

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 167

13 JANUARY 2014

PAGES 19308 TO 19509



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<p style="text-align: right;">Page 19308</p> <p>1 [PROCEEDINGS ON 13 JANUARY 2014] 2 [09:14] CHAIRPERSON: The Commission resumes. 3 Before we continue with the evidence there are two points I 4 want to raise. The first relates to the question of the 5 video summaries. Remember last year we requested that 6 summaries be prepared, objective summaries of what's 7 visible on the main videos and I just want to ask whether 8 there's any progress on that yet, and if not, I hope there 9 will be soon. 10 The second one is a matter that I think really I 11 must raise with the representatives of the SAPS. There is 12 a debate among us, whether we're talking about GGG or JJJ, 13 but doesn't matter what – 14 COMMISSIONER HEMRAJ: GGG36. 15 CHAIRPERSON: GGG36, it's the transcript 16 of the Ryland video. If one looks at the transcript, the 17 transcript says "Speaker" and then set outs what a speaker 18 has said and then it says "Speaker" and presumably another 19 speaker. Now I take it that the, either Captain Ryland or 20 perhaps Brigadier Calitz or both of them will be able to 21 identify the voices, so we'd appreciate it if an improved 22 transcript could be prepared identifying, where it is 23 possible, the speakers whose voices can be heard on the 24 audio side of the video. Yes, and I think a number of the 25 issues raised by Mr Chaskalson in his cross-examination of</p>	<p style="text-align: right;">Page 19310</p> <p>1 as well as all of its annexures, correct? 2 BRIGADIER CALITZ: Ja, it's a very huge 3 bundle, thick documents, but I went through them, ja. 4 MS LE ROUX: Okay, so then you'll be 5 aware that Mr White has expressed concern about the 6 statements that have been provided to the Commission by 7 members of SAPS, and you'll know that his concerns – just 8 to orientate you – are broadly fourfold. The first is the 9 lack of any mention of certain critical events where we see 10 an absence of mentioning scene 1 or scene 2 in the 11 statements of members who were there. His second concern 12 is that where members mention these important events of the 13 day of the 16th, there's not very much detail. There's a 14 lack of meaningful detail in how they describe them, and 15 then he notes his concern that he doesn't think this 16 accords with the SAPS recognising their accountability and 17 taking responsibility for the 34 deaths that occurred on 18 that day, and he also points out that he doesn't think this 19 is consistent with the commitment to cooperate with the 20 Commission. 21 So what I'd like to do is if we could start, do 22 you know whether any of the members – Papa1, Papa4 or Papa5 23 – are in the process of preparing the supplementary 24 statements that we should receive from SAPS this Friday? 25 Do you know whether, do you have any knowledge of whether</p>
<p style="text-align: right;">Page 19309</p> <p>1 the Brigadier may well either be answered or certainly 2 answered to some extent once we have that information. 3 Brigadier, you're still under oath. 4 ADRIAAN MARTHINUS CALITZ: Thank you. 5 CHAIRPERSON: Ms Le Roux. 6 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 7 Thank you, Chair. Good morning, Brigadier. 8 BRIGADIER CALITZ: Good morning, 9 Advocate. 10 MS LE ROUX: Brigadier Calitz, so that 11 you know where we are going - and hopefully we can finish 12 my cross-examination in the course of today – I have six 13 themes to cover with you. I'd like to start with the 14 question of the statements provided by SAPS members. Now 15 I'm correct that you've been provided with copies of the 16 statements of the SAPS members that were in Papa1, Papa4, 17 Papa5, correct? 18 BRIGADIER CALITZ: The ones that you 19 indicated in your document, that's correct. 20 MS LE ROUX: Yes, and you've had an 21 opportunity to review all of those? 22 BRIGADIER CALITZ: I read through those 23 statements, yes. 24 MS LE ROUX: Okay, and you've also had 25 the opportunity to read Mr Gary White's second statement,</p>	<p style="text-align: right;">Page 19311</p> <p>1 they are, any of those members are doing additional 2 statements? 3 BRIGADIER CALITZ: No, unfortunately not. 4 CHAIRPERSON: Ms Le Roux, as you were 5 setting out Mr White's criticisms of the documents produced 6 by SAPS, or some of them, I wondered how this witness could 7 help us. He's not responsible for preparing the SAPS' 8 case. He doesn't take the statements. I doubt very much 9 if he even supervises the statements. I'm not saying these 10 are inappropriate questions to ask, but I wonder whether 11 this is the right person to ask them of, but the question 12 you asked him about whether supplementary statements were 13 being prepared, that's a question that could appropriately 14 be put by way of, either orally or in writing to the legal 15 team representing the SAPS. I don't know that I'm going to 16 allow a question asked of a witness in position of the 17 Brigadier which can appropriately be asked of the legal 18 team for the SAPS. I just say that because then you'll 19 understand where I'm coming from. 20 MS LE ROUX: Thank you, Chair. In 21 response I merely note the following. We're unlikely to 22 hear from all of these witnesses in oral evidence, so at 23 the moment all that we have are these statements. I 24 understand the Brigadier would not necessarily know whether 25 they are engaged in preparing supplementary statements, but</p>

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1 my questions for the Brigadier – and I was about to get
 2 there with my next question – is he's the operational
 3 commander of an operation that –
 4 CHAIRPERSON: He's the operational
 5 commander of the operation.
 6 MS LE ROUX: Yes.
 7 CHAIRPERSON: He's not the operational
 8 commander of the presentation of the SAPS case to the
 9 Commission.
 10 MS LE ROUX: Correct, Chair.
 11 CHAIRPERSON: You must bear that
 12 distinction in mind.
 13 MS LE ROUX: Yes.
 14 CHAIRPERSON: Please carry on.
 15 MS LE ROUX: Brigadier Calitz, in your
 16 briefing to members on the 18th of August – we don't need to
 17 call up the video, but you'll recall that in that briefing,
 18 which we saw at the end of last year - there was detailed
 19 questioning on it by Adv Budlender - you referred to this
 20 Commission of Inquiry and you told the members that you
 21 were briefing that, you know, the SAPS would cooperate
 22 fully. You encouraged people to provide information and so
 23 it's in that theme as operational commander that I'd like
 24 to point out certain features of the statements that you've
 25 reviewed. I don't want to go through each and every

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1 statement. What I want to do is highlight certain features
 2 in these statements that you've seen and then ask you
 3 whether you think this, as the operational commander
 4 whether that was the type of cooperation and detail you
 5 envisaged when you briefed your members on the 18th.
 6 BRIGADIER CALITZ: The question that I
 7 take it from the statement that you made is on the 18th, yes
 8 I think my words were that we would give 100% cooperation
 9 to this Commission.
 10 MS LE ROUX: Thank you, Brigadier. So if
 11 I could just quickly start by placing the members in these
 12 three Nyalas. So if we could start actually at scene 1 and
 13 the easiest way to do this, for the record, is if we could
 14 refer to slide 55 of annexure GW6B to the Gary White
 15 statement, and if we could display that on screen. So
 16 GW6B, slide 55.
 17 BRIGADIER CALITZ: Which one is it in
 18 your reference, if you can just be patient with me, let me
 19 just find it? G?
 20 MS LE ROUX: It's annexure GW6B to Gary
 21 White's statement, and then it's slide 55 of that annexure.
 22 BRIGADIER CALITZ: Gary White's statement
 23 has got all the JJJ attachments to it. You mentioned G
 24 now.
 25 MS LE ROUX: Yes, it has – I don't know

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1 what the –
 2 BRIGADIER CALITZ: The ones you gave me
 3 runs from JJJ178 and then –
 4 MS LE ROUX: And then it will be 178.2.
 5 BRIGADIER CALITZ: Is it B?
 6 MS LE ROUX: Yes.
 7 BRIGADIER CALITZ: 178, JJJ178 Bravo, B?
 8 MS LE ROUX: Yes.
 9 BRIGADIER CALITZ: Alright. Thank you.
 10 MS LE ROUX: Brigadier, I just also –
 11 CHAIRPERSON: I'm sorry to interrupt you.
 12 You see from the top of the screen what this is all about.
 13 This is, as you see, annexure GW6B and it refers to
 14 JJJ178.2.
 15 BRIGADIER CALITZ: I got it, dankie mnr
 16 die Voorsitter.
 17 CHAIRPERSON: Mr Chaskalson took you
 18 through some of the material which had been prepared by
 19 CALS, so we're familiar with it to some extent at least.
 20 That's correct, isn't it?
 21 BRIGADIER CALITZ: Dit is korrek, mnr die
 22 Voorsitter.
 23 MS LE ROUX: And Brigadier Calitz, it's a
 24 very simple point, which is just on this plan you can see
 25 where Papa4 and Papa5 are in particular. They are right

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1 next to the kraal and for cross-reference purposes, but I
 2 don't think we need to necessarily display it if it will
 3 delay us, there is the document put in by SERI as well
 4 regarding vehicle movements and positions. I don't have an
 5 exhibit number for you just yet. I'll obtain an
 6 instruction on that, but at slide 40 of that the same plan
 7 is plotted, but that's on an aerial photograph that shows
 8 the positioning of the bodies. The simple point is we can
 9 see where Papa4 and Papa5 are, as well as the positioning
 10 of your Nyala at the kraal. So we can see that 4 and 5 are
 11 right next to the kraal, and given that we know where the
 12 bodies fell at scene 1, they were right there. They were
 13 in their clear line of sight. So having placed the members
 14 at scene 1, if we can then start –
 15 CHAIRPERSON: I'm sorry, can I interrupt
 16 for a moment. Colonel Pitsi, what was the number of his
 17 vehicle?
 18 BRIGADIER CALITZ: Papa5.
 19 CHAIRPERSON: So he was there too. He
 20 was in charge of the Nyala which we see here, which is
 21 directly opposite the kraal and very close to this place
 22 where scene 1, where the events at scene 1 occurred.
 23 That's right?
 24 BRIGADIER CALITZ: That is correct, yes.
 25 I think just the Papa19, that's the one I made corrections.

<p style="text-align: right;">Page 19316</p> <p>1 I think all the corrections has been made on this slide 2 because the way of the positioning of the vehicles differ 3 from the way that we rectify it with Mr Chaskalson, but I 4 think that is on record, Chair. 5 CHAIRPERSON: That's correct, 6 MS LE ROUX: Thank you, Brigadier Calitz, 7 and of course the issue with Papa19 is that that was the 8 call sign put on its roof, but we've corrected that. 9 BRIGADIER CALITZ: Ek praat onder 10 korreksie, ek dink dit was Pappa10 gewees, ja, en my 11 posisie is heeltemal uit plek uit, ensovoorts. Maar ons 12 het reeds in detail met dit gehanteer. 13 MS LE ROUX: So if we could start then 14 with the statements of the members in Papa1, in your Nyala, 15 and if we start with your statement, and as we, just for 16 the purposes of the record, Mr White at paragraph 7.3.10 – 17 we don't need to go there, but that's where he addresses 18 your lack of detail on scene 1 and scene 2. Now obviously 19 you've now filled that out through extensive testimony, so 20 I don't need to detain us too long on this, but the point 21 is that in your initial statement there was very little 22 detail of your recollection of events at scene 1, and 23 similarly very little detail about scene 2. Obviously your 24 testimony has now fleshed that out, and Human Rights 25 Commission's concern is that like other members' statements</p>	<p style="text-align: right;">Page 19318</p> <p>1 so ek weet nie of dit 'n vraag was, of dit net stellings is 2 nie, maar ek dink die rekord is reeds op die tafel wat dit 3 aanbetref. 4 MS LE ROUX: Then, Brigadier Calitz, the 5 other feature I'd like to point out, and recall this is the 6 exercise we're now doing, I'm just pointing out features in 7 the statements you've seen. I don't obviously expect you 8 to be able to testify about those members' recollections, 9 but – 10 COMMISSIONER HEMRAJ: Ms Le Roux, could 11 you perhaps just direct us to the paragraph in each 12 statement that you refer to? It will assist us in applying 13 our minds to this content, isn't it? 14 MS LE ROUX: Chair, for the record, in 15 the statement of Kgosana it's paragraph 5. I'll just read 16 it into the record. We don't need to go there. It says, 17 "Then all the Nyalas with wires were deployed as to channel 18 the participants so that they must use one exit to leave 19 their weapons and leave the place as their gathering was 20 illegal." And then in Seeko's statement similarly 21 paragraph 5 he records, "The Nyala with," he says bob wire, 22 I think he means barbed wire, "when started to deploy wire 23 channel crowd to use one exit and delay if they attack 24 police around." That seems to indicate they thought the 25 encirclement plan still applied, but Adv Budlender has</p>
<p style="text-align: right;">Page 19317</p> <p>1 where we may not get the opportunity to flesh them out, all 2 we have are statements with very scanty detail. 3 So if I can just then go through the members in 4 your Nyala. First we have Captain Greyling. Now we have 5 no statement at all from Captain Greyling. Do you have any 6 knowledge of why he never made a statement? 7 BRIGADIER CALITZ: Nee, mnr die 8 Voorsitter, ek dra nie kennis nie, maar ek glo dit kan 9 verkry word. 10 MS LE ROUX: And then if we look at 11 Warrant Officer Kgosana, whose statement is KKK27, and if 12 we look at Constable Seeko, whose statement is KKK26, this 13 is a point that has already been canvassed by Adv 14 Budlender, but from their statements we can see that they 15 thought the encirclement plan still applied at scene 1. 16 You noted that from their statements? 17 BRIGADIER CALITZ: Ja, u is bietjie 18 vinnig tussen die verklarings. Dis 'n hengse dik pak, so 19 ek het nou nie dit oopgemaak nie, maar ek het die 20 verklarings gelees, ja. Ek kan miskien as ons daarnatoe 21 gaan presies kyk waarna u verwys. Maar ek onthou rofweg 22 waarna u verwys, ja. As u net, u het in die vorige – ek 23 weet nie, u maak stellings oor wat in my eerste een was. 24 Miskien moet ek net sê die verklaring, hoekom die detail 25 nie in my eerste een was nie. Ons het ook daarvoor getuig,</p>	<p style="text-align: right;">Page 19319</p> <p>1 dealt with that. Then if we look at – 2 CHAIRPERSON: I'm just asking what's the 3 point of putting it to this witness? If the point has 4 already been made there's no reason, no purpose in making 5 it again. So what's the purpose of asking this witness 6 about that? I mean you can put the whole of Mr Budlender's 7 cross-examination to him and say 'I don't expect you to 8 answer that, I'm just putting it to you,' I mean how is 9 that going to help us? 10 MS LE ROUX: Chair, the point is twofold. 11 The first is as the commander who would have briefed the 12 members in that Nyala, the fact that they are still 13 confused about the briefing is one point to take, where the 14 second – all I'm doing is highlighting the deficiencies 15 that arise from the review of the statements of members 16 that are present, and then the point is as the operational 17 commander, whether he thinks this is in line with his 18 instruction to them to be fully candid with the 19 Commission – 20 CHAIRPERSON: The one example – 21 MS LE ROUX: - as well as his own 22 accountability and understanding of how to provide 23 information to the Commission. 24 CHAIRPERSON: Alright. Okay, well carry 25 on, but please try to keep it as short as you can.</p>

<p style="text-align: right;">Page 19320</p> <p>1 MS LE ROUX: Yes Chair, and that's why 2 I'm trying not to have to go through – 3 CHAIRPERSON: Alright, okay. Well, 4 you've given us two examples which make the point that 5 you – 6 MS LE ROUX: Right. 7 CHAIRPERSON: - or illustrate the point 8 you're making. 9 MS LE ROUX: Yes. 10 CHAIRPERSON: I'm not sure you have to 11 give them all to us. 12 MS LE ROUX: Then similarly Kgosana, 13 Seeko, and Shange, which is KKK25, they fail to mention any 14 detail of what happens after scene 1, despite the fact that 15 Papa1 moved up, arrested people 150 metres from scene 2 and 16 then arrived closer to scene 2 and those members would have 17 participated there. So they say nothing about those 18 aspects. If we then look at Kgosana and Seeko again, and 19 for the record it's paragraph 7 of both statements, these 20 allege an attack on the water cannon, which simply did not 21 happen. No-one else has provided any evidence of an attack 22 on the water cannon. 23 MR SEMENYA SC: Chair, Ms Le Roux is 24 testifying now. Whether or not that did not happen, we 25 don't have any statement of a witness who says that.</p>	<p style="text-align: right;">Page 19322</p> <p>1 statements that are not affidavits that are not as yet 2 before us, alleging some sort of an attack on a water 3 cannon. 4 MR CHASKALSON SC: Yes, but that takes 5 place to the south of koppie 3 at scene 2. 6 COMMISSIONER HEMRAJ: I understand. 7 CHAIRPERSON: [Microphone off, inaudible] 8 throw any light on it then we needn't waste anymore time on 9 it, but can you help us on that point? 10 BRIGADIER CALITZ: Mnr die Voorsitter – 11 CHAIRPERSON: I know you didn't see these 12 things – 13 BRIGADIER CALITZ: Ja – 14 CHAIRPERSON: But of course you did 15 receive these – 16 BRIGADIER CALITZ: Heeltemal - 17 CHAIRPERSON: - and so forth after – 18 BRIGADIER CALITZ: Heeltemal korrek. Ek 19 stem saam met alles wat gesê is. 20 VOORSITTER: Wel, nie alles nie. Almal 21 het nie saamgestem met mekaar nie, maar – 22 BRIGADIER CALITZ: Die enigste – 23 VOORSITTER: Kyk, u het wel inligting 24 gekry later – 25 BRIGADIER CALITZ: Nee, ek wil net na die</p>
<p style="text-align: right;">Page 19321</p> <p>1 CHAIRPERSON: Ms Le Roux, what do you say 2 about that? You are correct I think in saying we haven't 3 had any evidence to that effect, but it doesn't follow that 4 there wasn't an attack on the water cannon. There's no 5 direct evidence either there was or there wasn't, but that 6 doesn't mean there wasn't. You are putting an inference 7 which may not be justified. Perhaps we can ask the 8 evidence leaders to help us because they've interviewed 9 witnesses and gone through the whole, all the statements in 10 detail, but Mr Chaskalson, can you tell us what is the 11 position? Is it going to be the contention of the evidence 12 leaders at the end, based on evidence that's still to come, 13 that there were no attacks on the water cannons? If so, 14 the point being put is correct. 15 MR CHASKALSON SC: Well, certainly none 16 that could have been witnessed from Papa1 because the only 17 evidence of attacks on the water cannon is evidence of 18 events that took place to the south of koppie 3 at a time 19 when Papa1 was to the northwest of koppie 3 and wouldn't 20 have been able to see what was taking place. 21 CHAIRPERSON: I see. But in any event, 22 I'm not sure that this is a point that the Brigadier can 23 deal with and we haven't yet had the evidence about attacks 24 on the water cannon, have we? So – 25 COMMISSIONER HEMRAJ: There are</p>	<p style="text-align: right;">Page 19323</p> <p>1 waterkanon toe kom. Ek weet nie wat die lede se bedoeling 2 was met die woordjie "attack." Ek weet net op een stadium 3 het ek opdrag gegee die Nyalas moet die waterkanonne 4 beskerm omdat hulle nie "bulletproof" is nie. Dit was my 5 getuienis, omdat dit sagte-dop voertuie is. So dit is al 6 wat ek kan sê rondom die Nyalas wat dan beskerming aan die 7 waterkanonne gegee het, maar of hulle "ge-attack" is of so, 8 dit, ek kan nie op dit kommentaar lewer nie. 9 CHAIRPERSON: Ms Le Roux, you understand, 10 I'm not suggesting the points that you're seeking to make 11 aren't worthy points. My problem is whether this witness 12 is the appropriate person to whom you can make them, and I 13 know you could tell me he's the operational commander, but 14 that goes so far and no further. But anyway - 15 [09:34] MS LE ROUX: Chair, I just – 16 CHAIRPERSON: I don't want to stop you 17 making worthwhile points but I do want to conserve time as 18 much as I can. 19 MS LE ROUX: Chair, I do understand the 20 limitation of the Brigadier's recollection and his ability 21 to testify about these other members. Given that it's, 22 we're not, it's not clear whether we'll ever get to cross- 23 examine these other members I just want to put to the point 24 so that they are on the record and so that to the extent as 25 the operational commander he's in a position to address</p>

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1 whether he thinks this is adequate cooperation and
 2 accountability and putting evidence before the commission –
 3 CHAIRPERSON: Ms Le Roux, I'm not
 4 interested in whether he thinks the cooperation is
 5 adequate. At the end of the day we will making findings on
 6 whether the cooperation we received from the police is
 7 adequate and is what we expected. But we won't be guided
 8 by any views that this witness may express on the point.
 9 MS LE ROUX: Thank you, Chair, again I'll
 10 try to move through all of these, all of these points
 11 quickly. With respect to Warrant Officer Nong and for the
 12 record this is in paragraph 22 of his statement, Warrant
 13 Officer Nong to paraphrase puts a version in his statement
 14 that appears to place him in the Nyala seeing the attack on
 15 Mr Mpumza who then becomes, who is then identified as body
 16 C, this is directly contradicted by the evidence that we
 17 know that Warrant Officer Nong was outside of the Nyala
 18 taking photographs of the suspects and that's the evidence
 19 of Mr Chaskalson has already, Adv Chaskalson has already
 20 covered with you –
 21 CHAIRPERSON: Which paragraph are you
 22 referring to now?
 23 MS LE ROUX: Paragraph 22 of Warrant
 24 Officer Nong's statement.
 25 CHAIRPERSON: For the benefit of those,

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1 those of us who are going to read the transcript later and
 2 those historians and others who're going to read through it
 3 in years to come it will be helpful for them to know and
 4 for us to know that the exhibit that you're referring to is
 5 KKK24.
 6 MS LE ROUX: Thank you, Chair, and let me
 7 then read into the record the paragraph I'm referring to.
 8 Where he says that the –
 9 CHAIRPERSON: - it's already in the
 10 record.
 11 MS LE ROUX: Okay.
 12 CHAIRPERSON: Because it is before us.
 13 But is there a particular sentence or so that you want to
 14 ask the witness about then it's appropriate to read that.
 15 MS LE ROUX: Yes, Chair. It's just to
 16 point out this discrepancy which is that in his statement
 17 Warrant Officer Nong says "I saw one black male running
 18 towards one policeman on the ground holding his spear high
 19 and aim. I wanted to shout watch out. The policeman never
 20 heard me as I was in the police vehicle. Is then, is then
 21 that the saw the police shoot the black male. I stopped
 22 the vehicle and Colonel Macintosh run to the lying black
 23 man and start to perform first aid. The man died."
 24 But now we know from KKK18 which you'll recall is
 25 the thumbnail documents that Adv Chaskalson used during his

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1 cross-examination and we went through the exercise where we
 2 identified the time stamp of when Warrant Officer Nong is
 3 taking photographs and he's taking photographs, he takes
 4 photograph on that thumbnail KKK18 3688 is taken at
 5 16:19:44 which is four seconds before body C is shot and
 6 then he takes photograph 3689 at 16:20:14 which is 26
 7 seconds after body C is shot. The simple point is the
 8 evidence of what photographs he's taking when places him
 9 outside of the Nyala and therefore his account of how he
 10 saw body C be shot is completely contradicted by that
 11 evidence. So his statement appears to be at best
 12 inaccurate on that point.
 13 MR SEMENYA SC: Chair, again one does not
 14 impeach a witness through another one. These are
 15 observations that are properly to be put to another
 16 witness.
 17 CHAIRPERSON: I, Ms Le Roux, subject to
 18 what you may say it sounds as if Mr Semenya is right but I
 19 think you can make the point you want to make by asking the
 20 witness who's there himself at the time at what point he
 21 heard the shots and where Warrant Officer Nong was at that
 22 time and you, to that extent you can use his evidence, his
 23 direct evidence to cast doubt upon this paragraph in
 24 Warrant Officer Nong's statement. But the way you put it
 25 I'm afraid it does give rise to the objection which Mr

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1 Semenya has raised but perhaps you can approach it the way
 2 I've suggested and avoid the objection.
 3 MS LE ROUX: Thank you for your guidance,
 4 Chair. Brigadier Calitz, do you recall where Warrant
 5 Officer Nong was when body C was shot, do you recall if he
 6 was in or out of the Nyala?
 7 BRIGADIER CALITZ: Mnr die Voorsitter,
 8 nee as ek die vraag dalk net bietjie wyer kan vra, in die
 9 dokument wat u vir my gegee het om 16:19:47 ek lees dan net
 10 van u eie dokument af, het u gesê body C is shoot dead,
 11 Brigadier Calitz witnessed this from a distance. Ek het
 12 nog nooit getuig dat ek gesien het, en die vraag nou weer
 13 when body C was shot, ek het nooit getuig dat ek gesien het
 14 body C was shot nie. Ek het getuig Kolonel Macintosh het
 15 net vir my geskreeu op 'n stadium die persoon word
 16 aangeval, hy het uitgespring uit gehardloop en op daardie
 17 stadium het ek gesê het ek I think, "at that moment," was
 18 vir my, in my paragraaf maar het ek vir Warrant Officer
 19 Nong geskreeu kom terug na die voertuig ons moet gaan. U
 20 praat van vier sekondes, ek sal nie vir u kan sê of hy op
 21 daardie stadium toe Nong, ag toe Kolonel Macintosh dit sien
 22 voor op die sitplek was, toe uitgespring het, miskien om 'm
 23 beter, ek kan dit nie vir u sê nie. Maar volgens my toe ek
 24 hom, Macintosh uitgespring het en in daardie rigting
 25 gehardloop het het ek hom wel buitekant die voertuig geroep

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1 terug te kom laat ons kan ry.

2 CHAIRPERSON: Ja.

3 BRIGADIER CALITZ: So om die presies tyd

4 vas te stel ek is jammer, daai vier sekondes kan ek nou nie

5 vir u -

6 CHAIRPERSON: The precise times you can't

7 tell us but what you can tell us is at the relevant time

8 when Colonel Macintosh jumped out of the Nyala and ran

9 towards this area where this man was Warrant Officer Nong

10 was outside the vehicle taking photographs, that you can

11 confirm?

12 BRIGADIER CALITZ: Na die beste -

13 CHAIRPERSON: That's what you said in

14 effect.

15 BRIGADIER CALITZ: Dit is na die beste

16 wat ek kan onthou.

17 CHAIRPERSON: Okay, I think that's the

18 point you wanted, Ms Le Roux, you can move on.

19 MS LE ROUX: Thank you, Chair. So

20 Brigadier Calitz, that canvasses the statements of the

21 members that were in your Nyala. Did you encourage your

22 members, did you specifically address the members in your

23 Nyala and tell them to provide full and complete statements

24 to the commission?

25 BRIGADIER CALITZ: Nee, ek dink toe die

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1 verklarings na die tyd geneem was was ons nie weer, ons was

2 op daardie dag bymekaar die 16de en toe het ons die groepe

3 en ek het die hele groep aangespreek op die 18de. So ons

4 is nie weer in daardie selfde formaat -

5 CHAIRPERSON: On the 18th you urged

6 everybody -

7 BRIGADIER CALITZ: Dit is korrek.

8 CHAIRPERSON: To give full cooperation?

9 BRIGADIER CALITZ: Dit is -

10 CHAIRPERSON: Whether they complied with

11 your instruction is something we'll have to decide.

12 BRIGADIER CALITZ: Dit is korrek, mnr die

13 Voorsitter.

14 MS LE ROUX: And, Brigadier Calitz,

15 sitting here today are you aware of any processes that are

16 likely to follow, any disciplinary processes that may

17 follow in the SAPS if members are found not to have

18 provided correct statements or accurate statements. Do

19 you, have you heard anything about whether the SAPS will

20 discipline anyone for the statements provided?

21 CHAIRPERSON: Ms Le Roux, what he's heard

22 about whether there will be discipline, is that really

23 going to help us? If they're going to, you can ask the

24 question of Mr Semenya's team and they'll give us the

25 information. You don't have to ask this witness about what

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1 he's heard. If there is going to be any disciplining of

2 people for not making proper statements, not cooperating,

3 helping the police to cooperate fully that's a question to

4 be directed to Mr Semenya. Mr Semenya is as it were the

5 overall commander of the SAPS operations before this

6 commission and Mr Pretorius is the operational commander.

7 But they're the people who I feel these questions, not this

8 witness. His function is operational commander was in

9 another operation which ceased on the 16th of August 2012.

10 COMMISSIONER HEMRAJ: Mr Semenya, can you

11 assist me, the manuscript affidavits were they made to

12 IPID, did IPID members take these affidavits?

13 MR SEMENYA SC: They were taken by my

14 attorney and given to IPID.

15 COMMISSIONER HEMRAJ: Thank you.

16 MR SEMENYA SC: They did a statement

17 themselves which were handed over to the attorney who later

18 handed it to, they were warning statements.

19 COMMISSIONER HEMRAJ: The affidavits,

20 we're talking about the affidavits, not - the handwritten

21 affidavits. The contents of which has been transcribed in

22 these statements before us under the heading warning

23 statement.

24 MR SEMENYA SC: Yes, those are the

25 warning statements we are mentioning, they were handwritten

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1 by the members themselves, handed to the attorney who later

2 handed those to IPID.

3 COMMISSIONER HEMRAJ: Thank you.

4 CHAIRPERSON: They were also sworn to by

5 the witnesses who made them. So they're warning statements

6 weren't they?

7 COMMISSIONER HEMRAJ: Yes.

8 CHAIRPERSON: The handwritten ones have

9 got affirmation certificates on as far as I can recall.

10 MR SEMENYA SC: I'm advised that the

11 warning statements were not attested to and sworn to by the

12 witnesses.

13 COMMISSIONER HEMRAJ: Perhaps someone can

14 look at those and clarify it for us because all the

15 manuscript affidavits before us have been signed by a

16 commissioner of oaths and these warning statements that are

17 then signed, that are then typed are, appear to be a

18 transcription of those statements. But perhaps it can be

19 clarified at a later stage please.

20 MS LE ROUX: Thank you, Chair.

21 CHAIRPERSON: I mean KKK24 statement of

22 Warrant Officer Nong is unsigned, it's got the position for

23 an ascertain certificate at the end. What is before us is

24 effectively, there may be a signed one but if there isn't a

25 signed one it's an unsigned draft affidavit before us, not

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1 a warning statement. I know it's headed warning statement
 2 but it may also have functions as a warning statement at
 3 some stage but it's not only a warning statement as I see
 4 it but maybe we can get clarity on the exact status of
 5 these statements but anyway, Ms Le Roux, you want to move
 6 on I take it?

7 MS LE ROUX: Yes, thank you, Chair.
 8 Brigadier Calitz, if I can then for the commission just
 9 summarise the statements of the members in Papa 4 and Papa
 10 5 regarding scene 1. Now again you'll recall they were
 11 right next to where the shooting took place, where the TRT
 12 line stood and where the body fell at scene 1 but in Papa4
 13 the statements by Mabena Niza Baloyi and Mbotsana failed to
 14 mention anything about that TRT fire and in fact any deaths
 15 or injuries at scene 1.

16 CHAIRPERSON: So you're referring to
 17 KKK30, KKK21 and what is the other one?

18 MS LE ROUX: It is 31, 21 and 32.

19 CHAIRPERSON: Thank you.

20 MS LE ROUX: Similarly in Papa4 Sergeant
 21 Baloyi, which is KKK21 we know that he discharged two nine
 22 millimetre rounds from his Nyala at scene 1 but no, none of
 23 his members mention that in any of his, in any of their
 24 statements. So that's Papa4 on scene 1. With respect to
 25 Papa5 –

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1 MR SEMENYA SC: What can the witness say
 2 about that, Chair?

3 CHAIRPERSON: It's a question addressed
 4 to the witness which he can meaningful answer. I
 5 understand it's a point that will have to be made at some
 6 stage. I understand the relevance of the point as well.
 7 But my concern is, if you ask someone who can't answer the
 8 question what's the point of asking. So perhaps, you made
 9 the statement, would you now turn it into a question so
 10 that we can see whether the Brigadier can assist us.

11 MS LE ROUX: Chair, if I could just recap
 12 Papa5 as well and then the same question applies to both.
 13 With respect to Papa5 we have Constable Dlamini statement
 14 which is KKK34, Lieutenant Colonel Pitsi which is GGG28,
 15 Constable Magume which is HHH31, Constable Biko which is
 16 KKK35 and Sergeant Monokwane which is KKK37 similarly all
 17 fail to mention the TRT fire or any deaths or injuries at
 18 scene 1 and then the statement of Warrant Officer Tawana
 19 which is KKK38 he seems to be, he seems to deny that he was
 20 ever at scene 1, claiming that Papa5 was only what he calls
 21 at the other scene. So the question on all of these
 22 statement, Papa4 and Papa5 and the failure to mention
 23 anything about scene 1 when we know they were right next to
 24 where the TRT line shooting took place is as the
 25 operational commander is this the type of statement you

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1 would have expected from your SAPS members to provide given
 2 what they witnessed on that day?

3 BRIGADIER CALITZ: Met alle respek u het
 4 'n klomp stellings gemaak. Ek probeer by hou tussen al die
 5 verklarings. Enetjie wat ek sou vinnig na verwys het, u sê
 6 Tuwana het nie verwys of hy het sê hy was net by scene 2,
 7 ek lees maar net in sy paragraaf 3 waar hy getuig het, the
 8 other Nyalas rolled out the barbed wire so hy maak wel
 9 melding dat hy op toneel 1 was as ek u miskien misverstaan
 10 het.

11 CHAIRPERSON: Well, because that's not a
 12 reference to scene 1. The question is whether he talks
 13 about the shooting at scene 1. I understand he talks about
 14 the uncoiling of the wire.

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

17 CHAIRPERSON: Which of course ended on
 18 the other side of the kraal.

19 BRIGADIER CALITZ: Maar jy kan nou lees,
 20 ja hy kon dit net sien van toneel een af.

21 CHAIRPERSON: Well the point put is that
 22 he must have known about, that from the, what we know
 23 already at one point his Nyala was positioned in such a way
 24 he could see what was happening at scene 1. That's the
 25 point but it's a general point, I don't know you

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1 necessarily have to deal with each of the statements.
 2 They've been put together, been rolled together for the
 3 purposes of a single question. Namely here were people who
 4 appeared to have witnessed what happened at scene 1 who
 5 don't mention it at all and you were asked, I've already
 6 said I'm not really concerned about your response but I
 7 will get your response on this point, is this the kind of
 8 answer you expect or kind of statement you expected the
 9 people who were instructed to give full cooperation, is the
 10 kind of answer you'd expected them to give or does it fall
 11 short of what you would expected them to have given.

12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 miskien om 'n kort antwoord te gee. Dit wat voor u
 14 plaasgevind het en die omstandighede en dit was mense
 15 gesien het verwag mens moet dan in 'n verklaring wees. As
 16 ek dit so kan stel. Ek wil net by sê dat ek weet nie of
 17 daar supplementary's van hierdie lede gemaak is of wanneer
 18 die verklarings gevat is en of dit deur IPID of die
 19 speurders of deur wie gevat is of dit in 'n groep gevat is,
 20 dit weet ek nie. So dit kan alles faktore hê waarom lede
 21 miskien, ek sien baie is kort verklarings.

22 MS LE ROUX: And then, Chair, to repeat
 23 the exercise and the question for scene 2 and it's my final
 24 question on this theme. When we look at scene 2 the
 25 statements by the members of Papa4 have not a single

<p style="text-align: right;">Page 19336</p> <p>1 mention of anything happening beyond scene 1. So all of 2 those member's statements seem to stop at scene 1 even 3 though we know that Papa4 proceeds up to scene 2 and then 4 in Papa5 there are some references to arrests made after 5 scene 1 but nobody says anything about the body C attack or 6 body C at all despite the fact that we know that Papa5 goes 7 to body C and that's where it's members alighted. So again 8 with respect to the members statements in Papa4 and Papa5 9 that have no mention or very little detail of any of their 10 recollection around scene 2, is this what you would have 11 expected from SAPS members when you asked them to cooperate 12 with the commission.</p> <p>13 BRIGADIER CALITZ: Dit is korrek, dit is 14 dieselfde as ek terugkom na die vorige antwoord toe wat ek 15 gegee het, ja.</p> <p>16 MR SEMENYA SC: Chair, it must be stated 17 that these are statements of suspects to an investigation 18 by IPID, they were not made as a response to the invitation 19 by the Brigadier to cooperate with the Commission. Those 20 two things that are separate and apart but the criticism, 21 the observations are correct.</p> <p>22 MS LE ROUX: Brigadier Calitz, moving to 23 my second topic of cross-examination and we could head it 24 essentially opportunities for you to have known about the 25 scene 1 and scene 2 killings. At this point I want to make</p>	<p style="text-align: right;">Page 19338</p> <p>1 the middle of the first page it should refer to a member 3, 2 member 1 –</p> <p>3 CHAIRPERSON: Another way of identifying 4 –</p> <p>5 MS LE ROUX: That's the most recent 6 version that you should have.</p> <p>7 CHAIRPERSON: So on the first page as you 8 say at that time –</p> <p>9 MS LE ROUX: Yes.</p> <p>10 CHAIRPERSON: Member 3 engaged with radio 11 communication.</p> <p>12 MS LE ROUX: Correct.</p> <p>13 CHAIRPERSON: And there's a red type on 14 page 2. So that's now KKK41.</p> <p>15 MS LE ROUX: Correct.</p> <p>16 CHAIRPERSON: For those who have got an 17 earlier version I suggest you use it as scrap paper.</p> <p>18 MS LE ROUX: Correct and then, Chair, a 19 document that I don't believe has been given an exhibit 20 number, it's the annotated notes made by Captain Van 21 Heerden at the JOC. The notes are already JJJ168 but the 22 document that has been provided we've made annotations on 23 it. So it probably needs it own exhibit number. I believe 24 it will be KKK43.</p> <p>25 CHAIRPERSON: If we've got it, what does</p>
<p style="text-align: right;">Page 19337</p> <p>1 sure you've got three documents to hand and I believe the 2 Commissioner has also received the revised sets this 3 morning and that is the revised chronology which is a three 4 page document KKK41 entitled Brigadier Calitz chronology 5 points at which Brigadier Calitz might have gained 6 knowledge of deaths.</p> <p>7 CHAIRPERSON: Sorry, you say this KKK? 8 MS LE ROUX: 41.</p> <p>9 CHAIRPERSON: Oh this is the document 10 replaces the one we got –</p> <p>11 MS LE ROUX: Correct, this is the revised 12 –</p> <p>13 CHAIRPERSON: The difference is there is 14 some red type on the second page.</p> <p>15 MS LE ROUX: Correct, Chair, that's with 16 respect to a transcript interpretation point where there 17 may be some –</p> <p>18 CHAIRPERSON: Just to identify, the old 19 one can go out now and be replaced by the new one to be 20 identified by the fact it's got red type on page 2.</p> <p>21 MS LE ROUX: Yes, and in fact, Chair, the 22 most recent version which I believe was handed to you this 23 morning in fact refers to a document that was prepared over 24 the weekend and has been provided to SAPS. So the most 25 recent one should have an entry if you look at 16:00:42 in</p>	<p style="text-align: right;">Page 19339</p> <p>1 it look like?</p> <p>2 MS LE ROUX: Chair, it's on screen at the 3 moment. It's the black type is the Van Heerden notes which 4 are JJJ168.</p> <p>5 CHAIRPERSON: No, no, no –</p> <p>6 MS LE ROUX: The red type is –</p> <p>7 [09:54] CHAIRPERSON: No, we've seen that and 8 then, but the document to which you now referring is an 9 amplified or annotated version of that and have we got 10 that, because if we have it I am afraid I'm not able to lay 11 my hands on it.</p> <p>12 MS LE ROUX: Chair, -</p> <p>13 CHAIRPERSON: Ah, Ms Hardy's –</p> <p>14 MS LE ROUX: Chair, I believe my attorney 15 has copies for you. Mr Chair, I am not sure if you want to 16 give it a KKK exhibit or if you want it to be JJJ168.1, I 17 think makes sense to have it in the KKK series.</p> <p>18 CHAIRPERSON: Ja, I think so, what's the 19 next KKK?</p> <p>20 MR WESLEY: Mr Chair, it will be KKK42.</p> <p>21 CHAIRPERSON: What do I call it, 22 unofficial notes amplified?</p> <p>23 MS LE ROUX: Chair, I think annotated –</p> <p>24 CHAIRPERSON: Oh, annotated copy of 25 unofficial notes of Captain Van Heerden and her notes, is</p>

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1 Captain Van Heerden a lady, I think isn't she, what is the
2 exhibit number that we have already for those notes?
3 MS LE ROUX: JJJ168.
4 CHAIRPERSON: JJJ168, it is a lady, isn't
5 it? Yes.
6 MS LE ROUX: Yes, Chair.
7 CHAIRPERSON: Thank you, alright.
8 MS LE ROUX: And Chair, for the record
9 just to explain the annotations, the times on the left hand
10 side are ETV time. The entry number that is assigned means
11 the entry number in Van Heerden's notes, so if you count
12 down that gives you the entry number and then those entries
13 are cross referenced to, you'll see the different, it is
14 Project Coin, Chopper video or the Ryland video at a
15 particular time stamp in those videos and with the Ryland
16 videos we've given you a transcript cross reference in
17 addition. So those cross references to the video provide
18 us with the ETV times that are listed on the left, because
19 these were untimed.
20 CHAIRPERSON: Yes, so this document is
21 compiled by those appearing for the Human Rights Commission
22 using material, collating really material that's already
23 before the Commission to enable you to cross-examine this
24 witness in a way that he can understand your cross-
25 examination and we can benefit from the answers, is that

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1 right?
2 MS LE ROUX: Yes, Chair.
3 CHAIRPERSON: Alright.
4 MS LE ROUX: And then a final document
5 that was prepared over the weekend and has been provided to
6 SAPS and Brigadier Calitz is an analysis and it is entitled
7 CALS/SAHRC analysis, use of radio and telephone by SAPS
8 members at scene 1 and that needs an exhibit number, KKK43
9 I believe is the next available number.
10 CHAIRPERSON: Alright, let me enter that
11 in my book, use of radio and telephone. I'll repeat that,
12 my microphone wasn't on, KKK43 will be a document headed
13 CALS/SAHRC analysis, use of radio and telephone by SAPS
14 members at scene 1.
15 MS LE ROUX: Thanks, Chair. Brigadier
16 Calitz, what I would like to do is to take you through this
17 chronology that has been prepared. I have a few follow-up
18 questions on certain of the incidents but most of this has
19 been covered by the evidence leaders, so I hope to move
20 through the chronology fairly quickly. So to start we have
21 the first entry, 15:53:50 which is when the shooting takes
22 place at scene 1 and in your Nyala which we can, we
23 identify it from and we can see in the statements of
24 Lieutenant-Colonel McIntosh which is HHH14, Warrant-Officer
25 Nong which is KKK24 and the Lonmin interpreter whose

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1 statement is JJJ202. All three of those individuals that
2 were in the Nyala, they hear the sound of the TRT fire but
3 your evidence is that you did not hear anything inside in
4 the Nyala, correct?
5 MR SEMENYA SC: Chair, the correct
6 version on those statements is that they hear shooting, not
7 live ammunition as is described in this document.
8 MS LE ROUX: Now -
9 CHAIRPERSON: What do you say about that,
10 the suggestion is that those statements do not indicate
11 that the deponents heard the sound of live ammunition but
12 they heard firearms being discharged which might not
13 necessarily have involved the use of live ammunition,
14 that's the objection made by Mr Semanya and how do you
15 respond to that?
16 MS LE ROUX: Yes, Chair, obviously this
17 is point we can make submissions on given the discharge
18 reports on the day. Some of the statements refer, it is
19 correct referred to, the use of rubber rounds but they also
20 refer to the use of sharp pointed ammunition, live
21 ammunition, so we'll accept the correction that they refer
22 to the sound of shooting and then obviously we'll make
23 submissions that that sound of shooting would include live
24 ammunition.
25 CHAIRPERSON: One example, the

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1 interpreter statement, I can't remember the number at the
2 moment but -
3 MS LE ROUX: JJJ202.
4 CHAIRPERSON: Sorry?
5 MS LE ROUX: JJJ202.
6 CHAIRPERSON: JJJ202, it says in
7 paragraph 58, "The strikers attacked the police and then
8 the police shot. The shots started after the strikers
9 started attacking the police." Now that doesn't
10 necessarily indicate live ammunition. Now if you have got
11 a couple of live ammunition ones I'll allow you to proceed
12 with the questions, but if you haven't I won't, but give me
13 a live ammunition, give me a couple of live ammunition
14 ones.
15 MS LE ROUX: Statements?
16 CHAIRPERSON: Statements where that
17 allegation is made. Now we've got Nong here in the bundle
18 you gave us, what was that reference again, 24?
19 MS LE ROUX: Yes.
20 CHAIRPERSON: Nong was KKK24, now let's
21 see whether he talks about live ammunition. The paragraph,
22 Brigadier Calitz comes to my aid, the last sentence of
23 paragraph 21 reads, "It is then that I hear a sound of
24 firearm shooting at the back." McIntosh, - can someone
25 please give me the exhibit number, let's turn Colonel

<p style="text-align: right;">Page 19344</p> <p>1 McIntosh's statement?</p> <p>2 MS LE ROUX: Chair, it is HHH14.</p> <p>3 CHAIRPERSON: And what does he say on</p> <p>4 this point?</p> <p>5 MS LE ROUX: Chair, I think we can, let</p> <p>6 me get the –</p> <p>7 CHAIRPERSON: No, well, if he says live</p> <p>8 ammunition then you can carry on, if he doesn't then you</p> <p>9 would have to modify your question, aren't you?</p> <p>10 MS LE ROUX: Chair, in paragraph 27 of</p> <p>11 Lieutenant-Colonel McIntosh he refers to rubber, teargas,</p> <p>12 stun grenades as well as, and then he talks about shots</p> <p>13 being fired shortly thereafter, that's paragraph 27.</p> <p>14 CHAIRPERSON: Paragraph?</p> <p>15 MS LE ROUX: 27. Chair, he says, the</p> <p>16 Public Order Police then started to shoot with –</p> <p>17 CHAIRPERSON: No, forgive me, I was</p> <p>18 reaching down for my copy of the exhibit when I missed the</p> <p>19 paragraph number. What's the paragraph number?</p> <p>20 MS LE ROUX: 27.</p> <p>21 CHAIRPERSON: Thank you.</p> <p>22 MS LE ROUX: Chair, if we look at the</p> <p>23 last three sentences, "Public Order Police members started</p> <p>24 to shoot with rubber bullets which were not effective. I</p> <p>25 saw the water cannon also spraying towards the group. I</p>	<p style="text-align: right;">Page 19346</p> <p>1 and we will clarify it with him –</p> <p>2 CHAIRPERSON: It is ambiguous, "I also</p> <p>3 heard shots," the previous sentence, sorry, two sentences</p> <p>4 back it reads, "The Public Order Police members then start</p> <p>5 to shoot with rubber bullets." So he uses the word "shoot"</p> <p>6 to cover the shooting of rubber bullets and other things</p> <p>7 and then when he says later, "I also heard shots being</p> <p>8 fired," but that's ambiguous, it is capable of meaning, I</p> <p>9 also heard rubber bullets and stun grenade shots and these</p> <p>10 other shots being fired. It is ambiguous and I don't think</p> <p>11 it is appropriate to cross-examine a witness on a</p> <p>12 statement, on an ambiguous statement made by a witness</p> <p>13 which may or may not contradict what he says. Maybe we</p> <p>14 must wait for the witness to come, but perhaps we could ask</p> <p>15 one question which may cover some of the ground you want to</p> <p>16 cover. Brigadier, did you hear when you were at the place</p> <p>17 that's being talked about, at the north-west of the, - no,</p> <p>18 no, what place is being talked about here?</p> <p>19 MS LE ROUX: This is –</p> <p>20 CHAIRPERSON: At scene 1?</p> <p>21 MS LE ROUX: Scene 1, 15:53:50 at the</p> <p>22 time of the shooting.</p> <p>23 CHAIRPERSON: Yes, when you were at scene</p> <p>24 1 did you hear what Lieutenant-Colonel McIntosh said he</p> <p>25 heard?</p>
<p style="text-align: right;">Page 19345</p> <p>1 also heard stun grenades being discharged to move the group</p> <p>2 of attacking strikers back. I also heard shots being fired</p> <p>3 shortly thereafter." Now of course when Lieutenant-Colonel</p> <p>4 McIntosh comes to testify we can clarify where –</p> <p>5 CHAIRPERSON: That ambiguous, he will</p> <p>6 testify, I take it he will be testifying, giving oral</p> <p>7 evidence and I suggest that we leave the point until he</p> <p>8 comes because at the moment the paragraph you're relying on</p> <p>9 is ambiguous. Your point of course is if Lieutenant-</p> <p>10 Colonel McIntosh heard it the witness must have heard it</p> <p>11 too. So when Lieutenant-Colonel McIntosh comes he will</p> <p>12 tell us what he heard and we will then be able to compare</p> <p>13 what he tells us to what the brigadier has already told us.</p> <p>14 MS LE ROUX: Chair, I would just make a</p> <p>15 submission that –</p> <p>16 CHAIRPERSON: I don't know if you can put</p> <p>17 it higher than that.</p> <p>18 MS LE ROUX: All that we, - given that at</p> <p>19 the moment we don't have Colonel McIntosh to amplify his</p> <p>20 paragraph 27, but the fact that he splits out the different</p> <p>21 things that he saw, -</p> <p>22 CHAIRPERSON: Ja, no, but, -</p> <p>23 MS LE ROUX: - we –</p> <p>24 CHAIRPERSON: - no, no –</p> <p>25 MS LE ROUX: - included live ammunition</p>	<p style="text-align: right;">Page 19347</p> <p>1 BRIGADIER CALITZ: Nee, mnr die</p> <p>2 Voorsitter.</p> <p>3 CHAIRPERSON: Are you able to explain</p> <p>4 whether he was in a more favourable position than you were</p> <p>5 to hear these things? Can you explain the fact that if he</p> <p>6 heard these things and you didn't?</p> <p>7 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>8 nee, al wat ek kan aan dink, as u sê 'n meer favourable</p> <p>9 position, miskien reg bo hom is daar 'n opening aan die</p> <p>10 Nyala en ek was agter by die radio gewees, so die gat bo</p> <p>11 hom is oop van die, hoe kan ek sê, die passasiers kant. So</p> <p>12 dit is miskien, maar ek sal nie kan sê nie dit is hoekom hy</p> <p>13 dit gehoor het of nie gehoor het nie.</p> <p>14 CHAIRPERSON: You see the point is he</p> <p>15 said he heard shots, what kind of shots they were is a</p> <p>16 matter which we would come clear when he gives evidence,</p> <p>17 but the fact is you didn't hear shots of any kind as I</p> <p>18 understand you and you've given an explanation which may or</p> <p>19 may not cover that situation, is that right?</p> <p>20 BRIGADIER CALITZ: Korrek, mnr die</p> <p>21 Voorsitter.</p> <p>22 MS LE ROUX: Chair, I think for the</p> <p>23 record, let me just and for Brigadier Calitz, let me</p> <p>24 clarify the exercise that I want to do in this chronology</p> <p>25 first. Brigadier Calitz, I understand your testimony that</p>

<p style="text-align: right;">Page 19348</p> <p>1 you were unaware of scene 1 and scene 2 until you got hold 2 of General Annandale at 16:47 and he told you about the 3 shootings. What the chronology seeks to do is collate in 4 one document all the different opportunities that the Human 5 Rights Commission will ultimately argue you could have 6 understood, you could have come to know that something that 7 had happened and that could have changed the course of 8 events on the day. The point is not – 9 CHAIRPERSON: So I think we understand 10 that's the purpose of this exercise. The point arose 11 specifically in the questions as to whether you'd 12 accurately summarised in respect of the first entry what 13 those statements said. You didn't, but we've taken the 14 point further, there were shots heard, whether they were 15 live ammunition shots or other shots, there were shots, he 16 didn't even hear those and he has given an explanation 17 which may or may not be acceptable as to why he didn't hear 18 those shots, whichever shots they were. You can now move 19 on to the next one which I think may be less controversial. 20 MS LE ROUX: Brigadier Calitz, I do just 21 have some follow up questions with respect to your evidence 22 on the first point that you didn't hear the TRT volley and 23 am I correct that you testified that one of the reasons why 24 you may not have heard it is because the members in your 25 Nyala were firing rubber and stun grenades at the same</p>	<p style="text-align: right;">Page 19350</p> <p>1 door, start to use shotguns with reduced rounds to the 2 crowd and as the crowd was violent they started attacking 3 all vehicles that were nearby. The water cannon came, 4 started to using water as it was moving forward. They 5 started attacking it. Nyala P1 moved to the direction of 6 the water cannon and I used rubber bullets through the 7 shooting holes," and he then says in paragraph 8, "Then the 8 group started to split into smaller groups running to the 9 hills and we drove to that side to give other members who 10 were on route assistance and backup as they were affecting 11 arrests." 12 So paragraph 6 and 7 seemed to be chronologically 13 when he is at scene 1 and it appears that he fired stun 14 grenades before the TRT fired. Do you have a recollection 15 of what was happening when Warrant Officer Kgosana used 16 stun grenades? Do you recall movement of the crowd, 17 location of anybody else, can you pinpoint when that 18 happened because from his statement it seems that it 19 happened before the TRT firing, so it shouldn't have 20 impacted your ability to hear the TRT? 21 BRIGADIER CALITZ: Ek dink my getuienis 22 was dat ek het nie geweet op watter stadium het die TRT 23 geskiet nie, so ek het opgenoem wat in my Nyala besig was 24 om plaas te vind. So die stun grenade is gegooi toe ons 25 voor by die draad was en ons gesien het die groep het begin</p>
<p style="text-align: right;">Page 19349</p> <p>1 time, is that correct? 2 BRIGADIER CALITZ: Dit was een van die 3 redes wat ek gegee het, ja. 4 MS LE ROUX: Yes. 5 BRIGADIER CALITZ: Toe het ons vorentoe 6 beweeg. 7 MS LE ROUX: Okay, and I would like to 8 understand that a little more because what we know from 9 FFF8 which is the discharged report, that records who fired 10 what at scene 1 and scene 2. We know that Warrant-Officer 11 Kgosana fired one stun grenade from your Nyala and then if 12 you could look at his statement, that's Warrant-Officer 13 Kgosana, it is KKK27, if we look at paragraph 6 of his 14 statement he says, this is at scene 1 and he says, "By the 15 time of deployment the front group started moving forward 16 towards the Nyala with wire and started to attack. Then 17 P11 moved in as to assist and on its arrival they started 18 attacking P1," I think he means P11, "with spears, axes and 19 every weapon they have in their possession. P1 moved 20 forward to assist P11 and Siano on the other side of P11 21 and we opened the door of Nyala P1," and then this is the 22 important part, "and I used a stun grenade to disperse the 23 crowd that was attacking Nyala P11 and the group continued 24 on attacking." 25 He continues in paragraph 7, "We then closed the</p>	<p style="text-align: right;">Page 19351</p> <p>1 deurbeweeg en ek het besef dat hulle moet gekeer word en 2 die stun granaat is gegooi op 'n stadium, the deur is 3 toegemaak en daarna het hulle met rubber gevuur. Ek dink 4 dit was dieselfde tyd wat ek gesê het die Papa voertuie 5 moet vorentoe beweeg en my opdragte so begin gee het, maar 6 ek weet glad nie op watter stadium daar 'n skietery was wat 7 ons nou wel na die tyd gesien het op die voorste punt wat 8 deurgegaan het nie. 9 MS LE ROUX: Okay, let's move on. In the 10 chronology at approximately 15:55:20 we have Major-General 11 Naidoo hearing the radio report from Lieutenant-Colonel 12 Vermaak, the bodies were down, medical assistance is needed 13 and he begins to deploy his reserve force from forward 14 holding area 1. We get that in his statement which is 15 JJJ108, paragraph 60 and 61 and if we – 16 CHAIRPERSON: JJJ? 17 MS LE ROUX: JJJ108. 18 CHAIRPERSON: Paragraph? 19 MS LE ROUX: 60 to 61, and then we can 20 put a time on that because we know at 15:56:19 we see the 21 forward holding area 1 vehicles begin to pass the FLIR CCTV 22 camera, this is all set out at page 4 of the Gary White 23 Annexure, GW6C and that same radio communication about the 24 need for medical assistance and bodes down appears to be 25 heard by Brigadier Fritz which we get from his</p>

<p style="text-align: right;">Page 19352</p> <p>1 supplementary statement, JJJ72 at paragraph 6.2. So, 2 Brigadier Calitz, the point for you is, we have Major- 3 General Naidoo hearing something on the radio and Brigadier 4 Fritz hearing something on the radio by bodies and medical 5 assistance being needed. You didn't hear either of those 6 reports or that report if it is a single report, did you? 7 BRIGADIER CALITZ: Dit is korrek, ja, dit 8 is wat ek oor getuig het. 9 MS LE ROUX: Next in the chronology is 10 that approximately 15:56:10 and the footnote, footnote 1 on 11 the chronology explains how we've estimated that timing, 12 using the positioning of the water cannons and various of 13 the Botha photographs as well as the Marikana exposed 14 footage, but – 15 CHAIRPERSON: The Marikana exposed 16 footage, what exhibit number is that? 17 MS LE ROUX: Chair, I have to get that 18 for you, I don't have - 19 CHAIRPERSON: Well, will you give it to 20 us in due course? 21 MS LE ROUX: Ah, it is EEE16. 22 CHAIRPERSON: Thank you. 23 MS LE ROUX: Brigadier Calitz, that's the 24 video which was covered by the evidence leaders and their 25 cross-examination where you called for the TRT over the</p>	<p style="text-align: right;">Page 19354</p> <p>1 BRIGADIER CALITZ: Terwyl ons daar langs 2 koppie 2 gestaan het, het ek weer probeer kontak maak met 3 hulle maar daar was geen reply of – wat noem mens dit, 4 comms van hulle kant af nie, nee. En daarna was dit net 5 weer my en Kolonel Vermaak se gesprek. 6 MS LE ROUX: And at any other point 7 during the course of the day – so you tried once, which is 8 what we see on the Marikana exposed video. You asked 9 Lieutenant-Colonel Vermaak and then when you were re- 10 ordering your line, you tried one more time directly to the 11 TRT. Is that your evidence? 12 BRIGADIER CALITZ: Dit is waaroor ek 13 getuig het, ja. 14 MS LE ROUX: And any other attempts to 15 contact the TRT after the second one you've just 16 identified? 17 BRIGADIER CALITZ: Nee, ek dink nadat 18 Kolonel Vermaak vir my gesê het daardie persone, daar's 19 bodies, het ek aangeneem hulle is by daardie toneel en dan 20 ook het ek getuig oor die beveiliging, ensovoorts. So dit 21 is waaroor ek getuig het. 22 MS LE ROUX: Brigadier Calitz, if I could 23 then ask you to pick up KKK43, which is the document sent 24 and prepared over the weekend, CALS SHRC Analysis, Use of 25 radio and telephone by SAPS members at scene 1.</p>
<p style="text-align: right;">Page 19353</p> <p>1 radio, you say TRT, can you hear me. 2 [10:13] Then on the Marikana exposed video, they're 3 filming the TRT line, and you see the TRT members shouting 4 and saying, "TRT, listen to the radio." Do you recall that 5 footage? 6 BRIGADIER CALITZ: Ek het so getuig, dit 7 is korrek. 8 MS LE ROUX: So what that footage shows 9 us is that you called for the TRT and they listened, but 10 you never got a reply from them, despite the fact they were 11 all saying, "Listen to the radio, listen, listen 12 carefully." And then as a result you asked Lieutenant- 13 Colonel Vermaak to tell you why they weren't following 14 behind you. That's set out at paragraphs 1.16 and 1.17 of 15 your statement and you also testified about that. 16 BRIGADIER CALITZ: Dit is korrek, waaroor 17 ek getuig het, ja. 18 MS LE ROUX: At any other point, did you 19 try to contact the TRT again? 20 BRIGADIER CALITZ: Ek het gesê terwyl ons 21 daar by koppie 2 gestaan het. As jy sê again, beteken dit 22 na ek vir Kolonel Vermaak gevra het? 23 MS LE ROUX: Yes, after you asked 24 Lieutenant-Colonel Vermaak why they weren't following, did 25 you –</p>	<p style="text-align: right;">Page 19355</p> <p>1 MR SEMENYA SC: Sorry, Chair, maybe 2 before that happens, I failed to understand why the entry 3 15.56.10 about the witness calling for TRT is point at the 4 fact that he must have gained knowledge of the deaths. I 5 can't see the connection there. 6 CHAIRPERSON: I was just wondering 7 myself, but I thought it might become clear to us later. 8 COMMISSIONER HEMRAJ: As was I, I must 9 say. 10 CHAIRPERSON: Yes, we're all having this 11 problem, but Ms Le Roux will explain to us. Perhaps we 12 should give her the opportunity now. 13 MS LE ROUX: Thank you, Chair. Chair, the point is 14 simply this, the TRT are a critical part of the operation 15 that Brigadier Calitz is commanding. He tries to contact 16 them, doesn't get a reply. We know from the Marikana 17 exposed video that they received that communication and we 18 hear the member shouting to the line, saying, "Listen to 19 the radio, listen to the radio," as if some further 20 communication is to happen. Brigadier Calitz's testimony 21 is that he never gets a reply. He's testimony is that he 22 never gets a reply. He's testified he made two follow-up 23 attempts asking Lieutenant-Colonel Vermaak why the TRT 24 weren't following, and then trying once more to contact the 25 TRT directly and get a response from them. And we'll</p>

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1 submit all of that means, and the Human Rights Commission
 2 will submit in due course to the Commission, that it's one
 3 more question mark that should have been in Brigadier
 4 Calitz's mind: Why aren't the TRT responding to me? What
 5 are the TRT doing? And if he had pursued that enquiry, he
 6 could have got an answer saying, "We're standing around
 7 because we just killed some people."
 8 CHAIRPERSON: No, I understand that, but
 9 you fall short of what you're aiming to show. He may well
 10 asked himself why aren't they replying, but the mere fact
 11 they weren't replying wouldn't have conveyed to him that
 12 there'd been these shots and the people have just died,
 13 which is the point that you're busy with at the moment and
 14 that's why Mr Semenya asked the question that he did. That
 15 factor, taken by itself, doesn't bring home to him
 16 knowledge of the deaths. It may indicate to him something
 17 is happening, the TRT people doing something, he doesn't
 18 what it is there were deaths, but that's not enough in
 19 itself, but it may well be that, you know, you've got to
 20 go further and deal with other issues. That one by itself
 21 doesn't seem to me to help, but I don't want to comment as
 22 you go along on how cogent some of these arguments are,
 23 you're argument at the end will be, one must take them all
 24 together, I take it.
 25 MS LE ROUX: Correct, Chair. Let me make

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1 two submissions, the first is each entry in this chronology
 2 may not be a dispositive point that proves that Brigadier
 3 Calitz knew about the deaths and has not been honest with
 4 the Commission. What our submission will be is that
 5 cumulatively there were all these different opportunities
 6 that could have brought this knowledge - that could have
 7 given him knowledge of the deaths before 16:47, and that as
 8 operational commander, there were these different avenues
 9 that could have been explored credibly, and then in
 10 addition, Chair, it relates to the credibility of Brigadier
 11 Calitz's testimony. So for example -
 12 CHAIRPERSON: Yes -
 13 MS LE ROUX: Chair, if I could just
 14 finish the second point which is the credibility of the
 15 point that the TRT never responded, now of course when we
 16 get a TRT witness, we'll be able to explore that with that
 17 witness, but we know that they're getting the radio
 18 communications from Brigadier Calitz, so to test the point
 19 that perhaps from the TRT side they tried to contact
 20 Brigadier Calitz to let him know that they had just engaged
 21 in a fatal shooting at scene 1. That's another point, but
 22 each and every entry in this chronology, when we take them
 23 cumulatively, will be the basis for a submission by the
 24 Human Rights Commission that Brigadier Calitz should have
 25 known earlier than 16:47.

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1 CHAIRPERSON: I understand the argument.
 2 You may be met with the response that if some of them have
 3 got no value, you add one and one and then you add a couple
 4 of noughts, you're still left with two, but anyway we will
 5 get there when you finished the whole exercise. Alright,
 6 carry on.
 7 MS LE ROUX: Thank you, Chair. What I'd
 8 like to do, Brigadier Calitz, is just go through KKK43,
 9 which is the analysis of the use of radios and telephone by
 10 SAPS members at scene, since this is a new document. So if
 11 we turn to page 2 of that document, to just explain that
 12 what we've done is isolate screen shots from the JJJ194
 13 series, which show SAPS members using either radio or
 14 cellular telephones at scene 1, and then to clarify that
 15 where we've used zoom, the full screen image is shown in
 16 the top right-hand corner of the screen, which indicates
 17 with a little white box what's been zoomed and then that
 18 zoomed portion is what you see in the middle of the page.
 19 So if we can turn to slide 3 of this? This is a screenshot
 20 from 15:57:48 eTV time, from the clip JJJ194.25. It
 21 appears three seconds into that clip and here we see the
 22 TRT line and the member that we've zoomed in on and we've
 23 identified him as member 1. Do you know who member 1 is,
 24 Brigadier Calitz?
 25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 nee. Die foto kan ons miskien gaan kyk van wie daar is.
 2 Die TRT het berets, hierdie persoon het 'n pet op. Dis nie
 3 vir my heeltemal duidelik wie hy is nie. Ek kan ook net sê
 4 dat ons het gevra dat ek hierdie goed miskien net betyds
 5 kry om deur te gaan. Ek het hierdie vanoggend gekry, so ek
 6 is nog nie daardeur nie, of die geleentheid gehad om dit te
 7 bestudeer nie, maar ek glo soos ons nou bladsy vir bladsy
 8 gaan, is die eerste keer wat ek dit ook nou so sal saam met
 9 u deurgaang, maar ek sal my bes doen om vir u te probeer by
 10 sit, maar nee, u vraag is u kan nie met duidelikheid
 11 hierdie persoon herken nie.
 12 MS LE ROUX: And, Brigadier Calitz, we
 13 will follow-up with the SAPS legal team to identify member
 14 1.
 15 CHAIRPERSON: Sorry to interrupt you.
 16 Yes, I was going to say that. We'll ask the overall
 17 commander of the SAPS team here this morning to make
 18 enquiries as to whether, with or without the assistance of
 19 his operational commander, he can ascertain who this
 20 particular member was.
 21 MR SEMENYA SC: We'll try to do that,
 22 Chair.
 23 MS LE ROUX: Thank you, Chair. So the
 24 slide at page 3 we identify the member that we'll call the
 25 member that we'll call member 1, and he moves into the shot

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1 and you can see him clutching the radio that is attached to
 2 his chest. If we then turn over to slide 4, which is a
 3 screenshot from 15:57:52, we see that he brings the radio
 4 to his mouth, appears to start talking into it. If you
 5 turn over to slide 5, 15:57:55, that's clearer, you can see
 6 him holding a handheld radio in his left hand and appears
 7 to be speaking into it. Slide 6, which is 15:58:23, he
 8 continues to hold the radio near his mouth. Slide 7, at
 9 15:58:28, again he continues to have it close to his mouth
 10 and appears to be talking into it. If you then turn to
 11 slide 8, 15:58:37, we still see him. The handheld radio is
 12 close to his mouth. He appears to be talking into it,
 13 using it to communicate. Slide 9, 15:58:46, member 1 then
 14 kneels down still maintaining the posture of holding the
 15 radio to his mouth and appears to be talking into it. Then
 16 on slide 10, we have the screenshot from 15:59:16, where
 17 his standing alone in the area just beyond the bushes that
 18 we can see, still holding the radio close to his mouth,
 19 appears to be talking into it. This continues slide 11,
 20 time, 15:59:26.

21 CHAIRPERSON: I don't mean to be
 22 uncharitable, but of course it is possible that he just
 23 kept the radio close to his mouth, so if ever had to say
 24 it, I mean quickly, he didn't have to bring the radio there
 25 to do so. You say he appears to be talking. All you

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1 really see his holding it near his mouth, whether – you
 2 can't see his lips moving on the photograph. So whether he
 3 was actually talking, or merely holding it in readiness to
 4 talk if he wanted to do so, is something the photographs
 5 don't tell us, isn't that correct?

6 MS LE ROUX: Chair, I think –

7 CHAIRPERSON: He may be talking, he may
 8 not be talking, unless you see his lips move, unless he is
 9 a ventriloquist and he can talk without moving his lips,
 10 but I mean I take it that's not suggested.

11 MS LE ROUX: Chair, I can take the –

12 COMMISSIONER HEMRAJ: You say on slide 3
 13 that the video shows that the policeman appearing to be
 14 talking on the radio. Does that appear clearly from the
 15 video, is that what you're saying?

16 CHAIRPERSON: Or is it just an inference
 17 you're drawing from the still photographs that you attach?

18 MS LE ROUX: Yes. Chair, from the video
 19 and from – it is an inference we're making that he holds
 20 the handheld radio in a manner in which you typically do
 21 when you're talking into it.

22 CHAIRPERSON: Or unless you're holding it
 23 in readiness to talk if you have to, but isn't the answer
 24 to your question this, in due course this member will be
 25 identified. It appears to be one of the commanders of the

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1 group. So we will obtain information from SAPS who he is
 2 and he can be interviewed by the evidence leaders and they
 3 can ask him if he was using his radio or not, and we'll
 4 then have a statement from him. At the moment it's an
 5 inference which may be correct, which may not be correct.
 6 You can put a point to the witness based upon the
 7 inference, it's clear it is an inference, so we can get his
 8 answer and move on.

9 MS LE ROUX: Thank you, Chair, and that's
 10 why we've made that he appears to be talking. We will have
 11 to clarify this once we've identified member 1, but just to
 12 round out member 1 is slide 12, which is 15:59:46, where we
 13 see him walking right to left, again holding the radio
 14 close to his mouth and appears to be talking into it.

15 CHAIRPERSON: All you can say is he holds
 16 this radio close to his mouth. You can't say he appears to
 17 be talking, unless you can see his lips moving, but anyway
 18 we've covered that point. He will tell us if he was
 19 talking or not, why he was holding the radio next to his
 20 mouth all the time. You infer he was talking and if
 21 there's a question you want to ask the present witness
 22 based on that inference, I suggest you ask it.

23 MS LE ROUX: Chair, I just want to finish
 24 going through the document so that everyone has it, because
 25 questions then follow. Brigadier Calitz -

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1 BRIGADIER CALITZ: Mnr die Voorsitter, as
 2 u dalk –

3 CHAIRPERSON: A few red lights that I
 4 have to deal with, apart from your own, Ms Le Roux, Mr
 5 Semenya and the witness. Perhaps you'll let Mr Semenya
 6 talk first. He appears to be wanting to talk.

7 MR SEMENYA SC: Chair, I'm still waiting
 8 to see if this member is talking. Is the proposition that
 9 he's talking to Brigadier Calitz? So that I can establish
 10 whether it is contended that he must have gained knowledge
 11 of the deaths.

12 CHAIRPERSON: Well, I think you're being
 13 a bit premature in your objection, she's going to tell us
 14 in a minute. She's just telling us what the documents are
 15 so we can see them. She's then going to pop the question
 16 in a moment, and we will then find out where she's going.
 17 So I think you're objection is premature, so I'm not going
 18 to rule on it at this point, but, Brigadier, you turned on
 19 your light too, what do you want to say?

20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 nee, ek wou net gesê het voor sy daar aangaan met die
 22 volgende – met die vorige vraag was dit vir my moeilik. Sy
 23 het omtrent 12 goed genoem en dan terug gekom en dan weet
 24 ek nie watter een is die vraag of die stelling nie. So as
 25 u dalk met die punt kan klaar maak –

<p style="text-align: right;">Page 19364</p> <p>1 CHAIRPERSON: Ek is jammer om u in die 2 rede te val. Sy het nog nie die vraag gevra nie. Sy sê sy 3 gaan die vraag vra teen die agtergrond van hierdie fotos 4 waarna sy u verwys het. 5 BRIGADIER CALITZ: O, is sy nog steeds na 6 member 1 toe gaan, dan is dit reg. 7 CHAIRPERSON: Ja, u en ek wag vir die 8 vraag. 9 BRIGADIER CALITZ: Ek wil net graag – ja, 10 dat sy nie oorgaan na iets anderster as die member 1, wat 11 ons miskien met mee moet net klaar maak en dan – 12 CHAIRPERSON: I'll keep an eye on that 13 anyway, I'm waiting for the question. She's going to ask 14 it when she's ready. 15 MS LE ROUX: Thank you, Chair, yes. 16 Brigadier Calitz, we're just going through the document, 17 because you only received it over the weekend. So if we 18 can then get to slide 13, which is at 1600:41, eTV time, 19 here we see a second SAPS member who we've identified as 20 Captain Adriaio. It appears to be Captain Adriaio. We'll 21 obviously include that in the request to SAPS to identify 22 him. Captain Adriaio enters the shot and then on the next 23 page, slide 14, 1600:42, eTV time, we see that Captain 24 Adriaio has two mobile phones, one in each hand. Can you 25 confirm that member 2 is Captain Adriaio? Do you recognise</p>	<p style="text-align: right;">Page 19366</p> <p>1 en wat ek hier sien, dit lyk vir my na Kaptein Loest wat 2 dan die bevelvoerder was van die TRT. 3 MS LE ROUX: Thank you. We'll also 4 confirm that with the SAPS legal team. 5 CHAIRPERSON: We do know, of course, that 6 Captain Loest spoke to Brigadier Pretorius in the JOC. So 7 that's something that will be explored later, I should 8 imagine. Anyway, have we now reached a stage where you 9 ready to put the questions to the witness, based upon all 10 these photographs? 11 MR CHASKALSON SC: Chairperson, I don't 12 know if this will assist, but the cell phone records 13 reveal, among other things, that at 16:08:54, Captain Loest 14 made a 69 second cell phone call to Brigadier Pretorius. 15 So that would have taken, I mean assuming eTV time, and 16 Vodacom time are identical, which they wouldn't be, but 17 even if they're roughly approximate, that would have taken 18 him into 16;10, which is where this photograph is taken. 19 CHAIRPERSON: The probabilities are 20 almost overwhelming, I would think, that this is the 21 photograph of him talking to Brigadier Pretorius. That's 22 the point that's being made, not talking to the witness of 23 course. 24 MR CHASKALSON SC: Can I just correct my 25 statement? The call originated with Brigadier Pretorius,</p>
<p style="text-align: right;">Page 19365</p> <p>1 him? 2 BRIGADIER CALITZ: Hy kyk weg van die 3 kamera af op bladsy 13, maar daar's 'n blanke man, Kaptein, 4 met daai uniform en sy postuur van links agter af kan ek sê 5 70% dit kan hy wees. 6 MS LE ROUX: We'll get confirmation – 7 CHAIRPERSON: Ask SAPS to identify him 8 and I think he's going to have to come and give evidence 9 anyway, so we'll ask him when he comes in. 10 BRIGADIER CALITZ: And then if you can 11 turn to slide 15, which is 1600:42, eTV time, here we see 12 another SAPS member, member 3, who may possibly be the same 13 member as member 1. This is something we'll have to 14 clarify with the SAPS. Enters the shot and he seems to be 15 speaking into or listening to the radio. If you then turn 16 over to slide 16, which is 16h50. This is a closer shot of 17 that same person that we've identified as member 3, 18 although it may be member 1, but member 3 holding the radio 19 next to his face and then the final slide 17, 16:10:06 eTV 20 time, shows a SAPS member identified as member 4, speaking 21 into a mobile phone. That's the gentleman with the goggles 22 up on his helmet on the left of the group that stands 23 there. Brigadier Calitz, can you identify member 4? 24 BRIGADIER CALITZ: Ek dink hierdie 25 persoon is waarmee ek saam werk in my kantoor. Sy postuur</p>	<p style="text-align: right;">Page 19367</p> <p>1 but it was to Captain Loest. It was a call between Captain 2 Loest and Brigadier Pretorius. 3 MS LE ROUX: Is there any indication of 4 the previous – Mr Chaskalson, the members shown speaking on 5 cell phones, but was it only Captain Loest or – 6 MR CHASKALSON SC: That was Captain 7 Adriaio. 8 MS LE ROUX: Yes. 9 MR CHASKALSON SC: There are a series of 10 calls made from Captain Adriaio to the head of police, 11 public relations, Brigadier Mashego. If you'll give a 12 minute, I can give times for those calls. 13 MS LE ROUX: The recipient of the calls 14 in the JOC, Mr Chaskalson? 15 MR CHASKALSON SC: No, not to my 16 knowledge. Brigadier Mashego, as we understood it, was the 17 head of SAPS media liaison. So I imagine he would have 18 been in Pretoria. The first of those calls is at 15:57:05 19 which is a 23 second call from Captain Adriaio to Brigadier 20 Mashego. Brigadier Mashego calls back at 15:57:29, and 21 there's a 39 second call. 22 [10:33] Then at 15:58:46 Captain Adriaio calls Brigadier 23 Mashego again for 57 seconds, and at 16:03:32 Captain 24 Adriaio calls Brigadier Mashego and there is a call that 25 runs for over three minutes, 202 seconds.</p>

<p style="text-align: right;">Page 19368</p> <p>1 COMMISSIONER HEMRAJ: And any record of 2 the call from Captain Adriaao to Brigadier Calitz during 3 that timeframe? 4 MR CHASKALSON SC: Not during that 5 timeframe, earlier in the day. 6 COMMISSIONER HEMRAJ: Thank you. 7 CHAIRPERSON: In fact I take it the 8 record – I can't remember the exhibit now, but as far as I 9 can remember what was in it, does the document reflect any 10 telephone call to Brigadier Calitz at the time that we're 11 busy with? 12 MR CHASKALSON SC: The only one is from 13 Major General Naidoo. That was the call that I raised with 14 Brigadier Calitz in cross-examination. 15 CHAIRPERSON: Yes. 16 MR CHASKALSON SC: It's a short call that 17 went on to voicemail. 18 CHAIRPERSON: Yes. 19 MR CHASKALSON SC: At 15:53, if I recall 20 correctly. 21 MS LE ROUX: And Chair, for the record, 22 the document is a complete document looking at all the 23 evidence we could find of the use of radios or cell phones 24 at scene 1. My questions for Brigadier Calitz only relate 25 to member 1 and member 3, not to the cell phone calls,</p>	<p style="text-align: right;">Page 19370</p> <p>1 MS LE ROUX: So with that caveat that if 2 he was making a radio communication and if it had gone 3 through and not suffered interference from the power lines, 4 that communication would have been heard on the radio that 5 you had access to? 6 BRIGADIER CALITZ: Dit is korrek, ja. As 7 die radio gewerk het sal ons dit dan gehoor het. 8 MS LE ROUX: But if there was such a 9 communication you have no recollection of receiving it, 10 correct? 11 BRIGADIER CALITZ: Volgens my was daar 12 nie daardie terugvoer na my toe nie, nee. 13 MS LE ROUX: If we can then move on to 14 the next entry, which is at approximately 4 o'clock where 15 Lieutenant Colonel Vermaak reports "18 bodies" over the 16 radio, and if we look at the annotated Van Heerden notes, 17 that's entry number 7 on the annotated Van Heerden notes. 18 Now Brigadier Calitz, you've already testified about this, 19 you said that you thought the bodies was a reference to 20 people either injured or lying down, waiting to be 21 arrested. Three follow-up questions on that; did you ask 22 for any clarification from Lieutenant Colonel Vermaak about 23 what he meant by "bodies"? 24 BRIGADIER CALITZ: Hy het vir my gesê 25 daar is persone wat in die veld lê, waarna ons verwys het</p>
<p style="text-align: right;">Page 19369</p> <p>1 although I'm indebted to Mr Chaskalson for the further 2 information about confirming the use of the cell phones and 3 the times. 4 So Brigadier Calitz, if we could then look at the 5 fourth entry on the chronology, which is 15:57 – 6 CHAIRPERSON: What's the question? 7 Unless I was inattentive, what was this question I've been 8 waiting to anxiously to hear? 9 MS LE ROUX: I'm about to put it, Chair. 10 CHAIRPERSON: Oh, I see. I'm sorry. 11 MS LE ROUX: So the relevant entry is 12 15:57:52 where we see member 1 commencing radio 13 communication from scene 1. That's the member that we see 14 on slide 3 to 12 of the analysis document we've just gone 15 through. Brigadier Calitz, the question is this. If that 16 member was making a radio communication it would have been 17 heard on the radio in your Nyala, correct? 18 BRIGADIER CALITZ: Not entirely. It 19 depends on the radio communication. I think there's 20 evidence to the fact that the radio technician, or one of 21 our radio experts testified, or not testified, but I know 22 it's somewhere in the statement in hindsight that he said 23 the power lines affected the handsets, so if I can just 24 answer it this way, if the call went through it would have 25 been expected to be heard by the JOC and the vehicles, yes.</p>	<p style="text-align: right;">Page 19371</p> <p>1 na "bodies," en hy het vir my gesê dat hulle lê aan die 2 voorkant en aan die agterkant en ek het my getal op na 25 3 toe gehad. Ek weet die VB sê 18, maar nee, ons het nie 'n 4 gesprek gehad oor wat hy dink en wat hy, u weet, dit sou 5 vir my gesê het daar is dooie persone of daar is so. Hy 6 het net gesê dis persone wat in die veld lê. 7 MS LE ROUX: Did you clarify with him 8 whether they were injured or lying down awaiting arrest? 9 BRIGADIER CALITZ: Ek dink op sy hoogte, 10 4, 500 voet, is dit onmoontlik om te sien uit die tjoopper. 11 So nee, ek dink nie hy sou in daardie posisie gewees het om 12 vir my daardie antwoord te gee nie. 13 MS LE ROUX: When you heard this first 14 report about bodies, did you discuss it in the Nyala at 15 all? Did you ask any of your members in the Nyala with you 16 if they knew anything about bodies, had seen anything about 17 bodies? 18 BRIGADIER CALITZ: Weereens u vra vir my, 19 ek dink ek het daarvoor getuig, ek dink nie daar was rêrig 20 gesprekke daarvoor nie. Ons het aangeneem dit was met die 21 "dispersion action" en ook in die "regrouping line" het ons 22 vir die persone gevra en met die ander bevelvoerders, die 23 koms na my toe was nooit dat daar enige persone gedood is 24 nie. 25 MS LE ROUX: And at the time that the</p>

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1 report of 18 bodies comes over the radio, did Lieutenant
2 Colonel McIntosh, Warrant Officer Nong, or the Lonmin
3 interpreter who heard shooting at scene 1, they didn't say
4 anything in response to the radio report about bodies?
5 BRIGADIER CALITZ: Dit is waaroor ek
6 getuig het. Niemand het enigiets gerapporteer daar nie,
7 nee.
8 MS LE ROUX: Brigadier Calitz, the next –
9 CHAIRPERSON: Are you moving [microphone
10 off, inaudible]?
11 MS LE ROUX: Yes, I'm moving to the next
12 point in the chronology.
13 CHAIRPERSON: I must tell you that I find
14 difficulty in understanding the evidence in relation to the
15 use of the word "bodies." It's a matter of language. I
16 would have thought if living people are lying down one
17 would normally say there are people lying down. You would
18 only – the word "bodies" either to me, I put this prima
19 facie to you so you can help me; the word "bodies" conveys
20 to me either that Colonel Vermaak – and we'll hear from him
21 of course when he gives evidence, but I'm interested in how
22 you understood him – either means that he thought they were
23 dead, or he wasn't sure. So he used the word "bodies" to
24 cover people who are either alive, dead or alive, but I
25 wouldn't have expected as a matter of language usage a

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1 person to say there are four bodies or 18 bodies lying
2 there when what was meant, there are 18 people lying down.
3 So did the use of the word "bodies" not convey to you the
4 fact that Colonel Vermaak thought that there was a
5 possibility that some or all of them were dead?
6 BRIGADIER CALITZ: Mnr die Voorsitter,
7 nee, dit is waaroor ek getuig het. Dit is in my gedagte
8 glad nie gewees nie. Ek praat weereens uit ondervinding
9 uit in die jare as ons steun het van die helikopter af, en
10 ek dink Kolonel Vermaak kan daarvoor getuig; as ons 'n
11 uiteendryf aksie het is daar altyd persone wat in die veld
12 lê en daar is "so many bodies" en daardie kant is nog
13 "bodies," so, en dit is gewoonlik persone wat dan met die
14 "dispersion action" beseer is of dan wat in die veld lê om
15 gearresteer te word. Ek dink die waarna hy verwys het kan
16 ons sien, ek het gesien daar is 'n eTV "footage," in
17 "hindsight," waar die Canters beweeg en ook persone dan
18 besig is om op te laai wat dan in die veld lê. So dit het,
19 dit is wat ek verstaan het daarby.
20 CHAIRPERSON: I take it he spoke English,
21 did he? Did he speak English over the radio? I think the
22 transcript indicates he spoke English. So what would the
23 Afrikaans word be? Would it be "persone," "lyke,
24 "liggame"? What word – for "bodies" what would you expect
25 the English – sorry, what would you expect the Afrikaans

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1 translation of the word "bodies" to be in this context?
2 BRIGADIER CALITZ: Mnr die Voorsitter, ek
3 praat onder korreksie, ek dink Kolonel Vermaak se
4 verklaring is in Afrikaans. So ek is nie seker wat hy
5 daarna verwys het. Persone sou ek sê, maar ek dink ons
6 moet net na sy verklaring – ek weet sy Afrikaans, sy
7 verklaring is in Afrikaans geskryf –
8 CHAIRPERSON: Yes, well we'll ask him
9 when he comes. I'm interested in what you understood, you
10 see, but –
11 BRIGADIER CALITZ: Nee, persone.
12 CHAIRPERSON: Ja.
13 MS LE ROUX: Brigadier Calitz, the next
14 entry on the chronology is 16:42, which is where we see the
15 person we've identified as member 3 engaging in radio
16 communication, appearing to engage in radio communication
17 from scene 1. That's slides 15 and 16 of KKK43. The same
18 question as with member 1, if that member was making a
19 radio communication from scene 1 and if that radio
20 communication had come through and not suffered
21 interference from the power lines, you would have been able
22 to hear it on your radio, correct?
23 BRIGADIER CALITZ: As dit deurgekom het
24 en gewerk het sou ek dit dan gehoor het, ja.
25 CHAIRPERSON: That would be recorded in

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1 the police OB-book, so we'd know what it is. So, and
2 presumably he would have heard, the witness would have
3 heard what the people in the JOC heard and recorded in the
4 OB-book. Is that right?
5 MS LE ROUX: Chair, my understanding of
6 the evidence on the occurrence book is that not every radio
7 communication may have been recorded, only certain aspects
8 of it. So if there was radio communication, if there was
9 nothing to record or there was a failure to record, my
10 understanding of the occurrence book is that it's not a
11 complete transcript of all radio communication on the day.
12 CHAIRPERSON: I don't know what the
13 English is, but if it was a "niksseggende opmerking" on the
14 radio it wouldn't have been possibly written down, but then
15 the witness wouldn't necessarily have remembered a
16 "niksseggende opmerking" either. If it was a material –
17 the point you're busy with, namely that an incident had
18 happened, a very serious incident had happened at scene 1
19 and people had been shot and so forth, that is a kind of
20 thing which would have been written down, surely. Isn't
21 that right? The point is if it was important, material, it
22 would have been recorded. I think that's the evidence. It
23 would have been heard in the JOC and he would have heard it
24 too and then you can ask him about it. Isn't that correct?
25 MS LE ROUX: Chair, I think it's

<p style="text-align: right;">Page 19376</p> <p>1 obviously something for member 1 and member 3, if they're</p> <p>2 two different people to testify to, but you know, it may</p> <p>3 for example have been a question or a request for further</p> <p>4 instruction. That may not have been recorded in the</p> <p>5 occurrence book. It nonetheless would be significant for</p> <p>6 the purposes of –</p> <p>7 CHAIRPERSON: Yes, yes, I understand,</p> <p>8 but –</p> <p>9 MS LE ROUX: - the command of the</p> <p>10 operation.</p> <p>11 CHAIRPERSON: The question is a bit</p> <p>12 speculative at the moment, isn't it? But it will become</p> <p>13 clear – the significance of it will become clear to us when</p> <p>14 we've identified member 1 and/or member 3 and found out</p> <p>15 what exactly was being said, if lips were moving at the</p> <p>16 time. Can we perhaps take the tea adjournment now, or do</p> <p>17 you want to make a point, round off the point before we do</p> <p>18 that?</p> <p>19 MS LE ROUX: No, no, we can take the</p> <p>20 adjournment now.</p> <p>21 CHAIRPERSON: We'll take the tea</p> <p>22 adjournment.</p> <p>23 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>24 [11:12] CHAIRPERSON: The commission resumes.</p> <p>25 Brigadier, you're still under oath. Ms Le Roux?</p>	<p style="text-align: right;">Page 19378</p> <p>1 interested me as you know because I've mentioned it to</p> <p>2 some, a number of the witnesses it's N17 but, but that of</p> <p>3 course is Papa1 itself. But any way –</p> <p>4 MS LE ROUX: But, Chair, just –</p> <p>5 CHAIRPERSON: The point you make is</p> <p>6 correct that a number of reports were recorded with times</p> <p>7 which may be approximate and they're all under one entry</p> <p>8 because the evidence was, I think General Annandale gave</p> <p>9 the evidence, it was hearsay but it, no it wasn't hearsay</p> <p>10 because he was present in the JOC at the time. That the</p> <p>11 messages were coming in so thick, coming in so fast that</p> <p>12 they didn't have a chance to record each one sequentially</p> <p>13 as it came in. Anyway, Mr Semenya?</p> <p>14 MR SEMENYA SC: And to that picture we</p> <p>15 can add that there was also a Tetra system brought in there</p> <p>16 by the Gauteng -</p> <p>17 CHAIRPERSON: There was a Tetra system?</p> <p>18 MR SEMENYA SC: Tetra system.</p> <p>19 CHAIRPERSON: Yes, yes.</p> <p>20 MS LE ROUX: Brigadier Calitz –</p> <p>21 CHAIRPERSON: Sorry that was, sorry</p> <p>22 before we, the system was being used by the Gauteng members</p> <p>23 among themselves. Of course this witness didn't get the</p> <p>24 benefit of those communication in order the people in the</p> <p>25 JOC did they?</p>
<p style="text-align: right;">Page 19377</p> <p>1 MS LE ROUX: Thank you, Chair.</p> <p>2 Brigadier, just for the record, I took some time in the tea</p> <p>3 adjournment to have a look at the occurrence book in</p> <p>4 response to the interchange where it had about recording</p> <p>5 entries and for the record entry 1018 in FFF25 is the entry</p> <p>6 that commences at 15:56 and then it's quite a long entry,</p> <p>7 it runs all the way to after 4:30 on the 16th and there are</p> <p>8 several entries in there and obviously the difficulty is we</p> <p>9 have not been able to attribute all of them to speakers but</p> <p>10 there are certainly entries in there and at best, at the</p> <p>11 moment the Human Rights Commission can only submit that the</p> <p>12 apparent radio communication by member 1 seen in the</p> <p>13 footage and or member 3 maybe, may well have been recorded</p> <p>14 in the occurrence book because it does not attribute all of</p> <p>15 those communications, it merely records them. At best</p> <p>16 that's the only submission I can make at the moment on</p> <p>17 that.</p> <p>18 CHAIRPERSON: I'm sorry to interrupt</p> <p>19 you. 1018 is the one where they've, I think the evidence</p> <p>20 was or it was suggested in evidence that radio reports were</p> <p>21 coming in thick and fast and they wrote them all down on</p> <p>22 pieces of paper and then recorded them in the book, times</p> <p>23 weren't necessarily accurate and so forth. The 18 bodies</p> <p>24 down though of course is there quite early on. That we</p> <p>25 know is Vermaak isn't it? Of course the one that always</p>	<p style="text-align: right;">Page 19379</p> <p>1 MR CHASKALSON SC: Chairperson, we asked</p> <p>2 SAPS for details, the Tetra system apparently records all</p> <p>3 of its communications. SAPS provided us with all of the</p> <p>4 communications that were recorded on the Tetra system and</p> <p>5 there are no communications recorded on the Tetra system</p> <p>6 that have been provided to us by SAPS at any time during</p> <p>7 the operation.</p> <p>8 COMMISSIONER HEMRAJ: There is record of</p> <p>9 communications at times outside the operation times?</p> <p>10 MR CHASKALSON SC: Early in the morning</p> <p>11 on the 16th, not early in the morning, in the morning of the</p> <p>12 16th I can go back and get the exact times where the</p> <p>13 communication stop and where they pick up again but at the</p> <p>14 time of the operation we found nothing.</p> <p>15 CHAIRPERSON: Tell me were Tetra using</p> <p>16 police members involved in scene 2, the activities</p> <p>17 operation scene 2?</p> <p>18 MR CHASKALSON SC: That we'll have to ask</p> <p>19 SAPS. There was of course a third radio system that was in</p> <p>20 operation which was the Durban based STF system for which</p> <p>21 we haven't been provided any records or haven't requested</p> <p>22 any records but we haven't seen any records. But we do</p> <p>23 know, I think it was canvassed with Lieutenant-Colonel</p> <p>24 Scott that the Durban based STF team had their own radio</p> <p>25 system for communication among themselves so there was talk</p>

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1 of communications I think between Lieutenant Colonel
2 Gaffley and the two men who had been posted on top of
3 Nyala, to act as snipers or observers.
4 CHAIRPERSON: This is scene 1, you talk
5 about scene 1 now?
6 MR CHASKALSON SC: Yes.
7 CHAIRPERSON: But Gaffley was also at
8 scene 2.
9 MR CHASKALSON SC: Yes, Chairperson.
10 CHAIRPERSON: I see, so we may still get
11 some information about that, it may help us.
12 MR CHASKALSON SC: We may.
13 CHAIRPERSON: And in relation to the
14 Tetra, the Tetra using members were any of them involved in
15 scene 1?
16 MR CHASKALSON SC: That we'd have to ask
17 SAPS, we don't know who was on Tetra and who wasn't.
18 CHAIRPERSON: May I suggest that that
19 aspect can be investigated by means of queries to the SAPS
20 and I'm sure they'll provide the answers. Ms Le Roux?
21 MS LE ROUX: Thank you, Chair. Brigadier
22 Calitz, to pick up the chronology, it's at, we're at
23 16:01:35 which is when your Nyala drives back to the
24 Johannesburg Water Cannon and then you testified that
25 Lieutenant Colonel Macintosh handed over a hand held radio

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1 and then we hear you on the Protea Coin chopper video at
2 5:50 that's exhibit CC22 saying chopper the water cannon
3 got the radio now you can talk to him now, do you recall
4 that point in the operation?
5 BRIGADIER CALITZ: Dit is korrek, mnr die
6 Voorsitter.
7 MS LE ROUX: Okay. When Lieutenant
8 Colonel Macintosh went to hand over the hand radio did you
9 ask him to ask the Jo'burg water cannon what had happened
10 at the kraal, whether they could tell you what had happened
11 with the TRT, why you couldn't, why the TRT hadn't
12 responded to you or followed, did you ask Colonel Macintosh
13 to see if the water cannon knew anything?
14 BRIGADIER CALITZ: Nee, mnr die
15 Voorsitter. Dit het sekondes gebeur, Kolonel Macintosh het
16 net uitgespring nadat hy die radio vinnig gegee en terug
17 gespring in die voertuig, ek het hom nie gevra nie nee.
18 MS LE ROUX: And to ask the companion
19 question, when Lieutenant Macintosh returned to your Nyala
20 he didn't report to you that the water cannon members had
21 said anything to him about scene 1?
22 BRIGADIER CALITZ: Soos ek sê dit was
23 sekondes, ek dink nie daar was enige gesprekvoering tussen
24 hom en die waterkanon op daardie stadium, nee.
25 MS LE ROUX: Then, Brigadier Calitz,

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1 16:04:40 we hear you say over the radio no need for
2 firearms now unless, unless the targets engage you, that's
3 Protea Coin chopper at 7 minutes 10 into that footage, do
4 you recall, you've testified about that, that already and
5 just some questions on that. You testified that when you
6 said firearms you meant rubber, correct?
7 BRIGADIER CALITZ: Dit is korrek. Ons
8 het die heelyd gepraat met die dispersion group wat die
9 Papa Nyalas was.
10 CHAIRPERSON: Ms Le Roux, may I ask you a
11 question about that. I see in your, in the exhibit KKK42
12 in respect of that entry it is written no need for firearms
13 unless it hit, is that your summary or is that what, the
14 way that Captain Van Heerden summarised it?
15 MS LE ROUX: That's how Captain Van
16 Heerden summarised the radio communication.
17 CHAIRPERSON: I see, thank you.
18 MS LE ROUX: Brigadier Calitz, you'll
19 agree with me that clear instructions and precise language
20 is important when you use the radio to give an order,
21 correct?
22 BRIGADIER CALITZ: Ekskuus tog herhaal
23 net weer u vraag.
24 MS LE ROUX: When you use a radio during
25 an operation to give an instruction or command you'll agree

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1 that precise language is important.
2 BRIGADIER CALITZ: Ek verstaan nie mooi
3 wat u bedoel by precise language, as jy my net 'n voorbeeld
4 kan gee. As ek 'n opdrag gee moet dit 'n duidelike opdrag
5 wees, as dit is waarna u verwys.
6 MS LE ROUX: And in this case we know
7 that we had members that had firearms that shot live
8 ammunition and there were members that could shoot less
9 then lethal rubber rounds, correct, so you had two
10 different types of weapons that could be discharged, those
11 are sharp pointed ammunition and those with less than
12 lethal rubber rounds. So would you arrive that
13 distinguishing between those two would have been important
14 when you gave any command about firearms?
15 BRIGADIER CALITZ: Ja, nee, ek het tydens
16 die getuienis reeds daarvoor getuig. Daar was ook met die
17 voorligting duidelik gesê dat dis net die dispersion, die
18 Papa Nyalas sal vorentoe beweeg. So die lede het dit
19 verstaan in daardie lig dat ek net met die agterste groepe
20 kan praat nie. Veral nie die taktiese groepe nie maar net
21 met die openbare orde polisiëring.
22 MS LE ROUX: But, Brigadier Calitz, the
23 POP members had both live and, had both sharp pointed
24 ammunition and less then lethal. So even for the POP
25 members you would need to distinguish between those two

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1 surely.

2 BRIGADIER CALITZ: Mnr die Voorsitter,

3 nee glad nie. Ek het dit, dit was ook in my getuienis

4 gewees dat die lede is opgelei, hulle weet presies met 'n

5 dispersion action gebruik ons net non lethal, met ander

6 woorde jou rubber en die pirotegnies wat daarmee saam gaan.

7 Daar kan nie 'n opdrag wees vir 'n persoon om sy, soos live

8 ammo te gebruik. Daar bestaan nie so 'n opdrag nie.

9 MS LE ROUX: Brigadier Calitz, another

10 submission that the Human Rights Commission will make which

11 I'd like to give you an opportunity to respond to is that

12 the reason you used the word firearms is because you knew

13 they had been used because otherwise saying there's no need

14 for them now would make no sense. You wouldn't need to

15 distinguish now from what had come before unless you knew

16 that firearms had been used, do you have a response to

17 that.

18 BRIGADIER CALITZ: Nee, nee Advokaat, ek

19 dink as jy, die evidence, ek weet nie of ons weer daaroor

20 moet gaan nie. Ek het reeds breed vorige hier rondom

21 getuig. Ek was ge-ondervra deur mnr Chaskalson, die

22 evidence leaders oor dieselfde. Dit het gegaan rondom toe

23 ons vorentoe beweeg het en ons dan gesien het die lede het

24 uit die Nyala voertuie uit gevuur. Ek dink die Voorsitter

25 het dit ook vir my gevra en ek het gesê ja op daardie

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1 stadium het ek so 'n operasionele opdrag vir hulle gegee.

2 Die nou verwys na toe ons beweeg het en die groepe

3 uiteengedryf het.

4 MS LE ROUX: Brigadier Calitz, then at

5 16:09:17 we have the report by Lieutenant Colonel Vermaak

6 about two bodies at the back of the second koppie. On the

7 Protea Coin video that comes at 11:47 and you have already

8 been asked about this and testified that you heard the

9 report but I just want to confirm you made no further

10 enquiries about what was meant by that, what state the

11 bodies were in.

12 BRIGADIER CALITZ: Nee, soos ek verwys

13 het dat my, soos ek dit verstaan het die opdrag was gegee

14 om uit een te dryf en dan sou die groepe uiteendryf sou

15 daar dan weer dieselfde as op toneel 1 die bodies sal dan

16 verwys na persone wat beseer is. Ek dink nie die woord

17 bodies het onderskei tussen lewend en dood nie, ek het ook

18 verwys na die evidence leaders se woorde wat ook dieselfde

19 woord gebruik het maar twee verskillende betekenis gehad

20 het.

21 MS LE ROUX: Then if we turn to the

22 second page of the chronology at 16:12:12 we hear you over

23 the radio saying okay live fire live, that's on the Protea

24 Coin video at 14:42. Again you didn't follow up about what

25 report of live firearm pertained to, you didn't try to

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1 obtain any further clarity about what live fire, why live

2 fire or who was shooting, did you?

3 BRIGADIER CALITZ: Ja, ek is gister ook

4 daaroor gevra. As jy kyk Protea Coin ek dink dis 14:45

5 live fire en net daarna they are firing on the dogs, ek is

6 gevra of ek dit gehoor het en ek het gesê nee ek het dit

7 nie gehoor nie. Ek sien wel hierso hier, u maak melding

8 dat ek dit gesê het. Volgens my na die beste van my

9 getuienis het ek dit nie gesê op daardie stadium nie.

10 MS LE ROUX: Thank you, Brigadier, we'll

11 continue to try and ascertain the speaker.

12 COMMISSIONER HEMRAJ: Has it been

13 established that Brigadier Calitz said, "okay live fire

14 live," on the Protea Coin chopper?

15 MS LE ROUX: No, Commissioner Hemraj,

16 that is his, that's the evidence he's just repeated. So

17 we'll have to endeavour to identify the speaker there with

18 the SAPS.

19 COMMISSIONER HEMRAJ: Sorry, Mr Semanya,

20 I interrupted you.

21 MR SEMENYA SC: That is the same

22 objection that I don't know why they're say attribute

23 those, that phrase to the witness.

24 MS LE ROUX: Chair, we'll ascertain the

25 speaker. But, Brigadier Calitz, what I'd like to do now is

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1 address your testimony where you say that you didn't hear

2 any of the 295 rounds that were fired at scene 2.

3 MR SEMENYA SC: No, Chair. Maybe at this

4 very point for as long as KKK41 is going to be an exhibit

5 in these hearings all these corrections must be made. It

6 cannot stand on record as if there was live ammunition and

7 there was Brigadier Calitz saying all these words.

8 MS LE ROUX: Chair, we'll make those two

9 revisions to the exhibit.

10 CHAIRPERSON: Maybe by the end of the

11 exercise there may be more amendments as well. But any way

12 now I take your point. If such amendments is required will

13 be effected.

14 MS LE ROUX: Yes.

15 CHAIRPERSON: And just as you replace

16 one of your documents with an updated one the same will

17 happen with this one.

18 MS LE ROUX: Yes, Chair.

19 MR MPOFU: So, Chairperson, just apropos

20 these corrections I just want it to be noted that the

21 witness has not denied having used those words. He says he

22 can't remember op daardie stadium or whatever something –

23 CHAIRPERSON: No, no it's one thing to

24 say he doesn't deny using the words, he says he can't

25 remember, you can't then say positively that he said it.

<p style="text-align: right;">Page 19388</p> <p>1 MR SEMENYA SC: No, fair enough. I'm 2 just making a – 3 CHAIRPERSON: A correction is called for 4 – 5 MR SEMENYA SC: Not denied it. 6 CHAIRPERSON: Yes, but you're correct to 7 say the correction we based on the fact not that he has 8 denied it but that he said he can't remember, he concedes 9 it could be so, as I understand it but he certainly doesn't 10 remember having said it, he's not prepared to admit he said 11 it. 12 MS LE ROUX: Chair, the correction in 13 that respect will merely note the radio communication of, 14 "okay live fire live." Brigadier Calitz, at this point in 15 the chronology is around the time that the shooting at 16 scene 2 would have been occurring. So what I would like to 17 do is pause here because your evidence is that you heard 18 none of the 295 rounds that were fired at scene 2, correct? 19 BRIGADIER CALITZ: Ek het gesê ek het 20 geen lewendig skote as 'n mens na dit kan verwys, ek dink 21 nie ek het verwys na getal nie. U mention of u noem nou 22 295 of so iets. Ek dink nie dit was my getuienis nie, nee. 23 Ek het net gesê dat ek het nie geen skote gehoor, live 24 fire. 25 MR CHASKALSON SC: Chairperson, just for</p>	<p style="text-align: right;">Page 19390</p> <p>1 Commission will submit that the sound track appears to 2 capture the sound of shooting at scene 2. The other two 3 are clips where a journalist who is present at scene 1 is 4 making a report and says that, from scene 1 and she says 5 that she heard shooting for more than half an hour after 6 the initial TRT body, but she is reporting from scene 1. 7 So if we could play those three clips now for the record. 8 The first needs an exhibit number, Chair. It comes from 9 the SAPS hard drive/media DVDs/INT channels. 10 CHAIRPERSON: You'll have to be patient 11 with me. This will be, is this KKK44? 12 MS LE ROUX: Yes, Chair. 13 CHAIRPERSON: And what will KKK44 be? 14 MS LE ROUX: It's SAPS hard drive/media 15 DVDs/INT – 16 CHAIRPERSON: You're going too fast for 17 me. 18 MS LE ROUX: Sorry. 19 CHAIRPERSON: Media DVDs yes. 20 MS LE ROUX: Slash INT channel and then 21 it's says slash Aljazeera:BBC:CNN. 22 CHAIRPERSON: Hang on. After Aljazeera. 23 MS LE ROUX: BBC. 24 CHAIRPERSON: Sorry? 25 MS LE ROUX: BBC.</p>
<p style="text-align: right;">Page 19389</p> <p>1 correction. It's 295 not 195. 2 MS LE ROUX: And, Brigadier Calitz, at 3 this point in time you are approximately 150 metres away 4 from scene 2, correct, it's where you're affecting arrests? 5 BRIGADIER CALITZ: Dit is soos hulle dit 6 aangedui het, ja. 7 MS LE ROUX: And this is also the point 8 in time canvassed by Adv Chaskalson where various doors of 9 your Nyala were opened, the driver's door at one point, the 10 left hand door at another and we've seen those photographs 11 that show that at this point in time different doors on 12 your Nyala vehicle were open, correct? 13 BRIGADIER CALITZ: Ek weet op een foto 14 waar Kolonel Macintosh by die Nyala gestaan het en die 15 regter voorste deur was dan oop gewees. Dis die foto wat 16 ek na onthou. 17 MS LE ROUX: Chair, I'll get additional 18 copies made and hand these in as an exhibit. This is a, 19 it's merely a list of the different Botha photographs that 20 indicate which door on the Brigadier's Nyala were open at 21 what time, I'll hand that in just to complete the record. 22 It's not relevant to the questioning now but I'll get 23 copies made and hand that in. Brigadier Calitz, what I'd 24 like to do is play you three different video clips which in 25 the one instance is filmed at scene 1 and the Human Rights</p>	<p style="text-align: right;">Page 19391</p> <p>1 CHAIRPERSON: BBC, yes? 2 MS LE ROUX: Semi colon CNN. 3 CHAIRPERSON: Yes. 4 MS LE ROUX: Semi colon Sky News then it 5 says 16FL. 6 CHAIRPERSON: 1 6 capital? 7 MS LE ROUX: F. 8 CHAIRPERSON: F. 9 MS LE ROUX: Capital L. 10 CHAIRPERSON: Yes. 11 MS LE ROUX: Slash video_TS. So if we 12 could play that first clip. 13 [11:32] CHAIRPERSON: Now is this, are we seeing 14 the whole clip or just a part of it? 15 MS LE ROUX: Chair, we'll play it from 16 approximately 25 seconds in, and just for the record, 17 Brigadier Calitz, these are from scene 1 and you'll confirm 18 scene 1 is approximately 500 metres away from scene 2? 19 CHAIRPERSON: Now is this a combination 20 of footage from Al Jazeera, BBC, CNN and Sky News, or is it 21 one particular video clip which is broadcast on all those 22 networks, channels? What is the position? 23 MS LE ROUX: Chair, this is a video clip 24 that is an amalgamation of the different sources. The one 25 we're interested in though, 25 seconds comes from Al</p>

<p style="text-align: right;">Page 19392</p> <p>1 Jazeera. Brigadier, before we play it, could you just 2 confirm that scene 1 is approximately 500 metres away from 3 scene 2? 4 BRIGADIER CALITZ: Ek moet eerlik wees, 5 ek het nog nooit die afstand gaan meet nie. So – 6 CHAIRPERSON: Well, we can make an 7 estimation – 8 BRIGADIER CALITZ: - of skatting, maar ek 9 dink dit is maklik om te bepaal. 10 CHAIRPERSON: I'm sorry to interrupt. We 11 can have it measured at some stage; it's an objective fact. 12 BRIGADIER CALITZ: Ja. 13 CHAIRPERSON: So we don't have to delay 14 on that. 15 BRIGADIER CALITZ: Mnr die Voorsitter, ek 16 wil net vra, die videomateriaal, ekskuus tog, die video 17 waarna u nou verwys, is dit die, onder u dokument wat u vir 18 my gegee het, "Only if necessary," is dit daardie video's, 19 of is hierdie totaal iets nuuts wat – 20 MS LE ROUX: No, Brigadier Calitz, this 21 is something that occurred to us yesterday, so you haven't 22 seen this particular clip – 23 CHAIRPERSON: So hasn't he got warning of 24 this one? 25 MS LE ROUX: He hasn't seen this</p>	<p style="text-align: right;">Page 19394</p> <p>1 people who'd been shot which may well cause distress and 2 emotional trauma to members of their family and their loved 3 ones who see it on the screen, so the images must not be 4 shown until one minute has elapsed after Mr Tokota has 5 finished translating. 6 MS LE ROUX: And Chair, the warning 7 should probably apply to the three clips that we – we want 8 to show three clips in succession for the same point, so 9 the warning should apply to all the video we are now 10 looking at. 11 CHAIRPERSON: Yes, and if anyone leaves 12 the chamber we will tell them when it's safe for them to 13 return. 14 Thank you, we will wait a minute until the video 15 clips are shown. 16 The video clips can now be shown. 17 [VIDEO SHOWN] 18 MS LE ROUX: So Brigadier Calitz, the 19 critical point there is the journalist at scene 1 reporting 20 that she can hear ongoing gunfire flashing and teargas from 21 which she refers to as another scene, which we now know to 22 be scene 2. 23 The second video we'd like to play is – 24 BRIGADIER CALITZ: Mnr die Voorsitter, 25 moet ek antwoord daarop of –</p>
<p style="text-align: right;">Page 19393</p> <p>1 particular clip. 2 BRIGADIER CALITZ: Nee, dis hoekom ek sê, 3 mnr die Voorsitter, ek het een, twee, drie, hier is wel 'n 4 Al Jazeera "clip" en dan is hier 'n "clip" van "Marikana 5 Exposed," maar ek is, ek het hierdie een nie gehad nie, so 6 ek sou graag net – ek weet nie, ons kan daardeur gaan, maar 7 ek noem maar net dat ek dit nie gehad het om deur te gaan. 8 So "either" wat voor of na die tyd gebeur is, of dis 9 moeilik om sekere "clips" uit te haal en dan 'n afleiding 10 te maak daaruit. Dis maar al wat ek sê. 11 CHAIRPERSON: Alright, well let's look at 12 this clip and then if you are unable to deal with it at 13 this stage then you must say so, but it may be it's a 14 relatively simple point you can deal with. So let's take 15 it as it comes. So show him the clip. Show us all the 16 clip, and then let's proceed, provisionally at least, any 17 way. 18 MS LE ROUX: Chair, I'm not sure exactly 19 – I'm not 100% sure whether we may need a warning that it 20 will show some of the bodies – I can't remember exactly the 21 visual to the audio, which is what I'm interested in. 22 CHAIRPERSON: Yes, well we'd better have 23 it translated by Mr Tokota, whose Xhosa I'm sure will be 24 understood by the people here. I've asked him to give the 25 usual warning that we may well be seeing images here of</p>	<p style="text-align: right;">Page 19395</p> <p>1 MS LE ROUX: Brigadier Calitz, let me 2 show the three clips and then we can respond, because it's 3 a similar point being made in all three and then we can 4 pose the question and deal with the response once, because 5 it's essentially journalists at scene 1 who can hear and 6 are reporting on scene 2, and they are further away from it 7 than you are. So the second video, if we could play 8 exhibit AAA, and it's approximately 38 seconds into that 9 video, the relevant portion, on the audio. 10 [VIDEO SHOWN] 11 The relevant portion of the audio there is the 12 journalist reporting that there was gunfire for another 13 half hour after the scene 1 TRT volley, and then the third 14 video is in the JJJ194 series, it's JJJ194.46, and this is 15 a 7-second clip in which the audio has the sound of what 16 the Human Rights Commission will submit is the discharge of 17 weapons at scene 2, audible in a clip filmed and recorded 18 at scene 1. If we could play the third video, please. 19 [VIDEO SHOWN] 20 So Brigadier Calitz, the question again is we 21 heard three different video clips, one of which the Human 22 Rights Commission will submit may record the sound of 23 firearms being used at scene 2, the other two being reports 24 at the time by journalists from scene 1 that they heard 25 gunfire at scene 2. Do you persist in your evidence that</p>

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1 you heard none of the 295 rounds fired at scene 2 when you
2 were only 150 metres away from it?
3 BRIGADIER CALITZ: Ek dink, mnr die
4 Voorsitter, as ek dan op elke video kan my "comment" gee.
5 Die eerste een wat ek gehoor het daar, sy het gestaan, of
6 die media persoon het gestaan en gesê "You can hear further
7 teargas flash and gunshots." U het verwys dat die media
8 persoon dan daardie, ek dink die woorde wat u gebruik het,
9 ons kan na die transkripsie kyk, ek dink dis "a clear
10 indication," dit is "scene" 2. Dit verskil egter van wat
11 die "evidence leaders" vir ons gesê het dat op "scene" 2 is
12 daar geen traangas gebruik nie. So as die media persoon in
13 hierdie geval praat van "flashes, more tear smoke and
14 gunshots," dan dink ek hulle verwys na die uiteendryf aksie
15 wat nog steeds aan die gang is met die rubber. Onthou ons
16 het vir hulle van "scene" 1 af tot omtrent gelyk met die
17 koppie 2 daar, was daar 'n uiteendryf aksie die heelyd aan
18 die gang. So daar verskil ek van u.
19 Die tweede enetjie het sy weer verwys, dieselfde,
20 na "teargas," waterkanon, en "continuous" vir "half an
21 hour." Ek kan ongelukkig nou nie sê die media persoon, of
22 sy rekord gehou het en presies hoe laat het sy dit begin
23 hoor en hoe laat het sy - miskien kan ons 'n verklaring tot
24 die effek kry en dan sê watse "gunshots" - sy het gesê
25 "gunfire," so weereens ek dink as ons vat die "tear smoke"

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1 en die "water cannon," dis die opvolgproses van die
2 uiteendryf aksie.
3 En dan "scene" 1, ek weet glad nie op watse tyd
4 hierdie video geneem is nie. Ek hoor "tip, tip, tip, tip,"
5 so miskien kan ons daar vra dat die eksperts vir ons kan
6 miskien sê of dit, watse tipe skote dit is. Ek kan nie sê
7 dit is nie skote van toneel 2 nie. Dis glad nie wat ek sê
8 nie. Ek sê net ek weet nie die tyd nie. Ek dink dit is 'n
9 4-sekonde en die persone lê op die voorgrond, die TRT staan
10 daar. Ek wil net die presiese tyd hê van daardie video,
11 dan kan ons weet of "scene" 2 al aan die gang was of nie.
12 MS LE ROUX: Chair, I believe that that
13 7-second clip is at approximately 16:18:08.
14 BRIGADIER CALITZ: Ek glo dan kan dit
15 vasgestel word want 16:08 - ag, 16:18, ons weet, ek dink
16 mnr Mpumza, die "body C" was 16:19, dink ek, 47. So ons
17 kan dan gaan kyk na "footage" wat wel daar was op daardie
18 tyd en die skote vergelyk. Dit is nie moeilik om dit vas
19 te stel nie.
20 MS LE ROUX: But Brigadier Calitz, in
21 response to my question you persist in your testimony that
22 you didn't hear any of the 295 shots fired at scene 2?
23 BRIGADIER CALITZ: Ja, ek het gesê -
24 CHAIRPERSON: He said that several times.
25 I don't know whether you're trying to get him to change it,

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1 but so -
2 BRIGADIER CALITZ: Mnr die Voorsitter,
3 soos u -
4 CHAIRPERSON: You adhere or persist in
5 your statement that you didn't hear any of those 295 shots?
6 BRIGADIER CALITZ: Ek dink om u woorde te
7 gebruik, ek het gesê ek kan glad nie op daardie stadium
8 onthou dat ek daardie skote wel gehoor het nie, nie soos
9 voorheen beweer dat ek het dit nooit gesê of dit is my
10 getuienis gewees nie, nee.
11 MS LE ROUX: Brigadier Calitz, if we then
12 proceed through the chronology we get to approximately
13 16:12:30 and there if you look at KKK42, the annotated Van
14 Heerden notes, this is where we see the entries 19 and 20
15 which are, "Instructions for medics to go in at holding
16 area, 30 people lying down, some dead, some injured," and
17 you were questioned about this by the evidence leaders, and
18 I just wanted to check, you testified that you didn't hear
19 the same report that Naidoo or Fritz had heard about people
20 needing medical attention, which we covered earlier in the
21 chronology, but did you hear this radio report recorded by
22 Van Heerden, "Instructions for medics to go in at holding
23 area," and then "30 people lying down, some dead, some
24 injured"?
25 BRIGADIER CALITZ: Nee, ek dink die

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1 "evidence leaders" het ook hierdie vraag aan my gestel
2 gister en ek het gesê dat ek kan nie "recall" dat daardie
3 woorde ooit "some dead, some injured," en 30 persone "lying
4 down," wanneer dit gesê was nie. Ek dink hulle het dit op
5 'n "timeslot" probeer inpas tussen 'n sekere deel wat hulle
6 dan gesê het dis kronologies. Ek weet ook in "hindsight"
7 dat die persone wat die VB gemaak het gesê het die
8 "entries" is nie kronologies nie, dit was van notas af
9 gevat en toe in die VB geskryf. So ek dink nie daar was al
10 getuienis dat dit wel in hierdie volgorde plaasgevind het
11 nie.
12 MS LE ROUX: Yes, but of course,
13 Brigadier Calitz, for the record we have managed to
14 allocate times to the Van Heerden notes where they cross-
15 reference to the Protea Coin chopper and the Ryland video.
16 So we have managed to attribute some times to the Van
17 Heerden notes, but I take your point that she didn't record
18 times at the moment she put these down.
19 If we can then move on to 16:13:37, which is when
20 a group of strikers were arrested 150 metres north of the
21 koppie, and there we saw from the Nel photograph - Chair,
22 I'll have to get an exhibit cross-reference for you - where
23 we saw Papa1 members interacting with the Papa5 members
24 during that arrest process, and of course we note that
25 Papa5 members were immediately adjacent to where the bodies

<p style="text-align: right;">Page 19400</p> <p>1 fell, some of the bodies fell at scene 1, which we saw from 2 their position at GW6B, page 55. So Brigadier Calitz, at 3 the point in time when the members of your Nyala, Papa1, 4 are interacting with the Papa5 members, as we see in Nel 5 12:45, did you ask for an update from anyone in Papa5 about 6 what had happened at the kraal, at scene 1? 7 BRIGADIER CALITZ: Die enigste persoon 8 met wie ek 'n gesprek gehad het was Kolonel Pitsi toe hy 9 vir my gevra het daar is geskiet op hom en ek het vir hom 10 gevra – ekskuus tog, gestap na die Nyala toe en ek het vir 11 hom gevra wat gebeur het, en hy het dan vir my vertel 12 waarom ons reeds getuig het, toe daar by hom geskiet was 13 op toneel 2. So uit sy hele gesprek uit het ek afgelei dit 14 is wat hy vir my wil sê. 15 MS LE ROUX: And Colonel Pitsi never told 16 you anything about people being shot; he only told you 17 about his Nyala being shot? 18 BRIGADIER CALITZ: Dit is net die Nyala 19 waarop geskiet is, waarop hy gesê het. Hy het nooit vir my 20 vertel van enige persone, dooie persone wat op toneel 1 is 21 nie, en ek dink hy sal dan ook so kan kom getuig. 22 MS LE ROUX: And to this point in time 23 have you discussed this again with Colonel Pitsi as to why 24 he never mentioned anything else, that the only thing he 25 thought was important to tell you is that his Nyala had</p>	<p style="text-align: right;">Page 19402</p> <p>1 corrected. 2 MS LE ROUX: We'll make that revision, 3 Chair. Brigadier Calitz, we know that Papa5 stayed at 4 scene 1 for more than a minute before it moved off, and 5 then you met up with Lieutenant Colonel Pitsi. When he was 6 telling you about the damage that he alleges was done to 7 his Nyala did you ask him any other questions about how the 8 operation had gone to that point in time, anything else 9 he'd observed, or did you only focus on the fact that he 10 was pointing out damage to his Nyala? 11 BRIGADIER CALITZ: U sal onthou my 12 getuienis was net dat hy aan my meegedeel het terwyl ons by 13 "body C" se posisie was dat daar wel op sy Nyala geskiet 14 is. Ek het op geen stadium getuig dat ek dopgehou het wat 15 die "movement," of die beweging in daardie geval van Pappa4 16 – ag, Pappa5 was nie. Soos u dit nou net gestel het, ek 17 was bewus hy het vir 'n minuut of vier minute, ek weet nie 18 wat is die woorde nie, daar gestaan het; dit was nie aan my 19 bekend nie. Die voertuie wat saam met my vorentoe beweeg 20 het en die "dispersion action" het ek gevat hy was deel van 21 daardie persone wat saam met ons deurgekom het. "In 22 hindsight," ja, het ek verstaan hy was van die laastes wat 23 nog agter was. Dit het ons eers in "hindsight" geweet. So 24 op daardie stadium was daar nie vir my rede om vir hom te 25 vra maar jy het dan verby hulle gery of ek sou dit nie</p>
<p style="text-align: right;">Page 19401</p> <p>1 come under attack, not that people had been shot and 2 killed? Have you discussed that with him? 3 BRIGADIER CALITZ: Ek dink in "hindsight" 4 toe ons die "exhibit L" opgestel het en die inligting tot 5 ons beskikking gekom het, het ek vir verskeie van die 6 bevelvoerders gevra op daardie stadium waarom hulle my nie 7 ingelig het nie, en daar was verskeie redes gewees. Party 8 het gesê hulle kon ons nie in die hande kry op die radio 9 kommunikasie. Ek kan nie presies onthou wat Pappa5 gesê 10 het nie, maar dit, ek weet net hy het gesê, op daardie 11 stadium het hy net vir my ingelig oor die skietvoerval op 12 sy Nyala, en of dit nie sy "mind gecross" het op daardie 13 stadium nie en of hy dit – ek kan nie vir u sê waarom hy 14 dit nie gedoen het nie. 15 CHAIRPERSON: Ms Le Roux, I have a 16 problem with the annotation here at 16:24. The second 17 sentence says, "Conversation takes places with Lieutenant 18 Colonel Pitsi about shots fired at scene 1." Now I have 19 always understood by scene 1 we mean the area between the 20 kraal and the fence where the Nyalas were lined up, were in 21 a line against the fence, whereas what Colonel Pitsi spoke 22 about was not the incident at scene 1, as we call it, but 23 what's being described as incident 2. The incident at 24 scene 1 is really incident 3. So this is another 25 inaccuracy, I'm afraid, in your notes which will have to be</p>	<p style="text-align: right;">Page 19403</p> <p>1 geweet het nie, nou in hindsight, ja. 2 [11:52] MS LE ROUX: And, Brigadier Calitz, when 3 everyone got acknowledge into Papa1 and you drove up 4 towards koppie 3 your members that had been interacting 5 with the Papa5 members who had been at scene 1, they didn't 6 report anything to you when they got back into your Nyala, 7 that Papa5 had told them anything about scene 1? 8 BRIGADIER CALITZ: Nee, ek het dit glad 9 nie opgetel nie, ook nie in enige van hulle verklarings wat 10 ek dan, wat u vir my gegee het om te lees nie, het ek ook 11 niks van daardie opgetel nie. 12 MS LE ROUX: Okay, Brigadier Calitz, we 13 can then move quite quickly through the next two entries, 14 the first is 16:19:47 which just marks when body C was shot 15 dead and that you had witnessed this from a distance and 16 then 16:24:00 records when you then spoke to Lieutenant- 17 Colonel Pitsi about the shots fired at incident 2, as well 18 now corrected. So we can move on then to 16 – 19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, asseblief – 21 CHAIRPERSON: Did you actually witness, 22 sorry, you and I are talking over each other. Did you 23 actually witness the shooting or did you hear shots being 24 fired and so forth? What exactly did you see at that place 25 at that time?</p>

<p style="text-align: right;">Page 19404</p> <p>1 BRIGADIER CALITZ: Dit is die presiese 2 paragraaf waarna ek die advokaat verwys het vroeër en gesê 3 het dat sy het hier in getik, "Brigadier Calitz, witnesses 4 from a distance," en dit was nooit my getuienis nie. Ek 5 het net gesê Kolonel McIntosh skree daar was 'n aanval op 6 'n polisiebeampte en daarna het ek met Nong gepraat, so ek 7 het hierna verwys en dit is miskien, u sê kom ons gaan 8 vinnig oor die punte en dan gaan ons aan, maar ek voel dat 9 ons dit net miskien ook regstel want dit is presies, ek 10 weet nie waar of hulle kan dalk vir my sê waar is die 11 getuienis dat ek dit gesien het. 12 MS LE ROUX: Brigadier Calitz, we'll make 13 a revision to that entry then. 14 BRIGADIER CALITZ: Baie dankie. 15 MS LE ROUX: So if we can then move to 16 the next one which is 16:27:00, this is on the Protea Coin 17 chopper video where it appears to get a request to return 18 to the JOC to pick up medics. Unfortunately this is a 19 rather difficult part of that transcript but it seems to 20 have the words in "medical, medical help, medical help" and 21 then we know that the chopper returned to the JOC and picks 22 up medics a few minutes thereafter and then takes them and 23 drops them off at scene 2. So as a marker in the 24 chronology of the day did you hear this call for medical 25 help over the radio?</p>	<p style="text-align: right;">Page 19406</p> <p>1 that? 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek 3 dink in my getuienis het ek gesê daar was ook 'n 911 4 helikopter op 'n stadium wat later in die aand kom land het 5 maar om nou presies te sê dit was die Protea Coin chopper, 6 kan ek nie vir u met duidelikheid sê nie maar daar was 7 helikopters wat afgekom het en weer opgestyg het, ja. 8 MS LE ROUX: Brigadier Calitz, the next 9 entry I suspect will be one that you tell us needs to be 10 revised because we've attributed it at 16:27:40. You're 11 saying on the radio, "Let them go through this area and 12 secure," that's on the Protea Coin chopper video at 30:10. 13 Is it your evidence that you don't recall saying that or it 14 is definitely not you, because it sounds like you? 15 BRIGADIER CALITZ: Ek dink dit is die een 16 wat mnr Chaskalson so drie keer oor gespeel het en ek het 17 gesê op daardie stadium kan ek nie onthou dat ek so iets 18 gesê het nie, dit was my getuienis gewees, ja. 19 MS LE ROUX: Alright, then we have 20 16:31:15 which is when the Protea Coin chopper lands, drops 21 off the medics at scene 2. On that video it comes at 33:45 22 in that video. Did you observe the Protea Coin chopper 23 return to scene 2 and drop off medics? 24 BRIGADIER CALITZ: Dit is korrek wat ek 25 getuig het, daar was helikopters wat afgekom het en dan het</p>
<p style="text-align: right;">Page 19405</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 weereens ons het hieroor getuig, mnr Chaskalson het my 3 breedvoerig hier ondervra. Die tyd op mnr Chaskalson se, 4 ek het net na sy deel toe geblaai, het hy gesê dit het 5 gebeur tussen 14:40 en 35:20, tussen 16:23 ETV tyd en 6 16:32:50. Ek sien u tyd is so 'n bietjie 16:27, so u tyd 7 is so 'n bietjie voor die evidence leaders s'n maar die 8 stukke wat aangehaal word is dieselfde, maar dit is waaroor 9 ek reeds getuig het, dat op daardie stadium het my voertuig 10 klaar geparkeer gewees en ek was buitekant die voertuig 11 gewees. 12 MS LE ROUX: And that's your testimony 13 that because you were out of the Nyala and you had given 14 away your handheld radio you were out of radio 15 communication at that point. 16 BRIGADIER CALITZ: Ons het so daaroor 17 getuig vir daardie paar minute, ja. 18 MS LE ROUX: Alright, did you observe the 19 Protea Coin chopper returning to the JOC? 20 BRIGADIER CALITZ: Ek was nie teenwoordig 21 by die JOC nie, so ek sal nie weet – 22 CHAIRPERSON: Did you see, looking up in 23 the sky, did you see the Protea Coin helicopter and did you 24 see it then going off in the direction of the JOC and then 25 subsequently returning to scene 2 with medics, did you see</p>	<p style="text-align: right;">Page 19407</p> <p>1 ek ook getuig, ek dink dit was 'n 911 helikopter wat, ek is 2 nie seker oor die tyd nie, wat daar geland het. 3 MS LE ROUX: The 911 helicopter that you, 4 did you observe that helicopter come to scene 2 and land? 5 BRIGADIER CALITZ: Ja, dit was baie naby 6 aan my, maar ek dink dit was heelwat later as hierdie tyd 7 gewees. Hierdie een dink ek is die een wat ons na verwys 8 het, as ek die tye so kan vergelyk, dieselfde tyd wat ons 9 in daardie KKK17.3 wat ek na verwys het dink ek van die 10 videos, as dit die Coin Chopper is, ek is nie seker of dit 11 hy was nie. 12 MS LE ROUX: Chair, I would like to play 13 this clip of the Protea Coin chopper because it shows when 14 the Protea Coin chopper lands and drops off the medics, but 15 then as it takes off and if you could direct your attention 16 to this, Brigadier Calitz, we'll also try to stop at the 17 right moment. As it takes off again we can see Papa1, 18 Papa4 and Papa5 once they've arrived at koppie 3, so if we 19 could play that portion from – 20 MR CHASKALSON SC: Maybe if I could – 21 MS LE ROUX: - approximately 33:20 would 22 probably be – 23 MR CHASKALSON SC: I might be able to 24 assist because we have stills of this moment already at 25 KKK17. The stills which were annotated by the SAPS team to</p>

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1 mark the position of victim C relative to the body, -
 2 relative to Papa5 are stills taken when that Protea Coin
 3 helicopter takes off just after having dropped the medics
 4 at scene 2.

5 MS LE ROUX: Yes, I am indebted to my
 6 learned friend, at KKK17.3 and point 4 are the two stills
 7 from the Protea Coin video at 34:29 and 31 respectively, so
 8 if we can just watch that clip because another aspect I
 9 would like to draw the Commission's attention to in that is
 10 not only the positions of Papa1 and Papa5 and Papa4, but
 11 also that you'll see members, SAPS members walking into and
 12 out of the scene in that video clip.

13 [VIDEO SHOWN]

14 Thank you, so Brigadier Calitz, that clip only
 15 shows the positions of the three Nyalas but we see SAPS
 16 members walking in and out of koppie 3 and some seemed to
 17 be walking towards where you've testified you were at this
 18 point near body C. Did anyone come to you who had been
 19 inside koppie 3 and tell you what had happened there or
 20 what was going on there?

21 BRIGADIER CALITZ: Nie op daardie stadium
 22 nie, nee, dit is hoekom e kook so 'n paar minute terug
 23 verwys het na hierdie KKK17.3 toe u vir my gevra het oor
 24 die helikopter, so dit is presies die een waarna ek verwys
 25 het, dit was hierdie voorval en nee, niemand het pertinent

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1 uitgekome en vir my gesê dat daar is wat ons nou weet,
 2 persone gedood binne-in koppie 3 nie, nee.

3 MS LE ROUX: From your position with
 4 Colonel McIntosh at body C did you wonder why SAPS members
 5 were walking in and out of koppie 3, did you wonder what
 6 they were doing there?

7 BRIGADIER CALITZ: Dit is dieselfde rede
 8 hoekom ek ingegaan het, onthou ek het opdrag gegee dat
 9 hulle die mense moet, hulle was ge-encircle, so daar was
 10 arrestasies uitgevoer en ons het geweet daar was 'n
 11 dispersion action gewees, at least met twee persone wat
 12 beseer was wat ons dan later uitgevind het was die een
 13 persoon is, ek kan nie onthou wat was die nommer nie, body
 14 N dink ek wat oorlede is, maar nee, ek het ook van daardie
 15 posisie af ook inbeweeg na koppie 3 toe omdat daar 'n groot
 16 groep mense was wat gearresteer was.

17 MS LE ROUX: Brigadier Calitz, if we can
 18 then move on to the next entry which is 16:32 where we have
 19 what we've identified as Lieutenant-Colonel Vermaak saying
 20 on the radio, "Okay, I saw the 105 with, the general has
 21 also arrived and they are turning above us." That's on the
 22 Protea Coin chopper video at 34:30. First of all what is
 23 the 105?

24 BRIGADIER CALITZ: 'n 105 is 'n
 25 helikopter, dit is 'n verwysing na 'n helikopter.

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1 MS LE ROUX: You didn't hear this radio
 2 report about the 105 and the general's arriving?

3 BRIGADIER CALITZ: Ek dink nie hy het
 4 hier verwys na arriveer op die toneel nie, ek dink hier het
 5 hy verwys na, dit is nou in hindsight wat ek u miskien net
 6 kan help, is dat hulle het gearriveer met die 105, met
 7 ander woorde dat hy hulle wel gesien het. U sal sien later
 8 in my getuienis meld ek wanneer die generale aangekom het
 9 op die toneel, so die 105 is, ek kan amper vir u sê 'n ouer
 10 tipe helikopter en dan die squirrel is die een met die meer
 11 sitplekke wat later gearriveer het.

12 MS LE ROUX: But, Brigadier Calitz, my
 13 question was, did you hear this radio communication about
 14 the 105 with the generals who also arrived and they are
 15 turning above us, did you hear that radio communication?

16 BRIGADIER CALITZ: Nee, ek dink dit was
 17 in dieselfde tyd gewees wat ek buitekant die voertuig was.

18 MS LE ROUX: And, Brigadier Calitz, if I
 19 recall your testimony you said that you didn't have a
 20 handheld radio at this point but those around you did and
 21 no one said to you the generals are arriving.

22 BRIGADIER CALITZ: Nee, soos ek vir u
 23 gesê het en ek dink as Kolonel Vermaak getuig sal u miskien
 24 dit beter verstaan of begryp wat hy hier bedoel het. Dit
 25 is net arriveer in die lug, maak sirkels en dan terug JOC

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1 toe en op 'n latere stadium het hulle gearriveer, so dit is
 2 nie arriveer op die toneel waar ons besig was nie.

3 MS LE ROUX: Alright, but whether it
 4 refers to them specifically landing in a lighting at scene
 5 2 or whether it refers to them circling above the scene, no
 6 one came to you when you were standing at body C and said
 7 the generals have arrived?

8 BRIGADIER CALITZ: Ek weet nie wat, dit
 9 is dieselfde vraag, ek weet nie hoe moet ek u antwoord nie.
 10 Niemand op daardie stadium het gesê, nee, die generale
 11 sirkel bo ons by die koppie met 'n helikopter nie, nee.

12 MS LE ROUX: Okay, Brigadier Calitz, then if we
 13 move on to 16:32:30, there is the radio communication with
 14 chopper 2 that we hear on the Protea Coin video at 35100
 15 and if we look at KKK42 which is the annotated Van Heerden
 16 notes it appears that an entry 28, that's another
 17 correction I must make, Chair, where it seems to indicate,
 18 "Chopper 2, can you give me an indication of the people,"
 19 and here it is unclear whether it is "with the deaths" or
 20 "wounded there", is a response, "yes we are still counting"
 21 and then a follow-up question, "How many are dead?" Again
 22 you testified you didn't hear that communication?

23 BRIGADIER CALITZ: Dit was my getuienis
 24 toe ek breedvoerig hier ondervra was deur mnr Chaskalson,
 25 ja.

<p style="text-align: right;">Page 19412</p> <p>1 MS LE ROUX: And then the final entry on 2 the chronology is at 16:37:31 which is a radio 3 communication between the chopper and the mounted unit 4 which we hear in the Ryland video where they speak about 5 the scene of the first shooting. Again you didn't hear 6 this communication either? 7 BRIGADIER CALITZ: Dit is die laaste deel 8 van mnr Chaskalson se dokument wat hy vir my gegee het 9 waarna ek verwys het, dit is 'n kommunikasie tussen Kolonel 10 Vermaak en Kolonel Stapelberg en ek het ook reeds 11 breedvoerig daarna, ook dit getuig. 12 MS LE ROUX: Brigadier Calitz, that 13 completes the chronology and I must give you an opportunity 14 to respond to the submission that the Human Rights 15 Commission will make which sums up where we say this 16 exercise takes us and it is that as operational commander 17 it is either incredible or something inexplicable on the 18 day that from all of these different instances you as the 19 operational commander did not know that scene 1 and scene 2 20 had occurred until so late in the day. So if I can briefly 21 just summarise where we will submit the chronology takes 22 us, it is that you didn't hear the TRT volley, but three 23 others in your Nyala did. You didn't hear the radio 24 communication that prompted Naidoo to move his sources from 25 forward holding area 1 or the one that made Fritz respond</p>	<p style="text-align: right;">Page 19414</p> <p>1 with the Johannesburg water cannon as well as the members 2 of Papa5 which was right next to the shooting, they never 3 reported anything back to you and you never asked them to 4 follow up and find out what had happened with the TRT. You 5 hear a report of two bodies at the back of a second koppie 6 but again you think, - you don't think that these are 7 people who may be injured or dead. 8 Your testimony is that you didn't hear any live 9 ammunition fire at scene 2 despite the fact that 295 rounds 10 were fired and you were only a 150 metres away. Today 11 we've heard audio of what we will submit could be the 12 shootings at scene 2 audible from scene 1. You didn't hear 13 any of the radio communication referring to scene 1 or the 14 first shooting and no one in the JOC contacted you and you 15 didn't contact the JOC to try to find out what was going on 16 until 16:47 when you made contact with General Annandale. 17 So in essence the Human Rights Commission will submit that 18 your testimony is that you didn't know what had happened 19 and no one told you, but what that means for us is that the 20 overwhelming weight of this evidence shows that you're 21 either seeking to avoid the responsibility that would 22 follow had you had that knowledge before this Commission, 23 or that you failed in your responsibility as operational 24 commander to keep yourself adequately informed of the 25 events on the day. Would you like to respond to that,</p>
<p style="text-align: right;">Page 19413</p> <p>1 to send medical attention because he heard of bodies down. 2 You didn't hear the radio communication recorded by Captain 3 Van Heerden about 30 bodies down, some dead, some injured. 4 You attempted to contact the TRT. We know from the ETV 5 report that they received that communication and are told 6 to listen to their radios and you've testified today that 7 you asked Lieutenant-Colonel Vermaak what had happened to 8 the TRT and you tried one more time to make contact with 9 them and we'll submit that the fact that the TRT didn't get 10 back to you and you didn't follow up again would have been 11 another opportunity where you would have known about scene 12 1. 13 You then heard the report about 18 bodies down 14 but assumed that these were people either injured or under 15 arrest and we'll submit that this couldn't have been 16 reasonable when the TRT hadn't responded to you. Something 17 had happened with the TRT that you should have been curious 18 about and knowing that they had live ammunition you should 19 have been able to make the connection that the 18 bodies 20 down may have been people who had been injured or were 21 dead. From the chronology we then know that none and from 22 your evidence today, that none of the members in your Nyala 23 who heard the live ammunition fire or they heard shooting, 24 or heard any of these radio communications told you 25 anything about this. When members of the Nyala engaged</p>	<p style="text-align: right;">Page 19415</p> <p>1 Brigadier Calitz? 2 [12:11] CHAIRPERSON: - has turned his light on, 3 I think before we have a response, we must hear what Mr 4 Semanya has to say? 5 MR SEMENYA SC: Chair, there are 6 objections at various levels of that question. Can I start 7 with the first? We will have no difficulty if KKK41 is 8 headed, "Issues on which cross-examination will be made." 9 It should not stand as it stands there, to say these are 10 pointers which indicate that Brigadier Calitz ought to have 11 known about the deaths. That's the first thing. 12 CHAIRPERSON: I mean, if this is their 13 document, they put the heading on, and you don't agree with 14 the heading, it's fine, we're not going to change the 15 heading, but of course what struck me about it, used the 16 word might, and I wondered what that meant. Does that mean 17 that he did, or he had the opportunity, but he didn't avail 18 himself of it. There's an ambiguity there anyway, but you 19 know, but I'm not sure we can change the heading. It's 20 their heading, their document, but I understand your point 21 the heading is inaccurate, that's what you contend. My 22 problem is of course it's ambiguous in any event. 23 MR SEMENYA SC: The second aspect of the 24 objection is unless the Human Rights Commission is going to 25 submit a statement of a witness, who is going to hold these</p>

<p style="text-align: right;">Page 19416</p> <p>1 views that are indicated here, who will be subject to 2 cross-examination, it cannot be entered into evidence as a 3 KKK41, which is just arguments that they make. We do 4 concede they're entitled to make any argument they deem 5 fit, what they're not entitled to do is to submit, by way 6 of documentary evidence, something that is not supported 7 under oath.</p> <p>8 CHAIRPERSON: We did based on that once 9 before. Where a contention is being advanced by a counsel 10 or a party and a particular thing happened, a direct 11 statement made based on direct evidence, then you've got to 12 have direct evidence. But where the contention is going to 13 be that a certain inference must be drawn on the basis of 14 circumstantial evidence, whether you apply the Goldman 15 Skidmore test as the more plausible inference, or whether 16 you apply the criminal standard of the only reasonable 17 inference, clearly you can't put on an affidavit by someone 18 who says, "I confirm this inference which is based on 19 circumstantial evidence, is one I hold." I mean that's not 20 relevant. Counsel's entitled to argue, these are all the 21 circumstances. They point to the only reasonable inference 22 or the more plausible inference. So I don't think that 23 point has got any substance in it. Provided it's clear 24 that what is being contended is contended for a conclusion 25 based on circumstantial evidence, and not a finding based</p>	<p style="text-align: right;">Page 19418</p> <p>1 circumstances from which a court or a commission will be 2 asked to find that a particular inference is either the 3 more plausible or the only reasonable one. Now, if you're 4 in that – is that where you are? In other words, you're 5 not just making a submission and say, "What do say about my 6 submission?" Because counsel can come along – ingenious 7 counsel can come along and put up any kind of submission 8 and ask the witness to answer. That's not the appropriate 9 way moving forward, particularly in a Commission like this. 10 The submission has to be based on evidence, either direct 11 evidence, or circumstantial evidence. Now, do you say you 12 are in the latter category or in the former?</p> <p>13 MS LE ROUX: Chair, the submission is on 14 both, because certain elements of the chronology document 15 that has been gone through this morning is direct evidence. 16 We hear the radio communication on the video. That 17 happened. The submission is based on saying that was an 18 opportunity at which Brigadier Calitz could have become 19 aware that something had gone very tragically wrong in his 20 operation. And as I said, the submission is either he did 21 know and now chooses to place a different version before 22 the Commission so that he is not held responsible for what 23 would follow if he did know, or he should have known, 24 because otherwise this is a failure in his role as 25 operational commander.</p>
<p style="text-align: right;">Page 19417</p> <p>1 on direct evidence, clearly if it's the latter, then they 2 have to have a statement. Let's find out whether she – 3 which category this falls into. Ms Le Roux, what do you 4 say about the point I put to Mr Semenya. Are you going to 5 contend – is your contention going to be based upon an 6 inference drawn from a number of circumstances which are 7 established before the Commission, in other words, it's 8 circumstantial evidence on applying either the civil test 9 or the criminal test, or do you go further than that and 10 say, no, no, this is something which is supported by direct 11 evidence. If it's the latter, then there isn't a statement 12 setting out that direct evidence.</p> <p>13 MS LE ROUX: Chair, I'm sure the 14 transcript will confirm but I began this by saying this is 15 a submission that the Human Rights Commission will make in 16 due course and that in fairness I was giving Brigadier 17 Calitz the opportunity to respond to it. So this is not 18 evidence, this is a submission that the Human Rights 19 Commission is placing before Brigadier Calitz so that he 20 can respond to it. The items on the chronology –</p> <p>21 CHAIRPERSON: Sorry, submissions aren't 22 enough by themselves. I mean you can't just say I'm make a 23 submission, I want you to answer my submission. The 24 submission's got a substance. The submission has got to be 25 based either on direct evidence or on a number of</p>	<p style="text-align: right;">Page 19419</p> <p>1 CHAIRPERSON: Of course there's no direct 2 evidence that he did know. The inference that he did know 3 would be based on circumstantial evidence, surely. As far 4 as the second point is concerned, the alternative 5 submission that he was as it were negligent in not being 6 aware of what was happening, because he had a lot of 7 opportunities that he didn't avail himself of or didn't 8 appropriately apply his mind to, that would of course also 9 be based upon circumstantial evidence, the circumstances 10 outlined, isn't that right?</p> <p>11 MS LE ROUX: Yes, Chair.</p> <p>12 CHAIRPERSON: Mr Semenya, now we go back 13 go your objection. You complained that they didn't have a 14 statement by someone saying this is my opinion. I don't 15 think – I've never come across authorities proposition that 16 if counsel wants to argue for finding based on 17 circumstantial evidence, he's got a witness who says that's 18 my inference. In fact such a statement would not be 19 admissible, but if there's direct evidence she relies on, 20 then she's only entitled to rely on direct evidence which 21 is already before us. And subject to corrections which are 22 very necessary to which you've referred, there is direct 23 evidence upon which she relies that is before us.</p> <p>24 MR SEMENYA SC: Chair, we –</p> <p>25 CHAIRPERSON: Do I understand you to</p>

<p style="text-align: right;">Page 19420</p> <p>1 complain – this is a point that's being suggested to me by 2 my colleagues, that this document that we've been taken 3 through isn't evidence? Well, I don't understand it to be 4 evidence, I understand it to be simply a convenient summary 5 of the points upon which counsel relies, and once it is 6 clear that it's not evidence in itself, it may be given an 7 exhibit number for convenience, but if it's not intended to 8 be evidence in the strict sense, but simply a summary, 9 which requires amendment of course in revision, but a 10 summary of points to be relied upon I can't see any 11 objection to that.</p> <p>12 MR SEMENYA SC: No, Chair, we concede 13 that the party is entitled to argue what they deem 14 appropriate. That's not the basis of the objection. The 15 basis of objection is, this document purports to contain 16 conclusions, which we say are not founded on evidence. If 17 they intend to base their argument, whatever it is, based 18 on these conclusions that are drawn from here, we'd require 19 that evidence to be produced.</p> <p>20 CHAIRPERSON: Conclusions are inferences 21 which they ask the Commission to draw. When they rely on 22 facts, the facts have got to be right. There's no question 23 about that and that's why on a number of occasions Ms Le 24 Roux has been asked about certain factual averments, 25 conceded that their summary is not accurate and promised to</p>	<p style="text-align: right;">Page 19422</p> <p>1 saying is there is this entry by Captain Van Heerden. It 2 records a radio communication with chopper 2. Now, if that 3 is correct – if that correctly records the communication, 4 then that's an item of evidence which is properly before 5 us, because that's in Van Heerden's notes and presumably it 6 can be heard on the Protea Coin – the soundtrack of the 7 Protea Coin chopper video. That's evidential material 8 which is before us. If it's accurately summarised, then 9 there's no objection to it. It will of course form the 10 basis of an argument later that he should have heard 11 because it was on the radio. Captain Van Heerden heard and 12 he should have heard it. He has a number of answers to 13 that. He may say I wasn't in contact with my radio at the 14 time, because I was out of the Nyala and I didn't have a 15 hand radio, which may be an answer, as a result of which 16 could be contended, the inference can't be drawn, but I 17 can't see the objection to the admissibility of a reference 18 by counsel to a radio communication which appears to have 19 been made with chopper 2 and which is available to us, both 20 on the soundtrack of a video and also in a note made 21 Captain Van Heerden.</p> <p>22 MR SEMENYA SC: Okay, Chair, if you would 23 allow us at the right stage of argument to say this 24 inference sought to be drawn stands in direct face of 25 direct denial by a witness, which direct evidence was not</p>
<p style="text-align: right;">Page 19421</p> <p>1 correct it, but insofar as the conclusion is an inference 2 which the Commission is being asked to draw on the basis on 3 of principle circumstantial evidence, then there's no 4 objection to them being put before us by being referred to 5 and for convenience, being collected in a document, 6 provided it's clear that the document itself has got no 7 evidential value.</p> <p>8 MR SEMENYA SC: Chair, can I make a last 9 attempt at articulating the basis of the objection? We 10 have no difficulties if the Human Rights at the end will 11 say one, two, three, four, five in their contention or in 12 the conclusion in their submission indicates that the 13 Brigadier did or did not hear any particularity. That's 14 not the inference that I'm debating. The conclusion I'm 15 debating is, if we look at 16:32:30, this document says the 16 radio communication with chopper 2, and it continues what 17 it does, is a pointer that Brigadier Calitz might have 18 known of the knowledge of the deaths. That is the 19 difficulty. There are a whole number of them, I'm just 20 illustrating the point.</p> <p>21 CHAIRPERSON: I'm sorry, before I can 22 rule on your objection, I've got to understand. And if I 23 don't understand it, it's probably my fault, but I ask you 24 to repeat it to me slowly that I can understand, but the 25 latest point you make I don't understand. What she is</p>	<p style="text-align: right;">Page 19423</p> <p>1 challenged, then I'm happy with my basis.</p> <p>2 CHAIRPERSON: You see it becomes a 3 question of weight. You're debating admissibility with me 4 at the moment. If at the end of the evidence, you contend 5 that these inference they ask us to draw isn't the only 6 reasonable inference, isn't even the more plausible 7 inference, then that's the end of the matter. If you argue 8 that the inference, in any event, cannot properly be drawn 9 on all the circumstances, etcetera, particularly there is 10 no – you argue there is no reason to reject his evidence 11 that he didn't hear certain radio communications, well that 12 would be the end of the matter, wouldn't it? And that 13 would then be decided in your favour, but that would be a 14 question of weight, which you'll have the fullest 15 opportunity to deal with at the appropriate time, and I'm 16 not closing any door to any argument in that regard. So I 17 think that deals with the matter, doesn't it? Isn't that 18 correct? Right, yes. It's been drawn to my attention Ms 19 Le Roux that when you gave your summary at the end, some of 20 the points you made were in the unamended form, but I think 21 we're aware of what the amendments are, so I won't ask you 22 to repeat the exercise, inserting the amendments. Anyway, 23 the witness has heard the points you rely on. I can't 24 remember if he's actually given us his answer, but let's 25 give him the opportunity again. You understand the</p>

<p style="text-align: right;">Page 19424</p> <p>1 contention? Now, there are two contentions you've got to 2 keep an eye on. The first contention is they say that you 3 are not being truthful when you say you didn't know about 4 the shootings at scene 1 and scene 2 earlier than you say 5 you did, because all the evidence points, they would 6 suggest, strongly in favour of the conclusion that you must 7 have heard it. That's the first argument. 8 The second argument is that if they're wrong on 9 that, counsel can argue the alternative, witnesses can't 10 give evidence in the alternative, but they say if we're 11 wrong on that, we say that the Brigadier was negligent, 12 because in all the circumstances he had the opportunity to 13 find out what had happened and being the operational 14 commander, he should have availed himself of that 15 opportunity, right? Now, what's your answer to their first 16 contention that you did know and you're not being truthful 17 and all this evidence points to the conclusion that you 18 must have known? What do you say to that? 19 BRIGADIER CALITZ: Mnr die Voorsitter, as 20 ek haar reg verstaan, ek die 14 punte neergeskryf, so ek 21 het gedog ek moet op elkeen dalk, maar as u dit so opsom 22 vra ek maar net dat as u tot die conclusion kom, neem maar 23 net in ag die redes wat ek gegee het, waaroor ons reeds 24 getuig het, asook die persone wat dit sal kan confirm. Ek 25 is op 'n stadium, ek dink dit was Mnr Ntsebeza of Mnr</p>	<p style="text-align: right;">Page 19426</p> <p>1 CHAIRPERSON: Ja, well, the alternative 2 contention is, if you didn't know, it was your own fault 3 you didn't know. You had plenty opportunity to find out, 4 you didn't avail yourself of those opportunities though, 5 that's their contention. 6 BRIGADIER CALITZ: Ek dink met die 7 benefit van hindsight, soos ons nou al menige kere gesê 8 het, Mnr die Voorsitter, ja, as ek gaan kyk na hierdie was 9 daar seer sekerlik geleentheid. Ek bedoel die persone van 10 die water kanon, Kolonel Pitsi, alles wat u vir my hier 11 uitgewys het, as daardie persone op daardie stadium vir my 12 gesê het daar was wel dit of dit wat agter gebeur het, maar 13 onthou ek het getuig meer as een geleentheid dat in my mind 14 of hoe dit conjure het vir my is dat ons het met 'n gewone 15 eenvoudige uiteendryf aksie plaasgevind. So nêrens op 16 enige stadium het ek het ek geweet van enige – die eerste 17 keer toe ek dit uitvind van 'n dooie persoon, het ek 18 melding gemaak dat ek dadelik na daai aanval toe gestap 19 het. Ek dink u het my gevra, Mnr die Voorsitter, het ek 20 gedink ek gaan solank weg wees? Nee, ek wou dadelik daar 21 rapporteer, maar weens die ander goed wat gebeur het, het 22 dit my 'n rukkie langer gevat en dit wys dat as ek niks 23 gedoen het aan die vorige wat ek geweet het nie, hoekom sou 24 ek dan vir Generaal Annandale geskakel het? Dan sou ek dit 25 nog steeds nie – ek sou dit oor gelos het aan iemand</p>
<p style="text-align: right;">Page 19425</p> <p>1 Budlender, ek kan nie onthou wie het op 'n stadium het vir 2 my gevra, sou ek geweet het, scene 1, wat sou my aksie 3 gewees het? En dit beteken dat ek sou al vroeër, kom ons 4 noem dit 4 uur of 15:58 geweet het en ek het presies 5 verduidelik wat ek sou gedoen het, wat nie 'n opvolg aksie 6 sou afweer nie, so ek sê nie die uitslag sou dieselfde 7 gewees het, maar ek sou nog steeds opgevolg het, dit is net 8 dat ek vroeër dan sou geweet het en miskien vir iemand gesê 9 het gaan daar, maar ons weet ook dat my bevelvoerders was 10 so gebrief dat elkeen het sy role or responsibility gehad 11 en so oor die feit dat ek, ek dink paragraaf – punt 13 het 12 u gesê ek avoid dat ooit sou geweet het, sou ek enige tyd 13 bewus sou gewees het, sou ek definitief stappe geneem het 14 of die betrokke bevelvoerders gekontak het en gevra het, 15 gee vir my meer ondervinding, gee vir my meer – ek dink die 16 persone wat my ken, miskien buite hierdie Kommissie, wat 17 weet ek is al 20 jaar by openbare orde polisiëring. Ek is 18 die provinsiale hoof vir die provinsie nou vir 'n geruime 19 tyd. Daar het nog nooit sulke insidente plaasgevind waar 20 ek nie beheer gevat het of wat enige iemand kan uitwys dat 21 ek al ooit nalatig was in enige van hierdie nie. So al wat 22 ek vra is dat respekteer my antwoorde, vergelyk dit met 23 persone wat sal kom getuig na my en hoekom hulle my dan nie 24 ingelig het nie. Ek dink die tweede een is miskien op die 25 tweede vraag, as ek dit nou -</p>	<p style="text-align: right;">Page 19427</p> <p>1 anderster. So die eerste geleentheid wat ek wel gekry 2 gevind het daar was 'n dooie persoon, het ek die JOC 3 gekontak, waarop ek dan bewus gewees het van die ander 4 persone. Ek het in beweeg ne die koppie 3 toe en daar het 5 ek verder verneem dat Generaal Naidoo, wat hy ook alreeds 6 dan vir die JOC gerapporteer het. In hindsight miskien net 7 as ons gaan kyk daar is verskeie van hierdie goed wat 8 genoem is waar daar wel kommunikasie was, byvoorbeeld die 9 een tussen Generaal Naidoo, die medics die – jy weet, waar 10 ons weet Kaptein Loest het die JOC gekontak. Ons weet die 11 JOC het die mediese personeel ingeroep. So al hierdie goed 12 dink ek nie dit sou die uitslag of wat gebeur het op die 13 grond verander het nie. 14 Dit sou miskien net gewys het dat ek sou miskien 15 op 'n vroër stadium geweet het daarvan, maar die aksies op 16 die grond en wat daar plaasgevind het, sou nog steeds so 17 miskien plaasgevind het. So, in my leek opinie, dit 18 verskil nie van die feite van my verklaring nie, Mnr die 19 Voorsitter Mnr die Voorsitter, as ek u dit antwoord. 20 CHAIRPERSON: So that's your answer. I 21 can assure you in response to the point you put to us that 22 any finding we make on the submission, when it's advanced, 23 will be based on a thorough consideration of all the 24 evidence, okay. 25 BRIGADIER CALITZ: Dankie, mnr die</p>

<p style="text-align: right;">Page 19428</p> <p>1 Voorsitter.</p> <p>2 CHAIRPERSON: I've been asked, I think</p> <p>3 quite justifiably, to announce a comfort break at this</p> <p>4 stage. In fact I intended to do it earlier, but when this</p> <p>5 point arose, I thought we should dispose of the point</p> <p>6 first. So we'll take a comfort break, a reasonably short</p> <p>7 one I hope, and then we will proceed with the last shift,</p> <p>8 as it were, until lunch.</p> <p>9 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>10 [12:35] CHAIRPERSON: The Commission resumes,</p> <p>11 you're still under oath, Brigadier.</p> <p>12 BRIGADIER CALITZ: Dankie, mnr die</p> <p>13 Voorsitter.</p> <p>14 CHAIRPERSON: Ms Le Roux?</p> <p>15 MS LE ROUX: Brigadier Calitz, we are</p> <p>16 moving onto the third aspect of my cross-examination which</p> <p>17 picks up where we've now finished with scene 2 and it</p> <p>18 relates to a criticism made by Mr White, for the record,</p> <p>19 you don't need to go there, page 94, paragraph 6.6.9B,</p> <p>20 where he is addressing the confusion that appears to arise</p> <p>21 because of inadequate briefing of commanders and what I</p> <p>22 specifically want to ask you about is, what Captain Kidd</p> <p>23 understood in his briefing and why he moved to scene 2, so</p> <p>24 if you could start in Captain Kidd's statement which is</p> <p>25 HHH12. In paragraph 6 of that statement, you can turn</p>	<p style="text-align: right;">Page 19430</p> <p>1 paragraph 8 which is near the foot of the screen at the</p> <p>2 moment. Is it perhaps the wrong –</p> <p>3 MS LE ROUX: Chair, let me –</p> <p>4 CHAIRPERSON: - para number you've got –</p> <p>5 MS LE ROUX: Let me move on to a</p> <p>6 different point, we'll sort this out over lunch and then</p> <p>7 I'll pursue this line with –</p> <p>8 CHAIRPERSON: Alright, okay, but that</p> <p>9 sounds, so you want to move on to phase –</p> <p>10 MS LE ROUX: Let me move onto the next</p> <p>11 one –</p> <p>12 CHAIRPERSON: To phase 4 of your cross-</p> <p>13 examination?</p> <p>14 MS LE ROUX: Let me move on to phase 4.</p> <p>15 Brigadier Calitz, phase 4 is just to address some aspects</p> <p>16 of scene 1 with you and I don't want to, again we shouldn't</p> <p>17 need to spend too much time going through the documents but</p> <p>18 if you could just take note of, I'm going to give you a</p> <p>19 list of documents and statements that you've seen and then</p> <p>20 pose a question to you. So the first document you had were</p> <p>21 the timelines, KKK8 which Mr Chaskalson used in his cross-</p> <p>22 examination which show when the different media footage</p> <p>23 occurs over the period of incident 1 and incident 2 and</p> <p>24 then the shooting at scene 1. Do you recall that document?</p> <p>25 BRIGADIER CALITZ: If you refer to the</p>
<p style="text-align: right;">Page 19429</p> <p>1 there, HHH12, paragraph 6, I'll read it into the record so</p> <p>2 that we can keep moving. It says, "I was called to a</p> <p>3 briefing where information was given to myself by Brigadier</p> <p>4 Calitz. The instructions –</p> <p>5 BRIGADIER CALITZ: Ekskuus tog, wie se –</p> <p>6 MS LE ROUX: Kidd, Captain –</p> <p>7 BRIGADIER CALITZ: No, paragraph 6 refers</p> <p>8 to what is on the screen now, it is K9 units, that's the</p> <p>9 one that you gave me on HHH12. It is the same as this one.</p> <p>10 CHAIRPERSON: What paragraph are you</p> <p>11 referring to, Ms Le Roux?</p> <p>12 BRIGADIER CALITZ: Paragraph 6.</p> <p>13 MS LE ROUX: I'm referring to paragraph 6</p> <p>14 of HHH12 which is –</p> <p>15 CHAIRPERSON: Well, what's being shown on</p> <p>16 the screen, I haven't got my copy here –</p> <p>17 MS LE ROUX: Yes, no, that –</p> <p>18 CHAIRPERSON: It says, "K9 units" and</p> <p>19 then it refers to how many pistols they had and rounds and</p> <p>20 one rifle they had, but –</p> <p>21 MS LE ROUX: Yes, no, that –</p> <p>22 CHAIRPERSON: - this is described as</p> <p>23 HHH12 at the top of the screen, so there may be another</p> <p>24 statement by, - you did refer to the briefing which appears</p> <p>25 to be, the discussion of the briefing appears to be at</p>	<p style="text-align: right;">Page 19431</p> <p>1 one that he referred to yesterday, those ones with, is it</p> <p>2 this one or –</p> <p>3 MS LE ROUX: Yes, that one.</p> <p>4 BRIGADIER CALITZ: I think this one we</p> <p>5 never got to because the only timeline that I know is that</p> <p>6 one of the red blocks that we discussed yesterday that,</p> <p>7 according to me "die deurmekaar een", verskoon my as ek dit</p> <p>8 so sê, met geen dis-respek. Hierdie ene was op 'n stadium</p> <p>9 vir ons gewys en toe is daar object dat ek dink ons het</p> <p>10 verskillende weergawes gehad. Die blou blok was nie onder</p> <p>11 nie, die ander persone se, - daar was van die goed missing</p> <p>12 op die, wat vir ons gegee was en wat op die screen was en</p> <p>13 ek dink ons het nooit teruggekom na die regte weergawe nie,</p> <p>14 maar dit is recalling, ek is – maar nee, ek het nog nooit</p> <p>15 hierdie document gaan in detail of hy is vir my verduidelik</p> <p>16 nie, nee.</p> <p>17 MS LE ROUX: Brigadier Calitz, the</p> <p>18 particular document is not important. You've also</p> <p>19 obviously seen the Aljazeera series which is JJJ194, the</p> <p>20 channel 4 series which is JJJ197 and the Rowland Headgear</p> <p>21 footage which is KKK9 and the evidence leaders –</p> <p>22 BRIGADIER CALITZ: As ek –</p> <p>23 MS LE ROUX: The evidence leaders cross-</p> <p>24 examined you with respect to those three statements.</p> <p>25 BRIGADIER CALITZ: As ek net kan vra, as</p>

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1 u miskien, ek getuig stadiger, as u net, ek probeer byhou.
 2 MS LE ROUX: Sure.
 3 BRIGADIER CALITZ: En –
 4 MS LE ROUX: JJJ194 which is the
 5 Aljazeera footage that the evidence leaders used when they
 6 were addressing incident 1 and incident 2, scene 1, JJJ197
 7 is the channel 4 series, they similarly went through with
 8 you. KKK9 is the Rowland Headgear footage, similarly it
 9 was put to you by the evidence leaders, about that. Then
 10 there is also the document prepared by SERI regarding the
 11 movements of vehicles and protestors that were used.
 12 You've seen that which places the Nyalas at incident 1 and
 13 scene 2, scene 1, the vehicles and addresses the incident
 14 and then this is also where KKK40 comes in for the sake of
 15 completeness which is the field of view document prepared
 16 by CALS and the Human Rights Commission. That's the
 17 document that is our submission regarding the fields of
 18 view of these different pieces of footage and why they are
 19 reliable to use the footage to debunk incident 1 and
 20 incident 2 and scene 1, the police version as set out in
 21 Exhibit L.
 22 So looking at that overall universe of documents
 23 and again we are not going to traverse them individually.
 24 We will submit that on the basis of all of those there is
 25 no possibility that incident 1 and incident 2 occurred as

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1 you described them and so specifically the submissions we
 2 will make, that we'll say that is direct evidence showing
 3 that incident 1 and incident 2 did not happen. We submit
 4 that those indicate there is no attack on Nyala 4 near the
 5 famous pole, that there is no attach on Nyala 4 near the
 6 kraal, at least by the lead group of protestors, that at
 7 the site of alleged incident 2 the crowd that is alleged to
 8 have attacked Papa5 never comes closer than 5 metres to it,
 9 that no teargas or stun grenades were used until 19 seconds
 10 before the TRT volley of fire and that no water cannon is
 11 used until 8 seconds before the TRT volley. Have you been
 12 able to identify any other objective evidence to support
 13 your contention as to incident 1 and incident 2 and scene
 14 1, as you've testified? Do you know of any additional
 15 objective evidence that you can bring to the Commission's
 16 attention that confirms these incidents the way you've
 17 described them?
 18 BRIGADIER CALITZ: Mnr die Voorsitter,
 19 weereens ek het nie die vierde topic, ek dink as u vir my
 20 hierdie goed gegee het en ek kon daardeur werk dan sou dit
 21 dalk 'n bietjie makliker gewees het. Ek kan nie presies
 22 onthou waste footage na hierdie verwys is nie maar as dit
 23 is, dit wat ons gesien het en dit waardeur die evidence
 24 leaders met ons gegaan het dink ek kan maar net terugverwys
 25 na wat my detail getuienis was in daardie opsig. Ek dink

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1 scene 1 of incident 1 het ons pertinent gepraat oor die
 2 geel pyl. Ek dink my getuienis op daardie stadium was nie
 3 soos die pyl reg af tot so, maar die voorste groep, dit het
 4 gedui op die beweging. Ek het gedui op die groter groep bo
 5 wat om beweeg het na 2 toe. Ek kan nie onthou, u sê dat,
 6 ek weet nie of u sê ek sê daardie attack op Papa4 of op
 7 Nyala 4, ek dink in die Exhibit L is daar 'n foto waar
 8 hulle gesê het dit is nie 4 nie, maar dit was Nyala 5.
 9 So ek dink daardie, as ons dit in ag neem, ek het
 10 nooit getuig dat daar wel sulke traangas was op incident 1
 11 en 2 nie, dat ek dit gesien het nie. Die waterkanon, is ek
 12 gevra, het ek hulle gesien spuit, ek het nooit getuig dat
 13 ek hulle gesien spuit het op die 1 en 2 nie, so u sit
 14 miskien die goed nou, ek sal nie sê 'n bietjie vinnig op my
 15 nie, maar nee, ek is nie bewus van enige ander footage nie.
 16 Miskien in re-examination as ons nou geleentheid het om
 17 hierna te kyk dan kan ons sien of daar iets anders is
 18 buiten wat in Exhibit L as getuienis aangebied was.
 19 CHAIRPERSON: Do I understand you to be
 20 saying that the allegation in relation to incidents 1 and 2
 21 which appear in Exhibit L are not based upon your evidence
 22 as such, perhaps short portions of your evidence but the
 23 main thrust of it is not based on your evidence. So it is
 24 not for you to come and provide evidence which supports
 25 what you said because you didn't say anything really on the

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1 point. It is part of the State case, I mean the police
 2 case, it is in Exhibit L, there may well be some evidence
 3 which supports it at some stage but it is not for you to
 4 come and produce objective evidence supporting it because
 5 that's not your evidence. You only spoke about what you
 6 saw, am I summarising your evidence correctly or am I
 7 wrong?
 8 BRIGADIER CALITZ: Dit is soos ek dit
 9 verstaan en kan getuig daaroor.
 10 MR SEMENYA SC: And also for the record,
 11 Chair, Mr Mpofu's witnesses testified to this incident as
 12 well.
 13 CHAIRPERSON: Your point really to him
 14 was, Ms Le Roux, was there objective evidence which
 15 supported what he said? His answer is, what really you
 16 meant, was there objective evidence which supports the
 17 police version in Exhibit L in relation to incidents 1 and
 18 2, and he says, well, it is not for him to be objective
 19 evidence because it wasn't his evidence, maybe the police
 20 case but that's another matter, and Mr Semanya has
 21 thoughtfully suggested that you may find what you're
 22 looking for in the evidence that Mr Mpofu's witnesses gave.
 23 Is that really your phase 4 cross-examination or are there
 24 further questions you want to ask as part of this phase?
 25 MS LE ROUX: No, Chair, it was merely to

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1 give the brigadier an opportunity to respond to the
 2 submissions we will make, that the objective evidence
 3 currently before the Commission does not support the
 4 version on incident 1 and incident 2.

5 CHAIRPERSON: Well, it sounds as if he is
 6 declining the opportunity and he says it is not for him to
 7 do it, it is possibly someone else but not him.

8 MS LE ROUX: Yes, Chair, -

9 CHAIRPERSON: Now can we go back to -

10 MS LE ROUX: - but I can -

11 CHAIRPERSON: - your phase 3? I'm not
 12 sure whether I found what you're looking for but if I have
 13 maybe we could deal with it now. It is Exhibit HHH12,
 14 that's Captain Kidd's statement. In paragraph 8 he talks
 15 about the briefing with Colonel Scott.

16 MS LE ROUX: No, Chair, it is a different
 17 statement, I need to sort this out over the lunch -

18 CHAIRPERSON: Alright, -

19 MS LE ROUX: - adjournment.

20 COMMISSIONER HEMRAJ: Ms Le Roux, the
 21 photograph that appears in the annexures to Mr White's
 22 statement, I think it is on page 42 or 43, which shows
 23 strikers throwing objects. Have you been able to put a
 24 time to that because there is a legend, there is a comment
 25 on that made by CALS, perhaps you could look at that at

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1 some stage and revert?

2 MS LE ROUX: I'll do that.

3 CHAIRPERSON: Do we move on to phase 5?

4 MS LE ROUX: No, we move on to the second
 5 part of phase 4.

6 CHAIRPERSON: Oh.

7 MS LE ROUX: We're just clarifying things
 8 at scene 1.

9 CHAIRPERSON: Alright, that's cross-
 10 examination, I just wanted some kind of roadmap, I like to
 11 follow what's going on.

12 MR MPOFU: Chairperson, I wanted to get
 13 clarify on this evidence of the strikers throwing objects.

14 CHAIRPERSON: It is a photograph -

15 MR MPOFU: Oh -

16 CHAIRPERSON: - which is annexed to Mr
 17 White, MBE -

18 MR MPOFU: That still photograph?

19 CHAIRPERSON: The still photograph.

20 MR MPOFU: So maybe they were just
 21 holding it like -

22 CHAIRPERSON: No, well -

23 MR MPOFU: - the walkie talkies.

24 CHAIRPERSON: And there is a legend,
 25 there is a legend below the photograph and as you heard Ms

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1 Le Roux has been asked to provide further information about
 2 the legend and perhaps when we got that information we will
 3 know whether we're in the world of walkie talkies or
 4 whatever.

5 MR MPOFU: But the initial throwing or
 6 holding?

7 CHAIRPERSON: Throwing or holding, ja.

8 MR MPOFU: Ja, we'll need the movement
 9 like the lips on the walkie talkie.

10 CHAIRPERSON: It is alright, phase 2, -
 11 sorry, phase 4, part 2.

12 MS LE ROUX: Brigadier Calitz, you
 13 testified when the evidence leaders were cross-examining
 14 you about 3,000, 2 to 3,000 people and repeatedly you chose
 15 the 3,000 number when you were speaking about the number of
 16 protestors on the koppie when you started the operation and
 17 that you observed during the operation. Do you recall that
 18 testimony?

19 BRIGADIER CALITZ: Ja, I think it was on
 20 the previous day a little bit more and then as it has been
 21 reported to us and when we arrived there the two groups,
 22 but the figure of 3,000 was mentioned, yes.

23 MS LE ROUX: Brigadier Calitz, you
 24 testified when we started today that you've reviewed the
 25 annexures to Gary White's statement. Did you review

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1 Annexure GW6F which is the CALS analysis of the number of
 2 protestors on the koppie on 16 August and if you can
 3 actually just turn to slide 21 of that annexure, it is
 4 Annexure 6F, the CALS analysis of the number of protestors
 5 and that document in the 20 pages preceding slide 21
 6 literally performs a grid, it puts a grid over those
 7 photographs that we have of the koppie and then performs a
 8 headcount, and the conclusions are set out at page 21 where
 9 it says that on the 16th of August at approximately 11:20am
 10 there were approximately 2,988 protectors but that by 3:37
 11 pm which is -

12 BRIGADIER CALITZ: Sorry, u is bietjie
 13 vinnig vir my, as ons -

14 MS LE ROUX: Sure.

15 BRIGADIER CALITZ: Ek blaaai nog, u sê -

16 MS LE ROUX: Did you find GW6F?

17 BRIGADIER CALITZ: Yes, I just found it,
 18 you said page?

19 MS LE ROUX: If you go to the last page
 20 of that annexure, page 31, it sets out the conclusion of
 21 the headcount that is performed in the preceding slide and
 22 it concludes that at approximately 11:20 am there were
 23 approximately 2,988 protestors at the koppie and by 3:37
 24 here were approximately 1,682 that remained. So the number
 25 had halved by the time the operation commenced. So the

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1 3,000 that you continually referred to does not match the
 2 actual headcount that has been performed of the protestors
 3 on the koppie, do you accept that you may be mistaken and
 4 that it may be closer to half of that?
 5 CHAIRPERSON: Sorry, hang on a second, it
 6 is not as simple as that. Just before half past 11 in the
 7 morning, according to your own document, there were just
 8 under 3,000 people, protestors on or around the koppie, as
 9 you put it. Then later in the afternoon, after a number of
 10 things had happened and Mr Mathunjwa had addressed the
 11 people there were according to your calculations 1,682, so
 12 he is entitled to talk about 3,000 roughly in the morning.
 13 We don't know when the 3,000 declined to 1,682, if this
 14 figure of yours is correct, so the question I would have
 15 thought requires a bit more refinement in order to get a
 16 meaningful answer from the witness and when you, - perhaps
 17 I can be opening the way for you so that you can carry on.
 18 When you talk about 3,000 people do you mean, - are you
 19 excluding the militant group?
 20 BRIGADIER CALITZ: Dit is 'n persoon op
 21 die koppie gewees.
 22 CHAIRPERSON: Ja.
 23 BRIGADIER CALITZ: Ons het die heelyd
 24 van die twee aparte groepe gepraat.
 25 CHAIRPERSON: Are you talking about the

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1 people on the koppie?
 2 BRIGADIER CALITZ: Die –
 3 CHAIRPERSON: The 3,000?
 4 BRIGADIER CALITZ: Dit is korrek.
 5 CHAIRPERSON: Now I am not sure whether
 6 this figure which CALS has given us of 2,988 just before
 7 half past 11 in the morning includes the militant group,
 8 but anyway there was a number fairly close to 3,000 I take
 9 it, between 2,500 and 3,000 in the morning, around about
 10 11:20. Now in the afternoon at 3:37 they say the number
 11 was 1,682. Now did you count them at that stage, did you
 12 do anything to ascertain whether the number was still as
 13 high as it has been before lunch, if I can put it that way?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 ja, ons het, - ek sien nou wat hulle hier gedoen het, ek
 16 het dit oor gesit en met die benefit van hindsight is dit
 17 baie maklik om so miskien 'n uitwerking te hê. Ons getuig
 18 maar van die grond af wat u sien en wat 'n ou kan, die
 19 voorste groep waarneem. 'n Ou weet nooit presies agter die
 20 koppie, agter elke klip, boom, hoeveel mense sit nie, so ek
 21 sal saamstem dat ek miskien daardie, my wiskunde, 12 lede,
 22 12 persone uit was, maar dit was roughly die figure rondom
 23 die oggend gewees. Die middag het ons wel getuig dat die
 24 persone, ek dink soos u gesê het hulle kon gaan eet het en
 25 ek dink daar is meerderheid groepe wat teruggekom het toe

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1 hulle toegespreek is. Ek moet net gaan kyk na die, miskien
 2 die VB of so, ek het nou nie die getalle presies voor my
 3 nie, miskien as ek net 'n geleentheid kry om dit dan na te
 4 gaan, om te gaan kyk watter getalle gerapporteer is aan u,
 5 ek kan so vinnig my vinger daarop probeer lê.
 6 CHAIRPERSON: I am busy with something
 7 else, in the morning you people appeared to have counted
 8 them or made some kind of estimate as to the number. Did
 9 you make another estimate in the afternoon or did you count
 10 them again in the afternoon?
 11 BRIGADIER CALITZ: Hulle het vir ons maar
 12 nog steeds na die hoeveelheid gelyk wat op die oggend daar
 13 was.
 14 CHAIRPERSON: Ja, that's the point I am
 15 coming to.
 16 BRIGADIER CALITZ: Ja.
 17 CHAIRPERSON: You didn't count them –
 18 BRIGADIER CALITZ: Nee, nee –
 19 CHAIRPERSON: - again, and then dealing
 20 with your impression that the number hadn't significantly
 21 reduced. What Ms Le Roux is putting to you, that on the
 22 basis of their calculations the numbers had quite
 23 significantly reduced or it is almost being halved.
 24 [12:55] Were you aware of the fact that, or did you
 25 notice that there appeared to have been a falling off in

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1 the numbers, that the numbers had fallen quite
 2 significantly?
 3 BRIGADIER CALITZ: Die enigste wat ek kan
 4 verwys na die tyd wat sy miskien hier verwys, sal dit wees,
 5 dit is 15:37, as ek dit nou – en ek het hom 15:40 die
 6 opdrag gegee, as ons nou op die, as ons op dieselfde dag,
 7 dieselfde bladsy is, vir die "deployment" van die "barbed
 8 wire." Ek dink daar was getuies gewees, en dis wat ek
 9 probeer net vind het, maar onder korreksie weereens dat
 10 nadat mnr Mathunjwa – ag, ja, dis mos die AMCU leier –
 11 wegbeweeg het en die media wegbeweeg het van voor af, het
 12 ons gesê daar was 'n groot groep mense - en ek dink dit is
 13 in foto's sigbaar – wat aan die agterkant reeds begin
 14 wegbeweeg het van die koppie af vrywillig. Ek is onder
 15 korreksie, maar ek dink dit is, daar is foto's wat dit kan
 16 aandui op daardie tyd.
 17 CHAIRPERSON: Mr Mathunjwa had actually
 18 told them if they did stay they'd be killed. Now the
 19 evidence is that some of them at least, a significant
 20 number of them didn't believe him, for whatever reason, or
 21 alternatively were prepared to stay and be killed, if
 22 that's an inference we can really draw. But he certainly
 23 laid it on the line, put it to them very strongly, and my
 24 own prima facie impression is that some of them took
 25 seriously what he said – very sensibly – and started to

<p style="text-align: right;">Page 19444</p> <p>1 leave. Whether that of course explains the full drop which 2 we have here on what's been put to you by Ms Le Roux, I 3 don't know, but the real question as I say is you say you 4 didn't really notice the falling off of numbers after 5 lunch, if I can put it like that, but you did notice people 6 leaving round about the time he was speaking. Is that 7 fair?</p> <p>8 BRIGADIER CALITZ: Die tyd wat hier na 9 verwys is, dit is korrek.</p> <p>10 CHAIRPERSON: The time that's referred to 11 here is just about the time of his speech. I don't know 12 how long his speech on the second occasion was, but he 13 certainly put it very strongly, warned them of the 14 consequences of not leaving the koppie, and he seems to be 15 quite an eloquent orator and it would appear that some at 16 least of his audience were persuaded by what he said, but 17 that's just a prima facie impression at this stage.</p> <p>18 BRIGADIER CALITZ: Heeltemal reg, mnr die 19 Voorsitter.</p> <p>20 CHAIRPERSON: I don't know whether that 21 helps or hinders you in your cross-examination, but I tried 22 to clear the ground for you, literally and metaphorically 23 in the case of the people who are on the koppie.</p> <p>24 MS LE ROUX: Chair, no, that was very 25 helpful for our purposes, and I note the time and Chair, I</p>	<p style="text-align: right;">Page 19446</p> <p>1 to adjourn at quarter to 4 was unfortunately unsuccessful. 2 It was foiled by the need for certain papers to be printed, 3 which we have now received, and so we can carry on. But I 4 must apologise to anyone who was here at half past 1 in the 5 sincerely but unfounded belief that we were going to start 6 at 1:30.</p> <p>7 Ms Le Roux, you've given us copies of statement 8 by Captain Kidd, I see a manuscript statement and a typed 9 version. As far as I could see they are the same. I 10 haven't checked the accuracy of the typed version.</p> <p>11 Presumably we may as well give it an exhibit number now, 12 shall we?</p> <p>13 MS LE ROUX: Chair, what I have 14 established is that the reference I had, HHH12, to a 15 statement by Captain Kidd is to his second statement, which 16 is the one that was displayed at the time. In the three 17 I'd given you it was the one that came last. It just has 18 the title "Statement." That has been marked as HHH12.</p> <p>19 CHAIRPERSON: Yes.</p> <p>20 MS LE ROUX: The other typed statement 21 which types up the manuscript which you've been given 22 predates that one.</p> <p>23 CHAIRPERSON: Yes.</p> <p>24 MS LE ROUX: So I suppose what we should 25 do is mark it HHH12.1 and then the later statement HHH12.2.</p>
<p style="text-align: right;">Page 19445</p> <p>1 only have two discrete topics left, which shouldn't take me 2 too long after lunch.</p> <p>3 CHAIRPERSON: Have you finished phase 4 4 now?</p> <p>5 MS LE ROUX: I have finished phase 4. I 6 just have 5 and 6 left, and they shouldn't take –</p> <p>7 CHAIRPERSON: But haven't you got to go 8 back to 3?</p> <p>9 MS LE ROUX: Yes, that's 6 – no, no, 10 that's my original 6. I've taken it out of order. There 11 are two topics left; they shouldn't take very long, but 12 given the time we should probably take the lunch 13 adjournment now.</p> <p>14 CHAIRPERSON: Yes, may I respectfully 15 adopt your suggestion and take the lunch adjournment at 16 this stage. I'd like to resume at 1:30 because I've been 17 asked to adjourn at quarter to 4 for a particular reason, 18 which I've agreed to do. So please try to be back, 19 everybody, at half past 1. As long as Ms Le Roux and the 20 Brigadier and the three Commissioners are here at half past 21 1, we can carry on. I suppose Mr Semenya had better be 22 here as well. We adjourn now until half past 1.</p> <p>23 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>24 [13:46] CHAIRPERSON: The Commission will resume. 25 Our attempt to start promptly at 1:30 because we're going</p>	<p style="text-align: right;">Page 19447</p> <p>1 CHAIRPERSON: The existing HHH12 can be 2 HHH12.1. This will be HHH12.2, and the manuscript will 3 be –</p> <p>4 MS LE ROUX: 12.3.</p> <p>5 CHAIRPERSON: HHH12.3. Then you've also 6 handed us a document –</p> <p>7 MS LE ROUX: Yes, Chair, this –</p> <p>8 CHAIRPERSON: - which is headed "Images 9 of P1 at scene 2 with doors open." Your –</p> <p>10 MS LE ROUX: Yes, Chair, this is the 11 document I referred to during my cross-examination that 12 just needs to be given an exhibit number. I believe the 13 next exhibit is KKK45.</p> <p>14 CHAIRPERSON: Alright. Well, it's not 15 actually an exhibit, it's just a list, but lest there be 16 any misunderstanding, the fact that I'm marking the exhibit 17 doesn't mean it's evidence; it's just a convenient 18 reference –</p> <p>19 MS LE ROUX: Correct, it's a document, 20 just a submission –</p> <p>21 CHAIRPERSON: Alright, so we call it 22 KKK45.</p> <p>23 MS LE ROUX: Right.</p> <p>24 CHAIRPERSON: And I'd better write that 25 in my book, KKK – I put quotation marks, "Images" – oh,</p>

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1 it's also a "CALSA SAHRC analysis: Imagines of P1 at scene 2
2 with doors open."
3 MS LE ROUX: And Chair, for the record,
4 the first two entries which refer to the two Nel images
5 that we've seen repeatedly, Nel 12:45 and 12:48, in the
6 note we had the question "Who is the white officer holding
7 the knobkierie?" We know that has now been identified as
8 Greyling.
9 CHAIRPERSON: As whom?
10 MS LE ROUX: Greyling.
11 CHAIRPERSON: How do you spell that?
12 MS LE ROUX: G-R-E-Y-L-I-N-G.
13 CHAIRPERSON: G-R?
14 MS LE ROUX: E-Y-L-I-N-G.
15 CHAIRPERSON: Oh, Greyling. What is his
16 rank?
17 MS LE ROUX: He's a captain.
18 CHAIRPERSON: Alright, never mind. We'll
19 find out in due course. Brigadier, I understand –
20 MS LE ROUX: He's a captain, Chair.
21 CHAIRPERSON: Sorry?
22 MS LE ROUX: He's a captain.
23 CHAIRPERSON: Captain Greyling.
24 Brigadier, you're under oath.
25 ADRIAAN MARTHINUS CALITZ: s.u.o.

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1 CHAIRPERSON: Now that you're under oath,
2 do you want to say something? Or what is it?
3 BRIGADIER CALITZ: Nee, mnr die
4 Voorsitter, dis reg, ek weet net die dokumente wat gegee
5 is, is dit 'n "exhibit" of gaan ek 'n kopie kan kry? Ek
6 sien sy verwys na my voertuig en die deure.
7 CHAIRPERSON: [Microphone off, inaudible]
8 exhibit yet. I mean it's become an exhibit now. It's
9 KKK45, but if you haven't been given a copy you can have
10 mine. It's not really evidence; it's just a convenient
11 list of images that's been referred to. Alright, you're
12 under oath. Ms Le Roux.
13 BRIGADIER CALITZ: Dankie, mnr die
14 Voorsitter.
15 CHAIRPERSON: You told my they were
16 discrete topics. For the benefit of the transcribers, D-I-
17 S-C-R-E-E-T-E, which means isolated. Please proceed with
18 your isolated topics.
19 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
20 Thank you, Chair. Brigadier Calitz, I'd like to deal with
21 the Captain Kidd statements, now that we've worked those
22 out. So if we can just walk through these so that I can
23 establish with you the context in which I'm asking
24 questions, and you'll recall I said before the lunch
25 adjournment this is to deal with Mr White's criticism

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1 regarding briefing and Captain Kidd is one example that Mr
2 White has used regarding the apparent discrepancies and
3 inconsistencies in briefing and the understanding of
4 members as to what their task was on the 16th.
5 So if we could do this chronologically, which
6 means we need to start with the Kidd statement now marked
7 as HHH12.2, and this is a statement that we can date by
8 using HHH12.1, which says, "This is a further statement to
9 that which I made on 17 August 2012." So HHH12.2 is made
10 the day after the shooting. It's made on 17 August 2012.
11 You have that statement, Brigadier Calitz?
12 BRIGADIER CALITZ: Ek het sy drie
13 verklarings hier voor my, ja.
14 MS LE ROUX: Okay, and if we look in that
15 first chronological statement at paragraph 6, Captain Kidd
16 states there, "I was called to a briefing where information
17 was given to myself by Brigadier Calitz that instructions
18 would be given over the radio as to deploy my 90 members.
19 I was to perform a straight line with members by walking
20 towards the hill area." Did you brief Captain Kidd?
21 BRIGADIER CALITZ: No, I think that can
22 be clearly seen in the next paragraph, if I may read it.
23 Ek is ook nou in Engels. "I returned to the members and
24 briefed them with regarding to the operational briefing I
25 received from Colonel Scott." So ek weet nie of hy dalk

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1 net deurmekaar geraak het nie, maar die "briefing" was
2 definitief gegee deur Kolonel Scott en nie deur myself nie.
3 MS LE ROUX: So you never briefed the
4 forward holding area 1 members?
5 BRIGADIER CALITZ: Nee, hy was by
6 "forward holding area" 2.
7 MS LE ROUX: Forward holding area 2.
8 BRIGADIER CALITZ: Dit is korrek, ja. Ek
9 het hulle nie – Kolonel Scott het die "briefing" gegee.
10 MS LE ROUX: But Brigadier Calitz, you
11 were –
12 CHAIRPERSON: I'm sorry to interrupt
13 you –
14 MS LE ROUX: - at the briefing –
15 CHAIRPERSON: Sorry. Carry on. There's
16 something I want to put, but I'll put it to you later.
17 Please carry on.
18 MS LE ROUX: But Brigadier Calitz, you
19 were at the briefing given by Lieutenant Colonel Scott to
20 Captain Kidd and his men, were you not?
21 BRIGADIER CALITZ: Ek was teenwoordig
22 saam met hulle by daardie "briefing," saam met al die ander
23 bevelvoerders, dis korrek.
24 MS LE ROUX: Okay, and what do you recall
25 Colonel Scott briefing them to do?

<p style="text-align: right;">Page 19452</p> <p>1 BRIGADIER CALITZ: As ek so – ek dink ek 2 het daarna genoem iewers, onder korreksie weereens, het 3 Kolonel Scott vir “forward holding area” 2 se persone 4 “gebrief.” Daar was 'n nedersetting aan die suid-westelike 5 kant wat hulle dan 'n filter lyn moet vorm en dan 6 “protection” gee vir die persone by daardie nedersetting. 7 Dis hoe ek dit verstaan het. 8 MS LE ROUX: And Brigadier Calitz, was 9 your understanding that that filtering line was stationary? 10 They were to form it and then protect the informal 11 settlement by being stationary in a filtering line? 12 BRIGADIER CALITZ: Ja, dit is korrek, ja. 13 Aan die voorkant van daardie nedersetting. 14 MS LE ROUX: Because Captain Kidd's 15 recollection of that briefing is that he was to perform a 16 straight line with members by walking towards the hill 17 area. Do you recall that briefing saying anything about 18 they must form up a line and walk towards the hill? 19 BRIGADIER CALITZ: No, glad nie. 20 CHAIRPERSON: Ms Le Roux, there is of 21 course the fuller version by Captain Kidd about the 22 briefing in paragraph 8 of the later statement, which is 23 exhibit HHH12.1, and some of the obscurity of what is 24 contained in the paragraph you've now read may well be 25 removed if one reads that paragraph.</p>	<p style="text-align: right;">Page 19454</p> <p>1 statement, both in manuscript and in typed version, says 2 “this (blank) day of September.” So we don't know when 3 precisely it was signed, if it was signed at all, because 4 we haven't a signed copy. 5 MS LE ROUX: Chair, as I indicated, in 6 the second statement, which is HHH12.1, the first sentence 7 of it says, “This is a further statement to that which I 8 made on 17 August.” 9 CHAIRPERSON: I see. 10 MS LE ROUX: So we date the first 11 statement, 12.2, to 17 August, and then the statement which 12 is 12.1 is signed on the 14th of November 2012. So the 13 first statement that we've covered is 17 August 2012, the 14 day after the shooting. The next chronological statement, 15 HHH12.1, is 14 November 2012. 16 CHAIRPERSON: No, let's try to sort this 17 out. The document which I've now marked HHH12.2, which is 18 headed “Warning statement,” is actually a typed version - 19 which I think was erroneously headed “Warning statement” - 20 of the manuscript statement which is HHH12.3. 21 MS LE ROUX: Correct. 22 CHAIRPERSON: And as you correctly point 23 out, that statement appears to be made on the 17th of 24 August. It's signed, because we could see his signature I 25 think at the bottom of the various pages, but we haven't</p>
<p style="text-align: right;">Page 19453</p> <p>1 MS LE ROUX: Yes, Chair, the point that 2 obviously will be explored with Captain Kidd as well is 3 that that's a different description of the briefing, that 4 it is inconsistent with the one he captures in his first 5 statement. But you are correct that in paragraph 8 of the 6 second statement, which is now HHH12.1, he states that, 7 “The specific brief to my team was that we would look after 8 an informal settlement situate at the western side” – 9 CHAIRPERSON: Ms Le Roux, you're going a 10 bit fast. I think the Brigadier is trying to find it in 11 his copy, so perhaps just wait, give him a chance to catch 12 up with us. Have you got it, Brigadier? 13 BRIGADIER CALITZ: Nee, ek is, ek het die 14 drie. Ek het probeer kyk of daar net 'n datum is op die, 15 soos waarna sy verwys het in 12 – 16 CHAIRPERSON: You shouldn't do that. You 17 should listen to the questions. You shouldn't engage in – 18 BRIGADIER CALITZ: Nee, nee, nee, ek – 19 CHAIRPERSON: - further investigations of 20 your own. A copy of that statement which I have is 21 undated, so I don't know when it was – 22 BRIGADIER CALITZ: Ek wou dit net seker 23 maak, ja. 24 CHAIRPERSON: The one we've got, the ones 25 that we were given by Ms Le Roux today, that's the first</p>	<p style="text-align: right;">Page 19455</p> <p>1 actually got a date on the manuscript copy. 2 MS LE ROUX: Correct. 3 CHAIRPERSON: But it was signed and it 4 appears to have been in affidavit form because there's a 5 reference to the oath and so on at the foot of the last 6 page. Then the typed version which says, talks about the 7 blank day of September, doesn't appear to have been signed. 8 It's headed “Warning statement” but it appears that that 9 “warning statement” part came from using a template or 10 something which was actually not appropriate. And then 11 HHH12.1 is the statement which appears to have been made, 12 or intended to have been made in November, though the copy 13 we have isn't signed either, but I take it even if it 14 wasn't signed, it was intended to be signed some time in 15 November. Is that correct? 16 MS LE ROUX: Yes, Chair – 17 CHAIRPERSON: What appears to have 18 happened is manuscript statement of August, 17 August, the 19 typed version was intended to be signed in September but 20 wasn't, but of course it didn't have to be because we had a 21 manuscript one signed, and the third one is a November one, 22 not signed either, but we don't know when in November but 23 obviously it appears to have been prepared in November. Is 24 that correct? 25 MS LE ROUX: Chair, the version I have of</p>

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1 12.1 is signed on the 14th of November 2012.
 2 CHAIRPERSON: Well, I'm disadvantaged in
 3 relation to you, but nothing turns on the point. My one is
 4 blank, but –
 5 MS LE ROUX: Chair, I can explain that
 6 because in the lunch adjournment we obtained from the
 7 evidence leaders a copy of 12.1 that we did not have and
 8 that version was a PDF unsigned version. But I also now
 9 have a signed version, but anyway, the point is we've got –
 10 CHAIRPERSON: You've got advantages over
 11 me, but I'll endeavour to cope despite the problem that I
 12 have. Anyway, let's move on. The point is that you say
 13 there's a difference between what appears in 12.2 and 12.3
 14 in relation to the nature of the briefing, but the briefing
 15 is certainly spelt out in far more detail - possibly in a
 16 contradictory way, but that will be a matter for argument,
 17 I suppose - in the November statement. So surely in
 18 fairness to the witness it might be appropriate to ask him
 19 what he has to say about what's said in the November
 20 statement.
 21 MS LE ROUX: Yes, thank you, Chair.
 22 Brigadier Calitz, the Human Rights Commission will
 23 obviously cover this with Captain Kidd when he comes to
 24 give evidence, but the submission that I'd like your
 25 comment on because you were present at the briefing that he

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1 received, is that the statement he writes the day after
 2 indicates he understood that his task was to perform a
 3 straight line with members by walking towards the hill
 4 area. The statement he then produces in November says that
 5 they are to "look after the informal settlement situated at
 6 the western side by making a basic line in front of it,
 7 facing the koppies. The basic line was to be formed when
 8 the barbed wire was being deployed. It was our
 9 responsibility to protect the settlement from attack by
 10 anyone and disarm any armed protesters going past the line
 11 and arrest them." So the discrepancy that we've identified
 12 is in the first statement he seems to think his task is to
 13 form a line and walk towards what becomes koppie 3, scene
 14 2, and in the later statement he seems to indicate his task
 15 was to stand still in a line and filter protesters that
 16 came through. From your recollection of the briefing, what
 17 briefing was given to Captain Kidd?
 18 BRIGADIER CALITZ: Mnr die Voorsitter,
 19 wat ek kan onthou wat by die "briefing" gegee is, sal ek
 20 steun die verklaring wat geteken is die 14de November,
 21 paragraaf 8. Dit is meer 'n "recollection" wat gegee is as
 22 wat u na verwys, die eerste verklaring.
 23 MS LE ROUX: Thank you, Brigadier Calitz,
 24 and we'll obviously explore that further with Captain Kidd.
 25 Chair, I can now move to my final topic, which is regarding

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1 the Public Order Policing members. Brigadier Calitz, let
 2 me start with this; are you aware that the Public Order
 3 Police fired live ammunition?
 4 CHAIRPERSON: Public audit, you mean – is
 5 public audit the right word?
 6 MS LE ROUX: Yes, Chair, the POP members
 7 fired live ammunition –
 8 CHAIRPERSON: Oh, Public Order. I
 9 thought you said audit. It's my fault. Public Order
 10 Police. I didn't understand what auditing had to do with
 11 policing, but it was my mistake. Anyway, it's now been
 12 clarified, you can proceed.
 13 MS LE ROUX: Brigadier Calitz, to repeat
 14 the question, are you aware that POP members fired live
 15 ammunition?
 16 BRIGADIER CALITZ: Ek het wel daarvan
 17 bewus geword nadat ons die video gekyk het wat ons almal
 18 sien waar ons vir, ek dink ek het gesê Adjudant Kuhn –
 19 onder korreksie – gesien het dat hy sy R5 gebruik.
 20 MS LE ROUX: Before you watched the video
 21 here at the Commission did you know that POP members had
 22 used live ammunition?
 23 BRIGADIER CALITZ: Dit is toe ons die, al
 24 die inligting begin bymekaar maak het en ek dink daar is 'n
 25 skiet lys opgestel wat die bevelvoerders dan gebring het

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1 van wie het watter rondtes afgevuur. Ek kan nie nou vir u
 2 presies sê watter lede het wat nie, maar ek verbeel amper
 3 daarin verwys ook na van die POP lede.
 4 MS LE ROUX: Okay, Brigadier Calitz, if
 5 you know, are you referring to FFF8, which is the discharge
 6 report? Is that the document you referred to being
 7 collated?
 8 BRIGADIER CALITZ: Ja-nee, ek dink die
 9 "discharge report" soos ek hom hier het, het later
 10 gefinaliseer. Ek praat van soos ons die inligting by, as
 11 ons dan kan sê Roots bymekaar gemaak het vir die "exhibit
 12 L," weet ek daar was van die bevelvoerders wat gesê het
 13 hulle het gesien hoe persone op hulle skiet terwyl hulle in
 14 die Nyala voertuig is, en ek dink – ek praat weereens onder
 15 korreksie – daar is een of twee lede wat dan gesê het hulle
 16 het op die persone geskiet met, ek dink 9mm-pistole. Dit
 17 is waarna ek verwys.
 18 MS LE ROUX: But the first time you
 19 became aware of POP members using live ammunition was at
 20 Roots then?
 21 BRIGADIER CALITZ: Ja, toe ons begin die
 22 inligting bymekaar maak. Ek sal nie sê spesifiek net Roots
 23 nie. Dit kan dalk vroeër gewees het soos die bevelvoerders
 24 die inligting ingebring het van die lede af.
 25 MS LE ROUX: And Brigadier Calitz, have

<p style="text-align: right;">Page 19460</p> <p>1 you spoken to any POP members that used live ammunition? 2 At any point from the 16th until today have you spoken to 3 any POP members about their use of live ammunition? 4 BRIGADIER CALITZ: Ja, dit is moeilik. 5 Ek dink op 'n stadium by – weereens ek praat onder 6 korreksie, ek dink ek en Adjudant Offisier Kuhn het op 'n 7 stadium gesels oor wat daar gebeur het en dat hy my vertel 8 het hy die ene persone gesien uit selfverdediging uit 9 opgetree. Dit is omtrent wat ek kan onthou. 10 [14:06] CHAIRPERSON: Before, that would have 11 been before Roots? 12 BRIGADIER CALITZ: Ek dink so, 13 Kommissaris, definitief want ons het na die voorval soos 14 die inligting in kom het die bevelvoerders dan gesê van 15 hierdie lede het so en so geskiet. Op die spesifieke datum 16 of tyd kan ek nou nie vir u sê nie. 17 CHAIRPERSON: Aren't members supposed to 18 fully inform at the end of every day indicating whether 19 they have, if they have fired off rounds of ammunition and 20 details of that? 21 BRIGADIER CALITZ: Mnr die Voorsitter, ja 22 dit is waarvan ons verwys het. Ek dink ons het gepraat van 23 'n hard debriefing is waar die commanders dis by die lede 24 kry en ek dink het al daar getuig is waar die lede se 25 commanders dit dan bring waar iemand dan die getalle gaan</p>	<p style="text-align: right;">Page 19462</p> <p>1 BRIGADIER CALITZ: Nee, dit is maar wat 2 ek nou in hindsight seker uit hulle verklarings dit kan 3 lees en dan maar afleidings maak. Maar ek sal u nie 4 daarmee kan help presies tyd of wanneer nie, nee. 5 CHAIRPERSON: Is it correct, is it, I 6 think you said earlier that Warrant Officer Kuhn was the 7 first to fire? 8 BRIGADIER CALITZ: Ek dink, soos ek met 9 die bevelvoerders gepraat het was daar vroeëre insidente, 10 mnr die Voorsitter, waar die lede dan gesê het daar's op 11 hulle Nyalas aangeval of hulle het 'n persoon gesien met 'n 12 vuurwapen uit die skare uit wat skiet. So ek neem aan daar 13 was van die Openbare Orde Polisiëring wat dan met pistole 14 op die groep geskiet het. Maar of dit is na die, u 15 verstaan daar was 'n vorentoe en heen en weer beweging so 16 ek kan nie vir u sê ten tye wanneer dit plaasgevind of 17 agter nie. 18 CHAIRPERSON: Did they fire from Nyalas? 19 BRIGADIER CALITZ: Ek is amper onder 20 korreksie seker dit is wat ek vir die – 21 CHAIRPERSON: Because I think we can see 22 from the videos, the one video Warrant Officer Kuhn was 23 standing - 24 BRIGADIER CALITZ: Nee, hy was, hy was 25 buite.</p>
<p style="text-align: right;">Page 19461</p> <p>1 saamstel. Dis nie in die JOC vergadering maar - 2 CHAIRPERSON: I take it each policeman, 3 police member is supposed to fully inform - 4 BRIGADIER CALITZ: Die bevelvoerders, die 5 bevelvoerders. 6 CHAIRPERSON: The bevelvoerders. Oh I 7 see. 8 BRIGADIER CALITZ: Soos die lede aan 9 hulle rapporteer sal hulle dit nota. 10 CHAIRPERSON: Not individual police 11 members but their commanders? 12 BRIGADIER CALITZ: Ja, ek dink dis soos 13 'n, die eerste hard debriefing feedbacks sal hulle dan op 14 notas gevat het en dan vir ons daardie getalle gegee het. 15 MS LE ROUX: Brigadier Calitz, you said 16 you did discuss it with one member, I didn't catch that 17 member's name, could you - 18 BRIGADIER CALITZ: Ek sê onder korreksie 19 dink ek dit was met Adjudant Offisier Kuhn wat betrokke was 20 by die, wat ons gesien is is die eerste persoon wat heel 21 voor was, wat se voet vasgihak het, daardie persoon. 22 MS LE ROUX: And, Brigadier Calitz, can 23 you assist the commission at all on the question of when 24 the POP members fired live ammunition in relation to the 25 TRT volley of fire at scene 1?</p>	<p style="text-align: right;">Page 19463</p> <p>1 CHAIRPERSON: He wasn't in a Nyala, he 2 was actually standing. 3 BRIGADIER CALITZ: Hy was buite die 4 voertuig, dit is korrek. 5 CHAIRPERSON: Ja and so he would have 6 been the first person to have fired not from a Nyala, is 7 that correct? 8 BRIGADIER CALITZ: Not from a Nyala, dit 9 is korrek, soos wat ek verstaan het. 10 CHAIRPERSON: So if he was the first to 11 fire, it means that at least one POP member fired before 12 any TRT members fired? 13 BRIGADIER CALITZ: Dit is beslis so, mnr 14 die Voorsitter. 15 MS LE ROUX: And, Chair, this of course 16 then is the, a point that I can't really pursue with, 17 Chair, this is a point I, in light of the Brigadier's 18 answer I can't really pursue with Brigadier Calitz but you 19 know certainly we would need guidance of the Commission and 20 assistance from the SAPS team because as we've canvassed 21 previously with Lieutenant Colonel Scott the statements of 22 Constable Nyepi, Lieutenant Colonel Ntumkulu and Warrant 23 Officer Mugwena we read those to indicate POP members 24 firing live ammunition before the TRT volley and obviously 25 we can't explore it further Brigadier Calitz, we hope that</p>

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1 a subsequent witness will be able to address those
 2 statements with us. So, Brigadier Calitz, I can then move
 3 on to my final topic in this theme around the POP use of
 4 ammunition and it's to go back to your evidence that you
 5 gave when Adv Chaskalson was cross-examining you. You
 6 testified, if I'm correct and if you could please confirm
 7 that the POP members fired rubber rounds after scene 1 when
 8 they were on their way to scene 2, I think you even
 9 testified that it was contrary to an order you had given.
 10 But am I just correct that that was your evidence, that it
 11 appears POP members fired rubber rounds after scene 2 on
 12 route, after scene 1 on route to scene 2?
 13 BRIGADIER CALITZ: Ja, ek het nie getuig,
 14 miskien after scene want ek het nie geweet wanneer scene 1
 15 plaasgevind het nie, so nee, ek het gesê toe ons deur die
 16 draad beweeg het en vir my mense gesê om vorentoe te gaan
 17 toe het ons met 'n uiteendryf aksie daardie opdrag gegee.
 18 So vandat ek die draad gebreek het met die Nyala dit is
 19 waar die lede dan met haelgeweer rubber geskiet het tot op
 20 so mate dat ons gesien het die meeste mense begin hardloop,
 21 groepering daar en 'n meerderheid na die noord weste toe.
 22 MS LE ROUX: And Brigadier Calitz, so I'm
 23 clear, you saw the POP members firing rubber when they were
 24 on route to scene 2?
 25 BRIGADIER CALITZ: Van die voertuie, dit

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1 is moeilik om te sien uit die voertuie uit maar daar was
 2 definitief 'n Nyala langs my en dan my lid self wat in die
 3 Nyala was het ook uiteengedryf met die haelgeweer rubber.
 4 MS LE ROUX: Are you able to assist the
 5 commission by estimating how many rubber rounds you saw
 6 discharged in that period, when they were on route to scene
 7 2?
 8 BRIGADIER CALITZ: Nee, dit sal, dit sal
 9 onmoontlik wees. Ek dink dit ons sal dit uit die
 10 verklaring van die lede kan bepaal.
 11 MS LE ROUX: You see, Brigadier Calitz,
 12 our difficulty is that we have a global number, we have in
 13 the, in FFF8 the discharge report we have 477 rubber rounds
 14 discharged at scene 1 and then only 30 discharged at scene
 15 2 and that's only by three POP members. So some of the 477
 16 must have been discharged when you saw them discharging
 17 rubber but you're not able to help us as to how many of the
 18 477 or approximately what proportion of that would have
 19 been discharged on route to scene 2?
 20 BRIGADIER CALITZ: Nee, ongelukkig dink
 21 ek nie ek sal u daarmee kan help nie, nee. Daar was
 22 geskiet by scene 1 en dan het ons ook die opdrag gegee om
 23 uit een te dryf by toneel 2 en, so of al die doppies gekry
 24 is dit is 'n derde vraag. So mens sal nie weet.
 25 CHAIRPERSON: I'm interested in something

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1 else. If there were rubber balls I think they were, fired
 2 at scene 1 and rubbers rubber balls fired at scene 2 but
 3 also some rubber balls fired in between by people
 4 travelling from the vicinity of scene 1 because according
 5 to your evidence you left the vicinity of scene 1 before
 6 anything happened. I mean before the actual fusillade
 7 began. So if you've got rubber balls fired at scene 1,
 8 rubber balls fired at scene 2 and also rubber balls fired
 9 by people travelling from the immediate vicinity of scene 1
 10 towards scene 2 of those rubber balls, that's the third
 11 category included in the statistics that we have or don't
 12 you know?
 13 BRIGADIER CALITZ: Ek glo dit sal dan die
 14 totale getal maak. Wat, waarop ek kan sê is dat die lede
 15 selfs verklaring wat hulle getuig het op die afvuur lys
 16 sal dan wees dat elke lid het gesê ek het 20 geskiet of ek
 17 het 50 geskiet en ek dink daardie getalle is by mekaar
 18 getel en die totaal. Maar waar presies hulle afgeskiet is
 19 dit sal ons na die lede se verklaring moet kyk.
 20 CHAIRPERSON: Ms Le Roux, is interested,
 21 sorry I think Ms Le Roux is interested in another question.
 22 Those that were fired between the immediate vicinity of
 23 scene and scene 2 where do they figure in the statistics,
 24 are they put, those fired at scene 2 or those fired at
 25 scene 1 or can't you answer that?

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1 BRIGADIER CALITZ: Ek sal ongelukkig nie
 2 daarmee kan help nie, mnr die Voorsitter.
 3 CHAIRPERSON: Who will be able to help
 4 us?
 5 BRIGADIER CALITZ: Ek dink die persone
 6 wat miskien die skiet lyste gefinaliseer het vanaf die JOC
 7 en dan Kolonel Scott wat die presentation, exhibit L
 8 opgestel het met die verskillende vlakke.
 9 CHAIRPERSON: Perhaps the SAPS legal team
 10 can make some enquiries and give us that information
 11 without it being necessary for any witnesses to come, ja.
 12 MS LE ROUX: Thank you, Chair, of course
 13 the difficulty is that we've looked at the statements of
 14 the POP members and no one notes that they've fired
 15 anything between scene 1 and scene 2. So this is a, the
 16 correct allocation of how much rubber was used where and by
 17 whom is still an open question –
 18 CHAIRPERSON: We can leave that for the
 19 SAPS to start with and witnesses can give evidence,
 20 alternatively the evidence leaders can possibly interview
 21 some of the deponents to whom you've referred and elicit
 22 the information from them, to save time and trouble.
 23 COMMISSIONER HEMRAJ: Brigadier, that
 24 instruction not to shoot rubber perhaps I misunderstood was
 25 it only to those persons who were inside the Nyala, inside

<p style="text-align: right;">Page 19468</p> <p>1 your Nyala or all the POPS inside all the Nyalas who were 2 dispersing using the vehicles? 3 BRIGADIER CALITZ: Dit was vir al die 4 Papa Nyalas gewees, Kommissaris, nadat ons die, wat verwys 5 het na die river bend wat actually bietjie voor ons was, 6 maar van daar af het ons verder beweeg het die lede, 7 soos ek sê met die haelgewere en dit is waar ek die opdrag 8 gegee het dit is nie nodig om dan enige uiteendryf aksie 9 daar te loots tensy daar fisies op die grond dan aksie is. 10 MS LE ROUX: And, Brigadier Calitz, 11 similarly you don't have any knowledge and no POP has 12 discussed with you use of tear gas and stun grenades 13 between scene 1 or scene 2? 14 BRIGADIER CALITZ: Nee, nee ongelukkig 15 nie, ek kan nie, nie tussen die twee tonele, die naaste wat 16 ek miskien daaraan kan kom is die media berig waarna u nou- 17 nou verwys het, waar die media persoon gesê het sy sien 18 daar gaan nog traangas 'n half uur na die tyd maar ek het 19 dit selfs nie waargeneem nie, nee. 20 MS LE ROUX: Chair, for the record we 21 just note that in GW6E pages 24 to 26 indicate the use of 22 teargas and stun grenades between the two scenes, again an 23 issue we'll need to explore with future witnesses. 24 Brigadier Calitz, that is the Human Right Commission's 25 cross-examination. Thank you very much for your time this</p>	<p style="text-align: right;">Page 19470</p> <p>1 not the case, in other words we can excuse the Brigadier 2 while you're telling us what you're going to tell us. 3 MR CHASKALSON SC: I think the Brigadier 4 can be excused. I can't imagine Mr Bizos' evidence will, 5 the cross-examination will touch on this. But if it does 6 his legal representatives will have ample time to inform 7 him. I'm only going to give distances between the TRT 8 positions and the K9 positions at scene 2. 9 CHAIRPERSON: I see, alright. Well the 10 Brigadier is excused for the moment while he goes and gets 11 his file and if, when Mr Chaskalson is finished with this 12 information before you come back we'll take a short 13 adjournment to enable you to return. Yes, Mr Chaskalson? 14 MR CHASKALSON SC: Chairperson, 15 Commissioner Hemraj asked us to establish the distances 16 between the TRT position and the K9 positions at scene 2. 17 Obviously there's not just one distance because the TRT 18 fanned out around the western side of the koppie broadly in 19 the, and the K9 were fanning out round the south eastern 20 side. But the distances from the TRT who were furthest 21 away from the K9 range from a 150 metres to the closest K9 22 car to 213 metres to the furthest K9 car and for the 23 benefit of parties who want to know where these distances 24 come from there is on the SAPS hard drive a Google Earth 25 file called scene 2A.KMZ. Scene 2A.KMZ where SAPS have</p>
<p style="text-align: right;">Page 19469</p> <p>1 morning. 2 BRIGADIER CALITZ: Baie dankie, Advokaat, 3 kan ek net weer 'n laaste verwysing kry. Ek het hom gemis. 4 You said in G? 5 MS LE ROUX: GW6E page 24 to 26. 6 BRIGADIER CALITZ: Baie dankie. 7 CHAIRPERSON: Thank you, Ms Le Roux. Mr 8 Bizos, I believe you are next to cross-examine. 9 MR BIZOS SC: Yes, thank you, Mr 10 Chairperson. 11 MR CHASKALSON SC: Mr Chairperson, sorry 12 before Mr Bizos commences can I just revert with some 13 homework I was given yesterday. 14 CHAIRPERSON: Sorry before you get onto 15 that. I understand the witness has a problem because his 16 copy of what I can call the Bizos documents is in his car, 17 is that right and he wanted me to adjourn once Ms Le Roux 18 had stopped. So that he can go to his car and get Bizos 19 file. I take it we don't need him – 20 MR BIZOS SC: If I can help. I have 21 enough without reference to the document. 22 CHAIRPERSON: Well he may want to look 23 at the documents. But what I'm going to suggest is that, I 24 don't know if we need the Brigadier to be here while Mr 25 Chaskalson gives us the benefit of his homework or is that</p>	<p style="text-align: right;">Page 19471</p> <p>1 tried to plot the positions of the K9, the positions of the 2 TRT, the positions of the bodies onto a Google Earth map of 3 koppie 3. I haven't looked to see if SAPS have got their 4 plotting a 100% right. I just assumed that they're broadly 5 accurate and I've then measured the distances from the TRT 6 plotting that SAPS have made to the K9 plotting that SAPS 7 have made. 8 COMMISSIONER HEMRAJ: Thank you, Mr 9 Chaskalson. 10 CHAIRPERSON: Thank you, Mr Chaskalson. 11 Is there any other bits of homework we can refer to before 12 the Brigadier comes back. It doesn't seem so. So we'll 13 take a short adjournment until the Brigadier comes back. 14 [COMMISSION ADJOURNS COMMISSION RESUMES] 15 [14:26] CHAIRPERSON: The Commission will resume, 16 Brigadier, you've got your file, you're still under oath. 17 Mr Bizos? 18 MR BIZOS SC: Thank you, Mr Chairman. 19 You were appointed the operational commander of the whole 20 operation. 21 BRIGADIER CALITZ: Middag, mnr Bizos, ja, 22 dit is korrek. 23 MR BIZOS SC: It is a very important job 24 for a brigadier. 25 BRIGADIER CALITZ: Laat ek sê, ja, mnr</p>

<p style="text-align: right;">Page 19472</p> <p>1 Bizos, 'n operasionele bevelvoerder kan van die rang 2 kaptein ook wees, die oorhoofse bevelvoerder is eintlik die 3 senior persoon, maar ja, nee, dit is ook 'n belangrike 4 werk. 5 MR BIZOS SC: Who appointed you? 6 BRIGADIER CALITZ: Ekskuus tog, mnr die 7 Voorsitter? 8 MR BIZOS SC: Who appointed you? 9 BRIGADIER CALITZ: Ek dink dit was op die 10 Maandag gewees, die Provinsiale Kommissaris het gesê dat 11 General Mpembe moet die oorhoofs vat en ek het operasioneel 12 op daardie stadium gevat. 13 MR BIZOS SC: How many generals were 14 involved? 15 BRIGADIER CALITZ: By die operasie, as u 16 nou so vinnig vir my vra, "involved" dan bedoel ek by die 17 JOC, by die JOCCOM, dit was Generaal Annandale, Generaal – 18 MR BIZOS SC: In relation to the 19 operation how many generals were involved? 20 BRIGADIER CALITZ: Ek probeer gou tel, 21 dit is Generaal Annandale, General Mpembe, Generaal Naidoo, 22 dan die general, die PK, die Provinsiale Kommissaris, 23 Luitenant-Generaal Mbombo en dan na die tyd het ons dan die 24 Nasionale Kommissaris wat gedraai het saam met Luitenant- 25 Generaal Petros van Gauteng. Onder korreksie laat ek</p>	<p style="text-align: right;">Page 19474</p> <p>1 MR BIZOS SC: Now have you read the terms 2 of reference of the Commission? 3 BRIGADIER CALITZ: Ek het daar deurgegaan 4 tydens, toe dit aangekondig was, dit is korrek, mnr die 5 Voorsitter. 6 MR BIZOS SC: And perhaps I should read 7 the first before I ask the next question. "The Commission 8 shall enquire into, make findings, report on and make 9 recommendations concerning the following, taking into 10 consideration the constitution and other relevant 11 legislation, policies and guidelines." What did you think 12 the President had in mind when he said that we should have 13 regard to the constitution, relevant legislation, policies 14 and guidelines? What did he expect the Commission to 15 enquire into, particularly mentioning the constitution, but 16 what about the others? What policies and, - or sorry – 17 CHAIRPERSON: Am I correct, Mr Bizos, 18 you're asking him what he understood – 19 MR BIZOS SC: What he understood – 20 CHAIRPERSON: - the business to mean? 21 MR BIZOS SC: What did you understand – 22 CHAIRPERSON: He can't tell us what the 23 President meant. 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: But your question</p>
<p style="text-align: right;">Page 19473</p> <p>1 miskien iemand uit. 2 MR BIZOS SC: How many brigadiers were 3 involved? 4 BRIGADIER CALITZ: Mnr Bizos, 5 operasioneel was dit ek gewees en dan die seksie hoof van 6 die NIU, dit is 'n Brigadier Seloane, die seksie hoof van 7 die Taakmag is Brigadier Fritz, Brigadier Pretorius was in 8 die JOC. Ek probeer nou so vinnig, dat ek nou nie iemand 9 oorslaan – 10 MR BIZOS SC: Did you mention Brigadier 11 Engelbrecht? 12 BRIGADIER CALITZ: Brigadier Engelbrecht 13 was by die Crime Intelligence, ek weet later van tyd het 14 daar 'n brigadier aangesluit van hoofkantoor, ek dink dit 15 is Brigadier Victor vir die ondersoek saam met Brigadier 16 Engelbrecht. Brigadier Kiewiet van Zyl, die hoof van die, 17 of die Provinsiale Hoof van die speurders, ek is nie seker 18 hoeveel het ek nou opgenoem nie, maar dit is so min of 19 meer. 20 MR BIZOS SC: Finally how many colonels 21 were involved? 22 BRIGADIER CALITZ: Mnr Bizos, ek sal 23 miskien dit as huiswerk en miskien kan teruggaan na u toe, 24 vol kolonelle, luitenant-kolonelle, 'n redelike klomp. 25 Daar was redelik baie kolonelle.</p>	<p style="text-align: right;">Page 19475</p> <p>1 presumably is going to lead to the way he behaved in 2 relation to the Commission. 3 MR BIZOS SC: Thank you for the 4 assistance, that's what I intended, Mr Chairman. 5 CHAIRPERSON: Ja, guided by his 6 understanding. 7 MR BIZOS SC: Thank you, Mr Chairman. 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 baie dankie. 10 MR BIZOS SC: Policies and guidelines 11 where you supposed to have regard to? 12 BRIGADIER CALITZ: Wat ek verstaan het 13 met die, soos u verwys, die terms of reference, is dat na 14 al hierdie wetgewings gekyk moet word en hoe van toepassing 15 is dit op die incident wat gebeur het en dan soos u verwys 16 het, die grondwet, die grondwet soos ons hom hier het. Ek 17 het maar net hier vinnig gekyk na Exhibit – 18 MR BIZOS SC: The policies and 19 guidelines. 20 BRIGADIER CALITZ: Ek is nog net besig 21 met die grondwet waar ek dan vinnig gekyk het – 22 CHAIRPERSON: Brigadier, I think you and 23 Mr Bizos is talking past each other. Mr Bizos says we know 24 we had to consider the constitution, we know we had to 25 consider applicable legislation, but then it goes on to</p>

<p style="text-align: right;">Page 19476</p> <p>1 talk about policies and guidelines. 2 BRIGADIER CALITZ: O, okay. 3 CHAIRPERSON: And what he wants to know 4 from you is what did you understand would be relevant for 5 our purposes under those two headings, policies and 6 guidelines. I think that's – 7 MR BIZOS SC: That's correct. 8 CHAIRPERSON: That's what he wants. 9 BRIGADIER CALITZ: As die grondwet en die 10 wetgewing dan, vanselfsprekend dit is, - dankie, mnr die 11 Voorsitter, dan polities is watse polities en guidelines 12 verwys wat die polisie dan reguleer en beheer en bestuur en 13 wat ons in plek het rondom die gebeure wat op die dag 14 plaasgevind het. 15 MR BIZOS SC: What is the primary policy 16 that you should have had regard to about your function as 17 the operational commander? What was the policy in relation 18 to your conduct as the head of the operation, the primary 19 policy in relation to a situation where people had 20 gathered, they were protesting, some of them were armed, 21 what was the primary policy that the President in your view 22 had regard to? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 baie dankie. Die document waarop ons, die word "policy" 25 voorkom is ons policy aan Crowd Management en dan in lyn</p>	<p style="text-align: right;">Page 19478</p> <p>1 dit de-escalate, ek dink hulle praat van 'n opvolgaksie. 2 Daar is verskeie faktore, maar ek kan dit vir u kry en dan 3 pertinent noem. 4 MR BIZOS SC: I would – 5 BRIGADIER CALITZ: Dit is maar net so uit 6 my kop uit. 7 MR BIZOS SC: I would have thought that 8 what should have been foremost in your mind is, it will 9 have absolute respect for human life. 10 BRIGADIER CALITZ: Ja, ek weet nie of die 11 woorde "absolute respect for human life" in die policy 12 voorkom nie, maar dit is uiteraard ook dan seker, as 'n 13 mens dit saamvat, kan 'n mens op daardie afleiding kom, ja. 14 MR BIZOS SC: In your training did you 15 have anybody to draw to your attention that the 16 militarisation of the police by the apartheid regime had to 17 come to an end? 18 BRIGADIER CALITZ: Ek is nie nou 19 heeltemal seker wat mnr Bizos, as u dalk net vir my verder 20 kan uitbrei, wat is die vraag? In my opleiding- 21 MR BIZOS SC: Did anybody in your 22 training tell you that the militarisation of the police had 23 to come to an end? 24 BRIGADIER CALITZ: Ek dink militarisation 25 van die polisie bedoel ek u praat van in die 90s nog, teen</p>
<p style="text-align: right;">Page 19477</p> <p>1 met hom geskryf is dan Staande Orde 262 wat dan voortvloei 2 en basies maar dieselfde vervat as die policy. 3 MR BIZOS SC: Crime management, what 4 about – 5 CHAIRPERSON: Crowd Management. 6 MR BIZOS SC: Crowd, oh, Crowd 7 Management, that's correct, yes, Crowd Management and in 8 managing a crowd what is the primary policy that you have 9 to follow? 10 BRIGADIER CALITZ: Ek is nie seker ek 11 verstaan die vraag nie, die primary policy is, die policy 12 dokument self het verskeie verwysings na verskeie gebeure 13 van die briefing, by die execution tot die debriefing, daar 14 is verskeie faktore in die policy en dan in Staande Orde 15 262 wat ook dan dit vir ons so uiteensit. 16 MR BIZOS SC: And the use of force, what 17 is the policy in relation to that that you think that the 18 President had in mind? 19 BRIGADIER CALITZ: Die term "use of 20 force" word dan in die policy vir ons beskryf asook in 21 Staande Orde 262 en dit behels, ek ken nou nie die policy 22 uit my kop uit nie, verskoon, maar dit behels om te, "de- 23 escalate the conflict", as ek dit so kan stel en dan om 24 proportional op te tree, met ander woorde genoegsame force 25 te gebruik om dit wat voor u is plaas te vind en dan sodra</p>	<p style="text-align: right;">Page 19479</p> <p>1 daardie tye dat dit op training gekom het, daar was 2 verskeie kursusse en ek kan nou nie vir u presies datum en 3 tyd sê wanneer dit gesê is nie, of in watter kursus nie, 4 maar ek glo al ons dokumentasie, polities, alles is 5 aangepas na daardie tydperk. 6 MR BIZOS SC: Did anybody in your 7 training tell you that even criminals are not to be shot 8 dead, that every other step had to be taken before you shot 9 to kill? 10 BRIGADIER CALITZ: Mnr die Voorsitter, ek 11 is nie seker of ons 'n dokument het waarop dit uiteengesit 12 is nie, ek dink die naaste dokument praat van 13 selfverdediging, noodweer, private defence. Ek dink nie in 14 daardie dokumente is dit uiteengesit die stappe wat gevolg 15 moet word voor 'n persoon gedood is nie. Ek dink dit wat 16 voor dit gaan met Crowd Management is die use of force 17 regarding, as ons 'n dispersion action het, so ek dink nie 18 ons het 'n dokument wat pertinent stappe uiteensit van waar 19 'n mens begin voor 'n mens 'n persoon dood skiet nie. Ek 20 dink dit gaan oor selfverdediging. 21 MR BIZOS SC: Before we come to questions 22 of self defence, during your training was your attention 23 drawn to what the Constitutional Court said that even the 24 worse among us including criminals of serious, who 25 committed serious offences are not to be killed, other</p>

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1 steps have got to be taken to punish them? Did anybody
2 tell you that in your training?

3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 nee, eerlik as ek moet antwoord, ek kan nie onthou dat
5 daardie woorde pertinent vir my gesê is in 'n
6 opleidingsessie nie, nee.

7 MR BIZOS SC: You were a policeman for a
8 couple of years at least during the apartheid regime.

9 BRIGADIER CALITZ: Ek het aangesluit in
10 1987, so ek het nou 27 jaar diens in die polisie en as ons
11 vat tot en met, van 87 tot, dit hang af watter jaar u na
12 verwys, 94, is dit hoeveel jaar, my wiskunde laat my so 'n
13 bietjie in die steek.

14 MR BIZOS SC: But you had served in the
15 South African Police for –

16 BRIGADIER CALITZ: Mnr Budlender het my
17 gehelp en gesê dit is so sewe jaar, ja.

18 MR BIZOS SC: Ja, for six or seven years
19 during the apartheid regime.

20 BRIGADIER CALITZ: Kom ons sê, ek en mnr
21 Budlender sê vir my dit is sewe jaar, so van my 27 jaar
22 diens was ek dan sewe jaar, soos u dit stel in die
23 apartheid regime.

24 MR BIZOS SC: Yes, how would you put it,
25 does the fact that you served in the apartheid regime, do

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1 you think it is an unbecoming appellation?

2 BRIGADIER CALITZ: Mnr die Voorsitter,
3 met respek as dit by die polisie kom, kom dit maak nie saak
4 wie more die regering aan die dag is nie. Die polisie dien
5 die regering aan die dag, so daardie vyf, ses jaar het ons
6 die regering gedien aan die dag, die uniform wat ons gedra
7 het, dieselfde wat ek doen met trots nou in die afgelope 20
8 jaar wat ek die huidige regering dien, met trots wat ek my
9 uniform nou dra.

10 MR BIZOS SC: During that period there
11 were many people killed during protests, do you accept
12 that?

13 BRIGADIER CALITZ: Mnr die Voorsitter,
14 ja, ek het in 1992 by die Openbare Polisiëring aangesluit
15 as 'n jong luitenant. In my vorige lewe was ek by die Wag
16 eenheid gewees wat meer 'n statiese beskerming by geboue
17 is, maar ek aanvaar dat daar was sekere, daar was insidente
18 gewees in daardie tyd. Ek sal nie sê alles is bekend aan
19 my nie, maar ek aanvaar daar was insidente, ja.

20 MR BIZOS SC: Were there numerous deaths
21 that occurred during that period and commissions of inquiry
22 or inquests were held?

23 BRIGADIER CALITZ: Vra u vir my of ek
24 bewus is van enige? Nie waarvan ek bewus is in daardie vyf
25 jaar wat ek gedien het in daardie tydperke nie, nee.

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1 MR BIZOS SC: Where were you when the
2 people of Sebokeng were killed?

3 BRIGADIER CALITZ: As u miskien vir my
4 net die datum of die jaartal gee dan kan ek vir u sê waar
5 ek was?

6 MR BIZOS SC: It was at the time when you
7 were a police officer in the early 90s, the 26th of March
8 1990 according to my note keeper.

9 BRIGADIER CALITZ: 26 Maart 1990?

10 MR BIZOS SC: And colleague.

11 BRIGADIER CALITZ: In 1990 was ek, as ek
12 onder korreksie moet sê, 'n sersant of 'n adjudant-offisier
13 by die Spesiale Wageenheid in Pretoria. Toe was ons
14 betrokke by die statiese beveiliging van sekere regerings
15 geboue, sekere staatsgeboue, so ek was nie deel van die
16 onluste op daardie stadium of die Sebokeng voorval wat u na
17 verwys nie.

18 MR BIZOS SC: Not only in that before
19 Judge Richard Goldstone, but in a number of other
20 commissions and inquests, there was a common factor,
21 Brigadier, the person in charge somehow or other managed
22 not to be present when legal force was used, some of us had
23 this misfortune to represent members of the families and
24 you'll forgive me if I give you a number of examples if it
25 is going to help.

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1 BRIGADIER CALITZ: Dit sal baie help,
2 baie dankie, mnr die Voorsitter.

3 MR BIZOS SC: Yes, it was Sebokeng, it
4 was Port Elizabeth, it was a number of them, with this
5 coincidence that the man in charge for some reason or other
6 happened not to be there. In Sebokeng the leader told us
7 that he decided to leave the situation and go to his
8 motorcar and put the earphones on and he saw nothing and he
9 heard nothing when nine people were killed. Mr Semenya was
10 one of my colleagues that we'll remember this. We were on
11 the same side, by the way, for families.

12 [14:46] BRIGADIER CALITZ: Ek is baie bly om dit
13 te verneem, dan voel ek baie veilig.

14 MR BIZOS SC: So he can confirm it, and
15 the question was how convenient for the senior officer, but
16 now you as a senior officer were not, if we are to accept
17 your evidence, there when the people were killed on scene
18 1. You were not there when people were killed in scene 2.
19 You saw nothing. You heard nothing, and what do you say if
20 we – as we do – intend submitting that your absence was, to
21 use the words of the Judge, wilfully blind, and if I may
22 add, also wilfully deaf? What is your answer to the
23 submission that we are going to make? Was it just a matter
24 of coincidence that you were absent from both of the vital
25 moments of the events that the Commission is called upon to

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1 make a decision? A coincidence; is that what your answer
2 is?

3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 ja, in Afrikaans, miskien nie "coincidence." Ek dink daar
5 was verduidelikings gewees rondom elkeen van hierdie
6 terminologie. Ek dink die Adv Le Roux wat nou net klaar
7 gemaak het, het dit opgesom in 14 punte, en dit was my
8 antwoord gewees aan die, mnr die Voorsitter dat ons moet
9 miskien kyk aan elkeen van daardie 14 die persone wat
10 getuienis kan lewer voor hierdie Kommissie, en dan ook die
11 "evidence" wat daar is wat my plaas. Ek het myself nie op
12 daardie stadium geplaas daar om doelbewus te weet oor vyf
13 sekondes gaan daar 'n skietery wees, so ek moet my uit die
14 voete uit maak. Dit kan nie gedoen word nie. Dit is,
15 amper wil ek sê verregaande of belaglik om te sê dat dis
16 "wilfully" gedoen.

17 So om terug te kom na u vroeg toe, wat sal ek sê
18 op die vorige, die Voorsitter, of die Judge wat die, gesê
19 het "wilfully blind," ek het nie "wilfully" – as ek
20 "wilfully" reg verstaan is dit aspris of jouself onttrek.
21 Ek het nie aspris iewers heen gegaan, oorfone opgesit en
22 gesê ek het nie gehoor nie. Ek het beheer gevat oor 'n
23 baie, baie, baie traumatiese insident op die dag. Om
24 daardie lede bymekaar te hou, te koordineer, en die groepe
25 so te hê dat jou "dispersion action" nog steeds werk en op

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1 die einde van die dag mense te "encircle," te ontwapen en
2 te arresteer, dit is glad nie van 'n bevelvoerder wat glad
3 nie betrokke is nie.

4 So "wilfully blind," nee glad nie. Ek het alles
5 gesien wat voor my afgespeel het. Ek moet 'n "call" maak
6 op daardie drie, vier, vyf, ses sekondes wat ek gehad het.
7 Ons het nou die "benefit" van "hindsight" om elke ses, sewe
8 sekondes miskien te ontleed vir 'n dag, wat ek nie die
9 gerieflikheid gehad het daardie dag nie.

10 So ja, in "hindsight," mnr die Voorsitter, daar
11 is altyd iets om te leer hier uit. Ons het al geleer oor
12 ons radiokommunikasie; ons het al geleer miskien die
13 posisie wat die operasionele bevelvoerder moet vat miskien
14 in 'n helikopter om die toneel beter van bo af te sien. So
15 daar is sekere goed wat hier kan uitkom wat definitief vir
16 ons in 'n beter posisie sal sit, maar definitief nie
17 "wilfully blind" nie, nee. En dan ook definitief nie
18 "wilfully deaf" nie. Soos ek vir u gesê het, daar was
19 redes toe ek opgetree het in die Nyala, waar ek die
20 opdragte geskreeu het, hoe het ek met die mense gepraat.
21 As u luister na die radio en u luister mooi na die
22 transkripsie sal u hoor dit is nie 'n kalm, agteroor-sit
23 posisie, soos die helikopter se stem nie. U sal hoor dat
24 ek is op 'n redelike – ek weet nie wat is die regte woord
25 nie – die adrenaliën moet redelik wees.

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1 So ek was betrokke gewees by die voorvalle. Waar
2 ek kon uitklim, waar ek kon mense assisteer het ek dit
3 gedoen. Die eerste gevalle waar ek bewus geword het van
4 iets het ek dit deurgegee na die JOC toe en van daar af is
5 besluite geneem.

6 Ek het ook nie net onttrek as gevolg van die
7 trauma en die situasie wat daar plaasgevind het nie. Selfs
8 die volgende dag, die 18de het ek voortgegaan met dieselfde
9 groepe - en ek vat my as 'n voorbeeld om te speel uit die
10 video uit - wat ek gesê het om positief te bly en te sê ons
11 gaan nog steeds 100% samewerking gee met die Kommissie en
12 al die lede te oorreed en te probeer sê "Kêrels, kom ons
13 vat die ding; daar was sekere dinge wat gebeur het." Ons
14 het niks probeer wegsteek nie, of dit was nie my intensie
15 of my opdrag nie. So die "wilfully" sien ek myself beslis
16 nie as "blind" of "deaf" nie. Ek sien myself as 'n
17 professionele operasionele bevelvoerder met jare
18 ondervinding, en dit wat ek gedoen het op die dag was na
19 die beste van my vermoë wat voor my afgespeel het.

20 Ja, ek het verwag dat sekere mense met my moet
21 kontak sou goed gebeur. In "hindsight" is daar redes wat
22 die mense sal kom aanvoer hoekom hulle dit nie gedoen het
23 nie. So as mens nie ingelig is van – jy kan net besluite
24 neem volgens sekere goed wat aan jou gerapporteer word. So
25 dit is miskien my kort rondom die "wilfully," maar ten

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1 sterkste nee, dit was nie 'n aspris, of probeer uitdraai.
2 As u met die lede praat sal u hoor wat die lede op die
3 grond dink van my as 'n operasionele bevelvoerder.

4 MR BIZOS SC: You withdrew from scene 1
5 how many minutes before the shooting?

6 BRIGADIER CALITZ: Mnr die Voorsitter,
7 weereens –

8 MR BIZOS SC: I know that you say that,
9 but the time is a matter of record. How many minutes
10 before the shooting did you decide to leave scene 1?

11 BRIGADIER CALITZ: As ek mag vra, Adv Le
12 Roux, dit was u span wat die tyd opgestel het. Ek kan
13 ongelukkig nie daardie – ek wil nie sê u moet namens my
14 antwoord nie, maar in hulle dokument het hulle gesê dat
15 Pappa1 het begin beweeg ten tye van die "volley of fire."
16 So ek dink nie dit was minute nie; ek dink dit was soort
17 van tegelyk, sekondes. Ek is jammer om u te vra, maar ek
18 het nie daardie feite voor my nie.

19 MR BIZOS SC: By coincidence, almost as
20 the shoot-to-kill started you removed yourself from the
21 scene.

22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 ja, weereens, met alle respek, ek sal net verskil van die
24 woorde wat gebruik – ek het nie "decide" om myself te
25 "remove" van die "scene" nie. Ek het gesê dat daardie

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1 persone wat deur gebreek het, het ek geen ander opsie gehad
 2 om oor te gaan tot 'n stap wat ons eintlik nooit gebruik
 3 nie, en dit is om met voertuie die mense op te breek. Dit
 4 was absolute desperate poging gewees om hierdie groep terug
 5 te dryf en uiteen te dryf. U sal vind om met voertuie 'n
 6 skare uiteen te dryf is nie eintlik wat ons in normale
 7 omstandighede doen nie. So die omstandighede het geroep
 8 daarnatoe.

9 MR BIZOS SC: You've already told us that
 10 it was a coincidence. Was it a coincidence that –

11 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 12 het nie nou gehoor nie. U sê "I've already told"? Ekskuus
 13 tog, ek het net nie gehoor wat u sê nie.

14 MR BIZOS SC: That you told us that it
 15 was coincidental and not deliberate. But that you've
 16 already said. I'm going to ask you another question about,
 17 of a similar nature –

18 BRIGADIER CALITZ: Ek weet net nie of ek
 19 die woordjie "coincidence" reg verstaan nie, as ek miskien
 20 net kan – as hy sê, "It's not coincidental, or not
 21 deliberate but coincidental," die Afrikaans miskien. Ek
 22 praat onder nou – ek wil net seker maak ek getuig verder
 23 aan reg.

24 MR BIZOS SC: Ja, I got an E for matric,
 25 but because I've cross-examined so many policemen in my

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1 life my Afrikaans has improved.

2 BRIGADIER CALITZ: Baie dankie, mnr
 3 Bizos, as u my dan daarmee sal help.

4 CHAIRPERSON: Did you get 30% or 50%, Mr
 5 Bizos?

6 MR BIZOS SC: Well, these days, judging
 7 by reports that's a good mark. Yes?

8 BRIGADIER CALITZ: Nee, ek wil net sê dit
 9 was nie – soos ek "coincidental" verstaan – maar blote
 10 toeval. As dit die woord is, dan stem ek nie saam met
 11 daardie woord nie. Ek het glad nie gesê dit was blote
 12 toeval nie. U sê, I've just said now to the Commission
 13 it's coincidental and not deliberate. Dit is nie wat ek
 14 gesê het nie. Blote toeval is maar net. Ek het 'n
 15 doelgerigte besluit geneem van wat voor my aangaan en ek
 16 moes dit doen weens die omstandighede wat voor my was. So
 17 dit is nie maar net iets wat uit die lug uitgeval het
 18 toevallig nie, nee, glad nie, mnr die Voorsitter.

19 MR BIZOS SC: Now of all the senior
 20 officers that were there, from generals to brigadiers to
 21 colonels, how many of them were there at the point where
 22 the 18 people were killed on scene? Were there generals
 23 there?

24 BRIGADIER CALITZ: Nee, mnr die
 25 Voorsitter, op die grond was ek die senior offisier wat by

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1 toneel 1 was. Ek het wel verneem in "hindsight" dat
 2 Generaal Mpembe in die lug was na die tyd, maar ek kan nie
 3 die tyd sê hoe laat hy dit, hoe laat hy daar was nie. Dan
 4 het ek ook verneem van Brigadier Fritz wat ook in die lug
 5 was, ook ten tye van daardie, maar ek kan ook nie sê hoe
 6 laat. So dit sal ek, Brigadier Fritz, Generaal Mpembe
 7 wees, miskien –

8 MR BIZOS SC: Was it "toevallig" that the
 9 General, the overall commander was four and a half
 10 kilometres away from the vital scene?

11 BRIGADIER CALITZ: As u sê toevallig, dit
 12 is waar 'n "CJOC commander" is, is in die JOC. Praat u van
 13 dat hy in die JOC was of praat u toe hy in die helikopter
 14 was?

15 MR BIZOS SC: He wasn't on the scene.
 16 General Annandale was four and a half kilometres away.

17 CHAIRPERSON: Hang on a second. There's
 18 a debate, which we won't have to go, you don't have to go
 19 into with this witness. The official overall commander was
 20 General Mpembe who was in a helicopter at the time. In
 21 fact he appears to have got into the helicopter just about
 22 the crucial moment because according to his evidence he was
 23 on his way to the helicopter when he heard one of the
 24 messages over the radio.

25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: General Annandale was his
 2 deputy and he was the chairman of the JOCCOM and he
 3 remained behind in the JOC.

4 MR BIZOS SC: Yes.

5 CHAIRPERSON: Those are the two people
 6 you're talking about.

7 MR BIZOS SC: Yes. He was far away from
 8 the scene. They were –

9 CHAIRPERSON: "He" being who? You mean
 10 General Annandale?

11 MR BIZOS SC: Annandale. There was two –

12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 soos ek dit gehad het –

14 MR BIZOS SC: There were two –

15 BRIGADIER CALITZ: - Generaal Annandale
 16 was – ekskuus tog, as ek die vraag anders –

17 CHAIRPERSON: No, no, you must give the
 18 witness a chance to answer and then you can ask your next
 19 question. Yes, Brigadier.

20 BRIGADIER CALITZ: Ek is jammer,
 21 Advokaat, laat ek net – ek het gedog u het die vraag gevra
 22 al. Generaal Annandale was in die JOC en in ons
 23 beplanning, of in die beplanning self was dit nooit vir hom
 24 gemeen of bedoel of so geskryf dat hy na die toneel toe sou
 25 gaan nie, nee, glad nie. En dan ook die "CJOC commander,"

<p style="text-align: right;">Page 19492</p> <p>1 die "overall commander," dit is dan sy "call" as hy die JOC 2 sou verlaat het en dan gesê het hy voel hy kan beter of 3 nader gaan en dan miskien 'n bydrae so lewer, dan was dit 4 sy bevel – ag, sy roep gewees. Die, ons weet die oorhoofse 5 bevelvoerder is verantwoordelik vir die aksies wat op die 6 grond plaasvind, en dan die "JOC commander," as ons dit so 7 kan stel, of die persoon wat die vergaderings gelei het dan 8 is dan Generaal Annandale gewees. So hy was nie 9 veronderstel, as ek dit so kan stel, om na die toneel toe 10 te beweeg op daardie stadium.</p> <p>11 MR BIZOS SC: The man that drew the plan, 12 Colonel Scott, was far away from the scene.</p> <p>13 BRIGADIER CALITZ: Ja, ek dink as ons 14 weer kyk na die beplanning, mnr die Voorsitter, Kolonel 15 Scott was ingeroep deur Generaal Annandale – onder 16 korreksie – en dan Brigadier Fritz, wat sy bevelvoerder 17 was, en sy taak was net om die beplanning te koordineer en 18 uit te voer en glad in geen operasionele posisie geplaas te 19 word nie.</p> <p>20 MR BIZOS SC: We'll get on if you'll just 21 answer the question.</p> <p>22 CHAIRPERSON: No, he's answered the 23 question. He said that Colonel Scott was called in to 24 coordinate the plan.</p> <p>25 MR BIZOS SC: Yes.</p>	<p style="text-align: right;">Page 19494</p> <p>1 risk of oversimplifying and getting answers from you that 2 are unfair or misleading or not entirely accurate. So I'm 3 alive to that, so don't worry about that. But he's really 4 asking you a series of simple questions and he gives a 5 build-up to them. He says was there a general at the 6 scene. The answer is no. You don't have to explain why 7 not. Was there a brigadier there? Answer, no. You don't 8 have to explain why. Was there a colonel? No. The man 9 who drew the plan, was he there? No. What you were doing 10 is you're not just answering the question, you are giving 11 the reason. Now what you were doing is a very unwise thing 12 for a witness to do. A witness should stick to the 13 questions and answer them. Once they start answering 14 questions that they think are going to be asked they 15 sometimes get into difficulties. So if I were you I'd 16 avoid that. Just answer the question. If there's 17 something that needs clarification, that's Mr Semanya's 18 job. He's the overall commander of the SAPS in this 19 particular operation and his job in re-examination is to 20 pick up things of that kind that require extra 21 clarification. You just answer the question. We'll get 22 through the cross-examination quicker, and if there's 23 anything that requires elaboration, Mr Semanya will do 24 that. But obviously if a question you're asked doesn't, 25 can't appropriately be answered simply by saying yes or no,</p>
<p style="text-align: right;">Page 19493</p> <p>1 CHAIRPERSON: It was never part of the, 2 what was intended that he should take any operational role. 3 That's the answer he gave.</p> <p>4 MR BIZOS SC: To cut it short, that he 5 was not at the vital place. That is so. Whatever the 6 reason may be, we have heard the evidence, the question is 7 whether or not there was a senior person there in order to 8 exercise the discretion before he gave a warning to the 9 people and before the shooting took place. This is what we 10 are concerned with and this is one of the fundamental 11 questions for the Commission. Please do not – if you find 12 it necessary to give us reasons for their absence, by all 13 means. I only want to know were they in fact away from the 14 place that really mattered to the lives of the people that 15 were killed.</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, as 17 ek mag, u sien as mnr Bizos, met alle respek, sê ons sal 18 die tyd kort sny, dit is baie gevaarlik om net 'n ja of 'n 19 nee antwoord te gee.</p> <p>20 CHAIRPERSON: No, no, I'm not interested 21 in a "ja of nee antwoord."</p> <p>22 BRIGADIER CALITZ: Ek hoor u, ja.</p> <p>23 CHAIRPERSON: We have to be fair to you. 24 Obviously we're trying to not waste time, keep things as 25 short and crisp as we can, but we mustn't do that at the</p>	<p style="text-align: right;">Page 19495</p> <p>1 then obviously you must elaborate. But to the question, 2 was there a general on the scene, the answer is simply no; 3 no elaboration is required. Bear that in mind and let Mr 4 Bizos carry on after we've taken the tea adjournment, which 5 we are now going to do.</p> <p>6 [COMMISSION ADJOURNS COMMISSION RESUMES] 7 [15:21] CHAIRPERSON: The commission resumes, 8 Brigadier you're still under oath.</p> <p>9 BRIGADIER CALITZ: Dankie.</p> <p>10 CHAIRPERSON: Mr Bizos.</p> <p>11 MR BIZOS SC: Brigadier, two of the other 12 generals who were on the helicopters -</p> <p>13 BRIGADIER CALITZ: Ekskuus tog, ek het 14 gehoor two of the generals, u vraag is?</p> <p>15 MR BIZOS SC: Two other generals who were 16 on the helicopters during the vital periods from scene 1 17 and scene 2 -</p> <p>18 BRIGADIER CALITZ: Ek weet van Generaal 19 Mpmembe wat die JOC verlaat het.</p> <p>20 MR BIZOS SC: Sorry the other one was not 21 a general.</p> <p>22 BRIGADIER CALITZ: Die ander generale het 23 later by gekom na die toneel.</p> <p>24 MR BIZOS SC: Oh.</p> <p>25 BRIGADIER CALITZ: Maar die persone wat</p>

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1 die JOC verlaat het was Generaal Mpmembe en dan Brigadier
 2 Fritz as dit is miskien waarna u verwys. Brigadier Fritz
 3 was die aerial command helikopter.
 4 MR BIZOS SC: You see this coincidence of
 5 the absence of the senior persons we will submit a
 6 memorandum to the commission in due course about a number
 7 of times there was not a senior police officer to give a
 8 warning as required by the standing orders and to take
 9 responsibility for ordering people to shoot which will give
 10 us an opportunity to submit with some confidence to the
 11 commission, I want your comment on it that it is a
 12 stratagem or it was a stratagem of the police, of the South
 13 African Police for senior people to absent themselves so
 14 that the foot soldiers or not so senior officers could say
 15 I acted in self defence, there was no one around to give an
 16 order.
 17 MR SEMENYA SC: Chair, Mr Bizos, must
 18 give us the factual foundation for that statement. That
 19 the –
 20 CHAIRPERSON: - the first is, sorry to
 21 interrupt you. The evidence doesn't seem to indicate there
 22 was an order to shoot. But the wider statement he's making
 23 based on past, what he said past police practice is what
 24 he's putting you say he must give more details of that so
 25 that the witness can answer, is that properly, is that what

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1 you're saying?
 2 MR SEMENYA SC: No, also that there was a
 3 strategy, a police strategy that they must be removed at a
 4 critical time. I don't know where he gets that from.
 5 MR BIZOS SC: An inference from the
 6 number of times that it was raised as a defence, Mr
 7 Chairman, during the apartheid year and it was tried in the
 8 early 90s.
 9 MR SEMENYA SC: Isn't that a –
 10 CHAIRPERSON: I'm not sure you can put
 11 it as a stratagem, you can say something like it appears
 12 that it may well have been stratagem regard been had to the
 13 fact that it happened often or something like that. But Mr
 14 Semanya I think is right in saying you can't put it as a
 15 fact that it was a stratagem, you can put it in the way
 16 I've suggested.
 17 MR BIZOS SC: Yes. We may if, it may be
 18 inferred from the frequency in which this defence was put
 19 up that it was a deliberate attempt to avoid
 20 responsibility.
 21 CHAIRPERSON: - that?
 22 BRIGADIER CALITZ: Nee, Mnr Bizos, ek
 23 verskil van u.
 24 MR BIZOS SC: Now during your third
 25 turning, training about the constitution did anyone try and

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1 get across to the South African Police the sanctity of
 2 human life and what the constitution expected of the
 3 police? Did anybody do that?
 4 BRIGADIER CALITZ: Mnr die Voorsitter,
 5 weereens ek dink ons sal kan verwys na die training
 6 curriculum in hierdie geval. Die persone wat klas aanbied
 7 in die grondwet, ek dink die training curriculum en dit
 8 onderwerpe, die index, alles wat daar bespreek word ek is
 9 nie in besit daarvan op hierdie stadium om met sekerheid te
 10 sê watter dele behandel daar nie en hoe dit oorgedra word
 11 aan die klasse nie.
 12 MR BIZOS SC: Was any attempt made during
 13 your time to inform you what the judges of the
 14 constitutional courts said about the sanctity of human life
 15 and how steps ought to be taken to try and avoid the police
 16 killing people in order to arrest them, sometimes this is
 17 what they've said or in self defence which they sometimes
 18 said.
 19 BRIGADIER CALITZ: Mnr die Voorsitter,
 20 weereens dit is waarna ek u verwys het uit die grondwet uit
 21 wat dan die mandate vasstel is daar dan policies,
 22 regulasies, directives, skrywes opgestel wat dan vir ons as
 23 polisie hierdie uiteensit. Ek dink in breë het ek dink
 24 Generaal Annandale daarvoor getuig in sy getuienis. Ek het
 25 verwys na die policies direk wat ons raak rondom hoe om

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1 skares te beheer is die policies on crowd management asook
 2 dan staan orde 262 daar en dan die, ons noem dit die use of
 3 force sekere een van die temas wat daar bespreek word, ja.
 4 MR BIZOS SC: I want to read to you a
 5 passage from a judgment of Justice Froneman. Listen to it
 6 carefully and tell me whether this has been brought to the
 7 attention of the South African Police, to your knowledge.
 8 "Our constitution mandates members of the police to protect
 9 members of the community and to prevent crime. It is an
 10 important mandate which should quite legitimately and
 11 reasonably result in the trust of the police by members of
 12 the community. Where such trust is established the
 13 achievement of the task of the police will be facilitated
 14 in determining whether the minister is liable in these
 15 circumstance courts must take account of the importance of
 16 the constitutional role entrusted to the police and the
 17 importance of nurturing the trust of the community in the
 18 police in order to ensure that their role is successfully
 19 performed". Was this ever brought to your attention?
 20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 nie dit wat jy nou lees, die uitspraak van die regter wat u
 22 nou sê. Daai spesifieke woorde. Ek sal nie sê dit is
 23 pertinent wat ek al voorheen gehoor het, nee.
 24 MR BIZOS SC: Has it been brought to your
 25 attention that under the heading of superior criminal

<p style="text-align: right;">Page 19500</p> <p>1 responsibility do you agree that responsibility to be 2 determined the rank of the person responsible plays an 3 important role? 4 BRIGADIER CALITZ: Ek weet nie of ek u 5 reg verstaan nie, u praat van criminal responsibility en 6 dan praat jy van rank, ek wil net, as u die vraag kan 7 herhaal. 8 MR BIZOS SC: The higher you are the more 9 likely you are going to be held responsible for any 10 wrongdoing that your subordinates may have performed? 11 BRIGADIER CALITZ: Ek dink hoe hoer op in 12 rang u gaan hoe meer verantwoordelikheid word daar op jou 13 skouers gelaai, as u dis waarna u verwys, ja. 14 MR BIZOS SC: I know that the fact that 15 this was said by a judge of the International Court may be 16 an answer which is not really because the international law 17 in this respect has been adopted by us in Act 27 of 2002 18 which is a South African statute which says that having 19 signed the Roman statute it applies to us. I want to read 20 to you what the judge said in relation to military 21 commands, political leaders and other civilians in a 22 position of authority. "As soon as a superior has been put 23 on notice of the risk of illegal acts by subordinates he or 24 she is expected to stay vigilant and to enquire about 25 additional information rather than doing nothing or</p>	<p style="text-align: right;">Page 19502</p> <p>1 ek weet bestaan daar nie 'n opdrag vir persone om in self 2 verdediging op te tree nie met my beperkte kennis. 3 MR BIZOS SC: Did you expect an attack on 4 your colleague when you left? 5 BRIGADIER CALITZ: Nee, mnr die 6 Voorsitter. Ek het vir u verduidelik in my getuienis dat 7 toe ek vorentoe beweeg met die ander Papa Nyalas was dit my 8 indruk gewees dat ons 'n suksesvolle met die uiteendrywing, 9 daar het mense wel van agter af ook verby gehardloop en 10 almal het in 'n westelike rigting as ons dit so kan stel, 11 westelike, noord westelike rigting gehardloop. So ek het 12 op daardie stadium gedink die uiteendryf aksie wat ek op 13 opdrag gegee het was suksesvol. 14 MR BIZOS SC: Did you know that someone 15 in the police force distributed photographs of the man who 16 was savagely attacked with a panga, did you know that? 17 BRIGADIER CALITZ: Watter persoon verwys 18 u nou na? 19 MR BIZOS SC: The person that was – 20 MR SEMENYA SC: Chairperson, can – 21 CHAIRPERSON: Is there evidence to that 22 effect? 23 MR BIZOS SC: Yes. 24 CHAIRPERSON: Is it before us? 25 MR BIZOS SC: Yes.</p>
<p style="text-align: right;">Page 19501</p> <p>1 remaining wilfully blind. Those must not be - must lack a 2 due diligence in the - comprising the conduct of 3 subordinates." Now I want, you've heard that. I want to 4 ask you questions about what happened at scene 1. When you 5 left it was it clear to you that trouble was coming? 6 BRIGADIER CALITZ: Wat ek getuig het is 7 dat ek het aanval gesien en die voortsetting van die aanval 8 het verby my Nyala beweeg. So, ja daar was 'n aanval op 9 die polisie gewees. 10 MR BIZOS SC: The trouble was, may have 11 been imminent. 12 MR SEMENYA SC: Perhaps if the witness 13 can be assisted in knowing what trouble Mr Bizos is 14 referring to. 15 MR BIZOS SC: That there may have been an 16 attempted attack or some of your police officers without a 17 command would raise their gun and shoot at the crowd. 18 BRIGADIER CALITZ: Mnr die Voorsitter - 19 MR BIZOS SC: Either or, or both. It was 20 a volatile situation. 21 BRIGADIER CALITZ: Dit was 'n ernstige 22 toneel gewees, daar was 'n aanval op die polisielede gewees 23 en ek het dan daardie opdrag gegee om die groep te 24 disperse. Die absence waarna u verwys stem ek nie meer 25 saam nie. Daar was opdrag gewees om te disperse en so ver</p>	<p style="text-align: right;">Page 19503</p> <p>1 MR SEMENYA SC: Sorry, Chair, I 2 unfortunately did not hear the question. 3 CHAIRPERSON: The question was did you 4 know that the members of the force distributed among his 5 colleagues I think was the thrust of the question 6 photographs of the man who was, the policeman who was 7 hacked to death with the panga. 8 MR SEMENYA SC: No – 9 CHAIRPERSON: I said to Mr Bizos is 10 there such evidence on record before us and he said yes and 11 that's the point at which you point your light on. 12 MR SEMENYA SC: Not as far as we 13 concerned, there is no such evidence before us, Chair. 14 MR BIZOS SC: No, my learned friend's 15 memory is faulty. Colonel Scott gave evidence to that 16 effect and the photographs – 17 CHAIRPERSON: Is there evidence to that 18 effect? 19 MR BIZOS SC: As an exhibit, of deceased 20 police officers from Monday the 13th and the – 21 CHAIRPERSON: We know those photographs, 22 we've seen them. 23 MR BIZOS SC: The evidence of Scott was 24 that it was distributed. 25 CHAIRPERSON: With reference to that the</p>

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2 MR BIZOS SC: I haven't got a page

3 reference, Mr Chairman on my notes but we will find it.

4 CHAIRPERSON: Mr Bizos, it's, we're

5 going to be adjourning in seven minutes time. Perhaps you

6 might move on to another point in the meanwhile and resume

7 this point in the morning when you have the reference. I

8 have to adjourn at quarter to.

9 MR BIZOS SC: Well I will welcome the

10 opportunity to find the reference and refer to it, Mr

11 Chairman. Shall I proceed on -

12 CHAIRPERSON: I suggest you proceed on

13 some other point if there is one.

14 MR BIZOS SC: Did you appoint a senior

15 officer to take your place at this volatile situation on

16 scene 1 so that he can take responsibility if there was

17 untoward behaviour by either or the, either the crowd or

18 the police. Did you appoint somebody?

19 BRIGADIER CALITZ: Dit is korrek, mnr die

20 Voorsitter.

21 MR BIZOS SC: Whom did you appoint?

22 BRIGADIER CALITZ: Dit was tydens die

23 voorligting gewees in die beplanning, dit was Kolonel

24 Makhubela wat die senior agter sou wees, by toneel 1 sou

25 die dispersion action vorentoe gaan sou hy dan die beheer

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1 vat agter.

2 MR BIZOS SC: Do you accept that there

3 was no warning that lethal ammunition would be used against

4 the crowd before it was used?

5 BRIGADIER CALITZ: Soos ek vir u getuig

6 het, mnr die Voorsitter, ek weet nie wanneer dit gebruik is

7 teen die skare nie. As u praat van 'n waarskuwing voor dit

8 gebruik is ek sal nie daarvoor kan getuig nie, ongelukkig

9 nie, nee.

10 MR BIZOS SC: Evidence before the

11 commission that someone shouted out ceasefire as soon as

12 the first shot was or one of the first shots was fired,

13 what is the name of that person?

14 MR SEMENYA SC: No, also, Chair, I don't

15 have that evidence that the ceasefire was after one of the

16 first shots and then I don't know what that means.

17 MR BIZOS SC: One of the first shots.

18 CHAIRPERSON: There was some seconds

19 into the fusillade.

20 MR BIZOS SC: Yes, but -

21 CHAIRPERSON: By which time quite a

22 number of bodies were already down. But anyway your

23 question is, we'll accept the question differently. You

24 have seen on the videos and heard on the videos that at a

25 certain stage after a number of shots were fired one ca

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1 clearly hear someone saying ceasefire, I think a number of

2 people saying it. It's said several times, is that

3 correct. Now you, I know you weren't there but have you

4 ascertained -

5 BRIGADIER CALITZ: Ek het op die video

6 gesien, korrek, mnr die Voorsitter.

7 CHAIRPERSON: Have you, I know you

8 weren't there but have you ascertained who it was or who,

9 it was more than one who the people were, who said

10 ceasefire?

11 BRIGADIER CALITZ: Ons het na die tyd

12 vasgestel, as ons kyk na die eerste toneel, of as ek praat

13 van, kom ek sê my woorde reg, die mees bekende toneel waar

14 Adjutant Offisier Kuhn agteruit hardloop, vas haak en dan

15 is daar 'n blanke lid wat links voor op die bakkie staan en

16 sy hand opsteek, ek dit is miskien, as u na hom verwys, dit

17 is Sersant Browning. Maar die senior op die toneel aan die

18 regter kant van daardie voertuig was Kaptein Loest wat ook

19 gesê het, hy het ook gesê cease fire.

20 [15:40] Ek het op die ander video evidence wat van die

21 evidence leaders vir ons gewys het van die, as ek nou sê

22 regterkant af, ek bedoel soos die lyn nou gestaan het, die

23 skare van voor af gekom het, heel op die regterkant was

24 daar ook persone en dit klink vir my hulle was dalk die

25 eerstes maar ek het nie vasgestel wie daardie persone is

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1 nie. So daar het verskillende, soos dit in die lyn afgaan

2 van die lede het verskeie persone geskree, "seize fire."

3 MR BIZOS SC: Do you agree that the fire

4 continued for a number of seconds after that repeated call

5 for the fire to seize?

6 BRIGADIER CALITZ: Mnr die Voorsitter, ek

7 sal dit wel kan glo, ek het dit self nou nie gaan meet en

8 geluister wanneer is die laaste persoon en so nie, nee,

9 maar ek verneem as een persoon op die punt gesê het "seize

10 fire" en soos dit deurgaans word dan nog skote geskiet en as

11 hy in 'n lyn staan en hulle gee die opdrag sal daar wel nog

12 skote plaasvind na daardie eerste of tweede of derde roep.

13 Dit is net so dat as ons in 'n lyn staan en almal skiet

14 gelyktydig sal almal nie daardie eerste seize fire call kan

15 hoor nie. Ek dink nie dit is moontlik nie, nee.

16 MR BIZOS SC: Did you ask your substitute

17 whether he gave any warning about the use of sharper

18 ammunition before it actually took place?

19 BRIGADIER CALITZ: As u praat van die

20 substitute verwys u na Kolonel Makhubela?

21 CHAIRPERSON: He is referring to Colonel

22 Makhubela. He says, did you ask Makhubela -

23 BRIGADIER CALITZ: Nee, mnr die

24 Voorsitter, -

25 CHAIRPERSON: - afterwards whether he

1 gave any warning before the firing occurred?
 2 BRIGADIER CALITZ: Nee, mnr die
 3 Voorsitter, nee, ek dink nie.
 4 MR BIZOS SC: Why not?
 5 BRIGADIER CALITZ: Ek dink wat Kolonel
 6 Makhubela vir my getuig het is, toe hy sien toe storm die
 7 persone deur en die TRT lede het dan in selfverdediging
 8 opgetree. Ek dink nie daar, wel, wat ek van hom verneem
 9 het, ek sê weereens ek kan nie namens hulle getuig nie, ek
 10 dink nie die tyd aspek het toegelaat daarvoor nie.
 11 MR BIZOS SC: I want to give you an
 12 opportunity, we'll come back to the other requirements of
 13 the President in due course, you eulogised your colleagues
 14 for what happened, do –
 15 MR SEMENYA SC: Well, Chair, -
 16 MR BIZOS SC: - you know the meaning of
 17 the word eulogised?
 18 MR SEMENYA SC: - there was no unity
 19 there.
 20 CHAIRPERSON: Mr Bizos, there is an
 21 objection, but it is already quarter to four, I don't think
 22 we've got, I promised one of the commissioners that we will
 23 adjourn at quarter to four for a very good reason that
 24 affects him.
 25 MR BIZOS SC: Yes.

1 CHAIRPERSON: So tomorrow morning we will
 2 consider Mr Semenya's objection to the question you've
 3 asked, namely you said you eulogised your colleagues for
 4 what they did and Mr Semenya is objecting to that and we'll
 5 hear him on the objection and we'll hear your reply
 6 tomorrow morning just after nine o'clock. The Commission
 7 now adjourns.

[COMMISSION ADJOURNED]

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