

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 161

4 DECEMBER 2013

PAGES 18432 TO 18577



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1 [PROCEEDINGS ON 4 DECEMBER 2013]
 2 [09:09] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath.
 4 ADRIAAN MARTHINUS CALITZ: Dankie, mnr
 5 die Voorsitter.
 6 CHAIRPERSON: Mr Ntsebeza.
 7 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 8 Thank you, Mr Chairman. Now Brigadier, there was a small
 9 exercise that we're going to do just to establish the
 10 numbers of the units, the various divisions which you were
 11 in charge of on the day, the 16th of August, and we've also
 12 taken advantage of looking at exhibit L and we are able to
 13 indicate as follows. It looks like, and you'll agree with
 14 me if you are able to, it looks like in terms of exhibit
 15 L137 there are 45 POP units indicated there. You see that?
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 dit is korrek. Ek dink as ek dalk net kan sê, mnr die
 18 Voorsitter, u het vir my weer huiswerk gegee. I'm just
 19 talking about the homework, the question now, gaan weer oor
 20 die verskillende getalle, so u het gevra dat ek net 'n
 21 opsomming –
 22 VOORSITTER: Ja, asseblief. Ek het u
 23 verwys na hierdie skyfies ook, as ek reg onthou.
 24 BRIGADIER CALITZ: Ja.
 25 VOORSITTER: Skywe, is die korrekte

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1 woord.
 2 BRIGADIER CALITZ: Ek het dan onderneem
 3 om dit te –
 4 VOORSITTER: Nou u het nou die nodige
 5 gedoen. Miskien kan u vir ons gee die resultate van u
 6 arbeid gisteraand, en dan kan ons verder gaan. Sorry, you
 7 won't mind that, Mr Ntsebeza, will you? If he gives us the
 8 results of his labour last night.
 9 MR NTSEBEZA SC: Yes, if he can do that –
 10 CHAIRPERSON: Let him give us the results
 11 and then you can either, you can mark his paper out of 10
 12 if you like and then we can carry on.
 13 MR NTSEBEZA SC: That's one way to go, Mr
 14 Chairman.
 15 BRIGADIER CALITZ: Dankie, mnr die
 16 Voorsitter. Wat ek gedoen het is dat ek het dan hierdie
 17 "exhibit" L, soos genoem die bladsye waarna verwys is het
 18 ek net gaan probeer bymekaar sit en dan 'n geheel prentjie
 19 van die operasionele gedeelte –
 20 VOORSITTER: [Mikrofoon af, onhoorbaar]
 21 BRIGADIER CALITZ: - wat kan help.
 22 VOORSITTER: Dit sal baie waardevol wees.
 23 BRIGADIER CALITZ: Dan het ek hulle ook
 24 opgebreek op toneel 1, toneel 2, wat op altwee tonele was,
 25 wat in die lug was, en dan die totaal. So ek dink ek sal

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1 maar net dit so deurgaan. Wat betref die
 2 onderhandelingspan was daar 5 en hulle was op toneel 1, en
 3 hulle het dan ook deurbeweeg na toneel 2 toe na die
 4 voorval. Die Openbare Orde Polisiëringseenheid was daar
 5 173, 1-7-3, op toneel 1, en toneel 2 van "forward holding
 6 area" was daar agt, maar van die 173 het dan ook deurbeweeg
 7 na toneel 2, wat dan 'n totaal gee Openbare Orde
 8 Polisiëring van 181.
 9 Die TRT, Taktiese Reaksie Eenheid, was 134 op
 10 toneel 1 en dan toneel 2, "forward holding area 2," was 21
 11 geplaas daar. Van die 134 toneel 1 het dan ook saambeweeg,
 12 'n gedeelte van hulle, met die Openbare Orde Polisiëring,
 13 soos dan ook hulle taking was in ek dink fase 2 van die –
 14 so van hulle het dan ook na toneel 2 toe saambeweeg. Hulle
 15 totaal was dan 155.
 16 Die Taakmag lede, soos ons sê STF, hulle was op
 17 altwee gevalle. Die totaal is 21. So hulle het, was op
 18 hulle posisie weg van die toneel op "immediate response"
 19 area, maar hulle het dan ook by toneel 1, van daar af
 20 beweeg na toneel 2 toe met hulle voertuie. Dan was daar
 21 van hulle op die OP-poste. As ons dan weer, daar was ook
 22 een in die lug, in die helikopter, Taakmag; dit was die
 23 brigadier waarna verwys is. So in totaal het ek hulle as
 24 22.
 25 Die NIU het ek dan op, ook op altwee tonele.

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1 Hulle was honderd in getal. Hulle het begin by toneel 1 en
 2 dan deurbeweeg –
 3 VOORSITTER: Die hele honderd wat by
 4 toneel 1 was?
 5 BRIGADIER CALITZ: Dit was –
 6 CHAIRPERSON: The whole hundred, were
 7 they at scene 1?
 8 BRIGADIER CALITZ: Nee, nee, wat ek sê,
 9 both – ek sal nou verduidelik, mnr die Voorsitter –
 10 CHAIRPERSON: No, no, I understand. Ek
 11 verstaan die hele – altesame was daar honderd.
 12 BRIGADIER CALITZ: Ja.
 13 CHAIRPERSON: Altogether there were a
 14 hundred.
 15 BRIGADIER CALITZ: Ja.
 16 CHAIRPERSON: I must try to speak one
 17 language. But how many of them were at scene 1? Do you
 18 know?
 19 BRIGADIER CALITZ: Daar was 'n opbreking
 20 gewees. Hulle was opgedeel in – nou moet ek net gou na my
 21 kleiner notas toe gaan – die NIU ek dink by Kolonel Madiba
 22 by IRA2 was 74 en die ander by IRA – dis "immediate
 23 response areas" – 1 was 25 en dan die res op die voertuie
 24 soos hulle inbeweeg het. So dit is die opbreking van die,
 25 maar hulle getalle maak dan soos hulle inbeweeg het voor

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1 die aksie, het hulle dan inbeweeg by toneel 1 en dan ook
2 deurbeweeg toneel 2. In die lug, in die helikopter het ek
3 – daar was 13 NIU. So hulle totaal is dan 113.
4 K9, wat ons Honde-eenheid is, was ses by toneel
5 1, by die “forward holding,” en dan 32 by toneel 2 wat
6 ombeweeg het soontoe. In totaal het ek dan 38.
7 Die “Mounted unit” het ek gesit op albei. Hulle
8 het begin ry, afsaal, opklim, die Berede Eenheid, en dan
9 deurbeweeg toneel 2 toe. Ek het hulle as 14 totaal gekry.
10 Die speurders, die “detectives,” het ek dan net op toneel 2
11 op die, wat op bystand by “forward holding area” was drie
12 gewees. Die LCRC, wat dan die Kriminele Rekord Sentrum is,
13 is vier, plus daar was een in die lug getaak, in die
14 helikopter, so dit is vyf in totaal wat ek daar het. Van
15 die medies en “fire,” die medies was vyf persone by –
16 MR SEMENYA SC: Brigadier, remember the
17 interpreter.
18 BRIGADIER CALITZ: O, ek sal nog
19 stadiger.
20 CHAIRPERSON: Ja, you are going a little
21 bit fast actually. The interpreters I gather have a
22 problem because there’s no TV feed at the moment.
23 BRIGADIER CALITZ: Oh, sorry, can I –
24 CHAIRPERSON: No, no, because there’s no
25 TV feed they can’t look at the screen and see who’s

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1 talking, so they have to go entirely by what they can hear,
2 you see.
3 BRIGADIER CALITZ: Ek verstaan.
4 CHAIRPERSON: This is what I understand.
5 So Mr Semanya is quite right; take it slowly.
6 BRIGADIER CALITZ: Kan ek net weer – moet
7 ek dan miskien net weer oor die groot totale gaan, ek
8 dink –
9 CHAIRPERSON: Well, I presume they’ve
10 caught up by now, but just carry on –
11 BRIGADIER CALITZ: Goed, mnr die
12 Voorsitter. Ek was dan by die LCRC klaar gewees. Die
13 medies, “fire brigade,” daar was vyf mediese personeel op
14 bystand by “scene” 2, dit is eintlik dan “forward holding
15 area” 1 maar hulle het beweeg na toneel 2, en dan “fire”
16 beweeg na toneel 2, soos ek dit het, in totaal. En dan die
17 vlieëniers was daar aan die polisie se kant drie, ons twee
18 helikopters asook die Oryx helikopter. ALEOS, dit is
19 bemanning, ook bemanning vir die vlieëniers wat dan die
20 getal “match,” en ek het die Crime Intelligence het ek as
21 een wat dan in die helikopter was, die persoon wat getaak
22 was met die video.
23 So in totaal het ek dit so opgetel, asook so het
24 ek op “scene” 1 – maar dit is miskien nou nie akkuraat nie
25 want dit gaan deurbeweeg – 318 toneel 1 begin, 75 toneel 2,

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1 maar onthou ek het nou gesê baie van toneel 1 het
2 deurbeweeg toneel 2 toe, wat op albei van die spesialis
3 eenhede was 135. In die lug was 21, en dan 'n totale getal
4 wat ek dan gesê het vir die dag, onder beheer van die
5 verskillende bevelvoerders het ek volgens “exhibit” L 5-4-
6 9. So ek het gister onder korreksie gesê 600, so dit was
7 waarna ek verwys het. So dit is die 549. Ek dink dit is –
8 CHAIRPERSON: Is that the result of your
9 homework?
10 BRIGADIER CALITZ: As u tevrede is
11 daarmee, mnr die Voorsitter, dit was die huiswerk gewees.
12 CHAIRPERSON: Yes. No, it sounds very
13 comprehensive, but Mr Ntsebeza, are there any points that
14 you want to raise with the witness on this topic before you
15 move on to the rest of your cross-examination?
16 MR NTSEBEZA SC: Yes, thank you very
17 much, Mr Chairman. And thank you very much, Brigadier. In
18 fact your homework has been quite helpful. It’s not very
19 far from some of the things that we think. We are ad idem;
20 we had thought that the POP members were 176 in total, but
21 you say they were 180.
22 BRIGADIER CALITZ: 181.
23 MR NTSEBEZA SC: 181.
24 BRIGADIER CALITZ: In total.
25 MR NTSEBEZA SC: In total, yes.

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1 BRIGADIER CALITZ: According to my
2 calculations.
3 MR NTSEBEZA SC: And I don’t think it’s
4 neither here nor there. We had worked out that the TRT
5 unit was 154 total, and you have brought it to 155.
6 BRIGADIER CALITZ: Korrek, mnr die
7 Voorsitter.
8 MR NTSEBEZA SC: The STF we had worked
9 out the final number to be 20, but you have brought it to
10 22.
11 BRIGADIER CALITZ: Korrek, mnr die
12 Voorsitter.
13 MR NTSEBEZA SC: And the NIU we had
14 thought was 111, but your calculations say they were 113.
15 BRIGADIER CALITZ: 1-1-3.
16 MNR NTSEBEZA SC: 1-1-3, ja.
17 BRIGADIER CALITZ: 113.
18 MR NTSEBEZA SC: And the K9 unit, there
19 we’re ad idem; you said there were 38 of those and we are
20 also able to say they were 38. Now it seems to me, and
21 this is the point that I want to put to you, that we can
22 safely say that at both scene 1 and 2 the POP units were
23 outnumbered by the special units on this calculation at any
24 one time.
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 nee, ek stem nie saam nie, tensy ek die vraag net verkeerd
2 verstaan.

3 CHAIRPERSON: Let's take scene 1 for
4 example. How many POP – you gave us the figure, but just
5 by way of repetition to focus on the point that Mr Ntsebeza
6 is busy with, how many POP people did you have at scene 1?
7 BRIGADIER CALITZ: Mnr die Voorsitter,
8 Openbare Orde Polisiëring "scene" 1 het ek 173 gehad.
9 CHAIRPERSON: 173, and then combined all
10 the special units, how many did you have?
11 BRIGADIER CALITZ: O nee, okay, nee dan
12 verstaan ek. Ek het gesê op toneel 1 geplaas om Openbare
13 Orde te "support" was 134 TRT, maar as u nou die STF in die
14 lug, die helikopters, die NIU, almal wat inbeweeg het, in
15 daardie geval stem ek saam, daar was meer gewees. Dan
16 verstaan ek.

17 CHAIRPERSON: If you take out the people
18 in the air, just the ground forces, if one can call them
19 that, I understand what you had initially, but other people
20 came in. So what he wants to know, I think, is on the
21 ground, were there more combined specialised forces than
22 POP people, or the other way around? Just give us the
23 numbers, the special –

24 BRIGADIER CALITZ: Nee, ek stem saam met
25 u, mnr die Voorsitter. Ek het die vraag nou korrek

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1 verstaan. In totaal was Openbare Orde 181, TRT 155, maar
2 dan as die STF bytel, 21, aftrek die een in die lug, en u
3 tel die 100 af, trek die 13 in die lug, so dis 155 plus
4 100, dis 255 plus 20, 274, 275, as my wiskunde my nie –

5 CHAIRPERSON: So Mr Ntsebeza is right
6 when he says at the critical moment there were more
7 specialised forces there than POP people.

8 BRIGADIER CALITZ: Combined.

9 CHAIRPERSON: That his point.

10 BRIGADIER CALITZ: Ek stem saam, mnr die
11 Voorsitter.

12 MR NTSEBEZA SC: Right, thank you. And
13 if we look at exhibit L, slide 211, you got that?

14 BRIGADIER CALITZ: Ek het, mnr die
15 Voorsitter.

16 MR NTSEBEZA SC: Yes, now there seems to
17 be at scene 1 more ammunition fired by the TRT unit than
18 there was by the POP.

19 BRIGADIER CALITZ: Mnr die Voorsitter,
20 nee, ek verskil van u, tensy –

21 CHAIRPERSON: I think by "ammunition" Mr
22 Ntsebeza –

23 MR NTSEBEZA SC: Sharp-point.

24 CHAIRPERSON: - probably means sharp-
25 point.

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1 BRIGADIER CALITZ: Die Openbare Orde het
2 nie skerp-punt, behalwe die –

3 CHAIRPERSON: Well, they did have a bit.
4 I mean if we look here you see the POP, there were 10 9mm,
5 11 5.56mm.

6 BRIGADIER CALITZ: Dis korrek.

7 CHAIRPERSON: So they had – but
8 relatively small amounts of sharp-point ammunition. Major
9 ammunition that they fired was less lethal.

10 BRIGADIER CALITZ: As hy verwys net na
11 skerp-punt, dit is korrek, mnr die Voorsitter.

12 CHAIRPERSON: Yes.

13 MR NTSEBEZA SC: Yes. That's the point.
14 In fact the indication there is that 284 rounds of sharp-
15 point ammunition were fired at scene 1. You agree with
16 that?

17 BRIGADIER CALITZ: Dit is wat ons hier op
18 hierdie "slide" sien onder die totaal, mnr die Voorsitter,
19 korrek.

20 CHAIRPERSON: 284 sharp-point ammunition
21 units were expended, if that's the correct expression,
22 whereas only 37 of those were expended by the POP. The
23 balance were by the TRT. That's what the figures reveal.

24 BRIGADIER CALITZ: As na die kalkulasies
25 kyk, dis korrek, mnr die Voorsitter.

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1 MR NTSEBEZA SC: Now is there a way you
2 can indicate how you determine, or how it could be
3 determined that some were warning shots and some were shots
4 fired towards the – I suppose it was the victims? You have
5 109 which it is claimed were fired as warning and 175 as
6 towards.

7 BRIGADIER CALITZ: Mnr die Voorsitter, ek
8 weet nie of ek nou in "hindsight" kan getuig. Ek was nie
9 fisies self daar nie, so ek moet, ek dink nie my getuienis
10 sal feitelik bydra tot wat gebeur het nie. As ek die vraag
11 reg verstaan, wat is die verskil tussen 'n waarskuwingskoot
12 en 'n skoot direk na 'n persoon. 'n Waarskuwingskoot in
13 operasionele terme sal wees soos u aankom sal ek die
14 vuurwapen 45-grade, en ek sal skote in die grond voor u
15 skiet. Dit is 'n waarskuwingskoot. Dit is om te – hoe kan
16 ek amper sê? – "less lethal" sodat die persone kan sien
17 hier is gevaar, omdraai, en dan wegbeweeg. "Towards the
18 crowd," dit is waar dit dan sal ek sê selfverdediging,
19 "private defence," noodweer, daardie, dit is waar dit
20 inkom.

21 CHAIRPERSON: Directly fired at them, for
22 whatever reason.

23 BRIGADIER CALITZ: Directly fired at
24 them, for whatever reason, wat ek sê wat gerapporteer is
25 aan my, dit is hoekom ek sê in "hindsight" was dan die

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1 selfverdediging.

2 CHAIRPERSON: I suspect that Mr Ntsebeza

3 is interested to know also how the numbers were arrived at,

4 and I assume, I mean that must have been based essentially

5 on what the members said. I take it, it was clear how many

6 units they had expended, how many shots they'd fired. That

7 could be seen by the amount of ammunition they'd used up

8 and so on, but how it was divided up is dependent really on

9 their say-so, I would imagine. Is that correct?

10 BRIGADIER CALITZ: Dit sal korrek wees,

11 mnr die Voorsitter.

12 MR NTSEBEZA SC: No, I don't intend to

13 take that further with you. It's just that now that we are

14 talking about this slide, I thought you might be able to

15 throw some light on how the calculation was made to

16 determine. It probably was on the basis of statements made

17 by those who were involved. You did not as a person who

18 was in command on the day, you did not seek to establish

19 how that was arrived at, I take it?

20 BRIGADIER CALITZ: Negatief, mnr die

21 Voorsitter.

22 [09:29] MR NTSEBEZA SC: So when you say you

23 might, you would have to go and check, is it an indication

24 that it would be for the first time that you actually apply

25 your mind to the differentiation?

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1 BRIGADIER CALITZ: Mnr die Voorsitter,

2 nee, as ek u kan verwys na wat die voorsitter gesê het, dit

3 is wel soos gerapporteer. Al die persone wat daarna

4 gerapporteer het, ek het soveel afgevuur, ek het soveel

5 afgevuur, ek was op hierdie stadium op hierdie omgewing, so

6 dit is waaruit die inligting dan gekom het en dit is waar

7 ons dan vir die lede gesê het om dit, kan ek sê, te

8 konsolideer.

9 MR NTSEBEZA SC: No, I ask because you

10 must know or you would know that one of the contested areas

11 is whether there were any warning shots that were fired, as

12 a way of warning the protestors who on the SAPS version

13 were attacking the police lines. Now I see you nod, you

14 are aware of that contest, yes. Now since you became aware

15 that there is a challenge by the mineworkers as to whether

16 they were warned before they were shot at, did you, I'm

17 talking now as you as brigadier, did you seek to establish

18 whether this is well founded or did you just dismiss it?

19 BRIGADIER CALITZ: Mnr die Voorsitter,

20 nee, ek sal u glad nie in daardie omstandighede kan help

21 nie.

22 MR NTSEBEZA SC: No, I don't know whether

23 you're answering the question. The question is, did you

24 since you became aware that the miners are contesting and

25 contending that there were no warning shots given before

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1 they were fired at?

2 MR SEMENYA SC: Chair, we don't know

3 where that evidence is, Mr Ntsebeza may assist us?

4 CHAIRPERSON: I don't remember the

5 witnesses who were called, it is not your witnesses because

6 you're for the families, my recollection was that the

7 witnesses, the survivors who gave evidence about scene 1, I

8 don't remember that evidence been given, but in any event

9 we did see on the video which Colonel Scott took us

10 through, what he said were warning shots. Do you remember

11 there were, - well, I don't think you were here but your

12 learned junior was here, I think or both of them, there

13 were shots which appear to be fired at a 45 degree angle

14 into the ground and there were then dust clouds that went

15 up and according to Colonel Scott, this was his

16 interpretation of what we saw on the video, these were

17 warning shots.

18 They appeared to have been deliberately fired

19 into the ground in front of the advancing strikers. It was

20 done in re-examination by Mr Semanya when he led Colonel

21 Scott. I just mention that you because you may not be

22 aware of it, but I also do not recall direct evidence from

23 the side of the survivors who testified that there were no

24 warning shots. So I don't know where you get the statement

25 from. If it is intended to lead evidence to that effect, I

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1 haven't seen all the statements but if it is intended to

2 lead evidence to that effect I haven't a statement in which

3 that statement appears. That's the basis of Mr Semanya's

4 objection, unless there is something in the transcript that

5 supports, that I've missed, I'm not saying categorically

6 that there was no evidence but I don't recall it, but

7 that's the basis, my understanding of the objection. I put

8 that to you to enable you to answer.

9 MR NTSEBEZA SC: Thank you, Mr Chairman.

10 I may not be able to pinpoint the passage right away but I

11 do recall that in his testimony Magidiwana did say that as

12 they came around the kraal they were shot at and it clearly

13 could be established from his evidence that they were not

14 warned before they were shot at. Maybe let me try and see

15 if we cannot find that.

16 CHAIRPERSON: It is also possible, to be

17 fair, that he didn't appreciate it and it all happened so

18 fast, so quickly, he didn't appreciate perhaps that shots

19 were actually fired in the ground which caused dust clouds

20 to go up, were intended as warning shots. He may have seen

21 them as shots fired but anyway in due course if there is a

22 passage directly you can refer us to it, but proceed with

23 the cross-examination at the moment.

24 MR NTSEBEZA SC: Yes, thank you, Mr

25 Chairman. Now -

<p style="text-align: right;">Page 18448</p> <p>1 CHAIRPERSON: Advocate Hemraj says to me 2 that I must ascertain from you, you're talking about 3 warning shots and not a verbal warning. That is common 4 cause, as I understand it, that there were no verbal 5 warnings at that point. The witness intended to give 6 warnings later on when he proceeded further with phase 3, 7 so he didn't give a verbal warning but the police evidence 8 for what it is worth, is that there were warning shots 9 fired, as I've described and of course they also say that 10 there were warnings, or it is not really a warning strictly 11 so called, but the use of non lethal force would be a kind 12 of a warning, although it may well be that it would be said 13 that he didn't construe a warning that more lethal 14 ammunition will be used later if the non lethal force was 15 not successful, but that's their case basically. 16 MR NTSEBEZA SC: Thank you, Mr Chairman. 17 Let me investigate that evidence. 18 CHAIRPERSON: I don't think it is 19 important for your case. 20 MR NTSEBEZA SC: Indeed, I think in our 21 opening statement as well as everywhere else and you know, 22 can I just say at this stage we dispute that there were any 23 warning shots and if there is a need for us to lead 24 evidence on that aspect we will do so. We said so in our 25 opening statement but for now, for purposes of this cross-</p>	<p style="text-align: right;">Page 18450</p> <p>1 MR SEMENYA SC: How was that measure 2 taken, Chair – 3 COMMISSIONER HEMRAJ: Where does it 4 appear from, Mr Ntsebeza, if you could just assist me 5 please? 6 CHAIRPERSON: If necessary we can get the 7 Google Earth map. 8 MR NTSEBEZA SC: I was going to say that, 9 Mr Chairman, that the Google maps do give the distance. 10 CHAIRPERSON: But you know the question 11 is, had the exercise been performed and before you state it 12 as a fact it should be cleared that it is a fact. May I 13 make a suggestion, I don't know how important it is for you 14 to make this point at this stage in your cross-examination, 15 if you can make it after tea it might be possible for the 16 exercise to be performed between you and the police 17 representatives. 18 MR NTSEBEZA SC: Okay. 19 CHAIRPERSON: And you may well be able to 20 agree on the distance and it is an objective fact what the 21 distance is, it is simply a question of ascertaining it. 22 MR NTSEBEZA SC: Yes, that's fair, Mr 23 Chairman. Now the members of the Special Units were armed 24 with R1 and R5 rifles, it seems to be common cause, would 25 you agree with that?</p>
<p style="text-align: right;">Page 18449</p> <p>1 examination – 2 CHAIRPERSON: In order to avoid 3 confusion, it may be, it is more of a terminological 4 difference in the sense that your clients, well, really the 5 survivors, your clients' colleagues may not have 6 interpreted the shots which were apparently fired into the 7 ground and caused dust clouds to rise, they may not have 8 interpreted those as warning shots. They may have expected 9 some sort of shot in the air or something like that, so it 10 may be that the difference is more terminological as it 11 were than actual, but anyway, - 12 MR NTSEBEZA SC: No, no, I – 13 CHAIRPERSON: Bear in mind Mr Semenya's 14 objection. 15 MR NTSEBEZA SC: No, no, that point was 16 made, you made that point, Mr Chairman, and it is going to 17 be part of our dealing with this issue going forward. Now, 18 Brigadier, I don't know if you know this from your own 19 experience on the day, but it does appear from all accounts 20 that the distances between the protestors and the TRT line 21 when the TRT opened fire was between 20 to 25 metres. The 22 distance between – 23 CHAIRPERSON: The TRT line and – 24 MR NTSEBEZA SC: The TRT line – 25 CHAIRPERSON: - between 20 to 25 metres.</p>	<p style="text-align: right;">Page 18451</p> <p>1 BRIGADIER CALITZ: Dit is korrek, onder 2 andere van die wapens, Meneer. 3 MR NTSEBEZA SC: And what I want to put 4 to you is that in terms of your own experience as well as 5 in terms of evidence that has been led by an expert from 6 the SAPS, R5 and R1 rifles do inflict very serious wounds 7 and are in fact designed to incapacitate and to kill, would 8 you agree with that? 9 BRIGADIER CALITZ: Mnr die Voorsitter, as 10 ek die vraag reg verstaan, 'n R5 aanval geweer kan dood en 11 hy kan ernstig beseer, korrek. 12 MR NTSEBEZA SC: In fact if you could up, 13 Mr Chairman, the evidence of Warrant Officer Wessels, 14 T2152? 15 CHAIRPERSON: What's the point you want 16 to establish? The witness accepts the main proposition you 17 put to him that these are assault rifles, designed to 18 assault people legally or illegally. 19 MR NTSEBEZA SC: Well, if that, I take 20 your point, Mr Chairman. Now on the basis that you accept 21 this portion of what was testified to and that is that they 22 can inflict very serious wounds and can incapacitate 23 whoever is shot at, if a person were to be shot in the leg 24 with an R1 or an R5 rifle, the shot would cause very 25 serious injury, would it not?</p>

<p style="text-align: right;">Page 18452</p> <p>1 BRIGADIER CALITZ: Ek het net nie mooi 2 gehoor watter deel van die liggaam u na verwys nie, maar 3 die – 4 MR NTSEBEZA SC: In the leg. 5 BRIGADIER CALITZ: The leg? 6 MR NTSEBEZA SC: The leg, yes. 7 BRIGADIER CALITZ: Dit sal 'n wond los, 8 dit is korrek, mnr die Voorsitter. 9 MR NTSEBEZA SC: The person concerned 10 will not be able to carry on running, would they? 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek 12 is nie 'n expert nie, so wat ons van praat, miskien as dit 13 'n vleis wond is sal die persoon kan hardloop, as dit deur 14 die been is en die been het ge-fraktuur sal die persoon nie 15 kan hardloop nie. So dit hang af waardeur, waar by die 16 been die wond of die skoot deurgaen. 17 MR NTSEBEZA SC: Is your evidence that an 18 R5 or an R1 rifle would leave a superficial wound? 19 BRIGADIER CALITZ: Ek verstaan nie die 20 vraag nie, superficial, as u kan vir my net verduidelik? 21 MR NTSEBEZA SC: A flesh wound, I'm 22 sorry? 23 BRIGADIER CALITZ: Weereens, mnr die 24 Voorsitter, ek sê ek is nie 'n expert van wonde, ingang, 25 uitgangswonde, so ek kan nie vir u sê of 'n persoon sal</p>	<p style="text-align: right;">Page 18454</p> <p>1 shot through the leg with R1 or R5 ammunition would be 2 incapable of running any further. There would be cases of 3 people who, perhaps with superficial wound, a flesh wound 4 were able to go on running. 5 I don't know if you can state it as a general 6 proposition that's always applicable. It may well be, it 7 might be worthwhile exploring insofar as you can based on 8 the experience of this witness, how frequently that would 9 happen, but I think the objection taken to the generality 10 of the proposition read against the background of the 11 evidence led must be upheld. 12 MR NTSEBEZA SC: Maybe let me put the 13 question differently on the basis of comments by Warrant 14 Officer Wessels when that proposition was put to him when 15 there is a colleague of yours, he might want to express a 16 view. In line – 17 CHAIRPERSON: Perhaps the record, perhaps 18 the relevant passage from the transcript can be put on the 19 screen so that we can all see it and follow it. 20 MR NTSEBEZA SC: Yes, Mr Chairman. 21 CHAIRPERSON: I don't know if the witness 22 was referred to this passage in the evidence in the bundle 23 of papers, were you? 24 BRIGADIER CALITZ: Nee, mnr die 25 Voorsitter.</p>
<p style="text-align: right;">Page 18453</p> <p>1 aanhou kan hardloop, dit het nog nooit in my 2 teenwoordigheid, so ek kan nie daarvoor getuig nie. 3 MR NTSEBEZA SC: Let me put the question 4 again, if a person was shot in the leg with an R1 or an R5 5 rifle, that person would be incapacitated, would not be 6 able to move and I put this to you as an experienced 7 policeman of a number of years that you have been an 8 experienced policeman, would you accept that as a 9 proposition? 10 MR SEMENYA SC: Chair, I don't know, we 11 do know that some of the witnesses cut their own toes and 12 they ran to the next koppie and these propositions are 13 inconsistent to the evidence as we know it. 14 MR NTSEBEZA SC: No, I don't know whether 15 that's a comment or – 16 CHAIRPERSON: That's what the comment 17 was, the point taken, I think the question is unfair 18 because on the evidence we have, one at least of the 19 witnesses was shot in the leg, shot in the foot actually 20 and he was able to go on running albeit obviously in 21 circumstances of great pain and difficulty, so the point 22 taken is that your question is unfair because it is 23 contrary to the evidence that we've had. If I may say so, 24 I think the problem is the generality of the proposition. 25 Clearly some people, possibly most people who have been</p>	<p style="text-align: right;">Page 18455</p> <p>1 CHAIRPERSON: But I would imagine you can 2 handle it when we see the transcript on the screen. 3 BRIGADIER CALITZ: As hy dit kry sal ek 4 daarna kyk, dankie, mnr die Voorsitter. 5 MR NTSEBEZA SC: We know the brigadier 6 has been here for quite some time, he is now used to. 7 BRIGADIER CALITZ: Ekskuus, ek het nie 8 die opmerking – 9 MR NTSEBEZA SC: I say you have been here 10 for quite some time, you will now be able to navigate your 11 way through surprise questions if this is – 12 CHAIRPERSON: It depends on how 13 surprising they are. 14 MR NTSEBEZA SC: No, it is not, Mr 15 Chairman. 16 CHAIRPERSON: I don't know how much of 17 ambush is involved, but I'm not suggesting you're ambushing 18 him but let's get the passage and the transcripts – 19 MR NTSEBEZA SC: Yes – 20 CHAIRPERSON: - and then he can look at 21 it and we can see whether he can deal with it. 22 MR NTSEBEZA SC: I think it was cross- 23 examination from my elder colleague – 24 CHAIRPERSON: The page? 25 MR NTSEBEZA SC: It is T2105, lines 14 to</p>

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1 24.
 2 CHAIRPERSON: It is page 2105 of the
 3 transcript, let's get that page and then we'll zoom in on
 4 the lines. What lines did you refer to, Mr Ntsebeza? We
 5 haven't got the page?
 6 MR NTSEBEZA SC: Lines 14 to 24.
 7 CHAIRPERSON: Alright, so is it possible
 8 for that page of the transcript to be shown? I hope we're
 9 not waiting for nothing and that something is being done to
 10 get the page. Do you know, has he got it, Adv Pillay, if
 11 it is going to be shown we'll wait a minute or two, if it
 12 is not going to be shown I don't think we should wait for
 13 nothing?
 14 MR NTSEBEZA SC: Can I put this
 15 proposition to you whilst –
 16 CHAIRPERSON: We've got it, Mr Ntsebeza,
 17 we're in business, what line did you say, 14 to 24?
 18 MR NTSEBEZA SC: Yes.
 19 [09:49] CHAIRPERSON: Now Mr Bizos is cross-
 20 examining Warrant Officer Wessels, he's made the point that
 21 the 5.56 by 45 millimetre cartridge, that's the R1, or
 22 that's the cartridge fired by R1 and R5 weapons, is it?
 23 And he said it was developed by the USA for military
 24 operations due to the fact it creates a severe wound, has
 25 the capability to inflict serious damage. So, it was

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1 designed to inflict damage, and then let's go on a bit
 2 further, 14 to 24 is the passage – if you could take 14 up
 3 to the top of the screen, please? - the passage that Mr
 4 Ntsebeza is referring to. So, says the warrant officer, "a
 5 serious wound can certainly cause death. There is however
 6 a theory from the military for the US states, the cartridge
 7 was designed to such a state, would inflict such a wound,
 8 it would take two or three soldiers on battlefield to carry
 9 the wounded soldier to the back, thus making less soldiers
 10 available on the frontline, and also having the effect of
 11 inducing fright to the enemy's soldier." If someone,"
 12 proceeds the warrant officer, "in my instance, in my point
 13 of view, if it's just designed to kill, not just
 14 incapacitate, would not have the same effect." That's the
 15 passage you're relying on, is it?
 16 MR NTSEBEZA SC: Yes. Now, the question
 17 I want to put to you is relative to this and it's a
 18 revisiting of the first one that I put. If an R1 rifle was
 19 used and a person was hit in the bone part of a leg – let's
 20 now forget about the flash – given the kind of effect that
 21 it appears these R1 and R5 ammunition have, in terms of
 22 incapacitation, would the person be able to move?
 23 BRIGADIER CALITZ: Korrek, mnr die
 24 Voorsitter.
 25 CHAIRPERSON: I understood the witness to

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1 concede that before. He said if the bullet came into
 2 contact with the bone and fractured the bone, he said,
 3 which it would obviously if it came in contact with, I
 4 understood him to say the person concerned, the injured
 5 person, wouldn't be able to move further. That was his
 6 evidence earlier and I take it he still sticks to that, is
 7 that right?
 8 BRIGADIER CALITZ: Ja, ek het nou net die
 9 vraag geantwoord, mnr Ntsebeza het gevra, "Will the person
 10 be able to move?" En ek het gesê korrek.
 11 MR NTSEBEZA SC: Now, by correct, what do
 12 you mean by correct?
 13 BRIGADIER CALITZ: Mnr die Voorsitter, u
 14 vraag aan my was, indien 'n persoon met 'n R5 of met 'n R1
 15 in die been geskiet is, u het verwys na the bone part of
 16 it, dit bedoel ek in die bone, dan was die vraag, "Will
 17 that person be able to move?" En my antwoord up u is ja,
 18 daardie persoon sal nog steeds kan beweeg.
 19 MR NTSEBEZA SC: Can the person keep on
 20 running, let alone charging?
 21 BRIGADIER CALITZ: In daardie geval glo
 22 ek nie met 'n afbeen sal ons kan hardloop of charge nie,
 23 nee.
 24 MR NTSEBEZA SC: Nee. The person would
 25 fall to the ground in all likelihood?

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1 BRIGADIER CALITZ: Ek neem so aan, Mnr
 2 die Voorsitter, ek kan nie vir u sê daar of verder of ek is
 3 – ek kan nie daarop getuig nie, maar in all likelihood sal
 4 ek dit aanneem hy sal grond toe beweeg met 'n gebreekte
 5 been, ja.
 6 MR NTSEBEZA SC: The impact of the bullet
 7 may even cause the bones in that leg to break?
 8 BRIGADIER CALITZ: Weereens, mnr die
 9 Voorsitter, ek is nie 'n expert, maar ek glo as die bullet
 10 die been self tref, sal daar dan 'n fraktuur wees.
 11 MR NTSEBEZA SC: Can we agree, and I take
 12 also the exception made by even Warrant Officer Wessels,
 13 who's an expert, that even a wound can lead to death, but
 14 is it fair to put to you that if a person were charging
 15 towards you in order to attack, you would stop them in
 16 their advance if you shot them in the leg?
 17 BRIGADIER CALITZ: Mnr die Voorsitter,
 18 alles hang af seker maar van die afstand, die
 19 omstandighede. Ek sou sê as ek 'n waarskuwingskoot skiet
 20 is ek veronderstel om hom te stop, so dit alles hang af van
 21 die omstandighede, die afstand.
 22 MR NTSEBEZA SC: Yes, what I'm trying to
 23 say to you is that all things being equal, where you had a
 24 choice, as I think one would have a choice, there is person
 25 who's charging at you, and in fairness to you, let's say

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1 the person is charging armed with panga and spear and all
 2 the other lethal weapons associated with the mineworkers
 3 here, and you had a R1 rifle, if you wanted to incapacitate
 4 that person, is it fair to say where you would aim at is at
 5 the legs, if you wanted to stop them in their tracks from
 6 attacking?
 7 BRIGADIER CALITZ: Nee, mnr die
 8 Voorsitter, ek stem nie saam nie.
 9 MR NTSEBEZA SC: Can you indicate why you
 10 do not agree?
 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 12 het aangedui dat dit hang af van die omstandighede, dit
 13 hang af van die afstand wat hy van die persoon af is, dit
 14 hang ook af van hoe ek, as 'n persoon, 'n aanval beleef.
 15 Ek en die advokaat, byvoorbeeld, sal verskillend optree as
 16 ons aangeval word. Dit hang af van die lede links, dit
 17 hang af van die lede regs. Ek neem aan almal het ook nie
 18 geskiet nie, so dit hang af van watter kant af jy dit sien.
 19 Hoe jy die aanval beleef op jou en asook die afstand. So
 20 ek sal sê daar's faktore, mnr die Voorsitter.
 21 CHAIRPERSON: We're going to get to the
 22 distance after tea, I think, but I take it's a general
 23 proposition, subject to other aspects, if someone has come
 24 rushing towards me to kill me, I'm expected, if I can, to
 25 rather shoot – and I have a firearm – to shoot him in the

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1 leg, rather than in the chest, if I can do so, because if I
 2 shoot in the leg, I'll stop him from coming to me, but I
 3 won't kill him. But, of course, that's the - of
 4 perfection, it may not always be possible to do that, but I
 5 think the general proposition being put to you is that
 6 other things being equal – I know you say they weren't, but
 7 other things being equal, someone advancing towards you,
 8 particularly if he's only armed with a panga – so in other
 9 words, he'd really have to get close to you before he could
 10 do you harm, and if you've got a firearm and he's some
 11 distance away, you should, as a general proposition, try to
 12 shoot him in the legs rather than in the torso, in the
 13 chest. I take you'd agree with that?
 14 BRIGADIER CALITZ: Dit is 'n
 15 moontlikheid, mnr die Voorsitter.
 16 CHAIRPERSON: Of course, it's made more
 17 difficult, I suppose, in fast moving scene, to make sure
 18 you shoot someone in the leg, if he's leaning forward, sort
 19 of bending forward as he approaches you, easier to hit
 20 someone in the leg, I would imagine, if he's standing
 21 upright. That must be right, I would think?
 22 BRIGADIER CALITZ: Ek stem saam met u in
 23 daardie geval –
 24 CHAIRPERSON: The general proposition
 25 being put to you by Mr Ntsebeza is you should shoot for the

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1 legs, rather than the torso, and that's the preferred
 2 option. You would agree with that?
 3 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 4 sê weereens, my getuienis sal wees dit is 'n moontlikheid.
 5 Dit hang van persoon tot persoon af oor die - maar ek stem
 6 saam met u, Mnr die Voorsitter.
 7 CHAIRPERSON: Assuming you've got two
 8 members of the service standing next to each other, it's
 9 possible to shoot in the leg. One of them does the, what I
 10 would suggest, is the right thing. He shoots in the leg.
 11 The mere fact that the one next to him takes a different
 12 attitude and shoots in the torso, doesn't mean because the
 13 fact that he did that somehow lets him off the hook. If it
 14 was possible to shoot in the leg, the circumstances
 15 permitted, then he should have done it. Isn't that right?
 16 BRIGADIER CALITZ: Ek stem saam met u in
 17 daardie – dis reg, Meneer.
 18 MR NTSEBEZA SC: Now what the chairman
 19 has proposed to you is a scenario pretty much the kind of
 20 scenario you would encounter, because between a choice that
 21 he and I would have to exercise, as ordinary people,
 22 assuming we are able to use firearms, ordinarily that's
 23 what you would expect, that if I was confronted with a
 24 person who's attacking me, if I'm going to plead self-
 25 defence, I'm expected to have attempted to shoot the person

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1 where it would not be fatal. Would you accept that as a
 2 general proposition?
 3 BRIGADIER CALITZ: Mnr die Voorsitter, as
 4 ek nou reg verstaan, hy het ook verwys na wat mnr die
 5 Voorsitter gesê het. Ek het aantekeninge gemaak, mnr die
 6 Voorsitter, het gesê waar moontlik and if possible, en ek
 7 het gesê ek aanvaar dit.
 8 MR NTSEBEZA SC: But you'll agree with me
 9 it's a different kettle of fish if we are dealing here with
 10 trained police officers. Trained police officers who have
 11 been trained, I would assume, to take a route in decision
 12 making that would be less fatal for the victim. Do you
 13 agree?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 ja, laat die lede wel opgelei is en dan die tweede deel van
 16 die vraag?
 17 MR NTSEBEZA SC: You are not going to
 18 suggest to the Commission that trained policemen do not
 19 have to make a choice as to where they can shoot a victim,
 20 when an option is there for them to shoot them either in
 21 the head or in the leg? Those two options are open. You
 22 are not going to suggest that you are trained to shoot at
 23 anyone who attacks you, irrespective of whether you shoot
 24 them in the head or you shoot them in the legs?
 25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 ja, ek kom terug na my vorige antwoord waar ons gesê het in
2 soverre moontlik. Ek het saamgestem.

3 MR NTSEBEZA SC: And therefore to come to
4 what the chairman was saying, if you know that you are
5 armed with an R5 or an R1 rifle, and it is possible for you
6 to avoid shooting a person who's attacking you on the upper
7 body, because you want to avoid killing them, would it be
8 fair to say your choice would be to aim for the lower body?
9 MR SEMENYA SC: Chair, asked in a
10 different formats, the witness has conceded the point.

11 CHAIRPERSON: I think the objection now
12 is one of repetition, Mr Ntsebeza. You've made the point
13 already. The witness has conceded it. You don't have to
14 underline it. There's always the danger, you know, if you
15 ask a question twice and you get a good answer the first
16 time, you may not get the same answer the second time. I
17 think the suggestion is you've made your point, you might
18 like to move on to the next one.

19 MR NTSEBEZA SC: If that is the view of
20 the Chair that the point has been made –

21 CHAIRPERSON: By Mr Semanya –

22 MR NTSEBEZA SC: Well –

23 CHAIRPERSON: He and I agreed on this –

24 MR NTSEBEZA SC: Well, it's nice to know
25 that there is a concession from my colleague.

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1 CHAIRPERSON: - comment, Mr Ntsebeza.

2 MR NTSEBEZA SC: Now, just so that I
3 don't ask the same question, but I try to expand on the
4 questions that I've been putting. Is it so that police are
5 given accuracy training in the use of rifles, like R5 or
6 R1?
7 BRIGADIER CALITZ: Kan u net weer
8 herhaal. Is what –

9 MR NTSEBEZA SC: Accuracy training

10 BRIGADIER CALITZ: Wil u weet of 'n R5 of
11 'n R1 akkuraat is?

12 MR NTSEBEZA SC: No, no, what I want to
13 know is whether it is not part of the training of police
14 officers, and especially specialised forces, to be trained
15 to be accurate in the manner in which they discharge –

16 BRIGADIER CALITZ: Mnr die Voorsitter,
17 ja, nee, ek verstaan die vraag nou, baie dankie. Die beste
18 antwoord wat ek daarvoor kan gee is as ons skiet oefeninge
19 doen, daar is teikens gestel, en die verskeie dele na die
20 teikens, so ja, hulle word definitief opgelei.

21 MR NTSEBEZA SC: And specialised units,
22 like the TRT, would be given and have to pass even a higher
23 learning of training in that regard than ordinary SAPS
24 members, which is why they are called specialised units,
25 isn't it?

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1 BRIGADIER CALITZ: Korrek, mnr die
2 Voorsitter.

3 MR NTSEBEZA SC: So given that they were
4 in the majority there, and there is now evidence that they
5 did fire at the people who were conceived by them to be
6 attacking them, and given their training, would it be fair
7 to suggest that unless it is clear that they had no other
8 choice, the aim should have been for them to incapacitate
9 the attackers by shooting them in their legs, certainly
10 their lower bodies, so that they could not advance anymore?

11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 ja, weereens ek verstaan die vraag dieselfde as voorheen,
13 waarop ek u gesê het, u woorde "unless there was other
14 choice," ek verstaan dit dan weer dieselfde, waar moontlik,
15 sê ek weereens ja.

16 MR NTSEBEZA SC: Now, are you contesting
17 – as I understand it, you do not contest that in order to
18 avoid fatalities, it would be preferable, if it is
19 possible, not to aim at the upper body or at the heads of
20 those who are attacking? If it is possible and you are
21 being attacked, it's preferable?

22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 ja, ek weet nou nie of ek uit my pad uit sal wees nie. Ek
24 verstaan die vraag weereens as dieselfde. Ek het – my
25 antwoord sal wees - ek wil nie daarnatoe toe gaan deur te

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1 sê die vyfde keer nie - maar ek dink ek het gesê dat, ja,
2 indien dit moontlik sou gewees het, het ek saam met u
3 gestem. So weer, if possible, yes, ek stem nog die heel
4 tyd saam met u.

5 MR NTSEBEZA SC: Now, I don't know
6 whether you have had an occasion to look at the file that
7 was provided to you, with respect to the deceased persons,
8 where the evidence shows where they were shot. And I am
9 not wanting to put to you questions that seek to establish
10 whether you can authenticate the post-mortem reports.
11 [10:09] That obviously would be put to other witnesses.
12 You are not an expert there. There is also in your bundle
13 a summary by the SAPS of forensic experts' reports of 16
14 people who were killed in scene 1, and fatal wounds that
15 were sustained by all 16. Now as I say, you are not the
16 witness for us to be putting those questions to as to
17 whether or not the wounds – but if we proceed on the basis
18 that the reports say what they say, and as I say, I'm only
19 relying on the SAPS's own summary, the results show that
20 most of the people related to the families I represent were
21 killed in a particular way. For instance the report Jijase
22 at page 15 - Mr Chair, I would like to introduce as an
23 exhibit the summary of the forensics experts' reports.

24 CHAIRPERSON: I suppose we'd better make
25 them an exhibit, shouldn't we?

<p style="text-align: right;">Page 18468</p> <p>1 MR NTSEBEZA SC: I don't believe it was 2 made – 3 CHAIRPERSON: No, I say I think we should 4 make them an exhibit. 5 MR NTSEBEZA SC: It's a new exhibit, Mr 6 Chairman. 7 CHAIRPERSON: It will be KKK10. Is that 8 right, Ms Pillay? 9 MS PILLAY: KKK10, Chair. 10 CHAIRPERSON: How do we describe them, Mr 11 Ntsebeza? 12 MR NTSEBEZA SC: Shouldn't we describe it 13 as the SAPS's summary of forensic experts' reports? 14 CHAIRPERSON: Regarding those killed at 15 scene 1? 16 MR NTSEBEZA SC: Regarding those who were 17 killed at both scene 1 and scene 2. 18 CHAIRPERSON: Regarding strikers killed 19 at both scenes. 20 MR NTSEBEZA SC: Indeed, Mr Chairman. 21 CHAIRPERSON: Alright, so that whole 22 bundle of documents will go in – I think the pages have 23 been numbered and so we'll simply call the whole bundle 24 KKK10. So there are 36 pages. Cause of death is the 36th 25 page.</p>	<p style="text-align: right;">Page 18470</p> <p>1 correct, but you're not being obstructionist, you say they 2 can use it but as long as that caution is borne in mind. 3 That seems fair enough, Mr Ntsebeza. 4 MR NTSEBEZA SC: Yes. I wouldn't expect 5 my colleague to be obstructionist in any way. We come a 6 long way. 7 CHAIRPERSON: But I take it the material 8 relating to the actual post mortem findings is extracted 9 from exhibits that are before us, and there shouldn't be 10 much argument about that, but if there is it's a matter 11 than can easily be sorted out by reference to the original 12 source document. But there is other information about 13 where they lived and whether they were employed and whether 14 they had Teba contracts and all that kind of stuff. That's 15 material which is not vouched for by the police. That's 16 right, Mr Semenya, is it? 17 MR NTSEBEZA SC: Yes. 18 MR SEMENYA SC: Correct, Chair. 19 MR NTSEBEZA SC: Thank you, Mr Chair, and 20 thank you, my colleague. We are quite happy with the basis 21 on which the document is – because we, as I indicated when 22 I presaged this line of cross-examination, we are not 23 seeking the witness to vouch for the correctness or 24 otherwise, but on the basis only that if it is so then we 25 will take the witness just through certain aspects. It</p>
<p style="text-align: right;">Page 18469</p> <p>1 MR NTSEBEZA SC: Yes. 2 CHAIRPERSON: And 35th page is a summary 3 of selected aspects of the autopsy finding, but for the 4 rest, the 1 to 34, each page relates to a particular 5 incident. 6 MR NTSEBEZA SC: Yes, that's how I 7 understand the bundle. 8 CHAIRPERSON: Alright, so we now know how 9 to describe the exhibit when you refer to it further. 10 MR SEMENYA SC: Chair, can we place on 11 record the genesis of the document, that it is an internal 12 document created by the SAPS working on the various 13 information, for the purposes of ascertaining it. It has 14 not been vouched to be correct. It was extracted out of 15 the hard drive of the SAPS when the evidence leaders sought 16 to, requested the hard drives to be produced. It can be 17 used with that statement being said. 18 CHAIRPERSON: Alright, you're not 19 objecting to its use, but you're just entering sort of a 20 caveat that not too much reliance must be placed upon it 21 because some of the evidence isn't – 22 MR SEMENYA SC: May. May, may not be 23 accurate. 24 CHAIRPERSON: Well, I was going to say 25 isn't necessarily correct, but I mean it may not be</p>	<p style="text-align: right;">Page 18471</p> <p>1 should be tedious, but – 2 CHAIRPERSON: I take it you're cross- 3 examining the witness at the moment on scene 1, the people 4 who were killed at scene 1, are you? 5 MR NTSEBEZA SC: Yes. 6 CHAIRPERSON: So if that's correct we 7 start at page 14 of the document. I take it you're not 8 going to take him through each one of the summarised post 9 mortem reports, but we start at 14. Whether you're going 10 to use 14 is for you to decide, but that's where we start 11 as far as the scene 1 victims are concerned. Is that 12 correct? 13 MR NTSEBEZA SC: Yes, Mr Chairman. 14 CHAIRPERSON: Victims is not the exact – 15 the word I should use is "deceased," or "killed persons." 16 Sorry, we were looking at the document. I understand you 17 want to say something, Brigadier? 18 BRIGADIER CALITZ: [Microphone off, 19 inaudible] 20 CHAIRPERSON: You're the witness, so 21 you've got the right to say something. 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 nee, dis reg. Ek het net gevra op watter bladsy – ek dink 24 u het verwys na 14, so ek het net my plek probeer kry. 25 CHAIRPERSON: 14 is the first deceased in</p>

<p style="text-align: right;">Page 18472</p> <p>1 respect of who material appears –</p> <p>2 BRIGADIER CALITZ: Ek het dit, ja.</p> <p>3 CHAIRPERSON: - who was killed at scene</p> <p>4 1. The first 13 was the scene 2, they were scene 2 people.</p> <p>5 So anyway, Mr Ntsebeza, are you going to start with 14, or</p> <p>6 which page are you going to start with, using this bundle?</p> <p>7 MR NTSEBEZA SC: I'm going to start with</p> <p>8 Jijase, J-I-J-A-S-E, page 15. Mr Chairman, I don't know</p> <p>9 whether it's appropriate to give a warning.</p> <p>10 CHAIRPERSON: Are we going to see</p> <p>11 pictures of them as well on the screen –</p> <p>12 MR NTSEBEZA SC: Well, we might –</p> <p>13 CHAIRPERSON: - deal with the material</p> <p>14 here?</p> <p>15 MR NTSEBEZA SC: We might describe the –</p> <p>16 CHAIRPERSON: Sorry?</p> <p>17 MR NTSEBEZA SC: We might describe the –</p> <p>18 CHAIRPERSON: Alright. What is going to</p> <p>19 happen from now on is details are going to be given</p> <p>20 relating to certain of the people who were shot at scene 1,</p> <p>21 to start with, and descriptions will be given which will be</p> <p>22 rather graphic in some cases, of the wounds these persons</p> <p>23 sustained before they died, and if anyone here who is</p> <p>24 related to one of those people, or a close friend of that</p> <p>25 person, and who feels that there is a danger that he or she</p>	<p style="text-align: right;">Page 18474</p> <p>1 we will not burden the record with his address. We may</p> <p>2 just indicate that he was a 26-year old rock drill operator</p> <p>3 at that shaft, but this report says in the fourth column,</p> <p>4 "gunshot wound in the head, old wound in arm." Now, and</p> <p>5 also on forensic findings there is something that says,</p> <p>6 "Shot in back of head, arm and chest." Do you see that?</p> <p>7 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>8 ja, ek verskil egter. Kolom 4 waarna u verwys het is, as</p> <p>9 ek net kan lees wat wel daar staan, ek dink dit is nie op</p> <p>10 die skerm nie – "gunshot wound in head, old wound in arm."</p> <p>11 U het uitgelaat "Traditional markings on body." Dit is net</p> <p>12 wat u uitgelaat het in die sin, maar die res stem ek saam</p> <p>13 met u, en dan in "forensic findings" sien ek daar staan</p> <p>14 "Shot in back of head, arm and chest."</p> <p>15 CHAIRPERSON: Yes, I take it it's not</p> <p>16 suggested that he died because of the traditional markings</p> <p>17 on the body, so Mr Ntsebeza is concentrating on the fatal</p> <p>18 injuries, I think.</p> <p>19 MR NTSEBEZA SC: I would have thought</p> <p>20 that the Brigadier is not suggesting that the traditional</p> <p>21 marks were the cause of death.</p> <p>22 BRIGADIER CALITZ: Glad nie, mnr die</p> <p>23 Voorsitter. Ek het net verwys na die kolom wat u vir my –</p> <p>24 MR NTSEBEZA SC: So the omission was</p> <p>25 quite deliberate.</p>
<p style="text-align: right;">Page 18473</p> <p>1 will be distressed and deeply troubled by hearing this</p> <p>2 description, I would suggest they leave the chamber at this</p> <p>3 point. I will ask that Mr Ntsebeza only proceed when he's</p> <p>4 satisfied that all persons who wish to leave, have availed</p> <p>5 themselves of the opportunity.</p> <p>6 I understand, Mr Ntsebeza, that you've been</p> <p>7 repeating in somewhat expanded form perhaps in Xhosa what I</p> <p>8 said in English earlier.</p> <p>9 MR NTSEBEZA SC: Yes, Mr Chairman.</p> <p>10 CHAIRPERSON: So there could be no</p> <p>11 misunderstanding and everybody here who are dependent on</p> <p>12 the translation will know what is being said.</p> <p>13 MR NTSEBEZA SC: Thank you, Mr Chairman.</p> <p>14 Now Brigadier, we are wanting merely to show that the 16</p> <p>15 people according to these records, they create a case that</p> <p>16 suggests that fatal wounds that were sustained by all 16</p> <p>17 people who were killed at scene 1, were wounds that were in</p> <p>18 the upper body. Do you follow?</p> <p>19 BRIGADIER CALITZ: Ek sal u volg soos ons</p> <p>20 aangaan en die vrae, dan ek sal probeer byhou, dankie, mnr</p> <p>21 die Voorsitter.</p> <p>22 MR NTSEBEZA SC: Yes. I just wanted to</p> <p>23 do that introduction, and then I say for instance if we</p> <p>24 turned to page 15 of that bundle and the number is 15, and</p> <p>25 the name of the deceased is Mr Patrick Akhona Jijase, now</p>	<p style="text-align: right;">Page 18475</p> <p>1 CHAIRPERSON: You're reading it for the</p> <p>2 sake of completeness, but with respect, the extra bit you</p> <p>3 added didn't take it any further.</p> <p>4 BRIGADIER CALITZ: Korrek, mnr die</p> <p>5 Voorsitter.</p> <p>6 MR NTSEBEZA SC: Yes. So we can accept</p> <p>7 that. Now on page 21, in relation to Mr Tukusa, name of</p> <p>8 deceased, occupation, Mpangeli Tukusa, 41-year old ex-</p> <p>9 Lonmin worker. Now in that column – and please ignore the</p> <p>10 fresh traditional healer markings on neck, spine, and</p> <p>11 everywhere else, and let's concentrate on the findings,</p> <p>12 "Gunshot wound to head. Entrance wound at earlobe. Exit</p> <p>13 wound over left eye. Two toes missing on right foot." You</p> <p>14 see that?</p> <p>15 BRIGADIER CALITZ: Ja, mnr die</p> <p>16 Voorsitter, daar is wel verder weer "Birdshot," ek weet nie</p> <p>17 of ek dit weer moet lees en of u dit gaan verder vat nie.</p> <p>18 MR NTSEBEZA SC: Yes.</p> <p>19 CHAIRPERSON: Those weren't fatal. This</p> <p>20 is one of the people who was also shot with pellets.</p> <p>21 Remember that was the subject of earlier debate. One day</p> <p>22 perhaps we'll find out who was firing pellets, but we're</p> <p>23 not busy with that at the moment. But Mr Ntsebeza as I</p> <p>24 understand it is concentrating on the fatal wounds. Is</p> <p>25 that right, Mr Ntsebeza?</p>

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1 MR NTSEBEZA SC: Yes, Mr Chairman, and
 2 insofar as it is, those fatal wounds are indicated to have
 3 been in the upper body, unless of course –
 4 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 5 – ekskuus, is die vraag nog nie –
 6 MR NTSEBEZA SC: No, go ahead.
 7 BRIGADIER CALITZ: Ek dog u het –
 8 CHAIRPERSON: If you've got a comment to
 9 make, you're entitled to make it.
 10 BRIGADIER CALITZ: Nee, nee, ekskuus, ek
 11 dog die vraag was aan my gestel dat die wonde is in die
 12 "upper body." Ek wou dan net verwys het na "two toes
 13 missing on the right foot."
 14 CHAIRPERSON: Fatal wounds.
 15 BRIGADIER CALITZ: Praat ons nou net oor
 16 die "fatal wounds?"
 17 CHAIRPERSON: He's concentrating on fatal
 18 wounds. There are a lot of other wounds and marks and so
 19 on, but that's not, as I understand it, the thrust of Mr
 20 Ntsebeza's cross-examination.
 21 BRIGADIER CALITZ: Ek verstaan. Ek
 22 verstaan nou, mnr die Voorsitter.
 23 CHAIRPERSON: If he departs from fatal
 24 wounds I'll ask him to indicate it expressly to you.
 25 BRIGADIER CALITZ: Ek verstaan. Ek het

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1 hom so, mnr die Voorsitter. Baie dankie.
 2 MR NTSEBEZA SC: No, I see the thing
 3 about toes and I remember the remark that was made by my
 4 learned friend earlier on about people removing their own
 5 toes. We are not there. If we went to page 24 –
 6 MR SEMENYA SC: Chair –
 7 CHAIRPERSON: Mr Semanya?
 8 MR SEMENYA SC: I'm lost as to where we
 9 are going. Are we just reading the reports for what they
 10 are –
 11 CHAIRPERSON: No, I think he's –
 12 MR SEMENYA SC: - because that's what
 13 they are?
 14 CHAIRPERSON: No, I think he's putting to
 15 the witness a number of cases, as I read it, where there
 16 were injuries in the head, and presumably when he's
 17 collected all those, the number started at 13 and he's
 18 already at 24, so there are not so many, it would seem.
 19 MR SEMENYA SC: But the witness can't
 20 dispute it, Chair. That's the point I'm making.
 21 CHAIRPERSON: No, no, I understand, but –
 22 MR NTSEBEZA SC: The witness has had –
 23 [10:28] CHAIRPERSON: You and I might cross-
 24 examine differently from the way Mr Ntsebeza is doing it,
 25 but he's got his cross-examination worked out, the

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1 questions aren't irrelevant so I think we can let him carry
 2 on for the moment. If it gets too repetitive then we can
 3 come back to it, but for the moment I'm happy with him.
 4 MR NTSEBEZA SC: Can I show my learned
 5 friend or the chairman, it won't be repetitive because
 6 we'll be talking about each of the employees who got
 7 killed. Thank you very much, Mr Chairman. Page 24, and we
 8 are on number 24, Mr Mguneni Noki. Now the post mortem
 9 finding there –
 10 CHAIRPERSON: Have you got the name of
 11 the person, sorry?
 12 MR NTSEBEZA SC: Mguneni, it is Mr Noki,
 13 the man with the green blanket.
 14 CHAIRPERSON: The deceased in this case
 15 aren't just numbers and letters, we must respect their
 16 dignity even, the deceased in this case are not just
 17 numbers or letters.
 18 MR NTSEBEZA SC: No, no, no, no, I
 19 mentioned the name, I'm quite sensitive to that aspect, Mr
 20 Chairman. I mentioned his name as Mr –
 21 CHAIRPERSON: It is my fault, okay, carry
 22 on.
 23 MR NTSEBEZA SC: No, I did, Mr Chairman,
 24 thank you very much, but I accept your concern. Mguneni
 25 Noki, we are not, I'll put the question, you see that the

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1 post mortem findings show that he was killed as a
 2 consequence of gunshot wounds to the face and neck.
 3 BRIGADIER CALITZ: Korrek, mnr die
 4 Voorsitter.
 5 CHAIRPERSON: I'm not sure if that is
 6 correct, Mr Ntsebeza. Those are post mortem findings that
 7 you chosen to emphasis by printing them in heavier type
 8 than the others, but I'm not sure that that was the cause
 9 of death because there were, you'll remember in his case
 10 there was a substantial number of wounds in the lower body
 11 as well, and I'm not sure what exactly killed him, but
 12 you're correct in pointing out that he had gunshot wounds
 13 in the face and the neck. Whether they were the cause of
 14 death is a matter, or part of the cause of death is a
 15 matter that may be a subject for debate but I would think,
 16 with respect, that for your purposes it is enough for you
 17 to focus on the gunshot wounds in the face and neck which
 18 you've actually emphasised in heavy type on your document.
 19 MR NTSEBEZA SC: Well, Mr Chairman, our
 20 argument would be to say that that's the one which the
 21 experts have reconciled between themselves to have been the
 22 fatal –
 23 CHAIRPERSON: Yes, I see that actually,
 24 yes. Under LRC experts there is a column that says,
 25 reconciled main cause of death.

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1 MR NTSEBEZA SC: Indeed.

2 CHAIRPERSON: Gunshot wound on face, so

3 you were correct and I was wrong, please proceed.

4 MR NTSEBEZA SC: Thank you, Mr Chairman.

5 Now you've heard the exchange between the chair and I.

6 CHAIRPERSON: Mr Ntsebeza, are you going

7 to deal with a number of these, a substantial number? It

8 is half past ten and I was proposing to take tea but if you

9 would like to round off this part of the cross-examination

10 by referring to other pages in these exhibits relating to

11 scene 1, the you're free to do so and when it is convenient

12 for you, for us to take the tea adjournment will you please

13 let me know?

14 MR NTSEBEZA SC: Mr Chairman, in the

15 light of, I sometimes hazard to say it is common cause, but

16 it seems to me that the exercise would be to seek a

17 confirmation from the witness of the proposition that I

18 made.

19 CHAIRPERSON: Yes, I understand that.

20 MR NTSEBEZA SC: Yes.

21 CHAIRPERSON: Do you want his

22 confirmation before or after tea?

23 MR NTSEBEZA SC: After tea.

24 CHAIRPERSON: We'll take the adjournment.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:03] CHAIRPERSON: - Exhibit KKK10, is that

2 correct? Brigadier, you're still under oath.

3 BRIGADIER CALITZ: Dankie, mnr die

4 Voorsitter.

5 CHAIRPERSON: Mr Ntsebeza?

6 MR NTSEBEZA SC: Thank you, Mr Chairman.

7 Brigadier, can we look at page 26?

8 CHAIRPERSON: Before you do that, may I

9 ask whether the police, whether they've got a Google map

10 and worked out, had a chance to do that, work out the

11 distance?

12 MR NTSEBEZA SC: Mr Chairman, may I

13 indicate that I've indicated to my learned friend that it

14 is an exercise that we will do during lunch.

15 CHAIRPERSON: I see, okay, that's fine,

16 so we can carry on immediately -

17 MR NTSEBEZA SC: Yes, we can -

18 CHAIRPERSON: - from where you were when

19 we took the adjournment?

20 MR NTSEBEZA SC: Indeed, Mr Chairman.

21 COMMISSIONER HEMRAJ: At this point, is

22 this point not capable of agreement between SAPS and you,

23 Mr Ntsebeza, about the number of deceased that died as a

24 result of gunshot wounds to the head?

25 MR NTSEBEZA SC: I don't know what we

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1 would agree.

2 MR SEMENYA SC: We admit the correctness

3 of the post mortem reports.

4 MR NTSEBEZA SC: Yes.

5 COMMISSIONER HEMRAJ: Well, it is in your

6 hands then.

7 MR NTSEBEZA SC: Yes.

8 CHAIRPERSON: The examination, Mr

9 Ntsebeza, as I indicated to Mr Semenya, I might do it

10 differently if I was cross-examining, he might but I can't

11 stop you from adopting your style.

12 MR NTSEBEZA SC: Indeed.

13 CHAIRPERSON: Subject to -

14 MR NTSEBEZA SC: It is always subject to

15 something. Mr Chairman, may I just say this and I hope I

16 would never have to say it again? In October last year

17 when we went for an inspection in loco none of the families

18 were here and some of us had assumed that, like we had all

19 seen it on television, this and that and the next thing,

20 that the details of what happened to those about whom the

21 Commission is also, were common cause. If for nothing else

22 this exercise is intended to inform them, between you and

23 me and my learned friend and everybody else here, it is

24 easy for us to say, but the documents say what they say,

25 but it is difficult for, - we can tell them in consultation

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1 but that is not the point and -

2 CHAIRPERSON: I understand the point you

3 make.

4 MR NTSEBEZA SC: Yes.

5 CHAIRPERSON: I made a comment yesterday,

6 you'll remember, about the, I think it was before you

7 arrived, about the importance of their being present at

8 least during some of your cross-examination, I didn't put

9 it on that basis because I'd hoped they could be here for

10 the whole of your cross-examination, but I made the point

11 that it was important. Some of them, I take it, are still

12 coming back from tea, they haven't left, did they?

13 MR NTSEBEZA SC: No, they haven't left.

14 CHAIRPERSON: Oh, dear, my attention is

15 drawn to the fact that the air-conditioning is leaking.

16 Well, maybe it turned out for the best, shall we take a

17 short adjournment, let them sort out that air-conditioning.

18 MR NTSEBEZA SC: Yes.

19 CHAIRPERSON: And during that time the

20 rest of the family people who are coming back from tea will

21 be here and we can then carry on to a full house.

22 MR NTSEBEZA SC: Thank you, Mr Chairman.

23 CHAIRPERSON: We will adjourn for five

24 minutes to sort out the air-conditioning.

25 MR NTSEBEZA SC: Thank you, Mr Chairman.

<p style="text-align: right;">Page 18484</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>2 [11:19] CHAIRPERSON: The Commission resumes.</p> <p>3 You're still under oath, Brigadier.</p> <p>4 ADRIAAN MARTHINUS CALITZ: Dankie, mnr</p> <p>5 die Voorsitter.</p> <p>6 CHAIRPERSON: Mr Ntsebeza, are you going</p> <p>7 to proceed now? I'm sorry that we lost time there, but</p> <p>8 there's nothing we can do about it. Please proceed.</p> <p>9 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):</p> <p>10 Thank you, Mr Chairman. Mr Chairman, may I just also say</p> <p>11 that one of the reasons we are taking the rather tedious</p> <p>12 route is that –</p> <p>13 CHAIRPERSON: I don't think "tedious" is</p> <p>14 a fair word. I think you mean lengthy.</p> <p>15 MR NTSEBEZA SC: Lengthy. Lengthy.</p> <p>16 CHAIRPERSON: A lot longer.</p> <p>17 MR NTSEBEZA SC: The long road to – is</p> <p>18 that your Commission has been established in the public</p> <p>19 interest and it is the public that has taken – rightly or</p> <p>20 wrongly – positions about the rightness or wrongness of the</p> <p>21 actions of the miners and the actions of the SAPS, and it</p> <p>22 is also against that backdrop that we are taking the longer</p> <p>23 road. Between us we could agree on a number of things, but</p> <p>24 I think I made the point. Thank you, Mr Chairman.</p> <p>25 CHAIRPERSON: Thank you, Mr Ntsebeza.</p>	<p style="text-align: right;">Page 18486</p> <p>1 210 metres from scene 1. Do you know that?</p> <p>2 BRIGADIER CALITZ: Nee, mnr die</p> <p>3 Voorsitter.</p> <p>4 MR NTSEBEZA SC: Okay, and when once that</p> <p>5 has been established, we will make the submission, as you</p> <p>6 see in the PM reports, that that single gunshot was</p> <p>7 intended to dissuade him from running away. It was a</p> <p>8 single gunshot which on our argument will have been shot</p> <p>9 when he was about 210 metres away. You won't know that.</p> <p>10 CHAIRPERSON: Mr Semenya, you've got your</p> <p>11 light on.</p> <p>12 MR SEMENYA SC: Chair, obviously from</p> <p>13 what we have read, Mr Ntsebeza can say the individual</p> <p>14 suffered that wound and he was found at that distance. I</p> <p>15 don't see the basis for saying the wound was sustained</p> <p>16 where he was found.</p> <p>17 CHAIRPERSON: It sounds like a good</p> <p>18 point, Mr Ntsebeza. I don't know that you need that point</p> <p>19 to make the point you're busy with.</p> <p>20 MR NTSEBEZA SC: No, we will not make the</p> <p>21 point, Chair, except that when one is shot at the back of</p> <p>22 the head they can't run, can they?</p> <p>23 CHAIRPERSON: [Microphone off, inaudible]</p> <p>24 MR NTSEBEZA SC: Yes. Do you see on page</p> <p>25 29, Brigadier, "survival period and incapacitation," do you</p>
<p style="text-align: right;">Page 18485</p> <p>1 Please proceed.</p> <p>2 MR NTSEBEZA SC: Now the next page we'd</p> <p>3 like to look at, Brigadier, is page 24 – we have done page</p> <p>4 24. That was Mguneni Noki. We'd like to look at Mr</p> <p>5 Ndongophele on page 26. Now Mr Ndongophele, Bongani</p> <p>6 Ndongophele, the post mortem findings show that he was, he</p> <p>7 had one gunshot wound on the right forehead and a</p> <p>8 reconciled main cause of death with the LRC experts also</p> <p>9 says the main cause of death was a gunshot wound of the</p> <p>10 head. Do you see that?</p> <p>11 BRIGADIER CALITZ: Korrek, mnr die</p> <p>12 Voorsitter.</p> <p>13 MR NTSEBEZA SC: It's a single shot, it</p> <p>14 appears. The next page would be page 29, Mr Gwelani. Mr</p> <p>15 Gwelani, gunshot wound at back of head entering on right</p> <p>16 scalp area. You see that?</p> <p>17 BRIGADIER CALITZ: Korrek, mnr die</p> <p>18 Voorsitter.</p> <p>19 MR NTSEBEZA SC: And that is the position</p> <p>20 that the LRC experts also find to have been the main cause</p> <p>21 of death, gunshot wound of head.</p> <p>22 BRIGADIER CALITZ: Korrek, mnr die</p> <p>23 Voorsitter.</p> <p>24 MR NTSEBEZA SC: Now you may or may not</p> <p>25 know, it appears that Mr Gwelani is a person who was found</p>	<p style="text-align: right;">Page 18487</p> <p>1 see that?</p> <p>2 BRIGADIER CALITZ: Aan die regterkant</p> <p>3 onder –</p> <p>4 MR NTSEBEZA SC: Yes.</p> <p>5 BRIGADIER CALITZ: Korrek, mnr die</p> <p>6 Voorsitter.</p> <p>7 MR NTSEBEZA SC: Ja, almost immediate</p> <p>8 death adjacent to brainstem, immediate incapacitation.</p> <p>9 BRIGADIER CALITZ: Ek sien dit, mnr die</p> <p>10 Voorsitter.</p> <p>11 MR NTSEBEZA SC: So that's the point we</p> <p>12 will be arguing - perhaps we'll call for your comment -</p> <p>13 that he died where the shot hit him. Do you have any</p> <p>14 comment to make on that?</p> <p>15 BRIGADIER CALITZ: Nee, mnr die</p> <p>16 Voorsitter, ek het geen "comment" om daar te maak nie.</p> <p>17 MR NTSEBEZA SC: And part of the story of</p> <p>18 course is that it's unlikely at that place that he could</p> <p>19 have been charging at the police, 210 metres away.</p> <p>20 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>21 het reeds te kenne gegee ek was nie bewus van die persoon,</p> <p>22 die posisie. So ek weet, ek het te kenne gegee ek kan u</p> <p>23 nie daar help nie.</p> <p>24 MR NTSEBEZA SC: No, some of the</p> <p>25 questions are taking into account the fact that, you know,</p>

<p style="text-align: right;">Page 18488</p> <p>1 you were elsewhere when all of these things were happening, 2 but you were the overall commander of the entire operation. 3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter, ek as die "operational commander." 5 CHAIRPERSON: The operational commander. 6 MR NTSEBEZA SC: operational commander. 7 CHAIRPERSON: The overall commander was 8 General Mpmembe. 9 MR NTSEBEZA SC: Oh, operational 10 commander. Well, we'll go into that when we want to unpack 11 what it means to be an operational commander. The medical 12 reports, that report does say though that Mr Gwelani was 13 shot on the back of the head and that's all that I just was 14 raising the issue with you, that if he was shot at the back 15 of the head, we would argue that it would be unlikely that 16 he was shot by the person who he was charging at. Do you 17 understand what I'm saying? He was not moving towards the 18 person who shot him. That's the argument we'll make. 19 BRIGADIER CALITZ: Ek hoor u argument, 20 mnr die Voorsitter. 21 MR NTSEBEZA SC: And you don't agree with 22 it? 23 BRIGADIER CALITZ: Soos ek weereens gesê 24 het, mnr die Voorsitter, nee, ek kan u nie help op – ek 25 weet nie waar die persoon was, waar die – as u miskien vir</p>	<p style="text-align: right;">Page 18490</p> <p>1 considering the obvious. 2 CHAIRPERSON: That's a matter for 3 argument later, isn't it? 4 MR NTSEBEZA SC: Yes. Yes, Mr Chairman. 5 The next person on our list is Mr Ngweyi – or let me put it 6 this way. We will say the following 12 people were shot in 7 the chest, in the abdomen, in the neck, and/or back, all of 8 them in other words on the upper body. Now let's quickly, 9 very quickly go to these, and these would be Mr Ngweyi on 10 page 14. The forensic report says "Gunshot wound in 11 abdomen," but the reconciled main cause of death, in other 12 words by all the experts, LRC experts included, it says, 13 "Gunshot wound of chest and abdomen" is the main cause of 14 death. You see that? 15 BRIGADIER CALITZ: Ek sien, mnr die 16 Voorsitter. 17 MR NTSEBEZA SC: Yes, the next person is 18 Mr Yona. Mr Yona is accounted for on page 16. Now Mr 19 Yona, the post mortem findings are that he was shot in the 20 chest. "Gunshot wound to chest," and on the reconciled 21 main cause of death report, you see there, "Shotgun wound 22 of chest and neck." You see that? Are we together? 23 BRIGADIER CALITZ: Ek sien wat u gelees 24 het, alhoewel daar meer in daardie vierde kolom staan, maar 25 ek vat wat u gelees het, sien ek.</p>
<p style="text-align: right;">Page 18489</p> <p>1 my die posisie kan aandui, dan weet ek is dit in daardie 2 rigting gewees of waar dit was. Ek kan u glad nie help op 3 hierdie geval nie. 4 MR NTSEBEZA SC: No, we are simply saying 5 just on the basis of what the document say, if you are shot 6 on the back of the head, you're shot on the back of the 7 head. You can't be shot by somebody who's in front of you 8 who you are attacking, would you? You wouldn't. Is there 9 a way in which you can explain how you get shot at the back 10 of your head by somebody at whom you are charging? There 11 isn't. 12 BRIGADIER CALITZ: Mnr die Voorsitter, as 13 ek moet antwoord, daar kan redes wees. Een van die redes 14 is as 'n persoon na u toe storm en daar word op u gevuur en 15 ek draai om op die sekonde wat die skote geskiet word en ek 16 hardloop terug, is dit baie moontlik om in die agterkop 17 geskiet te word. 18 MR NTSEBEZA SC: Indeed. On your own 19 proposition the person would no longer be a danger to the 20 person whom he was attacking if he was shot at the back of 21 the head because he had turned around, would they? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 weereens, ek hou by my, wat ek nou het getuig het. 24 MR NTSEBEZA SC: Anyway, we'll argue at 25 the appropriate time that, you know, you are just not</p>	<p style="text-align: right;">Page 18491</p> <p>1 MR NTSEBEZA SC: So is there any comment 2 you want to make in relation to that? 3 BRIGADIER CALITZ: Net die gedeelte waar 4 u gesê het "Gunshot wound to chest" – 5 MR NTSEBEZA SC: Yes. 6 BRIGADIER CALITZ: - in die vierde kolom, 7 maar in die doktersverslag het daar gestaan "Chest and 8 neck." 9 MR NTSEBEZA SC: Yes. 10 BRIGADIER CALITZ: So ek verwys net na 11 die vierde kolom waar u dan uitgelaat het om te noem daar 12 was ook 'n "shot" na die nek. So dit is maar al wat ek sê 13 daar is 'n verskilletjie in die stelling gewees. 14 MR NTSEBEZA SC: Yes, which is consistent 15 with what we are seeking to put to you, that of the 16 following victims that we are going to indicate, all these 17 gunshot wounds were in the upper body. 18 BRIGADIER CALITZ: Korrek, mnr die 19 Voorsitter, ek aanvaar so. 20 MR NTSEBEZA SC: Thank you. And there 21 will be, you will have seen in your bundle that we will be 22 dealing with shotgun wounds, but do you see that the LRC on 23 that page, page 16, do have a comment that says one or two, 24 two shots via shotgun. Do you see that? 25 BRIGADIER CALITZ: Onder die "comment"</p>

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1 gedeelte?

2 MR NTSEBEZA SC: Yes.

3 BRIGADIER CALITZ: Dit is die eerste sin

4 van daardie paragraaf. Ek sien dit, mnr die Voorsitter.

5 MR NTSEBEZA SC: Yes, okay. But I think

6 we will also probably refer to it when we deal with shotgun

7 incidents in the course of that operation. We want now to

8 go to Mr Msenyeno on page 17. Quickly, Mr Msenyeno,

9 gunshot wound to neck, thigh, and since we are

10 concentrating on those that were in the upper body, the

11 reconciled cause of death by all the experts, bottom left,

12 "Gunshot wound of neck." See that?

13 BRIGADIER CALITZ: Ek sien dit, mnr die

14 Voorsitter.

15 MR NTSEBEZA SC: Next victim was Sompeta.

16 Sompeta you'll find on page 18. Sompeta, Mzukisi Sompeta,

17 according to the post mortem findings sustained a gunshot

18 wound to trunk and the reconciled report with LRC experts

19 gives the main cause of death as having been gunshot wound

20 of abdomen. You see that?

21 BRIGADIER CALITZ: Ek sien dit, mnr die

22 Voorsitter.

23 MR NTSEBEZA SC: Now the next one is Mr

24 Lehupa, and you'll find that on page 19. Mr Lehupa,

25 "multiple gunshot wounds over trunk, thigh," and the

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1 reconciled main cause of death with the LRC experts says,

2 "Gunshot wounds of chest and abdomen." See that?

3 BRIGADIER CALITZ: Ek sien dit, mnr die

4 Voorsitter.

5 MR NTSEBEZA SC: Then Mr Ntenetya will be

6 seen on page 20. Mr Ntenetya, "Six gunshot wounds in body,

7 head, upper and lower," I suppose it should be "lower

8 limbs," and the reconciled finding of the experts is

9 "Gunshot wound of chest and abdomen." You see that?

10 BRIGADIER CALITZ: Ek sien dit, mnr die

11 Voorsitter.

12 MR NTSEBEZA SC: Yes, Zibambele is the

13 next victim, and you'll find that on page 22. Zibambele in

14 terms of the post mortem findings, "Gunshot wound in

15 pelvis, shoulder, thigh," and then there's - I don't think,

16 ja, and then the reconciled version is "Gunshot wound of

17 chest." That is given as the main cause of death. You see

18 that?

19 BRIGADIER CALITZ: Ek sien dit, mnr die

20 Voorsitter.

21 MR NTSEBEZA SC: And the next person is

22 Yawa. Yawa comes from Cala where I was born. Mr Yawa on

23 page 23, "Gunshot wound on arm." Then it goes on to talk

24 about "pellet wounds on left side of face, neck, and upper

25 arm."

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1 [11:39] And then it talks about left wound in left

2 buttock, etcetera, but the reconciled finding with the

3 other experts from the LRC, "gunshot wounds of the abdomen

4 and chest", do you see that?

5 BRIGADIER CALITZ: Ek sien dit, mnr die

6 Voorsitter.

7 MR NTSEBEZA SC: The next one will be

8 Monisa or Monesa on page 25. Now Mr Monesa, Khawamare

9 Elias Monesa, "gunshot wound to the head, right chest and

10 abdomen and then lower limbs. The reconciled main cause of

11 death with the LRC experts' report says gunshot wound of

12 chest and abdomen." Do you see that?

13 BRIGADIER CALITZ: Ek sien daardie

14 gedeelte wat u lees, mnr die Voorsitter.

15 MR NTSEBEZA SC: Ledingoane is on page

16 27. Sorry, Mr Chairman, "gunshot wound to chest" and that

17 is also the reconciled finding with LRC experts, "gunshot

18 wound to chest, one shot appears," do you see that?

19 BRIGADIER CALITZ: Ek sien dit, mnr die

20 Voorsitter.

21 MR NTSEBEZA SC: And in this series the

22 next person would be Mr Mdze, - Mr Mtshazi, Mtshazi, page

23 28, Mtshazi. Mtshazi, "gunshot wound to right side of

24 face" and the reconciled main cause of death with the other

25 experts gives the cause of death, the main cause of death

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1 as having been "gunshot wound of cervical spine," do you

2 see that?

3 BRIGADIER CALITZ: Ek sien daardie

4 gedeelte wat u lees, mnr die Voorsitter.

5 MR NTSEBEZA SC: And then Mr Mdze, Mr

6 Mdze's details are on page 31, "bullet wounds in left arm,

7 right leg, 8 pellet wounds in abdomen and head" and the

8 experts concurred on the main cause of death having been

9 "gunshot wound to the abdomen," do you see that?

10 BRIGADIER CALITZ: Ek sien dit, mnr die

11 Voorsitter.

12 MR NTSEBEZA SC: And their conclusion on

13 the number of shots seems to be that these were two shotgun

14 inflicts, these were from a shotgun, do you see that, there

15 is a column, "number of shots, 2 times shotgun."

16 BRIGADIER CALITZ: Ek sien dit, mnr die

17 Voorsitter.

18 MR NTSEBEZA SC: Now it seems to me,

19 other than Mr Yona and Mr Mdze, were shot with shotgun, the

20 rest of the deceased were, according to this report shot

21 and killed by high velocity ammunition which would have

22 come from the R5 and the R1. Will you agree with that

23 assessment on the basis of what you see here?

24 BRIGADIER CALITZ: Wat ons sien in

25 hierdie verslag, mnr die Voorsitter, korrek.

<p style="text-align: right;">Page 18496</p> <p>1 MR NTSEBEZA SC: Thank you. Now I know 2 that earlier on when you testified you said – 3 MR SEMENYA SC: Maybe while – 4 MR NTSEBEZA SC: - it is possible – 5 MR SEMENYA SC: No, I say while Mr 6 Ntsebeza is formulating the question it does appear to me 7 in respect of the last question, a shotgun and high 8 velocity seem to be contradictions in terms – 9 CHAIRPERSON: It sounds like a good 10 point, Mr Ntsebeza, would you like to ponder that before 11 you carry onto your next question, what's your response to 12 it? 13 MR NTSEBEZA SC: Well, I formulated the 14 question on this basis, with the exception, - sorry, Mr 15 Chairman, my learned friend is directing me to look at page 16 31. Now page 31 is the story of Mr Mdze. Now do I 17 understand my learned friend to be saying, to the extent 18 that the second column talks about high or low velocity and 19 it says, high? It is a contradiction to then say "two 20 shotgun wounds were inflicted there – 21 CHAIRPERSON: It does sound like a 22 contradiction, I never heard of a high velocity shotgun, 23 have you? 24 MR NTSEBEZA SC: Yes. 25 CHAIRPERSON: You have?</p>	<p style="text-align: right;">Page 18498</p> <p>1 etcetera, so there isn't a contradiction. In fact it is a 2 combination of high velocity and pellets, shotgun wounds 3 and pellets, so – 4 MR NTSEBEZA SC: What I understand it to 5 be is that – 6 CHAIRPERSON: Sorry, sorry, the error 7 appears to be in the bottom section, under number of shots 8 it says, "two by shotgun." It should actually be, I would 9 think, "two", there is a misprint there, if there were two 10 bullet wounds, only one in the left arm and one on the 11 right leg, it looks as if there were two gunshot, - sorry, 12 there were two shots by an R5 or an R1 and the remaining 13 shots were by a shotgun. So that inaccuracy gives rise to 14 this apparent contradiction, but I think in time it is 15 sorted out. 16 MR NTSEBEZA SC: Ja, I think it does. 17 What it does say is that it is not either or, it is both, 18 high velocity and shotgun shots that were fired, except 19 that it does appear that they reconcile on, the main cause 20 of death has been gunshot wounds. 21 CHAIRPERSON: Yes, that's correct, 22 because it was wounds to the abdomen. 23 MR NTSEBEZA SC: Yes. 24 CHAIRPERSON: Wounds to the abdomen that 25 caused the death and that was the gunshot.</p>
<p style="text-align: right;">Page 18497</p> <p>1 MR NTSEBEZA SC: So I, you know – 2 CHAIRPERSON: Ja, I think maybe this one 3 can be taken off the table in this particular case. 4 MR NTSEBEZA SC: Yes, except that what we 5 are saying is that it would appear, according to these 6 reports, that Mdze and Yona were shot with a shotgun. Now 7 other than the two of them, I hear what you're saying about 8 this qualified contradiction in terms, to say Mdze, Mr 9 Yona, no, Bongani Mdze, two shotguns and then high or low 10 velocity and it says, high, I take that point but – 11 MR CHASKALSON SC: Mr Chairperson, I 12 wonder if I can assist here because I think the source of 13 the confusion becomes apparent if we look at the actual 14 post mortem report in respect of Mr Mdze, because the cause 15 of death that was indicated by the State pathologist was 16 "gunshot wounds to the left arm and abdomen with signs of 17 exsanguination." Now if one looks at the post mortem 18 report, the gunshot wound to the left arm was a high 19 velocity R5 bullet. The gunshot wounds to the abdomen, 20 with the shotgun wound, so I think that explains the cause 21 of the confusion. 22 CHAIRPERSON: Ja, I see, thank you for 23 that. In fact when I look at it in light of what you said, 24 I see under post mortem findings it says, "bullet wounds in 25 left arm and right leg, 8 pellet wounds in abdomen,"</p>	<p style="text-align: right;">Page 18499</p> <p>1 MR NTSEBEZA SC: So – 2 MR CHASKALSON SC: Mr Chairperson, - 3 BRIGADIER CALITZ: Not the pellet one. 4 MR CHASKALSON SC: No, in fact the State 5 pathologist describes the cause of death as gunshot wounds 6 to the left arm and abdomen. Now the left arm was the high 7 velocity projectile. 8 CHAIRPERSON: - the pellets, so anyway as 9 Mr Ntsebeza correctly says, it is actually a combination. 10 MR NTSEBEZA SC: Anyway, we will deal 11 with shotgun victims shortly, but the point here that I 12 would like to make and that I want to put it to you, 13 Brigadier, is that other than Yona and Mdze who clearly 14 were shot also with shotguns, the rest of the deceased from 15 this report in scene 1, the 16, were shot and killed by 16 high velocity ammunition which must have emanated from R1s 17 and R5s. 18 BRIGADIER CALITZ: Mnr die Voorsitter, 19 ja, as ek die verslag reg verstaan, dit is korrek. 20 MR NTSEBEZA SC: And the point here is 21 that these wounds were either to the head, secondly by all 22 accounts they were wounds that were inflicted on the upper 23 body. Will you agree with that? 24 BRIGADIER CALITZ: Dit is soos u die 25 verslag deurgegaan het, mnr die Voorsitter.</p>

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1 MR NTSEBEZA SC: Now I know that you did
 2 qualify how police officers came or would be expected to
 3 react when they are being attacked. First of all let me
 4 just put it on record, just so that, the way that I was
 5 putting questions is not misunderstood. It is not the
 6 family's case that the mineworkers at any stage were
 7 attacking the police. We dispute that, I just want you to
 8 know that whatever else I have been asking, it should be
 9 understood that we are disputing the fact that those who
 10 got killed were killed because they were attacking the
 11 police. What is your comment thereto?
 12 MR SEMENYA SC: The witness can't –
 13 CHAIRPERSON: He can't comment to that,
 14 surely the point is simply this, your case and the case of
 15 Mr Mpofo's clients has been always clearly stated to be
 16 this, that they weren't attacking the police, the group at
 17 scene 1, they weren't attacking the police, they were on
 18 their way to Nkaneng, that's the case.
 19 MR NTSEBEZA SC: Mm.
 20 CHAIRPERSON: What you are putting, as I
 21 understand it and I'm not sure it is for the witness to
 22 answer, is to say, in the alternative the police case is,
 23 they were attacking the police. So what you were saying
 24 is, you don't accept that, you say they weren't attacking
 25 police, they were on their way to Nkaneng but in the

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1 alternative, in the event it was to be found that they were
 2 attacking the police, or alternatively I suppose if the
 3 police were acting in imputative self defence or private
 4 defence, then in any event your argument would be that this
 5 wasn't appropriate or proper or, let me put it more
 6 accurately. This isn't covered by the doctrine of self
 7 defence or private defence, because these were not shots to
 8 the legs which were be appropriate in a self defence or
 9 private defence situation, but were shots to the head and
 10 the upper body, that's your case, is that correct?
 11 MR NTSEBEZA SC: Indeed.
 12 CHAIRPERSON: You understand what Mr
 13 Ntsebeza's case is? He doesn't accept that there was an
 14 attack, he says there wasn't but he says if there was,
 15 alternatively if the police on reasonable grounds thought
 16 there was, they still didn't go about self defence of
 17 private defence properly, because they should have shot the
 18 lower parts of the body and not the upper parts and he has
 19 taken you through the post mortem reports, is that the
 20 situation?
 21 MR SEMENYA SC: Chair?
 22 CHAIRPERSON: Yes, Mr Semenya?
 23 MR SEMENYA SC: This witness did not
 24 witness any of this, he can't make us, give us any useful
 25 comment.

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1 CHAIRPERSON: No, I'm aware of that, I'm
 2 just trying to explain what Mr Ntsebeza's point is, but you
 3 know there is now an anticipatory objection to what you're
 4 going to ask next, Mr Ntsebeza, and that is that this is
 5 the wrong witness to put these questions to. Perhaps you
 6 would like to deal with that before you proceed further.
 7 MR NTSEBEZA SC: Now, Brigadier, as an
 8 operational commander when this, I know you've been asked a
 9 number of questions about what you were doing, where you
 10 were, what you saw, what you heard. I just want to get a
 11 sense for purposes of putting a limited number of questions
 12 to you, whether your position is that you were not there
 13 and therefore you do not know, it is part of your statement
 14 which we've put up yesterday, you do not know why the
 15 people you were in command of acted the way they did. Do I
 16 understand that to be your position? You were at the scene
 17 but you were not at the scene in the sense that you don't
 18 know why people, your people acted the way they did? Is
 19 that your case?
 20 BRIGADIER CALITZ: As u verwys na "your
 21 people" is dit dan wat ons verwys na die skietvoerval wat
 22 plaasgevind het.
 23 MR NTSEBEZA SC: Yes.
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 dit is korrek, ja, op daardie stadium was my getuienis toe

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1 ek vorentoe beweeg het, ek was nie bewus van die aksies
 2 agter my nie.
 3 MR NTSEBEZA SC: Yes, so you don't know
 4 and I would like to get this on record, you don't know
 5 whether they acted in self defence when they shot the
 6 mineworkers?
 7 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 8 het op daardie stadium glad nie waargeneem self nie, dit is
 9 later aan ons meegedeel.
 10 CHAIRPERSON: To your knowledge the point
 11 is only hearsay. According to your evidence you only heard
 12 about 15 minutes later that there had been this incident at
 13 scene 1 where people were shot and killed?
 14 BRIGADIER CALITZ: Korrek, mnr die
 15 Voorsitter.
 16 CHAIRPERSON: You were on the way to the
 17 dry riverbed, as I understand it, at the time that that
 18 incident took place, is that correct?
 19 BRIGADIER CALITZ: Dit is korrek, mnr die
 20 Voorsitter.
 21 CHAIRPERSON: That's your evidence?
 22 BRIGADIER CALITZ: Korrek, mnr die
 23 Voorsitter.
 24 CHAIRPERSON: You heard reports later
 25 about self defence and private defence, whether they are

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1 not true or not, you cannot from your own knowledge add
 2 anything to that debate, is that correct?
 3 BRIGADIER CALITZ: Ek sal nie kan nie,
 4 mnr die Voorsitter, u is korrek.
 5 MR NTSEBEZA SC: Now I would like to
 6 understand the entirety of your evidence.
 7 CHAIRPERSON: Mr Ntsebeza, before you
 8 proceed, Mr Bizos has a comment, yes, Mr Bizos?
 9 [11:59] MR BIZOS SC: Mr Chairman, I think I must
 10 disclose in view of your question that the case is not as
 11 simple as that, that he was away does not mean he is
 12 exculpated, and I'm given notice that there is good
 13 authority to which that we will make available to the
 14 Commission, that for the operation commander to make
 15 himself an absentee on the authorities, does not exculpate
 16 him for - over what happened.
 17 CHAIRPERSON: I'm sorry to interrupt, Mr
 18 Bizos. If I understand the argument you put up. It's
 19 substantially a legal argument, but I was busy with
 20 something else. The witness was being asked to comment on
 21 certain factual averments and I was simply endeavouring to
 22 understand his answer, if I put, it in terms of I
 23 understood, to be I can't deal with those facts, because I
 24 wasn't there. I've already told you that I only heard 50
 25 minutes later that this happened, and I was on my way to

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1 the dry riverbed at the time it happened, so I can't, from
 2 my own knowledge, throw light on what actually happened. I
 3 understand your point. You may well contend and in fact
 4 question him about it, as to why he left at the time, why
 5 he didn't stay where he was or possibly even move to
 6 another position, so he could see what was happening.
 7 That's a totally different inquiry, but that's not what Mr
 8 Ntsebeza is about at the moment. He's busy with a factual
 9 averment as to actually how these people were shot and
 10 whether what happened was covered by the documents. That's
 11 a matter on which he can't throw any light, but I take your
 12 point. It's - we are aware of it, and you'll be developing
 13 it in due course, I take it.
 14 MR BIZOS SC: Yes, the reason why I
 15 interjected, Mr Chairman, is the witness must not think
 16 that just before - because he left, he is not culpable.
 17 CHAIRPERSON: No, no, I understand that's
 18 going to be your contention, but that's not the point Mr
 19 Ntsebeza is busy with at the moment.
 20 MR BIZOS SC: Thank you, Mr Chairman.
 21 CHAIRPERSON: The witness will, I'm sure,
 22 be cross-examined along those lines by you and the witness
 23 will not be under any false impression as to what the case
 24 is that you've putting to him. Shall we carry on, Mr
 25 Ntsebeza?

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1 MR SEMENYA SC: Neither would an
 2 impression be that his culpable.
 3 CHAIRPERSON: Sorry?
 4 MR SEMENYA SC: Neither must be labour
 5 under an impression that he is culpable.
 6 CHAIRPERSON: No, no, the impression
 7 under which he will be brought, if he hasn't been brought
 8 already, is it will be contented by Mr Bizos that he's
 9 culpable. Whether he really was culpable, is a matter that
 10 we will express views on at the end of the Commission, and
 11 which may or may not be the subject of further
 12 investigations elsewhere, but certainly, I imagine it would
 13 be hotly contended that he was not culpable, and that's a
 14 matter on which we're not competent, at this stage, to
 15 express an opinion, and even if we were competent to
 16 express an opinion - able to do so, I mean, it would
 17 inappropriate to do so. We must keep an open mind on that
 18 issue, like all the other issues, and only endeavour to
 19 come to some kind of conclusion at the very end, and
 20 certainly no impression must be created, one or the other.
 21 It's simply a contention that's going to be advanced in due
 22 course. Shall we carry on, Mr Ntsebeza?
 23 MR NTSEBEZA SC: Thank you, Mr Chairman.
 24 Brigadier, this is where I am at and I would like to be
 25 satisfied that your week and a half or two of your being on

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1 the stand has been - has not been in support of a case that
 2 the police were acting in self-defence, because you were
 3 not there. You have been in that stand for all this
 4 period. Is it your testimony that you are not alleging
 5 that the police acted in self-defence?
 6 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 7 is nie seker of ek die vraag reg verstaan. As dit
 8 dieselfde vraag is, as ek u reg verstaan, teenoor die
 9 vorige vraag, ja, ek kan nie sê wat agter gebeur het nie,
 10 ek was nie daar nie.
 11 MR NTSEBEZA SC: So all your testimony
 12 thus far, whatever it has been saying, has not been to
 13 support a theory that the police were justified in shooting
 14 my clients?
 15 BRIGADIER CALITZ: Mnr die Voorsitter, in
 16 soverre dit die skiet voorval agter my aangaan waar die TRT
 17 betrokke was, as jy praat van daardie getuienis, daar kan
 18 ek u nie help nie, nee.
 19 MR NTSEBEZA SC: I want an unequivocal
 20 response. Is it your case that because you were not there
 21 -
 22 CHAIRPERSON: Mr Ntsebeza, I'm sorry to
 23 interrupt you, the self-defence - I think the question is,
 24 the way it's phrased, may be a bit not - unclear. In
 25 regard to the defence of self-defence. There will be

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1 various facts which will have to be established. Part of
 2 it will be the situation in which the people acted, whether
 3 they were being attacked. That will be one part of it.
 4 The further part of it, on the assumption that they were
 5 being attacked, which is the assumption which were you were
 6 proceeding with at the moment, whether they acted
 7 appropriately and whether what they did was covered by the
 8 doctrines of self-defence. The witness has made it clear,
 9 as far as that part of the inquiry is concerned, he can
 10 throw no light. In regard to the run up to the events,
 11 whether there – a situation existed where there was an
 12 attack on the police, as opposed to an endeavour to proceed
 13 to Nkaneng, that's something on which he can give no direct
 14 evidence, but he does testify to facts, which, if accepted,
 15 might form part of a circumstantial finding in regard to
 16 the question, but – so it's not entirely correct to say
 17 that his evidence will be totally irrelevant to that
 18 question, but on the main part, what I call the second
 19 part, he's made it quite clear he can't assist us and he
 20 can't, in regard to the first aspect, he can't give direct
 21 evidence, but the facts to which he testified may or may
 22 not, on analysis, assist one side or the other, in regard
 23 to the first question, but I think now having said that,
 24 removing any scope for misunderstanding from the –
 25 MR NTSEBEZA SC: Mr Chairman, thank you

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1 very much. I don't want to find myself not knowing whether
 2 I'm dealing with a fish or a fowl, which is why I would to
 3 get some clarity as to what exactly the brigadier is able
 4 to testify on the basis of circumstantial evidence and what
 5 it is that he's able to testify on the basis of facts that
 6 he knows. Put the same question differently – can I put it
 7 on this basis? Are you able, sitting there, as you are
 8 today, to say on the basis of your presence or absence on
 9 the 16th of August 2012 at the scene, that there was an
 10 attack on the police by the mineworkers at scene 1?
 11 BRIGADIER CALITZ: As u sê my absence,
 12 kan ek dit net reg verstaan?
 13 CHAIRPERSON: The fact that you, on your
 14 own, you left before the actual engagement – if one can
 15 call it that – between the strikers and TRT people really –
 16 BRIGADIER CALITZ: The shooting.
 17 CHAIRPERSON: The shooting happened. And
 18 – but in any event, before that, you were in a situation –
 19 in a position where you couldn't actually see what happened
 20 there, because it was out of your line of sight. What you
 21 saw was the movements of people towards that spot, some
 22 seconds - or I'm not sure, it may even be minutes – before
 23 the actual shooting took place. So that's the basis of the
 24 question, as I understand it?
 25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 ja, as dit die basis is van die vraag is, kan ek getuig dat
 2 dit waaroor ek reeds ondervra is, tot op die stadium waar
 3 ek gesien het dat daar wel 'n aanval was. Ek het ook
 4 verduidelik die aanval wat ek daarby bedoel het, en ek het
 5 op daardie stadium dan opdrag gegee dat ons dan met die
 6 voertuie tussen in beweeg. So tot op daardie stadium, kan
 7 my getuienis wees wat ek gesien het, daarna ook, maar wat
 8 agter my gebeur het, ten opsigte van waar die skietery
 9 plaasgevind het, waarna verwys is, nee, Mnr die Voorsitter,
 10 ek kan nie uit my eie daarop testify nie.
 11 MR NTSEBEZA SC: Yes. I – is it your
 12 case, as a witness, that the police were being attacked by
 13 the mineworkers at the moment that the police shot and
 14 killed the 16 mineworkers on scene 1 that we have now dealt
 15 with?
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 weereens, dit is hindsight. Dit is wat aan my gerapporteer
 18 was. Ek was nie daar nie en ek het vir u duidelik gesê dat
 19 ek het dit nie waargeneem nie. Wat in hindsight
 20 gerapporteer is en die dele wat ons by mekaar gesit het,
 21 het dit wel vir my dan geblyk uit selfverdediging uit en
 22 laat daar wel 'n aanval was.
 23 MR NTSEBEZA SC: And is it your case, as
 24 a hindsight, that the police –
 25 CHAIRPERSON: Mr Ntsebeza, I'm sorry to

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1 interrupt you. You know, I don't like this word "case."
 2 He's a witness. The SAPS will presumably have a case,
 3 which they present to us. He's here simply to give us his
 4 evidence. He tells you he formed an opinion, which it may
 5 well be coincide – and I'm sure it does – with what's going
 6 to be the SAPS case. His opinion was based upon
 7 information he received immediately after the events and
 8 thereafter at the Roots conference. I must tell you,
 9 without intending any disrespect to him, I'm not interested
 10 in his impression. His impression doesn't bind me. My
 11 colleagues and I have to decide on the evidence before us,
 12 not the impression of people who attended the Roots
 13 conference, and it's a total, as far as I'm concerned, a
 14 waste of valuable time to explore his impression based upon
 15 what he heard at Roots. So I don't intend to be
 16 disrespectful to him, but he will understand we have to
 17 make up our own minds – it's our impressions, as it were,
 18 based upon a careful analysis of the evidence that will be
 19 relevant. So I don't propose to allow you to plead on this
 20 line. You obviously won't be prejudiced by an inability to
 21 do so, because I've already indicated to you that his
 22 impression of the matter is not relevant for me. I can
 23 understand he may have an impression based upon what he saw
 24 while he was still there, but that was limited nature and
 25 that I think has been explored, but –

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1 MR NTSEBEZA SC: Mr Chairman, what Mr
2 Chairman has said will be useful string to uphold, if I
3 understand the chairman well. Can I just make one
4 tentative question?
5 CHAIRPERSON: Sorry, it's not my
6 intention to add strings to anybody, but anyway you may
7 proceed, but please bear in mind what I said.
8 MR NTSEBEZA SC: Yes, I will – I will, Mr
9 Chairman. Brigadier, why I - I don't want to attribute to
10 you things that you didn't say, because I've been reading
11 your evidence and that is why I came to the impression
12 that, for instance, your statement, whether it's on the
13 basis of what you were told and on the basis of what you
14 arrived at – for instance, I mean in that paragraph 19 of
15 your statement you stated very clearly what were your
16 opinions. That these people would never give up their
17 firearms – I mean, their arms and whatever it was, their
18 pangas and what have you. And you quite clearly stated in
19 your statement that you came to a clear conclusion. Now –
20 so that is why I am careful, not always successfully, to
21 put to you something which you can help us with. For
22 instance, you are not able, on the basis of your presence
23 on the 16th of August, as an operational commander, to say
24 whether the police were being attacked by the mineworkers.
25 Would that be a fair statement to put to you?

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1 BRIGADIER CALITZ: Nee, mnr die
2 Voorsitter.
3 MR NTSEBEZA SC: And therefore you are
4 also not able to say whether the police, in shooting to the
5 detail that we have now been exploring via post-mortem
6 reports, were acting in self-defence on the basis of your
7 presence there? You can't say? Because you don't know
8 that they were being attacked, so you can't say that they
9 acted in self-defence?
10 BRIGADIER CALITZ: Wat agter my aangegaan
11 het, dis korrek, ek kan dit nie vir u deurgee nie, Mnr die
12 Voorsitter.
13 MR NTSEBEZA SC: Yes. But, and I'll put
14 it no higher than this and I'll move on.
15 CHAIRPERSON: If we move on to another
16 point, may I suggest you do so after we've taken the
17 comfort break, because –
18 MR NTSEBEZA SC: Thanks, Chairman.
19 CHAIRPERSON: This is long sessions and
20 my experience is it's difficult to concentrate for a long
21 stretch without taking a short break at some point -
22 MR NTSEBEZA SC: Especially if one takes
23 age into account, Mr Chairman. I'm talking about me.
24 CHAIRPERSON: I'm sure it applies to a
25 number of us here. Shall we take the comfort break now?

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]
2 [12:35] CHAIRPERSON: The Commission resumes.
3 I've been handed, I see while we were out, a document which
4 appears to be an IPID statement by, is it Hendrik Legau, Mr
5 Ntsebeza? I take it you're responsible for giving us the
6 document. Is that correct?
7 MR NTSEBEZA SC: Yes, Mr Chairman. It
8 was supposed to be in the files because I think it was one
9 in relation to which notice has been given –
10 CHAIRPERSON: Well, Hendrik Legau,
11 anyway. It's not been handed in. Do you want me to make
12 it an exhibit? KKK11?
13 MR NTSEBEZA SC: Yes, at a later stage,
14 or at this stage –
15 CHAIRPERSON: Not yet. Alright, not yet,
16 okay.
17 MR NTSEBEZA SC: We're not going to –
18 CHAIRPERSON: Alright. Brigadier, are
19 you looking for the document? Have you not seen it before?
20 BRIGADIER CALITZ: Ek het dit nou net
21 ontvang, mnr die Voorsitter. So –
22 CHAIRPERSON: Right, before you answer
23 I'd better remind you, you're still under oath.
24 ADRIAAN MARTHINUS CALITZ: Ek het hom.
25 Dis reg, mnr die Voorsitter.

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1 CHAIRPERSON: It appears that Mr Ntsebeza
2 isn't going to reach it yet, and I suspect he'll only get
3 there after lunch, so you've got the whole lunch hour to
4 read the statement at your leisure.
5 BRIGADIER CALITZ: Dankie, mnr die
6 Voorsitter.
7 CHAIRPERSON: Mr Ntsebeza, would you like
8 to proceed?
9 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
10 Thank you, Mr Chairman. Brigadier, I would like us to go
11 to scene 1 – I mean to scene 2 where further miners were
12 killed and if we went to the chart, and again what we will
13 be seeking to show here is that of the 16 people who were
14 shot, or believed to have been shot at the scene 2, seven
15 of them sustained single high velocity gunshots to their
16 upper bodies. That is what we are going to try and show.
17 Now if we went to – and may I propose that we go to page 3,
18 page 3 you'll see relates to Anele, I think it should be
19 Mdizeni. It's not Mdezi, Mr Chairman, Commissioners. It
20 should be Mdizeni, M-D-I-Z-E-N-I. You've got page 3,
21 Brigadier? You are on that page?
22 BRIGADIER CALITZ: Ek is saam met u, mnr
23 die Voorsitter.
24 MR NTSEBEZA SC: Thank you. Thank you.
25 There you'll see it's one wound in pelvis, high velocity

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1 firearm, and the reconciled main cause of death is gunshot
 2 wound of pelvis, and on the last column headed "Survival
 3 period and incapacitation," we have there "Rapid death."
 4 You see there? "Rapid death, immediate incapacitation from
 5 spinal injury."
 6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 miskien is ons nou nie op dieselfde bladsy nie. U het gesê
 8 bladsy 11?
 9 CHAIRPERSON: Page 3.
 10 BRIGADIER CALITZ: Lees u van bladsy 11
 11 af?
 12 MR NTSEBEZA SC: It's page 3.
 13 BRIGADIER CALITZ: Ek het dit soos hulle
 14 ook gehoor het, bladsy 11.
 15 MR NTSEBEZA SC: No, no, no, no –
 16 BRIGADIER CALITZ: Maar ons beweeg na
 17 bladsy 3. Ek het hom, mnr die Voorsitter.
 18 MR NTSEBEZA SC: We are on the same page
 19 now, are we not? Mdizeni instead of Mdezi, Mdizeni, M-D-I-
 20 Z-E-N-I. You see that? Have you found the -
 21 BRIGADIER CALITZ: Watter kolom – u is
 22 nie duidelik nie. Watter kolom het u nou gelees? Ek is op
 23 bladsy 3. Ek wil net weet wat –
 24 MR NTSEBEZA SC: Yes, it's column 4,
 25 "Post mortem findings."

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1 BRIGADIER CALITZ: Okay, the one wound in
 2 the pelvis, high velocity firearm.
 3 MR NTSEBEZA SC: One wound in pelvis, ja.
 4 BRIGADIER CALITZ: Ek is met u, mnr die
 5 Voorsitter.
 6 MR NTSEBEZA SC: Yes, and bottom left,
 7 the reconciled main cause of death is "Gunshot wound of
 8 pelvis." You see that?
 9 BRIGADIER CALITZ: Ek sien dit, mnr die
 10 Voorsitter.
 11 MR NTSEBEZA SC: Yes, and I also drew
 12 your attention to the comment under "Survival period and
 13 incapacitation" where it talks about "Rapid death.
 14 Immediate incapacitation, lower limb paralysis from spinal
 15 injury." You see that?
 16 BRIGADIER CALITZ: Ek sien dit soos dit
 17 hier staan, mnr die Voorsitter.
 18 MR NTSEBEZA SC: Yes, now the next person
 19 killed at scene 2 will be on page 6, Mr Liau. Now Mr Liau
 20 was shot at – or put it this way; their findings are that
 21 there was a single wound in chest, handgun, and the
 22 reconciled main cause of death report is gunshot wound of
 23 chest, handgun. You see that? Single shot.
 24 BRIGADIER CALITZ: Ek sien wat daar
 25 staan, mnr die Voorsitter.

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1 MR NTSEBEZA SC: Mabiya is the next
 2 person and that we'll find on page 8. Now under the post
 3 mortem findings is "Gunshot entrance wound through right
 4 side of head." You see that?
 5 BRIGADIER CALITZ: Ek sien, mnr die
 6 Voorsitter.
 7 MR NTSEBEZA SC: And there seems to be
 8 agreement with the LRC experts in that regard because under
 9 reconciled main cause of death, "Gunshot wound, head" as
 10 the main cause of death. Survival period and
 11 incapacitation, "Immediate death, immediate
 12 incapacitation." You see that?
 13 BRIGADIER CALITZ: Ek sien dit, mnr die
 14 Voorsitter.
 15 MR NTSEBEZA SC: The next family member
 16 to have died – I mean, the next mineworker to have died is
 17 Nokamba, and that you will find on page 9. Nokamba died of
 18 a "Wound in chest from a high velocity firearm. Entrance
 19 wound in the back of the body." You see that under post
 20 mortem findings?
 21 BRIGADIER CALITZ: Ek sien, mnr die
 22 Voorsitter.
 23 MR NTSEBEZA SC: And that seems to be
 24 what is agreed between the experts, "Gunshot wound of the
 25 chest, left to right. Rapid death, capable of movement."

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1 I don't know what that means. The next person was
 2 Saphendu, or Samphendu, page 10, "Gunshot wound in chest,"
 3 and it's possible handgun is reconciled main cause of death
 4 as to report as to what was used. We are together?
 5 BRIGADIER CALITZ: Ek sien waar u lees,
 6 mnr die Voorsitter.
 7 MR NTSEBEZA SC: Yes, the next one is
 8 Mkhonjwa. Mkhonjwa is on page 4. There Mkhonjwa is
 9 indicated to have had "wounds on left chest and left arm."
 10 The agreed position is, or the reconciled position,
 11 "Gunshot wound of chest and abdomen. Handgun." You see
 12 that?
 13 BRIGADIER CALITZ: Ek sien, mnr die
 14 Voorsitter.
 15 MR NTSEBEZA SC: Now we also have
 16 Thelejane. Thelejane is on page 2. Now he was shot in the
 17 pelvis and head wounds, and the reconciled main cause of
 18 death is the gunshot wound to the head. Do you see that?
 19 BRIGADIER CALITZ: Ek sien dit, mnr die
 20 Voorsitter.
 21 MR NTSEBEZA SC: And it appears that this
 22 is a person who seems to have been shot twice in the head,
 23 number of shots, two.
 24 CHAIRPERSON: [Microphone off, inaudible]
 25 repeat that one. Number of shots, two, but he's got an

<p style="text-align: right;">Page 18520</p> <p>1 injury of the pelvis and injury of the head. So I don't – 2 unless there's something I'm missing. It doesn't look as 3 if there were two head injuries, and if you look at the 4 section below of the LRC experts, Dr Naidoo's comments, he 5 concurs, it says in the comments section, with the State 6 pathologist who records a right buttock injury as high 7 velocity gunshot wound of the pelvis. So there was only 8 one head injury. I'm not sure that it affects the thrust 9 of the point you're making, but it's not correct to say 10 there were two head wounds. 11 MR NTSEBEZA SC: Yes, Mr Chairman, it 12 would be unfair to put to the witness on the basis hereof 13 that he was shot twice in the head, but I seem to remember 14 that in the post mortem report there will be verification 15 of this. But I'm not pursuing that at this stage. The 16 next person would be Mangcotywa. Mangcotywa, it should be 17 M-A-N-G-C – oh yes, spelt correctly. Mangcotywa, post 18 mortem finding – 19 BRIGADIER CALITZ: Kan ons net 'n bladsy 20 kry, asseblief? 21 MR NTSEBEZA SC: Oh, sorry. I'm sorry, 22 Brigadier. Page 5. 23 BRIGADIER CALITZ: Dankie, mnr die 24 Voorsitter. 25 MR NTSEBEZA SC: Page 5 of this exhibit.</p>	<p style="text-align: right;">Page 18522</p> <p>1 Voorsitter. 2 MR NTSEBEZA SC: The next person would be 3 Mr Ngxande, and that you'll find on page 11. Now Mr 4 Ngxande's post mortem findings are that he had a gunshot 5 wound to the chest, high velocity firearm, and the LRC 6 experts agree that it was a gunshot wound of the chest that 7 caused his death. You see that? 8 BRIGADIER CALITZ: Ek sien, mnr die 9 Voorsitter. 10 [12:55] MR NTSEBEZA SC: The next person would be 11 Gadlela. Gadlela you will find on page 12. Mr Gadlela was 12 according to this PM finding, "Gunshot wound to neck." 13 Now, and then the reconciled main cause of death is chest 14 wound, I mean gunshot wounds to chest as the main cause of 15 death, do you see that? 16 BRIGADIER CALITZ: Ek sien, mnr die 17 Voorsitter. 18 MR NTSEBEZA SC: Now the next person 19 would be Mr Pato. Mr Pato you will find on page 13. Mr 20 Pato had a gunshot wound to neck and that is the agreed 21 position by all the pathologists, do you see that? 22 BRIGADIER CALITZ: Korrek, mnr die 23 Voorsitter, ek dink ons het hom al gehad in die vorige – 24 MR NTSEBEZA SC: Oh, – 25 BRIGADIER CALITZ: - verwysing.</p>
<p style="text-align: right;">Page 18521</p> <p>1 "Wound in chest entering from right side of chest, high 2 velocity firearm." The agreed position is "Gunshot wound 3 of chest." You see that? 4 BRIGADIER CALITZ: Korrek, mnr die 5 Voorsitter. 6 MR NTSEBEZA SC: Yes, the next victim is 7 Mosebetsane. Mosebetsane is on page 7. You will notice 8 there that the finding is that he had a wound below the 9 right eye and the reconciled position is that he died of 10 the gunshot wound of the head. You see that? 11 BRIGADIER CALITZ: Ek sien, mnr die 12 Voorsitter. 13 MR NTSEBEZA SC: Now do you see where it 14 says "Pertinent dissensions between State and independent 15 reports," that would be column 7. You see that? 16 BRIGADIER CALITZ: Ek sien, mnr die 17 Voorsitter. 18 MR NTSEBEZA SC: It reads, "The body 19 shows two gunshot wounds through the head, both passing 20 from front to rear, whilst the State pathologist records 21 only one gunshot. Two gunshots are supported by the 22 external wounds, as well as internal brain and skull 23 findings. There is no dissension relating to range of fire 24 or direction of shot." You see that? 25 BRIGADIER CALITZ: Ek sien, mnr die</p>	<p style="text-align: right;">Page 18523</p> <p>1 MR NTSEBEZA SC: No, I'm not aware that 2 we did Mr Pato but anyway. 3 BRIGADIER CALITZ: Ons het reeds bladsy 4 15 hanteer toe ons by scene 1 was, maar as ek van hulp kan 5 wees. 6 MR NTSEBEZA SC: We're on 13. 7 CHAIRPERSON: Page 13. 8 BRIGADIER CALITZ: 15? 9 MR NTSEBEZA SC: 13? 10 CHAIRPERSON: 15. 11 MR NTSEBEZA SC: My apologies, - 12 CHAIRPERSON: 15 is scene 1. 13 BRIGADIER CALITZ: My verskoning, ek het 14 16 en 13 – 15 CHAIRPERSON: The - 16 MR NTSEBEZA SC: Oh, alright. 17 BRIGADIER CALITZ: Dit is hoekom ek, - 18 13, ek is met u, mnr die Voorsitter. 19 MR NTSEBEZA SC: Okay, 13, we are looking 20 at Mr Pato, Henry Mvuyisi Pato, "a gunshot wound to the 21 neck," and that is the reconciled position with the LRC 22 experts, "a gunshot wound to the neck, main shot direction 23 back to front," do you see that? 24 BRIGADIER CALITZ: Ek sien, mnr die 25 Voorsitter.</p>

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1 MR NTSEBEZA SC: Now Mr Xalabile is the
 2 next person we want to consider, Mr Xalabile is on page 13.
 3 Also Mr Xalabile, findings, "gunshot wound to chest and
 4 also to left thigh." Now the main cause of death between
 5 all the experts is gunshot wound chest, do you see that?
 6 BRIGADIER CALITZ: Ek sien, mnr die
 7 Voorsitter.
 8 MR NTSEBEZA SC: Now there are three more
 9 that I want to indicate. There are three more names in
 10 this summary which I'm going to direct your attention to.
 11 I believe that the evidence is that they died in hospital
 12 and that it is not clear whether they were in scene 1 or in
 13 scene 2. The likelihood though is that they were at scene
 14 2. The name is Mr Mohai –
 15 MR CHASKALSON SC: Sorry, Mr Chairperson,
 16 we can positively confirm that Mr Mohai was at scene 2,
 17 we've identified him on the video footage at scene 2.
 18 MR NTSEBEZA SC: I'm greatly indebted to
 19 Mr Chaskalson for that. Do you see page 32, Brigadier,
 20 number 32, Teleng Mohai, post mortem findings, "entrance
 21 wound in back right chest" and then there is commentary,
 22 "injury probably sustained when the victim was in the bend
 23 over position or when the body was flat on the surface" and
 24 then there are further in respect of this, further forensic
 25 findings, if you look at column number 6, "gunshot wound in

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1 back, right abdomen area, bullet trajectory is downwards
 2 across the spinal column, wound in chin" and the reconciled
 3 main cause of death with the LRC experts is that of
 4 "gunshot wound to the chest," do you see that?
 5 BRIGADIER CALITZ: Ek sien dit, mnr die
 6 Voorsitter.
 7 MR NTSEBEZA SC: The next person, I don't
 8 know whether Mr Chaskalson has got anything to assist here
 9 with, is Modisaotsile Sagalala and that will be on page 33.
 10 Now it is one of those in relation to who we said we don't
 11 know whether they were in scene 1 or scene 2, but they died
 12 in hospitals. Do you see there is "gunshot wound in chest"
 13 and then there is "gunshot wound in back of left shoulder,
 14 gunshot wound to left wrist" and then the reconciled main
 15 cause of death position is "gunshot wound to the chest."
 16 Do you see that, Brigadier?
 17 BRIGADIER CALITZ: Ek sien dit, mnr die
 18 Voorsitter.
 19 MR NTSEBEZA SC: Yes, now the last person
 20 is Molefi Ntsoele. Now Molefi Ntsoele's post mortem
 21 findings on page 34, I'm sorry, page 34, "gunshot wounds to
 22 abdomen, gunshot wound to back of left chest, general
 23 direction from upper left side." Further forensic findings
 24 are "wound in chin, neck, entrance wound in back of body,
 25 wound on lower neck." The reconciled position between all

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1 the experts is that the main cause death was attributed to
 2 "gunshot wounds of chest and abdomen, high velocity power."
 3 CHAIRPERSON: Mr Ntsebeza, may I ask you
 4 this, what time are your clients scheduled to leave? I
 5 gather they're leaving on a bus?
 6 MR NTSEBEZA SC: Mr Chairman, I believe
 7 they will leave at half past two.
 8 CHAIRPERSON: Half past two, and how much
 9 longer do you need to round up the point that you're busy
 10 with at the moment? You've now reached the end of the list
 11 of deceased persons that you were taking the witness
 12 through.
 13 MR NTSEBEZA SC: Yes.
 14 CHAIRPERSON: How much longer do you
 15 need? Obviously this cycle of injuries to the various
 16 deceased persons is leading to a point. Now how long is
 17 that going to be?
 18 MR NTSEBEZA SC: Mr Chairman, I think –
 19 CHAIRPERSON: I take it you would like to
 20 finish the point before your clients go?
 21 MR NTSEBEZA SC: Yes, yes, Mr Chairman.
 22 CHAIRPERSON: Now we either adjourn now
 23 and have lunch and try to come back punctually at, say ten
 24 to two or, - well, I'm in your hands, if they're only
 25 leaving at half past two presumably you will be able to

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1 finish the point between say ten to two and when they have
 2 to go, is that correct?
 3 MR NTSEBEZA SC: Yes, Mr Chairman.
 4 CHAIRPERSON: So we'll take the lunch
 5 adjournment now and we must try, I know it is not always
 6 possible but at this occasion we must make it possible, we
 7 must try to resume strictly at ten to two.
 8 [COMMISSION ADJOURNS COMMISSION RESUMES]
 9 [13:55] CHAIRPERSON: Brigadier, you're still
 10 under oath.
 11 ADRIAAN MARTHINUS CALITZ: s.u.o.
 12 CHAIRPERSON: Mr Ntsebeza.
 13 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 14 Thank you, Mr Chairman. I'll cut to the chase, Mr
 15 Chairman. Now Brigadier –
 16 CHAIRPERSON: Before you proceed, is it
 17 possible for that door there, the left-hand door as I face
 18 the wall there to be opened so we can get some air,
 19 particularly as the air-conditioner isn't on. I think
 20 there is an air-conditioners, there are air-conditioners in
 21 the, fans and so on in the foyer there. Otherwise it gets
 22 very unpleasant. Mr Ntsebeza, sorry about that
 23 interruption.
 24 MR NTSEBEZA SC: Thank you, Mr Chairman.
 25 Now Brigadier, we have now gone through the records, post

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1 mortem records of about 32 people and there is no doubt
 2 that all 32 were shot and killed on the 16th of August at
 3 scene 1 and at scene 2, something which is common cause.
 4 Now as operational commander did you get to know on that
 5 day the extent of the injuries sustained by those who died?
 6 BRIGADIER CALITZ: Nee, mnr die
 7 Voorsitter, nie op daardie dag nie.
 8 MR NTSEBEZA SC: I see. Other than today
 9 – well, let me not put it on that basis. When did you get
 10 to know the details of how these people met their death,
 11 the ones now we have gone through?
 12 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 13 sal nie 'n datum kan bepaal. Ons sal moet gaan kyk wanneer
 14 die post mortem verslae uitgekome het, die redes en daardie
 15 goed. Ek kan nie nou vir u sê op watter stadium dit –
 16 MR NTSEBEZA SC: Was it last year
 17 already, or this year?
 18 BRIGADIER CALITZ: Ek sal werklik vir u
 19 nie kan sê. Ek – dit kan dalk hierdie jaar wees. Ek kan
 20 rêrig nie vir u sê nie, nee.
 21 MR NTSEBEZA SC: Was it before you came
 22 to testify?
 23 BRIGADIER CALITZ: Dat die verslae uit
 24 is?
 25 MR NTSEBEZA SC: Was it before the 18th of

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1 August 2012 when you addressed for instance your -
 2 BRIGADIER CALITZ: Nee, meneer –
 3 MR NTSEBEZA SC: - your members of your
 4 police?
 5 BRIGADIER CALITZ: Nee, mnr die
 6 Voorsitter, dit was twee dae na die voorval, daardie. Dit
 7 kon nog nie uit gewees het nie.
 8 MR NTSEBEZA SC: Now when you got to know
 9 the details, did it strike you, as it has struck me, that
 10 almost all the people who got killed on that day were
 11 killed on the basis of these reports, because they were
 12 shot either in the head or certainly in their upper bodies?
 13 BRIGADIER CALITZ: Ek het dit wel in die
 14 verslae waargeneem later.
 15 MR NTSEBEZA SC: So before you came to
 16 testify, it has been known to you that all of the people
 17 who died on the 16th died as a result of wounds inflicted on
 18 them either to their heads or faces, or certainly to their
 19 upper bodies?
 20 BRIGADIER CALITZ: Soos ek sê, mnr die
 21 Voorsitter, dit wat in die verslae staan het ek dit so
 22 verneem.
 23 MR NTSEBEZA SC: Now I'm not saying it
 24 has been your case because I think that has been now
 25 clarified, but it seems to me that you have not been

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1 unsupportive of a view that the police in killing these
 2 mineworkers were acting in self-defence. Do you hold that
 3 view? Just as an opinion.
 4 CHAIRPERSON: Before you answer,
 5 Brigadier, Mr Semenya has turned his light on.
 6 MR SEMENYA SC: I don't understand the
 7 question, Chair, that he was unsupportive of that defence.
 8 CHAIRPERSON: Perhaps you can clarify,
 9 the question is a little bit unclear. Perhaps you could
 10 clarify for the benefit of the witness and Mr Semenya.
 11 MR NTSEBEZA SC: Yes, Mr Chairman, thank
 12 you very much. Thanks, my learned colleague. Brigadier,
 13 the position is this; do you hold the view that the police
 14 in inflicting the wounds that caused the deaths of these
 15 34, 32 people we had talked about, did so because they were
 16 defending themselves?
 17 MR SEMENYA SC: The witness's answer and
 18 opinion is totally irrelevant. It seeks to answer the
 19 question which has been tasked the Commission to answer.
 20 CHAIRPERSON: Mr Ntsebeza, isn't this the
 21 point we traversed before the lunch adjournment that I said
 22 I'm not interested in his opinion –
 23 MR NTSEBEZA SC: Thank you. Thank you,
 24 Mr Chairman –
 25 CHAIRPERSON: - his impression or his

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1 opinion. It's something we've got to form an opinion on
 2 ourselves on the evidence and his conclusion not only
 3 doesn't bind us, it's really irrelevant as far as we are
 4 concerned. So I think the objection, and subject to what
 5 you may wish to say –
 6 MR NTSEBEZA SC: Yes. No, no, Mr
 7 Chairman –
 8 CHAIRPERSON: I think the question can be
 9 perhaps, should be – if you want to ask something along
 10 those lines you must reformulate the question in a way that
 11 avoids the objection.
 12 MR NTSEBEZA SC: No, Mr Chairman, thank
 13 you very much. May I just say that as an experienced
 14 police officer who knows what specialised units, their
 15 training, as I asked you earlier, their skill, would it be
 16 fair to put to you that TRT members are trained not to
 17 panic even under pressure in an environment where they are
 18 deployed to deal with a volatile situation? Would it be
 19 fair to say part of their training is that they must try
 20 and maintain coolness even under extreme pressure?
 21 BRIGADIER CALITZ: Mnr die Voorsitter, as
 22 ek kan getuig, ek dink dit is die opleiding van enige
 23 polisiebeampte dat ons daaglikse taak is waar ons
 24 blootgestel word aan gevaar en, so ek sal sê korrek.
 25 MR NTSEBEZA SC: And TRT, NIU, STF even

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1 more so because they are being trained for specialised
2 operations, would you agree?
3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 ja, ek is nie heeltemal – as ek die woord net, “convinced”
5 of ek is nie heeltemal ingelig oor presies die
6 opleidingscurriculum van die NIU en die STF en wat dit
7 fisies behels nie, maar ek glo dat hulle dieselfde
8 opleiding kry, asook ook dan 'n beter gevorderde opleiding
9 as die TRT.
10 MR NTSEBEZA SC: Yes. No, what I'm
11 saying, Brigadier, is simply that, you know, there would be
12 that measure of difference towards better and more training
13 for a person who was a specialised unit member and an
14 ordinary policeman.
15 BRIGADIER CALITZ: Daar is 'n verskil –
16 MR NTSEBEZA SC: That should go without
17 saying –
18 BRIGADIER CALITZ: Daar is 'n verskil
19 tussen die spesialis eenhede se opleiding en dan 'n gewone
20 polisie lid, soos u dit stel.
21 MR NTSEBEZA SC: And not to make a fine
22 point of it, I mean they carry those deadly weapons,
23 weapons of war, it has been referred to by Warrant-Officer
24 Wessels.
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 daar kan ek nou nie saamstem nie want enige polisiebeampte,
2 selfs jou persone wat op 'n gewone klagte patrollievoertuig
3 ry het dan ook dieselfde handwapen en R5 gewere.
4 MR NTSEBEZA SC: No, Brigadier, I thought
5 this is a matter on which really we could agree. R1
6 rifles, R5 rifles are deadly weapons. They are weapons of
7 war.
8 BRIGADIER CALITZ: Ek het nie gesê hulle
9 is nie dodelik nie. Ek het net gesê u sê uitsluitlik hulle
10 dra dit, toe sê ek vir u nee, nie uitsluitlik nie –
11 MR NTSEBEZA SC: No, no, no -
12 BRIGADIER CALITZ: - ook die –
13 CHAIRPERSON: You must give him a chance
14 to answer. The point he's making is you suggested to him
15 the specialised units are the only ones that carry these
16 weapons and he's saying that's not so; ordinary policemen
17 in patrol vans have them as well, but he didn't disagree
18 with your proposition that they can be described as weapons
19 of war, they are assault rifles, and so on. So the facts
20 you're trying to establish he's admitted. You're having an
21 argument with him –
22 MR NTSEBEZA SC: Thank you, Mr Chairman.
23 It's just a –
24 CHAIRPERSON: - about something that you
25 don't need to.

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1 MR NTSEBEZA SC: - of expression, but
2 what I meant is, you know, from TRT, NIU, and STF units,
3 those people are not only well trained, but they are
4 trained in the usage of those kinds of weapons.
5 BRIGADIER CALITZ: Mnr die Voorsitter,
6 ja, as ek die vraag kan direk antwoord, hulle is opgelei in
7 daardie wapens, die R5, maar so ook al die VISPOL lede.
8 MR NTSEBEZA SC: Yes.
9 BRIGADIER CALITZ: Hulle is net op 'n
10 beter opleiding, soos ek voorheen getuig het.
11 CHAIRPERSON: Sorry to interrupt. I did
12 say a few minutes ago that you agreed that these are
13 weapons of war. Am I correct, or am I misstating what
14 you're saying? It's probably just a technical point, but
15 we've got to be very accurate.
16 BRIGADIER CALITZ: Mnr die Voorsitter,
17 ja, miskien nie “weapons of war” nie. Dit is nie wat die
18 woorde – ek het net gesê dit is 'n aanvalsgeweer wat dan
19 ook op stasievlak – ek het verwys na 'n patrollievoertuig,
20 wat dan beslis nie “weapons of war” is nie. So as ek dit
21 kan duidelik stel.
22 MR NTSEBEZA SC: I'll accept assault
23 rifles, and that is the context in which an expert from
24 SAPS described what assault rifle is. Now the only thing I
25 want to put to you, knowing that you were not there, is

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1 that we will argue that the action of the police in
2 inflicting the wounds that we have now gone through on all
3 of those victims, was totally disproportionate and that is
4 what we will argue, and I just want to put it to you as a
5 person who was in operational command on the day. You may
6 comment on that if you want to.
7 CHAIRPERSON: Do you wish to comment on
8 that, Brigadier?
9 BRIGADIER CALITZ: Mnr die Voorsitter,
10 nee, ek kan miskien vra of hy net kan herhaal, die
11 proposisie wat u sê “disproportional,” as u dit dalk vir my
12 kan verduidelik, maar as ek dit –
13 CHAIRPERSON: He didn't say
14 disproportionate of what – sorry to interrupt, Brigadier –
15 BRIGADIER CALITZ: Ja, en toe ons –
16 CHAIRPERSON: The question was
17 incomplete. You said it was disproportional, or
18 disproportionate I suppose is more correct. You didn't say
19 disproportionate to what and he wants to know that, which
20 seems a fair request, before he answers the question.
21 BRIGADIER CALITZ: Dit is die enigste,
22 ja, mnr die Voorsitter.
23 MR NTSEBEZA SC: Now we are saying given
24 what we now know, the weapons that were found in scene 1
25 and in scene 2, even accepting that those were the weapons

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1 that were found, the usage of lethal firepower, R1 rifles,
 2 R5 rifles, shotguns, was disproportionate, even assuming
 3 that the police were coming under attack, which of course
 4 we are denying.
 5 CHAIRPERSON: Sorry, you still haven't
 6 finished the question. Maybe I can help you, and if I'm
 7 helping you incorrectly, please say so. What you're
 8 asking, I think, is you're suggesting that you're going to
 9 argue, you say you're going to argue that the use of all
 10 that firepower, all those assault rifles and so forth,
 11 against a group of people who were approached, armed as
 12 they were with the weapons described, was disproportionate
 13 to the threat which they posed. I think that's what you're
 14 asking.
 15 MR NTSEBEZA SC: That is on the
 16 assumption that –
 17 CHAIRPERSON: Yes, yes, yes, sorry,
 18 you've already made it clear, I think –
 19 MR NTSEBEZA SC: Ja, yes.
 20 CHAIRPERSON: - that these questions are
 21 posed, or based upon a proposition that you don't accept,
 22 but for the purposes of this part of your cross-
 23 examination, for the sake of the argument you are accepting
 24 it without admitting it to be correct. So on the
 25 assumption that the threat was posed, you say that the use

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1 of all this firepower to a threat, or alleged threat posed
 2 by these approaching strikers, armed as they were, was
 3 disproportionate. That's your question. Am I right?
 4 MR NTSEBEZA SC: That's the basic one.
 5 MR SEMENYA SC: And I still raise the
 6 same objection. That's for the Commission to determine.
 7 CHAIRPERSON: He was the operational
 8 commander. I think I'll allow him to answer the question.
 9 What the value of the answer will be is a matter you can
 10 argue later, but I'd prefer to let him answer because it
 11 will be safer that way. Yes, Brigadier, do you agree with
 12 the proposition put?
 13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter, ek stem nie saam met die stelling wat gemaak is
 15 nie.
 16 MR NTSEBEZA SC: Mr Chairman, I want to
 17 move to something else. Brigadier, where I want to get to
 18 is just an examination of what you will find in your bundle
 19 under the head "Shotgun victims."
 20 BRIGADIER CALITZ: Was this under your
 21 second request, or first request?
 22 MR NTSEBEZA SC: Mr Chairman, we would
 23 like to make this a new exhibit.
 24 BRIGADIER CALITZ: Mnr Ntsebeza, ek het
 25 gevra was dit onder u eerste versoek of u tweede versoek

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1 wat u deurgestuut het? As u my net daar kan help.
 2 MR NTSEBEZA SC: I think –
 3 BRIGADIER CALITZ: Of hoe het u dit
 4 gestel, wat is die "exhibit" –
 5 MR NTSEBEZA SC: It is under the head
 6 "Shotgun victims."
 7 CHAIRPERSON: This is behind the green
 8 marker, is it, in the file? This will now be –
 9 MR NTSEBEZA SC: Yes.
 10 CHAIRPERSON: Adv Pillay, can you help
 11 me? This will be KKK?
 12 MS PILLAY: KKK11.
 13 CHAIRPERSON: 11. So how do I describe
 14 it? Photographs of shotgun victims, is it? Is that
 15 correct, Mr Ntsebeza? How do I describe it?
 16 MR NTSEBEZA SC: Yes, Mr Chairman.
 17 CHAIRPERSON: Alright, now if these
 18 photographs are going to be put up on the screen, some kind
 19 of warning will be required.
 20 MR NTSEBEZA SC: Yes, Mr Chairman, I
 21 think so.
 22 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 23 wil net seker maak dalk, dis reg, in die eerste versoek,
 24 die "bundle" na my toe, het u dit gesit onder 'n "heading,"
 25 "PowerPoint presentation pertaining to the location of the

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1 shotgun victims and the nature of their injuries." Is dit
 2 die een waarna u verwys?
 3 CHAIRPERSON: Before we get there, we've
 4 got a file, I wonder whether our file is the same as yours.
 5 We've got a file that started off with the Ramanala
 6 photographs which were referred to. Then we've got a
 7 section dealing "Deceased 16 August 2012," those are the
 8 pages which Mr Ntsebeza was going through. Then behind the
 9 next card as it were in the file is a section which is
 10 headed, "The shotgun victims"
 11 [14:15] CHAIRPERSON: And it consists of a series
 12 of photographs.
 13 BRIGADIER CALITZ: Ek het hom, mnr die
 14 Voorsitter, ja.
 15 CHAIRPERSON: Now the –
 16 BRIGADIER CALITZ: Dit is korrek so.
 17 CHAIRPERSON: I've had a quick look at
 18 this and some of them are the kind of photographs which are
 19 likely to cause alarm and distress and pain actually to
 20 people who were relatives or loved ones of the people so
 21 depicted. So it is similar to the ones you've given
 22 before, if anyone here feels that he/she is likely to
 23 experience pain and distress at these photographs being
 24 shown, screened on the screen, then I would suggest they
 25 take advantage of the opportunity to leave now and I will

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1 ask Mr Ntsebeza to kindly translate that into Xhosa and
 2 when he is finished to give those who wish to leave an
 3 opportunity to do so, and I'll ask him only to proceed when
 4 he is satisfied that all those who wish to leave have had
 5 enough time to do so. Yes, thank you, Mr Ntsebeza.
 6 MR NTSEBEZA SC: Thank you, Mr Chairman.
 7 CHAIRPERSON: It doesn't look as if
 8 anyone wishes to leave, so I can imagine it would be in
 9 order for you to proceed, but while we're on the subject of
 10 that, you told me the bus leaves at half past two, does
 11 that mean they've got to leave the chamber at half past two
 12 or shortly before that, because I think just before they
 13 leave we should adjourn so that they can walk out silently.
 14 MR NTSEBEZA SC: Yes.
 15 CHAIRPERSON: So when the time for their
 16 departure arrives would you please let me know so that I
 17 can address a few words to him before they go? You may
 18 proceed now, Mr Ntsebeza, I take it.
 19 MR NTSEBEZA SC: Thank you, Mr Chairman.
 20 Now before we put the pictures can we just recall the
 21 evidence on page T17468, T17468 to T17470? Ja, can we get
 22 that?
 23 CHAIRPERSON: Ja, there is no need
 24 waiting for it if we're not going to see it but if we're
 25 going to see it then, I'll give you a minute more.

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1 MR NTSEBEZA SC: It is relevant to cross-
 2 examination of the brigadier, I think it was on the first
 3 day of his cross-examination by Mr Budlender. I'm told to
 4 announce, it was day 155.
 5 CHAIRPERSON: What page do you want, Mr
 6 Ntsebeza?
 7 MR NTSEBEZA SC: It is 17468.
 8 CHAIRPERSON: 17468?
 9 MR NTSEBEZA SC: Yes, Mr Chairman.
 10 CHAIRPERSON: Yes, we've not got it, what
 11 line do you want to refer to?
 12 MR NTSEBEZA SC: It is line 4?
 13 CHAIRPERSON: Are you dealing with the
 14 shotgun pellets?
 15 MR NTSEBEZA SC: Yes, Mr Chairman.
 16 CHAIRPERSON: As we can see it is in line
 17 4 –
 18 MR NTSEBEZA SC: There we are, 4, now
 19 you'll remember giving that evidence. Now if we go down,
 20 scroll down –
 21 CHAIRPERSON: You have got the
 22 transcripts in front of you, do you, Brigadier?
 23 BRIGADIER CALITZ: Ek het my transkripsie
 24 lêer voor my, mnr die Voorsitter.
 25 CHAIRPERSON: Yes, good.

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1 MR NTSEBEZA SC: So, Brigadier, the
 2 question then arises, "How does one explain the fact that
 3 at least six strikers were shot with shotgun pellets at
 4 scene 1 and 2?"
 5 CHAIRPERSON: You're reading, Mr
 6 Ntsebeza, from line 4?
 7 MR NTSEBEZA SC: Yes, Mr Chairman.
 8 CHAIRPERSON: On that page, okay, and
 9 then the brigadier then answers, are you going to read his
 10 answer as well or do you want me to, Mr Ntsebeza?
 11 MR NTSEBEZA SC: Yes, Mr Chairman, if you
 12 could?
 13 CHAIRPERSON: "Mnr die Voorsitter, na die
 14 tyd, as ek my opinie kan gee daarop, is dat ons weet dat op
 15 die Sondag het die aanval plaasgevind tussen AMCU en NUM en
 16 ons was," I'll translate this, "Mr Chairman, after the
 17 time, if I can give my opinion on that, we know that on the
 18 Sunday the attack took place between AMCU and NUM and we
 19 were," and then I interposed and said, "I'm not sure it was
 20 between AMCU and NUM, but we do know that people who
 21 appeared to have been strikers attacked the two security
 22 guards who were in the employ of Lonmin and I think may
 23 have been the members of NUM, but anyway they were Lonmin
 24 employees, security guards, and they were killed at the
 25 scene, we know about it," and you said, "Ek onttrek wat ek

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1 nou gesê het," I withdraw what I now said.
 2 "Die protestors het dan die NUM persone of die
 3 sekuriteitspersoneel aangeval op die Sondag en ons weet dat
 4 twee van hulle haelgewere dan geneem is." "The protestors
 5 then attacked the NUM people or the security staff on the
 6 Sunday and we know that two of their shotguns were then
 7 taken." You went on, "Daar was ook aan my meegedeel dat
 8 die personeel van Lonmin wel gebruik gemaak het van, soos u
 9 dit stel, pellets." "It was also communicated to me that
 10 the staff of Lonmin indeed made use of, as you put it,
 11 pellets." You continued, "Die afleiding wat ons het is dat
 12 die groep protestors dieselfde groep moontlik kon gewees
 13 het en hulle dit dan gebruik het in die aanval tot die
 14 polisie."
 15 "The inference which we have made is that the
 16 group of protestors could possibly have been the same group
 17 and that they then used it," I take it by "it", it is meant
 18 the shotguns, "in the attack on the police." Is that the
 19 passage you're busy with, Mr Ntsebeza?
 20 MR NTSEBEZA SC: Yes, Mr Chairman, I'm
 21 indebted –
 22 CHAIRPERSON: I endeavoured to translate
 23 the Afrikaans for you as went along.
 24 MR NTSEBEZA SC: And if you could just
 25 read also the –

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1 CHAIRPERSON: Mr Budlender then said,
 2 this is now on page 17469, line 2, "So the explanation
 3 you're offering is that the strikers who were shot and
 4 killed with shotgun pellets on the 16th were shot and killed
 5 by their own people," and you said, "Korrek, mnr die
 6 Voorsitter," "Correct, Mr Chairman."
 7 MR NTSEBEZA SC: Yes.
 8 CHAIRPERSON: And then Mr Budlender said,
 9 "Is there any evidence to support that hypothesis," and Mr
 10 Semenya then, -
 11 MR NTSEBEZA SC: Yes, that's the one -
 12 CHAIRPERSON: I don't know if you want me
 13 to read that?
 14 MR NTSEBEZA SC: No, if I have to ask you
 15 to read anything it will be later on whereafter the debate
 16 was engaged in as to whether there is evidence or no
 17 evidence, but for purposes of my cross-examination I think
 18 it is sufficient to ask the brigadier now his evidence, on
 19 the basis of the passage you have read up to where Mr
 20 Budlender asked him whether he is giving an explanation.
 21 Is it your evidence that according to your thinking the
 22 strikers were shot and killed with birdshot at scene 1,
 23 were shot by one or more or the strikers themselves? Is
 24 that what that passage is seeking to convey?
 25 BRIGADIER CALITZ: Mnr die Voorsitter, -

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1 CHAIRPERSON: The passage he refers to is
 2 the passage for the record-
 3 BRIGADIER CALITZ: Ek het -
 4 CHAIRPERSON: - which I endeavoured to
 5 translate.
 6 BRIGADIER CALITZ: Ek het hom so, Meneer.
 7 Hy het verwys na birdshot waar ek verstaan het pellets,
 8 maar ek sal hom antwoord. My getuienis bly dieselfde as op
 9 daardie stadium, mnr die Voorsitter.
 10 MR NTSEBEZA SC: Let me ask it again. Is
 11 it your evidence that those strikers who were shot with
 12 shotguns, pellets at scene 1 were shot by one or more of
 13 the strikers themselves?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 korrek, my stelling is dieselfde as wat ek in daardie
 16 paragraaf gesê het.
 17 CHAIRPERSON: Counsel is just making
 18 clear, endeavouring to make it clear whether you're stating
 19 that as a positive fact that the strikers who were shot by
 20 pellets at scene 1 on the 16th were shot and killed by some
 21 of their fellow strikers?
 22 BRIGADIER CALITZ: Nee, mnr die
 23 Voorsitter, ek het nie gesê dit is 'n "positive fact" nie,
 24 ek het net gesê ek hou by wat ek getuig het, met ander
 25 woorde dit was my enigste afleiding wat ek gemaak het. Dit

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1 was my opinie, as ek dit so kan stel.
 2 MR NTSEBEZA SC: Now -
 3 CHAIRPERSON: Sorry, Mr Ntsebeza, before
 4 we can continue, it is now 2:30, I don't know what the
 5 position is in regard to your clients leaving, I understand
 6 this is an important point but if they've got to leave
 7 they've got to leave. If on the other hand the bus is
 8 waiting for them and they're not going to miss the bus,
 9 then you can carry on but -
 10 MR NTSEBEZA SC: I'm told there is
 11 flexibility -
 12 CHAIRPERSON: I see -
 13 MR NTSEBEZA SC: - up to three o'clock.
 14 CHAIRPERSON: Okay, I see, alright, well,
 15 then carry on.
 16 MR NTSEBEZA SC: Can I then ask this, I
 17 would like to clarify my own mind not being trained in
 18 these things and you can assist us. Now shotguns, are
 19 those the same things as what is sometimes used, I mean is
 20 sometimes called pump actions, shotguns?
 21 BRIGADIER CALITZ: Ek glo dit sal
 22 dieselfde wees na wat u verwys, korrek.
 23 MR NTSEBEZA SC: Yes, now there is a
 24 difference, - is there is a difference between rubber
 25 bullets and rubber balls?

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
 2 nee, daar is nie, rubber balls, as u verwys na die rondtes
 3 wat die polisie gebruik, -
 4 MR NTSEBEZA SC: Yes -
 5 BRIGADIER CALITZ: - is dit 'n blou
 6 rondte, -
 7 MR NTSEBEZA SC: Yes -
 8 BRIGADIER CALITZ: - ons praat van 'n
 9 rondte, miskien is dit die bullet waarna u verwys, dit is
 10 nie 'n bullet nie, dit is 'n, ons verwys na blou rondtes en
 11 binnekant die is dan 'n lading wat twee sagte balle, kan ek
 12 dit in soveel terme stel, dat u kan dit voel met u vingers,
 13 nou nie sag-sag nie, maar dit kan compress, en die twee
 14 balletjies is dan bo op die lading geplaas en sou dit
 15 afvuur dan sou die haelgeweer die twee balletjies dan uit
 16 vuur. So die rubber balls waarna u verwys is binne in die,
 17 wat ons dan verwys na die haelgeweer rondte.
 18 MR NTSEBEZA SC: Yes, now -
 19 BRIGADIER CALITZ: Dit is twee aparte
 20 verskillende goed.
 21 MR NTSEBEZA SC: Do SAPS have or did they
 22 use to have rubber bullets in the form of sharp pointed
 23 rubbers which were used?
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 nee, vandat ek aangesluit het in die polisie was daar nog

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1 nooit, waarom ek bewus was skerp punt rubber, ek dra nie
2 kennis daarvan nie.

3 MR NTSEBEZA SC: So whenever one talks
4 about rubber bullets and rubber balls one is talking about
5 the same thing, is that the evidence?

6 BRIGADIER CALITZ: Dit is korrek, dit is
7 –

8 CHAIRPERSON: The evidence we had was
9 that up to, apparently, recently, before the 16th of August
10 2012 the police also used rubber pellets which were
11 effectively also described as rubber bullets, but they were
12 then discontinued pursuant to a directive issued by the
13 National Commissioner. Judging by recent press reports it
14 would appear that some of the Metropolitan Police Forces in
15 this province still use the rubber bullets but I think it
16 is correct, is it not, that the South African Police
17 Service haven't used them, or are certainly not suppose to
18 use them, since the directive was issued by the National
19 Commissioner which is an exhibit before us, that's correct,
20 isn't it?

21 BRIGADIER CALITZ: Mnr die Voorsitter,
22 die enigste verskil is dat, waarna u verwys, die rubber
23 pellets, hulle was nooit rubber nie. Ons het vorige
24 rondtes gehad, ek getuig onder korreksie, dit is wat, die
25 woord wat die advokaat nou-nou gebruik het, die "birdshot".

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1 Dit was, ek is totaal onder korreksie, daar is instruktors
2 en beter mense, as ek uit my geheue uit kan onthou van
3 omtrent 15, 20 jaar terug, dit was 'n groen rondte wat dan
4 donshael was. Die donshael het omtrent 270 korreltjies,
5 dit is soos sout lading gehad. Die volgende een was dan
6 AAA wat ons verwys het, 'n rooi rondte en hy het so 70, 76,
7 80 klein balletjies ingehad wat nie rubber, maar metaal
8 balletjies.

9 [14:35] En dan is die SSG, die swart rondte wat 'n minder
10 lading het, ek dink dis iets soos 18 of 20, ek praat onder
11 korreksie, metaal balletjies ingehad het. So dit was dan
12 die verskillende stappe. Die rubber wat ons gehad het was
13 op daardie stadium stoppers. Dit is 'n 37mm stopper geweer
14 wat lyk soos 'n traangasgranaat en hy het 'n soliede stuk
15 rubber, kan ek voorstel soos die bottel, miskien bietjie
16 dunner net, maar dan 'n soliede plat voorkant, plat
17 agterkant, en 'n soliede stuk – dit is waarna ons verwys
18 het, die stoppers. Dit was die rubber en die
19 haelgeweerrondtes wat ons op daardie stadium gebruik het.

20 CHAIRPERSON: So the English word I think
21 is projectile. Is that correct? Rubber projectile.

22 BRIGADIER CALITZ: Ja, die dop.

23 CHAIRPERSON: In any event, we've now had
24 a little lecture on the matter, but does it help you to
25 formulate your question with precision?

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1 MR NTSEBEZA SC: Yes, it does. It does,
2 Mr Chairman. I think I do understand the Brigadier. Now,
3 Brigadier, birdshot pellets, now that's something different
4 to everything else that we have been talking about.
5 Birdshot pellets are small rounded, small –

6 BRIGADIER CALITZ: Kan ek u help, Meneer?
7 Dit is wat ek nou net vir u verduidelik het, "birdshot" en
8 "pellets" is twee verskillende. "Birdshot" sal wees 'n
9 soutlading, dit is omtrent 270 korreltjies fyn lading, waar
10 "pellets" dan metaal, dit is hoe ek dit het, wat tans
11 gebruik word deur sekuriteitsmaatskappye en ek dink as ek
12 dit nie mis het nie, het Lonmin gesê, die persoon wat
13 daardie dag hier was, dat hulle dit ook nog gebruik. So
14 dit is bietjie 'n groter lading.

15 CHAIRPERSON: In fact can I cut this
16 point short? We know that people were killed with pellets,
17 with the details we had before lunch. Now there are, I
18 would suspect, three possible sources of those who have got
19 pellets. The one that you mentioned, you suggested some of
20 the miners may well have been in possession of shotgun,
21 pellet shotguns, because of the incident on the 12th when
22 Lonmin security staff were killed and their shotguns were
23 taken by a group presumably of strikers. So that would
24 then indicate that some of the strikers may well have been
25 in possession of shotguns, which they could have used on

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1 the 16th.

2 BRIGADIER CALITZ: Korrek, mnr die
3 Voorsitter.

4 CHAIRPERSON: Second possible source are
5 the Lonmin people. We saw a few days ago on the screen
6 video clips of Lonmin security staff in possession of
7 shotguns and it was admitted by a representative of Lonmin
8 that they were in possession of, their staff were in
9 possession of shotgun bullets, and then the third
10 possibility, which you discounted quite strongly, was that
11 some of the members of the police service who were in
12 possession of shotguns which they were supposed to use for
13 firing stun grenades and teargas canisters and rubber
14 balls, might theoretically have been in possession also of
15 rubber bullets, but you discounted that and you gave
16 reasons why you were of the view that that was an unlikely
17 scenario. Is that a correct summary of your evidence?
18 Sorry, I get the terminology wrong; it's rubber pellets.

19 BRIGADIER CALITZ: Ek het dit so
20 verstaan, mnr die Voorsitter.

21 CHAIRPERSON: This projectile actually.

22 BRIGADIER CALITZ: Dit is korrek, mnr die
23 Voorsitter, die blou rondtes.

24 CHAIRPERSON: So there were effectively
25 three possible sources of these pellets. The strikers are

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1 the one that you preferred for reasons I think you gave.
 2 Of course we can't on the evidence before us eliminate the
 3 Lonmin security people, not on the evidence we have at the
 4 moment before us. That's a possibility. And the third
 5 one, there's also a possibility, that you gave your reasons
 6 for rejecting it as a reasonable possibility, that some of
 7 the members of the police service might surreptitiously, as
 8 it were, have obtained possession of rubber pellets and
 9 used them in their shotguns in addition to firing what they
 10 were supposed to fire. Is that a correct summary of your
 11 evidence? I've got my terminology wrong, but Adv Hemraj
 12 will correct me, repeat what she just told me off
 13 microphone so that there isn't any further confusion.
 14 COMMISSIONER HEMRAJ: I think the
 15 evidence was that Lonmin said that their personnel had
 16 birdshot and that was one of the possibilities that was
 17 posed.
 18 BRIGADIER CALITZ: I think it's in the
 19 same transcript –
 20 COMMISSIONER HEMRAJ: Yes.
 21 BRIGADIER CALITZ: - if we can – "I had
 22 pellets," but I might be mistaken, but we can find it.
 23 COMMISSIONER HEMRAJ: Yes, alright.
 24 CHAIRPERSON: What I'm saying to you,
 25 apparently there are three possible sources and you have

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1 given your reasons for saying that only one of those
 2 sources is the one that one should take realistically. The
 3 question that immediately arises is it's not possible
 4 surely on the material before us at this stage to say that
 5 the Lonmin people didn't, definitely didn't fire the
 6 pellets. Isn't that so? It's a possibility which will
 7 presumably be dealt with later in evidence, but one can't
 8 discard it at this stage without more. Is that right?
 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 10 dink waarna die – ek dink dit was mnr Budlender wat daarna
 11 verwys het, is die foto's wat ek gesien het en ons het die
 12 persone in uniform gesien wat dan op "scene" 2 was, en dit
 13 was dan bevestig deur Lonmin dit is hulle personeel en dat
 14 hulle haelgewere het met "pellets." So dit was die opsie,
 15 dis die tweede een wat u –
 16 CHAIRPERSON: Yes, that's a possibility.
 17 And there's the third one, which you don't like and you
 18 gave reasons for thinking we shouldn't take it seriously,
 19 was that there may have been some members of the police
 20 service who were surreptitiously in possession of pellets,
 21 which they shouldn't have had, and which they fired off in
 22 their shotguns. If they had been in possession of pellets,
 23 they could have done so with the weapons available to them.
 24 Is that correct too?
 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 dink ek het getuig daardie is jare terug onttrek, so die –
 2 CHAIRPERSON: No, no, no, I know you gave
 3 your reasons –
 4 BRIGADIER CALITZ: Oukei, nee, ek stem
 5 saam.
 6 CHAIRPERSON: I'm not suggesting your
 7 reasons are wrong. I've got an open mind on that, but it's
 8 a possible source of – right. Mr Ntsebeza, I hope that
 9 helps you and doesn't hinder you.
 10 MR NTSEBEZA SC: I don't think so, Mr
 11 Chairman. It doesn't hinder me. KKK11, which is this new
 12 exhibit we are referring to, I think page 13 thereof, can
 13 you show up page – KKK11. Yes, now typically what would
 14 cause those kinds of injuries or wounds? Is it pellets or
 15 birdshot?
 16 BRIGADIER CALITZ: Is dit die vraag aan
 17 my?
 18 MR NTSEBEZA SC: Yes, I'm sorry –
 19 BRIGADIER CALITZ: Ek weet nie of u 'n
 20 stelling maak en of u 'n vraag vra nie. Ek is jammer.
 21 MR NTSEBEZA SC: No, I was just seeking
 22 to find out from you what kind of shot would that be.
 23 Would it be birdshot, in the context of it is came from a
 24 shotgun?
 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 kan net raai. As ek moet sê, ek dink "birdshot" is 'n
 2 fyner, so dit kan "pellets" wees, maar ek weet nie watter
 3 nie. Dit kan miskien – ek is nie 'n ekspert op die wonde,
 4 hoe dit lyk as 'n persoon geskiet word met "pellets," so
 5 nee, maar dit is moontlik. Dit is moontlik, as dit my
 6 beste getuienis kan wees.
 7 MR NTSEBEZA SC: In your sort of limited
 8 knowledge, could it have been caused by rubber balls?
 9 BRIGADIER CALITZ: Nee, mnr die
 10 Voorsitter.
 11 MR NTSEBEZA SC: The rubber balls are
 12 those you referred to, there are about two of them that are
 13 in a casing?
 14 BRIGADIER CALITZ: Ja, dit sal 'n
 15 "distinct" ander merk los as wat ons hier sien.
 16 MR NTSEBEZA SC: I see. And pellet
 17 cartridges, are they a different colour from rubber balls?
 18 Pellet cartridges.
 19 BRIGADIER CALITZ: Soos ek getuig het,
 20 jare terug toe ons hulle gehad het toe was die rubber, soos
 21 ek gesê het die blou. Die "birdshot," onder korreksie
 22 weereens, was groen. Die "pellets" –
 23 MR NTSEBEZA SC: Was red.
 24 BRIGADIER CALITZ: - die AAA was rooi en
 25 die SSG, die meer – was swart.

<p style="text-align: right;">Page 18556</p> <p>1 MR NTSEBEZA SC: Okay.</p> <p>2 BRIGADIER CALITZ: So jy het 'n swart,</p> <p>3 groen, rooi gehad wat duidelik dan uitkenbaar was van die</p> <p>4 rubber. Wat die kleur is wat tans gebruik word deur die</p> <p>5 persone wat dit nog gebruik, dra ek nie kennis nie.</p> <p>6 MR NTSEBEZA SC: I see. No, I think I –</p> <p>7 I'm still confused about these pellets, these, that, but</p> <p>8 you know, I think I get a sense now. Now if you'll just</p> <p>9 bear with me, Brigadier. Would it be fair to say that</p> <p>10 birdshot rounds are also fired from a shotgun?</p> <p>11 BRIGADIER CALITZ: Dit kan een van die,</p> <p>12 met 'n haelgeweer afgeskiet word, as dit die vraag is.</p> <p>13 MR NTSEBEZA SC: And would it also be</p> <p>14 fair and safe to say also pellets can be fired from a</p> <p>15 shotgun?</p> <p>16 BRIGADIER CALITZ: Korrek, mnr die</p> <p>17 Voorsitter.</p> <p>18 MR NTSEBEZA SC: Now I don't know whether</p> <p>19 this is a matter of contestation. There were quite a</p> <p>20 number of police officers from the SAPS at scene 1 who were</p> <p>21 carrying shotguns. I think you said as much also.</p> <p>22 BRIGADIER CALITZ: Korrek, mnr die</p> <p>23 Voorsitter.</p> <p>24 MR NTSEBEZA SC: Now I've looked at</p> <p>25 exhibit L and I'm sure in the course of your exercise when</p>	<p style="text-align: right;">Page 18558</p> <p>1 BRIGADIER CALITZ: As u bedoel 'n</p> <p>2 "proposition," of u wil hê ek moet daar saamstem?</p> <p>3 MR NTSEBEZA SC: Well, in the evidence,</p> <p>4 unless I understand your evidence well –</p> <p>5 BRIGADIER CALITZ: Nee, ek wil net die</p> <p>6 woordjie "proposition" –</p> <p>7 MR NTSEBEZA SC: No, I'm simply saying</p> <p>8 when you said to Mr Budlender the explanation of</p> <p>9 mineworkers who had shotgun wounds in scene 1 and scene 2,</p> <p>10 and you explained it on the basis that they may have shot</p> <p>11 themselves, now if no shotguns were confiscated by the</p> <p>12 police at scene 1 and at scene 2, can I suggest to you that</p> <p>13 it is not possible for the miners to have shot themselves</p> <p>14 at those two scenes?</p> <p>15 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>16 nee, ek stem nie saam met u nie.</p> <p>17 MR NTSEBEZA SC: I'm listening. Why</p> <p>18 don't you?</p> <p>19 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>20 dit wat ons gekonfiskeer het was, soos ek u voorheen gesê</p> <p>21 het, die persone wat daar was. So die wapens wat ons wel</p> <p>22 op toneel 1 gekry het was van die groep wat daar was, waar</p> <p>23 die wapens verwyder was. Die persone wat by toneel 2,</p> <p>24 koppie 3 gearrester was, mnr die Voorsitter, daar het ons</p> <p>25 dan hulle wapens verwyder en dit is wat daar gekry is.</p>
<p style="text-align: right;">Page 18557</p> <p>1 you were assisting me and the Commission last night just</p> <p>2 outlining what kind of weapons were found at scene 1 which</p> <p>3 were attributed to the mineworkers, it appears to me – and</p> <p>4 you'll correct me if I'm wrong here – that there were no</p> <p>5 shotguns which were found among the strikers at scene 1.</p> <p>6 BRIGADIER CALITZ: Nie wat gekonfiskeer</p> <p>7 is nie, of wat daar gekry is nie, nee, mnr die Voorsitter.</p> <p>8 MR NTSEBEZA SC: So to the extent that</p> <p>9 there was – no, your contestation is that there was no</p> <p>10 shotgun that was confiscated at scene 1.</p> <p>11 BRIGADIER CALITZ: Korrek, mnr die</p> <p>12 Voorsitter.</p> <p>13 MR NTSEBEZA SC: Was there a shotgun that</p> <p>14 was confiscated at scene 2?</p> <p>15 BRIGADIER CALITZ: Dit is negatief, mnr</p> <p>16 die Voorsitter.</p> <p>17 MR NTSEBEZA SC: So can we safely say</p> <p>18 that no shotgun was confiscated from the miners neither at</p> <p>19 scene 1, nor at scene 2, on this day?</p> <p>20 BRIGADIER CALITZ: Die wat daar was, nee,</p> <p>21 mnr die Voorsitter, daar was nie gekry nie.</p> <p>22 MR NTSEBEZA SC: And therefore insofar as</p> <p>23 the miners could have injured themselves either in scene 1</p> <p>24 or scene 2 by way of shotguns, that is now no longer a</p> <p>25 proposition that stands scrutiny?</p>	<p style="text-align: right;">Page 18559</p> <p>1 Ekskuus, mnr die Voorsitter, ek het net gesien hy gesels –</p> <p>2 ek wil net graag die antwoord vir u gee. So die persone</p> <p>3 wat dan by groep 2 was, by "scene" 2, koppie 3, dit is die</p> <p>4 wapens wat dan by hulle gekry was. Die moontlikheid is wel</p> <p>5 daar was 2 tot 3 000 mense wat wegbeweeg het, weg van die</p> <p>6 koppie af. So daarom sê ek dat ons kan nie die afleiding</p> <p>7 maak dat net die wat gevind is, is wat op die toneel was</p> <p>8 nie. Ons weet ook dat daar sal getuienis wees van die</p> <p>9 polisie-offisiere wat dan ook gesien het dat daar persone</p> <p>10 met langwapens is. So daardie getuienis sal dan ook gelei</p> <p>11 word. Ons weet ook van die media wat erken het aan Kaptein</p> <p>12 Adriaan, wat reeds my getuienis was, dat daar was 'n lang</p> <p>13 wapen toegedraai in 'n kombes, of 'n tipe materiaal, en</p> <p>14 dit het van die media se kant af gekom, en die "protesters"</p> <p>15 het hulle nie toegelaat om dit af te neem nie. So gebaseer</p> <p>16 op die feite wat voor ons is op hierdie stadium en die</p> <p>17 getuienis wat gegee word, daarom kan ek nie saam met u stem</p> <p>18 nie, mnr die Voorsitter.</p> <p>19 MR NTSEBEZA SC: Now I'm not very strong</p> <p>20 at weapons, but is it so that after a shot has been</p> <p>21 discharged from a weapon, there are, shells get ejected</p> <p>22 from the weapon? In fact I think there is a footage which</p> <p>23 we'll show some time which clearly shows one getting out of</p> <p>24 the firearm and being ejected. Now as far as I'm aware,</p> <p>25 there were no shotgun pellet shells, either used or unused,</p>

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1 which were found among the strikers at scene 1.
 2 BRIGADIER CALITZ: Sover ek weet was daar
 3 geen by "scene" 1. Ek praat weereens onder korreksie; ek
 4 moet net gaan kyk na "exhibit" L, maar daar was geen so
 5 doppie opgetel.
 6 [14:54] CHAIRPERSON: If that is so that would be
 7 a pretty strong indication that the pellets fired at scene
 8 1 weren't fired by the strikers. It is not necessarily
 9 conclusive, but it is a strong indication, wouldn't it be,
 10 that's right, isn't it?
 11 BRIGADIER CALITZ: Die strikers of die
 12 polisie, mnr die Voorsitter, ek het –
 13 CHAIRPERSON: I take it –
 14 BRIGADIER CALITZ: - gesê by toneel 1.
 15 CHAIRPERSON: I take it if a striker has
 16 a shotgun and he fires off a pellet, the doppie will land
 17 near he was, alright?
 18 MR NTSEBEZA SC: Mm.
 19 CHAIRPERSON: And if a policeman fires it
 20 will land, the doppie will be near where he was and if a
 21 Lonmin person does it, it will be near he was, is that
 22 right?
 23 MR SEMENYA SC: Well, Chair, it is only
 24 if he reloads, if he doesn't reload it won't fall. It
 25 stays inside the firearm.

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1 CHAIRPERSON: Okay, so that point isn't a
 2 good point, so we withdraw that.
 3 BRIGADIER CALITZ: Ek wou net sê daar was
 4 ander metodes ook behalwe 'n haelgeweer, soos 'n pyp wat
 5 gemaak is. Daar is verskillende maniere om die wapen te
 6 gebruik of die projektiel.
 7 CHAIRPERSON: If he used a pyp then you
 8 almost certainly would have a doppie.
 9 BRIGADIER CALITZ: Hy sal nie uitspring
 10 nie, mnr die Voorsitter.
 11 CHAIRPERSON: It won't spring out, it
 12 won't jump out.
 13 BRIGADIER CALITZ: Wat ons noem 'n pyp
 14 gun is twee, ek wil nou nie vertel hoe maak hulle dit nie,
 15 dit is public knowledge maar hy spring nie uit nie, nee.
 16 CHAIRPERSON: Alright, so you say there
 17 are circumstances in which the doppie will not jump out?
 18 BRIGADIER CALITZ: Beslis so.
 19 CHAIRPERSON: So therefore you won't find
 20 a doppie on the ground in the vicinity where the shotgun
 21 shotist was, so the absence of doppies in the area where
 22 the strikers were at scene 1 isn't necessarily an
 23 indication that the shots didn't fire, I mean the strikers
 24 didn't fire the pellets, is that what you're saying?
 25 BRIGADIER CALITZ: Dit is 'n

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1 moontlikheid, mnr die Voorsitter.
 2 CHAIRPERSON: Okay.
 3 MR SEMENYA SC: Also -
 4 MR NTSEBEZA SC: Well, apropos what my
 5 learned friend was indicating, namely if he reloads then
 6 the shell would fall. We know that there is more than one
 7 striker who was shot at with shotgun ammunition. We said
 8 there were six in scene 1 and 2 and you named them, so
 9 there would have had to be more than one bullet, isn't that
 10 right?
 11 BRIGADIER CALITZ: As daar soveel skote
 12 afgevuur was dan vir elke skoot wat afgevuur word is daar
 13 'n shell casing.
 14 MR NTSEBEZA SC: Yes.
 15 BRIGADIER CALITZ: As dit die stelling
 16 is, dit is korrek.
 17 MR NTSEBEZA SC: Unless it is going to be
 18 suggested that all six were killed by one bullet from a
 19 shotgun and that will take some imagination, don't you
 20 agree?
 21 BRIGADIER CALITZ: Mnr die Voorsitter,
 22 nee, ek kan nie, ek sal na Exhibit L toe gaan om te gaan
 23 kyk die ratio van die skote, haelgeweer wat afgevuur is
 24 teenoor dit wat gevind is op die toneel. Ek dink daar is
 25 in my persoonlike denke dink ek daar is 'n groot verskil

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1 van wat gevind is en wat afgevuur is, so dit is ook 'n
 2 moontlikheid maar ek moet net gaan seker maak oor die
 3 feite, maar ek dink daar was al getuies daarvoor toe die
 4 PKRS kom getuig het, die grootheid van die toneel en dan op
 5 plekke waar wel getuies was dat daar afgevuur was maar
 6 daar was niks gekry nie, so dit kan wees dat dit ook gemis
 7 is.
 8 MR SEMENYA SC: Chair, it just occurs to
 9 me that, to assist the Commission, I realised that this
 10 gentleman was not fatally wounded. Maybe Mr Mpofu can help
 11 us. With this evidence he'll us where he was and what are
 12 the possibilities to clarify this aspect.
 13 CHAIRPERSON: On page, well, of course
 14 this is hearsay but on page 14 and 15 we see what's
 15 described as the position of number 3. So even without
 16 number 3 coming to tell us where he was we can see. Now it
 17 is now nearly three o'clock, Mr Ntsebeza, I'm worried about
 18 your clients and their bus.
 19 MR NTSEBEZA SC: Thank you, Mr Chairman,
 20 I was going to suggest that, it is now three o'clock, it is
 21 probably the time for us to adjourn.
 22 CHAIRPERSON: Well, I'll take the comfort
 23 adjournment now or in fact I'll take the tea adjournment
 24 now.
 25 MR NTSEBEZA SC: Yes?

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1 CHAIRPERSON: But before I do so I want
 2 to say to the members of the family who are here, we
 3 understand are leaving now, going back home for the
 4 Christmas break, we understand, I think you'll be back, I
 5 was told around about the 22nd of January. We of course are
 6 starting earlier than that, two weeks earlier than that but
 7 I take it you'll be informed, you will either be able to
 8 find out while you're back home what's happening or you'll
 9 be informed when you get back here, but we wish you a safe
 10 journey home and we hope that you'll have a blessed
 11 Christmas and a happy New Year, despite all the problems
 12 that you're having to deal with and that you will return
 13 safely in the New Year, so go well and we'll see you next
 14 year. We'll take the tea adjournment now.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [15:33] CHAIRPERSON: The Commission resumes.
 17 Brigadier, you're still under oath.
 18 ADRIAAN MARTHINUS CALITZ: Dankie, mnr
 19 die Voorsitter.
 20 CHAIRPERSON: Mr Ntsebeza.
 21 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 22 Thank you, Mr Chair. Brigadier, let me just, there's some
 23 question that I also want to clear my mind about. Now when
 24 one fires a shotgun with shotgun pellets, is it so that
 25 smoke comes out of the barrel of the gun? Or not

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1 necessarily?
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 nee ek sal nie met duidelikheid kan sê nie. Ek dink ons
 4 kan maar 'n demonstrasie reël en dan miskien so 'n video of
 5 iets inhandig. Ek kan nie vir u nou dit sê nie, nee.
 6 CHAIRPERSON: Do you undertake then to
 7 organise – perhaps I'll just ask Mr Semenya, a
 8 demonstration and he can take a video of it and show it to
 9 us?
 10 MR SEMENYA SC: I'll have it –
 11 CHAIRPERSON: - the time probably.
 12 MR SEMENYA SC: I'll have it arranged,
 13 Chair.
 14 CHAIRPERSON: Thank you.
 15 MR NTSEBEZA SC: Further point of
 16 clarification for me, Brigadier, now if a shotgun is loaded
 17 with rubber balls, does it give a different sound than it
 18 would if it were loaded with pellets?
 19 BRIGADIER CALITZ: Mnr die Voorsitter,
 20 weereens, ons gebruik nie "pellets" nie. Ek praat van 19
 21 jaar, 15 jaar terug. Ek kan nie vir u duidelik sê nie. Ek
 22 dink die rubber klink dalk – onder korreksie – sagter, maar
 23 ek dink ons kan met die demonstrasie dan sien. Ek dink die
 24 rubber het 'n sagter geluid, as ek – maar dis onder
 25 korreksie.

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1 MR NTSEBEZA SC: Now are you saying from
 2 your experience you don't recall whether the sound is
 3 different when, in the sense that even if you are no longer
 4 using it, you might recall from your experience?
 5 BRIGADIER CALITZ: Mnr die Voorsitter,
 6 nee, ek is onder eed hier en ek gaan nie nou 10 jaar terug
 7 se gedagte probeer omsit in woorde. Laat ek eerder sê
 8 onder korreksie en ons het gesê ons sal dit demonstreer.
 9 Miskien kan ons dan sien. Nee.
 10 MR NTSEBEZA SC: No, that will be
 11 arranged then, like –
 12 BRIGADIER CALITZ: Dankie, Meneer.
 13 MR NTSEBEZA SC: Yes. I'm not promising
 14 it, but I'm sure if it be necessary we can prevail on my
 15 learned friend to arrange that as well. Now –
 16 CHAIRPERSON: Is it possible that we
 17 should have a demonstration which we attend and then that
 18 can be video taped so that that could form part of the
 19 record, but perhaps we should be there when that happens.
 20 But anyway, that's something you can discuss outside the
 21 chamber with Mr Semenya.
 22 MR NTSEBEZA SC: Yes. Now let me just
 23 make sure that we did cover this. I was putting to you
 24 that if the mineworkers had used any shotguns at either
 25 scene, there would have been shotgun shells which would

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1 have been found in their possession. Now you do not know
 2 if any shells were found with any of the miners?
 3 CHAIRPERSON: I understood him to say he
 4 wasn't aware of any having been found. Am I correct? And
 5 it was suggested that if you didn't reload the shotgun the
 6 shells wouldn't be ejected. But obviously if a fair number
 7 were fired and it was reloaded then you would expect
 8 shells, and shells weren't found. That's his evidence.
 9 MR NTSEBEZA SC: Yes, thank you. Thank
 10 you, Mr Chairman. I just wanted to – now either at your
 11 instruction or generally as part of the process of mopping
 12 up, all the victims were thoroughly searched for dangerous
 13 weapons, I take it? All the people who fell on the –
 14 BRIGADIER CALITZ: Kan ek net hoor, u het
 15 iets in die begin gesê oor my, "your instruction." Kan ek
 16 net daardie deel reg verstaan? Wat is u vraag?
 17 MR NTSEBEZA SC: No, I say all the
 18 victims either at your instruction as the operational
 19 commander, or as a routine all the victims were thoroughly
 20 search for dangerous weapons at either scene.
 21 BRIGADIER CALITZ: Mnr die Voorsitter,
 22 weereens dit kan ek nou in "hindsight" vir u sê en dit wat
 23 ek op die TV waargeneem het op toneel 1 en toneel 2, daar
 24 'n gedeeltetjie wat ek gesien het toe ek daar aankom waar
 25 die mediese personeel besig was, daarvan kan ek self –

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1 MR NTSEBEZA SC: Yes.

2 CHAIRPERSON: As a matter of high

3 probability the victims who were arrested, the so-called

4 victims who were arrested, they all would have been search,

5 wouldn't they? So we can accept that if a shotgun had been

6 found we'd have heard about it. Isn't that so?

7 BRIGADIER CALITZ: Definitief, mnr die

8 Voorsitter.

9 MR NTSEBEZA SC: And I'm sure since the

10 events of the 16th of August to date, as a high-ranking

11 officer you are quite familiar with the processes around

12 what happened here. Have you been told by any officer that

13 any shotgun has been retrieved from any of the mineworkers

14 since these events? And we are talking about a year and

15 some half year ago now.

16 BRIGADIER CALITZ: My verstaan soos ek

17 dit op hierdie stadium het is dat daardie wapens nog vermis

18 is op hierdie stadium.

19 MR NTSEBEZA SC: Now if we could go to

20 KKK11 -

21 CHAIRPERSON: What page do you want to

22 look at?

23 MR NTSEBEZA SC: We will just look at the

24 presentation, Mr Chairman.

25 CHAIRPERSON: They're numbered.

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1 MR NTSEBEZA SC: They are numbered, from

2 what I've been told. What we have is page 13, but I would

3 like us to start at page 2. Now what I - you see that,

4 Brigadier?

5 BRIGADIER CALITZ: Ek is op bladsy 2, mnr

6 die Voorsitter.

7 MR NTSEBEZA SC: Yes, and generally you

8 know I don't want to spend more time here than is

9 absolutely necessary. You have heard this over the last

10 two days or so, and if we accept what is in that document,

11 the observation here that I want to make is the fact that

12 the injuries from the shotgun pellets are on the chest and

13 on the left upper arm, and according to the State

14 pathologist this was a fatal wound. Do you see -

15 CHAIRPERSON: According to the private

16 pathologist, or was it the State pathologist?

17 MR NTSEBEZA SC: Oh, private.

18 CHAIRPERSON: There's a mistake

19 somewhere; either it was -

20 MR NTSEBEZA SC: No, private. Private.

21 CHAIRPERSON: It may be the State one,

22 because in brackets after this -

23 MR NTSEBEZA SC: "State PM report."

24 CHAIRPERSON: - it says "State PM

25 report."

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1 MR NTSEBEZA SC: Yes.

2 CHAIRPERSON: So maybe, we won't waste

3 time on it now; you can go into it and by tomorrow

4 morning -

5 MR NTSEBEZA SC: Yes.

6 CHAIRPERSON: - you can tell us which is

7 correct.

8 MR NTSEBEZA SC: Ja, that's why I was

9 saying if we accept the documents to be saying what they

10 are saying until they are contested. It would appear from

11 this that Mr Yona died of shotgun pellet wounds that were

12 inflicted on his chest and left upper arm. You see that?

13 BRIGADIER CALITZ: Ek sien wat op die

14 bladsy staan, mnr die Voorsitter.

15 MR NTSEBEZA SC: Yes, and then I think

16 that what follows are then the pictures and I've no desire

17 for us to spend more time there. Page 2, page 3, page 4,

18 page 5 and page 6 just shows the same person in the

19 position in which he was found. Then we go to page 7.

20 Page 7 deals with Mr Yawa. Now again, and this is just the

21 observation which I want to make, is that this wound which

22 apparently is - this wound C, now it appears that both

23 State PM report and private PM report are ad idem that

24 wound C was a consequence of 11 birdshot-type shotgun

25 pellet injuries. Now what I want you to note is that they

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1 were also on the left side of the face, in the same way as

2 Bonginkosi Yona's injuries were on the left side of his

3 body. Do you see that, Brigadier?

4 BRIGADIER CALITZ: Ek sien die verslag,

5 mnr die Voorsitter.

6 MR NTSEBEZA SC: Wound D is also on the

7 left upper arm, and it looks like both in terms of the

8 State post mortem report and the private post mortem report

9 multiple birdshot-type shotgun pellet injuries on the

10 lateral aspect of the left upper arm. Then we go through

11 the identification process, page 8. Page 9, page 10, and

12 that's page 10, locating him in relation to where they were

13 found. Then we go to number 3, and I don't intend to spend

14 much time here because this person was injured, but on

15 current information - now the one thing that I would remark

16 about this, if you are able to agree with me, is that again

17 if one looks at page 12 and page 13, those injuries are on

18 his left side of his body, more pronounced on page 12. You

19 see that?

20 BRIGADIER CALITZ: Ek sien die twee

21 foto's, mnr die Voorsitter.

22 MR NTSEBEZA SC: Page 15 shows the

23 position of number 3 against the wall of the kraal. Now Mr

24 Bongani Mdze - if you will just bear with me, Mr Chairman.

25 Now I don't know whether you are in a position of agreeing

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1 with this process of identification. Now number 4 there is
 2 Mr Bongani Mdze –
 3 CHAIRPERSON: Page 16.
 4 MR NTSEBEZA SC: - and it starts on page
 5 16, yes, Mr Chairman. Now you will recall that I indicated
 6 that he's one of those who died on his way to hospital and
 7 the narrative there says it all, one shotgun pellet in his
 8 head, and again it was on the left-hand side. Now I'm just
 9 checking, Mr Chairman, whether it was the left or the back
 10 side of the head.
 11 MR CHASKALSON SC: Chairperson, I may be
 12 able to help here because there were apparently two
 13 separate shots to Mr Mdze. There were six shotgun entry
 14 wounds in the right lower back, not the left, although the
 15 direction of the shot is not identified by the post mortem
 16 doctor. That's in paragraph, on page 4 of the post mortem
 17 report. There was a separate shotgun shot in which, also
 18 in the lumbar region, in which the post mortem doctor
 19 recorded "The approach of this pellet was from the left and
 20 to the back of the deceased." And a third shotgun injury
 21 to the back of the head, says "right occipital."
 22 [15:53] MR NTSEBEZA SC: I'm indebted to my
 23 learned friend there. Now I think the purpose also of the
 24 pages 16, 17, 18, 19, is to identify positively that Mr
 25 Mdze died at or was shot at scene 1 and the rest of the

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1 pictures from page 20 to 24 which records that his left
 2 hand was badly injured, that process, Mr Chair?
 3 CHAIRPERSON: - to the left hand appears
 4 to be a bullet wound if one looks at page 31 of your
 5 Exhibit KKK10.
 6 MR NTSEBEZA SC: Yes, so the information,
 7 if you can see that, in general about Mr Mdze and how he
 8 was injured and where the presentation takes you up to page
 9 26 –
 10 CHAIRPERSON: Then you've got information
 11 on page 32 which indicates that Mr Mooketsi, I take it who
 12 is one of Mr Mpofo's clients, had a pellet in his left eye,
 13 Mr Tswana had injuries to his lower lip and left eye.
 14 MR NTSEBEZA SC: Yes.
 15 CHAIRPERSON: Mr Tuki Mano had shotgun
 16 wounds in his left foot and lower leg, so there appears to
 17 be something of a preponderance of injuries on the left
 18 side of the people concerned.
 19 MR NTSEBEZA SC: That's the point we are
 20 making.
 21 CHAIRPERSON: And if one looks at page
 22 31, the shotgun, the position of the shotgun victims
 23 appears to be very close to the corner of the little kraal
 24 opposite the corner where the shack is, which would seem to
 25 indicate prima facie that only one or two shotguns may be

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1 involved in the infliction of these injuries and if there
 2 is a preponderance on the left then it may be, I don't
 3 know, it's too early to say, but it may be an indication
 4 that the shots were fired not from where the strikers were
 5 but from the vicinity of perhaps one or other of those
 6 vehicles we see, P4, P5, P19 which is also Papa10, but I
 7 don't know whether that helps to expedite matters a bit,
 8 but it may be that the points that I focussed on are not
 9 correct.
 10 MR NTSEBEZA SC: I couldn't have put it
 11 better myself, Mr Chairman. Brigadier, do you have any
 12 comment to what the chairman is indicating as a
 13 possibility?
 14 MR SEMENYA SC: Did you go that far?
 15 CHAIRPERSON: Sorry?
 16 MR SEMENYA SC: Did you go that far of
 17 indicating possibilities?
 18 CHAIRPERSON: It may, the language, -
 19 MR NTSEBEZA SC: Well, maybe it is not
 20 even, it is a probability.
 21 CHAIRPERSON: No, I didn't say a
 22 probability, you can't say that, that's going too far. The
 23 indication is that it may be, I'm just trying to speed
 24 things up a bit, that's all, but I did indicate that prima
 25 facie it may be incorrect.

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1 MR NTSEBEZA SC: I couldn't put it higher
 2 than just being a prima facie point, Mr Chairman, and I was
 3 also indicating as much, perhaps, - we'll be taking it step
 4 by step. Would you accept, Brigadier, on the strength of
 5 this presentation that the prima facie probability is that
 6 those who were killed by shotgun fire were injured on the
 7 left hand side of their bodies, shot from the left?
 8 BRIGADIER CALITZ: I'm not sure which one
 9 of those are, die een waarna u nou verwys maar as die post
 10 mortem verslag sê dat die persoon aan die linkerkant
 11 geskiet is dan is dit so.
 12 MR NTSEBEZA SC: Now given the number of
 13 –
 14 CHAIRPERSON: I don't know whether we've
 15 got evidence supporting the statement at this stage, there
 16 may be later, supporting the statements on page 32
 17 indicating that some of the survivors appear to be injured
 18 on the left, Mr Mooketsi with a pellet in his left eye and
 19 Mr Tswana with injuries to the lower lip and left eye and –
 20 MR NTSEBEZA SC: There are –
 21 CHAIRPERSON: Mr Tuki Mano injuries to
 22 the left foot and lower leg, that's not evidence yet but
 23 presumably, unless –
 24 MR NTSEBEZA SC: There are –
 25 CHAIRPERSON: Unless the reports of the

1 examination of the injured parties are already before us in
2 which case I'm wrong and it is before us, but anyway I just
3 mention that, that it may not be properly before us yet but
4 it doesn't mean that it won't be before us before the end
5 of the hearing.

6 MR NTSEBEZA SC: Mr Chairman, I'm
7 instructed that that evidence is not before you yet but
8 there are hospital records that would be made available to
9 the Commission which would show that. I believe we can
10 make them available tomorrow.

11 CHAIRPERSON: It is pointed out –

12 MR NTSEBEZA SC: And we will send those
13 to –

14 CHAIRPERSON: Well, if you can hand them
15 in as exhibits from the bar, because one mustn't over
16 simplify and I may be doing that, because some of the
17 injuries of course weren't on the left, they were at the
18 back and that sort of the thing and the right, but if there
19 is a sufficient preponderance of injuries on the left and
20 if that can be established to be the case, then that might
21 have some evidential value in regard to the issue that's
22 being debated.

23 MR NTSEBEZA SC: We'll endeavour, Mr
24 Chairman, to get evidence to everybody before we can
25 authoritatively make that as the basis of our argument.

1 CHAIRPERSON: It is now four o'clock,
2 shall we, is it a suitable time for us to adjourn, Mr
3 Ntsebeza, -

4 MR NTSEBEZA SC: It is –

5 CHAIRPERSON: - until nine o'clock
6 tomorrow morning?

7 MR NTSEBEZA SC: It is indeed, Mr
8 Chairman.

9 CHAIRPERSON: Alright, we will take the
10 adjournment and we will resume the hearing tomorrow morning
11 at nine o'clock.

12 [COMMISSION ADJOURNED]

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