

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 175

27 JANUARY 2014

PAGES 20769 TO 20957



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1 [PROCEEDINGS ON 27 JANUARY 2014]
 2 [09:18] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath. Mr Gotz.
 4 ADRIAAN MARTHINUS CALITZ: Good morning.
 5 Thank you, Commissioner.
 6 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
 7 Good morning, Commissioners, and good morning, Brigadier
 8 Calitz.
 9 BRIGADIER CALITZ: Good morning,
 10 Advocate.
 11 MR GOTZ: Brigadier, I left you with a
 12 little bit of homework in relation to some of the documents
 13 that you hadn't had an opportunity to look at. Can we
 14 start with that? I'm referring to exhibit JJJ192, it's
 15 JJJ192, which is the meeting of the 14th of August between
 16 Lonmin and the Provincial Commissioner. Brigadier, I asked
 17 you specifically to look at pages 14 through to the end of
 18 that document. Perhaps we can start at page 14.
 19 CHAIRPERSON: Is there a particular line
 20 or section –
 21 MR GOTZ: Commencing really from line –
 22 CHAIRPERSON: - you want to focus on?
 23 MR GOTZ: Commencing really at line 2, I
 24 suppose. I think you've had an opportunity to read it,
 25 Brigadier. Essentially the SAPS Commissioner makes the

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1 point where she indicates that she believes that the plan
 2 which she's been discussing in the previous pages gels
 3 nicely and she supports the idea that "They must not be
 4 given the notice tonight, rather early in the early hours
 5 of tomorrow so that it works together with our plan." And
 6 you see there Graham, who we now know is Graham Sinclair,
 7 responds, "I will work with your planners on that." She
 8 responds, "Yes." Graham says, "Remember I just want to
 9 add" – the essence of this paragraph is a concern that he
 10 has about the fact that SAPS members have been sitting for
 11 24 to 26 hours to 28 hours already, and they're not in a
 12 particularly good mood because of that and he really wanted
 13 to give some sort of moral support to the guys.
 14 The Provincial Commissioner then responds, and
 15 you'll see that from line 18, if we can just go up a little
 16 bit, "No, they are going to – we already deployed them now
 17 before this because now they have to call them back for
 18 this operation. We deployed them to the key areas."
 19 Graham then responds, "Yes, we deployed 110." The
 20 Provincial Commissioner says, "Yes." Mr Sinclair says,
 21 "And we're going to deploy the horses," at which point it
 22 becomes inaudible, and she then says, "But we're bringing
 23 them back now because I want all of them to move, all of
 24 them at once to that area. So after that I think they will
 25 once again group them into different, or" – and then Mr

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1 Sinclair says, "Calitz is on top of that with me, Ma'am."
 2 Now, Brigadier, can you throw any light on this
 3 conversation? I know that you weren't present - I take it
 4 you were not present.
 5 BRIGADIER CALITZ: Dit is korrek, mnr die
 6 Voorsitter.
 7 MR GOTZ: In particular what Mr Sinclair
 8 is saying, "Calitz is on top of that with me, Ma'am," in
 9 the context, what he seems to be saying is that you and him
 10 have been collaborating or coordinating the deployment of
 11 at the very least horses, but possibly also of personnel at
 12 the Lonmin Mine. Do you see that? Would you agree with
 13 that assessment?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 ja, as ek miskien kan lig werp, soos u sê tereg, ek was nie
 16 daar nie. Al wat ek dink mnr Sinclair kan hier na verwys
 17 was waaroor reeds getuig was. As u reg onthou, mnr die
 18 Voorsitter, was dit op die – wat was hierdie? – die 14de,
 19 die 13de –
 20 VOORSITTER: Hierdie gesprek het
 21 plaasgevind –
 22 BRIGADIER CALITZ: Die Maandagaand –
 23 VOORSITTER: Nee, hierdie gesprek het
 24 plaasgevind –
 25 BRIGADIER CALITZ: Die 14de.

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1 VOORSITTER: - op die Dinsdag.
 2 BRIGADIER CALITZ: Die 14de.
 3 VOORSITTER: Hierdie gesprek waarna nou
 4 verwys word – sorry, this conversation took place on the
 5 Tuesday, the –
 6 BRIGADIER CALITZ: Dit is korrek.
 7 CHAIRPERSON: - conversation to which
 8 you're now being referred. So this obviously relates to
 9 something that happened before the, something that was on
 10 the go, I take it, at the time that this discussion took
 11 place.
 12 BRIGADIER CALITZ: Dit is korrek.
 13 CHAIRPERSON: And now what light can you
 14 throw on this rather cryptic statement, "Calitz is on top
 15 of that with me"?
 16 BRIGADIER CALITZ: Dis reg, dankie, mnr
 17 die Voorsitter. Ja-nee, ek het net na Maandag verwys, die
 18 13de. As u onthou het Kolonel Scott, Generaal Annandale,
 19 het hulle gereël om daardie aand deur te kom en Generaal
 20 Mpmembe het dan vir ons opdrag gegee dat ons moet mense gee,
 21 die operasionele lede wat kan help om, Kolonel Scott om die
 22 beplanning dan te begin finaliseer, en dit was my getuienis
 23 dat mnr Sinclair teenwoordig was, asook dan ek dink het ek
 24 gesê Kolonel Merafe en ek kan nie onthou of ek nog
 25 offisiere se name genoem het, wat dan betrokke was by

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1 daardie inligtingsessies. So mnr Sinclair was definitief
2 deel van die, kan ek maar sê waaruit die inligting gekry is
3 oor waar die "key" punte is, en dan in daardie sessies het
4 hulle dan gepraat.
5 U verwys spesifiek na die "horses," die Berede
6 Eenheid van die polisie. Daardie Berede Eenheid, ek praat
7 onder korreksie, het na my mening die Dinsdag opgedaag en
8 hulle was dan ontplooi by spesifieke "key" punte, kan ons
9 dit so sê, deur die dag, wat dan die "vehicle control
10 points" insluit en dan in die aand met gewone patrollies.
11 Maar die Berede, die perde self het fisies by sekere "key"
12 areas gery. Ek weet hulle was ook by Marikana dorp asook
13 Mooinooi, die dorp, was die Berede ook "deploy" gewees. So
14 dit is miskien as ek kan –
15 CHAIRPERSON: What I find interesting is
16 the statement by Mr Sinclair, "We are going to deploy the
17 horses." Now I must confess when I read this I thought
18 these are Lonmin horses. Now they turn out to be SAP
19 horses.
20 BRIGADIER CALITZ: Ja-nee, ek het –
21 CHAIRPERSON: But they were equine
22 members of the service, it would appear, and what was a
23 Lonmin official doing deploying equine members of the South
24 African Police Service?
25 BRIGADIER CALITZ: Nee, mnr die

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1 Voorsitter, ek dink miskien het hy in sy gesprek so daarna
2 verwys, maar hy het definitief nie die "deployment"
3 behartig van die polisie se Berede nie. Sover ek weet het
4 Lonmin – onder korreksie – nie Berede Eenheid nie. Ek het,
5 was nog nooit bewus daarvan nie. So dit is net die polisie
6 se Berede Eenheid en mnr Sinclair het dan net vir ons die
7 inligting gegee en die "key" punte, en seer sekerlik nie
8 getaak of "ge-deploy" nie. Dit kan nie so werk nie.
9 MR GOTZ: But, Brigadier, it doesn't stop
10 there, because what he says, "Calitz is on top of that with
11 me, Ma'am," surely he's saying not simply 'I've got
12 information because I've been sitting in all the planning
13 sessions,' he's saying something more than that. Isn't he
14 saying in effect that he's on top of that with you, meaning
15 he's in control of the deployment that the SAPS
16 Commissioner is talking about in the preceding paragraph?
17 BRIGADIER CALITZ: Nee, mnr die
18 Voorsitter, beslis nie. Dit het nog nooit so gewerk nie.
19 Geen siviele persoon kan die polisiemag of diens dan
20 "deploy" of vir ons opdrag gee waar om te werk nie. Dit
21 werk nie so nie. Hy het wel die inligting beskikbaar
22 gestel en gesê waar is van die "key" punte en dan ook soos
23 sy mense die CCTV monitors gemonitor het waar bewegings
24 was, het hulle dit vir ons deurgegee. So dit is wat ek
25 dink het hy hier na verwys, dat daar – soos ek daarna

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1 verwys het ek dink op Vrydag, die samewerking wat daar was.
2 MR GOTZ: And then the Provincial
3 Commissioner says, "Yes." What she doesn't say is 'No, but
4 that's not your role, Mr Sinclair; that's Mr Calitz's role,
5 Brigadier Calitz's role.'
6 BRIGADIER CALITZ: Mnr die Voorsitter, ek
7 glo die Provinsiale Kommissaris sal kom getuig. Sy sal kan
8 sê wat sy bedoel het toe sy gesê het "Yes," maar dit is,
9 selfs sy sal vir u sê dat die publiek nie vir ons opdrag
10 gee waar om ons mense te "deploy" nie.
11 MR GOTZ: Brigadier, I appreciate that,
12 and I do realise that you were not there. In a similar
13 vein –
14 CHAIRPERSON: Before you move on, are you
15 going to go back to the top line on the screen at the
16 moment, or aren't you? On the screen at the moment the top
17 line that's visible is Graham, "Yes, we deployed 110." If
18 you're going to ask him a question about that I won't
19 interfere with you, but if you aren't I'd like to ask a
20 question about it.
21 MR GOTZ: Chairperson, I'm happy for you
22 to ask the question that you have in mind. I was actually
23 going to sum up on the question of the three points on this
24 page.
25 CHAIRPERSON: Who are the 110? Do you

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1 know? "We deployed 110." The previous statement by the
2 Commissioner is, "We already deployed them now before this,
3 because now we have to call them back for this operation.
4 We deployed them to the key areas." That's what she said,
5 and Mr Sinclair then says, "Yes, we deployed 110." Now do
6 you know anything about 110 either members of the police
7 service or 110 employees of Lonmin who were deployed to key
8 areas? Can you help us, help me understand what Mr
9 Sinclair is talking about?
10 BRIGADIER CALITZ: Nee, ongelukkig die
11 syfer self kan ek nie mee help nie. Wat ek wel weet is dat
12 van daardie aand af het die polisie in die gebied ontplooi.
13 Ons kan miskien gaan kyk op die getalle wat hulle "deploy"
14 het op daardie stadium, maar ek is heeltemal onseker wat
15 Lonmin se gewone "deployments" was op daardie dag. So ek
16 kan u ongelukkig nie meer help nie.
17 MR GOTZ: Brigadier, I must put it to
18 you, on this page alone we see first of all a statement by
19 Mr Sinclair that he will work with your planners, secondly
20 a statement that "we," as in Lonmin, have deployed what
21 appear to be over a hundred SAPS personnel, and then –
22 MR SEMENYA SC: No Chair, that's not
23 apparent –
24 SPEAKER: Mr Commissioner, there's no
25 basis for that assertion.

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1 MR SEMENYA SC: Objection, Chair. It is
 2 not apparent he's referring to the SAPS members.
 3 CHAIRPERSON: I was interested to know
 4 whether this was Lonmin people or police members and he
 5 didn't know. So I don't know that you can proceed on the
 6 assumption that he's referring to members of the police
 7 service. It may be, maybe not, but certainly it's not
 8 clear to us at the moment and the witness can't even help
 9 us on that. So I think that question has to be
 10 reformulated.
 11 MR GOTZ: He makes the statement, "Yes,
 12 we deployed 110." It is unclear, I accept, what he's
 13 referring to, but it does seem that they are personnel
 14 either from Lonmin or from SAPS, correct?
 15 CHAIRPERSON: It's or, or and, isn't it?
 16 It's either a combined force of Lonmin people and members
 17 of the police service, or it's only Lonmin people or it's
 18 only police people. If it's only police people then the
 19 question arises why does Mr Sinclair say he was one of
 20 those who deployed them, but that's a question that he can
 21 presumably be asked when he comes, because a statement from
 22 him has been filed by Lonmin, and the Commissioner can be
 23 asked as well. But this witness can't help us. But the
 24 point is you can't ask the question on an assumption. One
 25 of those permutations that I put to you is the correct one.

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1 MR GOTZ: Well, let me move to the last
 2 of that where he says, the last statement, "Calitz is on
 3 top of that with me, Ma'am," which as I've already put to
 4 you does seem to indicate at least the belief that he is in
 5 some form of control or authority over the operation.
 6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 nee, ek kom weer terug na u vorige vraag toe. Hy is glad
 8 nie in "control" of in "authority" oor die operasie nie.
 9 Ek dink van die begin af het ek gesê dat ek het goeie
 10 samewerking met mnr Sinclair gehad. Ek dink my getuienis
 11 was toe ek gearriveer het die Sondag is dit hy wat ek op
 12 die toneel gevind het saam met die polisiemanne, en hy het
 13 vir ons na die Middelkraal toe geneem en van daar af al die
 14 inligting, die meeste inligting het maar van hom of van mnr
 15 Dirk Botes af gekom. So as hy sê "Calitz is on top of that
 16 with me, Ma'am," ek dink hy verwys maar net na die goeie
 17 samewerking wat daar was en van daar af die inligting wat
 18 gedeel was.
 19 CHAIRPERSON: What puzzles me is the use
 20 of the first person plural, "we," "ons," and the impression
 21 one gets is he's talking about you and he, "We deployed
 22 110." Now 110 follows immediately on the statement by the
 23 Commissioner, "We deployed them, we have to call them back,
 24 we deployed them to the key areas." So that sounds like
 25 members of the police service. Then Mr Sinclair says,

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1 "Yes, we deployed 110." "Yes." "And we are going to
 2 deploy the horses." Now the horses sound like police
 3 horses, don't they? And then the Commissioner says, "We
 4 are bringing them back now, and then "Calitz is on top of
 5 that," and so it does sound as if the "we" – obviously we'd
 6 have to find out definitely when he comes and the
 7 Commissioner comes, but it does sound as if he's using the
 8 first person plural as if you and he were doing things,
 9 making deployments and so forth together, and were on top
 10 of things together. Now I think that's basically the point
 11 Mr Gotz is putting to you. Would you say that that's
 12 correct, or do you think that Mr Sinclair was overstating
 13 his role?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 miskien die laaste deel, as u praat van "overstating" is
 16 miskien dat, ek weet nie wie almal by daardie vergadering
 17 was nie. Ek was nie daar nie. Miskien was hy die enigste,
 18 as ek sê operasionele verteenwoordiger miskien in daardie
 19 geval. Wat hy na die "we" verwys het van waar hy met die
 20 operasionele sy van dit betrokke is, ek kan ongelukkig nie
 21 sê nie; ek kan net raai. Maar nee, daar is beslis nie dat
 22 hy in beheer was of vir ons voorgeskryf het, glad nie. Dat
 23 daar samewerking was, dit is so, ja.
 24 MR GOTZ: Brigadier, we can't -
 25 CHAIRPERSON: It sounds as if you've got

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1 as much – I don't want to stop you prematurely, but it
 2 sounds as if you've got almost as much from this witness as
 3 you can on this point. It is clearly a matter you have to
 4 explore with other witnesses.
 5 MR GOTZ: That's exactly the point I was
 6 about to make, Chairperson. Brigadier, we obviously can't
 7 get much more clarity on these questions and we will take
 8 this up with the Provincial Commissioner, as well as of
 9 course Graham Sinclair when he files his witness statement
 10 and comes to give evidence. But I do not –
 11 CHAIRPERSON: Sorry, Mr Gotz, may I ask
 12 another question before you carry on, something else that
 13 puzzles me about the statement. Line 18 the Provincial
 14 Commissioner says, "We already deployed them now before
 15 this, because now we have to call them back for this
 16 operation." Now I'm not quite sure what that means. I
 17 don't know whether you can help me. I do know there had
 18 been trouble before at Marikana. There had been previous
 19 strikes and so forth, or a previous strike at least. Now
 20 when she's talking about "deployed them before this, and
 21 now we have to call them back for this operation," can you
 22 help us on that? Were a number of POP people from the
 23 North West previously deployed to Marikana to deal with
 24 earlier difficulties, and were they now being called back
 25 for this particular operation, i.e. what's called

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1 Operation Platinum? Can you help me on that?

2 BRIGADIER CALITZ: Mnr die Voorsitter,
3 dit sal net my opinie wees. As ek dan kan dink miskien
4 waarna die Generaal verwys het is dat ons het toe ons die
5 inligting gekry het – wanneer was die optog? – die 10de,
6 dink ek was die Saterdag of die Sondag, na daardie optog –

7 CHAIRPERSON: It was the Friday.

8 BRIGADIER CALITZ: Of die Vrydag, ja.
9 Ekskuus tog.

10 CHAIRPERSON: The 9th was a public holiday
11 and there was a meeting of some sorts.

12 BRIGADIER CALITZ: Ek dink die optog –

13 CHAIRPERSON: And then on the 10th there
14 was a procession –

15 BRIGADIER CALITZ: Dis reg.

16 CHAIRPERSON: - to the officers of Lonmin
17 and an attempt was made to negotiate –

18 BRIGADIER CALITZ: Dit is korrek.

19 CHAIRPERSON: That's the Friday, the 10th.

20 BRIGADIER CALITZ: Ja. Nou net na dit
21 het die inligting begin inkom en ons is daardie oggend van
22 die 11de ingelig, waarop ek dan Kolonel Merafe, die
23 eenheidsbevelvoerder van Rustenburg, gekontak het en vir
24 hom opdrag gegee het om addisionele mannekrag te "deploy"
25 sodat ons 'n 24 dag en nagskof kan hardloop juis oor die

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1 beweringe wat daar was. So ek, miskien is dit waarna sy
2 verwys hier en dan "call them back for this operation" neem
3 ek aan, ek kan net raai dat dit miskien is die "call-up
4 instructions" wat nou verder sal uitgaan om meer mense weer
5 te kry. Maar dit is net my opinie, mnr die Voorsitter.

6 COMMISSIONER HEMRAJ: When were the
7 sector policing patrol sent out, Brigadier?

8 BRIGADIER CALITZ: Kommissaris, dit was
9 die Maandag oggend gewees 6 uur toe Kolonel Scott-hulle
10 deurnag gewerk het aan die beplanning –

11 CHAIRPERSON: It couldn't have been the
12 Monday morning because he only arrived the Monday night, so
13 it must have been the Tuesday morning.

14 BRIGADIER CALITZ: Ag, die 14de, kom ons
15 werk op die datum –

16 CHAIRPERSON: He arrived there the Monday
17 the 13th –

18 BRIGADIER CALITZ: Ekskuus, ja.

19 CHAIRPERSON: - after the five people
20 were killed.

21 BRIGADIER CALITZ: Ja.

22 CHAIRPERSON: And he then, one of the
23 things he did was to design a sector policing operation,
24 which I think according to the evidence was implemented on
25 the Tuesday. Is that –

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1 BRIGADIER CALITZ: Ja. Nee, ek het net
2 my dae – maar kom ons, as ek op die datums werk is dit
3 maklik, mnr die Voorsitter. Die 14de die oggend 6 uur toe
4 het ons wel daardie sektorpolisiëring geïmplementeer.

5 CHAIRPERSON: I'm sorry, Mr Gotz, we've
6 interrupted you. I hope we haven't unduly hampered your
7 cross-examination.

8 MR GOTZ: Chair, thank you. Brigadier,
9 as I've indicated we will have to take this up with other
10 witnesses, but I'm sure you'll agree on a prima facie basis
11 at least that there appears to be at this stage a degree of
12 cooperation and coordination that goes beyond simply Lonmin
13 being informed about what SAPS is doing?

14 BRIGADIER CALITZ: As u verwys na
15 "beyond," kan ek net duidelikheid kry?

16 [09:38] MR GOTZ: Well, it is more than simply,
17 we are keeping Lonmin informed about what SAPS is doing,
18 there appears to be a much greater level of cooperation and
19 coordination between Lonmin and SAPS, even at this stage of
20 the operation.

21 BRIGADIER CALITZ: Mnr die Voorsitter,
22 weereens kan ek net verwys na baie goeie samewerking wat
23 daar was, die Sekuriteit gaan aan met hulle normale
24 dagtake, hulle is elke dag ge-deploy op die myn, op sekere
25 van wat, hulle beskryf hulle punte of hulle key points en

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1 daardie inligting is met ons gedeel en wat ook al hulle
2 gesien het daar, en daardie inligting is dan oorgedra en
3 het miskien vir Kolonel Scott gehelp met die beplanning.
4 So dit is die beste wat ek na u kan verwys, ek was
5 ongelukkig ook nie deel van daardie aand se beplanning nie.

6 MR GOTZ: Again, Brigadier, I put the
7 proposition to you on Friday, it is very hard to escape the
8 conclusion in the light of this evidence and other pieces
9 that we've looked at, that this was effectively a joint
10 operation between Lonmin and SAPS.

11 BRIGADIER CALITZ: Ja, soos ek vir u gesê
12 het, daar was 'n samewerking ooreenkoms, die enige joint
13 was die Joint Operational Centre wat gestig is en in
14 daardie sentrum, Gesamentlike Operasionele Sentrum is die
15 inligting dan gedeel. Ons weet dat hulle CCTV kameras daar
16 was, ons het Vrydag gesien waar hulle geposisioneer was
17 binne-in die Gesamentlike Operasionele Sentrum, so net tot
18 op daardie vlak van samewerking.

19 MR GOTZ: There were a couple of follow
20 up questions in relation to the movement of Nyala 6 which
21 were left hanging as well and let me move to that –

22 CHAIRPERSON: Are we now moving away from
23 –

24 MR GOTZ: - and put –

25 CHAIRPERSON: Are we now moving away from

<p style="text-align: right;">Page 20785</p> <p>1 -</p> <p>2 MR GOTZ: You can put that -</p> <p>3 CHAIRPERSON: - JJJ192 or are you going</p> <p>4 to go back to it?</p> <p>5 MR GOTZ: We can put that document away,</p> <p>6 we will take this up with other witnesses as I understand</p> <p>7 that you can't -</p> <p>8 CHAIRPERSON: So are you moving away from</p> <p>9 JJJ192? Do you want to read from here to the end of the</p> <p>10 exhibit, but if you are not going to deal with anything</p> <p>11 further then we can take it off the screen and you can just</p> <p>12 proceed with your other.</p> <p>13 MR GOTZ: Chair, I've made the point that</p> <p>14 I needed to make and -</p> <p>15 CHAIRPERSON: Okay, thank you.</p> <p>16 MR GOTZ: Thank you. Brigadier, I</p> <p>17 understood your evidence to be, - well, let me start with</p> <p>18 this. I understood that you accepted my proposition that</p> <p>19 barbed wire Nyalas were only in position at the koppie at</p> <p>20 10:44 on Thursday, the 16th of August 2012.</p> <p>21 BRIGADIER CALITZ: Ja, ek het vir u gesê</p> <p>22 dat ek het nie die tyd voor my nie en ek het gesê dat ek</p> <p>23 glo ons kan bygestaan word met die foto's beskikbaar om dan</p> <p>24 te kyk wat die tyd is wat hulle gearriveer het.</p> <p>25 MR GOTZ: Brigadier, do you want me to</p>	<p style="text-align: right;">Page 20787</p> <p>1 ek het nie met u gestry nie, ek het net geweet tussen die</p> <p>2 arrival en wanneer hulle ge-deploy het, ek het nie die</p> <p>3 presiese tyd gehad nie, korrek.</p> <p>4 CHAIRPERSON: This particular slide is,</p> <p>5 they haven't actually been repositioned yet in the</p> <p>6 positions which they were put, but they're on their way</p> <p>7 there. Would you agree with that, is that correct?</p> <p>8 BRIGADIER CALITZ: Ja, mnr die</p> <p>9 Voorsitter, ek dink dit is die tyd wat hulle verwys het,</p> <p>10 10:34 het ek gehoor, as ek, mnr Chaskalson het nou nie na</p> <p>11 hierdie foto verwys nie, ek neem aan die tyd is dan ook,</p> <p>12 10:34, so dit is so tien minute voor hulle heeltemal deploy</p> <p>13 was.</p> <p>14 MR GOTZ: Now, Brigadier, I also</p> <p>15 understood, - sorry, do you want to Mr Chaskalson to</p> <p>16 respond to that?</p> <p>17 CHAIRPERSON: Mr Chaskalson referred to -</p> <p>18 BRIGADIER CALITZ: Nee, -</p> <p>19 CHAIRPERSON: - other photographs taken</p> <p>20 on Colonel Vermaak's Blackberry which he says are more</p> <p>21 helpful in regard to the positioning of the Nyalas with the</p> <p>22 wire trailers at the time or just shortly after they</p> <p>23 arrived on the scene, so I take it he doesn't want to</p> <p>24 interfere unduly with your cross-examination, he is trying</p> <p>25 to help you but if you want to look at those slides, maybe</p>
<p style="text-align: right;">Page 20786</p> <p>1 show you those photographs or are you prepared to accept</p> <p>2 that my estimation is correct?</p> <p>3 BRIGADIER CALITZ: Wel, ek dink die</p> <p>4 evidence leaders is hierso en dit is baie maklik om vas te</p> <p>5 stel op 'n foto dat daardie tyd korrek is. As dit so is,</p> <p>6 ek het glad nie met u gestry nie, maar ek het nie</p> <p>7 saamgestem nie omdat ek gesê het dat hulle kan vir ons</p> <p>8 daardie tyd vasstel.</p> <p>9 MR GOTZ: Well, if I can assist the</p> <p>10 evidence leaders and just to put it on record, if one looks</p> <p>11 at Exhibit JJJ10 which contains Colonel Vermaak's Pentax</p> <p>12 photographs of the 16th of August and you look at image</p> <p>13 number 4499, in other words 4499, which is a photograph</p> <p>14 taken at ETV time 10:43:46, you will see the barbed wire</p> <p>15 Nyalas in position but if you compare that to the previous</p> <p>16 photograph which is 4498 you can see that the barbed wires</p> <p>17 are driving at the scene at 10:34:08 ETV time.</p> <p>18 Chairperson, I mean I wouldn't quibble with this, there are</p> <p>19 probably more precise times that you can get from Colonel</p> <p>20 Vermaak's Blackberry photographs, 1499 and 1498 which show</p> <p>21 that all of the Nyalas other than Nyala 1 were in position</p> <p>22 by 10:44am ETV time, but I mean we're talking a couple of</p> <p>23 minutes here. 10:44 was in fact the time that I gave, so I</p> <p>24 think that is confirmation from -</p> <p>25 BRIGADIER CALITZ: Ja, soos ek gesê het,</p>	<p style="text-align: right;">Page 20788</p> <p>1 we can call them up and look at them.</p> <p>2 MR GOTZ: Chairperson, -</p> <p>3 CHAIRPERSON: But it is your cross-</p> <p>4 examination, not mine and Mr Chaskalson's.</p> <p>5 MR GOTZ: Chairperson, we don't need a</p> <p>6 completely accurate time for this event. I think Mr</p> <p>7 Chaskalson has confirmed with reference to the Blackberry</p> <p>8 photographs that my estimation on the basis of the Vermaak</p> <p>9 Pentax photographs is that the barbed wire Nyalas were</p> <p>10 repositioned effectively at 10:44 and that is good enough</p> <p>11 for the purposes of my cross-examination.</p> <p>12 BRIGADIER CALITZ: Ja, nee, ek dink -</p> <p>13 CHAIRPERSON: You agree with that,</p> <p>14 Brigadier, that around about 10:44 the barbed wire trailers</p> <p>15 were in position?</p> <p>16 BRIGADIER CALITZ: Dit is korrek.</p> <p>17 CHAIRPERSON: In the original positions,</p> <p>18 of course there is a discussion about Nyala 6 later but you</p> <p>19 agree with the propositions being put?</p> <p>20 BRIGADIER CALITZ: As hy praat net van</p> <p>21 die barbed wire voertuie, dit is so, dan aanvaar ek dit.</p> <p>22 MR GOTZ: Now I also understood your</p> <p>23 evidence to be that approximately 30 minutes later Nyala 6</p> <p>24 had been moved, but that followed on a conversation that</p> <p>25 you'd had, a telephone conversation that you had had with</p>

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1 Lieutenant-Colonel Scott, is that a fair reflection of your
2 evidence?

3 BRIGADIER CALITZ: Ja, ek het gesê dat ek
4 dink Kolonel Scott het my geskakel en daar was n VB
5 inskrywing gemaak waarna ons verwys het, ek dink die tyd
6 was 11:20, onder korreksie, so dit moes in daardie omgewing
7 gewees het wat dan daardie groep na daardie Nyala toe
8 beweeg het.

9 MR GOTZ: We've looked at Annexure KKK4
10 which is the schedule of telephone calls that were made
11 between various SAPS members inter alia on the 16th of
12 August and perhaps we can go quickly to KKK4 and to look at
13 page 5 of that document. Sorry, Chair, I got a printout of
14 this, so I see that what's being displayed is an Excel
15 spreadsheet. I wonder if the person –

16 CHAIRPERSON: What time are you looking
17 for?

18 MR GOTZ: Yes, indeed, I wonder if the
19 person could scroll down to the 16th of August to a time
20 entry 11:56:18?

21 CHAIRPERSON: 11?

22 MR GOTZ: Yes, do you see that entry?

23 BRIGADIER CALITZ: Soos die opskrif, ek
24 glo dit is van en na, so ek neem aan dit is Kolonel Scott
25 wat dan –

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1 CHAIRPERSON: Yes, so this then refers to
2 a call made by Colonel Scott to you at 11:56?

3 BRIGADIER CALITZ: Dit wil so voorkom,
4 dit is korrek.

5 MR GOTZ: The phone call lasted a merely
6 12 seconds but it seems what happens is that you phone him
7 back almost immediately because you'll see that the next
8 entry which appears at 11:56:45 which will be 15 seconds
9 later, in other words 15 seconds after the end of the
10 previous call, you phone him back and you proceed to have a
11 3 minutes 42 second conversation with him. Do you see
12 that?

13 BRIGADIER CALITZ: Ek sien dit, ja.

14 MR GOTZ: Brigadier, we don't in fact
15 find any telephone call either from you to Colonel Scott or
16 from Colonel Scott to you before this, at least after the
17 arrival of the, and at least after the arrival of the
18 barbed wire on the scene. So can we conclude from that,
19 Brigadier, that Nyala 6 could not have been moved prior to
20 12 o'clock on the 16th?

21 BRIGADIER CALITZ: Mnr die Voorsitter,
22 ja, ek dink nie ek het oor 'n spesifieke tyd getuig nie, ek
23 het vir u gesê dit is in daardie omgewing. Ek weet ook nie
24 dat my verklaring enige getuie insit, presies hoe laat het
25 ons daardie voertuig geskuif nie, ek het gesê ek dink dit

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1 is om en by daardie tyd, 11:20 is die voorvalle boek
2 inskrywing gemaak, so dit kan wees dat toe ons dit
3 gerapporteer het, dat die persone dit in die voorvalle boek
4 geskryf het en daarna het die gesprekke plaasgevind wat
5 baie moontlik hierdie tye dan kon insluit, dit is reg.

6 CHAIRPERSON: If this record of cell
7 phone call, mobile phone calls is correct then this would
8 establish, I take it beyond doubt, that if the removal of
9 this Nyala6 took place after a conversation between you and
10 Colonel Scott, it must have happened after what's described
11 here as call 177, which is the one at 11:56:45 which lasted
12 3 minutes 42 seconds. It couldn't have been there because
13 as Mr Gotz has pointed out, apart from the 12 second call
14 earlier in that minute, there was no previous conversation
15 between you and Colonel Scott that morning by cell phone,
16 right? So it has got to be after 11:56. It is not a
17 question of maybe or it appears so, it is so, this is a
18 fact that we can establish with objective accuracy, do you
19 agree with that?

20 BRIGADIER CALITZ: Nee, ek stem heeltemal
21 saam daarmee, mnr die Voorsitter, dit is wat gesê het. Dit
22 kan 'n terugvoer van my kant af gewees het aan hom en dat
23 die gesprekke miskien op die radio plaasgevind het, ek he
24 gesê ek het met Kolonel Scott gekommunikeer. Dit kan wees
25 dat ons terugvoer gegee het op hierdie stadium, maar die

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1 feite is so, dit is reg.

2 MR GOTZ: Brigadier, we can at least then
3 say that contrary to what Exhibit L, slide 160 suggests and
4 it suggests that Nyala 6 was moved at 10:56. In fact Nyala
5 6 was not moved before more than an hour later, correct?

6 BRIGADIER CALITZ: Ja, al wat ek oor hier
7 getuig het is dat die dreigement wat ek na die JOC toe
8 relay het, soos ek vir u sê, dit kan oor die radio gewees
9 het, die inskrywing is gemaak en dat hierdie dan die
10 terugvoer boodskap was op daardie stadium.

11 MR GOTZ: When you had the conversation
12 with Colonel Scott, Colonel Scott I presume was in the
13 process of preparing his plan to be presented to the JOCCOM
14 meeting, correct?

15 BRIGADIER CALITZ: Ek sal nie vir u kan
16 sê waarmee hy besig was nie, ek weet hy was in die JOC
17 gewees.

18 MR GOTZ: Well, did you discuss the
19 implications of the move of Nyala6 for the plan that he was
20 preparing?

21 BRIGADIER CALITZ: Ek kan nie onthou dit
22 gaan oor die plan self nie, maar meer dat die Nyala ge-
23 isoleer is en dat hy moet inwaarts beweeg na die kraal toe,
24 na die binnekant toe.

25 MR GOTZ: I understood your evidence in

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1 chief to be that Colonel Scott had phoned you, well, I mean
2 I'm not sure it makes a difference that you phoned him
3 back, but it was him who informed you that Nyala 6 had to
4 move.

5 BRIGADIER CALITZ: Ja, as u kyk weereens,
6 as ek vir u kan sê die dreigement was deur my aan die JOC
7 gerapporteer, die inskrywing in die VB is 11:20, met ander
8 woorde dit wys as daar nie 'n selfoon is nie dan moes dit
9 telefonies gewees het wat ek die JOC dan so ingelig het,
10 ag, oor die radio met ander woorde. So 11:20 was hulle
11 bewus daarvan, dit is bespreek en dan hierdie oproep kan
12 dan 'n terugvoering wees van wat ons op die grond uitgevoer
13 het.

14 CHAIRPERSON: The earlier record at about
15 an hour earlier of the conversation between Brigadier, a
16 very short one, between Brigadier Pretorius who was
17 obviously at the JOC and you at 10:56:59, if they can
18 scroll this down so that we can see it, can you remember
19 what happens about it?

20 BRIGADIER CALITZ: As ek net daarna, wat
21 was die tyd gewees, Kommissaris?

22 CHAIRPERSON: 10:56:49, is it? 10:56:59,
23 if this could be scrolled down and we can look at phone
24 call, - there is it, now we have it. Do you see, 162,
25 entry 162, telephone conversation, but in fact there are

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1 two. There is one of 3 seconds, 161, 10:53:25, Brigadier
2 Calitz, you, and then 10:56:59, so 3 and a half minutes
3 later she phones you again and talks to you for 1 minute 23
4 and then you phone her back at 11:16 for 1 minute 6
5 seconds. Can you help us at all about, can you remember
6 what that's about or is it not fair to ask you?

7 BRIGADIER CALITZ: Mnr die Voorsitter,
8 ongelukkig, ek kan nie presies onthou wat dit was nie, al
9 wat ek sê tussen hierdie tye, as ek 'n afleiding kan maak,
10 dit stem ooreen met die voorvalle boek inskrywing. Ek het
11 gesê ek dink Kolonel Scott het my aanvanklik geskakel. Dit
12 kan wees dat ons kan sien die tyd van hierdie Blackberry
13 foto wat geneem is, as hulle miskien vir ons daarmee kan
14 help, ek dink dit is makliker dat ons kan sien die tyd en
15 dan dit vergelyk, watse tyd dit ontvang is by die JOC. Dit
16 kan wel wees dat sy my dan daarvoor geskakel het toe ons die
17 voorvalle boek inskrywing het en later dat ek terugvoer
18 gegee het, as ons daardie tye kan kry dan glo ek dit sal
19 dalk makliker wees.

20 CHAIRPERSON: Are you clear in your own
21 mind that the decision to move Nyala 6 from its original
22 preposition to the later position was the consequence of a
23 discussion between you and Colonel Scott where the
24 instruction to move that Nyala came from Colonel Scott, are
25 you clear in your own mind that that is the case?

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1 MR GOTZ: Mnr die Voorsitter, nee, ek het
2 van die begin af gesê ek dink dit was Kolonel Scott, dit
3 kan Brigadier Pretorius wees, ek glo sy sal kan sê of sy
4 enigsins na die Blackberry foto gekry is daardie inligting
5 met ons gedeel het. Sover ek onthou het ek en Kolonel
6 Scott gepraat, miskien is dit die terugvoer gesprek wat
7 meer in my gedagte is, maar nee, ek kan nie vir u met
8 sekerheid sê nie.

9 CHAIRPERSON: But Brigadier Pretorius was
10 basically inter alia recording entries in the JOC, wasn't
11 she, it was her job?

12 BRIGADIER CALITZ: Ja, sy sou die foto
13 gekry het, die Blackberry foto, so ek vra miskien as ons
14 kan kyk die tyd wat –

15 CHAIRPERSON: Ja, it is a bit speculative
16 but you say that you think she might have told you about
17 what the Blackberry photographs showed?

18 BRIGADIER CALITZ: Mnr die Voorsitter,
19 dit is totale, ek kan nie vir u dit met duidelikheid sê
20 nie, dit is 'n moontlikheid.

21 CHAIRPERSON: Alright.

22 MR GOTZ: Brigadier, the photograph I
23 think you're referring to which is Exhibit L160 is not in
24 fact a Blackberry photograph, it is a Pentax photograph and
25 it was taken at 10:54 ETV time. I gave those times to you,

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1 I think twice on Friday.

2 BRIGADIER CALITZ: Ja, ek dink net nie
3 ons het hierdie gehad op Vrydag nie, dit sou dalk baie
4 makliker gewees het, as u sê dit is ontvang in die JOC of
5 geneem 10:54, dit beteken teen 10:56 het die JOC dit in
6 hulle besit gehad en dan is dit baie moontlik dat Brigadier
7 Pretorius my kon skakel en gesê het hulle het dit gekry en
8 dan daarna, 20 minute later is die voorvalle boek
9 inskrywing gemaak en na die skuif van die Nyala het ons dan
10 terugvoer gegee. Dit is 'n moontlikheid wat ek hier sien,
11 met die tye wat dan ooreenstem.

12 COMMISSIONER HEMRAJ: Mr Chaskalson, do
13 the photographs of this start with when Nyala 6 moved
14 because that might assist this debate?

15 MR CHASKALSON SC: Not with precision,
16 Commissioner, we know that Nyala 6 hadn't moved by, I think
17 it is 11:20 which is the last photograph of the morning,
18 and then there is also video footage from an ETV, - sorry,
19 not an ETV, from a Protea Coin helicopter, I'll get an
20 exact time.

21 [09:57] It's around 12:30, if I remember correctly, by
22 which stage Nyala 6 had moved. So we can put the
23 parameters of when it moved into place, but there's an hour
24 or so in between –

25 CHAIRPERSON: [Microphone off, inaudible]

<p style="text-align: right;">Page 20797</p> <p>1 because on Friday Mr Gotz was only able to refer us to a 2 photograph, I think it was taken after 3 o'clock in the 3 afternoon, which showed that the Nyalas moved and there was 4 a doubt as to whether there was any photographic material 5 before that indicating whether the move had been earlier, 6 and if so, how earlier. But it would appear from what 7 you've now told us that the move took place at least by 8 12:30, some stage I take it between 11:20 and 12:30. 9 That's –</p> <p>10 MR CHASKALSON SC: I must just get an 11 exact time for that video footage. I'll find it and come 12 back in a few minutes.</p> <p>13 MR GOTZ: Brigadier Calitz, just a point 14 of clarification. If this photograph was taken with 15 Vermaak's Pentax camera it could not have been conveyed to 16 the JOC, as it were, at that time. As I understand it you 17 can send a BlackBerry photograph to the JOC because it can 18 be transmitted via cellular signals. A Pentax photograph 19 is quite a different matter. They would have seen Colonel 20 Vermaak's Pentax photographs after Colonel Vermaak had 21 landed, gone to the JOC, and the data downloaded at the 22 JOC. Is that correct?</p> <p>23 BRIGADIER CALITZ: Ek glo dit moet korrek 24 wees. Ek kan glad nie vir u sê Kolonel Vermaak, of hoe die 25 JOC die foto gekry het waarna hulle verwys het en die</p>	<p style="text-align: right;">Page 20799</p> <p>1 saying there?</p> <p>2 BRIGADIER CALITZ: Dit is soos ek dit 3 verstaan het, ja.</p> <p>4 MR GOTZ: Now of course the photograph 5 that Colonel Scott would have been looking at would have 6 been of Nyala 6 in its original prepositioned position, 7 correct?</p> <p>8 BRIGADIER CALITZ: Ek sal nie weet waarna 9 Kolonel Scott gekyk het of wat hy sou gesien het nie, maar 10 ek aanvaar wat u sê. As hy dit by hom gehad het, op die 11 plan was die "original" wat hy voor hom gehad het.</p> <p>12 MR GOTZ: It must be so, Brigadier. He's 13 looking at a photograph taken with a BBM and saying to you 14 if Nyala 6 remains in that position it's going to be 15 isolated. He must be looking at a photograph of the Nyala 16 6's position in its original prepositioned state, correct?</p> <p>17 BRIGADIER CALITZ: Soos ek vir u sê, ek 18 weet nie of hy op die foto gekyk het en of dit die 19 inligting is oor die dreigement. Ek kan nie vir u sê wat 20 Kolonel Scott, waarmee hy besig was nie. Die moontlikheid 21 is daar, ek stem saam met u.</p> <p>22 CHAIRPERSON: Brigadier, in line 12 on 23 the page which is before us, page 25 of the transcript of 24 the hearing on the 153rd day – I don't know what page it 25 was, but we can get it if necessary – what appears there</p>
<p style="text-align: right;">Page 20798</p> <p>1 inligting dat Nyala 6 moet geskuif word nie. Daardie 2 gesprek het wel plaasgevind.</p> <p>3 MR GOTZ: On the question of who informed 4 you to move Nyala 6, can we look at your evidence on day 5 153 of the transcript at 17220. It's 17220. Brigadier, 6 you will see that in response to a question you say, "Ek 7 het hierdie dreigement ook deurgegee na die JOC toe, wat ek 8 dan gemerk het as omtrent, ek dink dis die derde dreigement 9 op die polisie self." You then indicate that the JOC, 10 somebody in the JOC "het hulle ook vir my gesê Luitenant 11 Kolonel Vermaak het van die lug af 'n foto gestuur, via die 12 BBM BlackBerry, en in dieselfde, ek dink dit is die foto 13 waarna ons nou net gekyk het. So die JOC het dit ontvang, 14 ek dink Brigadier Pretorius, wat dan bespreek is in die 15 JOC." Then you say, "Ek is gekontak deur Luitenant Kolonel 16 Scott, nou Kolonel Scott, wat ons dan telefonies bespreek 17 het en gesê het sou Nyala 6 in daardie posisie bly en hulle 18 sou hulle weer dreig, dan is hulle in 'n baie geïsoleerde, 19 hulle was oop."</p> <p>20 So if I can perhaps summarise that, Brigadier 21 Calitz, what you're saying is that in relation to the 22 telephone call with Colonel Scott that it had been decided 23 that if Nyala 6 remained in that position it would be 24 isolated, out in the open, so to speak, and accordingly had 25 to be moved back. Is that a fair summary of what you are</p>	<p style="text-align: right;">Page 20800</p> <p>1 from line 12 is that Colonel Scott is talking about if the 2 Nyala 6 remains in that position and if they threaten it 3 again, then it's in a very isolated position. So the idea 4 was then, you went on, to move the, or cause the Nyala 6 5 then to move in a clockwise direction more to the inside so 6 that it would come close to the small kraal. So it's quite 7 clear from this passage that at the time this conversation 8 took place Nyala 6 still was in the isolated position, i.e. 9 the prepositioned position, and that what was discussed was 10 then moving it in this clockwise direction that you talk 11 about, close to the small kraal.</p> <p>12 So if this conversation – that's why I asked you 13 the question before – if this conversation is the one which 14 we discussed at, was it 11:56 I think it was, then it must 15 be clear, objectively clear that (a), the conversation took 16 place at that time; and (b), Nyala 6 was still in that 17 position because that's what's being talked about. This is 18 not a retrospective discussion about a move that had taken 19 place earlier, surely. I mean that must be so.</p> <p>20 BRIGADIER CALITZ: Nee, ek stem saam met 21 u, mnr die Voorsitter. Die vraag is net gevra waarna 22 Kolonel Scott gekyk het toe hy met my gesels het, na die 23 foto, en ek het vir hom gesê dit kan ook wees oor die 24 oproep wat ek – ag, die radiogesprek wat ek deurgegee het 25 na die JOC toe oor die dreigement. So ek kan net nie</p>

<p style="text-align: right;">Page 20801</p> <p>1 getuig op wat Kolonel Scott op daardie stadium – maar Nyala 2 6 sou in daardie posisie gewees het tot op daardie stadium 3 dat ek terugvoer gegee het en hy geskuif was. 4 MR GOTZ: Brigadier, I'm not sure I 5 understand your answer, but let's move on. Did you get the 6 sense that Colonel Scott had taken the decision to move 7 Nyala 6 on the basis of the information that he had? 8 BRIGADIER CALITZ: Dit is onder korreksie 9 het ek gesê ek dink dit was Kolonel Scott, ja. Ons het 10 daardie gesprek gehad met die JOC. 11 MR GOTZ: In other words it wasn't your 12 decision, correct? 13 BRIGADIER CALITZ: Ja-nee, ek het die 14 dreigement net deurgegee en die JOC waar die CJOC, JOCCOM 15 "overall commander" sit, sou dit seer sekerlik daar 16 bespreek het en dan daardie slotsom gekom het. 17 MR GOTZ: Can we take a look at what 18 Colonel Scott has to say on this subject, and you'll find 19 his evidence in the transcript at day 140, page 15190, and 20 if you can go down to line 10, in other words – now 21 Brigadier, I should just put to you that we will argue that 22 the overwhelming sense of Colonel Scott's evidence up until 23 this point is that he had no knowledge of the movement of 24 Nyala 6 and that impression is one which sticks with the 25 Chairperson, who then says to him, "But to be fair to you,</p>	<p style="text-align: right;">Page 20803</p> <p>1 sien is dat die foto wat na die JOC toe gestuur is, dat dit 2 bespreek was en as hy sê hy het nie die "decision" geneem 3 nie, dit is wat ek nou net in my vorige antwoord vir u gesê 4 het, dat ek is onseker of dit Kolonel Scott is. Dit sou in 5 die JOCCOM bespreek gewees het en ek glo daar sou dan die 6 "decision," die besluit geneem gewees het. Wie presies dit 7 was, dit kan ek nie vir u sê nie. Die kommunikasie was 8 tussen my en Kolonel Scott en ons het ook gesien tussen my 9 en Brigadier Pretorius, alhoewel ek nie onthou presies wat 10 daar gesê was op daardie gesprek op hierdie stadium nie. 11 MR GOTZ: But Brigadier, what you've just 12 suggested to us is that we can't say reliably that the 13 telephone conversation that you had with Colonel Scott at 14 11:56 related at all to the movement of Nyala 6. That's 15 what we have to conclude. 16 BRIGADIER CALITZ: Mnr die Voorsitter, ek 17 stem nie saam met u nie. As ons kyk na die kronologiese 18 tye en die inskrywings en die terugvoer, ek weet nie of 19 Kolonel Scott iewers gevra is oor daardie gesprek nie. Hy 20 sal dan dit ook so kon getuig het. 21 MR GOTZ: Again he says he did not take 22 the decision, which is inconsistent with the evidence that 23 you've given. 24 BRIGADIER CALITZ: Nee, mnr die 25 Voorsitter, ek het nie –</p>
<p style="text-align: right;">Page 20802</p> <p>1 there were two things that you hadn't planned for, for 2 which you can't be held responsible. The one was that the 3 barbed wire was uncoiled sequentially and not 4 simultaneously, and you realised that if that was done 5 sequentially, you've dealt with this with Mr Chaskalson, 6 there would be problems that you were intending to prevent 7 by having it done simultaneously." Colonel Scott says, 8 "Yes." And then the Chairperson says, "And the second 9 thing is you didn't know that the Nyala – is it Nyala 6? – 10 had been moved," at which point Colonel Scott says, "I was 11 aware, I saw a photograph, Chairperson. I didn't take the 12 decision, but I was aware that it had been moved because 13 I'd seen a photograph of the deployment on the ground." 14 Would you agree with me, Brigadier, that what 15 Colonel Scott is saying is that he became aware of the 16 movement of Nyala 6 after seeing a photograph of its 17 changed position? He didn't take the decision, appears to 18 reflect that he has no awareness of who took the decision, 19 and we've scoured the evidence; he doesn't talk at all 20 about this telephone conversation that he has with you. 21 BRIGADIER CALITZ: Ja-nee, ek sien hy 22 verwys glad nie na 'n telefoongesprek hier nie. Ek sien 23 ook hy sê dat "I didn't take the decision, but I was aware 24 that it had been moved because I'd seen a photograph of the 25 deployment on the ground." So my afleiding van wat ek hier</p>	<p style="text-align: right;">Page 20804</p> <p>1 CHAIRPERSON: Sorry to interrupt you, Mr 2 Gotz, I'd like to ask a question about that. Do you know 3 how the JOC worked? Was Colonel Scott a free agent in the 4 JOC who could make decisions on his own? If a decision was 5 made would it have been a decision of the participating 6 people in the JOC or might it have been a decision of 7 General Annandale, who was the chairman of the JOCCOM? 8 Would Colonel Scott have been in position, while sitting in 9 the JOC, to make decisions on his own? 10 BRIGADIER CALITZ: Nee, glad nie, mnr die 11 Voorsitter. Dis wat ek probeer getuig het voorheen, dat 12 indien dit inligting is in 'n JOCCOM, dit is wat ons verwys 13 die CJOC, die "commander van die JOC wat dan die "overall 14 commander" is, sal in daardie JOC geposisioneer wees. U 15 verwys na die "chairperson" van die JOCCOM vergaderings, 16 maar die "overall commander" dan ook wat teenwoordig is. 17 Kolonel Scott het nie 'n, soos u dit stel 'n "freelance" 18 carte blanche om "decisions" te maak nie, nee. Dit sou 19 definitief bespreek gewees het en dan sou terugvoer gegee 20 gewees het. 21 MR GOTZ: But oddly Scott doesn't say 22 'The matter was discussed in the JOC, I was integrally 23 involved in that discussion.' And he certainly doesn't say 24 that post that discussion he telephoned you and 25 communicated either his decision or the decision of the JOC</p>

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1 to you.

2 BRIGADIER CALITZ: Ja, ek sien glad nie

3 dat hy verwys na die gesprekke wat ons gehad het, of

4 daaroor nie, en soos ek getuig het, ek weet nie datum

5 iemand hom miskien ondervra het daarop nie. Ek kan nie vir

6 u daar help nie.

7 MR GOTZ: The consequence, Brigadier, is

8 that your evidence on this score is not confirmed by what

9 Colonel has to say on the subject.

10 BRIGADIER CALITZ: Ja, ek dink die

11 teendeel is ook waar dat hy dit, nie daaroor praat nie. So

12 dis ook nie, nie so nie. Ek dink die bewyse wat ons het op

13 die tafel is die selfoon rekords wys vanself dat daar wel

14 gesprekke was. Hoekom hy nie na die selfoongesprekke

15 verwys het nie sal ek nie weet nie, en dan die VB tye en

16 die skuif van die JOC, so die voorvalleboek is oopgemaak en

17 dit is van my af aan hulle gerapporteer, so volgens my is

18 die bewyse op die tafel.

19 CHAIRPERSON: Tell me, who is the

20 commander of Nyala 6?

21 MR GOTZ: Chair, on your file –

22 CHAIRPERSON: It may be in Mr Gotz'

23 document –

24 MR GOTZ: On your file there's a document

25 which has already been made an exhibit; it's one of the

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1 JJJ-series and it's in your file headed "STF." The exhibit

2 is headed in, is called "Nyalas" where you'll find, I think

3 on page 3 of that document, reference to the personnel who

4 were deployed in Nyala 6. The commander was either Mhlongo

5 or Malatsi, but I can't remember which –

6 CHAIRPERSON: No, I found the exhibit.

7 It's under tab 5 of the file that you gave us and Nyala 6,

8 the commander was Lieutenant Mhlongo, apparently, if the

9 document you gave us is correct, Mr Gotz.

10 MR GOTZ: This is a police document, the

11 one that you're looking at, Brigadier. It is prepared by

12 SAPS, as I understand it.

13 BRIGADIER CALITZ: Ek glo so, waar die

14 dokument, ek dink die JJJ is ook ingehandig as 'n

15 bewysstuk.

16 CHAIRPERSON: There's no, as far as I can

17 see there's no record of any telephone conversation between

18 anyone in the JOC on the one hand and Lieutenant Mhlongo on

19 the other, so there's no direct communication it would

20 seem, between – unless by radio, I suppose, but certainly

21 not by cell phone between the JOC and Nyala 6. So the

22 likelihood I take it is it would have been through you

23 because you were after all the operational commander. Is

24 that correct?

25 BRIGADIER CALITZ: Daardie kommunikasie

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1 het ek getuig, mnr die Voorsitter, was na my toe gewees,

2 soos ek verwys het in my getuienis, ek dink ek het gesê die

3 drywer wat dan aan die "commander" gerapporteer het. Die

4 "commander" het gekom en dan ook daardie dreigement. Ek

5 het dit JOC toe verwys en daarna het ek met Kolonel

6 Makhubela die her-posisieonering van Nyala 6 bespreek in

7 detail. So dit is hoe dit -

8 MR GOTZ: How did you communicate with

9 Makhubela?

10 BRIGADIER CALITZ: Fisies op die grond,

11 na die voertuig toe geroep en dan het ons dit bespreek en

12 hy het dan daardie persone gaan, die Nyala skuif.

13 MR GOTZ: Brigadier, quite apart from the

14 inconsistencies in the evidence in relation to this matter

15 between you and Colonel Scott, there's something I don't

16 quite understand and perhaps you can assist me. We

17 understand from the occurrence book, and I think you may

18 have testified to this as well, is that at 11:45 you called

19 for reinforcements, as it were, and it was at that stage

20 that five additional Nyalas arrived at the scene. Perhaps

21 you can go to the occurrence book, FFF25, on page 24, and

22 the item number 1002. You'll see at 11:45 JOC reported to

23 Brigadier Calitz that the posting must change to holding

24 area 1 – sorry, must change to holding – sorry, must change

25 too, holding area 1 are posting one Nyala to Papa1 and

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1 holding area 2 posting four Nyalas to Papa1 for assistance,

2 and it's at this point that the five additional Nyalas are

3 sent to the scene, correct?

4 [10:17] BRIGADIER CALITZ: Ja, dit is omtrent

5 daardie tyd, ek het daarna verwys in my verklaring,

6 paragraaf 84, net omtrent met die skuif van Nyala 6 het

7 daar 'n groepering inbeweeg agter na die kraal toe, na die

8 rigting van Nkaneng en dat ek nie visie gehad het op

9 daardie noordelike rigting nie en dit is waar ek ingeroep

10 het vir die reserve groep om dan my te kom bystaan.

11 MR GOTZ: Now, Brigadier, if you had

12 thought that Nyala 6 was isolated or being threatened, all

13 you needed to do was use or deploy one or two or even more

14 of the additional Nyalas that you have received in order to

15 protect it, surely?

16 BRIGADIER CALITZ: Nee, ek stem glad nie

17 saam met u nie, operasioneel werk dit nie so nie.

18 MR GOTZ: Well, what were the additional

19 Nyalas being sent to the scene to do?

20 BRIGADIER CALITZ: Dit is duidelik in die

21 voorligting en in die plan, wat elkeen van daardie Papa

22 Nyalas se pligte was.

23 CHAIRPERSON: You see the point is that

24 you changed, there was a change. What this entry that Mr

25 Gotz has referred to you says, is JOC reported to Brigadier

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1 Calitz that the posting was changed to, and this is now the
2 change, holding area 1 posting one Nyala to Papa1 and
3 holding area 2 posting four Nyalas to Papa1 for assistance.
4 So there is now a change, it is a change that emanates from
5 the JOC and it involves sending one Nyala from holding area
6 1, it is one of Naidoo's Nyalas, I take it, and four Nyalas
7 had been sent from holding area 2, to you for assistance.
8 Now can you remember what exactly was that about, why was
9 there this change, what prompted this change in the posting
10 that was called?

11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 dankie, dit is wat ek getuig het nou net in my paragraaf 84
13 van my verklaring en as ons met hierdie miskien net sou kon
14 opgaan na inskrywing 1,000 toe, ekskuus, twee inskrywings
15 op, sal u sien daar sê ek, "Papa1 reported that the group
16 of people deployed themselves at the back of the police
17 vehicles." In my paragraaf 84 het ek gesê, "At the same
18 time," met ander woorde toe ons Nyala6 geskuif het, "I
19 observed a small group of the militant group, 2 to 300 men
20 breaking away and moving towards the kraal in the direction
21 of Nkaneng. At this moment I contacted the JOC requesting
22 them for support or the reserve group to assist me. The
23 JOC then sent the four Nyalas and one Casspir, the
24 personnel to take up position similar to the one they took
25 up the day before."

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1 U sal onthou die vorige dag, die 15de het ons 'n
2 soortgelyke challenge gehad waar daar ook 'n groep beweeg
3 het by die klein kraal, by Nkaneng bymekaar gekom het. So
4 dit is waar, as ek nou sê my Nyala gestaan het op my,
5 vieruur, op my regter agterkant en daar is nie 'n lyn nie,
6 dit is waar die TRT lyn op gevorm het, kan ek sê die punt
7 van daardie voertuig, so dit is waar die reserve forces
8 ingeroep was en ge-deploy was nadat ek gesien het daar
9 is 'n beweging in daardie rigting.

10 MR GOTZ: I do want to put in the light
11 of that answer, Brigadier, and I would have taken you to
12 this paragraph, I do want to put this to you, that the far
13 more plausible explanation for the movement of Nyala 6 was
14 to better accommodate the way in which people were moving
15 to and from the koppie from Nkaneng.

16 BRIGADIER CALITZ: Ek verstaan nie u
17 vraag nie, sê weer?

18 MR GOTZ: You accept that people were at
19 that point in time moving between Nkaneng and the koppie,
20 they were using the road past the kraal, correct?

21 BRIGADIER CALITZ: Ja, nee, ek het vir u
22 getuig daaroor, die getuienis is op die tafel, die heel dag
23 het die persone nie net daardie pad nie maar ook ander
24 rigtings gebruik.

25 MR GOTZ: And as a consequence of that

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1 additional Nyalas were brought in and positioned as it were
2 in the L-shape, correct? That's what you've just testified
3 upon.

4 BRIGADIER CALITZ: Praat u van die
5 reserve forces wat ingebring is?

6 MR GOTZ: Yes.

7 BRIGADIER CALITZ: Nee, ek dink nie u
8 verstaan nie. Mnr die Voorsitter, wat ek getuig het is dat
9 nadat ons Nyala 6, die skuif van die Nyala, toe het daar 'n
10 groep van die militante groep ombeweeg en 'n fisiese groep
11 gevorm, kan ek sê by daardie kraal gedeelte en dit is waar
12 dan ek gesien het die persone is besig om op te vorm aan
13 die agterkant. So hoekom ek daardie voertuie opgeroep het
14 is, die reserwe mag, dat hulle vir ons kan monitor presies
15 wat hulle die Woensdag gedoen het en dit is waar hulle vir
16 ons gemonitor het in die rigting van die kraal na die
17 noordelike kant toe, as ek dit so kan stel.

18 MR GOTZ: But, Brigadier, I'm not sure
19 that you're not agreeing with my proposition, I'm saying to
20 you that it is a plausible explanation that Nyala 6 was
21 moved back to the kraal because of the way in which the
22 protestors were moving to and from Nkaneng and the koppie
23 along that road.

24 BRIGADIER CALITZ: Nee, mnr die
25 Voorsitter, dit was nie die doel gewees hoekom Nyala 6

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1 geskuif was nie and –

2 COMMISSIONER HEMRAJ: Is that
3 proposition, Mr Gotz, is born out by photograph L160, the
4 position of Nyala6 on that photograph, is that the
5 proposition that you're putting born out by the position of
6 Nyala6 on that photograph?

7 MR GOTZ: It is indeed, Commissioner
8 Hemraj, because you'll see that the position, the ultimate
9 position of Nyala 6 accommodates the movement of people to
10 and from Nkaneng down the road to Nkaneng.

11 COMMISSIONER HEMRAJ: Is Nyala 6 an
12 impediment to that movement as it was placed on L160?

13 MR GOTZ: Well, perhaps we should ask the
14 brigadier that question, I would suggest not. Brigadier?

15 BRIGADIER CALITZ: Wat is die vraag?

16 MR GOTZ: When Nyala 6 is moved back to
17 form the L-shape, is there any impediment to the movement
18 of protestors or strikers from the koppie down the road to
19 Nkaneng?

20 COMMISSIONER HEMRAJ: No, we're at cross
21 purposes. Your question was that, you put the proposition
22 that Nyala 6 was moved to accommodate the movement of the
23 strikers and what I'm putting to you is, the position of
24 Nyala 6 in L160, is that an impediment to that movement of
25 strikers?

<p style="text-align: right;">Page 20813</p> <p>1 MR GOTZ: Well, you will see, Brigadier, 2 that effectively once, when Nyala 6 is in this position, in 3 the crescent position, in order to get from the koppie down 4 the road to Nkaneng and indeed back again they have to pass 5 between Nyala 6 and Nyala 5, breaking as it were a police 6 line. 7 BRIGADIER CALITZ: Die voetpad lei tussen 8 5 en 6, dit is korrek. 9 CHAIRPERSON: One sees that in slide 160, 10 - sorry, 190, of Exhibit L, one sees the position of Nyala 6 11 at what's described as 15:35 and also Nyala 5 at that time, 12 I think that's correct. So, Mr Gotz, what exactly do you 13 say were the police trying to achieve by moving Nyala 6 to 14 a position which we see on slide 190? 15 MR GOTZ: I'm making a very simple, I'm 16 putting a very simple proposition perhaps in not 17 particularly simple terms, that Nyala 6 was moved back to 18 that position to better accord with the plan that Colonel 19 Scott was drafting at that time and indeed ultimately 20 presented to the JOCCOM meeting at 1:30. 21 COMMISSIONER HEMRAJ: I'm so sorry, I 22 don't understand that, Mr Gotz? 23 MR GOTZ: At the time that you had the 24 discussion with Colonel Scott, Brigadier, he was preparing 25 the plan that he ultimately presented to the JOCCOM</p>	<p style="text-align: right;">Page 20815</p> <p>1 you remember you said that in relation to what happened on 2 the Tuesday, is that so? 3 So if it was agreed at the JOCCOM meeting six 4 o'clock in the morning on Thursday, that a contingency plan 5 would be drawn up for the contingency that the arms weren't 6 going to be laid down, the strikers were going to fight to 7 stay there and keep their arms, then the logical person to 8 draw up the contingency plan would have been Colonel Scott 9 I take it, that must be right, is that not so? 10 BRIGADIER CALITZ: Dit is korrek, mnr die 11 Voorsitter. 12 CHAIRPERSON: And did you expect him to 13 be working on that plan which had been agreed would be 14 drawn up while you were out there in the field in the 15 course of the morning on the 16th? 16 BRIGADIER CALITZ: Ja, nee, dit sal wees, 17 mnr die Voorsitter, want hulle het gesê sou daar enigets 18 verder wees, sou daar met ons gekommunikeer gewees het, so 19 - 20 CHAIRPERSON: Ja, he was supposed to be 21 drawing up a contingency plan according to you, is that 22 right? 23 BRIGADIER CALITZ: Dit is korrek, ek weet 24 nie of hy klaar dalk al opgestel was nie. 25 CHAIRPERSON: No, no, no, that's an issue</p>
<p style="text-align: right;">Page 20814</p> <p>1 meeting, correct? 2 CHAIRPERSON: Do you know if that's 3 correct? 4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 sover ek weet het hy daardie oggend al vir ons die fases en 6 die plan bespreek, so ten tye van die oproep kan ek nie vir 7 u sê waarmee hy besig - 8 CHAIRPERSON: In fact what you told us 9 was that, it is in your statement, that it was agreed at 10 the six o'clock JOC meeting, JOCCOM meeting, that a 11 contingency plan would have to be prepared to cater for the 12 following situation, that the intelligence reports might be 13 correct and the strikers might be unwilling to lay down 14 their arms and might in fact want to keep them and fight to 15 keep them if necessary, that's the first contingency, and 16 then in that event you would have to have a plan in place 17 to deal with the situation further to proceed to stage 3, 18 because stage 3, what you said in your statement, that it 19 was agreed at the six o'clock meeting that a contingency 20 plan would be drawn up to deal with that situation if their 21 arms weren't laid down. Now I think you've told us before 22 that information was given by various people so that, you 23 were talking about an earlier plan but it is the principle 24 that applies, you said information was given by various 25 people so that Colonel Scott could finalise the plan. Do</p>	<p style="text-align: right;">Page 20816</p> <p>1 that we've discussed with him, we don't have to discuss it 2 with you. 3 BRIGADIER CALITZ: Okay. 4 CHAIRPERSON: Now what Mr Gotz is putting 5 to you, he says that, he suggests to you that this move of 6 Nyala 6 was in effect part of, he says this is more 7 plausible, was in effect part of this new contingency plan 8 which Colonel Scott was drawing up, is that your point? 9 MR GOTZ: That's absolutely correct, 10 Chair. 11 CHAIRPERSON: Do you understand the 12 point? 13 BRIGADIER CALITZ: Ek verstaan, mnr die 14 Voorsitter, ja. 15 CHAIRPERSON: Alright, I'm interested to 16 hear your answer to it. 17 BRIGADIER CALITZ: Mnr die Voorsitter, al 18 wat ek vir u kan sê is, die Nyala 6 is geskuif aangesien 19 daar 'n dreigement op hulle gemaak is en gesê het hulle 20 moet dit skuif en ons het gesien dat hulle is in 'n 21 geïsoleerde posisie. Of dit in sy gedagtegang was om dan 22 dit in te sluit by sy, soos die voorsitter verwys het, die 23 contingency plan vir latere deployment, dit sal ek nie vir 24 u kan sê nie, maar die rede vir die skuif definitief was 25 oor die dreigement gewees volgens my.</p>

<p style="text-align: right;">Page 20817</p> <p>1 MR GOTZ: I understand that you say that 2 that was your perception but you – 3 CHAIRPERSON: Sorry, Mr Gotz, before you 4 carry on, Mr Semenya has put his light on, he wants to make 5 a contribution. 6 MR SEMENYA SC: Chair, the witness has 7 indirect evidence, the reason for the movement of the Nyala 8 was precipitated by the threat to it. Now Mr Gotz says it 9 is not that the more plausible reason you are doing it is 10 because you want to better facilitate movement of the 11 crowds. One, we don't have any evidence of that nature and 12 I don't know whether he is going to be bringing it. 13 CHAIRPERSON: I take it that he would put 14 this in the category of circumstantial evidence, he would 15 say he hasn't got direct evidence on the point but he will 16 argue that the Govern and Skidmore approach, this is a more 17 plausible inference from the fact. So I'll allow him to 18 ask the question but of course it must be clearly 19 understood, it is not based on direct evidence but merely 20 on an inference from facts which he will argue later. 21 MR SEMENYA SC: But happily, Chair, if we 22 can be given the facts on which that inference can sustain 23 we can be better able to deal with it. 24 CHAIRPERSON: Yes, that sounds a good 25 point. Mr Gotz, what do you say about that?</p>	<p style="text-align: right;">Page 20819</p> <p>1 and he says that he is going to argue at the end, as you've 2 heard, that the Nyala 6 didn't move because of threats but 3 because of, for the reasons he gave. Now do you agree with 4 that or not? 5 BRIGADIER CALITZ: Mnr die Voorsitter, 6 nee, die voorvalle boek inskrywings is baie duidelik, die 7 getuienis wat sal volg, ek glo van die Nyala6 se personeel 8 was duidelik, Kolonel Makhubela kan daarvoor kom getuig 9 wanneer hy kom, daar was 'n duidelike rapport van my na die 10 JOC toe op daardie stadium wat nie gefabriseer kon gewees 11 het nie, dit was om 11:20. U sê Nyala6 was na 12 geskuif, 12 daar is glad nie daardie evidence nie, so hy kon tussen 13 11:20 en dan die volgende foto wat ons hoor is 12:30, 14 geskuif gewees het. So ek sê die telefoon gesprekke is 15 daar, mnr die Voorsitter, die kommunikasie met die JOC was 16 daar, die terugvoer was daar gewees, hoekom Kolonel Scott 17 nie na sy telefoon gesprekke met my verwys het nie, ek weet 18 nie of hy ooit die vraag gestel is nie. Ek kan nie daarop 19 reageer nie. In kort ek verskil van u en ek sê die feite 20 is op rekord en op die tafel. 21 CHAIRPERSON: I think we have these 22 answer, Mr Gotz. 23 MR GOTZ: Yes. 24 CHAIRPERSON: Perhaps it might be – 25 MR GOTZ: I do want to simply put this</p>
<p style="text-align: right;">Page 20818</p> <p>1 MR GOTZ: Chairperson, that's precisely 2 the point that I've been dealing with. The point is, and 3 I've dealt with the available evidence, there is no 4 confirmation from Colonel Scott of this detail discussion 5 in relation to a threat, we've established that. There are 6 other alternatives available to the brigadier in order to 7 deal with concerns that he may have had about Nyala 6 being 8 isolated, including using one of the reserve force Nyalas 9 to back it up as it were. The inconsistencies in relation 10 to the timing of what Exhibit L suggests as well as what 11 the objective facts suggest in relation to the movement, 12 and the fact remains that there seems to have been no 13 urgency in relation to the movement of Nyala 6 but had been 14 threatened before 11 o'clock and certainly was not moved 15 before or after 12 o'clock. 16 CHAIRPERSON: Mr Gotz, I think the 17 witness now knows the facts and Mr Semenya knows the facts 18 upon which you rely for the inference, let's just get his 19 short answer to it, whether he agrees on the inference or 20 not and if he does we can move on and if he doesn't we can 21 move on. So how he responds to the suggestion, you see 22 what Mr Gotz is about, do you remember from Friday, was he 23 is contending that there weren't threats and your evidence 24 about the threats is all confused and contradictory and so 25 forth. Now this is part of that attack on your evidence</p>	<p style="text-align: right;">Page 20820</p> <p>1 because in response to – 2 CHAIRPERSON: No, I understand the 3 importance of the point, the only question is whether there 4 is any point putting further to this witness. If you think 5 there is an importance in putting it to the witness again 6 getting his answer you must carry on, but I'm rather 7 anxious that once this, all the points you need for your 8 argument are on record that we should move on. 9 MR GOTZ: I do want to put this to you, 10 Brigadier, that this seems to have been a significant move, 11 it had impacts upon the plan, there is not one item in the 12 occurrence book which reflects the movement of Nyala 6 or 13 reflects that a threat had been made on Nyala 6 and we will 14 argue in due course that that is highly significant and is 15 indicative of the fact that – 16 MR SEMENYA SC: No, Chair, again is Mr 17 Gotz going so far as to say Mr Noki did not approach Nyala 18 6? 19 CHAIRPERSON: It sounds like it, but 20 anyway let's just get the witness' answer to the point and 21 then we can move on I think. You've heard the extra point 22 Mr Gotz wants to make in this regard, Brigadier? 23 BRIGADIER CALITZ: Dit is korrek, mnr die 24 Voorsitter. 25 CHAIRPERSON: Now do you have any comment</p>

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1 to make on that?

2 BRIGADIER CALITZ: Ek kan net vir u sê

3 die VB inskrywings waarna ons verwys het, die voorvalle

4 boek inskrywings is duidelik. Ja, die lettertjie "6" was

5 uitgelaat by die Nyala maar daar is geen twyfel dat ons oor

6 Nyala 6 gepraat het nie.

7 CHAIRPERSON: Alright, so that's your

8 answer, is it?

9 BRIGADIER CALITZ: Ja, en ek wil net sê

10 dat daar kan nie, dit het geen, ek kan nie onthou wat was

11 die woorde wat hy gebruik het nie, influence op die

12 original plan, nee, glad nie, want ons sou nog steeds

13 daardie opening gebied gebruik het om uit te beweeg en dan

14 die waarskuwing te gaan gee op die persone, so dit het nie

15 sodanige effek gehad op daardie plan nie, nee.

16 CHAIRPERSON: I think we have your point,

17 Mr Gotz, I don't want to unduly stop you but I think we

18 have your point, I think we have your points on which you

19 will rely, we've got the commentary of the witness on them,

20 he doesn't agree with you, but we'll make up our minds on

21 the matter when we've heard all the arguments at the end.

22 MR GOTZ: Thank you.

23 CHAIRPERSON: It may be appropriate to

24 move to the next point after we've taken the tea

25 adjournment?

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1 MR GOTZ: Sure.

2 CHAIRPERSON: We'll take the tea

3 adjournment now.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [10:59] CHAIRPERSON: The Commission resumes.

6 Brigadier, you're still under oath.

7 ADRIAAN MARTHINUS CALITZ: Thank you.

8 CHAIRPERSON: Mr Gotz, you're now moving

9 on to another point?

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

11 Yes, Chairperson. Well, it's in fact a point that

12 straddles the two. I hope I won't be criticised for that.

13 Brigadier, you do accept that Mr Noki is not here to give

14 evidence, correct?

15 MR SEMENYA SC: No, really now –

16 CHAIRPERSON: Mr Gotz, that's a question

17 to which there can only be one answer, but Mr Noki is one

18 of the 34 deceased, so he's not going to give evidence.

19 BRIGADIER CALITZ: Dit is

20 vanselfsprekend, mnr die Voorsitter.

21 MR GOTZ: He can't come and contradict

22 the evidence that you may tender, correct?

23 CHAIRPERSON: [Microphone off, inaudible]

24 MR GOTZ: One of the ways in which the

25 Commission will deal with that concern, Brigadier, is we

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1 will argue by testing the veracity of your evidence in

2 relation to contemporaneous documents and evidence and the

3 consistencies between the versions presented by the various

4 witnesses who appear. You understand that, Brigadier?

5 BRIGADIER CALITZ: Ek hoor wat u sê.

6 MR GOTZ: Brigadier, let's move on to an

7 additional threat that you have testified about, and I'd

8 like to deal with this quickly. It's in paragraphs 91 and

9 93 of your witness statement. It's JJJ107, to remind those

10 – have you got it, Brigadier?

11 BRIGADIER CALITZ: Ek het paragraaf 90

12 tot daardie stuk, ja. You said from 90 to?

13 MR GOTZ: Yes. Now just to give some

14 context, you may look at previous, some of the previous

15 paragraphs and just confirm to me that the events that you

16 reflect in 91, 92 or 93, relate to a period just after Mr

17 Mathunjwa has given his first address at approximately

18 13:40.

19 BRIGADIER CALITZ: Dit is korrek. Dit

20 lyk of dit net daarna kan wees, ja. Ek het nie tye genoem

21 hier nie.

22 MR GOTZ: Yes, you don't, but we do know

23 that Mr Mathunjwa leaves the koppie at 12:25, and I'm

24 simply saying –

25 BRIGADIER CALITZ: Ja, ek dink daar is 'n

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1 voorvalleboekinskrywing gemaak, ek dink 12:12, het hy

2 gearriveer. Ek is seker dit is reg, ja.

3 MR GOTZ: I beg your pardon, I may have

4 said 12:25. I meant 1:25. So 13:25 –

5 CHAIRPERSON: I was on the point of

6 asking you about that. Yes, he correct himself; he said

7 12:25, he meant 13:25, Mr Gotz.

8 BRIGADIER CALITZ: Ek glo dit is, kan

9 gesien word, dit is korrek.

10 MR GOTZ: So what you say in this

11 paragraph is that Mr Noki and the group of five approached

12 the Nyalas again, demanded to know why the barbed wire was

13 on the carts. You again explained to them what the purpose

14 of the barbed wire was. "At that point he stated that we

15 must sign a piece of paper so that the world can see how we

16 kill each other. He threatened us today that we will day

17 and our vehicles will be burned," and then you say in

18 paragraph 93 that you informed him again through the public

19 address system that there was no intention of the police to

20 fight and they would resolve issues by talking, and then

21 you say "Mr Noki was very aggressive, walked off and waved

22 his hands backwards in a dismissive posture." First of

23 all, Brigadier, do you recall that Mr Noki, this was the

24 occasion where Mr Noki waved his hands dismissively? Is

25 this the occasion that you're referring to?

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1 BRIGADIER CALITZ: Dit is waaroor ek
2 reeds getuig het, dit is korrek.

3 MR GOTZ: Did Mr Noki do this every time
4 he approached the Nyala, or was this the only time that
5 he –

6 BRIGADIER CALITZ: Nee, ek dink in my
7 verklaring is dit die enigste plek waar ek daarna verwys in
8 hierdie geval.

9 MR GOTZ: You see, that's not what you
10 say in your evidence-in-chief because the transcript at
11 17212 –

12 CHAIRPERSON: [Microphone off, inaudible]

13 MR GOTZ: Chair, I have it at day 152, it
14 may be 153 and I apologise if I've got the days wrong.

15 CHAIRPERSON: [Microphone off, inaudible]

16 matter because the pages are all numbered consecutively.

17 MR GOTZ: It's 17212 –

18 CHAIRPERSON: So as long as you've got
19 the right page number we'll be alright.

20 MR GOTZ: If we can have that up on the
21 screen, it's either day 152 or 153, 17212.

22 CHAIRPERSON: What's the exact page
23 number you want?

24 MR GOTZ: 17212.

25 CHAIRPERSON: That's the one we now have

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1 before us on the screen. What line?

2 MR GOTZ: Well, let's look from line 6
3 onwards. Mr Semenya asks you, "When Mr Noki then tells you
4 he does not, or they do not want the police there, what is
5 your response?" You then say, "Mnr die Voorsitter,
6 deurentyd het die 'interpreter' vir hulle gesê dat die
7 polisie se teenwoordigheid daar is glad nie om geweld uit
8 te lok nie. Ons is 'peaceful'." And that of course
9 accords with what you say in some of paragraphs 91 and 92
10 and 93. You then say from line 14, "Dit is die doel van
11 die onderhandeling en ons het probeer die heeltyd daardie
12 kalm atmosfeer te skep, maar op daardie stadium wou hulle
13 dit glad nie meer – mnr Noki was, hy het 'ge-wave,' hy wou
14 glad nie meer met ons gesels nie en ek dink daarna het die
15 dreigement op Nyala 6 gekom." And the other passages in
16 your evidence-in-chief where you testify about this "Mr
17 Noki 'ge-wave' het" and every single time you do so it's
18 not in relation to a threat that occurs after Mr
19 Mathunjwa's address, but before the threat on Nyala 6, in
20 other words in relation to threat number 2. Now I'm
21 putting to you, Brigadier Calitz –

22 COMMISSIONER HEMRAJ: Mr Gotz, is that
23 correct? Because at 17230, page 17230 when he's describing
24 that dismissing waving over the shoulder, isn't that after
25 Mr Mathunjwa's visit?

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1 MR GOTZ: I apologise if I've missed
2 something, Commissioner.

3 COMMISSIONER HEMRAJ: [Microphone off,
4 inaudible] In response to the Chairman's question about
5 describing the gesture it appears at page 17230 and that's
6 definitely after Mr Mathunjwa's visit.

7 MR GOTZ: I apologise for that,
8 Commissioner. But I think the point is still good, subject
9 to that qualification. Here you're testifying about Mr
10 Noki "het 'ge-wave'" as part of threat number 2, but you've
11 just told us that on your recollection he only waved once.

12 BRIGADIER CALITZ: Nee, ek het verwys na
13 my verklaring. Ek sê, en ek dink in my verklaring het ek
14 verwys na die "dismissive posture" in paragraaf 93. Ek sê
15 dis die, dink ek is die eerste keer wat ek daarna verwys
16 het in my verklaring. Dit was wat ek vir u gesê het.

17 MR GOTZ: Must we take it that what's on
18 screen, the evidence that you gave at 17212 is not true
19 when it says, "Mnr Noki was, hy het 'ge-wave,' hy wou glad
20 nie meer met ons gesels en ek dink daarna het die
21 dreigement op Nyala 6 gekom."

22 BRIGADIER CALITZ: Ja, u is korrek, en
23 daarom is die woorde in lyn 18, "Ek dink daarna," so dit
24 was in daardie selfde tydperk gewees met Nyala 6. Die AMCU
25 se tydperk, dit was nie ure uitmekaar uit nie. So daarom

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1 ek die woordjie gesê het "dink" en dit nie as 'n
2 definitiewe feit gestel nie. Wat u verwys as na dreigement
3 2, glad nie. As u kyk na paragraaf 90, as ons miskien
4 teruggaan na die verklaring toe – ek weet nie, paragraaf 90
5 het ek verwys daardie dreigement waar die media "unsafe"
6 gevoel het, dit het ek verwys na dreigement. 91 nie 'n
7 dreigement nie, want u het gesê ek het so gesê. Dit was
8 nie. En dan daardie, die definitiewe dreigement in 92 het
9 ek ook gesê dit is dan die vierde en die vyfde dreigement.
10 Dit is die dreigement waarna ek verwys het.

11 MR GOTZ: Brigadier, absent this
12 aggressive wave that you describe in your evidence-in-chief
13 at 17212, the alleged threat number 2 is not really any
14 threat. All it is, is a statement that he would prefer you
15 not to be there.

16 BRIGADIER CALITZ: Nee, u is - miskien
17 verstaan u nie, of deurmekaar, of ek weet nie wat is die
18 regte woord nie. Ek het nou net vir u verwys die
19 "dismissive posture," verwysing 93, het na die dreigement
20 gekom waar hy duidelik gesê het "Sign a piece of paper,
21 we're going to kill each other," en daarop wou Kolonel
22 McIntosh dan vir hom sê "no intention" van die polisie se
23 kant af om te "fight," ons kan dit "resolve" deur te praat
24 en dan weer Kolonel McIntosh, "Once again requested them to
25 disarm," en dit is waarop hy dan weggestap het en sy hand,

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1 "posture ge-wave" het. So dit was na die dreigement 5
 2 gewees, getuig ek vir u.
 3 MR SEMENYA SC: Chair, I was just going
 4 to say we have been through this patch of evidence.
 5 CHAIRPERSON: Yes, I think that –
 6 MR GOTZ: I'll move on, Chair.
 7 CHAIRPERSON: It's appropriate to move
 8 on.
 9 MR GOTZ: I think –
 10 CHAIRPERSON: All the points you want to
 11 argue are on record and so we'll move on.
 12 MR GOTZ: Brigadier Calitz, looking for
 13 objective contemporaneous evidence which supports the
 14 allegations that you make in paragraph 91 and 92 and 93 of
 15 your statement, we looked at the occurrence book. The
 16 police occurrence book does not refer to this alleged
 17 threat at all, and can we look at –
 18 CHAIRPERSON: The point you make –
 19 MR GOTZ: - FFF25 –
 20 CHAIRPERSON: I'm sorry, Mr Gotz, I don't
 21 want to hamper you in your cross-examination, but haven't
 22 you made this point already?
 23 MR GOTZ: Well, Chairperson, in relation
 24 to threats number 2 and 3 there is no mention of a threat.
 25 There's a mention at 11:20 of an approach and a

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1 discussion –
 2 CHAIRPERSON: Yes, yes, didn't you make
 3 that point on Friday?
 4 MR GOTZ: I'm dealing with the next
 5 threats, which is the threats that he refers to in
 6 paragraphs 91, 92 and 93.
 7 CHAIRPERSON: Well, the simple point is
 8 you say they're not in the occurrence book. Would you
 9 agree with that, Brigadier?
 10 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 11 het nou nie die hele VB deur gelees, so as dit 'n uitlating
 12 was wat die persone die VB nie gemeld het nie, sal ek saam
 13 met u stem.
 14 CHAIRPERSON: You weren't making the
 15 notes in the occurrence book, but Mr Gotz isn't blaming you
 16 for that. What he's putting to you is that you agree that
 17 it wasn't recorded in the – these two threats weren't
 18 recorded in the occurrence book. The answer to that I take
 19 it is yes.
 20 BRIGADIER CALITZ: As dit nie daar gevind
 21 is nie, sal ek saamstem, mnr die Voorsitter, ja. Ek het –
 22 dis 'n hele lywige paar bladsye –
 23 CHAIRPERSON: That sounds like one of
 24 these conditional apologies. I apologise if I did anything
 25 wrong. We're not interested in a conditional apology. Is

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1 it there or isn't it? You've got the occurrence book in
 2 front of you, have you? Or the extract. Is there any
 3 entry there to which you wish to point to contradict what
 4 Mr Gotz is putting to you?
 5 MR GOTZ: You'll find the relevant times
 6 at entry 1010 through to 1014, Brigadier, page 24.
 7 BRIGADIER CALITZ: Ek sien so op bladsy
 8 24 en 25, daar word nie melding gemaak nie in die gedeelte
 9 wat u na verwys. Dit is korrek.
 10 MR GOTZ: Brigadier, not only is there no
 11 reference to this, what could be described as very serious
 12 threat, in the occurrence book, but there are two entries
 13 at the relevant time which you make, which seem to be
 14 inconsequential matters.
 15 CHAIRPERSON: This witness doesn't make
 16 entries. The entries are made by Brigadier Pretorius and
 17 those working under her in the JOC. So I think that
 18 question needs reformulation.
 19 MR GOTZ: Perhaps we should – there are
 20 two reports that you make at 13:40 and 13:56. It's "Papa1
 21 reported that there is a white sedan standing at the people
 22 and the driver is addressing the people, registration
 23 number of the vehicle is CDX826L," and then 1013, 13:56,
 24 "Papa1 reported that the water cannons arrived and will be
 25 water 1 and water 2." Brigadier, you'll agree with me that

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1 when you compare the alleged threat that you allege in
 2 paragraphs 91 to 93 of your statement, these reports are
 3 rather inconsequential matters. Correct?
 4 BRIGADIER CALITZ: Herhaal net die laaste
 5 deel van u vraag. Wat is u vraag?
 6 MR GOTZ: If the evidence –
 7 CHAIRPERSON: It's really a question for
 8 Brigadier Pretorius if she comes. This witness wasn't in
 9 the JOC. He wasn't recording things in the occurrence
 10 book. I don't think you can make – I can understand you
 11 can argue that an inference will be drawn that you didn't
 12 make a report because they reported relatively
 13 inconsequential stuff that what you're now saying was more
 14 consequential and wasn't reported, and therefore you say it
 15 didn't happen. I can understand the argument, that's an
 16 argument, but I mean I don't see how you can question him
 17 about what was entered and what wasn't entered because
 18 that's not a matter over which he has any control.
 19 MR GOTZ: Brigadier, let me simply put it
 20 in this way; given the fact that you are reporting these
 21 matters, which are I would say inconsequential when
 22 compared to a threat, and you don't report what could be
 23 regarded as –
 24 CHAIRPERSON: No, no, no, no, is that
 25 correct? He may well have reported a whole number of

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1 things. He may have reported six things. For some reason
 2 or other they may have only written down two. It doesn't
 3 follow he didn't make the other four reports. So you can't
 4 put it to him as a fact he didn't report them. You can
 5 question him about whether he did report them and that sort
 6 of thing, but this again is a question based upon an
 7 assumption that's not been established. So I think you
 8 should reformulate the question.

9 MR GOTZ: Brigadier, do you have a
 10 recollection of reporting this threat, and if not – well,
 11 let me ask, do you have a recollection of reporting this
 12 threat to the JOC?

13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 sover dit my aangaan, ja. Daar was gereelde kommunikasie
 15 gewees tussen ons en die JOC en soos die "negotiations"
 16 aangegaan het, selfs voor Kolonel McIntosh, was daar dan
 17 situasie rapporte deurgegee na die gesamentlike
 18 operasionele sentrum.

19 MR GOTZ: Brigadier, that's not answering
 20 the question directly, with respect.

21 BRIGADIER CALITZ: Yes.

22 MR GOTZ: I'm asking you do you remember
 23 reporting this threat, and what you said was generally
 24 information was being shared all the time. Do you recall
 25 specifically reporting this threat?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 2 kan nie nou vir u sê spesifiek hierdie dreigement in
 3 hierdie presiese woorde nie. Daar waar hulle wel vorentoe
 4 gekom het en gesê het die papier moet geteken word, hulle
 5 gaan ons, die "vehicles" gaan gebrand word, daardie tipe
 6 van kommunikasie is wel selfs met die, deur die
 7 onderhandelaars gerapporteer. So in kortweg dan, ja, maar
 8 ek kan nie vir u spesifiek verwys net na hierdie een toe
 9 dat ek dit onthou nie, nee.

10 MR SEMENYA SC: Chair, I –

11 CHAIRPERSON: I take it there's an
 12 overwhelming probability that you would have reported it
 13 and if you reported the arrival of the water cannons, which
 14 is presumably far less important than this threat, the
 15 probabilities are overwhelming you would have reported it
 16 although you say you can't specifically recall it. Is that
 17 the position?

18 BRIGADIER CALITZ: Dit is korrek, mnr die
 19 Voorsitter.

20 CHAIRPERSON: Alright, perhaps we can
 21 move on, Mr Gotz. Sorry, Mr Semanya.

22 MR SEMENYA SC: I was going to say for
 23 the record, Chair, though not in the same language, the
 24 interpreter of Lonmin makes mention of this as well.

25 CHAIRPERSON: Yes, yes, no, the

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1 questioning relates to the absence of the relevant entries
 2 in the occurrence book. That's the point. It may well be
 3 that once we have evidence or affidavits, perhaps
 4 relatively contemporaneous affidavits from those in the
 5 Nyala, that the point may assume less significance than it
 6 has in Mr Gotz' cross-examination, but the cross-
 7 examination is based simply on the absence of entries in
 8 the occurrence book, and the occurrence book speaks for
 9 itself, really, and I think the points have been made and
 10 you can argue them at the end, and I don't think we need
 11 spend much more time on them now. As I say, I don't want
 12 to hamper you, but I also don't want to encourage you to
 13 make points over and over again that are already before us
 14 as a matter of record by way of absence or presence in the
 15 relevant exhibits.

16 [11:19] MR GOTZ: I appreciate that, Chairperson.
 17 I wonder if I could just deal briefly with the Lonmin
 18 interpreter's statement because I do think there is some
 19 significance in that.

20 CHAIRPERSON: Well, the problem I have
 21 with that Lonmin interpreter's affidavit, it is, we don't
 22 know his name, I mean it may be a matter in issue, whether
 23 the absence of his name can be overcome in some way is
 24 something else but I'm not sure how one deals with an
 25 anonymous affidavit, so I'm not interested frankly at this

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1 stage in it being gone through. If at some stage it comes
 2 before us properly in a form we can deal with, then maybe I
 3 can let you come back and cross-examine on it if you wish,
 4 but this is not a trial, this is a commission but still one
 5 expects witnesses to be identified and one wants to know
 6 who they are and it is not fair to people whose evidence,
 7 it is not fair to people against whom the evidence is
 8 tendered to come along with anonymous statements because
 9 how do they deal with it? How do we evaluate it?

10 So I don't propose to let you waste our time at
 11 this stage on the affidavit but as I say maybe the
 12 situation may change later. Perhaps I could ask the
 13 evidence leaders, has that position changed, is that still
 14 an anonymous affidavit? I mean we happened to now from
 15 some evidence what the first name of the interpreter is, at
 16 least I assume we do, but even the document itself does not
 17 even mention the first name of the interpreter, never mind
 18 anything else. Has that position now being changed?

19 MR GOTZ: No, Chair, the position is
 20 still the same but we'll take it up with Mr Semanya.

21 CHAIRPERSON: Well, what Mr Semanya's, –
 22 this is really –

23 MR GOTZ: No, forgive me –

24 CHAIRPERSON: Mr Van As, but, - Mr Van
 25 As, are you ready to deal with the point now or must we

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1 wait for Mr Burger to come tomorrow?
 2 MR VAN AS: If we could wait for Mr
 3 Burger to come tomorrow it will be useful, Mr Chairman.
 4 CHAIRPERSON: Yes, you're possibly unduly
 5 modest, Mr Van As, but never mind I hear what you're
 6 saying. Carry on, Mr Gotz, you can ignore the affidavit at
 7 the time being. I'm not sure if it can be described as an
 8 affidavit if we don't know who the deponent is, so let's
 9 concentrate on more material evidence.
 10 MR GOTZ: Chair, subject obviously to the
 11 reservation of rights that you've permitted, that I am
 12 permitted to once it does become clear.
 13 CHAIRPERSON: Ja.
 14 MR GOTZ: Brigadier, can we deal briefly
 15 with the next threat and I do want to deal with this
 16 briefly because you have given evidence in relation to that
 17 before. Can we turn to paragraph 108 of your statement?
 18 You say in that statement, "As the first barbed wire was
 19 deploying Mr Noki approached my Nyala. He was very
 20 aggressive and said again that we will die," and then at
 21 the end you say, "Mr Noki said that he will not return to
 22 us and he went back to the strikers." Now you'll recall
 23 that you were cross-examined at some length on this alleged
 24 threat by the evidence leaders and the propositions that
 25 were being put to you was that version is inconsistent with

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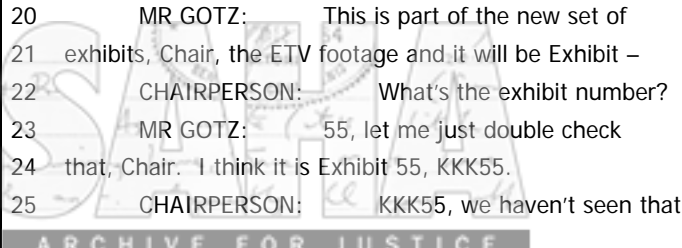
1 what is said in earlier versions, in other words the pre
 2 Roots versions of Exhibit L where –
 3 CHAIRPERSON: No, no, not pre Roots
 4 versions, early Roots versions, I think. Exhibit L was put
 5 together at Roots over a period of time and various drafts
 6 of the presentation have become available and it appears
 7 from the earlier drafts that this version was slightly
 8 different. It is not pre Roots, it is actually at Roots.
 9 MR GOTZ: Yes, I don't want to cover that
 10 ground again, Chair, we will obviously –
 11 CHAIRPERSON: I'm proposing not to, I
 12 wasn't proposing to let you, it is before us already.
 13 MR GOTZ: I was simply reminding the
 14 witness of the context. Brigadier, there is a video clip
 15 which is on the new ETV footage which, if one has regard to
 16 the sequence of events is, apparently of this moment where
 17 Mr Noki says whatever says to you in the Nyala.
 18 CHAIRPERSON: Is not being put in exhibit
 19 before?
 20 MR GOTZ: This is part of the new set of
 21 exhibits, Chair, the ETV footage and it will be Exhibit –
 22 CHAIRPERSON: What's the exhibit number?
 23 MR GOTZ: 55, let me just double check
 24 that, Chair. I think it is Exhibit 55, KKK55.
 25 CHAIRPERSON: KKK55, we haven't seen that

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1 yet?
 2 MR GOTZ: Yes, Chair, it is the –
 3 CHAIRPERSON: For housekeeping purposes
 4 you referred to it and we gave it a number?
 5 MR GOTZ: We did refer to that.
 6 CHAIRPERSON: So do you want to show it
 7 to us now?
 8 MR GOTZ: It is a small, it is 8 seconds
 9 of the clip.
 10 CHAIRPERSON: Well, I think, how long it
 11 is, do you want to show it to us?
 12 MR GOTZ: Yes, please.
 13 CHAIRPERSON: Alright, let's see it and
 14 he is speaking in probably an amalgam of Zulu and Xhosa, I
 15 should imagine, but we have a translation I believe, is
 16 that correct?
 17 MR GOTZ: No, Chair, the piece that I
 18 want to show is showing Mr Noki. In the sequence of the
 19 footage it comes after Mr Mathunjwa's second address and so
 20 one can conclude that it is likely to be Mr Noki talking to
 21 Brigadier Calitz after Mr Mathunjwa's second address. So
 22 can we play from 10:55 –
 23 CHAIRPERSON: We'll get there, what you
 24 handed us this morning at Chambers is a document which is
 25 now being put in the bundle. It is headed "Marikana" and

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1 then it proceeds, "workers singing, AMCU leader power."
 2 That's the translation as I understand it of those portions
 3 of Mr Mathunjwa's second address which is on the video, is
 4 that correct?
 5 MR GOTZ: That is correct, Chair.
 6 CHAIRPERSON: And on the second page
 7 there is a reference to man 1, and then man in the crowd
 8 and then man 2. Is this relevant in respect of what we're
 9 now going to listen to, or is it an extra piece that's not
 10 translated?
 11 MR GOTZ: No, if we show the clip you'll
 12 see why I say this, Chair. The document that you're
 13 referring to right now is not relevant to this piece of the
 14 cross-examination.
 15 CHAIRPERSON: No, I understand that.
 16 MR GOTZ: That will become relevant in
 17 five minutes' time.
 18 CHAIRPERSON: Yes, but are we going to
 19 hear Mr Noki saying something?
 20 MR GOTZ: No.
 21 CHAIRPERSON: I see, so we don't need a
 22 translation of anything, we're just going to see his –
 23 MR GOTZ: Absolutely –
 24 CHAIRPERSON: - his posture and his
 25 gestures and his bearing, that kind of thing?



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1 MR GOTZ: Absolutely.

2 CHAIRPERSON: Alright.

3 MR GOTZ: Can we play from 10:55?

4 [VIDEO SHOWN]

5 BRIGADIER CALITZ: Mnr die Voorsitter,
6 kan ons dalk net die tyd kry van, die tye wat u vir my gesê
7 het op Vrydag u sal dit deurgee, die translation? Ek het
8 dit Sondagaand gekry en ek het net die een bladsy
9 transcript –

10 CHAIRPERSON: No, no, no, Brigadier, you
11 weren't listening to the exchange between me and Mr Gotz.
12 Apparently after the bit that Mr Mathunjwa says, the man in
13 the crowd and that man 1 and man 2 say, on the translation
14 we got, after that we apparently are going to see Mr Noki.
15 We are not going to hear him speak, so we can't get a
16 translation of anything he is saying, we'll just be expect,
17 as I understand Mr Gotz, to look at him and see his bearing
18 and his gestures and that kind of thing, is that correct,
19 Mr Gotz?

20 MR GOTZ: That's absolutely correct, Mr
21 Chair.

22 CHAIRPERSON: Alright, so you don't need
23 a translation, there isn't one because he is not going to
24 say anything. We're just going to watch him, I don't know
25 whether he is going to wave or what he is going to do, but

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1 we're going to see that in a moment, alright?

2 BRIGADIER CALITZ: Nee, dit was maar net
3 my versoek, mnr die Voorsitter, ek dink dit was 'n 29
4 minute clip, toe wou ek net geweet het by watter tyd het
5 dit begin, maar as dit nie belangrik is nie is dit reg.

6 MR GOTZ: Can we play the clip from
7 10:55, please?

8 [VIDEO SHOWN]

9 I'm wondering whether it is possible to add the
10 sound, because that is of some significance.

11 [VIDEO SHOWN]

12 Okay, sorry, can we go back to 10:55 which is the
13 start of where you see Mr Noki and play that with sound?

14 [VIDEO SHOWN]

15 Okay, we can stop there. Brigadier Calitz, just
16 a couple of observations, that does appear to be Mr Noki
17 leaning into a Nyala after Mr Mathunjwa has finished his
18 second address. Would you agree with that?

19 BRIGADIER CALITZ: Mnr die Voorsitter,
20 dit is wat ek nou nie kan, - ek kan vir u sê dit is mnr
21 Noki wat by ons was, ek kan nie vir u sê dit is after
22 second address nie, dit is hoekom ek gevra het die tye, die
23 video spring rond tussen twee aparte, dink ek 29 minute,
24 dan is dit 'n bietjie van hierdie en 'n bietjie van
25 daardie. So ek weet nie of dit in sequence is heeltemal

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1 nie, maar ek het nie 'n probleem, dit is mnr Noki en dit is
2 hoe hy met ons gekommunikeer het.

3 CHAIRPERSON: Sorry, Mr Gotz, before you
4 carry on, what you told me in Chambers was that this is
5 what was described as raw ETV material and we had asked the
6 media house, as far as it goes to October 2012, to give us
7 all their material because parts that hadn't been broadcast
8 but nevertheless, because they weren't news worthy might
9 contain information relevant for us and they undertook to
10 give it to us and unfortunately it wasn't all given to us
11 at the time, but what you also told, - what you said had
12 finally been given, but you also told me, if I understood
13 you correctly, was this raw material actually was taken by
14 two cameras. Did I understand that correctly?

15 MR GOTZ: Chair, let me explain, as I
16 understand it there were two ETV cameras on the scene.
17 Each camera was taking sequentially a series of shots.
18 Unlike the so called Al Jazeera footage where each sequence
19 or each shot is separated into a separate file, in relation
20 to this material it comes back to back as it were and so
21 what you're seeing here is a sequence of raw footage and in
22 the sequence, what the camera person has taken is, just
23 prior to this is the end of Mr Mathunjwa's address. The
24 photograph then of Mr Noki and then switching over to the
25 NI, to a shot of the NIU as they line up, does that make

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1 sense to you, Brigadier?

2 CHAIRPERSON: Before you ask him that,
3 when you said back to back, do I understand that this raw
4 material that's now available on this exhibit, this is
5 firstly of everything taken by the first camera?

6 MR GOTZ: Yes.

7 CHAIRPERSON: Followed by everything
8 taken by the second camera?

9 MR GOTZ: Yes.

10 CHAIRPERSON: And the second camera of
11 course was being operated while the first camera was being
12 operated, so that's why, so you have a sequence as seen by
13 the first camera and then effectively if Mr Chaskalson
14 could do this for us, you would have to put the clock back
15 and watch what's being shown by the second camera and the
16 times of the things shown by, recorded by the second camera
17 would coincide with those recorded by the first camera, do
18 I understand that correctly?

19 MR GOTZ: Chair, I suspect that may be an
20 impossible exercise because-

21 CHAIRPERSON: But it can be done?

22 MR GOTZ: Yes.

23 CHAIRPERSON: I suggested if Mr
24 Chaskalson can do it, but –

25 MR GOTZ: Yes –

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1 CHAIRPERSON: - notionally that's what's
 2 happening, is that right? Camera 1 is showing from second
 3 1 to second 200 and then camera 2 is doing the same, so
 4 what we see as we watch this is firstly camera 1 and then
 5 camera 1 stops and then we start with camera 2, back at the
 6 time when camera 1 started recording?
 7 MR GOTZ: No, Chair –
 8 CHAIRPERSON: Is that right?
 9 MR GOTZ: Then I'm not explaining it
 10 correctly.
 11 CHAIRPERSON: No, I don't understand,
 12 that's why I'm asking you.
 13 MR GOTZ: Okay, what's happening if one
 14 can imagine carrying around a movie camera is that the
 15 camera person is taking a shot of a particular scene. He
 16 then or she then decides, well, there is no longer anything
 17 of interest here and stops recording, then points it at a
 18 different scene and starts to record, but on the tape they
 19 will be sequential. It stops again and then starts to
 20 record, so even though it appears to be sequential –
 21 CHAIRPERSON: No, I'm sorry to interrupt,
 22 I think I now understand what happened.
 23 MR GOTZ: Yes.
 24 CHAIRPERSON: Camera 1 takes a series,
 25 records a series of events at intervals.

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1 MR GOTZ: Yes.
 2 CHAIRPERSON: But unlike some of the
 3 camera material or video material we've seen there isn't a
 4 sort of blank screen for a second or two, indicating the
 5 interval, it is just running on one after the other?
 6 MR GOTZ: Yes, indeed.
 7 CHAIRPERSON: But obviously it is
 8 sequential in the sense that there is nothing which see,
 9 which happens before things we've seen already. That's
 10 camera 1. Then at some point camera 1 stops, all the
 11 various events which camera 1 has recorded now stopped and
 12 camera 2 starts and camera 2 starts not necessarily at
 13 exactly the same time when camera 1 started but more or
 14 less and camera 2 works in the same way and we've also got
 15 bits and pieces one after the other, is that correct?
 16 MR GOTZ: Indeed, Chair.
 17 CHAIRPERSON: Okay, now the question is
 18 whether, I think the witness' problem is, he is not sure
 19 whether what we're now looking at which is Mr Noki standing
 20 on the front bumper, in other words of the Nyala looking in
 21 and talking, he is not sure whether that is after Mr
 22 Mathunjwa's address because Mr Mathunjwa's address for all
 23 we know may have been recorded by camera 1 and this may be
 24 the beginning of camera 2, recording something that
 25 happened earlier. I take it that is the reason for his

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1 question. Now can you give him the assurance that this is
 2 indeed something that took place after the Mathunjwa
 3 address which preceded it on the video? Do you understand
 4 the question?
 5 MR GOTZ: Yes, Chairperson. Brigadier,
 6 two points in relation to that. You do justify it to this
 7 clip, you see obviously Mr Mathunjwa's address to the
 8 striking workers. Just after this clip you see the NIU
 9 lining up. When did the NIU arrive on the scene?
 10 BRIGADIER CALITZ: Dit sal wees na die
 11 voorligting wat ons by forward holding area 2 gehad het.
 12 MR GOTZ: So it was after Mr Mathunjwa's
 13 second address, I mean after his first address?
 14 BRIGADIER CALITZ: Dit is hoekom ek u
 15 gevra het, as u net vir my die tyd kan gee van sy tweede
 16 adres, hoe laat hy daar was en dan kan ek die tyd miskien
 17 net neergeskryf het maar toe sê ons die tyd is nie
 18 belangrik nie en nou kom ons terug dat dit wel belangrik
 19 is, so as u miskien die tyd vir my kan gee van sy tweede
 20 adres kan ek u vrae beter antwoord.
 21 MR GOTZ: We have the second address as
 22 ending at 15:37:48 and if you wish –
 23 BRIGADIER CALITZ: Nee, maar ek bedoel
 24 wanneer dit begin het, toe hy hulle toegespreek het.
 25 MR GOTZ: That I'm afraid remains

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1 somewhat of a mystery, but it is certainly after three
 2 o'clock and we, so it will be after 15:00 and it will be
 3 before 15:37:48.
 4 BRIGADIER CALITZ: Na drieuur volgens u?
 5 MR GOTZ: But may I ask you the second
 6 piece of evidence in relation to this clip? Do you hear
 7 when you listen to it that there is a voice over a public
 8 address system saying, "media move back, media move back?"
 9 BRIGADIER CALITZ: Ek het dit wel gehoor,
 10 ja.
 11 MR GOTZ: That sounds very much to us
 12 like your voice, Brigadier?
 13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 die enigste hoe 'n mens met 'n public address system kan
 15 praat is as 'n mens voor sit in die voertuig want die
 16 luidspreker draad is omtrent 'n linaal lengte en daardie
 17 persone wat dan kommunikeer, so soos u reeds weet het ek –
 18 CHAIRPERSON: It sounds as if you say it
 19 wasn't your voice –
 20 BRIGADIER CALITZ: - regs agter gesit, ek
 21 wou net verduidelik.
 22 CHAIRPERSON: Okay, could we not see the
 23 relevant bits and then you can ask the questions? You and
 24 the witness are having a interesting conversation about
 25 what he has heard and you've seen, but the rest of us are

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1 in the dark, but you still haven't answered my question and
 2 my question is, can we be sure that what we are now looking
 3 at namely Mr Noki standing on the front bumper of the
 4 Nyala, looking in towards the occupants of the Nyala, that
 5 that happened after Mr Mathunjwa's address or is it
 6 possible that Mathunjwa's address is material recorded by
 7 camera 1 and this is material recorded early on by camera 2
 8 which may well have preceded the Mathunjwa address? That's
 9 the question I asked you and you haven't answered it yet.

10 MR GOTZ: Yes, Chair, I'm trying to by
 11 way of extracting evidence give reasonable comfort that
 12 this was after Mr Mathunjwa's second address and whether or
 13 not it is Brigadier Calitz's voice that says, "media move
 14 back, media move back," the words "media move back, media
 15 move back" can only in the sequence of events have related
 16 to the media being told to move back after Mr Mathunjwa's
 17 second address.

18 CHAIRPERSON: I'm not sure that it
 19 follows, but let's ask the brigadier and see whether he can
 20 help us. Brigadier, you have an advantage over me that
 21 you've seen this video clip or possibly these two video
 22 clips, is that right?

23 BRIGADIER CALITZ: Dit is korrek.

24 [11:39] CHAIRPERSON: The answer to that is
 25 obviously "yes". Now what I want to know from you is, the

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1 remark "media move back, media move back," whether it's
 2 your voice or not I'm not interested. Can you remember
 3 whether that was said before or after Mr Mathunjwa spoke?

4 BRIGADIER CALITZ: Ek het dit vir die
 5 eerste keer gehoor toe ons na die video's kyk, mnr die
 6 Voorsitter, so dit kan die Nyalas aan die linkerkant of,
 7 wees wat ook met hulle gepraat het. So dit is, ek kan nie
 8 vir u duidelik sê hoe dit oor die "public address system"
 9 is nie. Wat ek weet die enigste kommunikasie met die media
 10 wat ek van bewus was Kaptein Adriaio gewees wat na die
 11 voorligting wel met die media 'n gesprek gehad het en vir
 12 hulle verduidelik het wat gaan volg.

13 CHAIRPERSON: That was before Mr
 14 Mathunjwa's second address, wasn't it?

15 BRIGADIER CALITZ: Dit was na ons
 16 voorligting gewees, 14:30 –

17 CHAIRPERSON: Your "voorligting," your
 18 briefing –

19 BRIGADIER CALITZ: Ja.

20 CHAIRPERSON: - was at half past 2.

21 BRIGADIER CALITZ: En ons is omtrent so 3
 22 uur terug, ja.

23 CHAIRPERSON: Ja, and it's in exhibit L,
 24 although we've been told we mustn't be too reliant on the
 25 accuracy of everything in exhibit L, but we won't go there

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1 now either. But as far as I can recall Captain Adriaio,
 2 we've seen a clip about it as well actually, Captain Adriaio
 3 spoke to the media and told them to move back.

4 BRIGADIER CALITZ: Dit is korrek, ja.

5 CHAIRPERSON: And they asked him some
 6 questions and so forth about that. Now what I want to know
 7 – if you don't know the answer, please say so – did that
 8 happen before or after Mr Mathunjwa's second address? I
 9 suspect it was before. I'll tell you why, because what
 10 appears from exhibit L is that pretty soon after Mr
 11 Mathunjwa's first address, a matter of a couple of minutes,
 12 the uncoiling of the wire began. So you people were
 13 waiting for Mathunjwa to finish. You didn't even wait to
 14 hear if he had anything to report. As soon as he, when he
 15 got in his car and he drove away and immediately the
 16 uncoiling started. Is that right?

17 BRIGADIER CALITZ: Dit is korrek, mnr die
 18 Voorsitter.

19 CHAIRPERSON: So therefore that makes it
 20 appear as if the "Media move away," or whatever the
 21 expression was, that in all probability occurred prior to
 22 Mathunjwa's second address.

23 BRIGADIER CALITZ: Ja, ek kan net sê
 24 Kaptein Adriaio sou dit gedoen het nadat ons die voorligting
 25 gekry het by "forward holding area" 1 en dit sal na 14:30

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1 wees. Ek hoor mnr Gotz sê dat die tweede "address" was om
 2 15:00. Ek dink dit is egter bietjie voor dit, maar ek dink
 3 ons sal nog daarby kom. Daar was 'n voorvalleboek
 4 inskrywing.

5 MR GOTZ: Chairperson, we do in fact know
 6 with certainty what time Adriaio's address was because we
 7 have a clip of that.

8 CHAIRPERSON: I remember that –

9 MR GOTZ: It's exhibit JJJ194.05, which
 10 is – and the timing of that is 15:41:24, is the
 11 commencement of that clip. So the –

12 CHAIRPERSON: Oh, I see. So then in fact
 13 it was in that little gap between the end of Mathunjwa's
 14 second speech –

15 MR GOTZ: Indeed.

16 CHAIRPERSON: - and while he was driving
 17 away presumably, before the wire began to be uncoiled.

18 MR GOTZ: Indeed.

19 CHAIRPERSON: Is that right?

20 MR GOTZ: Chair, so if one looks at JJ –

21 CHAIRPERSON: You haven't answered me.
 22 Is that correct?

23 MR GOTZ: Yes, indeed, Chair. If one
 24 looks at JJJ194.05, the commencement time of that is
 25 15:41:24 and you'll see then Adriaio addressing the media,

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1 and so it does appear to us, Brigadier, that this event
 2 that we're looking at occurs just prior to 15:41:24 and in
 3 the period between Mr Mathunjwa leaving the scene at 15:37
 4 and this event, which is 15:41, there's a four-minute gap.
 5 CHAIRPERSON: Let's now do what I've been
 6 waiting for, for some time, and let's watch the relevant
 7 sections of the clip. I see that slide 189 of exhibit L
 8 gives the time, which is exhibit L time, which isn't
 9 necessarily the same as eTV time, but slide 189 talks about
 10 Mr Mathunjwa preparing to leave the scene, telling the
 11 people they'd die if they continue with their course of
 12 action, and then the media report something to Captain
 13 Adriaio and they then apparently withdraw, and that's all
 14 said to have happened round about 15:35. But anyway, let's
 15 look at this and let's see whether we can conclude on the
 16 probabilities that what Mr Gotz is putting to you is right,
 17 that this particular thing we're going to see happened
 18 after Mr Mathunjwa's second speech. I think that's the
 19 exercise we're busy with. Can we see the relevant clip, Mr
 20 Gotz? Would you direct us to what we must look at?
 21 MR GOTZ: Sorry, Chair, I simply want to
 22 make a very simple point in relation to this clip,
 23 Brigadier, and that is that you will agree with me that
 24 there is no evidence of aggression on the part of Mr Noki
 25 evident in this clip?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, hy
 2 staan – die "clip" is twee sekondes op hom dan gaan die
 3 kamera weg, so ek weet nie waar mnr Gotz daardie afleiding
 4 kan maak nie.
 5 MR GOTZ: In this clip, Brigadier –
 6 CHAIRPERSON: Mr Gotz to you.
 7 BRIGADIER CALITZ: Meneer –
 8 CHAIRPERSON: [Microphone off, inaudible]
 9 BRIGADIER CALITZ: Ek het gesê meneer.
 10 CHAIRPERSON: Do you want to say
 11 something?
 12 MR SEMENYA SC: No, Chair –
 13 CHAIRPERSON: Mr Semenya, I thought you
 14 had your light turned on.
 15 MR SEMENYA SC: Yes, I had my light on
 16 because you can't make, conclude the proposition which Mr
 17 Gotz is making –
 18 CHAIRPERSON: Alright, anyway –
 19 MR SEMENYA SC: - by looking at this
 20 still photo.
 21 CHAIRPERSON: I would like to look at the
 22 video and see it myself just so that I could – but I
 23 suggested to Mr Gotz that he let's that happen and he
 24 didn't want to. But Mr Gotz, it's your cross-examination.
 25 I've been trying to help you, but if I've been hampering

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1 you I can only apologise.
 2 MR GOTZ: Sorry, Chair, that was a
 3 preface to us showing the clip again. So can we simply
 4 move back a few seconds to 10:55 and show the clip from
 5 10:55 through to 11:03, and Brigadier, I'd like you to look
 6 out for evidence of aggression on the part of Mr Noki.
 7 [VIDEO SHOWN]
 8 BRIGADIER CALITZ: You can stop there.
 9 Mnr die Voorsitter, weereens wat ek gesê het, en ek weet
 10 nie of u dit voorheen gehoor het nie, u sê "Mr Gotz." Ek
 11 het gesê mnr Gotz –
 12 CHAIRPERSON: I'm sorry, I am told by Adv
 13 Hemraj that I didn't hear the word "mister" and –
 14 BRIGADIER CALITZ: Ek wou net die –
 15 CHAIRPERSON: I rebuked you unnecessarily
 16 and I withdraw the rebuke, but –
 17 BRIGADIER CALITZ: Dankie, mnr die
 18 Voorsitter, ek sal nie disrespekvol wees nie –
 19 CHAIRPERSON: I was surprised because
 20 you're normally very well behaved and you have indeed been
 21 well behaved, so let's not worry about that.
 22 BRIGADIER CALITZ: Dankie, mnr die
 23 Voorsitter.
 24 CHAIRPERSON: But Mr Gotz, what were we
 25 supposed to look at? We saw Mr Noki on the bumper, as it

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1 were, of this Nyala. We didn't see him leave. We only saw
 2 him for - how many seconds did you calculate?
 3 MR GOTZ: Well, Chair, it's to test the
 4 probabilities of the version that the Brigadier has put up
 5 and it's simply this; that Brigadier, you will accept that
 6 the place at that time, the scene was crawling with media –
 7 perhaps it's an inappropriate terminology, but there were
 8 many media people there, correct?
 9 BRIGADIER CALITZ: Daar was heelwat media
 10 teenwoordig, ja.
 11 MR GOTZ: And there were media personnel
 12 on the scene because first of all we know that from the
 13 fact that there's a video taken by eTV, but also from the
 14 audio which says that the media must move back, correct?
 15 BRIGADIER CALITZ: Daar was wel media op
 16 die toneel, dit is korrek.
 17 MR GOTZ: And I'm simply putting to you
 18 that if Mr Noki had displayed the level of aggression that
 19 you have testified about, the probabilities are
 20 overwhelming that this camera person would have videoed it,
 21 or that others would have picked it up.
 22 COMMISSIONER HEMRAJ: Mr Gotz, the
 23 aggression that you refer to in the evidence that's been
 24 described as him walking away and waving dismissively,
 25 exactly, are you referring to something else in his

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1 behaviour that was interpreted as aggressive while he was
 2 standing there talking through the porthole in the Nyala?
 3 MR GOTZ: So Commissioner, when the
 4 Brigadier testifies to the dismissive wave he is referring
 5 to the incident that occurs after Mr Mathunjwa's first
 6 address. What we're dealing with presently is the incident
 7 that allegedly – well, the incident that occurs after Mr
 8 Mathunjwa's second address and he describes it in paragraph
 9 108 of his statement, he says, the Brigadier says, "As the
 10 first barbed wire was deploying Mr Noki approached my
 11 Nyala. He was very aggressive and said again that we will
 12 die," and I'm simply testing the probabilities of that
 13 version with reference to the only piece of objective
 14 evidence that has been found.
 15 CHAIRPERSON: Okay, Mr Gotz, have I got
 16 it right? If what we saw indeed is after Mr Mathunjwa's
 17 second address, which I take it we can pro tem, as it were,
 18 accept, what this clip shows is that the witness's evidence
 19 – if that's correct – the witness's evidence that after
 20 Mathunjwa left and once the wire started being uncoiled
 21 Noki came back to the Nyala, climbed onto the bumper and
 22 spoke through some kind of porthole at the front to the
 23 occupants inside the Nyala. That seems to be what we saw.
 24 He's virtually stationery. There's hardly any movement.
 25 What he said, what his tone of voice was, we don't know

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1 from this piece of evidence. We don't see him getting off
 2 the bumper. We don't see him walking away and we don't see
 3 his posture and his bearing and so forth as he walks away.
 4 All we have is we see him on the bumper and we see him
 5 talking – or I presume talking because he wouldn't have
 6 gotten onto the bumper if he wasn't going to say something
 7 – talking into the Nyala to the occupants, and further than
 8 that we can't take it. Is that correct?
 9 MR GOTZ: Yes, but it's not insignificant
 10 that one doesn't see any aggression in the video, Chair,
 11 and that's all I'm putting to the witness.
 12 CHAIRPERSON: Now that we've seen it,
 13 it's a matter of – as you say correctly – objective
 14 evidence which we can evaluate in due course. Is there
 15 anything you want to put to the witness about it apart from
 16 what you've put already?
 17 MR GOTZ: Chair, not in relation to that
 18 matter, or in relation to that video. So that can be
 19 switched off. Brigadier, maybe I should just put –
 20 COMMISSIONER HEMRAJ: Before you move
 21 from that point, can I refer you to the evidence on page
 22 17258 where the Brigadier describes the aggression and the
 23 manner in which he spoke to them. He doesn't seem to
 24 suggest that there was any outward sign of aggression.
 25 He's describing it in, "He said aggressively to us."

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1 That's the evidence that's led in chief.
 2 MR GOTZ: Commissioner Hemraj, I'm simply
 3 referring to paragraph 108 of his statement where – I may
 4 have misread it, but the Brigadier appears to be saying
 5 that he was aggressive in his approach to the Nyala because
 6 he says –
 7 COMMISSIONER HEMRAJ: Yes, but I'm
 8 pointing out to you that in his evidence-in-chief the
 9 aggression is defined as the manner in which he spoke.
 10 CHAIRPERSON: [Microphone off, inaudible]
 11 point that even if it's in his approach, even if as he
 12 walked towards the Nyala his body movements indicated
 13 aggression, and then he got on the bumper and he spoke, and
 14 that's all we see. We don't see the approach in the clip,
 15 so the clip doesn't really help us on that, does it?
 16 MR GOTZ: That is correct, Chairperson.
 17 In a sense I'm trying to get the most holistic picture
 18 possible of the scene with reference to the objective
 19 evidence.
 20 CHAIRPERSON: Mr Gotz, I'm just looking
 21 at the passage to which Adv Hemraj referred us and it's
 22 "met aggressie weer gesê," you know, it was said again with
 23 aggression, but anyway, you've made the point that you want
 24 on record –
 25 MR GOTZ: I have. I –

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1 CHAIRPERSON: You've referred us to the
 2 clip and we have to form our own conclusions in the end,
 3 but anyway, you're now going to move on to your next point,
 4 are you? Which may be linked to this, but you're going to
 5 move on to it.
 6 MR GOTZ: Yes, Chair. Again I don't want
 7 to go through the evidence in relation to the prior
 8 versions of exhibit L. We will rely upon that evidence as
 9 well in the conclusion –
 10 CHAIRPERSON: He was asked about that by
 11 Mr Chaskalson, I think –
 12 MR GOTZ: He was indeed. Well –
 13 CHAIRPERSON: So there's no point in
 14 reploughing that ground, is there?
 15 MR GOTZ: In fact by Adv Budlender, but
 16 yes. Brigadier, on page 17260, in fact in 17261 line 4 you
 17 refer to this as the "sesde dreigement." It isn't quite
 18 clear to us what the fifth threat was, Brigadier. Was
 19 there a fifth threat? You refer to the incident after Mr
 20 Mathunjwa leaves after his first address as the fourth
 21 threat, and you refer to this as the sixth threat. What
 22 was the fifth threat?
 23 BRIGADIER CALITZ: Mnr die Voorsitter,
 24 die vyfde dreigement sal u vind in my – as ons kan bo, net
 25 u vraag kortweg antwoord, die vyfde een was in paragraaf 92

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1 waar ek gesê het, "At that point he stated that we must
2 sign a piece of paper so that the world can see we're going
3 to kill each other. He also threatened us that today we
4 will die and that the vehicles will be burned," waarop
5 Kolonel McIntosh maar net weer probeer het om hom kalm te
6 hou. So die vyfde een sal u vind in paragraaf 92 van my
7 verklaring JJJ107.

8 MR GOTZ: Sorry, Brigadier, are you
9 saying that in paragraphs 91 to 93, which we looked at
10 earlier, there are in fact two threats?

11 BRIGADIER CALITZ: Nee, ek het dit –

12 MR GOTZ: Threats 4 and 5.

13 BRIGADIER CALITZ: - voorheen ook vir u
14 gesê dat 91 was nie 'n dreigement nie. Dit was die doel
15 van die draad gewees. Ek het u verwys spesifiek na die
16 paragraaf bo dit en ek het dit gelees van die skerm af.
17 Die vierde dreigement was, "The media people had begun to
18 withdraw from the koppie and they felt unsafe amongst the
19 strikers and they felt something was about to happen." Dit
20 was gerapporteer deur die media. "He also said that the
21 media people said that the strikers showed them a long
22 firearm wrapped in a blanket." So daar het die media
23 onveilig begin voel en daardie dreigement het ons gesê dit
24 was as dreigement 4 gewees.

25 MR GOTZ: Brigadier, I really have

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1 misunderstood your evidence. Are you saying that the
2 evidence in relation to the media seeing certain things,
3 that that is considered to be a threat against the police?

4 BRIGADIER CALITZ: As u deel is van 'n
5 media groep en die groep wat, of sê ek is media en hierdie
6 groep vertoon vir my 'n lang vuurwapen en die media sê in
7 hulle eie woorde dat "They began to withdraw from the
8 koppie as they felt unsafe amongst the strikers. They knew
9 something was about to happen." So duidelik moes daar vir
10 die media gesê gewees het hier is 'n lang wapen, hier gaan
11 nou iets gebeur. So natuurlik is dit 'n dreigement na die
12 polisie toe. Dit kan, daar kan geen ander twyfel daaroor
13 wees na wie toe anderste die dreigement moes gewees het
14 nie.

15 MR GOTZ: But this is hearsay evidence as
16 well, is it not, Brigadier?

17 BRIGADIER CALITZ: Dis gerapporteer aan
18 Kaptein Adriaio en Kaptein Adriaio het dit aan my
19 gerapporteer –

20 CHAIRPERSON: Which makes it hearsay.
21 The short point is that there were, you say there were six
22 threats. The fifth one was one which you say was reported
23 to Captain Adriaio, he then presumably reported it to you.
24 So it's hearsay, but – oh, the fifth one is signing the
25 paper, so I've got it wrong. It's the fourth one that's

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1 the hearsay one via Captain Adriaio. Is that so? And it
2 was a threat, you say it was impliedly a threat to the
3 police because in the context who else could have been
4 threatened. Is that the way it was?

5 BRIGADIER CALITZ: Korrek, mnr die
6 Voorsitter.

7 CHAIRPERSON: Alright. Are you clear
8 now, Mr Gotz?

9 MR GOTZ: I'm clear now, but Brigadier,
10 can we just get the order correctly? Threat 1 that you
11 testify happens on the 15th. Threat 2 is something that you
12 said happened in the morning when Mr Noki came to your
13 Nyala. Threat 3 you say –

14 BRIGADIER CALITZ: Nee, mnr die
15 Voorsitter, kan ek miskien net u daar stop? Ek het gesê
16 daardie twee was dieselfde woorde van hulle soek ons nie
17 daar nie. So ek het dit as een beskryf, een dreigement.
18 Hulle soek ons nie daar nie op die 15de sowel as op die
19 16de. Dreigement 2 was dan die een in paragraaf 85 waar
20 AMCU, die dreigement, en die, as ek dan net deur dit kan
21 gaan, die derde een was gewees paragraaf 87 waar hulle my
22 videopersoneel gedreig het en gesê het dat hulle het hulle
23 herken as, ek dink die woorde was "police spies" en dat
24 hulle, hulle gaan doodmaak. So daardie was die derde
25 dreigement. Die vierde een was hoorsê wat hulle vir

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1 Kaptein Adriaio wel gesê het. Die vyfde een waar hy gesê
2 het ons moet die papier teken dat ons gaan doodgaan die dag
3 en dat die voertuie gebrand gaan word, en dan die laaste
4 een, ses, is 108 waar mnr Noki na ons toe kom en sê dat hy
5 kom nie weer terug nie, vandag word die – ek dink ons gaan
6 doodgaan en ook iets van "He's not returning again." So
7 dit is die ses waarna ek verwys het.

8 [11:59] MR GOTZ: Brigadier, I'm afraid that the
9 evidence is going to be somewhat confused but we do
10 understand what you were saying. I just want to point out
11 and place on record that you often refer to the third
12 "dreigement" as the approach to Nyala6, that's several
13 paragraphs, passages in the transcript where you say, "Ek
14 dink dit is die derde dreigement," but be that as it may.
15 Brigadier, it seems to me that at least two of those six
16 threats are, or your evidence is based on hearsay evidence.
17 It is hearsay evidence in other words.

18 MR SEMENYA SC: Chair, on this, there is
19 nothing hearsay about the reports being made, their
20 contents is a different issue.

21 CHAIRPERSON: Whether the report was
22 made, that's the fact, the truth which we're investigating
23 and this witness cannot on his own knowledge say that the
24 reports were made in respect of two of them. He can merely
25 say he was told that the reports were made, so I think

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1 that's in order, Mr Gotz, but haven't we got all the juice
2 out of this lemon that we can and shouldn't we move on to
3 another one?
4 MR GOTZ: Let me conclude with this,
5 Chair, I think it is in fairness to the witness, we must
6 say that we will argue that there are a large number of
7 inconsistencies in the evidence in relation to these
8 threats and we will argue in due course that the so called
9 threats have been exaggerated and that the Commission
10 should, - sorry, well, let me ask you to respond to that.
11 CHAIRPERSON: No, sorry, you didn't
12 finish your last sentence?
13 MR GOTZ: No, I didn't. Let me formulate
14 the question again, Chair, and I apologise, that there are
15 a large number of inconsistencies in the evidence that
16 you've given about these threats, would you like to respond
17 to that?
18 CHAIRPERSON: Didn't you ask him about
19 that on Friday? Didn't he get an opportunity to deal with
20 the inconsistencies and so on? Is there anything else you
21 want to add on the subject of the inconsistency? There are
22 some points that your statement doesn't quite correspond
23 with the occurrence book and there are other
24 inconsistencies, but do you want to add anything to that or
25 -

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
2 nee, ek kan net sê, net soos ek dit nou die laaste keer vir
3 u opgesom het, ek het u na my cover verwys, dit is presies
4 hoe dit was. As daar enige verskil is in die voorvalle
5 boek of Exhibit L wat dan nie deur my opgestel is, so dit
6 is nie my getuieis nie.
7 CHAIRPERSON: Yes, he also referred to
8 Colonel Scott's evidence, but anyway you say that, you're
9 not responsible for that, but anyway, that's your answer.
10 BRIGADIER CALITZ: Dit is korrek, mnr die
11 Voorsitter, ja.
12 CHAIRPERSON: The next question, Mr Gotz?
13 MR GOTZ: And, Brigadier, in addition we
14 will argue that the threats have been exaggerated in
15 circumstances where you know that Mr Noki cannot come and
16 give contrary evidence. Would you like to respond to that?
17 BRIGADIER CALITZ: Mnr die Voorsitter,
18 nee, ek dink die dreigemente, behalwe vir die twee wat aan
19 Kaptein Adriaos gemaak is deur die media is die res direk
20 aan my Nyala gemaak en ek dink daar sal ander persone wees
21 wat ook daarvoor kan getuig.
22 CHAIRPERSON: The problem I've got with a
23 question like the one you've asked is, you say they're
24 exaggerated. Now if I was the witness, I don't know how I
25 would deal with that. I can understand if it is suggested

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1 that A, B was said in fact and the witness says that what
2 was said by way of a threat was A, B, C, D, then you say it
3 was exaggerated because you added C and D, but you just put
4 it to him it was exaggerated. It leaves uncertain what you
5 say really happened and what you say constituted the
6 exaggeration and I know you got a problem that you haven't
7 got a client to give you instructions on this, I understand
8 that, so I'm not being critical, but from the point of view
9 of the witness, I'm not sure how a witness answers an
10 allegation that something that was exaggerated when it is
11 not clear to him what he is accepted as being correct and
12 what is said to be the so called exaggeration. Mr Semanya?
13 MR SEMENYA SC: Chair, what is also
14 unfair is to ascribe an improper motive on the witness
15 simply because Mr Noki is no longer alive. I don't think
16 there is a basis for that attack.
17 CHAIRPERSON: Mr Gotz, you've heard the
18 point I put to you and you also heard the point that Mr
19 Semanya puts to you, do you wish to reply?
20 MR GOTZ: Well, Chairperson, two points,
21 the first is that the basis for my proposition that at
22 least some of the threats are, alleged threats are
23 exaggerated relates to propositions that I put in and
24 tested in relation to his understanding of what a threat
25 it. So he calls certain things a threat when they are not

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1 threats. The -
2 CHAIRPERSON: That's not exaggeration.
3 If someone says something which isn't a threat and it is
4 then put that you are exaggerating the threat you're not
5 saying, no threat was made. What you were saying is, there
6 was a threat but you made it worse than it was. If you are
7 suggesting to him that in fact no threat was made then the
8 allegation that there was a threat is in fact incorrect,
9 not exaggerated, it is incorrect, but you put it on the
10 basis of exaggeration. Now of course it may be that in the
11 light of that you may want to reformulate the question.
12 Anyway, but that's my difficulty.
13 MR GOTZ: But I do take that point,
14 Chair, the further basis on which I was saying it was an
15 exaggeration related to the inconsistencies in the content
16 of the threats as they were reported, just by way of
17 illustration, in the early versions of Roots, which I
18 haven't dealt with, with this witness but which
19 nevertheless form the basis for that statement. Chair,
20 you're absolutely correct -
21 CHAIRPERSON: - exaggeration you know, if
22 there are two versions of a threat which is inconsistent
23 with each other, then you don't say the allegation of a
24 threat is exaggerated, you say, - well, I mustn't tell you
25 how to put your case, but then you say the story is

<p style="text-align: right;">Page 20869</p> <p>1 inconsistent and in the circumstances it can't be accepted 2 as correct, but it is not exaggerated. Exaggeration means 3 part is correct and part has been added but isn't correct, 4 that's the exaggeration but anyway, - 5 MR GOTZ: Chair, I accept that - 6 CHAIRPERSON: Or innocuous statements 7 being misinterpreted, that's again not exaggeration, that's 8 something else, anyway, but you accept the thrust of what I 9 put to you? Maybe the question about exaggeration in the 10 circumstances is not a happy one and should be withdrawn. 11 MR GOTZ: In the circumstances, Chair, 12 perhaps I can simply put this to the witness, that we've - 13 CHAIRPERSON: Mr Semenya says you've got 14 no basis for putting to the witness that he is dishonestly 15 trying to take advantage of the situation but he is 16 testifying against, in effect against a dead person who 17 can't come and answer. Now I know there is a lot of 18 authority for the proposition, that where the witness is 19 giving evidence against a dead person who can't reply a 20 particular degree of caution and so one is required, I'm 21 aware of the law in that regard, as I'm sure you are, but 22 that's one thing, but where you go further and say you are 23 dishonestly taking advantage of the situation that the dead 24 person can't come and give evidence against you, that's an 25 allegation, a serious allegation which shouldn't lightly be</p>	<p style="text-align: right;">Page 20871</p> <p>1 circumstances where Mr Noki cannot come and give contrary 2 evidence and I'm simply saying that there is - 3 CHAIRPERSON: No, you went further, you 4 suggested that he did that because he knew that Mr Noki 5 couldn't come and contradict it. That's my understanding 6 and that was the basis for Mr Semenya's objection and that 7 was not justified by anything before us. Look, I 8 understand the argument, you know there are a number of 9 cases including the decision of the Appellate Division, 10 which deal with the cautionary rule, if one can call it 11 that, that you must be careful when a witness is testifying 12 against a dead person who can't come and contradict him, 13 and those principles will obviously have to be applied, but 14 to go further and suggest that the witness is deliberately 15 exploiting that situation without anything to back it up, I 16 don't think is something that should be allowed to stand. 17 So I would suggest you withdraw that and carry on with your 18 next question. 19 MR GOTZ: Chair, I must place on record 20 that I have no recollection of making the allegation 21 directly, that he was exploiting the situation ever. If I 22 - 23 CHAIRPERSON: In that event you didn't 24 attempt to make it - 25 MR GOTZ: If I did make it, I -</p>
<p style="text-align: right;">Page 20870</p> <p>1 made unless there is a basis for making it, and Mr 2 Semenya's complaint is, you haven't got a basis for making 3 it. 4 So again that's a gratuitous kind of insult 5 you're making to the witness and I'm not sure it is 6 justified unless you've got something to rely on to 7 indicate that you are not guilty of what Mr Semenya says 8 you are. 9 MR GOTZ: Chairperson, two points, the 10 first is that in a sense withdrawing the statement and 11 reformulating it deals with the problem. If I need to deal 12 with the proposition, Chair, directly notwithstanding the 13 fact that the statement has been withdrawn, Chair, I've 14 been dealing with the basis of that proposition all 15 morning. The fact that there are various pieces of 16 objective evidence, now this is the second time I'm making 17 this point, various pieces of objective contemporaneous 18 evidence which simply do not bear out the allegations that 19 Brigadier Calitz makes, is a basis for saying that there is 20 a concern that he has given evidence, taking advantage of 21 the fact that Mr Noki cannot come and give contrary 22 evidence and I'm not sure that there is any concern with 23 that whatsoever. 24 The way that I formulated it was quite careful. 25 I said that the threats of being exaggerated in</p>	<p style="text-align: right;">Page 20872</p> <p>1 CHAIRPERSON: - but if you made it you 2 can withdraw it. 3 MR GOTZ: If I - 4 CHAIRPERSON: If you did it inadvertently 5 you can withdraw it. 6 MR GOTZ: If I did do so inadvertently I 7 do withdraw it. 8 CHAIRPERSON: Alright, well, I'm sure Mr 9 Semenya will accept that and even if he doesn't I tell him 10 he should. 11 MR GOTZ: Brigadier, we will also argue 12 and I think this is the follow up question, we will also 13 argue that on the basis of the objective evidence that this 14 Commission should be very reluctant to accept your evidence 15 that these threats were in fact made. Would you like to 16 respond to that? 17 BRIGADIER CALITZ: Mnr die Voorsitter, ek 18 kan maar net sê ek verskil van u, die feite is op die 19 tafel, die verklarings is daar, die bewyse is daar, so nee, 20 ek verskil van u. 21 MR GOTZ: Can we move on to a separate 22 topic entirely which is your interactions with Mr Mathunjwa 23 and I would like to refer to - 24 CHAIRPERSON: So are you moving on to a 25 new point?</p>

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1 MR GOTZ: Yes.

2 CHAIRPERSON: We'll take a comfort break.

3 MR GOTZ: Thank you, Chair.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [12:27] CHAIRPERSON: The Commission resumes.

6 Brigadier, you're still under oath.

7 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

8 die Voorsitter.

9 CHAIRPERSON: Mr Gotz, I fear you won't

10 be able to keep your promise to finish by lunchtime. It's

11 not your fault; there's been a fair amount of injury time.

12 But I do hope you'll finish before tea this afternoon, but

13 it depends obviously on the absence of further injury time

14 from now on.

15 CROSS-EXAMINATION BY MR GOTZ (CONTD.): I

16 think that will be doable, Chair. Brigadier, you have been

17 provided with a copy of a supplementary affidavit by Joseph

18 Mathunjwa, it's exhibit 46. Perhaps we can have that up on

19 the screen –

20 VOORSITTER: Dit is bewysstuk KKK46.

21 MR GOTZ: Exhibit KKK46. I beg your

22 pardon.

23 MR SEMENYA SC: Chair, I take it that

24 this document is being used like all other affidavits,

25 except with one distinction; Mr Mathunjwa has already come

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1 and testified.

2 CHAIRPERSON: Yes, yes, yes. No, that's

3 correct, but he does explain in paragraph 2 of the

4 affidavit that he only realised the relevance of the point

5 after the Brigadier had given evidence. Extra

6 considerations may well apply in evaluating the affidavit,

7 but it's not a basis for not admitting it. But an attempt

8 has been made by those producing the affidavits to lay a

9 foundation to get around the kind of objection that you –

10 MR SEMENYA SC: No, I accept it. I'm

11 merely indicating, Chair, that if the factual averments

12 become contentious it may very well precipitate us inviting

13 Mr Mathunjwa back into the witness box.

14 CHAIRPERSON: Yes. No, that is so.

15 MR GOTZ: Chair, perhaps we can cross

16 that bridge when we come to it. Let's see what Brigadier

17 Calitz's response is to the averments. Brigadier, I simply

18 want to put, I think in fairness to you, what Mr Mathunjwa

19 says in this affidavit, for your response. Can we look

20 first of all at page 2 of the affidavit, paragraph 3.

21 You'll see Mr Mathunjwa refers to a passage in his first

22 witness statement in which he states as follows, "When I

23 arrived at the koppie I made another attempt to engage with

24 SAPS. I spoke to a SAPS officer and asked who is in

25 charge. He referred me to a white SAPS officer who said

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1 that he was in charge. I said to the white SAPS officer

2 that I'm not receiving cooperation from the SAPS, that no

3 General was available, no management, no Provincial

4 Commissioner. The officer said to me that he would phone

5 General Naidoo. I waited and waited, but he did not come

6 back." And then as you see in paragraphs 4 through to 7

7 what Mr Mathunjwa says is that effectively he was present

8 at the Commission, recognised that you were the white SAPS

9 officer that he had been speaking to as he refers to in

10 paragraph 86 of his statement, and he said in paragraph 7,

11 6 and 7 he recalls that you went off in the direction of

12 police officers who were wearing berets. He waited 10 to

13 15 minutes, "but it became clear to me that Brigadier

14 Calitz was not coming back. I consequently went back to

15 the koppie and addressed the strikers as set out in

16 paragraph 87 of my statement."

17 Brigadier, the simple question is this; can you

18 confirm that you were in fact the white police officer that

19 Mr Mathunjwa spoke to at that time?

20 BRIGADIER CALITZ: Ek wil net seker maak

21 of ek sy verklaring reg verstaan. Hierdie, verwys hy hier

22 na dit is die tweede keer toe hy teruggekom het na die

23 koppie toe, is dit korrek?

24 MR GOTZ: Indeed.

25 BRIGADIER CALITZ: Ja, ek kan -

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1 MR GOTZ: So it's not precisely clear

2 what time this is, but we –

3 BRIGADIER CALITZ: Nee, it's fine –

4 MR GOTZ: - put it around 3 o'clock.

5 BRIGADIER CALITZ: Dit is reg, ja. Nee,

6 ek kan, ek dink ons kan met duidelik bewys dat wat Mr

7 Mathunjwa hier sê van paragraaf 3 af, of 4 tot 7, is

8 absoluut vals en ons, ek sal vir u daarna kan verwys ook.

9 Hy het glad nie met my gesels nie. Inteendeel ek was op

10 daardie stadium nie eers op daardie toneel nie.

11 CHAIRPERSON: [Microphone off, inaudible]

12 false, but of course there is an other possibility. False

13 is a strongish word. There are two possibilities, aren't

14 there? The one possibility is that it's false because he

15 never spoke to anybody. Secondly it's false because he

16 didn't speak to you, but he might have spoken to somebody

17 else. I mean if you weren't there and he spoke to an SAPS

18 officer and he mistakenly thinks now, having seen you give

19 evidence before the Commission, that the person he spoke to

20 was you, and the only inaccuracy – you know the word

21 "false" technically can mean incorrect, but it does convey

22 other things which aren't always necessary. The only

23 inaccuracy might be that he spoke to someone else other

24 than you. Is that right?

25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 dit is korrek. As ek miskien kan – ek weet nie of die
 2 vraag gaan kom nie, of ek kan miskien help met die feite,
 3 dat hy definitief nie met my gepraat het toe hy die tweede
 4 keer teruggekom het nie. Ek sien hy sê dat hy verwys hier
 5 dat ek gesê het ek is in "charge" van die operasie, tweede
 6 keer, hy het nie met my gepraat hier nie. "As a result
 7 that I recognised him as the unidentified officer," wat ook
 8 nie so is nie; ek sal nou vir u sê hoekom. "I recall that
 9 the Brigadier went off in the direction of the people
 10 wearing the berets," en dan het hy gesê nadat hy met my
 11 gepraat het, het hy 10 tot 15 minute gewag vir die Generaal
 12 Naidoo en daarna het hy beweeg. As u gaan kyk in ons
 13 voorvalleboek inskrywing 1014 op bladsy 25 om 14:40 het
 14 "Papa1 reported that the union rep wants to go to the
 15 koppie to tell the group that the mine management does not
 16 want to negotiate. General Naidoo to talk to the union rep
 17 as he requested to talk to us and the SAPS management," en
 18 dit is duidelik dat, Kolonel McIntosh sal getuig dat die
 19 tweede keer toe mnr Mathunjwa terugkom het hy wel met die
 20 offisier gepraat daar, wat Luitenant Kolonel McIntosh was,
 21 wat dan in siviele klere. So, en ek glo ek en Kolonel
 22 McIntosh het redelike duidelike uitkenbare verskille. So
 23 dis hoekom ek sê, mnr die Voorsitter, teen die tweede keer
 24 wat mnr Mathunjwa teruggegaan het, teen daardie tyd was ons
 25 reeds by "forward holding area" 1 en sy voertuig is

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1 waargeneem waar hy verbybeweeg het. So ek was omtrent 'n
 2 hele kilometer en 'n half weg gewees daar.
 3 CHAIRPERSON: Who was in charge at the
 4 koppie? He says he arrived at the koppie. Now you say at
 5 the time he got back to the koppie the second occasion you
 6 weren't there. So that's the first answer. Secondly, I
 7 take it there was a group of SAPS members at the koppie.
 8 That must be right. Who was in charge? Would that have
 9 been Lieutenant Colonel McIntosh?
 10 BRIGADIER CALITZ: Die – nee, mnr die
 11 Voorsitter, hy was die onderhandelaar gewees. Die offisier
 12 wat ek agtergelos het in beheer was Luitenant Kolonel Mere
 13 en hy was dan die enigste van die groepbevelvoerders wat
 14 nie saam met ons vorentoe beweeg het nie. Maar ons weet
 15 dat hy het die Nyala "ge-approach." Hy het met Luitenant
 16 Kolonel McIntosh gepraat. Kolonel McIntosh het die JOC
 17 gekontak en dan so het Generaal Naidoo se naam wel te
 18 voorskyn gekom tussen McIntosh en Mathunjwa –
 19 CHAIRPERSON: So what you're saying, this
 20 is hearsay of course, you weren't there, but what you are
 21 saying is that Mr Mathunjwa is right when he says he
 22 arrived, he spoke to a white senior officer and General
 23 Naidoo's name was mentioned. All that apparently you on
 24 hearsay basis can confirm as correct. What you say is it
 25 wasn't you, number 1, and whether the remaining detail in

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1 this paragraph is correct is something that Colonel
 2 McIntosh could tell us about, not you. Is that fair?
 3 BRIGADIER CALITZ: Ek sê maar net, mnr
 4 die Voorsitter, hy het verwys na 'n offisier. Kolonel
 5 McIntosh was in siviele geklee, so ek weet nie hoe kon hy
 6 hom uit geken het as dan een van die senior offisiere nie,
 7 en hy "mention" paragraaf 6 hy het my gesien wegbeweeg in
 8 die rigting van 'n plek. Dit is, dit kon nie wees nie want
 9 ek was nie eers op die toneel nie.
 10 CHAIRPERSON: No, no, no, by "Brigadier
 11 Calitz" in 6 he's referring to the person he spoke to, I
 12 take it, because he says that he recognised you. He says
 13 in 5 he recognised you as the unidentified white officer.
 14 So when he refers in 6 to you he's really referring to the
 15 unidentified officer whom he, you say wrongly identified as
 16 being you. Right? So that's so –
 17 BRIGADIER CALITZ: En Kolonel McIntosh
 18 kan sê of hy in daardie rigting beweeg het –
 19 CHAIRPERSON: Ja, ja, ja –
 20 BRIGADIER CALITZ: Ek twyfel sterk, maar
 21 dit is so.
 22 CHAIRPERSON: Let's hear what Colonel
 23 McIntosh says to that –
 24 BRIGADIER CALITZ: Dankie, mnr die
 25 Voorsitter -

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1 CHAIRPERSON: - advance about what he's
 2 going to say. So that really deals with the first part.
 3 Is that right? Then the second part is, which Mr Gotz is
 4 now going to ask you about, I take it, paragraph 8 – unless
 5 you've got further questions about the previous part?
 6 MR GOTZ: Chair, perhaps I can just ask a
 7 couple of questions. Brigadier, I think you referred to an
 8 entry in the occurrence book. Do you accept that the
 9 contents of what you referred to does accord with what Mr
 10 Mathunjwa has testified about? You referred to 1014 –
 11 CHAIRPERSON: Mr Gotz, do we need his
 12 confirmation? It either accords or doesn't accord, and
 13 whether he says it doesn't accord, that won't bind us if we
 14 think it does accord. Even if he agrees it does accord and
 15 we don't think it does – so I mean there's no point in
 16 asking him that question, surely. I don't want to be
 17 difficult, but I mean it's a fact. You know we've
 18 consistently said don't ask witnesses questions that we're
 19 in as strong a position to answer as the witness, and
 20 that's one way – admittedly not a very effective way, but
 21 it's one way of reducing some of the contents that comes
 22 before us.
 23 MR GOTZ: Chair, I do want to be clear
 24 about what Brigadier Calitz's version in relation to this
 25 is. Is it simply that he – does he accept that, on the

<p style="text-align: right;">Page 20881</p> <p>1 basis of his knowledge that Mr Mathunjwa did all of these 2 things, but for the fact that –</p> <p>3 CHAIRPERSON: As I understand it he says 4 he doesn't know. He says he wasn't there. He says he'd 5 apparently spoken to Lieutenant Colonel McIntosh, that 6 Colonel McIntosh was at the scene to which Mr Mathunjwa 7 went, he wasn't. So he can't from his own knowledge, as I 8 understand it, confirm any of this, but he says the 9 relevant questions can be asked to Colonel McIntosh when he 10 comes. He can't himself tell us. So whether the 11 occurrence book affords corroboration for Mr Mathunjwa is a 12 matter that you argue on the basis of what's in the 13 occurrence book. There's no point in asking him about it, 14 is there?</p> <p>15 MR GOTZ: Chair, then I –</p> <p>16 CHAIRPERSON: I don't want to be 17 difficult, but I mean that's correct, isn't it?</p> <p>18 MR GOTZ: Chair, then I can't take it 19 further than that. I have -</p> <p>20 CHAIRPERSON: Alright, okay, let's move 21 on then.</p> <p>22 MR GOTZ: I was not clear on what he was 23 testifying, or did he –</p> <p>24 CHAIRPERSON: I told you. He says he 25 can't from his own knowledge testify to anything of this</p>	<p style="text-align: right;">Page 20883</p> <p>1 says, "I have no recollection of" you saying, asking him to 2 convey to the strikers that the barbed wire was for the 3 protection of the police, the media, and the community. He 4 says secondly, well in fact 9.2 is really confirmation of 5 something that you say in paragraph 8, so I'm not sure that 6 there is a difference between you on that score. The same 7 applies to 9.3 and 9.4.</p> <p>8 In paragraph 9.5 he says, "With respect to the 9 request for SAPS to move further away from the koppie my 10 recollection is that the message Brigadier Calitz asked me 11 to convey to the strikers was that it was not SAPS' 12 intention to do anything to the strikers. He explained his 13 request by saying that when they" – in other words SAPS – 14 "had arrived and the strikers had seen all the barbed wire, 15 they were concerned about it." And then he says to the 16 best of his recollection he concluded by he, that being 17 Brigadier Calitz concluded by saying it was just for the 18 safety of the members of SAPS, but he did not understand 19 you to be asking him to convey that to the strikers.</p> <p>20 Then he says the media were not seeking 21 protection, in paragraph 9.6, and he gives his explanation 22 for that. In paragraph 9.7, and in paragraph 9.8 he says, 23 he denies that you asked, you had told him about an alleged 24 threat that had been made against the police, or that you 25 had asked him to convey to the strikers not to threaten the</p>
<p style="text-align: right;">Page 20882</p> <p>1 because he wasn't there.</p> <p>2 MR GOTZ: I understand.</p> <p>3 CHAIRPERSON: He's got an alibi. Now 4 let's turn on, your next point is paragraphs 8 and 5 following, which is a subsequent, a separate point.</p> <p>6 MR GOTZ: Yes, it is a separate point and 7 it actually precedes the first point in time, Brigadier. 8 He starts by reflecting something that you, quoting 9 something that you say in paragraph 85 of your consolidated 10 statement JJJ107 where you say, "Somewhere around 12 11 o'clock the president of AMCU arrived. He addressed the 12 media and proceeded to the front of the koppie. On his 13 request I offered a megaphone from our Nyala to the 14 president of AMCU for him to use in his address. He also 15 requested that the chopper fly in a bigger radius because 16 of the sound was disturbing. This was arranged by me. 17 Before the AMCU president left to address the strikers I 18 requested him to explain to the strikers that the barbed 19 wire is not intended to be used against them, but for the 20 protection of the police, the media, and the community. I 21 informed him of the threat made by the strikers to the SAPS 22 and asked him to ask the strikers not to threaten the 23 police."</p> <p>24 Mr Mathunjwa's version is then set out in 25 paragraphs 9 and its subparagraphs. So first of all he</p>	<p style="text-align: right;">Page 20884</p> <p>1 police, and he says "If such a threat had been made of me I 2 would have remembered and I would have carried it out." 3 Brigadier, what is your response first of all to 4 – let's start with paragraph 9.1.</p> <p>5 BRIGADIER CALITZ: Mnr die Voorsitter, 6 dankie. As hy verwys het na my paragraaf 85 wat ons gelees 7 het, om dit maklik te maak, miskien kan ons net sê 8 paragraaf 9.2, 9.3 en 9.4 stem ek mee saam en dit gaan oor 9 die helikopter wat moet wyer wegbeweeg, die feit dat ons 10 die megafoon vir hom moes gegee het, en paragraaf 9.3 11 bevestig net weer 9.4.</p> <p>12 So as ek graag kan, dit wat ek wil aanspreek is 13 in 9.1, "I have no recollection of Brigadier Calitz asking 14 me to convey to the strikers that the barbed wire was for 15 the protection of the police, the community, and the 16 media," as u dan 9.5 lees sal u sien, ek sal nie sê dis 'n 17 "contradiction" nie, maar hier sê hy dat "Brigadier Calitz 18 asked me to convey to the strikers that it was not SAPS' 19 intention to do anything to the strikers. He explained," 20 wat onderstreep is, "his request by saying that when the 21 SAPS had arrived the strikers had seen the barbed wire and 22 they were concerned about it." So daar het hy wel gesien 23 dat hulle bekommerd was daaroor. "To the best of my 24 recollection," sê hy, "he concluded by saying it was just 25 for the safety of the members of the SAPS, but I do not</p>

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1 understand by asking me to convey it to the strikers.”
 2 Nou as ons dan paragraaf 9.1 en 9.5 vat, wat mnr
 3 Mathunjwa beweer is dat ek het nie vir hom gevra asseblief
 4 dra dit oor aan die persone nie. Miskien kan ek vra, die
 5 video “clip” wat u vir my gegee het, om na te kyk die
 6 gesprek tussen my en mnr Mathunjwa langs die Nyala. Ek
 7 weet nie of dit 'n geleë tyd is en of ons dit kan speel
 8 nie, dan sal u hoor net voor hy wegstap, daar is 'n stuk
 9 wat u nie kan hoor nie, en dan waar ek weer vir hom vra om
 10 dit oor te dra aan hulle. So ek wil net die teendeel bewys
 11 dat ek dit wel vir hom gesê het op die video. Dit is u
 12 video wat u vir my gegee het om na te kyk.
 13 MR GOTZ: We can play the video. It's
 14 exhibit CC6. I think in fairness to you –
 15 CHAIRPERSON: We've seen it before, but I
 16 don't remember this detail. It wasn't relevant before.
 17 Perhaps we should look at it –
 18 MR GOTZ: Yes.
 19 CHAIRPERSON: - to put the point to bed
 20 one way or another, as it were.
 21 BRIGADIER CALITZ: Die klank is baie
 22 onduidelik, so dit is net die laaste deel van daardie –
 23 CHAIRPERSON: Ja, alright.
 24 BRIGADIER CALITZ: - oor die “conveying.”
 25 Ek dink hy's 2 minute 37, ek dink ons kan – hier het hy

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1 gevra vir die, maar ons kan maar die hele een speel, mnr
 2 die Voorsitter. Hier het hy gevra vir die helikopter en u
 3 kan my respons hoor. Kom ons speel miskien maar, dis net
 4 twee minute.
 5 [VIDEO SHOWN]
 6 [12:47] BRIGADIER CALITZ: Ek weet nie of mnr die
 7 Voorsitter dit gehoor het nie, ons kan net so 'n second of
 8 twee teruggaan waar ek dit duidelik vir hom sê dat ons het
 9 nie 'n concern met die strikers nie, dit is nie teen hulle
 10 nie en dan kan u my duidelik hoor, ek sê, “Please convey
 11 this to the strikers.”
 12 MR GOTZ: But then just before we go on,
 13 it does seem to me that you're confirming the sentence of
 14 paragraph 9.5 of his statement and I know it is not on the
 15 screen, I will just read it to you. “My recollection is
 16 that the message Brigadier Calitz asked me to convey to the
 17 strikers was that it was not SAPS' intention to do anything
 18 to the strikers.” On the basis of what you've just said
 19 and I think I would agree with you on the basis of what I
 20 hear, that you would confirm Mr Mathunjwa's statement in
 21 the first sentence of paragraph 9.5.
 22 BRIGADIER CALITZ: Nee, ek praat oor die
 23 tweede stelling wat hy gemaak het, oor die safety, dat dit
 24 nie teen hulle gerig is nie.
 25 MR GOTZ: I'm trying to get a sense of

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1 what you agree with and what you don't, do you agree with
 2 the first sentence of paragraph 9.5?
 3 CHAIRPERSON: I understood him to say
 4 that –
 5 BRIGADIER CALITZ: Nee, mnr die
 6 Voorsitter, daar is 'n groot verskil, “My recollection is
 7 that the message Brigadier Calitz asked me to convey to the
 8 strikers was that it was not the intention to do anything
 9 to the strikers.” Dit is heeltemal 'n ander stelling, dit
 10 is, die polisie wil niks aan hulle doen nie. Die gesprek
 11 het nie daarvoor gegaan nie, die gesprek het die heeltyd
 12 gegaan oor die draad en die doel van die draad. U sal sien
 13 hy het verder verstaan dat hulle concern was oor die barbed
 14 wire en dit is waaroor ek en mnr Mathunjwa gepraat het, dat
 15 die dreigement, die draad self en ek het hom gevra om
 16 asseblief daardie boodskap aan sy mense oor te dra, maar u
 17 sal hoor soos hy omgaan, in die eerste deel van my woorde
 18 sal u dit duidelik kan hoor.
 19 CHAIRPERSON: It wasn't very clear to me,
 20 may I suggest that rather than waste time on it, the
 21 evidence leaders have got experts in, listening to
 22 recordings of this kind and then transcribing them and I
 23 would suggest that we ask them to do that in consultation
 24 with your side, your team, Mr Gotz, and I would hope that
 25 we will get an agreed transcript in the end of what was

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1 said.
 2 MR GOTZ: Chairperson, I think –
 3 CHAIRPERSON: Presumably the SAPS team
 4 would like to be involved in that exercise as well. One
 5 can hear things being said and I imagine if one plays it
 6 over and over again and listen to it very patiently one
 7 should be able to get most of it down, but I don't know if
 8 we need to hear it in the Chamber, that can be done outside
 9 and hopefully we can have an agreement between the SAPS and
 10 SERI and AMCU because you're appearing for AMCU, on the
 11 accuracy of the transcript.
 12 MR GOTZ: Chairperson, I'm happy to
 13 proceed on that basis. Perhaps I can get the brigadier's
 14 response to paragraph 9.8 because I don't think he has
 15 directly addressed that and we can then just move on.
 16 BRIGADIER CALITZ: Miskien as ons nou net
 17 puntsgewys afgaan of gaan ons die ander, wil u hê ek moet
 18 eers met paragraaf 9.8? Ja, dit is deel van die dreigement
 19 op die draad waarna ons verwys het, 'n alleged threat wat
 20 gemaak is. Dit gaan oor die draadkar self, “had been made
 21 against the police and that he asked me, for the strikers
 22 not to threaten the police.” Ek dink ons het herhaaldelike
 23 kere met mekaar gesels, u kon gesien het die manier waarop
 24 ons met mekaar gesels het, daar was nie aggressie betrokke
 25 nie, daar was samewerking en ek het hom mooi gevra om dan

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1 daardie boodskap so te convey.

2 CHAIRPERSON: Will that come out in the

3 transcript of this –

4 BRIGADIER CALITZ: Dit wat ons kan hoor.

5 CHAIRPERSON: Okay?

6 BRIGADIER CALITZ: Nee, ek sê ek aanvaar

7 dit so, mnr die Voorsitter.

8 CHAIRPERSON: Okay, so we don't have to

9 take it any further at this stage.

10 BRIGADIER CALITZ: Dit is nie nodig as

11 dit –

12 CHAIRPERSON: Ja, what we know, I think,

13 is that he did not ask the strikers not to threaten, we

14 have a transcript to what he said and I don't remember that

15 being there. So there may be another reason why he didn't

16 do it, but anyway this issue will be resolved, one hopes,

17 one way or the other by this transcript that has been

18 agreed will be prepared, is that correct?

19 MR GOTZ: Yes.

20 CHAIRPERSON: Do you agree with that, Mr

21 Gotz?

22 MR GOTZ: I am happy to proceed on that

23 basis, Chair. Brigadier, there was one small question that

24 I did want to ask you in relation to that video clip and

25 I'm happy to play it again if you want to. It does seem to

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1 me that throughout that video clip it appears that both you

2 and Colonel McIntosh are holding handheld radios. So you

3 are holding a handheld radio in your hand and Colonel

4 McIntosh has a handheld radio strapped to his front left

5 hand shirt on the front left hand side of his top. Did you

6 pick that up?

7 BRIGADIER CALITZ: Dit is logies want ek

8 het gevra vir 'n hand radio, ek kan nie onthou wie se hand

9 radio ek gebruik het op daardie stadium nie. Die boodskap

10 wat ons ge-herlei het na die JOC toe, dit is waar ek vir

11 mnr die Voorsitter gesê het ek gee al die sitrappe deur na

12 die JOC toe en dit is op die hand radio wat ons dan met die

13 JOC gepraat het en versoek het vir die helikopter om in 'n

14 wyer sirkel te vlieg.

15 MR GOTZ: I understood your evidence to

16 be that you only had one handheld radio between the two of

17 you and it was that handheld radio belonging to Colonel

18 McIntosh which was then given to the water cannon people.

19 BRIGADIER CALITZ: Nee, ek het nou net

20 vir u gesê, ek kan nie onthou wie se radio ek gebruik het

21 nie, ek het gevra, gee vir my 'n hand radio en daarom het

22 ek die versoek gerig na die JOC toe. Die video manne was

23 daar gewees, daar was verskeie polisiemanne, ek kan nie

24 onthou op daardie stadium wie het vir my die hand radio

25 gegee waarop ek gepraat het nie. Mnr die Voorsitter, as

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1 ons dalk, voor ons van die punt afgaan, op 9.6 en 9.7, of

2 kom u nog daarby?

3 MR GOTZ: Well, I think in fairness to

4 you, you should be given an opportunity to respond to this.

5 I take it you don't –

6 BRIGADIER CALITZ: 9 punt –

7 MR GOTZ: I take it you don't disagree

8 with paragraph 9.7?

9 BRIGADIER CALITZ: Ja, nee, dit is

10 presies dit waarna ek wil verwys. 9.7 stem ek heeltemal

11 saam, die media was baie tussen hulle en hulle het ge-

12 mingle met die strikers. Ek stem saam. Sy stelling in

13 paragraaf 9.6, "The media was not seeking protection, it

14 was a dislike that they approached a number of journalists

15 and crews and asked me if they could move closer to the

16 strikers. I made the request to the strikers who agreed to

17 the media going forward." In vergelyking hierso verwys hy

18 na my verklaring of my doel wat ek gesê het die draad is

19 daar vir protection vir die polisie, die media en ek dink

20 uit daardie sin uit het hy dan verwys na die geval, dat die

21 media nie beskerming nodig het nie.

22 Ek wil net sê dit is ook nie waar nie, want as u

23 sien die media het begin terugbeweeg uit hulle uit en

24 hoorsê, soos u tereg gesê het, maar wel vir Kaptein Adriaio

25 gerapporteer het dat iets gaan, "about to happen" en hulle

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1 het begin self terug beweeg nadat hulle die lang wapen

2 in 'n kombes gesien het, asook dan wat ek na voorheen

3 verwys het, na die ETV beeldmateriaal, maar ek dink ons sal

4 miskien in 'n latere stadium dit wel wys waar die media

5 vroeër ook gesê het hulle is gedreig deur van die persone

6 en hulle moes wegjaag met hulle voertuig. So ek stem nie

7 saam met hom dat die media heeltemal nie beskerming nodig

8 gehad het nie, miskien nie terwyl hy daar was en hulle dit

9 bespreek het nie, maar daar sou wel later, sou die media

10 wel beskerming nodig gehad het.

11 MR GOTZ: You see it is really his

12 impression at the time that he is conveying, he is saying

13 in his impression the media were not seeking protection,

14 they were mingling with the strikers. They were approached

15 by a number of journalists, he was approached by a number

16 of journalists and TV crews who asked him if he could move

17 closer to the strikers.

18 BRIGADIER CALITZ: Ja, ek dink –

19 MR GOTZ: He made a request to the

20 strikers to –

21 BRIGADIER CALITZ: Ek dink dit is my hele

22 punt.

23 MR GOTZ: You're not disputing the facts

24 of that?

25 BRIGADIER CALITZ: Ja, nee, ek dink dit

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1 is weer 'n punt dat hulle het na hom toe gekom en
 2 toestemming gevra, kan hulle maar nader gaan, sodra hy daar
 3 was dan sou daar mos nou nie probleme wees nie want die
 4 leier is daar. Ek praat van na die tyd toe hy wegbeweeg
 5 het en daardie dreigemente wat gemaak is in die afwesigheid
 6 van mnr Mathunjwa. So miskien het die media hom gevra dan,
 7 kan ons nader beweeg omdat hy dan daar is, anders kan ek
 8 nie sien hoekom die media hom toestemming sou gevra het
 9 nie, hulle sou net vrylik vorentoe gestap het as hulle so
 10 gevoel het.

11 MR GOTZ: Can we then –

12 CHAIRPERSON: Is it a new point now, Mr
 13 Gotz?

14 MR GOTZ: Yes, Chairperson.

15 CHAIRPERSON: It is one o'clock, so shall
 16 we –

17 MR GOTZ: I'm still on track to –

18 CHAIRPERSON: Sorry?

19 MR GOTZ: I'm still on track to finish
 20 this.

21 CHAIRPERSON: What I'm saying, shall we
 22 take lunch now –

23 MR GOTZ: Let's take the adjournment –

24 CHAIRPERSON: - and then fortified and
 25 refreshed by lunch we will then be able to receive your

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1 next points, so appropriately.

2 MR GOTZ: Thank you, Chair.

3 [COMMISSION ADJOURNS COMMISSION RESUMES]

4 [13:51] CHAIRPERSON: The Commission resumes.
 5 Brigadier, you're still under oath. Mr Gotz.

6 MR GOTZ: Thank you, Chairperson.
 7 Brigadier Calitz, can we play a segment of the clip that we
 8 looked at previously, the one which had Mr Noki in it.
 9 Chair, it's the new eTV material. I think it's exhibit
 10 KKK.

11 CHAIRPERSON: We called KKK55.

12 MR GOTZ: 55. And if we can play that
 13 from 8 minutes and 25 seconds?

14 CHAIRPERSON: Did we mark the translation
 15 – the transcript?

16 MR GOTZ: No, Chair, I don't think we
 17 did.

18 CHAIRPERSON: So that will be KKK5, okay.

19 MR GOTZ: Yes.

20 MR SEMENYA SC: Chair, if Mr Gotz has
 21 another copy of the translation, we'd appreciate it.

22 MR GOTZ: I do.

23 MR SEMENYA SC: You seem to have it and
 24 we don't.

25 MR GOTZ: I do have several, so that if

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1 anybody wants, then they can - so let's starting watching
 2 the clip. I am going to ask then that they stop it
 3 reasonably soon into it and –

4 CHAIRPERSON: Could just indicate where
 5 everyone stopped, where we indicate what the reading is so
 6 that if anyone has to read the record and try to understand
 7 what's going on, they'll know exactly what's being looked
 8 at particular times.

9 MR GOTZ: Yes, Chair, I may ask you for
 10 your assistance, because my eyes are not good. At least, I
 11 can't see, but anyway it starts from 08:25, and I'll tell
 12 you when to stop.

13 CHAIRPERSON: We've got 08:10, haven't
 14 we? So shall we start there and then run through?

15 [VIDEO SHOWN]

16 CHAIRPERSON: We have the sound enhanced
 17 rather so we can hear it more clearly? It stopped at 8:29
 18 at the moment.

19 MR GOTZ: That's fine. Brigadier, let me
 20 ask you a few questions around what we've seen so far.
 21 What we've seen is workers gathered – strikers gathered at
 22 the koppie. You'll agree with me that it appears to be
 23 late afternoon given the length of the shadows that you
 24 see?

25 BRIGADIER CALITZ: Ja, I think it can be

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1 determined – Mr Mathunjwa is there, so I presume it was
 2 second time, if I'm not mistaken. sê are much longer than
 3 that, so therefore that seems pretty conclusive evidence
 4 this is the second time he went there, which was around
 5 about half past – well, 3 o'clock onwards, wasn't it,
 6 roughly?

7 BRIGADIER CALITZ: Wel, volgens die, Mnr
 8 Gotz, ja.

9 MR GOTZ: The song that they were singing
 10 is a song saying Senzeni na. Do you know that song,
 11 Brigadier?

12 BRIGADIER CALITZ: Nee –

13 MR GOTZ: Have you never heard it before?

14 BRIGADIER CALITZ: Soos ek sê, ek ken hom
 15 nie, sou dit ook nie voorheen gehoor het nie.

16 MR GOTZ: It's actually quite a well
 17 known song and is commonly sang at funerals and protests,
 18 you don't know that?

19 BRIGADIER CALITZ: Die derde keer wat ek
 20 vir u sê, nee, ek ken nie die song nie.

21 MR GOTZ: The English translation of the
 22 word "Senzeni na" is loosely what have we done.

23 BRIGADIER CALITZ: Ek is nie bekend met
 24 die taal nie, so miskien as u vir my vertaal, dan kan ek u
 25 volg.

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1 MR GOTZ: And the song goes on usually to
2 say, "our sin is that we are black, our sin is the truth.
3 They are killing us. Let Africa return." And what I want
4 to put to you is that it is neither a violent, nor an
5 aggressive song, for your comment.

6 BRIGADIER CALITZ: Mnr die Voorsitter,
7 nee, ek sal nie kan comment gee. Soos ek sê ek ken nie die
8 taal nie, so ek op daardie stadium –

9 CHAIRPERSON: If you don't know the song,
10 you can't comment. I understand from Commissioner Tokota
11 that it's an well-known protest song that he and colleagues
12 used to sing when they students at Fort Hare, but it is a
13 protest song. It was sung at Steve Biko's funeral
14 apparently, but you don't know about that, so you can't
15 talk about it, and I'm just repeating hearsay, so we won't
16 -

17 BRIGADIER CALITZ: Ek stem saam, mnr die
18 Voorsitter. As ek net hoor die transcript is dit wat u nou
19 uit gedeel het, want in my bundel is dit net waar iemand
20 praat, of is dit die –

21 MR GOTZ: We haven't included the
22 transcript of the song. I'm simply putting to you that the
23 song "Senzeni na" –

24 BRIGADIER CALITZ: O nee, ek dog het dit
25 voor u.

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1 MR GOTZ: I haven't got a transcript of
2 the –

3 BRIGADIER CALITZ: Ekskuus, mnr die
4 Voorsitter, ek het net gedog hy sê hy het die transcripts
5 voor hom, so.

6 MR GOTZ: Can we continue with the clip,
7 Brigadier? And what I'd like you to observe or pay
8 attention to is the demeanour of the strikers generally, as
9 you watch the clip. Can we proceed? I think there may be
10 some problem with the – while they sort that out, can I
11 place this on record? It's at this point that Mr Mathunjwa
12 will start to speak, Chair, so you follow the transcript
13 that we've provided you, which is KKK56, right after the
14 words, "Workers singing" and then the AMCU leader starts.

15 CHAIRPERSON: In the transcript is the
16 word "Power", so I take it the first thing we're going to
17 hear is Mandla, and then things will follow on from there.

18 MR GOTZ: Chair, perhaps to save time,
19 what you will observe as the clip is played and Mr
20 Mathunjwa gives his address, that perhaps halfway through
21 the passage that has been transcribed, you'll see a
22 physical break in the video, and it's unfortunate, because
23 it does seem like the intermediate section has not been
24 captured at all, and so we do in fact only have a very
25 limited part of his second address, which is what is said

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1 here. So despite all the perhaps promises that it would
2 tell us a lot more, we don't actually have that much of his
3 second address, but of the –

4 CHAIRPERSON: We don't know whether the
5 videographer, whoever he or she was, was obviously standing
6 among the crowd, as we can see from what the screen, in
7 fact had the camera on the whole time. It might have been
8 – snatches might have been recorded and others not, so. We
9 don't know. It may well be that this is all eTV ever had,
10 but are attempts being made to get it moving? Mr Gotz, you
11 may not be finished by tea time. It won't be your fault.
12 This is rather unusual form of injury time, but there's
13 nothing that I can do it.

14 BRIGADIER CALITZ: Mr Chair, while we are
15 waiting, maybe if Mr Gotz can give us the time of this? Do
16 you have it confirmed, so that I can just –

17 MR GOTZ: Sorry, Chair, I wanted to
18 simply play this as a continuous clip, so I'm going to have
19 to rely on assistance from somebody here as to –

20 CHAIRPERSON: Well, this is, what we're
21 looking at the moment is the still we saw before with Mr
22 Mathunjwa standing with it looks like the microphone, the
23 megaphone in his hand, with someone else holding the
24 megaphone.

25 MR GOTZ: For reference purposes, it's at

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1 the commencement of the part that's been transcribed as
2 exhibit KKK –

3 CHAIRPERSON: Yes, it commences with the
4 address. What we've seen is the song which you referred
5 to.

6 MR GOTZ: Yes.

7 CHAIRPERSON: Mr Wesley, have you got
8 this on your flash drive. You're normally very good at –

9 MR GOTZ: Chair, I think I'm going to
10 step in.

11 CHAIRPERSON: Sorry?

12 MR GOTZ: I think I'm going to step in at
13 this stage –

14 CHAIRPERSON: Yes, please, I'm appealing
15 to you to do so.

16 MR GOTZ: If I can do so.

17 CHAIRPERSON: Mr Gotz needs your help.

18 MR GOTZ: Chair, I understand that part
19 of the problem is that we're not having much success
20 playing the sound. I, in fact – the sound is actually not
21 that critical, because what I can do is actually play the
22 clip –

23 CHAIRPERSON: Or we can hear the sound
24 first and then if we can't, if we then just look at the
25 images themselves and then perhaps read the transcript into

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1 the record - if we can hear it, that is if we can. And Mr
2 Wesley's gone in to do what he can for us.

3 MR WESLEY: Chair, the problem that we're
4 having at the moment with playing this is that if play it
5 through the devices which we use at the moment, Apple
6 devices, we lose the sound. So it's not – in fact there is
7 no sound audible which we can play, apart from the –

8 CHAIRPERSON: I understood Mr Gotz to say
9 that, but if we can't have it with the sound, but we can
10 have it without the sound, let's have it without the sound.

11 MR GOTZ: I think let's proceed, Chair –

12 CHAIRPERSON: - showing is better than no
13 showing at all.

14 MR GOTZ: I think I can do this without
15 the sound, because we have the transcript and in fact my
16 questions do not relate fundamentally to the transcript.
17 So, okay, let's proceed. Brigadier, again what I'm asking
18 you to observe is the demeanour of the strikers while Mr
19 Mathunjwa is giving his second address, and indeed
20 afterwards. So let's proceed without the sound.

21 [VIDEO SHOWN]

22 MR GOTZ: I think it's playing on double
23 speed. It may be a little bit helpful if it's played at
24 normal speed.

25 [VIDEO SHOWN]

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1 CHAIRPERSON: You now paused. Mr Gotz,
2 this can sorted out later, I mean the – we're wasting a
3 fair amount of time. I mean, we'll see it later on. I
4 don't know, do we have to see it for purposes of your
5 cross-examination, particularly if we can't hear what it
6 saying? We have a transcript of what was said, or part of
7 what was said, I take it.

8 MR GOTZ: Brigadier, have you had an
9 opportunity to look at this clip and this section of the
10 clip to which we drew your attention over the course of the
11 weekend?

12 BRIGADIER CALITZ: Ja, the first portion
13 was me and Mr Mathunjwa talking and then the rest was the
14 relative longish clip. Ek het nie geweet die translation,
15 uit watter deel kom uit nie. U het gesê u sal vir my die
16 tye deur stuur, hoe ver, en ek het dit nooit ontvang, soos
17 ons gereël het Vrydag nie.

18 MR GOTZ: No, Brigadier, I apologise if
19 I've mis-communicated. What I said to you was that I
20 didn't expect you to look at a 40 minute clip. What I
21 would simply do is identify times which I wanted you to
22 focus upon. So I'm sorry if you misunderstood, but I
23 didn't give you an undertaking that I would indicate
24 exactly at what time AMCU leader 1 and AMCU leader 2 spoke,
25 but –

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1 BRIGADIER CALITZ: Ja, ek het u email
2 voor my. Dit was 6:35 tot 7:30 in die video, en dit is die
3 met Mnr Mathunjwa se gesprek en dan het jy gesê 8:25 tot
4 12:40 in die video in.

5 MR GOTZ: Ja.

6 BRIGADIER CALITZ: Maar u het gesê u sal
7 vir ons wys uit watter deel uit die translation kom.
8 Daardie gedeelte wat speel is baie langer as wat die twee
9 1.5 halwe bladsye translation, want dis net twee mense wat
10 hier praat en dis 'n langerig gesprek, so ek kon nie regtig
11 volg omdat ek nie die taal verstaan nie, maar ek glo nie
12 dis 'n probleem nie. As u vra, ek kan dit miskien volg na
13 die beste van my vermoë.

14 MR GOTZ: Brigadier Calitz, I think in
15 the absence of sound, I don't want to focus on the
16 transcript. What I do want to ask you is, having looked at
17 those clips, would you agree with me that the general
18 demeanour of all of the strikers that you see during the
19 2.5 to 3 minutes of the clip that we asked you to look at,
20 during the address given by Mr Mathunjwa, is one of
21 dejection and defeat.

22 BRIGADIER CALITZ: Miskien verstaan ek
23 nie mooi wat u sê nie. As u net die vraag stel of u maak
24 'n stelling –

25 MR GOTZ: What I'm saying to you is that

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1 would you agree that there is a sense of defeat quite
2 visible when you look at the demeanour of the strikers
3 during Mr Mathunjwa's second address?

4 BRIGADIER CALITZ: Mnr die Voorsitter, ek
5 is jammer as ek nou – ek is nie onnodig difficult nie. As
6 u sê a demeanour of defeat, bedoel u oorgawe, bedoel u – ek
7 wil net seker maak ek verstaan u reg?

8 MR GOTZ: That they have lost the battle.

9 BRIGADIER CALITZ: Dit wat ek gelees het
10 is net die stukke van die transcript. So as u vir my sê
11 dat dit is nie waarnatoe u gaan nie –

12 CHAIRPERSON: The question isn't based,
13 as I understand, on what said in the transcript. The
14 question is based upon what you can see of the demeanour of
15 the people on the screen. Now again, this is possibly
16 something that we don't really need the witnesses' views
17 on. In due course, presumably, we'll see it ourselves and
18 we will then be able to form an opinion as to whether
19 you're correct in putting that they appear dejected and
20 defeated. So I don't think we need the witness's agreement
21 or disagreement to say they appear dejected or defeated.
22 We will see it in due course and make up our minds.

23 MR GOTZ: Well, let me put it this way,
24 Chair, with the part that I wanted to highlight, you don't
25 see any aggression amongst the strikers. Mr Noki looks

1 dejected and defeated. There is a portion where his head
 2 literally drops like as though about to pass out from
 3 exhaustion, and at the end of the address, I think at the
 4 very end of the people talking, what you see quite clearly
 5 is that a group - people start to get up and walk away from
 6 where they are seated. In other words, people start to
 7 leave the scene, and those are the issues that I wanted to
 8 highlight with the Brigadier.
 9 [14:11] CHAIRPERSON: We can't see the picture,
 10 you have told us what you want to highlight, when it is
 11 possible we will see it, in the meanwhile perhaps we must
 12 move onto something else? We are just wasting time at the
 13 moment, it's not your fault I understand that, but is it, I
 14 see your attorney is going to speak to the operator.
 15 Alright, we will try one more attempt to see the images.
 16 MR GOTZ: Perhaps we can use the time,
 17 Brigadier, what we see on the video is as Mr Mathunjwa and
 18 the other workers address comes to an end, that people get
 19 up and walk away from the scene. There is almost an
 20 instantaneous reaction from the crowd and it's not one of
 21 aggression or, it's not one of aggression or anything of
 22 the sort. But yet people get up and they start to walk
 23 away. Was that something you observed on the day? You
 24 were quite close to the scene.
 25 CHAIRPERSON: Sorry, before we take it

1 further, were you present when Mr Mathunjwa gave his second
 2 address to the crowd?
 3 BRIGADIER CALITZ: Nee, mnr die
 4 Voorsitter, nie toe hy begin het nie. Toe ek daar
 5 gearriveer het, het ek hom voor wel waargeneem en dit was
 6 minute later toe het hy gery. So dit is -
 7 CHAIRPERSON: So did you see, sorry to
 8 interrupt you, did you see the demeanour of the crowd when
 9 Mr Mathunjwa finished his address to which Mr Gotz is
 10 referring?
 11 BRIGADIER CALITZ: Nie, rërig nie mnr die
 12 Voorsitter nee, ek het wel gesien die mense staan op en
 13 beweeg weg en ek dink dit is die uitrol van waar ons begin
 14 het met draad 1, uitrol. Dit is hoekom ek gevra het die
 15 tyd en as ons dan die video aan een speak, ek dink dit
 16 sluit aan waar mnr Noki na ons toe kom met daardie, maar
 17 daar was baie onderbrekings in die clips, dit is hoekom ek
 18 dit net nie dit kon volg soos wat hy graag wil hê ek moet
 19 nie.
 20 CHAIRPERSON: May I ask, are we going to
 21 see the clip now or must we move on to something else? We
 22 are going to see it? Alright, here it comes. 8:52 is
 23 where it's paused at the moment. It's without sound but we
 24 can see the images.
 25 [VIDEO SHOWN]

1 MR GOTZ: And this is the point at which
 2 the speakers stop and you see the crowd starting to get up
 3 and leave and then it switches to the clip that we saw
 4 earlier. Do you see that, Brigadier?
 5 BRIGADIER CALITZ: Mnr die Voorsitter,
 6 goed as ons na die clip u sal nou verstaan wat ek bedoel as
 7 ek sê daar was onderbrekings. Die eerste een was Mnr
 8 Mathunjwa wat hulle het toegesprek het. Toe het hulle
 9 rustig gesit en hulle het geluister wat hy sê. Die tweede
 10 deel wat ek gesien het is dat u verwys na mnr Noki wat
 11 amper, ek sê passed out of, ek dink u het dit gestel. Ek
 12 sien dit glad nie so nie. Ek sien dit mnr Noki sit by 'n
 13 groep, miskien sy raadgewers en hulle bespreek strategie
 14 wat gaan volg. Op daardie stadium kan ons nie sien mnr
 15 Mathunjwa agter, het die kar klaar gery of nie gery nie.
 16 So dit is wat ek sien. Hy lyk definitief nie vir my asof
 17 hy verloor het nie want hy staan nog steeds op en hy maak
 18 'n stand nog steeds voor sy mense. Verder wat ek sien in
 19 die video is dat in die agtergrond het die mense gekyk, en
 20 u sal sien bo op die koppie sowel as onder, het hulle begin
 21 wegbeweeg. Net daarna het mnr Noki na ons toe gestap. Nou
 22 ons getuienis was dat ons het ons mense in posisie gesit,
 23 mnr die Voorsitter, by die barbed wire deployments, en toe
 24 mnr Mathunjwa weggery het, het ek wel opdrag gegee dat Een
 25 moet begin deploy. So logies sal twee en drie se persone

1 dan ook uitbeweeg by die draad. So my logiese afleiding
 2 wat u vir my in hierdie stukkie wys is dat die groepe het
 3 begin sien dat die polisie het begin deploy met die barbed
 4 wire en dit is hoekom hulle wegbeweeg het en nie volgens
 5 soos u beweer nie.
 6 MR GOTZ: We will argue on the basis of
 7 the objective evidence that at the conclusion of Mr
 8 Mathunjwa's second address, the strikers were not
 9 aggressive, not violent and that indeed quite a number of
 10 people had started to move away from the scene at the
 11 conclusion of the address.
 12 BRIGADIER CALITZ: Mnr Gotz, ja met
 13 respek as die, jou leier jou aanspreek sal jy natuurlik nie
 14 aggressive toon nie. Jy sit en luister wat hy sê, daarna
 15 het mnr Noki wel by 'n groep persone gesit. U kon sien
 16 hulle het 'n strategie bespreek. Volgens my, iets wat sal
 17 kom, daar was nodding of heads, so hulle het saamgestem oor
 18 een of ander saak en dan die persone wat wegbeweeg het sal
 19 u sien dit is individue wat iets gesien het, dit is nie dat
 20 hy vir hulle gesê het kom staan op ons beweeg weg en die
 21 hele groep het, dit is individue wat wel iets opgemerk het
 22 en ek sê vir u dit is die draad wat begin uitrol het, die
 23 video kan nie vir ons wys, ek dink op daardie stadium het
 24 mnr Mathunjwa klaar weggery.
 25 MR GOTZ: Can I ask you to look at the

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1 second page of the transcript where you see that a man 2 is
 2 recorded as saying, "I think it will indistinct even now
 3 because we had two workers who were killed by NUM on
 4 Friday," and this relates back to propositions that I put
 5 to you last week, that even on the Thursday right at the
 6 end before the police took again against the strikers, the
 7 strikers still believed that two of their members had been
 8 killed by NUM on the pieces on Friday, but it's actually
 9 the Saturday.

10 BRIGADIER CALITZ: Ek sien wat in die
 11 transkripsie staan.

12 MR GOTZ: I may ask you some follow up
 13 questions towards the end but I want to move to a topic
 14 which I hope will take relatively quick and that's the
 15 position positions of the Nyalas at the time of scene 1.
 16 Can we go to the rather lengthy document that we have
 17 prepared which deals with the matter of the positions of
 18 the SAPS vehicles at the time of the TRT volume, that's
 19 Exhibit 51, KKK 51, I beg your pardon.

20 BRIGADIER CALITZ: KKK51?

21 MR GOTZ: 51. Have you got it,
 22 Brigadier?

23 BRIGADIER CALITZ: Ja, nee, ek is by die
 24 dokument.

25 MR GOTZ: Can I ask you to look at page 3

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1 or slide 3 of that document? Brigadier, we gave you a copy
 2 of this document in the form that you are now seeing back
 3 in November of last year. You have had several months to
 4 go through it and I presume you have read the documents in
 5 preparing for this cross-examination.

6 BRIGADIER CALITZ: Ja nee, dit is
 7 negatief. Toe my getuienis begin het u gesê u sal dit vir
 8 my gee, en ek het net die eerste bladsy gekry en toe ons
 9 vir u gevra het oor die naweek en toe het ons die res wat u
 10 vir my die kopie gegee het in kleur ek dink dit was Vrydag
 11 middag, dit is die eerste keer wat ek hierdie dokument
 12 gesien het.

13 MR GOTZ: Brigadier, I gave you
 14 personally a copy of this document in November but be that
 15 as it may, have you had a chance to go through this
 16 document?

17 BRIGADIER CALITZ: Ek kan nie onthou dat
 18 ek en u in November iewers bymekaar was waar ek die kopie
 19 kon kry nie, maar nee ek het hom Vrydag by u gekry en ek
 20 het kan gehad, ek is deur hom, ja.

21 MR GOTZ: What we do on page 3 of this
 22 document, it reflects the analysis that we have done or the
 23 conclusion of the analysis that we have done of the
 24 positions of the SAPS vehicles at 15:53:50, the remainder
 25 of the documents is devoted to explaining how we place the

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1 vehicles, Brigadier. What I simply want to know from you
 2 is whether you agree with the conclusion that we have
 3 reached on slide 3 as to the positions of the SAPS vehicles
 4 at 15:53:50?

5 BRIGADIER CALITZ: Ja, myne op slide 3 of
 6 bladsy 3, was net posisies of Papa7, 11 en Casspirs. Dit
 7 is wat my bladsy 3 wys, so daar is geen conclusion daar
 8 nie.

9 CHAIRPERSON: I think he is referring to
 10 page 2. My copy of the document which is currently on the
 11 screen has got a number 2 on the bottom right hand corner.

12 BRIGADIER CALITZ: Dis korrek, mnr die
 13 Voorsitter. U conclusion daar is no Papa19 is Papa10. Dit
 14 het ons reeds bevestig and they are the same Nyala. So dit
 15 is die conclusion, mnr die Voorsitter ek kan net sê -

16 MR GOTZ: Sorry, Brigadier, I'm not
 17 asking you for a comment on the note. What I want to know
 18 from you is whether or not you agree that we have
 19 accurately placed in this diagram the SAPS vehicles in the
 20 little blocks, depicted by the little blocks, at 15:53:50.

21 BRIGADIER CALITZ: Mnr die Voorsitter,
 22 ekskuus ek sien u was besig, ek dink ek en advokaat
 23 Chaskalson dink ek, het dit breedvoerig ek dink vir drie,
 24 vier dae het ons gespandeer en hierdie is reeds op rekord
 25 waarop ons ooreengekom het waar die voertuie was sekere

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1 tye. Ek kan nie nou vir u sê 15:53 was daardie karre in
 2 daardie posisie, dit sal vir my onmoontlik wees om nou hier
 3 te sit en dit vir u te sê, ek weet byvoorbeeld Papa10 was
 4 meer in 'n posisie waar hy voor die persone weggeroep het.
 5 Dit hang af wanneer die skietvoorval was, as jy vir my die
 6 presiese tyd gee van die skietvoorval en dan kan ek dalk
 7 sien of papa19 wel reguit en of hy nog dwars was op daardie
 8 stadium.

9 MR GOTZ: Brigadier, at the time of the
 10 TRT shooting or opening fire is 15:53:50. So what we are
 11 depicting there is the positions of the SAPS vehicles at
 12 that point in time.

13 BRIGADIER CALITZ: Dit is hoekom ek sê ek
 14 dink Papa19, ons het hom gesien op die video toe hulle
 15 begin skiet het, dat hy net pad gegee he, so behalwe vir
 16 die agterste kar wat in hindsight gesien het, kan ek nie
 17 vir u rêrig sê die ander karre, ek glo dit is dieselfde as
 18 wat ons uitgesit het toe advokaat Chaskalson met my dit
 19 deurgegaan het. Mnr die Voorsitter, wat ek wil sê dit is
 20 op rekord, ek kan nie onthou of 4 en 2 of 1 agter die ander
 21 een was of 5 voor 2 was, dit sal ek nie nou vir u so uit my
 22 vuis uit kan sê nie. Maar dis min of meer seker die
 23 posisies, behalwe Papa 1 is heeltemal uit posisie uit
 24 daarbo. Ek dink ek getuig ons was teen die draad gewees en
 25 ons het vorentoe beweeg ten tye van die TRT se vuurlyn.

<p style="text-align: right;">Page 20913</p> <p>1 Dit is bewys deur die Roland cameras van ek dink dit is die 2 CALS dokument, dat ons sou vorentoe beweeg het. So behalwe 3 vir daardie een of twee skuiwe glo ek minute of meer die 4 ander voertuie is in plek, ja.</p> <p>5 MR GOTZ: So your answer is, this looks 6 generally correct, what you can't confirm is whether we 7 have got it absolutely precise? And there is a -</p> <p>8 CHAIRPERSON: And also P1 is wrong.</p> <p>9 MR GOTZ: And there is a qualification 10 around Papa 1.</p> <p>11 CHAIRPERSON: He says Papa1 is wrong. He 12 can't be sure what the relative positions of P2, P4 and P5 13 were for example, which is which and so on, and I 14 understood him to say he wasn't sure about the position of 15 P19, the angle. But for the rest basically he wouldn't 16 quarrel with it.</p> <p>17 BRIGADIER CALITZ: Nee, mnr die 18 Voorsitter, nee ek dink min of meer lyk die prentjie reg. 19 As ek so vinnig moet kyk, dis is omtrent presies hoe ek en 20 mnr Chaskalson, advokaat Chaskalson dit op daardie dag 21 bespreek het. Maar ek wil weer sê dit is op rekord en ons 22 het breedvoerig hieroor getuig, so ek weet nie of daar 23 enigiets anders is nie.</p> <p>24 MR GOTZ: Brigadier, we have given our 25 explanation in the slides that follow as to how we arrive</p>	<p style="text-align: right;">Page 20915</p> <p>1 stopping and starting?</p> <p>2 BRIGADIER CALITZ: Nee, ek kan nie onthou 3 dat ek enige iets getuig het dat ek 14 sekondes iewers 4 staties gestaan het nie, na die skietvoorval nie. Ek kan 5 dit glad nie onthou nie. Wat ek wel getuig het is dat ek 6 het opdrag gegee toe ek sien die voorste groep beweeg deur 7 dat ons hulle uiteendryf met die voertuie self en dan het 8 my drywer vir my gesê daar is 'n draad voor hom, en wat u 9 nou vir my sê, as dit op video is maak dit 100% sin. Hy 10 het die draad probeer breek en miskien weer op n tweede 11 geleentheid en toe het hy daardeur beweeg, want ons het 12 fisies die kraal se draad moes afry met die voertuig en dan 13 moet hy seker maak die draad coil nie op die wiele van die 14 voertuig nie. So ja, nee ek glo hy sou dit met 15 omslagtigheid gedoen het.</p> <p>16 MR GOTZ: And it's at that third, as it 17 were, stop start, stop start, start, stop, start stop, 18 start and its only on that third, at that point that you 19 make the third movement off, that the TRT starts shooting. 20 Brigadier, neither our analysis nor the CALS analysis 21 suggests that you were – had driven off completely from 22 scene 1 when the TRT had started shooting.</p> <p>23 [14:31] BRIGADIER CALITZ: Nee, ek het gehoor u 24 sê nou net dat ek het buite beeld - my getuienis was nie 25 dat ons "completely driven off" nie. My getuienis is dat</p>
<p style="text-align: right;">Page 20914</p> <p>1 at the positions of all of those vehicles. I do want to 2 just ask you a question about Papa1, your evidence that 3 Papa1 was moving at the time of the TRT shooting, as I 4 understand it, is based on the CALS document, which says 5 that Papa1 had started to move at the time of the TRT 6 shooting, is that correct?</p> <p>7 BRIGADIER CALITZ: Dit is wat ek getuig 8 het, ek het vir u gesê of vir mnr die Voorsitter gesê dat 9 ek weet nie wanneer het hulle begin skiet nie. So ek het 10 my ge-rely op die dokument waar daar dan bewyse was. Ek 11 dink dit is met die Rowland headgear as ek dit nie mis het 12 nie. Een of ander, die kamera angle wat daar was. So dit 13 is waarop ons gesê het toe ons vorentoe beweeg het, maar ek 14 sal nie vir u kan sê op daardie sekonde was, bietjie voor 15 of bietjie na die tyd nie, nee.</p> <p>16 MR GOTZ: Ja, our analysis is similar to 17 CALS but we conclude that on the basis of the Rowland 18 headgear that it wasn't as it were a smooth movement, that 19 your Nyala a few seconds before the TRT opens fire moves 20 forward slightly, stops then jerks forward again, stops and 21 then one loses sight of it and, Brigadier, my question to 22 you is, your recollection at the time you stopped, you did 23 stop for a while I think you have confirmed that at scene 24 1. We calculate that you stopped for some 14 seconds 25 before moving off again. Do you recall that you were</p>	<p style="text-align: right;">Page 20916</p> <p>1 ek het vir die Pappa Nyalas gesê om die persone dan uiteen 2 te dryf met die voertuie en soos ons vorentoe beweeg het en 3 begin uiteendryf het kon ek sien dat 'n groot groep in die 4 rigting – ek het gedink noordwestelike rigting begin 5 hardloop, met ander woorde dat ons suksesvol was met die 6 uiteendrywing op hierdie manier en dan die groepe begin 7 opbreek het, en daarop het ons opdrag gegee om op te volg 8 tot so 'n mate dat ons by die hergroepingslyn gekom het.</p> <p>9 MR GOTZ: You also gave evidence –</p> <p>10 CHAIRPERSON: I'm sorry [microphone off, 11 inaudible]. Sorry, I didn't have my microphone on. What 12 appears to me to be the case is that the position of Papa1 13 is dealt with in pages 36 and following of the document. 14 Is that right?</p> <p>15 MR GOTZ: Yes, indeed, Chair.</p> <p>16 CHAIRPERSON: And your conclusion is, or 17 the heading is "Papa1 position is somewhat imprecise 18 because it may have been moving," and you say that there 19 are screenshots from exhibit JJJ194.16 at 50 seconds, 57 20 seconds, and a minute, and they show Papa1 - clearly 21 identifiable from its number plate – next to Nyala 6, 22 ultimately squeezes past the right of Nyala 6 between Nyala 23 6 and the fence, when Nyala 6 comes to a halt. There 24 appear to be no other videos, you say, showing Papa1's 25 precise position at the time of the TRT shooting, other</p>

<p style="text-align: right;">Page 20917</p> <p>1 than the Rowland Headgear camera and the Rowland Headgear 2 camera indicates Papa1 may have been moving at the time of 3 the TRT shooting. This is not entirely clear. And then 4 you give enlargements. Is that correct? 5 MR GOTZ: Yes, Chair, and so – 6 CHAIRPERSON: Now have you had a chance 7 to look at these documents, these pages? 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, dit is wat ek sê, dit is waar ons verby die draadkar 10 Nyala 6 gery het op die regterkant en dit is hoekom ek sê 11 ek en Adv Chaskalson is breedvoerig, presies bladsy vir 12 bladsy soos u dit aandui, selfs die nommerplaat, en Adv 13 Chaskalson, ek het die volgende dag teruggekom na huiswerk 14 en die nommerplaat self erken. So alles wat u aandui op 15 bladsy 38 waar ons was, waar Pappa7 was, dit was bevestig 16 op bladsy 40, Pappa1 aan die regterkant van die draadkar 17 verby, dit was bevestig. Daar waar u wys op bladsy 41 dat 18 ek aan die regterkant van Nyala 6 verbygaan, dit was 19 bevestig gewees en reeds getuig oor. So ek sien niks nuuts 20 behalwe u stelling op bladsy 42 dat u nie rêrig kan sê, dan 21 beweeg ek weg en ek is uit die "screenshot" uit. So ek 22 weet nie, ek kan nie enige nuwe vrae kry, of waarnatoe u 23 verwys nie. 24 MR GOTZ: There's one slight, I suppose 25 detail that I did want to highlight and if you look at page</p>	<p style="text-align: right;">Page 20919</p> <p>1 position? They're not depicted on this slide. You'll have 2 to go back to the conclusion slide on slide 3. 3 BRIGADIER CALITZ: Ja, as u van my 4 posisie af kyk, wat ek vir u gesê het ek kon sien Pappa11, 5 die groep van "strikers" wat daar beweeg en die aksie wat 6 teenoor Pappa11 geloods was, die aanval daar, en dan die 7 voorste punt wat verby daardie deel van die Casspir begin 8 beweeg het. So nee, ek kan nie vir u sê dat ek opgelet het 9 of teruggekyk het en weet wanneer het Pappa2, 4, of 5 10 opgevorm nie. Ek dink dit is, as u gaan kyk na bladsy 40 11 kan u wel sien waar Pappa18 en Pappa9 is en die ander 12 voertuie wat op beweeg. Ek kan nie sien dat hier enige 13 melding maak van wanneer Pappa2, 4, of 5, of 19 in posisie 14 kom nie, nee. 15 MR GOTZ: What we're seeking to do by way 16 of this presentation, Brigadier, is simply depict the final 17 positions at 15:53:50. We've prepared a separate document 18 which sets out that detail, which we provided to you last 19 night. But for present purposes I'm testing your memory of 20 what you saw. Do you have a recollection of seeing those 21 Nyalas moving into their positions, moving up behind you as 22 it were? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 nee, ek het reeds daarvoor getuig en ek weet nie of ons dit 25 als gaan herhaal nie. Soos ek vir u sê, dit is reeds</p>
<p style="text-align: right;">Page 20918</p> <p>1 41, slide 41, you'll see we indicate your movement – sorry, 2 it may be the next slide. Brigadier, have you got a 3 diagram which says "Papa1's position at 15:53:13"? 4 BRIGADIER CALITZ: It's the slide just 5 before this one. That one. 6 MR GOTZ: Yes, that. On our analysis of 7 the videos you'll see that Papa1 moves up to the right 8 between the fence and Nyala 6, and I think you've just 9 confirmed that that occurs, but what does happen is that it 10 comes to a stop at the head of the arrow and stays there 11 for 14 seconds. Do you recall stopping in that position 12 for approximately 14 or 15 seconds? 13 BRIGADIER CALITZ: Nee, mnr die 14 Voorsitter, ek kan nie nou vir u sê dat ek presies onthou 15 dat ons op daardie punt van die "arrow" gestop het nie vir 16 14 sekondes nie. Miskien was dit iets, die drywer, ek weet 17 nie of daar iets voor hom in die pad was of die rede nie. 18 As u sê dit wys ons het 14 sekondes lank gestaan en toe 19 verder beweeg, dit kan moontlik so wees. Ek kan nie vir u 20 sê dat ek presies nou onthou 18 maande terug dat 14 21 sekondes, wat toe gebeur het nie, nee. 22 MR GOTZ: It's during that 14 seconds, 23 Brigadier, that the other SAPS vehicles come into position, 24 as it were. Do you have a recollection of watching the 25 SAPS vehicles which are behind the Casspir come into</p>	<p style="text-align: right;">Page 20920</p> <p>1 getuienis wat op rekord is. 2 MR GOTZ: You also gave evidence that 3 your Nyala had gone to assist Papa11. Do you recall that? 4 BRIGADIER CALITZ: Ja, nie net "assist" 5 nie; ek het gesê ten tye van die voorval wat hulle daar 6 verby is het ek opdrag gegee toe ek sien die voorste punt 7 van die aanvalgroep kom verby, dat ek gesien het dat die 8 rubber het geen uitwerking, of die "less lethal force," en 9 ek het opdrag gegee vir die Pappa Nyalas om dan vorentoe te 10 beweeg en die groep so uiteen te dryf met die voertuie. 11 MR GOTZ: But I'm focusing on Papa11 for 12 the moment. Was your evidence, as I recall, that you had 13 gone to the assistance of Papa11? 14 BRIGADIER CALITZ: Mnr die Voorsitter, ek 15 kan nie onthou spesifiek dat ek getuig het dat ons Pappa11 16 gaan bystaan het nie. As ek dit iewers gesê het, die doel 17 van die hele uiteendrywing was al die Pappa voertuie gaan 18 vorentoe en dryf uiteen. Dit sluit Pappa11 in. So ek kan 19 nie onthou spesifiek op 'n plek waar ek gesê het dat ek 20 gegaan het om Pappa11 te gaan help nie. 21 MR GOTZ: Brigadier, the evidence of 22 Colonel Scott - I can take you to the relevant passage or 23 exhibit - was that you were ordering the vehicles around at 24 this stage. 25 BRIGADIER CALITZ: Ja, dit is korrek. Ek</p>

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1 het reeds daarvoor getuig ook.
 2 MR GOTZ: So I want to put to you that
 3 this configuration of vehicles is not fortuitous, as it
 4 were. This was the consequence of orders that you were
 5 giving at the time.
 6 BRIGADIER CALITZ: Nee, mnr die
 7 Voorsitter, wat ek wel die opdragte gegee het is vir die
 8 persone om te gaan, die "dispersion action," en dan ook toe
 9 Nyala 4 hulle afsny en hulle gaan om die kraal het ek dan
 10 ook verder vir die voertuie gesê gaan "disperse" en blok,
 11 met ander woorde laat ons kyk of ons hulle kan uiteendryf.
 12 Waar die groepbevelvoerders heen gery het en wat voor hulle
 13 aangespeel het, dit is onmoontlik vir my gewees om vir elke
 14 voertuig te sê gaan posisioneer jouself daar en daar en
 15 daar. Dit is hoekom daar groepbevelvoerders is.
 16 MR GOTZ: Brigadier, you've also
 17 described this configuration as a "perfekte blok." Do you
 18 recall that evidence?
 19 BRIGADIER CALITZ: Ek dink waarna u
 20 verwys is toe die groep persone die kraal genader het, ek
 21 dink hulle het gepraat van hulle het nog nie die TRT lyn
 22 gesien nie en wat voor hulle aangespeel het, en ek dink op
 23 'n vraag van mnr die Voorsitter is as ek aan die voorkant
 24 van, ek dink ons het gepraat van 'n "white ellipse," as ek
 25 my rekord kan reg onthou, of my getuienis, het ek gesê wat

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1 hulle voor hulle sou sien sou dan 'n linie wees van
 2 Openbare Orde Polisiëring wat dan in hulle rigting optree.
 3 MR GOTZ: Brigadier, I'm not sure that I
 4 understand your answer. On the transcript of day 160 at
 5 page 18270 in response to questions from Mr Chaskalson you
 6 describe this configuration of vehicles as a "perfekte
 7 blok." Do you accept that that's –
 8 BRIGADIER CALITZ: Ons kan miskien gaan
 9 kyk daarna, dan kan ek kyk wat het vooraf en na die tyd –
 10 ek kan nie nou vir u sê. Dit is hoekom ek vir u getuig het
 11 dat ek dink die gesprek het gegaan oor die persone wat die
 12 kraal benader het en wat hulle visie sou gewees het, en dat
 13 die lyn wat voor hulle gevorm is, as ek daarna verwys het
 14 as 'n blok, met ander woorde dit sou 'n reguit lyn voor
 15 hulle gewees het wat hulle dan uiteendryf. Dit is wat
 16 hulle visie sou gewees het. Ek dink ek het nog verwys na
 17 'n 45 grade "angle" wat hulle op die kraal afgekome het.
 18 Dit is nog voor hulle om die hoek is, ek praat van in die
 19 rigting Pappa11 oppad na die Casspir toe.
 20 MR GOTZ: Before we get there, Brigadier
 21 - I'll give you the opportunity obviously to look at the
 22 transcript - can we look at one of the POPS training
 23 manuals that we have provided to you. It's exhibit KKK47
 24 which deals with the matter of blocking, and what I want to
 25 put to you, Brigadier, is that in fact there's not only one

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1 form of block; that the notion of blocking in SAPS'
 2 understanding – or let me first confirm this. This is a
 3 SAPS document, correct?
 4 BRIGADIER CALITZ: Ek vertrou so. Dit is
 5 seker uit een van die "training manuals."
 6 MR GOTZ: And you'll confirm also that it
 7 describes training on how to use blocking to control the
 8 movement of strikers, protesters?
 9 BRIGADIER CALITZ: Ek dink dit is waaroor
 10 die "action note" gaan, ja.
 11 MR GOTZ: And you'll accept also that
 12 there are different, that this document reflects that there
 13 are different types of block?
 14 BRIGADIER CALITZ: Ek sien dit op die
 15 eerste bladsy, punt 2 staan daar, daar is verskillende
 16 tipes.
 17 MR GOTZ: What we found most useful was
 18 the diagrams that you find towards the end of the document.
 19 You'll find them on slide 15 and 16, I think, if we can go
 20 just one slide up. You'll confirm, Brigadier, that on the
 21 basis of these diagrams and other paragraphs of this
 22 document that SAPS commonly uses vehicles – in this case it
 23 would be Nyalas – in order to block protesters, and what
 24 this slide is illustrating is the use of a vehicle to, as
 25 it were, stop protesters from proceeding.

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1 BRIGADIER CALITZ: Dit is in 'n
 2 beplanningsvergadering, ja, waar ons die gebruik van
 3 voertuie en waar dit vooraf beplan word dat die voertuie
 4 dan in sekere posisies geplaas word tydens voorligting.
 5 MR GOTZ: And if you go over to the next
 6 slide, which is 16, you'll see also that not only are
 7 vehicles used in order to prevent people from proceeding
 8 along a path, but they're also used in order to, as it
 9 were, channel protesters or people in a direction which
 10 SAPS wants them to go.
 11 BRIGADIER CALITZ: Dit is een van die
 12 gebruike, ja.
 13 MR GOTZ: And again you'll see that on
 14 the following slide. Now Brigadier, let's go back to the
 15 diagram that we drew, which would be the exhibit that we -
 16 sorry, exhibit KKK51. Would you agree, Brigadier, that if
 17 this is a block, it is a block of the nature that we saw on
 18 slide 16, which is to effectively channel the strikers down
 19 the length of the vehicles which are marked in yellow?
 20 BRIGADIER CALITZ: Vra u vir my of die
 21 blok-formasie was om hulle te "channel"? Is dit die vraag?
 22 MR GOTZ: Would you agree that if this is
 23 a block, it is a block of the nature that we saw on slide
 24 16 of the previous exhibit, one which channels the
 25 protesters down, as it were, the length of the vehicles

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1 marked in yellow?

2 BRIGADIER CALITZ: Dit is hoekom ek u

3 vra, as u sê as hierdie 'n blok-formasie was, en daarmee

4 moet ek met u verskil; dit was nie 'n blok-formasie nie.

5 Hierdie was dan 'n opvolg van 'n uiteendryf aksie wat ons

6 dan gesê het "move forward, disperse, and block." So dit

7 was die opdrag gewees. Dit was nie 'n voorafbeplande – as

8 u mooi gaan kyk na die dokument waarna u verwys het, wat ek

9 vir u ook getuig het is dat as ons vooraf weet daar is 'n

10 groep wat gaan optog hou en ons wil 'n sekere straat

11 afblok, dan kan u dit met voertuie doen en mens weet vooraf

12 en jy beplan vooraf en die lede is vooraf ingelig. Hierdie

13 was glad nie in so 'n geval gewees nie. Hierdie was 'n

14 opvolg van 'n uiteendryf aksie gewees en die lede het dan,

15 die "commanders," dit wat voor hulle afgespeel het, het

16 hulle so posisioneer om nog steeds die uiteendrywing met

17 "non-lethal force" toe te pas. So wat ek vir u getuig het

18 in die vorige een, antwoord, is die persone wat dan van

19 Pappa11 se kant af oppad was kon die ry Openbare Orde

20 Polisiëringsvoertuie voor hulle sien, wat dan 'n aksie van

21 "non-lethal" teen hulle opgetree het.

22 MR GOTZ: We know in fact that protesters

23 did move down the length of, or past the vehicles that are

24 marked in yellow, correct?

25 BRIGADIER CALITZ: Ja, en ek het verwys

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1 daarna, dit is reg. Dit is die persone wat voortgegaan het

2 met die aanval op die polisie. Die groter meerderheid het

3 egter wegbeweeg in 'n westelike rigting.

4 MR GOTZ: So on the one side, as it were,

5 the south side I think it is, you had the kraal, and on the

6 other side you had the Nyala vehicles which are marked in

7 yellow, correct?

8 BRIGADIER CALITZ: As u verwys die kraal

9 teenoor die Nyala "vehicles," ek sien wat u – waar hulle

10 ge-posisioneer is, dit is korrek.

11 [14:51] MR GOTZ: And that creates a channel,

12 correct?

13 BRIGADIER CALITZ: Mnr die Voorsitter,

14 nee, u wil verwys weereens na die blok formasie wat dan

15 gebruik is om persone te channel, ek verskil met u. Daar

16 is wel 'n spasie daar en dit is wel waar mense deur kon

17 beweeg, maar dit was nie deel van die opdrag of deel van

18 die formasie wat uitgevoer is op die dag nie. Hierdie

19 was 'n opvolg van 'n uiteendrywing en dit was van daardie

20 posisie af waar die Openbare Orde dan die persone

21 uiteengedryf het met non lethal force.

22 MR GOTZ: Brigadier, we will argue that

23 it is quite apparent that when you, quite apparent from the

24 POPs straining manuals that you are able to use vehicles

25 under the general label block in order to channel

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1 protestors in a direction that you want them to go and that

2 is exactly what happened in the last 30 seconds before the

3 TRT opened fire.

4 BRIGADIER CALITZ: Mnr Gotz, ek hoor wat

5 u sê, ek verskil van u in die simpel feit van my

6 ondervinding, soos ek al vir u voorheen gesê het, u weet

7 dit seker, ek werk al 19, 20 jaar met Openbare Orde

8 Polisiëring, as daar 'n geleentheid is en ons weet vooraf

9 dat hierdie mense hierdie roete sal gebruik en ons maak

10 voorsiening daarvoor vir 'n blok, wat een van die action

11 modes is, dan doen jy 'n spesifieke beplanning waarin jy

12 dit insit. As jy gaan kyk na die mission wat ons op

13 hierdie dag uitgevoer het, dit was om die crowd the

14 disperse, to encircle, to disarm and to arrest. Blok was

15 nie een van die action modes in ons mission vir die dag

16 nie. Ons het dit bloot hier probeer omdat ons gesien het

17 die persone probeer deurbreek en ek het die voertuie gesê,

18 gaan plaas julle self so, disperse en probeer om hierdie

19 mense dan te blok. So daar was geen vooraf beplanning

20 gewees en as u vir my sê ek kan in 30 sekondes beplan en

21 oor doen in die verskillende voertuie en bevelvoerders

22 brief, dat elkeen presies verstaan hoe hulle nou moet gaan

23 blok, dit is feitlik onmoontlik in enige operasionele

24 toestand, so dit is waar ek met u verskil.

25 MR GOTZ: You have given evidence that

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1 you gave the command to block and you have described this

2 configuration as the perfect block.

3 BRIGADIER CALITZ: Ek het u weereens

4 verwys, u gaan terug na die vorige vraag toe wat Advokaat

5 Chaskalson gevra het en dit is wat die groep sou gesien het

6 sou hulle die Openbare Orde Polisiëringslyn nader, het ek

7 vir u gesê, u sal sien daar is 'n linie van Openbare Orde

8 voertuie voor hulle en dit is 'n linie wat hulle dan geblok

9 het in die sin van om te disperse, nie in die sin van, ek

10 dink ons het later gesê die voertuie kon sy aan sy, deur

11 aan deur stop, wat dit nog steeds onmoontlik, daardie

12 militante groep wat aangeval het sal nog steeds deur ge-

13 squeeze het tussen die kraal en die Nyala of tussen die

14 twee Nyalas deur. Dit sou geen verskil gemaak het of die

15 voertuie langs mekaar daar was nie, dit sou nog steeds die

16 Openbare Orde terug gedryf het op 'n tactical retreat wat

17 sou nog steeds gelei het tot die tragiese gevolge met die

18 persone wat dan so aangeval het.

19 MR GOTZ: What we also know from these

20 documents is that the tactical option of block is commonly

21 the basis of other options including to isolate, canalise

22 and to encircle and we see that on the last page of the

23 exhibits relating to block that we've just dealt with. I

24 can show it to you again if you, it is Exhibit 47, actually

25 the penultimate page which is the summary which says that

1 this tactical option is very commonly used. It forms the
2 basis of tactical options, that was to isolate, to canalise
3 and to encircle.

4 BRIGADIER CALITZ: Ja, dit is korrek,
5 weereens as ons vooraf hiervan weet dan kan u die groepe
6 wat in die straat afkom isoleer na 'n sekere rigting toe.
7 U kan hulle kanaliseer, met ander woorde dat hulle dan
8 in 'n, sê maar van die een straat na 'n ander straat toe
9 gekom en dan sal u sien die action mode van encircle, as u
10 na die, ek dink die opskrif, die encirclement toe gaan,
11 encirclement is eintlik 'n verrassingselement. Met ander
12 woorde die encirclement, dit is waar u dan fisiese voertuie
13 buite sig het en dan skielik om hulle kom. So dit is waar
14 jy vooraf weet en dit vooraf beplan vir so 'n operasie, as
15 u die res van die dokumente dan gelees het.

16 MR GOTZ: Encirclement we know was part
17 of the plan, correct Brigadier?

18 BRIGADIER CALITZ: Dit was korrek gewees,
19 na die dispersion.

20 MR GOTZ: And the word "encircle" in
21 POP's language includes, as you've just testified, an
22 element of ambush or setting a trap, correct?

23 BRIGADIER CALITZ: Ja, ek het nie ge-
24 testify ambush of 'n trap nie, ek het gesê dit is 'n
25 verrassingselement waar die voertuie dan op so 'n manier

1 geplaas word en dan sou hulle in kleiner groupies gebreek
2 wees deur die dispersion dan ontmoedig hulle mekaar, met
3 ander woorde as jy 'n groot groep kleiner wil breek dan
4 ontmoedig jy hulle daardie sterkheid en in daardie geval is
5 dit makliker om hulle dan vinnig te encircle.

6 MR GOTZ: In Exhibit 48, KKK48, I beg
7 your pardon, sorry, it will be Exhibit KKK49, you'll see a
8 description of how to execute an encirclement plan under
9 the heading "Method", I think it is page 5. I'm sorry,
10 Chair, these pages aren't numbered, so it is the slide
11 headed "Method". First you need to select an appropriate
12 action zone, I'm not quite sure why EEP is an acronym for
13 an appropriate action zone but nevertheless. "At the EEP
14 members must remain out of sight of participants to
15 maintain an element of surprise. On command sections will
16 appear from their positions and close all escape routes so
17 that it is then coordination between all sections involved
18 in the operation and then the trap must be sprung once the
19 participants are in a distance inside the street so that
20 there is no chance of escape."

21 Now what I want to put to you, Brigadier, is that
22 when you're told in effect that the plan involves an
23 encirclement option you're effectively being told to engage
24 in this type of strategy or tactic, correct?

25 BRIGADIER CALITZ: Die metode van

1 encircling, net om vir u te help, u weet nie hoe kom EEP
2 daar nie. Dit is "expecting encircling position," so dit
3 is weereens vooraf beplan en as u dit gebruik na 'n blok
4 dan gebruik jy die verrassingselement waar lede dan buite
5 sig is en dan in so 'n mate verwys hulle, "the trap must be
6 sprung once the participants are in a distance inside that
7 street and then there is no chance for escape." Dit is 'n
8 totale ander operasionele prentjie waar jy die persone
9 uiteendryf en nadat jy die uiteendrywing gedoen het en die
10 persone hardloop weg, om hulle dan te probeer in kleiner
11 groepies uiteendryf en dan encircle vir die doel om te
12 ontwapen. Dit is totaal iets anderste as wat u dit bloot
13 net hier sien in hierdie geval.

14 MR GOTZ: Well, Brigadier, I'm not sure I
15 understand your answer again, I was simply putting to you
16 that in the understanding of POP the concept of encircle
17 involves utilising this method in order to deal with the
18 crowd of protestors, and fundamental to that method there
19 is maintaining an element of surprise and then at a
20 particular point in time springing the trap. Do you see
21 that?

22 BRIGADIER CALITZ: Nee, ek sien dit en
23 dit is wat ek hier verduidelik het, in die operasionele
24 terme. Miskien as ons na die volgende slide toe gaan, net
25 na hierdie een sal u sien daar, "to reinforce a relief of

1 members in line," met ander woorde wanneer hulle op beweeg,
2 "to push back the participants who have broken out." So
3 dit kan ook gebruik word in daardie geval waar die persone
4 dan, dit is hoekom ek sê encircle is nie net een spesifieke
5 operasie en is cast in stone en dit is hoe dit is nie. Dit
6 word in verskeie operasionele terme gebruik, dit is waarmee
7 ek te doen het vir die afgelope 20 jaar, so ek kan vir u
8 boekdele sê oor die encirclement self. Dit is nie beperk
9 net tot die gebied waarna u verwys nie.

10 MR GOTZ: Scott testified that he didn't
11 dictate what encircle would entail, so when he gave you the
12 plan he didn't say, I'm telling you, Brigadier Calitz, that
13 you must encircle in a particular way, he said, POP knows
14 their job, I simply handed it over to the operational
15 commander to implement an encirclement action.

16 BRIGADIER CALITZ: Mnr Gotz, dit is
17 hoekom ek vir u sê, as ek vir my mense voorligting gee en
18 ons het tien minute waarin ek voorligting gee en ek sê vir
19 hulle, ons gaan hierdie groep uiteendryf en daarna, na die
20 uiteendrywing moet hulle ge-encircle word met die doel om
21 te ontwapen gaan elke Openbare Orde Polisiëring
22 bevelvoerder presies weet wat om te doen want dit gebeur
23 daaglik. As u, kom ons vat 'n simpel voorbeeld, persone
24 wat 'n pad toe plak met klippe en nou moet ons hulle
25 uiteendryf, hulle sal moet nadat hulle uiteengedryf word

<p style="text-align: right;">Page 20933</p> <p>1 ge-encircle word om sodoende gearresteer te word. So dit 2 pas dan ook nie in by die encirclement nie en dit is hoekom 3 ek vir u sê dit is nie cast in stone, dit wat u hier gesê 4 het, dit is riglyne. Operasioneel op die grond word die 5 action modes dan gekombineer met mekaar. 6 MR GOTZ: Well, Brigadier, I'm not 7 disputing that you can and in fact do and indeed did on the 8 day combine action modes. What I'm however suggesting to 9 you is that when you think about action modes, one of those 10 action modes which you've been told to think about, were 11 told to think about was encircle and as we see from this 12 document quite clearly the concept of encirclement involves 13 the springing of a trap, effectively maintaining an element 14 of surprise and then springing a trap. 15 BRIGADIER CALITZ: Mnr die Voorsitter, ek 16 weet nie hoe om dit verder te verduidelik nie, dit is 17 duidelik mnr Gotz verstaan nie. In die sin waar dit hier 18 ingeskryf is, "the springing of a trap," dit is as ons 19 mense in 'n straat af kanaliseer en dat jy posisioneer jou 20 voertuie so dat as hulle om die volgende blok kom dan 21 skielik is daar mense reg rondom hulle van albei kante af, 22 van al vier kante af en dan is hulle so ge-encircle. Dit 23 is waarna 'n trap verwys, as jy skielik binne-in 'n ding 24 inloop en hier is 'n trap. Wanneer dit 'n opvolgaksie is 25 met 'n uiteendrywing en jy gebruik dieselfde voertuie dan</p>	<p style="text-align: right;">Page 20935</p> <p>1 wat nie gereageer het op die honderde rondtes rubber wat op 2 hulle gevuur is nie en despite die vermoëns en die aksies 3 wat geloods is, non lethal op hulle, het hulle nog steeds 4 besluit om vorentoe te gaan, maak nie saak wat nie. Dit is 5 wat ons hier sien. Wat u wel sien, die mense wat gehoor 6 gegee het is die meer as 2,000 plus wat in 'n westelike 7 rigting wegbeweeg het na 'n meer veilige hawe toe. Dit wat 8 u hier sien is 'n groep wat bly aanval het en die 9 posisieoning van die voertuie. In hindsight kan ons sê 10 Papa4 kan langs Papa2 gestaan het en Papa5 miskien langs 11 hom, dit verhoed nie die groepering om, om 'n Casspir te 12 hardloop, die tweede Casspir of die eerste Casspir aan die 13 regterkant en dan tussen hulle en die sinkhuisie deur te 14 kom nie, so nee, glad nie, ek stem nie saam met u nie. 15 MR GOTZ: Well, let me put the 16 propositions to you. The action started with a dispersal 17 which was an attempt to break up the group into smaller 18 groups, as it were and that was partially achieved by the 19 time that the group of protestors reached the corner of the 20 kraal near the Casspirs, correct? 21 BRIGADIER CALITZ: As jy van die voorste 22 groep praat, nee, dit was glad nie ge-achieve nie. Nyala 23 4, waar hy die kraal toe maak weet ons dat aan hierdie kant 24 het die lede reeds opgetree met non lethal force en was 25 daar reeds 'n uiteendryf aksie gewees, so die meeste van</p>
<p style="text-align: right;">Page 20934</p> <p>1 is dit nie moontlik om daardie voertuie vooruit te plaas, 2 want u weet nie in watter rigting hulle gaan nie. 3 Hulle spreid in 'n sekere groot gebied, so jy volg 4 hulle op tot waar dit vir jou moontlik is om hulle in 5 kleiner groepies op te breek en dan daardie kleiner 6 groepies word daar ge-encircle om die terme gebruik, met 7 die doel van ontwapening. So dit is wat ek vir u sê, 8 operasioneel hoe dit aangewend word. 9 MR GOTZ: Brigadier, let's finally just 10 go back to Exhibit KKK51 and look at the configuration of 11 the vehicles at the time of the TRT opening fire. Can you 12 see that as the protestors moved down, what I think is 13 abundantly clear is a channel between the yellow vehicles 14 and the kraal towards the TRT line, that they are 15 effectively encircled? 16 BRIGADIER CALITZ: Nee, ek sien nie wat u 17 daarmee bedoel nie. 18 MR GOTZ: They have got the kraal on the 19 one side and they have got Nyalas on the left hand side of 20 them, the kraal on their right hand side of them, they have 21 got the water cannon spraying effectively back over Nyala4, 22 why is that not an encirclement? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 wat u hier sien, mnr Gotz is dat, u sien 'n protes groep 25 wat besluit het om die polisie lyn aan te val kom wat wil,</p>	<p style="text-align: right;">Page 20936</p> <p>1 die groepering het terugbeweeg. Daardie handjie vol wat 2 besluit het, die militante groep, hulle beweeg om en val 3 nog steeds die polisie lyn aan. So ek stem nie saam met u 4 dat u sê by die Casspirs nie, reeds by Nyala 4 was daar al 5 teen hulle opgetree. 6 MR GOTZ: A smaller grouping attempted to 7 make their way down that channel, would you at least agree 8 with that? 9 BRIGADIER CALITZ: Nee, mnr die 10 Voorsitter, hulle het nie attempt to make way down a 11 channel nie, hulle het besluit om die polisie lyn fisies 12 aan te val en dit is hoekom hulle in daardie rigting beweeg 13 het. 14 MR GOTZ: I was trying to put it in the 15 most neutral way possible so that we don't have 16 disagreement. As a matter of fact a smaller grouping of 17 strikers attempted to make their way down that channel, 18 whether it was to attack the police or whether it was to 19 make their way past the group of Nyalas, leave that away 20 for the moment, a smaller group attempted to make their way 21 down that channel, correct? 22 BRIGADIER CALITZ: As u sê ons los die 23 aanval uit en die redes hoekom hulle dit gedoen het, dit is 24 korrek, hulle het afbeweeg in daardie rigting. 25 MR GOTZ: At that time they were being</p>

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1 shot at with rubber bullets and I think it has been
 2 suggested also with pellet rounds from the Papa Nyalas, P2,
 3 P4, P5 and P19/P10, that's correct?
 4 BRIGADIER CALITZ: Ja, ek dink die lede
 5 uit Papa11 uit en hier selfs by Nyala 4 het ook van rubber
 6 gebruik gemaak. Ek is nie seker tussen die Casspirs, dit
 7 wit Casspir glo ek se lede het ook op hulle gevuur. Die
 8 lede wat wel buitekant was wat ons kon fisies sien na die
 9 tyd, dink ek het gestaan tussen die Casspir and P2 en
 10 tussen P2 en P4, as ek korrek is, die lede wat nog
 11 buitekant die voertuie was.
 12 MR GOTZ: As a consequence of that they
 13 have their blankets over their heads, correct?
 14 BRIGADIER CALITZ: Die komberse is
 15 gebruik as 'n strategie en ook hulle double layer of
 16 clothing weens die, om resistant te wees teen die rubber
 17 wat teen hulle gebruik is.
 18 MR GOTZ: At the same time teargas is
 19 been shot behind them in the vicinity of, between Papa11
 20 and the STF Casspir as well as into that space between the
 21 kraal and the yellow Nyalas, the yellow Papa Nyalas,
 22 correct?
 23 [15:11] BRIGADIER CALITZ: Ek glo die traangas en
 24 die en die "stuns" is gebruik al aan wat ons verwys het
 25 hier na insident 2 se kant by Nyala 4 op so 'n vroeë

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1 stadium, en dan ook die waterkanon is gebruik op die groep.
 2 So as u sê "behind them" beteken dit dan, ek weet nie op
 3 watter stadium u verwys nie, seker toe die voorste groep al
 4 verby is, maar ek dink hulle het reeds by insident 2 hier
 5 waar Nyala 4 teen die kraal is, is daar reeds gebruik
 6 gemaak daarvan.
 7 MR GOTZ: Yes, I think the issue of
 8 teargas has been well covered by other parties and I'm not
 9 going to deal with that, when it was fired for the first
 10 time, etcetera. The effect of teargas, Brigadier, can you
 11 just give us a little insight as to what that does to a
 12 person's eyes?
 13 SPEAKER: Chair, sorry Chair, just two
 14 points. Firstly, Chair, I just want to find out if it's
 15 still the position that parties who desire to cross-examine
 16 must first file a request -
 17 CHAIRPERSON: Yes, nothing has changed.
 18 SPEAKER: - wherein they indicate the -
 19 CHAIRPERSON: Nothing has changed. But
 20 he did file a request and he did indicate that these
 21 questions were going to be covered.
 22 SPEAKER: Okay, because - and secondly,
 23 Chair, just on the last question that he asked, I think
 24 Brigadier Mkhwanazi, it was one of the other previous
 25 witnesses dealt quite extensively with the effects of

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1 teargas on protesters.
 2 CHAIRPERSON: Yes, I understood him to
 3 say he's not dealing with the teargas.
 4 SPEAKER: That would be the question that
 5 was just asked now, just before I -
 6 CHAIRPERSON: Did I understand you to say
 7 you weren't going to deal with the teargas question, that
 8 it's been dealt with already?
 9 MR GOTZ: Well, Chair, I simply asked
 10 whether the Brigadier could give us a sense of what the
 11 effect of teargas was. If it has been covered, I don't
 12 need to deal with it in great -
 13 CHAIRPERSON: It was covered, ja.
 14 MR GOTZ: - in great detail, but -
 15 CHAIRPERSON: Are you moving on to a new
 16 topic, or are you still busy in the middle -
 17 MR GOTZ: Well, I'd like to follow up
 18 just a few questions on the -
 19 CHAIRPERSON: Because I'd like to take
 20 the tea adjournment in a few minutes, but when it's
 21 convenient let me know.
 22 MR GOTZ: Yes, Chair. Brigadier, then -
 23 CHAIRPERSON: Are we doing it now, or do
 24 you want to ask a few more questions?
 25 MR GOTZ: No, no, let's take it after the

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1 tea adjournment, Chair.
 2 CHAIRPERSON: Alright, you want to follow
 3 up after tea?
 4 MR GOTZ: Yes.
 5 CHAIRPERSON: Alright, we'll take the tea
 6 adjournment.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [15:31] CHAIRPERSON: The Commission resumes.
 9 Brigadier, you're under oath. Mr Gotz.
 10 ADRIAAN MARTHINUS CALITZ: Thank you,
 11 Chair.
 12 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
 13 Thank you, Chairperson. Brigadier, we were discussing the
 14 way in which the tactics can be combined and were combined
 15 on the day, and I dealt with the issue of dispersal. I'd
 16 put to you that effectively the use of teargas, rubber
 17 bullets and water cannon had been partially successful at
 18 least in breaking up the group of, the large group of
 19 strikers into smaller groups at least that went through the
 20 channel made up of the vehicles that we've identified.
 21 Perhaps we can for that purpose just have another
 22 look at that exhibit. That will be exhibit KKK51 and page
 23 3. After the dispersal action has commenced, Brigadier, I
 24 must just put this to you because it will be our argued
 25 that a blocking tactic is then employed, not a blocking

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1 tactic which you could have employed which was to stop the
 2 strikers, as it were, in their tracks, but a blocking
 3 tactic which channelled them down the line of the vehicles
 4 which are the Papa Nyalas which are marked in yellow, and
 5 it becomes an encirclement tactic because effectively the
 6 TRT line is out of sight. They do not see the TRT line.
 7 At the last moment, you've already testified, Papa19 moves
 8 out of the way and the front group of strikers passes
 9 Papa19 and then there are tragic consequences.

10 What immediately follows then is the push-back
 11 action, which is then to use the remaining Papa vehicles
 12 which have not been engaged in the block and encirclement
 13 to then push the other group back towards koppie 2.

14 MR SEMENYA SC: Chair, with respect, I
 15 wish at a certain point Mr Gotz indicates he'll be giving
 16 us statements of these witnesses. We really would like to
 17 cross-examine them. His theories are inconsistent with the
 18 way these matters are handled.

19 MR GOTZ: Chairperson, I'm putting a
 20 proposition on the basis of what we have observed what the
 21 objective evidence strongly suggests, coupled with a proper
 22 reading of the POPS documents relating to these strategies,
 23 and all I'm saying is it's a plausible proposition to put
 24 to this witness, indeed the argument that we will run is
 25 that that was precisely what took place, and it's a

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1 perfectly fair proposition to put.

2 CHAIRPERSON: Mr Semenya, what's happened
 3 in the past is I've ruled on numerous occasions that
 4 counsel can't put something unless they've got evidence to
 5 support it, statements of witnesses. There is an exception
 6 to that and that is where what is being put is contended
 7 for on the basis of circumstantial evidence, in which case
 8 obviously you won't have a statement confirming that, but
 9 the counsel is then obliged to put the circumstances upon
 10 which he or she will rely for the inference that the
 11 Commission will in the end be asked to make. I think that
 12 principle applies here. The question is whether Mr Gotz
 13 has put sufficiently clearly the circumstances upon which
 14 he will rely for the inference which he will ask the
 15 Commission to draw at the end, based on the facts he's
 16 mentioned, and I think there is substance, I think, in what
 17 Mr Semenya says, that that hasn't been done with sufficient
 18 clarity. You've got no direct evidence that that's so, but
 19 it doesn't stop you from arguing it at the end on a Govern
 20 & Skidmore circumstantial evidence basis, but then in line
 21 with what I've ruled earlier you must indicate clearly the
 22 facts upon which you will rely for the inference. So I
 23 suggest you repeat the question, but this time do it in
 24 accordance with the rulings that I've given.

25 MR SEMENYA SC: Chair, maybe once Mr Gotz

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1 is doing that, the focus of my objection is if he is
 2 relying on the evidence we all see, the opinion of the
 3 witness is irrelevant, but I'm interest in seeing where he
 4 says that is a blocking action and that is a channelling
 5 action. I would like to cross-examine witnesses who want
 6 to sponsor that on the basis of that conclusion.

7 MR GOTZ: Chairperson, I –
 8 CHAIRPERSON: What do you say to that, Mr
 9 Gotz?

10 MR GOTZ: Chairperson, well, I mean the
 11 first person that Mr Semenya would be cross-examining is
 12 his own witness. The Brigadier came to give evidence –

13 CHAIRPERSON: No, I won't allow him to
 14 cross-examine in re-examination.

15 MR GOTZ: Indeed, but it's the Brigadier
 16 who gave evidence that he instructed his troops, as it
 17 were, to engage in a blocking action. So I've got a basis
 18 for saying that a blocking tactic was employed.

19 CHAIRPERSON: Ja, my understanding is
 20 what you've done is you've put from the police manual the
 21 police definition of a block, block action, right?

22 MR GOTZ: Yes, Chair.
 23 CHAIRPERSON: And you've also put from
 24 the police manual the police definition of an encirclement
 25 action and a dispersal action, right? And you're now

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1 seeking to persuade the witness to agree with the
 2 proposition that that's what happened here.

3 MR GOTZ: Indeed.
 4 CHAIRPERSON: But if you do it along that
 5 basis I don't think there can be an objection, but if you
 6 go beyond that and you suggest things that are not covered
 7 by the materials before us, namely the police manual, then
 8 the objection taken will be a good one. So I suggest you
 9 approach it in the manner I've suggested and then you
 10 shouldn't have any difficulty. Whether you'll get the
 11 answers you want of course is another matter.

12 MR GOTZ: But with respect, Chair, I'm at
 13 a bit of a loss. I've been putting the bases for the
 14 conclusion; the entire session after 2 was devoted to
 15 showing the witness the various police manuals,
 16 highlighting the evidence in relation to block and
 17 encirclement, and this is, as it were, the conclusion to
 18 that. For me to go through the evidence again will simply
 19 duplicate matters –

20 CHAIRPERSON: No, you won't go through
 21 all the evidence all again, but the objection really is
 22 that in putting these conclusory questions you haven't
 23 stated with sufficient clarity the bits of material that
 24 we've been traversing since 2 o'clock, which will enable,
 25 (a), the witness to answer; and (b), his counsel to know

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1 what he must deal with in re-examination without cross-
 2 examining his client.
 3 MR GOTZ: Chair, again I apologise for
 4 perhaps not understanding. If the objection is that I
 5 haven't been clear enough, then I must do the exercise
 6 again –
 7 CHAIRPERSON: I think that's part of the
 8 complaint. Mr Semenya says it is not clear to him what
 9 exactly is happening. He thinks that you are going to call
 10 a witness to say these things and he'd like to cross-
 11 examine the witness. That's, you've disavowed any
 12 intention of doing that.
 13 MR GOTZ: Yes, let me be clear on that –
 14 CHAIRPERSON: So you are in the, on the
 15 area other that where you are putting to the witness an
 16 inference you'll ask the Commission to draw based on
 17 circumstantial evidence, and the question is whether you
 18 put the circumstances upon which you will rely with
 19 sufficient clarity, albeit with sufficient succinctness as
 20 well, to incorporate them in the question. The question is
 21 whether you've done that. You've covered a lot of ground.
 22 A lot of the basic building blocks are there, but they're
 23 sort of scattered over the ground. If you want to put a
 24 proper succinct focussed question, you must then put the
 25 relevant building blocks together in the form of a

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1 structure so that the witness can understand, and also to
 2 be fair, so that his counsel can understand what point
 3 you're seeking to make so that he can deal with it in re-
 4 examination and it can be dealt with. It's not too
 5 difficult an exercise, Mr Gotz.
 6 MR GOTZ: Chair, I do feel that it's an
 7 exercise that I may not be able to complete today. But
 8 Brigadier, let's – the first building block is that you
 9 have testified that you gave an instruction to the people
 10 in the Nyalas that they must block the strikers as they
 11 were coming around the kraal. You would agree with that?
 12 BRIGADIER CALITZ: Nee, dit is nie korrek
 13 nie. Ek het gesê, ek het die woorde gebruik "Engage" toe
 14 ons nog terug was by, tussen Nyala 3 en 4, en daarna het
 15 mnr die Voorsitter gevra was daar verdere kommunikasie
 16 gewees. Ek het gesê ja. Ek het dan wel met die Pappa
 17 Nyalas gekommunikeer en gesê beweeg uit, "disperse," en
 18 blok, met ander woorde daardie opdragte het gevolg na die
 19 "dispersion," dit is korrek.
 20 MR GOTZ: So you're agreeing with my
 21 proposition, you gave the instruction to block?
 22 BRIGADIER CALITZ: Nee.
 23 CHAIRPERSON: You gave three
 24 instructions. The third instruction was block. So you did
 25 give an instruction to block, correct?

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1 BRIGADIER CALITZ: Dit is korrek, mnr die
 2 Voorsitter –
 3 CHAIRPERSON: Now "block" is defined in
 4 the police manual which was put before us. Is that right?
 5 We know what police mean when they use the word "block,"
 6 and the definition of block – my pages aren't numbered,
 7 neither are yours, but it's about the fourth page of KKK47,
 8 "Block is the placing of members or means to control access
 9 or deny access to one or more particular place in one or
 10 more direction," and then types of blocks are given. One
 11 of them is to prevent participants from deviating from a
 12 route, to stop them proceeding further from proceeding
 13 along their present route, but the more appropriate one is
 14 to prevent them from deviating from a route, right. That's
 15 the first section under types of blocks after the
 16 definition. Now what you did was, we had the slide up for
 17 us which showed us what the situation was. You had a row
 18 of vehicles, P11, the STF Casspir, the other Casspir, P2,
 19 P4, P5, and P19 as we them there, with members of the
 20 police service in between the STF Casspir, I think, and the
 21 Casspir and P2, and I think P2 and P4, and they were busy
 22 firing rubber balls, and I think there was teargas as well.
 23 The effect of that was that the strikers couldn't move in
 24 the direction of the gap between the STF Casspir and the
 25 other Casspir, and the Casspir and the P2 that they

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1 couldn't move sideways. They couldn't move to their left.
 2 They couldn't move sideways to their right because of the
 3 kraal. So the only route they could follow was the route
 4 ahead, right? So in terms of the definition of "block"
 5 they were effectively prevented from deviating from the
 6 routes that they were on. That is a block as defined under
 7 the regulations - in terms of the police manual. Now, so
 8 effectively they were blocked, there was a block. You'd
 9 given an order to block, and what counsel is putting to
 10 you, as I understand him, is you can't be heard to say that
 11 having told your men to block and having achieved the
 12 block, that it wasn't what in fact you intended. That's
 13 your point, isn't it, Mr Gotz?
 14 MR GOTZ: Yes, indeed, Chair. That's the
 15 first building block, as it were. Correct, Chair.
 16 CHAIRPERSON: Now Mr Semenya wants to say
 17 something. Yes, Mr Semenya?
 18 MR SEMENYA SC: Chair, you would allow us
 19 that even those demonstrations show you a blocking does not
 20 leave all those gaps there, so if you allow us an
 21 opportunity later to persuade you differently, if that is
 22 the proposition –
 23 CHAIRPERSON: Of course. Of course you
 24 may. I was simply endeavouring to put Mr Gotz' question in
 25 a way which, I hope he will not be offended if I say was

<p style="text-align: right;">Page 20949</p> <p>1 slightly more succinct than his, and in a way which 2 conveyed to the witness the point he was trying to make. 3 I'm endeavouring to keep an open mind on this. You will be 4 able to re-examine your witness without cross-examining 5 him. You will also be able to call other evidence on the 6 point, if necessary, either by affidavit or by oral 7 evidence. So you don't have to worry about – 8 MR SEMENYA SC: No, I was just reticent 9 to have counsel hanging their arguments on the strength of 10 the word of the Chair. The witness may – 11 CHAIRPERSON: No, well I was simply 12 endeavouring – so sorry. I was just simply endeavouring to 13 put his question, and I fear I may have offended him, but I 14 was trying to put it clearly and succinctly for the 15 witness. Anyway, so now after that unnecessary debate, 16 what do you say to the question which counsel was putting 17 to you, which I endeavoured to summarise? 18 BRIGADIER CALITZ: Mnr die Voorsitter – 19 ekskuus, mnr die Voorsitter, ek sien u was besig. Ek wil 20 net sê soos u opgesom het, maar miskien is dit waarna mnr 21 Semenya verwys dat ons dalk later dit sal doen. Ek kan net 22 sê dat die opsomming wat u gegee het, die enigste manier, 23 of die enigste "way" wat vir hulle oop was, was daar deur; 24 ek stem nie saam nie. Daar was die omgekeerde. As die 25 polisie 'n lyn maak en ons as 'n gesag van die Regering, en</p>	<p style="text-align: right;">Page 20951</p> <p>1 hierdie mense te stop dat hulle nie verder aanval op die 2 polisielyn nie maar gehoor gee aan die "dispersion action." 3 So wat u hier sien is 'n lyn wat opgevorm het wat dan 'n 4 uiteendrywing uitgevoer het op die persone. Die getal 5 rondtes, die gas wat gebruik is, die "stuns," die getalle 6 is beskikbaar. So daar was meer as genoeg geleentheid 7 gewees vir die persone om om te draai en in 'n westelike 8 rigting te hardloop. Ek sê nie dit was nie die woorde 9 gewees nie; daar was wel gesê "disperse" en blok, so dit 10 moes gekombineer gewees het. Maar dit is nie 'n 11 voorafbeplande "block action" wat ons vooraf beplan het of 12 bespreek het of dan voorligting gegee het dat die karre in 13 'n sekere linie moet trek of op 'n sekere punt moet staan. 14 Dit was nooit bespreek so nie, mnr die Voorsitter. 15 CHAIRPERSON: I don't think Mr Gotz is 16 suggesting to you that it was all planned and discussed 17 beforehand. What he's discussing with you is what happened 18 on the scene at the time. But anyway, he must carry on 19 with his cross-examination. I tried to help him. He must 20 paddle his own canoe from now on. 21 MR GOTZ: And Chair, I'm very indebted to 22 you for the succinct way in which you put the rather 23 lengthy cross-examination that I had. Brigadier, just a 24 couple of points on your statement. You'll accept though 25 that the front group, as it were, doesn't quite have the –</p>
<p style="text-align: right;">Page 20950</p> <p>1 ons dryf persone weg of ons maak 'n "dispersion action," 2 dan is die hele westekant, daar is 'n groter, ek dink 200 3 grade oop gewees vir hulle om heen te gaan. So indien daar 4 wel teen jou opgetree word deur die polisie is dit, dis die 5 eerste keer dat ek sien – en ek wil weet waar sulke 6 getuienis is – daar is nog nooit op 'n polisielyn na jou 7 "ge-disperse" word aangehou, aangeval, en dan as jy 8 "squeeze" deur die "gap" en te sê dit is die enigste "way" 9 gewees nie. In daardie sin het ek met mnr Gotz verskil. 10 Wat u hier sien is nie 'n blok-formasie nie. Die 11 blok-formasie soos hy in die "manual" vir u verduidelik 12 word het ek vir u gesê dit is vooraf waar jy voertuig 13 "bumper" teen "bumper" trek, meer in 'n stadsomgewing, meer 14 om persone in 'n sekere rigting te dwing. Dit is as jy 15 vooraf weet en jy kan dit vooraf beplan. 16 Ons het dalk net gestop voor die belangrike goed, 17 en dit is die "menace," die milieu, en die faktore om in ag 18 te neem. Die "menace," u moet vooraf die dreigemente 19 bestudeer. Die milieu, "conduct the recce," wat beteken 20 "physical inspection of the area prior to the deployment of 21 a block." Daar is sekere faktore wat ons in ag moet neem, 22 mnr die Voorsitter, voordat jy die taktiek, of die "action 23 mode block" kan gebruik in die sin van dit is 'n aparte 24 beplanning. In die sin van die woord waar ons dit 25 gekombineer het met 'n "disperse action" was gewees om</p>	<p style="text-align: right;">Page 20952</p> <p>1 the front group of strikers doesn't quite have the option 2 of turning around because they have a crowd of people at 3 their back. So it's not that easy just for the front group 4 of strikers who have, as we see in the videos, a crowd of 5 people – 6 MR SEMENYA SC: Chair, again – 7 MR GOTZ: - pushing behind them. 8 CHAIRPERSON: I'm sorry, Mr Semenya 9 raised an objection. 10 MR SEMENYA SC: My learned colleague is 11 raising factual issues without any support. I don't know 12 that the group at the back of that crowd could not go back 13 and the other one back as well. We want this type of 14 evidence, if it is tendered, to test it. 15 CHAIRPERSON: You were putting a factual 16 statement now and not just, as I understand, a 17 circumstantial factor. You were suggesting as a fact that 18 the strikers couldn't turn around, about-turn as it were, 19 and proceed in the direction which they had come from. Now 20 it may or may not be so, but there's no evidence to that 21 effect. Isn't that so? 22 [15:50] MR GOTZ: Well, Chair, I'm not suggesting 23 that it was absolutely impossible. What I am suggesting 24 though is that it wasn't as easy as the brigadier has 25 suggested and I chose those words carefully and perhaps I</p>

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1 can show you the photograph and indeed the video of why I
 2 say that, so –
 3 CHAIRPERSON: Mr Gotz, if you do that
 4 then Mr Semenya won't object, his complaint is that you
 5 haven't got any evidence to support you on this. If you've
 6 got evidence to support you on it obviously his objection
 7 falls away.
 8 MR GOTZ: So, well, Brigadier, let me put
 9 the proposition to you knowing that I do, I am putting the
 10 proposition on the basis of photographic and video
 11 evidence. As the group approaches –
 12 MR SEMENYA SC: No, we want to see that
 13 video graphic evidence first, Chair, so that the witness
 14 can give an informed answer.
 15 CHAIRPERSON: Let me suggest to you, Mr
 16 Gotz, that you can't say, I put it to you on the basis of
 17 photographic video evidence and don't show him the
 18 photographic video evidence. Clearly that precedes the
 19 putting of the question.
 20 MR SEMENYA SC: Chair, -
 21 CHAIRPERSON: Mr Gotz, may I make a
 22 suggestion to you, I know it is before the time I was
 23 intending to adjourn and you know I don't like us to
 24 adjourn early and I don't want to waste unnecessary time,
 25 but sometimes a tactical retreat is better, it is not

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1 running away and it actually saves time op die ou einde.
 2 So it might be helpful, unless there is something you can
 3 deal with in the meanwhile, I might be helpful to stop the
 4 cross-examination at this point and to gather the
 5 photographs that you rely on, gather the video material
 6 that you rely on and then tomorrow first thing put it to
 7 the witness. That will, I suspect save time at the end.
 8 If the photograph and video material supports you, you will
 9 be far more effective in your cross-examination than you
 10 would be by referring to something you can't see, but I'm
 11 merely making the suggestion, Mr Gotz.
 12 MR GOTZ: Mm, -
 13 CHAIRPERSON: Is there some other little
 14 point you can deal with now before, from now until four
 15 o'clock?
 16 MR GOTZ: Chair, -
 17 CHAIRPERSON: Or would you want me to
 18 adjourn now –
 19 MR GOTZ: Let me consult with my
 20 colleague for a second.
 21 BRIGADIER CALITZ: Mnr die Voorsitter,
 22 miskien net 'n versoek, as daar video materiaal is of 'n
 23 foto waarna hy verwys dat ek net dit ook kan kry en deur
 24 die nag dan daarna kan kyk, as dit nuwe evidence is by
 25 gesê?

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1 CHAIRPERSON: You know that's a fair
 2 request if it can be complied with, I'm sure it will be.
 3 Yes, Mr Gotz?
 4 MR GOTZ: Absolutely, Chair, so let's, as
 5 you propose, have an early adjournment. I'll gather my
 6 evidence in a coherent way. It certainly is in the
 7 documents that are before you, but let me draw the
 8 brigadier's attention to them during the course of the
 9 night and we can then have a debate with speed tomorrow.
 10 CHAIRPERSON: To this point being dealt
 11 with, how long do you anticipate the rest of your cross-
 12 examination will be?
 13 MR GOTZ: Chair, this was the last big
 14 topic as it were.
 15 CHAIRPERSON: I see.
 16 MR GOTZ: I got four small points which
 17 hopefully should not take longer than ten minutes each, so
 18 we're looking at, I think probably an hour, I'm going to be
 19 an hour and a half tomorrow morning.
 20 CHAIRPERSON: Okay, then we have Mr Gumbi
 21 who is going to ask some questions, but he assures me only
 22 about a quarter of an hour, but I'll allow for half an hour
 23 just in case we run out of time.
 24 MR GUMBI: Ja, it won't be more than an
 25 hour, Chairperson, I assure you, it can be 15 to 20

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1 minutes.
 2 CHAIRPERSON: Alright. Okay, then Mr
 3 Semenya, will you be in a position to re-examine?
 4 MR SEMENYA SC: Indeed, Chair.
 5 CHAIRPERSON: Alright, and I know it is
 6 difficult to say, is it lengthy, likely to be a lengthy re-
 7 examination such as we had in the case of General Mpembe –
 8 MR SEMENYA SC: Certainly –
 9 CHAIRPERSON: - or is it likely to be a
 10 fairly succinct one?
 11 MR SEMENYA SC: Certainly not 23 days of
 12 cross-examination we have seen, Chair.
 13 CHAIRPERSON: Well, the re-examination of
 14 General Mpembe wasn't 23 days either, although it certainly
 15 didn't err on the side of brevity, but we don't have to
 16 debate that further now. We'll adjourn until nine o'clock
 17 tomorrow morning. It sounds though as if your next witness
 18 will be in the box at some stage tomorrow.
 19 MR SEMENYA SC: I anticipate that to be
 20 the case, Chair.
 21 CHAIRPERSON: Okay, and that I think will
 22 be Lieutenant-General Mbombo?
 23 MR SEMENYA SC: Yes.
 24 CHAIRPERSON: Alright, very well, we will
 25 now adjourn then until nine o'clock tomorrow morning. The

1 material you want will hopefully be made available to you.
2 BRIGADIER CALITZ: Just before midnight,
3 please?

4 CHAIRPERSON: I'm unable to comment on
5 that, we'll now adjourn until nine o'clock tomorrow.

6 [COMMISSION ADJOURNED]

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