

# 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 174

24 JANUARY 2014

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1 [PROCEEDINGS ON 24 JANUARY 2014]  
 2 [09:16] CHAIRPERSON: The Commission resumes. I  
 3 was approached in chambers this morning by Adv Semenya, who  
 4 requested an extension until Monday as the date for filing  
 5 statements. In view of the fact that I'm prepared to give  
 6 him that extension, I give it to everybody else, but it  
 7 must be understood that the extension is until Monday and I  
 8 expect all statements to be filed by the end of Monday.  
 9 Brigadier, you're still under oath.  
 10 ADRIAAN MARTHINUS CALITZ: More,  
 11 Kommissaris. Baie dankie.  
 12 CHAIRPERSON: Mr Gotz.  
 13 CROSS-EXAMINATION BY MR GOTZ (CONTD.):  
 14 Good morning, Commissioners, and Brigadier Calitz.  
 15 BRIGADIER CALITZ: Good morning,  
 16 Advocate.  
 17 MR GOTZ: Perhaps we can start with a  
 18 matter of housekeeping, Chairperson. The exhibits that we  
 19 dealt with yesterday did not include two additional videos  
 20 that I would like to rely upon. The first video is one  
 21 that's been mentioned I think by Mr Mpofu in these  
 22 proceedings and it's new eTV footage showing a number of  
 23 things, but also including a small clip of Mr Mathunjwa's  
 24 second address, and I'd like to be able to introduce that  
 25 as an exhibit if the –

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1 CHAIRPERSON: That's been mentioned, and  
 2 I understood that we were going to see it. Mr Mpofu  
 3 mentioned it, but then I think in his anxiety to finish  
 4 reasonably within the time he promised, he didn't show it  
 5 to us. But obviously we've got to see it. We may as well  
 6 see it now, and I understood that we were going to get a  
 7 transcript of it – well, more accurately we were going to  
 8 get a translation of a transcript of it. I don't know  
 9 whether that's available yet.  
 10 MR GOTZ: Chair, I'm not sure what the  
 11 position is, but in any event, I'm not going to be relying  
 12 upon that transcript for any purposes of my cross-  
 13 examination –  
 14 CHAIRPERSON: Alright, well let's find  
 15 out if the transcript is available. I think the evidence  
 16 leaders were looking into the matter. Mr Budlender, can  
 17 you help us on that?  
 18 MR GOTZ: I'm told we do have a  
 19 transcript, Chair, so that can be introduced as an exhibit  
 20 as well.  
 21 CHAIRPERSON: You know if we see it and  
 22 we hear it and some of us who are more disadvantaged than  
 23 others won't be able to follow it and others will, and it's  
 24 desirable, I would have thought, that we follow the  
 25 transcripts, a translated transcript, while we're seeing

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1 it. So I don't know that you need it at this stage of your  
 2 cross-examination. Perhaps photocopies can be made, unless  
 3 they're available already, of the translated transcript,  
 4 and then we can receive that exhibit.  
 5 MR GOTZ: Then the second video that I  
 6 would like introduced as an exhibit, Chair, is –  
 7 CHAIRPERSON: [Microphone off, inaudible]  
 8 response to the point I made?  
 9 MR GOTZ: No, Chair, I agree with that.  
 10 Sorry, I was nodding and perhaps I should place that on –  
 11 CHAIRPERSON: Alright, we will receive  
 12 that –  
 13 MR GOTZ: Yes, I agree with that.  
 14 CHAIRPERSON: The transcribers can't see  
 15 you nodding and your nods we won't find on the transcript.  
 16 Let your yea be yea, your nay be nay, but your nods will  
 17 not be recorded.  
 18 MR GOTZ: We will make it available,  
 19 Chair. The second video that I'd like to introduce as an  
 20 exhibit is in fact material that we have already seen in  
 21 the Commission. It is however a much clearer copy of the  
 22 video. So the video that I'm referring to is the Reuters  
 23 shot of the strikers approaching the TRT line. We've seen  
 24 that on a number of occasions –  
 25 CHAIRPERSON: If what you're saying to us

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1 is simply a copy of what we saw before, but a better copy,  
 2 then I suggest you give us the exhibit number and then we  
 3 will replace the one you're now going to show us by the one  
 4 – sorry, we will replace the one we've already got by the  
 5 one that you're going to introduce –  
 6 MR GOTZ: Chair, might I make a different  
 7 proposal, and I'll explain the reason for that. The  
 8 original exhibit is UU3. The material that I want to  
 9 introduce has a five-second introduction, as it were, which  
 10 states that the material that is about to be displayed is  
 11 rather graphic. The consequence of that introduction means  
 12 that the timing on the two clips is different, even though  
 13 when one starts the actual content the content is the same.  
 14 I'm a bit concerned that parties may have relied upon UU3  
 15 to set times and the like, and for that reason I propose  
 16 that this new material should not replace UU3 but rather  
 17 should be made a new exhibit, as a separate one.  
 18 CHAIRPERSON: Yes, that makes sense.  
 19 What is the latest exhibit?  
 20 MR GOTZ: Well, if we introduce the eTV  
 21 footage, that would be then KK55.  
 22 CHAIRPERSON: Alright, should be –  
 23 MR BUDLENDER SC: Chair, would it not be  
 24 more convenient to make it UU3.1, so we'll connect the two?  
 25 CHAIRPERSON: Ja, that sounds sensible,

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1 otherwise they're separated by thousands of pages among the  
 2 exhibits. We'll make it – what did you say? UU3?  
 3 MR BUDLENDER SC: [Microphone off,  
 4 inaudible].  
 5 CHAIRPERSON: Sorry?  
 6 MR BUDLENDER SC: [Microphone off,  
 7 inaudible].  
 8 CHAIRPERSON: No, it's numbered as UU3.  
 9 Is that right?  
 10 MR GOTZ: Yes, indeed.  
 11 CHAIRPERSON: So we can either call it  
 12 UU3 bis for those who prefer that, or we can call it UU3.1.  
 13 I prefer bis myself, but if I'm in the minority I'll go  
 14 along with UU3.1. I'm happy to say that the Commissioners  
 15 are unanimous that it's going to be UU3 bis because there's  
 16 no continuation from 1, and that makes it clear it's the  
 17 second – no, for the benefit of Mr Mahlangu and those who  
 18 are interpreting these proceedings into Xhosa, bis – no-one  
 19 else needs the explanation – bis is Latin for twice, and so  
 20 that's what it will be. Could we see UU3 bis please?  
 21 MR GOTZ: Do you want us to show that  
 22 now, Chair?  
 23 CHAIRPERSON: Well, when do you want to  
 24 show it?  
 25 MR GOTZ: During the course of my cross-

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1 examination. I don't propose to –  
 2 CHAIRPERSON: Alright, okay. We'll you  
 3 must –  
 4 MR GOTZ: - show it in advance.  
 5 CHAIRPERSON: You determine the order of  
 6 your cross-examination. Has the witness seen it? You've  
 7 seen UU3. Were you told to look at UU3?  
 8 BRIGADIER CALITZ: Nee, mnr die  
 9 Voorsitter, ook nie die een van die nuwe eTV "footage" wat  
 10 ek dink hy het gesê KK55 is die nuwe een. Ek weet ook nie  
 11 wat is daardie een –  
 12 VOORSITTER: Is dit K-K-K?  
 13 BRIGADIER CALITZ: K-K-K.  
 14 VOORSITTER: 55.  
 15 BRIGADIER CALITZ: Ek dink dit is die  
 16 nuwe –  
 17 VOORSITTER: Ja-nee, maar hy is –  
 18 BRIGADIER CALITZ: Daar is twee wat hy –  
 19 VOORSITTER: Maar ek dink hy het gesê dit  
 20 het ons al gesien.  
 21 BRIGADIER CALITZ: Nee, mnr die  
 22 Voorsitter.  
 23 CHAIRPERSON: Have we not seen the KKK55  
 24 one?  
 25 MR GOTZ: There is a – one has seen most

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1 of the material in that exhibit –  
 2 CHAIRPERSON: One has seen most of it,  
 3 but in fairness to the witness, we may have seen it but if  
 4 he wasn't alerted to it, he hasn't looked at it as part of  
 5 his preparation, so I think it might be appropriate to –  
 6 you'll introduce it at the appropriate time, but if the  
 7 appropriate time is after tea he might be given an  
 8 opportunity – I take it, it won't be long – to look at it  
 9 during tea -  
 10 MR GOTZ: Yes.  
 11 CHAIRPERSON: - so that he can be  
 12 prepared. Alright?  
 13 MR GOTZ: Thank you, Chair.  
 14 BRIGADIER CALITZ: Dankie, mnr die  
 15 Voorsitter.  
 16 MR GOTZ: Brigadier Calitz, we were  
 17 dealing yesterday with Major General Mpembe's views on  
 18 your, should we say limitations or weaknesses in crowd  
 19 management situations, and Major General Mpembe has told –  
 20 CHAIRPERSON: I don't think "weakness" is  
 21 an appropriate word in this case. It's really an inability  
 22 to deal, or disadvantage is the right word, disadvantage to  
 23 deal with a particular situation.  
 24 MR GOTZ: I'm happy to use the word  
 25 "disadvantage" -

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1 CHAIRPERSON: But to call it a weakness  
 2 implies something pejorative, which I don't think you mean,  
 3 and if you do I won't allow you to do it anyway. So let's  
 4 carry on.  
 5 MR GOTZ: Major General Mpembe has told  
 6 the Commission that an understanding of the relevant  
 7 language is one of the major factors affecting the success  
 8 or failure of a crowd management intervention. I take it  
 9 you would agree with Major General Mpembe on that?  
 10 BRIGADIER CALITZ: Ek het nie die eerste  
 11 deel gehoor nie. U sê kommunikasie?  
 12 MR GOTZ: Yes, an understanding of the  
 13 relevant language, so what I'm saying is that the language  
 14 of the strikers and an understanding by SAPS, or the  
 15 intervener of that striker, or those strikers' language, is  
 16 an important factor in the success or failure of the crowd  
 17 management intervention.  
 18 BRIGADIER CALITZ: Ek stem saam met u.  
 19 MR GOTZ: And I take it you would also  
 20 agree that an understanding of the culture or belief  
 21 systems of the strikers in the crowd may also be an  
 22 important factor affecting the success or favour of the  
 23 intervention, correct?  
 24 BRIGADIER CALITZ: Dit is korrek.  
 25 MR GOTZ: The factors that Major General

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1 Mpmbe mentions, an understanding of language and an  
2 appreciation of culture, were obviously not only important  
3 on the 13th, but also in the days following the 14th, the  
4 15th, and indeed also the 16th, correct?

5 BRIGADIER CALITZ: Dit is korrek.

6 MR GOTZ: You've given your evidence  
7 about your knowledge of the language and understanding,  
8 your understanding of the language and culture of the  
9 strikers. Colonel McIntosh was in the same position as you  
10 were, correct?

11 BRIGADIER CALITZ: Ja, ek weet nie of  
12 Kolonel McIntosh Xhosa verstaan nie, of Fanagalo nie, so ek  
13 kan nie vir u sê nie, maar as hy dit nie verstaan nie sou  
14 hy in dieselfde posisie gewees het. Dit is korrek.

15 MR GOTZ: You have in fact already  
16 testified that he didn't understand Fanagalo. Did he have  
17 any understanding of the cultural belief systems of the  
18 strikers?

19 BRIGADIER CALITZ: Ek dink my getuienis  
20 was dat ek was onseker of hy dit verstaan. Ek weet nie of  
21 ek gesê het definitief hy verstaan dit nie, want ek ken hom  
22 glad nie so goed nie. Oor die kultuur verskille kan ek nie  
23 vir u sê nie. Sy agtergrond, waar hy gewerk het, ek sal u  
24 nie daarmee kan help nie. Ek glo Kolonel McIntosh sal vir  
25 u meer duidelikheid daarvoor kan gee.

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1 CHAIRPERSON: I don't know if it would be  
2 necessary for him to give oral evidence, but if you require  
3 this information from him I suggest you send a  
4 communication to the evidence leaders indicating what extra  
5 information you would like him to be requested to give, and  
6 then a supplementary affidavit can be prepared containing  
7 that information.

8 MR GOTZ: Let's proceed on the assumption  
9 that he didn't have an understanding of the language, of  
10 the relevant language of the strikers, and he also didn't  
11 have an understanding of the culture of the strikers. Can  
12 we proceed on that assumption?

13 BRIGADIER CALITZ: "Assumption," as u sê  
14 ons vat dit asof dit so is op daardie dag dan kan ek u vrae  
15 daarop beantwoord. Dit –

16 CHAIRPERSON: Why must we proceed on what  
17 may be an incorrect assumption? It may be a total waste of  
18 time to ask a whole series of questions based on something  
19 which may not be correct. Time is precious in this  
20 Commission. I'm not prepared to allow you to proceed on an  
21 assumption which may well be incorrect.

22 MR GOTZ: Chairperson, we've asked  
23 Brigadier Calitz whether he had any indication whether, or  
24 had any knowledge of whether or not McIntosh –

25 CHAIRPERSON: And he doesn't know the

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1 answer, so therefore the assumption you ask us to make may  
2 not be correct. I mean if necessary, I don't know how it  
3 could be done, but if he's contactable maybe someone from  
4 the police legal team could contact him quickly and ask for  
5 the information, and if they come back and report that the  
6 assumption you want us to make is correct you can carry on,  
7 on that basis. But absent information of that kind I think  
8 it's a waste of time and I'm not prepared to allow further  
9 time to be wasted.

10 MR GOTZ: Brigadier, the fact that you  
11 did not understand the language of the strikers placed you  
12 at a disadvantage. One of the disadvantages was manifest,  
13 or that disadvantage was manifested, as it were, in the  
14 fact that you had to use an interpreter, correct?

15 BRIGADIER CALITZ: Ons het die gebruik  
16 van 'n interpreteerder gehad, ja.

17 VOORSITTER: 'n Tolk.

18 BRIGADIER CALITZ: 'n Tolk. Dankie, mnr  
19 die Voorsitter.

20 MR GOTZ: You had need of the  
21 interpreter. Did you get any sense that Colonel McIntosh  
22 had the need for an interpreter?

23 CHAIRPERSON: Mr Gotz, you're really  
24 wasting time now. I can't see why Mr Pretorius can't go  
25 and telephone Colonel McIntosh quickly. I've got an idea

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1 that I read somewhere that Colonel McIntosh, or Lieutenant  
2 Colonel McIntosh did have some understanding of Fanagalo,  
3 and Mr Budlender nods his head, so I think that's probably  
4 right. But anyway, be that as it may, Mr Pretorius has  
5 been very helpful up to now. I'm sure he can go away,  
6 telephone Colonel McIntosh, find out and come back and  
7 report to us, and depending what he says you can proceed  
8 with this line, but you're wasting time now. Let's carry  
9 on with something else.

10 MR GOTZ: Brigadier, it placed you at a  
11 disadvantage in the negotiations, correct?

12 BRIGADIER CALITZ: Wat myself aanbetref,  
13 ek het myself verlaat op die tolk wat dan vir ons die  
14 inligting deurgegee het.

15 MR GOTZ: As far as you are, or from your  
16 position you don't know whether the interpreter was  
17 correctly conveying what you had said to the strikers, or  
18 Colonel McIntosh had said to the strikers, correct?

19 BRIGADIER CALITZ: Ja-nee, soos ek sê, 'n  
20 ou het totaal verlaat op – of hy die presiese woorde  
21 gebruik het, dit sal ek nie van, vir u kan sê nie, nee.

22 MR GOTZ: And similarly you don't know  
23 whether the interpreter correctly translated what the  
24 strikers had told Colonel McIntosh or yourself, correct?

25 BRIGADIER CALITZ: Die "flipside" van die

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1 "coin," dit is so -

2 CHAIRPERSON: Of course there were other

3 people in the Nyala and there was a question last week

4 about some of them were African policemen -

5 BRIGADIER CALITZ: Dit is korrek, mnr die

6 Voorsitter.

7 CHAIRPERSON: And we don't know whether

8 they could understand what was being said in Fanagalo,

9 which I gather is a mixture of Nguni languages and Sotho

10 language. We don't know what they could understand or not

11 understanding, but did anybody with you in the Nyala say to

12 you, 'Hang on a second, the interpreter is getting it

13 wrong; he's interpreting wrongly'? It doesn't necessarily

14 mean he was interpreting rightly, but it's a factor to bear

15 in mind. Did anybody say to you, 'No, no, that's not

16 right'?

17 BRIGADIER CALITZ: Nee, mnr die

18 Voorsitter, die meeste van die kommunikasie deur die tolk

19 was maar Kolonel McIntosh of Adjudant Offisier Nong wat dit

20 dan na my toe deurgegee het agter.

21 MR GOTZ: Perhaps we can move on to a

22 different subject, and that's -

23 CHAIRPERSON: Very good idea.

24 MR GOTZ: Can I ask you to look at

25 paragraph 32 to 34 of your statement, Brigadier, which is

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1 JJJ107 and it's on page 7 of that exhibit.

2 BRIGADIER CALITZ: U wil hê ek moet

3 paragraaf hoeveel? 33 tot?

4 MR GOTZ: Can I ask you to just cast your

5 eye over those paragraphs -

6 BRIGADIER CALITZ: 33 tot?

7 MR GOTZ: 32 to 34.

8 BRIGADIER CALITZ: Ek sal gou daar

9 deurlees. Dit is korrek, daardie drie paragrawe het ek

10 weer deur gelees.

11 MR GOTZ: Tell me, Brigadier, when you

12 returned to the base, as you put it, I assume what you mean

13 is that that was, you returned to the JOC?

14 BRIGADIER CALITZ: Mnr die Voorsitter, as

15 ek mag vra, as u miskien net bietjie - ek sukkel om u te

16 hoor. Miskien my mikrofoon, ek is jammer, anders gaan ek

17 die heelyd vra om te herhaal. Ek hoor nie mooi.

18 MR GOTZ: When you say in paragraph 33

19 that you returned to the base, I assume what you mean by

20 that is you returned to the JOC?

21 BRIGADIER CALITZ: Dit is korrek, ja.

22 MR GOTZ: Did you return to the JOC

23 immediately after the helicopter landed?

24 BRIGADIER CALITZ: Nee, ek dink van die

25 toneel waar Generaal Mpmembe-hulle was het ons teruggevlieg

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1 en gesirkel eers oor die groot koppie waar die ander

2 persone gesit het, oor daardie gebied, gedeelte oor

3 Nkaneng, en toe het ons gaan sit. So dit was nie 'n

4 direkte vlug terug nie, nee.

5 MR GOTZ: Brigadier, please listen to my

6 questions. I said after the helicopter landed, did you

7 return immediately to the JOC? So what happened before the

8 helicopter landed is completely irrelevant -

9 BRIGADIER CALITZ: Oh, sorry, I thought

10 you say from after the scene. Ja, that's why I'm saying I

11 can't hear you properly. You mean from when we landed to

12 the JOC?

13 MR GOTZ: Yes.

14 BRIGADIER CALITZ: Ja, ek dink ons het

15 geland op die skoon oop veld waar die helikopters gestaan

16 het. Ek het gestap - ek moet nou vir u eerlik sê, ek kan

17 nie presies onthou of ek direk JOC toe was en of ek eers 'n

18 draai gemaak het by die CJOC nie. Ek weet daar was 'n

19 vergadering aan die regterkant van die JOC - nie 'n

20 vergadering nie, so 'n terugvoer waar die personeel besig

21 was met 'n vergadering, en ek dink dit is waar ek met

22 Brigadier Van Zyl in gesprek gestaan en getree het, miskien

23 was ons aan die buitekant vir 'n rukkie en toe ingegaan, as

24 ek reg onthou.

25 [09:36] MR GOTZ: What you then say in paragraph

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1 34 is that, "Whilst at the JOC and approximately 30 minutes

2 after my arrival, I was informed that the SAPS members who

3 had accompanied Major-General Mpmembe, effectively had been

4 attacked, but what you don't mention in your statement, nor

5 in your evidence in chief is that you received a call from

6 Major-General Mpmembe while he was still talking to the

7 strikers at the railway line. Do you recall that?

8 BRIGADIER CALITZ: Nee, ek kan nie sê dat

9 ek nou spesifiek daardie oproep kan onthou nie, nee.

10 MR GOTZ: I would like to take you to the

11 evidence that Major-General Mpmembe gave on this score, can

12 we have a look at the transcript, day 103 and it is page

13 11126?

14 CHAIRPERSON: While it is being found I

15 see Mr Pretorius has returned, are you able to give us any

16 information, Mr Semenya, on the topic that was under

17 discussion before Mr Pretorius left.

18 MR SEMENYA SC: Indeed, Chair, Colonel

19 McIntosh does not speak Fanagalo but he says he has a fair

20 understanding of the culture having worked in various

21 townships over his career life.

22 CHAIRPERSON: Thank you. When you

23 finished this point you can go back to the cross-

24 examination that you wanted to start on, because I wouldn't

25 allow it on, because I wasn't satisfied that the assumption

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1 was correct and it now appears it is correct and you'll be  
 2 able to deal with it, but perhaps you want to finish off  
 3 this point first?  
 4 MR GOTZ: It is day 103, 11126, if you  
 5 can find that and it is commencing at line 23.  
 6 CHAIRPERSON: Sorry, what is the exact  
 7 line on the page that you are referring to?  
 8 MR GOTZ: Well, I would like if the  
 9 person controlling these matters can take us to 11126?  
 10 CHAIRPERSON: Okay, now we have 11126 and  
 11 what line on 11126 do you want?  
 12 MR GOTZ: I'm sorry, Chair, I seem to –  
 13 CHAIRPERSON: What line do you want?  
 14 MR GOTZ: Sorry, Chair, I seem to have  
 15 the wrong reference, day 103. Sorry, Chair, maybe, -  
 16 perhaps I can come back to this, -  
 17 CHAIRPERSON: Yes, obviously when you've  
 18 got the reference.  
 19 MR GOTZ: - to this reference. Can we  
 20 then look at 16035?  
 21 CHAIRPERSON: Which day is that?  
 22 MR GOTZ: It is day 145.  
 23 BRIGADIER CALITZ: Page?  
 24 MR GOTZ: Chair, I see –  
 25 CHAIRPERSON: Would you give him the page

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1 -  
 2 MR GOTZ: - it is 16035.  
 3 CHAIRPERSON: 16035. Yes, what line on  
 4 16035 do you want to refer to?  
 5 MR GOTZ: Yes, it may actually be useful  
 6 if we go to the end of 16034 so that we can get the content  
 7 where the line that I want to refer to, the context, I beg  
 8 your pardon, where Mr Ntsebeza says to Major-General  
 9 Mpembe, "No, do you speak to anyone in the JOC and who, if  
 10 you did," and then Major-General Mpembe says, "I spoke to  
 11 Brigadier Calitz and I spoke to General Mbombo and later I  
 12 spoke to the commanders." The chairperson then comes in  
 13 and says, "I think the question relates to the telephone  
 14 conversation that you had, so you had one telephone  
 15 conversation with General Mbombo and then another one with  
 16 Brigadier Calitz, is that right? Correct. And was  
 17 Brigadier Calitz at the JOC at that stage?" The evidence  
 18 that Major-General Mpembe gave, Brigadier, was that whilst  
 19 he was interacting with the strikers at the railway line  
 20 and having listened to them for some time, he then decided  
 21 that he would telephone Major-General Mbombo and in  
 22 addition he would telephone you and he said, this is not  
 23 the only reference, there is another which we're trying to  
 24 find, where he says expressly that he spoke to you about  
 25 these matters.

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1 CHAIRPERSON: Perhaps we could see the  
 2 rest of this page which is on the screen at the moment,  
 3 that may give us some information on this point, I don't  
 4 know.  
 5 MR GOTZ: Yes.  
 6 CHAIRPERSON: Can we see beyond? Yes, he  
 7 says when he spoke to you he gave you the same information  
 8 which he had given Major-General Mbombo and then perhaps we  
 9 could continue with the evidence after that? No, it  
 10 appears from the evidence thereafter he doesn't give the  
 11 content of the conversation. Well, unless after line 12 on  
 12 page 16037 there is something? No, it is not. Yes, Mr  
 13 Ntsebeza suggests to him that he wanted to put to those in  
 14 the JOC who knew what his mission was, that there was a  
 15 need to change deck, as Mr Ntsebeza put it, not to disarm  
 16 the people there at the railway line and Major-General  
 17 Mpembe says, no, and then he doesn't agree with what Mr  
 18 Ntsebeza put to him. I don't know what he says thereafter,  
 19 that's part of the record we can't see at the moment. Do  
 20 you have a clear passage where Major-General Mpembe shares  
 21 to us, because I can't remember I'm afraid, what he said to  
 22 Brigadier Calitz in the course of that telephone  
 23 conversation?  
 24 MR GOTZ: Chair, this is why I'm asking  
 25 the brigadier the question because it isn't, I'm afraid,

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1 clear what Major-General Mpembe told Brigadier Calitz.  
 2 What we do have and I'm afraid, Chair, I don't understand,  
 3 we've then checked this reference that I had, to transcript  
 4 11126 and our version of the transcript has the passage  
 5 that I was referring to, I'm not sure whether we can't look  
 6 at that again just to make sure that we have the right  
 7 thing.  
 8 CHAIRPERSON: But what does that passage  
 9 say, - well, maybe at the same time you can tell us what  
 10 your version of the transcript says.  
 11 MR GOTZ: Yes.  
 12 CHAIRPERSON: Bring it down to us and  
 13 then –  
 14 MR GOTZ: So why –  
 15 BRIGADIER CALITZ: Mnr die Voorsitter, -  
 16 CHAIRPERSON: It is a bit unscientific  
 17 way of doing it but never mind, put it to the witness and  
 18 let's see how he responds. We may be on a dwaalspoor but  
 19 on the other hand this may be an important point, we don't  
 20 know if we've heard the brigadier's answers.  
 21 MR GOTZ: The brigadier wants to say  
 22 something?  
 23 BRIGADIER CALITZ: No, no, I thought you  
 24 just want to go back to your, to the other slide, maybe if  
 25 we can just finish what was said on this one and then move

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1 to the other one, anderste moet ons terugkom na hierdie een  
2 toe, mnr die Voorsitter.

3 MR GOTZ: Yes.

4 BRIGADIER CALITZ: Hier het hy verwys na  
5 160, ag, daardie 11126, ek dink dit is net op die vorige  
6 lyn, waar Generaal Mpembe gesê het dat hy met my  
7 kommunikeer, ek dink dit is op die ander kantste bladsy  
8 waar ons, eerste waar ons begin het.

9 MR GOTZ: Brigadier, can we get back to  
10 this, sorry, I want to try and cut this as short as  
11 possible.

12 BRIGADIER CALITZ: Ek wil net, -

13 MR GOTZ: Look at –

14 BRIGADIER CALITZ: Ek wil net vir u iets  
15 uitgewys het daar.

16 MR GOTZ: I promise you I will return to  
17 that, Brigadier.

18 CHAIRPERSON: The passage being referred  
19 to on 11126, he is being asked about the fact that  
20 according to the video he is talking to someone on the  
21 telephone, because that's what's put, you're on the  
22 telephone, so then he is asked who he was on the telephone  
23 to and so on.

24 BRIGADIER CALITZ: Dit is hoekom ek vra,  
25 as ons net na lyn 23 kan kyk.

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1 MR GOTZ: Yes, indeed, so if we can go  
2 down to line 23. Mr Ngalwana says, "Can you stop there,"  
3 and what he is referring to there, Brigadier, is the video  
4 that's playing. "Is that you seemingly on the telephone,  
5 General," and the general responds, "Correct, Chairperson,"  
6 and then if we can go to the next page, 11127, Mr Ngalwana  
7 asks, "With whom were you communicating there," and Major-  
8 General Mpembe says, "I was communicating with the JOC and  
9 also informed the Provincial Commissioner about the  
10 situation that I encountered." Now the importance of the  
11 second reference that I gave you is that he tells us that  
12 the person that he was communicating with on the JOC was  
13 you, Brigadier, and then Mr –

14 CHAIRPERSON: But I understood the  
15 witness to say he didn't dispute that, but he couldn't  
16 remember it and then we see further on that General Mpembe  
17 says, "I informed the JOC, that means I must informed  
18 Brigadier Calitz, that the strikers seem not to cooperate  
19 the handover of their weapons, precisely the reason I've  
20 given to the Commission. So I've taken the decision that  
21 we will escort them, the same I did communicate to the  
22 Provincial Commissioner and she said to me, I'm the best  
23 placed person on the ground to take decisions, and she  
24 agreed with me." Now that's his discussion with General  
25 Mbombo but he had earlier said in a passage that we saw a

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1 few minutes ago, that he conveyed the same information to  
2 you as he had conveyed it to General Mbombo. Now he told  
3 us that he couldn't remember it but now you've seen what he  
4 said. Does it perhaps jog your memory and help you to give  
5 us further evidence on this point?

6 BRIGADIER CALITZ: Mnr die Voorsitter,  
7 ja, dit is heeltemal korrek. Op hierdie gedeelte sê hy net  
8 na die JOC toe en dan Mbombo, waar my naam gebruik word,  
9 was op bladsy 16035 en ek dink dit is die uitklaring wat  
10 die advokaat soek.

11 MR GOTZ: Indeed, Brigadier.

12 BRIGADIER CALITZ: So as ons na daardie  
13 lyn toe kan gaan –

14 MR GOTZ: Just so that we –

15 BRIGADIER CALITZ: - dan sal ek vir u wys  
16 in watse sin Generaal Mpembe dit bedoel het en dit sal  
17 miskien duidelik word.

18 CHAIRPERSON: Never mind the meaning that  
19 he had, the context and so forth in which he said these  
20 things. The real question is, what is suggested is, he  
21 said he spoke to you and what we want to know is whether  
22 you now can remember something you couldn't remember  
23 before, but these things happen when one's memory get  
24 jogged by things. Can you now remember that when you had  
25 got back to the JOC you received a telephone call from

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1 General Mpembe who said something to you, can you-  
2 BRIGADIER CALITZ: Mnr die Voorsitter,  
3 nee, nie toe ek terug was by die JOC nie, maar dit is  
4 hoekom ek u wil wys toe ek wel met hom gesels het en dit  
5 sal duidelik wees as ons kan na daardie lyn 14 toe gaan.

6 CHAIRPERSON: Well, I think you better  
7 show us that and tell us about it.

8 MR GOTZ: Brigadier, before we move off  
9 this page I just wanted you to focus –

10 CHAIRPERSON: But, Mr Gotz, I'm not  
11 stopping you from taking him further on the page, but let  
12 him finish off the point he is trying to make now so that  
13 we can understand.

14 BRIGADIER CALITZ: Ek dink dit sal vir u  
15 duidelik wees –

16 CHAIRPERSON: Alright –

17 BRIGADIER CALITZ: - as ek net kan.

18 CHAIRPERSON: Well, it may or may not be  
19 clear to us, but if you try to make it clear that's –

20 BRIGADIER CALITZ: O, ja, ja, 16035  
21 waarna u verwys het op dag 145, lyn 14, dink ek wat ons  
22 gelees het, u sal sien daar het hy gesê, as ons 'n bietjie  
23 kan opgaan, nee, op, anderkant toe op, stop daar, Generaal  
24 Mpembe, "I spoke to Brigadier Calitz and I spoke to General  
25 Mbombo and later I spoke to the commanders that were around

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1 me. I think the question relates to the telephone  
 2 conversation you had, so you had one telephone conversation  
 3 with General Mbombo and the other one with Brigadier  
 4 Calitz, is that right?" Dit is waar die generaal gesê het,  
 5 ja, en waar hy my naam gebruik het, "And was Brigadier  
 6 Calitz at the JOC at that stage? I indicated before he was  
 7 at the JOC, he was, he did guide me."  
 8 As u kan nou net op daardie stadium sien en dan  
 9 verder lees, die chairperson sê, "Yes," en toe sê General  
 10 Mpembe, "And when I arrived he guided me because there was  
 11 no chopper which was refuelling and when the chopper  
 12 arrived with Colonel Vermaak then he went back to the JOC,  
 13 but I refer specifically to him because he was at the JOC,  
 14 yes." So ek dink die tyd wat hy met my gepraat het hier  
 15 verwys na die tyd wat ek hom in beduie het.  
 16 CHAIRPERSON: It is not easy to do it,  
 17 read on, "But I refer specifically to him because he was at  
 18 the JOC, yes. Now I say, yes, and did you say to him what  
 19 you also said to General Mbombo?" Now I don't we, - we  
 20 know what he said to General Mbombo, he reported that, they  
 21 didn't want to hand over their arms and he was now going to  
 22 agree to escort them back to the koppie and so on. "Did  
 23 you say to him what you also said to General Mbombo?" The  
 24 answer, "The same information, Chairperson."  
 25 BRIGADIER CALITZ: Dit is so –

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1 CHAIRPERSON: So what he says, he spoke  
 2 to you and you were at the JOC and he reported to you what  
 3 he reported to General Mbombo, that there had been this  
 4 discussion with the strikers and they refused to hand over  
 5 their arms, weapons, but he had decided a decision which  
 6 was supported by the Provincial Commissioner. He had  
 7 decided not to try and disarm them there but to rather  
 8 escort them back to the koppie. That's what he says. Now  
 9 the question is whether you can remember that?  
 10 BRIGADIER CALITZ: Ja, nee, glad nie, Mnr  
 11 die Voorsitter, dit is wat ek net wil wys uit hierdie uit,  
 12 dat die gesprek was net ten tye van die aanduiding gewees  
 13 en nie toe ek by die JOC was nie, nee.  
 14 CHAIRPERSON: I'm sorry, can we please  
 15 just see what continuous after line 24 which I've read? Mr  
 16 Ntsebeza then says, "So if I understand you," that's the  
 17 next page, we've got to go up, no, no, what we need is 36,  
 18 Mr Ntsebeza says, "If I understand you, you say to these  
 19 personalities in the JOC, look, the situation is such, now  
 20 I have to change the deck a little bit. My mission here  
 21 was to disarm these people here at this railway line.  
 22 There has been an exchange of views between us and them,  
 23 they are not handing their weapons. The suggestion they  
 24 make about me and us accompanying them to the mountain, I  
 25 think that's an opportunity that we must give, an

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1 opportunity, a chance."  
 2 That's the end of Mr Ntsebeza's purported  
 3 quotation from what General Mpembe said and then he  
 4 continues, "More or less is that how the communication went  
 5 between you and them?" And Major-General Mpembe says, "It  
 6 included that they should disarm but in case where they  
 7 don't voluntarily disarm that is the case, but the main  
 8 priority was that it could be important for me that they  
 9 should go there disarmed and we can just escort them. The  
 10 reason why I wanted to escort them is with the allegations  
 11 that they put that NUM or securities were shooting at them,  
 12 but the condition I put to them, that was very clear,  
 13 unequivocally unarmed." That's what the answer was but  
 14 anyway the point is if you can't remember the conversation  
 15 then we're wasting our time, putting to you what General  
 16 Mpembe said. Does it not jog your memory a bit?  
 17 BRIGADIER CALITZ: Nee, glad nie, Mnr die  
 18 Voorsitter, nee, ek kan glad nie onthou dat hy my geskakel  
 19 het nie. Ek glo die records kan miskien daarnatoe wys,  
 20 maar in die sin wat dit hier gesê is, miskien met die JOC  
 21 gepraat of met die general, maar sover ek weet hy het nie  
 22 met my oor hierdie onderwerp nie, nee.  
 23 MR GOTZ: Brigadier, do you recall any  
 24 conversation that you had with Major-General Mpembe in  
 25 which the reasons for his decision or the decision that was

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1 taken on the 13th were discussed between you and him?  
 2 BRIGADIER CALITZ: Net na die tyd –  
 3 CHAIRPERSON: I'm sorry to interrupt, Mr  
 4 Budlender, I know you've got details of certain cell phone  
 5 records, have you got, do they cover the 13th, because, you  
 6 need not now but you can investigate and tell us, because  
 7 it may help Mr Gotz with this part of his cross-  
 8 examination. Sorry, I was interrupting you, Brigadier?  
 9 BRIGADIER CALITZ: Nee, Mnr die  
 10 Voorsitter, ek wou intendeel dieselfde gevra het, want ek  
 11 kan dit glad nie onthou nie. Om die vraag te antwoord was  
 12 dat wel na die tyd het ons daarvoor gesels en ek was glad  
 13 nie bewus daarvan nie, nee.  
 14 MR GOTZ: I'm sorry, Brigadier, I may not  
 15 have understood your answer in flurry of activity, did you  
 16 say you had discussed the matter with him and when I refer  
 17 to the matter I'm talking about –  
 18 CHAIRPERSON: No, I'm sorry, he said he  
 19 couldn't remember a conversation at all, and when I tried  
 20 from various angles to see whether his memory have being  
 21 jogged by the passages in General Mpembe's evidence he said  
 22 he still couldn't remember.  
 23 MR GOTZ: No, with respect, Chairperson,  
 24 I'm asking a different question. What I said was, post the  
 25 events of the 13th, the operation, did Brigadier Calitz have



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1 any conversation with General Mpembe in which the reasons  
2 for General Mpembe's decision were discussed with General  
3 Mpembe?

4 CHAIRPERSON: I'll allow that question.

5 BRIGADIER CALITZ: Dit is wat ek u  
6 geantwoord het, Mnr die Voorsitter, wat ek gesê het dat na  
7 die tyd het ons wel daardie aand dit bespreek en dit is dan  
8 ook so oorgedra, ek dink aan die generale wat besoek het.

9 MR GOTZ: Was that a private conversation  
10 between you and Mpembe?

11 BRIGADIER CALITZ: Nee, ek dink dit was  
12 bespreek gewees, die feedback wat gegee was van die dag en  
13 in daardie vergadering of daardie, as ek dit 'n vergadering  
14 kan noem, het ons dan daardie terugvoer gekry van die  
15 persone wat daar was.

16 MR GOTZ: During that feedback session  
17 Major-General Mpembe, I presume, would have explained his  
18 conduct on the 13th, correct?

19 BRIGADIER CALITZ: Dit is korrek, sover  
20 ek onthou wat hy gesê het.

21 MR GOTZ: And you would have explained  
22 the reasons he took the decision that he did, correct?

23 BRIGADIER CALITZ: Dit is ook korrek, ja.

24 MR GOTZ: Did he tell the people around  
25 the gathering or at that gathering that he had taken a

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1 decision which he described as one of situational  
2 appropriateness, he had listened to the strikers, he had  
3 assessed the situation and he had taken a decision to agree  
4 to their request that he escort them to the koppie.

5 BRIGADIER CALITZ: Ek kan nou nie die  
6 presiese woorde onthou soos u dit stel nie, maar die breë  
7 strekking was dat hy wel besluit het om die persone dan te  
8 escort na die koppie toe.

9 MR GOTZ: And did he explain to you what  
10 went wrong?

11 [09:56] Ek dink op daardie stadium het hulle gesê dat die  
12 persone wou weg breek, onder korreksie na die gedeelte van  
13 'n nedersetting en dat toe die polisie hulle wou stop was  
14 daar geweld uitbreek waar hulle die polisie aangeval het  
15 en verskeie persone dan gedood en beseer is aan beide  
16 kante.

17 MR GOTZ: Did Major General Mpembe tell  
18 the people gathered there why the strikers had told him  
19 they did not want to relinquish their weapons?

20 BRIGADIER CALITZ: Nee, ek kan nie, ek  
21 kan nie die rede daarvoor onthou nie, nee.

22 MR GOTZ: Did he tell you that the  
23 strikers had asked him to permit them to keep their weapons  
24 until such time as they had reached the koppie because they  
25 needed it for their protection?

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1 BRIGADIER CALITZ: Nee, ek kan ook nie  
2 onthou dat daar enigiets gesê is oor dat hulle dit nodig  
3 het vir julle verdediging nie, nee.

4 MR GOTZ: Did he tell you that they  
5 believed that two of their members had been shot dead in  
6 the preceding days?

7 BRIGADIER CALITZ: Nee, ek kan nie dit,  
8 daardie inligting onthou nie.

9 CHAIRPERSON: I have difficulty in  
10 understanding the value of this cross-examination. The  
11 reason I say that is that the conversation between General  
12 Mpembe and the strikers representatives is, was videoed.  
13 We've seen the video, we received the translation of what  
14 was said, it was dealt with in Mr Ntsebeza's cross-  
15 examination. I'm not satisfied that any second hand  
16 recital by General Mpembe if he could remember what was  
17 said and if this witness can accurately remember what  
18 General Mpembe said is going to take the matter any  
19 further. We have first hand evidence of what was said  
20 which is on the video and which has been translated for us  
21 and which is set out in exhibits. So what's the point of  
22 asking this witness about it?

23 MR GOTZ: Chairperson, the point and I  
24 don't –

25 CHAIRPERSON: Alright, perhaps I should

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1 give you an opportunity to answer the point I put to you.  
2 What, am I correct in thinking that you're simply asking  
3 questions to get a second hand recital of what we already  
4 have at first hand, if there's a further reason you have of  
5 asking these questions and it's not covered by the material  
6 we already have then obviously I'll allow you to ask the  
7 question. I was only concerned that we should be ploughing  
8 over ground at second hand which we, in respect of which we  
9 already have first hand information. Am I not correct in  
10 that assumption?

11 MR GOTZ: Chair, with respect my next  
12 question I think will reveal the purpose of the cross-  
13 examination.

14 CHAIRPERSON: Ask, let's hear your next  
15 question.

16 MR GOTZ: Brigadier, do you not think as  
17 the operational commander in charge of the operation on the  
18 ground and indeed as the person centrally involved in the  
19 negotiations that that information ought to have been  
20 conveyed to you?

21 BRIGADIER CALITZ: Mnr die Voorsitter, u  
22 moet onthou u, u verwar miskien nou twee dinge. Die  
23 provinsiale kommissaris het op daardie stadium die  
24 voorvalle boek inskrywing gemaak en sy het aangedui dat  
25 General Mpembe my oorhoofs en ek moet oor vat operasioneel.

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1 Die voorval op die Maandag was daar nie 'n beplanning voor  
 2 nie, dit was 'n spontane voorval gewees. So wat betref  
 3 operasionele bevelvoerder en die beplanning en die  
 4 negotiations waar als begin het, het actually op die 14de  
 5 begin. Daardie dag, ek dink Kolonel Merafe sou dan die  
 6 doel van die operasionele bevelvoerder op die grond gevat  
 7 het in sy kapasiteit van die senior openbare order  
 8 polisiëringslid op die grond. So ek wil net die twee  
 9 onderskeidings vir u wil uitwys.

10 MR GOTZ: Brigadier, I appreciate the  
 11 distinction but what I'm putting to you is a different  
 12 question. I'm saying that as the operational commander but  
 13 also the person centrally involved in the negotiations with  
 14 the strikers it was important for you to have an  
 15 understanding of what had happened on the 13th and critical  
 16 to that understanding was the reasons that the strikers  
 17 were carrying the weapons that they were, why they had  
 18 asked the police to escort them and indeed the fact that  
 19 they believed that two of their members had been shot dead.  
 20 Do you not think that that was important information which  
 21 should have been conveyed to you?

22 BRIGADIER CALITZ: Ja, u het vir my  
 23 gevra, die vraag was of Generaal Mpembe dit op daardie aand  
 24 bespreek het en ek kan vir u duidelik sê dat ek kan nie  
 25 onthou op daardie stadium nie. Die volgende dag, die 14de

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1 het die inligting begin inkom van misdaad intelligensie en  
 2 al die plekke en toe het ons 'n JOC gestig en dit is waar  
 3 dit bespreek is en waar dit oorgegee is aan die  
 4 onderhandelaars en waar die beplannings begin het waarna u  
 5 verwys nou.

6 MR GOTZ: Well I'm not sure that I  
 7 completely understand that information, but let's, that  
 8 answer. Brigadier, when you commenced the negotiations  
 9 with the strikers the following day on the 14th were you  
 10 aware of certain factors, for instance that they believed  
 11 that two of their members had been shot dead, that they  
 12 were carrying the weapons they had told Mpembe for their  
 13 own protection. Was that information in your mind?

14 BRIGADIER CALITZ: Mnr die Voorsitter,  
 15 waarvan ons wel bewus was en dit is die inligting wat deur  
 16 gegee is, is van die insidente wat die Vrydag, die Saterdag  
 17 en die Sondag vooraf gebeur het so daardie detail inligting  
 18 is wel met ons gedeel op daardie dae toe die beplannings  
 19 opgetrek is.

20 CHAIRPERSON: Is it correct that the  
 21 strikers themselves when you and Lieutenant Colonel  
 22 Macintosh were in conversation with them, did they at any  
 23 point during those conversations repeat this allegation  
 24 that two of their members had been killed by NUM members on  
 25 the Saturday?

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1 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
 2 kan nie die presiese, ek dink ek het verwys daarna waar  
 3 hulle aan ons aan die begin met hulle kontak gehad het waar  
 4 hulle dan gesê het dat hulle wil nie met ons gesels nie,  
 5 maar met die myn oor sekere dinge en dan ook die aanval op  
 6 hulle lede. Ek dink ek het verwys –

7 CHAIRPERSON: What Mr Gotz, is asking,  
 8 what I'm interested in as well is more specific than that.  
 9 We know that it's not true that two people were killed on  
 10 the Saturday.

11 BRIGADIER CALITZ: Dit is korrek.

12 CHAIRPERSON: That was a story that was  
 13 spread around, it was repeated even in the book that was  
 14 published after the commission was set up, but we know the  
 15 allegation is not true. But there is some suggestion that  
 16 it was believed at the time by the strikers. The question  
 17 is whether that belief was communicated to you either by  
 18 some information you got from some of your colleagues as to  
 19 what happened on the 13th or whether they communicated it  
 20 directly to you in the course of your interchanges or  
 21 exchanges with them?

22 BRIGADIER CALITZ: Mnr die Voorsitter,  
 23 dankie, ek dink die inligting wat ons dan ingewin het  
 24 gedurende die JOCCOM vergaderings was wel gedeel, ek kan  
 25 nie presies onthou of dit misdaad intelligensie of die

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1 sekuriteitsmaatskappy af kom nie dat daar wel sulke  
 2 bewerings was en ek het wel ook in, as ek nou reg, onder  
 3 korreksie verwys daar in my, ek praat heeltemal onder  
 4 korreksie, die verklaring wat ek gemaak het vir die cordon  
 5 and search wat sou plaasgevind het dink ek het ons, ons het  
 6 ook daaraan verwys van die twee persone wat gedood was, wat  
 7 actually dan nie so was nie. So daardie inligting was wel  
 8 met ons gedeel.

9 CHAIRPERSON: Perhaps I can jog your  
 10 memory on this, exhibit GGG13, it's the statement that you  
 11 made which we, I think it's your first statement, the one  
 12 you made on the 19th of August. In paragraph 7 you talk  
 13 about the negotiations and around about the middle of the  
 14 paragraph you say later, "the five came right up to the  
 15 Nyala, one of them had a green blanket wrapped around him,  
 16 climbed onto the bulbar of the Nyala vehicle and spoke to  
 17 Lieutenant Colonel Macintosh. This person informed him  
 18 that they want to speak to the mine management about their  
 19 wages and the killing of their people and they don't want  
 20 to talk to the SAPS. So what we can see from that, sorry.  
 21 What we can see from that is that certainly the so-called  
 22 killing, the alleged killing of their people was raised.  
 23 Can you remember that?

24 BRIGADIER CALITZ: Mnr die Voorsitter, ja  
 25 as u onthou wat ek nou net getuig het, ek het net gesê

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1 onder korreksie en ek wou dit gesoek het. Dit is presies  
2 waarna ek verwys het, toe hulle gesê het hulle wil nie met  
3 die polisie onderhandel nie maar met die myn management oor  
4 hulle geskille van lone en dan ook die dreigemente en die  
5 killings van hulle persone. So, maar dit is die verwysing  
6 wat ek -

7 CHAIRPERSON: Yes, but did they give any  
8 more, did they give any more detail about the killing of  
9 their people, in other words the allegation was, we've  
10 heard this a number of times in the course of the evidence  
11 before this commission, the allegation that they made was  
12 that on that occasion on the Saturday morning when a number  
13 of strikers, about 3 000 marched towards the NUM office and  
14 shots were fired by members of NUM. We know two people  
15 were injured. But the allegation was that two people were  
16 killed by NUM members on that occasion. Was that  
17 allegation ever conveyed to you as far as you can recall?

18 BRIGADIER CALITZ: Mnr die Voorsitter,  
19 ja, nie die detail van hulle kant af nie. Maar wel deur  
20 misdaad intelligensie. Ons het dit gehad dat daar vyf  
21 wounded persons were found and dan drie persone gewond  
22 gedurende die optog. Dit was Saterdag die 11de. Dit is  
23 hoe die inligting deurgekom het na ons toe. Maar van mnr  
24 Noki af self net daardie woorde gewees.

25 MR GOTZ: You see, Brigadier, the concern

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1 maar dat hulle nie die rede gegee het vir die wapens omdat  
2 hulle wil teen NUM verdedig het nie nee. Daardie rede is  
3 nie aan ons gegee nie. Ons het wel herhaaldelik vir hulle  
4 gesê dat dis 'n onwettige byeenkoms en die wapens moet  
5 neergelê word en, en, en. So ons het nie verdere daarop  
6 kommunikeer nie.

7 MR GOTZ: You, despite the fact that you  
8 know that their members had not been killed, you don't  
9 convey to them your knowledge that they are in fact in  
10 hospital, correct?

11 CHAIRPERSON: Ja, I don't think that's a  
12 fair question. The witness hasn't told us when he  
13 discovered, my recollection is that we only ascertained in  
14 this commission after it had begun that that allegation of  
15 two people had been killed was unfounded. There was for a  
16 long time there was, it was believed I think by the police,  
17 according to the evidence that there may be some substance  
18 in it but what, but attempts were being made to find out  
19 who the two people were. So the question presupposes that  
20 the witness knew at the time he spoke to the strikers that  
21 the information is incorrect and that assumption on which  
22 the question is founded doesn't appear to be correct.  
23 Perhaps you should ask him whether it's correct first  
24 before asking questions based on an assumption which has  
25 not yet been established.

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1 that I have is that this seems to have been a repeated  
2 statement made by the strikers. It was made to Mpembe on  
3 the 13th namely that, Major General Mpembe had been told  
4 that they were carrying their weapons because they needed  
5 them for their protection believing that two of their  
6 members had been killed. We see from this statement,  
7 paragraph 7 that they conveyed the same information to you.  
8 It was a repeated statement and it was a concern that was  
9 repeatedly put to SAPS.

10 BRIGADIER CALITZ: Ja, dit is hoekom ek  
11 sê dit is die inligting. Die meer detail daarom het ons  
12 nie ontvang nie en dit kon nooit bevestig word van daardie  
13 twee persone wat gedood is.

14 MR GOTZ: But what we -

15 CHAIRPERSON: We now know the two people  
16 weren't killed. But the question is whether it was  
17 believed by the strikers that they had been. That's the  
18 point Mr Gotz is busy with and flowing from that was the  
19 further allegation by the strikers that the reason that  
20 they were hanging onto their weapons was because, to defend  
21 themselves against NUM. The question is whether that  
22 information was conveyed to you, whether you were aware of  
23 it at any stage?

24 BRIGADIER CALITZ: Ja, nee, die eerste  
25 gedeelte dat daar wel persone wat hulle beweer is gedood,

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1 MR GOTZ: Brigadier, I had understood  
2 that you had crafted an email, that you had crafted an  
3 email which you refer to in your statement, and I'm trying  
4 to find it where you had indicated that the two people had  
5 not in fact been killed but had been sent to hospital and  
6 you name the hospitals. If you'll bear with me, I can find  
7 it in your statement. But I had understood that you knew  
8 that the two people had been injured but not killed.

9 CHAIRPERSON: Well let's ask him about  
10 that. Did you know that no one was killed on the Saturday  
11 morning, that two strikers were injured and were taken to  
12 hospital, do you know that?

13 BRIGADIER CALITZ: Mnr die Voorsitter,  
14 nee ons het geweet daardie bewering is gemaak en dit is die  
15 enigste en ons het later wel in hindsight uitgevind daar is  
16 wel nie twee persone gedood nie. Die email waarna die  
17 Advokaat verwys was nie deur my opgestel nie. As u net  
18 die, dit sal volg en ek dink dis ingehandig as 'n bewysstuk  
19 dit is 'n email wat ek ontvang het van Kaptein Govender wat  
20 die, kan ek sê misdaad intelligensie offisier is by  
21 Marikana polisie stasie en die is die eerste email wat met  
22 my gekommunikeer was wat ek ontvang het van hulle rondom  
23 die situasie daar en die rede hoekom ek die email ingesit  
24 het is dat dit is die spesifieke woorde en die beskrywing  
25 waarop ons dan die versoek na die NATJOC toe gestuur het.

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1 Ek dink ek het dit ontvang en omtrent 8 minute later het ek  
2 daai selfde email deur gestuur NATJOC toe. So dit was die  
3 doel van daardie email dat hulle die strekking kon sien,  
4 die beweringe wat gemaak word asook die ernstigheid van die  
5 situasie en dan laat hulle uit daardie standpunt uit dan  
6 vir ons ekstra personeel stuur. So dit was die doel van  
7 die email waarna u verwys.

8 MR GOTZ: Yes, indeed, Brigadier. You  
9 refer to this email in paragraph 27 of your statement,  
10 exhibit JJJ107 and that commences on page 5 and you'll see  
11 that in paragraph 2 you specifically refer to the incident  
12 or rather the email specifically refers to the incident.  
13 It records that both were shot in the back near the spinal  
14 area, the victims were taken to Andrew Saffy Hospital for  
15 medical attention.

16 BRIGADIER CALITZ: Ja, dit is die  
17 presiese email wat ek na verwys het en u sal sien dis in  
18 italic gedruk en in my statement include en as jy dan na  
19 die, dis ingegee as exhibit, ek ken nie die exhibit nommer  
20 nie, sal u dan kan volg presies die email, wanneer ek dit  
21 ontvang het en aangestuur het en my presiese woorde aan die  
22 NATJOC dat weens hierdie email die ernstig van die aard en  
23 dat ons het hulp nodig in terme van meer mannekrag.

24 MR GOTZ: So you did know that they had  
25 not been killed, you received information via email before

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1 the 14th, correct?

2 BRIGADIER CALITZ: Nee, dit kon nie  
3 bevestig word nie, onthou daar was 'n bewering gewees en  
4 hierdie woorde was die Kaptein wat ek sê die intelligensie  
5 offisier op die grond opgestel is. So dit kan na twee  
6 ander persone verwys word wat dan ook vermoor is. So op  
7 daardie stadium ek dink die speurders het dit probeer  
8 opvolg en ons kon dit nooit bevestig van twee persone wat  
9 oorlede is nie.

10 MR GOTZ: No, Brigadier, these are the  
11 two victims that the strikers believed had been shot and  
12 killed. Were you not aware of this?

13 BRIGADIER CALITZ: Mnr die Voorsitter, ek  
14 verstaan nou nie, u vra het hulle vir my gesê, ek sê ja  
15 julle het vir my laat weet en toe verwys hy na die email en  
16 ek het vir u gesê oor ek die email verstaan het en  
17 aangestuur het.

18 MR GOTZ: But you were in possession of  
19 information which at the very least pointed strongly to the  
20 fact that they had not been killed.

21 CHAIRPERSON: I understand him to say  
22 that he didn't know it was the same people. He said there  
23 was information two people had been injured that were in  
24 hospital, there was information two people had been dead,  
25 were dead. He thought they were two other people but he

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1 couldn't obtain, he couldn't establish, he couldn't obtain  
2 confirmation of the fact that these, the two people, that  
3 two people had been killed. That's my understanding of his  
4 evidence. You're suggesting that he knew that the two  
5 people who were allegedly killed were the same as the two  
6 people who were actually injured, that's the basis on which  
7 the question is asked and I understood him to say precisely  
8 the opposite, that he thought that there were two other  
9 people who had been killed, they could never get  
10 confirmation about this. Am I summarising your evidence  
11 correctly or have I got it wrong?

12 BRIGADIER CALITZ: Dit is heeltemal  
13 korrek, mnr die Voorsitter. As u kyk van die Vrydag, die  
14 Saterdag, die Vrydag was daar twee persone ge-injure  
15 during, kom ons sê rivals tussen unies, die Saterdag vyf  
16 persone gewond, toe weer later drie persone gewond. So  
17 daar's verskeie persone wat gewond is en wat gerapporteer  
18 is aan die polisie in hierdie tydperk en dan die bewering  
19 van twee persone wat dood is. So u kan nooit sê die twee  
20 persone wat dood is, is spesifiek waarna hulle verwys nie.  
21 So ek stem saam met u, mnr die Voorsitter.

22 COMMISSIONER TOKOTA: Sorry, Brigadier,  
23 let me just find out, if you had, let's assume that you had  
24 known that people had been killed on that Saturday would it  
25 have made any difference as to whether the carrying of

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1 pangas and spears there was justified in the circumstances?

2 [10:15] BRIGADIER CALITZ: Kommissaris, nee,  
3 definitief nie. Ek kan verwys, ek het so vinnig gesoek toe  
4 die Voorsitter verwys het na GGG, in my paragraaf JJJ – my  
5 "consolidated statement," paragraaf 48, het ek ook gesê  
6 "Negotiations, informed the five men as well as the  
7 strikers," dit is nadat hulle ons ingelig het van die  
8 persone wat gedood is, "that the gathering is illegal and  
9 the carrying of the weapons is illegal and that SAPS does  
10 not want any confrontation with them but wanted to resolve  
11 this peacefully." So die dra van die pangas sou definitief  
12 dan geen relevansie gehad het nie. Dit sou nog steeds dit  
13 'n onwettige byeenkoms gemaak het waar gevaarlike wapens  
14 glad nie toegelaat word nie. So dit sou ek dan, soos ons  
15 wel aan hulle oorgedra het, Kommissaris, dit is wat ons aan  
16 hulle oorgedra het.

17 MR GOTZ: Major General Mpembe considered  
18 it important to find out why the strikers were carrying  
19 pangas and other weapons, correct?

20 BRIGADIER CALITZ: Ek dink dit is wat ek  
21 op die video gesien het na die tyd.

22 MR GOTZ: And once he had been informed  
23 about that he took a decision based on that knowledge.

24 BRIGADIER CALITZ: Ek dink die "decision"  
25 wat, waarna u verwys is om hulle te escort na die koppie

<p style="text-align: right;">Page 20681</p> <p>1 toe was vir hom 'n veiliger opsie op daardie stadium. Ek  2 weet nie of daar genoegsame mannekrag was om die persone te  3 ontwapen daar waar hulle was nie. Ek dink daar was 'n  4 geskil oor opinies –  5 CHAIRPERSON: There were 70 people under  6 the command of Major General Mpembe. There were about 200  7 people who were strikers. So that's one aspect of the  8 matter. The other one was if they could have, if an  9 attempt had been made to disarm them, even if there had  10 been 200 policemen or 300 policemen, the other problem was  11 whether it could have occurred in circumstances where there  12 would have been no bloodshed, and Major General Mpembe told  13 us – I don't know if he told you – that he was afraid that  14 if he tried to disarm them there at the railway line, there  15 would have been what he called another Tatane incident and  16 there would have been, at least one person and probably  17 more would have been killed, and that's why he said – or I  18 don't know whether he told you that, but he told us that –  19 that he applied the doctrine of situational appropriateness  20 which is set out in the policy document on Public Order  21 Policing. That's what he told us, but I don't know if he  22 told you that.  23 BRIGADIER CALITZ: Nee, dit is korrek,  24 mnr die Voorsitter. Dit is wat ek net wou gesê het wat ek  25 verstaan het uit sy getuienis uit en ek dink daar was nog</p>	<p style="text-align: right;">Page 20683</p> <p>1 out the reason why they were carrying the weapons, or was  2 it irrelevant to you?  3 BRIGADIER CALITZ: Nee, dit was nie  4 irrelevant nie. Ek dink die onderhandelinge het die hele  5 dag aangegaan. Ek het nou nie sekonde vir sekonde  6 neergeskryf wat met die onderhandelinge gesê word nie, maar  7 dit was belangrik gewees en dat Kolonel McIntosh het met  8 hulle onderhandel. Hulle het gesê hulle het die wapens en  9 dan het ons vir hulle verduidelik dit is onwettig, dis 'n  10 onwettige byeenkoms en hulle moet dit neersit, want onder  11 geen omstandighede volgens my is meegedeel dat hulle het  12 die wapens in hulle besit om hulle te beskerm teen NUM nie.  13 Daardie inligting, nee, het ek nie gehad nie.  14 CHAIRPERSON: If they'd told you that  15 they had the weapons in their possession to protect  16 themselves against NUM, would you have offered them police  17 protection against NUM?  18 BRIGADIER CALITZ: Mnr die Voorsitter, as  19 ek nou in "hindsight," ek kry nou die inligting en ek moet  20 die "call" maak, sou ek nog steeds vir hulle gesê het dat  21 die polisie is daar om hulle te beskerm, sowel as die NUM  22 mense. Daar sal wel moet onderhandelinge gewees het. Ek  23 sou dit deurgegee het JOC toe sodat die nodige leier  24 elemente tussen NUM en AMCU bymekaar kan kom en dan die  25 beweringe dan uitsorteer, en ons sou hulle definitief</p>
<p style="text-align: right;">Page 20682</p> <p>1 iets gewees ook die spoorlyn wat ook, die trein wat gebruik  2 word en die tye en hy was onseker, as ek kan –  3 CHAIRPERSON: Ja, there were other  4 subsidiary reasons, but I –  5 BRIGADIER CALITZ: - as ek kan reg  6 onthou.  7 CHAIRPERSON: I would have thought the  8 Tatane one was the best. But can I ask you this before Mr  9 Gotz continues? If you had known that this reference to  10 two people who'd been killed, if a number was given or  11 simply people had been killed, was actually based on a  12 misunderstanding and was a reference to the two people  13 who'd been shot but not killed by NUM members on the  14 Saturday, would you have conveyed that to the strikers and  15 said, 'No, no, none of your people were killed. They're  16 lying in hospital.' Would you have conveyed that to them  17 if you had known that they were talking about the same  18 people?  19 BRIGADIER CALITZ: Beslis so, mnr die  20 Voorsitter, want dit is die doel van onderhandeling en dit  21 is hoe jy 'n vertrouensposisie bewerkstellig met, tussen  22 twee groepe. Dit sou definitief oorgedra gewees het.  23 MR GOTZ: My final question on this line,  24 Brigadier, when you commenced negotiations with the  25 strikers on the 14th, did you consider it important to find</p>	<p style="text-align: right;">Page 20684</p> <p>1 verseker het. Ek dink iewers in die paragrawe het ons wel  2 vir hulle gesê ons wil hierdie hele ding "peacefully  3 resolve" en ons wil nie "violence" hê nie; die polisie is  4 nie daar om enige konfrontasie uit te lok nie. So  5 definitief met ons teenwoordigheid daar en van die 14de af  6 kan u sien die insidente het afgeneem. So daar was wel  7 polisiebeskerming gewees en 24 uur, so deur die nag was  8 daar ook patrollies gewees.  9 CHAIRPERSON: It sounds from what you say  10 as if you assumed that when you were speaking to the  11 strikers' representatives you were actually speaking to  12 AMCU members as such, you talked about inter-union rivalry  13 and inter-union violence and talked about AMCU. Did you  14 think that these people who you were talking to were all  15 AMCU members and that this was in effect an AMCU strike?  16 BRIGADIER CALITZ: Mnr die Voorsitter, ek  17 sal nie sê almal was AMCU nie, maar weens die inligting wat  18 ons gehad het en van Misdaad Intelligensie het dit geblyk  19 dat die meerderheid van die persone dan wel AMCU lede was.  20 CHAIRPERSON: They may have been AMCU  21 members coincidentally. The question was whether it was an  22 AMCU strike which, or was the strike by rock drill  23 operators, some of whom were members of AMCU? There's a  24 distinction between the two, isn't there?  25 BRIGADIER CALITZ: Daar is beslis, mnr</p>

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1 die Voorsitter.

2 MR GOTZ: Brigadier Calitz –

3 CHAIRPERSON: Sorry, Mr Gotz, before you

4 carry on, may I ask you, in order to understand the

5 relevance of some of these questions you ask, is it your

6 case that if the police had told them that these people

7 hadn't died, that they would then have handed over their

8 arms and they wouldn't have considered it necessary to keep

9 them to protect, allegedly to protect themselves?

10 MR GOTZ: Chair, our case is, we put it

11 no higher than it would have made a difference in the

12 negotiations because what we do see, Chair, and I'm afraid

13 I'm sharing evidence as it were, what we do see even on the

14 16th is the strikers making reference to the fact that two

15 of their members have been killed. So between the 14th and

16 the 16th they still have not been told that two of their

17 members have not been killed, and they are concerned about

18 it right up until Mr Mathunjwa gives his first address –

19 CHAIRPERSON: I understand the relevance

20 now. You may proceed.

21 MR GOTZ: Brigadier, can I ask you to

22 have a look at paragraph 23 of –

23 CHAIRPERSON: Before he looks at

24 paragraph 23, or whatever the paragraph is you're referring

25 to, Mr Semenya has turned on his light.

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1 MR SEMENYA SC: I could not follow the

2 last response, Chair, because by the 16th there were already

3 fatalities that had happened the Monday.

4 MR GOTZ: Sorry, Chair, I don't

5 understand the objection.

6 CHAIRPERSON: No, it's not an objection.

7 What Mr Semenya says, he doesn't understand the point

8 you're making and he gives a reason why he doesn't

9 understand it, and presumably he'll say he would like to

10 understand it so that he can follow the evidence, and if he

11 doesn't understand it, it should be made clear. So perhaps

12 you could explain it again so that Mr Semenya can follow

13 the point you're making.

14 MR GOTZ: Chairperson, you had asked a

15 question about whether or not it's our case that if the

16 strikers had been informed of the fact that two of their

17 members had not been killed, that would have made any

18 difference, and I said indeed it is our case and we had

19 understood on the basis of the emails that Brigadier Calitz

20 was in possession of information that the strikers had not

21 been killed, and it is our case that if Brigadier Calitz

22 had conveyed that to the people with whom he was

23 negotiating, it would have made a difference.

24 CHAIRPERSON: He answered that to some

25 extent by saying he didn't know the two people who were

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1 allegedly killed were the two people who had been wounded,

2 and that's why he wasn't able to convey it. So that's

3 point has been dealt with, but you then went on to say

4 something further, but I think let's find out. Mr Semenya,

5 are you now on the same page as Mr Gotz? Do you now

6 understand the point that he's making?

7 MR SEMENYA SC: No, he then continues to

8 say even on the 16th that information was withheld from the

9 strikers, and I'm saying at that stage there would have

10 been also fatalities on the Monday of those AMCU members.

11 CHAIRPERSON: Yes, yes. No, perhaps

12 putting words in Mr Gotz' mouth, Mr Gotz would say there's

13 a difference. The people who were killed on the Monday,

14 some of them were members of the police service; that's not

15 relevant. As far as the strikers were concerned they were

16 killed by the police, well, two of them. We don't know

17 about the third, but the thrust of Mr Gotz' questions

18 relates to the alleged desire of the strikers to retain

19 their weapons to defend themselves not against the police

20 who were responsible for the killings, were responsible in

21 the physical sense for the killings on the Monday, but

22 against NUM who they alleged were responsible for earlier

23 killings on the Saturday. If I misstated your point, Mr

24 Gotz, I apologise. Did I get it right?

25 MR GOTZ: No, that is absolutely correct,

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1 Chair, and just to correct one further point; I had simply

2 said that it appears from the videos that we've seen that

3 the strikers were still not aware of the fact - on the

4 Thursday, the 16th, they were still not aware of the fact,

5 and I put it no higher than that when I address the

6 question.

7 CHAIRPERSON: Alright. You know, that

8 raises all sorts of questions to which we obviously don't

9 know the answers. I mean either the statement that people

10 had been killed was a lie, or it was genuinely believed, or

11 it was true, what their genuine belief was earlier on but

12 some of them had visited the people in the hospital in the

13 meanwhile and knew that they hadn't been killed. We don't

14 know the answer to any of those questions. All you can say

15 is they persisted in the statement that people had been

16 killed. Whether that was a truthful statement made in the

17 sense of what they genuinely believed, or whether it was

18 something that they were repeating even though they knew it

19 was false, is a matter in respect of which we have no

20 evidence at this stage, and I doubt if we ever will have.

21 MR GOTZ: Does that clear things up for

22 my learned friend? Thank you. Brigadier Calitz, let's

23 move on to paragraph 23 of your witness statement. You say

24 in your witness statement at paragraph 23 –

25 CHAIRPERSON: Sorry, Mr Gotz, forgive me.

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1 There's one other point I want to put to you before you  
 2 move on. Would it really have made a difference if they  
 3 had been told, as you say they should have been told if  
 4 Major Calitz had known that these two people hadn't been  
 5 killed, they'd just been seriously injured and were lying  
 6 in hospital, if it is true that they wished to retain their  
 7 weapons to protect themselves against NUM, if that's true,  
 8 that need would still have existed even if the people  
 9 concerned hadn't been killed but had merely been seriously  
 10 injured? Isn't that so?  
 11 They'd been shot. They might well have died. It  
 12 may well be that you will argue at the end of the case that  
 13 we must recommend that consideration must be given to  
 14 prosecuting the NUM members who fired without giving a  
 15 warning or anything of that kind, prosecuting them for  
 16 attempted murder, but does it make a difference, did they  
 17 need to keep their weapons to protect themselves against an  
 18 actual killing? Because there had only been an attempted  
 19 killing which was unsuccessful, albeit the victims were  
 20 seriously injured, they didn't need t keep their weapons.  
 21 That sounds like a non-starter, that point. What do you  
 22 say to that?  
 23 MR GOTZ: Chair, it's difficult for me to  
 24 give evidence. It's certainly not our case that there  
 25 would have been a difference between the two. What I'm

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1 probing with the Brigadier is the extent of information  
 2 that was shared during the course of the negotiations and  
 3 testing as a result the quality of those negotiations, what  
 4 substantively was conveyed during the course of those  
 5 negotiations with the Brigadier.  
 6 CHAIRPERSON: Alright, perhaps we can  
 7 investigate that in depth after we adjourn, the tea  
 8 adjournment has been taken, but we won't take the tea  
 9 adjournment until Mr Budlender has said something.  
 10 MR BUDLENDER SC: Chair, you asked  
 11 whether we have the cell phone records of the 13th of  
 12 August. We don't have it. The records we have commence on  
 13 the 14th.  
 14 CHAIRPERSON: Yes, that was my impression  
 15 also. Alright, well fortified by that extra information  
 16 we'll take tea and you will then proceed with the line that  
 17 you're busy with now after tea. Is that right?  
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 19 [10:51] CHAIRPERSON: The Commission resumes,  
 20 Brigadier, you're still under oath.  
 21 BRIGADIER CALITZ: Dankie, Mnr die  
 22 Voorsitter.  
 23 CHAIRPERSON: Mr Gotz?  
 24 MR GOTZ: Brigadier, I may come back to  
 25 this issue in the light of some of your answers, I'm afraid

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1 I don't think that I'm going to be finishing today, so I  
 2 may come back to it in the light of the answers that you've  
 3 -  
 4 CHAIRPERSON: Are you not going to finish  
 5 before the end of the day?  
 6 MR GOTZ: It is very unlikely, Chair.  
 7 CHAIRPERSON: Because you did tell me  
 8 earlier what your estimate of the length of your cross-  
 9 examination would be but anyway, how long do you think  
 10 you'll be now, can you give us a revised estimate?  
 11 MR GOTZ: Chair, I'll certainly be up  
 12 until teatime on Monday.  
 13 CHAIRPERSON: Which teatime, morning or  
 14 afternoon?  
 15 MR GOTZ: No, morning tea, Chair.  
 16 CHAIRPERSON: Well, that -  
 17 MR GOTZ: I apologise for that -  
 18 CHAIRPERSON: No, no, I understand -  
 19 MR GOTZ: Chair, the things are going  
 20 slower than I anticipated -  
 21 CHAIRPERSON: I understand, you've got to  
 22 do your job as you see it, you've got to ask the questions  
 23 you consider necessary and it doesn't help you to be  
 24 heckled all the time from the chair, so carry on.  
 25 MR GOTZ: I wouldn't put it as strongly

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1 as that, Chair.  
 2 CHAIRPERSON: No, but I can, carry on, Mr  
 3 Gotz.  
 4 MR GOTZ: Brigadier, can I ask you a few  
 5 questions relating to the interactions between yourself and  
 6 Lonmin and Mr Sinclair in particular? Now I understand  
 7 that Mr Mpfu has dealt with this quite extensively and in  
 8 a sense I'm just filling in some of the gaps that he did  
 9 not deal with and we will rely on the evidence that Mr  
 10 Mpfu extracted. So can I ask you to look at Exhibit  
 11 JJJ192 which is the transcript of the meeting of the 14th of  
 12 August between Lonmin and the Provincial Commissioner?  
 13 BRIGADIER CALITZ: Is that in my bundle  
 14 under which point?  
 15 MR GOTZ: It is, - sorry, I wouldn't have  
 16 prepared this bundle for you, Brigadier, you may have to  
 17 ask -  
 18 CHAIRPERSON: It is an exhibit already,  
 19 you see? If you look at the screen you'll see the first  
 20 page of the document that's being referred to and it's been  
 21 referred to already during the course of your cross-  
 22 examination. It is JJJ192, is the conversation which  
 23 was clandestinely recorded at the offices of Lonmin on  
 24 Tuesday, the 14th, a conversation between Provincial  
 25 Commissioner Mbombo who is described as SAPS Commissioner

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1 and Mr Mokoena and I think Mr Sinclair also took part and  
 2 also I think Mr Cardy as well, but anyway people from  
 3 Lonmin on the one side and Provincial Commissioner Mbombo  
 4 on the other. Do you remember reading that document?  
 5 BRIGADIER CALITZ: Nee, glad nie,  
 6 Kommissaris, dit is hoekom ek vra. Dit sou dalk in sy  
 7 bundel gewees het, as ek geweet het hy gaan daaruit vra –  
 8 MR GOTZ: Chair, we expressly refer to  
 9 this document in our –  
 10 CHAIRPERSON: I'm sorry, Mr Gotz says you  
 11 were given a list of exhibits that would be referred to and  
 12 you were also given documents which were not yet exhibits  
 13 which are in a red file with the tabs that we went through  
 14 yesterday, but there was a list given to you which  
 15 contained references to the exhibits to which your  
 16 attention was drawn and Mr Gotz says that this one, JJJ192  
 17 was one of them, but if you haven't seen it, well, then the  
 18 fault is not Mr Gotz' but we'll have to proceed as best we  
 19 can.  
 20 BRIGADIER CALITZ: Mnr die Voorsitter,  
 21 nee, ek sit met die lys hier, dit bestaan uit vier bladsy  
 22 uit en dit is definitief nie op hierdie lys nie.  
 23 MR SEMENYA SC: It is not on ours either,  
 24 Chair.  
 25 CHAIRPERSON: Sorry?

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1 MR SEMENYA SC: It is not on ours as  
 2 well.  
 3 CHAIRPERSON: Well, Mr Gotz, I assumed in  
 4 your favour erroneously that it was included.  
 5 MR GOTZ: No, I must apologise for that,  
 6 Chair, I –  
 7 CHAIRPERSON: Well, in view of –  
 8 MR GOTZ: - something that I –  
 9 CHAIRPERSON: No, -  
 10 MR GOTZ: Can I refer the brigadier to –  
 11 CHAIRPERSON: Sorry, these things happen  
 12 in the best regulated cases, I'm afraid. I'm not sure  
 13 whether this is in that category, but in view of the fact  
 14 that you were going to be cross-examining until morning  
 15 teatime on Monday, it may be appropriate to leave this  
 16 point over until Monday morning and the brigadier can spend  
 17 some of his weekend studying this document and also  
 18 possibly it might be sensible to check at the end of the  
 19 day were there any other documents that were left out of  
 20 this so that the brigadier can also read them if there are  
 21 any. Is that a suggestion that finds favour with you?  
 22 MR GOTZ: It does with one qualification,  
 23 Chair, it might assist the brigadier if I refer him to the  
 24 page that I want to ask questions about.  
 25 CHAIRPERSON: I'm sure he would be

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1 grateful to receive that information.  
 2 MR GOTZ: So, Brigadier, -  
 3 CHAIRPERSON: What is the page?  
 4 MR GOTZ: Brigadier, if you can look at  
 5 page 14 of that document?  
 6 BRIGADIER CALITZ: Ek sal dit maar op die  
 7 screen volg, ek het nou nie die dokument by my nie.  
 8 MR GOTZ: Brigadier, I don't want to ask  
 9 you questions about it now,-  
 10 BRIGADIER CALITZ: No, no, it is fine, ek  
 11 wil net op die, bladsy 14?  
 12 CHAIRPERSON: Will it take the elements  
 13 of surprise away from your cross-examination if you tell  
 14 him what passage on page 14 you're referring to, say if he  
 15 is spending an anxious half an hour reading the page over  
 16 and over again?  
 17 MR GOTZ: It probably would, Chair, but  
 18 can I ask you simply to read from page 14 through to the  
 19 end of the document and I –  
 20 BRIGADIER CALITZ: Ek sal so maak, ja.  
 21 MR GOTZ: It –  
 22 CHAIRPERSON: 14 to 18, it won't take too  
 23 much of your time.  
 24 BRIGADIER CALITZ: Ek sal 14 tot 18 lees,  
 25 dankie daarvoor, Advokaat.

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1 MR GOTZ: Okay, Brigadier, to turn again  
 2 to a document with which you are familiar, it is your  
 3 witness statement, JJJ107, I would like you to look at  
 4 paragraph 23 of your witness statement. Now, Brigadier,  
 5 you say in that paragraph that you also instructed Captain  
 6 Sefiki to ensure that the Operations Board is kept up to  
 7 date with regard to who the group commanders were and what  
 8 their contact numbers are. This was to advise anyone  
 9 seeking information to know who to contact and where. The  
 10 Operations Board was also to contain information of the  
 11 details of the deployment and the description of how the  
 12 personnel and resources were to be deployed. Do you see  
 13 that, Brigadier?  
 14 BRIGADIER CALITZ: Ek sien dit, Mnr die  
 15 Voorsitter.  
 16 MR GOTZ: One of the pieces of  
 17 information which was on the JOC board was a page relating  
 18 to Mining Security postings and can I show you that, a  
 19 photograph of that board? It is Exhibit HHH60. You'll see  
 20 that that document or that photograph is of the board which  
 21 is headed "Mining Security postings, 16 August 2012," and  
 22 it then contains a list of names. It also reflects  
 23 information regarding what weapons or arms the relevant  
 24 people are carrying, which vehicles they're driving and we  
 25 understand that it also indicates where in the vicinity



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1 those people were posted. Do you see that, Brigadier?  
 2 BRIGADIER CALITZ: Ek sien dit, mnr die  
 3 Voorsitter.  
 4 MR GOTZ: You do accept that this was  
 5 part and parcel of the JOC board on the 16th of August?  
 6 BRIGADIER CALITZ: Mnr die Voorsitter,  
 7 ja, dit is eintlik waarop ek u aandag wil wys, paragraaf 23  
 8 van my verklaring en as u in die voorvalle boek inskrywing  
 9 gaan kyk is dit die JOC wat gestig is die 12de. Dit was  
 10 die Sondag gewees toe ons net daar aangekom het, so dit was  
 11 die klein JOC, as u weet hoe lyk die perseel by, ek glo u  
 12 weet by Middelkraal is daar 'n klein kamertjie waar hulle  
 13 hul radio's en beheer kamer en daar was 'n JOC board waar  
 14 ek vir Kaptein Sefiki dan gesê het, vir die deployments wat  
 15 op daardie dag en dan sou volg, daardie JOC board, sodat as  
 16 die mense daar aankom dan kan hulle dit volg. Ek weet nie  
 17 of u weet op watter stadium en waar hierdie foto geneem is  
 18 nie, volgens my kennis sou hierdie gewees het nadat die JOC  
 19 geskuif het en daar 'n ander JOC bevelvoerder aangestel  
 20 gewees het wat dan totaal beheer oor daardie sou geneem  
 21 het. So, -  
 22 CHAIRPERSON: I'm not sure that you're on  
 23 the same point as Mr Gotz. You were talking about the  
 24 document on 12, I take it, which is the police docket, is  
 25 that correct?

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1 BRIGADIER CALITZ: Watter document verwys  
 2 u na?  
 3 CHAIRPERSON: You're talking about the  
 4 Operations board, is that a sort of a black board on which  
 5 writing was done in chalk or one of these -  
 6 BRIGADIER CALITZ: Dit was die Sekuriteit  
 7 se, ek dink dit was 'n wit bord -  
 8 CHAIRPERSON: Ja -  
 9 BRIGADIER CALITZ: Hierdie white -  
 10 CHAIRPERSON: A white board, yes.  
 11 BRIGADIER CALITZ: Ek dink so.  
 12 CHAIRPERSON: And the markings on that,  
 13 the writing on that, was that what one would call Lonmin  
 14 writing or was that police writing?  
 15 BRIGADIER CALITZ: Nee, nee, dit is om  
 16 aan te dui ons -  
 17 CHAIRPERSON: It was police writings?  
 18 BRIGADIER CALITZ: Polisie, ja.  
 19 CHAIRPERSON: Now I don't think it is  
 20 suggested, if I'm wrong Mr Gotz will correct me, I know, I  
 21 don't think it is suggested that this document that we're  
 22 looking at now is a police document. It is a Lonmin  
 23 document, is that right, Mr Gotz?  
 24 MR GOTZ: Well, I'm trying to establish  
 25 the origins of the document. I have no basis for

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1 suggesting to the brigadier that the police, that that  
 2 contained writing by the police and I don't put that  
 3 proposition to him.  
 4 CHAIRPERSON: No, if it is a police  
 5 document you can tell us but it looks to me like a Lonmin  
 6 document, it refers to Lonmin staff, I take it, Lonmin  
 7 vehicles, is that right?  
 8 BRIGADIER CALITZ: Dit -  
 9 CHAIRPERSON: And the positions on the  
 10 Marikana property on which Lonmin are mining -  
 11 BRIGADIER CALITZ: As ek dit -  
 12 CHAIRPERSON: - where different people  
 13 are going to be posted because that's what the heading is,  
 14 "Mining Security postings." So I take it these people are  
 15 - part of the Security officers, are members of the  
 16 Security staff of Lonmin and this says where they were  
 17 supposed to be posted on the 16th. I take it that's what  
 18 the document is, if I'm wrong you can correct me or Mr Gotz  
 19 can.  
 20 BRIGADIER CALITZ: Nee, dit is hoe ek dit  
 21 ook verstaan het, mnr die Voorsitter.  
 22 CHAIRPERSON: Alright, okay, Mr Gotz, are  
 23 you happy with that?  
 24 BRIGADIER CALITZ: Wat in die polisie -  
 25 MR GOTZ: Yes, and perhaps to further

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1 assist, perhaps we can give some context to where this  
 2 board was located in the JOC, we have photographs which  
 3 were taken by Captain Van Heerden. The relevant  
 4 photographs are HHH34 and 35 and perhaps we can just simply  
 5 put that up on the screen, those photographs up on the  
 6 screen so that we can get further information regarding  
 7 the, so it will be HHH34, I beg your pardon, I'm told it is  
 8 35 and 36, I'm not sure why mine, - sorry, is there a  
 9 concern that they don't have the relevant exhibit?  
 10 CHAIRPERSON: That the witness was  
 11 referred to?  
 12 MR GOTZ: Chair, -  
 13 CHAIRPERSON: If it is a document he was  
 14 referred to you can carry on, but if it isn't then it falls  
 15 in the same category as the document we referred to earlier  
 16 in which case you can deal with it the way we decided that  
 17 one will be dealt with. I mean alternatively I could lend  
 18 him my copy of HHH35 and 36 because they're just  
 19 photographs.  
 20 MR GOTZ: Yes, -  
 21 CHAIRPERSON: But -  
 22 MR GOTZ: They're simply photographs and,  
 23 Brigadier, perhaps I can ask the questions in an abstract  
 24 way. Have you prior to have seen the photograph that is  
 25 reflected as HHH60, have you seen that document, - sorry,

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1 had you seen that JOC board before?

2 BRIGADIER CALITZ: Mnr die Voorsitter,  
3 nee, ek sal nie sê spesifiek hierdie board nie, nee, dit is  
4 hoekom ek u gevra het wanneer die foto geneem is. Volgens  
5 my sou dit gewees het die groter JOC wat in daardie tyd  
6 geskuif was en waar totaal ander JOC personeel aangestel  
7 was.

8 MR GOTZ: Yes, and in response to that I  
9 said, let's look at the background, there were photographs  
10 taken by Captain Van Heerden on the 16th.

11 BRIGADIER CALITZ: Nee, hierdie is  
12 definitief die geskuifde JOC, dit is nie waar ek vir  
13 Kaptein Sefiki opdrag gegee het nie, by Middlekraal is  
14 daar 'n klein Sekuriteitskamer. Hierdie is wat ons dan na  
15 die JOC verwys, maar dit is 'n aangrensende, hoe kan ek sê,  
16 lapa, 'n grasdak lapa waartoe die JOC geskuif was. U sal  
17 onthou later toe Brigadier Pretorius en die personeel gekom  
18 het, toe het die generale in opdrag, want hulle het die JOC  
19 geskuif en waar hulle aangestel is as die JOC personeel  
20 waar hulle dan hulle hul eie reels en regulasies en goeters  
21 neergesit het en dit is dan waar die JOCCOM vergaderings  
22 gehou was.

23 MR GOTZ: Can you explain to the  
24 Commission, Brigadier Calitz, why in a JOC which is  
25 established by the SAPS do we find a board which indicates

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1 Mining Security postings for the 16th of August which  
2 contains information and details of the deployment and  
3 indeed a description of the personnel and resources that  
4 were being deployed by Lonmin?

5 MR SEMENYA SC: Chair, perhaps before  
6 that, Mr Gotz may want to tell us why he comes to the  
7 conclusion it was in the police JOC, this document?

8 CHAIRPERSON: I've looked at HHH, I think  
9 it is HHH35 and 36, I can't see that Security posting  
10 there.

11 MR SEMENYA SC: Yes.

12 CHAIRPERSON: You see the foundation of  
13 the question, the assumption on which the question is based  
14 is that this was in the police JOC. Now if that assumption  
15 is established to be correct obviously the question can be  
16 asked but unless and until it is established I don't think  
17 the question is a proper one. Now unless when that exhibit  
18 was admitted, received, it was established that it was a  
19 picture of a notice that was up in the police JOC, or the  
20 room that had been allocated to the police from, I think it  
21 is the 13th onwards, the 13th or it may even be the 14th  
22 onwards, for the enlarged police JOC, unless it is  
23 established that that document was there, the question  
24 doesn't arise. Now haven't you got to establish that first  
25 before you can ask the question?

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1 MR GOTZ: Chair, -  
2 COMMISSIONER HEMRAJ: I seem to recall  
3 more than one photograph dealing with the charts or the  
4 boards inside the JOC, this is not the only photograph that  
5 we've been shown. I'm just not sure where they are, but  
6 they do show more than one board up.

7 CHAIRPERSON: Well, we have the good  
8 fortune that Advocate Pillay has returned from abroad and  
9 she is normally the one who immediately puts us on the  
10 track of the relevant exhibits, perhaps we can take  
11 advantage of her return and ask her if she can help us.  
12 Can you help us, Ms Pillay?

13 MR GOTZ: Chair, I have no need for Ms  
14 Pillay, as kind as her help may be, my evidence is twofold,  
15 Chair. The first is that this photograph is one of several  
16 which is taken by Captain Van Heerden on the day and that  
17 was established during the evidence of, the cross-  
18 examination of Scott. The second piece of evidence is  
19 HHH36 which shows the JOC board and shows the photograph in  
20 the far corner and so I was hoping that we would see HHH, -

21 CHAIRPERSON: Maybe copy -  
22 MR GOTZ: It may be, Chair, -  
23 CHAIRPERSON: I've looked on HHH36 and I  
24 couldn't find it, hence my situation to Mr Semenya's  
25 objection but if it is in fact there then I'll be happy to

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1 allow you to proceed.

2 MR GOTZ: I understand that they may be  
3 given a copy -

4 COMMISSIONER HEMRAJ: Are you in  
5 possession of a photograph that shows both boards, Mr Gotz?

6 MR GOTZ: Not in -

7 COMMISSIONER HEMRAJ: No?

8 MR GOTZ: In my head, Commissioner  
9 Hemraj, but not, - we understand that that is being done at  
10 this moment and we would like to show -

11 CHAIRPERSON: Let's -

12 MR GOTZ: - HHH36 -

13 CHAIRPERSON: Let's bate our breath, if  
14 that's the correct verb, while it is being shown to us.

15 MR GOTZ: This is actually HHH35, but  
16 Commissioner, can you, - now is it possible to brighten  
17 that up a little bit? Sorry, can we have HHH36?

18 CHAIRPERSON: The question is, this is  
19 36?

20 MR GOTZ: Yes, Chair.

21 CHAIRPERSON: HHH36?

22 MR GOTZ: Correct.

23 [11:11] CHAIRPERSON: On HHH36 there is a  
24 gentleman at the back, further of the way into the  
25 photograph in the middle, speaking on the telephone and

<p style="text-align: right;">Page 20705</p> <p>1 behind his right shoulder is clearly a large piece of paper  2 with some writing on it and behind his left shoulder  3 there's something, I think it's just a refrigerator which  4 is blank, but perhaps we could go to the right again,  5 please. Who is that? Can you recognise that –  6 MR GOTZ: Can we pan to the right?  7 That's the left.  8 CHAIRPERSON: Brigadier, can you  9 recognise that person on the photo?  10 BRIGADIER CALITZ: Nee, mnr die  11 Voorsitter, ek –  12 CHAIRPERSON: Alright, let's go further  13 to the right.  14 BRIGADIER CALITZ: Dit lyk soos 'n  15 polisie offisier.  16 CHAIRPERSON: Let's go further to the  17 right. Now there's something. There's a piece of paper  18 there with writing on it in – it's white paper with writing  19 on it in red. Can that please be enlarged? Can we zoom on  20 it, because that might be the document that's been referred  21 to.  22 MR GOTZ: Can you confirm that that is  23 the board behind –  24 CHAIRPERSON: Yes, that is the document.  25 So you're right, Mr Gotz, I apologise. The assumption on</p>	<p style="text-align: right;">Page 20707</p> <p>1 opdrag gegee het dat die bord daar opgesit word, dit sal ek  2 nou nie vir u kan sê nie. In enige, ek praat van 'n  3 normale operasie waar ons dan 'n "joint operational centre"  4 sal ons dan al die rolspelers se kontak details en hulle  5 roepseine en hulle toerusting, ensovoorts, sal dan  6 "reflect" in 'n gewone operasionele situasie.  7 CHAIRPERSON: Can I ask you this; do you  8 know what that room was used for before it was made  9 available to the police for the enlarge JOC centre?  10 BRIGADIER CALITZ: Nee, glad nie, mnr die  11 Voorsitter.  12 CHAIRPERSON: When you went into it for  13 the first time did it appear to be a room that had been  14 unused by Lonmin, or were there signs of it having been  15 used by Lonmin, and if so, for what purpose?  16 BRIGADIER CALITZ: Mnr die Voorsitter, ek  17 het laat daar aangekom die aand en die toerusting, van die  18 goed was alreeds daar. So ek sou nie sê dit is ongebruik  19 nie, maar dit lyk ook soos 'n lapa met 'n gedeelte, so waar  20 miskien lesings of funksies kan aangebied word. Ek sal nie  21 sê, Lonmin sal dalk beter vir ons kan sê.  22 MR GOTZ: There appears to be a bar in  23 the corner. Is that a correct assessment?  24 BRIGADIER CALITZ: As u verwys na die  25 toonbank, ja.</p>
<p style="text-align: right;">Page 20706</p> <p>1 which your question is based is established and you can ask  2 the question.  3 BRIGADIER CALITZ: Dit lyk inderdaad soos  4 die dokument, dit is korrek.  5 MR GOTZ: So it is a board, can we call  6 it that, which appears in the police's JOC and given the  7 date and indeed the timing of Captain Van Heerden's  8 photographs we know that it was taken on the 16th. So again  9 I ask my question; can you explain why we find in the JOC  10 on the 16th a board which shows the deployment of Lonmin  11 personnel with arms, and a description of where they are to  12 be deployed?  13 BRIGADIER CALITZ: Mnr die Voorsitter, ek  14 sal net vir u my mening kan gee, ek glo die JOC  15 "commander," Brigadier Pretorius sal beter weet of daar  16 opdrag gegee is dat dit moet gedoen word. As ons bietjie  17 kan uit zoom uit die foto uit dan wil ek net vir u wys dit  18 is waar die CCTV – okay, stop net daar – daardie blou  19 stoele met die persone wat u sal sien een het 'n kruis op  20 die rug wat 'n "reflection" is, dit is die  21 sekuriteitpersoneel wat daar sit, en dit was hulle posisie  22 gewees in die gesamentlike operasionele sentrum. Dit is  23 die CCTV kameras wat gemonitor is. So hulle was dan deel  24 van die "joint operational centre." Die bord, of die  25 "deployment" sien ek dan is reg bo hulle opgesit. Wie</p>	<p style="text-align: right;">Page 20708</p> <p>1 MR GOTZ: Brigadier Calitz, it couldn't  2 possibly be that that poster that we see containing  3 security postings predated your arrival and use of that  4 room.  5 BRIGADIER CALITZ: Ja, maar ek het nie  6 dit gesê –  7 CHAIRPERSON: I don't think you're  8 suggesting that, are you? Presumably if it's a posting for  9 the 16th it would have been put up either in the morning of  10 the 16th or possibly late on the 15th.  11 BRIGADIER CALITZ: Dit kan gewees het,  12 mnr die Voorsitter, ja. Dit is hoekom ek sê –  13 CHAIRPERSON: And inasmuch as it appears  14 to relate to Lonmin staff, it would have been put up by  15 some Lonmin official, not by the police. Is that also  16 right?  17 BRIGADIER CALITZ: Dit is korrek. Ek glo  18 nie die polisie sal hulle "postings" kan detail, neerskryf  19 nie, nee.  20 CHAIRPERSON: You can't tell us anything  21 about how that piece of paper got affixed to the wall  22 there?  23 BRIGADIER CALITZ: Ongelukkig nie, mnr  24 die Voorsitter.  25 CHAIRPERSON: Presumably it's a question</p>

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1 that Lonmin people can be asked when they come and give  
2 evidence.

3 MR GOTZ: Yes, it may well be, but  
4 Brigadier, were you aware of where the security personnel  
5 were deployed, as it were, on the 16th? Quite apart from  
6 the questions of whether you were aware of this board, were  
7 you aware of where the security personnel were deployed?

8 BRIGADIER CALITZ: Nee, ek sal nie vir u  
9 kan sê met detail dat ek weet waar hulle "ge-deploy" was  
10 nie. Ek weet 'n gedeelte van die personeel van Lonmin was  
11 by "forward holding area" 1 saam met Generaal Naidoo. Ek  
12 dink dis die nooddienste personeel, maar of dit al daardie  
13 persone insluit sal ek nie vir u kan sê nie.

14 MR GOTZ: You see, what I find a bit  
15 strange about your answer, Brigadier, is when you were  
16 giving evidence-in-chief there was a question which  
17 elicited an answer from you in which you referred to the  
18 deployment of "Lonmin sekuriteitspersoneel op sekere plekke  
19 op die myn" as a key aspect of the cooperation that you  
20 received from Lonmin during that period. Can I take you to  
21 that passage? It's 17435 on day 155. So it's day 155 and  
22 it's 17435. Can we go up just a little bit to get the  
23 context, to 17434, line 18, so go down to line 18. Mr  
24 Semenya puts to you that the other criticism is that you  
25 should not have used an interpreter, a Fanagalo interpreter

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1 from the "enemy camp," and you'll recall that that causes  
2 you some confusion around who we're talking about in the  
3 "enemy camp," and once it's clarified by the Chairperson on  
4 17435 that what is being spoken about is Lonmin you say at  
5 line 14, "Nee, eerstens, nee" –

6 CHAIRPERSON: Could we have line 14,  
7 please?

8 MR GOTZ: Line 14, "Nee, eerstens, nee,  
9 ons het dit glad nie gesien as die woorde wat gebruik is,  
10 'enemy camp.' Nee, nee. Mnr Sinclair het ek op meer as  
11 een geleentheid getuig dat hy het honderd persent  
12 samewerking gegee." I note he doesn't get the 110% grade,  
13 but he certainly gets 100%. And then you give three  
14 examples of the level of cooperation – "samewerking" is  
15 cooperation – between SAPS and Lonmin. The first that you  
16 give is that they provided you with the "perseel," which is  
17 the JOC. Second you say, "Die wyse waarop hulle, hulle  
18 inligting met ons gedeel het," and thirdly you say, "Die  
19 sekuriteitspersoneel wat op sekere plekke op die myn 'ge-  
20 deploy' is." Do you see that, Brigadier?

21 BRIGADIER CALITZ: Ja, lees net bietjie  
22 verder ook.

23 MNR GOTZ: - "wat dan deel van hulle,  
24 hulle werk, natuurlik."

25 BRIGADIER CALITZ: Ja ek dink dit, daar

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1 is u antwoord.

2 MNR GOTZ: Wat is die antwoord, die  
3 antwoord vir wat, Brigadier? I'm asking you a question  
4 about –

5 BRIGADIER CALITZ: U het gevra, ek dink –  
6 MR GOTZ: Yes?  
7 BRIGADIER CALITZ: Wil u eers klaar vra  
8 of kan ek antwoord soos ek verstaan het?  
9 MR GOTZ: I've just, you've asked me to  
10 complete the sentence and I've done so.

11 BRIGADIER CALITZ: Okay, mnr die  
12 Voorsitter, ja, die eerste opmerking sal ek nou nie  
13 persoonlik vat oor die 110% nie. Ek dink ons is, mnr die  
14 Voorsitter het al gesê ons gaan nie weer daarvoor gaan nie.  
15 So ek vra maar net dat ons wegbly van –

16 CHAIRPERSON: That's a joke that's been  
17 made, it's been recycled so often I think we can put it in  
18 the cupboard and leave it there.

19 BRIGADIER CALITZ: Ja. Nee, ek wil net  
20 verhoed dat ons nie wedersyds sarkasme toepas nie, dan gaan  
21 ons lank hier sit. Die ander deel wat ek vir u wil wys is  
22 dat die perseel wat hulle vir ons beskikbaar gestel het, en  
23 dit was van aankoms daar gewees, is die Middlekraal  
24 perseel, nie net die JOC nie, maar ook die JOC wat geskuif  
25 het.

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1 Die wyse waarop hulle inligting met ons gedeel  
2 het, dit was die sekuriteitspersoneel wat dan vir ons op  
3 verskeie geleenthede op CCTV kameras gewys het waar persone  
4 is en hoe hulle bewegings is, en dan die laaste deel is wat  
5 dan, die sekuriteitspersoneel wat op sekere plekke op die  
6 myn "ge-deploy" het.

7 So, en dan wat ek vir u gesê het lees verder, wat  
8 dan deel van hulle, hulle werk is natuurlik. Met ander  
9 woorde die myn personeel het nog steeds voortgegaan met  
10 hulle werk. Ek dink ek het op 'n stadium getuig dat by die  
11 smelters was daar draad gesteel en daar was op 'n stadium  
12 voertuie wat aan die brand gestee is op 'n ander plek. So  
13 dit is waar die myn personeel en, nog steeds hulle werk  
14 gedoen het en daardie inligting van hulle is met ons  
15 gedeel. So daar was 'n wedersydse samewerking gewees  
16 tussen ons en beslis mnr Sinclair wat dan die Lonmin  
17 sekuriteit verteenwoordig het.

18 MR GOTZ: Of course the reply is not just  
19 to Mr Sinclair, and your comments relating to the level of  
20 cooperation, or "samewerking," if that's not a perfect  
21 translation, extend to Lonmin as a whole, other people  
22 within the Lonmin company, correct?

23 BRIGADIER CALITZ: Nee, ek sal nie saam  
24 met u stem nie. My getuienis het gegaan oor wat ek hier  
25 gesê het. Ek het gesê mnr Sinclair het ek op meer as een

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1 geleentheid getuig dat hy – hy, nie hulle nie – het 100%

2 samewerking gegee van die begin af, en dan die ander naam

3 wat genoem was wat ook baie betrokke was, was mnr Dirk

4 Botes. So dit is die twee persone wat ek persoonlik mee

5 saamgewerk het en wat ek geglo het is in beheer van die

6 sekuriteitspersoneel.

7 MR GOTZ: Perhaps we're

8 misunderstanding –

9 BRIGADIER CALITZ: O ja, daar was nog 'n

10 derde persoon, ek dink mnr Henry Blaauw, as ek onder

11 korreksie – dit is die drie persone wat met ons geskakel

12 het, of met my.

13 CHAIRPERSON: Before Mr Gotz goes further

14 on that, he says you dealt directly with these three people

15 you mentioned, but apart from that, over and above that you

16 got cooperation from Lonmin. They made facilities

17 available to you, not just those three people, but Lonmin

18 as such made facilities available to you, shared

19 information, did various things which indicated that they

20 were cooperating with you in the work that you were trying

21 to do there, and that's the point he's concerned with.

22 It's not only limited to the three; he's asking in the

23 broader sense, as I understand the question, the nature of

24 the cooperation you got from Lonmin as a whole, if one can

25 put it like that. Is that right, Mr Gotz?

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1 MR GOTZ: Yes, indeed. So to refer to

2 one or two other examples, the people who were operating

3 the CCTV cameras, the Coin Security helicopter. Now of

4 course that wasn't necessarily being flown by a Lonmin

5 person, but the fact is that that was something that was

6 made available to you whenever you needed it, correct?

7 BRIGADIER CALITZ: Ja, ek wil weereens

8 net vir u sê ek het die heelyd – ek stem saam met mnr die

9 Voorsitter, "obviously" werk mnr Sinclair vir Lonmin, so

10 dit sal seker dan met die goedkeuring van sy seniors ook

11 wees. Ek verskil glad nie daar nie, maar die CCTV kamera

12 "feedback" het gegaan na mnr Botes of na mnr Sinclair toe

13 en hulle het dan met ons gekommunikeer. Die helikopter se

14 versoeke, dit het deur mnr Sinclair gegaan. So dit was die

15 skakelpersone, hy of mnr Botes. Ek het self nooit met

16 enige van die ander, kan ek sê Lonmin personeel iets mee

17 gereël waarvan ek bewys is nie.

18 MR GOTZ: Can I simply put this to you,

19 Brigadier; there seems to us on this evidence that we've

20 dealt with to have been quite a high level of mutual

21 cooperation between SAPS and Lonmin personnel during the

22 period 14 August to 16 August 2012. Would you agree with

23 that?

24 BRIGADIER CALITZ: Ek kan getuig op die

25 operasionele gebied en operasioneel het ek gesê daar was

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1 100% samewerking. Ons het nooit gesukkel met inligting

2 nie. Hulle het al hulle inligting met ons gedeel, waar die

3 "key" punte is, ensovoorts. So operasioneel ja.

4 MR GOTZ: Did you share your plans with

5 Lonmin personnel?

6 BRIGADIER CALITZ: Ek dink ons het al

7 hieroor getuig, mnr die Voorsitter. Die Lonmin personeel,

8 veral Dirk Botes was teenwoordig met baie van die fases.

9 Waar dit gegaan het oor detail taktiese operasies was hulle

10 nie teenwoordig nie.

11 MR GOTZ: It's quite hard to escape the

12 conclusion that this was effectively a joint operation

13 between you and – you as SAPS – and Lonmin, Brigadier.

14 Would you like to respond to that?

15 BRIGADIER CALITZ: Nee, in soverre sal ek

16 nie sê "joint operation" nie. Dis 'n "joint operational

17 centre" waar die inligting gedeel is. Dit sal my antwoord

18 wees.

19 MR GOTZ: Will you at least accept that

20 Lonmin was integrally involved in SAPS' operation?

21 BRIGADIER CALITZ: Ja, ek weet nie

22 heeltemal wat die woord behels. My getuienis is dat waar

23 ons hulle operasioneel nodig gehad het en waar die versoeke

24 gerig was, soos u gesê het, die helikopter, die inligting

25 oor waar die "key" punte is, daardie inligting is met ons

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1 gedeel en daar was goeie samewerking gewees. Dit is

2 korrek.

3 MR GOTZ: And then, Brigadier, I will

4 simply put the evidence which I would like you to read

5 during the weekend – sorry, you'd made a note of this

6 already, I just want to contextualise it – which is the

7 meeting of the 14th between Lonmin and the Provincial

8 Commissioner, and we'll deal with that as well, and that

9 forms part of –

10 BRIGADIER CALITZ: Ek sal dit deurgaang,

11 baie dankie, Advokaat.

12 MR GOTZ: Brigadier, can we move on to a

13 separate subject, and that is the alleged threats that were

14 made by the strikers on the police. Can we start with

15 this; would you agree with me that a threat is really a

16 statement of intention to inflict some harm on somebody

17 else if that somebody else doesn't comply with a request?

18 So to put it in plain English, it's a statement by person X

19 that person Y will be harmed in some way if he or she does

20 not do what X wants him to do.

21 CHAIRPERSON: Do you need the last part?

22 If I say to you I'm going to kill you, isn't that a threat?

23 If I say to you I'm going to kill you, and I don't say what

24 you must do to make sure I don't kill you, I just say I'm

25 going to kill you, isn't that a threat, a matter of

<p style="text-align: right;">Page 20717</p> <p>1 language?</p> <p>2 MR GOTZ: Well, I'd like to have –</p> <p>3 CHAIRPERSON: No, it's a matter of</p> <p>4 language now. You know you're asking the witness what a</p> <p>5 word means and I'm putting to you the word doesn't mean</p> <p>6 everything you say it means because the statement "I'm</p> <p>7 going to kill you" is in itself a threat. That's correct,</p> <p>8 isn't it? I know you're not under oath; you don't have to</p> <p>9 answer the question.</p> <p>10 MR GOTZ: Chair, this is the difficulty</p> <p>11 that I have, because I would suggest not, but I'd like to</p> <p>12 hear the Brigadier's answer to that question –</p> <p>13 CHAIRPERSON: No, no, no, you're asking</p> <p>14 him the meaning of a word and I don't think the word means</p> <p>15 that and I think the dictionaries support me and don't</p> <p>16 support you. So I suggest you move on to your next point.</p> <p>17 MR GOTZ: Brigadier, let's take a</p> <p>18 practical example; if somebody says "I don't want you</p> <p>19 here," is that a threat?</p> <p>20 BRIGADIER CALITZ: Dit is korrek.</p> <p>21 MR GOTZ: If somebody says, "Go away, we</p> <p>22 don't want you here," on your understanding of the word</p> <p>23 "threat," is that a threat?</p> <p>24 BRIGADIER CALITZ: Ek sal dit so sien,</p> <p>25 ja, veral as dit in die lyn van die persoon is en jy sê dit</p>	<p style="text-align: right;">Page 20719</p> <p>1 CHAIRPERSON: I don't consider myself</p> <p>2 just, I didn't want to allow myself to be prejudiced by</p> <p>3 anything that's not before the commission.</p> <p>4 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>5 ja, ek wil net verwys dan waar 'n media persoon gesê het</p> <p>6 dat 'n swart dame het, met die media wat ingery het en</p> <p>7 hulle het 'n blanke media persoon opgelaai wat 'n vervoer</p> <p>8 probleem gehad het en hulle sê toe hulle nader gekom het,</p> <p>9 en dit is haar eie woorde het die groep ook vir hulle gesê</p> <p>10 gaan weg, ons soek jou nie daar nie maar sy het getuig dat</p> <p>11 sy gehoor het iemand sê daar's 'n blanke man hulle gaan hom</p> <p>12 dood maak en die media het getuig dat hulle moes wegjaag</p> <p>13 daar. Dit is op video. Ons kan dit kry en ons kan dit</p> <p>14 speel. So dit is wat ek vir u sê gaan weg ons soek jou nie</p> <p>15 daar nie het konsekwensies, as hulle nie sou weggegaan het</p> <p>16 daardie volgende stadium die media dame nie het sy erken op</p> <p>17 die video dat sy so bedrieg gevoel dat hulle moes wegjaag.</p> <p>18 CHAIRPERSON: Mr Calitz, Brigadier Calitz</p> <p>19 sorry forgive me, Brigadier Calitz, I don't think we should</p> <p>20 get to involved in the semantic debates. The truth is if I</p> <p>21 say I don't want you here, that's not a threat. But it</p> <p>22 could be an implied threat if in the circumstances I was</p> <p>23 conveying to you what I'd do to you if you didn't go. So</p> <p>24 you can have direct threats, express threats and implied</p> <p>25 threats and depending on the circumstances the statement I</p>
<p style="text-align: right;">Page 20718</p> <p>1 vir die polisie, as die polisie se teenwoordigheid daar is</p> <p>2 en 'n persoon kom na 'n polisieman toe en sê "U as 'n</p> <p>3 polisie, ek soek jou nie hier nie, gaan weg," dit is logies</p> <p>4 dis 'n dreigement.</p> <p>5 MR GOTZ: Surely it's simply a statement</p> <p>6 of fact. The person is expressing their views. Why is it</p> <p>7 a threat on the police, Brigadier?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>9 kan net sê wat my opinie daarop is. Ons kan na die</p> <p>10 woordeboek toe gaan. Daar is baie dreigemente – daar is</p> <p>11 baie voorbeelde. As ek, dit kom vinnig tot my gedagte –</p> <p>12 kom ons vat nie 'n Marikana – of ja wel, 'n Marikana</p> <p>13 voorbeeld maar nie direk op ons nie. U sal onthou dat in</p> <p>14 "hindsight" het ek gesien daar was die – u sal onthou laas</p> <p>15 jaar met die, ek wil nou nie sê herdenking nie, die jaar</p> <p>16 van die 16de –</p> <p>17 CHAIRPERSON: There was a commemoration</p> <p>18 of the anniversary of the events of the 16th of August.</p> <p>19 BRIGADIER CALITZ: - was daar 'n program</p> <p>20 op eTV wat herhaaldelik vir ek dink 'n week of twee gespeel</p> <p>21 is met die titel, "The Marikana Massacre." Ek dink almal</p> <p>22 van ons in hierdie saal het dit gesien, waarop hulle -</p> <p>23 [11:30] CHAIRPERSON: I didn't see it but -</p> <p>24 BRIGADIER CALITZ: Dis goed so, mnr die</p> <p>25 Voorsitter.</p>	<p style="text-align: right;">Page 20720</p> <p>1 don't want you here would, could be an implied threat but</p> <p>2 in other circumstances it wouldn't be a threat, that must</p> <p>3 be right. So I don't think we should waste further time on</p> <p>4 that. What Mr Gotz, is leading up is when words of that</p> <p>5 kind were said to the police in those particular</p> <p>6 circumstances he would contend they didn't amount to</p> <p>7 threats. Now can you recall those words being used to the</p> <p>8 police by some of the strikers, we don't want you here.</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>10 beslis. Ek het getuig in my verklaring daarvoor in JJJ107</p> <p>11 waar hulle verskeie kere gesê het hulle soek ons nie. Op</p> <p>12 die 15de en die 16de tydens die onderhandelingsproses, ek</p> <p>13 kan u my paragrawe aanhaal as u dit wil hê waar hulle dan –</p> <p>14 CHAIRPERSON: We've read your statement,</p> <p>15 you don't have to read it again.</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>17 waar hulle daar dan ook gesê het we don't want you here,</p> <p>18 ons wil nie met julle praat nie, ons wil met die myn</p> <p>19 personeel en jy weet as 'n persoon vir u sê ons soek jou</p> <p>20 nie daar nie en hy is gewapen met 'n spies of 'n panga dan</p> <p>21 is dit 'n dreigement. Dit is nie laat jy dit ligtelik</p> <p>22 opneem van 'n vreedsame groepie wat nou sit en rugby kyk en</p> <p>23 jy kom sit langs hulle, hulle sê gaan sit op 'n ander plek,</p> <p>24 wel dit sal ook op die einde van die dag op 'n konfrontasie</p> <p>25 uitloop.</p>

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1 MR GOTZ: Brigadier, in fact you  
 2 identified I think in your evidence-in-chief, you were  
 3 counting and at the end of the count you had counted what  
 4 you called 6 threats and I do want to put it to you that at  
 5 least half of those were not threats at all, even on the  
 6 most expansive understanding of the word. Let's look at  
 7 what you say about the so-called first threat which you say  
 8 occurred on the 15th of August. It appears at, on day 153  
 9 at page 17187 and the line is from line 19. Mr Semenya, my  
 10 learned friend says to you Mr Noki again comes to the  
 11 Nyala, this is approximately 2 o'clock and he makes it  
 12 plain that the police are not wanted there anymore.  
 13 Brigadier Calitz, "dit is korrek, mnr die Voorsitter. Hy  
 14 wou glad nie met ons praat nie en ek het dit ook verstaan  
 15 as die eerste dreigement direk aan ons wat hy gesê het dat  
 16 hy soek nie die, nie meer die polisie se teenwoordigheid  
 17 daar nie." So all that Mr Noki says on this version is we  
 18 don't want to talk to you, he probably said in the same  
 19 context we want to talk to management, we don't want you  
 20 here anymore. Why do you interpret that as a threat on the  
 21 police, Brigadier?  
 22 BRIGADIER CALITZ: Ek het daarna verwys  
 23 in paragraaf 63 van my verklaring wat ek dan vir u gelees  
 24 het. The group approached the Nyalas in a horseshoe  
 25 formation, Mr Noki informed us that they did not want to

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1 speak to the police and they did not want the police there,  
 2 Colonel Macintosh repeatedly told them through the public  
 3 address system of our Nyala that the police presence are  
 4 there for peaceful purpose and a desire to dissolve this  
 5 peacefully. Dit is wat ek vir u na verwys het as die  
 6 eerste dreigement deur daardie gewapende groep wat gesê het  
 7 hulle wil nie met ons praat nie en hulle soek nie die  
 8 polisie daar nie. So dit is wat ek as die eerste  
 9 dreigement beskou.  
 10 MR GOTZ: Is this your clear recollection  
 11 of the, of what transpired that Mr Noki came to the vehicle  
 12 and said we don't want to talk to you any more please go  
 13 away?  
 14 BRIGADIER CALITZ: Dit is korrek, ja.  
 15 MR GOTZ: Can we by way of contrast look  
 16 at exhibit L on slide 188.  
 17 CHAIRPERSON: 188 on my copy of the L is  
 18 a photograph of events which took place around about 15:35,  
 19 I think you're got the wrong reference.  
 20 MR GOTZ: Let me just find it. Chair,  
 21 I'll read the reference. It's in relation to Wednesday the  
 22 15th of August 2012 where it says the representatives stated  
 23 that they wanted the telephone number of the commander of  
 24 the operation.  
 25 CHAIRPERSON: That's 118.

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1 MR GOTZ: Oh 118. I beg your pardon, I'm  
 2 slightly dyslexic, Chair.  
 3 CHAIRPERSON: I'm really not sure if you  
 4 are or not, if you are I'll express my sympathy. If you're  
 5 not, let's just carry on.  
 6 MR GOTZ: I beg your pardon, Chair.  
 7 CHAIRPERSON: I'm not sure whether you  
 8 really are dyslexic but if you are I express my sympathy to  
 9 you. But shall we just carry on.  
 10 MR GOTZ: Sorry, Chair, I do have a  
 11 tendency to do this, although I haven't been diagnosed as  
 12 being dyslexic. Just to clarify but thank you, Chair. It  
 13 says, "the representatives stated that they wanted the  
 14 telephone number of the commander of the operation and if  
 15 present he or she should come forward as they wanted to  
 16 provide him her with a telephone number of the Advocate  
 17 Shapiro. Then it goes on to say the representatives were  
 18 informed that the request will be forwarded to the JOC. At  
 19 this point one of the representatives became very  
 20 aggressive and stated that the police should not be there  
 21 and that the people in the hippos, referring to the  
 22 armoured vehicles would die there and not one Nyala would  
 23 leave that ground. Now, Brigadier, that I don't think we  
 24 would quarrel would constitute a threat." But the problem  
 25 is that there's no evidence that this was ever said on the

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1 15th.  
 2 BRIGADIER CALITZ: Daar was getuienis  
 3 daaroor en daar's verklarings daaroor en ek glo daar sal na  
 4 my ook verklarings in wees.  
 5 CHAIRPERSON: Brigadier Calitz, you  
 6 described a few moments ago what you said was the first  
 7 threat. Die eerste dreigement. Now this is obviously the  
 8 first threat you're aware of. But were you in the Nyala at  
 9 the relevant time when this event that's described in slide  
 10 118 took place which appears if one has regard to slide 117  
 11 to have been at 10:15 in the morning on the 15th, were you  
 12 in the Nyala at that time?  
 13 BRIGADIER CALITZ: Dit is korrek, mnr die  
 14 Voorsitter. Dit was nie die eerste dreigement nie, ek dit  
 15 was die tweede of die derde.  
 16 CHAIRPERSON: Oh I see. Now what you,  
 17 sorry, I'm sorry. What you described early as the eerste  
 18 dreigement, the first threat when did that happen?  
 19 BRIGADIER CALITZ: Dit is met ons eerste  
 20 kontak.  
 21 CHAIRPERSON: Was that on, was it on the  
 22 14th I don't know -  
 23 BRIGADIER CALITZ: Die 14de.  
 24 CHAIRPERSON: Was it on the 15th?  
 25 BRIGADIER CALITZ: Ek dink dit was die -

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1 CHAIRPERSON: The Wednesday.  
 2 BRIGADIER CALITZ: Mnr die Voorsitter,  
 3 ja.  
 4 CHAIRPERSON: The 14th -  
 5 BRIGADIER CALITZ: Ek dink die 15de, ja,  
 6 ek praat onder korreksie.  
 7 CHAIRPERSON: The 15th was the Wednesday,  
 8 the 14th was the Tuesday. According to exhibit L the event  
 9 to which Mr Gotz is now referring you in slide 118 took  
 10 place around about 10:15 on the morning on Wednesday the  
 11 15th. Now the incident to which you referred to earlier  
 12 which you call the first threat what time did that happen  
 13 and on what day?  
 14 BRIGADIER CALITZ: Die eerste insident  
 15 waarna ons verwys het, dit was op die 15de rondom 2 uur die  
 16 middag. Dit is wat ek in my evidence-in-chief getuig het.  
 17 CHAIRPERSON: The problem with that is  
 18 you see is that this one, this alleged incident referred to  
 19 in the slide took place so exhibit L says in the morning of  
 20 the Wednesday at about 10:15. So that would have preceded  
 21 the event which you describe as the first threat which you  
 22 say happened at about 2 o'clock in the afternoon on the  
 23 Wednesday.  
 24 BRIGADIER CALITZ: Nee, mnr die  
 25 Voorsitter, hierdie een van -

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1 CHAIRPERSON: So that's not -  
 2 BRIGADIER CALITZ: Die een van Shapiro  
 3 het ek in my verklaring, ek probeer dit net vinnig kry, dan  
 4 sal ek vir u sê die hoeveelste een was dit gewees. Die  
 5 volgende dreigement -  
 6 CHAIRPERSON: All I'm saying to you is  
 7 what you told us about a few minutes ago is the first  
 8 threat couldn't have been at 2 o'clock in the afternoon if  
 9 this incident referred to in slide 118 took place at 10:15  
 10 the same morning.  
 11 MR SEMENYA SC: Chair -  
 12 MR GOTZ: Brigadier, it's correct that  
 13 you don't [inaudible] the Chairperson's question.  
 14 CHAIRPERSON: Before he answers my  
 15 question. Mr Semenya wants to make a comment.  
 16 MR SEMENYA SC: Chair, in leading the  
 17 witness I did not understand him to be given us a sequence  
 18 of threats but the number of threats and say this is the  
 19 first threat and the second threat. Not that they came in  
 20 a particular chronology.  
 21 CHAIRPERSON: Yes, because there's  
 22 another problem and that is you look at the consolidated  
 23 statement of the witness there is a possibility that this  
 24 is something that happened on the Tuesday, the 14th. So  
 25 there's a bit of confusion here. It may be it's confusion

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1 which you say enables you to find an argument in this  
 2 regard, or it may just be genuine confusion that's got to  
 3 be cleared up. If you look at paragraph 47 of his  
 4 consolidated statement. That appears to be a reference of  
 5 something on page 10 of his consolidated statement appears  
 6 to be reference to something that happened on the Tuesday.  
 7 But there is some confusion but we'll obviously get  
 8 clarified during this part of your cross-examination.  
 9 MR GOTZ: Brigadier, I was hoping that  
 10 you would be able to provide some clarification.  
 11 BRIGADIER CALITZ: Ek sal vir u tye kry.  
 12 Ek wil net deur my verklaring, die paragrawe maar ek het  
 13 dit aangeteken wanneer die Advokaat Shapiro insident  
 14 plaasgevind het. Ek sal dit vir u definitief kry.  
 15 MR GOTZ: Can I offer some assistance in  
 16 that regard and that's the occurrence book which is, some  
 17 people know it off by heart, it's FFF25.  
 18 BRIGADIER CALITZ: Page, which page?  
 19 MR GOTZ: There's several. It's page 16  
 20 and 17. If you can look first of all at items 178 and 179.  
 21 CHAIRPERSON: What are you referring to  
 22 in the occurrence book?  
 23 MR GOTZ: It's -  
 24 CHAIRPERSON: FFF25 but which entry on  
 25 which day?

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1 MR GOTZ: 178 and 179 and these are  
 2 entries for the 15th of August.  
 3 CHAIRPERSON: I see.  
 4 MR GOTZ: 178 is recorded as having  
 5 happened at 10:20 and 179 at 10:25. You'll see that item  
 6 178, Brigadier, have you got it?  
 7 BRIGADIER CALITZ: Ja.  
 8 MR GOTZ: You'll see that 178 refers to  
 9 the interchange in relation to the lawyer, Aubrey Shapiro.  
 10 I suspect it gets it the wrong way round but be that as it  
 11 may 179 refers to negotiations, Chopper 2 reports that  
 12 these people were negotiating with Papa1 moving back to the  
 13 group and they want mine management to come and talk to  
 14 them as they cannot say or discuss anything to the police  
 15 and they can't lay down their weapons and they want mine  
 16 manager. What the occurrence book does not record is  
 17 anything remotely resembling a threat on the police at that  
 18 -  
 19 BRIGADIER CALITZ: Okay.  
 20 MR GOTZ: In the morning.  
 21 BRIGADIER CALITZ: Ja, nee ek het dit  
 22 gekry in my verklaring. Ek het so vinnig daar deur ge-  
 23 scan. Waarna ek die eerste dreigement verwys het was  
 24 paragraaf 63 maar die een van Advokaat Shapiro is in  
 25 paragraaf 58 van my verklaring. Ek sal dit net vir u lees.



<p style="text-align: right;">Page 20729</p> <p>1 "Mr Noki came forward and said that they were not going to 2 speak to the SAPS anymore and they wanted to speak to the 3 mine management through their attorney Shapiro. He walked 4 back to the group, a short while later the group 5 approximately 300 men changed their mood, showed greater 6 aggression by clapping their weapons together, start 7 singing and moving up and down as a tight unit". Hier het 8 ek verwys dit is nie 'n dreigement nie maar hier het ek 9 gesê dit is 'n mood change wat ek gesien het.</p> <p>10 CHAIRPERSON: What day were you talking 11 about?</p> <p>12 BRIGADIER CALITZ: Dit was die 15de 13 gewees.</p> <p>14 CHAIRPERSON: What time?</p> <p>15 BRIGADIER CALITZ: Ek het hom as 11:30, 16 ek sien in die VB was 10:20. So paragraaf 58 van my 17 verklaring, mnr die Voorsitter.</p> <p>18 CHAIRPERSON: Thank you.</p> <p>19 COMMISSIONER HEMRAJ: According to your 20 statement that's not the first interaction in the 21 negotiations with the strikers?</p> <p>22 BRIGADIER CALITZ: Nee, nee, dit het 23 later gekom, dit was na die attempts gewees waar ons die 24 mense probeer convince het om hulle wapens neer te sit. 25 Daar was 'n vorige, die eerste aankoms was op die 14de</p>	<p style="text-align: right;">Page 20731</p> <p>1 daardie woorde op 'n latere geleentheid op die 16de.</p> <p>2 CHAIRPERSON: I understand that but the, 3 what is said here in slide 118 of exhibit L where it's 4 stated that that threat was uttered the same time that 5 Advocate Shapiro's name was mentioned during the discussion 6 about Advocate Shapiro. That statement in exhibit L you 7 can't confirm as being correct?</p> <p>8 BRIGADIER CALITZ: Nee, mnr die 9 Voorsitter, dit lyk as of dit maar net 'n opsomming was 10 deur die persoon wat dan die presentation gedoen het, nee. 11 Dit is nie die, in die een insident gesê nie.</p> <p>12 CHAIRPERSON: So one can't rely then on 13 slide 118 as being an accurate statement of what happened 14 in the discussions at about 10:15 on the Wednesday the 15th 15 between the police negotiating team on the one hand and the 16 group of five strikers on the other, is that correct?</p> <p>17 BRIGADIER CALITZ: Dit is hoekom ek sê ek 18 dink die presentation is miskien 'n samevatting van die 19 inligting wat later plaasgevind het.</p> <p>20 CHAIRPERSON: But you haven't answered my 21 question. The question was would it be fair to say that we 22 can't rely on the accuracy of what is contained in slide 23 118 as being what was said during the discussions between 24 the police negotiating team on the one hand and the five 25 strikers on the other.</p>
<p style="text-align: right;">Page 20730</p> <p>1 gewees. So hierdie was 'n volg op gewees. U sien waar die 2 change of mood gekom het, waarom hulle gesê het hulle wil 3 nie meer met ons praat nie, dit is nadat ons hulle ingelig 4 het dat, paragraaf 56 "Mr Noki again insisted to speak to 5 mine management in response Colonel Macintosh informed him 6 that mine management was not willing to speak to them if 7 they disarmed and returned to work for a two year wage 8 agreement which the unions had and the strike was 9 unprotected. This appeared to make Mr Noki agitated and 10 aggressive". So weens daardie terugvoer in paragraaf 56 11 het mnr Noki dan vorentoe gekom in paragraaf 58 in my 12 verklaring en gesê dat hulle wil nie meer direk met ons 13 praat nie, hulle wil nou deur hulle Advokaat praat en dit 14 was nie 'n dreigement gewees nie. Dit was net die mood 15 change wat toe dadelik opgemerk is van die groep. As dit 16 miskien vir u duidelikheid gee.</p> <p>17 MR GOTZ: You can't confirm the statement 18 in exhibit L that during the discussion in relation to 19 mister, Advocate Shapiro one of the representatives became 20 very aggressive and then said to people in the hippos, 21 referring to the armoured vehicles, that they would die 22 there and not one Nyala would leave that ground. You can't 23 confirm that?</p> <p>24 BRIGADIER CALITZ: Nie op daardie stadium 25 van mnr Shapiro, daardie dreigement is wel gemaak met</p>	<p style="text-align: right;">Page 20732</p> <p>1 [11:50] At 10:15am or thereabout on Wednesday, the 15th of 2 August 2012. We can rely in particular on the last 3 sentence of the first bullet on slide 180. That didn't 4 happen at 10:15 during that exchange –</p> <p>5 BRIGADIER CALITZ: Dit is korrek – 6 CHAIRPERSON: - between the police 7 negotiating team and the strikers, the leaders, at 10:15 on 8 the Wednesday, the 15th, that –</p> <p>9 BRIGADIER CALITZ: Die laaste – 10 CHAIRPERSON: Do you agree with me what I 11 put to you?</p> <p>12 BRIGADIER CALITZ: Die laaste sin in 13 paragraaf 1, u is korrek, mnr die Voorsitter.</p> <p>14 CHAIRPERSON: Okay, thank you.</p> <p>15 MR GOTZ: Can we while we're on the 16 Operation's occurrence book, I beg your pardon, also look 17 at the entries in relation to 14:00 and you'll find that at 18 page 17, entries 195 and 196. It says, "Papa1 reporting 19 that they were informed that the groups are going to form a 20 C-shape and come closer to the police vehicles." I think 21 what that's supposed to record is that the group approached 22 you in a horseshoe formation.</p> <p>23 BRIGADIER CALITZ: Ja, daardie groep, ja, 24 dit is 'n horseshoe, 'n C-shape, dit is omtrent, ja, 25 dieselfde.</p>

<p style="text-align: right;">Page 20733</p> <p>1 MR GOTZ: And then at 14:05, entry 196 2 you'll see "Chopper 1 reporting that the guy with the green 3 blanket, the negotiator of the group went to the back of 4 the group and he is busy talking to them," and you can – 5 CHAIRPERSON: There is obviously a word 6 missing there, I suspect the word "members" is missing in 7 front of the words, "of the group," in other words it 8 should probably read, "Chopper 1 reporting that the guy 9 with the green blanket, the negotiator, and members of the 10 group went to the back of the group and he is busy talking 11 to them." 12 MR GOTZ: I think – 13 CHAIRPERSON: That's probably right, 14 isn't it, - 15 MR GOTZ: Probably – 16 CHAIRPERSON: - Brigadier? 17 MR GOTZ: But do you see, Brigadier, that 18 – 19 BRIGADIER CALITZ: Ek sien hom so, mnr 20 die Voorsitter. 21 MR GOTZ: There is no – 22 CHAIRPERSON: I don't think what you said 23 got recorded if Mr Gotz spoke over to you. What do you say 24 to the question I asked you? 25 BRIGADIER CALITZ: U het gesê daar is 'n</p>	<p style="text-align: right;">Page 20735</p> <p>1 recorded? 2 BRIGADIER CALITZ: Ek kan glad nie vir u 3 sê waarom dit nie in die voorvalle boek is nie. Daar 4 was 'n konstante kommunikasie tussen ons en die JOC gewees, 5 so ek kan nie vir u daar antwoord, waarom dit nie in die VB 6 is nie, nee. 7 MR GOTZ: You see I want to put it to you 8 that it wasn't a threat, all it was, was at most a 9 statement by Mr Noki that he didn't want to talk to you 10 anymore, he wanted to talk to mine management and he didn't 11 want the police there, and that is not a threat, Brigadier. 12 BRIGADIER CALITZ: Ek dink ek het u reeds 13 daarop geantwoord, ja. 14 MR GOTZ: And I must put it to you that 15 we will argue that in fact there was no threat that was 16 made on the 15th by the strikers. 17 BRIGADIER CALITZ: Ek hoor wat u sê en ek 18 verskil van u. 19 MR GOTZ: Can we move then to what you 20 refer to as the second threat and perhaps I can take you to 21 paragraph 81 of your statement where you say a number of 22 things but in the second sentence, can we start there? You 23 say, "Mr Noki and one of the five men approached our Nyala 24 and told us that they did not want us there and went back 25 to the koppie singing and displaying aggression." Now,</p>
<p style="text-align: right;">Page 20734</p> <p>1 woord – 2 CHAIRPERSON: There is obviously a word 3 missing from entry 196 and I suggest it is probably the 4 word "members" in front of the words "of the group" in the 5 second line, do you agree with that? 6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 ja, dit is seker dan die members of die groep, busy talking 8 to them, daar kan dalk 'n terugvoer wees. Ek is nie seker 9 wat die Chopper 1, ek kan nie recall presies wat hier gesê 10 is deur die Chopper nie. 11 MR GOTZ: There is no mention in the 12 occurrence book of any threat on the police, Brigadier, do 13 you see that? 14 BRIGADIER CALITZ: Ek, dit wat u nou vir 15 my gewys het daarop sien ek nie, nee, dat daar is 'n 16 dreigement aangeteken in die VB nie, nee. 17 MR GOTZ: Do you not think that if the 18 police had felt that they were threatened, that that would 19 have been recorded in the occurrence book at that time? I 20 can understand, Brigadier, let me just finish, I can 21 understand the events of the 16th, particularly late in the 22 afternoon when many things were happening, things may not 23 have been accurately recorded but on the 15th when this is 24 the only event that is occurring, do you not think that if 25 a threat had been made on the police it would have been</p>	<p style="text-align: right;">Page 20736</p> <p>1 Brigadier, five minutes ago you said that the fact that 2 they went back to the koppie singing and displaying 3 aggression does not constitute a threat in relation to the 4 events on the 15th. What makes that a threat if Mr Noki 5 comes to you and says, they do not want you here? 6 BRIGADIER CALITZ: If you see the word 7 "singing and displaying aggression" – 8 MR GOTZ: No, Brigadier, you said five 9 minutes ago in relation, and the record will reflect this, 10 in relation to events on the 15th that the mere fact that 11 they were singing and displaying aggression did not 12 constitute a threat on the police. 13 BRIGADIER CALITZ: Sover dit my geheue 14 betref het ek gesê dit is waar ons 'n "mood change" gesien 15 het in die groep. 16 MR GOTZ: Indeed in relation to that 17 event. 18 BRIGADIER CALITZ: Ja, die "mood change" 19 en hier het hulle definitief 'n aggressie getoon deur die 20 kap van die wapens en die manier waarop hulle opgetree het, 21 so dit is die verskil van die twee. 22 MR GOTZ: Again we'll argue that the mere 23 fact that Mr Noki comes to you and says, we do not want you 24 here, does not constitute a threat. Perhaps we can get 25 some, if you wish to respond to that feel free to do so? I</p>

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1 think you have given us your views but if there is anything  
2 else –

3 BRIGADIER CALITZ: Nee, nee, -  
4 MR GOTZ: - you want to add?

5 BRIGADIER CALITZ: Ek wou net terwyl u op  
6 paragraaf 81 is, na Nyala6 toe gegaan het en dan ook vir  
7 hulle gesê het, "remove the barbed wire, he is not going to  
8 ask again," so daardie woorde dui definitief daarop dat  
9 daar sal iets gebeur indien dit nie gehoor gegee word nie,  
10 so dit is in dieselfde paragraaf 81 waarna ek verwys het.

11 MR GOTZ: We get the sense from your  
12 witness statement that this statement was made, first of  
13 all in response to or shortly after the arrival of the  
14 barbed wire at the scene and we understand that from  
15 paragraph 79 of your statement where you described the  
16 arrival of the barbed wire.

17 BRIGADIER CALITZ: Ja, ek sê in paragraaf  
18 80, het ons dan aangekom rondom tienuur waar daardie groep  
19 dan, omtrent 600 mense "arriving at the koppie heavily  
20 armed," was die inligting gewees wat ons van die observasie  
21 pos gekry het, so dit was met ons aankoms gewees relatief  
22 die oggend van die 16de.

23 MR GOTZ: My proposition to you was that  
24 this threat, alleged threat let's call it, occurred shortly  
25 after the arrival of the barbed wire.

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1 BRIGADIER CALITZ: Ek het vir u gesê dit  
2 is na die aankoms van die oggend wat ons daar aangekom het,  
3 dit is korrek.

4 MR GOTZ: You also put a time to this as  
5 10am, do you see that in paragraph 80?

6 BRIGADIER CALITZ: Ja, daardie een verwys  
7 na die plus minus 600 gewapende persone wat op pad was, van  
8 die oostekant af, van die koppie. Dit sal nou van Nkaneng  
9 se kant af wees.

10 MR GOTZ: Brigadier, a small point, that  
11 the barbed wire only arrived on the scene some 40 minutes  
12 later and in fact was only fully rolled out 50 minutes  
13 after 10am.

14 CHAIRPERSON: But it wasn't, - it was  
15 only rolled out in the afternoon.

16 MR GOTZ: I beg your pardon, I beg your  
17 pardon.

18 CHAIRPERSON: Pre-positioned, I think  
19 what you mean?

20 MR GOTZ: Yes, in other words, let me be  
21 clear, the barbed wire Nyalas arrived on the scene some 40  
22 minutes after 10am and the barbed wire vehicles were only  
23 prepositioned, I have it at 10:44.

24 BRIGADIER CALITZ: Okay, ek verstaan nie  
25 u vraag, wat is u vraag aan my?

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1 MR GOTZ: Are you sure that you've got  
2 the timing of this correct, Brigadier?

3 BRIGADIER CALITZ: Die tyd wat ek gegee  
4 het, die enigste tyd wat ek hierna verwys het, "shortly  
5 before 10 and upon our arrival at the koppie," die "shortly  
6 before 10," daar was 'n report gewees van die observasie  
7 pos, op die toring, dat daardie persone dan gewapen was en  
8 daarna het ek nie weer 'n tyd gegee van ons arriewering op  
9 die koppie nie, so die tyd waarna hier verwys was, was van  
10 die persone wat aankom, ek weet nie of daar 'n VB is  
11 daaroor nie, ek kan kyk.

12 MR GOTZ: Brigadier, I want to try and  
13 cut this short, the –

14 CHAIRPERSON: Is there something in the  
15 occurrence book, it might be helpful if he finds it because  
16 it would enable you to proceed with your cross-examination.  
17 Have you found the entry in the occurrence book?

18 BRIGADIER CALITZ: Mnr die Voorsitter,  
19 ja, ek het so vinnig geblaai, ek sien 'n inskrywing op  
20 bladsy 22.

21 CHAIRPERSON: At what time?

22 BRIGADIER CALITZ: Inskrywing 978 op  
23 9:45, OP1, dit is, "Observation post 1 reported that 600  
24 people arriving at the koppie, heavily armed, a lot of the  
25 people still coming from the eastern side," so die VB –

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1 CHAIRPERSON: Ja, but the Nyalas hadn't  
2 gone there yet with the wire trailers, had they?

3 BRIGADIER CALITZ: Ja, so dit is, - nee,  
4 dit is die tyd waarna ons verwys –

5 CHAIRPERSON: If you read on there are  
6 some entries later on at the next page you might look at.  
7 Look at the next page of the OB, the occurrence book. You  
8 see you say in your statement in paragraph 81, you talk  
9 about this explanation about the, you talk about the story  
10 that Mr Noki wanted you people to remove the barbed wire,  
11 that means the barbed wire trailers, and you say the threat  
12 was relayed to the JOC by you. Now if you look at the  
13 occurrence book, which we were looking at a minute ago, you  
14 will see that there is an entry which was made in the JOC  
15 about that incident but the time is different from the time  
16 you've given us. Could we see a bit more of the occurrence  
17 book, please?

18 BRIGADIER CALITZ: Daardie inligting is  
19 gemaak om 11:20.

20 CHAIRPERSON: Well, that's the point,  
21 isn't it? So what, so it does look as if, I mean unless  
22 they put the, and they may be an entry in the occurrence  
23 book at the wrong time, but that's a but unlikely because  
24 as Mr Gotz says, there wasn't a big flow of report coming  
25 in that had to be converted into entries in the occurrence

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1 book. So the probabilities are that 11:20 is more or less  
2 a correct time and if that's correct, entry 998, then that  
3 indicates that the time you gave us previously is totally  
4 wrong, at 10:30, it can't be right.  
5 MR GOTZ: Ten o'clock.  
6 CHAIRPERSON: Not so?  
7 BRIGADIER CALITZ: Mnr die Voorsitter,  
8 nee, ek –  
9 CHAIRPERSON: There is confusion –  
10 BRIGADIER CALITZ: Ek het nie 'n tyd  
11 gegee nie –  
12 CHAIRPERSON: Either the occurrence book  
13 is wrong, I mean that entry, do you agree with me, that  
14 entry, 998, refers to the incident you described in  
15 paragraph 81 of your consolidated statement.  
16 BRIGADIER CALITZ: Dit is korrek.  
17 CHAIRPERSON: Which you say you actually  
18 reported to the JOC.  
19 BRIGADIER CALITZ: Dit is korrek.  
20 CHAIRPERSON: So that entry clearly  
21 relates to that, because you agree with that?  
22 BRIGADIER CALITZ: Dit is korrek.  
23 CHAIRPERSON: Alright, and the  
24 probabilities are that the entry was made more or less  
25 contemporaneously in the occurrence book by Brigadier

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1 Pretorius or whoever was making the notes in the occurrence  
2 book at that time, is that correct?  
3 BRIGADIER CALITZ: Ek dink dit is omtrent  
4 dieselfde tyd, dit sou die regte tyd gewees het.  
5 CHAIRPERSON: That's right.  
6 BRIGADIER CALITZ: Dit is korrek, mnr die  
7 Voorsitter.  
8 CHAIRPERSON: Now you told us earlier in  
9 answer to Mr Gotz' question that this incident took place  
10 at 10:30 and what I'm saying to you is, it seems to what we  
11 now see by reference to the occurrence book that your time  
12 is wrong, that there is a bit of confusion at least  
13 relating to the time of this incident, will you agree with  
14 that?  
15 BRIGADIER CALITZ: Mnr die Voorsitter,  
16 nee, ek verskil, miskien moet ons dan net gaan luister, ek  
17 kan nie onthou dat ek getuig het dat hierdie insident om  
18 10:30 plaasgevind het nie, ek dink die tyd wat ek verwys  
19 het waar, ek sê die enigste waarna ek 'n tyd verwys het was  
20 "shortly before 10" en dit was die berig wat ons van die OP  
21 pos af gekry het, so ek het nie gepraat oor 'n tyd wanneer  
22 die Nyalas daar aangekom het nie.  
23 MR GOTZ: Brigadier, will you at least  
24 concede that paragraph 79 of your statement is hopelessly  
25 incorrect?

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1 BRIGADIER CALITZ: Paragraph?  
2 MR GOTZ: 79, in respect of the timing.  
3 You refer expressly there to the arrival of the barbed wire  
4 and that paragraph can't be correct.  
5 COMMISSIONER HEMRAJ: Paragraph 80, Mr  
6 Gotz?  
7 MR GOTZ: No, -  
8 BRIGADIER CALITZ: Yes, 79.  
9 MR GOTZ: No, I refer to paragraph 79,  
10 the first sentence, Commissioner.  
11 BRIGADIER CALITZ: Ja, dit is 100%, 79  
12 verwys van die tyd wat ons daar aangekom het of wat  
13 geobserveer was en dan paragraaf 80 verwys na die  
14 inskrywing wat in die VB gemaak is deur die observasie pos.  
15 Dit het niks te doen met die arrivering van die Nyalas nie  
16 en dan 81 is rondom 11:20, so dit is wat daar gebeur het  
17 rondom daardie dreigement op Nyala 6.  
18 MR GOTZ: Brigadier, I am going to argue  
19 that the level of confusion in your recollection of these  
20 events says a lot about whether or not these events  
21 actually did occur, because paragraph 79 which you  
22 confirmed to me occurred before ten o'clock, could not have  
23 occurred before, because it refers to the barbed wire. We  
24 know that the barbed wire only arrived 45 minutes later and  
25 –

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1 BRIGADIER CALITZ: Mnr die Voorsitter, u  
2 sien ek het nie gesê dat paragraaf 79, die uitrol van die  
3 draad het gebeur voor tienuur nie. Ek wil graag sien waar  
4 sien u dit want ek het dit glad nie genoem in my verklaring  
5 nie. Die verwysing na paragraaf 80 is 'n totale ander  
6 verwysing, nie na die arrivering van die draad nie, nee.  
7 MR GOTZ: Well, can you tell us where  
8 paragraph 79 must be located in the chronology, because you  
9 say in paragraph 80 "shortly before 10am and upon our  
10 arrival at the koppie certain things happened." Where does  
11 79 then fit in?  
12 BRIGADIER CALITZ: Nee, 79 is beslis waar  
13 ons die aankoms gesê het van die Nyalas, so as dit in  
14 kronologiese volgorde moet wees kan 80 dan voor 79 geplaas  
15 word, maar ek het vir u gesê dit is waarop ons die boodskap  
16 gekry het, dat daar persone nog op pad is, "on our arrival  
17 at the koppie." Ek het nie vir u gesê oor die uitrol van  
18 die draad nie, wanneer die draad daar aangekom het nie.  
19 MR GOTZ: I then asked you expressly,  
20 Brigadier, are you saying that this alleged threat by Mr  
21 Noki occurred shortly after the arrival of the barbed wire?  
22 BRIGADIER CALITZ: Die dreigement van mnr  
23 Noki op ons het wel gebeur nadat die draad, toe hulle pre  
24 ge-posisioneer was.  
25 MR GOTZ: Sorry, Chair, I beg your

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1 pardon, can you repeat that, Brigadier?

2 BRIGADIER CALITZ: Sê weer?

3 MR GOTZ: Can you just repeat your answer

4 to that question, Brigadier?

5 BRIGADIER CALITZ: Ek sê mnr Noki het na

6 ons toe gekom en hy het gevra wat is die doel van die draad

7 waarop Kolonel McIntosh dit wel vir hom verduidelik het,

8 later, "The commander of Nyala 6 and explained to Mr Noki

9 over the public address system the purpose of the wire was

10 for the safety of the police and the media personnel. The

11 explanation was loud for every striking group to hear," dit

12 is die laaste deel van 81.

13 MR GOTZ: Brigadier, quite apart from the

14 questions of confusion relating to timing, there also seems

15 to be some kind of confusion as to what happened with Nyala

16 6 and can I ask you to look at paragraph 81 of your

17 statement again?

18 CHAIRPERSON: Sorry, Mr Gotz, I've been

19 asked, it has been suggested to me that we should take a

20 comfort break at this stage.

21 MR GOTZ: I would –

22 CHAIRPERSON: And may I suggest we do

23 that and then you can, refreshed and comforted you can

24 proceed with this part of your cross-examination? You will

25 be refreshed and comfortable and so will the witness.

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1 MR GOTZ: Thank you, Chair.

2 [COMMISSION ADJOURNS COMMISSION RESUMES

3 [12:24] CHAIRPERSON: The Commission resumes.

4 Brigadier, now that you've got your jacket on, you're still

5 under oath.

6 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

7 die Voorsitter.

8 CHAIRPERSON: Mr Gotz.

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

10 Thank you, Chair. Brigadier, we were dealing with

11 paragraph 81 of your statement in which you describe in the

12 first sentence – I beg your pardon, the second sentence,

13 that "Mr Noki and one of the five men approached our Nyala

14 and told us that they did not want us there, and went back

15 to the koppie singing and displaying aggression. They

16 moved towards Nyala 6 where they informed the police that

17 they must remove the barbed wire. Mr Noki informed the

18 police that he was not going to ask them again." And then

19 you say, "The commander of Nyala 6," note the word

20 "commander," "then reported this to me," and then you read

21 through to the end of the paragraph and you say, "The

22 threat was relayed to the JOC by me." Now what I want to

23 put to you, Brigadier, is you describe this in your witness

24 statement as one threat on the police. In your evidence-

25 in-chief you say there are two threats. You describe this

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1 as "dreigement 2 en dreigement 3." Do you recall that?

2 Should we take this as one threat or two threats, alleged

3 threats?

4 BRIGADIER CALITZ: Ja, ek dink ons moet

5 dit net opbreek. Dit is nie dieselfde geval nie, so ek

6 moet nou teruggaan en gaan kyk waarna het ek verwys as

7 dreigement 2 en waar het ek verkies as dreigement 3. Ek

8 kan dit nie so uit my kop uit onthou nou soos u dit noem

9 nie, nee. Wat ek wel hier verwys het is paragraaf 81;

10 nadat ons daar aangekom het en die uitrol van die draad het

11 mnr Noki wel die dreigement gemaak dat hy soek ons nie daar

12 nie en hulle het verdere aggressie getoon. Later het daar

13 nog 'n dreigement gewees op die draadkar van Nyala 6 en

14 daardie bevelvoerder het dan daardie dreigement aan ons

15 oorgedra en dit is ook wat ons dan beskryf het waar Kolonel

16 Vermaak die lugfoto geneem het, waar ek gekontak is deur

17 die JOC, daardie hele getuienis rondom daar, daardie

18 insident. So dit het nie gelyktydig gebeur soos wat dit

19 hier wil voorkom dit hier staan nie, nee.

20 MR GOTZ: Brigadier, again you've

21 referred to the statement by Mr Noki that he does not want

22 you there as a threat. I must just put this to you; I want

23 to play you a short clip and the exhibit KKK56 can be found

24 and played, not in its entirety. KKK56 is on the disc that

25 will be new eTV footage, or eTV footage, new.

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1 CHAIRPERSON: [Microphone off,

2 inaudible] –

3 MR GOTZ: No, no, no –

4 CHAIRPERSON: KKK56?

5 MR GOTZ: Well, yes. We made it an

6 exhibit earlier this morning, Chair.

7 BRIGADIER CALITZ: Mnr die Voorsitter, ek

8 dink dit is die een wat ons gevra het dat indien daar vrae

9 op gevra word en hy het gesê ons gaan dit nie vandag

10 hanteer nie, ek sal geleentheid kry om daarna te kan kyk.

11 So ek weet nie of ons – maar ek sal daarna kyk en, maar ek

12 dink ek moet in geheel seker maar die hele een kyk en die

13 tye en die goeters voor ek daarop kan antwoord.

14 CHAIRPERSON: Sorry, that's quite right –

15 BRIGADIER CALITZ: Dit was nie aan my

16 voorsien nie.

17 CHAIRPERSON: I'm sorry, my notes are

18 wrong. I've got KKK55 as being the video of Mathunjwa's

19 second address, and then I've got UU3 bis as the replaced

20 version of UU3. I haven't got KKK56, and what is KKK56?

21 MR GOTZ: Product of my undiagnosed

22 dyslexia, Chair. You're entirely correct.

23 CHAIRPERSON: It's 55?

24 MR GOTZ: 55.

25 CHAIRPERSON: Alright, okay. Alright, so

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1 anyway, Mr Gotz, you heard the Brigadier saying he'd like  
 2 to see this first, and he was entitled to be told about it  
 3 beforehand, and he'd like to look at it before Monday and  
 4 deal with it then. Have you any objection to that?  
 5 MR GOTZ: Brigadier –  
 6 CHAIRPERSON: Particularly as I think if  
 7 it's Mathunjwa's address we do need the translation as  
 8 well, don't we, to follow it. I understand you're probably  
 9 relying more on gestures and people's bearing and so forth  
 10 than the actual words, but still –  
 11 MR GOTZ: Yes.  
 12 CHAIRPERSON: - it's probably wisest to  
 13 look at the video with the translation in front of us,  
 14 wouldn't you think?  
 15 MR GOTZ: Chairperson, I wasn't in fact  
 16 going to refer to that at this moment, but I'm happy to  
 17 leave this point –  
 18 CHAIRPERSON: Look, I don't want to make  
 19 your cross-examination difficult, or perhaps more difficult  
 20 than it is. I understand the points you're dealing with  
 21 are of importance and you must be given an opportunity to  
 22 do full justice to them, but I hope you don't regard  
 23 yourself as being hampered if the matter stands over till  
 24 Monday.  
 25 MR GOTZ: And to assist the Brigadier, we

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1 will give the time references. It's a rather long clip and  
 2 so I'm not sure that he needs to deal with the entire,  
 3 review the entire clip. We'll give him the relevant parts  
 4 to look at –  
 5 BRIGADIER CALITZ: Nee, dis reg, dankie,  
 6 mnr die Advokaat.  
 7 MR GOTZ: Thank you, Chair. Brigadier,  
 8 can we look at what you say in your evidence-in-chief in  
 9 relation to these matters? And it's to be found at day 152  
 10 on page 17216.  
 11 BRIGADIER CALITZ: Page?  
 12 MR GOTZ: 17216.  
 13 BRIGADIER CALITZ: That cannot be day  
 14 152.  
 15 MR GOTZ: It's page –  
 16 CHAIRPERSON: We've now got page 17216.  
 17 What line are you referring to?  
 18 MR GOTZ: 17216.  
 19 CHAIRPERSON: What line are you referring  
 20 to?  
 21 MR GOTZ: It's your evidence commencing  
 22 on line 13.  
 23 CHAIRPERSON: Thank you.  
 24 MR GOTZ: Perhaps we can read from line 9  
 25 where Mr Semenya puts what Mr Noki says to you. Mr Semenya

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1 says, "Mr Noki had said they don't want the police there  
 2 and they explained" – I think there may be a mistake there  
 3 – "explained why the police are there, is there any  
 4 information given around the barbed wire?" What you then  
 5 say is, "Mnr die Voorsitter, ja, ek dink dit het gekom na  
 6 die Nyala 6 dreigement op Nyala 6 waar die bestuurder van  
 7 die voertuig dan vir ons meegedeel het van die dreigement."  
 8 You'll recall, Brigadier, that I asked you to –  
 9 CHAIRPERSON: Perhaps we should translate  
 10 that. What the sentence you read reads, "Mr Chairman, yes,  
 11 I think it came after the Nyala 6 threat to Nyala 6 where  
 12 the driver of the vehicle then informed us of the threat."  
 13 That's a translation of the sentence you read.  
 14 MR GOTZ: Do you see that, Brigadier?  
 15 BRIGADIER CALITZ: Dit is korrek, ek sien  
 16 dit.  
 17 MR GOTZ: Brigadier, in paragraph 81 of  
 18 your statement you said it was the commander of the Nyala  
 19 that reported it to you, not the driver. The driver and  
 20 the commander are two different people.  
 21 BRIGADIER CALITZ: Ja, dit is korrek, ja.  
 22 MR GOTZ: The commander of Nyala 6 was a  
 23 Lieutenant Mhlongo and the driver was a Constable Malatsi,  
 24 and to give the reference, we know that from JJJ135, page  
 25 3, where it's recorded that they are two separate people,

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1 Mhlongo and Malatsi. Now Brigadier, you'll appreciate that  
 2 you are providing hearsay evidence in this regard? You  
 3 didn't hear this so-called "dreigement" personally. It's  
 4 therefore hearsay evidence, correct?  
 5 BRIGADIER CALITZ: Dit is wat hulle aan  
 6 my meegedeel het, so dit sal hoorsê wees. Dit is korrek.  
 7 MR GOTZ: We will argue –  
 8 MR SEMENYA SC: Chair, we don't contend  
 9 that it is hearsay evidence when it is not offered for the  
 10 truthfulness of its contents, but a report received by the  
 11 witness. It's not hearsay at that level.  
 12 CHAIRPERSON: The fact that the witness  
 13 received the report is a direct fact which can be proved by  
 14 giving the report. Whether the report is tendered,  
 15 evidence is given to prove the truth of the report is  
 16 another matter, and then that involves the question of  
 17 hearsay. Your point is that inasmuch as an attempt is  
 18 being made to prove that a threat was made, that would be  
 19 hearsay, but insofar as the evidence is tendered merely to  
 20 indicate that this report was made to the witness, it would  
 21 not be hearsay. So that's the distinction to which Mr  
 22 Semenya refers. Obviously you accept that, I take it.  
 23 MR GOTZ: Indeed. Indeed, Chair. On  
 24 either point through, Brigadier, you'll accept that, I  
 25 think that the Commissioners should be very reluctant to

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1 accept any of this evidence when you can't even reflect  
2 accurately whether it's the driver or the commander of the  
3 vehicle that reported this to you, and this is compounded,  
4 Brigadier, by the fact that neither Malatsi or Mhlongo have  
5 filed witness statements. We do not have witness  
6 statements for them –

7 CHAIRPERSON: Well, you know that the  
8 time for filing witness statements comes to an end on  
9 Monday and it may well be that there will be statements  
10 from them, but all you can say is that up to now statements  
11 haven't been filed from them. That's correct, isn't it?

12 MR GOTZ: Indeed, Chair. There's no  
13 confirmation on record at this point, Brigadier, of a  
14 threat having been made on Nyala 6.

15 BRIGADIER CALITZ: Al wat ek vir u kan sê  
16 is ek glo daardie verklarings sal verkry word en dit sal  
17 ingegee word. Dit is die boodskap wat oorgedra is, die  
18 "commanders," en ons het dit bespreek en met Kolonel  
19 Makhubela ook bespreek.

20 MR GOTZ: And Brigadier, you accept that  
21 there's an inconsistency in your evidence in relation to  
22 who gave you the information?

23 BRIGADIER CALITZ: Nee, ek dink in my  
24 getuigenis het ek gesê die drywer het dit gerapporteer. Ek  
25 sien in my verklaring het ek gesê "commander." Dit kan

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1 beide die drywer, as ek nou moet terugdink, ek kan nie  
2 onthou of dit presies oor die radio gesê is en toe het ons  
3 dit buitekant die voertuie met die "commander" bespreek.  
4 So dit was in ieder geval die een wat die boodskap ontvang  
5 het en ek het dit verder met die bevelvoerder en ook sy  
6 bevelvoerder, Kolonel Makhubela, bespreek. So dit, ek stem  
7 nie saam met u nie.

8 MR GOTZ: Well, I'm not sure I understand  
9 your answer. Who gave you the information? Was it the  
10 driver or the commander, or both?

11 BRIGADIER CALITZ: Ek dink aanvanklik het  
12 ek die boodskap gekry dat dit van die drywer af kom. Soos  
13 ek vir u sê, ek kan nie onthou of dit op die radio was nie.  
14 Ons het dit toe gaan opvolg en verder met die bevelvoerder  
15 bespreek. Die bevelvoerder het wel vir my gesê, die  
16 offisier, dat daar was daardie dreigement gewees. Maar of  
17 die drywer dit aan hom gerapporteer het, dit kan ek nou nie  
18 vir u sê. Ek dink dit was oor die radio gewees.

19 MR GOTZ: And again, Brigadier, at its  
20 highest the way in which this so-called threat has been  
21 described is Mr Noki coming to the Nyala and saying "We  
22 don't want the police there."

23 BRIGADIER CALITZ: Ja, ek kan net vir u  
24 getuig oor wat die bevelvoerder vir my gesê het. Ek het  
25 nie self daardie dreigement gehoor nie. Wat ons opvolg was

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1 is dat ons vir mnr Noki oor die luidspreker dan verduidelik  
2 het die doel van die draad en probeer om die situasie weer  
3 kalm te kry.

4 MR GOTZ: And again I'll put it to you,  
5 Brigadier, that that doesn't constitute a threat.

6 Brigadier –

7 BRIGADIER CALITZ: Mnr die Voorsitter,  
8 nee, ek verskil van u. As dit die woorde is wat hulle  
9 gebruik het en gesê het hulle moet die draad wegvat en  
10 hulle gaan hulle nie weer vra nie, is dit duidelik 'n  
11 dreigement.

12 MR GOTZ: Brigadier, the other – perhaps  
13 it's not an inconsistency, but can we have a look at what  
14 exhibit L says on this? You'll find that, if I've got it  
15 correctly, on slide 160.

16 CHAIRPERSON: I didn't catch the slide  
17 number.

18 MR GOTZ: I beg your pardon, Chair –

19 CHAIRPERSON: What is it?

20 MR GOTZ: It's slide 160.

21 CHAIRPERSON: 1-6-0?

22 MR GOTZ: Yes, 1-6-0.

23 CHAIRPERSON: I'm afraid your problem is  
24 affecting you again. 160 is a photograph. May I suggest  
25 that you –

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1 MR GOTZ: No, no, Chair –

2 CHAIRPERSON: - ask either Ms Barnes or  
3 Ms Lewis to read these numbers for you. I mean to be fair,  
4 it's a genuine problem you've got.

5 MR GOTZ: No, Chair, in this respect,  
6 with respect, I do want to refer to this slide.

7 CHAIRPERSON: I see. Okay, okay.

8 MR GOTZ: You see, Brigadier, what  
9 exhibit L, slide 160 says is that at 10:56 protesters are  
10 formed up near Nyala 6 which was moved back to avoid it  
11 being isolated, and that's all we find on the question of a  
12 threat on Nyala 6 in exhibit L. Exhibit L doesn't refer to  
13 threats being made which are reported to you of Mr Noki  
14 coming to the vehicle. It presents a different picture.  
15 It says that what happened was that the protesters formed  
16 up as a group near Nyala 6, which was then moved back to  
17 avoid it being isolated.

18 BRIGADIER CALITZ: Nee, ek sien wat die  
19 opskrif sê.

20 MR GOTZ: The inconsistency is this,  
21 Brigadier; I'm not sure that, perhaps I'm the only one that  
22 sees this. The inconsistency is this. Exhibit L seeks to  
23 represent that Nyala 6 was moved back out of the way  
24 because it was isolated. It doesn't record any threat.  
25 Your evidence says that the reason that Nyala 6 was moved

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1 was because they were threatened by Mr Noki.  
 2 BRIGADIER CALITZ: Dit is wat oorgedra  
 3 was aan my, ja, en verder is hierdie foto's gestuur na die  
 4 JOC toe en die JOC het dan daardie besluit geneem en met  
 5 ons meegedeel.  
 6 MR GOTZ: I'd like you to appreciate what  
 7 I'm attempting to do, Brigadier. You know, you've come to  
 8 this Commission and you've made allegations about multiple  
 9 threats made inter alia by people who are part of my, or  
 10 members of my client. When I look at the objective  
 11 evidence, and when I try to piece together what actually  
 12 happened, nothing makes sense. There are a number of  
 13 inconsistencies between the versions and I simply cannot  
 14 work out the timing of these matters on the basis of the  
 15 available evidence, and we are going to argue that very  
 16 little of this evidence must be taken seriously by the  
 17 Commission in the light of a number of inconsistencies.  
 18 MR SEMENYA SC: Chair, those broad  
 19 statements don't help us understand and get an informed  
 20 answer from the witness.  
 21 MR GOTZ: Chair, I'm entitled to put what  
 22 my argument is going to be. I'm highlighting the  
 23 inconsistencies in the evidence –  
 24 CHAIRPERSON: Sorry to interrupt you.  
 25 You say that no threats were made at all. Is that your

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1 case?  
 2 MR GOTZ: Chairperson, to be quite  
 3 honest, I don't know. You will appreciate –  
 4 CHAIRPERSON: Have you looked at exhibit  
 5 OO9?  
 6 MR GOTZ: Perhaps you can simply – the  
 7 reference doesn't in fact make a –  
 8 CHAIRPERSON: OO9, if I remember the  
 9 reference correctly, is a translation of the soundtrack of  
 10 a video that was made during Mr Mathunjwa's first address,  
 11 I think, near the end, which formed the basis of cross-  
 12 examination I think by Mr Semanya of Mr Mathunjwa when he  
 13 gave evidence, and someone is clearly heard saying on that  
 14 tape, referring to a senior policeman who came from the  
 15 homelands who'd be killed, and making further other threats  
 16 as to what would happen. I haven't got it in front of me,  
 17 but that's my recollection of it. I don't know whether Mr  
 18 Semanya has it, or his junior has it on their laptop;  
 19 perhaps they can read it to us, because that appears to be  
 20 – I'm not suggesting that it destroys the validity of the  
 21 cross-examination that we've been listening to this  
 22 morning, but it is evidence, prima facie at least, of a  
 23 threat having been made. Mr Semanya, have you got it in  
 24 front of you?  
 25 [12:44] MR SEMENYA SC: I do, Chair. The

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1 translation at the relevant portion reads, Speaker, "These  
 2 police, if they claim that they have safety, they must go  
 3 and apply safety to that white man/boss who sent them here,  
 4 they must leave us here and bring this white man/boss. We  
 5 do not leave this place without what we want, they must  
 6 leave immediately. A police officer from the homelands, if  
 7 he/she was fetched to come here we'll be left here. He/she  
 8 will not enter that hippo," is that relevant, and then  
 9 there is laughter.  
 10 CHAIRPERSON: The next sentence, "We will  
 11 finish them here," – sorry, no, it is further, "We will  
 12 finish them here, they must leave here." Now doesn't that  
 13 sound like a threat?  
 14 MR GOTZ: Chairperson, what I'm testing  
 15 is the evidence that Brigadier Calitz has given.  
 16 CHAIRPERSON: No, no, I understand that,  
 17 I understand that.  
 18 MR GOTZ: He hasn't given any evidence –  
 19 CHAIRPERSON: I understood what you were  
 20 doing –  
 21 MR GOTZ: - in relation to these events.  
 22 CHAIRPERSON: You were interrogating the  
 23 allegations he made about threats, but I asked you, is it  
 24 your case that there were no threats and you said you  
 25 didn't know, so that's why I referred you to this exhibit

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1 which appears to indicate that what looks suspiciously like  
 2 a threat was made to the police on the occasion when Mr  
 3 Mathunjwa delivered his first address, I think, and that's  
 4 evidence before us. We have the, I presume that is the  
 5 Xhosa on the left hand side?  
 6 MR GOTZ: Yes.  
 7 CHAIRPERSON: And we have a translation  
 8 on the right, so that is evidence before us. So, there was  
 9 at least one threat and you have succeeded in showing, I  
 10 think, this is a prima facie view, succeeded in showing  
 11 that there is, at the lowest perhaps, an element of  
 12 confusion in the present evidence, dates, I mean times  
 13 don't correspond, there are contradictions and so on  
 14 and that evidence is obviously that you've elicited, to  
 15 which you've drawn is very important, but the point that I  
 16 raised is still a relevant one, were there any threats of  
 17 any kind at all and your answer was, you don't know. Well,  
 18 no you do know. Shall we carry on?  
 19 MR GOTZ: Brigadier, - thank you, Chair.  
 20 Brigadier, this isn't an incident which you testify and I'm  
 21 questioning you in relation to your evidence in relation to  
 22 the threats. I do want to highlight a few other  
 23 inconsistencies because it doesn't end in relation to this,  
 24 Brigadier, but I can simply put this to you, is that you  
 25 will appreciate that there is a difference between a single



<p style="text-align: right;">Page 20761</p> <p>1 threat being made and what you refer to as six threats.</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>3 daar is seker 'n verskil tussen 1 en 6, ek stem saam met u,</p> <p>4 toe ek, in my getuienis in chieff het ek gesê dit is soos ek</p> <p>5 dit waargeneem het en ek het vir u verduidelik die eerste</p> <p>6 dreigement, ons hoef nie weer daaroor te gaan nie, die tyd</p> <p>7 wat mnr die Voorsitter sê daar is time confusion, ek dink</p> <p>8 ons sal terugkom daarnatoe miskien net om te verduidelik</p> <p>9 dat paragraaf 80 en daardie, dit verwys na iets anders.</p> <p>10 Dit verwys nie na die deployment van die karre nie, so ek</p> <p>11 stem nie saam met die time confusion nie en dan oor Nyala 6</p> <p>12 het ons gewys daar is 'n VB inskrywing om 11:20, waar ek</p> <p>13 duidelik gesê het daar is daardie woorde geuiter aan Nyala</p> <p>14 6, wat dan so ge-record is in die VB. So op hierdie</p> <p>15 stadium is dit feitlik deurgegee, so ek weet nie waar is</p> <p>16 die onduidelikheid nie.</p> <p>17 CHAIRPERSON: There is time confusion in</p> <p>18 the sense that Exhibit L suggests that Nyala 6 was moved at</p> <p>19 10:56 and the occurrence book suggested it was moved at</p> <p>20 11:20, so that's the time confusion. Whether it is</p> <p>21 significant confusion, where it takes us at the end is a</p> <p>22 different question, but you can't say there wasn't any time</p> <p>23 confusion. I mean that's contradicted by what we see, but</p> <p>24 anyway you and Mr Gotz can continue with this conversation.</p> <p>25 Mr Gotz, have you got further questions for the witness?</p>	<p style="text-align: right;">Page 20763</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>2 ja, weereens ek dink dit is maar die persoon wat dit</p> <p>3 geskryf het en as hy die woordjie "6" uitgelaat het na die</p> <p>4 Nyala, dit was die enigste groep, ag, die enigste Nyala wat</p> <p>5 ons dan sien in slide 160 waarnatoe die groep beweeg het en</p> <p>6 waar die groep gedreig het, so ek kan nie vir u 'n</p> <p>7 verduideliking gee waarom daar nie die syfer "6" na die</p> <p>8 Nyala is nie.</p> <p>9 CHAIRPERSON: Mr Gotz, the problem with</p> <p>10 this point is that we do know that Nyala 6 was moved</p> <p>11 because we know that from other photographs and we may have</p> <p>12 to apply a bit of circumstantial evidence here but the</p> <p>13 indications are that something happened in relation to</p> <p>14 Nyala 6 which caused Nyala6 to be moved. It is true, there</p> <p>15 isn't a note in the occurrence book which already sends up</p> <p>16 a warning sign, don't rely too exclusively on the</p> <p>17 occurrence book but never mind, Nyala 6 was moved and there</p> <p>18 is an entry that people towards the Nyala. It doesn't say</p> <p>19 which one, but if you put the two together you might get</p> <p>20 the answer, but anyway, it doesn't help to say that nothing</p> <p>21 happened in relation to Nyala 6 because clearly something</p> <p>22 did. What exactly it is, whether this involved a threat,</p> <p>23 these are obviously matters that we must investigate and</p> <p>24 you may well wish to contend at the end that a threat</p> <p>25 hasn't been proved in respect of that, but that's a matter</p>
<p style="text-align: right;">Page 20762</p> <p>1 MR GOTZ: Well, Chair, just with respect</p> <p>2 a correction, Exhibit L doesn't in fact refer to the</p> <p>3 movement of Nyala 6. It –</p> <p>4 CHAIRPERSON: It shows an error. Come</p> <p>5 on, it shows, there is a yellow red tangle around Nyala 6</p> <p>6 and then there is an arrow which points to another spot and</p> <p>7 in fact other videos show that Nyala 6 was moved from the</p> <p>8 place we see on slide 160 to the place where the head of</p> <p>9 the arrow is to be seen. So it doesn't say in the legend</p> <p>10 at the top that it was moved, but those of us who look at</p> <p>11 the arrow and its direction you can clearly see that what</p> <p>12 is being conveyed is it was moved, so not let's waste time</p> <p>13 on a non point. Shall we move onto a more substantial</p> <p>14 points?</p> <p>15 MR GOTZ: The chairperson has highlighted</p> <p>16 and I was going to as well, the occurrence book which</p> <p>17 records at 11:20 something that you report to the JOC.</p> <p>18 Let's look at that, it is FFF25, at 11:20 and it's entry</p> <p>19 998. You'll see it says there, "Situation report. Papa1</p> <p>20 reported that the group is moving towards the Nyala. The</p> <p>21 group leader asked the police official to remove the wires</p> <p>22 and said he is not going to ask them again as he is also</p> <p>23 aggressive. About 3,500 people gathered." There is</p> <p>24 nothing in the occurrence book about Nyala 6 being</p> <p>25 threatened, Brigadier?</p>	<p style="text-align: right;">Page 20764</p> <p>1 we'll deal with at the appropriate time.</p> <p>2 MR GOTZ: Chairperson, I was just about</p> <p>3 to go onto evidence which I would like to show the</p> <p>4 brigadier, which demonstrates the photographs taken with</p> <p>5 Vermaak's Pentax as well as his Blackberry, there are two</p> <p>6 photographs, but particularly a Vermaak photograph which</p> <p>7 was taken at 11:22 which at that point showed –</p> <p>8 CHAIRPERSON: Shall we see it, shall we</p> <p>9 see it, let's have a look at it?</p> <p>10 MR GOTZ: Yes, Chair.</p> <p>11 CHAIRPERSON: If you want to show it and</p> <p>12 it is relevant, then let's see it. It is an exhibit</p> <p>13 already, I take it?</p> <p>14 MR GOTZ: Just for record purposes,</p> <p>15 Chair, the image that we had on screen from Exhibit L is</p> <p>16 also taken from Vermaak's Pentax camera. It is 4501 in</p> <p>17 Exhibit JJJ10 taken at Vermaak's Pentax time 10:55, which</p> <p>18 is ETV time 10:44:16 and then if the brigadier can have a</p> <p>19 look in that folder at image 4524, if it can be put on the</p> <p>20 screen, image 4524. Now this photograph was taken at</p> <p>21 Vermaak Pentax time 11:22:24 which his ETV time 11:20:42.</p> <p>22 You can see, Brigadier, that there is a Nyala with barbed</p> <p>23 wire in the top left hand corner of the photograph, the</p> <p>24 furthest to the left. You'll confirm, Brigadier, that that</p> <p>25 is Nyala6?</p>

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1 BRIGADIER CALITZ: Dit is korrek, die  
 2 heel linkerkantste een soos ons nou na die foto kyk.  
 3 MR GOTZ: So by 11:20 Nyala6 has not been  
 4 moved. What we find is –  
 5 CHAIRPERSON: It will of course explain  
 6 why the occurrence book entry at 11:20 doesn't record that  
 7 Nyala 6 has moved yet, but it is quite clear that it hadn't  
 8 moved by 11:20. We know it moved later.  
 9 MR GOTZ: We do know that it moved later,  
 10 what is unclear to us is precisely when it moved because it  
 11 is at this point that Vermaak appears, returns and lands.  
 12 The next photograph in the series, 4525, is the first  
 13 photograph that Colonel Vermaak takes in the afternoon.  
 14 CHAIRPERSON: We see a Nyala close to the  
 15 kraal which presumably is Nyala6. I haven't counted them  
 16 but I take it, it is Nyala 6.  
 17 MR GOTZ: Do you confirm that that does  
 18 show that Nyala 6 has been moved and the timing of this, -  
 19 sorry, let me ask the question. Will you confirm,  
 20 Brigadier, that that shows that Nyala 6 has now moved?  
 21 BRIGADIER CALITZ: Ja, dit is korrek.  
 22 Wat is die tyd van die foto?  
 23 MR GOTZ: It is Vermaak Pentax time  
 24 15:34:14 which I have as 15:32:32, and we haven't seen,  
 25 Brigadier, and perhaps you can refer us to something which

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1 does indicate when Nyala 6 was in fact moved because none  
 2 of the photographs that we've seen does indicate that. I  
 3 may have missed something, I'm happy to accept that there  
 4 is a lot of material there, but certainly on the basis of  
 5 the material that I've seen in the exhibits and elsewhere,  
 6 there is no indication of when exactly Nyala 6 was moved.  
 7 BRIGADIER CALITZ: Mnr die Voorsitter,  
 8 ons het daarvoor getuig en as u gaan kyk na die foto van  
 9 slide 160, ek weet nie wat is die ETV tyd van daardie foto  
 10 nie, dit is omtrent min of meer, sou ek sê wanneer die  
 11 dreigement plaasgevind het, toe het die drywer dit  
 12 deurgegee, die bevelvoerder het dit kom bespreek, daardie  
 13 dreigement is deurgegee JOC toe, so ek weet nie, 'n ou moet  
 14 versigtig wees want anderste more gaan u sê ek het gesê dit  
 15 het spesifiek daardie tyd beweeg, maar dit sou enige tyd  
 16 gewees het in die volgende, seker 'n halfuur of 'n uur want  
 17 die foto's wat Kolonel Vermaak gestuur het kan 'n mens  
 18 sekerlik sien die foto, wanneer hy dit gestuur het of die  
 19 foto geneem het. Daardie foto is in die JOC ontvang, dit  
 20 is in die JOC bespreek. Ek het 'n telefoonoproep ontvang  
 21 wat ons miskien ook na kan kyk, en dan is daardie gesprek  
 22 met Kolonel Makhubela, so daar sou seker 'n goeie halfuur,  
 23 uur omtrent verloop het en dan die posisionering van  
 24 daardie voertuig. So –  
 25 CHAIRPERSON: This is a matter that can

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1 presumably be demonstrated by photographs or videos or –  
 2 BRIGADIER CALITZ: Ek glo so, mnr die  
 3 Voorsitter.  
 4 CHAIRPERSON: - the timing of telephone  
 5 calls and cell phone calls.  
 6 BRIGADIER CALITZ: Dit is korrek.  
 7 CHAIRPERSON: So that's a matter that the  
 8 SAPS team can look into, you can only testify from your own  
 9 knowledge which you have done so far.  
 10 BRIGADIER CALITZ: Korrek.  
 11 CHAIRPERSON: It is after or just before  
 12 one o'clock, Mr Gotz, so when it is convenient for the  
 13 purpose of your cross-examination, let me know and we will  
 14 take the, not the lunch adjournment but the weekend  
 15 adjournment –  
 16 MR GOTZ: Chair, -  
 17 CHAIRPERSON: - and we'll resume on  
 18 Monday, but it is for you to determine when it will be  
 19 appropriate for purpose of your cross-examination for us to  
 20 do that.  
 21 MR GOTZ: Chair, just to, the brigadier  
 22 asked the timing of the photograph on Exhibit L, I did  
 23 actually give that earlier but let me repeat it. It is  
 24 Vermaak Blackberry time 10:55:58, which is ETV time  
 25 10:54:16. So at the very least what we can say is that

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1 between 10:44:16 and 11:20 Nyala 6 had not been moved.  
 2 BRIGADIER CALITZ: Ja, ek sal sê teen  
 3 daardie tyd kan 'n mens dan vasstel dat, ek het gesê  
 4 omtrent 'n halfuur, dit is die kommunikasie en die  
 5 inligting wat op die grond gedeel is en ons wat JOC toe  
 6 geskuif het, so dit is baie moontlik, dit is korrek.  
 7 MR GOTZ: Thank you, Chair, and I'll take  
 8 the weekend to try and shorten my cross-examination.  
 9 CHAIRPERSON: - if you did that, on the  
 10 other hand I don't expect you to leave anything important  
 11 out because I can understand the significance of this  
 12 cross-examination and it hopefully will assist us to arrive  
 13 at the truth ultimately in relation to the issues that  
 14 you've been covering. We will now adjourn until Monday  
 15 morning at nine o'clock.  
 16 [COMMISSION ADJOURNED]  
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A				
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