

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 168

14 JANUARY 2014

PAGES 19510 TO 19710



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1 [PROCEEDINGS ON 14 JANUARY 2014]
 2 [09:10] CHAIRPERSON: The Commission resumes. I
 3 hope everyone present has complied with the instruction
 4 that we had on the screen to turn off your cell phones. I
 5 don't know what I'll do to people who haven't; I'll think
 6 about it. Brigadier, have you turned off your cell phone?
 7 First of all, I remind you, you're still under oath.
 8 ADRIAN MARTHINUS CALITZ: s.u.o.
 9 CHAIRPERSON: Have you turned off your
 10 cell phone?
 11 BRIGADIER CALITZ: In that regard, let me
 12 check. It is off, Chairperson.
 13 CHAIRPERSON: Mr Bizos.
 14 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 15 Thank you, Mr Chairman. Brigadier, don't let's have any
 16 time spent by my use of the word "eulogy." Let's deal with
 17 your wording as is – we'll deal –
 18 CHAIRPERSON: Sorry, Mr Bizos, before you
 19 proceed, I'm reminded by Adv Hemraj that Mr Semenya was
 20 going to – he had objected, but he was going to address us
 21 and motivate his objection. Unless you and he have settled
 22 your differences since we adjourned, I suppose we must give
 23 him an opportunity to motivate his objection if he still
 24 wishes to do so and hasn't repented in the interim.
 25 MR SEMENYA SC: We have come to an

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1 amicable settlement with my learned colleague.
 2 CHAIRPERSON: I regret I haven't got the
 3 power to make it an order of court, but we will
 4 nevertheless regard it as binding. Mr Bizos, please
 5 proceed.
 6 MR BIZOS SC: Yes. To avoid arguments
 7 about the meaning of the word "eulogy," Brigadier, let us
 8 use your own words. In JJJ82 at 8:07, which is a clip, you
 9 are recorded as having said the following; "The police, we
 10 will give our hundred percent full of cooperation, okay,"
 11 and at 8:10, "At this stage we did nothing wrong. From the
 12 beginning to the execution was 110% exactly how we plan it
 13 and it is not often that this happens in a large group. I
 14 have to congratulate you, exactly how we planned it and we
 15 briefed the commanders exactly, we executed in that line.
 16 The force continuum, we did the water cannons, we did the
 17 stun grenades, we did the tear smoke, we did the push back,
 18 we tried. When was ineffective the guys ran back. Then on
 19 the media they say police were running away. Yes, it is
 20 true, but we call it tactical retreat and we don't call it
 21 running away, nè? Ja." And at 8:53 you are recorded as
 22 having said, "By retreating back to your safe haven,
 23 therefore we got over to the second phase." And at 9:20,
 24 "And that is where the TRT line and the NIU line was formed
 25 and when they become under attack, that is where the

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1 command was given by their commanders as well as some of
 2 them act in self-defence, alright? So that nothing,
 3 nothing, nothing was wrong, okay? You acted. It was
 4 justified and that is exactly the commitment and the
 5 cooperation that we are going to give the people, those
 6 people that still need to fill the 15S and say how many
 7 rounds," is that, do you accept that you said that?
 8 BRIGADIER CALITZ: Dit is korrek, mnr die
 9 Voorsitter.
 10 MR BIZOS SC: Right, now you were not
 11 there at the vital moments when this happened, Brigadier.
 12 BRIGADIER CALITZ: Met sekere dele van
 13 wat u gelees het ja, was ek nie daar nie.
 14 MR BIZOS SC: So you didn't have any
 15 personal knowledge of exactly what happened.
 16 BRIGADIER CALITZ: Nee, ek stem nie saam
 17 met u nie.
 18 MR BIZOS SC: Personal knowledge, I mean
 19 you were not present to witness what happened.
 20 CHAIRPERSON: Mr Bizos, he said he was
 21 there some of the time in relation to the matters he was
 22 describing, so when he says he was there some of the time,
 23 he then says no when you say you didn't know anything about
 24 what happened, his answer obviously is I did know, from
 25 personal knowledge I knew some of the stuff, and then the

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1 point you're interested in is where he didn't know
 2 himself –
 3 MR BIZOS SC: I will amend the question.
 4 During the vital period immediately before the shooting
 5 where 18 people were shot dead you were not there. You
 6 were not anywhere near there to have personal knowledge of
 7 what happened at the vital moment, or moments.
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 ja, om u woorde te gebruik, "not there, not near," daar
 10 verskil ek met u. Ek was daar naby. As u bedoel het of ek
 11 dit gesien het, dan stem ek saam met u; nee, ek het dit nie
 12 gesien nie.
 13 MR BIZOS SC: So you agree that what
 14 happened during the vital moments prior to the shooting of
 15 the 18 people at scene 1, you had no personal knowledge?
 16 BRIGADIER CALITZ: Ek sal getuig dat ek
 17 het nie persoonlik dit gesien nie, die skietery nie.
 18 MR BIZOS SC: You had no personal
 19 knowledge that you had seen yourself. You relied on
 20 statements presumably made by a number of other people, but
 21 you yourself did not know what happened.
 22 BRIGADIER CALITZ: Ek sê weer, ek het op
 23 daardie stadium dit nie gesien nie, as dit, as ek u reg
 24 verstaan, en ten tye van die video, ja, toe het ek my "ge-
 25 rely" op wat ek, die inligting tot my beskikking.

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1 MR BIZOS SC: On what basis did you come
2 to the conclusion that the actions of your colleagues were
3 100% correct if you had no personal knowledge?
4 BRIGADIER CALITZ: Adv Bizos, dit is wat
5 ek u nou net geantwoord het. Ek het gesê die deel waar ek
6 op die 18de die lede toegesprek het, dit is wat aan my
7 meegedeel is deur die lede en die bevelvoerders.
8 CHAIRPERSON: I'm sorry to interrupt, but
9 obviously you were relying substantially on what you were
10 told, but by the time you made your speech or address on
11 the 18th had you seen some of the video clips? You know not
12 necessarily ones that weren't shown, I'm only talking about
13 the ones that were broadcast on the media –
14 BRIGADIER CALITZ: Ek dink op die eNews,
15 daardie gedeelte wat die, as ek kan sê die bekende gedeelte
16 waar die persoon terughardloop, ek dink dit het ons gesien
17 daardie volgende dag.
18 CHAIRPERSON: So your remarks then on the
19 18th were based, I assume, on what you were told by people,
20 as you mentioned, but also to some extent I would think on
21 what you had seen on the eTV news broadcast. Would that be
22 correct?
23 BRIGADIER CALITZ: Dit sal korrek wees.
24 MR BIZOS SC: [Microphone off, inaudible]
25 eTV broadcast that gave you the right to state as a fact

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1 that you were 100% correct and nothing wrong happened?
2 BRIGADIER CALITZ: Mnr die Voorsitter,
3 ja, die 100% "correctness" het nie verwys na –
4 MR BIZOS SC: 110%.
5 BRIGADIER CALITZ: Okay, daar was twee
6 goed, die "110% correctness" het nie verwys na die skietery
7 nie. Ek dink ons het al breedvoerig daaroor getuig. Dit
8 het glad nie verband gehou met die skietery nie. Wat ek
9 wel gesê het, as u verwys na "it was justified" en "self-
10 defence," dit is wat die lede aan my meegedeel het, asook
11 wat ek gesien het toe persoon terugbeweeg het, sy voet
12 vasgehaak het en daar op hom afgestorm was, in daardie
13 geval "self-defence."
14 MR BIZOS SC: None of your senior
15 officers were there - senior officers, the generals and
16 other brigadiers - were there to inform you. Who gave you
17 the information of precisely what happened?
18 BRIGADIER CALITZ: Dit was bespreek
19 gewees in die terugvoer wat ons gekry het van die
20 bevelvoerders af, van die grond af, asook –
21 MR BIZOS SC: Identify the person or
22 persons that gave you the information which led to your
23 conclusion that nothing wrong happened. Please identify
24 the persons that told you that.
25 BRIGADIER CALITZ: Mnr Bizos nee, ek sal

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1 moet teruggaan en gaan miskien kyk na die terugvoer wat ons
2 gekry het op daardie dag, wie wat gesê het, as dit miskien
3 nog op notas is. Die bevelvoerders van die Taktiese
4 Respons Eenhede was Kaptein Loest, asook Kaptein Ntlati,
5 Kaptein Thupe, ek dink dit was die drie bevelvoerders
6 gewees wat daardie inligting dan deurgegee het.
7 CHAIRPERSON: What about the commanders
8 of the Nyalas who had been under your command, who stayed
9 at the scene after you left and went off in the direction
10 of koppie 2, did they give you feedback?
11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 nee, nie wat ek onthou ten opsigte van wie sou opdrag gegee
13 het nie.
14 CHAIRPERSON: [Microphone off, inaudible]
15 Bizos definitely wants to know an account of what happened
16 which encouraged you to say everything as 110% correct.
17 Now for example Colonel Pitsi I take it was there at the
18 time. We've seen where his Nyala was at the relevant
19 moment, and you say he didn't say anything to you when you
20 met him in the vicinity of koppie 3, but subsequently that
21 evening, or possibly the next day before you made your
22 address on the 18th, did you speak to him? Did you ask him
23 what happened? Because I take it you knew he was there.
24 Did you ask him to give you feedback?
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 dit is korrek, daar was – ek het net verstaan hy bedoel net
2 met die Taktiese Respons Eenhede. Daar was ander ook wat
3 die bevelvoerders daar was, Kolonel Pitsi wat u na verwys,
4 dan ook Luitenant Kolonel Mere wat dan op die toneel self
5 was, ek dink Pappa19 op die foto wat ons gesien het, wat
6 ons dan verwys het na Pappa10, wat pertinent verwys het na
7 die aanval op die polisie en dan die selfverdediging.
8 CHAIRPERSON: Did you get feedback from
9 them?
10 BRIGADIER CALITZ: Hulle was deel van die
11 groep definitief gewees.
12 MR BIZOS SC: Did anybody take notes of
13 what was reported to you and the other senior officers,
14 that were not, conveniently not there?
15 BRIGADIER CALITZ: Mnr die Voorsitter,
16 daardie aand toe die bevelvoerders teruggekom het was daar
17 wel 'n samekoms waar die bevelvoerders dan terugvoer gegee
18 het. Ek sou aanneem daar is met Kolonel Scott, het ek
19 vroeër getuig, gesit en dit is waar die feite dan – of dit
20 op daardie stadium, die inligting tot hulle beskikking
21 deurgegee is aan hom.
22 MR BIZOS SC: Has any document to your
23 knowledge been placed before the Commission at this stage
24 as to who said what happened at scene 1 and scene 2 which
25 led to your conclusion that things were okay by 110%?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, al
 2 dokument waarvan ek bewus is, is dat die, Kolonel Scott het
 3 die dokument opgestel rondom die media "briefing." Ek dink
 4 dit is die enigste waarvan ek op hierdie stadium bewus is,
 5 die inligting daarin vervat.
 6 CHAIRPERSON: I think the evidence is
 7 that the media briefing – you're talking about the speech
 8 by, or remarks to the media given by the National
 9 Commissioner?
 10 BRIGADIER CALITZ: Dit is korrek.
 11 CHAIRPERSON: I thought his evidence was
 12 that Captain Adriaao was responsible for that. He had been
 13 involved, if I remember his evidence correctly, in the
 14 document which was prepared for the President, but there
 15 are significant differences between the two and he couldn't
 16 tell me who was responsible for the changes because he said
 17 he wasn't involved, it was Captain Adriaao who was going to
 18 explain them to us in due course.
 19 BRIGADIER CALITZ: Mnr die Voorsitter,
 20 heeltemal moontlik. Soos ek gesê het, ek het aangeneem die
 21 bevelvoerders het daardie aand met Kolonel Scott gesit en
 22 dan die "feedback" gegee. As hy getuig het hy het dit
 23 oorgegee aan Kaptein Adriaao, wat dan die "media liaison"
 24 offisier is, en wie se verantwoordelikheid dit is om die
 25 mediaverslag op te stel, dit mag so wees. Ek kan nie

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1 daaroor getuig nie.
 2 MR BIZOS SC: Did anybody report that due
 3 warning in terms of the Standing Orders were given before
 4 live ammunition was to be used?
 5 BRIGADIER CALITZ: Ekskuus –
 6 MR BIZOS SC: Did anyone say that I or my
 7 colleague so-and-so that was there warned the crowd that if
 8 they advanced any further towards the line, live ammunition
 9 will be used in order to keep them back? Did anybody say
 10 words to that effect?
 11 BRIGADIER CALITZ: Nie wat nou tot my
 12 geheue kom nie, mnr die Voorsitter, nie toe die "live
 13 ammunition" gebruik is nie, die waarskuwing, nee.
 14 CHAIRPERSON: Never mind warning; did
 15 anybody from the police side say anything to the advancing
 16 strikers as they came around towards the point where the
 17 TRT were lined up? Did anybody from the police say
 18 anything to them, to your knowledge? I know you weren't
 19 there at the time, but I take it Mr Bizos is interested in
 20 the feedback you got.
 21 MR BIZOS SC: Yes.
 22 BRIGADIER CALITZ: Meneer –
 23 MR BIZOS SC: Was it reported to you
 24 before you came to the conclusion that everything happened
 25 100% correctly, did anyone report yes, in terms of the

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1 Standing Orders we have to give warnings and Captain or
 2 Colonel or Major or whatever their rank was did give such a
 3 warning? Did that happen?
 4 MR SEMENYA SC: Objection, Chair. There
 5 is no Standing Order that requires a warning to be given
 6 for the discharge of live ammunition.
 7 CHAIRPERSON: Yes, I think he's right, Mr
 8 Bizos. The warning had to be given before the dispersal
 9 action commenced and his evidence was he was going to do
 10 that but he never got that far. So I think the objection
 11 raised is correct, but you can I take it meet it by
 12 reformulating your question and taking out the reference to
 13 the required warning. Your concern is whether any warning
 14 was given or indeed anything was actually said to the
 15 advancing strikers before any shots were fired.
 16 MR MPOFU: I'm sorry to interrupt,
 17 Chairperson. This exchange has made it impossible for the
 18 witness to answer the Chairperson's question rather than Mr
 19 Bizos's question.
 20 CHAIRPERSON: No, no, it's my question
 21 and I was prepared to allow –
 22 MR MPOFU: Ja, but it got lost in the,
 23 I'm just saying –
 24 CHAIRPERSON: No-one can get lost. I
 25 thought Mr Bizos had reformulated, was busy reformulating

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1 it. If I'm not satisfied with the reformulation I'll ask
 2 it again. I can look after myself, but thank you for
 3 trying –
 4 MR MPOFU: No, I'm looking after myself,
 5 Chairperson. If that question is not answered it's for my
 6 purposes, not for yours. Thank you.
 7 CHAIRPERSON: Anyway, okay. Let's make
 8 an agreement that one or the other of us will ask the
 9 question. Carry on, Mr Bizos.
 10 MR BIZOS SC: In response to the
 11 objection, Mr Chairman, for the benefit of my learned
 12 friend Mr Semenya I want to read out section 11(5) of
 13 Standing Order 262 which states that, "Force may only be
 14 used on the command or instruction of the CJOC or the
 15 operational commander, if appointed. Members may never act
 16 individually without receiving a command from their
 17 commander." Now I think –
 18 CHAIRPERSON: What about subparagraph
 19 (7), Mr Bizos?
 20 MR BIZOS SC: I beg your pardon?
 21 CHAIRPERSON: What about subparagraph
 22 (7)?
 23 MR BIZOS SC: If I may – this is, the
 24 common law principles of self-defence or private defence
 25 are not affected by this order. We are going to argue, Mr

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1 Chairman, that this is a reference with a one-to-one
 2 situation in which a person –
 3 CHAIRPERSON: I'm sorry, Mr Bizos, it's
 4 not confined to that.
 5 MR BIZOS SC: I beg your pardon?
 6 CHAIRPERSON: It's not confined to that.
 7 Look, there may be common law principles that apply because
 8 the very phrase "common law principles of self-defence" is
 9 used, but in terms of the Order, that's what you said, in
 10 terms of the Order you said no-one may use force – you're
 11 referring to subpara (5). Force may only be used, the
 12 exact words of the Order, "Force may only be used on the
 13 command or instruction of the CJOC or operational
 14 commander. Members may never act individually without
 15 receiving a command from their commander." But that of
 16 course is relevant to what happened on the 13th.
 17 [09:30] But in relation to what happened on the 16th the
 18 police version is – it's one of the matters we're
 19 interrogating and examining – is that the deaths that
 20 occurred at scene 1 occurred because of people either
 21 defending themselves or defending others and with the
 22 principles of self defence or private defence apply. Now
 23 if that's correct and this is only, obviously the
 24 assumption made at the moment, it may be rejected at the
 25 end but if that's correct then sub para 5 doesn't then

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1 apply, that members were entitled to defend themselves or
 2 their colleagues without having received a command from the
 3 commander if they felt in the circumstances that it was
 4 necessary to do so and that must be right surely. The only
 5 way you can get out of it is if you say it is by reading
 6 something into 7 which doesn't appear to be there. So I
 7 think you should reformulate the question, take out the
 8 requirements of an order requiring a warning and proceed
 9 with your question and at the same time you may ask or re-
 10 ask my question so that Mr Mpofu will go home satisfied
 11 tonight.
 12 MR BIZOS SC: Mr Chairman, with due
 13 respect I do not believe that the persons that complied,
 14 that put the standing orders together, having regard to
 15 what the Constitutional Court said in about Section 49 and
 16 other interpretations, that the absence of a notice was
 17 justified where you actually heard a large group of people
 18 armed and a large group of people on the other side that
 19 the exemption that you with respect referred to, reading on
 20 the jurisprudence as I understand it, you do not expect in
 21 a one to one or one or a few against a few to say, as one
 22 of the top officials said, to take out a constitutional
 23 provision and wave it at a criminal. I am not talking
 24 about that in this case, Mr Chairman. In this case we have
 25 standing orders which deal with the control and management

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1 by the people in charge and the defence available to an
 2 individual in a small scale or on a personal basis does not
 3 apply. The general provisions of the standing orders in
 4 relation to warning people in order to avoid deaths are the
 5 primary interpretation.
 6 CHAIRPERSON: Mr Bizos, you are arguing
 7 at the moment.
 8 MR BIZOS SC: Yes.
 9 CHAIRPERSON: For a particular
 10 interpretation of the relevant provisions of Section 11 of
 11 the standing order. Now you may argue those at the end of
 12 the matter when you argue, but I don't think I can allow
 13 you to ask a question based upon your interpretation as if
 14 your interpretation has already been decided to be correct.
 15 So you may reformulate the question, you may say, we were
 16 contend that this is the correct interpretation of the
 17 order, you may proceed on that basis but I don't think it
 18 would be proper for me to allow you to ask a question which
 19 assumes that your interpretation is correct without the
 20 witness having an opportunity to realise that another
 21 construction may be open. Do you understand, I am trying
 22 to be fair to you, I am also trying to be fair to him, so
 23 I've got to keep the balance.
 24 MR BIZOS SC: Yes, I'll, with your
 25 permission I want to put a number of other questions which

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1 will make it easier for the witness to answer the questions
 2 that I want to put finally, Mr Chairman.
 3 CHAIRPERSON: Proceed in that way and
 4 before you do that let me ask the question, Mr Mpofu won't
 5 go home tonight happy unless it is asked and that is, apart
 6 from any warning been given or not given, with anything
 7 said based on the feedback you received, because you
 8 weren't there, we know, by a policeman or a senior
 9 policeman to the advancing strikers before any shots were
 10 fired, was anything said at all to them?
 11 BRIGADIER CALITZ: Mnr die Voorsitter,
 12 nie wat tot my kennis strek nie, nie op hierdie stadium
 13 nie, nee.
 14 CHAIRPERSON: Well, Mr Mpofu can now go
 15 home rejoicing. Carry on, Mr Bizos.
 16 MR BIZOS SC: Let me ask you a few
 17 questions. We asked you yesterday whether you became aware
 18 that the photographs of the injured policemen were
 19 circulated, do you remember?
 20 BRIGADIER CALITZ: Ek onthou, mnr die
 21 Voorsitter.
 22 MR BIZOS SC: And there was a dispute as
 23 to whether this was correct or not, do you remember that?
 24 BRIGADIER CALITZ: Ek onthou die, as u sê
 25 dispuut, die argument dat –

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1 MR BIZOS SC: Yes –

2 BRIGADIER CALITZ: - of dit feitlik

3 korrek is, of daar bewyse daar rondom was. Ek onthou daar

4 was 'n gesprek daar rondom, ja.

5 MR BIZOS SC: Very well. At page 15347

6 of the record on day 141 the following question was asked

7 at page 15347 by our learned friend, Mr Ntsebeza SC, "And

8 do you know if the pictures of the dead police were

9 disseminated amongst the police? Colonel Scott, yes, I

10 believe they were." Will you accept that, that there was

11 clear evidence that the picture was distributed to the

12 police on the basis of what Colonel Scott said?

13 BRIGADIER CALITZ: Mnr die Voorsitter, -

14 MR SEMENYA SC: Chair –

15 CHAIRPERSON: Sorry, Mr Semenya, you've

16 turned your light on.

17 MR SEMENYA SC: Yes.

18 CHAIRPERSON: Do you want to say

19 something?

20 MR SEMENYA SC: Yes, I would prefer that

21 we locate the context of that answer.

22 CHAIRPERSON: The question was put to

23 Colonel Scott by Mr Ntsebeza, "And do you know if the

24 pictures of the dead police were disseminated amongst the

25 police," and then in that context you see the answer is

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1 given and then he actually says, you can go on reading, "I

2 believe they were, I first couldn't recall that and

3 something in the recent past, I am not sure what it was,

4 brought that back to memory but I think I actually did see

5 pictures of that that evening," so in other words on the

6 evening of Thursday, the 16th.

7 MR SEMENYA SC: It may be the 13th and

8 that's precisely my difficulty.

9 CHAIRPERSON: Oh, I see what you mean.

10 Alright, well, then perhaps we must take, look a little

11 back but could we please have the earlier part of that

12 passage, of that page? Yes, I think it was the 13th because

13 the reference to Merafe being emotional in meeting with the

14 actual Commission relates to the 13th. So it doesn't take

15 away the full force of your question, Mr Bizos, it simply

16 means that you have to ask whether pictures of the people

17 who have being hacked to death, which of course happened on

18 the 13th anyway, were shown to the police on the evening of

19 the 13th and not later. You know if you put the question in

20 that form I'll allow it but otherwise it requires

21 modification.

22 MR BIZOS SC: My learned friend that no

23 policeman was killed on the 16th, the policeman was killed

24 on the 13th and there is an unfortunately, a very graphic

25 picture available which was shown and it is slide 52 on

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1 Exhibit L, Mr Chairman, that's the picture that I am

2 referring to.

3 CHAIRPERSON: Mr Bizos, you're concerned

4 with pictures being shown to the police before the 16th.

5 MR BIZOS SC: That is the question.

6 CHAIRPERSON: And what Colonel Scott said

7 was, he can recall picture being shown, I'm not quite sure

8 to whom but being shown on the evening of the 13th, that's

9 what he said.

10 MR BIZOS SC: Yes.

11 CHAIRPERSON: So that supports the

12 question you put.

13 MR BIZOS SC: Thank you, Mr Chairman.

14 CHAIRPERSON: Of course it might be

15 relevant to know to whom they were shown.

16 MR BIZOS SC: From my point of view it

17 doesn't really matter who might have made it, Mr Chairman,

18 there is evidence by a senior officer that he knew that

19 they were distributed and that it was a picture, this most

20 disturbing picture that was distributed to the police

21 officers before the 16th. Now –

22 CHAIRPERSON: No, no, I'm sorry, Mr

23 Bizos, it is not as easy as that. The nature of the

24 distribution is relevant, if it was only shown to those in

25 the JOC on the evening of the 13th and none of the people

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1 who saw it was actually in the field as it were, on the

2 16th, then that is one situation. Another situation would

3 be if the pictures were generally seen by members of the

4 police who were in the field on the 16th who might well have

5 been influenced in acting in the way they did by what they

6 saw, that would be a different situation. Now –

7 MR BIZOS SC: That's the point that –

8 CHAIRPERSON: I know that's the point

9 you're trying to make, but I am not sure that that point

10 can fairly be made if the distribution was of the limited

11 kind that I mentioned. So surely the nature of the

12 distribution has got to be investigated first before you

13 can make what I can call the latter point. Do you

14 understand the thing -

15 MR BIZOS SC: I understand, Mr Chairman,

16 but with due respect I think that I am entitled to put

17 before you and remind you and the members of the Commission

18 what the state of mind of at least a number of the

19 policemen that had deadly weapons in their possession on

20 the afternoon of the 16th.

21 CHAIRPERSON: No, no, no, but that's the

22 very point I am putting to you, that if the pictures were

23 seen by policemen who were in the field, I use that phrase

24 to cover those who were there at scene 1 and scene 2, in

25 possession of short rifles and other firearms. That's one

<p style="text-align: right;">Page 19530</p> <p>1 thing because I can understand they might well have been 2 influenced by what they've seen to be more zealous than 3 perhaps was appropriate, but if these pictures were only 4 seen by people who were in the JOC and who remained in the 5 JOC on the 16th and who weren't influenced at anything they 6 did on the 16th by what they'd seen then it is a different 7 point. We've got to know the nature of the distribution 8 before the point you want to make can validly be made. 9 MR BIZOS SC: I am entitled with respect 10 to assume from what Colonel Scott said, that they were 11 distributed. 12 CHAIRPERSON: Could we see again what 13 Colonel Scott said? Could that be shown to us? It is a 14 bit lower down on page 15347. The question is, "Do you 15 know if pictures were disseminated among the police," and 16 he says, "Yes, I believe they were." I first couldn't 17 recall that, and something in the recent past, I am not 18 sure what it was, brought that back to memory but I think I 19 actually did see pictures of that that evening." Now, it's 20 true he says in the beginning, yes, I believe they were 21 disseminated, but then when he comes to elaborate on his 22 answer he says, "I actually saw pictures." 23 Now we know that that evening he was in the JOC 24 with the National Commissioner and various other senior 25 officers, so I am not sure that the statement that he made</p>	<p style="text-align: right;">Page 19532</p> <p>1 objection and then you can answer. Yes, Mr Semenya? 2 MR SEMENYA SC: Chair, we have the 3 evidence and for the witness' context sake I request that 4 we read the transcript from page 15346 so that we know what 5 the actual evidence is. We don't have to assume anything. 6 CHAIRPERSON: What was the mood like 7 among those whom we met in the SAPS, this is a reference to 8 the evening of the 13th, a question asked by Mr Ntsebeza. 9 Colonel Scott replies, "On arrival many of the ground 10 commanders, I don't recall seeing for that matter, maybe he 11 was there but Colonel Merafe was only introduced to me 12 later, but I got to see who he was for the planning. I 13 recognised him though from when he gave his briefing to the 14 National Commissioner because he was pretty emotional and 15 explaining, obviously having to carry, I think Lieutenant 16 Baloyi, but who was in the JOC at that time, I can remember 17 General Annandale, General Mpenbe, I think Brigadier Calitz 18 and then Mr Sinclair. Mr Ntsebeza, okay, but as you were 19 proceeding with your plan and I'll ask you this once and 20 then we move on, was it your sense that there was a 21 residual anger among the members of the SAPS on the basis 22 that two of their members have been killed by the miners? 23 Colonel Scott, I can understand and appreciate your 24 question. I don't remember picking that up. I do as I 25 say, recall Colonel Merafe being quite emotional at that</p>
<p style="text-align: right;">Page 19531</p> <p>1 necessarily covers the case, but possibly you can cover it 2 by asking this witness whether he knows about it and if 3 necessary further enquiries can be made of the SAPS. Yes, 4 I mean if your point is correct that there was a 5 distribution of the nature you suggest that is a material 6 fact that this Commission has to know about. So I don't 7 want to stifle the point but on the other hand I also want 8 to be fair to this witness and the SAPS attorney, but I am 9 sure you can use your fabled ingenuity and find a way of 10 getting the point appropriately before us. 11 MR BIZOS SC: Thank you for the guidance 12 and I'll try and comply with it, Mr Chairman. I want you 13 to assume, assume for a moment that what Colonel Scott has 14 said that they were distributed, that that is correct in 15 its broad sense, just assuming – 16 MR SEMENYA SC: No, Chair, - 17 MR BIZOS SC: Assuming. 18 MR SEMENYA SC: No, Chair. 19 MR BIZOS SC: No, with respect, Mr 20 Chairman, I am entitled to make – 21 CHAIRPERSON: No, Mr Bizos, we haven't 22 heard the objection yet. Mr Semenya wants to object. 23 You're doing what I told the witness not to do yesterday, 24 you're answering the question before it is being asked. 25 You haven't heard the objection yet, let's hear the</p>	<p style="text-align: right;">Page 19533</p> <p>1 meeting with the National Commissioner. I think what I 2 picked up more was almost a sense of awe, of shock at what 3 had happened that day, but this was something the police 4 were struggling to come to terms with, that this had 5 actually happened, that their members have been killed and 6 robbed but I don't remember anything other than that. It 7 was just the atmosphere I could feel, that I can remember. 8 It was just one of, a sort of awe and shock and how do we 9 get on with now dealing with the situation we're sitting 10 with," and then comes the question, "Do you know if 11 pictures of the dead police were disseminated amongst the 12 police," and then there is the answer we've read. That's 13 the context, Mr Semenya. 14 MR MPOFU: Chairperson, I am sorry, once 15 again I don't want to butt in but I think that the thrust 16 of this lies in Mr Ntsebeza's question rather than, - he 17 says very clearly was it disseminated amongst the police, 18 not amongst the people who attended the particular meeting 19 and the answer is, yes, I believe they were. 20 CHAIRPERSON: It is amplified by saying, 21 I really didn't remember that and then I remember seeing 22 them that evening, which is clearly a reference to what he 23 saw at the JOC – 24 MR MPOFU: Ja, because he is also a 25 member of the, yes, –</p>

<p style="text-align: right;">Page 19534</p> <p>1 CHAIRPERSON: He was a member in the JOC, 2 it is not – 3 MR MPOFU: He is a member of the police 4 as well, so it doesn't detract from the fact that it was 5 disseminated amongst the police. 6 CHAIRPERSON: No, no, it is ambiguous and 7 I am not prepared to allow a statement based upon a 8 particular interpretation of this ambiguous answer to be 9 put to the witness as if it is an unambiguous answer. So I 10 uphold the objection but, Mr Bizos, I am sure you will be 11 able to make the point either with this witness or with the 12 benefit of information from others at a later stage, but 13 can I intervene at this stage and ask a question of my own? 14 We've seen a transcript of a discussion on the Tuesday 15 between the Provincial Commissioner and people from Lonmin 16 and in that transcript the reference can be given if 17 necessary. In that transcript the Provincial Commissioner 18 says she delayed any action, in the context, it has got to 19 be the action on the Tuesday because that's when the 20 discussion took place. He is talking about after, what 21 happened after the killings on the 13th. 22 "I delayed any actions," he said and she explains 23 that, partly at least the reasoning for that, maybe the 24 whole reasoning was, she wasn't sure, wasn't confident that 25 if she had given instructions to the police to act in a</p>	<p style="text-align: right;">Page 19536</p> <p>1 to rely only on the sub position and I'll accept the 2 ruling, but let's take the state of mind of the police on 3 the 16th having regard to what the police that wanted to 4 assassinate a very senior officer for what he had done on 5 the 13th and it was taken seriously enough to pull him out 6 of participation for his own safety, will you accept that 7 as a correct statement of the evidence that is before the 8 commission? 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 kan net seker maak ek verstaan die vraag reg, na wie verwys 11 – 12 CHAIRPERSON: Sorry to interrupt you. 13 This is a reference to what General Mpembe said and the 14 action of Colonel Vermaak in removing him from the, what I 15 can call the field of engagement near the railway line on 16 the 13th when Colonel Vermaak heard, I'm not sure if they're 17 officers or just members of the force saying they were 18 going to kill General Mpembe because they're really angry 19 because they felt that he was responsible for the death of 20 their colleague and Colonel Vermaak then acted, quite a 21 tall thing to do actually, but he then removed his senior 22 officer, the Major General from the scene in order to, as 23 he saw it to save his life but that's the evidence and 24 that's what Mr Bizos is referring to, is that correct, Mr 25 Bizos?</p>
<p style="text-align: right;">Page 19535</p> <p>1 particular way, in a restrained fashion that they would 2 have complied with those instructions because emotions were 3 running high. That's the evidence she gave. I don't know 4 if you read the transcript, did you read the transcript? 5 BRIGADIER CALITZ: Nee, mnr die 6 Voorsitter. 7 CHAIRPERSON: Well, I think I've 8 summarised it accurately, if necessary it can be shown to 9 you. So the point is this, it was the considerate opinion 10 it would appear, of the Provincial Commissioner that it 11 would be dangerous to ask the police to take any action on 12 the Tuesday, that's why she delayed it, because emotions 13 were running high and she wasn't confident that any 14 instruction she gave them to hold back and act in a 15 restrained fashion, I take it that's what she means, would 16 have been complied with. Now, so it is clear, is it not, 17 that whether people saw the photographs or not they were 18 feeling very strongly indeed about the way in which their 19 colleagues, one colleague in particular had been killed. 20 That is correct, isn't it? 21 BRIGADIER CALITZ: Dit sal seker so wees, 22 mnr die Voorsitter. 23 CHAIRPERSON: No, perhaps you could 24 follow on from that, Mr Bizos? 25 [09:50] MR BIZOS SC: Mr Chairman, we don't have</p>	<p style="text-align: right;">Page 19537</p> <p>1 MR BIZOS SC: That's – 2 CHAIRPERSON: Does that clarify your 3 problem. 4 BRIGADIER CALITZ: Ek het daardie, ja, ek 5 wou net weet wie is die senior offisier na wie u verwys 6 maar daardie reël weet ek wel gesien in die transkripsie en 7 ek is wel bewus van daardie mening wat daar uitgespreek is, 8 ja. 9 MR BIZOS SC: Now taking the statement of 10 Colonel Scott as unclear as it may be but adding to it that 11 members of the police force were prepared to kill one of 12 their generals because of the death of a policeman, if we 13 take those two factors together would it be correct for us 14 to legitimately infer that there was deep concern among the 15 police as a result of the death of this policeman and might 16 they have sought revenge against a group of people that 17 were protesting on the 16th. What is your answer to that 18 question? 19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 die eerste gedeelte van die stelling stem ek mee saam. 21 Daar was definitief skok en trauma betrokke by die dood van 22 'n kollega, wat vir my ook logies is en tragies is en die 23 tweede gedeelte van u vraag rondom dat die polisie revenge 24 vat stem ek glad nie mee saam nie. Dit is net die polisie 25 of die bevelvoerders in enige voorligting wat ons gegee het</p>

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1 aan die lede dat dit 'n revenge is nie. Die lede en die
 2 offisiere is professioneel en wraak kom die polisie nie toe
 3 nie. So op die 16de is die wet en order net toegepas
 4 volgens my op die regulasies, die orders wat vir ons gegee
 5 is. So ek stem nie saam dat dit 'n revenge is nie, nee
 6 glad nie.

7 MR BIZOS SC: How –

8 CHAIRPERSON: Sorry to interrupt, Mr
 9 Bizos. The Provincial commissioner was obviously afraid
 10 that some, that a factor or factors of that kind might well
 11 be operative on the 14th, is that, because I told you what
 12 he told people from Lonmin. Would those feelings of anger,
 13 whatever they were, he used the phrase emotions were
 14 running high on the 14th. Would those emotions have now
 15 disappeared and no longer being operative on the 16th?

16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 nee ek het gesê die persone het, die emotions, die gevoel,
 18 die hartseer, die skok, daardie deel sal seker ons by bly.
 19 Ek dink vandag nog, ek dink in die transkripsie wat ek
 20 gelees het, Kolonel Merafe spesifiek wat die persoon gedra
 21 het, ek dink trauma bly 'n lang ruk by 'n mens. So ek weet
 22 nie presies wat die Kommissaris of die, ag die Provinsiale
 23 Kommissaris bedoel het by haar woorde op daardie stadium.
 24 Maar die hartseer en die skok sal nog steeds by die lede
 25 wees op die dag.

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1 CHAIRPERSON: We'll show you the
 2 passage, you see because she said, she gave that as a
 3 reason or delaying, those are the words she used, for
 4 delaying any action on the Tuesday because emotions were
 5 running high and she was afraid that any instructions that
 6 she gave the members you know to behave you know, with a
 7 constrained manner wouldn't be listened to, that was her
 8 concern on the Tuesday. Now you say those feelings of
 9 shock and trauma and so forth would have persisted on the
 10 16th. So the question that really, I think Mr Bizos is
 11 getting is to is how confident can we be that those
 12 feelings which legitimately gave rise to concern and
 13 caution on the parts of the Provincial Commissioner on the
 14 14th were still not operative on the 16th, is that basically
 15 what you're about, Mr Bizos?

16 MR BIZOS SC: Yes.

17 CHAIRPERSON: You've heard the question
 18 as I've formulated it. If you feel it's at a disadvantage
 19 because you hadn't seen the passage in the transcript of
 20 the Provincial Commissioner's conversation with Lonmin and
 21 you'd like to see it then obviously you're free to ask for
 22 that, but I'm in your hands on that point.

23 MR SEMENYA SC: But, Chair, can I raise
 24 an objection. It is unfair for us to expect this witness
 25 to talk about feelings of other people on a predicate that

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1 those feelings were in the first place there and the
 2 Provincial Commissioner was correct.

3 CHAIRPERSON: That sounds like a good
 4 point. Let's reformulate the problem. If you'd like to
 5 see what the Provincial Commissioner said we can arrange
 6 for you to see it. But you shake your head and say you're
 7 not. So you've heard what the Provincial Commissioner said
 8 on the Tuesday, was that your assessment of the situation
 9 as well that it was a sensible thing not to have take any
 10 action on the Tuesday because emotions were high and
 11 because one couldn't be confident that the police would be
 12 able to keep those feelings in check when they proceeded,
 13 did you agree with that view or did you not?

14 BRIGADIER CALITZ: Nee, mnr die
 15 Voorsitter, my gevoel op die oggend van die, as ek die
 16 datums korrek het, die 15de –

17 VOORSITTER: Woensdag die 14de of die
 18 Dinsdag -

19 BRIGADIER CALITZ: Ekskuus tog, mnr die
 20 Voorsitter.

21 CHAIRPERSON: I spoke without the
 22 microphone, I'll be in trouble again with the operators.
 23 Die gesprek wat jy kon gepraat het was op die Dinsdag die
 24 14de, ek dink die middag van die 14de bespreek tussen die
 25 Provinsiale Kommissaris en mense van Lonmin.

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1 BRIGADIER CALITZ: Ek verstaan u so, mnr
 2 die Voorsitter. Dan die volgende dag, die 15de het ek
 3 verstaan dat ons het reeds 'n verhouding met die, as ek
 4 verwys na verhouding praat ek van 'n vertrouens verhouding
 5 opgebou met die groep strikers as ek dit so kan noem, die
 6 leierskap van hulle waarna ek verwys het wat ons later
 7 bewus was, mnr Noki. So hoe ek dit verstaan het is dat
 8 daardie verhouding was reeds opgebou en ons het vir hulle
 9 dan twee of drie goed gesê is dat ons sal teruggekome het na
 10 hulle toe, hulle het 'n versoek vir ons gerig dat ons moet
 11 die boodskap oordra aan management wat ons gesê het ons
 12 gaan terug gaan na hulle toe, asook ons het gesê en gereël
 13 met hulle dat, u sal onthou die vorige dag was die dood van
 14 daai ander persoon, dat ons die volgende oggend sou terug
 15 wees weer. So dit was my verstandhouding dat daar 'n tipe
 16 van 'n vertrouens posisie opgebou word en dat ons die
 17 onderhandelinge dan 'n kans gee eerder as om enige ander
 18 optrede te loots.

19 CHAIRPERSON: I can understand that, but
 20 that's, but that's not entirely the answer to the point
 21 that I'm concerned with and I think Mr Bizos is concerned
 22 with, and that is I understand there was 'n confidential
 23 relationship built up, a relationship of trust between the
 24 negotiators, you and the other negotiators, in the
 25 negotiating Nyala and the leaders of the strikers, I can

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1 understand that. But that wasn't what the Provincial
 2 Commissioner had been concerned about. What she was
 3 concerned about it would appear on the 14th and I understood
 4 you to say you didn't necessarily disagree with her, on the
 5 Tuesday. Was it was more the rank and file of the police,
 6 they were ones that she wasn't confident would obey
 7 instructions to keep their emotions under control and act
 8 in a controlled and restrained fashion. So the vertrauens
 9 verhouding would have been built up, it doesn't reflect on
 10 that at all. It may well be that it was your view that by
 11 the Thursday that was no longer a problem and if that was
 12 your opinion then you must say but that's the issue that's
 13 been probed, you understand.

14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 nee ek –

16 CHAIRPERSON: I'm sorry, did you think
 17 it was a problem on the Tuesday?

18 BRIGADIER CALITZ: Aan die?

19 CHAIRPERSON: On the Tuesday.

20 BRIGADIER CALITZ: On the Tuesday?

21 CHAIRPERSON: That it would be unwise to
 22 take action that the Provincial Commissioner was right in
 23 delaying action for the reasons that I've mentioned.

24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 soos ek getuig het net op die Dinsdag waarvan ek bewus was,

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1 ek was op die Dinsdag nie bewus dat dit haar woorde was of
 2 dat sy gesê het nie. So ek is ook nie bewus dat dit in die
 3 JOCCOM vergaderings bespreek was nie. Sou dit een van die
 4 punte gewees het dan kon mens miskien daarop reageer. Ek
 5 het maar net getuig op die Dinsdag hoe ek dit gesien het.

6 CHAIRPERSON: No, I understand. No it's
 7 not suggested that it was said at the JOC on the Tuesday,
 8 I'm not even sure if she's at the JOC on the Tuesday but
 9 that was what she said on the Tuesday to people from Lonmin
 10 in a private conversation which was clandestinely recorded
 11 and, but you raise an interesting point now. If it had
 12 been raised at the JOC, if she had said that at the JOC on
 13 the Tuesday it would obviously have been discussed by those
 14 present. How would you have reacted at that stage to it?
 15 Hypothetically, it may be difficult to answer, I understand
 16 that also but if you can be answer I'd be grateful.

17 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 18 sal maar net kan getuig soos uit my ondervinding uit waarna
 19 ek kan terug gaan, dis die enigste waarna ek kan verwys.
 20 Ons was in menige voorvalle al, ek het verwys na, ek het
 21 oor die 2 000 plus gevalle hanteer wat party van die
 22 gevalle oor dae geloop het en dit was maar altyd 'n geval
 23 van ons het nie die luuksheid van om lede aan mekaar te
 24 replace as ek dit so kan stel nie. So die volgende dag die
 25 lede is gemotiveer, die gevalle is bespreek en dan het ons

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1 terug gegaan. Soos ek gesê het nooit is dit 'n posisie van
 2 die polisie om wraak te neem nie, nee. Daarom is hulle
 3 opgelei, die bevelvoerders, die lede self, ek verwys na
 4 openbare order polisiëring waarin ek in beheer is in die
 5 provinsie is opgelei en elk een weet hoe om op te tree. So
 6 ek glo nie wraak sou 'n opsie gewees het, dit sou my input
 7 gewees het in die vergadering dan dat die, miskien oor die
 8 hoof gesien kan word nie, maar dit bespreek was. Maar ek
 9 dink nie dit is waar nie, nee.

10 CHAIRPERSON: Let me move on to another
 11 point. You say you weren't aware that photographs had been
 12 disseminated among what I can call the rank and file of the
 13 police, the ordinary members of the police weren't shown
 14 pictures to your knowledge of this, which one of the
 15 pictures I think is in exhibit L of the head very badly
 16 hacked by, on the 13th. You weren't aware that pictures of
 17 that kind were disseminated among the ordinary rank and
 18 file of the police, is that your evidence?

19 BRIGADIER CALITZ: As, mnr die
 20 Voorsitter, verwys na ranking, dit is die lede.

21 CHAIRPERSON: Ja.

22 BRIGADIER CALITZ: Ja, nee ek dra nie
 23 kennis rondom dit nie.

24 CHAIRPERSON: Now the next question is
 25 if you, has it come to your knowledge that that had

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1 happened, the photographs of that kind had been
 2 disseminated among the ordinary members who were going to
 3 take part in future operations by way of controlling this
 4 problem what would your attitude have been, what if
 5 anything would you have done?

6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 ons sou seer sekerlik dan gereël het dat ons, wat ons na
 8 verwys ESW, die persone wat die trauma counselling en
 9 daardie geval doen wel met daardie lede in kontak is wat
 10 die fotos gesien het. Hulle gemotiveer het en in gesprek
 11 met hulle getree het en ek dink ek sou dit ook dan verwys
 12 het in my gesprek op die 18de op die video miskien gesê
 13 het vir die ouens om positief te bly en dan hulle gewaarsku
 14 het dat dit is 'n voorval wat gebeur het maar nog steeds om
 15 professioneel op te tree in daardie geval. So ek dink ons
 16 sou in daardie geval leiding gegee het aan die junior lede.

17 MR SEMENYA SC: Chair, it may also be
 18 for the record the evidence of General Mpembe is that there
 19 was a debriefing, those who indicated they were
 20 uncomfortable to proceed were removed and those who were,
 21 were allowed to go.

22 CHAIRPERSON: But I think that relates
 23 to those who were present on, at the field of engagement as
 24 it were on the 13th. The question relates to other
 25 policemen who may or may not, just remember there's an

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1 ambiguous answer we're dealing with, who may or may not
 2 have seen photographs but any way, I've asked the questions
 3 that I thought legitimately flowed from that but let's see
 4 whether Mr Bizos has got any further, before Mr Bizos gets
 5 his chance, Adv Hemraj would like to ask a question before
 6 he, before you do, Mr Bizos. No, Mr Bizos, Adv Hemraj,
 7 would like to ask a question before you do. I'm sure
 8 you'll stand back in your usual gentlemanly fashion for
 9 her.

10 COMMISSIONER HEMRAJ: Brigadier, as at
 11 the 14th of August, the Tuesday amongst the members under
 12 your command did you sense among them this sense of unease
 13 and dissatisfaction about what had happened the previous
 14 day?

15 BRIGADIER CALITZ: As ek u reg verstaan,
 16 die unease is dat daar wel die skok was 'n kollega -

17 COMMISSIONER HEMRAJ: Agitation about
 18 what, was there any agitation or dissent among those
 19 members that you command about what had happened on the
 20 13th?

21 BRIGADIER CALITZ: Daar was wel 'n gevoel
 22 van skok en ongeloof om, onder die lede en dit is soos
 23 hulle met mekaar gepraat het maar die dag, die 14de toe ons
 24 na die toneel toe beweeg het die persone met wie ek toe
 25 gepraat het en die onderhandelinge en daar het die lede

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1 weer oorgegaan tot hulle normale dienste. Daar was nie,
 2 hoe kan ek vir u sê enige verdere bespreking gewees rondom
 3 dit.

4 COMMISSIONER HEMRAJ: Did agitation
 5 persist into the days after the 14th?

6 BRIGADIER CALITZ: As jy verwys na
 7 agitation, ekskuus tog?

8 COMMISSIONER HEMRAJ: The agitation, the
 9 unease, the discomfort about what had happened on the 13th?

10 BRIGADIER CALITZ: Kommissaris, ja, as ek
 11 nou reg is ek kan maar getuig wat in my Nyala bespreek is
 12 en met die persone wat ek mee aangegaan het, maar dit het
 13 aangegaan oor hoe ons volgende gaan optree, die
 14 onderhandelinge verder vat en soos dit dan verder aangegaan
 15 het. Dit was nie regtig verder met my bespreek.

16 CHAIRPERSON: Mr Bizos, I fear we've
 17 possibly trespassed on your ground unduly, forgive us, if
 18 you'd prefer to carry on with your cross-examination.
 19 Would you like to carry on with your cross-examination.

20 MR BIZOS SC: I will not abandon the
 21 point that I am pursuing because there are other passages
 22 from Scott that I want to refer to but let me try and be,
 23 it's a serious matter and please try and answer the
 24 questions. A threat by any number of police officers to
 25 kill a general is mutinous, do you agree?

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1 BRIGADIER CALITZ: Mutinous, ek wil net
 2 sê dit is ernstige dreigemente, is dit hoe ek dit verstaan.

3 CHAIRPERSON: You know what mutiny is
 4 mutiny I think the Afrikaans mutiny.

5 BRIGADIER CALITZ: Verraad.

6 CHAIRPERSON: Sorry. No verraad is
 7 treason. Mutiny it is mutiny. M-U-I-T-E-R-Y the word
 8 Mutiny is te gekom nie waar nie. What happens on a ship
 9 when the Bounty was in South Pacific Fletcher Christian and
 10 his men mutinied, took over the ship, Captain Blythe and so
 11 many officers off and they sailed on with the ship. They
 12 took over the ship against their, totally contrary to all
 13 their obligations under the relevant laws applicable and if
 14 soldiers rise up against their officers, disobey their
 15 orders and try to shoot their officers, disobey them,
 16 that's mutiny okay. You've come across the concept?

17 BRIGADIER CALITZ: Dit is net wat die
 18 duidelikheid wou gehad het. Die mutiny konsep wel -

19 CHAIRPERSON: Now what Mr Bizos is
 20 putting to you is that what the policemen concerned against
 21 whose proposed actions Colonel Vermaak acted the way he did
 22 to protect General Mpembe he's suggesting to you that that,
 23 that actually amounted to mutiny, to mutiny right, that's
 24 his question. I think you now understand the question. Do
 25 you want to take it a bit further before the witness

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1 answers, Mr Bizos?

2 MR BIZOS SC: I want an answer from the
 3 witness with respect, Mr Chairman. It's mutinous?

4 BRIGADIER CALITZ: Mnr die Voorsitter,
 5 daar is 'n moontlikheid die presies definisie, maar ek
 6 verstaan wat u bedoel by mutiny. As daar wel 'n
 7 dreigement op die senior offisier gemaak is en dat hulle
 8 hom wou dood maak oor 'n sekere aspek is dit moontlik dat
 9 dit, as jy sê dit so verstaan word.

10 VOORSITTER: Moontlik, moontlik means
 11 possible. Is there any possibility any other way.

12 BRIGADIER CALITZ: Dit is hoekom ek sê
 13 dit is maar my afleiding wat ek daarvan kan maak, mnr die
 14 Voorsitter.

15 MR BIZOS SC: Would have expected that a
 16 well commanded and managed force, if this came to the
 17 notice of any officer it would not have been kept a secret
 18 from other senior officers.

19 CHAIRPERSON: You haven't asked the
 20 question yet. Do you agree with what Mr Bizos says that
 21 that was a serious matter which wouldn't have been kept a
 22 secret, presumably it wasn't kept a secret from other
 23 senior officers, how do you respond to that question?

24 [10:10] BRIGADIER CALITZ: Nee, ek dink in
 25 hindsight tot my kennis het gekom dat dit is gerapporteer

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1 gewees, die feit van Kolonel Vermaak. Ek onthou hy het
 2 dit, ek neem aan hy het iemand geskakel, die Kommissaris,
 3 maar dit is wat ek in "hindsight" verneem het.
 4 CHAIRPERSON: Yes, I think he said he
 5 reported it to the Provincial Commissioner.
 6 BRIGADIER CALITZ: Ek is – ja, ja –
 7 CHAIRPERSON: Maybe even reported it to
 8 the National Commissioner. I can't remember. But nothing
 9 appears to have been done about it. Is that right? No
 10 steps appear to have been taken that we know about,
 11 according to the material before us. If something was done
 12 and we don't know about it, perhaps we should hear about
 13 it, but do you know whether any steps were taken against
 14 the officers concerned?
 15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 nee, tot huidiglik dra ek nie kennis of die Generaal dan,
 17 of daar enige stappe geneem is ten opsigte van daardie
 18 dreigemente nie. Ek dra nie kennis nie, nee.
 19 MR SEMENYA SC: Chair, when –
 20 CHAIRPERSON: I see you turned your light
 21 on.
 22 MR SEMENYA SC: When Colonel Vermaak
 23 comes the evidence will be even to this day he's unable to
 24 identify the members who uttered those threats.
 25 CHAIRPERSON: Well, that's the answer

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1 then, or will be the answer when we get it.
 2 MR BIZOS SC: It's not an answer. My
 3 learned friend can't direct my cross-examination, Mr
 4 Chairman. It's a legitimate question that I have asked and
 5 I expect the witness to give an answer.
 6 CHAIRPERSON: You got the answer. He
 7 said as far as he knows no steps have been taken against
 8 anybody. He understands Colonel Vermaak reported it to the
 9 General. Mr Semenya has given us information to prevent us
 10 going off on a "dwaalspoor" and wasting time on what may be
 11 a wild goose chase as to why no steps were taken. That was
 12 intended merely to help us, but I suggest you proceed with
 13 the point. I don't think his comment was intended to
 14 derail or undermine or frustrate your cross-examination, so
 15 carry on.
 16 MR BIZOS SC: Mr Chairman, I want to put
 17 to the witness paragraph 6.10 on exhibit HHH20 at 6.10.
 18 CHAIRPERSON: Paragraph 6 point?
 19 MR BIZOS SC: 6.10.
 20 CHAIRPERSON: Thank you.
 21 MR BIZOS SC: On page 20, Mr Chairman.
 22 CHAIRPERSON: This is the consolidated
 23 statement of Colonel Scott.
 24 MR BIZOS SC: It starts, "I suggested
 25 during the meeting that the conditions of both sides were

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1 high due to the loss of life and should the police" –
 2 CHAIRPERSON: Not conditions; emotions,
 3 Mr Bizos. "I suggested during the meeting that the
 4 emotions on both sides were high."
 5 MR BIZOS SC: "The emotions on both sides
 6 were high due to the loss of life and that should the
 7 police move in to disperse the group the next morning, the
 8 intervention could possibly be interpreted by the media and
 9 the public as a retaliation instead of enforcement of the
 10 law. I said this because I considered there was bound to
 11 be conflict again should the police use force to defuse the
 12 situation with the protesters that are armed, as they were,
 13 and with their emotions running as high as they did at the
 14 time." Were you present at that meeting?
 15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 ja, ek het so vinnig probeer kyk; ek dink die vergadering,
 17 as ons kyk na die volgende waar hy sê, "I suggested that to
 18 the National Commissioner," ek dink dit is die vergadering
 19 wat laataand plaasgevind het waar ek verwys het die
 20 Generale het die voorligting gegee aan die Nasionale
 21 Kommissaris. Ek kan nou onthou op 'n stadium dit was by
 22 die Lonmin kantore, dat ek wel op 'n stadium daar was en
 23 toe weer verlaat het. Ek dink dit was net om te hoor wat
 24 ek –
 25 CHAIRPERSON: You're quite right, 6.11

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1 says, "I suggested to the National Commissioner," so he was
 2 speaking at a meeting attended by the National
 3 Commissioner, and when he talks in the third line of para
 4 6.10 about the next morning, it's quite clear that he's
 5 talking about what was said at a meeting on the Monday
 6 night because the next morning was clearly the Tuesday. So
 7 you're quite right. You don't have to elaborate on that
 8 point.
 9 MR BIZOS SC: Do you agree with the view
 10 of Colonel Scott that emotions on both sides were high? Do
 11 you agree with what he said? You were there; you heard
 12 him. Do you agree with him?
 13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 nee, ek verskil van u. Ek het nie gesê ek was daar en dat
 15 ek hierdie woorde gehoor het nie, maar of ek saam met hom
 16 stem dat die emosie van die polisiemanne, daar was wel
 17 emosie gewees en dan aan die ander kant glo ek van die
 18 "strikers," as ek 'n afleiding kan maak, daar was ook
 19 emosie betrokke gewees, ja.
 20 MR BIZOS SC: So that this was not kept a
 21 secret among the high-ranking officers that were in command
 22 and control of the situation at Marikana?
 23 CHAIRPERSON: What do you mean by "this
 24 is not kept a secret"? What was not kept a secret was that
 25 emotions were running high on both sides.

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1 MR BIZOS SC: Yes.

2 CHAIRPERSON: Is that what you mean?

3 MR BIZOS SC: That was not kept a secret.

4 It was known to all of you senior officers.

5 BRIGADIER CALITZ: Ek glo daardie woorde

6 was gedeel met die seniors, so die mense wat betrokke was,

7 as ek kan sê by die JOCCOM sou wel dan bewus gewees het van

8 die dreigemente. Of van die emosies.

9 MR BIZOS SC: It was a vital matter as to

10 whether the plan that had been put together by Colonel

11 Scott would be put into operation when the emotions of both

12 sides were as high, both sides being the protesters on the

13 one hand and the hurt of the policemen that one of their

14 number, or at least two of their number but one more

15 brutally than the other, and that was known to all the

16 senior officers involved. Commanders.

17 BRIGADIER CALITZ: Mnr die Voorsitter, ek

18 weet nie of ek die vraag nou reg verstaan nie. Dis

19 dieselfde as die vorige vraag waar ek gesê het ja, die

20 senior offisiere, die persone wat daar was, sou wel bewus

21 gewees het hiervan, ja.

22 MR BIZOS SC: So that can we draw the

23 inference that we intend drawing to the attention that the

24 senior officers, the command from the Generals down to the

25 Colonels, were aware of the dangers of putting the plan

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1 into operation on the 16th?

2 BRIGADIER CALITZ: Mnr die Voorsitter, ek

3 dink dit is die fases wat in die plan dan bespreek is. Dit

4 was my ondervinding op die Dinsdag, die Woensdag, dat ons

5 wel besig is om die verhouding op te bou en die plan het so

6 uitgespeel; elke dag is daar terugvoer gegee, so die plan

7 se fases is in daardie verband uitgevoer. So as ek u reg

8 verstaan, dit was my verstandhouding gewees om dan eers

9 deur die "negotiations" en die trust en al daardie stappe

10 te gaan voor daar besluit is die 16de, en ek dink dit is

11 eers om 13:30 besluit om oor te gaan tot 'n uiteendryf

12 aksie.

13 MR BIZOS SC: One would have expected

14 careful commanders having regard to what happened on Monday

15 and the threat against a general, to have gathered the

16 police force together and say it is unfortunate that two of

17 our members were killed, but please have regard that we are

18 dealing with 3 000 people; not all of them are responsible

19 for these deaths. We are professionals and we must not

20 seek to take revenge against the crowd. Would you agree

21 that that would have been a very useful precaution for the

22 officers to take?

23 BRIGADIER CALITZ: Mnr die Voorsitter,

24 tot my kennis dra ek nie kennis van die bevelvoerders wat

25 met hulle lede bespreek het nie, maar ek glo – en ek weet

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1 nie as hulle kom getuig of hulle dan daarvoor kan getuig –

2 tot my kennis sou dit wel met hulle bespreek was, want soos

3 ek sê, in die JOCCOM vergadering het ons besluit om nie oor

4 te gaan tot aksie nie daardie volgende dag, maar om die

5 onderhandelingsproses en die reeds aan die gang te hou, en

6 as ek nou reg is, in 6.10, as ek 'n afleiding kan maak wat

7 hier staan by Kolonel Scott is dit presies wat hy sê, dat

8 dit nie moet gesien word as "retaliation" nie maar dat

9 daar, die plan se stappe nog steeds gevolg moet word. So

10 ek glo dit is gedoen.

11 MR BIZOS SC: Do you agree that the

12 suggestion that I have made as having been a good policy to

13 adopt did not take place? You didn't address the rank and

14 file as to how to behave or not behave, having regard to

15 what happened in relation to the death of two policemen?

16 BRIGADIER CALITZ: Mnr die Voorsitter, al

17 waarna ek kan verwys is na die tyd het ek, op die 18de is

18 waar ek die parade toegesprek het. Voor die tyd is die

19 ander bevelvoerders wat dan aan hulle lede – so dit is wat

20 ek sê ek glo dit het gebeur, dat dit wel met die lede sou

21 bespreek gewees het.

22 MR BIZOS SC: [Microphone off, inaudible]

23 happen?

24 BRIGADIER CALITZ: Ek kan u ongelukkig

25 nie help nie. Ek was nie teenwoordig daar tydens daar

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1 voorligting –

2 MR BIZOS SC: No, but you were the

3 operational commander. Surely you must have had a

4 responsibility to quiet down the hurt members of the police

5 force. You, the operational commander, above all should

6 have taken the step that I have suggested to you.

7 BRIGADIER CALITZ: Mnr die Voorsitter,

8 weereens, dit is in die JOCCOM tussen die senior offisiere,

9 glo ek dat hierdie aspek geadresseer is. Die bevelvoerders

10 wat dan teenwoordig is tydens hierdie sessies sou dan na

11 hulle lede toe gaan, maar nee, ek dra nie kennis van dat al

12 die lede bymekaar geroep is en dan spesifiek hieroor

13 gepraat het nie. Dit dra ek nie van kennis nie.

14 MR BIZOS SC: Would you agree that if

15 what I had suggested ought to have happened did happen, we

16 may not have the tragedy of 34 dead people?

17 BRIGADIER CALITZ: Nee, mnr die

18 Voorsitter, ek stem nie saam nie.

19 MR BIZOS SC: Why not?

20 BRIGADIER CALITZ: Ek kan net gaan op wat

21 vir my gesê is en wat ek gesien het. As daar 'n aanval is

22 op die polisielede en hulle het uit selfverdediging

23 opgetree was dit nie "revenge" soos wat u daarna verwys

24 nie, nee.

25 MR BIZOS SC: The question was not

<p style="text-align: right;">Page 19558</p> <p>1 relating to what you said on the 18th or what may have 2 happened. Why did not this obvious precaution not taken by 3 you or to your knowledge any other senior officer? 4 BRIGADIER CALITZ: Mnr die Voorsitter, ek 5 verstaan die vraag weer dieselfde as op die 16de waar daar 6 wel 'n voorligting gegee is aan die lede en die voorligting 7 wat gegee is, is pertinent verwys na die plan en die fases 8 en ek dink ons het reeds breedvoerig daaroor getuig. 9 CHAIRPERSON: Mr Bizos, you see you're 10 making two points. I'm not sure if the two points can be 11 taken together, the separate points. The first one is 12 whether warnings were given and instructions were given and 13 attempts were made to eliminate this revenge motive aspect. 14 That's one point, as I understand it. The other one is you 15 put to him if that had been done the 34 people mightn't 16 have died, and he's answered that by saying well, if they, 17 the strikers, still had attacked the police and if it's 18 correct that it was an attack on the police and if it's 19 correct that the police were placed in a situation of the 20 threat they had to deal with and that they acted in self- 21 defence and private defence, then of course despite 22 instruction and guidance of the kind you suggest should 23 have been given to the police, we might still have had the 24 situation we had on the Thursday afternoon. That's the 25 point the witness is dealing with, but the point I'm</p>	<p style="text-align: right;">Page 19560</p> <p>1 to assure the ordinary policemen there who carried the 2 lethal weapons as to how and when to use them. 3 BRIGADIER CALITZ: Mnr die Voorsitter, ek 4 het probeer die vrae kort hou deur net te antwoord "Ek stem 5 nie saam nie," maar u weet, ek word gevra om weer te 6 verduidelik. Weereens as ons teruggaan na die plan toe, 7 daar was breedvoerige voorligting gegee aan die plan. Elke 8 bevelvoerder het presies aan sy lede dan die voorligting 9 gaan gee soos dit uiteengesit is en wat hulle takings is. 10 Die Taktiese Respons Eenhede, die TRT, die NIU, die 11 Taakmag, glo ek het dan presies vir hulle lede gaan 12 terugvoer gee. So elkeen sou beslis gewet het wat van hom 13 verwag is. Die lede is opgelei; hulle is professioneel, en 14 elke lid van die polisie van die vlak van konstabel tot by 15 generaal glo ek is opgelei en weet presies wat van hom 16 verwag word. 17 So om u vraag weereens te beantwoord, waar ek nie 18 saam met u stem nie is dat die nodige voorligting was 19 gegee. Die beplanning wat met ons bespreek is, is in 20 detail gegee. Ek glo nie iemand kon daardie voorligting 21 wat gegee is misverstaan het nie, en die lede het opgetree 22 as gevolg van die aanval en wat voor hulle dan plaasgevind 23 het op daardie stadium, en nie as gevolg van 'n swak 24 voorligting deur enige bevelvoerder nie. 25 MR BIZOS SC: [Microphone off, inaudible]</p>
<p style="text-align: right;">Page 19559</p> <p>1 putting to you is that they're two separate points and they 2 have to be dealt with separately, surely. 3 MR BIZOS SC: Well, let's take them one 4 by one. Let's take the second one. You assume that, 5 without having personal knowledge, that the police were 6 actually attacked and they did not fire out of a feeling of 7 revenge. 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 dit was my getuienis gewees. Ook uit die Nyalas uit was 10 dit my getuienis gewees dat ek gesê het dit was 'n aanval 11 op die polisie. Dit wat ek gesien het was 'n aanval op die 12 polisie. So ja, ek bly dit, hulle het opgetree as gevolg 13 van die aanval op die polisie en beslis nie 'n "act" van 14 "revenge" of wraak dan nie. 15 MR BIZOS SC: The fact that there was, if 16 we assume that there was no order to shoot, because of the 17 lack of briefing, because of the lack of advising how to 18 behave in a disciplined manner, there may not have been a 19 danger to the police but rather a premature attack as an 20 act of revenge against the strikers. 21 BRIGADIER CALITZ: Nee, ek stem nie saam 22 met u nie, mnr die Voorsitter. 23 MR BIZOS SC: You may not agree, but you 24 cannot deny the possibility that it may not have happened 25 if proper steps had been taken by the commanding officers</p>	<p style="text-align: right;">Page 19561</p> <p>1 without any personal knowledge on your part as to the 2 truthfulness or not of what you now say you believe. 3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter, wat ek nou getuig het is alles waar ek self by 5 betrokke was en wat ek gehoor het is die voorligting, en op 6 daardie dag self, so dit is nie 'n "assumption," dit is 7 feite. 8 MR BIZOS SC: Let us turn to – 9 CHAIRPERSON: Mr Bizos, I have a problem. 10 You ask him about things which you say he didn't know 11 about, and certainly some of the things he didn't know 12 about but you ask him about them. You asked his views; he 13 gives his views. You then say to him well, you don't know 14 what you're talking about because you weren't there. I 15 mean that's a bit unfair, isn't it? If you go into the 16 territory of asking him about things that you know he's 17 relying on feedback and information he'd received, when he 18 gives you an answer based upon that you then say to him ja, 19 but you weren't there, you're only relying on feedback – 20 MR BIZOS SC: Yes. 21 CHAIRPERSON: Well, that's a bit unfair, 22 isn't it? 23 MR BIZOS SC: But Mr Chairman, my learned 24 friend says that we can't make assumptions. Is that 25 privilege not to be offered to me when he makes an</p>

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1 assumption about things that when he was not there?
 2 CHAIRPERSON: You asked him to make an
 3 assumption. He makes the assumption, then you say ja, but
 4 it's only an assumption. That's the point I'm busy with.
 5 I haven't prevented you from asking him to make
 6 assumptions. I've allowed hypothetical questions to be
 7 asked. There had been objections sometimes which I've
 8 overruled. So don't get excited. I'm trying to be fair to
 9 everybody.
 10 MR BIZOS SC: No, Mr Chairman, I
 11 appreciate it and I'll try and bear it in mind. Let us
 12 turn to scene 2, Brigadier –
 13 CHAIRPERSON: Before we get to scene 2,
 14 can we have some tea?
 15 MR BIZOS SC: Yes, please.
 16 CHAIRPERSON: We'll take the tea
 17 adjournment.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [10:56] CHAIRPERSON: The Commission resumes,
 20 Brigadier, you're still under oath. Before we continue
 21 with the evidence I understand that Mr Semenya wishes to
 22 say something about the dates for the filing of statements.
 23 MR SEMENYA SC: Chair, you had directed
 24 that all statements must be in by Friday and we're trying
 25 to raise to get, to comply. We anticipate, we may not be

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1 in a position to do so, we're requesting that deadline to
 2 be moved to the next Friday or month-end.
 3 CHAIRPERSON: Yes, I discussed that with
 4 you and Mr Budlender in Chambers. In the circumstances it
 5 seems that the application is one which should be granted,
 6 so the date for the filing of statements is moved or the
 7 deadline for filing of statements is moved from the 17th of
 8 January to the 24th of January. Mr Mpofu did indicate that
 9 he has some difficulties and I hope his difficulties are
 10 now being eliminated. I think I've already reminded you,
 11 you're under oath, Brigadier?
 12 BRIGADIER CALITZ: Dankie.
 13 CHAIRPERSON: Mr Bizos, we are moving to
 14 scene 2, I believe?
 15 MR BIZOS SC: May I with your leave round
 16 off something on general before I go to –
 17 CHAIRPERSON: Of course –
 18 MR BIZOS SC: - to scene 2, Mr Chairman?
 19 Did you consider the threat made to General Mpembe an
 20 illegal act, a threat to kill the general, was that an
 21 illegal act?
 22 BRIGADIER CALITZ: Ja, enige dreigement
 23 op 'n persoon se lewe sal nie wettig wees nie.
 24 MR BIZOS SC: Yes, were any steps taken
 25 to investigate that illegal act?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 2 kan net getuig op wat ek in hindsight gehoor het.
 3 MR BIZOS SC: I don't like this hindsight
 4 to be used too often as an excuse to not answering a
 5 question directly.
 6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 dankie.
 8 CHAIRPERSON: But I don't know with
 9 respect if that's justified criticism. Many of the things
 10 he says are, I wasn't aware of that at the time, for
 11 whatever reason, but I now with hindsight realised that
 12 that is so or is not so. I don't regard that as –
 13 MR BIZOS SC: Can we have an answer, were
 14 any steps taken, Mr Chairman, and then if the witness wants
 15 to explain why not, if I choose to ask him that question he
 16 may want or my learned friend may want to re-examination –
 17 CHAIRPERSON: Yes, Mr Bizos, -
 18 MR BIZOS SC: I'm trying to avoid lengthy
 19 responses –
 20 CHAIRPERSON: Yes –
 21 MR BIZOS SC: - to direct questions which
 22 have a yes or no answer.
 23 CHAIRPERSON: Yes, do you remember I gave
 24 him a lecture on that yesterday? I said, if you're asked a
 25 question answer the question and don't answer the next

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1 question which you think you may be asked because you're
 2 not asked that and if it is relevant to clarify the answer
 3 your counsel will deal with it in re-examination. I told
 4 him that yesterday and I'm sure he is conscious of it and
 5 if he isn't I'll have to speak to him sharply again in
 6 future, but remember that. If you're asked a question and
 7 your answer is, yes or no, say yes or no. I understand
 8 sometimes a yes or no answer isn't enough and you've got to
 9 explain a bit but forgive me if I say, sometimes I get the
 10 impression you say, he is asking me that question and the
 11 next question is going to be following and I'll quickly
 12 answer that as well and I told you yesterday, it is never a
 13 good idea. Counsel in fact like witnesses who don't
 14 answer, - who answer questions that haven't been asked
 15 because it very often gets the witness into trouble, but
 16 anyway just answer the questions and no more. Carry, Mr
 17 Bizos.
 18 BRIGADIER CALITZ: Ek sal so maak, mnr
 19 die Voorsitter, dankie.
 20 MR BIZOS SC: The answer is to your
 21 knowledge, no, no steps were taken?
 22 BRIGADIER CALITZ: Ek dra nie kennis nie,
 23 mnr die Voorsitter.
 24 MR BIZOS SC: Yes, now did you consider
 25 it your duty as an operational commander, threats made to a

<p style="text-align: right;">Page 19566</p> <p>1 general was a very, very serious allegation that needed 2 investigation? 3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter. 5 CHAIRPERSON: Yes, Mr Bizos, the evidence 6 was that this was reported to either the Provincial 7 Commissioner or the National Commissioner or both and 8 clearly they would have been the appropriate, whichever one 9 it was reported to, would have been the appropriate person 10 to have taken an initiative in investigating it, but I 11 don't know that it was a necessary matter for the 12 operational commander, knowing that the information had 13 been conveyed to, it was either the Provincial Commissioner 14 or the National Commissioner or both, necessary then to 15 take steps himself. 16 BRIGADIER CALITZ: Dit is wat ek sou gesê 17 het, mnr die Voorsitter, maar ek probeer maar, net nou 18 probeer op die ja of nee. 19 CHAIRPERSON: That's why I intervened. 20 BRIGADIER CALITZ: Dankie, mnr die 21 Voorsitter. 22 MR BIZOS SC: On page or paragraph 67 of 23 Exhibit L the designated command positions are set out. 24 Commander JOC CJOC, Major-General Mpmembe, it would appear 25 that his role was the overall command of the operation</p>	<p style="text-align: right;">Page 19568</p> <p>1 CHAIRPERSON: He was removed from his 2 physical position, from a geographical point of view he was 3 on the ground, on the field of engagement on the 13th and he 4 was removed there from by Colonel Vermaak for his own 5 safety. In that sense he was removed from his position, 6 any other sense does not apply. 7 BRIGADIER CALITZ: Dit is net wat ek wil 8 seker maak, mnr die Voorsitter. Ja, in daardie opsig as 9 daar 'n dreigement was, die kolonel wat, hy kon dit doen. 10 MR BIZOS SC: He went up into a 11 helicopter, is that right? 12 BRIGADIER CALITZ: Na wie verwys u, mnr 13 die Voorsitter? 14 MR BIZOS SC: On the 16th, General Mpmembe. 15 BRIGADIER CALITZ: Hy was die 16de wel in 16 die helikopter gewees. 17 MR BIZOS SC: Who sent him there? 18 BRIGADIER CALITZ: Ek dra nie kennis nie, 19 mnr die Voorsitter. 20 MR BIZOS SC: This was in the field at 21 the time when General Mpmembe decided to leave the JOC, so 22 he can't answer who sent General Mpmembe there, if anybody, 23 he sent himself in fact, he doesn't know, he wasn't there. 24 MR BIZOS SC: Yes, what role could 25 General Mpmembe play in relation to the operation as an</p>
<p style="text-align: right;">Page 19567</p> <p>1 according to that document, you've got it in front of you. 2 BRIGADIER CALITZ: Ek het die dokument 3 voor my, mnr die Voorsitter. 4 MR BIZOS SC: It is a correct description 5 that he was the overall commander of the operation? 6 BRIGADIER CALITZ: Korrek, mnr die 7 Voorsitter. 8 MR BIZOS SC: He was removed. 9 BRIGADIER CALITZ: Op die 13de, mnr die 10 Voorsitter. 11 MR BIZOS SC: By whom? 12 BRIGADIER CALITZ: So ver my kennis strek 13 Kolonel Vermaak, ek weet nie deur wie nie. Ek weet Kolonel 14 Vermaak het gerapporteer wie hom weggevat het, ek dra nie 15 kennis nie. 16 MR BIZOS SC: Do I understand you 17 correctly that a colonel can overturn the position of a 18 general? 19 BRIGADIER CALITZ: As u vir my 20 verduidelik wat u by overturn bedoel? 21 MR BIZOS SC: I beg your pardon? 22 BRIGADIER CALITZ: Wat bedoel u by 23 overturn, as u net vir my dit kan verduidelik? 24 MR BIZOS SC: Remove him from his 25 position.</p>	<p style="text-align: right;">Page 19569</p> <p>1 overall commander from a helicopter? 2 BRIGADIER CALITZ: Presies waarvoor dit 3 staan, mnr die Voorsitter, to overall command, die 4 operasie. 5 MR BIZOS SC: How could you do that from 6 a helicopter with the communication system not being what 7 it ought to have been? 8 BRIGADIER CALITZ: Ek dra nie kennis op 9 daardie stadium, of hy kennis gedra het dat die 10 kommunikasie system nie gewerk het nie. 11 MR BIZOS SC: In truth and in fact he was 12 really removed from any authority in relation to the 13 command of the operation on the ground. 14 BRIGADIER CALITZ: Ek stem nie saam met u 15 nie, mnr die Voorsitter. 16 MR BIZOS SC: Well, what could he do? 17 BRIGADIER CALITZ: Ekskuus tog, mnr die 18 Voorsitter? 19 MR BIZOS SC: If a colonel told him to 20 withdraw for his own safety what could – 21 CHAIRPERSON: No, no, no, - 22 MR SEMENYA SC: No, no, Chair. 23 CHAIRPERSON: Mr Bizos, you're now busy 24 conflating the 13th and the 16th. On the 13th the colonel 25 came to him and said, you must remove for your own safety,</p>

<p style="text-align: right;">Page 19570</p> <p>1 I take it technically he could have said, well, never mind 2 that, I'm staying here, but he accepted the proposal of 3 Vermaak and left. On the 16th a different proposition 4 altogether, he was in the JOC, he got into the helicopter 5 for the reasons which he explained, but the operation as 6 such was over on the 13th in any event or generally 7 speaking. I think there may have been a bit of a pursuit 8 still going on, but most of the operation was over on the 9 13th and he at that stage went away in a helicopter, is that 10 right, but we must keep the 13th separate from the 16th. 11 MR BIZOS SC: Before you left scene 1 and 12 before General Mpmembe went onto the helicopter where was 13 General Mpmembe on the 16th? Was he near you when you were 14 the operational commander of scene 1? 15 BRIGADIER CALITZ: Ek dra nie kennis nie, 16 mnr die Voorsitter. 17 MR BIZOS SC: Well, presumably if he was 18 the overall commander and you were operational commander 19 didn't you have to associate with one another for the 20 peaceful resolution of the issues? Don't you know, did you 21 see him there at all? 22 BRIGADIER CALITZ: Ek het hom glad nie 23 gesien nie, mnr die Voorsitter. 24 MR BIZOS SC: If he was there where would 25 you have expected him to be as General Mpmembe, hiding</p>	<p style="text-align: right;">Page 19572</p> <p>1 BRIGADIER CALITZ: Dit is hoekom ek se 2 15. 3 MR CHASKALSON SC: Sorry, let me not go 4 by memory. 15:53:50. 5 CHAIRPERSON: So there you have it, the 6 fusillade was 15:53:50. It is 6 minutes and 10 seconds 7 before 4 o'clock in the afternoon. 8 BRIGADIER CALITZ: Dankie, mnr die 9 Voorsitter. 10 CHAIRPERSON: And at that point, 11 according to the evidence you had already left the 12 immediate vicinity of scene 1 and you were proceeding 13 effectively towards the, I think it was the dried riverbed 14 spot at that stage for reasons you've explained already. 15 BRIGADIER CALITZ: Ek dink hulle woorde 16 wat hulle gebruik het was, simultaneously, toe dit gebeur 17 het, het ek vorentoe beweeg, dankie, mnr die Voorsitter. 18 MR BIZOS SC: At what time did you arrive 19 at scene 1 on the 16th? 20 BRIGADIER CALITZ: Dit was vroeër die 21 oggend met die onderhandelinge, ek sal net na my verklaring 22 moet gaan kyk, die presiese tyd. 23 MR BIZOS SC: More or less? 24 CHAIRPERSON: I don't know if that's 25 right, scene 1 remember is the position near the kraal and</p>
<p style="text-align: right;">Page 19571</p> <p>1 somewhere in the crowd of policemen or to be prominent? 2 BRIGADIER CALITZ: Mnr die Voorsitter, as 3 oorhoofse bevelvoerder kan hy, dit is sy prerogatief waar 4 hy op daardie stadium wil wees, definitief nie hiding 5 amongst the crowd nie. Dit sou belaglik wees. 6 MR BIZOS SC: What time did you leave 7 scene 1 again? 8 BRIGADIER CALITZ: Ek dra nie kennis nie, 9 mnr die Voorsitter. 10 MR BIZOS SC: Try and give us an 11 approximate time? 12 BRIGADIER CALITZ: Mnr die Voorsitter, ek 13 het gister gevra, Advokaat Le Roux-hulle het dit in hulle, 14 ek het daardie dokument ongelukkig nie voor my nie, hulle 15 het gesê ten tye van die volley van vuur het my voertuig 16 vorentoe beweeg. Ek dink hulle het gekyk na die document, 17 ek sien sy is vandag nie hier nie, as ek, - ek praat 18 heeltemal onder korreksie, 11:57, 11, iets in daardie, net 19 voor die volley of fire het my voertuig vorentoe beweeg, - 20 ag, 16 - 21 CHAIRPERSON: It wasn't 11 anything, it - 22 BRIGADIER CALITZ: 15:15. 23 CHAIRPERSON: It was around about 10 to 4 24 but Mr Chaskalson has got these things on his fingertips. 25 What time was the volley, the fusillade, Mr Chaskalson?</p>	<p style="text-align: right;">Page 19573</p> <p>1 your evidence was that during the day you were near that 2 mast, remember you were, that's where the negotiations and 3 so forth took place and then later on, after the wire 4 started being uncoiled you were then at a particular point, 5 did you explain already in your evidence. You then 6 proceeded and you showed us on the model and so on that we 7 saw, in fact the large photograph of the area. You then 8 proceeded from there to a spot near the fence, near the 9 kraal, do you remember that, that's what he is asking you 10 about. So that wasn't 11 o'clock in the morning, that was 11 sometimes after 3. 12 BRIGADIER CALITZ: Nee, ek het hom. 13 CHAIRPERSON: The uncurling of the wire 14 started about 15:40, isn't that right? 15 BRIGADIER CALITZ: Dit is korrek, mnr die 16 Voorsitter, ek het maar net die - 17 CHAIRPERSON: Yes, let's get it - 18 BRIGADIER CALITZ: - vraag verkeerd 19 verstaan, ek het gedog toneel 1. 20 CHAIRPERSON: No, no, I can see that. 21 BRIGADIER CALITZ: Baie dankie, mnr die 22 Voorsitter. 23 CHAIRPERSON: But we're on the same page 24 now. 25 BRIGADIER CALITZ: Ek het 15:40 die</p>

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1 opdrag gegee en vandaar af beweeg na hierdie, so dit sal
 2 tussen 15:40 en 15:53 wees.
 3 MR BIZOS SC: Yes, for my benefit could
 4 you please tell me how many hours or minutes did you spend
 5 at scene 1 on the 16th?
 6 BRIGADIER CALITZ: Vandat ek die opdrag
 7 gegee het om die draad uit te gooi, 15:40 tot by 15:53:50,
 8 as hulle sê ek het beweeg sal dit wees 10, 13 minute, as ek
 9 na die tyd kyk en ek is reg.
 10 MR BIZOS SC: So how much time is that?
 11 BRIGADIER CALITZ: Ek het nou net gesê 13
 12 minute.
 13 MR BIZOS SC: 13 minutes, is that the
 14 only time that you spent on scene 1 the whole day?
 15 BRIGADIER CALITZ: Nee, mnr die
 16 Voorsitter, ek wou antwoord op die whole day. Mnr die
 17 Voorsitter het vir my verduidelik dat u is besig met die
 18 toneel, so die whole day is nie wat ek verstaan het die
 19 vraag was nie.
 20 MR BIZOS SC: How much time did you spend
 21 at or near scene 1 the whole day?
 22 CHAIRPERSON: Mr Bizos, near is a bit
 23 ambiguous, that's the trouble. May I intervene and just
 24 ask the same question in a different way? We here in the
 25 Commission talk about scene 1 as being the place where the

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1 first shootings took place and that's the place in the
 2 vicinity of the kraal, or actually between the kraal and
 3 that shack, the corrugated iron shack. At any point in the
 4 day before you gave the order for the uncoiling of the wire
 5 were you there?
 6 BRIGADIER CALITZ: Dit is korrek, mnr die
 7 Voorsitter.
 8 CHAIRPERSON: Were you there at any point
 9 during the day, before you gave the order for the wire to
 10 be uncoiled, the barbed wire to be uncoiled, were you at
 11 scene 1?
 12 MR SEMENYA SC: Chair, maybe can we
 13 distinguish between scene 1 and koppie 1?
 14 CHAIRPERSON: I tried to explain to him
 15 what scene 1 is. Scene 1 is the place between the kraal
 16 and that, there is a corrugated iron shack where the
 17 shooting took place, the first fusillade took place at
 18 15:57, that's what we call scene 1 in this Commission.
 19 Scene 2 of course is the place in the vicinity of koppie 3,
 20 that's a different matter, but the evidence was that, he
 21 explained at the time, before 15:50 in a different
 22 position, near the mast which we see on the photographs,
 23 opposite koppie 1 and there were negotiations and various
 24 things happened thereafter. Now Mr Bizos talked about
 25 scene 1, I take it he means scene 1 as I have defined it.

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1 If he means near koppie 1 in the area opposite, near that
 2 mast and so on, then the answer would of course be
 3 different. Mr Bizos, what do you want from him?
 4 MR BIZOS SC: Let me put the question,
 5 during the 16th did you see General Mpembe anywhere near you
 6 wherever you may have been on the 16th? Did you see him at
 7 all anywhere near scene 1, at scene 1, take your choice,
 8 did you see General Mpembe during the course of the 16th?
 9 CHAIRPERSON: I take it you're excluding
 10 seeing him at the JOC?
 11 MR BIZOS SC: No, the JOC met in a
 12 building some distance away, I don't mean there.
 13 CHAIRPERSON: No, what you mean is -
 14 MR BIZOS SC: I mean -
 15 CHAIRPERSON: What you mean is -
 16 MR BIZOS SC: Where, in the veld?
 17 CHAIRPERSON: What you mean is, in the
 18 veld opposite koppie 1, at what we call scene 1, near
 19 koppie 2 or near koppie 3 which is what we call scene 2,
 20 anywhere there?
 21 MR BIZOS SC: Anywhere there?
 22 CHAIRPERSON: Did you see General Mpembe?
 23 MR BIZOS SC: This is why I said at or
 24 near, Mr Chairman.
 25 BRIGADIER CALITZ: Nie by, at or near

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1 toneel 1, scene 1, ook nie by koppie 3, scene 2 nie, nee,
 2 mnr die Voorsitter.
 3 MR BIZOS SC: You never saw him?
 4 BRIGADIER CALITZ: Ek het hom nie gesien
 5 nie, nee, mnr die Voorsitter.
 6 MR BIZOS SC: So he was the overall
 7 commander in name only in relation to the -
 8 [11:16] MR SEMENYA SC: Objection, objection,
 9 Chair.
 10 MR BIZOS SC: On the 16th.
 11 MR SEMENYA SC: Objection, Chair. This
 12 is very surprising to us because even the expert witness
 13 White says there was nothing wrong in being overall
 14 commander -
 15 CHAIRPERSON: Yes, I know that but
 16 that's not objecting to the question. The question is
 17 asked the witness can give an answer to it. I think the
 18 answer is pretty obvious but let's see what the answer is,
 19 I don't think you can object to it. Would you agree with
 20 the proposition that General Mpembe who was the overall
 21 commander most of the time was in the JOC and thereafter
 22 left the JOC and went into a helicopter and was in a
 23 helicopter circling above and able to communicate if he
 24 wished subject to certain problems with the radio, but
 25 generally speaking able to communicate if he considered it

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1 necessary or if someone asked him for advice would you
2 regard it as correct to say that he had, was no longer in
3 overall command?
4 BRIGADIER CALITZ: Nee, glad nie, mnr die
5 Voorsitter.
6 MR BIZOS SC: During the same period
7 chief of staff Major-General Annandale was supposed to
8 coordinate the running of the operation by managing the JOC
9 with the designated role, role players representing each
10 field. Did you see General Annandale outside the JOC
11 office on the 16th?
12 BRIGADIER CALITZ: Nee, mnr die
13 Voorsitter. Ook nie by een van die twee tonele as ons weer
14 na die tonele verwys nie.
15 MR BIZOS SC: And Brigadier Pretorius who
16 was to manage the information flow and record, record
17 keeping in the JOC did you see him anywhere near –
18 CHAIRPERSON: Brigadier Pretorius is a
19 lady, Mr Bizos.
20 MR BIZOS SC: I beg your pardon. I'm
21 sorry, Mr Chairman?
22 CHAIRPERSON: Brigadier Pretorius is a
23 lady, you said did you see him referring to Brigadier
24 Pretorius.
25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: Brigadier Pretorius is a
2 lady.
3 MR BIZOS SC: Oh I see. Her, I beg your
4 pardon. Yes, thank you, Mr Chairman. Did you see her at
5 all?
6 BRIGADIER CALITZ: Mnr die Voorsitter, as
7 die forward holding area is near scene 1 dan is die
8 antwoord ja.
9 MR BIZOS SC: And General Naidoo who was
10 to manage the reserve and support forces kept in the
11 forward holding area releasing recourses as required by
12 their operational command, did you see him around?
13 BRIGADIER CALITZ: Ja, mnr die
14 Voorsitter.
15 MR BIZOS SC: Was he there with you
16 throughout the period that you were there?
17 BRIGADIER CALITZ: Nee, mnr die
18 Voorsitter.
19 MR BIZOS SC: When did you see him and
20 what was he doing?
21 BRIGADIER CALITZ: Ek het hom gesien op
22 koppie 3, toneel 2 waar hy dan bevel gevat het oor die
23 persone saam met hom op forward holding area 1.
24 MR BIZOS SC: Then Brigadier Calitz
25 yourself you were to the, to do the coordination of the

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1 operation on the ground, do you agree with that?
2 BRIGADIER CALITZ: Korrek, mnr die
3 Voorsitter.
4 MR BIZOS SC: Who was responsible for the
5 requirements of the police force on the day out of these
6 commanders, who was responsible, that was, that what was
7 needed was provided?
8 BRIGADIER CALITZ: Dit hang af van watse
9 sense die vraag gestel is, requirements rondom?
10 MR BIZOS SC: Well let us come down to
11 the, there were 4 000 rounds of live ammunition, who
12 decided that 4 000 rounds of ammunition were needed, which
13 of the commanders decided that?
14 BRIGADIER CALITZ: Ek dra nie kennis, mnr
15 die Voorsitter.
16 MR BIZOS SC: I beg your pardon.
17 BRIGADIER CALITZ: Ek sê ek dra nie
18 kennis nie, mnr die Voorsitter.
19 MR BIZOS SC: But you were in charge of
20 the operation. Surely you will be the person that would
21 have been consulted how many rounds of live ammunition do
22 we need.
23 BRIGADIER CALITZ: Ek stem nie saam, mnr
24 die Voorsitter.
25 CHAIRPERSON: No, Brigadier, it's not as

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1 simple as that. Somebody must have said look we better
2 make sure that there is enough ammunition because shots may
3 be fired and we don't want people to run out of ammunition
4 as I think they did in an early incident, that Colonel
5 Vermaak wrote a letter about, you remember. Somebody must
6 have said we've got to make sure they've got enough
7 ammunition. Now we, so presumably that person said we
8 better send them 4 000 rounds of ammunition so that they've
9 got enough. Is that right, would that, would one person
10 have made that decision?
11 BRIGADIER CALITZ: Nee, mnr die
12 Voorsitter, rondom die 4 000 rondtes wie daardie opdrag
13 gegee het dra ek nie kennis nie.
14 CHAIRPERSON: No, no I'm not asking you
15 that. I'm asking you would one person have made that
16 decision? It wasn't, it didn't happen that one person said
17 we better give the STF some ammunition and give them so
18 much. Someone else said we'd better make sure the NIU have
19 got ammunition we'll give them so much. In other words was
20 it a decision by one person that there will be 4 000 rounds
21 of ammunition which will have to be provided or was it a
22 combination of decisions by a number of people, that's the
23 question.
24 BRIGADIER CALITZ: Dit kan al twee wees,
25 mnr die Voorsitter. Ek dra nie kennis nie.

<p style="text-align: right;">Page 19582</p> <p>1 CHAIRPERSON: You can't help us on this 2 point? 3 BRIGADIER CALITZ: Ek het vroeër in die, 4 in my getuienis getuig toe ek gevra was rondom dit waarna 5 ek iets, na iets anders verwys het, maar in hierdie geval 6 dra ek nie kennis nie, nee. 7 CHAIRPERSON: Perhaps the police can get 8 that information for us, to who made the decision, whether 9 it was one person or a number and who they were. 10 MR BIZOS SC: Well – 11 CHAIRPERSON: Because it would be 12 interesting to know if it was one person why he or she 13 thought that as many as 4 000 rounds were required but 14 that's a matter we can't deal with, with this witness, he 15 doesn't know. 16 MR BIZOS SC: May I suggest that with due 17 respect that we should give this task to the evidence 18 leaders, Mr Chairman. 19 CHAIRPERSON: You can, but I mean you 20 just, I've already asked the police team to get the 21 information for us and I suppose if they don't do it 22 promptly the evidence leaders will follow it up. But I 23 have no reason to believe they won't do it promptly. So 24 we've asked, I've asked them, Mr Chaskalson, you want to 25 say something?</p>	<p style="text-align: right;">Page 19584</p> <p>1 instruction? 2 BRIGADIER CALITZ: Nee, mnr die 3 Voorsitter. 4 CHAIRPERSON: You didn't consider it 5 necessary? 6 BRIGADIER CALITZ: Nee, mnr die 7 Voorsitter. 8 MR BIZOS SC: Who would have considered 9 it necessary? 10 MR SEMENYA SC: No, Chair, the witness 11 can't be expected to answer a question like that. 12 CHAIRPERSON: He says he doesn't know. 13 So he said he didn't do it, he didn't think it necessary, 14 someone else did it, he doesn't know who it is. I don't 15 know if that question you've asked by way of a follow up 16 question is really appropriate in the circumstances. 17 MR BIZOS SC: Yes. Well may I appeal to 18 my learned friend if he has objections to speak a little 19 loudly because I can't hear him. But the Commissioner, the 20 Commissioner and other who was the - were you aware that 21 Commissioner Mbombo and Captain Adriaio referred to the 16th 22 as D day. 23 MR SEMENYA SC: Chair, the Provincial 24 Commissioner did not use the word D day. 25 CHAIRPERSON: Captain Adriaio –</p>
<p style="text-align: right;">Page 19583</p> <p>1 MR CHASKALSON SC: A part of the problem 2 is there doesn't seem to be a single consistent version 3 coming out of the SAPS because the report from Lieutenant 4 Colonel Merafe was that the instruction came from Brigadier 5 Calitz, Brigadier Calitz has now denied that. So I don't 6 think that this is something that can come from the police. 7 I think it's something that the evidence leaders need to do 8 their best to investigate. 9 CHAIRPERSON: Well I reverse my request, 10 withdraw my request to the SAPS team and I ask the evidence 11 leaders as you suggest Mr Bizos to follow this up. 12 MR BIZOS SC: Vehicles to transport 13 corpses should be made available for the morning of the 14 16th. 15 BRIGADIER CALITZ: Ek dra nie kennis wie 16 daardie opdragte gegee het nie. 17 MR BIZOS SC: Who would know? Who would 18 know that corpses would be needed as a result of any 19 actions that may have been, may be taken either by the 20 police or the crowd that vehicles to transport corpses from 21 the scene, who made that decision if you the operational 22 commander didn't know anything about it? 23 BRIGADIER CALITZ: Ek dra nie kennis wie 24 daardie opdrag gegee het op daardie dag nie. 25 CHAIRPERSON: You didn't give such an</p>	<p style="text-align: right;">Page 19585</p> <p>1 MR BIZOS SC: Or words to that effect 2 that today we will finish this business, were her words. 3 I'm sorry if I - 4 CHAIRPERSON: Sorry let's not talk over 5 each other. The record will be a mess. The, you are 6 asking about the remarks made by the Provincial 7 Commissioner at her press conference at 09:30 and you're 8 also referring I think to a briefing to the police 9 thereafter by Captain Adriaio. I think Captain Adriaio used 10 the word D day. What the Provincial Commissioner said was, 11 she had mentioned the possibility, I'm not sure she called 12 it possibility, the probability of arms being laid down 13 voluntarily but she said that if it didn't happen then 14 whatever happened the matter would be dealt with, would be 15 disposed of that day, namely the Thursday. That's what 16 he's referring to. The question he wants to know did you 17 know about that? 18 BRIGADIER CALITZ: Nee, op daardie 19 stadium van die dag nie, nee. 20 MR BIZOS SC: Have you heard the 21 expression D day before? 22 BRIGADIER CALITZ: Before, bedoel u voor 23 die - 24 MR BIZOS SC: No, generally speaking. 25 You know you're a senior officer -</p>

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1 BRIGADIER CALITZ: Oh generally speaking
2 dit is korrek, mnr die Voorsitter.

3 MR BIZOS SC: You have heard it? What
4 does it mean?

5 BRIGADIER CALITZ: D dag in my terme is
6 dat vandag gaan daar opgetree word soos dit stop vandag dit
7 is D dag.

8 MR BIZOS SC: In what sort of activity is
9 it used D Day?

10 BRIGADIER CALITZ: Mnr die Voorsitter,
11 nee ek kan nie regtig in watter aktiwiteit nie. Dit kan in
12 enigiets plaasvind. Vandag is die dag wat -

13 MR BIZOS SC: Let's be honest with one
14 another. It really means the day on which a battle would
15 take place.

16 BRIGADIER CALITZ: Mnr die Voorsitter, ja
17 ek weet nie, ek dink dit is maar hoe elke persoon sy
18 afleiding maak van hoe jy dit sien. Ek sien dit nie net as
19 'n battle verwys na oorlog of daarna nie nee.

20 CHAIRPERSON: - language that's correct.
21 I think D day very often means decisive day, the day where
22 a decisive event will take place. Some operation will take
23 place, is intended to target to take place on a particular
24 day and people would as a matter of ordinary language call
25 that D day. I'm not sure that D day necessarily means the

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1 day of the battle.

2 MR BIZOS SC: Used metaphorically but I'm
3 usually carefully by looking it up in the dictionary, Mr
4 Chairman, if I remember correctly D-day is a military term
5 on which the day on which the battle will begin and it's
6 called D-day because the generals don't want to fix a date
7 so that the enemy can hear of the day. They say the D-day
8 is going to be the day on which our battle is going to take
9 place.

10 CHAIRPERSON: That may be so but of
11 course it's also used metaphorically and in the sense that
12 I referred to and whether it was used metaphorically or in
13 a military sense by Captain Adriaao is not clear, if he
14 comes, when he comes we can ask him. But of course that
15 phrase was used earlier at the JOCCOM meeting at 6 o'clock
16 in the morning which you attended I think, Brigadier,
17 didn't you?

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

20 CHAIRPERSON: According to the
21 manuscript notes the first speaker who I suspect was Major-
22 General Annandale used that phrase, did you hear it?

23 BRIGADIER CALITZ: Ek dink ek het van die
24 notas bekend, bewus van een van die persone wat in hand
25 geskrewe notas gemaak het.

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1 CHAIRPERSON: Did you hear that said,
2 you were at the meeting?

3 BRIGADIER CALITZ: Ja, nee, ek was.

4 CHAIRPERSON: You were the operational
5 commander, I take it you were listening very carefully to
6 what the Chairman said.

7 BRIGADIER CALITZ: Dit is korrek, mnr die
8 Voorsitter.

9 CHAIRPERSON: Did you hear it?

10 BRIGADIER CALITZ: Nee, ek kan glad nie
11 recall dat ek dit op daardie dag, soos ek sê ek het in, na
12 die tyd op geskrewe notas het ek vir die eerste keer bewus
13 geword van daardie woord. Mnr die Voorsitter, as ek dalk
14 mag net op my vorige vraag, toe ek besig was of hoe
15 verskillende persone dit sien. Ek kan maar net verwys na
16 die sokker wêreld beker in 2010, het ons ook gepraat D
17 minus 1, D minus 5, D minus 10. So dus dui die dae aan
18 voor die D day.

19 CHAIRPERSON: Metaphorical use.

20 BRIGADIER CALITZ: Dit is wat ek net wou
21 getuig of op, hoe ek dit sien, ja.

22 MR BIZOS SC: And who, were you party to
23 a decision that the matter had to be dealt with on the 16th
24 and not postponed to any other day because that was going
25 to be D day.

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1 BRIGADIER CALITZ: As jy praat waarvan ek
2 teenwoordig was, was die oggend van die 6 uur vergaderings
3 waar ons dan besluit het om oor te gegaan het na fase 2
4 toe. Dit is wat bespreek is en dit is wat ons gedoen het.

5 MR BIZOS SC: I want to go back because I
6 didn't have the reference to the question of resources.

7 CHAIRPERSON: Before you go back to
8 resources, can I ask a question relating to the topic we've
9 just been covering.

10 MR BIZOS SC: Of course, Mr Chairman.

11 CHAIRPERSON: Do I understand you to say
12 that you were not aware until a relatively late stage, I'll
13 define relatively late stage in a moment, you were not
14 aware until a relatively late stage that the 16th had been
15 chosen to be the day when decisive action, this positive
16 action was to be taken to deal with the problem of the
17 strikers on the koppie? Did I understand you correctly?

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

20 CHAIRPERSON: Thank you, when did you
21 hear, when did you learn for the first time that such a
22 decision had been taken?

23 BRIGADIER CALITZ: Met die voorligting by
24 forward holding area 1 tydens die voorligting 14:30.

25 CHAIRPERSON: That was 2:30 in the

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1 afternoon?

2 BRIGADIER CALITZ: Dit was 2:30 in the

3 afternoon on the 16th.

4 CHAIRPERSON: Alright, the evidence is

5 that that the [inaudible] announced to certain persons who

6 had remained present after the meeting of the National

7 Management Forum on the Wednesday, the evening of the 15th

8 whether that was a continuation of the management forum is

9 a matter of controversy but we would assume for the sake of

10 this that it wasn't. The provincial commissioner announced

11 that and those present who were the other provincial

12 commissioners and the national commissioner and someone

13 else from head office endorsed the proposal. Thereafter

14 the provincial commissioner made a number of telephone

15 calls, according to the phone records, to people at

16 Marikana including General Annandale, General Naidoo I

17 think General Mpembe, I don't recall a phone call to you.

18 If, obviously it's an if, it's a hypothetical question to

19 which an objection might be taken and overruled, but if the

20 provincial commissioner communicated to any of the persons

21 to whom she spoke on the Wednesday night in those phone

22 calls that this was her decision, a proposal which had been

23 endorsed by those present at the meeting the question

24 arises whether any of them would have considered it

25 necessary to communicate that to you as the operational

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1 commander? Whether they did or didn't consider the matter

2 your evidence is clear they never told you that. The first

3 time you heard such a decision had been taken was at 2:30

4 on the Thursday afternoon is that clear?

5 BRIGADIER CALITZ: Dit is duidelik.

6 CHAIRPERSON: Right, thank you.

7 MR SEMENYA SC: Chair, Chair, you make

8 the comment that the evidence is, we have heard a statement

9 of the PC about giving that word of endorsement. I think

10 the record must reflect that to.

11 CHAIRPERSON: Well I was quoting from

12 the resolution. If the wording of the resolution was

13 inexact then, we will see that evidence in due course, it

14 may be that the phrase has to be, the words I used would

15 have to be amended in the light of what you've said.

16 [11:35] But what is clear is according to the statements

17 we've received is the Provincial Commissioner communicated

18 her decision, and you in fact confirmed that yourself, Mr

19 Semanya, at the meeting, or at the venue where the National

20 Management Forum meeting had been held on the Wednesday

21 evening, and those present then agreed that if necessary

22 extra resources that were required would be made available.

23 That we know. The technical description to that

24 interchange may be a matter for debate, but I summarise the

25 effect of it correctly. A number of phone calls were made

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1 thereafter by the Provincial Commissioner to high-ranking

2 officers at Marikana. This witness says that he heard for

3 the first time at half past 2 that, the next day, of what

4 had been decided in effect. So that's clear now beyond

5 debate, I would think. Mr Bizos, if you want to carry on?

6 MR BIZOS SC: Yes, I'm going to –

7 CHAIRPERSON: You were moving to another

8 topic, I think.

9 MR BIZOS SC: I want to refer back, you

10 remember that I asked you what your functions were as the

11 operational commander in relation to resources? You

12 remember that?

13 BRIGADIER CALITZ: Korrek, mnr die

14 Voorsitter.

15 MR BIZOS SC: Yes, I missed at the time

16 that I asked you that question what I knew to be there, but

17 obviously didn't realise it was what I had already referred

18 to in paragraph 67 of exhibit L where it says under

19 commander of the reserve and support forces, Major General

20 Naidoo, role, "Manage the reserve and support forces kept

21 at a forward holding area; releasing resources as required

22 by the operational commander." That seems to identify you

23 as that you had something to do with resources, or am I

24 wrong?

25 BRIGADIER CALITZ: Dit was wel so en dit

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1 het ook die vorige twee dae gebeur.

2 CHAIRPERSON: Those were the resources

3 that were under Major General Naidoo's control at the time,

4 which presumably means the reserve and support forces.

5 BRIGADIER CALITZ: Dit is die reserwe

6 Openbare Orde Polisiëringmagte wat ons kan help –

7 CHAIRPERSON: Ja, but your phrase

8 "resources" refers to members of the service.

9 BRIGADIER CALITZ: Korrek -

10 CHAIRPERSON: Police –

11 BRIGADIER CALITZ: Korrek, ja.

12 CHAIRPERSON: Policemen and women, right?

13 BRIGADIER CALITZ: Korrek.

14 CHAIRPERSON: And medics and fire-

15 fighters and various people of that kind. Is that right?

16 He had the fire-fighters and the medics under his control

17 too, didn't he?

18 BRIGADIER CALITZ: Ja, ek het dit

19 verstaan, meer die "reserve forces" wat my kan help, die

20 operasionele personeel.

21 CHAIRPERSON: The word "resources" then

22 refers to all those people. They were under his control

23 and if you needed them you would tell him I need the

24 police, release them, send them to me, or send them

25 somewhere, and they'd have to go. Is that right?

<p style="text-align: right;">Page 19594</p> <p>1 BRIGADIER CALITZ: Die operasionele 2 gedeelte daarvan. 3 CHAIRPERSON: Yes. 4 MR BIZOS SC: But what about things that 5 they needed, like bullets? Who do they go to for the 6 bullets that they need? 7 BRIGADIER CALITZ: Mnr die Voorsitter, 8 dit sal elke bevelvoerder self weet as daar persone is wat 9 rondtes kort en daardie bevelvoerder sal dan daardie 10 versoek rig. 11 MR BIZOS SC: Now I want to deal with the 12 liability of commanders and I want you to please listen 13 carefully. Military commanders, political leaders and 14 other civilians in position of authority and from a 15 judgment, as soon as a superior has been put on notice of 16 the risk of illegal acts by subordinates, he or she is 17 expected to stay vigilant and to enquire about additional 18 information rather than doing nothing or remaining wilfully 19 blind. There must not be a lack due to diligence in 20 supervising the conduct of subordinates. Do you agree that 21 superior - criminal responsibility imposes a duty to do 22 things if you are a superior officer? 23 BRIGADIER CALITZ: As u miskien net die 24 vraag kan herhaal? Die "criminal," ek het nie u mooi 25 gehoor nie.</p>	<p style="text-align: right;">Page 19596</p> <p>1 MR SEMENYA SC: No, Chair, that's not 2 my – 3 CHAIRPERSON: No, Mr Bizos, come on; 4 that's not a good point. On the 13th you will remember that 5 General Mpembe left him behind because he went himself, and 6 he conceded that he was functioning both as overall 7 commander and operational commander in the field on the 8 13th, for the reasons he gave, and this witness in fact 9 stayed behind and in fact clearly wasn't involved directly 10 at all in what happened on the 13th – 11 MR MPOFU: Chairperson – 12 CHAIRPERSON: So at that stage if there 13 was any responsibility in respect of what happened, 14 certainly what happened in relation to General Mpembe, you 15 can't put that responsibility at the door of this witness. 16 General Mpembe was of course functioning as operational 17 commander, but how he could have been responsible for the 18 acts of people who wanted to kill him is something that 19 "gaan my verstand te bowe." But I suggest that question be 20 withdrawn and you proceed to another point. 21 MR MPOFU: Chairperson, just factually 22 that is not completely correct. The witness did not stay 23 behind. He went into the Lonmin chopper with Mr Sinclair. 24 CHAIRPERSON: No, well he certainly 25 wasn't in the field of engagement at the time.</p>
<p style="text-align: right;">Page 19595</p> <p>1 MR BIZOS SC: Do you accept as a – 2 BRIGADIER CALITZ: Miskien net nader – 3 MR BIZOS SC: - senior officer, as a 4 senior officer with a specific task in relation to an 5 operation, that you are responsible for the acts of your 6 underlings? 7 CHAIRPERSON: Mr Bizos, I don't quite 8 understand the question. If you're asking him - because 9 you use the word "criminal responsibility" – if you're 10 asking him what the law is, and I don't know that I should 11 allow that question; we decide what the law is for the 12 purposes of our report and if there's any litigation 13 thereafter those who are hearing those cases will decide. 14 The witness's views on the law aren't really relevant. I 15 can understand if you want to ask him, do you accept 16 responsibility in the fullest sense as it can be for what 17 the people under you did. 18 BRIGADIER CALITZ: Dit wat aan my opgedra 19 is, en ek dink in my vorige getuienis het ek die vier, vyf 20 pligte genoem wat ek voor verantwoordelik is en daarvoor is 21 ek verantwoordelik en ek aanvaar daardie 22 verantwoordelikheid. 23 MR BIZOS SC: You've already told us that 24 the threat to the life of a general was a criminal act by 25 people over who you were a commander.</p>	<p style="text-align: right;">Page 19597</p> <p>1 MR MPOFU: Ja, that's also true. 2 CHAIRPERSON: Alright, okay. Thank you 3 for that correction. Anyway Mr Bizos, you've heard what I 4 have to say on that. I can understand your arguments which 5 you're going to advance, I'm sure, at the end in great 6 detail as to why this witness is responsible for a number 7 of the things that happened on the 16th, but I think an 8 attempt to make him liable for what happened on the 13th 9 isn't really one that will be dealt with in the same way, 10 and I think you'll be – 11 MR BIZOS SC: [Microphone off, inaudible] 12 why does it have to be confined to the 13th if in fact he 13 was one of the operational commanders – 14 CHAIRPERSON: I'm sorry, Mr Bizos – 15 MR BIZOS SC: - and a crime came to his 16 notice. 17 CHAIRPERSON: I'm sorry to interrupt you, 18 but the evidence is that on the 13th in the field, as it 19 were, General Mpembe himself said he was functioning both 20 as overall commander and operational commander. So what 21 happened then is something which he would have been able to 22 deal with in both those capacities, and this witness was 23 not functioning as operational commander at that stage, 24 but – 25 MR MPOFU: Chairperson, I'm sorry to do</p>

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1 this, but with respect, I've made two, at least one
 2 submission. The one is that this witness was involved on
 3 the 13th, albeit in the chopper with Mr Sinclair. But
 4 secondly, if this death threat involved General Mpembe you
 5 can hardly expect him to be the one who's going to do
 6 something about it. He was personally involved, so the
 7 next in line was this witness.

8 CHAIRPERSON: [Microphone off, inaudible]
 9 point for argument. Whether it's good or not we can decide
 10 later, but certainly in the helicopter wherever he was, he
 11 wasn't in control of the men on the ground and so what the
 12 men on the ground were doing was something that he had no
 13 control over. But in any event, I can understand the
 14 arguments you want to advance in this regard, but I don't
 15 know that our time is being profitably used in going down
 16 that avenue, investigating that point in relation to what
 17 he did or didn't do in relation to the threats, or the plot
 18 as it were, against General Mpembe on the 13th, and I don't
 19 think that any –

20 MR BIZOS SC: We will deal with that –

21 CHAIRPERSON: - any matter within our
 22 terms of reference can really be in a valuable fashion
 23 dealt with by addressing that issue.

24 MR BIZOS SC: We will deal with the terms
 25 of reference in due course, the further terms of reference.

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1 Have you had any legal training, Brigadier?

2 BRIGADIER CALITZ: As u sê "legal
 3 training," waarna verwys u?

4 MR BIZOS SC: Did you attend any law
 5 courses?

6 BRIGADIER CALITZ: Nee, mnr die
 7 Voorsitter.

8 CHAIRPERSON: I take it as part of your
 9 training as a policeman you have, there are courses in such
 10 topics as Criminal Law and so on, on which you have to
 11 write exams. Isn't that right?

12 BRIGADIER CALITZ: Ja, ja, dit is normale
 13 polisie, ja. Ek het dit nou net verstaan –

14 CHAIRPERSON: No, no, no, so in that
 15 sense you've studied aspects of the law and probably
 16 written exams on them, but legal training of the kind that
 17 is received by people who registered for a LLB or a B.Iuris
 18 or something of that kind, that's something you haven't
 19 had?

20 BRIGADIER CALITZ: Dit is korrek, mnr die
 21 Voorsitter.

22 MR BIZOS SC: Yes. Now you made a
 23 statement – I'll give you the exhibit number – GGG13, you
 24 remember that?

25 BRIGADIER CALITZ: Dit is korrek, mnr die

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1 Voorsitter.

2 MR BIZOS SC: And you signed it under
 3 oath. You took the oath that what you said was correct.

4 BRIGADIER CALITZ: Korrek, mnr die
 5 Voorsitter.

6 MR BIZOS SC: And in relation to Tuesday
 7 the 14th you say that, in paragraph 7, "A group of 4 500
 8 aggressive armed men waving weapons at us." Did you say
 9 that?

10 BRIGADIER CALITZ: Ja, ek dink my woorde
 11 was "There were approximately four and a half thousand men
 12 on the koppie," en dan die volgende sin, "The group was
 13 aggressive and waving their weapons at us," ja.

14 MR BIZOS SC: You said that, and you
 15 stand by that?

16 BRIGADIER CALITZ: Dit is die inligting
 17 op daardie stadium tot my beskikking. Ek het wel daarna 'n
 18 "supplementary" gegee.

19 MR BIZOS SC: I know about the
 20 supplementary. Is that statement correct?

21 BRIGADIER CALITZ: Tot die inligting tot
 22 my beskikking toe, ja.

23 CHAIRPERSON: Mr Bizos, this whole issue
 24 about the statement and that paragraph and subsequent
 25 paragraphs was dealt with very fully by Mr Budlender in his

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1 cross-examination.

2 MR BIZOS SC: I'm sorry, I didn't hear –

3 CHAIRPERSON: I say this paragraph and
 4 subsequent paragraphs in the statement GGG13 were very
 5 extensively dealt with by Mr Budlender, as far as I can
 6 recall, in his cross-examination of the witness. So I hope
 7 that what you're going to ask won't amount to a repetition
 8 of that.

9 MR BIZOS SC: I'm sorry, I was not here,
 10 but I will not take a long time because I don't know
 11 precisely what Mr Budlender dealt with, but I want to go to
 12 a following paragraph and ask him questions –

13 MR BUDLENDER SC: [Microphone off,
 14 inaudible]. The microphone I gather is not working. I
 15 didn't deal with the [inaudible], I dealt with what was
 16 seen on the [inaudible] –

17 CHAIRPERSON: So it wasn't dealt with.
 18 Alright, so I withdraw what I said, Mr Bizos. Carry on.

19 MR BIZOS SC: Yes. Thank you.

20 CHAIRPERSON: Please keep it as brief as
 21 you can.

22 MR BIZOS SC: And in paragraph 19 you
 23 deal with what you said about the 16th of August.

24 BRIGADIER CALITZ: Ja, dit is korrek.

25 MR BIZOS SC: Please turn to paragraph

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1 16.
 2 BRIGADIER CALITZ: 16 or 19?
 3 MR BIZOS SC: I beg your pardon, 19,
 4 paragraph 19 relating to the 16th of August.
 5 CHAIRPERSON: This was extensively dealt
 6 with before by Mr –
 7 MR BIZOS SC: I beg your pardon –
 8 CHAIRPERSON: - Mr Budlender as I recall,
 9 so if there's a short little point you want to make I'll
 10 let you do it because –
 11 MR BIZOS SC: Yes.
 12 CHAIRPERSON: - it will probably be
 13 easier to let you do it than debate it with you.
 14 MR BIZOS SC: Yes. "The crowd that
 15 assembled on the koppie was unruly and very aggressive.
 16 They were all" – and I want to underline all – "armed with
 17 extremely dangerous homemade and bought weapons which they
 18 clearly intended using to injure or kill SAPS members.
 19 They acted as one group and all of them associated
 20 themselves with the actions of each other. All of them had
 21 the same intention and goal. Their actions threatened law
 22 and order and constituted a crime of public violence. They
 23 disturbed public order and peace." Did you say that?
 24 BRIGADIER CALITZ: Mnr die Voorsitter, as
 25 ek net kan versoek, soos u gesê het, hierdie paragraaf 19,

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1 ek het sin by sin het ek verduidelik wat ek daarby bedoel
 2 het aan mnr Budlender, en ek dink daarna is dit ook
 3 toegelaat met Adv Ntsebeza waar ek dit in detail –
 4 CHAIRPERSON: This was extensively –
 5 BRIGADIER CALITZ: - bespreek het. So ek
 6 dink dis klaar op rekord, as ek dit mag versoek.
 7 CHAIRPERSON: This was extensively
 8 covered and a number of points were put to him as to
 9 whether that statement related to everybody, all 3 000, or
 10 only related to the militant group and so on. That field
 11 has been ploughed and re-ploughed. I don't think it
 12 appropriate for you to try to plough it a third time
 13 because I don't think you'll add, if I may so say with
 14 respect, it's likely to take the matter any further.
 15 MR BIZOS SC: I don't know whether it was
 16 put or not. Section 10(2) of the Standing Order require
 17 you, "the operational commander, to personally brief all
 18 members in the command structured, ensure that all members
 19 in the command structure communicate the objectives of the
 20 operation clearly to all members deployed for the event,
 21 and instruct all commanders or section leaders to furnish
 22 detailed written plans for their specific tasks."
 23 CHAIRPERSON: That was dealt with as well
 24 previously and the point was taken that in the
 25 circumstances it was not practical to do that because there

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1 wasn't time to do it. That point was made. There may be
 2 criticisms which flow from that in relation to the decision
 3 to act only being communicated to the witness - if his
 4 evidence on the point is correct - at half past 2 and so
 5 forth, but that point was fully dealt with already. I
 6 think you can leave it. I think you'll find that the point
 7 you're wishing to make was fully covered already.
 8 MR BIZOS SC: Mr Chairman, I'm sorry that
 9 I was, I happened not to be here, but I accept that it is
 10 not necessary to traverse the – except one question. The
 11 reason why I asked you whether you had any legal training
 12 was because you seem to be well informed in relation to the
 13 principle of common purpose, which I found somewhat strange
 14 because it's quite a difficult concept for well-trained
 15 lawyers. I just thought I would ask you whether you set
 16 yourself up as a cognoscenti or a knowledgeable person
 17 about what common purpose means.
 18 [11:55] BRIGADIER CALITZ: Ek hoor wat u sê, mnr
 19 die Voorsitter.
 20 CHAIRPERSON: I take it that the course
 21 you did on criminal law for the police exams would have
 22 covered the doctrine of common purpose.
 23 BRIGADIER CALITZ: Dit is so, mnr die
 24 Voorsitter, asook die jare se openbare orde polisiëring,
 25 dit is waarmee ons werk.

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1 MR BIZOS SC: Thank you for that, it may
 2 be an explanation which we have to accept but I want to
 3 turn to the terms of reference other than the one issue
 4 that we have dealt with.
 5 CHAIRPERSON: Sorry to interrupt you, Mr
 6 Bizos, at one stage you were going to take us to scene 2
 7 just before we adjourned for tea.
 8 MR BIZOS SC: Oh yes, yes.
 9 CHAIRPERSON: But –
 10 MR BIZOS SC: Let me –
 11 CHAIRPERSON: You must do your cross-
 12 examination the way you wish obviously but –
 13 MR BIZOS SC: Yes, let me deal with scene
 14 2 and come back to the –
 15 CHAIRPERSON: I would have thought the
 16 point that you were talking about a moment ago is something
 17 you do near the end by way of a sort of general gathering
 18 of material.
 19 MR BIZOS SC: Yes. I'll deal with scene
 20 2 –
 21 CHAIRPERSON: If it seems appropriate
 22 now, but it's your cross-examination –
 23 MR BIZOS SC: I'll deal with scene 2, Mr
 24 Chairman. Now, the koppie in which people gathered, what
 25 is referred to as scene 2, has rocks, bushes, fairly

<p style="text-align: right;">Page 19606</p> <p>1 difficult terrain when we inspected it. The people that 2 ran to this koppie obviously did so to use it as a place of 3 refuge, would you agree? 4 BRIGADIER CALITZ: Mnr die Voorsitter, ek 5 dink dit is omtrent presies die woorde wat Adv Chaskalson 6 met my deurgegaan het, die terrein van die koppie, hoe dit 7 daar gelyk het en beweringe dat die mense daar weggekrui 8 het, so ek sal maar net verwys na my antwoorde wat ek dan 9 op daardie stadium gegee het. 10 MR BIZOS SC: Just repeat it for my 11 benefit please, what your answer was. 12 BRIGADIER CALITZ: Ek het gesê op daardie 13 stadium dat dit is 'n koppie waarnatoe die persone beweeg 14 het. Die groter groep het dan ook na die noordwestelike 15 rigting beweeg en dit is waarnatoe ek beweeg het en ons het 16 wel te kenne gegee dat daar bosse en klippe was en my 17 antwoord daarop was dat ek het die waterkanon in daardie 18 rigting gestuur. Ek dink die woorde wat ons toe gebruik 19 het is om hulle uit te flush, met ander woorde om voort te 20 gaan met die uiteendryfaksie. Dit is hoekom ek die 21 waterkanon in daardie rigting gestuur het. 22 MR BIZOS SC: It was not a place which 23 they chose as a convenient place to attack the police. 24 MR SEMENYA SC: I don't understand how 25 the witness can know -</p>	<p style="text-align: right;">Page 19608</p> <p>1 weggehardloop van – weggevlug van die aanval op hulle. 2 That's his point. Now do you agree with it or not? 3 BRIGADIER CALITZ: In principle kan ek 4 dan sê nee, mnr die Voorsitter, dit was net 'n 5 uiteendryfaksie. Dieselfde sal ek sê het met die mense na 6 die noordwestelike rigting waar die meerderheid 7 weggehardloop het, dit was maar net 'n scattered, dit is 8 maar net die volgende plek waar die persone dan heen gegaan 9 het. 10 MR BIZOS SC: Please confine yourself to 11 the koppie itself. People went there to hide because of 12 what happened at scene 1. Do you agree with that? 13 BRIGADIER CALITZ: Ek sal sê dit is 'n 14 moontlikheid, mnr die Voorsitter. 15 MR BIZOS SC: Yes, because if people went 16 there in order to attack the police, they would not have 17 chosen a place in which it was difficult for them to move. 18 They went there in order to hide away from the police. 19 BRIGADIER CALITZ: Ek kan nie saam met u 20 stem nie, mnr die Voorsitter. 21 MR BIZOS SC: I'm sorry, I didn't hear 22 what you said? 23 BRIGADIER CALITZ: Ek sê ek kan nie saam 24 met u stem nie, mnr die Voorsitter. 25 MR BIZOS SC: Why not?</p>
<p style="text-align: right;">Page 19607</p> <p>1 MR BIZOS SC: A place of refuge. 2 MR SEMENYA SC: - the mental state of 3 those - 4 CHAIRPERSON: No, Mr Semanya, he is 5 asking his opinion, whether he agrees with the proposition. 6 I don't think you can object to it. Let's see what the 7 answer is. If he can't answer it, he'll say so. what Mr 8 Bizos is suggesting to you, regard being had to the 9 terrain, it wasn't a place from which Mr Bizos suggests 10 they, it appears that the strikers were intending to launch 11 an attack against the police. It looks more like a place 12 to which they ran by way of taking refuge. We know they'd 13 moved there and he's suggesting to you that it was a place 14 of refuge rather than a launching pad for an attack. Do 15 you agree with that or don't you agree or are you unable to 16 comment? 17 BRIGADIER CALITZ: Nee, ek stem nie saam 18 nie, mnr die Voorsitter, ek dink dis maar net die naaste 19 plek waar hulle heen gehardloop het in daardie rigting. 20 CHAIRPERSON: Mr Bizos is suggesting to 21 you, you see they ran there as you say but they ran there 22 to get away from all the shots that were being fired at 23 them at scene 1 and the further actions that I think took 24 place at koppie 2. So it looks like, he says, like a place 25 to which they had taken refuge, skuiling gesoek daarso,</p>	<p style="text-align: right;">Page 19609</p> <p>1 BRIGADIER CALITZ: Die redes wat ek vir u 2 gegee het hoekom ek gedink het – 3 MR BIZOS SC: What are the reasons? 4 BRIGADIER CALITZ: Ek het dit reeds 5 genoem in die vorige vraag – 6 MR BIZOS SC: Please repeat them. 7 CHAIRPERSON: I think you should repeat 8 the reasons. It'll help us to move forward. 9 BRIGADIER CALITZ: Ek sal dit weer 10 herhaal, mnr die Voorsitter. Ek het gesê ek dink dit was 11 die volgende plek waarheen die persone beweeg het na die 12 uiteendryfaksie. U stel dit as 'n plek waar hulle net 13 weggekrui het en waarvan hulle nie 'n aanval kon loods 14 nie. Ek dink u woorde was omdat dit moeilik vir hulle 15 was om te beweeg. Ek stem glad nie daarmee saam nie. 'n 16 Aanval kon daaruit ook geloods gewees het. Dit is die 17 gedeelte, as ek miskien kan verduidelik – 18 MR BIZOS SC: Well, what I am going to 19 put to you is this, that the place that they chose to run 20 to was a confined space. It wasn't an open space, do you 21 agree with that? 22 BRIGADIER CALITZ: Dit was nie 'n oop 23 spasie nie, u is korrek. 24 MR BIZOS SC: Did you consider, as the 25 operational commander, to use your megaphone? Did you have</p>

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1 one?

2 BRIGADIER CALITZ: Die voertuie het 'n

3 public address system wat ek gehad het.

4 MR BIZOS SC: Right. If it was a

5 confined place, did you have sufficient members of the

6 police force to surround at least the easy entrance and the

7 exit portions, the way I remember it, and announce, "We

8 have surrounded you, put down your arms one by one and come

9 through these passages and we will arrest you," or have

10 said that, come out of it or otherwise we may do this or

11 the other. Did you give any, consider giving any such

12 warning to the people that I say sought refuge in the

13 koppie?

14 BRIGADIER CALITZ: Mnr die Voorsitter,

15 die voorligting was aan die bevelvoerders gegee en die papa

16 Nyalas soos hulle vorentoe beweeg het om dan voort te gaan

17 – u sal onthou dit is 'n opvolg van 'n dispersion action.

18 Met ander woorde daar was klaar opgetree en hierdie was 'n

19 opvolg, met ander woorde van die uiteendryfaksie. So die

20 voorligting was aan die bevelvoerders gegee om dan voort te

21 gaan met die uiteendrywing en dit wat u nou gesê het is,

22 kan deel vorm van die uiteendryfaksie.

23 MR BIZOS SC: You did not give them an

24 opportunity to stop hiding and surrender themselves,

25 putting their arms down. No such opportunity was given to

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1 them.

2 BRIGADIER CALITZ: Ek stem nie saam nie,

3 mnr die Voorsitter.

4 MR BIZOS SC: Well, did you say this is a

5 course for you to follow or did you not say anything to

6 them and send in men with sharp ammunition to kill them?

7 MR SEMENYA SC: Chair, again to the

8 assistance of the witness, we know that when the witness

9 arrived at koppie 3 the arrests had already been started

10 and effected, so he could not have given a warning before

11 those arrests had happened.

12 CHAIRPERSON: Correct, but you'll

13 remember his evidence was there was an instruction given

14 over the radio before that, arising from something Colonel

15 Vermaak had said. I don't think we should discuss it in

16 great detail at this point as the witness is being cross-

17 examined on it but you are correct when you talk about what

18 happened when he arrived in the vicinity of koppie 3

19 because there are other aspects which perhaps we should

20 allow Mr Bizos to explore without interruption. The point

21 made is that if you're confining your question to the time

22 when he arrived in the vicinity of koppie 3, things had

23 already happened, which I think is a correct point but if

24 you are dealing with things that happened before that then

25 you can carry on.

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1 MR BIZOS SC: Whenever, you were the

2 operational commander. What may have happened before, your

3 duty, constitutional duty was not – was to avoid the

4 killing of people. If anything happened before, as soon as

5 you arrived as the operational commander, say stop

6 shooting, surround them, let them come out one by one by

7 dropping their arms. Did you take any such step? If not,

8 why not?

9 BRIGADIER CALITZ: Dit is korrek, mnr die

10 Voorsitter.

11 MR BIZOS SC: What is correct?

12 BRIGADIER CALITZ: Wat u my gevra het.

13 MR BIZOS SC: No, the question was did

14 you take any such step, yes or no?

15 BRIGADIER CALITZ: Ek het gesê dit is

16 korrek, mnr die Voorsitter.

17 MR BIZOS SC: So you say you did take

18 that step?

19 BRIGADIER CALITZ: Sodra dit tot my

20 kennis gekom het dat die persone daar was het ek opdrag

21 gegee, ja.

22 MR BIZOS SC: What did you say on the

23 public address system for the people to hear?

24 BRIGADIER CALITZ: Nee, mnr die

25 Voorsitter, ons beweeg nou terug na die public address

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1 system toe. Ek is – die goed is ook reeds met Adv

2 Chaskalson deurgegaan, ek weet nie of ek net kan verwys na

3 my getuienis nie.

4 CHAIRPERSON: No – no, there is a

5 repetition aspect but – sorry to interrupt you. There is a

6 repetition aspect but I think Mr Bizos is busy with a

7 precise point. You didn't use a public address system,

8 that we know. You didn't make an announcement to these

9 people that they could hear. The point made by Mr Semanya

10 was that by the time you got there to the edge of koppie 3,

11 the time for making public announcements over an address

12 system had gone, that's correct. You had of course earlier

13 given certain instructions over the radio to your forces,

14 to your men, but that's a different matter. Is that

15 correct?

16 BRIGADIER CALITZ: Ja, ek het dit

17 verstaan as deel van mnr Bizos se vraag, so dit is waarna

18 ek verwys het.

19 CHAIRPERSON: Mr Bizos, do you understand

20 the distinction? Before he got to the vicinity of koppie 3

21 he had given certain instructions over the radio to his

22 men. That followed something he had been told, according

23 to his evidence, been told by Colonel Vermaak and things

24 then happened. He then went eventually to the vicinity of

25 koppie 3. His case is that by that time the things that

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1 had happened, had happened and it wasn't appropriate or
 2 necessary or possible, I suppose, to give, to make any
 3 address to the people over a public address system but now
 4 the question is are you asking about what happened when he
 5 got to the vicinity of koppie 3 or are you referring to
 6 what happened earlier before he got there, when he gave
 7 certain instructions over the radio?
 8 MR BIZOS SC: I didn't ask him about what
 9 happened on the radio. Was any notice given to anyone, to
 10 his knowledge, by him or anyone else, give an opportunity
 11 to the people that sought refuge in koppie 3, to surrender?
 12 CHAIRPERSON: I thought he'd answer that
 13 already in the negative, saying that that didn't happen.
 14 Did I understand correctly? As far as you know, no-one got
 15 on a public address system or use a loudhailer or anything
 16 like that and said to the people, you people on the koppie
 17 I'm giving you a warning now, we've surrounded it,
 18 surrounded the koppie, you must leave your weapons behind
 19 and come out through that opening over there and we'll
 20 arrest you or let you go or whatever. Nothing of that kind
 21 was said. In fact nothing was said to them by the police
 22 which they could hear which gave them an instruction or
 23 warning as to what was going to happen. That's as far as
 24 you know, is that correct?
 25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 tot my kennis weet ek nie of dit kon gebeur het nie. Ek
 2 kan nie sê dit het nie gebeur nie. Soos ek getuig het –
 3 CHAIRPERSON: As far as you know.
 4 BRIGADIER CALITZ: Ja, that's correct.
 5 MR BIZOS SC: How far away were you from
 6 the koppie?
 7 MR SEMENYA SC: When? When, Chair?
 8 When, when? The question is how far were you from the
 9 koppie. We are asking when?
 10 CHAIRPERSON: Yes, that seems appropriate
 11 because he moved around. So if you want a distance between
 12 him and the koppie you must specify at what time you are
 13 talking about.
 14 MR BIZOS SC: When you were going around
 15 the koppie, how far away from the centre of the koppie were
 16 you?
 17 BRIGADIER CALITZ: As u met –
 18 CHAIRPERSON: Mr Bizos, I don't know if
 19 it's going to help because he moved around in that area.
 20 You remember we had, Mr Chaskalson dealt with it very
 21 fully, the place where body C was and the way the Nyala
 22 moved and all that kind of thing. Now he'd first gone
 23 round the koppie to the north-western part, certain things
 24 happened there, people were arrested. He then, the Nyala
 25 then went down to a spot close to the koppie and he then

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1 got out of the Nyala, according to his evidence, and went
 2 back to the area where events took place in relation to
 3 what's been called body C. Now, so he moved around quite a
 4 lot, so when you want to know the distance you must specify
 5 at what time you are talking.
 6 MR BIZOS SC: At any time did you hear
 7 any shots being fired within the koppie?
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 nee, ek dink ons het – twee, drie advokate het my al
 10 daardie vraag gevra en ek het dit alreeds meer as een keer
 11 geantwoord, nee.
 12 CHAIRPERSON: The answer you gave, you
 13 didn't hear shots.
 14 BRIGADIER CALITZ: Live fire, nee.
 15 CHAIRPERSON: Ja.
 16 MR BIZOS SC: Isn't it another example of
 17 being wilfully blind and deaf?
 18 BRIGADIER CALITZ: Mnr die Voorsitter,
 19 nee, ek dink ek het duidelike redes gegee waar ek was,
 20 hoekom ek daar was en wat gebeur het op sekere stadiums, so
 21 glad nie wilfully nie en seer sekerlik ook nie deaf nie.
 22 MR BIZOS SC: Is it a coincidence that
 23 the operational commander, when 34 people were killed, by
 24 coincidence he didn't hear a single shot and didn't see a
 25 single shot being fired?

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1 MR SEMENYA SC: Chair, again Mr Bizos
 2 dealt with this matter yesterday to a great extent.
 3 CHAIRPERSON: He didn't deal with scene 2
 4 but the suggestion is that the fact that you didn't hear
 5 anything at scene 2, he wants to know whether that's links
 6 with what had happened yesterday, which was discussed with
 7 you, that you didn't hear the shots at scene 1 – he says is
 8 that just a coincidence? The suggestion is that it wasn't
 9 a coincidence, it was deliberate evasion and wilful
 10 deafness and so on, on your part. What do you say about
 11 that?
 12 BRIGADIER CALITZ: Ja, beslis nie
 13 deliberate nie. Coincidence, toevallig, ek het dit net
 14 verder verduidelik as net die woordjie toevallig. Daar was
 15 redes daarvoor.
 16 MR BIZOS SC: Now, I want to ask you some
 17 questions that I did not ask you about the speech that you
 18 made –
 19 CHAIRPERSON: Mr Bizos, before we get
 20 onto the speech, is it the speech of the 18th, I take it?
 21 MR BIZOS SC: Yes.
 22 CHAIRPERSON: I've been asked for us to
 23 take a comfort break at this stage.
 24 MR BIZOS SC: Thank you, Mr Chair.
 25 CHAIRPERSON: And let's do that and then

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1 you can deal with the speech.
 2 MR BIZOS SC: Yes, yes. Thank you, Mr
 3 Chair.
 4 CHAIRPERSON: We will now take a comfort
 5 break.
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [12:31] CHAIRPERSON: The Commission will resume,
 8 Brigadier, you're still under oath.
 9 BRIGADIER CALITZ: Dankie, mnr die
 10 Voorsitter.
 11 CHAIRPERSON: Mr Bizos?
 12 MR BIZOS SC: Can we return to the terms
 13 of reference? The terms of reference say that the police
 14 are to conduct, to look into or rather the Commission is to
 15 look into the conduct of the South African Police Service
 16 and more particularly, the precise facts and circumstances
 17 –
 18 CHAIRPERSON: What is on the screen is in
 19 fact an earlier portion of the terms of reference, the
 20 passage you're quoting was later on in paragraph 1.2.2.
 21 MR BIZOS SC: Yes, the precise facts and
 22 circumstances which gave rise to the use of all or any
 23 force and whether this was reasonable and justifiable in
 24 the particular circumstances. Now were you at
 25 Potchefstroom?

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1 BRIGADIER CALITZ: Dit is korrek, mnr die
 2 Voorsitter.
 3 MR BIZOS SC: Did you discuss the
 4 circumstances which gave rise to the use of all or any
 5 force and whether this was reasonable and justifiable in
 6 the particular circumstances? Did you give any attention
 7 to it at Potchefstroom?
 8 BRIGADIER CALITZ: Dit is korrek, mnr die
 9 Voorsitter.
 10 MR BIZOS SC: And what was the conclusion
 11 that you came to?
 12 BRIGADIER CALITZ: Dit was die
 13 samestelling van Exhibit L gewees.
 14 MR BIZOS SC: No, specifically in answer
 15 to this question what conclusion did you come to?
 16 BRIGADIER CALITZ: Mnr die Voorsitter, -
 17 CHAIRPERSON: It is whether the force
 18 that was used, which led to the deaths was justifiable or
 19 the use of the force which led to the deaths of the 34
 20 people on the 16th and presumably the other two on the 13th,
 21 whether that was justified in the circumstances? This
 22 relates to the use of force by the police and what Mr Bizos
 23 wants to know is, did those of you who were engaged in the
 24 Potchefstroom exercise at Roots, did you come to a
 25 conclusion on that question which you then would convey to

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1 the Commission, you know that's his question. Did you come
 2 to a conclusion on the point?
 3 BRIGADIER CALITZ: Mnr die Voorsitter,
 4 conclusion, as ek dit reg verstaan, ons het die inligting
 5 by die bevelvoerders gekry waarop hulle die circumstances
 6 vir ons verduidelik het waaronder dit gebeur het en dan
 7 daaruit het hulle gesê dit is self defence wat die
 8 justifiable en die reasonability daarvan aanspreek en dan
 9 op die rise of use of force, hoe het dit gebeur dat hulle
 10 wel hulle wapens moes gebruik het, het elkeen sy
 11 verduideliking gegee. So dit is wat daar bespreek was, as
 12 ek dit so op kan breek.
 13 MR BIZOS SC: Do I understand you to say
 14 that you actually discussed whether the use of force was
 15 reasonable in the particular circumstances and did you come
 16 to a conclusion which was what?
 17 BRIGADIER CALITZ: Ek het gesê die groep
 18 het opgebreek, die verskillende bevelvoerders het met hulle
 19 lede –
 20 MR BIZOS SC: What was the conclusion,
 21 Sir?
 22 MR SEMENYA SC: No, Chair, the witness
 23 must be given an opportunity to answer.
 24 CHAIRPERSON: Mr Bizos, let him finish
 25 his sentence before you pepper him with the next question.

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1 Carry on with your answer and then when you're finished Mr
 2 Bizos will then ask the question he wants to ask.
 3 BRIGADIER CALITZ: Dankie, mnr die
 4 Voorsitter. Die groepe was opgebreek in die verskillende
 5 bevelvoerder groepe en daar het die lede dan vir hulle
 6 bevelvoerders gesê in die omstandighede wat dit plaasgevind
 7 het en dat dit in selfverdediging was, so dit is die
 8 antwoord op die vraag.
 9 MR BIZOS SC: What was the conclusion?
 10 BRIGADIER CALITZ: Dat hulle opgetree het
 11 in selfverdediging in daardie omstandighede, die lede wat –
 12 MR BIZOS SC: And that no one was to
 13 blame?
 14 MR SEMENYA SC: Chair, -
 15 BRIGADIER CALITZ: Ek kan nie hoor as u
 16 vir my vrae vra en ek antwoord nie, mnr die Voorsitter, dan
 17 gaan ons mekaar nie verstaan nie, so –
 18 MR BIZOS SC: It was the conclusion that
 19 the police were not in any way responsible for what
 20 happened, was that the conclusion?
 21 BRIGADIER CALITZ: Nee, ek kan nie dink
 22 dat ons gesê het die polisie is glad nie responsible for
 23 what happened, daardie pertinente woorde kan ek nie dink
 24 dat dit gebruik was nie, nee.
 25 CHAIRPERSON: Somebody is responsible is

<p style="text-align: right;">Page 19622</p> <p>1 a bit vague, I may they may well have been physically 2 responsible in the sense that policemen pulled the triggers 3 of the firearms that killed 34 people, but that would be 4 physical responsibility. You are referring more to legal 5 responsibility which will either be civil or criminal or 6 possibly, but I suppose moral responsibility but the 7 question as phrased isn't sufficiently clear. Perhaps you 8 could clarify it for the purposes of the witnesses so that 9 we get a meaningful answer from him.</p> <p>10 MR BIZOS SC: Was there in-depth 11 discussion at Potchefstroom as to whether anyone was 12 responsible for any wrongdoing in relation to the people 13 that had been killed or injured?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 nee, ek dink ons het net die feite gevat soos dit vir ons 16 gegee is en toe is besluit dat dit sal, die Kommissie sal 17 dan eers sy werk afhandel en dit is hoekom ek die rede 18 gegee het waarom daar nie 'n formele debriefing, waarna ons 19 verwys het, op daardie stadium plaasgevind het nie.</p> <p>20 MR BIZOS SC: I still haven't got an 21 answer but let's assume that what you have said is 22 accepted, which I interpret that you said that no one was 23 responsible for any wrong that may have been done to any of 24 the people that were killed or injured.</p> <p>25 BRIGADIER CALITZ: As u die vraag vra</p>	<p style="text-align: right;">Page 19624</p> <p>1 executed by using, if necessary water cannons, stun 2 grenades, tear grenades and so on. The unfortunate reality 3 was that the aggression of the crowd left the SAPS with no 4 other choice than to act in private defence, defending 5 their own lives and the lives of others." So that's 6 clearly the conclusion of the Potchefstroom exercise, 7 whether it is right or wrong, obviously we challenge it but 8 –</p> <p>9 CHAIRPERSON: Yes, thank you, Mr Mpofu.</p> <p>10 Yes, I must confess I thought the earlier answer the 11 witness gave you covered the same ground, that the police, 12 they came to the conclusion at Potchefstroom that the use 13 of force was justified because of self defence, his words, 14 self defence. If it was justified then obviously no one 15 was responsible for any wrong for that and the same point 16 is captured in the last sentence of Exhibit L to which Mr 17 Mpofu has appropriately referred us.</p> <p>18 MR BIZOS SC: Yes, thank you to my 19 colleague. You agree that that was the conclusion that was 20 arrived at?</p> <p>21 BRIGADIER CALITZ: Dit is korrek.</p> <p>22 MR BIZOS SC: Yes.</p> <p>23 BRIGADIER CALITZ: Dankie, mnr Mpofu.</p> <p>24 MR BIZOS SC: But now the question was, - 25 MR MPOFU: Don't thank me yet.</p>
<p style="text-align: right;">Page 19623</p> <p>1 soos ek u reg verstaan is, niemand is aangewys en gesê die 2 persoon is verantwoordelik daarvoor en hy word aangekla 3 daarvoor nie. Daardie deel, soos ek u vraag reg verstaan, 4 nee, dit was nie gedoen nie.</p> <p>5 MR BIZOS SC: It was not done?</p> <p>6 BRIGADIER CALITZ: Dit is hoekom ek sê, 7 nee, die Kommissie is, eers dat sy werk afgehandel word en 8 dan sal ons van hier af dan kyk indien daar enige 9 wrongdoings hier uitkom, glo ek daar sal die nodige gedoen 10 word.</p> <p>11 MR MPOFU: Chairperson, I'm doing this 12 reluctantly but particularly I have to intervene for the 13 first time in favour of the witness.</p> <p>14 BRIGADIER CALITZ: Dankie, Meneer.</p> <p>15 CHAIRPERSON: This becomes habit forming.</p> <p>16 MR MPOFU: It is my duty to do so, but I 17 think this point, the witness, the first answer he gave was 18 that, as it is indicated in Exhibit L, and I just wanted to 19 read the very last paragraph in Exhibit L, it seems to 20 answer this, the very, very last slide L283 where they 21 claim that this obviously is the conclusion. "Even when 22 stage 3 of the operational plan was implemented the use of 23 live ammunition was never an option and the use of minimum 24 force if negotiations were not successful was the next 25 alternative, where encirclement and dispersion would be</p>	<p style="text-align: right;">Page 19625</p> <p>1 MR BIZOS SC: The question was whether 2 there was any sort of earnest enquiry at Potchefstroom as 3 to whether or not anyone was responsible for the killings 4 or wounding of people. Was there a responsible debate 5 among you as to whether or not anyone was responsible?</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 nee, die kort antwoord is, nee, nie wat ek so kan onthou op 8 hierdie stadium nie, nee.</p> <p>9 MR BIZOS SC: Yes, well, of course your 10 speech on the 18th and the speech of the National 11 Commissioner would have made any sort of such questions 12 being asked at Potchefstroom quite out of place, because 13 you both had made public statements that nothing wrong 14 happened and there was 100% congratulate –</p> <p>15 CHAIRPERSON: I'm sorry to interrupt you, 16 Mr Bizos, but I am not sure that his speech on the 18th was 17 intended to be a public speech, but certainly the remarks, 18 the comments you make in relation to the National 19 Commissioner is correct. Perhaps we should ask him you 20 know whether his speech was intended to be a public speech. 21 Your speech on the 18th, I seem to remember you took a 22 rather bold and possibly unauthorised action in relation to 23 somebody who was making a video of the speech. Did you 24 regard it as a public speech you were making or were you 25 just addressing the troops, if I can call them that?</p>

<p style="text-align: right;">Page 19626</p> <p>1 BRIGADIER CALITZ: Nee, mnr die 2 Voorsitter, dit is operasionele voorligting aan die lede 3 wat op daardie dag sou gebeur het en die groot deel van die 4 toespraak het gegaan op 'n motivering om die lede weer op 5 'n standaard te kry dat ons kan aangaan. 6 CHAIRPERSON: You're answering questions 7 you were not asked but was it intended to be a public 8 speech? 9 BRIGADIER CALITZ: Glad nie, mnr die 10 Voorsitter. 11 CHAIRPERSON: But of course you had said 12 things which were recorded, which gave a big clear 13 statement of your view, I don't think it was done for 14 motivational purposes but nevertheless it is your view. If 15 you get a 110% for an examination paper you're doing 16 substantially better than most of the people who wrote 17 matric, is that correct? 18 BRIGADIER CALITZ: Dit is korrek, mnr die 19 Voorsitter. 20 CHAIRPERSON: And of course the National 21 Commissioner already made his speech which Captain Dreyer 22 appears to assisted in drafting which also, I think it was 23 Captain Dreyer, I may be wrong on that, perhaps I should 24 withdraw that. She made two speeches actually, the one was 25 the press conference on the 17th and then subsequently she</p>	<p style="text-align: right;">Page 19628</p> <p>1 can argue, but I don't see how it helps to question him 2 about it. It is a matter for argument, I understand that. 3 MR BIZOS SC: No, with respect, I am 4 entitled to ask the witness how difficult it must have been 5 to have a proper inquiry at Potchefstroom if the 6 commissioner of Police and the operational commander had 7 already exculpated the police from any blame. I think that 8 it is a legitimate question which the witness is called 9 upon to answer. 10 CHAIRPERSON: Because he denies that his 11 own speech amounted to exculpation. He says he has 12 explained that – 13 MR BIZOS SC: Well, - 14 CHAIRPERSON: - and we don't have to go 15 over all that ground again, but perhaps we can ask the 16 question from a slightly different angle and get the answer 17 I think hereafter, if I'm wrong you will stop me or correct 18 me. Did you find that you and your follow participants at 19 Roots, did you find it inhibiting that you were called upon 20 to discuss the justification or justifiability of the 21 police action when there already were statements on record 22 indicating that the police, the official stance was that 23 what it done did not amount to wrongdoing of any kind? 24 BRIGADIER CALITZ: Nee, mnr die 25 Voorsitter, glad nie. Daar was geen invloed gewees deur my</p>
<p style="text-align: right;">Page 19627</p> <p>1 spoke again, I think on another occasion as well where she 2 expressed very strong views that the police had correctly 3 and congratulated them and so on, and Mr Bizos' point is 4 really the police attitude on the matter was already clear, 5 that they thought, the police attitude was that the action 6 was justified. Is that your point, Mr Bizos? 7 MR BIZOS SC: It is so, Mr Chairman. Do 8 you agree that the exculpation of the whole police force 9 was already preordained by the commissioner and endorsed by 10 you? 11 BRIGADIER CALITZ: Ek stem nie saam nie, 12 mnr die Voorsitter. 13 MR BIZOS SC: Why not? 14 BRIGADIER CALITZ: Die redes wat ek gegee 15 het in my toespraak op die 18de, ek was breedvoerig daaroor 16 ondervra en ek het punt vir punt verduidelik wat ek bedoel 17 het met die 110% en hoe ons op die punt gekom het dat dit 18 'n motivering was vir die lede. Ek weet nie of ek dit weer 19 moet herhaal nie, mnr die Voorsitter. 20 CHAIRPERSON: Mr Bizos, I've got another 21 problem with your questions, he wasn't responsible for 22 calling together the people at Roots, he wasn't responsible 23 for that whole exercise, he was there as one of the 24 participants. Now whether the conclusion was foregoing one 25 in the light of what had gone before, is a matter which you</p>	<p style="text-align: right;">Page 19629</p> <p>1 toespraak op dit wat gebeur het op Roots nie. 2 MR BIZOS SC: The Minister's statement 3 was published before yours, was it? 4 CHAIRPERSON: The Minister or the 5 National Commissioner? 6 MR BIZOS SC: The National Commissioner. 7 CHAIRPERSON: The National Commissioner, 8 not the Minister. 9 MR BIZOS SC: What did I say, I am sorry? 10 CHAIRPERSON: You said the Minister. 11 MR BIZOS SC: No, the National 12 Commissioner. 13 CHAIRPERSON: It is now clarified. 14 MR BIZOS SC: Yes, I'm sorry. That was 15 published before you made your speech, is that correct? 16 BRIGADIER CALITZ: Korrek, mnr die 17 Voorsitter. 18 MR BIZOS SC: Did you read the Minister's 19 speech before you made your- 20 MR SEMENYA SC: Not the Minister – 21 CHAIRPERSON: The Commissioner, Mr Bizos. 22 MR BIZOS SC: I beg your pardon? 23 CHAIRPERSON: The National Commissioner. 24 MR BIZOS SC: The National Commissioner, 25 I beg your pardon. Did you read it before you made your</p>

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1 speech?

2 BRIGADIER CALITZ: No, I did not read it.

3 MR BIZOS SC: Did you hear it?

4 BRIGADIER CALITZ: Yes.

5 MR BIZOS SC: Were you in any way

6 influenced by the exculpation by the Commissioner of all

7 blame of the police at Marikana?

8 BRIGADIER CALITZ: Nee, glad nie, mnr die

9 Voorsitter.

10 MR BIZOS SC: Did you ignore it?

11 BRIGADIER CALITZ: Ek sal nie sê ek het

12 dit ignore nie, as ek die vraag reg verstaan, exculpation,

13 of dit my beïnvloed het en wat ek gesê het, dit het my

14 geensins beïnvloed nie, myne het gegaan oor die

15 operasionele voorligting en dan ook 'n motivering vir die

16 lede vir daardie dag se gebeure.

17 MR BIZOS SC: Insofar as there may be

18 substantial similarities between the two speeches is that

19 also a coincidence?

20 BRIGADIER CALITZ: Miskien as ek daarop

21 gewys kan word dan kan ek dit antwoord, mnr die Voorsitter.

22 Ek dra nie kennis nie.

23 MR BIZOS SC: No, you know what you said

24 and you remember what the Commissioner said. Do you deny

25 that there are substantial, there is substantial

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1 concurrence between the Commissioner's speech and your

2 speech, congratulations, you did well, is that a

3 coincidence?

4 BRIGADIER CALITZ: As u verwys na die

5 congratulations, you did well, my woorde aan hulle was, die

6 operasie het 110% verloop en ek het my redes gegee, so ek

7 kan nie nou hier waar ek sit onthou presies wat die

8 Nasionale Kommissaris gesê het nie.

9 CHAIRPERSON: I'm not sure how far this

10 line of inquiry is going to take us, there are two obvious

11 points that arise. The one is, both speeches appear to

12 have been directed to some extent at least to raising the

13 morale of the police and therefore you can understand the

14 comments, whether the comments went too far is a matter

15 we'll debate later. The second point is that it has become

16 apparent over and over again during her cross-examination,

17 the National Commissioner wasn't at Marikana on the 16th

18 until much later in the evening and she had to rely on the

19 information she received from those who were there at the

20 time. This witness, as we've covered it extensively in the

21 cross-examination, the two critical moments, wasn't

22 personally able to see what was happening. You've dealt

23 with that and you commented on that. So he was also

24 dependent as was the National Commissioner on feedback

25 information from those who were there.

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1 [12:51] In those circumstances it wouldn't be surprising

2 if two speeches both made on the basis of feedback from

3 people who were there, revealed a substantial degree of

4 identity, and if the motive in, or partial motive in each

5 case was at least to do something to raise the morale of

6 the police, again you would expect a substantial degree of

7 similarity. That seems to be obvious. I don't know how

8 helpful this further exploration along this line is going

9 to prove. I say that not by way of stopping you, but by

10 indicating my prima facie response to the point you're busy

11 with.

12 MR BIZOS SC: Mr Chairman, with due

13 respect, to say that things are said by the Commissioner of

14 Police and a brigadier publicly, exculpating people from

15 the deaths of 34 people and the injury of approximately 80

16 people, that they cannot be cross-examined as to why they

17 did it and what effect did their statements have on the

18 supposed inquiry that was entered into at Potchefstroom,

19 and also how, to what extent these officials if they

20 operated on hearsay failed to comply with the expressed

21 provisions of the Standing Orders. These are vital

22 issues -

23 CHAIRPERSON: Mr Bizos, I wasn't -

24 MR BIZOS SC: - which in my submission -

25 CHAIRPERSON: Mr Bizos, I'm sorry -

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1 MR BIZOS SC: - the Commission has to -

2 CHAIRPERSON: I'm sorry to interrupt you.

3 I wasn't intending to stop you from covering any of those

4 issues. I was only concerned with the fact that you were

5 hammering on the point that was it a coincidence, and I'm

6 suggesting to you there were obvious reasons why you would

7 expect substantial similarity between the two. That

8 similarity of course doesn't help us in answering the other

9 questions which do arise for decision, some of which are

10 covered by the other points that you made in replying to

11 me, and I'm not stopping you investigating those. I was

12 only concerned with the hammering on the coincidence when

13 it seemed to me that the circumstances were such that you'd

14 expect similarity to some extent in the content of both

15 speeches. That was all I was saying to you.

16 MR BIZOS SC: But Mr Chairman, the issue

17 is where does the truth lie. Where does the truth lie, and

18 the fact that there are these coincidences shows that, not

19 that they were truthful and corroborative, but that a false

20 version was made public before either of them really knew -

21 or so they say, in particular to the witness - of what

22 happened. We are entitled to actually expose by drawing

23 attention to the incidents, the coincidences, in order to

24 enable us to argue that they are not telling the truth.

25 CHAIRPERSON: The coincidences are a

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1 matter of record and can be argued. Whether they lead to a
2 conclusion that the underlying information upon which the
3 two speeches were made was correct or not, different
4 matter. We obviously are investigating all the
5 circumstances, all the feedback that all the people
6 received, all the information that's put before us. We are
7 interrogating them as thoroughly as we can because we have
8 only one objective and that's to get the truth. We're
9 appreciative of all efforts that counsel may make to assist
10 us to do that. I was solely concerned with your hammering
11 on the point of coincidence, which I thought for the
12 reasons I gave wasn't going to help us. But I see Mr
13 Semenya turned his light on. Do you want to say something,
14 Mr Semenya?

15 MR SEMENYA SC: Purely to say, Chair,
16 that whether the explanations are false or not, it's a
17 matter ultimately to be decided by yourselves.

18 MR BIZOS SC: I am entitled to ask
19 questions, whether they are the truth or coincidental
20 falsehoods, Mr Chairman.

21 CHAIRPERSON: Well, carry on, but you
22 know what I think about the –

23 MR BIZOS SC: Yes.

24 CHAIRPERSON: - the coincidental –

25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: - or allegedly coincidental
2 similarity between the two speeches covering the same
3 ground.

4 MR BIZOS SC: Yes, I'll try and avoid the
5 coincidence if the Commission is of the view that it is not
6 fair to remind the persons concerned about the
7 coincidences –

8 CHAIRPERSON: Mr Bizos, I'm sorry, I
9 didn't say it was unfair. I said it was unhelpful because
10 the reasons I gave you, you'd expect a degree of
11 similarity. Whether the underlying reasons for the
12 similarity are because the information is correct or
13 incorrect is a different matter and you have the fullest
14 right to interrogate that issue.

15 MR BIZOS SC: Thank you, Mr Chairman.
16 Brigadier, when you made your speech did you know what the
17 medical evidence would be about the nature of the wounds
18 and the entry points, whether in the back or in the side,
19 before pronouncing for the world that your men did 110% the
20 correct thing?

21 MR SEMENYA SC: That was also not a
22 pronouncement to the world, Chair.

23 CHAIRPERSON: Mr Semenya, I didn't hear.

24 MR SEMENYA SC: That was not a
25 pronouncement to the world, as Mr Bizos says happened on

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1 the 18th –

2 CHAIRPERSON: Yes, we've covered that
3 already. It wasn't intended to be a public speech. He
4 explained that. It was a speech made to the, what I call
5 the troops, which may be a term that can cause trouble as
6 well, but the members of the force who were present who
7 were going to take part in an operation which was due to
8 take place later that day. That wasn't a public speech.
9 That's the point raised by Mr Semenya and that's a
10 correct –

11 MR BIZOS SC: I'm indebted to my learned
12 friend for the correction. I will change the question.
13 When you made the speech to your forces who were going to
14 truthfully try and persuade the people of South Africa and
15 the world at large as to what happened, what you told them
16 in praise of their conduct would have a very important
17 influence as to whether they were going to speak the truth
18 or not. Did you realise that? Even though if it was
19 intended only for their ears.

20 BRIGADIER CALITZ: Mnr die Voorsitter,
21 hier dink ek moet ek net so bietjie uitbrei. U het nou-nou
22 self gelees en ek glo die dokument is voor u. As u daar
23 18:07 wat u vir my gelees het, sal u sien die woordjie -
24 miskien moet ek u die geleentheid gee om die dokument net
25 voor u te kry.

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1 MR BIZOS SC: Yes? What do you want to
2 say about it?

3 BRIGADIER CALITZ: Die 18:07 wat u gelees
4 het, daar waar ek gesê het "The police will give hundred
5 percent full cooperation," so u sal onthou dit is nou nadat
6 ek verduidelik het watse dag die gebeure gaan gebeur. So
7 daar het ek vir hulle gesê ons gaan honderd persent
8 samewerking gee.

9 Die volgende woordjie, die eerste drie woordjies
10 is baie belangrik; "At this stage we did nothing wrong."
11 So dit was met die inligting op daardie oomblik tot my
12 beskikking en dit is daarna waar ek verwys het, "the
13 planning and execution," en as jy gaan kyk na so drie sinne
14 later waar die sin eindig, "exactly we executed it in that
15 line," dit het ek duidelik verduidelik is dit is die lyn
16 van die voertuie, die formasies wat die lede gehou het.
17 Onder geen omstandighede het ek hier gepraat oor die dooies
18 nie.

19 U het drie stellings gemaak oor die "publicly,"
20 dit het ons klaar aangespreek. Die "deaths" wat ek goed
21 gepraat het, ek het onder geen omstandighede verwys dat dit
22 iets goed was of dat dit enigsins is dit wat ons bespreek
23 het hier nie. En dan in die paragraaf wat sê 10:44, net
24 bietjie af, so in die middel het ek vir die lede gesê, "You
25 got nothing to hide. Please do not," ek het vir hulle

<p style="text-align: right;">Page 19638</p> <p>1 verduidelik dat IPID die ondersoek gaan doen, dat hulle 2 wapens oorgehandig gaan word aan ballisties, en dan het ek 3 ook afgesluit met, "You got nothing to hide." So volgens 4 my as 'n operasionele bevelvoerder, ek het in detail vir my 5 mense gesê wat ek van hulle verwag, dat ons honderd persent 6 samewerking gaan gee, en onder geen omstandighede het 7 enigsins dit gesinspeel dat indien daar iemand is wat iets 8 het om weg te steek, dat hy dit moet doen nie. 9 Ek het ook gesê daardie mense wat nog hulle 10 SAP15s moet inhandig en hulle rondtes verklaar, dit was 'n 11 proses wat van daardie dag af gevolg het. So, en soos ons 12 weet IPID het ook dan begin met hulle ondersoek. So ons 13 het honderd persent samewerking gegee presies waar dit 14 nodig was. So as u sê dat ek het dit probeer "hide" van 15 iemand af, dit is glad nie so nie, nee. 16 CHAIRPERSON: Mr Bizos, when you reach an 17 appropriate stage we'll take the lunch adjournment. It may 18 be you've reached it, but if there's another question or a 19 few questions you want to ask on this topic before we 20 adjourn, I'm in your hands. 21 MR BIZOS SC: I want to ask this 22 question. Do I understand you correctly that if you had 23 known that most of the people had been shot in the back or 24 the side and most of the people – that is the people who 25 died, and if you knew then that most of the injured people</p>	<p style="text-align: right;">Page 19640</p> <p>1 hulle gedeel het en gesê het daar is persone wat so en so 2 en so gewond is, of wat so en so en so, presies dieselfde. 3 Ons sou honderd persent samewerking gegee het – amper het 4 ek nou weer gesê 110% - en dit is wat ek bedoel het waar ek 5 gesê het "We got nothing to hide." Ek het vir hulle 6 verduidelik hulle wapens gaan gevat word. 7 Miskien die regte antwoord op u vraag sal wees ek 8 het op 'n stadium gesê "So unless that you say no, I fired 9 two shots but there were 500 or 400 cartridges picked up, 10 you understand, that's why I'm saying we got nothing to 11 hide." Dit was my presiese woorde. 12 So indien ek wel geweet het van hierdie uitslae 13 en van persone wat gedood of gewond is sou ek presies 14 dieselfde hier vir die persone gesê het en vir hulle 15 gemotiveer het om nog steeds met die waarheid vorendag te 16 kom want "ultimately" gaan die doppies en die wapens 17 "gelink" word met van die persone wat gedood is en dit is 18 wat 'n bevelvoerder gedoen het en dit is wat ek in daardie 19 omstandighede gedoen het. 20 MR BIZOS SC: Now that you have heard the 21 evidence and you have read the medical reports, would you 22 admit that it would appear from the evidence, and 23 particularly the medical reports, that many could not 24 possibly have been shot in self-defence? 25 CHAIRPERSON: Mr Bizos, aren't you asking</p>
<p style="text-align: right;">Page 19639</p> <p>1 were shot in the back, you wouldn't have said that they had 2 done 115%, or 110% of their work. Do I understand you 3 correctly or not? 4 CHAIRPERSON: Mr Bizos, I don't think 5 it's factually correct that most of the people were shot in 6 the back, but I think it's fair to say that a substantial 7 number were shot in the back, but subject to that 8 correction the question can proceed. 9 MR BIZOS SC: Well, if you had the 10 information of the doctors about the places in which people 11 were shot and killed, or shot and injured, leaving aside 12 the percentages, would you still have said that you acted 13 100%, and would you have said it if you knew then what the 14 doctors are going to tell the Commission? 15 BRIGADIER CALITZ: Mnr die Voorsitter, 16 weereens as ek dit net kan bietjie langer maak en nie net 17 'n ja of 'n nee nie, die 100% was samewerking met die 18 polisie, waarna u verwys as die 110%, en weereens terug te 19 kom na my rede hoekom ek dit gesê het was glad nie ten 20 opsigte van die persone wat opgetree het, die skietery nie. 21 Ek het dit bedoel van die bevelvoerders en die lyne en die 22 uitvoering van die uiteendryf aksie wat plaasgevind het. 23 Om terug te kom na u vraag toe, sou ek geweet het 24 enige van hierdie wat u vir my hier in die bundel gegee het 25 van die mediese personeel, dan sou ek die inligting ook met</p>	<p style="text-align: right;">Page 19641</p> <p>1 him for an opinion on a matter which we really have to 2 decide? He's not an expert on the matter, and I've already 3 on a number of occasions ruled that I won't allow questions 4 of that kind asked of witnesses to give their opinions on 5 matters which we have to decide, unless they're experts. 6 But perhaps we can reformulate your question differently. 7 In the light of what Mr Bizos has now put before you and 8 the information you've got, would you have said precisely 9 what you said on the 18th to the assembled members, or would 10 you have been more cautious and phrased what you did in 11 relation to their conduct and so on in a slightly more 12 careful and less dogmatic way? 13 BRIGADIER CALITZ: Mnr die Voorsitter, as 14 ek verwys na die doktersverslae, Dr Perumal, Dr Naidoo, die 15 wat ek gesien het, die "medical reports," ek sien hulle het 16 nie al die "bodies" persoonlik nagegaan. Ek bedoel dit is 17 die "independent" persone wat daarna verwys het. Ek sien 18 ook in hulle verklarings dat daar is baie teenstrydighede, 19 dat hulle party net oop "gezip," party is net "geview." So 20 daar is baie goed wat uit hierdie mediese verslae verder 21 kon – so dit sal ek nie honderd persent sê as feitlik op 22 hierdie stadium nie want dis baie, dis afleidings wat 23 gemaak is. 24 Maar ek sou definitief vir die lede gesê het dat 25 daar is by, as ons nou vat, dan sou die mediese verslae en</p>

<p style="text-align: right;">Page 19642</p> <p>1 die "LRC reports" sou die "bodies" in die goed geplaas het. 2 So dan sou ek vir die ouens gesê het dat by "scene" 2 is 3 soveel persone in daardie omstandighede so gewond; so ver 4 moontlik die wat dit kan bevestig, of die wat dit, daar 5 betrokke was, en ek dink dit is die proses wat ons wel na 6 die tyd gevolg het, mnr die Voorsitter, soos die lede erken 7 het en hulle het wapens geskiet, die skietverslae sal dan 8 aandui waar hulle dit gevuur het. So om terug te kom na 9 die antwoord toe, ja dit sou deel gewees het van my – 10 CHAIRPERSON: So you would have put 11 things, you might well have put things slightly differently 12 if you'd had that information at your disposal when you 13 made your speech. Is that right? 14 BRIGADIER CALITZ: Ja, ek – 15 CHAIRPERSON: - something to your speech, 16 and you didn't really – part of the problem is you didn't 17 really deal with scene 2, did you? 18 BRIGADIER CALITZ: Uh-uh. 19 CHAIRPERSON: You know you talked about 20 they kept the line. 21 BRIGADIER CALITZ: The dispersion action. 22 CHAIRPERSON: That was a big point you 23 stressed. 24 BRIGADIER CALITZ: Die uiteendrywing – 25 CHAIRPERSON: And that of course only</p>	<p style="text-align: right;">Page 19644</p> <p>1 BRIGADIER CALITZ: Dit is – 2 CHAIRPERSON: - which he's now agreed 3 relates to scene 1, you see, anyway. But that comment he 4 made – 5 MR BIZOS SC: - he said they were 6 justified to keep the line, Mr Chairman. He said that what 7 you did was justified, if the English language is to be 8 followed, Mr Chairman. 9 CHAIRPERSON: What line is that? Perhaps 10 we can look at that quickly before we take the lunch 11 adjournment. 12 MR BIZOS SC: The second-last sentence in 13 the middle of the page. "It was justified, and that is 14 exactly the commitment and the cooperation that we are 15 going to give to the people." It was justified. 16 CHAIRPERSON: That was the point you said 17 you gave him to think about over lunch. 18 MR BIZOS SC: Yes. 19 CHAIRPERSON: So perhaps he can think 20 about it over lunch – 21 MR BIZOS SC: Yes. 22 CHAIRPERSON: - and give us the benefit 23 of his conclusions – 24 MR BIZOS SC: And how consistent it is 25 with his explanations.</p>
<p style="text-align: right;">Page 19643</p> <p>1 relates to scene 1, doesn't it? There wasn't a line kept 2 at scene 2. I'm not saying it by way of criticism, but 3 there wasn't a line to be kept at scene 2, was there? 4 BRIGADIER CALITZ: Korrek, mnr die 5 Voorsitter. 6 CHAIRPERSON: You didn't deal really with 7 scene 2. 8 BRIGADIER CALITZ: Nee, mnr die 9 Voorsitter. 10 CHAIRPERSON: I understand. Perhaps we 11 can continue the discussion after lunch, Mr Bizos, if 12 that – 13 MR BIZOS SC: May I just put to the 14 witness for his consideration during that, you know, did 15 you say "So on that nothing, nothing, nothing was wrong, 16 okay. You acted. It was justified and that is exactly the 17 commitment and the cooperation that we are going to give 18 the people." Did you say that? 19 BRIGADIER CALITZ: Ek weet nie van watter 20 lyn u nou gelees het nie, maar ja, dit klink soos wat ek 21 gesê het, ja. 22 CHAIRPERSON: The question was that that 23 was to do with his point that they kept the line. 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: The dispersal line -</p>	<p style="text-align: right;">Page 19645</p> <p>1 CHAIRPERSON: Well, he can tell us the 2 benefit of his thoughts on the matter after lunch. We'll 3 take the lunch adjournment. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [14:03] CHAIRPERSON: The Commission resumes. 6 Brigadier, you're still under oath. 7 ADRIAAN MARTHINUS CALITZ: Dankie, mnr 8 die Voorsitter. 9 CHAIRPERSON: Mr Bizos, you're cross- 10 examining, but I think you asked the witness to think about 11 something over the lunch adjournment and to give us his 12 comments after lunch. Would you like to remind him of what 13 it was and then we can hear his answer? 14 MR BIZOS SC: To be honest, I don't 15 remember what it is that I asked him. I thought that he 16 was – 17 CHAIRPERSON: Perhaps he's got a better 18 memory than you have. Brigadier, can you help Mr Bizos, 19 remind him of the question he asked you and then give us 20 your answer? 21 BRIGADIER CALITZ: Ek sal, mnr die 22 Voorsitter, met plesier. Advokaat, u het verwys na die 23 laaste deel, as ek kan gaan na, as u 'n verwysing JJJ82, 24 die woorde wat u gelees het is die tweede paragraaf van bo 25 af, net na die 9:20 tyd. Ja, daardie wat nou bo-aan die</p>

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1 skerm verskyn, en dit is – as ek net bietjie vroeër kan
 2 gaan, u het my gevra, “And that is where the TRT line, NIU
 3 line was formed.” U het aan die einde van dit na die
 4 “Alright?” het u gesê, “So on that nothing, nothing,
 5 nothing was wrong, okay? You acted, it was justified and
 6 that is exactly the commitment and the cooperation we’re
 7 going to give the people.” So u het gevra het ek dit gesê
 8 dat “nothing, nothing, nothing was wrong,” dat dit
 9 “gejustify” is, en oor die “commitment,” en u het gevra wat
 10 het ek daarby bedoel.

11 As ons net kan opgaan so entjie daar by 29, net
 12 voor dit het ek gepraat met die “Public Order Police
 13 members” wat dan “tactically retreat” het terug na hulle
 14 voertuie toe en net voor 9:20 miskien daardie sinnetjie,
 15 “By retreating and going back to your safe haven,” dit is
 16 die Nyalas, “therefore we got over to the second phase.”
 17 So die deel wat die Voorsitter vir my gevra het oor die
 18 110%, die gelukwensing en dit, dit was die boonste deel wat
 19 geëindig het “exactly where we executed in that line,” dit
 20 het verwys na die “dispersion action.”

21 Waarna ons hier verwys het, 29, en ek het reeds
 22 ook hieroor in my vorige “evidence,” ek het net nie die
 23 “transcripts” by my nou nie anders kon ek daarna verwys
 24 het, die bladsy, maar ek het dit reeds breedvoerig
 25 geantwoord, en onder korreksie wat ek toe gesê het, “That

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1 is where the TRT line and the NIU line was formed” - dit
 2 praat van die opvolg – “and when they become under attack”
 3 – dit is wat hulle dan vir my gesê het en wat ons gesien
 4 het op die “footage” – “the command was given by their
 5 commanders.” Dit is waar ek getuig het dat jy kan hoor
 6 “basic line, basic line, basic line,” dit is jou “command,”
 7 “and then some of them acted in self-defence.” Hoekom ons
 8 gesê het “some of them” is dat nie almal van hulle het
 9 hulle vuurwapens gebruik nie. So dis wat ek in daardie sin
 10 getuig het.

11 “So on that” – met ander woorde daardie inligting
 12 tot my beskikking op daardie stadium, daar is niks verkeerd
 13 nie. Dit was “gejustify” rondom “self-defence,” en dan het
 14 ek vir hulle gesê, “Exactly the same commitment we’re going
 15 to give the cooperation, to give the people.” “The
 16 people,” ek dink mnr die Voorsitter of iemand het vir my op
 17 daardie stadium gevra na wie verwys ek, en dit is die
 18 Kommissie. So daar het ons vir almal gesê maak nie saak
 19 wat daar gebeur het nie, ons gaan daardie “commitment” hê
 20 en ons gaan dan samewerking gee met die Kommissie. Ek hoop
 21 dit antwoord u vraag.

22 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 23 Please look at the line that you say that the command was
 24 given by their commanders, as some of them act in self-
 25 defence. Now if they acted in self-defence – I’m sorry to

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1 use the word again, but is it a coincidence that there were
 2 34 dead and 80 seriously injured and not a single scratch
 3 on any policeman? How do you explain that? If this was a
 4 fight, a self-defence fight, how come that there isn’t a
 5 single scratch on any policeman, 34 dead, 80 seriously
 6 injured? The self-defence has got to be balanced. You
 7 know, the people fight. How come that one side comes out
 8 of it completely unscathed and there are so many casualties
 9 on the other side? Can you explain that possibly?

10 BRIGADIER CALITZ: Mnr die Voorsitter –
 11 CHAIRPERSON: He wasn’t there. He wasn’t
 12 there, Mr Bizos. He’s told us that he only received
 13 feedback and what he said was based upon what he’d been
 14 told. He was already on his way ultimately to koppie 3
 15 when these things happened. So how can you expect him to
 16 explain? He can tell you what he was told. He assumed it
 17 was in order obviously, but I don’t see how you could ask
 18 him to explain things that happened when he didn’t see
 19 them.

20 MR BIZOS SC: But did you accept whatever
 21 you were told on face value, or as a commander was it your
 22 duty to try and evaluate what you were told?

23 BRIGADIER CALITZ: Mnr die Voorsitter, op
 24 daardie stadium – en dit is wat ek vir u daar bo gewys het
 25 waar die lyn staan 18, ek dink dis net die paragraaf bo

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1 hierdie een waar hy begin en ek sê, “At this stage,” – nog
 2 so bietjie op, daar heel bo – “the police will give the
 3 hundred percent full cooperation, okay. At this stage we
 4 did nothing wrong.” Dit is op daardie stadium wat ek die
 5 inligting gegee het en dit is op daardie stadium twee dae
 6 na die voorval die inligting tot ons beskikking gewees. So
 7 op daardie stadium was daar niks wat vir ons as
 8 bevelvoerders, of vir my dan as operasionele bevelvoerder,
 9 net vir myself te praat, gedui het op enigiets wat gebeur
 10 het wat ons 'n vinger kon op lê en sê maar hierdie persoon,
 11 dit en dit en dit het verkeerd gegaan nie. Die
 12 verklaring, of die, kan ek sê die “hot debriefing” wat die
 13 lede dan gegee het, dit het gebruik, asook die inligting
 14 wat tot ons beskikking was. So dit is waarop ons gegaan
 15 het en dit is waarop die uitsprake dan, of die – as ek sê
 16 die woorde gesê is.

17 MR BIZOS SC: Before you spoke did you
 18 try to evaluate the truthfulness of what you had been told?
 19 Did you question if you’re telling me the truth, how did it
 20 come about that we have 34 people dead, 80 seriously
 21 injured, and not one of you has a single scratch; how did
 22 that happen? It’s improbable.

23 CHAIRPERSON: Mr Bizos, that’s three
 24 questions I think you’re asking. Maybe you should ask them
 25 one by one, to be fair to the witness. The first question

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1 you asked him, did you evaluate what you were told? And
 2 then the second question was, there was this question about
 3 injuries all on one side and not the other, did you ask
 4 them about that, and the third question relates to
 5 improbability, but perhaps, seeing I'd broken the questions
 6 up you don't have to repeat them. Brigadier, you heard the
 7 three questions that Mr Bizos asked you. Would you like to
 8 answer them one by one?
 9 BRIGADIER CALITZ: Mnr die Voorsitter, as
 10 ek net weer kan hier vra – met respek, u het gesê die
 11 eerste, die "evaluate," en die tweede een –
 12 CHAIRPERSON: The first one was did you
 13 evaluate what you had been told?
 14 BRIGADIER CALITZ: Ja?
 15 CHAIRPERSON: The second one was, did you
 16 say to the members how did it happen that the injuries were
 17 all on one side, that 34 are dead and no-one, not a
 18 policeman has got a scratch, and thirdly, is that not an
 19 improbable tale? It's really linked, I suppose, to the
 20 question that he says you should have asked the members, or
 21 asked you whether you asked the members about the lack of
 22 scratch on one side and 34 deaths on the other. Anyway,
 23 those are the three questions. Is that right, Mr Bizos?
 24 BRIGADIER CALITZ: So drie –
 25 MR BIZOS SC: That's correct, yes.

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1 BRIGADIER CALITZ: So vraag 3 en vraag 2
 2 is omtrent die, in een –
 3 CHAIRPERSON: They go together.
 4 BRIGADIER CALITZ: As ek u reg verstaan.
 5 Mnr die Voorsitter, op die eerste een, "evaluate," dit is
 6 presies wat ek gesê het wat ek gedoen het. Ons het van die
 7 17de af en tot die oggend van die 18de, daar was amper
 8 deurnag gesit - ek dink daar is minimum geslaap – waar met
 9 die lede dan gesprek gevoer is, met die bevelvoerders, om
 10 te probeer uitvind presies wat het gebeur, wie het geskiet,
 11 waar, watter posisies. Die bevelvoerders het inligting
 12 ingebring. So alle moontlike fasette van die aspek het ons
 13 in ag geneem. As dit is rondom die "evaluate," voor ek dan
 14 vir hulle gesê het, "At this stage," tot, inligting tot my
 15 beskikking op daardie stadium.
 16 En dan die tweede een wat miskien hand-aan-hand
 17 loop met die derde een oor beserings, ek kan net sê dat
 18 daar wel van die polisiebeamptes was wat vir ons gesê het
 19 daar is op hulle geskiet, nie net die TRT nie, maar ook van
 20 die Openbare Orde Polisiëringslede, en dit het ons nou wel
 21 na die tyd gesien - ek dink dis 'n Al Jazeera video, as ek,
 22 ek praat onder korreksie – waar die lede dan, waar ons dan
 23 fisies sien daar word met 'n pistool op die polisiemanne
 24 gevuur, en as ons gaan kyk die rigting wat die pistool
 25 gevuur is en waar die Openbare Orde lid staan, is dit

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1 lynreg in mekaar.
 2 So ek dink, as ek die woorde kan gebruik, dit is
 3 Godsgenade dat daar nie op daardie dag polisiemanne beseer
 4 is nie. Miskien die manier wat hulle opgevorm het, ons het
 5 nie in detail gegaan hoekom hulle nie beseer is, maar ek
 6 weet daar is wel op die polisiemanne gevuur en daar het
 7 verskeie van hulle gesê dat hulle het gesien hoe daar op
 8 hulle geskiet word. So dit kom miskien neer op opleiding
 9 of op hoe hulle beweeg het tussen die voertuie, maar dit is
 10 'n afleiding wat ek sal maak en dit is nie wat ek self
 11 gesien het nie.
 12 MR BIZOS SC: Well, you know, what I am
 13 going to put to you is this; that you voluntarily
 14 swallowed –
 15 BRIGADIER CALITZ: Ek kan –
 16 MR BIZOS SC: You swallowed and accepted
 17 whatever was said to you uncritically and unreasonably and
 18 came to a false conclusion.
 19 BRIGADIER CALITZ: Ek stem nie saam met u
 20 nie, mnr die Voorsitter.
 21 MR BIZOS SC: Also you are expected to
 22 examine the role played by SAPS through its representative
 23 units individually and collectively in dealing with this
 24 incident. Was this done at any time?
 25 BRIGADIER CALITZ: Ek het nou nie u vraag

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1 verstaan nie. As u net weer vir my kan herhaal?
 2 MR BIZOS SC: The terms of reference
 3 provide that you should examine the role played by SAPS
 4 through its representative units individually and
 5 collectively in dealing with this incident. Was that done?
 6 BRIGADIER CALITZ: Mnr die Voorsitter,
 7 jammer vir my onkunde; miskien as ek net daardie deel kan
 8 kry, dat ek daarna kan kyk waarna u verwys as u sê dit was
 9 my plig. Ek weet nie waar u –
 10 CHAIRPERSON: You see, it's one of the
 11 terms of reference – perhaps we can get the terms of
 12 reference back on the screen. One of the terms of
 13 reference was, as Mr Bizos read it to you, that we are
 14 charged, we the Commission are charged with investigating
 15 the role of each of the units and so forth of the police,
 16 and we're going to look at that now. There we go.
 17 BRIGADIER CALITZ: O, is dit die "terms
 18 of reference."
 19 CHAIRPERSON: We can go a bit further
 20 down on that page, please. The first part relates to
 21 Lonmin. We have to go to the next page. Now we come to
 22 paragraph –
 23 MR BIZOS SC: 1.2.3 –
 24 CHAIRPERSON: - 1.2 of the terms of
 25 reference, the conduct of the SAPS, you see. The first one

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1 deals with the Standing Orders, policy consideration, that
2 doesn't arise necessarily.

3 BRIGADIER CALITZ: Ja.

4 CHAIRPERSON: 1.2.2 is the one that Mr
5 Bizos put to you before lunch, "Precise facts and
6 circumstances which gave rise to the use of all and any
7 force and whether this is reasonable and justifiable in the
8 particular circumstances." You say people had regard to
9 that at Roots because you were going to make a presentation
10 to us dealing with that.

11 BRIGADIER CALITZ: Korrek.

12 CHAIRPERSON: The third one is the one
13 that Mr Bizos is busy with now, "To examine the role played
14 by SAPS through its respective units, individually and
15 collectively in dealing with this incident." So I take it
16 that means we've got to look at what the NIU did –

17 BRIGADIER CALITZ: O ja.

18 CHAIRPERSON: - what the STF did, what
19 the TRT did, what the POP did.

20 BRIGADIER CALITZ: Ek verstaan.

21 CHAIRPERSON: We've got to look at those
22 individually and then collectively, and what he wants to
23 know is at Roots did you do that? Did you examine the role
24 played by the SAPS through its respective units? That's
25 your question, Mr Bizos?

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1 MR BIZOS SC: That is so.

2 BRIGADIER CALITZ: Ekskuus, mnr die
3 Voorsitter, ja, nee ek het nie geweet u verwys weer terug
4 na die "terms of reference" toe nie. Ek dog dit kom uit
5 die bundel uit as my take. Dit is presies wat gedoen was
6 by Roots waar ek vir u gesê het dat die groepe opgebreek
7 het en die verskillende groepe en groepbevelvoerders en dan
8 is dit dan spesifiek die "respective units individually" en
9 "collectively in dealing with the incident," en dit is waar
10 die inligting dan saamgestel is in die dokument.

11 MR BIZOS SC: In exhibit L?

12 BRIGADIER CALITZ: Ja, ek dink daar is 'n
13 "narrative" ook saam met "exhibit L."

14 MR BIZOS SC: Yes, and is it correct that
15 you found nothing that anyone, nothing wrong that anyone
16 had done, either individually or collectively?

17 BRIGADIER CALITZ: Mnr die Voorsitter,
18 niks wat tot my kennis gekom het op hierdie stadium, dat
19 iemand "deliberate" iets verkeerd gedoen het waarvan ek
20 bewus is op daardie stadium nie.

21 MR BIZOS SC: So that the answer to you
22 is that you know nothing that anyone did which was shown to
23 be the responsibility of any police officer or any
24 commander or group of commanders?

25 BRIGADIER CALITZ: Ek sê weereens, mnr

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1 die Voorsitter, dit wat die bevelvoerders vir ons gegee het
2 op daardie dag het niks daarop gedui. Elke aksie wat 'n
3 bevelvoerder gesê het, het hulle gedoen. Alhoewel dit op
4 die voorligting was of nie op die voorligting was nie, het
5 hulle redes daarvoor gegee hoekom hulle dan in daardie, kan
6 ek sê manier opgetree het.

7 MR BIZOS SC: And finally, the Commission
8 is to decide whether by act or omission it directly or
9 indirectly caused loss of life when –

10 CHAIRPERSON: Harm.

11 MR BIZOS SC: - or harm to persons or
12 property. This is what the Commission is enjoined to try
13 and find out. Did you either at Potchefstroom or elsewhere
14 find any act, or decide whether any act or omission was
15 committed which may have avoided the loss of life or –
16 well, I don't, damage to property I think is secondary in
17 these proceedings.

18 BRIGADIER CALITZ: Nee, mnr die
19 Voorsitter, nie wat op hierdie stadium tot my kennis is
20 nie.

21 CHAIRPERSON: I mean you know they're not
22 talking about culpability. The drafters of these terms of
23 reference, paragraph 1.2.4, aren't talking about
24 culpability, blameworthiness. They want us to say whether
25 by act or omission the SAPS directly or indirectly caused

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1 loss of life or harm to persons or property. Now the
2 factual position, now let's leave the property out for a
3 moment. I mean there's no doubt that a number of members
4 of the SAPS pulled the trigger of their weapons -

5 BRIGADIER CALITZ: Dit is korrek.

6 CHAIRPERSON: - and killed people and
7 injured others, right?

8 BRIGADIER CALITZ: Dit is korrek, mnr die
9 Voorsitter.

10 CHAIRPERSON: So a number of acts were
11 committed by members of the SAPS which directly caused
12 either loss of life or harm to persons. Is that right?

13 BRIGADIER CALITZ: Ek verstaan nou. Ek
14 verstaan wat u – ja, dit is heeltemal korrek, mnr die
15 Voorsitter.

16 CHAIRPERSON: Ja.

17 BRIGADIER CALITZ: Ja.

18 MR BIZOS SC: So particularly in relation
19 to omissions, you have been cross-examined by my colleagues
20 and to some extent by me about other things that could have
21 been done that could have avoided the loss of life. I
22 don't want to go into details, but generally do you accept
23 that, that it was put to you for instance that at scene 2
24 you could have taken an alternative way of calling on
25 people to surrender before they were shot, either you or

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1 someone else? You know what the difference between a deed
2 and an omission, that if you had done something else there
3 may have been a different result, that none of them that
4 have been put to you are well-founded according to you?
5 You didn't omit to do anything that you could have done to
6 avoid loss of life? Is that what your case is?
7 BRIGADIER CALITZ: Mnr die Voorsitter, as
8 u na my getuienis verwys, ja, ek het vir u getuig dat ek
9 het op niks, soos u dit sê, "admit" om iets anders te
10 gedoen het om te verhoed. Wat ons wel getuig het is oor
11 wat ek gehoor het en wat ek op daardie stadium verstaan het
12 en hoe die uiteendrywing plaasgevind het.
13 [14:23] Dit is wat u nou-nou ook vir my gevra het oor,
14 het dit gebeur? Ek kan egter nie getuig op scene 2, wat
15 deur die bevelvoerders, wat daar plaasgevind het nie, nee.
16 MR BIZOS SC: Well, that was only one
17 example. Among the documents that you have in that file is
18 a report by Mr Hendrickx, GGG2, have you got it?
19 BRIGADIER CALITZ: Ek het die dokument
20 voor my.
21 MR BIZOS SC: Have you read it?
22 BRIGADIER CALITZ: Ek het daar
23 deurgegaan, ja, mnr die Voorsitter.
24 MR BIZOS SC: Have you read that
25 carefully?

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1 BRIGADIER CALITZ: Ek sal nie sê ek het
2 soveel tyd gehad om vreeslik baie aantekeninge te maak nie,
3 maar as u my verwys na sekere paragrawe behoort ek vir u te
4 kan antwoord.
5 MR BIZOS SC: Well, we will come to the
6 detail. First of all Mr Hendrickx sets out his
7 qualifications, have you any reason to doubt that he is
8 qualified to express opinions as to how a crowd should be
9 managed?
10 BRIGADIER CALITZ: Ja, wat ek sy
11 kwalifikasies verstaan is dat dit is wel in die buiteland
12 en nie in Suid-Afrika onder ons omstandighede nie, so dit
13 is –
14 MR BIZOS SC: No, that's not quite right,
15 you didn't read it properly, you see because he actually
16 was called to South Africa and spent almost five years,
17 trying to change the South African habits by the police as
18 to how to deal with crowds.
19 BRIGADIER CALITZ: Nee, mnr die
20 Voorsitter, as –
21 MR BIZOS SC: Did you read that?
22 BRIGADIER CALITZ: As ek net die
23 geleentheid gegee geword het om klaar te maak, u het
24 gepraat van sy kwalifikasies en nie die ondervinding nie,
25 so ek wou nog daarby kom deur te sê die kwalifikasies, sien

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1 ek sy kwalifikasies is alles wat hy oor –
2 MR BIZOS SC: His qualifications and his
3 experience, have you got any reason to doubt his
4 qualifications and his experience and his judgment in
5 relation as to how crowds should be managed, not
6 controlled, managed in a democratic society?
7 BRIGADIER CALITZ: Dit was sy opinie
8 gewees en ek het dit so gelees.
9 MR BIZOS SC: Do you disagree with his
10 opinion or opinions?
11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 nee, ek kan nie my vinger nou op spesifieke punte lê nie,
13 daarom sê ek as ons deur die verslag gaan kan u dit vir my
14 wys.
15 MR BIZOS SC: Well, have you any reason
16 to doubt that he is correct when he sets out his wide
17 experience and fortunately for the benefit of the
18 Commission and those of us representing the victims, he has
19 had considerable South African experience.
20 BRIGADIER CALITZ: Dit het ek so gesê,
21 ja, mnr die Voorsitter.
22 MR BIZOS SC: You accept that?
23 BRIGADIER CALITZ: Korrek, ja, Meneer.
24 MR BIZOS SC: Now do you agree that in
25 this document, may I indicate Mr Chairman, that it will be

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1 amplified by a further document having regard to matters
2 that have come up but I will confine myself only on matters
3 dealt with in GGG2. Have you any reason to believe that he
4 is much more experienced than you and possibly many others
5 as to how crowds should be managed even in conflict
6 situations, would you agree with that?
7 BRIGADIER CALITZ: Mnr die Voorsitter, as
8 u praat van sy opleiding of sy experience, ek het getuig
9 oor, ek het vir die afgelope 19, 20 jaar ondervinding met
10 Openbare Orde Polisiëring.
11 MR BIZOS SC: Yes, but –
12 BRIGADIER CALITZ: U het gemeld hy was
13 vyf jaar in Suid-Afrika waar hy sy ondervinding kon opgetel
14 het oor wat aangaan in Suid-Afrika en hoe hy die polisie
15 bygestaan het, miskien met sekere aspekte, so in daardie
16 gevalle, nee, ek sou nie sê 100% dat ek saamstem nie, nee.
17 MR BIZOS SC: He has been in and out of
18 South Africa for almost 20 years and he spent almost 10
19 years as an advisory to the South African Democratic
20 Government as to how to re-educate, if I may use the word,
21 the South African Police Force from a militarised force to
22 a non militarised force. Have you any reason to doubt his
23 competence or experience in that regard?
24 BRIGADIER CALITZ: Nee, mnr die
25 Voorsitter.

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1 MR BIZOS SC: Do you agree that when you
2 joined the South African Police Force it was a militarised
3 police force? Do you agree with that?
4 BRIGADIER CALITZ: Dit is van die
5 terminologie wat gebruik was in daardie tyd.
6 MR BIZOS SC: Well, terminology has a
7 meaning and you understand what I mean. He describes it as
8 a militarised police force and he was called in at the
9 instance of the new government led by Mr Mandela and
10 Minister Mufamadi in order to change the character of the
11 South African Police Force from a militarised force to a
12 non militarised force.
13 BRIGADIER CALITZ: Dit is waar, dit kan
14 saam met u stem, ja.
15 MR BIZOS SC: Do you accept that it was a
16 militarised force for the first seven years of your
17 membership of the police force?
18 BRIGADIER CALITZ: Soos ek vir u gesê het
19 dit is die terminologie wat daarna verwys is, ja.
20 MR BIZOS SC: Do you agree with Mr
21 Hendrickx that for the seven years that you were trained as
22 a South African policeman it was a militarised force?
23 BRIGADIER CALITZ: Miskien as ons dit dan
24 net kan afbreek, wat u presies bedoel met militarised. Ons
25 het militêre range gehad en in daardie mate, ek het vir u

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1 getuig waar ek die eerste vyf, ses jaar was van my
2 loopbaan, miskien was ek dan nie so direk betrokke by,
3 waarna u verwys nie.
4 MR BIZOS SC: Well, you know words have a
5 meaning but for your benefit perhaps I should give you some
6 of the examples of what a militarised force used.
7 Unfortunately I have lived through it for many more years
8 than you did. First of all Casspirs and their smaller
9 sisters are hardly suitable vehicles to manage crowds,
10 would you agree?
11 BRIGADIER CALITZ: 'n Casspir, dit is die
12 voertuig waarna u verwys.
13 MR BIZOS SC: Yes, yes.
14 BRIGADIER CALITZ: Mnr die Voorsitter, -
15 MR BIZOS SC: The massive, the massive
16 one and the smaller sister.
17 BRIGADIER CALITZ: Nee, ek verstaan nie?
18 MR BIZOS SC: Die Nyalas.
19 BRIGADIER CALITZ: Ek hoor wat u sê, die
20 Casspir voertuig was daardie jare gebruik en miskien vir u
21 inligting, die Casspir voertuig is vandag nog in gebruik.
22 Ons het twee Casspir voertuie op die dag gehad en dit is
23 nog steeds in gebruik vandag, die Casspir voertuie.
24 MR BIZOS SC: Casspirs and Nyalas are
25 akin to tanks with one important difference for the purpose

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1 for which they were used and that Casspirs during the
2 apartheid years were used as, in particular and to a lesser
3 extent that Nyalas, were used as tanks used in warfare,
4 with one important difference. The Casspirs had movable
5 arms and the tanks had immovable cannons in order to deal
6 with the enemy.
7 MR SEMENYA SC: Chair, -
8 BRIGADIER CALITZ: Mnr die Voorsitter, ek
9 kan nie saamstem -
10 CHAIRPERSON: Brigadier, Mr Semenya has
11 turned his light on.
12 MR SEMENYA SC: Just so that we follow,
13 is the case that legal resources is making that armoured
14 vehicles are not appropriate in crowd management
15 situations?
16 MR BIZOS SC: No, no, no, we don't say
17 that they are not, we are going to talk about their use
18 during the apartheid regime, if my learned friend -
19 MR SEMENYA SC: No, no, Mr Chair, -
20 CHAIRPERSON: I'm sorry but I don't quite
21 know where it gets you, if you've got a vehicle which has
22 been used for the militaristic purpose but you could also
23 use for what one can call a peaceful non militaristic
24 purpose.
25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: The fact that you still use
2 those vehicles but for non militaristic, peaceful purposes
3 doesn't indicate that the police is still militarised
4 because the use of the vehicle for non militaristic
5 purposes means that the fact that the vehicles are still
6 retained by the police is a neutral fact, isn't it? There
7 may be other bases for saying the police were militarised
8 then and there has been an element of re-militarisation
9 since the agreement between the Belgium Government and the
10 South African Government in which Colonel Hendrickx was
11 involved in and there are, as you know the matter is dealt
12 with in the National Planning Commission report which was
13 put to the National Commissioner when she gave evidence,
14 but I don't know if it is fruitful to traverse this matter
15 in great detail with the present witness but -
16 MR BIZOS SC: Not in great detail, Mr
17 Chairman, but in answer to my learned friend, we do not say
18 that Casspirs should be taken away. It is what our
19 reputation was during the apartheid regime when they were
20 used in order to put full speeder ahead on the streets of
21 Soweto and elsewhere in order to disperse crowds.
22 CHAIRPERSON: Yes, I understand that, but
23 how did that help us to decide the matters which were
24 brought to our attention under the terms of reference, the
25 fact that Casspirs were used for those nefarious purposes

<p style="text-align: right;">Page 19666</p> <p>1 in the pre 94 days and are now still retained by the SAPS 2 but used, one assumes for non nefarious purposes. How does 3 that help us to answer the questions which arise under the 4 terms of reference? 5 MR BIZOS SC: I will explain, Mr 6 Chairman. Our expert will say that the bringing to the 7 notice of a crowd force may be counterproductive and the 8 expert says so and what I am going to put to the witness is 9 that what is in the mind of the people in the crowd, or 10 particularly of people of the disadvantaged group that were 11 there up to 1994, that these Casspirs, Mr Chairman, were 12 used in order to bulldoze people off the streets of Soweto 13 and elsewhere that had to jump fences in order not to be 14 run over and that is the image that a Casspir has for the 15 vast majority of the people of South Africa – 16 CHAIRPERSON: Sorry, Mr Bizos, - 17 MR BIZOS SC: - and having Casspirs and 18 Nyalas, about how many, 20 of them in all, in a crowd 19 controls a situation is counterproductive? 20 CHAIRPERSON: Alright, now I don't 21 remember that I see that in Exhibit GGG2, it may be in the 22 amplified version unless it is somewhere here that I've 23 missed, but really the point you're putting is a wider 24 point than that. It is the fact that the police used 25 armoured vehicles because that's really what Casspirs and</p>	<p style="text-align: right;">Page 19668</p> <p>1 MR BIZOS SC: - relying on that I have 2 put the situation, the evidence that I know of which is 3 here, that there were two people who allegedly heard 4 firearms and the rest had the worst possible panga and a 5 couple of assegais. What I say was that having 20 odd such 6 vehicles is counterproductive – 7 CHAIRPERSON: Yes, I heard you saying it, 8 don't you think the time has come now to put that 9 proposition to the witness and let's get him comment on it? 10 What is suggested, well, you know what is suggested, that 11 there was an excessive show of force, there were far too 12 many armoured vehicles there, that a message was being sent 13 out to the crowd of strikers which was a counterproductive 14 kind of a message which was calculated, I use calculated in 15 the objective sense, not the subjective sense, which was 16 calculated to evoke some kind of violent response from 17 them. Is that what you're putting, Mr Bizos? 18 MR BIZOS SC: Yes, Mr Chairman. 19 CHAIRPERSON: And what, before you answer 20 let me read you what Colonel Hendrickx says in Exhibit GGG2 21 at page 15. I don't think, you've got a copy, haven't you? 22 Page 15 of that exhibit, in paragraph 21.6.2, what Colonel 23 Hendrickx says is the following. He is talking about the 24 plan and I know you weren't responsible for the plan but 25 you were involved in it. He says, "A display of force as</p>
<p style="text-align: right;">Page 19667</p> <p>1 Nyalas are. Armoured vehicles were inappropriate in a 2 crowd management situation, I don't want to debate it with 3 you but presumably when Colonel Hendrickx comes the point 4 will be fully covered. I am not sure if it is appropriate 5 to debate it with this witness, but if you have a crowd, it 6 depends on the crowd surely, if you have a crowd which has 7 got firearms, which has got dangerous weapons of other 8 kinds and it manifests the intention to use them against 9 others, then is it possible even in a modern democratic 10 system to manage such a crowd without armoured vehicles and 11 if the answer to that is, no, then how does it help us 12 because – 13 MR BIZOS SC: Yes, our expert is not 14 going to say that they should not be used generally, but 15 where we have a situation that it is alleged that two 16 people had firearms and for that reason it was necessary to 17 have 20 such vehicles, is an excessive use of force which 18 is counterproductive. 19 MR SEMENYA SC: At – 20 CHAIRPERSON: Where do we see that in the 21 report or is it just going to be the subsequent report that 22 we haven't seen yet? 23 MR BIZOS SC: And what he is saying, that 24 excessive force is counterproductive and – 25 CHAIRPERSON: Okay, can we –</p>	<p style="text-align: right;">Page 19669</p> <p>1 envisaged in stage 2 of the plan it can be provocative and 2 increase antagonism towards the police." Now that's the 3 point which I take it Mr Bizos is busy with or leading up 4 to. Mr Bizos, would you mind if I ask him to deal with it 5 at this stage? 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: You would mind? 8 MR BIZOS SC: No, no, not at all. 9 CHAIRPERSON: Alright, so you understand 10 the point that's being put and the views that Colonel 11 Hendrickx has expressed. Are you able to give us your 12 views on these points? 13 BRIGADIER CALITZ: Mnr die Voorsitter, ek 14 sal so kort as moontlik probeer wees om dan te verwys na 15 die Casspirs of die Nyalas. Soos ek vir u gesê het ek het 16 27 jaar diens waarvan 19, 20 jaar in die Openbare Orde 17 Polisiëring, 21 jaar in die nuwe demokrasie en in hierdie 18 huidige omstandighede is dit die enigste pantser voertuie 19 wat tot die beskikking van die Suid-Afrikaanse Polisiediens 20 is, so daar is niks anders nie. Ek weet daar is verwys na 21 vuurwapens of miskien pangas, maar selfs al gaan ons net na 22 'n pad toe wat geblokkeer is, selfs klippe en die persone 23 gooi ons, dit is hoekom daar pantser voertuie moet wees. 24 Jou sagte dop voertuie is nie bestand teen so iets nie en 25 die skade sal baie hoog wees as ons net in sagte dop</p>

<p style="text-align: right;">Page 19670</p> <p>1 voertuie beweeg. So die Openbare Orde Polisiëringseenhede, 2 dit is die eenhede wat dan uitgereik is met die Nyalas en 3 ek glo daar is omvattende studies gedoen en ek glo die 4 Generaal Annandale, the persone wat nasionaal is kan 5 daardie studies vir ons, hoe hulle op die voertuie afgekom 6 het. 7 [14:43] Om te sê dit is counterproductive, soos ek vir u 8 sê dit is baie effektief en ons gebruik dit vandag en 9 miskien is dit en van die redes waarom ons kan verduidelik 10 dat, waarom daar nie polisiëmanne beseer was op die dag 11 nie. U verwys na twee vuurwapens. Die bewys van die 12 polisie in exhibit L verwys na vyf vuurwapens wat op die 13 dag gevind is. Dit is net wat gevind is, ons weet ook dat 14 die twee sekuriteitsbeamptes se wapens gevat is, wat 15 haelgewere was, ons weet dat ons eie polisiëman se 16 haelgeweer gevat is, ons weet dat sy R5 gevat is asook die 17 pistole van die polisiëmanne wat dan gedood is op die 13de. 18 So nie net die wapens wat gekry is op die toneel nie, maar 19 daar was baie ander vuurwapens ook. Ons weet dat die 20 aanloop tot en met die, as ek sê display of force as 21 envisaged in stage 2 of the plan, dit is waar ons dan 22 oorgegaan het, can provoke the people. Ons weet tot op 23 daardie dag was daar tien mense vermoor en dit is waar die 24 polisie dan toegetree het. So dit was nie hierdie rustige 25 kalm situasie wat miskien geskets word nie, so – en dan</p>	<p style="text-align: right;">Page 19672</p> <p>1 pantservoertuie waar die skare dan baie minder was en ons 2 suksesvol was met die uiteendrywing. Indien ons dalk 3 sagtedop voertuie gebruik het, glo ek daar sou baie meer 4 beserings gewees het, die skade sou hoër gewees het en die 5 voertuie sou dan in so 'n posisie oneffektief geraak het om 6 dan enigsins op te volg. Daarom ook die laaste ding wat ek 7 wil sê oor die Nyala voertuig, dit is 'n voertuig wat gebou 8 is as 'n 4X4 pantservoertuig en ek kan dit glad nie 9 vergelyk met wat u gesê het, 'n tank. Dit is twee 10 wêreldwye verskille tussen die twee. So dit is miskien wat 11 mnr Hendrickx in sy tien jaar, vyf jaar, 20 jaar in Suid- 12 Afrika ondervind het, maar dit is nog steeds wat ons 13 gebruik. Dit, in kort – 14 MR BIZOS SC: Well, we have the evidence 15 of someone who resented the fact that the crowd was 16 addressed from a Casspir or a Nyala. Do you remember that 17 evidence? 18 BRIGADIER CALITZ: Ek was ongelukkig – 19 MR BIZOS SC: Because I'm going to put to 20 you – 21 BRIGADIER CALITZ: - nie teenwoordig 22 gewees nie, so as u miskien vir my kan wys kan ek daarna 23 gaan kyk. 24 MR BIZOS SC: Because it's not what the 25 police think the effect of these vehicles may have, it's</p>
<p style="text-align: right;">Page 19671</p> <p>1 stage van die plan can be provocative and increase the 2 antagonism towards the police. Dit is van dag 1 af met die 3 onderhandeling het ek verwys in my verklaring daarna dat 4 toe ons met die voertuie daar opdaag en oor die public 5 address system met die groepe gekommunikeer het, mnr Noki 6 self het geen probleem gehad om na ons toe te kom nie en 7 was bereid om te onderhandel en sy eerste onderhandeling 8 was nie dat, u weet, die voertuie pla ons nie, die 9 onderhandeling was dat hulle wil met die myn praat. Hulle 10 het met ons gedeel, daar was 'n suksesvolle 11 vertrouensposisie opgebou tot die volgende dat wat ons nou 12 vir hulle die feedback gegee het. Ek het so rofweg gesê 13 dit is, 13 keer in my verklaring, het ek in my consolidated 14 verklaring verwys waar ons dan met die public address 15 system gepraat het met die skare en dan die doel 16 verduidelik het van dan die fase 2 op die 16de waar ons dan 17 die Nyalas ge-preposition het met die draad daarby. So ek 18 dink daar was veelvuldige, menigde kommunikasie gewees tot 19 die groep en dan ek dink vir die afgelope 21 jaar, al die 20 situasies op die televisie, die voorvalle. Ek het genoem, 21 as ek so vinnig kan kyk na my statistiek wat hulle vir my 22 getrek het van die IRIS sisteem af, het ek so 3 900 om en 23 by 58 gevalle hanteer in my loopbaan en ons het nog nooit 24 enige probleme, waar die voertuie die skuld was nie. Ons 25 het wel baie sukses gehad as gevolg van die gebruik van die</p>	<p style="text-align: right;">Page 19673</p> <p>1 the experience of the oppressed people because these 2 vehicles were used in order to suppress them during the 3 apartheid regime. I'm not to be understood that Mr 4 Hendrickx is going to say that you shouldn't use Nyalas and 5 Casspirs in appropriate circumstances but it's a fact of 6 life for the people that were oppressed for so many years, 7 that you do not converse with them or try and control them 8 with such vehicles. 9 MR SEMENYA SC: I'm tempted to say that 10 that is evidence of no accurateness, given my own 11 background. 12 CHAIRPERSON: Is that an objection, Mr 13 Mpofu – sorry, I beg your pardon Mr Mpofu – is that an 14 objection, Mr Semanya? 15 MR SEMENYA SC: It is an objection, 16 Chair. That's not an historical fact. It's not something 17 that is of sufficient notoriety for judicial – 18 CHAIRPERSON: I think, Mr Bizos, I think 19 Mr Semanya is right that it's not something one can take 20 judicial notice of and if there's going to be evidence to 21 that effect, well, so be it, we'll deal with it but I'm not 22 sure it's evidence you can give us from the bar and I'm not 23 able to say whether what you're saying is accurate or not. 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: And I like to have a</p>

<p style="text-align: right;">Page 19674</p> <p>1 presumption in your favour when I approach these matters 2 but it does sound like – 3 MR BIZOS SC: I usually have good grounds 4 for what I say and I would suggest that my learned friend 5 should visit the apartheid museum where there is a Casspir, 6 there is a Casspir in the museum with an explanation as to 7 what use it was put for and then perhaps if he has limited 8 experience, the apartheid museum has something to teach 9 him. 10 CHAIRPERSON: Alright, Mr Bizos, that's a 11 very interesting point but it's not helping us very much, 12 so may I suggest we move on and deal with questions to the 13 witness that he can answer – 14 MR BIZOS SC: I didn't intend to be so 15 long on it, on the point, but – 16 CHAIRPERSON: That would be called a 17 frolic of your own, Mr Bizos. 18 MR BIZOS SC: Yes. 19 CHAIRPERSON: But we won't go there now. 20 MR BIZOS SC: Yes. 21 CHAIRPERSON: Let's carry on with the 22 case. 23 MR BIZOS SC: I'm going to put a number 24 of general propositions as set out by Dr, by Mr Hendrickx. 25 Please turn to page 5 where he lists with the opening, "The</p>	<p style="text-align: right;">Page 19676</p> <p>1 shocked the next morning to realise that they did that. I 2 take it that's your experience too, as an experienced 3 public order policing officer. 4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 heeltemal in u woorde. Ek sal net wil byvoeg, en baie kere 6 word hulle dan geintimideer om dan saam met die groep te 7 gaan. So ordinary members of the public who do not 8 otherwise – ek wou net die woorde gelees het – commit, not 9 otherwise commit criminal acts. So in baie gevalle is dit 10 dan persone wat, die gevalle wat ons het en wat gearresteer 11 is, baie, baie van daardie gevalle sê die persone ons was 12 geintimideer gewees, as ons nie sou gaan nie sal hulle ons 13 huise afbrand, as ons nie dit doen nie gaan hulle dit doen 14 en hulle gaan weet. So hulle probeer dié verskoning, wat 15 in baie gevalle so is. Ons sien menigde male voorbeelde, 16 tans in die media ook, oor service delivery en die meeste 17 van daardie mense sweep maar en vat maar mense saam op die 18 dag – as dit die antwoord is. Ek weet op die dag van die 19 16de byvoorbeeld het hulle die mense bymekaar gemaak en 20 gesê al die mans moet koppies toe, die vrouens was verbied 21 en so, dit is ook een van die voorbeelde dat hulle het baie 22 van die mense gedwing om soontoe te gaan. 23 CHAIRPERSON: You and I are having a 24 conversation, Mr Bizos isn't involved but anyway he'll join 25 us in due course. Mr Bizos, are you ready to ask the next</p>
<p style="text-align: right;">Page 19675</p> <p>1 crowd management model is based on five theoretical 2 building blocks" and then turn over to page 5 and have a 3 look at 14.2.3. "Disorder often involves ordinary members 4 of the public who do not otherwise commit criminal acts." 5 Would you agree with that? 6 CHAIRPERSON: I take it, Brigadier, you 7 can deal with that because in your extensive experience in 8 public order policing you would have encountered crowds and 9 I think – again I don't want to give evidence but we are 10 sometimes - 11 BRIGADIER CALITZ: Ek verstaan, mnr die 12 Voorsitter. 13 CHAIRPERSON: - some of us appeared in 14 cases involving crowd violence and so on and one of the 15 interesting things was, I ask you whether this is your 16 experience, I can't give evidence on the point, that 17 sometimes in the emotion of the moment a whole lot of 18 people were swept up into the crowd and did things totally 19 out of character and there were theories about 20 deindividuation and so forth that applied. You've probably 21 heard of those in the past but it does seem to be true, 22 does it not, that disorder does often involve ordinary 23 members of the public who somehow get swept up in the 24 excitement of the moment and participate in acts by crowds 25 which they wouldn't normally do and some of them are quite</p>	<p style="text-align: right;">Page 19677</p> <p>1 question? Did you hear what the witness was telling me? 2 MR BIZOS SC: Sorry, I – 3 CHAIRPERSON: No, thought you weren't. I 4 asked a question which was designed to be a follow-up to 5 your question to help you and he agreed with me that 6 sometimes in crowd management situations you find people 7 who are normally law-abiding, doing things which are 8 totally out of character, swept up in the excitement of the 9 moment and so forth and we had lots of those cases in the 10 past. Remember there were theories of deindividuation and 11 that kind of thing. He agreed with all that but he said in 12 many cases in his experience the people concerned have 13 given the explanation for their conduct, when asked about 14 it, that they had been intimidated and I take it that 15 that's also true but it wouldn't necessarily apply to 16 everybody. The general proposition then, 14.2.3 may also 17 apply to people who weren't intimidated. I take it you'd 18 agree with that as something that does happen from time to 19 time, is that right? 20 BRIGADIER CALITZ: Mnr die Voorsitter, en 21 dan miskien die laaste enetjie wat tot my mind gekom het 22 nou net, baie van die kere indien daar wel – ek praat nou 23 van service delivery of in soos hierdie geval daar wel 24 optogte is – is daar wel die kriminele element wat dit 25 uitbuit. So hulle wag spesifiek vir hierdie tipe van, noem</p>

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1 dit vreedsame protes, noem dit, as ek kan sê iets wat mens
2 kan verstaan soos oor water, hulle protes oor water. So
3 daar is wel 'n kriminele element wat hierdie ding uitbuit
4 en vir hulle gaan dit glad nie oor die water of hoe die
5 ding is nie, maar hulle wil wel dan misdaad pleeg. So dit
6 is miskien net die opposite van wat hier ook staan, is ook
7 waar.

8 MR BIZOS SC: Yes, it may be that there
9 are other situations but you are not suggesting that any
10 substantial number of the people gathered on the 16th or the
11 13th, 14th, 15th, 16th, were there as a result of being
12 intimidated? You're not suggesting that?

13 BRIGADIER CALITZ: Mnr die Voorsitter, ek
14 weet nie. Dit sal verdere ondersoek nodig wees en op
15 daardie stadium weet ons, soos ek vir u gesê het, op 'n
16 stadium is daar groepe en dit was getuienis gewees, waar
17 hulle deur die huise gegaan het en gesê het al die mans
18 most koppies toe gaan en die vrouens moet op eenkant bly.
19 So ek dink daar was getuienis, so ja, om – ek weet nie
20 watse woorde is gebruik nie –

21 MR BIZOS SC: We're talking about what
22 happened –

23 BRIGADIER CALITZ: Ek praat van op die
24 16de –

25 MR BIZOS SC: - what may have happened on

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1 the three or four days that we had these incidents.

2 CHAIRPERSON: There was evidence –

3 BRIGADIER CALITZ: Dit is presies –

4 CHAIRPERSON: He's referring to an item
5 of evidence that we had. It's in the occurrence book, I
6 think, that it's suggested that on the 16th the women in
7 Nkaneng, I think it was, were going around saying to the
8 men that they must go to the koppie, the suggestion being –
9 remember there was a strike on so there wasn't any activity
10 – saying they mustn't lie in bed at home, they must get up
11 and get out and go to the koppie. I think that was the
12 thrust of one or other of the entries in the occurrence
13 book and that's what he is referring to. So it is relevant
14 to the 16th but it doesn't necessarily detract from the
15 force of what you put to him, which I understood him also
16 to agree.

17 MR BIZOS SC: We must be careful, Mr
18 Chairman, that we do not consider suggestions made by wives
19 as intimidation.

20 CHAIRPERSON: I don't propose addressing
21 that point in the report of the Commission. If the
22 President wants advice on that he must appoint a special
23 separate commission and he must not appoint me to it.

24 MR BIZOS SC: Yes.

25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 net op rekord plaas, my vrou is nie vandag hier nie, so ek
2 is nie deel van die gesprek, dat dit net op rekord is.

3 MR BIZOS SC: Yes. 14.2.4 "Not all
4 members of the crowd or community participated. They saw
5 the –"

6 BRIGADIER CALITZ: Ekskuus tog, ekskuus
7 tog meneer –

8 MR BIZOS SC: "- but those who do often
9 have the tacit" –

10 CHAIRPERSON: No, Mr Bizos, sorry –

11 MR BIZOS SC: "- support of the rest."

12 CHAIRPERSON: Mr Bizos, we want the
13 Brigadier with us. I think he wasn't with us for a moment.
14 What is happening is he is reading 14.2.4, can you see that
15 – which is on the screen, which is on the screen and which
16 is on page 5 of Colonel –

17 BRIGADIER CALITZ: Ek het hom, mnr die
18 Voorsitter.

19 CHAIRPERSON: Are you now with us?
20 Right. Mr Bizos, proceed. We'll finish 14.2.4 and his
21 answer and then we'll take the tea adjournment.

22 MR BIZOS SC: Yes. What do you say to
23 that? Do you accept that?

24 BRIGADIER CALITZ: Soos ek dit hier lees,
25 as ek nou net reg is, "Not all members of the crowd or

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1 community participated in disorder but those who do, often
2 have a tacit or an open support of the rest." Met ander
3 woorde dat hulle mekaar steun en dat daar 'n gesamentlike
4 doel is. Is dit reg soos ek dit verstaan?

5 CHAIRPERSON: I must point out to you
6 before we carry on that this is expert evidence really
7 which is being put to you and you of course are, from a
8 practical point of view, an expert in public order
9 policing. You've got the experience which gives rise to
10 the expertise. The passages being put to you from Colonel
11 Hendrickx's report are based upon the work of an expert who
12 has been referred to previously in this Commission,
13 Professor David Waddington, an international expert on
14 public order policing and he talks about the empirical
15 realities of gatherings and disorder and he says these
16 stipulate that all current public gatherings manifest a
17 number of empirical realities which are common to all
18 crowds and disorder and then he gives these examples. The
19 one we've dealt with, that's 14.2.3 and now 14.2.4. So
20 what Colonel Hendrickx is saying is that he is supported by
21 empirical research by an international authority on public
22 order policing, Professor David Waddington, who says that
23 research indicates that this is true really of all crowds
24 and disorder, the statement in 14.2.4. Now you've got 19
25 years' experience, I take it, dealing with this kind of

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1 thing. I take it your experience coincides with the
 2 general findings of Professor Waddington, is that right?
 3 BRIGADIER CALITZ: Ja, mnr die
 4 Voorsitter, dit is wat ek verstaan het onder hierdie een,
 5 is dan die common purpose waar hulle mekaar ondersteun.
 6 MR BIZOS SC: Well, I don't know that it
 7 means what you purport to say in the document, being
 8 paragraph 19 of your statement, that they acted as one
 9 group and all of them associated themselves with the
 10 actions of each other, all of them had the same intention
 11 and goal, their actions threatened law and order and
 12 constituted the crime of public violence, they disturbed
 13 public order and peace. You can't reconcile 12, 14.2.4
 14 with your generalisation in this paragraph, can you? Can
 15 you reconcile what you purported to say, what you said in
 16 paragraph 19 of your statement with 14.2.4?
 17 BRIGADIER CALITZ: Soos ek dit verstaan
 18 het, kan ek dit sê, mnr die Voorsitter. Dit is wat ek
 19 verstaan het onder hierdie sinnetjie, as common purpose.
 20 Die wat dan wel deelneem, hulle is in support van mekaar en
 21 beïnvloed mekaar dan sodanig.
 22 CHAIRPERSON: Quite a number of
 23 spectators of these public disturbances in the past were
 24 acquitted on the basis of the argument that the mere fact
 25 that they were there didn't indicate tacit support, but I'm

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1 not sure that this is a line that will help us very much.
 2 Can we take the tea adjournment now, Mr Bizos?
 3 MR BIZOS SC: Thank you, Mr Chair.
 4 MR MPOFU: Chairperson, during the
 5 adjournment can something be done about the air
 6 conditioning which is killing many people? I'm just a shop
 7 steward.
 8 CHAIRPERSON: What's the problem with the
 9 air conditioning?
 10 MR MPOFU: It's too strong, apparently
 11 Chairperson. I thought –
 12 CHAIRPERSON: Too strong?
 13 MR MPOFU: Ja, it's affect –
 14 CHAIRPERSON: I will ask those –
 15 MR MPOFU: Affecting those of us who have
 16 sinus problems.
 17 CHAIRPERSON: I'll ask those responsible
 18 for the administration of this building to have a look at
 19 the matter.
 20 MR MPOFU: Thank you, Chair.
 21 CHAIRPERSON: I hope that if we can't
 22 deal with this particular point, there isn't going to be a
 23 strike.
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]
 25 [15:25] CHAIRPERSON: The Commission continues.

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1 I spoke to an official during the adjournment and reported
 2 about the air conditioning. Whether there's any
 3 improvement I can't tell from where I'm seated. I hope
 4 there is. I hope it's not gone drastically too much the
 5 other way, but anyway, if the shop steward and his members
 6 are happy – I won't say members of what –
 7 MR MPOFU: Thank you, Chairperson.
 8 CHAIRPERSON: - then we can –
 9 MR MPOFU: The members are happy,
 10 Chairperson.
 11 CHAIRPERSON: Then we can carry on.
 12 [Microphone off, inaudible] appears we've reached the end
 13 of that saga, but we won't go there now. Brigadier, you're
 14 still under oath.
 15 ADRIAAN MARTHINUS CALITZ: Thank you,
 16 Chair.
 17 CHAIRPERSON: Mr Bizos.
 18 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 19 Thank you, Mr Chairman. May I make an appeal to the
 20 witness? Brigadier Calitz, what I am reading to you are
 21 general principles. There are always exceptions to general
 22 principles. I'm appealing to you in listening carefully to
 23 what I read out to be the general principles. If you're in
 24 general agreement, say so, and we can leave the odd example
 25 out. If you disagree you say you disagree with the

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1 principle, so that we can really expedite the pace, but I
 2 don't want you to feel that I'm preventing you from if you
 3 disagree, why you disagree. I thought that I would try and
 4 expedite matters.
 5 CHAIRPERSON: And if there's a
 6 significant exception which you think is applicable to the
 7 events that we're busy investigating, then obviously you
 8 will say that too.
 9 BRIGADIER CALITZ: Dis wat ek probeer –
 10 dankie, mnr die Voorsitter.
 11 CHAIRPERSON: Right. Okay, Mr Bizos,
 12 shall we carry on?
 13 MR BIZOS SC: Yes. The next one is
 14 14.2.7. "Far from being innocent bystanders or victims,
 15 the police usually play a significant role in forestalling
 16 or provoking disorder." Would you agree with that as a
 17 general principle?
 18 BRIGADIER CALITZ: Disagree, mnr die
 19 Voorsitter.
 20 MR BIZOS SC: You disagree?
 21 BRIGADIER CALITZ: Dit is korrek.
 22 MR BIZOS SC: Do you disagree that the
 23 police may provoke disorder?
 24 BRIGADIER CALITZ: Ja, die sinnetjie van
 25 "usually play a significant role in provoking," so ek stem

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1 nie daarmee saam.

2 CHAIRPERSON: Do you agree with the

3 forestalling part? "Far from being innocent bystanders or

4 victims" - bystanders just mean you stand by, do nothing;

5 victim means you actually suffer harm because of it – "the

6 police usually play a significant role in forestalling or

7 provoking disorder." Now very often they forestall

8 disorder, surely. They prevent it. The police, because

9 they're there, stop the disorder. They bring the disorder

10 to an end.

11 BRIGADIER CALITZ: Dit is reg, mnr die

12 Voorsitter.

13 CHAIRPERSON: Sometimes, however, they

14 don't apply the doctrine of situational appropriateness,

15 which we've heard about in this Commission, and unwittingly

16 in many cases they actually make things worse by acting too

17 drastically or inappropriately. That's also true, isn't

18 it? Isn't it?

19 BRIGADIER CALITZ: Dit is korrek, mnr die

20 Voorsitter.

21 CHAIRPERSON: Ja, okay. Okay, Mr Bizos –

22 BRIGADIER CALITZ: Ja, dit is hoekom ek

23 maar net verhoed het om te probeer verduidelik. Ek wou

24 weer 'n voorbeeld – maar dit is reg so.

25 CHAIRPERSON: Give your example. I don't

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1 want to stop you.

2 BRIGADIER CALITZ: Nee, mnr die

3 Voorsitter, nee, nee, nee, ek probeer tyd spaar in

4 samewerking wat versoek is. Die meeste van die kere, ek

5 wil weer net noem, is soos in my ondervinding van die 20

6 jaar "service delivery," die persone wat die probleem het,

7 dit is nie te sê daar is nie 'n probleem nie. Dan beweeg

8 hulle van een punt tot 'n ander. Die polisie word geroep

9 en ons word - met alle respek die, ek wil amper sê - nee,

10 die speel bal gaan verkeerde woord wees. Die "mediator,"

11 die persoon wat tussen geplaas word, dit is gewoonlik nie

12 die polisie wat die probleem begin het nie, maar ons moet

13 iemand anderste se "fight" wat begin is eindig, as ek dit

14 vir u so kan stel.

15 So die polisie is in die meerderheid van die

16 kere, sou ons vir die "protesters" sê jy kan nie soontoe

17 gaan van punt A na punt B nie want die optog is onwettig,

18 en dan in stede van die persone om dit "orderly" te doen in

19 Suid-Afrika volgens wat die demokrasie verlang, besluit

20 hulle om dit nie "orderly" te doen en dan te begin gooi met

21 klippe of – en dit is die groepering tussenin, en dan het

22 die polisie geen keuse as om op te tree en uiteen te dryf

23 en, so ek dink ons word gesien in daardie lig maar dit word

24 nooit geïnisieer. As ons aan albei kante samewerking het

25 sal – en dit is hoekom ek net gesê het, "disagree."

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1 CHAIRPERSON: I don't want to be accused

2 of giving evidence, but I must tell you that in my

3 experience it has happened that the police used teargas

4 unnecessarily and too early and teargas sometimes makes

5 crowds very angry and that makes things worse. So that's

6 also a case where the police have actually made things

7 worse. I'm not saying it happens very often, but it does

8 happen. It has happened in the past and I'm not sure it

9 applies even to this case. I'm not suggesting it is

10 applying here. It may or may not; there's no evidence, but

11 certainly that was my experience in the past and I take it

12 you probably encountered similar cases as well in your

13 years of experience.

14 BRIGADIER CALITZ: Mnr die Voorsitter,

15 ja, dit is ongelukkig die stappe van die force kontinuum en

16 ons kan nie net oorgegaan het en "gedisperse" het, soos u

17 sê in die verlede, en dit is maar een van die minimum goed

18 om te gebruik is om 'n skare – ja, ek stem saam dit sal 'n

19 skare, soos u dit stel "provoke," of daar sal 'n reaksie

20 van die skare wees, maar dit is die eerste stap. Dieselfde

21 met 'n "stun grenade," dit is 'n "non-lethal" metode in

22 Suid-Afrika in die huidige demokrasie. Vir die afgelope 21

23 jaar wat ek daar is, is dit al wat ons het buiten

24 onderhandelinge.

25 CHAIRPERSON: The trouble with the stun

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1 grenade of course – and this may be of application in this

2 case, but I'm not discussing it with you in that context

3 now. The trouble with the stun grenade is people who don't

4 know what stun grenades are think it's actually live

5 ammunition that's being fired and they react accordingly.

6 That's also true, isn't it?

7 BRIGADIER CALITZ: Mnr die Voorsitter, ek

8 kan net –

9 CHAIRPERSON: When a stun grenade goes

10 "bang, bang," I mean if you've never encountered a stun

11 grenade before and suddenly you hear "bang, bang" and the

12 police are there, you think they're shooting at you, isn't

13 that so?

14 BRIGADIER CALITZ: Dit is hoekom ons

15 99.9% in die verlede in my geval wat ek kan getuig, die

16 effek daarvan is die persone hardloop weg van die geluid

17 af. Dieselfde met die traangas, hulle beweeg weg, en dit

18 is die effek –

19 CHAIRPERSON: Ja, they run away because

20 they think they're being shot at –

21 BRIGADIER CALITZ: Dit is die effek wat

22 dit moet hê.

23 CHAIRPERSON: They run away because they

24 think they're being shot at, but some people, they think

25 they're being shot at, might react differently. But

<p style="text-align: right;">Page 19690</p> <p>1 anyway, we don't have to debate that in detail. You agree 2 with the thrust of what I'm putting to you. Is that right? 3 BRIGADIER CALITZ: Dankie, mnr die 4 Voorsitter. 5 CHAIRPERSON: I take it, I'm reminded 6 that what I'm putting to you is really general knowledge, I 7 take it, so would you agree with that? 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, ek dink almal wat televisie kyk kan presies sien en 10 afleidings maak van wat gebeur en ek moet net – 11 CHAIRPERSON: You've put it very well. 12 Exactly. Yes, Mr Bizos. 13 MR BIZOS SC: I want to turn to 14.3.2.1 14 on page 6. "Sudden or overdramatic police interventions 15 which suggest overkill and will draw other people to the 16 scene," I don't know about the draw other people to the 17 scene, but what about "Sudden or overdramatic police 18 interventions which suggest overkill are 19 counterproductive," would you agree with that? 20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 weereens nee. Net in kort, dit is een van die beginsels 22 wat gewerk het – wel, ek verwys nou na die verlede – toe 23 Openbare Orde Polisiëring baie sterker was. Ons was 'n 24 paar duisend man en as jy opdaag met genoegsame, soos dit 25 hier staan, 'n "overkill" van personeel, dan verhoed jy</p>	<p style="text-align: right;">Page 19692</p> <p>1 understanding of the evidence was that stun grenades were 2 thrown from helicopters but not onto the koppie, onto the 3 open veld. I think that's the evidence. Is that your 4 point, Mr Semenya? 5 MR BIZOS SC: Well, near enough to be 6 heard, if you – 7 CHAIRPERSON: I don't think even that's 8 correct, but – there is a passage somewhere in Colonel 9 Hendrickx's statement – 10 MR BIZOS SC: Shall we put it on a 11 hypothetical basis – 12 CHAIRPERSON: - where he deals with the 13 inadvisability of throwing stun grenades from helicopters. 14 MR BIZOS SC: Well, can we put it on a – 15 CHAIRPERSON: I'm trying to find that. 16 Perhaps you or your junior can find it for me. 17 MR BIZOS SC: Can we put it on a 18 hypothetical basis that using stun grenades may in certain 19 circumstances suggest overkill? I'll be happy with an 20 answer to that. 21 BRIGADIER CALITZ: Nee, mnr die 22 Voorsitter, ek stem nie saam nie. 23 MR BIZOS SC: You don't agree. Okay. 24 14.3.3.2, officers deployed in high-profile and provocative 25 formations with reinforcements, weaponry, dogs, horses,</p>
<p style="text-align: right;">Page 19691</p> <p>1 enigiemand, hulle sien af van hulle aksies omdat hulle sien 2 hier is 'n groot groep mense. Juis die teenoorgestelde 3 gebeur; indien jy te min mense daar het dan sien die mense 4 kans vir jou en hulle vat dan kans en dan "result" dit in 5 aksie wat gevat moet word wat onnodig was sou daar meer 6 mense gewees het. 7 MR BIZOS SC: Well, would you propagate 8 that throwing stun grenades from helicopters, perhaps 9 sudden overdramatic police interventions which suggest 10 overkill and may be counterproductive? 11 BRIGADIER CALITZ: Is ons nou by 12 dieselfde punt, mnr die Voorsitter? 13 MR BIZOS SC: Well, I don't know. You 14 say – 15 BRIGADIER CALITZ: Ekskuus, ek dog – 16 MR BIZOS SC: You say that sometimes we 17 do this and it may be considered overkill, but it's 18 necessary, and what I'm asking you is on the facts of this 19 case would you consider throwing stun grenades from a 20 helicopter into the koppie behaviour which can be described 21 as overkill? 22 MR SEMENYA SC: Chair, that is not the 23 evidence. There's no – 24 CHAIRPERSON: Mr Bizos, I was going to – 25 sorry, Mr Semenya. I was going to say to you that my</p>	<p style="text-align: right;">Page 19693</p> <p>1 etcetera, all on public display, would they be – would you 2 agree with that sort of behaviour on the part of the 3 police? 14.3.3.2. 4 BRIGADIER CALITZ: Ek sien die opskrif 5 van hierdie is, u praat van "Interactional context can be 6 triggered by," so as ek dit in daardie konteks lees dan kan 7 ek sê daar dit kan wel "getrigger" word, alhoewel ek 8 dieselfde wil verduidelik dat die persone, dit hang af in 9 wate omstandighede - soos op hierdie dag weet ons dat 10 daardie "dogs, horses," al daardie, dit was buite sig 11 gewees van die groep op die koppie. 12 MR BIZOS SC: 14.3.5.1, "Officers from 13 outside the locality who are unfamiliar with local customs 14 and sensibilities and do not have a commitment to 15 maintaining good long-term relationships," do you agree 16 with that or disagree with it? 17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 nee ek stem glad nie saam hier nie. 19 MR BIZOS SC: Well, you seem to be 20 contradicting not only Mr Hendrickx, but also Mr David 21 Waddington whose name appears on paragraph 14.3. You have 22 a right to disagree, but are you questioning either the 23 good faith or the expert knowledge of both Mr Hendrickx and 24 Mr David Waddington? 25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>

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1 kan ek dit net so kort as bondig antwoord. My eie
 2 ondervinding, 20 jaar, ek was in hierdie afgelope 19, 20
 3 jaar, die hele land vol en ek dink nie daar is 'n provinsie
 4 waarin ek nie "gedeploy" was nie of afgedeelde diens gedoen
 5 het net - ons mense in die Openbare Orde Polisiëring word
 6 baie rondgeskuif, en op die dag was daar ook "officer from
 7 outside the locality, unfamiliar with local" – en ons het
 8 'n honderd persent samewerking van daardie persone. Ja,
 9 dit vat 'n rukkie om hulle georiënteer te kry sodat hulle
 10 kan sien hoe die gebied is en wat daar aangaan, maar dit is
 11 nie te sê as ek van Noordwes af Mpumalanga werk, nou gaan
 12 ek my wangedra net omdat dit in 'n ander provinsie is, as
 13 ek dit reg verstaan nie. So ek stem nie saam met daardie
 14 stelling nie, glad nie.

15 CHAIRPERSON: It maybe just can happen
 16 that if you have a police member from another area who
 17 comes in, doesn't know the local people, knows he's going
 18 to be gone tomorrow, so he doesn't really bother about what
 19 they think of him because it won't be relevant to him, he
 20 might behave inappropriately in his interaction with some
 21 of the locals. I take it that does happen from time to
 22 time.

23 BRIGADIER CALITZ: Die laaste stukkie
 24 stem ek saam, "to maintain long-term relationships,"
 25 daardie gedeelte.

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1 CHAIRPERSON: Now in this particular
 2 case, I know a lot of people were brought in from outside;
 3 presumably they had to be because there weren't enough
 4 local people to deal with the situation, but is there any
 5 evidence that they were interacting with the locals in a
 6 way which gives rise to the kind of problem that's set out
 7 in this paragraph?

8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 nee, ons weet dat op die Dinsdagoggend het ons – ek praat
 10 nou onder korreksie – mense uitgestuur vir
 11 sektorpolisiëring, daardie persone wat gekom het van
 12 buitekant af. Ons weet ook dat die mense van NIU wat van
 13 buitekant af gekom het sekere sleutelpunte beman het, en
 14 daar was sekerlik interaksie gewees met die publiek die
 15 hele tyd en daar was geen klagte gewees of niks ingebring
 16 teen ons teenwoordigheid op die mynperseel - wel, dit is
 17 die Dinsdag, Woensdag, tot en met die Donderdag nie, en die
 18 persone het, kan ek sê 24/7 gewerk, dag en nagskof. So
 19 selfs die nagskof mense. Ek sê nie daar is verklarings
 20 daartoe nie, maar die mense het eintlik daarvoor gepraat dat
 21 hulle is bly om die polisie te sien in die omgewing want
 22 almal vereenselwig hulle nie met wat aangegaan het daar
 23 nie. So dit is in my oog meer 'n beskermingspunt as wat
 24 dit 'n – wat staan hier? – ja, meer 'n beskermingspunt as
 25 wat hier gemeld word.

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1 MR BIZOS SC: 14.3.4.2, "A history of
 2 routinising and neutralising protest in such a way as to
 3 enhance political resentment and indignation." Would you
 4 agree with that?

5 BRIGADIER CALITZ: Ekskuus, mnr die
 6 Voorsitter, u het die paragraaf bietjie vinnig gelees en
 7 toe begin lees, as ek net weer die paragraaf kry?

8 MR BIZOS SC: Top of page 7, 14.3.4.2.
 9 BRIGADIER CALITZ: 14.3 punt? Gaan u nou
 10 terug? 14.3.4.2, of –

11 MR BIZOS SC: 14.3.4.2 –
 12 CHAIRPERSON: He's going back to the top
 13 of the page. He'd been previously dealing with something
 14 lower down the same page. It's the top of page 7.

15 MR BIZOS SC: I'm sorry, I went
 16 backwards, yes.

17 BRIGADIER CALITZ: Ekskuus, ja so ons
 18 begin onderaan bladsy 6 –

19 MR BIZOS SC: Once we are there, what do
 20 you say about that one?

21 BRIGADIER CALITZ: Ek het dit nou nog nie
 22 gelees nie, as u net weer vir my lees, is dit onderaan
 23 bladsy 6 en dan bo-aan bladsy 7? Mnr die Voorsitter, nee,
 24 ek kan my nie rêrig uitlaat hierop nie. Ek het dit nog
 25 nooit ondervind nie. So –

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1 MR SEMENYA SC: Chair, I was not going to
 2 be able to follow the answer because I don't understand
 3 14.3.4.2. I don't know what is "routinising."
 4 MR BIZOS SC: I'll give you an example.
 5 People that have a quarrel with their employer want to
 6 demonstrate at its door, its yard or its square or its
 7 football field and the police preventing people to get into
 8 direct contact with the employer to register their protest
 9 may be what the experts had in mind in 14.3.4.2.

10 BRIGADIER CALITZ: Mnr die Voorsitter,
 11 nee, dit is nie wat ek lees hier nie. Wat ek lees hier is
 12 dat hierdie is net die teenoorgestelde. "A history of
 13 routinising and neutralising protest in such a way to
 14 enhance political resentment and indignation." Wat ek hier
 15 verstaan is, as ek reg is, is dat 'n groep wat sê maar oor
 16 "service delivery protest," hulle weet dat sê nou maar die
 17 "local" munisipaliteit of die distrik luister nie na hulle
 18 nie, so dan gaan brand ons die kliniek af want as ons die
 19 kliniek afbrand, dan kry ons skielik aandag.

20 [15:45] Gee nie om, 'n mens stel nie belang om te weet
 21 dat die volgende dag gaan die kinders die kliniek weer
 22 nodig hê nie of ons, kom ons gaan brand die skool af omdat
 23 ons nie water het nie, dit is wat ek hier lees. Dit het
 24 niks met die polisie te doen nie en dit is groepe wat dan
 25 dit doen om meer, as ek kan sê politieke aandag te kry, dit

<p style="text-align: right;">Page 19698</p> <p>1 groter uit te blaas en dan weet hulle as hulle dit doen sal 2 daar aandag gegee word aan die probleem. So dit het niks 3 met die polisie te doen nie, dit is die way wat die 4 groepering –</p> <p>5 CHAIRPERSON: I think if one looks at the 6 previous page, beginning with your paragraph 14.3.4, it is 7 clear that this is not a stone that's being thrown at the 8 police, if I can call it that, it talks about how a 9 particular event can become history, the behaviour of 10 participants and incidents during similar events in the 11 past, a common knowledge, amongst all those preparing for 12 it in those presence. The historical context includes, 13 one, the history of previous incidences or negative 14 encounters with possible scores to be settled and a history 15 of routinising and utilising protests in such a way as to 16 enhance political resentment of indignation. I don't 17 understand that necessarily to be criticism of the police 18 at all, it is just the kind of things that happen, the way 19 protests had been dealt with in the past and now either old 20 scores that have to be settled or protesters become routine 21 or they'd been utilised in a way that causes resentment, 22 that's all that's being said. Mr Semenya, do you still 23 want to say something?</p> <p>24 MR SEMENYA SC: Chair, my difficulty is 25 not that it is associated with the police, I just don't</p>	<p style="text-align: right;">Page 19700</p> <p>1 waar hulle kla oor 'n water probleem maar dan gooi hulle 2 rotse en klippe van die br?e af op 'n persoon wat verby ry, 3 dit maak nie saak wie daardie persoon is nie, dit kan u 4 wees, dit kan ek wees, dit kan enige persoon wees, dit gee 5 nie om nie. Dit is waarna hier verwys word, so hulle weet 6 as hulle na die ergste toe gaan en hulle gaan brand 'n 7 kliniek af of hulle gaan beskadig die skool dan kry hulle 8 meer aandag. Dit word in die media gedek en skielik raak 9 die politieke party of die MEC betrokke en gee opdrag dat 10 daar dan iets gedoen moet word daaraan.</p> <p>11 Noordwes word geteister deur baie, baie service 12 delivery and crowd management aksies. Ek het dit genoem en 13 as ons dit vergelyk met die ander provinsies wil ek amper 14 sê ons is tweede of derde meeste in die land. So my 15 ondervinding in die sake van hierdie 3,000 plus wat ek 16 hanteer het, dit is wat ek experience en dit is ongelukkig 17 wat die polisie dan moet polisier en te probeer daardie 18 mediator rol speel om alles weer terug te kry na 'n kalm 19 posisie dat die partye vreedsaam kan onderhandel en dit is 20 presies wat ons probeer het in hierdie geval, mnr die 21 Voorsitter, van die 14de af, die 15de. Ons het gaan 22 probeer onderhandel, ons het die partye probeer bymekaar 23 kry, daar is verskeie opsies, goed wat ons probeer het tot 24 op 'n stadium dat dit nie kon nie en daar 'n aanval op ons 25 was.</p>
<p style="text-align: right;">Page 19699</p> <p>1 know how neutralising protests, the history of neutralising 2 protests and hence –</p> <p>3 CHAIRPERSON: It is neutralising protests 4 in such a way as to enhance political resentment and 5 indignation.</p> <p>6 MR SEMENYA SC: The sort I don't 7 understand –</p> <p>8 CHAIRPERSON: If you neutralise protests 9 in a way which makes people cross and indignant they 10 protest about something and you close off a road, so they 11 can't go there and protest, there are all sorts of examples 12 he can give us from his practical experience where protests 13 were dealt with by saying municipalities or local 14 government people, you know if the protest was neutralised, 15 rendered ineffective by heavy handed action which made 16 people very angry and indignant, is that –</p> <p>17 BRIGADIER CALITZ: Mnr die Voorsitter, -</p> <p>18 CHAIRPERSON: Is that the way you 19 understand it?</p> <p>20 BRIGADIER CALITZ: Die meeste van die 21 kere waar daar protes is en groeperinge bymekaar is, of ons 22 dit nou wil weet of nie, erken of nie, 80, 90% is die 23 persone aan die ontvang kant die publiek, die onskuldige 24 publiek. As ons 'n pad toepak dan pak hulle byvoorbeeld 25 die N4 toe, ek sal 'n voorbeeld noem, in Noordwes by Bapong</p>	<p style="text-align: right;">Page 19701</p> <p>1 MR BIZOS SC: In fact prevented the crowd 2 from going to their employer's football ground, prevented 3 them from going to their offices, isn't that what this may 4 refer to? Isn't that counterproductive?</p> <p>5 BRIGADIER CALITZ: Nee, dit is glad nie 6 wat op die dag gebeur het nie en dit is nie feite of 7 evidence sover ek weet nie.</p> <p>8 CHAIRPERSON: Sorry, Mr Bizos, that's an 9 over simplification of what happened. It was possible for 10 the vast majority of the strikers who wanted to go to 11 Nkaneng to do so, because all what happened was a 12 particular route or routes were no longer available and 13 that is what happened but it is not correct to say that 14 they were prevented totally from going to Nkaneng.</p> <p>15 MR BIZOS SC: But they were not allowed 16 to go near their employer's premises. That's clear on the 17 evidence as a whole, this is why the koppies or the open 18 ground was chosen, this is how I have understood the facts.</p> <p>19 MR SEMENYA SC: No, that's not correct, 20 Chair. The evidence is that they abandoned the stadium 21 because of the looming problem they would have had with NUM 22 members.</p> <p>23 CHAIRPERSON: Well, there was also some 24 suggestion that the stadium was locked as well, but –</p> <p>25 MR SEMENYA SC: By the police, Chair.</p>

<p style="text-align: right;">Page 19702</p> <p>1 CHAIRPERSON: No, it is correct that 2 they, the evidence seems to indicate that they or they 3 certainly claimed that they were afraid that they would be 4 killed by NUM and they were afraid they would be attacked 5 by NUM. 6 MR SEMENYA SC: There is no evidence, 7 Chair, that the police locked the stadium. 8 CHAIRPERSON: No, no, no, no, sorry, this 9 point I'm putting to you, it is a point in your favour, so 10 don't fight with me about it. 11 MR BIZOS SC: But we're dealing with 12 general positions, Mr Chairman, if they didn't apply they 13 didn't apply, but these are the opinions of the experts as 14 to how employers and the police should behave vis-a-vis 15 their workers. 16 CHAIRPERSON: I understand that, Mr 17 Bizos, but you know if they, these are general propositions 18 which of course apply – 19 MR BIZOS SC: Yes – 20 CHAIRPERSON: - in wide variety of 21 circumstances. Those who don't apply to this case, there 22 is not much point in putting them because – 23 MR BIZOS SC: Yes – 24 CHAIRPERSON: - they just waste our time. 25 MR BIZOS SC: Very well, I will proceed</p>	<p style="text-align: right;">Page 19704</p> <p>1 ander police personnel, police personnel, beslis, dit hang 2 af, jou senior, in my geval een van my generale, to apply 3 uncompromising tactics and strategies. Dit was nog nooit 4 vir my gegee deur enige generale, in my geval kan ek daarop 5 getuig nie en ondertoe, ek het beslis ook nie as 'n police 6 personnel van enige van my lede verwag om tactics and 7 strategies te gebruik wat hulle dan so in die moeilikheid 8 kan kry, kan ek dit so stel nie. As dit wel gebeur is dit 9 individuele gevalle. Ons hoor baie van arrestasies, ons 10 hoor baie van polisie persone wat gearresteer word oor een, 11 twee, drie, vier, vyf en korrupsie, miskien daardie 12 individue, maar glad nie in hierdie konteks nie, nee. 13 MR BIZOS SC: The document also deals, I 14 want to cut it short, the document also deals on page 11 15 and subsequent pages with how the standing orders are to be 16 observed. You've been through that? 17 BRIGADIER CALITZ: Ek is op bladsy 11. 18 MR BIZOS SC: You've been through to how 19 the opinion of the experts, the standing order should be 20 interpreted and how they should be adhered to? 21 BRIGADIER CALITZ: Vra u vir my of ek 22 saamstem of net of ek deur dit gegaan het? 23 MR BIZOS SC: No, have you been through 24 it? 25 BRIGADIER CALITZ: Ek het deur dit</p>
<p style="text-align: right;">Page 19703</p> <p>1 with the next point, Mr Chairman. 14.3 we've already dealt 2 with. Different, - 14.3.6, "Different perceptions and past 3 conflicts contribute to the political or ideological 4 context with the issues and their manifestations are 5 debated by politicians and pressure groups, especially in 6 the media, factors that exacerbate the political or 7 ideological context of the this order include hard line 8 government willing to sanction police repression, an 9 explicit pressure on the police from government and other 10 politicians, interest groups, the general public, the media 11 or police personnel to apply uncompromising tactics and 12 strategies." Would you in principle agree with all or some 13 of those matters? 14 BRIGADIER CALITZ: Mnr die Voorsitter, ek 15 dink ek kan miskien net op die laaste een comment lewer, 16 oor die 4.3.6 kan ek glad nie op kommentaar lewer nie en 17 3.6.1 ook nie. Government willing to sanction police 18 repression, ek verstaan nie regtig nie, so ek het dit nog 19 nooit ondervind nie en dan die 6.2, explicit pressure on 20 the police from government and other politicians, interest 21 groups in general public, the media, the police to apply 22 uncompromising tactics and strategies. In my 20 jaar 23 ondervinding in Openbare Orde Polisiëring het ek nog nooit 24 toegelaat dat enige MEC, interest groups, politieke partye, 25 definitief nie die publiek nie, beslis nie die media nie of</p>	<p style="text-align: right;">Page 19705</p> <p>1 gegaan, ja. 2 MR BIZOS SC: Do you find yourself, do 3 you find authority of their view to substantiate your view 4 that you didn't have to observe certain of the standing 5 orders because of the special circumstances? 6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 nee, daar is verskeie punte in hierdie – 8 CHAIRPERSON: Mr Bizos, I don't think 9 that question can be permitted in that general form. You 10 say in his view he didn't have to comply with certain of 11 the standing orders. Now I take it, it would be 12 appropriate to put the particular instances to him. I mean 13 there was one example where they had to come back, 14 commanded to come back with plans which couldn't be done in 15 this case because of the time problem. That's one instance 16 where he said it wasn't practical. I can't remember the 17 others, there may be others but I can't remember any 18 others, but I think in fairness to him you should put to 19 him what you say are the instances where he says he was 20 free to depart from the terms of the standing order so that 21 he can deal with them. 22 MR BIZOS SC: Do you contend that you 23 didn't have to observe certain of the standing orders 24 because of the special circumstances of this case? I know 25 that Colonel Scott did but I have been asked to ask you</p>

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1 directly whether you share the view that you could ignore
2 the standing orders.
3 BRIGADIER CALITZ: Ek weet nie wat
4 Kolonel Scott se view was, of dit enige getuienis was nie,
5 ek is nie bewus daarvan nie, beslis nie ignore enige
6 Staande Orde nie. Hoekom ons op Staande Orde 262 werk is
7 dat dit is die enigste Staande Orde na genoeg om te beskryf
8 hoe crowd management gedoen moet word, maar ons weet op die
9 dag dat hierdie was nie 'n normale crowd management
10 situasie nie en daar nie 'n ander dokument in the polisie
11 bestaan vir die unieke omstandighede wat daar plaasgevind
12 het nie. So hoekom Staande Orde 262 gebruik word is, as ek
13 miskien vir u dit so kan stel, Staande Orde 262 is van
14 toepassing waar u sal aansoek doen vir 'n optog na 'n
15 spesifieke plek, die Apartheids Museum en dan u is die
16 organiseerder daarvan en dan sal ons sit, wat ons noem 'n
17 Section 4 en in die Section 4 meeting sal u vir my sê
18 hoeveel mense gaan deelneem, wie sal die marshals wees,
19 sulke tipe van en dan gaan ons op 'n ooreenkoms skriftelik
20 saam met die munisipaliteit en saam met die organiseerder
21 en saam met die polisie 'n ooreenkoms teken en nadat die
22 ooreenkoms geteken is gaan u terug na u party toe en dan
23 daarna sal dit dan 'n wettige byeenkoms wees. So dit is
24 wat Staande Orde 262 behels.
25 Dit is geskryf vir omstandighede waar ons 'n

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1 Section 4 kan hê, waar daar vooraf gesit kan word saam met
2 al die rolspelers om die tafel, daar genoeg tyd is vir elke
3 persoon om die tafel om te gaan voorligting gee, terug te
4 kom met 'n behoorlike plan wat ons dan van praat van 'n OCD
5 plan en dan van daar af daarop te werk. So dit was die
6 naaste moontlike dokument wat ek sê nie geignoreer is nie,
7 maar sekere dele van toepassing wou gemaak het op die dag
8 van die 16de wat nie kan gebeur nie.
9 CHAIRPERSON: Now, Mr Bizos, it is now
10 practically four o'clock, I take it you are not going to
11 finish today?
12 MR BIZOS SC: I have a few more specific
13 things –
14 CHAIRPERSON: Yes, may I suggest that we
15 –
16 MR BIZOS SC: - that I want to refer to.
17 CHAIRPERSON: - that we have a look at
18 them tomorrow morning?
19 MR BIZOS SC: Relating to –
20 CHAIRPERSON: Will you have a look at
21 them tomorrow morning?
22 MR BIZOS SC: Yes.
23 CHAIRPERSON: And then the next cross-
24 examiner is going to be Mr Mpofo.
25 MR MPOFU: I'm sorry, Chairperson?

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1 CHAIRPERSON: I won't disappoint you,
2 what I said was, I take it you're going to be the next
3 cross-examiner?
4 MR MPOFU: Yes, you take it correctly,
5 Chairperson.
6 CHAIRPERSON: Okay, that's right. So Mr
7 Bizos is going to be a little while tomorrow.
8 MR MPOFU: Oh.
9 CHAIRPERSON: And then if your other
10 commitments allow you you'll be here to cross-examine on
11 behalf of your clients, is that right?
12 MR MPOFU: Yes, Chairperson. Well, my
13 understanding is Mr Bizos says that I was going to come in
14 today but –
15 CHAIRPERSON: But you know lex non cogit
16 ad impossibilia, I'm not sure we've got a Latin interpreter
17 here but it means the law doesn't compel people to do the
18 impossible.
19 MR MPOFU: Yes.
20 CHAIRPERSON: And Mr Bizos was doing his
21 best, but there was a fair degree of injury time for which
22 he is not responsible. So I'm sure you'll forgive him.
23 MR MPOFU: Yes.
24 CHAIRPERSON: And let's hope you don't
25 pick up too much injury time tomorrow, so we'll start

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1 tomorrow morning. So we'll carry on tomorrow but let me
2 just ask the witness something, have you got all Mr Mpofo's
3 documents?
4 BRIGADIER CALITZ: Mnr die Voorsitter,
5 ja, ek wou net seker gemaak het die dokumente wat hy wel
6 deurgegee het na ons administratiewe kantore, of dit nog
7 steeds daardie bundel is?
8 MR MPOFU: Ja.
9 BRIGADIER CALITZ: Of daar van dit is wat
10 ons kan, want dit is baie koste effektief om, u sal sien
11 die pakke bundels wat ons bind en dan gebruik ons 2%
12 daarvan, dit is nogal redelike moeite en koste effektief
13 vir die personeel wat dit saamstel.
14 CHAIRPERSON: I think what we will try to
15 do is to ensure that he uses 110%.
16 BRIGADIER CALITZ: I will love the 10%.
17 MR MPOFU: Chairperson, I can only give
18 this assurance that, yes, it is a document that I listed,
19 any other documents that I might refer to would be
20 documents that might have been referred to, let's say by Mr
21 Bizos or someone else. There is one picture which I have
22 just found, so I will share it with Mr Semanya and –
23 CHAIRPERSON: And regard being had to the
24 fact that Mr Bizos' bundle is quite thick.
25 MR MPOFU: Yes.

1 CHAIRPERSON: It is very difficult for
2 the witness if he has got to bring that bundle along as
3 well.
4 MR MPOFU: Yes.
5 CHAIRPERSON: If there is something
6 specific in Mr Bizos' bundle I think you should tell him so
7 that he can take it out and have it ready with his bundle
8 of your documents.
9 MR MPOFU: Yes, Chair.
10 CHAIRPERSON: Together with this new
11 photograph that you are going to give to him.
12 MR MPOFU: Thank you, Chairperson.
13 CHAIRPERSON: Alright, we'll adjourn now
14 until nine o'clock tomorrow morning.
15 [COMMISSION ADJOURNED]
16 .
17 .
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