

# 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 171

17 JANUARY 2014

PAGES 20107 TO 20240



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1 [PROCEEDINGS ON 17 JANUARY 2014]  
 2 [09:19] CHAIRPERSON: The Commission resumes.  
 3 Brigadier, you're still under oath.  
 4 ADRIAAN MARTHINUS CALITZ: Dankie, mnr  
 5 die Voorsitter.  
 6 CHAIRPERSON: Mr Mpofu.  
 7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 8 Thank you very much, Chairperson. Good morning, Brigadier.  
 9 BRIGADIER CALITZ: Good morning,  
 10 Advocate.  
 11 MR MPOFU: Okay, before we move on, I  
 12 just want to round off the topic that we were busy with  
 13 when we adjourned, and that was the issue of the alleged  
 14 threat which according to the police version played a role  
 15 in what subsequently happened, and just to remind you, you  
 16 remember that you and I had agreed that the two versions of  
 17 what Mr Noki allegedly said would give completely different  
 18 implications.  
 19 Now I want to say this. Maybe let me start at  
 20 the end. I'm going to argue that it is improbable that Mr  
 21 Noki said that they were going to kill the police, and that  
 22 it is more probable that he said they – the strikers – were  
 23 willing to die, and of course I do appreciate your  
 24 disadvantage in this regard because as we know, this is  
 25 something you got through the medium of the interpreter, so

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1 I'm not going to – I mean I'm going to regard that as part  
 2 of what I'm going to say to you.  
 3 MR SEMENYA SC: No, Chair, I suffer a  
 4 much greater difficulty in understanding how Mr Mpofu can  
 5 calculate probabilities when we know he didn't consult with  
 6 Mr Noki.  
 7 CHAIRPERSON: He did not?  
 8 MR SEMENYA SC: He did not consult with  
 9 Mr Noki.  
 10 CHAIRPERSON: No, but in the case, if it  
 11 is alleged that a dead person while he was alive behaved in  
 12 a particular way and someone says, well, he couldn't have  
 13 behaved in that way because that's very improbable that he  
 14 would have done that, then the point can be raised.  
 15 Whether it's a good point or bad point, whether the  
 16 probabilities are as Mr Mpofu is going to suggest is  
 17 perhaps another matter, but I don't think I can stop him  
 18 from putting what effectively is an argument, that it's  
 19 unlike that this deceased person acted in this particular  
 20 way while he was still alive. So I'll allow him to do  
 21 that, but it really goes to weight. The weight may not be  
 22 very substantial; it may. It's too early for us to say.  
 23 There are other aspects on this point which presumably will  
 24 have to be looked at. You can carry on, Mr Mpofu, for the  
 25 time being.

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1 MR MPOFU: Thank you, Chairperson. And  
 2 Brigadier, I'll base that, or rather, I'll base – that's  
 3 why I use the word advisedly, probability – I'll base, my  
 4 persuasion of the Commission to accept that argument will  
 5 be based on objective evidence which I'm just going to deal  
 6 with you now, okay.  
 7 CHAIRPERSON: May I ask the evidence  
 8 leaders and Mr Semanya, do we know whether there are any  
 9 recordings of what was said during the course of the  
 10 negotiations between the witness and Lieutenant Colonel  
 11 McIntosh and some of the strikers? If we –  
 12 MR SEMENYA SC: Chair, no, we do not, but  
 13 we do have a statement of the Lonmin interpreter.  
 14 CHAIRPERSON: No, I know that, but the  
 15 Lonmin interpreter, at the moment Lonmin hasn't disclosed  
 16 his name and he hasn't signed the affidavit; he's merely  
 17 put his fingerprints on it, and there may be problems in  
 18 relation to assessing the weight of an affidavit from an  
 19 anonymous person and so we have, I know we have the  
 20 statement, I understand that, but when it comes to  
 21 questions of weight when you've got that kind of thing –  
 22 now I'm not sure to what extent Mr Noki was alone when he  
 23 spoke, or whether he spoke within earshot of some of his  
 24 colleagues. So these are all matters that are important,  
 25 but you say as far as you know there isn't a tape recording

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1 of that, because that would be helpful. But if there  
 2 isn't, then –  
 3 One of the questions I asked you yesterday,  
 4 because I said you shouldn't find out, maybe the SAPS or  
 5 the evidence leaders should, you mentioned the names of the  
 6 people who were with you in Papa1 at the time these threats  
 7 were allegedly made and I was interested to know whether  
 8 any of them could understand Fanagalo, but I take it you  
 9 haven't made the enquiries, but presumably there are  
 10 affidavits of course from some of them. But that's a  
 11 matter we can look into in due course.  
 12 BRIGADIER CALITZ: Dis korrek, mnr die  
 13 Voorsitter. Ek het dit nie opgevolg nie omdat u dit, die  
 14 taak vir iemand anders gegee het, maar ons kan dit –  
 15 CHAIRPERSON: I don't want you to do it,  
 16 you see, because otherwise there'd be allegations – or no –  
 17 BRIGADIER CALITZ: Ek verstaan –  
 18 CHAIRPERSON: There may be allegations  
 19 that you've been tampering with witnesses and so on.  
 20 That's not a route we want to go, but there's no reason why  
 21 the SAPS team can't interview these witnesses, and the  
 22 evidence leaders can interview them as well, but –  
 23 BRIGADIER CALITZ: Korrek, mnr die  
 24 Voorsitter.  
 25 CHAIRPERSON: You keep out of it.

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1 BRIGADIER CALITZ: Ek sal so maak,  
2 dankie, mnr die Voorsitter.

3 MR MPOFU: Thank you. The Chairperson –  
4 CHAIRPERSON: I'm sorry to interrupt. I  
5 thought I indicated yesterday that I'd like that exercise  
6 to be performed, but obviously there hasn't been time to do  
7 it yet. But alright, Mr Mpofo, please proceed.

8 MR MPOFU: Thank you very much,  
9 Chairperson. Brigadier, the Chairperson is quite correct;  
10 if there was a tape recording of this it would take us one  
11 second to know what was said. Because there isn't, we have  
12 to rely on indirect evidence, and what I was saying to you  
13 when we adjourned yesterday is simply this: whether through  
14 an interpreter or eavesdropping or whatever, what is clear  
15 is that it came to the attention of the South African  
16 Police Service that Mr Noki had said that they, had said to  
17 Mr Mathunjwa at least - I know this is a bit earlier, but  
18 I'm facing the probabilities, as I've indicated – that at  
19 least to Mr Mathunjwa at 15:35 the strikers said – or  
20 firstly let's take one step back. Mr Mathunjwa said,  
21 "Look, you're going to be killed." We went through that  
22 yesterday, and they in response said, "We are prepared to  
23 die." In other words, they were the ones who were going to  
24 be prepared to die, and the evidence of that is at L189  
25 which I read out to you yesterday, where the police version

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1 itself says that, "Mr Joseph Mathunjwa remarked to the  
2 protesters they would die that day if they continued with  
3 their course of action, to which they responded that they  
4 were prepared to die there that day." Okay, so that's the  
5 police confirming the attitude of the strikers. You accept  
6 that that's the police version?

7 BRIGADIER CALITZ: Ek stem saam met u dit  
8 is wat op bladsy 189 staan.

9 MR MPOFU: Ja, okay. Now we then take it  
10 a step further from there and if you can go to – and in  
11 that, what is in the police statement is common cause  
12 because Mr Magidiwana also testified that after Mr  
13 Mathunjwa's address the response of the workers was that  
14 'Well, if they want to kill us let them kill us. We want  
15 money,' and so on. He said all the things that he said in  
16 this Commission. So that's the second pointer. First  
17 pointer is the police themselves, Mr Magidiwana, now I'm  
18 going to take you to the third pointer. If you can go to  
19 JJJ34, slide 31. It's just a slide.

20 BRIGADIER CALITZ: Sê net weer, JJJ?  
21 MR MPOFU: 34. It's just a slide. Okay,  
22 you can see it. This is –  
23 CHAIRPERSON: That's not the same as what  
24 it's in exhibit L.  
25 MR MPOFU: Yes, it's not –

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1 CHAIRPERSON: This is an earlier version,  
2 and -  
3 MR MPOFU: Yes, an earlier version –  
4 sorry, Chairperson.

5 CHAIRPERSON: It is an earlier version  
6 which was taken from one of the computers, I think of  
7 Colonel Scott, and it was at Roots. For some reason or  
8 other the, it was changed in the final version of the  
9 police presentation, exhibit L, but what appears to have  
10 been said at one stage at Roots, which was recorded by one  
11 of the people there and in fact put into an earlier draft  
12 of the presentation, was that what Noki – because he was  
13 presumed the leader – told you obviously through an  
14 interpreter was the protesters had made a contract that  
15 they would not lay down their arms and were willing to die,  
16 there was no turning back. That's what's being put to you  
17 by Mr Mpofo.

18 MR MPOFU: That's correct. Thanks,  
19 Chairperson. So we have the third pointer, which as the  
20 Chairperson says comes from a version of the police, what  
21 we call the previously undisclosed information, which was  
22 an earlier version of L where once again the police  
23 themselves say that what was said, telling you, Brigadier  
24 Calitz, "nogal," was that the protesters have made a  
25 contract that they would not lay down their arms and were

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1 willing to die, and it's put in quotes to suggest that that  
2 is what was said. Do you see that?

3 CHAIRPERSON: [Microphone off, inaudible]  
4 now you were at Roots. I'm not sure whether you were  
5 present at that particular session, but are you able to  
6 tell us whether some – it looks as if it's a version of  
7 what you said because the way it's written down is that the  
8 leader approached the police, telling Brigadier Calitz, and  
9 then the bits in quotation marks. So did you at any stage  
10 at Roots say to those who were recording the information so  
11 that it could be put into the police presentation, what we  
12 see there in the passage in quotation marks in the third  
13 bullet on this slide?

14 BRIGADIER CALITZ: Mnr die Voorsitter,  
15 nee, ek weet nie op watter stadium hierdie – net hoe lank  
16 voor, of is dit die eerste "inputs" wat gekry is of – maar  
17 ek het nie, die woorde soos dit hier staan het ek nie  
18 meegedeel nie. Ek het wel "inputs" gehad van wat aan my  
19 gesê is en dit het ek reeds oor getuig en dit is in my  
20 verklaring. Hierdie lyk soos 'n kombinasie van – ek wil  
21 nou nie afleidings maak nie, die "contract" lyk soos  
22 miskien verwysende na daardie "signed" papier, die "lay  
23 down of arms," daar is verskeie kere wat ons wel vir hulle  
24 gesê het om hulle wapens neer te lê, dis onwettig, en dat  
25 hulle dan indikasie gegee het hulle gaan nie, en "we were

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1 willing to die that day," "we were willing to die that  
2 day," dit is nie van hulle af; dit het ek na die tyd op die  
3 video wat ek dink Advokaat na verwys het, het ons dit eers  
4 gesien. Maar hulle het die dreigement aan ons gemaak, nie  
5 dat hulle bereid is om te –

6 CHAIRPERSON: So if you didn't say that  
7 and it was – but someone said it at Roots and it was  
8 correctly recorded by Colonel Visser or whoever it was who  
9 was writing these things down and putting them into the  
10 draft presentation, then presumably it would have been said  
11 by somebody else who was in the Nyala with you?

12 BRIGADIER CALITZ: Dis hoekom ek sê, mnr  
13 die Voorsitter, dit lyk vir my, as ek nou my mening  
14 uitspreek, dit lyk na 'n opsomming van die "inputs" wat  
15 gegee is, maar nie in die spesifieke woorde –

16 CHAIRPERSON: Ja, the inputs, but I'm  
17 interested in who would have given the input, you see, and  
18 the inputs about what was said in these negotiations  
19 between you on the one hand and the leader of the militant  
20 group on the other could only have come presumably from  
21 people who were with you in your Nyala. Is that right?

22 BRIGADIER CALITZ: Dit kan slegs Pappa1  
23 se personeel wees in die Nyala.

24 CHAIRPERSON: Ja, okay.

25 BRIGADIER CALITZ: Dit is korrek, mnr die

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1 Voorsitter.

2 CHAIRPERSON: You agree with that.

3 MR MPOFU: Thank you, and just to go back  
4 to where we started, what I'm saying is that it is based on  
5 those pointers that I've given you, what Mr Noki said, what  
6 Mr Magidiwana – I'm sorry, what the strikers said to Mr  
7 Mathunjwa, what Mr Magidiwana says was their response, and  
8 what the police's own initial version of what it is that  
9 was said, it is based on those that I will argue that – and  
10 fourthly the fact that through no fault of your own you  
11 received this via the medium of an interpreter. It's not  
12 as if you, it's something you heard, you are put banging  
13 your hands on the table that you heard with your own ears,  
14 and I'm saying with all those factors would tend to suggest  
15 that Mr Noki said that they were prepared to die as opposed  
16 to that they were going to kill you. Would you care to  
17 comment?

18 BRIGADIER CALITZ: Mnr die Voorsitter,  
19 nee, ek hoor wat u sê. Ek dink op die eerste een, die  
20 video wat gemaak is, dit is wat ek sê het ons in  
21 "hindsight" nou gesien toe hy met hulle gepraat het. Ek  
22 weet daar was een van die "protesters" wat wel 'n  
23 dreigement gemaak het en gesê het dat die polisie wat hier  
24 is, ek dink van die buite provinsies of so iets, ek het nie  
25 die tuis –

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1 CHAIRPERSON: The evidence was that  
2 policemen that come from the homelands, the "tuislande" –

3 BRIGADIER CALITZ: Die tuislande.

4 VOORSITTER: 'n Tuisland.

5 BRIGADIER CALITZ: Ja, ek het probeer kyk  
6 na die video's, ek dink dis in die CC-reeks, maar ons het  
7 nie die transkripsie gedeelte, so dis in 'n taal wat ek nou  
8 nie verstaan, so, maar ek weet wel dit was reeds as 'n  
9 bewysstuk ingedien dat in die video gedeelte het hulle gesê  
10 die polisie, dat die polisie sal doodgaan, en dan –

11 CHAIRPERSON: Of course that wasn't said,  
12 that remark wasn't made, one can hear it on the tape, as I  
13 understand, but that wasn't made in the negotiations  
14 between you and the militant group.

15 BRIGADIER CALITZ: Nee, mnr die  
16 Voorsitter.

17 CHAIRPERSON: What Mr Mpofo is busy with  
18 is whether the evidence that's been given by the police  
19 that the militant group, or the leader in negotiations with  
20 you or with Lieutenant Colonel McIntosh made threats of  
21 this kind. That's what he's exploring at the moment. Have  
22 you put all the points to –

23 MR MPOFU: Yes, I have, Chairperson.  
24 I'll leave it for argument.

25 CHAIRPERSON: Alright.

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1 MR MPOFU: I think the –

2 CHAIRPERSON: Now tell me, you gave the  
3 names yesterday, I can't remember them, of the people who  
4 were with you in the Nyala. Were any of them either Xhosa  
5 or Zulu speakers?

6 BRIGADIER CALITZ: Ek vertrou wel, so –

7 CHAIRPERSON: Okay, can you remember  
8 their names, the people who were with you? You gave them  
9 yesterday, so you should remember them.

10 BRIGADIER CALITZ: Warrant Officer Nong,  
11 wat die drywer was, en –

12 CHAIRPERSON: Do you know what his home  
13 language is?

14 BRIGADIER CALITZ: Ek kan nie vir u sê  
15 nie, mnr die Voorsitter.

16 CHAIRPERSON: You don't know. Next one?

17 BRIGADIER CALITZ: Dan is daar Seeko,  
18 Kgosana, Kaptein, ek dink dis –maar ja, ek het nou nie die  
19 name voor my nie –

20 CHAIRPERSON: If you're not sure we can  
21 find out, I'm sure, with more accuracy from some or other –

22 BRIGADIER CALITZ: Daar was drie lede –  
23 ja, 'n offisier, 'n kaptein, en die drywer, Adjudant  
24 Offisier Nong, vyf lede wat ek glo kan dan "either" Xhosa,  
25 miskien Fanagalo, miskien Tswana praat.

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1 CHAIRPERSON: Well, I understand that  
 2 Fanagalo is a mixture, it's an artificial language used on  
 3 the mines initially. It's a mixture of a number of  
 4 indigenous languages.  
 5 BRIGADIER CALITZ: Dit is wat die  
 6 "interpreter" –  
 7 CHAIRPERSON: With a, so I understand we  
 8 may have to lead evidence on this, but with a fairly strong  
 9 Nguni base, so that Nguni speakers are able to understand  
 10 Fanagalo. But anyway, that's a matter we don't have to  
 11 explore with you because you can't help us on it, but we  
 12 may have to investigate it more fully. If your comrades,  
 13 or your colleagues in the Nyala are able to remember  
 14 independently what was said, but that may not even be the  
 15 case either, but we won't waste time with you on it. It's  
 16 a matter we'd have to investigate.  
 17 BRIGADIER CALITZ: Dankie, mnr die  
 18 Voorsitter.  
 19 MR MPOFU: Chairperson, I'm sorry, I  
 20 misled you when you asked me if I've put all the points.  
 21 There is one more point. Brigadier, if you go to – or let  
 22 me put it this way. The last point, or pointer that I am  
 23 going to use to support the argument that the Commission  
 24 must reject the evidence that Mr Noki made that threat will  
 25 be the fact that the interpreter himself does not say that

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1 Mr Noki or anybody said that the police are going to be  
 2 killed. Now if you got this from the medium of the  
 3 interpreter, then obviously the person who must be closer  
 4 to the truth must be the interpreter. I think that's  
 5 obvious, isn't it?  
 6 BRIGADIER CALITZ: Ja, soos ek sê, ek het  
 7 dit maar via Kolonel McIntosh, wat met die "interpreter" in  
 8 gesprek is, het ek die boodskap gekry.  
 9 MR MPOFU: Okay, and the highest that the  
 10 interpreter puts it in – if we go to JJJ202 -  
 11 [09:39] CHAIRPERSON: He says in paragraph 46 -  
 12 MR MPOFU: 45 –  
 13 CHAIRPERSON: - of Exhibit JJJ202, it is  
 14 page 3 of the affidavit, well, I'll read from 45, "Two  
 15 people came forward and they said to us, today there will  
 16 be a fight." At 46, "They said the police and the strikers  
 17 must sign a paper that there will be a fight but there is  
 18 no piece of paper. I do not know whether the brigadier  
 19 answered that question," and then at 48 he says, "They  
 20 started threatening us, they said the police will run away  
 21 by foot today. They told us the police would leave the  
 22 Nyalas there, the police would run away on foot." So  
 23 that's part of the statement.  
 24 MR MPOFU: Ja, thanks, and that's why I  
 25 used the words, the highest, even at the highest of what

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1 the interpreter is saying, there is nowhere where he says  
 2 that Mr Noki or anybody said they were going to kill you  
 3 and I suppose the brigadier that he is referring to is you,  
 4 so this means you were involved in this discussion. You  
 5 were the only brigadier in the interpreter's Nyala,  
 6 correct?  
 7 BRIGADIER CALITZ: Dit is korrek, ja, so  
 8 –  
 9 MR MPOFU: Ja, okay –  
 10 BRIGADIER CALITZ: - ek sien nie die  
 11 woorde wat u verwys na nie, die woorde "kill", net die  
 12 woorde "threatening, run away, will leave the Nyalas there  
 13 and run away," ja.  
 14 CHAIRPERSON: So he of course supports  
 15 the version which the witness has given to us, that it was  
 16 said the police and the strikers must sign a paper that  
 17 there would be a fight, but there was no piece of paper.  
 18 There is a slightly different version of that of course in  
 19 the slide to which you referred –  
 20 MR MPOFU: Yes, -  
 21 CHAIRPERSON: - the earlier part at Roots  
 22 but insofar as we are looking at this anonymous affidavit  
 23 by this person, that's in it, but anyway we can have it  
 24 before us.  
 25 MR MPOFU: Yes, Chairperson, I am putting

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1 it in fairness to the witness to say at worst the  
 2 interpreter is 50/50, as he would put it, but the other  
 3 objective evidence that I've put to him suggests the  
 4 opposite. So in fairness, that's why I was saying I have  
 5 to put this last pointer to him. So anyway, so the  
 6 argument, I'm sure one day Mr Semenya and I will deal with  
 7 all those pointers. What I want to say to you really,  
 8 Brigadier, is this, the concern about this is not so much  
 9 that the wrong thing gets propagated, it has serious  
 10 implications in that Mr Noki is not here to answer for  
 11 himself. You know there is a book that has been written  
 12 which is entitled "We are going to kill each other today,"  
 13 and those words are attributed to Mr Noki and from what  
 14 I've just said he may never have said those words. So it  
 15 is that kind of thing that a person who is deceased, who  
 16 can't answer for himself, can be prejudiced forever simply  
 17 because of, and I'm not at this stage attributing it as an  
 18 intentional thing, I will just now, but I'm just saying  
 19 that it is that kind of danger. Do you understand what I'm  
 20 saying?  
 21 BRIGADIER CALITZ: Ek hoor wat u sê, mnr  
 22 die Voorsitter.  
 23 MR MPOFU: Do you accept that it is  
 24 undesirable for someone who has departed, leaving loved  
 25 ones to be misquoted possibly in that way, on such a

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1 crucial point?

2 BRIGADIER CALITZ: As hy wel ge-misquote

3 was sal ek saam met u stem.

4 MR MPOFU: Thank you, so that's the first

5 concern. The second concern is something which is more

6 sinister which is that another reading of this changing of

7 Mr Noki, of what Mr Noki said, insofar as it may be

8 deliberate, - well, what we know that it was deliberate to

9 remove that bullet point from the presentation until it was

10 discovered. So if it was deliberate to misquote Mr Noki

11 then it points to something even more serious, which is

12 that the police are prepared to go to any length and to

13 even lie about someone who has departed in order to portray

14 the strikers as belligerent and to support this theory that

15 they were being attacked. Now that is even more serious,

16 the other one is serious for Mr Noki and his family, but

17 this, what I'm saying to you now is something that would

18 have serious implications for this Commission. What would

19 you say to that?

20 BRIGADIER CALITZ: Mnr die Voorsitter,

21 ja, ek het glad nie Kolonel Scott se getuienis gevolg nie,

22 so vir hom of Kolonel Visser wat dan miskien getuig het oor

23 of hierdie deliberate remove was, soos wat u -

24 CHAIRPERSON: No, Colonel Visser hasn't

25 testified yet.

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1 BRIGADIER CALITZ: O, sê dan net Kolonel

2 Scott, of daar getuienis was dat hy hierdie stukkie

3 deliberate remove is, soos u sê en dit is discovered, en of

4 dit deel was van notas en uiteindelik tot 'n dokument

5 saamgestel is, so ek kan u nie help en sê, in daardie geval

6 nie. Wat ek hier voorheen geantwoord het, dit het gelyk

7 vir my soos 'n samevatting en miskien later is die finale

8 dokument saamgestel toe al die inligting ingesamel was, so

9 ek kan u ongelukkig nie met daardie een verder help nie.

10 MR MPOFU: Okay, well, apropos this, what

11 I call a serious matter, you may or may not be aware that

12 there is a general belief certainly held by my clients that

13 the police leadership will stop at nothing to protect its

14 members and each other, including lies and exaggerations

15 and distortions such as the one that you and I have been

16 discussing, in order to give a particular slant to the

17 events and my emphasise is on the deliberateness, if people

18 make mistakes and they might have perceived things

19 differently, we all make mistakes. I'm talking about a

20 situation where there is a deliberate distortion of events,

21 sometimes taking advantage of the fact that people are not

22 there to answer for themselves.

23 CHAIRPERSON: Mr Mpofo, forgive my

24 interfering, intervening but -

25 MR MPOFU: Yes -

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1 CHAIRPERSON: - what is the relevance of

2 the belief your clients hold on that and the fact that your

3 clients may have a belief on the point, of the nature that

4 you've described doesn't take the case any further and the

5 question is whether the belief is well founded.

6 MR MPOFU: Yes, Chair.

7 CHAIRPERSON: And the mere fact that they

8 believe it takes the inquiry no further and I'm not sure

9 whether it is an appropriate question to put to this

10 witness, my clients believe that the police are going to

11 tell lies. Well, they may believe that but the police may

12 believe that your clients are going to tell lies. In both

13 cases we would ignore the belief of a person's concern and

14 concentrate on the evidence.

15 MR MPOFU: Well, thank you, Chairperson.

16 CHAIRPERSON: Unless of course, I take

17 it, some of that deliberateness has been attributed to this

18 witness, but -

19 MR MPOFU: Yes -

20 CHAIRPERSON: - the mere fact that your

21 clients believe that and I'm not suggesting for a moment

22 they don't and I'm prepared to accept that they do, but it

23 doesn't help me to decide whether their belief is correct,

24 so I'm not sure that it helps us.

25 MR MPOFU: Yes, thank you, Chairperson,

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1 I'm indebted to Commissioner Hemraj. Yes, that's exactly

2 the point, the point, when I say that that belief is widely

3 held by my clients and I might add, by my colleagues who

4 have had experience in this matter, the point is that, I'm

5 saying it is against the leadership of the police and this

6 witness is part of that in the context of this Commission

7 and I'm accusing him effectively.

8 CHAIRPERSON: I'm sorry to interrupt you

9 again.

10 MR MPOFU: I'm sorry, Chairperson.

11 CHAIRPERSON: I don't care in respect of

12 whom the belief is held, the question I'm putting to you is

13 the fact that your clients believe that doesn't help us to

14 decide whether they believe it is justified. That's my

15 point.

16 MR MPOFU: Yes, thank you.

17 CHAIRPERSON: And I would never when I

18 was counsel and I'm surprised if I may say so, that you

19 would put to witnesses on the other side that my clients

20 believe you telling an untruth, telling untruths, but I

21 would have been told by the judicial officer concerned that

22 your clients' belief is irrelevant, we at the end of the

23 day will decide whether that is correct or not. So I don't

24 think it is a fruitful line of cross-examination.

25 MR MPOFU: And as you said, Chairperson,

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1 unless it is attributed to this witness and I'm answering  
2 that part, I'm saying, yes, all what you've said is correct  
3 unless it is attributed to this witness and it is  
4 attributed to this witness.

5 COMMISSIONER HEMRAJ: Mr Mpfu, perhaps  
6 you can assist us by showing what aspect of this witness'  
7 conduct it is, to which you attribute that deliberate  
8 conduct.

9 MR MPOFU: Yes.

10 COMMISSIONER HEMRAJ: That will assist  
11 us.

12 MR MPOFU: Thank you, I'm going to argue  
13 as I've indicated earlier, that your evidence earlier that  
14 Mr Noki said that he is going to kill when he may have  
15 said, "they are going to die," as I've indicated, is a  
16 deliberate distortion on your part, specifically yourself  
17 in order to create an impression that there were life  
18 threatening statements which were made and the ultimate aim  
19 is to justify the false claim of self defence, you, you as  
20 the witness, Calitz.

21 BRIGADIER CALITZ: Mnr die Voorsitter, as  
22 ek dan net namens myself kan antwoord, ek stem nie saam met  
23 u nie. Die redes daarvoor is dat ek was nog nooit betrokke  
24 by enige toesmeerdery of probeer lede wat ons bewus is iets  
25 gedoen het om dit te probeer cover of toe te smeer nie. As

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1 u gaan na my video toe op die 18de sal u sien dat ek vir  
2 die lede gesê het, ons gaan 100% samewerking gee. Ek het  
3 vir hulle gesê hulle het niks om weg te steek nie. Ek het  
4 gesê presies wat gebeur het moet hulle ten vore kom in  
5 hulle verklarings, so van my kant af as bevelvoerder het ek  
6 uit my pad uit gegaan om seker te maak daar word 100%  
7 samewerking gegee met die verklarings van hierdie  
8 Kommissie.

9 So ek was nog nooit bewus daarvan nie en ek kan u  
10 definitief verseker dat nie een van my persone bo my, dit  
11 verwys na my generale, al ooit van my verwag het om iets  
12 toe te smeer of dat ek so 'n opdrag gekry het nie, so ek  
13 was nog nooit deel daarvan of het ek dit ondervind in my 27  
14 jaar loopbaan nie.

15 MR MPOFU: The second evidence, piece of  
16 evidence which I'm going to use to advance that,  
17 reinforcement of the belief that I'm talking to you about  
18 is the issue of your, you again, your justification of the  
19 placing of a boot or the kicking of a person when they were  
20 down literally, near the kraal where I will argue that you  
21 gave a really flimsy justification which cannot hold any  
22 water and I'll take you through that, and that is, if I'm  
23 correct, would be consulate with the belief that the police  
24 leadership, including yourself, will stop at nothing to  
25 protect even the un-protectable.

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1 BRIGADIER CALITZ: Mnr die Voorsitter, my  
2 antwoord op u sal wees, miskien net een regstelling in die  
3 toespraak of die stelling wat u nou gemaak het, is dat u  
4 het gesê "placing a boot or kicking," wat ek gesê ek het  
5 nooit die word "kicking" gebruik nie. Dit was uit konteks  
6 uit en ek het gesê daar waar u wel gesien het dat die  
7 persoon sy voet, verwys na die boots van die uniform, op  
8 die persoon plaas en ek het verduidelik operasioneel,  
9 takties dat indien u 'n R5 in die hand het en ek dink daar  
10 is reeds getuig daaroor, sal dit gevaarlik en onvanpas wees  
11 om dan u hande te gebruik of die wapen langs jou neer te  
12 sit. Dit is die manier om 'n persoon stabiel te hou, as ek  
13 sê stabiel, stilt te hou totdat u kollegas opdaag en dan,  
14 ek het dit ook gesê baie duidelik, in 'n geordende en  
15 gedissiplineerde manier. So die word "kicking" en die  
16 bewerings wat u nou maak stem ek glad nie mee saam nie.

17 MR MPOFU: Sure, no, fine, no, the word  
18 "kicking" came from me when I showed that evidence to Mr  
19 Magidiwana. All I am saying to you is that you yourself,  
20 you don't know whether it was kicking or it was placing of  
21 the boot, do you?

22 BRIGADIER CALITZ: Ek het dit wel op die  
23 video footage gesien en dit is van daar waar ek my  
24 verklaring gemaak het. Daar was beslis nie, die persoon is  
25 beslis nie geskop volgens my nie.

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1 MR MPOFU: Well, - okay, I don't want to  
2 go down that line, but I'll, let's just say this. In any  
3 event your justification of the placing of the boot or the  
4 kicking, as I allege it was, is that sometimes when a  
5 person is going to be arrested one has to place a boot or a  
6 knee on their face, is that the sum total of what you say  
7 or am I distorting it?

8 BRIGADIER CALITZ: Ek het gesê om die  
9 boot, of soos u verwys, die knie op 'n persoon neer te  
10 plaas, dit is om hom stabiel te hou sodat die ander  
11 persone, aangesien jy 'n wapen in die hand het en die hande  
12 nie gebruik kan word nie, totdat daar persone of die  
13 kollegas wat saam met u is dan nader kan kom en dan die  
14 persoon te deursoek. Die rede daarvoor is, daardie persoon  
15 kan beweeg, daardie persoon kan 'n wapen onder hom hê,  
16 daardie persoon kan, u weet selfs 'n vuurwapen hê, so  
17 daarom moet hy in daardie posisie gehou word.

18 MR MPOFU: And if that was the situation  
19 then that would apply to all the 20 or 30 people who were  
20 lying on the ground, not just that one, unfortunate one who  
21 was kicked, correct?

22 BRIGADIER CALITZ: Ek stem weer nie saam  
23 met u nie, hy was volgens my nie geskop nie en ek sal sê  
24 dat dit wat voor die lede afgespeel het of dit wat hulle  
25 gesien het, ek was ongelukkig nie daar nie, ek kan net

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1 getuig wat ek op die video sien. Die ander persone se  
 2 wapens weet ek is langs hulle gesien, party is onder hulle  
 3 uitgehaal, so in daardie persoon se geval weet ek nie wat  
 4 het daardie lid wat dit uitgevoer het waargeneem op daardie  
 5 stadium nie.

6 MR MPOFU: Yes, that's the point exactly,  
 7 Brigadier, shouldn't you have just said, "Look, I don't  
 8 know the circumstances, I was not, ek was nie daar nie," as  
 9 you are saying now, instead of jumping to a justification  
 10 of something which you don't know on the basis of what may  
 11 be an arrest and so on? Remember you even said that that  
 12 manoeuvre is done when the arresting person is holding a  
 13 heavy firearm, do you remember that?

14 BRIGADIER CALITZ: Ja, ek het verwys, ek  
 15 dink na 'n R5 toe, maar ek het nooit in my getuienis  
 16 verwys, dit is wat daardie lid gedoen het nie.

17 MR MPOFU: Good.

18 BRIGADIER CALITZ: Ek het getuig uit 'n  
 19 taktiese oogpunt uit, 'n algemene operasionele optrede en  
 20 dan gesê hoe dit normaalweg uitgevoer word. Ek het  
 21 geensins in my getuienis verwys na daardie lid en dit is  
 22 hoekom hy dit gedoen het nie.

23 MR MPOFU: And, I'm sorry, Brigadier, and  
 24 you yourself don't know whether the kicker or the placer of  
 25 the boot in that instance was carrying a big firearm,

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1 because you'd never witnessed this incident and you were  
 2 not there, correct?

3 BRIGADIER CALITZ: Dit was net op die  
 4 video wat ons dit gesien het, dit is korrek.

5 MR MPOFU: What did you see on the video?

6 BRIGADIER CALITZ: Die persoon wat sy  
 7 voet op die ander persoon plaas en dan die ander persone  
 8 wat dan nader kom. Ek kan nie presies onthou wat het hulle  
 9 verwyder van die persoon af nie.

10 MR MPOFU: So you can't remember, you're  
 11 saying exactly what I'm saying, you yourself don't know  
 12 whether the person who was kicking had a heavy R5, which is  
 13 part of the justification, or not, you can't say that to me  
 14 now?

15 BRIGADIER CALITZ: Ek sal moet gaan kyk  
 16 na die video –

17 MR MPOFU: Yes, that means you don't know  
 18 –

19 BRIGADIER CALITZ: - om dit presies vir u  
 20 te sê.

21 MR MPOFU: I'm sorry, I'm sorry, I'm  
 22 sorry to interrupt you. Yes, no, no, I accept that you'll  
 23 have to go and look again but this means you don't know  
 24 whether he was indeed carrying such a thing, correct?

25 BRIGADIER CALITZ: Op hierdie stadium kan

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1 ek nie vir u sê presies dat hy dit gedra het nie.

2 MR MPOFU: Yes.

3 BRIGADIER CALITZ: Toe ek die video gekyk  
 4 het, as ek moet terug dink aan die video, dit is 'n hele  
 5 rukkie gelede, glo ek dat hy wel die wapen in sy hand gehad  
 6 het, maar dit kan ek vir u bevestig later.

7 MR MPOFU: And yet you felt entitled to  
 8 justify that action to this Commission despite all the  
 9 shortcomings that you've now admitted to. You were not  
 10 there, you don't know whether he was carrying this, you did  
 11 not witness it yourself and so on. That's the kind of  
 12 thing, Brigadier, I'm getting to. I'm saying those are  
 13 instances which I will use to persuade the Commission that  
 14 the belief that the leadership of the police is prepared to  
 15 go to absurd lengths to justify and to protect the members  
 16 of the police, even when something is patently  
 17 unjustifiable patently unjustifiable is properly held by my  
 18 clients.

19 [09:59] Do you understand where I'm coming from?

20 COMMISSIONER HEMRAJ: Mr Mpofu, is it –

21 MR SEMENYA SC: This is argument.

22 COMMISSIONER HEMRAJ: Mr Mpofu, at the  
 23 time the witness gave the explanation wasn't he shown the  
 24 video?

25 MR MPOFU: No.

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1 COMMISSIONER HEMRAJ: And at this point  
 2 in time he doesn't remember what was on the video.

3 MR MPOFU: No, Chairperson, I'm sorry,  
 4 Commissioner, no he was not. What happened is this, in Mr  
 5 Semenya in sweeping up his examination-in-chief which was a  
 6 proper thing to do, at the end he then had a section where  
 7 he deals with criticisms of Mr White and this that and the  
 8 other and in that same breath he then said Mr Mpofu has  
 9 already raised, I don't know if he used my name, but  
 10 someone has raised the criticism about the boot. It's at  
 11 17, you'll find it's at, in the transcript at 17399,  
 12 Chairperson and Mr Semenya started 17398.

13 CHAIRPERSON: If I understand correctly,  
 14 Mr Mpofu –

15 MR MPOFU: The short answer –

16 CHAIRPERSON: Sorry you haven't heard my  
 17 question.

18 MR MPOFU: Sorry. I was referring to the  
 19 Commissioner.

20 CHAIRPERSON: The point that you are now  
 21 dealing with, you say that doesn't appear in the  
 22 consolidated statements of Brigadier Calitz, he made a  
 23 consolidated statement which is exhibit JJJ107 and in that  
 24 he deals at the end with a number of miscellaneous points  
 25 and is the point you're busy with there or is it with



<p style="text-align: right;">Page 20135</p> <p>1 something that was merely added in the course of his oral 2 evidence as it were which was not in the statement? 3 MR MPOFU: No, it's both, Chairperson. 4 What Commissioner Hemraj, the question was really that the 5 witness was shown the video. I'm saying he wasn't, that is 6 established. But what I'm now saying is that what happened 7 both you and I are right, Chairperson, in his statement 8 pre-emptively he dealt with it and then in evidence at 9 17398 of the transcript, line 9 Mr Semenya also raised it. 10 So that it was certainly on both occasions, at least when 11 Mr Semenya raised it with him he didn't show the video. 12 CHAIRPERSON: Alright, well anyway let's 13 look first at his consolidated statement JJJ107. 14 MR MPOFU: 107. 15 CHAIRPERSON: Before we look at the 16 transcript. 17 MR MPOFU: Yes. 18 CHAIRPERSON: On page 29 of that 19 statement at paragraph 154 and 155 the witness deals with 20 the point and he says concerns have also been raised about 21 how the arrest of the strikers were done particularly where 22 footage is shown of a police officer placing a boot on a 23 suspect lying on the ground. So there's he's clearly 24 referring to criticism based upon a video. Because he 25 talks about where footage is shown. Then he says 155 in</p>	<p style="text-align: right;">Page 20137</p> <p>1 CHAIRPERSON: But in the context, you're 2 talking about general practice, he says if there's, he says 3 footage was shown which indicated that a member of SAPS had 4 his foot on a suspect or an arrested person lying on the 5 ground and he says, he then says based on general practice 6 he then gives us what I read, I think it's page 155 I put 7 the passage away already. That's what it says. 8 MR MPOFU: Yes. 9 CHAIRPERSON: He's describing what he 10 understands to be general practice in a case of this kind. 11 That's why I asked do you quarrel with that. 12 MR MPOFU: No, no. No, Chairperson, let 13 me make a simple example if – 14 CHAIRPERSON: What exactly is your 15 quarrel on this point? 16 MR MPOFU: Thank you, I'll explain. 17 CHAIRPERSON: I want to make sure I 18 understand it properly. 19 MR MPOFU: Yes, I'll explain it, 20 Chairperson. If, let's assume I said a policeman should 21 not do this and that and then he says well if the policeman 22 is to short then he can do that, that I'm criticising 23 about. Now if I say to him now do you know if that 24 policeman who did that was short or tall and he says I 25 don't know then that explanation flies out of the window.</p>
<p style="text-align: right;">Page 20136</p> <p>1 normal practice where an arrest is effected by a police 2 officer of a suspect believed to be in possession of a 3 dangerous weapon whereas a police officer is holding a 4 rifle it would be foolhardy to put the rifle on the ground 5 to use his hands to effect an arrest. The police officer 6 in those circumstances would use their foot in a controlled 7 and sublime way to restrain the suspect until he's 8 satisfied that it's safe for the arrest to be effected. 9 These are often dangerous encounters which are done under 10 difficult circumstances. 11 MR MPOFU: Absolutely. 12 CHAIRPERSON: Now that's what he said in 13 the consolidated statement. Do you quarrel with that at 14 all? 15 MR MPOFU: No, no I don't. In fact 16 that's exactly, the reason why my criticism of him is that 17 you can't say even that unless it's premised on the ground 18 that you know that the alleged kicker or the placer of the 19 boot was holding a rifle as he says. Now that's I asked 20 him was he and he says he doesn't know. So that theory 21 just flies out of the window if it's not based on his 22 knowledge because that justification quote unquote can 23 only hold water if in this instance the kicker was in the 24 position that he presupposes. That's exactly the point I'm 25 making.</p>	<p style="text-align: right;">Page 20138</p> <p>1 That's the simple point I'm making. I'm saying if he say 2 yes it, as you correctly say, Chairperson, in general if 3 someone is holding a rifle dah, dah, then I say to him as 4 I've just said now do you know if that person was holding a 5 rifle before he testifies, I don't know. Then what's the 6 value of theoretical – 7 CHAIRPERSON: - it flies out of the 8 window. He's giving evidence to a general practice. If 9 the evidence indicates that the general practice to which 10 he's referring didn't apply in this case or the 11 circumstances were different then that event the 12 explanation falls away because it doesn't help us. But 13 the, I'm not sure that we are able to make a finding at 14 this stage that the circumstances outlined by him in 15 paragraph 155 weren't present. It may affect the weight of 16 what he said if, because he didn't purport in that passage 17 that I read to be saying that's exactly what I see on the 18 video. He simply explaining that's the sort of thing that 19 can happen. But I think Mr Semenya turned his light on at 20 one stage and I didn't give him a chance. Have you 21 repented of your idea, proposal to say something, Mr 22 Semenya? 23 MR SEMENYA SC: No, thank you, Chair. 24 CHAIRPERSON: Alright. Have you put 25 what you want to put to the witness on this point?</p>

<p style="text-align: right;">Page 20139</p> <p>1 MR MPOFU: Yes, Chairperson, yes I simply 2 want to address the point like this. I won't proceed much 3 further with the witness. All I'm saying, Chairperson, 4 you're a 100% correct we neither I nor him nor you at this 5 stage can say that those conditions prevailed or didn't 6 prevail. What we know as a fact which is why I put the 7 question to him, is that he doesn't know whether those 8 conditions prevailed, that's the only point I'm making and 9 therefore the theory flies out on the basis that unless it 10 is, it was backed up by his own knowledge, if he said oh ja 11 you know I know that person, I've seen him, he usually does 12 it like that, he doesn't mean badly or whatever, that would 13 be a different set of circumstances but if he just tells us 14 about some theoretical thing which may or may not apply in 15 this case then how does it assist the commission. 16 CHAIRPERSON: That's an argument that 17 you can advance later and I'm sure – 18 MR MPOFU: Thank you. 19 CHAIRPERSON: Mr Semenya may say 20 something about, before we move on, is there anything else 21 you want to say on this point, Brigadier? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 nee, net miskien presies wat u gesê het. Ek het gesê in 24 normal practice en ek het verduidelik hoe dit in die 25 normale loop van polisiëring plaasvind. Ek ken nie die lid</p>	<p style="text-align: right;">Page 20141</p> <p>1 right? 2 BRIGADIER CALITZ: Dit is korrek. Ek 3 dink dis die een wat die stun granaat gegooi het, as ek reg 4 is. 5 CHAIRPERSON: That's what he says in 6 para 3, that you were his commander and the interpreter was 7 there and the negotiations and then he says the following, 8 in paragraph 4 that, at around 15:30 three guys came 9 towards the Nyala. One of them who was wearing a green 10 blanket came to the Nyala and ordered that all the Nyalas 11 and vehicles must leave that place, if not all the police 12 are going to die. Then all the Nyalas with wires were 13 deployed and he goes on about that in para 5. Now we don't 14 know at this stage whether he's merely reporting what the 15 interpreter said or whether with his own knowledge of one 16 or more of the vernacular languages he was able to 17 understand what Mr Noki, who was the man in the green 18 blanket was saying, but that's something we'll have to find 19 out from him in due course. 20 BRIGADIER CALITZ: Dis reg, dankie, mnr 21 die Voorsitter. 22 MR MPOFU: Thank you, Chairperson. If 23 you may be kind enough, Chairperson, unfortunately I don't 24 have that statement at hand. If maybe Chairperson you'll 25 be kind enough to tell me the date of the statement or it</p>
<p style="text-align: right;">Page 20140</p> <p>1 nie. Ek het net gesê ek – 2 CHAIRPERSON: Sorry, your explanation 3 may or may not apply on the facts of this case. 4 BRIGADIER CALITZ: In hierdie geval is 5 dit algemene praktyk, nie verwysend na die spesifieke lid 6 nie. 7 CHAIRPERSON: Okay. So your explanation 8 may or may not be applicable to this particular case which 9 presumably effects the weight of what you said but anyway 10 these are matters which will be traversed in argument that 11 you and I don't have to space now. That's all you want to 12 say on that point, is that right? Am I right? 13 BRIGADIER CALITZ: Ja, op hierdie punt 14 van - 15 CHAIRPERSON: I'd like to go back to a 16 point that was dealt with earlier in the cross-examination 17 and refer to an exhibit which is, to which our attention 18 was drawn by the Human Rights Commission, I think it was 19 one of the statements they handed in. I marked it exhibit 20 KKK27, it's the statement by Joseph Skosana, he's a warrant 21 officer, Warrant Officer Joseph Skosana. He was in Nyala 22 P1 and he had a shotgun with 40 rounds in it and he 23 describes that, what happened, he's talking about the 16th 24 of August and in paragraph 4 he says the following. This 25 is the Skosana Brigadier who was in your Nyala, is that</p>	<p style="text-align: right;">Page 20142</p> <p>1 can be, because it's important whether it was given before 2 or after the doctoring of the, of exhibit L. 3 CHAIRPERSON: What we have is, the usual 4 practice you know, the usual practice is that there were 5 manuscript statements and then they were typed by, I think 6 Mr Pretorius's secretary who, and what we've got are 7 actually unsigned typed versions. Whether, and that simply 8 says blank day of September. 9 MR MPOFU: Oh. 10 CHAIRPERSON: Which would be post Roots. 11 MR MPOFU: Post Roots, okay. 12 CHAIRPERSON: But whether there was an 13 manuscript version prior to that is something – 14 MR MPOFU: We don't know. 15 CHAIRPERSON: We'll find out in due 16 course. 17 MR MPOFU: Okay. No for me it's good 18 enough that it's post Roots. 19 MR SEMENYA SC: Chair, through you – 20 CHAIRPERSON: Mr Semenya, you've now 21 turned your light on. 22 MR SEMENYA SC: Through you can we ask 23 that Mr Mpofo retract the comment of doctoring of documents 24 by the police. 25 MR MPOFU: Okay.</p>

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1 CHAIRPERSON: I didn't actually hear it.  
 2 What did you say, Mr Mpfu?  
 3 MR MPOFU: No, I say I wanted to know  
 4 whether it was before Roots or not or after Roots as, so  
 5 that we know whether it was before or after what we  
 6 perceive as the doctoring of exhibits. But I'm prepare to  
 7 retract that, I'll say alteration.  
 8 CHAIRPERSON: I don't think that's an  
 9 appropriate comment to make at this stage.  
 10 MR MPOFU: Alteration.  
 11 CHAIRPERSON: I share your concern, no  
 12 concern is not the word. I share your caution in respect  
 13 of things that happened during and after Roots. The  
 14 caution may in fact when applied still lead to a conclusion  
 15 that evidence, information of this kind is accurate. I'm  
 16 not suggesting everything from Roots and afterwards is  
 17 necessarily incorrect. But in light of some of the  
 18 evidence we've had it's advisable to adopt a measure of  
 19 caution. But I don't think one can go and put the thing as  
 20 starkly as you do, that would be inappropriate.  
 21 MR MPOFU: Yes, thank you, Chairperson.  
 22 CHAIRPERSON: You withdraw that?  
 23 MR MPOFU: I withdraw it. It's  
 24 premature. Let's call it alteration, neutral word.  
 25 CHAIRPERSON: No, you don't have to say

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1 that, Mr Mpfu. If there's a statement, if the statement  
 2 I've read could exist in manuscript form from a very early  
 3 stage that might in the circumstances give it greater  
 4 weight then it would have if it was only dated later. But  
 5 that's a matter that can be addressed later. Alright.  
 6 MR MPOFU: I accept that, Chairperson.  
 7 In any event, Chairperson, I'm sorry, Brigadier, I hope you  
 8 understand I'm not going to belabour this, I just want to  
 9 say I'm not criticising you now about the alleged kicking  
 10 or placing of boots or whatever. You didn't do that. I'm  
 11 making a separate point. I'm saying this kind of  
 12 explanation which we now know may not apply to this  
 13 situation supports the belief that the senior leadership of  
 14 the police will go out of its way to justify even the  
 15 unjustifiable. That's the only purpose for which I was  
 16 raising it to you, not necessarily to attribute it to you  
 17 or to say because you were in command these people of, I'm  
 18 not going there at all. I'm just dealing with the issue of  
 19 the leadership's propensity to defend the indefensible.  
 20 MR SEMENYA SC: Chair, also that is  
 21 argumentative.  
 22 CHAIRPERSON: You know you, I think  
 23 we've traversed this ground. You've put things to him.  
 24 MR MPOFU: I'll move –  
 25 CHAIRPERSON: These are matters for

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1 argument. But while were busy with the point that I was  
 2 busy with about statements about the alleged threat. It's  
 3 also dealt with in the statement of Warrant Officer, I  
 4 think it's Warrant Officer Mong.  
 5 MR MPOFU: No, N-O.  
 6 CHAIRPERSON: Nong. He's called Mong  
 7 but he's really Nong. It's exhibit KKK24 and do you know  
 8 what the home language of what Officer Nong is?  
 9 BRIGADIER CALITZ: Nee, mnr die  
 10 Voorsitter. Hy is van Johannesburg so ek dra nie kennis  
 11 nie.  
 12 CHAIRPERSON: In paragraph 18 of the  
 13 statement he says the following. It's, I gave the exhibit  
 14 number, ja KKK24. He says at about plus minus 15h00 hours  
 15 the then high rank in the negotiating police vehicle, I  
 16 take it by that that he means the senior person in the  
 17 negotiating police vehicle Brigadier Calitz instructed the  
 18 police vehicle with the barbed wire to deploy the barbed  
 19 wire into position as planned. There were five barbed  
 20 wires. When the first Nyala started to deploy the man in  
 21 the green blanket approached the negotiating team. He said  
 22 in Xhosa that I can see that you are placing yourself in  
 23 position. I can see that you are ready for war. But I am  
 24 telling you today that the world will see how the angry  
 25 community of miners will react to the police and they're

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1 going to be killed and leave their vehicle behind for  
 2 someone who will be burnt into the vehicle. Para 19, the  
 3 negotiator tried very hard to bring the man back and his  
 4 team but he was running, swirling towards the crowd when  
 5 the second Nyala deployed the barbed, obviously the barbed  
 6 wire. The man in the green blanket came back again holding  
 7 his spear and a steel pipe with another black male which  
 8 was never in the negotiation at the time. He speaks  
 9 angrily in Xhosa saying today you are going to leave this  
 10 Hippo's police vehicle, you will run away. He was showing  
 11 that his followers are ready for us and then we have this,  
 12 he said that the police must bring a piece of paper that we  
 13 all sign that today we're going to kill each other, no one  
 14 is to be blamed as the letter will be the evidence to the  
 15 world.  
 16 Now this statement is also one that having blank,  
 17 not signed by the witness, the date is September. So the  
 18 same points apply. Whether there's a manuscript copy of it  
 19 beforehand it is something which we will discover later. I  
 20 see there's a note at the top on the first page which says  
 21 typed as written by the deponent which indicates that there  
 22 was a manuscript version at some stage which we presumably  
 23 will see in due course and the date of that may be  
 24 significant. But any way but I'm just drawing to your  
 25 attention the fact that there is other material other than

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1 the mere say so of the interpreter who appears to be  
 2 reluctant to even tell us who he is and it may well be that  
 3 the two Warrant Officers who's statements I've referred to  
 4 are able to, if in fact Xhosa is their home language and if  
 5 it's correct that these remarks were made in Xhosa then  
 6 they would be able to tell us what they are. But any way  
 7 this is a matter –  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: That we look at in due  
 10 course. I just want to put it on record now as it were,  
 11 draw your attention to the fact that there is material and  
 12 there may be other statements as well from other people in  
 13 the –  
 14 MR MPOFU: Yes.  
 15 CHAIRPERSON: Which I haven't had, we  
 16 haven't had time to find but any way I didn't say that by  
 17 way of interfering with your cross-examination.  
 18 MR MPOFU: NO.  
 19 CHAIRPERSON: It's helpful to mention  
 20 these on record now so it focuses our attention when we  
 21 look at this issue further in due course.  
 22 MR MPOFU: Yes. I mean that's exactly  
 23 that, Chairperson.  
 24 CHAIRPERSON: Adv Hemraj suggests that I  
 25 ask Mr Semenya, which I'm now going to do to put the, if

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1 there are manuscripts statements by these two people and  
 2 also other people who were in that Nyala if they could be  
 3 put before us as exhibits. If they're not, they're not but  
 4 –  
 5 MR SEMENYA SC: All the parties have the  
 6 manuscript, Chair.  
 7 CHAIRPERSON: Yes, alright thank you.  
 8 So we'll get that in due course and we'd like them in as  
 9 exhibits.  
 10 MR MPOFU: Yes.  
 11 CHAIRPERSON: Mr Mpofu –  
 12 MR MPOFU: Chairperson –  
 13 CHAIRPERSON: Would you like now to move  
 14 to your next point?  
 15 MR MPOFU: Yes, I would. If I may just  
 16 say apropos, alright.  
 17 MR BUDLENDER SC: Can I just confirm that  
 18 there are manuscript, all of those typed statements are  
 19 available in manuscript and it was either at our request or  
 20 by arrangement that they were typed because they're quite  
 21 difficult to work with in manuscript.  
 22 CHAIRPERSON: I understand that.  
 23 There's nothing sinister about us being given typed  
 24 versions, in fact it was done to help our tired eyes to  
 25 read them because manuscripts particular manuscripts

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1 written by someone like me are normally not easy to read.  
 2 [10:18] MR MPOFU: Thank you –  
 3 CHAIRPERSON: I'm sure the police's  
 4 handwriting is better than mine, but it still may be a  
 5 problem. Anyway, Mr Mpofu.  
 6 MR MPOFU: Yes –  
 7 COMMISSIONER HEMRAJ: It's just that the  
 8 dates of those statements will –  
 9 MR MPOFU: That's the issue.  
 10 COMMISSIONER HEMRAJ: - will be relevant  
 11 to certain aspects of the cross-examination.  
 12 MR MPOFU: Thank you, Chairperson, that  
 13 actually is the only issue. The only issue is when the  
 14 statements were made, as far as I'm concerned, because if  
 15 they were made before Roots then I'll be able to say well,  
 16 despite those statements it looks like the consensus at  
 17 Roots is that they said we're going to die. If they were  
 18 made after Roots then it means that they might have been  
 19 made in the process of what we call politely "alteration."  
 20 CHAIRPERSON: Well, let's be blunt. An  
 21 earlier consistent statement can be put in, in relation to  
 22 the evidence of the witness to rebut a suggestion of recent  
 23 fabrication.  
 24 MR MPOFU: Yes.  
 25 CHAIRPERSON: And in effect you will be

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1 contending if they were post Roots, that there's a danger  
 2 of recent fabrication.  
 3 MR MPOFU: Thank you. Thank you,  
 4 Chairperson.  
 5 CHAIRPERSON: Alright, which means we've  
 6 cleared the bush on that issue.  
 7 MR MPOFU: Thank you very much.  
 8 CHAIRPERSON: And then we move on to the  
 9 next one.  
 10 MR MPOFU: Yes, thank you. Well, I think  
 11 let's stop at those – we'll stop at those two examples  
 12 about what I was saying is the, for now we'll stop at those  
 13 examples about what I was saying is the propensity. Maybe  
 14 I can just say to you that, because it pertains to my next  
 15 topic, that another example that happened here is that when  
 16 the National Commissioner was testifying she, like you,  
 17 kept on saying, I think about 10 times, that the plan was  
 18 disrupted, the plan was disrupted. When I asked her how  
 19 was the plan disrupted she did not know.  
 20 MR SEMENYA SC: No she did –  
 21 CHAIRPERSON: Mr Mpofu, I –  
 22 MR MPOFU: Or she did not answer.  
 23 CHAIRPERSON: That's a matter you can  
 24 address in argument later. You may well have criticisms of  
 25 the National Commissioner's evidence which may not apply to

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1 this witness, but in any event, I take it you will listen  
2 attentively to what Mr Mpofo has to say on his next topic  
3 and give us your answer when he finally asks you a  
4 question.

5 BRIGADIER CALITZ: Ek sal so maak, mnr  
6 die Voorsitter.

7 MR MPOFU: Yes, I'm sorry, I was just  
8 saying that by way of saying I'm not – those other examples  
9 will be made in argument to sustain what I'm saying.  
10 Chairperson, I don't know if you were threatening to have a  
11 tea break or –

12 CHAIRPERSON: Look, if you want a  
13 premature, an earlier tea break than usual for a reason  
14 related to your preparation and so forth –

15 MR MPOFU: No –

16 CHAIRPERSON: - or your continuation of  
17 the cross-examination, I'll grant you one. If you want to  
18 carry on until half past 10 –

19 MR MPOFU: I'll carry on.

20 CHAIRPERSON: - which is when I was  
21 supposed to take the tea break, you can do so, but  
22 sometimes a cross-examiner requires an earlier tea break  
23 just to gather his material together so that he can proceed  
24 to the next point. If you're in that position, I'll give  
25 you a tea break now.

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1 MR MPOFU: No, I'll continue,  
2 Chairperson. I misunderstood. I thought earlier you were  
3 saying, you were asking me whether we should break then or  
4 not.

5 CHAIRPERSON: No, no, no.

6 MR MPOFU: Okay, thank you. Alright, now  
7 you would agree, Brigadier, or in fact you have already  
8 agreed yesterday that of the symbiotic, or the direct  
9 relationship, I think we used the expression "same side of  
10 the same coin," or you might call it Siamese twins or  
11 whatever other metaphor, but of the direct relationship  
12 between the plan and the execution thereof, that it's  
13 really the same thing. Agreed?

14 BRIGADIER CALITZ: Ek dink ek het vir u  
15 gesê die "execution" is deel van die beplanning. Dit is  
16 een van die punte in 'n beplanning. Dis waarop ons  
17 ooreengekom het, ja.

18 MR MPOFU: Yes, and if the plan is good  
19 and the execution is good, then the outcome will also be  
20 good. That's also logical, correct?

21 BRIGADIER CALITZ: Ek kan saam met u  
22 stem.

23 MR MPOFU: Ja, now as far as the  
24 execution is concerned, we've established that you were the  
25 big boss on the ground, and as far as the planning is

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1 concerned, it was Colonel Scott. So those would be the  
2 Siamese twins of that coin, two sides of the same coin.  
3 Correct?

4 CHAIRPERSON: I don't know what you mean  
5 by Siamese twins. Siamese twins are sometimes joined at  
6 the hip and so on. I don't know if there is any suggestion  
7 really of that kind, even metaphorically speaking.

8 MR MPOFU: At the head. Okay, thanks,  
9 Chairperson. Now you would also agree with me that the  
10 point at which plan meets execution is – or let me put it  
11 this way. You're aware of the expression that says a  
12 journey of a thousand miles starts with a single step. In  
13 other words if you miss the first step in anything, it's  
14 likely to be ill-fated. You know what I mean? Are you  
15 aware or are you not aware?

16 BRIGADIER CALITZ: Nee, ek kan nie rêrig  
17 sê nie. Miskien as u 'n idiom gebruik of so, ek –

18 MR MPOFU: No, forget the idiom. The  
19 fact that if you are planning something and you mess up the  
20 first step, then it will, it's likely to be ill-fated.  
21 Forget the idiom.

22 BRIGADIER CALITZ: Nee, ek kan nie saam  
23 met u stem nie. Dit hang van omstandighede af. Dis nie te  
24 sê as jou eerste stap verkeerd is – ek weet nie, ek kan dit  
25 seker maar vergelyk met enige, as jy 'n misstap doen tydens

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1 'n rugbywedstryd en jy maak 'n foutjie in die begin, is nie  
2 te sê jou span sal verloor nie, as ek u reg verstaan, sodat  
3 dit hang van omstandighede af.

4 MR MPOFU: Ja. No, so okay, I'm sure  
5 that might be, with everything there might be many  
6 exceptions. I'm saying you actually, you don't know that  
7 if you mess up the first stage of something which is  
8 supposed to happen serially, it's likely to be messed up?  
9 You don't know that as a human being?

10 BRIGADIER CALITZ: Nee, ek het nie gesê  
11 ek weet nie. Ek het vir u gesê ek stem nie saam met u nie  
12 en ek het u 'n rede gegee daarvoor.

13 MR MPOFU: So why are you arguing against  
14 that idiom?

15 BRIGADIER CALITZ: U bly die vraag vra.  
16 Ek het gesê ek stem nie saam met u nie.

17 MR MPOFU: Anyway, I'm now going to say  
18 to you that stage 3, the one thing that – stage 3 as you  
19 know is the tactical phase, which is the dangerous phase of  
20 the operation, okay? We agree on that?

21 BRIGADIER CALITZ: As u verwys na  
22 "dangerous" verwys u na die "dispersion," die taktiese  
23 gedeelte?

24 MR MPOFU: No man, I'm saying you know  
25 that stage 3, which is called the tactical phase, is the

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1 most dangerous stage of the operation because it's the one  
 2 where death might likely occur. Do you accept that or  
 3 don't you accept it?  
 4 BRIGADIER CALITZ: Nee, kan ek sê ek  
 5 verskil met u. Daar was ander fases ook gewees waar daar  
 6 konsekwensies kon gewees het. So –  
 7 MR MPOFU: Ja, anyway, the issue is this,  
 8 and I'm going to demonstrate to you that stage 3, which I  
 9 regard as the dangerous stage, was ill-fated and stillborn  
 10 because the very first step was a misstep, of stage 3. You  
 11 remember that the only difference that you've been prepared  
 12 to admit to in this Commission between you and Colonel  
 13 Scott, the Siamese twins, is this issue of simultaneous  
 14 rollout. Is that fair, or is that not fair? In other  
 15 words, you said what Scott was talking about was dangerous,  
 16 this thing of simultaneous rollout. So to that extent you,  
 17 and more so you said you've never seen it being done in  
 18 your entire life, simultaneous rollout. Is that fair, or  
 19 is it not fair?  
 20 BRIGADIER CALITZ: As u verskil, as u  
 21 verwys waar ons miskien verskil het in ons verklarings of  
 22 in ons getuienis –  
 23 MR MPOFU: Ja.  
 24 BRIGADIER CALITZ: - dit is so; ek het  
 25 gesê dat – maar ek het reeds daarvoor getuig.

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1 MR MPOFU: Yes. Now if the Siamese  
 2 twins, the chief of planning and the chief of execution,  
 3 have such a difference on what I call the very first step  
 4 of the dangerous phase 3, then clearly disaster looms.  
 5 Would you agree?  
 6 BRIGADIER CALITZ: Nee, ek stem nie saam  
 7 met u op daardie nie.  
 8 MR MPOFU: Okay, if Scott had the view  
 9 that the simultaneous rollout, as the word "simultaneous"  
 10 obviously implies, would last for a period of let's say  
 11 whatever period it would take to unfurl one A-frame, you  
 12 know what I mean, because simultaneous would mean the whole  
 13 thing of unfurling would last for that period. You  
 14 understand that, accept that?  
 15 BRIGADIER CALITZ: Ek weet nie "that  
 16 period," maar ek sal u volg soos u aangaan.  
 17 MR MPOFU: Ja, but you, the other Siamese  
 18 twin, is of the view that the unfurling of the barbed wire  
 19 is going to happen serially, in other words it is that  
 20 period that Scott has in mind times 6 –  
 21 MR SEMENYA SC: Chair, can I ask that the  
 22 witness be protected and not be called a Siamese twin or  
 23 something like that.  
 24 CHAIRPERSON: Sorry, you lowered your  
 25 voice, I didn't hear.

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1 MR SEMENYA SC: Can I ask the witness to  
 2 be protected, not –  
 3 CHAIRPERSON: I did try to tell him not  
 4 to call them Siamese twins because I said it's an  
 5 inappropriate expression. Mr Mpofu's trouble is he's  
 6 fallen in love with the expression and he doesn't want to  
 7 part with it. It doesn't really help us. It's not an  
 8 insult to be called a Siamese twin –  
 9 MR MPOFU: No.  
 10 CHAIRPERSON: I am sure there are lots of  
 11 people in Bangkok who have no objection to that, but Mr  
 12 Mpofu, it doesn't take it any further. It's a distraction  
 13 when you use an expression like that, that is inaccurate.  
 14 So may I suggest put that expression back in your –  
 15 MR MPOFU: No, Chairperson –  
 16 CHAIRPERSON: - in your file and carry on  
 17 without it, okay? You'll make me and Mr Semenya happy.  
 18 MR MPOFU: Ja, Chairperson, I'm not  
 19 married to that expression. It's clear what I'm trying to  
 20 convey here, which is that execution and planning are  
 21 inextricably linked.  
 22 CHAIRPERSON: [Microphone off, inaudible]  
 23 agrees with that.  
 24 MR MPOFU: Yes. So that's the, what I  
 25 mean by the expression, but I'll use another expression. I

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1 mean we're not – it's got nothing to do with twins here.  
 2 It's about the differences, major differences in unfurling  
 3 barbed wire which subsequently resulted in people dying.  
 4 Okay, so if I'm saying –  
 5 CHAIRPERSON: I'm not sure that the  
 6 difference led to deaths, but anyway, you make the comment;  
 7 you can argue it later if necessary.  
 8 MR MPOFU: Ja, okay. Yes, that's  
 9 exactly –  
 10 CHAIRPERSON: If that was the sole cause  
 11 of the problem, this Commission would have been over a long  
 12 time ago.  
 13 MR MPOFU: No, Chairperson, I would with  
 14 respect say that's also an inappropriate comment because  
 15 I've said to the witness – and I don't think we should  
 16 trivialise this – that the rolling out of the dangerous  
 17 phase, which resulted in the death of people, we are busy  
 18 dealing with the first step, and if that first step was  
 19 missed - at least that's the theory that I'm advancing – if  
 20 that theory was missed –  
 21 CHAIRPERSON: No, I understand you make –  
 22 MR MPOFU: Yes, I'm not –  
 23 CHAIRPERSON: I understand you make that  
 24 point.  
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: Whether that led to the  
2 deaths is a matter that will be argued about later.  
3 MR MPOFU: Yes.  
4 CHAIRPERSON: You were stating it as a  
5 fact. That was my only complaint. But never mind, let's  
6 dispose of this point before teatime and then we can deal  
7 with another topic thereafter, but carry on.  
8 MR MPOFU: Yes, thank you, Chairperson.  
9 Just to take one step back, so that we can breath a bit –  
10 BRIGADIER CALITZ: Ek is gemaklik, mnr  
11 die Voorsitter, dankie.  
12 MR MPOFU: Ja well, congratulations. I'm  
13 saying that you – or remember on the 21st of November, I  
14 think that's what it was, we did that exercise across the  
15 road with the Nyala and the A-frame. Remember that?  
16 BRIGADIER CALITZ: Dit is korrek.  
17 MR MPOFU: And that rollout – let's call  
18 it rollout – rollout of that experimental A-frame took  
19 about nine to 10 minutes, correct?  
20 BRIGADIER CALITZ: Op daardie dag?  
21 MNR MPOFU: Op daardie dag, ja.  
22 BRIGADIER CALITZ: Nee, ek verskil met u.  
23 Ek dink ons kan na die video kyk en dan kan ons die lengte  
24 van daardie video sien vandat hulle hom afgegooi het totdat  
25 hy gebind is aan die voertuig.

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1 MR MPOFU: Yes.  
2 BRIGADIER CALITZ: Maar definitief nie  
3 nege minute nie, ek twyfel, nee.  
4 MR MPOFU: Okay.  
5 COMMISSIONER HEMRAJ: It takes just under  
6 five minutes on the video, Mr Mpofo.  
7 MR MPOFU: Okay. We'll establish that.  
8 I saw something which referred to that, but whatever it is,  
9 let's call it X. It doesn't matter, let's call it X.  
10 We'll establish it. The point I'm making is –  
11 BRIGADIER CALITZ: Ekskuus tog, wie – na  
12 wie verwys u as X? Ek is nie –  
13 MR MPOFU: No, I'm saying the amount of  
14 time, whether it was five or 10 –  
15 BRIGADIER CALITZ: O, okay, ek is met u.  
16 MR MPOFU: - ja, it's irrelevant.  
17 BRIGADIER CALITZ: Ek is met u.  
18 MR MPOFU: That's what I'm going to say  
19 to you, ja.  
20 BRIGADIER CALITZ: Ek is met u.  
21 MR MPOFU: So let's call it X minutes, it  
22 took X minutes, okay. The point I was making to you is  
23 that if that rollout was going to be done simultaneously  
24 according to Scott, then it would have taken X minutes, but  
25 if it was going to be done serially it would take 6X, six

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1 times X. You understand? Understand the difference?  
2 BRIGADIER CALITZ: Ek hoor wat u sê.  
3 MR MPOFU: No, but apart from hearing it,  
4 do you agree that if it was to be done simultaneously it  
5 would take X, and if it was done serially it would take 6X?  
6 BRIGADIER CALITZ: Noudat u vir my vra  
7 stem ek saam. U het nie voorheen gevra stem ek saam nie.  
8 Nou ja, dit maak sin.  
9 MR MPOFU: Thank you. Now the crucial  
10 thing, you as the police were of the view that the strikers  
11 were going to attack, correct?  
12 BRIGADIER CALITZ: Die enigste wat ons  
13 voorsien het is dat nadat ons die waarskuwing sou gegee  
14 het, uitbeweeg het, en in 'n, kan ek sê van 'n  
15 noordwestelike rigting – nee, noord oostelike rigting dan  
16 in 'n noordwestelike rigting die waarskuwing aan die koppie  
17 sou gee, tydens daardie proses het ons konflik verwag. Dit  
18 is korrek.  
19 MR MPOFU: And do you think it is  
20 significant or insignificant that you would have to project  
21 the time that it would take to roll out the barbed wire,  
22 which was the first step of stage 3, that you, at least the  
23 big leaders, you'd have to be on the same page as to that  
24 crucial issue, correct?  
25 BRIGADIER CALITZ: Nee, ek stem nie saam

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1 met u nie, mnr die Voorsitter.  
2 MR MPOFU: So it would be – remember,  
3 this goes right up to General Annandale. He's the one who  
4 has fixed the time for this, so that means he also must  
5 have some projections as to how long each stage is going to  
6 take because he didn't want it to get dark while the thing  
7 was being done, but I'm just placing that aside. You were  
8 not there. That is at the half past 1 meeting, and he has  
9 given evidence as to why he chose half past 3. So we can  
10 take it for granted that that's what he said.  
11 BRIGADIER CALITZ: Mnr die Voorsitter,  
12 ja, ek dink die half 3 was, het niks te doen gehad –  
13 VOORSITTER: Half 4.  
14 BRIGADIER CALITZ: Ag, die 15:30, kom ek  
15 noem dit so, het – wel in my mening niks te doen gehad met  
16 die uitrol van die draad, die tydperk van die draad nie,  
17 nee, en daarom het ek verskil.  
18 CHAIRPERSON: [Microphone off, inaudible]  
19 it works like this. He didn't want it to take place, to  
20 start too late because there would be a problem with lights  
21 as you approach sunset and so forth. So he must have  
22 formed some kind of, made some rough kind of estimate as to  
23 how long the whole process might take and therefore he had  
24 to fix it at a time so that the thing would be over whilst  
25 – so that those parts that needed light would be over

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1 before the light became problematic. I mean that must  
 2 follow, surely. So he must have formed some kind of, made  
 3 some kind of estimate as to how long the rollout would  
 4 take, but he would also have had to take other factors into  
 5 account, such as the period, the warning you would give,  
 6 the period that would elapse before – I think you were  
 7 going to give two warnings really - before the second  
 8 warning, and how long would elapse after, between the  
 9 second warning and the actual commencement of the operation  
 10 as such, the actual dispersal operation. He would have had  
 11 to work those out roughly, wouldn't he? That must be so.  
 12 Is that right?

13 BRIGADIER CALITZ: Dit kan 'n  
 14 moontlikheid wees, mnr die Voorsitter.

15 CHAIRPERSON: Ja, so what Mr Mpfu is  
 16 putting to you is that he must have made some kind of  
 17 estimate, looking at it from a practical point of view, as  
 18 to how long the rollout would take. I think that, is that  
 19 your point, Mr Mpfu?

20 MR MPOFU: That's all, Chairperson.

21 CHAIRPERSON: You agree with that?

22 BRIGADIER CALITZ: Dit is wat ek van u  
 23 verstaan, mnr die Voorsitter, ja. Ek, soos mnr Mpfu dit  
 24 gestel het, het ek net met hom verskil -  
 25 MR MPOFU: Okay.

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1 BRIGADIER CALITZ: - op daardie stadium.  
 2 [10:38] CHAIRPERSON: You mustn't agree with me  
 3 because I ask questions, if you really disagree with Mr  
 4 Mpfu, if you disagree you must disagree consistently and  
 5 if you agree with him you must do the same.

6 BRIGADIER CALITZ: Mnr die Voorsitter, -  
 7 CHAIRPERSON: Is this a note from which  
 8 we can tea, Mr Mpfu?

9 MR MPOFU: It is, Chairperson, and on  
 10 that note I adopt the Chairperson's question to which he  
 11 has agreed.

12 BRIGADIER CALITZ: Mnr die Voorsitter,  
 13 kan ek dalk net iets sê? U omskrywing en verduideliking is  
 14 partykeer baie breër en duideliker as die beweringe wat net  
 15 gemaak word in 'n kort sin, so ek is versigtig om te sê  
 16 "ja" en dan more word ek aangehaal dat ek gesê het "ja, die  
 17 generaal het dit gedoen omdat die draad," so dit is wat ek  
 18 wou verskil het, maar ek stem saam met u, mnr die  
 19 Voorsitter, dankie.

20 CHAIRPERSON: Well, I did try to help all  
 21 the cross-examiners from time to time, sometimes I succeed  
 22 and sometimes I don't, but we won't take that point any  
 23 further now, we'll have tea instead.

24 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 25 [11:08] CHAIRPERSON: The Commission resumes. Mr

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1 Budlender, I see you have your hand up?  
 2 MR BUDLENDER SC: Chair, there is a  
 3 matter which I need to raise with the Commission in an open  
 4 session regrettably, it is complaint about a lack of  
 5 cooperation. I want to say immediately this is not a  
 6 complaint about a lack of cooperation by our colleagues and  
 7 the SAPS legal team who have always cooperated fully with  
 8 us, but I'm afraid on this matter there has been a lack of  
 9 cooperation by their client. The problem, Chair, is that  
 10 for, we require, for the purpose of the evidence of  
 11 Lieutenant-General Mbombo, materials relating to the  
 12 National Management Forum meeting which was held on the 15th  
 13 of August 2012 and what was called the extraordinary  
 14 session, we've been tempting to obtain the relevant  
 15 materials for some time and unfortunately without success  
 16 and can I just say what they are?

17 The first thing is the agenda papers and pack  
 18 which were distributed to members of the National  
 19 Management Forum before the meeting of 15 August 2012,  
 20 those were first requested on the 23rd of September last  
 21 year. We've requested it a number of times since then.  
 22 Secondly, there are the agenda papers and the pack which  
 23 was distributed to members of the National Management Forum  
 24 before the following meeting of the National Management  
 25 Forum after August 2012 and that was requested more

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1 recently, on the 7th of January.  
 2 Thirdly, there is the tape recording of the  
 3 meeting of the National Management Forum meeting which was  
 4 held on the 15th of August 2012. We've been told that it  
 5 has been, it was recorded and that the recording has been  
 6 preserved. We requested that on the 17th of November last  
 7 year, we've requested it since then and we haven't received  
 8 it. Fourthly, we have asked for, the method which the  
 9 secretariat uses for the minutes of these meetings is that  
 10 Brigadier Mahlalela distributes a draft and asks members  
 11 who were there for comments on the draft minutes, and so  
 12 we've asked for a copy of the draft minutes of the  
 13 extraordinary session which she distributed to those  
 14 present for their comment and we've asked for the comments  
 15 which she received from those who were present. Those were  
 16 both requested on the 6th of January and we are sure they're  
 17 available because we interviewed Brigadier Mahlalela.

18 Sadly we have not received them. Our colleagues,  
 19 we believe, have attempted to secure them for us. The  
 20 result is that we are hindered in our preparation for the  
 21 evidence of Lieutenant-General Mbombo, the Provincial  
 22 Commissioner, and the fact that we are hindered means that  
 23 we are hindered in our ability to assist the Commission in  
 24 its function. Now we've tried to resolve this by other  
 25 matters, unfortunately other attempts have not succeeded



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1 and we now ask the Commission to intervene and to address  
2 the matter.

3 CHAIRPERSON: General Mbombo is the next  
4 witness?

5 MR BUDLENDER SC: That is correct, Chair.

6 CHAIRPERSON: So as soon as this witness,  
7 Brigadier Calitz is finished she will come to the witness  
8 table to give evidence, and the first person to cross-  
9 examine her will be you, as I understand it, is that  
10 correct?

11 MR BUDLENDER SC: That is so, Chair.

12 CHAIRPERSON: Ja, Mr Semenya, you've  
13 heard what Mr Budlender said, I don't know whether you wish  
14 to say anything or you wish merely to convey, you may wish  
15 merely to convey to your clients that I have now asked you  
16 in an open session to see to it that we get this material  
17 or no, we don't get it, but the evidence leaders get it. I  
18 understand some of it may be of a confidential nature which  
19 may not be relevant to our proceedings and I'm sure that  
20 there is no suggestion that any material of that kind will  
21 not be dealt with appropriately, but would you convey to  
22 your clients that this is cooperation which we require. We  
23 were promised full cooperation when the Commission was  
24 appointed and this appears, there may be an explanation for  
25 it and I don't want to prejudge anything, it does appear

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1 prima facie if what Mr Budlender says is correct, not to be  
2 the kind of cooperation we've been promised. There may be  
3 an explanation but if this material is not made available  
4 to us I would expect the National Commissioner to appear  
5 before us in person, not to give evidence, but to explain  
6 the reasoning for this lack of cooperation, if indeed that  
7 is what it is. I don't know if you wish to say anything?

8 MR SEMENYA SC: Chair, thank you, we will  
9 make the complaint and the transcript of this complaint,  
10 we'll give it to the National Commissioner for her notice.

11 CHAIRPERSON: Thank you, Mr Semenya.  
12 Brigadier, you're still under oath.

13 BRIGADIER CALITZ: Dankie, mnr die  
14 Voorsitter.

15 CHAIRPERSON: Mr Mpofu?

16 MR MPOFU: Yes, Chairperson.

17 CHAIRPERSON: Do you still have some  
18 questions to ask this witness?

19 MR MPOFU: Yes, yes, Chair. Brigadier,  
20 would it be fair to say that one of the reasons you  
21 differed sharply with what Colonel Scott was suggesting  
22 was, I'm now, we're still on the point of simultaneous  
23 rollout, was because it was, if implemented going to be  
24 very dangerous.

25 COMMISSIONER HEMRAJ: I'm so sorry, I

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1 missed the question, Mr Mpofu, would you mind repeating  
2 that?

3 MR MPOFU: Okay, it looks like the  
4 witness also missed the question. Is it correct or is it  
5 not that one of the reasons why you differed with what  
6 Colonel Scott is said to have been suggesting, is that it  
7 would have been very dangerous, a very dangerous thing to  
8 do, the simultaneous rollout, correct?

9 BRIGADIER CALITZ: Dit is nie wat ek gesê  
10 het hoekom ek met hom verskil het nie, ek het gesê in my  
11 vorige getuienis, mnr die Voorsitter, dat ek weet nie wat  
12 het Kolonel Scott daaroor getuig nie, dit was sy bedoeling  
13 tydens die beplanning gewees. Wat ek wel getuig het is dat  
14 operasioneel was dit nie moontlik gewees nie.

15 MR MPOFU: Yes, that's another reason,  
16 the second one, it was impossible, correct?

17 BRIGADIER CALITZ: Operasioneel, dit is  
18 korrek.

19 MR MPOFU: Yes, and it was very  
20 dangerous, correct?

21 BRIGADIER CALITZ: As u sê dangerous, in  
22 watter sin?

23 MR MPOFU: I don't know, in any sense  
24 that you can imagine, was it very dangerous?

25 CHAIRPERSON: What was dangerous, do you

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1 mean the danger of Nyalas colliding with each other or  
2 people getting entangled in a wire or –

3 MR MPOFU: Well, okay, I'll give an  
4 example.

5 CHAIRPERSON: What, I think you did say  
6 earlier when you dealt with it previously in your evidence,  
7 that it would have been a dangerous thing to do and I think  
8 Mr Mpofu is just getting you to confirm that and to explain  
9 to us what kind of danger you referred to earlier.

10 BRIGADIER CALITZ: Mnr die Voorsitter,  
11 dankie, ja, ek was net versigtig om te antwoord waarnatoe  
12 ek dink hy gaan, so –

13 CHAIRPERSON: No, look here, if we're  
14 going to have this business of he asks a question, -

15 BRIGADIER CALITZ: Ek verstaan –

16 CHAIRPERSON: You know it is dangerous to  
17 answer until I have repeated the question in my language  
18 we're not going to get anywhere. I don't think you mean  
19 that but, you didn't mean that or did you, but anyway let's  
20 get the answer now?

21 BRIGADIER CALITZ: Dankie, mnr die  
22 Voorsitter. Wat ek wel getuig het is dat operasioneel, dit  
23 sou baie onvanpas wees om 'n draad gelyktydig uit te gooi.  
24 Die rede daarvoor is dat u sal nooit weet die lengte van  
25 die draad nie. Ek het breedvoerig daaroor getuig, dit gaan

<p style="text-align: right;">Page 20171</p> <p>1 oor hoe ver 'n lemmetjiesdraad gaan as hy uitgerol word.</p> <p>2 Party van die lemmetjiesdraad haak vas en dan gaan hy net,</p> <p>3 sê 50 of 60 meter, die ander rol mooi uit en hy kan gaan</p> <p>4 tot by 80 tot 100 meter, so dit kan nooit voor die tyd</p> <p>5 bepaal word nie. Dit hang van die terrein af, dit hang van</p> <p>6 die graspolle, ag, enige, sê die terrein, dit hang daarvan</p> <p>7 af en die gevaar, soos u miskien daarna verwys, as ek u reg</p> <p>8 verstaan, is dat daar sou dan gaps, openinge gelaat gewees</p> <p>9 het of moontlik gelaat gewees het tussen die en dit sou dan</p> <p>10 'n gevaar situasie geskep het vir die neutrale zone, die</p> <p>11 veilige zone wat ek gesê het die polisie, die media en</p> <p>12 daardie persone was.</p> <p>13 MR MPOFU: And for that reason it would</p> <p>14 be very dangerous, baie gevaarlik, yes, no?</p> <p>15 BRIGADIER CALITZ: As die persone wel</p> <p>16 daardeur gekom het en die konfrontasie wat daaruit kon</p> <p>17 ontstaan het sou gevaarlik gewees het, dit is korrek.</p> <p>18 MR MPOFU: It was also, you've already</p> <p>19 said it was impossible, it would also be unprecedented,</p> <p>20 you've never seen it done before?</p> <p>21 BRIGADIER CALITZ: Ja, nee, ek het getuig</p> <p>22 dat in ons, my ondervinding is waar ons lemmetjiesdraad</p> <p>23 uitgooi, jy gooi die een en dan volg die ander een, so ja,</p> <p>24 dit is nog nooit gelyktydig uitgegooi waarvan ek bewus was</p> <p>25 nie.</p>	<p style="text-align: right;">Page 20173</p> <p>1 irregular, the answer?</p> <p>2 BRIGADIER CALITZ: In die sin wat u die</p> <p>3 vraag gevra het en wat ek dit verstaan het, as u dit nie op</p> <p>4 'n ander manier kan vra nie dan moet ek vir u sê, nee.</p> <p>5 MR MPOFU: Alright, now we were at the</p> <p>6 stage where we had said that on your understanding the</p> <p>7 rollout would take so long, on Colonel Scott's</p> <p>8 understanding I would take so long.</p> <p>9 BRIGADIER CALITZ: Ek het nie daaroor</p> <p>10 getuig nie, nee, mnr die Voorsitter.</p> <p>11 MR MPOFU: You don't remember when I said</p> <p>12 to you if it was done simultaneously it would be X and if</p> <p>13 it was done serially it would be 6 times X?</p> <p>14 BRIGADIER CALITZ: Al wat ek sê is, ek</p> <p>15 het nooit gesê dat ek en Colonel Scott het daardie tye met</p> <p>16 mekaar vergelyk en dit was nie my getuienis nie. Ek onthou</p> <p>17 dat ek gesê het ek weet nie wat Kolonel Scott getuig het,</p> <p>18 wat sy getuienis in daardie opsig was nie, dit is nie hoe</p> <p>19 ek dit verstaan het nie en dit is hoekom dit nie uitgevoer</p> <p>20 is nie.</p> <p>21 MR MPOFU: Yes, but you also were not</p> <p>22 prepared to dispute that that is what he said, so it is</p> <p>23 possible that he did getuig like that, correct?</p> <p>24 BRIGADIER CALITZ: Nee, dit is moontlik</p> <p>25 dat hy dit kon sê, ja.</p>
<p style="text-align: right;">Page 20172</p> <p>1 MR MPOFU: I take that as a, yes, and it</p> <p>2 was also, it would also have been life threatening or a</p> <p>3 danger to people's lives, correct?</p> <p>4 BRIGADIER CALITZ: Miskien as u die vraag</p> <p>5 net weer kan herhaal en vir my sê wat u bedoel?</p> <p>6 MR MPOFU: Yes, we've established that</p> <p>7 you regarded the suggestion by Scott as very dangerous,</p> <p>8 impossible, unprecedented. I'm asking you now whether it</p> <p>9 was also life threatening in the sense that it would be</p> <p>10 threatening to lives.</p> <p>11 BRIGADIER CALITZ: Ek het getuig dat</p> <p>12 indien die persone deur daardie gaping sou kom kon daar 'n</p> <p>13 konfrontasie ontstaan het aan die agterkant.</p> <p>14 MR MPOFU: And would it also be irregular</p> <p>15 in the sense that it wouldn't be in compliance with what is</p> <p>16 expected of the police obviously to do a dangerous thing?</p> <p>17 BRIGADIER CALITZ: Ja, nee, ek het nie</p> <p>18 getuig dat die polisie 'n dangerous ding gedoen het nie, so</p> <p>19 ek kan nie nou saam met die vraag stem nie.</p> <p>20 MR MPOFU: No, I accept that, Brigadier,</p> <p>21 please just answer the question.</p> <p>22 BRIGADIER CALITZ: Met ander woorde die</p> <p>23 antwoord is, nee, mnr die Voorsitter.</p> <p>24 MR MPOFU: So it would not be, - it would</p> <p>25 be dangerous, life threatening but it would not be</p>	<p style="text-align: right;">Page 20174</p> <p>1 MR MPOFU: So let's work on that</p> <p>2 possibility and I'm saying if, as part of the possibilities</p> <p>3 he did say that it would be rolled out simultaneously, then</p> <p>4 it would take, or rather your understanding of the process,</p> <p>5 it would take 6 times longer than his, correct?</p> <p>6 BRIGADIER CALITZ: As dit so</p> <p>7 vermenigvuldig word wat u nou-nou verduidelik het, dit sal</p> <p>8 langer gevat het glo ek.</p> <p>9 MR MPOFU: Ja, your idea of how long the</p> <p>10 warning period would have been was about half an hour,</p> <p>11 correct?</p> <p>12 BRIGADIER CALITZ: Ek het getuig die</p> <p>13 groep wat op die koppie is, tussen 20 en 30 minute wat ek</p> <p>14 hulle sou gegee het na die waarskuwing om dan te reageer.</p> <p>15 MR MPOFU: Yes, that's the same thing, so</p> <p>16 it is, yes, it was about half an hour?</p> <p>17 BRIGADIER CALITZ: Ek het getuig tussen</p> <p>18 20 en 30 minute.</p> <p>19 MR MPOFU: But 30 minute is half an hour,</p> <p>20 correct?</p> <p>21 BRIGADIER CALITZ: Ek bly by my antwoord.</p> <p>22 MR MPOFU: And if the rollout was going</p> <p>23 to be done according to your understanding, not the</p> <p>24 dangerous and life threatening one, then it would have</p> <p>25 taken another half an hour, more or less, not less than</p>

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1 that, it could be more but it wouldn't take less than that,  
 2 at least based on the demonstration, correct?  
 3 BRIGADIER CALITZ: As u dit net weer kan  
 4 herhaal, u sê my weergawe, ek wil net u reg verstaan?  
 5 MR MPOFU: If the rollout was going to be  
 6 done serially as you insist it should have been done  
 7 because you were obviously not going to do the "gevaarlike"  
 8 approach, then it would take about another, about half an  
 9 hour, I'm assuming that X will find it to be less than what  
 10 I thought it was and I'm using five minutes. If it was ten  
 11 minutes it would be an hour, if it took five minutes it  
 12 would be half an hour, so I'm taking the best case scenario  
 13 so that I don't argue with you about it.  
 14 MR SEMENYA SC: Chair, this matter was  
 15 extensively dealt with, I think by Mr Budlender. We had  
 16 established that it would take two minutes and on - logic  
 17 of time 6 it would be whatever it is, it is not a matter  
 18 for cross-examination.  
 19 CHAIRPERSON: Yes, well, there is a  
 20 further point and that is that it was in fact unrolled, the  
 21 wire was in fact uncoiled consecutively and we know the  
 22 time from, in terms of ETV time, we know how long it took  
 23 and it was actually less than 12 minutes as far as I  
 24 remember. So we're looking at, on your rough estimate, 2  
 25 minutes versus 12 minutes. My impression was it was

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1 actually slightly less than 12 minutes, but let's take 12  
 2 minutes at the outer limit for the moment. It added an  
 3 extra 10 minutes on that quote to, what was going to happen  
 4 that afternoon as envisaged initially by Colonel Scott,  
 5 isn't that right? So there is an extra 10 minutes delay if  
 6 I can call it that, it was occasioned by the facts that the  
 7 wire was uncoiled consecutively rather than simultaneously.  
 8 MR MPOFU: Yes, that is what in fact  
 9 happened, I'm not busy with that, with respect.  
 10 CHAIRPERSON: Well, what are you –  
 11 MR MPOFU: I'm busy with what the, I'm  
 12 obviously talking about the interaction, that's why I  
 13 talked about the interaction between what was planned ala  
 14 Scott and what was envisaged ala Calitz. I'm still there,  
 15 I'm coming to –  
 16 CHAIRPERSON: Well, obviously what Scott  
 17 envisaged was two minutes and what this witness, I'm not  
 18 sure what he envisaged, let's ask him quickly. How long  
 19 did you think this exercise would take, this uncoiling of  
 20 the wire?  
 21 MR MPOFU: Ja.  
 22 BRIGADIER CALITZ: Mnr die Voorsitter,  
 23 gewoonlik vat dit so twee tot drie minute om 'n draad af te  
 24 gooi. Weereens dit hang van die omstandighede af, so maal  
 25 met –

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1 CHAIRPERSON: So this is –  
 2 BRIGADIER CALITZ: Maal met 6.  
 3 CHAIRPERSON: This is not accurate  
 4 science but it is an estimation, so it sounds like you  
 5 thought it might take as much as 18 minutes?  
 6 BRIGADIER CALITZ: Ek sou sê twee tot  
 7 drie minute maal 6, wat is, tussen 12 –  
 8 CHAIRPERSON: You can take your  
 9 calculator out of your pocket if you like?  
 10 BRIGADIER CALITZ: Tussen 12, ek gaan –  
 11 CHAIRPERSON: You can take it from me,  
 12 six 3 is 18.  
 13 BRIGADIER CALITZ: Dit is, ek vat u woord  
 14 daarvoor, dankie mnr die Voorsitter.  
 15 MR MPOFU: Have you, in your life have  
 16 you ever seen that exercise being done in two minutes, what  
 17 we witnessed out there the other day?  
 18 BRIGADIER CALITZ: Mnr die Voorsitter,  
 19 ja, ons werk baie met draad en in die verlede was daar baie  
 20 keer draad uitgegooi en opgetel en tydens kursusse, ek  
 21 praat van die verlede, en dit is baie moontlik om dit wel  
 22 so uit te gooi. Ek moet vir u sê dit hang baie van die  
 23 terrein af en die omstandighede op die dag, die druk wat  
 24 daar is wat voor die lede afspeel, asook die terrein self.  
 25 Dit speel 'n belangrike rol met die uitgooi van draad,

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1 dieselfde met die optel daarvan, dit kan ook enige iets -  
 2 MR MPOFU: And the purpose of us being  
 3 taken to this exercise across the road was among other  
 4 things to give us a life show of the average, how long it  
 5 takes to do that, wasn't it?  
 6 BRIGADIER CALITZ: Nee, die doel hoekom,  
 7 my doel wat ek probeer daar vir die Kommissie en vir almal  
 8 wat daar teenwoordig was gewys het omdat daar getuienis  
 9 miskien was dat dit gelyktydig was en dat operasioneel op  
 10 die grond met die, kan ek sê, my en Kolonel Makhubela se  
 11 uitvoering van die plan was, dit was nie moontlik gewees  
 12 nie en indien ons dit sou gelyktydig doen en daar is 'n  
 13 spasio van, ek dink ons het 'n spasio van 5 meter gelos of  
 14 so iets, en om dan die A frame op te tel en terug te trek  
 15 om vas te maak aan die Nyala is feitlik onmoontlik. U sal  
 16 onthou dat 'n seksie bestaan uit 6 tot 8. Ek dink op die  
 17 video het ons gesien dat op 'n stadium ek dink 6 persone  
 18 gelyktydig getrek het aan daardie A frame waar almal dit  
 19 kon sien en dit is op video, en dit was net nie moontlik  
 20 gewees om hom verder te trek nie. Die draad haak vas aan  
 21 enige iets, u het op daardie stadium gesien hoe lyk die  
 22 draad wat afgegooi is.  
 23 Daar was plastiese sakke, daar was allerhande  
 24 goed, so dit is uit vorige ontplooiings. Die  
 25 lemmetjiesdraad haak fisies vas aan alles, so indien u dit

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1 nie so doen nie sal daar beslis openinge gelaat word en  
2 deur openinge te laat sou baie onwys gewees het.  
3 MR MPOFU: I've just asked you a simple  
4 question, was your understanding of the exercise that you  
5 took us to do across the road intended to give us a sense  
6 of how long it takes to roll the wire out or not?  
7 BRIGADIER CALITZ: Nie net dit nie, nee.  
8 MR MPOFU: Was that part of the reasons?  
9 [11:28] BRIGADIER CALITZ: U het vir my gevra die  
10 "purpose." Ek het vir u die "purpose" gesê. Dit was deel  
11 daarvan.  
12 MR MPOFU: Thank you. And given all the  
13 things that you've explained, the possibility of it  
14 catching on something and so on and the terrain, all the  
15 things that you've said, how long did you envisage it would  
16 take on that day, on the 16th?  
17 BRIGADIER CALITZ: Dit is wat mnr die  
18 Voorsitter geantwoord het, daardie tussen 12 en wat ons sê  
19 18 minute.  
20 MR MPOFU: So given all those things you  
21 thought it would take two minutes per Nyala?  
22 BRIGADIER CALITZ: Mnr die Voorsitter,  
23 ja, dit is die gemiddelde tyd. Ek het gesê twee tot drie  
24 minute om die ding af te gooi en te ry.  
25 MR MPOFU: Alright.

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1 BRIGADIER CALITZ: So sou daar iets  
2 gebeur het en daar sou 'n voorval, of soos u dit gister  
3 gestel het, the Nyala got stuck, dit sou alles invloed  
4 gehad het daarop, juistemeer dat ons dit nie gelyktydig kon  
5 doen nie.  
6 MR MPOFU: That's fine. We'll stick with  
7 your 12 to 18 minutes, which I don't accept, but that's  
8 another story. So the issue is that on your – or rather,  
9 on Scott's version then the whole thing would have taken  
10 about two minutes. On yours it would take about 12 to 18  
11 minutes. Let's just accept that for now. The point is on  
12 your version you then expected that for those 18 minutes  
13 these strikers were going to do what? Just sit, wait and  
14 watch for 12 minutes, or 18 minutes? What was your view of  
15 what was going to happen in that 18 minutes?  
16 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
17 het getuig dat die draad was nooit "intended" om gebruik te  
18 word teen die "strikers" nie, en ek het ook getuig,  
19 breedvoerig dink ek, ek kan nie onthou, ek dink dit was Adv  
20 Budlender, dat ons het met die "public address system" die  
21 doel van die draad en hoekom dit daar is, ek het so rofweg  
22 getel, ek dink ons het op 12 keer uitgekom wat ons daarvoor  
23 gepraat het oor die "address system," nie het met mnr Noki  
24 maar ook met die hele groep wat daar gesit het, wat dit dan  
25 kon hoor. So die "uncoiling" van die draad was glad nie

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1 teen die "protesters" nie. So nee, hulle sou dan dopgehou  
2 het wat voor hulle plaasgevind het, die beweging van die  
3 voertuie, en van daar af sou ons dan met hulle in gesprek  
4 getree het.  
5 MR MPOFU: Ja, that is exactly what I  
6 mean when I say your plan was stillborn because you  
7 anticipated a group of people that you had categorised as  
8 belligerent, who were going to kill you and all these  
9 menacing things, to sit for 18 minutes at worst, or at  
10 best, folding their arms and waiting for you to unroll the  
11 barbed wire, which they had repeatedly told you is  
12 something that they found to be offensive. Do you think  
13 that's logically sustainable, that expectation that they  
14 were just going to stand there and both of you, stand there  
15 for 18 minutes and, you know, kindly wait for you to unroll  
16 the barbed wire?  
17 BRIGADIER CALITZ: Mnr die Voorsitter,  
18 ja, dit is wat ek getuig het.  
19 MR MPOFU: Right, and what do you say to  
20 my suggestion that that was an unreasonable and, kind of  
21 out there expectation that these people that you had  
22 categorised like this would suddenly behave like that?  
23 That is was from a leadership point of view, for you as a  
24 leader, that it would be a criticism that I will level  
25 against you that you expected them to behave that way when

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1 you've categorised them the way that I've said?  
2 MR SEMENYA SC: Chair, that is still  
3 argument.  
4 MR MPOFU: No. Sorry Chairperson, no,  
5 no, no, it's not. It's not argument. I'm putting to this  
6 witness something that I'm going to use to criticise him,  
7 so I'm giving him an opportunity to deal with it. I'm  
8 simply saying if he even on his version, which I don't  
9 accept, expected that the people would stand there for 18  
10 minutes while the police are kindly rolling out the barbed  
11 wire, that that is a criticism of his own assessment and  
12 leadership and so on –  
13 CHAIRPERSON: Ja, Mr Mpofu, let's deal  
14 with it this way.  
15 MR MPOFU: Yes.  
16 CHAIRPERSON: Your question about what he  
17 expected, I take it that relates to what he expected before  
18 the wire started being uncoiled. Is that right?  
19 MR MPOFU: Well, yes, that's why I said  
20 there are two sections, Chairperson –  
21 CHAIRPERSON: No, no, no, I –  
22 MR MPOFU: There's what actually happened  
23 and there's what he anticipated to happen.  
24 CHAIRPERSON: Yes, but you agree with me,  
25 I take it –

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1 MR MPOFU: Yes.

2 CHAIRPERSON: - that your question as to

3 what he expected relates to what he expected before the

4 wire started being uncoiled.

5 MR MPOFU: Yes, Chairperson.

6 CHAIRPERSON: Alright, now were there any

7 – when that morning when the Nyalas arrived with the wire

8 trailers, you remember the previous day there had been

9 Nyalas at the scene but without wire trailers, they had

10 been kept away I think in the forward holding area or

11 something because it was thought that their presence might

12 provoke trouble and so on. That's correct, isn't it?

13 BRIGADIER CALITZ: Hulle was terug by die

14 JOC self gewees.

15 CHAIRPERSON: They were at the JOC, okay.

16 So they weren't there on the Wednesday. They were brought

17 there on the Thursday, and when the Nyalas arrived with the

18 wire trailers was there any response from the strikers, or

19 any of the strikers?

20 BRIGADIER CALITZ: Mnr die Voorsitter,

21 ja, dit is wat ek getuig het. Mnr Noki het self na ons toe

22 gekom en gevra wat is die doel, hoekom is die voertuie

23 daar. Dieselfde beweging het plaasgevind voor hulle van 1

24 af tot en met 6, so dieselfde karre met dieselfde draad het

25 beweeg en stellings gaan inneem. So hy het na ons toe

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1 gekom en gevra wat is die doel, en dit is een van die kere

2 wat ons vir hulle verduidelik het, en hy het omgedraai en

3 teruggestap.

4 CHAIRPERSON: So you explained what they

5 were for and he turned around and went away. Alright, then

6 when the wire started being uncoiled, when Nyala 1 started

7 moving away from the power station, I think it was, and the

8 wire started being uncoiled, I think on the evidence he

9 came back to you.

10 BRIGADIER CALITZ: Dit is korrek, mnr die

11 Voorsitter.

12 CHAIRPERSON: And he expressed, hy het sy

13 misnoë uitgedruk. Is ek reg? He expressed his

14 dissatisfaction about what was happening. Is that right?

15 BRIGADIER CALITZ: Dit is, hy het dan

16 daardie dreigemente tot ons toegevoeg.

17 CHAIRPERSON: Ja, alright, so certainly

18 whatever you expected before the wire started being

19 uncoiled, wasn't happening. You thought they'd just

20 observe it and stand quietly with their arms folded and

21 watch the wire being uncoiled for 18 minutes. That's what

22 you told us that's what you expected, but that wasn't

23 happening. Once the first Nyala moved away with the fire,

24 he came back to you and complained in rather aggressive

25 tones, I think is your evidence. Is that right?

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1 BRIGADIER CALITZ: Dit is korrek.

2 CHAIRPERSON: So your expectations

3 weren't realised.

4 BRIGADIER CALITZ: Waarop ons dan weer

5 vir hom verduidelik het weer oor dieselfde "address system"

6 die doel van dit, en dit is glad nie gemik teen hulle nie.

7 CHAIRPERSON: And did he seem satisfied

8 with that?

9 BRIGADIER CALITZ: Nee, ek dink hy het

10 weggestap en ek dink daardie "dismissive action" was op

11 daardie stadium gewees, dat –

12 CHAIRPERSON: What did you expect then?

13 I can understand what you've told Mr Mpofu you expected

14 before the wire started to be uncoiled, but what were your

15 expectations once you started uncoiling the wire and there

16 was this reaction that you've described?

17 BRIGADIER CALITZ: Hy het weggestap van

18 ons toe, mnr die Voorsitter, en ek het gesien dat hy nie

19 baie gelukkig was nie, as ek in daardie terme kan dit stel,

20 en daar is my toegevoeg dat daar dreigemente gemaak was, en

21 toe het ons maar net "observe." Hy het na die groep toe

22 gegaan en dit is waar daardie spesifieke militante groep

23 dan begin, nader bymekaar begin beweeg het en dit is,

24 daarna is die getuienis van Nyala 3 na 4 toe en sonder om

25 terug –

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1 CHAIRPERSON: No, my question, Brigadier

2 – I'm sorry to interrupt you. I understand it's difficult

3 sometimes, I'm not being critical, but you haven't answered

4 my question yet and so I'll repeat my question to you. The

5 question was, you had certain expectations what would

6 happen before you began to uncoil the wire. I understand

7 what you're saying. You've also told us that you expected

8 something different once you started uncoiling – well, you

9 hadn't answered the question. The question is what did you

10 expect once you saw his reaction to the uncoiling of the

11 wire by Nyala 1? You've told us what happened, but I take

12 it you must have realised that your expectation wasn't

13 going to turn into reality because he wasn't just standing

14 there with his arms folded, watching the wire being

15 uncoiled, was he?

16 BRIGADIER CALITZ: Nee, hy het na ons

17 toe –

18 CHAIRPERSON: So what did you expect to

19 happen once his attitude, as you've described it to us, was

20 manifested?

21 BRIGADIER CALITZ: Ek het verwag hy sal

22 dan teruggaan na sy mense toe en seer sekerlik dan vir

23 hulle die boodskap oordra, wat ek verneem het hulle het dan

24 gehoor en duidelik sou hulle gedrag dan, het gewys dat dit

25 onmiddellik verander. So ek het hom, verwag dat hy sou

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1 teruggaan en dan miskien dit sal oordra aan die groep self  
 2 aangesien hy die enigste gesprek tussen ons en hulle was  
 3 die heeldag.  
 4 CHAIRPERSON: So the short point is their  
 5 conduct would change, wouldn't it? Their conduct would  
 6 change once they saw the wire being uncoiled and he behaved  
 7 in the fashion that you've described.  
 8 BRIGADIER CALITZ: Yes.  
 9 CHAIRPERSON: Now what did you expect  
 10 their conduct to change to? That's the question. You  
 11 still haven't answered it.  
 12 BRIGADIER CALITZ: Ja-nee, ek hoor wat u  
 13 sê, mnr die Voorsitter. Ja, ek kan nie sê op daardie  
 14 stadium presies dat ek in die voertuig gesit het en  
 15 enigiets anderste gedink het as dat ons moet hierdie draad  
 16 toe kry want die persone is ongelukkig, en hy sou terugvoer  
 17 gegee het, maar ek het ook getuig dat onmiddellik toe hy by  
 18 hulle kom het daardie groepering bymekaar gekom. So ek kon  
 19 sien daar is 'n drastiese, as ons dan sê "change of mood,"  
 20 ja. Dit is miskien die beste hoe ek dit kan antwoord.  
 21 CHAIRPERSON: I've cut some of the bush  
 22 out of the way for you, Mr Mpfu, you can now proceed -  
 23 MR MPOFU: Yes, indeed, Chairperson.  
 24 CHAIRPERSON: - if you wish.  
 25 MR MPOFU: I will, Chairperson. Thank

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1 you very much. Now let's examine then what the Chairperson  
 2 says what you expected the mood to change to. What we do  
 3 know for sure is that at that stage you thought that these  
 4 people were prepared to fight with the police and to die,  
 5 correct?  
 6 BRIGADIER CALITZ: Watter stadium? Sê  
 7 net weer?  
 8 MR MPOFU: At all stages you had the  
 9 impression that these people were prepared to fight the  
 10 police and to die, correct?  
 11 BRIGADIER CALITZ: Ja, daardie  
 12 dreigemente is later gemaak eers op ons, nie die heeltyd  
 13 gewees nie, nee.  
 14 MR MPOFU: No, Brigadier, please listen.  
 15 This is a very important question. Is it correct that at  
 16 all stages you were of the view that these people were  
 17 prepared to fight the police and to die, or is it not  
 18 correct? Yes or no?  
 19 BRIGADIER CALITZ: Daar is nie net 'n  
 20 maklike "yes or no" nie. Dit het bekend geword aan my toe  
 21 hy die dreigemente tot my toegevoeg het.  
 22 CHAIRPERSON: You see, Mr Mpfu used the  
 23 word "at all times." If you change the question slightly  
 24 and said once they made the threats, which of course you  
 25 deny they made, dealing with his evidence now, once they

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1 made the threats that you say they made, what did you think  
 2 would happen? If you ask the question that way you may -  
 3 if I may suggest that you may get the answer you're looking  
 4 for.  
 5 MR MPOFU: Okay, maybe I'll make it  
 6 easier. I'll make it easier, Chairperson, and it will be  
 7 clear why I ask the question that way, by quoting you  
 8 yourself, Brigadier, and you can tell me if you still stand  
 9 by this statement. "At no stage, at no stage during the  
 10 whole negotiating process did I get the impression that the  
 11 crowd was willing to listen to reason and lay down their  
 12 weapons. Instead I came to the conclusion that they will  
 13 never surrender their weapons and that they were prepared  
 14 to fight with the police and to die." Do you stand by that  
 15 statement?  
 16 BRIGADIER CALITZ: Dit is presies net  
 17 soos u daar lees.  
 18 MR MPOFU: Ja, thank you.  
 19 BRIGADIER CALITZ: Daardie verwys nie na  
 20 een spesifieke gedeelte nie.  
 21 MR MPOFU: At no stage -  
 22 BRIGADIER CALITZ: As ek na daardie  
 23 sinnetjie toe kan gaan, ek dink ek het dit verduidelik met  
 24 Adv Budlender of Adv Ntsebeza, en dit verwys na die proses  
 25 waar dit begin het, waar hulle nie hulle wapens wou neerlê

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1 nie. Ons het meer as 'n paar keer vir hulle gevra om hulle  
 2 wapens neer te lê. Daarna het dit oorgegaan na die "mood  
 3 change" toe, toe ons vir hulle "feedback" gegee het, en  
 4 daarna het dit oorgegaan na 'n dreigement toe. So daardie  
 5 sinnetjie vat die dag saam soos wat dit gebeur het.  
 6 MR MPOFU: I asked you a simple question.  
 7 Do you still stand by that statement or not?  
 8 BRIGADIER CALITZ: Dit is korrek, in die  
 9 sin wat ek dit gestel het.  
 10 MR MPOFU: Yes. So if at no stage, then  
 11 it means all stages and that's why I framed that question  
 12 that way. I'm saying to you that we have a situation where  
 13 you've just spoken to this gentleman - well firstly, it was  
 14 not the first time that you were telling them that the  
 15 barbed wire was not meant against them, was it?  
 16 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 17 het hierdie vrae "intensive" al geantwoord.  
 18 MR MPOFU: Just a yes or no. It was not  
 19 the first time that you were telling them that the barbed  
 20 wire was not -  
 21 BRIGADIER CALITZ: Watter deel van die  
 22 tydperk praat u nou van? As u sê "that was not the first  
 23 time," daardie, watter deel is die "that"?  
 24 MR MPOFU: In your life. Was it the  
 25 first time that you were telling them that the barbed wire

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1 was not meant against them?

2 MR SEMENYA SC: Chair –

3 BRIGADIER CALITZ: Mnr die Voorsitter, ek

4 verstaan nou glad nie wat u sê –

5 CHAIRPERSON: “In your life” is actually

6 a little bit –

7 MR MPOFU: Well, it’s a ridiculous

8 question –

9 CHAIRPERSON: - a little bit over the

10 top. No, no, let’s approach it differently. Did you tell

11 them several times what the purpose of the wire was?

12 BRIGADIER CALITZ: Mnr die Voorsitter,

13 ja –

14 CHAIRPERSON: Okay, the answer is yes.

15 Next question, what was the first time you told them the

16 purpose of the wire?

17 BRIGADIER CALITZ: Die eerste keer, as ek

18 dit hier reg aangeteken het, was in paragraaf 48 van my

19 verklaring gewees en dit is toe Kolonel McIntosh daar

20 aankom met die “public address system,” mense vorentoe

21 gekom het en dat ons vir hulle gesê het - maar dit was die

22 “public address system” waar ons die eerste keer met hulle

23 gepraat het –

24 CHAIRPERSON: Yes, yes, no, but when was

25 that?

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1 BRIGADIER CALITZ: - om die vertrou –

2 CHAIRPERSON: Was that when the Nyalas

3 arrived on the scene, dragging the wire trailers behind

4 them?

5 BRIGADIER CALITZ: Dit is wat ek net wou

6 uitgeklaar het, mnr die Voorsitter. Hy het gevra wanneer

7 was die eerste keer wat ons hulle “ge-address” het oor die

8 – as hy praat net van die draad was dit dan die oggend

9 rondom 10 uur op die 16de.

10 CHAIRPERSON: That was the first time.

11 Now how many times altogether was it explained to them?

12 BRIGADIER CALITZ: Vandat hulle daar

13 gekom het, mnr die Voorsitter?

14 CHAIRPERSON: Yes, yes, well I mean

15 obviously you didn’t tell them before the trailers –

16 BRIGADIER CALITZ: Ek sal dit so stel –

17 CHAIRPERSON: Sorry, listen. You didn’t

18 tell them before the Nyalas arrived on the scene with the

19 wire trailers, did you? So that was the first time. So

20 from then on how many times did you tell them before the

21 actual uncoiling took place? Did you explain to them again

22 at all?

23 BRIGADIER CALITZ: Dit was op daardie

24 stadium gewees toe – ek probeer gou-gou net die tye

25 vasstel, dat daar nou nie ’n verskil is nie. Paragraaf 81

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1 van my verklaring, waar hy na ons toe gekom het, dit was

2 nou net na 9, 10 uur die oggend, het ons die doel van die

3 draad vir hom verduidelik en toe weer rondom so 12,

4 “roughly” 12:35 net na, met die AMCU president wat daar was

5 het ons ook die doel van die draad verduidelik. Intendeel

6 hier het ek met die AMCU president gepraat en vir hom gesê

7 rondom die eerste dreigement op Nyala 6, en ons het ook

8 duidelik versoek dat hy dit aan hulle moet oordra. So dit

9 was die tweede keer gewees. Toe het hy, my paragraaf 91,

10 nadat die media en die goed, die media en die persone terug

11 begin beweeg het omdat hulle gesê het dis “unsafe” en dis

12 waar hulle die lang vuurwapen gesien het voor, het Noki

13 weer na ons toe gekom, demand why we had the barbed wire.

14 We again explained to him, ek dink dit is die derde een.

15 CHAIRPERSON: What time was that?

16 BRIGADIER CALITZ: Dit moet wees so net

17 voor, so rondom 14:00.

18 CHAIRPERSON: So 2 o’clock.

19 BRIGADIER CALITZ: Dis omtrent.

20 CHAIRPERSON: And thereafter?

21 BRIGADIER CALITZ: Waar hy dan –

22 CHAIRPERSON: That’s 2 o’clock in the

23 afternoon, and thereafter?

24 BRIGADIER CALITZ: Dit is korrek, mnr die

25 Voorsitter.

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1 CHAIRPERSON: Yes, yes, and thereafter –

2 BRIGADIER CALITZ: Dis die vierde keer,

3 en –

4 CHAIRPERSON: Did you give a warning

5 again about it later, or –

6 BRIGADIER CALITZ: Net daarna het hy die

7 dreigement gemaak van die “signing piece of paper,

8 killing,” daardie waaroor ons nou nie – en dan het ons net

9 na daardie dreigement weer met hom gesê, “We informed him

10 with the public address system, no intention to fight. We

11 can resolve it by talking. Request them to disarm again.”

12 So dit was die, soos ek dit getel het die –

13 CHAIRPERSON: But did you talk about the

14 barbed wire again on that occasion?

15 BRIGADIER CALITZ: Weer ’n keer, ja.

16 CHAIRPERSON: Okay, alright.

17 BRIGADIER CALITZ: So dit wat ek so

18 vinnig kry, en dan soos die “barbed wire,” paragraaf 108,

19 “ontcoil” het, het hy weer na ons toe gekom, “very

20 aggressive.” Kolonel McIntosh het weer vir hom “explain

21 over the public address system that the purpose of the

22 barbed wire is for the protection of the police, the media,

23 and the community.” U het my gevra voorheen oor die

24 “community.” Ek het gesê dit sluit die “protesters” in en

25 die hele, net die dinges nie. “He told him that it’s not

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1 intended against the strikers." Mnr Noki het dan gesê hy  
 2 gaan terug, ons sal hom nie weer sien nie.  
 3 CHAIRPERSON: Okay, so –  
 4 BRIGADIER CALITZ: So dis die ses -  
 5 CHAIRPERSON: You told them on a number  
 6 of occasions –  
 7 BRIGADIER CALITZ: - sewe kere.  
 8 CHAIRPERSON: - on a number of occasions,  
 9 starting early in the morning when the Nyalas arrived on  
 10 the scene dragging these wire trailers and you've explained  
 11 all the other cases thereafter, so I think you've not got  
 12 the information you want, Mr Mpofo.  
 13 [11:48] MR MPOFU: Thank you, Chairperson, yes, I  
 14 do, and so despite the fact that you had told him four or  
 15 five times –  
 16 BRIGADIER CALITZ: Nee, dit is meer as  
 17 dit, mnr die Voorsitter.  
 18 MR MPOFU: Yes, let's say, what are you  
 19 happy with, eight?  
 20 BRIGADIER CALITZ: More like –  
 21 CHAIRPERSON: About six I think, but it  
 22 doesn't matter –  
 23 MR MPOFU: Yes, okay.  
 24 CHAIRPERSON: - whether it was four, five  
 25 or six, they were told a number of times, that's it.

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1 MR MPOFU: Yes, okay, six, let's agree on  
 2 six. Despite the fact that you told him six times that the  
 3 wire was not meant for them he did not accept that  
 4 explanation otherwise you would only had to tell him once,  
 5 correct?  
 6 BRIGADIER CALITZ: Ek neem aan hy dit nie  
 7 aanvaar nie.  
 8 MR MPOFU: Yes, so that's the situation  
 9 we have, we know that you've said this six times to these  
 10 people and they still don't accept it. We know that they  
 11 are prepared to fight with the police and to die, we know  
 12 that there were about 3,000 people waving arms at you,  
 13 number three, all of whom were armed with extremely  
 14 dangerous weapons and we also know that they acted with one  
 15 goal and one intention, the 3,000 people, and despite those  
 16 five things you expected them for 18 minutes to sit there,  
 17 fold their arms, okay, maybe that's an unfortunate time,  
 18 sit there and watch you uncoiling the barbed wire for about  
 19 18 minutes, is that your evidence?  
 20 BRIGADIER CALITZ: Dit is waaroor ek  
 21 getuig het toe ek die vorige keer daaroor gevra is deur mnr  
 22 die Voorsitter.  
 23 MR MPOFU: Well, I have to say,  
 24 Brigadier, that I will argue that any reasonable person in  
 25 your position knowing all these things that I've just

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1 explained to you, should have known that those people were  
 2 not going to sit there and that your failure to appreciate  
 3 that fact contributed to the disastrous consequences of  
 4 that operation, would you care to comment?  
 5 BRIGADIER CALITZ: Ja, ek stem nie saam  
 6 met u nie, mnr die Voorsitter, oor die redes wat ek vir u  
 7 wel gegee het.  
 8 MR MPOFU: Yes, do you know whether or  
 9 rather let me put it this way, do you know at what stage  
 10 the change to, or rather from the intended deployment of  
 11 the six Nyalas in that concave shape that we see in, I  
 12 think in slide 81, to the actual deployment towards the  
 13 kraal, when that change happened?  
 14 CHAIRPERSON: - change in the plan?  
 15 MR MPOFU: In the plan, yes, Chairperson.  
 16 CHAIRPERSON: The plan was the concave.  
 17 MR MPOFU: The concave shape, yes.  
 18 CHAIRPERSON: Shape that you refer to and  
 19 then of course that wasn't implemented.  
 20 MR MPOFU: Yes.  
 21 CHAIRPERSON: And clearly that was  
 22 because the plan will change, you want to know when the  
 23 change of plan took place?  
 24 MR MPOFU: Yes, thank you, Chairperson.  
 25 CHAIRPERSON: Okay, can you answer that

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1 please, Brigadier?  
 2 BRIGADIER CALITZ: Mnr die Voorsitter,  
 3 gegewe die tyd min of meer rondom, tussen 11 en 12 uur op  
 4 daardie dag was daar 'n dreigement gewees op Nyala6 en dit  
 5 is dan waargeneem, soos ek getuig het alreeds, deur Kolonel  
 6 Vermaak, die foto is gestuur JOC toe. Daardie persone het  
 7 aan ons meegedeel wat die dreigement was weereens op hulle  
 8 en dat die JOC het dan opdrag gegee dat, soos ons dit sien  
 9 op bladsy 81 van Exhibit L, ek dink ek het verwys dat hy  
 10 teen 'n klokwaards, as ek my getuienis kan reg onthou met  
 11 Advokaat Budlender of Chaskalson, wie my hieroor  
 12 breedvoerig ondervra het, het hy dan op daardie stadium  
 13 klokwaards beweeg en sou hy na die rigting van die klein  
 14 kraal en nie meer soos hy nou hier was, beweeg het nie.  
 15 CHAIRPERSON: That then inevitably  
 16 brought in its train a change of plan as far as the shape  
 17 of the barbed wire fence or what the shape of the barbed  
 18 wire fence would be, is that right?  
 19 BRIGADIER CALITZ: Dit is korrek, mnr die  
 20 Voorsitter.  
 21 CHAIRPERSON: And did you realise at the  
 22 time then that the shape of the barbed wire fence would now  
 23 be different from what was originally planned in  
 24 consequence of the decision communicated by the JOC, I  
 25 think with General Annandale's decision to move Nyala6 from



<p style="text-align: right;">Page 20199</p> <p>1 where it was to the place it ended up, is that correct?</p> <p>2 BRIGADIER CALITZ: Ja, dit is korrek,</p> <p>3 hulle het dit gesien en dit is so opgetel, mnr die</p> <p>4 Voorsitter.</p> <p>5 MR MPOFU: Okay, now we know the motive</p> <p>6 or the motivation for that change. Who took the decision</p> <p>7 to make that change?</p> <p>8 CHAIRPERSON: Which change, the change –</p> <p>9 MR MPOFU: The change from concave to the</p> <p>10 kraal?</p> <p>11 CHAIRPERSON: So –</p> <p>12 MR MPOFU: No, I'm saying he has now</p> <p>13 given us a motivation which I accept, but who took that</p> <p>14 decision, Brigadier?</p> <p>15 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>16 glo dit sal in die JOC bespreek gewees het.</p> <p>17 CHAIRPERSON: All you can say is, the</p> <p>18 decision was made in the JOC.</p> <p>19 BRIGADIER CALITZ: Dit is vir my</p> <p>20 deurgegee.</p> <p>21 CHAIRPERSON: Who in the JOC took the</p> <p>22 decision is something you can't help us about, but I think</p> <p>23 the evidence is with General Annandale, but that's</p> <p>24 something –</p> <p>25 BRIGADIER CALITZ: Ek dink –</p>	<p style="text-align: right;">Page 20201</p> <p>1 answered this, maybe I was not listening, how was it</p> <p>2 communicated to you and by whom?</p> <p>3 BRIGADIER CALITZ: Ek dink dit is wat ek</p> <p>4 nou net getuig het, ek sê –</p> <p>5 MR MPOFU: Ja –</p> <p>6 BRIGADIER CALITZ: - ek dink my getuienis</p> <p>7 was Kolonel Scott wat my gekontak het, ek praat onder</p> <p>8 korreksie.</p> <p>9 MR MPOFU: So he said to you, because</p> <p>10 now, I'm not quoting him verbatim, because Nyala 6 had to</p> <p>11 retreat the plan has now changed and the six Nyalas will no</p> <p>12 longer have to uncoil the barbed wire in the concave shape</p> <p>13 and now it must go straight to the kraal, words to that</p> <p>14 affect?</p> <p>15 BRIGADIER CALITZ: Dit sal min of meer in</p> <p>16 daardie, soos ek verduidelik het, 'n klokwaardse beweging</p> <p>17 wees.</p> <p>18 MR MPOFU: And at that stage, you say</p> <p>19 this was sometimes in the morning?</p> <p>20 BRIGADIER CALITZ: Ja, dit is korrek, mnr</p> <p>21 die Voorsitter.</p> <p>22 MR MPOFU: And then, so it means at that</p> <p>23 stage you then already knew that the only way through which</p> <p>24 the operation could be rolled out, so to speak, would have</p> <p>25 been through that gap between the sink house and the kraal</p>
<p style="text-align: right;">Page 20200</p> <p>1 CHAIRPERSON: - you can't from your own</p> <p>2 knowledge tell us.</p> <p>3 BRIGADIER CALITZ: Ek dink ek het getuig</p> <p>4 Kolonel Scott het my geskakel, maar ek moet –</p> <p>5 MR MPOFU: Ja, -</p> <p>6 BRIGADIER CALITZ: Dit is onder</p> <p>7 korreksie.</p> <p>8 CHAIRPERSON: So obviously someone</p> <p>9 contacted you and said you must move the Nyala.</p> <p>10 BRIGADIER CALITZ: Dit is korrek.</p> <p>11 CHAIRPERSON: But whose idea it was,</p> <p>12 whose decision it was is something you can't tell us about,</p> <p>13 but I think General Annandale said it was him.</p> <p>14 BRIGADIER CALITZ: As hy so getuig het –</p> <p>15 CHAIRPERSON: It was him.</p> <p>16 BRIGADIER CALITZ: Dan is dit so, mnr die</p> <p>17 Voorsitter.</p> <p>18 CHAIRPERSON: Yes.</p> <p>19 MR MPOFU: No, no, no, it is fine, I'm</p> <p>20 not looking for an identity, that's good enough that the</p> <p>21 decision was taken by the JOC so to speak, whoever it was,</p> <p>22 is that your evidence?</p> <p>23 BRIGADIER CALITZ: Dit is korrek, ja, dit</p> <p>24 is waar die besluit geneem is.</p> <p>25 MR MPOFU: Yes, and I'm sorry if you've</p>	<p style="text-align: right;">Page 20202</p> <p>1 where the people died. So you knew that in the morning,</p> <p>2 correct?</p> <p>3 BRIGADIER CALITZ: Dit is van die begin</p> <p>4 af, dit is die opening waar die polisie voertuie sou</p> <p>5 uitbeweeg.</p> <p>6 MR MPOFU: Yes, that's what I'm saying,</p> <p>7 die enigste, it was the only other way in which this</p> <p>8 operation could be rolled out now, was between the zinc</p> <p>9 house and the kraal, you knew that from the morning, that's</p> <p>10 what I am saying.</p> <p>11 BRIGADIER CALITZ: So rondom 12 uur, dit</p> <p>12 is korrek, mnr die Voorsitter.</p> <p>13 MR MPOFU: So that when you were briefing</p> <p>14 the group commanders you said to them, once again not</p> <p>15 verbatim, listen here fellows, we're no longer going to go</p> <p>16 directly to the mountains, we are now going to go through</p> <p>17 that gap between the sink house and the kraal and that is</p> <p>18 how we are going to access the period. In other words the</p> <p>19 only opening that will be available for anybody coming in</p> <p>20 or out will be that gap between the kraal and the zinc</p> <p>21 house, you knew that by twelvish, correct? Oh, I'm sorry,</p> <p>22 it is a double question, this is wrong, forget about that</p> <p>23 you knew that one. The question is, when you were briefing</p> <p>24 the group commanders, that is what you said to them.</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>

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1 net 'n regstelling, om 14:30 toe ons voorligting gekry het  
 2 was dit gedoen deur Kolonel Scott en dit was sy verandering  
 3 aan die plan en hy het dit dan so aan ons verduidelik. Dit  
 4 is nog steeds die opening waardeur die polisie voertuie sou  
 5 uitbeweeg en soos ek gesê het in 'n noord-westelike rigting  
 6 opgevorm het by die koppie. So dit sou nie 'n verandering  
 7 gebring het aan die polisie voertuie wat uitbeweeg en hulle  
 8 stelling sal inneem nie.

9 CHAIRPERSON: Let me see if I understand  
 10 it. The evidence is that, I think it was phase 2, involved  
 11 what was called the repositioning of the wire trailers,  
 12 that's correct, isn't it?

13 BRIGADIER CALITZ: Korrek, mnr die  
 14 Voorsitter.

15 CHAIRPERSON: Were the commanders of the  
 16 Nyalas which had the wire trailers behind them informed  
 17 initially what the routes to be covered by the barbed wire  
 18 barrier would be, or were they simply told, that's where  
 19 you're going to go, your preposition, you will be told  
 20 later what exactly is to happen, can you help me on that?

21 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 22 glo Kolonel Makhubela sal, hy was die groep bevelvoerder in  
 23 die JOC wat dan sou uitbeweeg het en daardie voorligting  
 24 vir sy lede gegee het, wat ek glo en vertrou die boodskap  
 25 wat hy sou oorgedra het sou wees om vir elkeen sy posisie

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1 aan te dui wat hulle dan gesien het op die oorhoofse  
 2 presentation van Kolonel Scott. So die Nyala drywer sou  
 3 geweet het in watter rigting om te gaan.

4 CHAIRPERSON: So they wouldn't simply  
 5 have known that they were repositioning the trailers as it  
 6 were, they would also have known at that early stage  
 7 already what the routes, if I can call it that, of the  
 8 barbed wire barrier would be?

9 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 10 sou sê net die repositioning van die voertuie, miskien nie  
 11 tot waar die draad of wanneer die draad uitgegooi word, dit  
 12 sou hulle nie op daardie stadium geweet het nie.

13 CHAIRPERSON: Yes, but as far as I  
 14 remember phase 2 simply talks about repositioning.

15 BRIGADIER CALITZ: Dit is net –

16 CHAIRPERSON: It didn't talk about the  
 17 routes that will be –

18 BRIGADIER CALITZ: Nee, -

19 CHAIRPERSON: - covered by the barbed  
 20 wire.

21 BRIGADIER CALITZ: Nee, Meneer -

22 CHAIRPERSON: That was part, that was  
 23 going to be part of phase 3.

24 BRIGADIER CALITZ: Dit is korrek, wat  
 25 later besluit is.

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1 CHAIRPERSON: And it was said, you were  
 2 told about phase 3 later and there was of course also the  
 3 question of whether they were told that phase 3 will even  
 4 take place on the day. I talk about early in the morning,  
 5 am I right or did I, there is other evidence but your  
 6 evidence as I understand it was, you only heard that phase  
 7 3 was going to happen at half past two of the Thursday  
 8 afternoon, is that correct?

9 BRIGADIER CALITZ: Ek dink die getuienis  
 10 was, mnr die Voorsitter, dat sou daar oorgegaan word na 'n  
 11 volgende fase, ekskuus tog, mnr die Voorsitter.

12 CHAIRPERSON: Sorry, I was listening to  
 13 Advocate Hemraj. Would you repeat this sentence again,  
 14 please?

15 BRIGADIER CALITZ: Ja, ek het gesê my  
 16 getuienis was dat sou daar oorgegaan is na 'n volgende fase  
 17 sou dit met ons gekommunikeer word, so dit was betreffende  
 18 fase 3.

19 CHAIRPERSON: The point that Advocate  
 20 Hemraj put to me which flows directly from what I was busy  
 21 with is, if you look at slide 149, have you got Exhibit L  
 22 there in front of you?

23 BRIGADIER CALITZ: Ek het, mnr die  
 24 Voorsitter.

25 CHAIRPERSON: Slide 149, that slide,

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1 that's this concave shape that Mr Mpofu is talking about,  
 2 was a hardcopy of that slide given to the commanders of the  
 3 wire trailer pulling Nyalas in the morning?

4 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 5 weet die groep bevelvoerders was ge-brief en hulle het van  
 6 hierdie, want u sien my van staan regs onder, ek dink die  
 7 groep bevelvoerders het dit gehad maar of dit vir elke  
 8 Nyala drywer gegee is, ek is onseker, ek kan u nie daarmee  
 9 help nie.

10 CHAIRPERSON: The evidence was, it was  
 11 given to the commanders, so that wouldn't have included the  
 12 Nyala drywer, the commanders of the wire trailer dragging  
 13 Nyalas at that stage, they would simply, presumably have  
 14 been told, this is where you're going to place your Nyala  
 15 with the trailer and what's going to happen thereafter,  
 16 that will be phase 3, you'll hear about that later if it  
 17 happens, that's your evidence, is that right?

18 BRIGADIER CALITZ: As ek u reg verstaan  
 19 dit is korrek, ek dink Kolonel Makhubela sal ons meer kan  
 20 sê, of hy dan vir sy drywers ook dan opdragte gegee het.

21 CHAIRPERSON: So it would be fair to say  
 22 that you can't really help us on that, you don't know what  
 23 the commanders, in this case it would be Colonel Makhubela,  
 24 what he told his Nyala, - sorry, I'll repeat it again, his  
 25 wire trailer dragging Nyala commanders, you don't know what

<p style="text-align: right;">Page 20207</p> <p>1 he told them at the early stages of the morning, is that 2 right, but you say he would have had a copy of that 3 hardcopy of that slide, is that correct? 4 BRIGADIER CALITZ: Dit was in die oggend 5 gewees met die JOCCOM, mnr die Voorsitter. Wat betref 6 later die dag, na 14:30 het ons dan wel die Nyala drywers 7 en die groep bevelvoerders voorligting gegee, so hierdie 8 was vroeg die oggend, ja. 9 CHAIRPERSON: Ja, you say that 10 "voorligting", that instruction was given at 14:30 by 11 Lieutenant-Colonel Scott at forward holding area A, is that 12 right? 13 BRIGADIER CALITZ: En daarna deur my, so 14 na 3, met al die drywers en die commanders. 15 CHAIRPERSON: Ja, I see, the drivers and 16 commanders weren't there at 14:30, but you were? 17 BRIGADIER CALITZ: Net die groep 18 bevelvoerders was saam – 19 CHAIRPERSON: Yes, yes – 20 BRIGADIER CALITZ: - met my daar gewees, 21 maar nie die drywers nie. 22 CHAIRPERSON: Not the drivers and you 23 then told the drivers at three o'clock, 15:00, - 24 BRIGADIER CALITZ: Saam met die groep 25 bevelvoerders, Kolonel Makhubela, die was saam.</p>	<p style="text-align: right;">Page 20209</p> <p>1 die onvoorsiene aanval waarna ons verwys het dan, insident 2 1, 2, 3, dit was nie beplan voor – 3 MR MPOFU: Ja – 4 BRIGADIER CALITZ: - dat hulle daarnatoe 5 kom nie, ja. So dit is wat mnr die Voorsitter my gevra 6 het, wat het ek gesien gebeur en na die uitrol van die 7 draad by 1 en 2 is dit dan wat in sekondes daarna gebeur 8 het. 9 [12:08] MR MPOFU: Yes, do you accept then that 10 if the disruption that has been told, the refrain in the 11 Commission, that, as you say that it was unforeseen but 12 would you accept that it was foreseeable in the sense that 13 it was well, unreasonable to expect a group of belligerent, 14 3 000 arm-waving, murderous people to sit there for 48 15 minutes. 16 MR SEMENYA SC: Is Mr Mpofo accepting his 17 clients to be so described as the murderous ones? 18 MR MPOFU: No, obviously I'm reading – 19 that's why I'm reading from the statement of the 20 Brigadier – 21 CHAIRPERSON: That sounds like a debating 22 point, Mr Semanya. I take it everything he says is on the 23 basis that that's what you say – 24 MR MPOFU: That's what the Brigadier 25 said, ja.</p>
<p style="text-align: right;">Page 20208</p> <p>1 CHAIRPERSON: Alright. 2 BRIGADIER CALITZ: En hulle het dan dit 3 verder gaan vat. 4 CHAIRPERSON: Thank you, I think that's 5 some of the information you was after, Mr Mpofo? 6 MR MPOFU: Yes, that is, thank you very 7 much, Chairperson, and before we proceed with this let me 8 just, forgive me Brigadier, just go back very slightly to 9 something that we just covered now. So all in all, apart 10 from the criticism that I presented to you about the 11 expectation of the people sitting for 18 minutes, on top of 12 that 18 minutes there was going to be approximately 30 13 minutes of the warning and they would still be, - so 14 effectively they would be sitting there, waiting for about 15 48 to 50 minutes and doing nothing, that was the plan. 16 BRIGADIER CALITZ: As u die uitbeweeg van 17 die polisie voertuie, die lyn bedoel en dan die waarskuwing 18 kan daardie tyd bygetel word, dit is korrek. 19 MR MPOFU: Okay, thanks, and when you say 20 that you, I know the National Commissioner also said this 21 but let's stick with you, when you say that the plan was 22 disrupted, when you gave answers as to why things were done 23 in that way, what exactly are you referring to? How was it 24 disrupted? 25 BRIGADIER CALITZ: Dit was die aanval,</p>	<p style="text-align: right;">Page 20210</p> <p>1 CHAIRPERSON: Alright, okay. It's very 2 unlikely - 3 MR MPOFU: Even the 18 minutes for that 4 matter I don't accept – 5 CHAIRPERSON: It's very unlikely that 6 he – 7 MR MPOFU: - as Mr Semanya clearly knows. 8 CHAIRPERSON: Mr Mpofo, let's not talk 9 over each other. It's very unlikely he would accept it. I 10 take it implicit in the questions you're asking is that's 11 the police case, I don't accept it, as you've indicated 12 from time to time you don't accept it. 13 MR MPOFU: I have. If I have to – 14 CHAIRPERSON: You're probing details of 15 the police case, police evidence and so forth. 16 MR MPOFU: Yes. Thank you, Chairperson. 17 CHAIRPERSON: Its version. 18 MR MPOFU: Yes. Yes, Brigadier, in case 19 it wasn't clear, I'm saying, and that's why I laid out all 20 the things you've said, your view was that these people 21 were all armed with extremely dangerous weapons. They 22 acted as one group. They had one intention. At no stage 23 did you have the impression that they were willing to 24 listen, and they were prepared to fight and to die, and I'm 25 saying that given those circumstances, for you</p>

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1 simultaneously to expect that they would stay for 48  
 2 minutes minimum, about, and basically wait for you while  
 3 they are doing nothing, given those circumstances of your,  
 4 as the leader, your subjective assessment of their levels  
 5 of dangerousness, that what you call a disruption might not  
 6 have been foreseen, but it was foreseeable. In other words  
 7 if you didn't foresee it, it was your own weakness not to  
 8 foresee because it was obvious for all to see. Do you  
 9 understand what I'm saying, first, and I suspect you might  
 10 disagree with it, but do you understand?  
 11 COMMISSIONER HEMRAJ: Mr Mpfu, I don't  
 12 understand the question. Do you mind repeating it –  
 13 MR MPOFU: Well, in that case –  
 14 CHAIRPERSON: Before you repeat it –  
 15 MR MPOFU: I should assume the Brigadier  
 16 also doesn't understand it.  
 17 CHAIRPERSON: - I'm going to suggest we  
 18 take a comfort break in a minute.  
 19 MR MPOFU: Okay.  
 20 CHAIRPERSON: But before we do that, you  
 21 talked about 48 minutes. I just want to make sure I  
 22 understand what the 48 minutes consist of.  
 23 MR MPOFU: Yes, the –  
 24 CHAIRPERSON: Am I correct in thinking  
 25 you're referring to – you may have even said it, but

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1 perhaps I didn't pick it up at the time – you got the 18  
 2 minutes of the uncoiling, not simultaneous, consecutively.  
 3 You then got the half hour in the middle of which there are  
 4 two warnings to the strikers, we're going to take action  
 5 against you, we're going to disarm and disperse you, or  
 6 we're going to disperse you and disarm you, and so on,  
 7 unless you do what we tell you in the meanwhile. So that's  
 8 your 48 minutes. 18 minutes is the uncoiling and the half  
 9 an hour is this period during which they're getting  
 10 warnings and so on, before the rest of stage 3 can be  
 11 implemented.  
 12 MR MPOFU: That's correct, Chair.  
 13 CHAIRPERSON: That's your 48 minutes,  
 14 right.  
 15 MR MPOFU: That's exactly it.  
 16 CHAIRPERSON: Now we understand that, I  
 17 suggest we take a comfort break. I hope it will only be  
 18 five minutes and then we can proceed until 1 o'clock or  
 19 shortly thereafter. I want to proceed for three-quarters  
 20 of an hour after we resume.  
 21 MR MPOFU: Thank you, Chairperson.  
 22 CHAIRPERSON: And we will then adjourn  
 23 for the day.  
 24 MR MPOFU: Thank you, Chairperson.  
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [12:19] CHAIRPERSON: The Commission resumes,  
 2 Brigadier, you're still under oath.  
 3 BRIGADIER CALITZ: Dankie.  
 4 CHAIRPERSON: Mr Mpfu? We've been asked  
 5 to adjourn promptly at one o'clock because there are people  
 6 who're afraid they will miss planes if we don't do that, so  
 7 one o'clock in mid sentence we're going to stop, okay, bear  
 8 that in mind.  
 9 MR MPOFU: Thank you, Chairperson.  
 10 Brigadier, I'm busy saying to you that it, or at least I  
 11 will argue at the end that it bothers, it is so absurd  
 12 that, it must be completely untrue that a person in your  
 13 position, believing what you'd believed about the strikers,  
 14 could expect that for about 38 minutes or even 18 minutes,  
 15 even 5 minutes for that matter, while you were unrolling  
 16 the barbed wire these people were going to politely check  
 17 out that, were going to just sit there and do nothing, that  
 18 it is so absurd that it is false, that's how absurd it is.  
 19 BRIGADIER CALITZ: Mnr die Voorsitter,  
 20 nee, ek verskil van u, ek kan maar net getuig uit my eie  
 21 ondervinding uit waar ons in die verlede al baie keer met  
 22 skares gewerk het en nog nooit in die geskiedenis, nie  
 23 waarvan ek bewus is nie, in hierdie land, nadat die draad  
 24 uitgegooi word of daar 'n defensive lyn in plek gesit is,  
 25 dat iemand die polisie aangeval het of in die rigting van

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1 die polisie begin storm het met daardie doel nie. Die  
 2 reaksie gewoonlik sou iets gebeur is dat die persone weg  
 3 beweeg in daardie geval, so –  
 4 CHAIRPERSON: So you're talking about  
 5 what happened in your experience in the past, over the  
 6 period that you've been in charge of-  
 7 BRIGADIER CALITZ: Dit is korrek –  
 8 CHAIRPERSON: Involved in POP operations,  
 9 is that right?  
 10 BRIGADIER CALITZ: Dit is korrek.  
 11 CHAIRPERSON: You're talking about cases  
 12 where wire was uncoiled or other defensive lines were set  
 13 up?  
 14 BRIGADIER CALITZ: Dit is korrek, mnr die  
 15 Voorsitter.  
 16 CHAIRPERSON: In any of those cases that  
 17 you were talking about, were they preceded by threats by  
 18 members of the crowd, armed members of the crowd that they  
 19 will attack the police?  
 20 BRIGADIER CALITZ: Mnr die Voorsitter,  
 21 menigmale was daar persone met klippe, persone met petrol  
 22 bomme gewees, persone wat te kenne gegee het dat hulle gaan  
 23 nie en die dreigemente was gegooi na die polisie se kant  
 24 toe, en as ons dan ons defensive lyn opsit en sodra die  
 25 voertuie begin beweeg is die ondervinding dat hierdie

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1 persone, al is dit nie ver nie, hulle beweeg weg van die  
 2 polisie af om te sien in watsie rigting en dan gewoonlik met  
 3 die uiteendrywing, dan is dit eers waar daar arrestasies  
 4 gemaak word, waar dan konfrontasie is, maar nog nooit  
 5 waarvan ek bewus is het enige groep besluit om 'n polisie  
 6 lyn aan te val of 'n linie of 'n posisie wat die polisie  
 7 inneem nie, dit was die eerste.

8 CHAIRPERSON: You're telling me you've  
 9 never, you're telling us that you've never known a case  
 10 where a rowdy crowd, members of a rowdy crowd have attacked  
 11 the police line?

12 BRIGADIER CALITZ: Dit is wat ek gesê  
 13 het, mnr die Voorsitter, as ons 'n defensive lyn uitsit,  
 14 met ander woorde defensive measure beteken, kry die  
 15 voertuie in lyn of gooi die draad uit of laat die lede  
 16 deploy in linies met die skilde, dit is alles defensive lyn  
 17 voordat die waarskuwing gegee is, in daardie gevalle het  
 18 ons nog nooit gesien dat hulle storm na die polisie toe  
 19 nie.

20 CHAIRPERSON: And in fact they normally  
 21 move the opposite direction.

22 BRIGADIER CALITZ: In my ondervinding het  
 23 hulle weg beweeg, ek sê nie heeltemal weggehardloop nie,  
 24 maar weg beweeg in 'n veiliger rigting, as ek dit so kan  
 25 stel vir hulle om te sien wat is die volgende stap en dan

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1 gewoonlik as die waarskuwing en goed volg, is gewoonlik  
 2 waar die klippe begin gooi of die petrol bomme in gevalle  
 3 waar ek al was, en dan tree ons op.

4 CHAIRPERSON: So they move in, you used  
 5 the word "veiliger", they moved to a safer position  
 6 normally, is that right?

7 BRIGADIER CALITZ: Dit is korrek.

8 CHAIRPERSON: Because they realise that  
 9 the police appear to mean business and it could be  
 10 unpleasant for them if they say were they were, is that  
 11 your experience normally?

12 BRIGADIER CALITZ: En ek dink in hierdie  
 13 gevalle, die afstand was van so 'n mate dat dit, ek glo op  
 14 'n veilige afstand of dan kon hulle verder weg beweeg het,  
 15 maar –

16 CHAIRPERSON: That's your experience  
 17 previously?

18 BRIGADIER CALITZ: Wat hulle doel was,  
 19 ja.

20 CHAIRPERSON: Ja, so that's your  
 21 experience. Now did you ever have a case, now this is a  
 22 question that Mr Mpofu can't ask you but I can. Did you  
 23 ever have a case in the past where the crowd that you were  
 24 dealing with were armed with dangerous weapons, were  
 25 aggressive and hostile towards the police, had gone through

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1 rituals to your knowledge and appear to believe that muti  
 2 which they had been received were render then invincible,  
 3 did you ever have such a case in the past?

4 BRIGADIER CALITZ: Mnr die Voorsitter,  
 5 nee, ek dink met die vorige myn gevalle wat ons hanteer het  
 6 was daar beweringe gewees dat dit persone dit self, maar ek  
 7 het dit nooit waargeneem self nie. In hierdie geval is dit  
 8 die eerste waar ek dan fisies gesien het die foto's na die  
 9 tyd van die naakte persone op die 16de, die 800 wat agter  
 10 by die koppie bymekaar gekom het, ensovoorts.

11 CHAIRPERSON: Not the incident  
 12 photographs you saw afterwards, had you been informed by  
 13 the time, by midday shall we say or the middle of the day  
 14 on the 16th, information received prior to that, over the  
 15 days prior to that, that the people in the police  
 16 helicopters had observed people undergoing rituals, had  
 17 that, in other words had you already been informed that the  
 18 police suspected, rightly or wrongly is a matter that we  
 19 debate later, but the police suspected that these people  
 20 had undergone rituals with the view to rendering them  
 21 invincible and vulnerable and so on?

22 BRIGADIER CALITZ: Mnr die Voorsitter,  
 23 ja, wat ons self of wat ekself waargeneem het was die dag  
 24 toe ons daar aankom met die Nyala, die video wat uit my  
 25 Nyala uitgemaak was waar daardie persone dan nakend voor

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1 was. U onthou die video waar die persoon dan ge-urineer  
 2 het in die rigting, en, en, en, maar wat hulle spesifieke  
 3 doel was, ek dink nie dit kon ooit vasgestel word nie.

4 Daar was altyd maar die beweringe gewees van die, wat het  
 5 hulle hom genoem, die Sangoma. Ook op die dag van die 16de  
 6 het hulle gesê hulle sien die persoon maar ek het nooit,  
 7 daar was nie enige foto's geneem, iets wat ons van bewus  
 8 was dat ekself daardie persoon gesien het nie.

9 COMMISSIONER HEMRAJ: In answer to the  
 10 chairman's question as to in any previous incident have you  
 11 ever encountered threats being made by protestors or  
 12 strikers against the police, I'm not sure that I heard your  
 13 answer and I'm not sure if you did answer it.

14 BRIGADIER CALITZ: Kommissaris, ja,  
 15 beslis, daar was al baie gevalle waar dreigemente gemaak  
 16 was aan die polisie, veral Openbare Orde omdat ons altyd  
 17 die tussenganger is met die optog wat reeds op pad is na 'n  
 18 munisipaliteit toe of na 'n service delivery protest, so  
 19 ons is maar die linie wat tussen hulle en dit gaan staan.  
 20 Ons probeer altyd maar met die leiers of met die  
 21 organiseerders wat ons kan waarneem sien, maar daar was  
 22 definitief dreigemente, asook dan voor die tyd soos klip  
 23 gooi na ons toe en daardie tipe van –

24 CHAIRPERSON: I found what I'm looking  
 25 for. If you look at slide 85, this deals with the position

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1 on Tuesday, the 14th, it said, and the time given is 15:23.  
 2 "It was reported that the protesters had imported inyanga  
 3 to perform certain rituals and manufactured muti which  
 4 would ensure them victory and confrontations with the  
 5 opponents. The men who gathered at the koppie armed with  
 6 knopkieries, iron rods, spears and pangas believed the  
 7 inyanga could perform a ritual at the koppie and sprinkle  
 8 them with muti to make them brave," and then the next  
 9 bullet, "Protestors were seen by a police helicopter and  
 10 the observation after undergoing a ritual," there is a word  
 11 missing obviously after the word observation but I'll start  
 12 reading from the beginning of the sentence. "Protestors  
 13 were seen by a police helicopter and the observation after  
 14 undergoing a ritual where their bodies were wiped down with  
 15 a substance, believed to be made from or called [African  
 16 language]." Now that information that the report referred  
 17 to in the first bullet and the information contained in the  
 18 whole of the slide which appears on a page of the  
 19 presentation dealing with the 14th, Tuesday, the 14th, was  
 20 that information made available to you prior to the 16th?  
 21 BRIGADIER CALITZ: Mnr die Voorsitter,  
 22 die 14de het ek self die groep nakendes waargeneem en die  
 23 15de was daar 'n report gewees deur die helikopter wat dan  
 24 die 800 mans gesien het, so daardie reports was beskikbaar  
 25 gewees, ja.

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1 CHAIRPERSON: Alright, and the other  
 2 report that the protestors, there was a report, presumably  
 3 the Criminal Intelligence people got it through their  
 4 informants, that protestors had imported an inyanga to  
 5 perform certain rituals and manufactured muti which would  
 6 ensure them victory in confrontations with their opponents,  
 7 was that report conveyed to you?  
 8 BRIGADIER CALITZ: Nee, ek kan nie sê in  
 9 daardie woorde nie.  
 10 CHAIRPERSON: Not the words, was the  
 11 "strekking", the gist of the information –  
 12 BRIGADIER CALITZ: Nee, -  
 13 CHAIRPERSON: - stated in that sentence,  
 14 was that conveyed to you, you're the operation commander.  
 15 Surely it would have been important that that information  
 16 which has been obtained according to this slide by the 14th,  
 17 had been conveyed to you, so that you could bear it in mind  
 18 and factor it into anything that happened, that it was  
 19 done?  
 20 BRIGADIER CALITZ: Mnr die Voorsitter,  
 21 ja, die woorde soos dit daar staan kan ek nie vir u sê nie,  
 22 al wat ek sê is dat die rituals en die beweringe daar, 'n  
 23 sangoma is by hulle, dit was wel gerapporteer en bespreek  
 24 gewees.  
 25 CHAIRPERSON: So now we're dealing with

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1 your expectation of what's going to happen, you've got a  
 2 crowd of people there on the koppie who according to your  
 3 information had undergone these rituals, got in an inyanga  
 4 manufactured muti to ensure them victory, they were making  
 5 threats to you, they were armed with dangerous weapons,  
 6 they obviously don't like the wire that's being uncoiled,  
 7 they're aggressive about it. Now the question Mr Mpofu  
 8 wants to know from you, well, he couldn't ask the questions  
 9 I've just asked you about the muti because those aren't his  
 10 instructions. The question Mr Mpofu wants to know from you  
 11 is, what did you expect as a reasonable operational  
 12 commander with extensive POP experience, they would do once  
 13 the wire started being uncoiled because they clearly were  
 14 aggressive about it and didn't like it, is that your  
 15 question, Mr Mpofu?  
 16 MR MPOFU: It is –  
 17 CHAIRPERSON: More or less?  
 18 MR MPOFU: It is, Chairperson, I had put  
 19 the five factors and I would add to that the sixth factor  
 20 which the chairperson has just dealt with, in other words  
 21 that on top of being dangerous and armed they were also  
 22 possessed.  
 23 CHAIRPERSON: According to the police  
 24 information, whether it is right or wrong is a matter you  
 25 will debate later but according to the police information

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1 that was the position and that would have presumably  
 2 contributed to your expectation of what's was going to  
 3 happen.  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: That's fair, isn't it?  
 6 BRIGADIER CALITZ: Dit is wat ek net  
 7 vroeër, wat ek die vraag gevra is, mnr die Voorsitter, op  
 8 watter stadium en ek dink u het vir my gesê voor die tyd,  
 9 voor die tyd was ons bewus hiervan gewees. Onthou ek was  
 10 nie bewus dat die 13:30 call gemaak word dat ons gaan  
 11 oorgaan na daardie fase, alhoewel die inligting aan my  
 12 bekend was en dat toe hulle ons om 14:30 meegedeel was, was  
 13 ons wel bewus van hierdie. So nadat die eerste wire  
 14 uncoiled was en mnr Noki het na ons toe gestap en hy het  
 15 die dreigement gemaak, is presies wat ek vir u gesê het,  
 16 toe het die "mood" ge-change en dit is hoekom ek my woorde  
 17 vir Nyala4 was, die groep het afbeweeg en ek het vir hulle  
 18 gesê, klim terug in die voertuie, maak toe, so ek het  
 19 duidelik 'n aanval daar op die linie gesien voor ons.  
 20 CHAIRPERSON: So you foresaw in other  
 21 words an attack by these people after the wire started  
 22 being uncoiled by Nyala 1 and the strikers manifested or  
 23 some of them anyway, manifested aggression and serious  
 24 dissatisfaction with the uncoiling of the wire, is that a  
 25 fair summary of what you say?

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1 BRIGADIER CALITZ: Dit is korrek, mnr die  
2 Voorsitter.

3 MR MPOFU: Yes, thank you and what I'm  
4 saying to you or I'm putting to you is that because of the  
5 six factors, because, what I'm putting to you is that  
6 because of the six factors which I won't repeat, you as a  
7 reasonable operational commander ought and I'll go so far  
8 as to say you did foresee that they would attack. In other  
9 words I'm saying you should have because of all the things  
10 that I've discussed together with the chairperson, I'm  
11 saying you should have foreseen that they would attack and  
12 I'm going further than that and I'm saying a person in your  
13 position actually did foresee it, what is your comment?

14 CHAIRPERSON: Mr Mpofu, he said, I  
15 summarised his answer to him, he says at the time, to be  
16 fair, we've got to fix the time limit –

17 MR MPOFU: Oh, yes, yes, fair enough.

18 CHAIRPERSON: At the time the wire was  
19 being uncoiled by Nyala 1 and they reacted aggressively and  
20 dissatisfaction, at that stage he expected that there will  
21 be an attack and in fact that's why he gave certain  
22 instructions to Nyala 4.

23 MR MPOFU: Yes.

24 CHAIRPERSON: So that's his evidence  
25 because he said that.

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1 MR MPOFU: No, fair enough, Chairperson,  
2 sorry, I was asking the question wrongly. What I'm putting  
3 to you is that before that point, well before that point,  
4 knowing what you knew about these factors that we have gone  
5 through, including the fact that these people were  
6 possessed, dangerous, wanting to kill and so on and so on,  
7 I'm saying well before that time you as a reasonable  
8 operational commander, a senior member of the police with  
9 the experience that you have, ought to have foreseen and  
10 actually did foresee that they were going to attack.

11 BRIGADIER CALITZ: As u bedoel nou daar  
12 voor die tyd en nie van Nyala 1 af se uncoiling nie, bedoel  
13 u voor die tyd, die daad wat afgespeel het voor die tyd?

14 MR MPOFU: Yes.

15 BRIGADIER CALITZ: Tydens die beplanning,  
16 nee, dan stem ek nie saam met u nie, mnr die Voorsitter.  
17 Die getuienis daarvoor is duidelik, dat dit bespreek was,  
18 die beplanning wat opgestel was, die gesprekke in die JOC,  
19 ensovoorts.

20 MR MPOFU: Alright, I don't want to  
21 belabour the point because it is a matter that's obviously  
22 going to be central in argument but in fairness to you I  
23 have to finally just put it like this, that the thrust of  
24 what I'm saying is that even if I were to accept that you  
25 did not foresee it until that point, which I don't, but

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1 let's say for the purposes of this question I accept it,  
2 the thrust of what I'm saying to you is that a reasonable  
3 person in your position should have foreseen, given all  
4 these factors that we've gone through, that an attack would  
5 come?

6 BRIGADIER CALITZ: Mnr die Voorsitter,  
7 nee, ek verskil weer van u, nie van u nie, van die  
8 advokaat, dat die redes wat ons gegee het is baie duidelik.  
9 Ons het 'n show of force daar gehad, as die polisie die  
10 getal Nyalas wat u genoem het vroeër, die magte wat daar  
11 opgedaag het, die voertuie van die Taakmag, die uniforms,  
12 die helikopters, daar was soveel show of force op daardie  
13 dag gewees dat dit geen redelike man se toets in my oë sal  
14 deurstaan om te sien, ek het nog die moed en ek gaan  
15 hierdie groep aanval nie, die logiese is dat hier is 'n  
16 show of force neergesit en daar is vir hulle agt keer plus  
17 verduidelik wat die doel was, nie net die doel van die  
18 draad nie, maar ons het ook die verhouding tussen ons en  
19 hulle met negotiations versterk. So gegewe al hierdie goed  
20 wat in plek gesit is sou ek sê 'n redelike persoon in  
21 daardie omstandighede sal dan eerder 'n veilige opsie kies  
22 en nie 'n aanval nie, dit in kort.

23 CHAIRPERSON: But obviously you placed  
24 your faith, I'm not speaking about you specifically, you  
25 the police involved in this operation, placed your faith in

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1 the show of force, you thought the show of force combined  
2 with the force continuum which was a slow build-up with  
3 less than lethal force, would be effective in achieving  
4 what you wanted to achieve, is that fair?

5 BRIGADIER CALITZ: Dit is beslis so, mnr  
6 die Voorsitter.

7 CHAIRPERSON: And you say that any  
8 reasonable person on the other side, your opponents if one  
9 can use that expression, would have reacted that way and in  
10 the face of this show of force that was mounted, would have  
11 not done what these people did, is that fair?

12 BRIGADIER CALITZ: Dit is wat ek sê, dit  
13 is die eerste wat dit gebeur het, mnr die Voorsitter.

14 CHAIRPERSON: Ja, so you assumed that  
15 your opponents were reasonable people?

16 BRIGADIER CALITZ: Nee, hulle was wel  
17 persone wat, ons weet tot op daardie stadium was daar  
18 persone gedood. Ons weet wel daar was faksie verskille  
19 gewees, so dit is nie wat ek sê as ek vat 'n redelike man  
20 toets nie, nee, dit is nie, ek praat van 'n striker  
21 protestor in ons ondervinding van Openbare Orde  
22 Polisiëring, so dit is iemand wat ongelukkig is en wat 'n  
23 punt het om te bewys oor 'n salaries geskil, 'n loon geskil  
24 en dan daarvoor, so nie 'n redelike normale persoon met geen  
25 frustrasies nie.

<p style="text-align: right;">Page 20227</p> <p>1 [12:39] CHAIRPERSON: Reasonable people, well,  2 this is a matter where one must phrase it delicately  3 because there are cultural differences which one must be  4 sensitive to, but it may well be contended that reasonable  5 people wouldn't believe that undergoing rituals and using  6 "muti" which had been manufactured would necessarily ensure  7 them victory in confrontation with the police. So you knew  8 that your opponents, if I can use that word for the sake of  9 brevity, were according to the information you had  10 received, that that was what they had done. Is that right?  11 That's the information you got. That's the belief they  12 held. We know the belief was unfounded. It's contended,  13 it will be contended that that's not what they believed and  14 they hadn't done that, but we're not busy with that. We're  15 busy with the information you'd received.  16 The point that presumably will be argued, and  17 we'd have to consider whether it's correct or not, is  18 whether it was reasonable for you to assume, as you say you  19 did, that the show of force combined with the force  20 continuum will be enough to deal with the situation, and  21 that these people would not, in the face of the facts that  22 were put to you by Mr Mpofo and the extra one I added,  23 would not attack you, attack the police and behave as in  24 fact they appear to have done according to the evidence.  25 That's going to be the contention, I take it, from Mr</p>	<p style="text-align: right;">Page 20229</p> <p>1 felt very strongly about it you might have done that, but  2 it would have been a very delicate situation. You're being  3 trained in the force for many years. Basically it's a  4 hierarchy. You obey instructions from above. Is that  5 correct?  6 BRIGADIER CALITZ: Dit is korrek, mnr die  7 Voorsitter. Sou -  8 CHAIRPERSON: So we must -  9 BRIGADIER CALITZ: Sou ek nie opgetree  10 het nie, of sou miskien hulle dan in die "village" inbeweeg  11 het, ons kan net, u weet, "hypothesis," dan, en dan was  12 daar selfs twee persone of een persoon in die "village"  13 vermoor sou ek definitief dan aangekla gewees het hoekom  14 het ek nie die opdragte uitgevoer nie.  15 CHAIRPERSON: The criticism is about what  16 was expected and what should have been borne in mind and  17 what was appropriate to do, is criticism that in the first  18 place isn't really criticism that should be addressed to  19 you, but those who are responsible for the instruction you  20 received. Would that be fair?  21 BRIGADIER CALITZ: Mnr die Voorsitter, ek  22 het die opdrag gekry 14:30, as ek dit so kan antwoord.  23 CHAIRPERSON: No, I'm saying if there's  24 criticism about what was done, that it shouldn't have been  25 done, it shouldn't have been done that way - and there will</p>
<p style="text-align: right;">Page 20228</p> <p>1 Mpofo. We will have to decide on that contention, whether  2 it's right or wrong. What's your response to it?  3 BRIGADIER CALITZ: Mnr die Voorsitter,  4 ja, ons moet net die tye in gedagte hou, wanneer hierdie  5 "show of force" dan in plek gesit is. Die oggend se "show  6 of force," die voertuie, dit was dan neergesit met 'n doel  7 van dat, onthou daar sou 'n moontlike neerlegging van die  8 wapens gewees het en dan sou ons uitbeweeg het, en dan na  9 die 13:30 "call" van die JOC wat ek dan om 14:30 ingelig  10 is, so my tyd wat ek die lede "ge-brief" het tussen 15:00  11 en 15:40, daardie 40 minute is wat ons dan al hierdie dinge  12 in plek gesit het, die ekstra "show of force," om dan die  13 taak uit te voer wat die JOC 'n opdrag voor gegee het.  14 CHAIRPERSON: There's another aspect of  15 course, to be fair to you, that we must bear in mind and  16 that is I'm not sure you were a free agent to do entirely  17 what you might have done if you had total authority to act.  18 You were subject to instructions from the JOC. That's  19 correct, isn't it?  20 BRIGADIER CALITZ: Dit is so -  21 CHAIRPERSON: You received this briefing  22 at 2:30. It would have been a very bold step for you to  23 have taken, if you considered it was appropriate, to say  24 I'm sorry, we can't do it, we won't do it. That would have  25 led to all sorts of repercussions. I'm not saying if you</p>	<p style="text-align: right;">Page 20230</p> <p>1 be criticism about that, we can see that already - what I'm  2 putting to you is to be fair to you, the criticism is  3 really criticism that should more appropriately be  4 addressed to others, those who gave the instruction to you,  5 not to you who did your best to carry it out. Would you  6 agree with that, without you commenting on the correctness  7 or otherwise of the criticism? Would that be an  8 appropriate way of putting it?  9 BRIGADIER CALITZ: Ek stem saam met u,  10 mnr die Voorsitter.  11 MR MPOFU: Well, okay, I think in the  12 same vein of to be fair to you, in that respect I will make  13 two points for you to comment, one in your favour and the  14 other one against you.  15 CHAIRPERSON: Are you going to tell him  16 in advance which is which?  17 MR MPOFU: Yes, okay well let's start  18 with the one against you. The one against you is this; it  19 is that it is not - the point against you is this one. It  20 is not those other people, whoever they might be, who held  21 the views which I quoted from your statement, about these  22 people who were all armed with dangerous weapons, they all  23 had one intention, they were prepared to fight the police  24 and die, and so on, and so on. It's you, Brigadier Calitz,  25 who held those views. So insofar as this point is based on</p>



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1 your subjective beliefs, it cannot be, I'm afraid, passed  
 2 over to anyone else. So that's the point against you. You  
 3 also were the one who believed that the "muti" was going to  
 4 make them brave, or whatever that means.  
 5 CHAIRPERSON: [Microphone off,  
 6 inaudible].  
 7 MR MPOFU: Yes.  
 8 CHAIRPERSON: The "muti" wouldn't make  
 9 them brave, but they might believe it will make them brave.  
 10 MR MPOFU: Yes.  
 11 CHAIRPERSON: It would make them brave,  
 12 might make them foolhardy –  
 13 MR MPOFU: Yes.  
 14 CHAIRPERSON: - but wouldn't necessarily  
 15 work. You say it wouldn't make them brave –  
 16 MR MPOFU: Yes. Or rather yes, that they  
 17 believed that it would make them brave, and on top of that,  
 18 as it were, there was also the crime intelligence report in  
 19 the morning, that's a seventh factor, but let's just put  
 20 that away. So those factors are to do with your subjective  
 21 belief, or your reasonable belief. That's the point  
 22 against you. Do you understand the point?  
 23 BRIGADIER CALITZ: Moet ek, wil u hê ek  
 24 moet reageer daarop, of –  
 25 MR MPOFU: Yes, just that you understand

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1 – I'm sure you don't agree with it, so we don't have to  
 2 waste time on that, but do you understand what I'm saying?  
 3 BRIGADIER CALITZ: Ek wil net op rekord  
 4 sit, u lees, ek weet paragraaf 19 van my eerste verklaring  
 5 wat in detail bespreek is, ek het sinnetjie vir sinnetjie  
 6 en woord vir woord reeds verduidelik in watter sin ek dit  
 7 bedoel het, so nie miskien net die konteks wat u dit nou  
 8 het nie, maar dit is reeds bespreek en dit is op rekord.  
 9 So ek verskil van u.  
 10 MR MPOFU: Okay, now the point in your  
 11 favour, which emanates from what the Chairperson has said,  
 12 is that irrespective of the fact that you knew all these  
 13 things, it was after all D-day and this had to happen today  
 14 and that decision of making it D-day is what I was talking  
 15 to you about yesterday, that it was made at another level,  
 16 probably high up in the police, and probably even at a  
 17 political level. Now as far as that part of the criticism,  
 18 the fact that you now had to rush-rush this thing because  
 19 it's D-day, that is as I can say a point that I cannot  
 20 criticise you about because that we will deal with, with  
 21 the relevant witnesses. But I'm busy now dealing with you  
 22 and accepting that this other criticism of having to do it  
 23 that day, for some reason not even being able to wait for  
 24 another day and so on and so on, that is not something I  
 25 can blame you for because in that context you were taking

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1 instructions. Do you understand that point in your favour  
 2 as well? And I'm sure that one you agree with.  
 3 BRIGADIER CALITZ: Laat ek net sê, mnr  
 4 die Voorsitter, die opdrag wat ons gekry het dat ons kan  
 5 nie langer die gewapende groep so vrylik rond laat beweeg  
 6 nie en die opdrag was gegee om daardie groep dan te  
 7 "disperse," op te breek in kleiner groepies, te ontwapen en  
 8 te arresteer. Dit het gegaan oor die onwettigheid van die  
 9 byeenkoms, dat dit nie langer kon toegelaat word nie weens  
 10 alles wat tot op daardie stadium gebeur het.  
 11 MR MPOFU: And I don't want to make too  
 12 many points in your favour, but the last one I'll make is  
 13 that as a result of the D-day rush-rush, one of the things  
 14 is that the briefings which had to be made, which according  
 15 to the manual and according to 262, Regulation 262 –  
 16 CHAIRPERSON: Standing Order 262.  
 17 MR MPOFU: - Standing Order 262, thank  
 18 you, Chairperson, are supposed to be thorough and detailed  
 19 and so on, those briefing in some instances had to be done  
 20 in 10 minutes, and as I say that's not something I can  
 21 blame you for. I can blame you for doing it, but I can't  
 22 blame you for having decided that that's how it should be  
 23 done because there you were constrained; it's D-day, it has  
 24 to be done today. Do you understand the point? And I'm  
 25 sure you differ again, but do you understand the point?

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1 BRIGADIER CALITZ: It's not that I  
 2 differ; I just want to know, the briefing you refer to is  
 3 the, 14:30 voorligting?  
 4 MR MPOFU: No, no, am I correct that  
 5 there were three sets of briefings which had to be done?  
 6 BRIGADIER CALITZ: U sal my sê watter een  
 7 u na verwys –  
 8 MR MPOFU: Ja.  
 9 BRIGADIER CALITZ: - dan kan ek antwoord.  
 10 MR MPOFU: The first briefing is by Scott  
 11 to you and the group commanders, correct?  
 12 BRIGADIER CALITZ: Dit is die een wat ek  
 13 u vra, dit is die 14:30 –  
 14 MR MPOFU: Ja, the second is by the group  
 15 commanders to the section commanders, correct?  
 16 BRIGADIER CALITZ: Ja, die tweede sal  
 17 wees dat ek dit aan die, soos wat ek gedoen het teen, sê  
 18 kwart oor 3, 3 uur se kant.  
 19 MR MPOFU: Yes, and the third one is by  
 20 those section commanders to the members, to the troops –  
 21 using that word loosely – correct?  
 22 BRIGADIER CALITZ: Miskien vir die wat in  
 23 die voertuie was, u is korrek.  
 24 MR MPOFU: Yes, thank you. So we have  
 25 three sets of briefings which must take place within a

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1 short space of time because it's D-day, and I'm saying to  
 2 you in terms of the regulations we know that under normal  
 3 circumstances those briefings are meant to be long, or  
 4 well, not necessarily long, but thorough, and people, I  
 5 suppose one of your duties according to Standing Order 262  
 6 is to ensure that in the course of those briefings people  
 7 ask questions and so on, and so on, but because of the  
 8 position in which you were placed – and that's why I'm  
 9 saying it's a point in your favour – all this had to be  
 10 done in, as I say in at least the case of one of those  
 11 briefings in about 10 minutes or so, which is clearly  
 12 inadequate. Would you agree? And it's not your fault;  
 13 it's because it had to be done, correct?

14 BRIGADIER CALITZ: Die tyd van die  
 15 "briefings" wat gegee was moet ek saam met u stem, dit was  
 16 'n beperkte tyd gewees.

17 MR MPOFU: Ja, thank you. Okay, so  
 18 that's it –

19 BRIGADIER CALITZ: Maar ek –

20 MR MPOFU: That's enough. No more points  
 21 in your favour.

22 BRIGADIER CALITZ: Ek kan net die – ja,  
 23 die "inadequate" deel kan ek nie vir u sê want die lede is  
 24 opgelei en die voorligting wat vir hulle gegee is weet ek  
 25 nie op daardie stadium hoe die bevelvoerders, wat is hulle

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1 gesê nie. So ek wil nie saam met die "inadequate" deel  
 2 stem nie, maar saam met die tyd deel.

3 MR MPOFU: Chairperson, if you could just  
 4 bear with me for one minute. An example of what I'm saying  
 5 to you is contained in L183. According to the police  
 6 version in L183 at 20 past 3, which is 10 minutes before  
 7 the start, the scheduled start of the operation, it was  
 8 only then that the NIU commander briefed his members with  
 9 regard to their roles and responsibilities, and the STF  
 10 commander briefed his members, and so on, and so on.  
 11 That's just a reference point. I'm not going to ask you a  
 12 specific question around that. Do you see that slide?

13 BRIGADIER CALITZ: Ek sien die "slide"  
 14 183 waarna u verwys. Ek sien dit, ja.

15 MR MPOFU: Ja, in any event, in the – let  
 16 me first ask you this, and I'm not a witness, but I can  
 17 tell you I've got some experience in these things,  
 18 including some of the ones you referred to, Vryburg, the  
 19 rolling out of the wire and the use of the barbed wire, I  
 20 was there.

21 BRIGADIER CALITZ: Which side?  
 22 MR MPOFU: Against your side. What a  
 23 question.

24 BRIGADIER CALITZ: We haven't met. Nee,  
 25 dit is net in 'n ligte oomblik, mnr die Voorsitter.

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1 MR MPOFU: Thank you, ja. And the other  
 2 time where I experienced the use of barbed wire was last  
 3 year where there was a case in Bloemfontein of two factions  
 4 of a political party and the court, the precinct of the  
 5 court had to be divided so that the one side is this side  
 6 and the other section is this side. So those are the two  
 7 experiences.

8 The third one, which you referred to, was  
 9 Ventersdorp, the Eugene Terre'Blanche incident. That one I  
 10 saw, but I saw it on television, but in all these instances  
 11 that I'm talking to you about, never did it happen that the  
 12 barbed wire was so-called prepositioned and only rolled out  
 13 when the people were already there. In the case of  
 14 Vryburg, as you know, it was put up there. In the case of  
 15 the court example that I'm giving you from last year, when  
 16 we got to court in the morning we found the barbed wire  
 17 there, and in the case of the Terre'Blanche I stand  
 18 corrected; I don't know, but also I think it was put before  
 19 the court commenced.

20 Now against all that background, in your  
 21 experience have you ever heard of a situation where the  
 22 rolling out, we know that it has been used before, barbed  
 23 wire, but it's rolling out process is done when the rowdy  
 24 crowd is already there?

25 BRIGADIER CALITZ: Om terug te kom van

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1 waar u sê ek en, ons altwee was, as u reg onthou in Vryburg  
 2 was 'n groep van omtrent 1 500 oppad - op daardie stadium  
 3 sou hulle 'n vergadering gehad het by Huhudi, en ek praat  
 4 nou onder korreksie met sekere feite, en die gemeenskap van  
 5 die skool het by die skool bymekaar gekom. So ons het nie  
 6 op daardie stadium geweet waarnatoe wie beweeg nie. So die  
 7 draadkar was nie "predeployed." Ons het gewag om te sien,  
 8 en soos ons gesien het dat die persone van Huhudi af met  
 9 daardie grondpad – u sal nou weet as u aan daardie kant was  
 10 – reg op ons afgekome het, het ek dan opdrag gegee en die  
 11 draad is uitgegooi ten tye van die aanbeweeg van die  
 12 voertuie. Myself en die kameraman – ek onthou nog goed,  
 13 Adjudant Offisier Letsie - dink ek op daardie stadium het  
 14 vorentoe beweeg. Ek het 'n hele aantal meter vorentoe  
 15 beweeg en met die leiers probeer praat.

16 U sal onthou die feite van die saak is daar is op  
 17 my geskiet. Daar is klippe gegooi. Ek dink daar is  
 18 petrolbomme gegooi. Ek moes terugbeweeg na 'n veilige hawe  
 19 toe en daarop het ek dan die opdrag gegee, die traangas.  
 20 Of dit u geaffekteer het weet ek nie. Traangas het  
 21 oorgekom, maar onmiddellik toe die draad en goed uitgegooi  
 22 is, is dit asof die mense gehalt het en net die, daardie  
 23 paar leierfigure vorentoe gekom het. So dit is nie dat die  
 24 hele groep gestorm het nie. Eers toe ek probeer met hulle  
 25 kontak maak en toe die groep van agter af die klip

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1 oorgegooi het – ek weet nie of u voor of agter was nie –  
 2 toe eers het die hele groep gereageer, maar nie op die  
 3 reaksie van die draad nie, en dit is waar ek dan opdrag  
 4 gegee het en ons het “ge-disperse.” Ekself het op die  
 5 grondpad beweeg en u sal daar vir Kolonel Vermaak onthou,  
 6 hy het deur 'n veld gekom aan die regterkant en hy het van  
 7 daardie kant af die groep uiteengedryf. So ek dink ons was  
 8 daardie dag so 15, 16 ure besig met daardie toneel. So dit  
 9 is net om dit so te plaas.

10 MR MPOFU: Yes, thank you. I think  
 11 you've forgotten the question. The question was – and I  
 12 agree with you here and there, or mostly, but that's  
 13 probably just as a result of the fact that we were on  
 14 opposite sides. The question was, have you in your  
 15 experience, have you any example of a situation where the  
 16 wire was deployed when the crowd was already there? In  
 17 other words it was prepositioned, as in this case of  
 18 Marikana, waiting there in the vans, in the Nyalas, or in  
 19 the A-frames or whatever, and instead of it being deployed  
 20 overnight or in anticipation of a situation or whatever,  
 21 being deployed when they rowdy crowd there and there.  
 22 That's the question.

23 [12:50] CHAIRPERSON: - question. Answer it  
 24 quickly so that we can then take the adjournment till  
 25 Tuesday.

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1 BRIGADIER CALITZ: Mnr die Voorsitter,  
 2 buiten Vryburg dink ek, ek het verwys eenkeer na, ek dink  
 3 dis Ramatlabama Mafeking waar die weermag wou oorgegaan het  
 4 na Botswana se kant toe. Ek dink daar was dieselfde geval  
 5 gewees waar ons toegemaak het terwyl die mense nog daar  
 6 was. Waar daar ook nie 'n storm was nie. Ek praat nou  
 7 maar net vinnig wat tot my gedagte kom. Maar ek kan –

8 CHAIRPERSON: Thank you, that's something  
 9 that you can take up on Tuesday morning. We have been  
 10 asked, as I have indicated before not to use these premises  
 11 on Monday, they normally would be available to us, because  
 12 there is a special meeting the council wants to hold. So  
 13 we will adjourn now until half past 9 on Tuesday morning  
 14 when you can continue with your cross-examination.

15 MR MPOFU: Thank you very much,  
 16 Chairperson.

17 [COMMISSION ADJOURNED]

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