted a minute and 13 13 seconds. 14 BRIGADIER CALITZ: Dit is korrek, mnr die 15 Voorsitter. 16 MR BUDLENDER SC: Is that the call that 17 you're referring to? 18 BRIGADIER CALITZ: Dit is die oproep 19 waarna ek verwys, mnr die Voorsitter. 20 MR BUDLENDER SC: Why did you call 21 General Annandale at that time? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 soos ek reeds getuig het dat dit was op daardie stadium wat 24 ek by 'n liggaam gestaan het wat gemerk was op daardie 25 stadium Liggaam C wat mnr Mpumza was en ek gevoel het dat</p>	<p style="text-align: right;">Page 17761</p> <p>1 gespring nadat die persoon geskiet is, Kolonel MacIntosh 2 het soontoe gehardloop en ek het op Adjudant Offisier Nong 3 geskree wat buite my voertuig was, wat besig was om foto's 4 te neem, so daardie proses het hy klaar gemaak, hy het na 5 my Nyala voertuig toegekome, die Nyala voertuig het dan na 6 daardie rigting toe beweeg en ek het uitgeklim, ek het ook 7 verder getuig dat ek van die TRT persone daar gesien het en 8 ek het dan ook van hulle verneem wat presies hier gebeur 9 het. Kaptein Kidd het na my toegekome en ek het ook aan hom 10 'n opdrag gegee, soos ek reeds getuig het, om uit te vind 11 wat gaan aan en dit dan deur te gee aan die gesamentlike 12 operasionele sentrum. Nou as ons dan vat 20 minute, 27 13 minute as ek my tyd korrek het, dit is glad nie te veel tyd 14 nie, nee, ek moes eers verseker het wat het daar gebeur 15 voordat ek dit feite kon deurgee. 16 MR BUDLENDER SC: You telephoned General 17 Annandale because Mr Mpumza had been shot dead and this was 18 an important matter that the JOC should be informed about. 19 BRIGADIER CALITZ: Dit is korrek, mnr die 20 Voorsitter. 21 MR NTSONKOTA: Sorry, Chair, before my 22 learned colleague moves away from KKK4, might I just 23 enquire if he has been able to find out what these entries 24 refer to, the NIU at NUM offices, the entries in KKK4? 25 CHAIRPERSON: I raised that but I think</p>

<p style="text-align: right;">Page 17762</p> <p>1 we haven't got an answer yet, but I've got a problem, I've 2 got a copy I marked KKK4 which has got far more calls on it 3 than what we see on the screen. What we see on the screen 4 appears to be only the calls involving Brigadier Calitz, is 5 that correct? Well, my KKK4 has got a whole lot of calls 6 and all sorts of people, in particular there is a call 7 which would be on the screen, you know if it wasn't the 8 fact that this one only has got Brigadier Calitz, there is 9 a call at 16:32:49 of 1 minute 3 seconds from General 10 Mbombo to General Phiyega but that's not in here because, - 11 that's on the screen because the screen, I take it is 12 actually –</p> <p>13 MR BUDLENDER SC: Chair, the exhibit is 14 KKK4, you have the correct exhibit before you. What is on 15 the screen is not the exhibit which is before you.</p> <p>16 CHAIRPERSON: Yes, that's what I am 17 saying to you.</p> <p>18 MR BUDLENDER SC: It is someone's summary 19 of it.</p> <p>20 CHAIRPERSON: Yes, what's on the screen 21 is, I mean this is going to be terrible on the record. 22 What's on the screen is an extract from KKK4 which deals 23 only, as far as I can see, with calls involving and SMSs 24 involving Brigadier Calitz, so this document that's on the 25 screen must obviously be printed and it can be KKK4.1.</p>	<p style="text-align: right;">Page 17764</p> <p>1 will just multiply paper unnecessarily.</p> <p>2 CHAIRPERSON: The question was asked by 3 the representative of NUM, he wants to know, well, this 4 doesn't relate of course to these extracts now but it is a 5 point I raised earlier. Someone was phoning various 6 people, I think, were phoning Captain Ntoyi, it looks if it 7 was mainly Brigadier Thulani, was phoning Captain Ntoyi who 8 is described in brackets as, (NIU at NUM officers), 9 offices. I take it we haven't got, - there it is on the 10 screen now, but the fourth entry with a red mark against it 11 and the fifth, but I take it you haven't got the answer to 12 that yet and when it is available it will be provided?</p> <p>13 MR BUDLENDER SC: Chair, it would be 14 helpful if it were raised with me instead of in the middle 15 of the cross-examination on other aspects, but the person 16 who knows the answer is Mr Chaskalson and I was going to 17 ask him and give the Commission the answer tomorrow 18 morning, but now that we're here perhaps he could give the 19 answer.</p> <p>20 MR CHASKALSON SC: Chairperson, Captain 21 Ntoyi was an NIU member who had been posted at the NUM 22 offices on the basis that that was potentially a site of 23 attack.</p> <p>24 CHAIRPERSON: Alright, the NUM offices 25 therefore is meant the site that we saw at the inspection</p>
<p style="text-align: right;">Page 17763</p> <p>1 MR BUDLENDER SC: Chair, that's correct, 2 this is a summary which has been prepared on an extract but 3 we're relying on KKK4 which is the comprehensive list and 4 we will show the Commission in due course other entries.</p> <p>5 CHAIRPERSON: Yes, yes, I haven't got a 6 problem with that. What I'm saying to you is, in as much 7 as what we've seen now is an extract from KKK4, it would be 8 more orderly I would imagine, for this particular extract 9 to be printed out and handed as KKK4.1, that's what I'm 10 saying.</p> <p>11 MR BUDLENDER SC: Chair, that can be done 12 but I'm sure that everything that is there is also on KKK4.</p> <p>13 CHAIRPERSON: Okay, -</p> <p>14 MR BUDLENDER SC: So it is just a 15 duplication.</p> <p>16 CHAIRPERSON: If you think it is 17 unnecessary we won't do it.</p> <p>18 MR BUDLENDER SC: I don't think it is 19 necessary.</p> <p>20 CHAIRPERSON: Yes, so what's recorded 21 then is what we're now looking at is an extract from KKK4 22 relating only to calls and SMSs involving Brigadier Calitz, 23 is that correct.</p> <p>24 MR BUDLENDER SC: That's correct, Chair, 25 and we don't propose to make that a separate exhibit, it</p>	<p style="text-align: right;">Page 17765</p> <p>1 which is around the corner from the place where the 2 engagement took place on the Sunday and where the events of 3 Saturday morning, the 11th took place, is that where Captain 4 Ntoyi was?</p> <p>5 MR CHASKALSON SC: That's correct, 6 Chairperson.</p> <p>7 CHAIRPERSON: Well, that –</p> <p>8 MR NTSONKOTA: Okay, thank you, Chair –</p> <p>9 CHAIRPERSON: I think the NUM office was 10 deserted by that stage, so I don't think NUM need fear 11 anything from that call, am I right?</p> <p>12 MR NTSONKOTA: Thank you, Chair, yes, 13 indeed, that's correct, Chair.</p> <p>14 CHAIRPERSON: It is being sorted out. Mr 15 Budlender, we apologise for taking up your valuable time, 16 will you proceed?</p> <p>17 MR BUDLENDER SC: The Commission's 18 valuable time, Chair, and not mine. Now as we know, 19 Brigadier, Colonel MacIntosh, - well, sorry, let me take a 20 step back, you've given evidence that you neither saw nor 21 heard the shootings at scene 1, is that correct?</p> <p>22 BRIGADIER CALITZ: Korrek, mnr die 23 Voorsitter.</p> <p>24 MR BUDLENDER SC: Now Colonel MacIntosh 25 was in Papa1 with you and let's have a look at what he says</p>

<p style="text-align: right;">Page 17766</p> <p>1 in that regard, it is HHH14. Could we go to page 9, 2 paragraph 27? Are you with me? This is what Colonel 3 MacIntosh says. He says, "A large group of the armed men 4 then advanced to one of the Nyala vehicles that were near 5 the koppie busy to deploy the barbed wire. SAPS members 6 were outside the vehicle and the group of armed men stormed 7 them. The SAPS members got back into this specific Nyala. 8 The public order police members then started to shoot with 9 rubber bullets which were not effective. I saw the water 10 canon also spraying towards the group and I also heard stun 11 grenades are being discharged to move the group of the 12 attacking strikers back. I also heard shots being fired 13 shortly thereafter." Now it seems, that seems to be a 14 description of scene 1 as far as I can understand it. 15 MR SEMENYA SC: Chair, these are the 16 difficulties we have, that shot may be relating to rubber 17 and – 18 MR BUDLENDER SC: But, Chair, the witness 19 can – 20 CHAIRPERSON: I don't know Mr Budlender's 21 point? 22 MR BUDLENDER SC: It may well be rubber. 23 CHAIRPERSON: Well, in fact he says the 24 public order members then started to shoot the rubber 25 bullets, which I take it should have been – which was not</p>	<p style="text-align: right;">Page 17768</p> <p>1 anything. 2 MR BUDLENDER SC: I could not see 3 anything, I'm sorry, "I could not see anything, I did not 4 want to look," does that sound like scene 1 to you? 5 BRIGADIER CALITZ: Dit klink vir my na 6 toneel 1, miskien daar tussen insident 2 en insident 3, hy 7 praat van, "We start to hear things hitting our Nyala," so 8 dit sal wees by insident 3. 9 MR BUDLENDER SC: That's after the 10 strikers started attacking the police? 11 BRIGADIER CALITZ: Dit is terwyl hulle 12 ons aangeval het, dit is korrek. 13 MR BUDLENDER SC: And then could we go, 14 it is the last one I'll deal with this afternoon, Chair, to 15 the statement of Warrant Officer Nong, but that is a new 16 exhibit which, Commissioners, which I think you don't have 17 and again I apologise, it should have been made available 18 to you in advance. Brigadier, I think you have Warrant 19 Officer Nong? 20 BRIGADIER CALITZ: Warrant Officer Nong, 21 a new request? 22 MR BUDLENDER SC: It was an early, it was 23 in the early list of documents provided but I think without 24 an exhibit number because it didn't – 25 CHAIRPERSON: Alright, presumably it</p>
<p style="text-align: right;">Page 17767</p> <p>1 effective, and he says he heard shots being fired. He 2 doesn't say what kind of shots they were, so when he comes 3 presumably he will tell us if he was able to distinguish, I 4 don't know if it is necessary to take it further at this 5 point. 6 MR BUDLENDER SC: You had an interpreter 7 with you in Papa1 and let's read what he says, it is 8 JJJ202. Could we go to paragraph, to page 4? 9 CHAIRPERSON: An anonymous interpreter 10 and something was going to be done about sorting that 11 aspect out, but I take it that hasn't been done yet. So 12 what paragraph are you referring to? 13 MR BUDLENDER SC: From paragraph 58. Now 14 he is in the same Nyala as you are, Brigadier Calitz, is 15 that correct? 16 BRIGADIER CALITZ: Dit is korrek, hy het 17 agter Kolonel MacIntosh gesit. 18 MR BUDLENDER SC: Yes, and he says, 19 paragraph 57, "As soon as we passed the Nyala loosening the 20 wire I started to hear things hitting our Nyala. The 21 strikers attacked the police and then the police shot. The 22 shots started after the strikers started attacking the 23 police. I did not see anything and I did not want to 24 look." 25 CHAIRPERSON: He says, I could not see</p>	<p style="text-align: right;">Page 17769</p> <p>1 would be KKK7 and it is a statement by Warrant Officer Nong 2 dated? 3 MR BUDLENDER SC: It is again, Chair, an 4 unsigned copy of the statement dated September 2012. Now 5 Warrant Officer, it is mistyped as Mong, but it is actually 6 Nong, N-O-N-G, do you see that? You know Warrant Officer 7 Nong, KKK7. 8 BRIGADIER CALITZ: Adjudant Offisier 9 Nong, hy was die bestuurder van my voertuig. 10 MR BUDLENDER SC: Yes. 11 BRIGADIER CALITZ: Dit is korrek, mnr die 12 Voorsitter. 13 MR BUDLENDER SC: And then can we go to 14 paragraph, you'll see at the bottom of page 6, of the sixth 15 page, at the foot of the sixth page, you'll see there is a 16 number 21. Well, let's read paragraph 20 first, at the 17 foot of that page. 18 BRIGADIER CALITZ: Sorry, Sir, I only got 19 two pages of the statement. 20 MR BUDLENDER SC: It is on the screen, 21 could you just, I just want to - 22 BRIGADIER CALITZ: No, this new one. 23 MR BUDLENDER SC: Alright, can you follow 24 it on the screen, Brigadier? At paragraph 20 Warrant 25 Officer Nong says, "When the fourth Nyala started deploy</p>

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1 the group started to move at the right hand side of the
 2 police vehicle line of the armoured vehicle. They were
 3 singing very loud and clinching their weapons together," I
 4 imagine it is clicking. "They passed the fifth police
 5 vehicle before it could deploy the barbed wire. As I was
 6 the driver of the negotiating team I could not take photos
 7 anymore and I was to drive to the other side of the police
 8 vehicle. When I reached the other side I found police on
 9 the ground with shield and shot guns. The crowd was
 10 approaching and the police stepped back and climbed into
 11 the police vehicle, the Nyala."
 12 So we now located ourselves in time, and then can
 13 you go on to the next paragraph, we'll go on to the next
 14 paragraph on the next page. He says, "They were trying to
 15 spear or damage the tyres of the Nyala in front and I drove
 16 over the fence to get in line with the police vehicle to
 17 push back and to stop them from reaching the police.
 18 [16:00] As I was in line, some of them were already past
 19 the Nyalas then in line with the police vehicle at the
 20 back. We pushed them to the open field and they were
 21 running in all directions. It's then that I hear a sound
 22 of firearms shooting at the back." Now that seems to be
 23 very clearly a description of scene 1 as you are departing,
 24 heading off towards what will become the dispersion. Is
 25 that correct?

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1 BRIGADIER CALITZ: Dis moontlik, klink
 2 korrek, mnr die Voorsitter.
 3 MR BUDLENDER SC: Well, is there any
 4 other time when it could be than that? This is a time when
 5 you are pushing to the open field. You're moving away and
 6 he hears the sound of firearms shooting at the back.
 7 BRIGADIER CALITZ: Daarom het ek gesê dit
 8 is korrek, mnr die Voorsitter, ja.
 9 CHAIRPERSON: The distinguishing mark is
 10 of course the fact he says he drove over the fence. You
 11 remember you described to us how in order to get out of
 12 there you actually drove over the fence and you showed us
 13 yesterday, so that's clearly presumably while scene 1 was
 14 taking place, although as you've explained you couldn't
 15 really see what was happening. Is that right?
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 ja, ek weet nie of ek weer moet verduidelik. My posisie
 18 agter, ek dink ek het dit verduidelik rondom my skreeuery
 19 en my opdragte wat ek skreeu. Kolonel McIntosh en Warrant-
 20 officer Nong het voor gesit. Ek dink nie op daardie
 21 stadium toe ons gedemonstreer het iemand voor gesit nie. U
 22 sal sien die linker "hatch," ons noem dit 'n "hatch," dis
 23 'n oop klap bo die passasier, wat dan 'n opening is, maar
 24 agter is alles toe en gesluit. So dit is, maar ek dink my
 25 getuienis in die verband is breedvoerig.

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1 MR BUDLENDER SC: Would this be a
 2 convenient time?
 3 CHAIRPERSON: Alright, we'll take the
 4 adjournment in a moment. There are two things I want to
 5 say. The one is I understand from Mr Pretorius that the
 6 sketch map of the area, which is apparently as large as
 7 that table in front of you – is that correct, Mr Pretorius?
 8 More or less, and the little blocks of motor cars, or motor
 9 vehicles, should be here by tomorrow and I think that may
 10 help us to follow the evidence better.
 11 I also want to say something about the videos and
 12 how we're proposing to deal with them to assist us in going
 13 ahead. We think it desirable that written narratives be
 14 prepared setting out what can be seen on the most relevant
 15 videos, in order to assist the Commissioners, the evidence
 16 leaders, and the representatives of the parties in dealing
 17 with the evidence. The narratives will also assist in the
 18 drafting of heads of argument and the final report, once
 19 all the evidence has been led. Such narratives of course,
 20 if they're going to be of assistance, must be entirely
 21 objective statements of what can be seen on the videos;
 22 that's to say without anything amounting to commentary
 23 and/or interpretation. We originally asked SAPS to assist
 24 in preparing the first draft of some of the narratives
 25 required, and Colonel Scott, who was involved with the

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1 videos featured in exhibit L, was initially asked to
 2 assist, on the clear understanding that drafts prepared by
 3 him would be disclosed to all the parties, would be asked
 4 to agree with the drafts prepared, or to suggest
 5 alterations, and no narrative would be finally accepted
 6 without agreement by all the parties. The initial
 7 selection of the videos which should be dealt with in this
 8 way was made by Adv Hemraj and Adv Wesley after a number of
 9 videos were looked at by the Chairman, Adv Hemraj, Adv
 10 Wesley, and Colonel Scott. Colonel Scott was requested to
 11 prepare initial drafts in respect of certain videos dealing
 12 only with the events on 16 August 2012 at scene 1, while
 13 the remaining initial drafts were to be prepared by the
 14 evidence leaders.
 15 Subsequently it was decided it would be better if
 16 all the initial drafts of the narratives were to be
 17 prepared by the evidence leaders alone in respect of videos
 18 chosen by Adv Hemraj and Adv Wesley. The parties will in
 19 due course be provided with a list of the videos referred
 20 to and they will be free to suggest other videos to be
 21 dealt with in the same way. The drafts to be prepared by
 22 the evidence leaders will be furnished to the parties after
 23 they are completed, for the parties to agree or to prepare
 24 amendments. No narrative will be accepted unless it is
 25 agreed to by all the parties and the evidence leaders. I

1 think that's the proposal that's made and that's what we
2 would like to happen in respect of the videos to help us to
3 deal with them. At this point we'll adjourn until 9
4 o'clock tomorrow morning.

5 [COMMISSION ADJOURNED]

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