

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 172

21 JANUARY 2014

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1 [PROCEEDINGS ON 21 JANUARY 2014]
 2 [09:30] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath.
 4 ADRIAAN MARTHINUS CALITZ: Good morning,
 5 Commissioner. Dankie.
 6 CHAIRPERSON: Mr Mpofo.
 7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 8 Thank you very much, Chairperson. Good morning, General –
 9 Brigadier.
 10 CHAIRPERSON: No, no, he's still a
 11 brigadier.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: And I hope you don't intend
 14 extending your cross-examination for so long that that
 15 appellation will be appropriate.
 16 MR MPOFU: Until he attains – until it
 17 becomes true, no.
 18 BRIGADIER CALITZ: Baie dankie vir
 19 daardie voorspoed, maar goeiemore, Advokaat. Ek waardeer,
 20 dankie.
 21 MR MPOFU: Okay, thank you. You remember
 22 that we – just to round off a point, as the Chairperson had
 23 promised that he would stop me even mid-sentence, on
 24 Friday, I was just one question short of rounding off the
 25 point we were busy with, namely, just to remind you,

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1 whether or not there had been an occasion to your knowledge
 2 where the barbed wire was rolled out in the presence of the
 3 crowd. You said, I think you could only remember one
 4 instance and it was near the border. You can just remind
 5 me of that instance?
 6 BRIGADIER CALITZ: Nee, ek dink mnr die
 7 Voorsitter het gevra of daar nog 'n insident is wat ons kan
 8 gebruik. Ek sê ek glo die lede het, by Ramatlabama dink ek
 9 was daar op 'n stadium waar die weermag, 'n insident was
 10 met Botswana, maar ek praat heeltemal onder korreksie. Ek
 11 het nie die feite op hierdie stadium voor my nie.
 12 MR MPOFU: Okay. Thank you. And that
 13 operation that you are talking about in – was it on the
 14 border of Botswana and South Africa, near the border?
 15 BRIGADIER CALITZ: Dit is waar
 16 Ramatlabama is, ja.
 17 MR MPOFU: Yes.
 18 BRIGADIER CALITZ: Maar soos ek u
 19 weereens sê, ek het nie, ek weet dit was, ek dink die groep
 20 van Mafikeng. Myself, nee.
 21 MR MPOFU: Okay, so in other words to
 22 your personal knowledge in an operation that you were
 23 involved in you've never seen this situation where the
 24 rollout is done while the crowd is there?
 25 BRIGADIER CALITZ: Net die een waarop ons

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1 reeds getuig het.
 2 MR MPOFU: And you say that operation was
 3 an army operation really. Correct?
 4 BRIGADIER CALITZ: Nee, dit is nie wat ek
 5 nou vir u gesê het nie. Die een waarop ons getuig het ek
 6 dink was die Vryburg insident.
 7 MR MPOFU: No, no, no, we're still
 8 talking about the one near the Ramatlabama border. I'm
 9 saying there was that operation, essentially an SANDF
 10 operation, or was it a police operation?
 11 BRIGADIER CALITZ: Nee, dit was 'n
 12 polisie operasie gewees, maar soos ek sê, ek dra kennis
 13 daarvan. Ek het nie die feite op hierdie stadium voor my
 14 nie en daarom is dit bloot net spekulasie as ek vir u moet
 15 antwoord.
 16 MR MPOFU: Okay, no fair enough. You
 17 yourself have never been personally involved in any
 18 operation where the rollout was done with the crowd being
 19 there?
 20 BRIGADIER CALITZ: Nie daar nie, maar –
 21 MR MPOFU: Anywhere.
 22 BRIGADIER CALITZ: Dit waaroor ons getuig
 23 het, waaroor ek en u gepraat het ook, die Vryburg insident.
 24 MR MPOFU: Oh, I thought we had agreed
 25 that all the other incidents the wire was positioned before

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1 the crowd were at the scene.
 2 BRIGADIER CALITZ: Ja, die ander waarna u
 3 verwys het, dink ek u het verwys na die Ventersdorp
 4 insident –
 5 MR MPOFU: Ventersdorp.
 6 BRIGADIER CALITZ: En u het verwys na, ek
 7 dink Bloemfontein of so iets.
 8 MR MPOFU: Ja.
 9 BRIGADIER CALITZ: Daar glo ek, ek kan
 10 nie vir u die feite gee daar nie.
 11 MR MPOFU: Ja, look, we don't have to go
 12 through nitpicking. The point of the matter really is that
 13 this idea of rolling out barbed wire when a hostile crowd
 14 is present, I won't say it's unprecedented, which is what I
 15 was suggesting. At best it's unusual and rare, correct?
 16 BRIGADIER CALITZ: Ek sou nie sê
 17 "unusual" nie. Dit hang af oor die omstandighede op die
 18 dag en dit is hoekom die beplanning dan so was dat dit in
 19 die beplanning ingeskryf was as fase 2 en dit was, die doel
 20 gehad vir 'n "show of force" vir daardie dag.
 21 MR MPOFU: No, Brigadier, I don't think
 22 we understand each other. I accept that that's what
 23 happened there, but all I'm saying is that if you are
 24 yourself struggling to find another example of something
 25 happening, that must at the very least suggest that it's

<p style="text-align: right;">Page 20245</p> <p>1 something that's unusual, that doesn't happen often. Do 2 you understand?</p> <p>3 BRIGADIER CALITZ: Dit gebeur nie elke 4 dag nie, nee.</p> <p>5 MR MPOFU: Ja, and I'll go so far as to 6 say that the idea of rolling out barbed wire in the 7 presence of a hostile crowd is not just unusual, it's 8 inappropriate. What would you say to that?</p> <p>9 BRIGADIER CALITZ: Nee, ek sal nie saam 10 met u stem nie.</p> <p>11 CHAIRPERSON: Mr Mpofu, are you going to 12 follow up that question or not?</p> <p>13 MR MPOFU: No, Chairperson, I was going 14 to move on.</p> <p>15 CHAIRPERSON: You see, how would you 16 respond to this criticism if it were put to you; if you are 17 uncoiling barbed wire in the presence of a hostile crowd in 18 order to prevent them from going to a particular point, and 19 if it's going to take you 10 minutes or so to uncoil the 20 wire to do that, how can you eliminate the possibility that 21 they will then seek to take advantage of the fact that the 22 wire is not fully uncoiled to go where you don't want them 23 to go? I can understand if it all happens in two minutes, 24 but we've gone over that ground; it's not practically 25 feasible to do that, but you're uncoiling wire because you</p>	<p style="text-align: right;">Page 20247</p> <p>1 as ons begin het met die arrestasie gedeelte en die 2 waarskuwing, dat daar miskien 'n konfrontasie sou gewees 3 het, maar ek kan miskien net getuig uit die ondervinding 4 uit wat ons het en die geskiedenis dat dit nog nooit gebeur 5 het nie. Die persone het altyd wegbeweeg. Sou daar enige 6 formasie vorm, sou daar enige aksie wees deur die polisie 7 was die natuurlike ding vir die persone om gewoonlik weg te 8 beweeg en dit is in al die ondervinding wat ons oor die 9 jare – en ek dink dit is miskien waarop die JOCCOM dan ook 10 die fase 2 in proses gesit het wel nadat – dis die tweede 11 vraag wat u my gevra het is die “uncoiling” van “barbed 12 wire” 1, dit is ja, waar ek wel gesien het hoe hulle 13 gereageer het.</p> <p>14 MR MPOFU: Thank you. Did I understand 15 you correctly that in previous incidents, similar 16 obviously, not the same, the hostile crowd would either 17 throw petrol bombs at you, I think was an example that you 18 gave, or move away in the opposite direction? Did I 19 understand you correctly?</p> <p>20 BRIGADIER CALITZ: Ja, dit is korrek. 21 Hulle sal wegbeweeg van wat ook al ons as 'n “defensive 22 measure” in plek sit.</p> <p>23 MR MPOFU: Yes, so then that's exactly 24 the point. I'm sorry to belabour this point, but it's 25 important. That's the point that the Chairperson and I'm</p>
<p style="text-align: right;">Page 20246</p> <p>1 want to prevent a hostile crowd from going in a particular 2 direction, and as you're uncoiling the wire they see what 3 you're up to. They realise amongst other things that 4 you're trying to stop them from going where they want to 5 go, and so the natural thing for them to do will be to go 6 there as fast as they can before the wire closes them off. 7 So the criticism which I take it is going to be argued 8 later is that it's not sensible, unless you really have to, 9 to uncoil wire in the presence of a hostile crowd to 10 prevent them going somewhere because it will provoke the 11 very thing that you want to prevent, namely a rush by the 12 crowd to the place that you're trying to prevent them going 13 to. That's basically your point, is it, Mr Mpofu?</p> <p>14 MR MPOFU: That's the point, thanks, 15 Chairperson.</p> <p>16 CHAIRPERSON: Alright, would you like to 17 deal with Mr Mpofu's point?</p> <p>18 BRIGADIER CALITZ: Mnr die Voorsitter, ek 19 kan maar net weer teruggaan op wat ons voorheen getuig het, 20 dat met die inligting wat tot ons beskikking was op daardie 21 stadium en die doel van die operasie, met ander woorde die 22 fases, fase 1 en 2, dit was bespreek in die JOCCOM 23 vergadering en met al die rolspelers wat daar gesit het en 24 al die “inputs” wat gegee is was dit net nooit voorsien dat 25 hulle op daardie stadium sou storm. Ons het wel verwag dat</p>	<p style="text-align: right;">Page 20248</p> <p>1 putting to you, which is – now let's replace petrol bombs 2 with spears, so just even from your own experience it was 3 predictable that it's either they're going to move away, 4 which is great, or they will throw the “petrol bombs” which 5 they have, namely they will attack you with whatever they 6 have. So once again the question then is let's eliminate 7 the great idea that they might run away, which – because it 8 didn't happen. So surely then what you should have 9 foreseen is that they will do what those petrol bomb crowds 10 usually do and attack with whatever. Whether it's stones 11 or petrol bombs or spears, for the purpose of this question 12 is not material, but the point is that you would foresee 13 that like those previous other crowds they would attack.</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 weereens ek dink die Advokaat kombineer die twee. Ek het 16 duidelik getuig dit is twee aparte insidente. Waar ons nie 17 voorsien het nie was waar was die “defensive measure” in 18 plek sit, het dit - in hierdie geval die “barbed wire” – 19 het dit in 'n gewone onlustevoerval waar ons menigte male 20 die Nyalas in 'n lyn sit en dan die Openbare Orde 21 Polisiëring met hulle uniforms, die skilde en goed 22 “deploy.” In daardie geval, ek praat van die “defensive 23 measure,” het die persone altyd wegbeweeg. Daar was nog 24 nooit 'n aanval op ons in daardie geval nie. Dreigemente 25 ja, die mense gaan terug en hulle begin goed skreeu en, en,</p>

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1 en, maar waar ons dan die waarskuwing gee om uiteen te dryf
 2 en waar ons dan nadergaan - dit is die tweede deel - met
 3 die "dispersion action," dit is waar ons altyd 'n
 4 konfrontasie in al die gevalle optel waar die persone dan
 5 "disperse" en gearresteer word. So dit is nie dieselfde
 6 enkel geval waarna u verwys nie; dis twee aparte –
 7 MR MPOFU: Alright, okay. We'll leave
 8 that for argument.
 9 CHAIRPERSON: Before you leave it for
 10 argument, prima facie it seems to me that we can accept
 11 that you didn't foresee it because if you had foreseen it
 12 you would have acted differently. But the question of
 13 course is whether you should have foreseen it and whether a
 14 reasonable person would have foreseen it. Now Brigadier
 15 Mkhwanazi who gave evidence testified that in his
 16 experience it does sometimes happen that the – I haven't
 17 got the reference but it can be found reasonably easily, I
 18 hope – that there had been instances where barbed wire had
 19 been uncoiled and the hostile crowd concerned has then
 20 advanced forward to get through before the wire is
 21 completely in place.
 22 Sorry, I'm corrected by Adv Hemraj, who's got a
 23 clear recollection of it. What he said was it wasn't put
 24 quite the way I put it, but he said have you, in your
 25 experience have protesters ever approached barbed wire

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1 which is being put in position, and he said yes that has
 2 been his experience. But if anything turns on it we can
 3 find the reference. But anyway, that's not your
 4 experience.
 5 BRIGADIER CALITZ: Dit is glad nie my
 6 "experience" nie. Ek weet Brigadier Mkhwanazi was vir jare
 7 in opleiding voor hy jaar, twee jaar terug Openbare Orde
 8 Polisiëring se hoof geword het. So hy was by opleiding
 9 betrokke, so miskien in daardie sessies het die voorbeeld
 10 dan voorgekom. Ek sal dit nie ontken as hy vir ons daardie
 11 voorbeeld genoem het nie, maar in my ondervinding en die
 12 persone wat in die JOCCOM was en wat deel was van hierdie
 13 besprekings, met al daardie ondervinding om daardie tafel
 14 was dit nie voorsien nie, mnr die Voorsitter.
 15 MR SEMENYA SC: Chair, is the case Mr
 16 Mpfu is making that the police ought to have reasonably
 17 foreseen that the strikers would attack the police line?
 18 Because as far as I've always understood his case they were
 19 going home.
 20 CHAIRPERSON: Let's see what answer he
 21 gives to that question.
 22 MR MPOFU: Chairperson, the test for
 23 reasonableness is, as far as I know, tested by putting the
 24 person that you are testing in the position of the so-
 25 called reasonable man. What I'm doing now is simply to say

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1 that the reasonable man that we are talking about now is
 2 Brigadier Calitz, but I'm saying Brigadier Calitz – and as
 3 we all know, that test has both a subjective and objective
 4 element. Let's start with the subjective. He subjectively
 5 believes that these people are hostile. 3 to 4 000 of them
 6 are going to, are willing to attack. They act as one group
 7 with this murderous intent. He is in possession of
 8 intelligence from the morning that they will never
 9 surrender their arms. He himself in terms of paragraph 19
 10 of his statement believes that at no stage will they ever
 11 surrender, and so on, and so on. So that's the subjective
 12 part.
 13 Now what we then have to do is to say that's what
 14 he subjectively believed. Would a reasonable man – and
 15 that's where the objective part comes in – would a
 16 reasonable man in that position, believing all the things
 17 that he believes, or should have acted the way he did.
 18 That's the simple reasonable man test. The fact that I may
 19 contest some of those five or six things that he
 20 subjectively believed is completely irrelevant for the
 21 purposes of this line of questioning. Thank you, Chair.
 22 CHAIRPERSON: Thank you, Mr Mpfu. That,
 23 for want of a better word, is Mr Mpfu's short answer to
 24 the question that you put. Mr Mpfu, would you like to
 25 carry on?

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1 MR MPOFU: Thank you, Chairperson. Now I
 2 forgot my next question. Let's say that the, while we're
 3 on this thing of, while we are still on this
 4 reasonableness, there's also – you would agree, wouldn't
 5 you, that the citizens of South Africa, as your paymaster,
 6 as it were, are also entitled to certain reasonable minimum
 7 standards of how a person in your position should behave,
 8 or SAPS as an institution should behave? Would that be a
 9 fair thing to say?
 10 BRIGADIER CALITZ: Ek is nie seker ek
 11 verstaan die vraag direk nie.
 12 MR MPOFU: Okay, I'll ask it differently.
 13 Is there in your view a minimum reasonable level of
 14 expectation of behaviour which the citizens are entitled to
 15 on the part of yourself and SAPS generally?
 16 BRIGADIER CALITZ: Mnr die Voorsitter, as
 17 ek dit miskien so kan antwoord; die polisie is daar om lewe
 18 en eiendom te beskerm, maak nie saak, ongeag, dit is
 19 onpartydig.
 20 MR MPOFU: Ja. No, no, that I accept
 21 that they must maintain law and order, and so on. All I'm
 22 saying is that in the course of doing exactly that, in the
 23 course of maintaining law and order, protecting the public
 24 peace and so on, obviously they can't just do anything and
 25 just, you know, "sommer" do anything. Is there a minimum

<p style="text-align: right;">Page 20253</p> <p>1 level of expectation that the citizens are entitled to in 2 their performance of that very important duty? 3 BRIGADIER CALITZ: Mnr die Voorsitter, ek 4 weet nie, miskien verstaan ek net nie die vraag nie. Ek 5 sal weereens vir u sê – 6 MR MPOFU: Okay, no fine – 7 BRIGADIER CALITZ: - die polisie is daar 8 om wet en orde te handhaaf en die publiek het sekerlik die 9 reg om dan veilig te voel in die uitvoering van ons pligte, 10 as ek die vraag reg verstaan. Ons doen dit onpartydig – 11 CHAIRPERSON: No, no, no, I understand 12 all that. I think Mr Mpofo understands that, but he 13 actually seems to be after something else. Obviously the 14 police are there to maintain law and order, protect life 15 and property, and so forth, but he's concerned about the 16 manner in which they do that, and my understanding of his 17 question is do you say that the police can approach that on 18 a sort of no-holds-barred basis, do anything in order to 19 maintain law and order, whatever that thing, or that may 20 be, or are there certain minimum rules which apply, which 21 the public are entitled to assume will be adhered to by the 22 police in the carrying out of their duties? I think that's 23 your question, Mr Mpofo. 24 MR MPOFU: That's it, Chairperson, ja. 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>	<p style="text-align: right;">Page 20255</p> <p>1 niks snaaks aan dooie persone om daar te staan en lag. 2 MR MPOFU: Yes, so it's unacceptable to 3 you that people should behave that way and laugh around 4 dead bodies, correct? 5 BRIGADIER CALITZ: Van my as 'n leke 6 persoon sou ek sê ja maar soos ek weereens vir u sê ek weet 7 daar is verdere studies gedoen in hierdie verband wat wel 8 bewys dat in sekere traumatiese gevalle dit wel voorkom. 9 Maar, ja. 10 MR MPOFU: And would it also, in your 11 view fall below that minimum standard to drag bodies of 12 dead or injured people on the ground as we have seen in 13 some of the videos? 14 BRIGADIER CALITZ: We talk about Marikana 15 or the dragging of the bodies behind other videos or we 16 talk about only Marikana? 17 MR MPOFU: We're talking Marikana only. 18 BRIGADIER CALITZ: Okay. 19 MR MPOFU: Scene 1 in particular. 20 BRIGADIER CALITZ: Scene 1 it depends on, 21 again on what happened in front of you and what the persons 22 there saw. If it's dragging a body by meters I will say no 23 that's inhumane, if it is to remove a person that was most 24 probably moving away from a object it depends on the 25 matter. But it must be, ek antwoord in Engels, dit moet</p>
<p style="text-align: right;">Page 20254</p> <p>1 kan maar net sê dat ons het voorskrifte, ons eie Staande 2 Order 262, die wetgewing wat duidelik sê dat die gebruik 3 van geweld moet met omsigtigheid, highest degree of 4 tolerance. So as dit is wat u sê, ja dit is wat die 5 publiek dan kan verwag. 6 [09:50] MR MPOFU: Okay, no, that's a fair 7 answer. I think it's obvious that it's, that the 8 prescripts as we call them in the commission to our 9 shorthand represent those standards. But I was talking 10 about something broader, but it's fine, I think it's better 11 if I do it question by question. Would you agree that it 12 would fall below that standard for members of SAPS to be 13 laughing around dead bodies? 14 BRIGADIER CALITZ: Ek kan dit in twee 15 antwoord maar ja nee dat daar is nie 'n grap as mens 16 rondom, ek wil weereens vir u sê die omstandighede speel 'n 17 belangrike rol. In hierdie geval kan mens wel sê dat ek 18 weet van daar is 'n navraag studies gedoen in hierdie geval 19 wat hulle, ek is nie seker wat is die Engelse woord nie, 20 black humour, is hoe die verskillende persone dan hulle 21 trauma verwerk en die studies het gewys partykeer is dit 22 miskien laat die ouens in 'n traumatiese situasie van ? 23 komiese ding gebruik maak of iets sê om die, so daar is 24 studies wat ek van weet en wat ek van gehoor het in die 25 geval maar ek sal saam met u stem dat dit is nie, daar is</p>	<p style="text-align: right;">Page 20256</p> <p>1 nog steeds diskreet wees met die nodige omsigtigheid. 2 MR MPOFU: But ja on the face of it the 3 dragging of a body even by a few metres would be something 4 unacceptable would it? 5 BRIGADIER CALITZ: Dit hang weereens van 6 die omstandighede af, mnr die Voorsitter. Ek sou sê - 7 CHAIRPERSON: You see the point as a 8 general rule it is undesirable but there may be a special 9 reason justifying it in a particular exception. 10 BRIGADIER CALITZ: Dis wat ek nou wou 11 gesê het, ja. 12 CHAIRPERSON: Is that your answer? 13 BRIGADIER CALITZ: Dis wat ek wou gesê 14 het. 15 CHAIRPERSON: Ja. 16 BRIGADIER CALITZ: In die algemene breë 17 sense ja stem ek saam. 18 MR MPOFU: And isn't, the dragging of 19 bodies in that sense, in the sense that we saw in the 20 videos doesn't it also become unacceptable apart from the 21 human factor, from the point of view of not tampering with 22 a scene? 23 BRIGADIER CALITZ: Vra jy vir my of dat 24 as indien u 'n body beweeg of dit 'n tampering is van 'n 25 toneel?</p>

<p style="text-align: right;">Page 20257</p> <p>1 MR MPOFU: No, no –</p> <p>2 BRIGADIER CALITZ: Is dit die vraag, ek</p> <p>3 wil net seker maak.</p> <p>4 MR MPOFU: No, sorry, no it was a vague</p> <p>5 question, ja. What I'm saying is I'm, I've now criticised</p> <p>6 or you and I have discussed the issue of dragging of bodies</p> <p>7 from the point of view of, what I said is the minimum</p> <p>8 standard that the citizenry is expected or may expect from</p> <p>9 the police. I'm saying now let's look at it just now from</p> <p>10 a technical point of view, forget the citizenry. Isn't it</p> <p>11 also unacceptable from the point of view of tampering with</p> <p>12 the scene in the sense that if this body was lying here</p> <p>13 facing north that might have something to do with the</p> <p>14 investigation of the murder of that person as opposed to</p> <p>15 the fact that it is now facing east because someone has</p> <p>16 dragged it along.</p> <p>17 BRIGADIER CALITZ: Mnr die Voorsitter, in</p> <p>18 die algemeen miskien weereens soos die vorige vraag. In</p> <p>19 die algemeen kan dit daarop neerkom. Dit hang van die</p> <p>20 omstandighede af waarom daardie persoon geskuif is as daar</p> <p>21 'n wapen onder die persoon was of iets en hy is beweeg en</p> <p>22 daardie wapen is weggehaal sal die liggaam in 'n ander</p> <p>23 rigting lê. Maar ek sien dit nie as, soos verwys as</p> <p>24 tampering nie, dit is die hantering van 'n misdaad toneel.</p> <p>25 CHAIRPERSON: The point applies, we've</p>	<p style="text-align: right;">Page 20259</p> <p>1 Marikana en die situasie wat hom afgespeel het en die</p> <p>2 omstandighede glo ek dit moet ook in ag geneem word wat</p> <p>3 daar plaasgevind het.</p> <p>4 MR MPOFU: Are you aware of allegations</p> <p>5 that the strikers or the protestors were assaulted by</p> <p>6 members of the police, that's the first question.</p> <p>7 CHAIRPERSON: That's bit vague, surely</p> <p>8 you'd have to indicate where and when.</p> <p>9 MR MPOFU: Yes. Okay.</p> <p>10 CHAIRPERSON: Some of the, I know there</p> <p>11 are allegations that certain of the arrested persons might</p> <p>12 well have been assaulted while in custody.</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: I'm not sure that we need</p> <p>15 go there because I'm not sure how relevant it is to the</p> <p>16 questions we have to answer. But the question you phrase,</p> <p>17 as you phrased it is wide enough to cover that.</p> <p>18 MR MPOFU: Yes.</p> <p>19 CHAIRPERSON: So perhaps you should</p> <p>20 restrict the ambit of the question so that we can get a</p> <p>21 meaningful answer.</p> <p>22 MR MPOFU: Yes, thank you, Chairperson.</p> <p>23 Fair enough, yes, I'm not talking about assaults in custody</p> <p>24 and so on. Are you aware of allegations of assaults being</p> <p>25 meted out against the strikers during the operation, in</p>
<p style="text-align: right;">Page 20258</p> <p>1 discussed before in general it's undesirable to move bodies</p> <p>2 around because there's, the first aspect, the human aspect</p> <p>3 that Mr Mpofo has referred to which we've discussed already</p> <p>4 and then there's the question of it changes the scene</p> <p>5 which, insofar as inferences that later can be drawn from</p> <p>6 the way bodies were lying and positions of one body in</p> <p>7 relation to another. Those inference can no longer be</p> <p>8 drawn because the scene has been changed. But again there</p> <p>9 may be exceptional circumstances like the fear that there's</p> <p>10 a weapon under a body and that's the reason for acting.</p> <p>11 But that would be the exception of the rule. Is that what</p> <p>12 you're saying, is that right?</p> <p>13 BRIGADIER CALITZ: Dit is presies wat ek</p> <p>14 gesê het, mnr die Voorsitter, baie dankie.</p> <p>15 MR MPOFU: Yes, and once again the</p> <p>16 follow-up question is, I think you've answered it, in other</p> <p>17 words until we are told or some evidence is brought here as</p> <p>18 to why the bodies were dragged and why the people were</p> <p>19 laughing and so on and so on, on the face of it, it's</p> <p>20 something unacceptable, correct?</p> <p>21 BRIGADIER CALITZ: In die algemene reël</p> <p>22 wat ons nou net bespreek het, in die algemeen weereens wat</p> <p>23 mnr die Voorsitter gesê het sal ek saam met u stem.</p> <p>24 MR MPOFU: Ja.</p> <p>25 BRIGADIER CALITZ: In die geval van</p>	<p style="text-align: right;">Page 20260</p> <p>1 other words between the time of scene 1 and let's say the</p> <p>2 departures of the Canters with the arrested people?</p> <p>3 BRIGADIER CALITZ: Nee, mnr die</p> <p>4 Voorsitter.</p> <p>5 MR MPOFU: And once again if such</p> <p>6 assaults took place that would be below the reasonable</p> <p>7 standards to –</p> <p>8 CHAIRPERSON: Mr Mpofo, the answer to</p> <p>9 that one must clearly be yes.</p> <p>10 MR MPOFU: Well –</p> <p>11 CHAIRPERSON: If there were assaults and</p> <p>12 they weren't done in self defence or whatever, in –</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: Which case they'd be</p> <p>15 justified, if they were assaults clearly they would be</p> <p>16 unacceptable because that would amount to criminal offences</p> <p>17 committed by the assaulters and that clearly would be</p> <p>18 unacceptable. So I don't know you need get the views of</p> <p>19 the Brigadier on that. The answer is self evident, isn't</p> <p>20 it?</p> <p>21 MR MPOFU: Well, Chairperson, I thought</p> <p>22 the answer to the dragging was self evident but I</p> <p>23 understand that there are exceptions. So there may be</p> <p>24 exceptions why people might –</p> <p>25 CHAIRPERSON: Once you use the word</p>

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1 assault, assault means it is an offence because it's an
 2 assault. If there was justification of some time, it was
 3 done in self defence or whatever then it wouldn't be an
 4 assault would it. So the way the question is phrased the
 5 answer is obvious and so I suggest you move on to your next
 6 point.

7 MR MPOFU: Okay.

8 CHAIRPERSON: On the assumption that the
 9 answer to your question has to be yes.

10 MR MPOFU: Okay well then I won't use the
 11 technical term of assault. Were you aware that there were
 12 beatings of protesters and if so would that be unacceptable
 13 or does it depend on the circumstances?

14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 nee ek is glad nie bewus daarvan nie en indien dit wel
 16 voorgekom het soos u gesê het assault dit bly 'n kriminele
 17 klag. So dit is 'n definisie op sy eie en dit is nie, dit
 18 is onwettig.

19 CHAIRPERSON: But Mr Mpofu is now
 20 changing his ground a bit, he says are you aware of
 21 allegations that some of the strikers were hit –

22 MR MPOFU: Beaten up.

23 CHAIRPERSON: Beaten up, if you weren't
 24 aware of such allegations well then the answer must be, if
 25 you never heard such allegations so we can move on. You

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1 say if you've heard of such allegations that further
 2 questions will follow. Have you heard of such allegations?

3 BRIGADIER CALITZ: Nee, mnr die
 4 Voorsitter, en daar was 'n tweede vraag indien nie sou ek
 5 sê dit was justified, dit was die tweede deel van sy vraag.
 6 So ek sê net ek dra nie kennis nie, en sou dit wel so wees
 7 sal dit nie wettig wees nie.

8 COMMISSIONER HEMRAJ: Mr Mpofu, these
 9 beatings alleged to have taken place during the arrest
 10 process?

11 MR MPOFU: Yes, Commissioner, I've just
 12 unfortunately lost my JJJ number.

13 CHAIRPERSON: Mr Mpofu, I take it you're
 14 going to be busy until after tea?

15 MR MPOFU: Yes, I can do it after tea.

16 CHAIRPERSON: You can do it after tea.

17 MR MPOFU: Yes, I just didn't want to hop
 18 back to –

19 CHAIRPERSON: Yes, I understand but it's
 20 better sometimes to do that.

21 MR MPOFU: Which I passed onto Mr Semenya
 22 last week, if maybe he can help me with this JJJ number.
 23 Chairperson, if you'll just bear with me, I think it's just
 24 better that I finish this off.

25 CHAIRPERSON: I'm bearing with you, Mr

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1 Mpofu.

2 MR MPOFU: Alright, I'll move on. I'll
 3 move on.

4 CHAIRPERSON: I'm bearing with you. It's
 5 alright.

6 MR MPOFU: Oh you are bearing with me.
 7 Thank you, Chairperson. Alright, we'll come back to it,
 8 unfortunately it's my fault, I just didn't - now I want to
 9 understand something about this idea of the neutral area.
 10 You know what that means hey?

11 BRIGADIER CALITZ: Dit is korrek.

12 MR MPOFU: Ja. Okay I've asked this
 13 question from one or two other people but they said they
 14 were not there and so on, so you maybe you'll be able to
 15 help me. Can you go to exhibit L191. Brigadier, sorry I
 16 asked you a question, you are familiar with the notion of
 17 the neutral area?

18 BRIGADIER CALITZ: Dit is wat ek sê ja,
 19 mnr die Voorsitter, die term het opgekom.

20 MR MPOFU: Ja.

21 BRIGADIER CALITZ: Alhoewel ek nie in die
 22 voorligting gebruik was nie maar ek sal sover moontlik -

23 MR MPOFU: Ja.

24 BRIGADIER CALITZ: U kan -

25 MR MPOFU: I'm sorry I didn't realise you

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1 had answered. Now this is what I've put to other people
 2 and I've other gotten different answers or vague answers,
 3 maybe you can assist. Am I correct that as depicted there
 4 the neutral area is represented by the horseshoe
 5 arrangement that is formed by those Nyalas from the kraal
 6 50 metres and from the crowd about 80 metres? And by
 7 horseshoe arrangement I'll use the point now just to
 8 indicate, I mean this formation, it might not be a perfect
 9 horseshoe but you know about this, I mean that formation,
 10 in other words is that the neutral area inside that
 11 horseshoe?

12 BRIGADIER CALITZ: Nee, ek sal meer
 13 daarna verwys as die safe zone, dit is wat ons verwys het -

14 MR MPOFU: Ja.

15 BRIGADIER CALITZ: As die veiligheidsarea
 16 waar die media en die polisie dan is.

17 MR MPOFU: Yes, okay I always thought
 18 that the safe area and the neutral area are, were the same
 19 thing but I might be wrong, I don't know these things. Can
 20 you tell me what the difference is?

21 BRIGADIER CALITZ: Die term neutral area
 22 is nie regtig gebruik met die voorligting nie.

23 CHAIRPERSON: Sorry to interrupt you,
 24 Brigadier, it's not entirely correct. The phrase the
 25 neutral area is used in slide 195 which is part of the

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1 presentation, exhibit L.
 2 MR MPOFU: Yes, and it's used in
 3 conjunction with your name.
 4 CHAIRPERSON: It is used in fact in slide
 5 137 and 138 where, under the, this is the reconstructed
 6 document prepared after the event but this is, under the
 7 heading operational deployment briefing, this is the JOCCOM
 8 meeting that you attended 6 o'clock in the morning. If you
 9 look at 136 the command, negotiation team their action area
 10 was a neutral area and the central point is given and then
 11 the same action area described as the neutral area is in
 12 137, that's the, for the monitoring group. Then there's
 13 even a group called the neutral area response team which is
 14 in 138. 139 the defensive measure team, their defensive
 15 area is also the neutral area. So the neutral is referred
 16 to a number of times and if you look at slide 141 we're
 17 dealing with immediate reaction area 2 this is the group of
 18 74 members of national intervention unit under the command
 19 of Lieutenant Colonel Modiba, their action area was merely
 20 to deal with the footpath to the north of the gathering
 21 adjacent to the informal settlement but their task was to
 22 provide rapid response capability in the case of surprise
 23 attack on police and media at neutral area and there's
 24 other references as well, I've got enough, I've given you
 25 enough already. So quite clearly this phrase neutral area

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1 is used over and over and over again in the presentation.
 2 So Mr Mpofo is entitled to ask you what exactly was meant,
 3 I know what the central point is because that's dealt with
 4 in the slides but I think you're entitled, he's entitled to
 5 more particularity than that.
 6 BRIGADIER CALITZ: Mnr die Voorsitter, as
 7 'n mens miskien kan terug gaan na die foto. As u kan sien
 8 waar mnr Mpofo na verwys het, ek weet nie of u kan die rooi
 9 agter u sien. Die TRT voertuie en dan daardie, hy praat
 10 van 'n horseshoe shape, met ander woorde kom ons sê waar
 11 daar staan 100 meter, die swart lyn met die 100 meter dit
 12 is die gedeelte waarna hy verwys het binnekant daardie
 13 sirkel. Hy het gevra of dit soos ek dit verstaan het die
 14 neutral area is en ek vir hom gesê nee daardie is meer wat
 15 ek sal na verwys die safe zone en waar ons dan nie persone
 16 binne in wou gehad het nie te beskerming van die media en
 17 die publiek en wat ook daar was. Toe vra hy my wat
 18 verstaan ek onder die neutral area, toe sê ek alhoewel dit
 19 nie in die voorligting, ek sry nie, mnr die Voorsitter,
 20 dit is wel in die presentation gemeld, die neutrale gebied
 21 is die gebied wat die polisie afgeblok het.
 22 [10:10] Dit is nie 'n gebied wat die protestors, soos die
 23 koppie self is nie 'n neutrale gebied nie, daardie gebied
 24 tussen ons voertuie is nie 'n neutrale gebied nie. Die
 25 neutrale gebied is die gebied tussen die lyn, met ander

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1 woorde van voor die barbed wire lyn kan ek sê na die
 2 protestors toe, daardie oop spasio asook dan hierdie hele
 3 gebied aan, die kaart wys noord, met ander woorde Noord,
 4 Noordwes, waar die publiek dan kon vrylik beweeg, 'n
 5 neutrale gebied en dit is hoe ek dit verstaan, dit is
 6 daardie area waar die publiek dan toegang het om te beweeg.
 7 U sal sien dat die taakgroep wat ingeroep is, die 11:30,
 8 was gewees om bystand te verleen na die neutrale area.
 9 U sal onthou ek getuig het dat by die klein kraal
 10 was daar 'n groep wat gevorm het aan daardie kant en dit is
 11 hoekom ek die reserwe magte ingeroep het, want daardie deel
 12 waar die voetpad is, daardie gedeelte, dit is waar hulle
 13 byeen gekom het die vorige dag. So dit is die neutrale
 14 gebied, met ander woorde iets wat nie toegemaak of, dis nie
 15 u gebied nie, dit is nie my gebied nie, dit is die neutrale
 16 gebied tussen ons, dit is waarna dit hier verwys het, as ek
 17 dit so kan verduidelik.
 18 MR MPOFU: Ja, okay, let's just get two
 19 things straight, the first one is, for the first time I
 20 understand from you that there is a difference between the
 21 neutral area and the safe area, am I correct?
 22 BRIGADIER CALITZ: Dit is korrek soos ek
 23 getuig het.
 24 MR MPOFU: Okay, and so the horseshoe
 25 arrangement that I've defined, you say that is the safe

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1 area?
 2 BRIGADIER CALITZ: Ja, die persone kon
 3 nie in daardie gedeelte vrylik net inbeweeg nie, nee.
 4 MR MPOFU: Yes, the public is not or
 5 rather people, the public that is not welcome, unlike the
 6 media because they are the public, but they were supposed
 7 to be there –
 8 BRIGADIER CALITZ: I would not say not
 9 welcome, maybe more restricted area.
 10 MR MPOFU: No, no, -
 11 BRIGADIER CALITZ: Controlled area.
 12 MR MPOFU: Yes.
 13 BRIGADIER CALITZ: As ek die regte woorde
 14 kan probeer gebruik.
 15 MR MPOFU: No, I'm putting exactly it in
 16 that sense that members of the public accepted by
 17 permission of the police would not be allowed in the safe
 18 area.
 19 BRIGADIER CALITZ: In die safe area, nee,
 20 korrek.
 21 MR MPOFU: Yes, okay. Now, so now we
 22 know what the safe area is. The neutral area as I
 23 understand it, members of the public are allowed in the
 24 neutral area, correct?
 25 BRIGADIER CALITZ: Die protestors, as u

<p style="text-align: right;">Page 20269</p> <p>1 sê members of the public –</p> <p>2 MR MPOFU: Ja, the protestors.</p> <p>3 BRIGADIER CALITZ: The public, sou iemand</p> <p>4 soontoe wou kom sou dit ook die tipe van beheerde toegang</p> <p>5 wees, ons sou, jy weet as 'n persoon net van die media</p> <p>6 byvoorbeeld soontoe wou ry met 'n voertuig dan sou ons vir</p> <p>7 daardie persoon advies gegee het en gesê het en wat die</p> <p>8 omstandighede is en, en, en, maar hulle het vrylik toegang</p> <p>9 gehad om te beweeg en daar miskien waar die woorde "80</p> <p>10 meter" staan, asook altwee 80 meters, die geel en die wit,</p> <p>11 in daardie gedeelte was vrylike beweging gewees.</p> <p>12 MR MPOFU: Okay, once again I just want</p> <p>13 to be sure that we understand each understand. The</p> <p>14 protestors would be allowed in the neutral area, yes?</p> <p>15 BRIGADIER CALITZ: Op die stadium, ja, en</p> <p>16 soos hulle beweeg het elke dag.</p> <p>17 MR MPOFU: Good, now the neutral area is</p> <p>18 not a moving target as it were, as the chairperson just</p> <p>19 showed you, we are even given its midpoint dimensions and</p> <p>20 what have you, so the neutral area is the neutral area. It</p> <p>21 does not move from place to place, correct?</p> <p>22 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>23 dit hang weer van omstandighede af, 'n neutral gebied, sou</p> <p>24 daar aksie geloods words –</p> <p>25 CHAIRPERSON: No, I'm sorry to interrupt</p>	<p style="text-align: right;">Page 20271</p> <p>1 area as you defined it, they would know that they are free</p> <p>2 and welcome to move up and down without any trouble?</p> <p>3 BRIGADIER CALITZ: Ek dink soos u op</p> <p>4 hierdie foto sien, daardie beweging in the areas wat ek</p> <p>5 gesê het is daar wel persone wat op en af daar beweeg, so</p> <p>6 gegewe die foto wat ons hier sien en die beweging is dit</p> <p>7 ook korrek.</p> <p>8 MR MPOFU: Yes, and that's exactly the</p> <p>9 point. So the people who are moving that you are referring</p> <p>10 to in 191, they are moving on that road to Nkaneng which</p> <p>11 goes in front of the kraal, that they were free to do?</p> <p>12 BRIGADIER CALITZ: Sê net weer, ek het</p> <p>13 die laaste woord, that they would?</p> <p>14 MR MPOFU: Okay, no, I am saying the</p> <p>15 people that you have referred to are moving on that road to</p> <p>16 Nkaneng, so according to you that was not part of the</p> <p>17 prohibited area?</p> <p>18 BRIGADIER CALITZ: Ek het gesê op hierdie</p> <p>19 foto, u kan sien daar is persone wat op die voetpad beweeg</p> <p>20 asook in 'n meer noord-westelike rigting, Nkaneng, daar was</p> <p>21 nie net die een pad gebruik nie, die hele veld, u kan sien</p> <p>22 hoe die mense beweeg in hierdie foto.</p> <p>23 MR MPOFU: So if that road is, as you</p> <p>24 defined it, then we can be sure that it was, insofar as</p> <p>25 people died before they reached that road they were not in</p>
<p style="text-align: right;">Page 20270</p> <p>1 you, he is not talking about general, I think he is talking</p> <p>2 about at Marikana, what was called neutral area was always</p> <p>3 a fixed concept with fixed boundaries and it wasn't</p> <p>4 something that was variable or fixable, it was a clearly</p> <p>5 demarcated area that remained the same. I think that's the</p> <p>6 question you're asking?</p> <p>7 MR MPOFU: That's correct, Chairperson.</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, na</p> <p>9 die implementering van fase 3, sekere van daardie punte is</p> <p>10 dan nie meer 'n neutrale, onthou ek het gesê dit hang van</p> <p>11 die omstandighede af, dit hang af van wat is jou</p> <p>12 operasionele fases waarnatoe jy beweeg, so dit kan gebeur</p> <p>13 dat daardie neutrale area dan deel word van 'n operasionele</p> <p>14 area in die sin van die woord.</p> <p>15 MR MPOFU: Okay, maybe let me approach it</p> <p>16 differently, from the point of view of the protestors given</p> <p>17 that horseshoe formation, it would have been obvious they</p> <p>18 can't just be wondering around there, that's the place that</p> <p>19 specifically defined by Nyalas and if you just go there</p> <p>20 basically you're asking for trouble, correct?</p> <p>21 BRIGADIER CALITZ: Ja, ek sal nie "asking</p> <p>22 for trouble" nie, maar dit was 'n beheerde, as hulle</p> <p>23 soontoe sou gegaan het sou daar wel met hulle gekommunikeer</p> <p>24 gewees het en sekere beperkinge gestel geword het.</p> <p>25 MR MPOFU: And by contrast in the neutral</p>	<p style="text-align: right;">Page 20272</p> <p>1 the prohibited area?</p> <p>2 MR SEMENYA SC: The question is unclear</p> <p>3 to me, Chair.</p> <p>4 MR MPOFU: Okay.</p> <p>5 MR SEMENYA SC: Where that road is.</p> <p>6 MR MPOFU: Okay, I'll break it down.</p> <p>7 We've agreed that those people who are walking on that road</p> <p>8 are not walking on the prohibited area, correct?</p> <p>9 BRIGADIER CALITZ: Ek het vir u gesê dat,</p> <p>10 die "prohibited" het u nou verwys na 'n neutrale gebied</p> <p>11 toe, is dit waarna u verwys of verwys u na die safe area?</p> <p>12 Die persone wat daar loop op hierdie stadium het ons gesê</p> <p>13 loop op die neutrale gebied, met ander woorde dit is die</p> <p>14 gebied wat die persone vrylik in, as u sê Nkaneng, beweeg</p> <p>15 het, to and from. Die persone wat tans daar beweeg en ook</p> <p>16 hier aan die noord-westekant, dit is die neutrale gebied.</p> <p>17 MR MPOFU: Yes.</p> <p>18 BRIGADIER CALITZ: As ek u reg verstaan</p> <p>19 het.</p> <p>20 MR MPOFU: No, you do, yes, and it is not</p> <p>21 the safe area?</p> <p>22 BRIGADIER CALITZ: Nee, die safe area is</p> <p>23 agter, soos u verwys het daar na die horseshoe en ek het</p> <p>24 gesê daar waar die swart 100 meter is, in daardie gebied is</p> <p>25 die safe area en dit is agter die, hoe kan ek sê, die</p>

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1 negotiation line, agter the Papa Nyalas en aan die voorkant
 2 van die TRT voertuie. Daardie is 'n oop beperkte gebied.
 3 MR MPOFU: Yes, -
 4 BRIGADIER CALITZ: So dit -
 5 MR MPOFU: And the safe area is also a
 6 fixed place, it is there on the horse shoe and the 100
 7 metres and all that, as depicted, correct?
 8 BRIGADIER CALITZ: Die safe area is
 9 aangedui, ja. Ek het aangedui dat die ander een waarmee u
 10 besig is, die neutrale zone hang af van omstandighede af en
 11 van die fases waarin daar beweeg word.
 12 MR MPOFU: Okay, that's fine but the safe
 13 area does not, hang af die omstandighede, it is fixed where
 14 it is there, correct?
 15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 dit sal, daardie voertuie sal dan ook beweeg, dit hang van
 17 die fases af. Indien daar oorgegaan is na 'n fase 3 toe
 18 sal daardie voertuie nie in daardie statiese posisie bly
 19 nie, maar hulle sal beweeg, so dan sal die gebied agter
 20 hulle dan outomaties groter raak in die rigting waarin
 21 hulle gaan.
 22 MR MPOFU: Alright, I think let me go
 23 straight to the point that I want to argue on this and then
 24 you can react. The point is this, Brigadier, that the
 25 people who were killed at scene 1 were killed while they

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1 were still in the free area or non prohibited area where
 2 they had been freely moving up and down for the whole day,
 3 including as depicted in slide 191. Do you understand the
 4 point?
 5 BRIGADIER CALITZ: Ek verstaan wat u sê,
 6 ek stem nie saam met u nie -
 7 MR MPOFU: Ja, and what's your -
 8 BRIGADIER CALITZ: Ek stem nie saam met u
 9 nie, Meneer.
 10 MR MPOFU: Okay, you're saying the people
 11 were not killed in the area where you see people walking on
 12 slide 191?
 13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 nee, ek weet nie hoe om dit beter uit te druk nie, die term
 15 wat tot my kom, ons speel met woorde, met alle respek. Wat
 16 ek gesê het is dat die neutrale gebied sal verander
 17 afhangende van die fase waarnatoe ons gaan. So in die
 18 Marikana geval is die fase 3 waarnatoe ons beweeg het, dan
 19 het daardie deel wat die Nyalas toegemaak het voor dit
 20 afgesny, met ander woorde dit is nie meer 'n neutrale
 21 gebied nie. Die neutrale gebied sal dan wees die vrylike
 22 oop gebied wat die protestors nog het om na heen te gaan en
 23 dan sou die Nyalas vorentoe kom, die safe area. Sou hulle
 24 dan beweeg sou die safe area saam met hulle beweeg, so die
 25 gebied sal al kleiner en kleiner, as ek dit vir u so kan

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1 verduidelik.
 2 MR MPOFU: No, Brigadier, that can't be
 3 acceptable, that is exactly why I was asking you those
 4 earlier questions, it was to prevent you from doing what
 5 you are doing now if shifting according to the question.
 6 BRIGADIER CALITZ: Mnr die Voorsitter, -
 7 MR MPOFU: That's why I asked you those -
 8 BRIGADIER CALITZ: Ek wil net sê, mnr die
 9 Voorsitter, ek het nie ge-shift van question tot question
 10 nie. Toe u my in die begin gevra het en die rekord sal
 11 wys, dat die neutrale area, bly dit altyd, is dit 'n fixed
 12 position en my antwoord was nog voor ek geweet het waarna,
 13 wat hierdie vraag was, het ek gesê dat dit bly nie fixed
 14 nie, dit hang van die fases af, waarnatoe die operasionele
 15 operasie beweeg. So dit is nie dat ek geskuif het net
 16 omdat u die vraag gevra het nie en die antwoord was al
 17 gegee vroeër.
 18 MR MPOFU: In any event the point is
 19 simply this, where the people were killed was an area even
 20 before the road, in other words it was an area where they
 21 were free to move for the whole day, up and down, as we can
 22 see in slide 191, correct?
 23 BRIGADIER CALITZ: Vir die hele dag tot
 24 en met die tyd -
 25 MR MPOFU: Well, until they were killed

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1 obviously.
 2 BRIGADIER CALITZ: Nee, mnr die
 3 Voorsitter, nie tot hulle, nog voor dit, tot die opdrag
 4 gegee is dat die draad toegemaak word, so daar, wat daardie
 5 fase begin het was daardie gebied afgesny gewees vir die
 6 protestors.
 7 MR MPOFU: Ja, very good, so until the
 8 point that Nyala 4 closed off that road, the people had
 9 been moving up and down on it, correct?
 10 BRIGADIER CALITZ: Ek sal sê voor Nyala 1
 11 beweeg het, het die persone op en af daar beweeg, nie net
 12 Nyala 4 nie.
 13 MR MPOFU: Yes, and that happened until
 14 Nyala 4 closed the road, correct?
 15 BRIGADIER CALITZ: Nyala 4 het dan wel
 16 daardie gaping toegemaak, dit is korrek.
 17 MR MPOFU: Ja, thank you. The next
 18 point, still using 191, is that you see that there are
 19 people, that's Nyala 6, am I correct, nearest to the kraal?
 20 BRIGADIER CALITZ: Die voertuig naaste
 21 aan die klein kraal, dit is Nyala6, dit is korrek.
 22 MR MPOFU: Ja, and at that point we see
 23 the people who are running down, on either side of Nyala 6,
 24 correct?
 25 BRIGADIER CALITZ: Ja, ek kan die persone

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1 nie sien hardloop nie, maar ek sien daar is persone wat aan
2 beide kante van Nyala 6 beweeg.

3 MR MPOFU: Ja, well, it is the police
4 version that they were running, so if they were running
5 they are running on either side of 6, correct?

6 BRIGADIER CALITZ: As hulle wel
7 gehardloop het en u sê dit is so, daar is bewyse, ek sal
8 nie daarteen stry nie, ek sien persone aan albei kante. Ek
9 kan nie sien in watter rigting hulle gaan, vorentoe of
10 agtertoe nie, maar ja, ek sien persone aan albei kante, dit
11 is korrek.

12 MR MPOFU: And none of them were
13 prohibited from doing so?

14 BRIGADIER CALITZ: Mnr die Voorsitter, ek
15 sien hier is op 15:40, ek weet nie wat is die regte tyd van
16 die foto nie, ek weet daar is 'n timeline, so ek dink ons
17 kan dit vasstel.

18 MR MPOFU: At 15:40.

19 BRIGADIER CALITZ: Volgens die foto maar
20 ons weet die kamera is nie ge-sequence met die regte ETV
21 tyd nie, so dit is net hoekom ek sê ek is nie seker op
22 watter stadium die tyd van hierdie foto die regte tyd is
23 nie.

24 MR MPOFU: But you know what stage it is
25 in relation to the other SAPS times, let's use just the

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1 SAPS times. SAPS says for example, Mathunjwa was there at
2 15:35 and so on, so on SAPS own version at 15:40 those
3 people were not prohibited from walking on either side of
4 that Nyala or running, whatever they were doing.

5 BRIGADIER CALITZ: Mnr die Voorsitter,
6 nee, ek verskil, my getuienis was op 15:40 het mnr
7 Mathunjwa weg beweeg, op hierdie foto sien ek hom nie, sy
8 voertuig, tensy ek miskien kan wys waar sy voertuig
9 wegbeweeg en waar is sy voertuig en dan om 15:40 het ons
10 dan gesê dat Nyala 1 het begin met die uitrol van die draad
11 wat ons dan kan sien Nyala 1 staties is terug. So ek neem
12 aan hierdie foto moet dan net so 'n bietjie op 'n vroeëre
13 stadium wees.

14 MR CHASKALSON SC: Maybe I can assist
15 here, this is the photograph just at the start of the
16 rollout because although Nyala 1 is in fact not static it
17 is pulled away, just away from the fence of the power
18 station and, Mr Brigadier, you're correct, Mr Mathunjwa's
19 vehicle has already passed behind the mountain at this
20 stage, behind the koppie.

21 BRIGADIER CALITZ: Okay, dit is net
22 hoekom ek sê my getuienis op 15:40 is toe ek gesien het dat
23 mnr Mathunjwa ry, so vir hom om, om die koppie te gaan –

24 MR MPOFU: Okay –

25 CHAIRPERSON: Okay, Mr Mpofu, they waited

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1 for Mr Mathunjwa to go before they started uncoiling the
2 wire. They didn't wait very long but they waited, -

3 MR MPOFU: Yes –

4 CHAIRPERSON: - so won't you accept that
5 Nyala 1 has already moved away slightly to the power
6 station, it follows, because Mr Mathunjwa must have gone?

7 MR MPOFU: Yes.

8 CHAIRPERSON: There is a white dot there
9 just under the word "mobilising" which may be his vehicle,
10 I don't know.

11 MR MPOFU: Yes, no, Chairperson, let's
12 take Mr Mathunjwa out of this, that is just, the point is –

13 CHAIRPERSON: You're using him to help
14 you to ascertain the time?

15 MR MPOFU: No, it is me who started the
16 Mathunjwa thing, but now that Mr Chaskalson has clarified I
17 don't want to use Mathunjwa, but the point is by the time
18 that Nyala1 had started unrolling its wire those people
19 were allowed to be where they were, whatever time it was.

20 BRIGADIER CALITZ: Mnr die Voorsitter,
21 toe ons dit getuig, ek kan nie onthou presies wanneer of op
22 watter stadium dit was nie, toe Nyala1 begin het, selfs toe
23 mnr Mathunjwa, - ekskuus tog, selfs toe mnr Mathunjwa,
24 ekskuus tog, ek het gesien u gesels, ek wil net seker maak
25 u hoor die antwoord.

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1 MR MPOFU: No, I don't think the
2 chairperson –

3 CHAIRPERSON: He is leaning forward with
4 his finger on his microphone but –

5 MR CHASKALSON SC: I just wanted to give
6 the time because there seems to be a debate around it, it
7 is 15:42:35, 15:42:35.

8 CHAIRPERSON: Thank you for those 2
9 minutes and 50 seconds, Mr Chaskalson.

10 MR MPOFU: Thank you, Chairperson. Quite
11 frankly I don't, I've moved away.

12 CHAIRPERSON: May I interrupt you, Mr
13 Mpofu?

14 MR MPOFU: Yes.

15 CHAIRPERSON: Mr Brigadier, not to waste
16 time, the fact is this is 15:42:50, the order has been
17 given by Colonel Makhubela for the wire to be uncoiled, we
18 see that because the Nyala1 has moved, or you gave the
19 order. You gave the order to Brigadier Makhubela, and
20 presumably the, sorry?

21 BRIGADIER CALITZ: To Colonel Makhubela.

22 CHAIRPERSON: Yes, to Colonel Makhubela,
23 sorry, I apologise to him for promoting him prematurely.
24 You gave the order to him and the uncoiling process began.
25 At that stage we can see from the photograph that some of

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1 the strikers were in the area which was to the east of what
 2 was going to be the line of the barbed wire fence and they
 3 were allowed to proceed undisturbed, that's correct, isn't
 4 it?

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

7 CHAIRPERSON: Ja, so that's Mr Mpfu's
 8 point.

9 MR MPOFU: Thank you, thank you,
 10 Chairperson, thank you very much. Alright, I'll leave it
 11 like that. It is correct that the media, according to your
 12 plans and what you foresaw, the media was supposed to be
 13 confined to what is called the safe area, in other words
 14 they were supposed to be some 50 metres away from the
 15 kraal, correct?

16 BRIGADIER CALITZ: Nee, dit is nie korrek
 17 nie, die media is nie 50 meter nie, dit is die Papa Nyalas
 18 van Luitenant-Kolonel Pitsi, dan sal jy 'n lang lyn
 19 voertuie sien parallel met die swart lyn wat 110 meter
 20 gemerk is.

21 [10:29] Dit is die TRT voertuie. Op die punt van daardie
 22 lyn sal u die groot trokke sien. Dit is die Canter trokke
 23 en dan net agter hulle, aan die agterkant, daardie wat
 24 amper op die grondpad staan, daar het die media bymekaar
 25 gekom.

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1 MR MPOFU: Am I pointing at the right
 2 place?

3 BRIGADIER CALITZ: Ja, daai kant –

4 MR MPOFU: So it's supposed to be in that
 5 vicinity?

6 BRIGADIER CALITZ: Dit was waar die media
 7 bymekaar gekom het, korrek.

8 MR MPOFU: Okay, so even further than the
 9 safe area, basically towards the back of the safe area.

10 BRIGADIER CALITZ: Ja, die media was wel
 11 toegelaat. Hulle het op en af beweeg deur daardie gebied,
 12 vorentoe na die protestors toe, en terug, op en af daar.
 13 So tot op daardie stadium dat die opdrag gegee is.

14 MR MPOFU: No, I accept that. So what
 15 I'm saying is that you are saying is that the situation is
 16 even worse or better, depending which side you're standing,
 17 than what I – I said they would be 50 metres away. You are
 18 saying, no, they should be more than 110 metres away.

19 CHAIRPERSON: I think there's a
 20 confusion. He's talking about where their vehicles were.
 21 You pointed out where the vehicles were, which is more than
 22 50 metres, more than a 110 metres in fact away from the
 23 kraal, but Mr Mpfu is busy with another point. And that
 24 is a journalist who – or media person who got out of his
 25 vehicle, carrying his camera or whatever, video camera or

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1 ordinary camera, and walked in the direction along that
 2 line that's a 100 metres, that black line, toward back in
 3 the direction of the koppie, would have presumably been
 4 allowed to proceed some distance down that line. Is that
 5 right?

6 BRIGADIER CALITZ: Dit is korrek, Mnr die
 7 Voorsitter.

8 CHAIRPERSON: And was there a point – the
 9 next question is going to be, was there a point beyond
 10 which, as such a journalist approached the koppie, the
 11 police would not have allowed the journalist to proceed
 12 further?

13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 vir hulle eie veiligheid, het ons 'n media skakelpersoon
 15 gehad, Kaptein Adriaao, en ek weet hy het die media bymekaar
 16 geroep. Ek kan die tyd vasstel. Ek het nie nou die
 17 presiese tyd nie, waar hy die media bymekaar geroep het en
 18 wel vir hulle verduidelik het dat ons gaan oor na 'n
 19 taktiese fase en dit sal veiliger wees vir hulle om dan
 20 agter die linie van die polisie te bly. So agter die
 21 linie, dit kan wees dan soos die polisie opvolg, miskien
 22 net aan die agterkant van daardie polisie voertuie.

23 CHAIRPERSON: So you say, daardie polisie
 24 voertuie – those police vehicles, are you referring to the
 25 line of vehicles, it's Nyalas I take it, which are below

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1 the words "100 metres" on the photograph at the what one
 2 could describe as the Western end of that 100 metre arrow?

3 BRIGADIER CALITZ: Mnr die Voorsitter, ja
 4 –

5 CHAIRPERSON: Is that the line?

6 BRIGADIER CALITZ: Ek sal verwys het na
 7 die Papa Nyalas, so dit is daardie vyf plus die vier wat na
 8 die kraal toe wys.

9 CHAIRPERSON: Those are the ones I'm
 10 talking about, ja. So on foot the media people were
 11 allowed to go as far as that?

12 BRIGADIER CALITZ: Ja, en dan soos ons
 13 opvolg –

14 CHAIRPERSON: I'm sorry to interrupt you.
 15 But as you moved towards the koppie, they could proceed
 16 behind you?

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

19 CHAIRPERSON: Ja. So it would be a
 20 moving boundary, as it were –

21 BRIGADIER CALITZ: Ons wou hulle net nie
 22 voor ons gehad het vir die obvious rede van as daar
 23 uiteendrywing is, wil ons nie die media tussen ons en die
 24 skare hê nie. Dit sou nie werk nie.

25 MR MPOFU: Okay, you've seen on the

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1 videos where the shout of, "Media go away, media go away."
 2 At that stage, the media were where they were not supposed
 3 to be, correct?
 4 BRIGADIER CALITZ: Ek sal nie vir u kan
 5 sê op daardie stadium wie dit of wat is die bedoeling van
 6 daai nie. Ek kan net my afleiding maak dat ek sal teen
 7 daardie op die video gekyk het, is om vir die media te sê
 8 dit is toe ons die opvolgaksie nog gehad het, op daardie
 9 stadium voor ek nog bo by die draad was, neem ek aan, is
 10 daardie woorde gesê, soos ek die video gekyk het. So dit
 11 sal wees asof daardie persoon dan 'n media persoon gesien
 12 het wat voor die polisie voertuie was of so, en vir hom te
 13 sê, "Move away" beteken val net terug, volgens die gesprek
 14 met Kaptein Adriaan.
 15 MR MPOFU: Do you know who the person who
 16 said three times, "Media go away, media go away, media go
 17 away?"
 18 BRIGADIER CALITZ: Nee, ek dra nie kennis
 19 nie.
 20 MR MPOFU: And once again, I think I've
 21 asked this from someone else, but if there was the
 22 opportunity and the means, so to speak, to warn the media
 23 three times, why was that opportunity and the means not
 24 used to say to the strikers don't cross the road, whatever
 25 you did not want them to do? Or that, "Protestors go

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1 away?"
 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 3 kan nie vir u sê of die Papa Nyalas wel daardie waarskuwing
 4 gegee het nie. Ek dink ek het dit raak gelees in een of
 5 twee verklarings waar hulle wel gesê het hulle het vir die
 6 persone gesê om weg te beweeg, maar ek kan nie nou met
 7 sekerheid vir u sê deur wie is dit gesê gedoen nie.
 8 MR MPOFU: But sorry, I don't think we
 9 understand each other. I'm using the term loosely now.
 10 I'm saying let's assume those statements that were used
 11 against the media three times, let's call them warnings,
 12 just for the purposes of this question, they might not
 13 qualify with the prescripts and all that, but I'm saying if
 14 those "warnings" could be given to the media, that would
 15 mean there was an opportunity to do so and the means. In
 16 other words, the audible means to do so. Why was that
 17 opportunity and means not also used to "warn" the strikers
 18 either not proceed any further or to stop right there or to
 19 go back or stop, or we will shoot, or something?
 20 BRIGADIER CALITZ: Mnr die Voorsitter, my
 21 antwoord bly dieselfde. Ek dra glad nie kennis, vir
 22 dieselfde asem kan ons sê dit was gesê deur een van daardie
 23 Nyala 1 – 6, asook van die Papa Nyalas. Die persone wat
 24 voor is by die mikrofoon, gewoonlik die drywer of die
 25 persoon wat voor sit, het access tot die public address

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1 system. Dis voor in die voertuig. So ek het gesê ons sal
 2 kan gaan kyk. Ek wil nou onder korreksie sê dat ek het dit
 3 raak gelees dat daar wel op 'n stadium vir die persone gesê
 4 is om weg te beweeg.
 5 MR MPOFU: Ja. You know, Brigadier, the
 6 reason I'm asking this, is that actually it's tied to the
 7 issues that you and I just discussed now, which is that
 8 from the point of view of the protestors, and from what
 9 they had observed happening during the whole day, that road
 10 to Nkaneng was accessible to them, or rather the police did
 11 not quarrel with them using that road. Now, if that had
 12 changed for some reason, maybe for good reasons, at the
 13 very least you must agree that you had to say to those
 14 people, "You may no longer use this road. The fact that
 15 you've been using it for the past five days, that's par for
 16 the cause, but as of this moment, that road is no longer
 17 accessible to you," which, as we know was accessible to
 18 them a few seconds or minutes before. Do you understand
 19 where I'm going with this?
 20 BRIGADIER CALITZ: Ek hoor wat u sê.
 21 MR MPOFU: And what I'm going to argue is
 22 that the police owed those protestors a duty to say, "This
 23 road that you have been using all day, which your
 24 colleagues have just walked on a few minutes before, which
 25 you have used to come to the koppie, which we have just

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1 blocked with Nyala 4, is no longer – you're no longer
 2 allowed." Because under normal circumstances, they would
 3 assume that that road, they're allowed to use it to go to
 4 Nkaneng, and I'd like your comment as to whether the police
 5 had such a duty or not, and if so, whether it may not have
 6 been discharged by using the loudhailer?
 7 BRIGADIER CALITZ: Mnr die Voorsitter,
 8 volgens ons voorskrifte, is daar wel – dit baie duidelik
 9 dat ons sit eers ons verdedigingslyn in plek en na dit moet
 10 daar dan 'n waarskuwing wees. Ek dink die hele ding wat
 11 ons gesê het, as ons kan sê onkant betrap, dis te
 12 onderbreek die plan was wel dat hierdie persone gestorm het
 13 nog voordat ons by daardie fase kan kom waar ons
 14 voorskrifte vir ons gaan sê om 'n waarskuwing te gee. U sê
 15 wel vir my dat dit is vir die media gesê. Ek sê vir u dat
 16 op daardie stadium kon dan van die voertuie dit ook vir die
 17 persone gesê het van waar ek was en ek ombeweeg het. Dit
 18 kon gedoen gewees het deur van die persone wat dalk nie op
 19 die lig gehoor kan word nie. Ek het verwys na miskien 'n
 20 verklaring wat ons kan later na kyk en sê of daardie
 21 persone dan wel met die protestors gekommunikeer het, maar
 22 die waarskuwing sou gekom het as ons uitbeweeg het en dan
 23 na die protestors toe die waarskuwing vir die uiteendrywing
 24 en dan die doel. Dit is in kort my antwoord, saam met wat
 25 ek voorheen getuig het oor wat ons miskien vermag het as

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1 Mnr Mathunjwa na my toe gekom het en dan sou dit miskien 'n
2 heel ander prentjie kon gewees het.

3 MR MPOFU: Fine, thank you. No, I accept
4 that it could have been done, but do you think it should
5 have been done too? It might have saved lives if it was
6 done.

7 BRIGADIER CALITZ: Mnr die Voorsitter,
8 nou in hindsight, dit is altyd maklik om na die tyd te kyk
9 en sê, ja, dit is moontlik gewees op miskien Nyala 4,
10 miskien daar waar hulle was, die gesprek. Ons weet hierdie
11 hele ding het in minute – in sekondes plaasgevind, en die
12 bevele is gegee om te gaan disperse, uiteen te dryf en te
13 blok. So, ja, in hindsight is dit altyd moontlik om te sê
14 daardie opsies, 1, 2, 3 en 4.

15 MR MPOFU: Yes, thank you. Then the next
16 point also to do with this photo. No, sorry, let's take
17 one step back. Do I understand your evidence correctly
18 that someone at the JOC before 12 midday had informed you
19 about the change of plan, that Nyala 4 is now going to be –
20 going towards against the kraal.

21 CHAIRPERSON: Nyala 6 was going –

22 MR MPOFU: Nyala 6, yes, or yes, or yes,
23 the last Nyala, let's say. That the last Nyala would now
24 be going against the kraal?

25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 ook dit ook gerapporteer, ek dink dis iewers in my
2 verklaring – sal nie nou my vinger daarop wys nie, waar ek
3 met die JOC dan ook die sitrap deurgegee het van die
4 dreigement wat ons meegedeel is van Nyala 6 en daarna het
5 die JOC bevestig dat hulle het die foto gesien van Kolonel
6 Vermaak. Hulle het dan ook gesien die posisie en die
7 verduideliking oor die Nyala 6 se posisie wat moet in
8 beweeg, soos ek dit hier verwys het na clockwise. As ons
9 op die foto kyk, hy was heeltemal geïsoleer, ek kan amper
10 sê net regs van die letters 191 het hy gestaan. So dit is
11 hoekom hy in beweeg is dat daardie meer 'n beheerde area
12 gewees het om toe te maak.

13 MR MPOFU: Yes. The gist of my question
14 – you've explained that last week. The gist of the
15 question was, whether that happened before 12 midday?

16 BRIGADIER CALITZ: Ek dink dit was rondom 11 iets –
17 ek kan die tyd vir vasstel in my verklaring.

18 MR MPOFU: 11ish, it's fine.

19 BRIGADIER CALITZ: Maar daar's 'n VB
20 gemaak oor die voorval.

21 MR MPOFU: Ja. Now, if that happened at
22 around – firstly, when you were told this, it was told to
23 you personally, correct?

24 BRIGADIER CALITZ: Dit is korrek. Ek
25 dink dit was, ek het getuig Kolonel Scott, onder korreksie.

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1 MR MPOFU: Ja, you're not sure. That's
2 fine. And that information you did not brief anyone about
3 it? It was told to you by Scott or somebody from the JOC
4 and you did not see it necessary to call all the troops and
5 the commanders and so on about such a small change,
6 correct?

7 BRIGADIER CALITZ: Nee, nie korrek nie,
8 Mnr die Voorsitter. My getuienis was dat ek Kolonel
9 Makhubela, die voorsitter – die bevelvoerder van daardie
10 groep geroep het, asook die commander van daardie voertuig.
11 Kolonel Makhubela is meegedeel en hy het die voorligting
12 aan daardie Nyala 6 gegee, hoe dit nou sal plaasvind en van
13 waar af hy dan sal beweeg. Kolonel Makhubela, ek kan nie
14 vir sê of hy dan terug gegaan het en met elke Nyala dit
15 bespreek het nie, maar dit is wel deur my aan die groep
16 bevelvoerders gegee, wat die boodskap dan sou oordra.

17 MR MPOFU: Okay, no that's fine. No
18 doubt Colonel Makhubela will tell us, but as far as you are
19 concerned, apart from telling Colonel Makhubela, you did
20 not broadcast that information to the other group
21 commanders, correct?

22 BRIGADIER CALITZ: Ons het die JOC
23 ingelig en ek dink dit is op die radio gewees, so ek dink
24 die persone wat daar was kon dit seer sekerlik dan ook
25 gehoor het van die dreigement op daardie voertuig.

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1 MR MPOFU: No, please, Brigadier, just
2 answer the question. You, Brigadier Calitz, did not take
3 any steps - the mere fact that someone might have
4 overheard something on the radio is neither here nor there,
5 you did not take any steps to broadcast that information of
6 that change to anyone else apart from Colonel Makhubela,
7 correct?

8 BRIGADIER CALITZ: Nee, net die groep
9 bevelvoerder wat geraak was met die verandering. Dit is
10 korrek.

11 MR MPOFU: Yes. Now, so it's said to a
12 few that until the operation actually started, the other
13 members of the police and the other units that were not in
14 Colonel Makhubela's unit still thought that the advance, if
15 we can call it that, the police advance is going to be from
16 that area with Nyalas to the koppie, in other words
17 westward – that the advance would be westward, correct?

18 BRIGADIER CALITZ: Ek is nie seker oor
19 wat u reg verstaan, die advance, wat bedoel jy by –

20 MR MPOFU: Okay, let's call it movement.
21 I'm saying, if I understand you correctly, until the JOC at
22 about 11:00, whatever, told you about this new change of
23 plan which you shared with Colonel Makhubela, the rest of
24 the people would have understood that the movement of the
25 police will be from where the police vehicles are

<p style="text-align: right;">Page 20293</p> <p>1 concentrated towards the koppie, as it were, behind the 2 concave arrangement that we spoke about, correct? 3 BRIGADIER CALITZ: Nee, ek stem nie saam 4 met u nie, mnr die Voorsitter. 5 MR MPOFU: Okay, maybe just to be fair to 6 you, I'll have to ask the question again and maybe simplify 7 it. Am I correct that until that point, the other members 8 of the police would have believed that the movement – their 9 movement towards the dispersal activities would be 10 westward. In other words, from where the vehicles are 11 towards the koppies, yes? 12 MR SEMENYA SC: I don't understand – 13 COMMISSIONER HEMRAJ: Mr Mpofo, I don't 14 follow the question. 15 MR MPOFU: Okay, let's use the pointer. 16 CHAIRPERSON: I think Advocate Hemraj 17 wants to tell you why she doesn't understand the question. 18 Perhaps you should listen to her first. 19 MR MPOFU: And Mr Semenya also doesn't 20 understand, ja. 21 COMMISSIONER HEMRAJ: Are you suggesting 22 that they were going to move in the direction of the barbed 23 wire? 24 MR MPOFU: No. 25 COMMISSIONER HEMRAJ: Okay, then perhaps</p>	<p style="text-align: right;">Page 20295</p> <p>1 but I think what you're really busy with is not so much 2 just an advance in a westerly direction towards the koppie, 3 what you're really concerned about is the bottom left-hand 4 corner of this slide that we see here at the moment, and 5 what they would have assumed about that. 6 [10:49] And perhaps if you follow that line then I'll be 7 able to understand you and perhaps Mr Semenya will too. 8 MR MPOFU: Ja, well everyone should 9 understand because that's why I use the word "towards," not 10 "to." But that's another matter. I'm saying when the – 11 rather, the rest of the police would have understood that 12 their movement will be westwards – let's not use the koppie 13 because maybe that's what is causing the confusion – that 14 their movement would be westwards, and westwards, I was 15 saying towards, it could be towards anything in the west, 16 ja, that their movement would be towards, or maybe let's 17 make it easier so that we eliminate this thing, would be 18 towards the barbed wire direction. Let's not use the 19 koppie because now the – do you understand now, or do you 20 agree? 21 BRIGADIER CALITZ: Ek hoor wat u sê, maar 22 ek stem nog steeds nie saam met u nie. 23 MR MPOFU: Okay, so then they would have 24 understood their movement to be towards the north? 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>
<p style="text-align: right;">Page 20294</p> <p>1 you need to explain the question to us. 2 CHAIRPERSON: - police knew there was 3 going to be barbed wire, I mean it's obvious – the barbed 4 wire trailers were there. So they knew the plan was to 5 have a barbed wire barrier and we can see the position of 6 the prepositioned Nyala. So they knew there'd be a barbed 7 wire barrier there. So there's no question of them 8 advancing beyond that towards the koppie because the barbed 9 wire barrier presumably would stop them. So that's why I 10 don't understand the question. I don't know what Mr 11 Semenya's reason for not understanding the question, but 12 I've given you one good reason anyway. So perhaps you 13 could reformulate the question – 14 MR MPOFU: No, okay, Chairperson. You 15 heard that exchange, Brigadier? 16 BRIGADIER CALITZ: Ja, maar dit is nog 17 steeds nie duidelik nie, so miskien as jy dit vir ons so 18 kan verduidelik sal ek verstaan. 19 CHAIRPERSON: The question is a non- 20 starter. There's no way that the police could have 21 advanced beyond, as I understand it, beyond the barbed wire 22 barrier towards the koppie, because the barrier would stop 23 them. So that's the first point. The second point is, 24 they would in any event have seen Nyala 6 being moved and 25 once it was moved, they'd have understood where it now is,</p>	<p style="text-align: right;">Page 20296</p> <p>1 weet nie of ek dit nou, dit goed of sleg is nie. Ek weet 2 nie of ek net kan help nie, maar miskien moet ek ook nie, 3 laat ons miskien net eers duidelikheid kry – 4 MR MPOFU: No, Brigadier – 5 BRIGADIER CALITZ: Ek wil – 6 CHAIRPERSON: Sorry, you say what you 7 want to say and then I want to put something to you. You 8 say what you want to say, and then I'll put something to 9 you. 10 BRIGADIER CALITZ: Mnr die Voorsitter, 11 die vraag is ten tye van die 12 uur, dat die ander polisie 12 persone nog steeds bewus was dat hulle sou in 'n westelike 13 rigting opgevolg het, dit is wat ek verstaan wat mnr Mpofo 14 sê. Ons stem nie saam met dit nie want teen 12 uur toe die 15 Nyala 6 geskuif is was dit nog steeds net 'n fase 3 16 "prepositioning" teen 12 uur. So daar was nog geen 17 opdrag – 18 CHAIRPERSON: So your point is that the 19 briefing which only took place at 2:30 in respect of the 20 tactical option phase 3 – 21 BRIGADIER CALITZ: Dit is miskien, as ek 22 kan help, ja – 23 CHAIRPERSON: So therefore the policemen 24 who were waiting at these various positions east of this 25 330 metre white line that we see on the slide, wouldn't</p>

<p style="text-align: right;">Page 20297</p> <p>1 have known what was going to happen in relation to the 2 tactical option because they hadn't been briefed yet. So 3 nothing would have passed through their minds in relation 4 to the consequences of the moving of Nyala 6. Is that your 5 point? 6 BRIGADIER CALITZ: Dit is my hele punt 7 waarmee ek graag wil help, as ons kan aangaan, mnr die 8 Voorsitter. 9 MR MPOFU: Alright, then this will be 10 clearer if we go to the photo. These people, this line, 11 this line here – 12 CHAIRPERSON: Which line where? You're 13 showing it, but – 14 MR MPOFU: Well, I said – 15 CHAIRPERSON: But those of us, those 16 people – 17 MR MPOFU: I'm still talking – 18 CHAIRPERSON: - who will be reading the 19 transcript in subsequent years won't know what "this line 20 here" means. So would you be kind enough to explain which 21 "this line here" is? 22 MR MPOFU: I'm still talking, 23 Chairperson. The reason why I have not described it is 24 because I still, the pointer is still finding it here. 25 Once that happens – ja, this line here of, this line of</p>	<p style="text-align: right;">Page 20299</p> <p>1 MR MPOFU: The man in – 2 CHAIRPERSON: - if one knows it's blue, 3 then one knows what the colour is. 4 BRIGADIER CALITZ: Kom ons sê maar net 5 'n, donker kolletjies wat ek "depict" op hierdie afstand as 6 persone. 7 MR MPOFU: Ja, okay. That police line, 8 I'm saying to you that police line is positioned for a 9 movement westward, correct? In other words they are facing 10 – unless if they were standing behind each other, which is 11 unlikely. If they are standing on a line which is ready to 12 move, they're facing westwards, correct? 13 BRIGADIER CALITZ: Mnr die Voorsitter, ek 14 kan glad nie sê wat die doel was van daardie lyn. Dit kan 15 'n bevelvoerder gewees het wat sy persone vinnig besig was 16 om te "brief." Ek kan nie vir u sê wie die lyn is op 17 daardie stadium op hierdie afstand nie. So nee, dis 18 onmoontlik om te sê. 19 MR MPOFU: Brigadier Calitz, just answer 20 the question. I'm not asking you about the "doel." I'm 21 saying would you agree that that line at that point is 22 facing westward? 23 BRIGADIER CALITZ: Nee, ek kan dit nie 24 sien nie. 25 COMMISSIONER HEMRAJ: Is that a TRT line?</p>
<p style="text-align: right;">Page 20298</p> <p>1 policemen, can you see the line here of policemen, which is 2 behind, or starting just east of the point of the 110 3 metres line? 4 BRIGADIER CALITZ: Ek sien die lyn, mnr 5 die Voorsitter. 6 MR MPOFU: Yes. 7 CHAIRPERSON: Is that a police line or a 8 media line? I understood you to say that's – 9 BRIGADIER CALITZ: Nee, dit lyk – 10 CHAIRPERSON: - where the media vehicles 11 were parked. Were there police vehicles parked there as 12 well? 13 BRIGADIER CALITZ: Nee, ek dink dit is - 14 die blou uniforms sal, ek sal my geld daarop sit dat dit 15 dalk 'n polisielyn is. 16 MR MPOFU: Yes, the media were not 17 wearing the same clothes. 18 BRIGADIER CALITZ: Nee, ek dink nie hulle 19 gaan in daardie formasie wees nie, nee. 20 CHAIRPERSON: I'm sorry, can you see 21 people in blue uniforms on this thing? 22 BRIGADIER CALITZ: Nee, dis net 'n donker 23 lyn van persone tussen voertuie – 24 CHAIRPERSON: Oh, that's supposed to be 25 blue? Okay –</p>	<p style="text-align: right;">Page 20300</p> <p>1 Are you unable to say? 2 BRIGADIER CALITZ: Kommissaris, dis 3 hoekom ek sê dit is die tyd wat ons dit het is 15:42, so 4 dit is, op hierdie foto moes dit na die voorligting gewees 5 het. So dit kan 'n bevelvoerder wees wat dan terwyl hy 6 Nyalas uitrol, gou sy mense – dit sal my afleiding wees – 7 vinnig voorligting gegee het miskien nog in daardie 8 agterste linie. Dit sou my logiese afleiding gewees het, 9 maar of hulle nou, watter kant toe hulle kyk en ek sien 10 hulle nie beweeg westelik nie, so dis hoekom ek sê ek stem 11 nie saam nie. 12 MR MPOFU: But Brigadier, really, I think 13 you are just being difficult for no reason. 14 CHAIRPERSON: No, no, no, I don't think 15 that's fair. Look, surely there are two possible things. 16 The one is that the line – well, there are three, but I 17 think we can – 18 MR MPOFU: There are four. 19 CHAIRPERSON: We can only – 20 MR MPOFU: There are only four 21 directions; east, west, south, north. 22 CHAIRPERSON: No, you're quite right. 23 Theoretically there's a line of people. They're either 24 standing next to each other, you know, next to each other, 25 in which case they're either facing westward towards the</p>

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1 koppie, or they're facing eastwards towards the media
 2 vehicles. Alternatively they are in single file, as it
 3 were, one behind the other, in which case they're either
 4 facing northwards or they're facing southwards. Those are
 5 the four possibilities, and there are only four
 6 possibilities, and what Mr Mpofu suggests to you is the
 7 most likely one is that they were facing westward, they
 8 were in other words standing next to each other and they
 9 were facing westwards in the direction of the koppie, most
 10 likely that they were looking at the koppie. That's where
 11 the action was. They didn't turn their backs on the action
 12 and look the other way. That's his question. Now what do
 13 you say about that? Is that right, Mr Mpofu?
 14 MR MPOFU: That's hundred percent
 15 correct, Chairperson.
 16 BRIGADIER CALITZ: Mnr die Voorsitter, as
 17 dit is dat die vraag is die moontlikheid dat hulle wel kan
 18 wes beweeg, hy het dit gestel as 'n feit – ag, wes kyk, die
 19 moontlikheid is daar dat hulle in 'n westelike rigting, en
 20 dan my "comment" daarop is dat dit is besig, daardie lede
 21 is besig met 'n vinnige voorligting, hulle "kit" reg te
 22 kry, ensovoorts, as ek my afleiding kan maak, want dit is
 23 nog voor die opdrag gegee is deur my enigsins op hierdie
 24 stadium. Ons sien Nyala 1 net begin beweeg, so op hierdie
 25 stadium het die voorste groep nog stilgesit.

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1 MR MPOFU: Alright, now –
 2 CHAIRPERSON: Alright, you've made the
 3 point [microphone off, inaudible].
 4 MR MPOFU: Well, you made it for me,
 5 thank you, Chairperson.
 6 CHAIRPERSON: [Microphone off,
 7 inaudible].
 8 MR MPOFU: Thank you.
 9 CHAIRPERSON: I'm pleased I can be of
 10 some assistance. Now are you moving on to another point,
 11 or are you still busy with this point?
 12 MR MPOFU: No, I'm still busy with this
 13 point.
 14 CHAIRPERSON: I see. So I didn't make it
 15 completely for you. Alright, well finish the point
 16 quickly, then we'll take tea.
 17 MR MPOFU: Yes. Yes, thank you,
 18 Chairperson. Now where I'm going with this, Brigadier – or
 19 are you saying that there's a possibility that there was a
 20 briefing taking place of those members?
 21 BRIGADIER CALITZ: Wat my getuienis was
 22 dat ten tye van Nyala 1 het die groep voor stilgesit. Ek
 23 het slegs die opdrag gegee vir die Pappa Nyalas om te gaan
 24 "disperse" en blok toe ek die beweging sien wat nader kom.
 25 So dis baie moontlik dat die "commander" wel sy groepe

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1 bymekaar gekry het en wat vir hulle tydens die voorligting
 2 gesê is om te weet dat hulle gaan POP bystaan sou daar dan
 3 daardie uiteendrywing – so op hierdie stadium sou dit 'n
 4 vreedsame uitrol van die draad gewees het. Daardie lede
 5 sou vreedsaam opgevolg het. Ons sou vreedsaam uitbeweeg
 6 het. Daar sou 'n vreedsame waarskuwing gewees het, en die
 7 wat gehoor gegee het sou vreedsaam huis toe kon gegaan het,
 8 met geen tragiese gevolge nie.
 9 MR MPOFU: And would it be fair to assume
 10 that – let's assume now it was not a briefing and there
 11 were, they had formed up a line ready for action. Would it
 12 be fair that given the fact that they were facing westward,
 13 that their understanding was that the movement would be as
 14 I described earlier, westward?
 15 BRIGADIER CALITZ: Mnr die Voorsitter, as
 16 ons moet aanneem dis TRT, wat ek net, as ons sê ons kan dit
 17 aanneem, dan sou hulle verstandhouding gewees het dat sodra
 18 die "call" kom moet hulle Openbare Orde Polisiëring volg.
 19 Daar sou 'n "dispersion order" wees en hulle sou dan
 20 geassisteer het met die arrestasies wat daarna sou volg,
 21 asook dat hulle sou geweet het op daardie stadium dat hulle
 22 koppie 2 sou gevee het. So dit was duidelik in die
 23 voorligting.
 24 CHAIRPERSON: If they were going to
 25 follow the POP police members, the POP police members would

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1 have had to enter into the area on the western side of the
 2 barbed wire barrier to do the dispersal. Isn't that right?
 3 BRIGADIER CALITZ: As ek u reg verstaan,
 4 die polisie sal inkom –
 5 CHAIRPERSON: Look, you had the wire
 6 barrier. Police couldn't go through the wire barrier.
 7 BRIGADIER CALITZ: Daar is net een
 8 opening.
 9 CHAIRPERSON: You were going to move to
 10 the spot that you –
 11 BRIGADIER CALITZ: I think it's at the
 12 eastern side of the kraal.
 13 CHAIRPERSON: Yes, eastern side of the
 14 kraal.
 15 BRIGADIER CALITZ: Dis korrek.
 16 CHAIRPERSON: You would then have given
 17 two warnings and eventually –
 18 BRIGADIER CALITZ: Korrek.
 19 CHAIRPERSON: - the POP people would have
 20 advanced into the, what one can call the unsafe area, the
 21 area on the west of the barbed wire, to proceed with their
 22 dispersion and disarmament exercise. That's right, isn't
 23 it?
 24 BRIGADIER CALITZ: Ons sou uitbeweeg het,
 25 wat ek hier verwys het na die neutrale gebied toe. So met

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1 ander woorde om die kraal, heeltemal uitbeweeg het, 'n lyn
2 gevorm het –

3 CHAIRPERSON: Ja.

4 BRIGADIER CALITZ: - wat nou die
5 neutrale, waar ons hierdie klomp mense sien loop, "facing"
6 die koppie, en dan van daar af die waarskuwings gegee het.

7 CHAIRPERSON: And the TRT were told they
8 must be behind the POP people so that in the case of –

9 BRIGADIER CALITZ: Arrestasies.

10 CHAIRPERSON: - need, they must either
11 defend or protect the POP people, or if there's no need for
12 that they must proceed to sweep the koppie and assist with
13 arrests. Is that correct?

14 BRIGADIER CALITZ: Nadat ons dan die
15 uiteendrywing aksie uitgevoer het, as sou daar persone
16 oorgebly het, wat ons verwag het die persone sal "either"
17 hulle wapens sou neersit en wegbeweeg. Sou daar 'n groep
18 wees wat "resistance," sou daar 'n konfrontasie
19 uiteendrywing gewees het en soos die Openbare Orde dan
20 deurbeweeg sou dan hulle doel wees om koppie 2 te "sweep"
21 met al die bewysstukke wat dan daar bymekaar gemaak word.

22 CHAIRPERSON: The point is that that's
23 what the TRT people, assuming they're TRT people, if that's
24 what they were told by their commander who'd received a
25 briefing from Colonel Scott or whoever, at about half past

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1 2, they would have realised that what they're going to have
2 to do is they're going to have to follow the POP people and
3 they're going to move to a north-western position near that
4 kraal and do the things we've discussed a moment ago.

5 BRIGADIER CALITZ: Dit is –

6 CHAIRPERSON: Is that correct?

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

9 CHAIRPERSON: So there wouldn't have been
10 any question of them moving westward towards the wire
11 barrier.

12 BRIGADIER CALITZ: Uh-uh.

13 CHAIRPERSON: They would have known, in
14 the light of what we've discussed, that they'd be going to
15 the north-western corner of this photograph in the vicinity
16 of the kraal. Is that correct?

17 BRIGADIER CALITZ: Dit was die enigste
18 uitgang gewees wat die polisie sou gevolg het met die TRT,
19 mnr die Voorsitter.

20 MR MPOFU: Thank you. Then so this is
21 the last one before tea. If that is indeed so, then as the
22 operational commander can you give an explanation as to why
23 they had formed a line that was facing westward at that
24 crucial stage?

25 BRIGADIER CALITZ: Mnr die Voorsitter –

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1 CHAIRPERSON: It wasn't a crucial stage
2 at that stage.

3 MR MPOFU: 15:40 was, Chairperson.

4 CHAIRPERSON: No, the crucial stage –
5 well, it wasn't a crucial stage of the dispersion operation
6 because according to the evidence we had that was only
7 going to take place about half an hour later. Once the
8 wire was in place the, according to the plan there were
9 going to be two warnings, with substantial time interval
10 between them, given by the witness before the actual
11 dispersion operations had begun. So I don't think it was a
12 crucial time –

13 MR MPOFU: Fine.

14 CHAIRPERSON: But in any event, surely
15 it's a question that's not going to help us. If the
16 commanding officer said to them look here you chaps, line
17 up in front here and I will tell you in detail what we're
18 going to do, he would have done it so that he could keep an
19 eye on them as he spoke to them and see who was falling
20 asleep and who was following. I mean it's simply that.
21 It's not going to help us surely to take this discussion
22 any further.

23 MR MPOFU: Well –

24 CHAIRPERSON: Unless I'm being
25 characteristically obtuse and I can't follow your point, in

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1 which case I'd be grateful if you'd explain it.

2 MR MPOFU: Well, I wouldn't agree with
3 that, Chairperson, about you being obtuse, but I also
4 wouldn't dare to imagine that you are saying that the fact
5 that the police seemingly at least from the photograph were
6 facing a direction other than the one that we are told that
7 they were supposed to move to, that that is – I don't know
8 the word you used – unhelpful, because I think that it's
9 quite an important – remember, we are piecing things
10 together here, Chairperson. We are not, we don't – if we
11 had the magic bullet of knowing what is in everybody's mind
12 and how the people were shot, we wouldn't be here.

13 CHAIRPERSON: No, you're quite right.

14 MR MPOFU: We have to use pieces of
15 information to get to it. Thank you.

16 CHAIRPERSON: I understand that. Have
17 you not got the piece of information you require on record
18 at the moment –

19 MR MPOFU: Yes, I have.

20 CHAIRPERSON: - which will enable you to
21 argue the point you want to argue at the end of the matter?

22 MR MPOFU: Yes, no, that's a different
23 matter. If I've made the point, that's fine, but it's not
24 unhelpful, it's not irrelevant.

25 CHAIRPERSON: Yes, no I'm sorry.

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1 MR MPOFU: Thank you.

2 CHAIRPERSON: Perhaps I will be informed

3 in due course that it's a very helpful point.

4 MR MPOFU: Thanks, ja.

5 CHAIRPERSON: It may well assist us to

6 put the whole jigsaw together.

7 MR MPOFU: No, that's correct.

8 CHAIRPERSON: Can we take tea now, Mr

9 Mpfu?

10 MR MPOFU: We can, thank you,

11 Chairperson.

12 CHAIRPERSON: We'll take the tea

13 adjournment.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [11:34] CHAIRPERSON: The commission resumes.

16 Brigadier, you're still under oath.

17 BRIGADIER CALITZ: Dankie, mnr die

18 Voorsitter.

19 CHAIRPERSON: Mr Mpfu?

20 MR MPOFU: Thank you very much,

21 Chairperson. Brigadier, the, you and I have had this

22 discussion about what you ought to have foreseen and what

23 you, and really it was sparked by the question that I asked

24 you on Friday namely that there have been this refrain from

25 police evidence or police witnesses, SAPS witnesses about

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1 the plan was disrupted, the plan was disrupted and I had

2 asked you what the disruption was and you said that it was

3 the fact that these people came over to the, to attack as

4 you put it and it's from that line that I was saying that

5 can't be a disruption because that was something you should

6 have foreseen. You remember that line of questioning on

7 Friday?

8 BRIGADIER CALITZ: Ek onthou en ek onthou

9 wat ek daaroor getuig het, ja.

10 MR MPOFU: Ja. Now, so we have, I think

11 we have exhausted that, is there any other disruption apart

12 from this one that we have discussed that qualifies under

13 this heading of the plan was disrupted or was that, the

14 only or the main disruption?

15 BRIGADIER CALITZ: Nee, ek sal sê die

16 onderbreking in die plan wat ons juis wou gedoen het is

17 waarna ons hier verwys, die aanval en dit is waar ons nie

18 die geleentheid gehad het om uit te beweeg, die persone

19 waarsku en en en. So dit was die onderbreking in die plan

20 en vandaar af het ons uit, met die uiteendryf aksie

21 voortgegaan soos wat die beplanning was.

22 CHAIRPERSON: So the short answer is the

23 only respects in which the plan was disrupted was in

24 respect that we've been discussing this morning?

25 BRIGADIER CALITZ: Mnr die Voorsitter, as

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1 ons praat van wat ons praat van die onderbreking in die

2 plan dit was die aanval –

3 CHAIRPERSON: I take the disruption of

4 the onderbreking when the National Commissioner gave

5 evidence she used a phrase disruption, she said the plan

6 was disrupted and what Mr Mpfu as I understand it has been

7 trying to ascertain from you is in what respect was the

8 plan disrupted and are you satisfied that what you've told

9 us so far is the description and the manner in which the

10 plan was disrupted?

11 BRIGADIER CALITZ: Ja, daar het verdere

12 inligting later tot die kennis gekom, daar het nog gebeure

13 wat nie soos op die voorligting was of soos op die plan was

14 waar lede moes bly en ons praat van forward holding area 2

15 wat ons weet het inbeweeg na koppie 3 en daai was ook nie

16 deel van die plan nie. Maar ek weet nie of dit die

17 disruption is van die plan wat ons na verwys nie. So ek is

18 versigtig om dit te sê die enigste, daar was ander gevalle

19 waar daar ook miskien nie volgens die plan maar met redes

20 wat gegee was.

21 CHAIRPERSON: Disruption means, the word

22 disruption really relates to the manner in which the plan

23 could not be, the reason for the fact that the plan could

24 not be implemented as it was originally worked out and the

25 fact that people came from forward holding area 2 and so

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1 on, and people who were supposed to give medical attention

2 at scene 1 went off to scene 2 and got involved in

3 activities there. Those, are those are not really reasons

4 why the plan as originally drafted wasn't implemented, they

5 are consequences of certain other things that had been

6 looked at.

7 BRIGADIER CALITZ: Ek verstaan, dankie

8 vir daai verduideliking, dankie, mnr die Voorsitter.

9 MR MPOFU: Is it also true that you and

10 when I say you in this context I mean the police

11 anticipated that the, a section of the crowd would refuse

12 to disperse or let me put it this way, more specifically

13 would remain at or near the koppie or koppies, the first

14 two koppies, correct?

15 BRIGADIER CALITZ: Wat ons voorsien het

16 dat, nadat ons die waarskuwing gegee het sou daar dan

17 persone vrylik wegbeweeg het wat gehoor gegee het aan die

18 waarskuwing en, ek weet nie of ek die hele waarskuwing weer

19 moet herhaal nie, dit is nie nodig, en dan het ons voorsien

20 dat tydens die arrestasie daar wel 'n paar groepe soos wat

21 in al ons gevalle mag gebeur nooit al die persone beweeg

22 weg nie en gee gehoor aan 'n waarskuwing nie, daar sou dan

23 'n paar persone agter gebly het op die koppie. Wat ons dan

24 vorentoe sou gegaan het en met die uiteendrywing proses

25 volgens die force kontinuum dan daardie persone

<p style="text-align: right;">Page 20313</p> <p>1 uiteengedryf het en daar is waar ek getuig het dat ons het 2 wel in daardie geval konfrontasie voorsien, dit is korrek. 3 MR MPOFU: No, Brigadier, I'm asking you 4 a simple question. Was it part of your projection of what 5 was going to happen that the so-called militant group would 6 refuse to vacate the koppies, correct? 7 BRIGADIER CALITZ: Mnr die Voorsitter, ja 8 ek dink dit is wat ek nou net getuig het. Die wat gehoor 9 sou gegee het sou wegbeweeg het en dan sou daar die wat nie 10 gehoor gegee het nie sou dan ook agter gebly het, so ja. 11 CHAIRPERSON: That's not the entire 12 answer to the question. What Mr Mpofu is concerned about, 13 you explained to us there would essentially be two 14 groupings of strikers. There were the militant ones who 15 were clear in the 400 and then there were the others. Now 16 I think you made it clear in the past that you expected the 17 others to go. Some of them went already and others you 18 expected to react to the warning. As far as the militant 19 group was concerned do you expect the whole militant group 20 to stay or did you expect even some of the militant group 21 to go after the warning had been given? 22 BRIGADIER CALITZ: Mnr die Voorsitter, na 23 ons 'n waarskuwing gee sal almal wat dan die waarskuwing 24 verstaan en dit so inneem sou dan die toneel verlaat het en 25 dit sluit die militante groep in. Dis nie te sê dat ons</p>	<p style="text-align: right;">Page 20315</p> <p>1 gehad het tydens die uiteendrywing ja. 2 MR MPOFU: Brigadier, I don't want to 3 criticise you unfairly. Please listen to this question. I 4 hear all these things, nobody could know exactly what's 5 going to happen. What I'm saying to you is in your 6 postulation or projection of what was going to take place 7 the one thing you did not foresee or did not plan for was 8 the fact that everyone would choose to leave the koppies 9 and proceed towards Nkaneng, everybody, every single 10 person, that was not part of your projection? 11 BRIGADIER CALITZ: As jy praat van die 12 projection die plan en dit was ons op die beplanning 13 voorsien het, mnr die Voorsitter het ons voorsien dat daar 14 wel uiteendrywing sou plaasvind en dit beteken dat daar wel 15 mense sou gewees het wat agter op die koppie agter gebly 16 het. So ons het geweet uit die dreigemente uit daar sal 17 mense wees wat nie sal reageer nie. 18 MR MPOFU: Yes, and I'm going to argue 19 that actually that is the, it's your own lack of foresight 20 really that was the disruption in the sense that the people 21 contrary to what you had projected, all decided to leave 22 the koppies, the places where they were meeting and to 23 proceed mainly towards Nkaneng but the emphasis on this is 24 that the koppie was vacated and that was not part of your 25 plan that these people will just go, choose to go to</p>
<p style="text-align: right;">Page 20314</p> <p>1 hulle uit gesluit het in die waarskuwing en geweet ons 2 praat net met die ander groep op die koppie nie self. So 3 van die militante groep kon dan ook, hoe kan ek sê wapens 4 neergelê het en vrylik wegbeweeg het. 5 CHAIRPERSON: So are you saying that you 6 expected, because that's what Mr Mpofu is busy with I 7 think, what you expected to happen. Are you saying you 8 expected even some of the militant group to respond to the 9 warning and all that would remain, because you said you 10 expected some would remain and there would be a 11 confrontation, that you expect those who remained or who 12 were going to remain to be a part of the militant group, 13 not the whole militant group but a portion of them, is that 14 - 15 BRIGADIER CALITZ: Dat hulle deel sal 16 vorm van daardie groep, korrek, mnr die Voorsitter. 17 MR MPOFU: Yes, and to look at it on the 18 flip side. What you did not expect certainly is that 19 everyone was going to vacate the koppie and proceed towards 20 Nkaneng, correct? 21 BRIGADIER CALITZ: Ons sal altyd sê dat 22 daar sal altyd 'n element wees wat agter sal bly en wat nie 23 gehoor sal gee aan die waarskuwings nie. Weens die 24 dreigemente van dood wat aan ons gemaak is was daar wel die 25 moontlikheid voorsien dat ons daar wel konfrontasie sou</p>	<p style="text-align: right;">Page 20316</p> <p>1 Nkaneng. 2 BRIGADIER CALITZ: Mnr die Voorsitter, u 3 sien ons kombineer weer die twee wat nie die geval is nie. 4 Die tweede een waarna Mnr Mpofu sou verwys het is hoe die 5 mense sou gereageer het nadat ons die waarskuwing gegee 6 het. Wat hy nou impliseer is dat die waarskuwing reeds 7 gegee is, die mense het geweet en nou is almal vrylik, dit 8 het nie so gebeur nie. Toe ons die eerste draad uitgegooi 9 het was nog voor ons die geleentheid gegee het om die 10 waarskuwing te gee aan die persone het daardie groep 11 besluit om die polisielyn aan te val. Daar was wel - 12 CHAIRPERSON: Sorry that's where you and 13 he differ. His case is that none of his clients intended 14 to attack the police line. All of them wanted to go 15 peacefully to Nkaneng. So he says that before you had even 16 got to a stage of giving warnings once the wire was being 17 uncoiled all of the people on the koppie, the so-called 18 militant group and the others all decided, it's not 19 sensible to stay around here anymore we're all going home 20 to Nkaneng and possibly other places as well and they all 21 were going peacefully to Nkaneng and then the police fired 22 at them and so forth. That's his case because it's denied 23 very strongly by the injured and arrested people that they 24 had any intention of attacking the police, they were just 25 proceeding, they say peacefully to Nkaneng and remember</p>

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1 you, I think Mr Mpofo reminded you on Friday what Mr
2 Magidiwana said that Mr Noki said we had done nothing
3 wrong, there's no reason why we can't just walk straight
4 through the police line to Nkaneng.

5 MR MPOFU: - didn't say anything about
6 walking through the police line. He simply said it was
7 done, neither did Magidiwana quote him as such.

8 CHAIRPERSON: Alright. Well give the
9 correct, I thought I had summarised the gist of it, but
10 correct me because I'm accustomed to being corrected. Give
11 us the exact passage.

12 MR MPOFU: Yes.

13 CHAIRPERSON: So the witness won't be
14 misled.

15 MR MPOFU: Yes. What I said to you on
16 Friday is that Mr Magidiwana's evidence was that Mr Noki
17 came to them and said, as the Chairperson correctly says,
18 we've done nothing wrong let us not run which is very
19 crucial for other reasons, let us walk to Nkaneng, he
20 didn't say lets walk through the police line.

21 CHAIRPERSON: Oh okay, I accept the
22 correction for which I'm grateful. But he then led his men
23 towards the police line so they were going to walk not run
24 but they could walk through the police line on their way to
25 Nkaneng.

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1 MR MPOFU: No, the police line only, so-
2 called police line arrived once Nyala 4 closed, walk
3 towards the road to Nkaneng which was as the witness had
4 said was open to them until such time that Nyala 4 closed
5 it.

6 CHAIRPERSON: You and I are both wiser
7 then we were before. We now know what Mr Mpofo's clients
8 case is and do you want him to comment upon that or is
9 there a specific question you want to ask him?

10 MR MPOFU: Yes, no, this is what I was
11 saying. The Chairperson is quite correct, I'm now
12 premising this question on our version, you understand,
13 that's what this discussion was all about. Now all I was
14 saying to you is this. In your projections, expectations
15 and so on of what was going to happen none of them, none of
16 them included, okay lets even make it worse, let's assume,
17 forget this thing whether they're walking peacefully or
18 with murderous intent include both, but none of your
19 projections included the possibility of all the people
20 vacating the place towards Nkaneng, to murder or to go home
21 or to do whatever, that you did not anticipate? That all
22 of them would vacate, correct?

23 BRIGADIER CALITZ: Mnr die Voorsitter,
24 dit is waaroor ek getuig het. As ons die waarskuwing gegee
25 het, het ek getuig dat die ondervinding wat ek het en ek

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1 kan net daaruit praat, is dat daar is altyd 'n groepering
2 of 'n militante groeie wat ons nou maar, as ek kan die
3 woord gebruik 'n stand wil maak. Dit gebeur baie weinig in
4 die operasionele ondervinding en my experience daar is
5 persone gewaarsku het en die hele groep wat die pad versper
6 het, het besluit okay ons luister na die polisie ons beweeg
7 vreedzaam weg.

8 CHAIRPERSON: It sounds as if you're
9 answering, you're actually agreeing with what Mr Mpofo says
10 on the assumption which you asked you to make for purposes
11 of answering this question. On the assumption that his
12 clients were all proceeding to Nkaneng and not intending
13 simply to attack the police and stay there, but on the
14 assumption that he says is his case that they all were
15 proceeding to Nkaneng, that is something which was not
16 foreseen which you did not expect? You expected some of
17 them would stay, you expected some of them would put up a
18 fight but you did not expect that all of them would proceed
19 to Nkaneng, that's correct isn't it?

20 BRIGADIER CALITZ: Dit is uit
21 ondervinding uit, mnr die Voorsitter, as ek net een ding
22 kan byvoeg dat op die einde wat mnr Mpofo self gesê het nou
23 is dat die woorde van mnr Mathunjwa soos ek nou verstaan
24 het is beweeg –

25 CHAIRPERSON: No, no Mr Noki.

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1 BRIGADIER CALITZ: Ag.
2 CHAIRPERSON: Mr Mathunjwa's address –
3 BRIGADIER CALITZ: Mr Noki, ja.
4 CHAIRPERSON: Mr Noki is alleged to have
5 said -

6 BRIGADIER CALITZ: Ek het dit.
7 CHAIRPERSON: We've done nothing wrong.
8 We can walk, we don't have to run.

9 BRIGADIER CALITZ: Dit is korrek.
10 CHAIRPERSON: And then they walked off in
11 the direction of this path but Nyala 4 came in front of
12 them and stopped them and then they went round the kraal
13 and they were carrying on, this time walking towards the
14 police line and then something happened -

15 BRIGADIER CALITZ: Dit is –
16 CHAIRPERSON: That we heard a lot about.
17 BRIGADIER CALITZ: Dis miskien wat ek net
18 op rekord wil plaas is dat gesê is dat hulle kan vreedzaam
19 beweeg, hardloop soos wat u gesê het in die rigting van
20 Nkaneng en nie na die polisie lyn toe nie. So die polisie
21 lyn was juis daar waar die voetpad was so ek is bly dat ek
22 dit net op rekord plaas dat hulle moes gegaan het na
23 Nkaneng toe en dit is waar ek wil verwys na die vorige
24 foto, fotos wat ek ingehandig het, die hele groep, meer as
25 180 grade na Nkaneng toe was oop gewees waar hulle kon

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1 loop. Maar hulle het presies besluit om na die polisie lyn
2 toe te loop.

3 CHAIRPERSON: That doesn't answer the
4 question. You're repeating what you said before, you don't
5 have, we've heard it already.

6 BRIGADIER CALITZ: Ek wil net daar 'n
7 bietjie -

8 CHAIRPERSON: No, no I understand but you
9 don't have to, you repeat a point it doesn't make it any
10 stronger, it's still remains as strong as it was from the
11 beginning. We know what your case is. Your case is if
12 they wanted to go to Nkaneng they could have, they followed
13 another route, the fact that they went this way is one of
14 the reasons why you say they intended to attack the police
15 but Mr Mpofo is not discussing that with you at the moment.
16 But he says, he's just putting it to you that his case is
17 that his clients were all proceeding to Nkaneng and that's
18 something that you didn't foresee and the answer you
19 already given yes you didn't foresee that, you thought some
20 people would stay behind and fight, that's the difference
21 isn't it, ja.

22 MR MPOFU: Yes, in other words the, if
23 you go to slide L194 where at that stage at 194 it's quite
24 clear that by then the koppies have been vacated. Such
25 people as we can see, well some have gone home obviously,

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1 but those that we can see are elsewhere but the koppies,
2 there's no strikers at the koppies, that is the situation
3 that I'm saying you did not foresee. You foresaw the
4 opposite. That some will remain and some will go and so
5 on, as you've explained at length. But this situation that
6 we see in L194 where the area concerned has been vacated is
7 not what you contemplated.

8 BRIGADIER CALITZ: Mnr die Voorsitter -
9 MR MPOFU: Correct?
10 BRIGADIER CALITZ: Ek wil net hierdie
11 antwoord, om net seker te maak dat ons net op die regte,
12 weereens dis twee aparte voorvalle. Wat ons voorsien het -

13 CHAIRPERSON: No, no I know that. Mr
14 Mpofo doesn't quarrel with that. What you thought as I
15 understand you that effectively nothing much would happen
16 until you came to give the warnings and then after the
17 warnings you expected certain things to happen, some people
18 would go home, some people would stay, there would be a
19 confrontation and the dispersal and disarmament would
20 proceed.

21 BRIGADIER CALITZ: Dis korrek.
22 CHAIRPERSON: That's what you thought.
23 He says now something else. He says he accepts that, he
24 never got there. The very time when the wire was being
25 uncoiled everybody decided to go. Some people went one

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1 direction, other people went in another.
2 [11:54] His clients are presumably to be seen at the
3 bottom end of the orange arrow on slide 194, and then of
4 course after Nyala 4 had accelerated and got to the kraal,
5 they then went around the kraal and the events at scene 1
6 took place. But that was not what you people foresaw would
7 happen. You assumed that there would be nothing noteworthy
8 to report really while the wire was being uncoiled. You
9 thought the operation as such would begin, the action would
10 start, if I can put it that way, after that when you had
11 given the warnings and so forth. That's correct? That's
12 the point he's making, as I understand it, and you agree
13 with it?

14 BRIGADIER CALITZ: Ja, ek "agree" met
15 daardie stelling, as ek dit dan reg het. Dankie daarvoor,
16 mnr die Voorsitter. En dan die tweede deel is van wat u
17 gesê het hier kan ons sien dat daardie persone dan wel in
18 die, na Nkaneng toe beweeg. Ek wil net sê wat ek sien hier
19 is die persone wat wel na Nkaneng toe beweeg is die persone
20 wat na hierdie sinkhuisies aan die onderkant van die foto,
21 dit is die persone wat Nkaneng toe beweeg. Die ander het
22 reguit na die polisielyn toe beweeg. So dis die verskil.

23 MR MPOFU: Okay, I'll ignore that for
24 now. We'll come back to it, I can assure you. Now the
25 point, in fact to reinforce what I'm saying, the arrests,

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1 such arrests as you foresaw and the places that were going
2 to be swept - I think was the word you used - by the
3 tactical line, also involved this group of people who would
4 have, (a), either refused to leave their position at or
5 near the koppie, or moved to what you called a higher
6 position. Those were the candidates for arrest, correct?

7 BRIGADIER CALITZ: Die persone wat hulle
8 teengesit het teen die "dispersion" en geweier het om hulle
9 wapens neer te lê en gehoor te gee, daardie persone was dan
10 die groep wat sou gearresteer gewees het.

11 MR MPOFU: That may well be so, but did
12 you also foresee the main arrests coming from people, (a),
13 who refused to leave their positions at the koppie, and who
14 took what you call higher positions, so that the TRT and
15 NIU would be able to access them?

16 BRIGADIER CALITZ: Mnr die Voorsitter,
17 nee - ekskuus, mnr die Voorsitter, ek het net gesien u is
18 besig. Nee, dit het glad nie gegaan net oor die persone by
19 die koppie nie want sou ons dan met die uiteendrywing begin
20 het, sou die persone dan outomaties wegbeweeg het van
21 hierdie koppie af. So dit is nie beperk gewees net tot die
22 koppie en net tot die militante groepie wat stilgesit het,
23 of sou stilsit, of net in koppie 1 of 2 nie. Ek het getuig
24 in my vroeëre getuienis dat sou die "dispersion" aangaan
25 die persone in 'n noordwestelike rigting dan sou

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1 weghardloop. Dit is ook wat ons vandag weet koppie 3. So
 2 die "dispersion" sou aanbeweeg na daardie geval toe, en ek
 3 wil net vir u sê dat die TRT, soos u gesê het die "tactical
 4 forces, where they can deal with them," dit was glad nie
 5 die ideaal nie. Die "tactical forces" sou net die
 6 "sweeping" gedoen het. Dit is slegs die Openbare Orde
 7 Polisiëring, die Pappa Nyalas waarmee ek gekommunikeer het
 8 wat die "dispersion" gedoen het. Die TRT sou net dan
 9 "assist" het met van die arrestasies, sou daar wees, maar
 10 hulle sou glad nie gebruik gewees het vir uiteendrywing
 11 nie.

12 CHAIRPERSON: Ja, but that's not entirely
 13 right, is it? Because I understood the evidence was that
 14 the plan provided for the following situation; that the POP
 15 members could have come under attack, would then have
 16 retreated, taken refuge in the armoured vehicles, and then
 17 the TRT people would then have dealt with the situation.

18 BRIGADIER CALITZ: Ek het suiwer nou net
 19 gepraat op die uiteendrywing, Kommissaris.

20 CHAIRPERSON: No, but the
 21 "uiteendrywing," the dispersion –

22 BRIGADIER CALITZ: Ja.

23 CHAIRPERSON: - might well have been
 24 accompanied by armed resistance –

25 BRIGADIER CALITZ: Dit sou –

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1 CHAIRPERSON: - on the part of the
 2 members of the militant group, who might well have attacked
 3 the POP people, and which would have necessitated a retreat
 4 by the POP people to the safety of the Nyalas, and the TRT
 5 people would then have taken over.

6 BRIGADIER CALITZ: En dit is –

7 CHAIRPERSON: That's part of the plan.

8 BRIGADIER CALITZ: In daardie geval, ja,
 9 Kommissaris. Die eerste een het ek net verduidelik op die
 10 uiteendrywing.

11 MR MPOFU: Ja, again correct me if I'm
 12 wrong; my impression was this, Brigadier, that the people
 13 who would have either voluntarily upfront, or by way of
 14 obedience to your instructions or warnings or whatever,
 15 would have left, would be allowed to do so, so much so that
 16 even if they were carrying dangerous weapons, they would
 17 have been allowed to proceed because after all, you knew
 18 that you were going to do phase 6 and search the places
 19 later. Is that a fair summary of what you anticipated to
 20 happen?

21 BRIGADIER CALITZ: Nee, mnr die
 22 Voorsitter, dis glad nie so nie. Die persone was wel, die
 23 wat gehoor gegee het aan die waarskuwing en hulle wapens
 24 neergelê het, hulle kon vrylik beweeg in die rigting van
 25 Nkaneng, wat ek hier gewys het. Die persone wat verhoed

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1 het, of versuim het – dis die regte woord – om hulle wapens
 2 dan neer te lê, daardie persone sou benader geword het,
 3 indien hulle in 'n groepering was uiteengedryf is,
 4 geïsoleer gewees het, ontwapen geword het, en gearrester
 5 gewees het. So dit is ook ten doel van die opvolgaksies
 6 wat ons gehad het. Al die persone in die veld wat geweier
 7 het om wapens neer te lê is dan in daardie geval
 8 gearrester. Niemand sou gearrester gewees het as jy jou
 9 wapens neerlê en vrylik wegbeweeg nie. Dit was die
 10 ooreenkoms met hulle.

11 CHAIRPERSON: How many troops did you
 12 have in the field to make these arrests? I mean I use
 13 "troops" in the loose sense in which it has been used up to
 14 now. How many arresters did you have, people who would be
 15 able to make arrests?

16 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 17 het nie 'n presiese getal by my nie, maar ek kan dit vir u
 18 gee. Dit is die –

19 CHAIRPERSON: A rough estimate.

20 BRIGADIER CALITZ: - Openbare Orde –

21 CHAIRPERSON: Rough estimate.

22 BRIGADIER CALITZ: - Nyalas wat opgevolg
 23 het. Ek dink daar is, hoeveel Nyalas het opgevolg? Kom
 24 ons vat 10 en daar is 'n seksie van agt per Nyala, omtrent
 25 80 –

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1 CHAIRPERSON: You're talking about 80
 2 people.

3 BRIGADIER CALITZ: Plus dan die –

4 CHAIRPERSON: And assuming all –

5 BRIGADIER CALITZ: Plus dan die TRT wat –

6 CHAIRPERSON: And how many TRT people
 7 were there?

8 BRIGADIER CALITZ: Ek kan nie vir u
 9 presies sê in die voertuie nie.

10 CHAIRPERSON: Roughly.

11 BRIGADIER CALITZ: Daar was so, sê maar
 12 drie of, twee of drie per Nyala wat dan sou die OOP
 13 ondersteun het met van die arrestasies.

14 CHAIRPERSON: Well, if all 400 militant
 15 people – assuming there were 400, assuming they all had
 16 dangerous weapons, if they all decided we're going off now
 17 back to Nkaneng, taking our weapons with us, would you have
 18 been able to, in fact able with the forces at your disposal
 19 to have arrested them all?

20 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 21 glo wel so. As ons hulle uiteengedryf het met die Openbare
 22 Orde Polisiëring en jy breek hulle op in kleiner groepies,
 23 is dit dan baie makliker om daardie arrestasies uit te
 24 voer. So ek glo wel ons sou in 'n posisie gewees het om
 25 daardie arrestasies te doen.

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1 MR MPOFU: Forgive me for asking you the
2 same thing, but I want you to be sure about this. There
3 was no talk – are you saying that there was no talk or
4 expectation or anticipation that some of those people who
5 would leave could do so with their weapons on the basis
6 that those weapons would in any event be recovered during
7 phase 6? Was there such an idea?

8 BRIGADIER CALITZ: As ek u reg verstaan
9 is dat u verwys na fase 6 waar daar dan 'n opvolg sou
10 gewees het van die deursoekings. Is dit waarna u verwys?

11 MR MPOFU: Yes, but just so that we don't
12 get another long answer, I just want you to understand that
13 I'm not discussing that phase now. All I'm saying is that
14 in the safe knowledge that there would be these follow-up
15 and search operations, and for that reason it was
16 anticipated that some of the people would be followed up
17 later, so that – do you understand what I'm saying?

18 BRIGADIER CALITZ: Nee, ek verstaan wat u
19 sê.

20 MR MPOFU: It's either you – there are
21 two possibilities. It's either you said look here, not a
22 single person must pass through these gates or this gap, or
23 whatever, who is carrying a dangerous weapon. That's
24 situation A. Situation B is look, preferably they must
25 hand over their weapons, but if they don't, still let them

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1 through because remember, we are going to get them in phase
2 6. Which of the two was it?

3 BRIGADIER CALITZ: U propositie 1 is
4 nooit moontlik in daardie geval. Dit is baie moeilik om
5 dit te verseker dat ons almal sal hê. U sal wel onthou dat
6 ek getuig het in die noordwestelike rigting het daar baie
7 mense wegbeweeg. In die oostelike rigting, selfs op
8 hierdie foto, is daar baie van hierdie mense wat hier
9 wegbeweeg na, op die tyd van hierdie foto is dit baie
10 moontlik dat van hierdie mense wat hier wegbeweeg het na
11 Nkaneng toe wel van die "protesters" was, van die militante
12 groep en wat dan wel gewapen was, en ons weet dan later was
13 daar wel 'n deursoeking wat na 'n "cordon and search"
14 verwys is, waar nog 'n groot aantal wapens wel weer gekry
15 is. So ja, ek stem saam met u, u tweede gedeelte, dat dit
16 is baie moontlik dat die persone, ons het nooit voorsien
17 dat ons sê honderd persent van dit, almal wat wapens dra
18 sou kon in die hande kry nie en ons het geweet die wat wel
19 wegbeweeg sal ons dan op 'n latere stadium, daar so 'n
20 operasie wees.

21 MR MPOFU: Good. And that must indeed be
22 so because if you look at paragraph 13.9 of HHH20, which is
23 consolidated statement of Duncan Scott, 13.9 – sorry, page
24 83 bottom, to 84, it says there, "It was mentioned that any
25 strikers who moved away after the verbal warning could do

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1 so without incident. There would be a follow-up action,
2 being phase 5 and 6, to retrieve as many of those weapons
3 as possible at their places of residence." I'm just saying
4 that reinforces the point that you and I agree on, that
5 people were – I wouldn't go as far as to say allowed, but
6 were expected to pass through with weapons in the safe
7 knowledge that they would be retrieved later, correct?

8 BRIGADIER CALITZ: Ek dink ons het op
9 daardie punt saamgestem, ja, mnr die Voorsitter.

10 MR MPOFU: Ja.

11 CHAIRPERSON: What is said here at the
12 top of page 84 and the foot of page 83 refers to strikers
13 who walked, who moved away after the verbal warning. So
14 that was in fact even later than the time we're busy with
15 here. People could have moved away, and in fact did move
16 away long before the verbal warning was given, and they
17 could have gone with their weapons as well.

18 BRIGADIER CALITZ: Dit is hoekom ek in
19 die begin verwys het na die twee aparte, die heelyd net
20 wil teruggegaan het na daardie een toe ook, mnr die
21 Voorsitter. Maar dit is bevestig hier ook.

22 MR MPOFU: And yet – okay, sorry, I
23 thought Adv Tokota wanted to say something else. Maybe he
24 pressed the light –

25 CHAIRPERSON: He was saying something to

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1 me, but not to you.

2 MR MPOFU: Okay. Well, the light was on.
3 Okay, and yet despite that dispensation of accepting, to
4 put it at the lowest, accepting that people could go
5 through even with weapons, you had a specific intention to
6 block the so-called militant group from proceeding to
7 Nkaneng, correct?

8 BRIGADIER CALITZ: As u praat van toneel
9 1, wat my opdrag daar was, dit was gewees om te "disperse"
10 en blok. Dit was ten opsigte van die onverwagte aanval wat
11 op die lyn geloods is dat ek daardie opdrag gegee het, ja.

12 MR MPOFU: It's my fault again, ja. I
13 didn't mean block in that sense. I'm saying even before
14 the "toneel 1" took place you were so minded as to prohibit
15 or restrict the militant group from going to Nkaneng, or
16 towards Nkaneng. You wanted to prevent them from doing so,
17 as a specific intent harboured by you and the others.

18 BRIGADIER CALITZ: As u sê voor insident
19 1, ek wil net weet op watter stadium dan kan ek u vraag
20 antwoord.

21 MR MPOFU: No, at any stage. I'm saying
22 one of your goals – maybe let me put it that way – one of
23 your goals was to prevent the militant group from
24 proceeding like the other people.

25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

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1 is net weereens versigtig, net om die vraag reg te
 2 verstaan, "at any stage during the day," was sy vraag
 3 gewees. So daarop stem ek nie saam nie. Selfs die
 4 militante groep het deur die dag vrylik beweeg. So hulle
 5 was nooit verhinder. Slegs toe die opdrag gegee is fase 3
 6 was dit as beskou, wat ons gewys het as 'n "negative
 7 attraction point" teenoor 'n "positive attraction point,"
 8 as dit is waarna u verwys.

9 MR MPOFU: Ja, okay. That's a fair
 10 point. During the operation itself one of your goals was
 11 to prevent the so-called militant group from going towards
 12 Nkaneng, correct? Or not correct?

13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter, nie korrek nie.

15 MR MPOFU: Alright.

16 CHAIRPERSON: It looks to me as if you
 17 were possibly trying to prevent them from going in a
 18 northerly direction into Nkaneng, but if some of them had
 19 decided to go in a north-westerly direction and approached
 20 Nkaneng from the western side, you had nothing in place to
 21 stop that.

22 BRIGADIER CALITZ: Dit is wat ek na wil
 23 verwys het, mnr die Voorsitter. Dit is heeltemal korrek.

24 CHAIRPERSON: So in fact they could have
 25 frustrated your whole operation by all going off in a

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1 north-westerly direction and getting into Nkaneng via the
 2 western side, then you would have achieved only this; you
 3 would have cleared the koppie for the time being, but all
 4 the people who were in possession of dangerous weapons
 5 would have remained in possession of dangerous weapons.

6 BRIGADIER CALITZ: Dan sou ons van voor
 7 af seker weer begin het met die onderhandelingsfase –

8 CHAIRPERSON: Well, then you would have
 9 done the cordon and search, but –

10 BRIGADIER CALITZ: En fase 5 van die
 11 fase.

12 CHAIRPERSON: Yes, ja, but how long that
 13 would have taken and how successful that would have been,
 14 and if they'd all come back to the koppie the next morning
 15 you would have been back where you started. That's right,
 16 isn't it?

17 BRIGADIER CALITZ: Ek glo op daardie
 18 stadium sou hulle teruggewees het by die koppie die
 19 volgende dag, sou ons die inligting miskien gehad het deur
 20 middel van ons "crime intelligence," en dan sou die besluit
 21 gewees het ek glo dieselfde, dat ons hulle miskien van daar
 22 af dan net uiteendryf miskien op 'n ander metode, miskien
 23 weet ons dat hulle nie op die draad gereageer het nie, so
 24 daar was moontlikhede, mnr die Voorsitter, waarna ons wel
 25 kon gekyk het. Maar beslis sou daar 'n opvolg operasie

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1 gewees het.

2 MR MPOFU: Okay, well I'll find the
 3 passage. Brigadier, I don't want to confront you with
 4 something that I don't have at hand. I will find the
 5 passage, but I put it to you that your evidence-in-chief
 6 was that – or well, it might not be in chief, but I think
 7 my recollection is that it was your evidence-in-chief -
 8 that part of your evidence was that you had specifically
 9 formed the intent – and I say "you" collectively – to
 10 prevent the so-called militant group, as opposed to the
 11 other people proceeding towards Nkaneng.

12 [12:14] MR SEMENYA SC: That was never the
 13 evidence.

14 MR MPOFU: I'll find it, it is there,
 15 Chairperson. Okay, we'll come back –

16 CHAIRPERSON: My recollection is that, as
 17 I've put to him a few moments ago, that all they really had
 18 in mind was stopping them from proceeding into Nkaneng
 19 through what one can call the northern boundary of Nkaneng,
 20 that's all, but even that wasn't put specifically in chief,
 21 I don't think, I think Mr Semenya is right but anyway, if
 22 the passage can be found and Mr Semenya and I are wrong we
 23 will accept it as we have –

24 MR MPOFU: I'll find it, it is in
 25 Afrikaans. Okay, we'll come back to that. Now I want to,

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1 before I go to my next topic, to put something to you
 2 regarding, again something that we discussed last week
 3 about, remember when I said the leadership protects people
 4 and so on and so on, do you remember that discussion, yes?

5 BRIGADIER CALITZ: As u verwys na die
 6 polisie wat u gesê het die leierskorps van die polisie?

7 MR MPOFU: Van die polisie, ja.

8 BRIGADIER CALITZ: Ek onthou daardie
 9 beweringe wat u gemaak het, ja.

10 MR MPOFU: Alright, I want to short
 11 circuit this by saying this, one of the things I'm going to
 12 argue about your statement at the parade is that it was
 13 intended to poison the minds of the members of the police
 14 by suggesting to them what the official line is, namely
 15 that, look, there is going to be this Commission and our
 16 line is going to be self defence, that was your intention.
 17 It was to disseminate to the group that you were
 18 addressing, the fact that the defence is self defence.

19 CHAIRPERSON: Mr Semenya, you've put your
 20 light on?

21 MR SEMENYA SC: Chair, in fairness the
 22 witness must be taken to that address and –

23 MR MPOFU: Good –

24 MR SEMENYA SC: - and be pointed to which
 25 element of that address has this –

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1 MR MPOFU: No, that's a fair objection,
2 Chair.

3 CHAIRPERSON: You don't oppose the
4 objection, I'm pleased, I concur, Mr Mpofo.

5 MR MPOFU: I support the objection,
6 Chair. 82, Chairperson, JJJ –

7 CHAIRPERSON: JJJ?

8 MR MPOFU: 82, yes, the chairperson is
9 correct, ja. Sorry, just one second. Sorry, Chairperson,
10 it is where he says there is going to be a commission.

11 CHAIRPERSON: It looks like around about
12 the reference 807, is it?

13 MR MPOFU: 807, yes.

14 CHAIRPERSON: Yes.

15 MR MPOFU: Yes, starting from about 750,
16 he says that then the president and so on got the same view
17 and you can read it in the papers. Then he announced that
18 there will be a board of inquiry, which is the Commission I
19 suppose. Some of you might wonder, are you with me, Mr
20 Brigadier?

21 BRIGADIER CALITZ: Ek is met u, Advokaat.

22 MR MPOFU: Ja, okay. "Some of you might
23 wonder what is now going to happen. Remember after any big
24 action there is now a board of inquiry that will sit and
25 then take it frame by frame, minute by minute of what

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1 happened, alright? The police will give 100% full
2 cooperation, okay. At this stage we did nothing wrong.
3 From the planning to the execution was 110%, exactly how we
4 planned it" and so on, we've read that before.

5 CHAIRPERSON: If you're looking for the
6 self defence, it is two lines after 920.

7 MR MPOFU: 920? Yes, that's the part I'm
8 looking for, "and that is where the TRT line and the NIU
9 line was formed and when they come under attack, that is
10 where the command was given by their commanders as well as
11 some of them act in self defence," but the gist of this
12 question is what you say after that. "Self defence,
13 alright, so on that nothing, nothing, nothing was wrong you
14 acted, it was justified and that is exactly the commitment
15 and the cooperation that we are going to give to the
16 people." You've already admitted that what you meant by
17 the people there was the Commission, correct?

18 BRIGADIER CALITZ: Ek stem so ver saam
19 met u, wat u lees.

20 MR MPOFU: Ja, now what I'm saying is
21 that you then, what you were doing here was to say to the
22 people, this is what happened and then they came under
23 attack and then it was self defence and that is the
24 commitment, that is exactly the commitment and the
25 cooperation we are going to give to the Commission. In

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1 other words what I've just told you now, which is that it
2 was self defence is exactly the Commission, rather, sorry,
3 the commitment as you call it, that you are going to give
4 to the Commission of inquiry that I've referred you to.

5 BRIGADIER CALITZ: Mnr die Voorsitter, as
6 ek net kan versoek dat nie net die een lyntjie, ek dink
7 daardie een het ons 100 keer al oor verduidelik, oor wat
8 presies my strekking van my woorde was en wat ek daarby
9 bedoel het. Ek wil net vra in regverdigheid miskien daar
10 by 10:44, as die advokaat net daardie 10:44, daardie
11 paragraaf ook kan lees, sal ek bly wees, asseblief?

12 MR MPOFU: I'm sorry, it is my fault
13 again, I don't know what you're saying now, what should the
14 advocate do? Okay, -

15 MR SEMENYA SC: Your mike, your mike
16 Chair, is not on.

17 MR MPOFU: Chairperson, your mike but
18 yes, I got the point.

19 CHAIRPERSON: Thank you.

20 MR MPOFU: Alright, Mr Brigadier, please
21 believe me, we are going to get to that paragraph just now,
22 I can assure you 100%. All I'm saying to you now is that
23 the passage that I've read to you that talks about how
24 exactly the commitment to the Commission is going to be
25 done is the one that is specifically suggesting to the

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1 members that the "line" is self defence. What do you have
2 to say about that?

3 MR SEMENYA SC: And the witness has
4 already answered, that you are isolating one sentence, you
5 must read it in a particular context. The witness can be
6 prevented from doing that.

7 MR MPOFU: No, the witness can be
8 prevented if the other passage he is referring me to has
9 nothing to do with what I'm putting to him.

10 CHAIRPERSON: Anyway, the point is –

11 MR MPOFU: Well, I want a proper answer –

12 CHAIRPERSON: If the witness wants to
13 give an answer you must let him give his answer, that's
14 all. So let's stop for a moment, Mr Mpofo. You understand
15 what Mr Mpofo is putting to you. He says that what you did
16 in the speeches, you conveyed to the members present what
17 the police defence, as it were, to these allegations was,
18 so they would know what it was so that they could stick to
19 that defence. That's essentially what he is putting to you
20 and he says, and he relies on the phrase nothing was wrong,
21 you acted, it was justified, that's exactly the commitment
22 and the cooperation we're going to give the people, he says
23 that means what you were saying to them, that's the story
24 you're going to tell to the Commission, you see, that's his
25 point. Now what comments to you have on that and if there

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1 are other passages in the address to which you wish to
 2 refer in order to rebut the allegations being put to you,
 3 you're free to do so.

4 BRIGADIER CALITZ: Dankie, mnr die
 5 Voorsitter. Dit is presies wat ek, - ek sien die advokaat
 6 praat, ek wil net hê hy moet die antwoord luister. Dit is
 7 presies waarna ek verwys het toe ek vir u gesê het dit is
 8 glad nie so nie. As u dit lees in die konteks, "It was
 9 justified and that's exactly the commitment," met ander
 10 woorde die ondersteuning wat ons aan hierdie Kommissie gaan
 11 gee, dit verwys nie na die woord "self defence" en exactly,
 12 gaan ons bly by self defence nie. Dan kon hulle dit wel
 13 verstaan het as ek vir u gesê het "and some of them acted
 14 in self defence," wat dan, hoe sou die ander dit verstaan
 15 het, wat ek ook verduidelik het. Ek het na daardie verwys
 16 wat net hulle vuurwapens gebruik het, so deur te sê die
 17 lede kon dit so verstaan, dit is glad nie so nie. Hoekom
 18 ek na die ander paragraaf wil verwys, u sal sien 9:50 en
 19 10:26 is my sin onderbreek, ek was besig om met die TRT te
 20 praat en toe is ek onderbreek deur die video persoon, die
 21 kameraman wat ons gesien het en dit het ons alreeds
 22 bespreek.

23 By 10:44 gaan ek aan na waar ek opgehou het met
 24 die TRT, met ander woorde daardie twee paragrawe was ons
 25 onderbreek. Ek het iets anders gesien, ek het die aandag

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1 daarop gevestig, toe ons dit klaar bespreek het gaan ek aan
 2 met hulle, mnr die Voorsitter, en as u my toelaat dat ek
 3 dit net so lees, "but there is no secret in what we are
 4 doing." Met ander woorde daar het ek presies vir hulle
 5 gesê teenoor wat u nou beweer het ek het gesê, "and we say
 6 it openly, we say it yesterday to the media, if you shot 25
 7 R5, then you say, I shot 25. If you had one magazine and
 8 it is necessary to put the second one you say so. Why,
 9 because the Crime Scene experts, the LCRC, everybody was on
 10 the scene, they already retrieved the cartages, alright.
 11 In the newspaper this morning it was something like 400
 12 cartages." U sal onthou dat daar media berigte was oor wat
 13 al gevind was. "That is why they say in the media, so
 14 unless that we say, no, I only fired two shots but there
 15 were 5 or 400 cartages picked up, you understand what I'm
 16 saying. You have got nothing to hide, please do not."

17 So ek het vir die ouens duidelik herhaal hier en
 18 toe het ek vir hulle verduidelik, net om alles op te som,
 19 why die vuurwapens sou gevat word, dit sou Ballisties toe
 20 gestuur word, IPID ondersoek en ek het weereens herhaal die
 21 derde sin van onder af, "You got nothing to hide," vir die
 22 spesifieke TRT. So dit was vir my baie duidelik 'n
 23 bevelvoerder wat sy mense motiveer en vir hulle sê om die
 24 waarheid te praat en net die waarheid en dan daarby te bly.
 25 Die inligting waarna ek vroeër verwys het, dit is wat ek

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1 beskryf het wat gebeur met POP, dit is wat ek beskryf het
 2 wat gebeur het met TRT, soos dit aan my oorgedra was deur
 3 die commanders vir die lede wat nie daar was nie en vir die
 4 benefit van dat almal verstaan op dieselfde prentjie en toe
 5 ek die lede aanspreek wat wel geskiet het, het ek vir hulle
 6 gesê, mnr die Voorsitter, daar is niks om weg te steek nie,
 7 gee 'n 100% samewerking, dit wat u sê is dit wat u gedoen
 8 het.

9 So om te sê ons probeer die mense protect of iets
 10 toesmeer, dit het ek nog nooit gedoen in my 27 jaar
 11 loopbaan as 'n polisiebeampte nie en seer sekerlik nie in
 12 my posisie wat ek vandag is nie en ek sal dit ook nie doen
 13 nie.

14 MR MPOFU: Okay, well, in pursuance of
 15 that argument and I'm giving you an opportunity to comment,
 16 I'm going to use the fact that there was no need for you to
 17 spell it out, so to speak, apart from trying to be
 18 schooling these people as to what they should say at the
 19 Commission. There was no need for you to say, and then it
 20 was the TRT line and then it was the NIU line and then they
 21 were given command and then it was a self defence, and then
 22 it was justified, that's exactly the commitment you are
 23 going to give to the Commission of inquiry. This was
 24 simply there after all.

25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 nee, dit is waar die advokaat die fout maak, daar was op
 2 daardie dag lede daar gewees wat vir die eerste keer daar
 3 opgedaag het. Hulle was op daardie parade en hulle moes
 4 ingelig gewees het wat daar gebeur het. Al die lede was
 5 nie daar nie, so dit het ek in my antwoord reeds vir u
 6 gesê.

7 MR MPOFU: Okay, fair enough. Then why
 8 was it necessary only for you to relate this part, if that
 9 was the motivation then you should have told the whole
 10 story, when K9 did this, because when K9 did that all the
 11 others were not there, and then STF did this, do you
 12 remember, because POP was not, - that's not, the only point
 13 at which you decided to inform people who were not there
 14 about what happened, is the one where you wanted them to
 15 know that the story is self defence and I'm going to
 16 suggest that you were schooling those members and in an
 17 irregular fashion suggesting to them the theory of self
 18 defence. What will you say when I present that argument to
 19 the Commission?

20 BRIGADIER CALITZ: Mnr die Voorsitter, my
 21 antwoord bly staan, dit wat ek gesê het is baie duidelik,
 22 my getuienis daarvoor is baie duidelik en dit wat op daardie
 23 dag, ons praat van binne 24 uur aan my bekend gemaak was,
 24 dit is waarop ek comment gelewer het. Die doel van die
 25 hele toespraak was egter iets anders wat op daardie dag sou

<p style="text-align: right;">Page 20345</p> <p>1 plaasgevind het, daardie was maar net 'n deel om die ouens 2 in te lig wat nuut bygekom het. So ek stem glad nie saam u 3 nie en u sal miskien weet of, ek weet nie waar u dit gaan 4 kry nie, oor watse tipe bevelvoerder ek is en as u gaan kyk 5 na my, hoe kan sê, my track record en dit wat ek doen en 6 die mense wat, daar was nog nooit so iets gewees nie, wat 7 ek enigsins beskuldig was daarvan nie. Ek het 'n skoon 8 rekord, ek is nog nooit aangekla van enige iets nie, 9 beweringe van daardie aard nie, so u het my gevra wat my 10 antwoord daarop sal wees, so nee, ek stem glad nie saam met 11 u nie en die feite is op die tafel.</p> <p>12 MR MPOFU: Okay, -</p> <p>13 MR SEMENYA SC: In consolation, Chair, I 14 will attempt to meet that argument when it is presented.</p> <p>15 CHAIRPERSON: Well, we never expected you 16 to do make the attempt, Mr Semenya.</p> <p>17 MR MPOFU: I would have started that 18 sentence with the words, "Needless to say," from Mr 19 Semenya, I wouldn't expect lesser from him, ja, but fine, 20 basically you disagree with me. Okay, so -</p> <p>21 BRIGADIER CALITZ: Totally, ja.</p> <p>22 MR MPOFU: Yes, now and Mr Semenya will 23 pursue that further in due course. The second, once again 24 I'm doing this, Mr Brigadier, so that when I do criticise 25 you, you won't be here to defend yourself. It is for you</p>	<p style="text-align: right;">Page 20347</p> <p>1 R5," whatever that is, "then you say I shot 25." "If you 2 shot 25 R5 then you say I shot 25, if you had one magazine 3 and it was necessary to put a second you say so. Why," 4 you're asking yourself a rhetorical question, "because the 5 Crime Scene experts, the LCRC, everybody was on the scene, 6 they already retrieved the cartages, alright." Now that I 7 understand, I may not understand the technical terms of 8 operational things, but the word "why" and "because" I 9 understand. You say they must say that there were 25, why, 10 because the Crime Scene experts have been there and they 11 already retrieved the cartages. So the two must be linked 12 by the word "why" and "because", correct?</p> <p>13 BRIGADIER CALITZ: Ek dink u sal die 14 antwoord vind as u net 'n bietjie verder aflees, sal dit 15 vir u duidelik word.</p> <p>16 MR MPOFU: Well, it only reinforces what 17 I'm saying. You then say, "Alright, in the newspaper this 18 morning it was something like 400 cartages," once again you 19 are schooling them, "that is what they say in the media. 20 So it is useless to say, it is useless that you say, no, I 21 only fired 2 shots.</p> <p>22 [12:34] But there were 500 or 400 cartridges picked up, 23 you understand what I'm saying? Doesn't that mean -</p> <p>24 BRIGADIER CALITZ: And then -</p> <p>25 MR MPOFU: No, no please -</p>
<p style="text-align: right;">Page 20346</p> <p>1 to be able to arm Mr Semenya with your short answers to 2 pursue that argument. So I'm now going to give you another 3 opportunity to defend yourself against another criticism 4 I'm going to give. The second criticism I'm going to give 5 is in relation to the paragraphs that you referred me to, 6 10:44. That's why I was saying we are coming to that, and 7 that criticism is this, to summarise it, what you were 8 saying to those people there is, you must tell the truth 9 about how many shots you fired because they already know, 10 because they have the evidence. In other words you must 11 tell the truth simply because LCRC has taken the videos, 12 not because it is a good thing to tell the truth, whether 13 LCRC has got the evidence or not. You must tell the truth 14 literally ja, because they will find out, these people of 15 the Commission. What do you have to say to that criticism?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, 17 nee, voor ek persoonlik raak, nee, kom ek sê net ek verskil 18 met u heeltemal. Ek dink nie u verstaan die operasionele 19 terme nie, ek dink nie u verstaan hoe die operasionele sy 20 van die polisie werk nie, so ons sal dit miskien met re- 21 examination verduidelik weer 'n keer, met alle respek, 22 dankie.</p> <p>23 MR MPOFU: Okay, you're right, I don't 24 understand all the terms but I understand one word, "why", 25 because it gives the reason. You said, "If you shot 25</p>	<p style="text-align: right;">Page 20348</p> <p>1 CHAIRPERSON: Give him a chance to finish 2 his question. Then I'll make him give you a chance to 3 finish your answer.</p> <p>4 MR MPOFU: To answer, yes. I was then 5 saying that, that reading on only reinforces what I'm 6 saying. Once again you are saying that it's useless to say 7 no I fired two shots because they found 500 cartridges. In 8 other words if it wasn't for the fact that they find this 9 500 it wouldn't be useless to lie and say I fired two shots 10 when you fired three or whatever it is.</p> <p>11 BRIGADIER CALITZ: Nee, mnr die 12 Voorsitter, die advokaat het nou gerieflikheidshalwe of 13 miskien, ek weet nie of hy net by die vraagteken gestop, u 14 antwoord waarna u soek is in die volgende sinnetjie. You 15 have got nothing to hide please do not. So dit is baie 16 eenvoudig dat ek die lede nie net geskool het soos wat u 17 beweer nie, ek het vir hulle gesê hulle het niks om weg te 18 steek nie en soos enige goeie bevelvoerder na enige voorval 19 ons was betrokke by hoeveel skiet voorvalle het ek altyd 20 vir my lede gesê, kêrels alles wat ons nou gedoen het hier 21 sit alles op skrif laat alles uitkom, gee die volle 22 samewerking, alles wat jy, so dit is hoe 'n bevelvoerder 23 moet motiveer. As ek enigsins wou iets wegsteek het ek vir 24 die ouens gesê voordat julle enige verklaring maak kom 25 praat eers met my, voordat julle enige verdere statement</p>

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1 maak aan IPID waarskuwing, kom praat eers met ons laat ons
2 regspan eers daarna kyk, laat ons nou eers probeer 'n
3 storie, weet as mens enigsins wou wegsteek kon mens sulke
4 woorde gesê het. Ek kon op hierdie stadium het ek nie eers
5 geweet hierdie video kom kommissie toe nie. Dit was twee
6 dae na die tyd, dit was bedoel vir iets anderste. So u kan
7 duidelik sien dit was nie 'n voorbereide toespraak vir die
8 kommissie nie, dit was 'n voorligting aan my lede en dit
9 was hoe ek hulle motiveer het en daarom het ek, glo ek het
10 alle na alle eerlikheid die verklarings en die inligting
11 wat ingesamel is dit sodoende gedoen.

12 MR MPOFU: Okay, once again I'm, this is
13 something that Mr Semenya and I will be engaged with much
14 later but while you are here I want to give you a chance to
15 defend yourself. I'm saying that these words I accept that
16 you said that you have nothing to hide and so on and so on,
17 but when you communicate you communicate for a purpose.
18 When you say to these people A do not, rather you must say
19 it as it happened why, because the LRC has been there and
20 secondly you say separately they know how many cartridges
21 were there so it will be no use for you to say you shot one
22 or two as suppose if you shot more. Then clearly what you
23 are saying and this is what I'm going to argue is not that
24 you must tell the truth because you would have sworn before
25 God and it's a good thing to do, to tell the truth and if

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1 you shot three shots you must just say you shot three
2 shots. You are saying that because that is because there
3 is objective evidence which will be used against you if you
4 lie. So do not lie because they know, not do not lie
5 because it's a good thing to do. That was your message.
6 What is, I'm just giving you a last chance to defend
7 yourself against that so that you can arm Mr Semenya later
8 to refute my argument.

9 BRIGADIER CALITZ: Mnr die Voorsitter,
10 last chance sal ek dit die enige tyd vat, want ons
11 debatteer die punt al in die, maar nee ek stem glad nie
12 saam met u nie. Ek het die feite aan u gestel en ek het
13 ook gesê hoekom dit gesê was. So ek kan glad nie dink dat
14 ons werk nie hier met 'n groep, ek wil amper sê, al die
15 lede wat hier was is opgeleide polisiebeamptes, die meeste
16 van hulle met range, wat al jare ondervinding het so ons
17 werk nie hier met iemand wat vir die eerste keer op 'n
18 toneel was. 'n Lid van die publiek wat miskien 'n skoot
19 afgetrek het of in 'n ongeluk betrokke was en nou probeer
20 jy vir hom sê hoor maar dit gaan volg nie. Ek dink 'n
21 groot presentasie van hierdie lede is openbare orde
22 polisiëring lede wat jare en jare se ondervinding het en
23 wat by duisende insidente betrokke was, ek praat van skiet
24 voorvalle, uiteendrywings. So dit is nie nodig om hulle te
25 skool nie, dit is belaglik. Maar dit is my woorde, dit is

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1 nie wat ek sê u sê nie. Dankie, mnr die Voorsitter.
2 MR MPOFU: No, I can take it. Alright,
3 so it's belaglik, it's laughable what I'm saying.
4 BRIGADIER CALITZ: Nee, belaglik is nie
5 laughable nie maar -
6 MR MPOFU: What is it?
7 BRIGADIER CALITZ: Nee, kom ons -
8 CHAIRPERSON: Belaglik is ridiculous.
9 MR MPOFU: It's even worse than
10 laughable.
11 CHAIRPERSON: What he's saying, well no.
12 What he's putting to you is the point that you're making he
13 says is ridiculous. That's his opinion.
14 MR MPOFU: Sure.
15 CHAIRPERSON: At the end of the day Mr
16 Semenya may say something along the same lines in more
17 polite language and you will deny it.
18 MR MPOFU: Yes, no I'm just confirming, I
19 don't want to accept an insult that I haven't understood.
20 Okay.
21 CHAIRPERSON: - an insult, that's just a
22 strong way of saying he doesn't agree with what -
23 MR MPOFU: Ja.
24 CHAIRPERSON: And he thinks your point
25 doesn't, isn't really a good point at all.

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1 MR MPOFU: Ja, okay. Fine. So, okay
2 fine so it's belaglik, alright. Now the, I'm now going to
3 go into something which might even maybe even more belaglik
4 which is the possibility that you, Brigadier Calitz gave
5 the instruction for the people to be killed on the 16th at
6 scene 1 at least.

7 MR SEMENYA SC: No, Chair, we have to be
8 seriously responsible about the propositions we put. Mr
9 Mpofo, has no basis whatsoever that the witness gave
10 instructions for the shooting at scene 1. There's no basis
11 for it at all.

12 CHAIRPERSON: Mr Mpofo, you remember that
13 if you're going to put a proposition of that kind you have
14 to refer to evidence, either direct evidence or
15 circumstantial evidence which justifies what's been put.
16 You can't just make the allegation out of the air as it
17 were to the witness.

18 MR MPOFU: Yes, well -

19 CHAIRPERSON: On that ground we've gone
20 over often before in this commission.

21 MR MPOFU: Chairperson, quite frankly Mr
22 Semenya cannot be suggesting that this is the end of my
23 cross-examination. I'm obviously going to, I said I'm
24 going to canvas a particular topic. I can't be stopped
25 from saying what topic I'm going to canvas with the

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1 witness.

2 CHAIRPERSON: I'm not stopping you, I'm

3 just reminding you of what the rules are.

4 MR MPOFU: Yes.

5 CHAIRPERSON: That I assume –

6 MR MPOFU: I know what the rules are.

7 CHAIRPERSON: That you either got, I'm

8 not sure of any direct evidence that's before us at the

9 moment on this point. For that matter, but there's got to

10 be some evidence which justifies the proposition being put

11 to the witness. That I think is Mr Semenya's contention.

12 MR MPOFU: The evidence of Colonel

13 Vermaak which is in GGG17. Yes, if you can assist me

14 because I can't find my copy, just move it up, I think it's

15 paragraph 7. Thank you. What Colonel Vermaak says there

16 is that, I'll read it out and I'll try and do what the

17 Chairperson usually does, ja the, I'm starting at the

18 beginning of 7. It says that the group moved back and

19 regrouped on the side of the kraal.

20 CHAIRPERSON: - the group moved back and

21 regrouped again on the other side of the kraal.

22 MR MPOFU: Yes.

23 CHAIRPERSON: Photo 1516 –

24 MR MPOFU: That's exactly what I –

25 CHAIRPERSON: And the policemen, "and

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1 attacked the policemen again at about 15:55. It was clear,

2 it had been noticed clearly observed clearly from the air

3 that the group was not going to surrender or yield.

4 Brigadier Calitz again gave the members the instruction to

5 mount an operation. It almost appeared as if the members

6 did not hear. Because of the incident on Monday the 13th of

7 August where the two police members under the helicopter

8 had been hacked to death I realised that the members would

9 have to act in order to defend themselves."

10 MR MPOFU: Yes.

11 CHAIRPERSON: "I again repeated Brigadier

12 Calitz's instruction from out of the helicopter whereupon I

13 saw that the members were acting. Groups (attackers)

14 photos 1517 ran away in the direction of the squatter

15 houses adjacent to the scene at 15:56. At 15:58 we flew

16 over the scene and noticed that a number of people were

17 lying on the ground. The members grouped again in a line

18 in order to be able to handle any further attacks photo

19 1518. At 16:01 the mass –

20 MR MPOFU: That's fine, Chairperson.

21 CHAIRPERSON: Is that as far as you want?

22 MR MPOFU: Yes. Now here you, do you

23 agree firstly with what Colonel Vermaak is saying as far as

24 this concerns you?

25 BRIGADIER CALITZ: Ja, as dit is wat uit

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1 die lug uit waargeneem het, ek kan nie met hom stry nie,

2 dit is sy waarneming. Ek kan nie sê wat hy waargeneem het

3 nie.

4 MR MPOFU: Alright, now he says

5 effectively that you gave an order for action to be taken,

6 so that far you agree?

7 BRIGADIER CALITZ: Ek dink dit is

8 duidelik op rekord al, mnr die Voorsitter.

9 MR MPOFU: And then he says it looked

10 like the members could not, at least to him, this may or

11 may not be so, but to him it looked like the members did

12 not hear your instruction or your command or your order,

13 correct?

14 BRIGADIER CALITZ: Ek sien wat hy daar

15 sê.

16 MR MPOFU: And he says because of what

17 had happened on the 13th where policemen had been killed,

18 chopped he realised that those members to whom you were

19 giving the instruction should act to protect themselves or

20 their lives, correct?

21 BRIGADIER CALITZ: Ek sien wat hy daar

22 skryf.

23 MR MPOFU: And simply because he thought

24 you didn't hear or rather the rightly or wrongly that the

25 members did not hear your command he repeated it and they

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1 then obeyed the instruction, correct?

2 BRIGADIER CALITZ: Ek sien wat hy gesê

3 het dat hy die, die opdrag herhaal het maar ook gesien het

4 dat hulle op, laat die lede optree, ja.

5 MR MPOFU: Ja, and then the point I want

6 to put to you is that in that sequence these people were

7 supposedly suppose to act in self defence, sorry, sorry to

8 use that broad word, to protect themselves let me put it in

9 that way, in that instance where the people were being

10 attacked according to both you and Vermaak. Correct?

11 MR SEMENYA SC: Chair, is this the basis

12 on which that proposition was offered?

13 CHAIRPERSON: You're asking me, I don't

14 know the answer. But Mr Mpofo –

15 MR SEMENYA SC: I can only ask through

16 you, Chair.

17 CHAIRPERSON: You've heard Mr Semenya's

18 question, your answer?

19 MR MPOFU: Well I think Mr Semenya is

20 just busy interrupting my cross-examination until such time

21 that he thinks I'm moving to another topic –

22 CHAIRPERSON: No.

23 MR MPOFU: I'm still busy with the cross-

24 examination, Chairperson.

25 CHAIRPERSON: He's asking whether this is

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1 the sole basis for the point you're putting, if the answer
 2 for that is no you can say no and you can carry on.
 3 MR MPOFU: Ja, I propose to carry on and
 4 until such time it's clear that I've finished this topic.
 5 CHAIRPERSON: I see.
 6 MR MPOFU: Thank you.
 7 CHAIRPERSON: No, no it's not till you
 8 finished the topic. He wants the basis upon which the
 9 statement is made, that you made, the allegation you made
 10 to him. He wants to know what's that based on and what
 11 you, I understand you to be saying is that you haven't yet
 12 finished giving the basis of that statement.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: You want to carry on with
 15 that.
 16 MR MPOFU: Yes, that's the topic I'm
 17 talking about. It's the allegation, whatever you call it.
 18 Brigadier, just answer the question, before the
 19 interruption you were just about to answer my question
 20 which is that the instruction which is referred to in this
 21 passage is, I'm going to argue that is the fatal
 22 instruction if you know what I mean, the one that made the
 23 people to take that action and that the actions that is
 24 referred to is the shooting of the people. What would be
 25 your comment if I advance that argument and now Mr Semenya

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1 -
 2 MR SEMENYA SC: I'll still ask the basis
 3 of that, for that proposition, Chair.
 4 MR MPOFU: Well, Chairperson, the, Mr
 5 Semenya is free to differ but if he doesn't understand then
 6 that's really, there's nothing I can do about that. If he
 7 is taking a different view that I can understand but if he
 8 doesn't understand the, what I'm putting to the witness,
 9 what I'm putting to the witness for acceptance or denial
 10 was that, I can't assist him.
 11 CHAIRPERSON: No, it's not necessary to
 12 get personal with Mr Semenya now, I hope he won't get
 13 personal with you. What he wants to know is what is the,
 14 the basis of the allegation you put earlier that this
 15 witness ordered the members to shoot the strikers and you
 16 put a passage which is the passage in the third line of
 17 this paragraph, Brigadier Calitz again gave the members the
 18 order to mount, to launch an operation which I take is to
 19 be the correct translation, to loots and it almost appeared
 20 as if the members didn't hear and then the order was then
 21 repeated by Colonel Vermaak. Now is that the basis for
 22 your suggestion that, to the witness, that he gave the
 23 order to the members that they must shoot the strikers?
 24 MR MPOFU: Okay, yes, no that's a further
 25 question, Chairperson. Let me just put it like this, yes

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1 together with the, maybe I should read, one of the
 2 sentences that you read which I've not read just to satisfy
 3 Mr Semenya where he says -
 4 CHAIRPERSON: Never mind Mr Semenya,
 5 you've got to satisfy me that's a proper question.
 6 MR MPOFU: Well I didn't know you also
 7 had the same problem.
 8 CHAIRPERSON: No, no, I haven't got an
 9 objection but I've got to rule on these objections.
 10 MR MPOFU: Ja, okay.
 11 CHAIRPERSON: He just raises the
 12 objection, I've got to be satisfied either the objection is
 13 good or bad and you've got to, so in that sense you've got
 14 to satisfy me. Carry on.
 15 MR MPOFU: Any way the sentence says, the
 16 sentence which I didn't read which you read Chairperson is
 17 that om, what is it 15:58 het ons oor die toneel gevlieg en
 18 op -
 19 CHAIRPERSON: To translate that, "at
 20 15:58 we flew over the scene and noticed that a number of
 21 persons were lying on the ground."
 22 MR MPOFU: Ja. So what I'm saying to
 23 you, Brigadier, for your comment is that you give an
 24 instruction for people to protect themselves, those people
 25 then act according to Vermaak at least and after that a few

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1 people are lying on the ground. I mean I don't think one
 2 has to be particular genius to see the point. You may
 3 disagree but I'm saying, what I'm putting to you for your
 4 comment so that you can defend yourself is that on the
 5 basis of the fact that you gave an instruction, that
 6 instruction had something to do with defending, with people
 7 defending themselves and that instruction was eventually
 8 followed up and people were lying on the ground thereafter.
 9 On that basis I'm going to argue that the important
 10 instruction which had to do with alleged self defence was
 11 given by you.
 12 COMMISSIONER HEMRAJ: Mr Mpofo, can I
 13 just seek some clarity from you please. Where it says in
 14 line 3 of paragraph, opdrag gegee om 'n optrede te loods,
 15 are you saying that the interpretation of that phrase
 16 should be gave the order to shoot because that literally
 17 says gave an order to mount an operation. Are you
 18 extrapolating the meaning of that into something else?
 19 MR MPOFU: No, no I'm not. I don't know
 20 what an operation that defends yourself is except shooting.
 21 I mean, it maybe there's another method by which they would
 22 defend themselves but I've never heard of it. The only way
 23 I know if they were saying there are people who are
 24 attacking them and they must defend themselves surely it
 25 didn't mean giving them tea or something. It was about

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1 doing something to defend themselves against the attack.
 2 [12:53] That's the other argument. Please answer the
 3 question.
 4 COMMISSIONER HEMRAJ: I'm sorry, I still
 5 don't follow you, Mr Mpofo - evidence as to exactly what
 6 the order was that was given by the witness, just what the
 7 words were, so that we can try and see what you say they
 8 meant.
 9 MR MPOFU: Yes.
 10 COMMISSIONER HEMRAJ: Because I'm not
 11 sure if they're include the words, "Protect yourself, or
 12 defend yourself."
 13 MR MPOFU: No, I don't think - with
 14 respect, Chairperson, I don't think that's necessary that
 15 the words must say protect yourself, protect yourself, it
 16 could mean - it could say shoot, it could say protect
 17 yourself, it could say engage, it could say all sorts of
 18 things. I don't know what the words were? All I'm saying
 19 is that the - what is clear from here is that he gave an
 20 instruction. That instruction had something to do with the
 21 people defending themselves. According to Vermaak, that
 22 instruction was not understood and aroused it, he repeated
 23 it. He, Vermaak, and then the instruction was obeyed and
 24 after that people were dead lying on the ground. That's
 25 all.

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1 CHAIRPERSON: I've got difficulty with
 2 it, and I think to be fair to the witness, one must take it
 3 in context and the context is what appears in the last few
 4 sentences of para 6. Brigadier Calitz gave instruction -
 5 well, no, let me start a bit higher. Let's start after the
 6 words where it's photo 15.12, "Instruction was given to the
 7 wire cars to uncoil the wire, because the group had the
 8 guns and move up and down." Photo 15.14. 45.40. "They
 9 the first time moved to the Nyalas and the wire cars.
 10 Brigadier Calitz gave an order to the members of the Nyala
 11 to close the doors, because the group was aggressive. The
 12 group moved at 15:46 to the kraal where the last Nyala had
 13 uncoiled its wire car." I suppose he means the wire. The
 14 group was at that stage approximately 3 000
 15 people/attackers. Brigadier Calitz gave an instruction
 16 that the members should launch an operation," the same
 17 phrase, the optrede moet loods, "launch an operation to
 18 protect themselves against the attack the mass." Photo
 19 15.15. The mass must be the group. Photo 15.15. "The
 20 members delayed until the group was practically at them, at
 21 the Nyala and the wire cars. Out of the helicopter it
 22 could be observed that the water canon was employed and
 23 stun grenades and teargas canisters were also used against
 24 the attack of the group."
 25 So in that paragraph, the expression, "n optrede

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1 moet loods," is followed by use of water canon, stun
 2 grenade, teargas. Then he goes on, the bit we read before,
 3 "The group moved back and again regrouped on the other side
 4 of the kraal, and police attacked them - and attacked the
 5 police again at 15h55. And then it was clear from the air
 6 that the group was not going to yield. Brigadier Calitz
 7 again gave the members an instruction to launch an
 8 operation." The same phrase as that being used in the
 9 previous paragraph. "It almost appeared as if the members
 10 didn't hear it," and then he goes on about because he
 11 entered it on the 13th, he realised that the members would
 12 act to defend themselves and then he repeated the order out
 13 of the helicopter. That's the full passage in the full
 14 context.
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: Now, are you suggesting
 17 that whatever Brigadier Calitz' instruction was on the
 18 second occasion, even if it was simply like engage, launch
 19 an operation, whatever it was, that was the cause of the
 20 shooting of the strikers who got shot at scene 1. Is that
 21 what you -
 22 MR MPOFU: Yes, what I'm saying,
 23 Chairperson, is that there are not merits to any words you
 24 might have heard, and it's a rule of logic, the mere fact
 25 that he might have said, launch an operation, and referring

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1 to teargas, does not mean when you're referring to water
 2 and saying, "Launch an operation," it's now different, or
 3 when he's referring to live ammunition, and he uses the
 4 same phrase, that's, you know, launch an operation, launch
 5 an operation, that's not who I am. I'm not saying he used
 6 the same words phonetically to give the instruction, all
 7 I'm saying is that, and in fact the part that you have
 8 read, Chairperson, reinforces my point, that the first so-
 9 called operation that he was talking about, finished, which
 10 was the teargas and the stun grenade. We know from Mr
 11 Chaskalson's cross-examination that the first stun grenade
 12 and teargas were issued, I think about eight seconds before
 13 the people died, if I'm not misquoting Mr Chaskalson. Now,
 14 the point I'm - that's exactly the point I'm making. If
 15 that operation of the teargas and all that had been done,
 16 and eight seconds later the next that happened was live
 17 fire which killed people. So the operation now that
 18 followed eight seconds after the traan, whatever it is, had
 19 been done, that follows almost a second later, the only
 20 next operation is the fatal one, as we know, which killed
 21 16 people or 17 people. That's the proposition I'm putting
 22 and it's based on all those things and those sequences, and
 23 I just want the witness to give me a - to refute it. In
 24 other words, to say -
 25 CHAIRPERSON: There's a lack of clarity,

<p style="text-align: right;">Page 20365</p> <p>1 because we don't quite what the words were. We also do 2 know that before the actual firing of what presumably 3 caused the deaths, Colonel Vermaak had also repeated what 4 he considered to be the instructions, and he said he 5 realised that the members would have to act to defend 6 themselves, and then he repeated the instruction again. So 7 it may be better for us to get clarity from Colonel Vermaak 8 what exactly the words were that Brigadier Calitz used and 9 what words he use, but anyway I think the witness 10 understands the point you're making and I hope he's in a 11 position to answer it. Do you agree with the proposition 12 put to you, or not?</p> <p>13 BRIGADIER CALITZ: Mnr die Voorsitter, 14 nee glad nie. Soos ek vir hier vir u gesê het, u het die 15 woorde gebruik, "rule of logic." Dit hang seker maar af 16 van watter kant af jy dit sien. Soos ek weereens vir u 17 gesê het operasioneel, daar's as jy die – ek kan amper sê 18 my getuienis gevolg het, ek weet nie of jy elke dag hier 19 was nie, ek dink hierdie ding is deurtrap by Advokaat 20 Chaskalson of Budlender, ek's nie seker wie het my ondervra 21 oor hierdie nie, en daar was baie duidelik gewees aan wie 22 het ek opdragte gegee om wat te doen. Om vinnig te 23 herhaal, die opdragte was gegee om te gaan disperse en te 24 blok. Met ander woorde, dit is vir die Papa Nyalas, en as 25 hy uit die lig uit gesien het die voertuie het nie</p>	<p style="text-align: right;">Page 20367</p> <p>1 was om te disperse en te blok. Met ander woorde, net met 2 die Papa Nyalas.</p> <p>3 CHAIRPERSON: Right, now there are two 4 questions I want to ask you flowing from that? Now, we're 5 referring now to third line at paragraph 7 of Colonel 6 Vermaak's statement. He says that – just to remind those 7 who are listening to it, that he said, Brigadier Calitz 8 again gave the members an order to launch an operation and 9 that it almost appeared as if they didn't hear. And the 10 two questions I want to ask you are these, what – do you 11 accept, you did give an order that an operation be 12 launched? Can you remember what words you used, more or 13 less?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 ons weet in die eerste geval toe ek nog terug gestaan het 16 was dit die engage, engage, en nader aan die, het ek vir 17 die voertuie opdrag gegee, daar - spesifiek was, toe hulle 18 om die kraal beweeg het na insident 3 toe, het ek vir die 19 voertuie gesê beweeg om, beweeg uit vorentoe, disperse and 20 block.</p> <p>21 CHAIRPERSON: So what Colonel Vermaak is 22 talking about is when the group – when this group of people 23 regrouped on the other side of the kraal, you're talking 24 about that. So you say that what you then said to them was 25 disperse and block.</p>
<p style="text-align: right;">Page 20366</p> <p>1 gereageer nie, daarom te meer het hierdie opdrag dan 2 herhaal. Ek het –</p> <p>3 MR MPOFU: Sorry, my attorney was 4 whispering, are you pausing because of that –</p> <p>5 BRIGADIER CALITZ: Ek wil net graag hê jy 6 moet die antwoord verstaan anderster –</p> <p>7 MR MPOFU: No, I can –</p> <p>8 BRIGADIER CALITZ: Logies vir u. Dan het 9 ons ombeweeg en dit is wat ons na insident 3 toe verwys, 10 waar Kolonel Vermaak, as ek nou reg verstaan, uit sy 11 verduideliking uit, waar hy dan weer die opdrag herhaal 12 het. Dis waar ek vir die voertuie gesê het, beweeg 13 vorentoe, gaan blok en nog steeds was die dispersion action 14 voor op gewees en ek het die heel tyd met die Papa Nyalas 15 gepraat. So daardie evidence, mnr die Voorsitter, glo ek 16 is op rekord, sonder om weer daar deur te gaan en alles te 17 herhaal, maar daar was onder geen omstandighede vir my 18 enigsins nodig om met die TRT lyn te praat. Hulle het 19 hulle eie bevelvoerders gehad. Ek het dit getuig uit, ek 20 dink dit was Karl se dokument wat gewys het ten tye van 21 deurstorm na hulle toe het ek al vorentoe beweeg. So dit 22 was glad nie eers in my lyn van sig nie, So hoe op aarde 23 kan u bevel gee vir iemand wat agter is en dan net my 24 laaste comment is dat daai lede, volgens hulle, dan uit 25 selfverdediging uit opgetree. Die opdrag wat ek gegee het</p>	<p style="text-align: right;">Page 20368</p> <p>1 BRIGADIER CALITZ: Dit sou die – ja.</p> <p>2 CHAIRPERSON: That was preceded by what? 3 What was the full order, instructions?</p> <p>4 BRIGADIER CALITZ: Vir die Papa Nyalas om 5 my te volg. Ek dink op 'n stadium het ek gesê volg my en 6 ons gaan om, en van daardie stadium het die lede die 7 voertuie alreeds voor beweeg, het ek vir hulle gesê gaan 8 vorentoe en disperse. Met ander woorde, -</p> <p>9 CHAIRPERSON: In other words, you said go 10 ahead. Did you speak English or Afrikaans?</p> <p>11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 dit sal Engels gewees het.</p> <p>13 CHAIRPERSON: Okay. So you said 14 something like go ahead or, go forward, disperse - block 15 and disperse, is that –</p> <p>16 BRIGADIER CALITZ: - onder die onderdruk 17 sou ek iets gesê het soos Papa Nyalas, move, move, move 18 forward, go and block and disperse, block them, disperse 19 them, ja. Dit sou die –</p> <p>20 CHAIRPERSON: So you've actually answered 21 my second question already. The second question was going 22 to be to whom was the instruction given? So the answer 23 just to summarise, to make sure I understand correctly, 24 answer to the two questions I was going to ask you. One, 25 what exactly did you say? And you said it Papa Nyalas must</p>

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1 move forward and block and disperse. And inherent in that
 2 answer is the answer to the second question, that
 3 instruction was given to the Papa Nyalas.
 4 BRIGADIER CALITZ: Dit is beslis so, Mnr
 5 die Voorsitter.
 6 CHAIRPERSON: Not to the TRT.
 7 BRIGADIER CALITZ: Ek het onder geen
 8 omstandighede met die TRT gepraat nie.
 9 CHAIRPERSON: That's your evidence on the
 10 point.
 11 BRIGADIER CALITZ: Dit was ook die
 12 voorligting gewees kan ek sê.
 13 CHAIRPERSON: So when Mr – now, we know
 14 the shooting was done by the TRT people. So when Mr Mpofu
 15 suggests to you that they fired because of an instruction
 16 that you gave them, you don't agree with that? You deny
 17 that, is that correct?
 18 BRIGADIER CALITZ: Ek verskil heeltemal
 19 daarvan, Mnr die Voorsitter, daar's geen bewyse daarvoor
 20 nie.
 21 CHAIRPERSON: Mr Mpofu, I see it's now
 22 after 1 o'clock, perhaps you'd like to – if you want to
 23 resume this point, let's deal with very shortly, you can do
 24 so after lunch, but the full point you want to raise now
 25 before lunch before you move onto another point, obviously

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1 you can to do it now. I'm in your hands.
 2 MR MPOFU: Ja, just one, Chairperson. In
 3 this – and I can accept that you won't remember the exact
 4 words, but in this range of things that you – of words
 5 rather that you may have used to give that instruction,
 6 that includes the words "engage," you might have said that,
 7 correct? That's what you said.
 8 BRIGADIER CALITZ: Toe ek nog staties
 9 was, die eerste een het ek gesê vir hulle, "Engage,
 10 engage," en daarna het ek vir hulle gesê dit was by
 11 insident 1, insident 2, dis nog voordat Nyala 4 toegemaak
 12 het. Dit is korrek.
 13 CHAIRPERSON: - concentrating on what you
 14 said after the group had gone around the kraal and
 15 regrouped on the other side of the kraal and -
 16 BRIGADIER CALITZ: Dit is korrek.
 17 CHAIRPERSON: And the words that you used
 18 then, which you've repeated to me several times, did they
 19 include, or could they possibly include the words, "Engage,
 20 engage?"
 21 BRIGADIER CALITZ: Dit kan 'n
 22 moontlikheid wees dat ek dit weer gesê het, mnr die
 23 Voorsitter, ek sal dit nie kan onder eed nou sê ek het dit
 24 glad nie gesê nie, nee.
 25 MR MPOFU: And sorry, I misled you, I

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1 said this would be the last question.
 2 CHAIRPERSON: You misled me to, Mr Mpofu,
 3 more serious.
 4 MR MPOFU: Yes, I'm actually addressing
 5 you, Chairperson, when I say that. The last issue or
 6 question I want to put to you in this line is, if that word
 7 "engage," was issued or uttered immediately before the
 8 shooting of the people, by you or anybody now, it might be
 9 you. I'm suggesting that it's you obviously, because of
 10 this, but that's not what I'm asking you now, if that word
 11 was uttered immediately before the shooting, then I would
 12 be justified to say that was the instruction or command to
 13 kill the people, or shoot them, at least, correct?
 14 BRIGADIER CALITZ: Ek stem nie saam met u
 15 nie. Dit is glad nie die strekking van daardie woorde nie
 16 en as jy die lede wat miskien na my sal kom getuig sal vir
 17 u sê dat daardie woorde gebruik ons nooit in 'n geval van -
 18 as ons moet skiet sal die opdrag wees, vir 'n persoon,
 19 disperse. Engage het net simply beteken die ouens moet nou
 20 toe tree tot 'n optrede en hulle moet vorentoe gaan.
 21 Daarna het ons spesifiek begin praat oor disperse, die
 22 action modes van block, arrest, encircle, al daardie action
 23 modes is weer gebruik.
 24 CHAIRPERSON: Mr Mpofu, it looks as if
 25 this is suitable stage for us to take the lunch

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1 adjournment.
 2 MR MPOFU: It is, Chairperson, and I'll
 3 come back to that thing.
 4 CHAIRPERSON: It is now ten past one. We
 5 will resume at five to two, I think. I hope we'll resume
 6 at five to two. I want everybody to try and be here at
 7 five to two.
 8 MR MPOFU: Thank you.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [14:08] CHAIRPERSON: The Commission resumes,
 11 you're still under oath, Mr Brigadier. Mr Mpofu?
 12 MR MPOFU: Chairperson, just before, no,
 13 I see Mr Semenya is not here, I think in fairness I'll
 14 raise this point when he is here because it was a point of
 15 dispute me and him about what was said. Thank you,
 16 Chairperson.
 17 CHAIRPERSON: If I wasn't aware of the
 18 fact that he wasn't here I wouldn't have come in the
 19 Chamber if I'd he wasn't. Let's ask the relevant –
 20 MR MPOFU: No, I think they're prepared –
 21 CHAIRPERSON: Please, is it in order if
 22 we proceed in his absence?
 23 MS BALOYI: It is Chairperson.
 24 CHAIRPERSON: I don't want to prejudice
 25 your clients.

<p style="text-align: right;">Page 20373</p> <p>1 MS BALOYI: No, it is in order, 2 Chairperson. 3 CHAIRPERSON: I'm not suggesting you 4 can't look after their case properly, but you know what I 5 mean. We can carry on without him? 6 MS BALOYI: We can indeed. 7 CHAIRPERSON: Alright, thank you. 8 MR MPOFU: Yes, now I also assumed, 9 Chair, Ms Baloyi is more than competent to do it, but I 10 just, because it was raised specifically between me and Mr 11 Semenya, that other point. Alright, we'll come back to 12 that, I wanted to get it out of the way. Brigadier, you 13 agree with me, don't you, that the instruction engage, 14 engage, engage, whether it is said once or three times, can 15 include an instruction to shoot. 16 BRIGADIER CALITZ: Nee, ek stem nie saam 17 met u nie. 18 MR MPOFU: So your evidence is that under 19 no circumstances in the police can that instruction include 20 and I'm using the word "include" advisedly, I don't dispute 21 that it might mean a whole lot of other things, but I'm 22 saying or your evidence is that under no circumstances can 23 it be used to include shooting, using live ammunition. 24 BRIGADIER CALITZ: In the police 25 operationally, no, not at all.</p>	<p style="text-align: right;">Page 20375</p> <p>1 BRIGADIER CALITZ: En dit is 'n toespring 2 teken om betrokke te raak, met ander woorde ek sal dit 3 volledig sê, ek sal vir hulle sê sodra almal nader moet 4 beweeg, betrokke raak by die operasie en van daar af sal 5 daar duidelike opdrag – 6 CHAIRPERSON: Betrokke raak, to become 7 involved? 8 BRIGADIER CALITZ: To become involved, 9 ja. 10 CHAIRPERSON: And in what way did you 11 attend them to become involved? 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 dit is waar ons dan vir die betrokke bevelvoerders gesê 14 het, die Kolonel Pitsi, die Kolonel Mere, die Makhubela, 15 daardie Papa Nyala voertuie, van daar af sal die opdragte 16 kom en van daar af sal hulle dan vir hulle eie lede die 17 opdragte gee soos wat dit voor hulle afspeel op daardie 18 stadium. Ek sal die uiteendrywings opdrag gegee het en dan 19 van daar af sal hulle dit verder vat. 20 CHAIRPERSON: Sorry, Mr Mpofo, are you 21 going to put the passage and the evidence of the persons to 22 whom you were referring? 23 MR MPOFU: Yes, just now, Chairperson, if 24 I may just, I just want to be clear first. So we've now 25 excluded the shooting of live ammunition. Does the word</p>
<p style="text-align: right;">Page 20374</p> <p>1 MR MPOFU: Alright, and if somebody were 2 to give evidence that they heard the word "engage" being 3 said or the instruction to engage being said immediately 4 before the shooting, would you quarrel with that version? 5 BRIGADIER CALITZ: No, any person can 6 come and testify whatever he/she heard he was saying, if 7 he/she understand it in that way I want to see that 8 statement because that will be a first. We don't issue 9 that kind of instructions when you speak about, if you want 10 to give an instruction, engage is just, soos ek in 11 Afrikaans gesê het, dit is 'n toespring teken, met ander 12 woorde raak betrokke, gaan vorentoe, almal nou, dit is die 13 teken wat gegee word, almal raak betrokke, daarna kom die 14 spesifieke opdragte van disperse of block of, jy weet ons 15 noem dit action modes in die polisie, en spesifieke 16 opdragte om te skiet weet ek nie of daar gegee is op die 17 dag vir TRT nie. Sovêr ek weet het hulle in self 18 verdediging opgetree, ek dink nie daar was enige opdragte 19 gegee om te skiet nie, nee. 20 CHAIRPERSON: What do you mean by the 21 word "engage", did you use the word "engage" when you say 22 you could have done? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 ja, ek dink dit is reeds op rekord, ons het daarvoor getuig. 25 CHAIRPERSON: Ja, now what –</p>	<p style="text-align: right;">Page 20376</p> <p>1 "engage" also exclude the shooting with rubber bullets and 2 teargas, those kinds of things, in other words non lethal 3 ammunition, I don't want to use the word ammunition because 4 – 5 BRIGADIER CALITZ: Less lethal – 6 MR MPOFU: - it also includes water and 7 things like that. That's non lethal force, ja, that's the 8 word I'm looking for. Does it also exclude the "shooting" 9 as it relates to non lethal force? 10 BRIGADIER CALITZ: Ja, soos ek gesê het, 11 mnr die Voorsitter, dit is net 'n toespring teken vir die 12 lede om betrokke te raak en daarna sou daar dan duidelike 13 opdragte wees. As dit uiteendryf is sou daar 'n opdrag 14 gewees het, gaan disperse, vir die waterkanon, gaan 15 vorentoe, gaan doen dit, so daar sal spesifieke opdragte 16 wees dan rondom elke aksie. 17 MR MPOFU: Chairperson, you'll forgive me 18 again because I don't have the reference directly to hand 19 now, but I'll just put something to you, if you dispute it 20 then I'll find the reference, don't worry. I want to put 21 it to you that that evidence on the word "engage" is 22 untruthful because General Annandale said that the word 23 engage, like you, you said excluded live ammunition but you 24 said this includes non lethal force and you've just 25 differed from him.</p>

<p style="text-align: right;">Page 20377</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek 2 kan nie sê nie, ek weet nie wat General Annandale se 3 getuienis in die geval is nie. Ek sê net hoe ons dit 4 bedoel het op die grond en daarna wat die opdragte was wat 5 dit gevolg het. 6 MR MPOFU: No, that I understand, Mr 7 Brigadier, all I'm saying is that if I'm correct and I'll 8 find the passage now, that General Annandale said engage 9 includes the use of non lethal force and you are saying it 10 excludes it, you can't both be right, one of you is right, 11 one of you is wrong and that I will suggest is part of both 12 of you avoiding the obvious, which is that engage includes 13 shooting. What will your comment be? 14 BRIGADIER CALITZ: Engage includes 15 definitief nie die woord "shoot" nie en dan sou dit bedoel 16 het op die less lethal sal die woord wees, daar sal verdure 17 opdragte wees, met ander woorde al die aksie stappe soos to 18 encircle, to disperse, to make arrests, al daardie woorde 19 kan nie saam gevat word net deur een woord nie. Die lede 20 sou dit so verstaan het, ek het dit later ook weer wel 21 gebruik waar ek gesê het, engage, move out, en wat die lede 22 bedoel het van, waar ek bedoel het maak arrestasies, klim 23 uit die voertuie uit, so dit is hoe die bevelvoerders dit 24 dan sou verstaan het, die woord "engage" en die non lethal 25 and the Papa Nyalas sou dan gereageer het daarop. Ek dink</p>	<p style="text-align: right;">Page 20379</p> <p>1 MR MPOFU: No, I think the question that 2 the commissioner would like to be addressed is this, 3 remember I've said that the only commonality between you 4 and General Annandale is that you say engage excludes live 5 ammunition, so let's put that aside. I disagree with that 6 but let's put it aside for now, but the point of difference 7 between you and him is that he says it includes non lethal 8 force and you say it excludes non lethal force. Now the 9 question is, if the police themselves in their own version, 10 which stems from what the commissioner has pointed to you, 11 use that word "engage" in the context of L199 where it says 12 the protestors were engaged with rubber and teargas, then 13 it would seem that your version is incorrect, that that 14 word excludes non lethal force as well, putting aside the 15 fact that it may or may not exclude lethal force. 16 BRIGADIER CALITZ: Mnr die Voorsitter, 17 miskien as ek dit net weer kan sê, ek sê nie die woord 18 engage excludes in totaliteit non lethal force nie. Wat ek 19 gesê het is dat dit sal opgevolg word deur die groep 20 bevelvoerders met verdere opdragte wat ons dan verwys na 21 action modes, wat sê nou maar to arrest, to block, to 22 encircle, wat verdere action modes dan daaruit sal 23 voortspruit, at die groep bevelvoerders dan vir hulle lede 24 sal gee. Dit sal nie net op my woorde bly en dan sal die 25 groep bevelvoerders dit net daar los nie.</p>
<p style="text-align: right;">Page 20378</p> <p>1 dit was miskien waarna General Annandale kon verwys het, as 2 hy dit so getuig het. 3 MR MPOFU: Alright, can you go to Exhibit 4 Q, slide 43, just a quick reference. 5 COMMISSIONER TOKOTA: Before that, Mr 6 Mpofu, - 7 MR MPOFU: Yes - 8 COMMISSIONER TOKOTA: - I just want the 9 brigadier to refer to slide 199. 10 MR MPOFU: L199? 11 COMMISSIONER TOKOTA: Exhibit L, the 12 second bullet there, it says "The approaching group of 13 protestors attempted to enter in front of Nyala 4 before it 14 reached the kraal. The POP members from Nyala 3 and 4 15 engaged the protestors with rubber and teargas." 16 MR MPOFU: Thank you, Commissioner, yes. 17 BRIGADIER CALITZ: Kommissaris, ja, dit 18 is hoekom ek sê ek betwis glad nie die feit as General 19 Annandale so getuig het nie, ek sê net dit sal opgevolg 20 word met verdere aksies deur die Papa Nyala bevelvoerders. 21 Met ander woorde as ons dan vir hulle die opdrag gegee het, 22 dit beteken glad nie soos in die sin van live ammunition 23 nie, glad nie. Soos dit hier staan glo ek dat dit is wat 24 die Nyala3 en 4 se bevelvoerders dan vir hulle opdrag gegee 25 het binne in die voertuig om rubber te skiet, ensovoorts.</p>	<p style="text-align: right;">Page 20380</p> <p>1 MR MPOFU: No, no, - 2 BRIGADIER CALITZ: As ek dit miskien so, 3 en as u verstaan wat ek bedoel. 4 MR MPOFU: Ja, no, it is either you don't 5 understand or you are deliberately evading the question. 6 I'm saying to you, I asked you nicely whether, I said let's 7 I accept that the word engage excludes non lethal force for 8 the purposes of, - rather lethal force, for the purpose of 9 the question, and I asked you, does it also exclude the use 10 of non lethal force and I gave you examples of what that 11 means, rubber and so on and so on, and you said, yes, it 12 excludes that and then I challenged that answer on the 13 basis that it differs with that of General Annandale. So 14 you can't now say you didn't say it excludes totally, we 15 didn't use those kind of totally or whatever. The issue or 16 let me ask you the question again, does an instruction to 17 engage include or exclude the use of non lethal force? 18 BRIGADIER CALITZ: Mnr die Voorsitter, ek 19 wil nou net seker maak ek verstaan dit reg dat ek nou nie 20 weer aangehaal word dat ek dit verkeerd sê nie. Ek sê dit 21 exclude dit nie totally nie, dit moet net opgevolg word. 22 Daar sal verdere opvolg wees deur opdragte deur die groep 23 bevelvoerders, met ander woorde dan sal dit seker dan wees 24 dit exclude dit nie, as dit 'n reguit antwoord is wat u 25 soek, as ek dit reg verstaan nou.</p>

<p style="text-align: right;">Page 20381</p> <p>1 COMMISSIONER HEMRAJ: Can I just ask you, 2 after you give a command "engage", for a police person then 3 to use rubber or teargas there would have to be another 4 command? 5 BRIGADIER CALITZ: Dit is korrek, 6 Kommissaris, die woordjie net "engage" sal, u weet dit 7 is 'n toespring teken vir die non lethal, ek praat van die 8 Papa Nyalas. Kom ons 'n voorbeeld, met ander woorde 9 Kolonel Pitsi met sy groep, hy sou dit dan gehoor het en 10 dan sal hy dan verder vir sy mense gesê het, met ander 11 woorde vuur rubber daar of traangas daar of stun grenade 12 hier, dit sal opgevolg word met sekere aksies want 'n lid 13 kan nie 'n haelgeweer gebruik en rubber skiet sonder 'n 14 direkte opdrag nie. Dit is wat ek sê, dit is net 'n 15 toespring teken vir al die groepe, dit is onmoontlik vir my 16 vanwaar ek sit om vir elke Nyala en vir elke voertuig 17 presiese opdragte gee wat hy moet doen, dit is net 18 onmoontlik. Ek het nie die vermoë of die visie om te sien 19 waar elkeen van daardie verskillende voertuie en wat voor 20 hulle afspeel nie. 21 CHAIRPERSON: Can I put it to you the way 22 I understand it just to make sure I've got it right? I 23 understand you to say the word "engage" is a non specific 24 instruction, it means something like take action, do 25 something as it were, but it doesn't say what has to be</p>	<p style="text-align: right;">Page 20383</p> <p>1 anyone were to come and testify that they heard the word 2 engage immediately before the shooting, would he quarrel 3 with that. Now it is important to know what you prepare 4 for – 5 CHAIRPERSON: I'm sorry to interrupt you, 6 I did ask him about that. There is a witness who says that 7 and I asked him if he is going to put that and he said he 8 would. 9 MR MPOFU: I will. 10 CHAIRPERSON: And I understood him to 11 indicate that this other exhibit he is now referring to is 12 being referred to first before he refers to the witness who 13 made the statement about engage, engage, engage, which is 14 in one of the statements which you'll hear about in a 15 moment and in fact it is in one of the statements listed by 16 Mr Mpofo in the list of documents to which he is going to 17 refer in cross-examination. It is in the bundle of 18 statements to which he refers, so I'm sure we'll get there 19 and if he doesn't I will, but – 20 MS BALOYI: Thank you, Chairperson. 21 CHAIRPERSON: I understood him to say 22 that this Q Exhibit he is going to put first before he puts 23 the other thing. 24 MR MPOFU: Yes. 25 CHAIRPERSON: Is that correct, Mr Mpofo?</p>
<p style="text-align: right;">Page 20382</p> <p>1 done. It simply indicates something must be done and then 2 the specific action that is required will be the subject of 3 a further instruction, presumably either given by you if 4 we're in a position to give it, or by one of the other 5 commanders. Am I understanding it correctly? 6 BRIGADIER CALITZ: Ek dink, dit is 7 heeltemal so, mnr die Voorsitter, die groep bevelvoerders 8 sal presies geweet het wat dan met die non lethal, om te 9 doen en watse opdragte vir hulle lede te gee want volgens 10 ons Staande Orde 262 moet daar sulke spesifieke opdragte 11 wees aan die lede, so dit is korrek. 12 MR MPOFU: Okay, so what you are saying 13 really is that in this situation that was described by 14 Colonel Vermaak of people who needed to protect themselves, 15 where you may have said "engage", then you would say engage 16 and then stand back and then someone else, because engage 17 can mean a whole lot of things. You must now say which 18 engage this is and say, engage, and then teargas, engage, 19 stun grenades, engage, water, really is that your evidence? 20 BRIGADIER CALITZ: Nee, dit is glad nie 21 wat ek getuig het nie en dit was ook nie my woorde gewees 22 nie, mnr die Voorsitter. 23 MR MPOFU: Okay, anyway let's go to – 24 MS BALOYI: Chairperson, before Mr Mpofo 25 moves to Q2 he asked the witness the witness whether if</p>	<p style="text-align: right;">Page 20384</p> <p>1 MR MPOFU: That's correct, Chairperson, 2 but for the benefit of my learned colleague I'm quite happy 3 to do that now and take away the suspense. 4 CHAIRPERSON: You say it is Exhibit 5 GGG19? 6 MR MPOFU: That's correct, Chairperson. 7 CHAIRPERSON: Page 17, paragraphs – 8 MR MPOFU: 59. 9 CHAIRPERSON: - 56 to – 10 MR MPOFU: To 59. 11 CHAIRPERSON: - 59. 12 MR MPOFU: That's correct, Chairperson. 13 BRIGADIER CALITZ: Mnr die Voorsitter, as 14 ek net weer, waarna, ekskuus tog, ek het nie die bewysstuk? 15 CHAIRPERSON: I was being premature 16 perhaps but it is Exhibit GGG19, on the list of exhibits to 17 be used in cross-examination it is number 11 and once you 18 have that you will see on page 17 of the statement, it is 19 page 17, it is paragraph 56 and following. I take it 20 that's it, is it Mr Mpofo? 21 MR MPOFU: Yes, I'm on 57, ja, but 56 is 22 fine, we can start there. 23 [14:28] You can read quietly, or I can just take you to 24 the specific passages. 25 BRIGADIER CALITZ: No, I've got it, and I</p>

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1 know what Mr Botes was saying here.

2 MR MPOFU: Yes.

3 BRIGADIER CALITZ: And we can go through

4 it, that's fine.

5 MR MPOFU: Right, okay. Firstly I just

6 want to take you to the middle of 57 where he says that, "I

7 just heard the words on the SAPS radio communication

8 system, 'Engage, engage, engage,'" and then he didn't have

9 good visuals and so on, and then you go to paragraph 59,

10 which is the gist of what I was saying, that my colleague

11 Adv Baloyi was referring to, and that's where he says,

12 "Other than for hearing the word 'engage,' which was

13 repeated a few times immediately before the shooting

14 started, I did not hear any specific instruction for the

15 use of live ammunition." Now if you understand what that

16 sentence is saying, is that he's talking specifically about

17 the use of live ammunition. So that shooting, you

18 understand the word "shooting" in context. Now he says

19 other than hearing that word "engage" used immediately

20 before that shooting, he didn't hear any other instruction.

21 In other words the only instruction he heard immediately

22 before the shooting was "engage."

23 CHAIRPERSON: That's not what he says.

24 He says, "Other than for hearing the word 'engage,' which

25 was repeated a few times immediately before the shooting

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1 started, I did not hear any specific instruction for the

2 use of live ammunition."

3 MR MPOFU: Well, Chairperson, it doesn't

4 matter where we do the intonation. What he's saying there

5 is that apart from hearing that instruction to engage he

6 did not hear any specific instruction for the use of –

7 CHAIRPERSON: For the use of live

8 ammunition –

9 MR MPOFU: But I don't want to debate the

10 semantics –

11 CHAIRPERSON: No, the point is he might

12 well have heard an instruction for the use of non-lethal

13 force. In other words "Engage, engage, engage" might have

14 been followed by a further instruction from one of the

15 commanders for the use of some kind of –

16 MR MPOFU: Fair enough.

17 CHAIRPERSON: - non-lethal force.

18 MR MPOFU: Yes, but –

19 CHAIRPERSON: All he says is he didn't

20 hear, apart from the word "Engage, engage," which he

21 obviously appears to interpret as meaning, or including the

22 use of live ammunition –

23 MR MPOFU: Yes.

24 CHAIRPERSON: - he did not hear any

25 specific instruction for the use of live ammunition.

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1 That's what he says.

2 MR MPOFU: Okay, I'll accept that that

3 interpretation is also competent. But in any event, the

4 point is you now see where the – I was invited to point you

5 to where there's a witness who says that there was "engage"

6 immediately before the shooting. There it is. What do you

7 say?

8 BRIGADIER CALITZ: Mnr die Voorsitter,

9 nee, ek weet van die "witness." Dit is, ons het dit nooit

10 ontken dat ek daardie woorde gesê het nie. Ek dink in my

11 "evidence-in-chief" het ek dit al gesê en verduidelik wat

12 ek daarby bedoel het. So dit is nie nou dat dit skielik

13 nou uitkom nie.

14 MR MPOFU: Okay.

15 BRIGADIER CALITZ: Ek wil net verwys na

16 paragraaf 58, net bo hierdie een. As u dan kan sien

17 paragraaf 57 maak hy weer die woorde "Engage, engage,

18 engage," en dan sê hy dan in paragraaf 58, die eerste

19 sinnetjie, "Brigadier Calitz requested that the units must

20 move around as they have planned to disperse the group."

21 Dit moet hy gehoor het. "Again the water cannons were

22 called to be used. I could not see at that stage where

23 they were used, or the dispersal groups. After the

24 situation unfolded I heard instructions being given for the

25 movement of police vehicles, including Kwelas" – that must

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1 be Nyalas – "to transport those people," no, that must be

2 Canters, "to transport those people arrested." So hier is

3 dit duidelik dat na die "engage" wat in paragraaf 57 is het

4 dit hier gesê wat hy verstaan het daarmee, soos ek hom

5 verstaan, "plan to disperse the group" en dit was dit

6 bedoeling gewees. En as 'n ou by 59 kyk lateraan sê hy

7 net, "Subsequently I heard the SAPS radio system that more

8 people have been shot at the 'klein koppie.'" Ek dink hy

9 verwys dan net na 'n verdere, die koppie 3. Maar ek dink

10 nie ons moet uit die oog uit verloor dat dieselfde persoon,

11 hoe hy dit verstaan het, volgens my dat ek die groep wil

12 "disperse" en dat ook die opdragte wat hy daar gehoor het

13 nie. So dit is ook baie duidelik in dieselfde "witness" se

14 verklaring.

15 MR MPOFU: Okay, so you agree with Mr

16 Botes.

17 BRIGADIER CALITZ: I did say the words

18 "engage," en ek het die bedoeling wat ek daarby bedoel het

19 gegee. Ek dink dit word gestaaf in paragraaf 58 van mnr

20 Botes se verklaring, my bedoeling wat ek gegee het, en ek

21 het nie ontken dat die woorde wel gebruik is nie, nee, en

22 ek sien nêrens dat hy iets gehoor het dat die opdrag gegee

23 was om te skiet nie. So die selfverdediging wat ek gesê

24 het die lede het opgetree staan ek nog steeds by.

25 MR MPOFU: Well, firstly I put it to you

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1 that Mr Botes's evidence, obviously he'll come and
2 elaborate on it, but in the same vein that I don't then
3 intend to recall you, so I have to give you what I want to
4 say, which is that Mr Botes's evidence at this stage seems
5 to be clear that he heard the word "engage" immediately
6 before the shooting, and it's clear that he's referring to
7 the live ammunition, and I put it to you that you used that
8 word immediately before the shooting as an instruction for
9 the people to be killed.

10 BRIGADIER CALITZ: Mnr die Voorsitter, ek
11 verskil. Dit is onmoontlik; van waar my posisie was kon ek
12 nie eers daardie persone gesien het nie. So dit is
13 onmoontlik om daardie opdrag te gegee het. Dit aan die een
14 kant, en dan mnr Botes weet ons is 'n sekuriteitsbeampte by
15 die myn, nie 'n polisiebeampte nie, so ek weet nie hoe sou
16 hy dit verstaan het teenoor wat ek getuig het my
17 polisiebeamptes dit sal verstaan, wat jare ondervinding het
18 in die Openbare Orde Polisiëring nie.

19 MR MPOFU: Yes, and one of those
20 "polisiebeamptes" with that long experience is Colonel
21 Scott, correct?

22 BRIGADIER CALITZ: Kolonel Scott het jare
23 ondervinding in die Spesiale Taakmag, en nie Openbare Orde
24 Polisiëring nie.

25 MR MPOFU: Okay, let's just explore this

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1 further with one more example, well two more, but let's go
2 to one. If you go to Scott's statement, 19.1, which is
3 HHH20, Chairperson –

4 BRIGADIER CALITZ: Watter bladsy?

5 MNR MPOFU: 92. 92. It says there,
6 "After Brigadier Calitz had initiated the operation, some
7 minutes later I heard the intensity increase in the radio
8 communication with Brigadier Calitz calling the Nyalas on
9 their Papa call signs into some formation and to engage.
10 He was repeatedly calling the water cannons to come forward
11 and engage. It sounded like they were under some form of
12 attack." What do you say to that?

13 BRIGADIER CALITZ: Ja, dit is soos
14 Kolonel Scott dit gehoor het oor die radio, dit is presies
15 so waar ek opdragte gegee het vir die Pappa "call signs,"
16 to come into some formation. Dit is die formasie waarna ek
17 verwys het. Die woord "engage," weereens ek ontken dit nie
18 dat ek dit gesê het nie, en dan het ek gesê die formasie
19 wat hy hier van praat is dan die "disperse" en blok.

20 MR MPOFU: So Colonel Scott is lying, or
21 mistaken, one of the two?

22 BRIGADIER CALITZ: Nee, dis glad nie wat
23 ek gesê het nie. U sit nou woorde in sy mond. Ek sê vir u
24 presies wat hier in die paragraaf staan en wat hy gesê het,
25 wat ek gehoor het direk uit die gesprek uit, paragraaf

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1 19.1.

2 MR MPOFU: No, Brigadier, please, I'm not
3 putting words into Colonel Scott's mouth. He puts these
4 words in his own mouth. He says that you made repeated
5 call signs for formations, which you agree with, and to
6 engage. Okay, him, not me, and then he says you repeatedly
7 – not once, repeatedly called the water cannons to come
8 forward and engage. So it's not my words.

9 BRIGADIER CALITZ: Mnr die Voorsitter,
10 dan verstaan ek nie. U sê net so Kolonel Scott vertel 'n
11 leuen. Ek wil net weet watter deel verwys u dan as u sê hy
12 vertel 'n leuen, want ek het saam met u gestem dat ek die
13 woord "engage" gesê het. Ek het saamgestem dat die Pappa
14 Nyalas, "call signs," come into some formation. Miskien
15 het hy nie alles uitgeskryf soos wat my opdragte was nie.
16 "Some formation" is waar ek vir die persone gesê het "move
17 forward, block and engage," en dan "Repeatedly calling the
18 water cannons," dit het ek ook getuig al oor waar ons vir
19 hulle gesê het hulle moet vorentoe gaan en gaan "spray."
20 So ek kan nie verstaan waar kom die leuen in wat u na
21 verwys hier nie, as u –

22 MR MPOFU: Okay. Okay, fine. Maybe I
23 used a strong word, and I don't want to have a debate on
24 grammar with you. What I'm saying is that I'm going to
25 argue that the context in which this word is used in this

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1 paragraph by Colonel Scott does not accord with your
2 earlier explanation that "engage" is just a generic word
3 which must always be used with the specific type of non-
4 lethal force that is envisaged, which on its own was a
5 contradiction to what you had said earlier, which is that
6 it excludes non-lethal force, but that's another story.
7 But what you are saying now is not even twisting these
8 words, but it's denying the obvious. What will you say to
9 that?

10 BRIGADIER CALITZ: Mnr die Voorsitter,
11 nee ek – miskien verstaan ek dit nie reg nie. Ek sal sê
12 soos mnr die Voorsitter dit voorheen opgesom het en gesê
13 het hoe hy dit verstaan, en ek het saam met hom gestem
14 daar. So die allegasies verder wat u gemaak het, kom ek sê
15 net ek stem nie saam met u nie. So dit is op rekord wat
16 ons gesê het.

17 MR MPOFU: Yes. No, you'll forgive me; I
18 have to give you a chance to explain this. Put aside the
19 fact that I might have used a strong word that, or he was
20 lying, or whatever; all I'm saying to you is that this, one
21 of you is correct. It's either the word is used as Colonel
22 Scott uses it here, which is engage with water cannon, and
23 as Commissioner Tokota pointed to you, engage people with
24 teargas, engage them with rubber. It's either that is the
25 explanation, or it's the explanation you gave that that

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1 word always has to be qualified since it is just a generic
 2 neutral term. Those two cannot both be correct and I'm
 3 giving you an opportunity to reconcile the two.
 4 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 5 sien daardie wat Kommissaris Tokota vir ons gewys het nie
 6 as Nyala 4 en Nyala 4 "engage into," dit is waarnatoe hulle
 7 gegaan het. Ek kan dit nie sien as dis 'n opdrag gegee
 8 deur iemand in daardie sin nie. Dit is nie hoe ek dit in
 9 daardie konteks lees in "exhibit" L nie. So daar verskil
 10 ek van u, en met 19.1 –
 11 MR MPOFU: Okay.
 12 BRIGADIER CALITZ: Nee, ek is nog nie
 13 klaar nie. Ek sien net u gesels. Ek wil net seker maak u
 14 hoor. En dan 19.1 stem ek saam met Kolonel Scott, wie sê,
 15 en dit is dat "some formation and to engage." So daardie
 16 opdragte het hy miskien nie my presiese woorde saamgevat
 17 nie, maar dit is presies waar ek vir die Pappa Nyalas gesê
 18 het, en ek glo wanneer hulle kom sal hulle dan daaroor
 19 getuig wat ek presies vir hulle gesê het.
 20 MR MPOFU: Okay, well I put it to you
 21 once again, and don't worry, I'm going to put it to you at
 22 the end as well, but just that in relation to this further
 23 example that I've given you, that your evidence is
 24 fabrication and should not be believed. It's actually
 25 ridiculous.

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
 2 ja, ek kan dan maar net sê ek stem nie saam met u nie. Ek
 3 het voorheen dieselfde opmerking gemaak oor u stellings.
 4 Miskien moet ek maar net dieselfde antwoord vir u gee. Dit
 5 is belaglik dat iemand kan dink enigiets anderste praat van
 6 'n polisiepersoon wat kennis het wat aangaan.
 7 MR MPOFU: Okay, now let's go, my final
 8 attempt is – and we'll see how ridiculous it is – my final
 9 attempt is based on exhibit Q, just Q, and it's slide 43.
 10 It's on the board, or rather, sorry, overhang, ja. You see
 11 there –
 12 CHAIRPERSON: Have you got the right
 13 page? We're looking at a page about dog handlers at the
 14 moment.
 15 MR MPOFU: 43. It's on the screen,
 16 Brigadier.
 17 CHAIRPERSON: Is this the page we're
 18 supposed to see?
 19 BRIGADIER CALITZ: No, I'm just saying
 20 it's not in the bundle that you gave me.
 21 MR MPOFU: I know. I know that. It's on
 22 the screen. Can you look at the screen?
 23 BRIGADIER CALITZ: Ek sal kyk na die
 24 "screen."
 25 MR MPOFU: Ja, okay, do see that at the

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1 first arrow there, the heading is "Tactical Dog Handlers
 2 Course, Shooting Exercises." Okay?
 3 BRIGADIER CALITZ: Dis korrek.
 4 MR MPOFU: And the instruments that are
 5 referred to are 9mm gun, R5 assault rifle, and a shotgun.
 6 Those are all live ammunition, correct?
 7 BRIGADIER CALITZ: Dit is, behalwe jou
 8 "shotgun," dit is "baton rounds," so dit is nie "live
 9 ammunition" nie, dis "less lethal."
 10 MR MPOFU: Yes, no fine. But the first
 11 two are live ammunition?
 12 BRIGADIER CALITZ: The first two, dit is
 13 "lethal force."
 14 MR MPOFU: R5 is lethal force, yes, okay.
 15 Now assault courses, it says, listen – "Move from firing
 16 line to firing line, to engage targets two metres to 10
 17 metres away." Insofar as that refers to the R5 and the 9mm
 18 handgun, engage must mean shooting live ammunition,
 19 correct?
 20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 ja, nee ek kan glad nie – ek weet nie waar, in watter
 22 "presentation" hierdie gebruik is nie. Ek sien dis 'n
 23 taktiese K9 "handlers" kursus. "Move from the firing
 24 line," dit sal ek voorsien dis waar die mense aantree, "to
 25 engage the targets two metres and 10 metres away," met

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1 ander woorde hulle beweeg nader, ek kan nie sien dat daar
 2 enigsins 'n opdrag is om te skiet nie. So ek –
 3 CHAIRPERSON: The trouble is that the
 4 heading is "Shooting exercises," so it looks like a
 5 shooting exercise. So what this appears to say in police
 6 language, certainly in K9 police language, it seems to be
 7 saying that the word "engage the target" is capable of
 8 conveying the meaning that a shooting exercise is involved,
 9 because that's the heading, and then the next one, "Stop
 10 street ambush, shooting exercise with a dog, send the dog
 11 on a suspect, apprehend the suspect while handlers engage
 12 other targets," so that again seems prima facie to convey
 13 the notion that the word "engage" is capable in police
 14 jargon to involve a shooting exercise, and I think that's
 15 the point Mr Mpofo is putting.
 16 MR MPOFU: Thank you very much,
 17 Chairperson, that's the point. Brigadier?
 18 BRIGADIER CALITZ: Mnr die Voorsitter,
 19 ja, weereens ek sien die opskrif, "Shooting exercises." Ek
 20 is nooit betrokke gewees by enige van die K9 kursusse nie,
 21 maar ek, nie daardeur te sê dat wat daar staan is nie waar
 22 nie. Ek sê maar net soos ek dit "interpret." Miskien kan
 23 ons net, u weet, hierna kyk en miskien iemand wat die
 24 kursus aanbied, dat hy dit vir ons kom sê. "Assault
 25 courses," wat ek bedoel dit is nie net "move from firing

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1 line to firing line, to engage," met ander woorde beweeg
 2 van een punt na 'n ander punt "to engage." So ek sien dit
 3 nie rêrig as waar die deel inkom van wie opdrag moet gee om
 4 te skiet nie. So ek kan u nie met, verder met hierdie een
 5 help nie, nee.

6 MR MPOFU: Well, once again, Brigadier,
 7 I'm not going to engage – if you excuse the pun – you in a
 8 grammatical debate, or a debate about grammar. I'll simply
 9 put this to you; that you have admitted having given an
 10 instruction to engage at different times at the scene.
 11 That much we accept, correct?

12 BRIGADIER CALITZ: Dit is toe ons begin
 13 beweeg het en toe ek vir die voertuie sê om vorentoe te
 14 gaan. Dit is korrek.

15 MR MPOFU: Ja, Colonel Vermaak suggests
 16 that you gave an instruction before he saw the people lying
 17 on the ground, and after the teargas and stun grenade,
 18 correct?

19 BRIGADIER CALITZ: Dit was wat ons getuig
 20 het by insident 3. Dis hoe ek verstaan het waar hy gehoor
 21 het ek gee 'n opdrag en waar hy dit herhaal het.

22 MR MPOFU: Yes. The evidence suggests
 23 that the only thing that happened within about eight
 24 seconds after the teargas and the stun grenades were shot
 25 was the killing of the people. You accept that? Not that

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1 you accept that is correct, but that that's the evidence so
 2 far?

3 BRIGADIER CALITZ: Dit is wat ons in
 4 "hindsight" gesien het, die video's op daardie stadium.
 5 [14:48] Ek het wel getuig uit my oogpunt uit wat in
 6 daardie tyd gebeur het. Dit is my getuienis gewees.

7 MR MPOFU: So what must have happened in
 8 those few seconds, well at least one of the things we know
 9 that happened in those few seconds is that people were
 10 killed using among other things R5s and handguns, let's say
 11 just R5s because, correct?

12 BRIGADIER CALITZ: Dit het ons na die tyd
 13 waargeneem en dit is korrek.

14 MR MPOFU: Now it's also clear that your
 15 instruction which according to you may have included the
 16 words engage or rather Mr Botes had the instruction to
 17 engage immediately before the shooting of the people, the
 18 killing of the people, correct? From that statement at
 19 least, that he really heard that and so on, he'll be cross-
 20 examined.

21 BRIGADIER CALITZ: Ek het u gesê wat ek
 22 lees in mnr Botes se verklaring en die gedeelte hoe hy my
 23 verstaan het wat ek gesê het.

24 MR MPOFU: Yes, and therefore the
 25 conclusion can fatally be drawn that when you gave the

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1 instruction to engage that included the instruction to
 2 shoot people with R5s which is live ammunition and to kill
 3 them and that you gave that instruction if all these pieces
 4 of evidence are put together, including the clear
 5 impression that the words you've used to include live
 6 ammunition unlike what you've been denying ridiculously.

7 BRIGADIER CALITZ: Nee, ek weet nie van
 8 die ridiculously nie, maar ek het op die feite van die
 9 grond wat ek vir u gesê het het ek dit ontken en ek sê nog
 10 steeds hoe ek die woord engage bedoel het en wat my Papa
 11 Nyalas daarby verstaan het. Ek het getuig wat ek gesien
 12 het voor my gebeur en hoe ek opdrag gegee het om vorentoe
 13 te gaan en onbewustelik gewees of onbewus op daardie
 14 stadium gewees van wat agter gebeur by die TRT. So gegewe
 15 al die feite en my getuienis die enigste wat ons nie van is
 16 hierdie een wat in die K9 is en wel ek weet nie een van die
 17 K9 was enigsins naby betrokke by die scene 1 se
 18 skietvoorval om, as dit in hulle doktrine is om dit so te
 19 verstaan nie. Ek lees dit nie soos as 'n opdrag om te
 20 skiet nie, dit is net om van een punt te beweeg en dit is
 21 hoekom ek hier sê from firing line to firing line. Dis na
 22 een punt toe te beweeg na 'n ander.

23 CHAIRPERSON: - to engage you see and
 24 that's obviously the exercise. The exercise doesn't meant
 25 to move, this is a number of exercises and the second

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1 exercise on this page appears to be engage in targets from
 2 two metres to 10 metres away. So you move from firing line
 3 to firing line. You engage the target from two metres or
 4 four metres to six metres, that seems to me what it's
 5 saying. In the context it looks pretty clear that engage
 6 mean fire. But you say that you're not familiar with that
 7 usage of the word, is that your evidence.

8 BRIGADIER CALITZ: Dit is wat ek hier
 9 sien in die K9 se template wat ek nie weet uit watter
 10 dokumente dit kom nie, mnr die Voorsitter, as ons dit so
 11 kyk maar ek getuig het op –

12 CHAIRPERSON: Q, I don't know what
 13 exhibit, if we look at exhibit Q we will see what it is.
 14 The one that we had early on in this case, long ago we had
 15 evidence -

16 BRIGADIER CALITZ: Maar soos ek sê, mnr
 17 die Voorsitter, ja.

18 CHAIRPERSON: Training that various
 19 members of the police force got, the South African Police
 20 Service basic and specialised training overview you see and
 21 this is a document that was put in to tell us what the
 22 training people have, in the K9 section is that page which
 23 Mr Mpofo showed us. Is this the only reference to engage
 24 in the whole of that training manual?

25 MR MPOFU: Well what is actually,

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1 Chairperson, if it's the only one it's good enough, it
 2 means shooting people to die, you don't need to –
 3 CHAIRPERSON: I'm just asking is there
 4 more, you see the point being raised at the moment is that
 5 this just a K9 matter.
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: But it may be that in this
 8 training manual, I can't see it, reading it with any
 9 careful detail attention previously. There may be
 10 somewhere else in the training manual, there's another
 11 phrase, use of the phrase engage which may help you. I'm
 12 just asking that in an endeavour to assist but if you don't
 13 want my assistance well you don't.
 14 MR MPOFU: No, I don't want, yes,
 15 Chairperson, I don't want assistance that comes with words
 16 like is it the only reference in this whole manual because
 17 that suggests something which is a very –
 18 CHAIRPERSON: Actually –
 19 MR MPOFU: This is a serious matter by
 20 killing people.
 21 CHAIRPERSON: You misinterpreted what
 22 I'm saying. The thrust of the whole manual was precisely
 23 the other way that if engage is in fact used to mean shoot
 24 or can mean shoot one would expect the training manual to
 25 have other examples of it which would help us if you drew

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1 our attention to them. So I was just trying to help.
 2 MR MPOFU: Thank you, Chairperson.
 3 CHAIRPERSON: But if was misinterpreted
 4 and misunderstood –
 5 MR MPOFU: Oh.
 6 CHAIRPERSON: Then I'll bear that with
 7 such fortitude as I can muster.
 8 MR MPOFU: Thank you, Chairperson.
 9 Thanks for the help. The answer is no. If you go to the
 10 next slide 44 the shotist moves in a predefined platform,
 11 point A to point B and engaged 10 targets with his or her
 12 shotgun 18 rounds, the shotist, the next one is also
 13 shotist will apply striking as well and so on.
 14 CHAIRPERSON: Charge office Blue -
 15 BRIGADIER CALITZ: Mnr die Voorsitter ek
 16 kan u regtig nie help nie. Ek, dis die eerste keer dat ek
 17 hierdie dokument sien, soos ek sê vir K9. So ek sal moet
 18 gaan kyk eers wat die dokumente –
 19 CHAIRPERSON: The charge office blue does
 20 look like as if it's engage and shoot.
 21 BRIGADIER CALITZ: Charge office blue so
 22 ek, nee ek weet glad nie wat die beteken eers, mnr die
 23 Voorsitter.
 24 MR MPOFU: Ja, well the shotist in charge
 25 office blue –

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1 CHAIRPERSON: I think the word should be
 2 shot –
 3 MR MPOFU: Whatever.
 4 CHAIRPERSON: We won't go there now.
 5 MR MPOFU: Okay. The shotist/shotist but
 6 it's a person who shoots will sit behind a table assemble a
 7 nine millimetre handgun with live ammunition and engage
 8 targets while moving from firing point to firing point and
 9 there it only refers to nine millimetre, that's only live
 10 ammunition, correct?
 11 BRIGADIER CALITZ: Ek sien dit in hierdie
 12 dokument vir die K9 ja.
 13 MR MPOFU: Yes, thank you, no the
 14 Chairperson had asked if in this whole document we –
 15 CHAIRPERSON: You see that's why I think
 16 there may be other examples in this exhibit because I can't
 17 understand why shotists should only do this charge office
 18 blue exercise and no other member of the service should do
 19 as well. I would imagine assembling handguns and sitting
 20 behind tables and engaging targets while moving is
 21 something that not only the K9 people should do but other
 22 people should do as well. I'm surprised that the Brigadier
 23 himself didn't have to do that in his younger days.
 24 MR MPOFU: Well –
 25 CHAIRPERSON: But we won't go there

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1 either.
 2 MR MPOFU: Fair enough.
 3 CHAIRPERSON: But what I'm suggesting to
 4 you is that exhibit may well have other examples –
 5 MR MPOFU: No, that's fine.
 6 CHAIRPERSON: Not just defined to K9,
 7 that's where I came from but you didn't like it.
 8 MR MPOFU: Thank you, Chairperson. I
 9 think we can make peace on that one. The, Chairperson,
 10 the, in fact just to emphasise, sorry Brigadier, just to
 11 emphasis the points that the Chairperson is making, is it
 12 so that what is, what one calls basic training, there's
 13 specialised training and so on, but basic training is one
 14 that every member has had to go through? The fact that
 15 later they might go to TRT or STF and so on is another
 16 matter but basic training covers all the shotists?
 17 BRIGADIER CALITZ: Ja, nee ek sal die
 18 opskrif as dit sê basic training police college training
 19 dan is daar een standaard polisie opleiding by die college.
 20 Daarna kry 'n mens basic training crowd management, basic
 21 training K9, basic training STF, so dan begin hulle weer
 22 met die spesialiseerde wat ook eers jou basic en dan jou
 23 advanced.
 24 MR MPOFU: Well for what it's worth I put
 25 it to you then that you gave the instruction to kill and

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1 for, because of what we have discussed earlier which is the
2 fact that I tried to demonstrate to you that such killing
3 was not in the circumstances justified or reasonably
4 justified that that, your instructions would attract the
5 charge of murder of those people. What is your comment?
6 BRIGADIER CALITZ: Mnr die Voorsitter,
7 nee ek kan maar net sê ek verskil totaal van u oor al die
8 redes wat ons gegee het en dit was my woorde, ek weet wat
9 ek daarby bedoel het en ek dink my voertuie het daarop
10 gereageer, die dispersion, die res van die, dit is duidelik
11 wat daar gebeur het. Die moorde waarna u verwys dit is
12 duidelik sigbaar op die video, ek dink nie hulle het dit in
13 opdrag gedoen nie, dit was wat ons na verwys in self
14 defence.
15 MR MPOFU: And that I will recommend
16 insofar as the commission in the terms of reference is duty
17 bound or enjoined to make recommendations for criminal
18 prosecutions based on what I've just said to you, I will
19 recommend that you among other people be charged with
20 murder of at least the people who were killed at scene 1
21 because that, this is instruction at least at this stage
22 only covers scene 1 if you link it to the Vermaak thing and
23 so on. What's your comment to that? But you're not the
24 only one.
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 nee ek dink nie 'n element van 'n misdaad is baie duidelik
2 en dit moet bewys word. So as dit u aanbeveling is dit
3 staan u vry om u aanbeveling te maak. Ek kan maar net sê
4 ek verskil van u en dit feite op hand is duidelik oor al
5 die getuienis asook miskien die wat my sal volg.
6 MR MPOFU: Okay thank you.
7 CHAIRPERSON: How much longer are you, I
8 know it's difficult to answer the question over matters
9 over which you have no control, but how much longer do you
10 think you'll be?
11 MR MPOFU: Chairperson, you know I would
12 have given an arm and a leg to finish today for my own
13 sake. But at this rate we are going, Chairperson, maybe
14 can we take the tea break then I'll give you a better
15 indication.
16 CHAIRPERSON: That's why I asked you the
17 question.
18 MR MPOFU: Yes.
19 CHAIRPERSON: Alright, we'll take the
20 tea adjournment be back here strictly at quarter past 3.
21 MR MPOFU: Thank you, Chairperson.
22 CHAIRPERSON: And then you'll either
23 have an arm and a leg to give me or some other information.
24 MR MPOFU: Thank you, Chairperson.
25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [15:19] CHAIRPERSON: Mr Brigadier, you're still
2 under oath, the Commission resumes, you're still under
3 oath.
4 BRIGADIER CALITZ: Dankie, mnr die
5 Voorsitter.
6 CHAIRPERSON: Mr Mpofo?
7 MR MPOFU: Thank you, Chairperson. Well,
8 Chairperson, it looks like I might have to give an arm or a
9 leg, I've just looked at my material. I think the
10 likelihood is that I'll finish early Thursday, that's the
11 next day, but I'm going to try and, I'll do my best.
12 CHAIRPERSON: Did you say Thursday next
13 week?
14 MR MPOFU: No, this week, Chairperson,
15 that much I can promise.
16 CHAIRPERSON: Thank you, go on with your
17 cross-examination.
18 MR MPOFU: Thank you. Chairperson, I see
19 that Mr Semenya is back. I must say Mr Semenya is an
20 ungrateful colleague, I've kept my powder dry on that point
21 so that he can come back, but he doesn't seem to appreciate
22 the gesture, but nevertheless I thought I should round off
23 that point.
24 CHAIRPERSON: If you'd kept your powder
25 dry until the end of your cross-examination and thereafter

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1 he would be more grateful.
2 MR MPOFU: I agree, Chairperson. Yes,
3 there is just a point I wanted to round off before we come
4 back to this, Brigadier, where I was waiting for Mr
5 Semenya. Do you remember there was a debate between
6 yourself and I and Mr Semenya before lunch about whether or
7 not there was a specific intent to block the so called
8 militant group from proceeding to Nkaneng, do you remember
9 the debate?
10 BRIGADIER CALITZ: Ja.
11 MR MPOFU: And both you and Mr Semenya
12 suggested that there is no such reference, the chairperson
13 on the other hand said according to his memory, so the
14 chairperson is covered. I wanted to refer you to
15 transcript 17740 and the only mistake I made, do you
16 remember I said I am not sure if that was in chief or under
17 cross-examination?
18 BRIGADIER CALITZ: Yes.
19 MR MPOFU: I made a mistake there, it was
20 under cross-examination or rather it was not in chief as I
21 proposed here. I'm sorry, page 17740, it was day 27
22 November, which is day 156. Well, I didn't realise that
23 the Commission has gone on for so long, but I have to say
24 27 November 2013. Okay, it is day 156, Brigadier. Are you
25 on that page? Ja, okay, before we get to that page let me

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1 just ask you, firstly, you do accept that, what you call
 2 the peaceful ones were headed to Nkaneng, correct?
 3 BRIGADIER CALITZ: Dit is wat ons op
 4 daardie foto gesien het, die persone.
 5 MR MPOFU: Yes.
 6 BRIGADIER CALITZ: Dit is korrek.
 7 MR MPOFU: The people who were on that
 8 road in front of the kraal, the path in front of the kraal
 9 on that photo, correct?
 10 BRIGADIER CALITZ: Die persone aan
 11 weerskante van Nyala 6, praat u van daardie?
 12 MR MPOFU: Ja, but in front of those
 13 ones, there were people on the path, were they also going
 14 to Nkaneng?
 15 BRIGADIER CALITZ: Ja, ek dink dit is
 16 waarna u verwys het op die regter en die linkerkant van
 17 Nyala 6, as ons op daardie fotos, dit is wat ek op die foto
 18 gesien het, as ek kan reg onthou.
 19 MR MPOFU: Yes, in front of the people
 20 that you and I discussed were on either side of Nyala 6,
 21 where other people were actually on the road in front of
 22 the kraal, were they also going to Nkaneng like those ones
 23 on either side of Nyala 6?
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 dit is wat ek sê, dit is wat ek vir u vra.

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1 MR MPOFU: Well, you can then just say,
 2 yes.
 3 BRIGADIER CALITZ: Ek wil weet na watter
 4 foto u verwys, hoe moet ek sê ja as ek nie weet na watter
 5 foto u verwys nie, ek is nie seker nie, en ek kan seker
 6 maar vra.
 7 MR MPOFU: But, Mr Brigadier, I'm sorry,
 8 you're the one who referred to a photo, not me, but that's
 9 fine, I'll take that as a yes.
 10 BRIGADIER CALITZ: Mnr die Voorsitter,
 11 kan ek dan vra om die foto te sien, asseblief? Kan ons
 12 teruggaan, laat ek net seker maak –
 13 MR MPOFU: Okay, -
 14 BRIGADIER CALITZ: - want ek weet nou nie
 15 –
 16 CHAIRPERSON: He is entitled to ask to
 17 see the photograph if you ask him a question about it.
 18 MR MPOFU: I didn't, he raised it.
 19 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 20 wil net seker maak, is dit die foto waar Nyala 6 dan, waar
 21 hy gesê het die persone is aan die regter en linkerkant,
 22 die 191 dink ek of iets in daardie lyn?
 23 CHAIRPERSON: This is a photograph which
 24 is one of the slides in Exhibit L?
 25 BRIGADIER CALITZ: Ja, ja, as dit die –

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1 CHAIRPERSON: 199, I think?
 2 BRIGADIER CALITZ: As dit die foto is
 3 stem ek saam, ja, ek was net nie seker waarna hy verwys
 4 nie.
 5 CHAIRPERSON: So you've got a yes, if it
 6 is with reference to that photograph.
 7 MR MPOFU: No, I'm not referring to any
 8 photograph, I'm saying to you the people who were using
 9 that road that you've dubbed the peaceful ones, were they
 10 on their way to Nkaneng, yes or no?
 11 BRIGADIER CALITZ: Miskien moet ons weer
 12 teruggaan, laat ons seker maak.
 13 CHAIRPERSON: It depends in which
 14 direction, they were in the path, Mr Mpofo, people use the
 15 path, right, they walk one way or the other. Clearly those
 16 walking in one direction are walking in the direction of
 17 Nkaneng and those walking in the other direction walk away
 18 from Nkaneng. Now are you, - I take it you're referring to
 19 those who were walking in the direction of Nkaneng, is that
 20 right?
 21 MR MPOFU: Well, Chairperson, I can
 22 assure you of one thing, nobody was walking in the
 23 direction of the koppie and they were running, they
 24 couldn't be running towards the koppie to their death.
 25 CHAIRPERSON: Well, some were running and

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1 some were walking, but you understand the point, Mr
 2 Brigadier, there is a photograph, people are walking in the
 3 direction of Nkaneng and he wants to know from you whether
 4 you accept, because all the people who were walking in the
 5 direction of Nkaneng were actually going to Nkaneng, do you
 6 understand what I mean?
 7 BRIGADIER CALITZ: Ek –
 8 MR MPOFU: Chair, can we –
 9 CHAIRPERSON: I would take the answer to
 10 that one is, yes?
 11 MR MPOFU: Chair, can we ask that slide
 12 191 be put up, but this is the context within which that
 13 cross-examination is obtained.
 14 CHAIRPERSON: That seems a very fair
 15 request.
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 die enigste waaroor ek onseker was, hy het gesê hy verwys
 18 nie na 'n foto nie, so dit is –
 19 CHAIRPERSON: We want the slide 191, is
 20 it? There we go, that's it. Do you see there is a Nyala
 21 with a wire trailer behind it, in the bottom, close to the
 22 kraal, more or less the bottom left hand quarter of the
 23 photograph and one can see people on either side of the
 24 Nyala and they do appear to be moving in the direction of
 25 Nkaneng. Would you agree with that?

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1 BRIGADIER CALITZ: Dit is die een waarna
2 ek verwys het, korrek, mnr die Voorsitter.

3 CHAIRPERSON: And so what Mr Mpfu wants
4 to know from you is, do you accept that all those who
5 appear to be walking towards the left hand side of the
6 photograph are actually going to Nkaneng, would you accept
7 that?

8 BRIGADIER CALITZ: Ek sal dit so aanvaar,
9 ek kan nie sien in watter rigting hulle loop, maar ek
10 vertrou dit sal in 'n noord-oostelike rigting wees wat dan
11 die voetpad is wat Nkaneng toe gaan, ja.

12 MR MPOFU: Yes, walking or running in
13 that direction.

14 BRIGADIER CALITZ: Ek dink voorheen het
15 ons net gesê ons kan nie gesien het running nie, dit is
16 hoekom ek na die foto verwys het.

17 MR MPOFU: Ja, no, no, it is not a big
18 one, it is the police's own version but we'll deal with it
19 later. Anyway that was just a precursor really to what I'm
20 going to ask you, which is the point of debate between you
21 and myself and your counsel, and that's contained in, -
22 firstly, well, I'm sure you've read it by now so I won't
23 ask you the question. 17440, Mr Budlender, you say that, I
24 suppose Mr Budlender was referring you to one of these
25 photos, 193 or 191 or whatever, but there are these photos

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1 that we are talking about. He says, "We can see that at
2 that point people were in fact going past Nyala 5 on the
3 footpath towards Nkaneng," and then your answer, -

4 MR SEMENYA SC: What line are you at, Mr
5 Mpfu?

6 MR MPOFU: 2, from the beginning, 17440,
7 and then your answer is, "Dit is die vreedsame groep wat
8 gehoor gegee het, nie die protest groep wat aangeval is,
9 wat nie toegelaat sou gewees het om daardeur te kom." That
10 clearly suggests that you are saying, yes, there are those
11 people who are working past the Nyala, but these are the
12 peaceful group that is compliant, not the protest group
13 which was attacked, I think, which was not to be allowed to
14 go through there. Do you accept that?

15 MR SEMENYA SC: Chair, maybe the punch
16 point is still going to come.

17 MR MPOFU: Ja, well, Mr Semanya, you'll
18 see the punch point, for now I'm simply asking whether my
19 summary of the witness' evidence is correct, because the
20 punch point won't come if I'm incorrect, then I'll ask for
21 the assistance of the chairperson. Did I sum it up more or
22 less correctly in English?

23 BRIGADIER CALITZ: Ja, mnr die
24 Voorsitter, ek dink ek en mnr Budlender, ek het so vinnig
25 probeer op die bladsy waar u is, as ons ook net teruggaan

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1 na die vorige waarvan ons gepraat het, dit gaan oor Nyala5.
2 Ek dink dit sou ons sien op bladsy 193, op slide 193. Ek
3 dink dit het regtig veel verskil op die foto nie, maar ek
4 dink dit is die een waarna ons verwys het, so as ons slide
5 193 kan sien was dit gewees het, of Nyala 5 dan die voetpad
6 toemaak. Nyala 5 as ons nou kan sien is daardie Nyala aan
7 die regter onderkant van die rooi sirkel wat dan op die
8 voetpad staan. Ek dink die gesprek het gegaan, as ek onder
9 korreksie is, of die voetpad toeganklik was, wat, wat, wat,
10 en dan die lang wit pyl wat afkom onder, het verwys na
11 persone wat dan beweeg en hy het gevra of daardie persone
12 dan vrylik na Nkaneng toe beweeg het en dit is waarop my
13 antwoord gebaseer was.

14 MR MPOFU: With respect, Brigadier, it
15 doesn't matter which photo you are dealing with, the issue
16 is that Advocate Budlender spoke to you about the people
17 who are on the footpath to Nkaneng and your answer
18 suggests, which is really the crux of the matter, that
19 there was a group of people called the protes groep who
20 were not to be allowed to go through as opposed to another
21 group of people called the peaceful group who were to be
22 allowed to go through. That's the gist, it doesn't matter
23 which picture it is, what nogal, okay?

24 BRIGADIER CALITZ: Ek dink -
25 MR MPOFU: That - is your evidence that,

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1 or rather do you stick with your evidence there that there
2 was a group dubbed the protest group which was not to be
3 allowed through and there was a group called the peaceful
4 group which was to be allowed through or not?

5 BRIGADIER CALITZ: As ek dit deur my eie
6 woorde met u kan gaan, presies dit wat u sê, waarna ek
7 verwys het. Ek het ook gesê die foto is dieselfde tyd, so
8 ek het nie gesê dit is 'n ander foto nie, so dit maak nie
9 saak nie.

10 MR MPOFU: Sorry, okay.

11 BRIGADIER CALITZ: Ek dink dit is die
12 vreedsame groep wat gehoor gegee het, nie die protest groep
13 nie, want hy het spesifiek gevra watter groep loop daar en
14 toe sê ek vir hom, na mnr Mathunjwa weg is was daar baie
15 mense wat weggeloo het, ek sê wat gehoor gegee het, nie
16 die protes groep wat aangeval, wat nie toegelaat sou gewees
17 het om daardeur te kom nie. Die protes groep is daardie
18 wat in die rooi sirkel is en toe die Nyalas toegemaak is,
19 hulle sou nie toegelaat gewees het dan om daardeur te kom
20 nie.

21 MR MPOFU: Well, there are two things
22 that arrive from that passage. Firstly you say the protest
23 group that was attacked, correct?

24 BRIGADIER CALITZ: Die protes groep wat
25 aangeval het, met ander woorde wat die polisie lyn direk

<p style="text-align: right;">Page 20417</p> <p>1 aangeval het.</p> <p>2 MR MPOFU: No, you didn't say, aangeval</p> <p>3 het, you said aangeval is, die protes groep wat aangeval</p> <p>4 is, the protest group that was attacked.</p> <p>5 BRIGADIER CALITZ: Ja, nee, ek dink dit</p> <p>6 is maar net daar 'n mis-quote gewees en almal weet wat ek</p> <p>7 daarby bedoel het, dit is die protes groep wat van vooraf,</p> <p>8 wat aangeval het.</p> <p>9 MR MPOFU: Mr Brigadier, please look, I</p> <p>10 don't want us to waste each other's time. Do you see, I</p> <p>11 know that what you are saying now, we are saying we heard</p> <p>12 now, I ask you to read what is written there which you said</p> <p>13 on the 27th of November. Did you refer to the protest group</p> <p>14 wat aangeval is or did you not?</p> <p>15 BRIGADIER CALITZ: Nee, mnr die</p> <p>16 Voorsitter, dit is net mooi anderste om.</p> <p>17 MR MPOFU: So we'll blame the</p> <p>18 transcribers now?</p> <p>19 MR SEMENYA SC: Chair, I know these</p> <p>20 transcriptions get certified, etcetera, but we understand</p> <p>21 the evidence quite well. There has never been a group of</p> <p>22 people wat aangeval is.</p> <p>23 MR MPOFU: Well, how did they –</p> <p>24 CHAIRPERSON: Mr Semenya, there are two</p> <p>25 possibilities, there are three possibilities. The first</p>	<p style="text-align: right;">Page 20419</p> <p>1 gaan kyk.</p> <p>2 MR MPOFU: Okay, in any event that part</p> <p>3 aside, that part aside, the second leg of that quotation</p> <p>4 says that you're saying they should not have been allowed</p> <p>5 to go through unlike the peaceful group, is that your</p> <p>6 evidence now or is it the one before lunch, which one is</p> <p>7 the truth, which one is a lie?</p> <p>8 BRIGADIER CALITZ: Nee, ek kan nie onthou</p> <p>9 dat ek enigsins iets anders gesê het voor tee of voor</p> <p>10 langs, soos u beweer nie. Dit was nog altyd die militante</p> <p>11 groep wat van vooraf, daardie groep wat aangeval is en dit</p> <p>12 is waar ons gesê het, maak toe, ry vinniger met die draad</p> <p>13 en toe hulle aangeval word het ons die opdrag gegee om te</p> <p>14 gaan disperse, so daar is nie 'n ander weergawe nie.</p> <p>15 MR MPOFU: No, Sir, please listen to me</p> <p>16 carefully. I'm not on the "aangeval" thing now, that's</p> <p>17 behind us. I'm saying that group, this protest group,</p> <p>18 according to this passage was not to be allowed to go</p> <p>19 through, unlike what you said to me earlier and what Mr</p> <p>20 Semenya challenged me to show, do you remember I said it is</p> <p>21 in Afrikaans somewhere and I can't find it, which I've now</p> <p>22 found? What you said before lunch and what you are saying</p> <p>23 now about whether that group had to be blocked from going</p> <p>24 to Nkaneng is not the same. I'm asking which one of those</p> <p>25 two is the truth, were they to be blocked, - rather</p>
<p style="text-align: right;">Page 20418</p> <p>1 is, he said "aangeval is" and meant it, and the second is</p> <p>2 he said, "aangeval is" and it was a slip of the tongue, he</p> <p>3 meant to say "aangeval het" and the third possibility is he</p> <p>4 actually said, "aangeval het" and it was wrongly</p> <p>5 transcribed. So those are the three possibilities. Now –</p> <p>6 BRIGADIER CALITZ: Die tweede een, mnr</p> <p>7 die Voorsitter.</p> <p>8 CHAIRPERSON: You say the second one, the</p> <p>9 second one is, you may well have said "aangeval is" but it</p> <p>10 was a slip of the tongue, you meant "aangeval het?"</p> <p>11 BRIGADIER CALITZ: Dit is –</p> <p>12 CHAIRPERSON: In the context.</p> <p>13 BRIGADIER CALITZ: Dit is in die konteks</p> <p>14 wat ons dit gelees het, ja, dit is duidelik, mnr die</p> <p>15 Voorsitter.</p> <p>16 CHAIRPERSON: Alright.</p> <p>17 MR MPOFU: Ja, well, fine, I'll, even if</p> <p>18 I accept that I'll argue that that was a Freudian slip, you</p> <p>19 meant exactly that, that's how they were attacked and</p> <p>20 killed by the police to your knowledge, so that was not an</p> <p>21 innocent slip of the tongue, it was because subliminally</p> <p>22 you knew that they were attacked and killed, murdered.</p> <p>23 BRIGADIER CALITZ: Nee, nee, ek verskil</p> <p>24 van u, mnr die Voorsitter, maar dat die transkripsie, die</p> <p>25 res, alles is op skrif en op rekord, so hulle kan daarna</p>	<p style="text-align: right;">Page 20420</p> <p>1 stopped, I don't want to use that word because it caused</p> <p>2 the confusion, to be prevented from going through or were</p> <p>3 they not? Those two cannot both be true, one is true and</p> <p>4 one is false.</p> <p>5 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>6 is nie seker of ek die vraag reg verstaan nie, miskien haak</p> <p>7 ek vas by die protes groep. As ek dit so kan verduidelik,</p> <p>8 as hulle, hulle wapens neergesit het en ek dink mnr die</p> <p>9 Voorsitter het my ook gevra, daar was menigde gevalle op</p> <p>10 regterkant van hierdie foto waar hulle dan wel na Nkaneng</p> <p>11 toe kon beweeg het en wat 'n moontlikheid was, dat hulle</p> <p>12 soontoe kon beweeg het. Hoekom hulle die opdrag gekry het</p> <p>13 van disperse is omdat daardie groep reguit na die polisie</p> <p>14 lyn toe beweeg het en sodoende die polisie lyn aangeval het</p> <p>15 en dit is dan waar die disperse en block opdrag gekom het.</p> <p>16 MR MPOFU: Well, I put it to you that</p> <p>17 this version that is here is correct, that you intended and</p> <p>18 did prevent the people from taking the path to Nkaneng,</p> <p>19 among other things by using Nyala 4 to close that gap and</p> <p>20 that action was in pursuance of this intention as opposed</p> <p>21 to the false evidence that there was a so called incident 2</p> <p>22 which was watered off by inter alia Nyala 4, but Nyala 4's</p> <p>23 action was meant to carry out this intention and it did</p> <p>24 indeed stop the people from going to Nkaneng and we've gone</p> <p>25 through the rest. Then they went around the kraal, then</p>

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1 you shot them and killed them at the path.
 2 [15:39] BRIGADIER CALITZ: Mnr die Voorsitter, ek
 3 verstaan nie; is daar 'n vraag? U het 'n stelling gemaak.
 4 Wat is die vraag aan my?
 5 MR MPOFU: What do you say about that?
 6 CHAIRPERSON: Do you agree with the
 7 proposition put to you by counsel? That's the question, I
 8 suppose.
 9 BRIGADIER CALITZ: Nee, mnr die
 10 Voorsitter, daardie groep het die lyn aangeval en ons het
 11 wel vir Nyala 4 die opdrag gegee om daar toe te maak en
 12 daarvoor het ons breedvoerig getuig. Daar was 'n gewone
 13 "dispersion" en blok aksie, en die "protester" groep het
 14 gekies om om die kraal te kom en weg van Nkaneng af te
 15 beweeg, "in fact," ek het gesê na die substasie toe, wat
 16 heeltemal op die suide is, as u sien die rigting wat hulle
 17 beweeg, en die foto wys dit nogal mooi. So hulle het
 18 heeltemal wegbeweeg van Nkaneng af in die substasie se
 19 rigting, weg van Nkaneng af na, as die voetpad dan so
 20 belangrik was het ek gesê daar was meer as genoeg spasie
 21 aan die regterkant waar hulle wel na Nkaneng toe kon gaan.
 22 So dit is waar ek verskil.
 23 MR MPOFU: Anyway, we'll leave that for
 24 argument. I just wanted to round off that for the benefit
 25 of my learned colleague. Now before that we were busy with

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1 the instruction to engage. You remember there is evidence
 2 which was given by I think General Annandale, but for him
 3 it was – well, not hearsay, it's something I think he heard
 4 over the radio, but I think you've confirmed it where you
 5 said something to the effect that the police members should
 6 not engage the target unless the target engages them.
 7 Remember that?
 8 BRIGADIER CALITZ: Ja, u verwys na my
 9 gesprek wat op die –
 10 MR MPOFU: Ja.
 11 BRIGADIER CALITZ: - video, of die dinges
 12 was by die Coin, ja.
 13 MR MPOFU: Yes. Now what I'm going to
 14 argue, and once again the usual way I want to give you a
 15 chance to explain it, is that your explanation of the word
 16 "engage" is false and fabricated, among other things,
 17 because in that context it would mean an absurd thing, such
 18 as do not get involved with the target unless the target
 19 gets involved with you. Or even worse; do not spray the
 20 target with water until the target sprays you with water,
 21 or whatever. I think it only could have meant that you
 22 were saying do not shoot the people unless they shoot you,
 23 or something like that. In other words, the usage of the
 24 word "engage" even in that sentence cannot be strained away
 25 from its proper meaning, which means to shoot. Comment?

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1 BRIGADIER CALITZ: Die korrekte woorde
 2 daar was "No need for firearms now unless the target engage
 3 you. No need to shoot while they are running, unless a
 4 target engage you." So hier het ek pertinent verwys na die
 5 vuurwapens en gesê "No need to shoot." So ek het pertinent
 6 daarna verwys, "unless the target engage you." So tensy
 7 hulle afklim en daar is 'n konfrontasie wat dan plaasvind,
 8 dan is jy geregtig om – en dit, hier duidelik uit die
 9 getuienis, ons wil nie teruggaan nie, weer net met die
 10 Pappa Nyalas gepraat. Dit was toe ons die opvolgaksie
 11 gehad het by die "riverbed."
 12 MR MPOFU: Yes, okay. Thank you. So the
 13 firearms you were referring to were live ammunition,
 14 correct?
 15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 nee, ek het nou net gesê ons het breedvoerig al hieroor
 17 getuig. Dit was met die Pappa Nyalas gewees. Dit was
 18 nadat ons opgevorm het en vorentoe beweeg het na die droë
 19 rivierbedding waar ons hergroepeer het en van daar af
 20 vorentoe beweeg het. Hierdie vrae is alreeds op, oor
 21 getuig, kan ek dit so stel.
 22 MR MPOFU: Brigadier Calitz, when you
 23 referred to firearms in the explanation that you were
 24 giving, what firearms were you referring to?
 25 BRIGADIER CALITZ: Dit was die voertuie –

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1 ag, die haelgewere van die Pappa Nyalas, want die persone
 2 het op gevuur terwyl hulle gehardloop het en die Nyalas het
 3 beweeg. Ek het gesê ook dat dit, daardie was nie 'n
 4 teregwyding, maar operasionele opdrag, as ek kan my regte
 5 woorde onthou waaroor ek getuig het.
 6 MR MPOFU: So used in that context you
 7 meant do not fire shotguns at the protesters unless they
 8 fire shotguns at you?
 9 BRIGADIER CALITZ: Dis hoekom ek sê die
 10 woord "engage" beteken nie skiet nie, tensy hulle betrokke
 11 raak. Ek is gevra daarvoor en ek het verwys waar ons
 12 uitklim en die groepie in 'n kleiner groepie opgesplit en
 13 ons sou uitklim en daardie persone dan fisies naderbeweeg
 14 en dan betrokke raak in daardie sin van die woord. Dit is
 15 waar hulle dan die haelgewere kan gebruik vir uiteendryf
 16 aksie.
 17 CHAIRPERSON: Why is the word "engage" in
 18 that context confined to "haelgewere," shotguns? If the
 19 strikers were engaging a member of the POP for example by
 20 advancing on him, a particular striker advancing on a
 21 particular POP member with raised panga or assegai or
 22 something like that, and it was part of an attack, then
 23 surely you didn't mean that the POP person must only shoot
 24 back with his shotgun? POP members have pistols, I
 25 understand, and one in eight of them I think had a rifle.

<p style="text-align: right;">Page 20425</p> <p>1 We know Warrant Officer Kuhn for example had a rifle. So 2 if the POP member who was being engaged, with whom the 3 striker was engaging in the manner I've described had a 4 pistol, then surely what you said would have been conveyed 5 and there would have been nothing wrong with it in those 6 circumstances; shoot him with a pistol. I mean surely, you 7 know, experience had shown already, had it not, that these 8 rubber bullets weren't terribly effective in repelling the 9 strikers, were they, for various reasons. So isn't what 10 you said capable of meaning if a striker engages you, i.e. 11 comes and tries to attack you with a panga, shoot him with 12 your pistol? Or is that an incorrect interpretation of 13 what you said? 14 BRIGADIER CALITZ: Mnr die Voorsitter, ek 15 sal sê nee, dit is nie korrek nie. Wat ek hier wel van 16 gepraat het was terwyl die Nyala voertuie vorentoe beweeg 17 het, die persone wat dan met die haelgewere uit die Nyalas 18 uit geskiet het was die sin, u sien die tweede sin, "No 19 need to shoot while they are running, unless target engages 20 you." So ons het pertinent met die Pappa voertuie gepraat, 21 met die uiteendryf groep, wat dan so op die mense - sodat 22 hulle moet in kleiner groepies opgebreek word en dan eers 23 sou die arrestasie en die ontwapening plaasvind. 24 CHAIRPERSON: Why would you shoot if they 25 were running?</p>	<p style="text-align: right;">Page 20427</p> <p>1 with rubber. Is that correct? 2 BRIGADIER CALITZ: Dit is korrek gewees, 3 Kommissaris. 4 MR SEMENYA SC: The point, Chair, we were 5 going to make is these utterances are said after the 6 formation at the dry riverbed. It could never have had any 7 reference as to what TRT has done minutes before, or 8 seconds before. 9 MR MPOFU: No, Chairperson, the question 10 is about the use of the word "engage" to mean kill. 11 Whether that happened 20 years later doesn't matter. The 12 point I'm making is that in this context, the fact that it 13 happened to be scene 2 or scene this or scene that is 14 irrelevant for the purposes of what I'm saying now. I'm 15 saying in that particular exchange the word "engage" must 16 have been referring to live ammunition - 17 CHAIRPERSON: No, I understood that you 18 were busy with word usage. 19 MR MPOFU: Yes. 20 CHAIRPERSON: Anyway, the witness has 21 given an answer. The passage in question was put to him. 22 MR MPOFU: Yes. 23 CHAIRPERSON: He explained what he meant, 24 and I think - 25 MR MPOFU: Can't take it further, yes.</p>
<p style="text-align: right;">Page 20426</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 daardie vraag - 3 CHAIRPERSON: Why would the person to 4 whom you were speaking shoot a striker if the striker was 5 running? I don't understand that, I'm sorry. 6 BRIGADIER CALITZ: As mnr die Voorsitter 7 onthou, daardie vraag, ons het dit bespreek. Ek dink die 8 vraag het van u af gekom of van Kommissaris af, wat is 9 gesien op daardie stadium. Ek het gepraat van ek het hulle 10 net tereggewys want dit was 'n operasionele opdrag, en toe 11 het, ek dink die Kommissaris of uself vir my gevra het ek 12 wel iemand gesien wat op daardie stadium, en ek het gesê 13 ja, toe die Nyalas vorentoe beweeg, ek dink ek het daaroor 14 getuig, en dit is hoekom ek die opdrag gegee het. Ek praat 15 nou onder korreksie, my presiese woorde, maar ek kan dit 16 gaan kry in die transkripsie, mnr die Voorsitter. So dit 17 was spesifiek op dit gemik en niks op die, iets anderste 18 nie. 19 COMMISSIONER HEMRAJ: My recollection of 20 your evidence - 21 MR SEMENYA SC: Chair - 22 COMMISSIONER HEMRAJ: Sorry, Mr Semenya, 23 you go ahead. My recollection of your evidence was that 24 when you gave that order not to shoot it was to the members 25 inside the Nyala not to shoot at the protesters outside</p>	<p style="text-align: right;">Page 20428</p> <p>1 CHAIRPERSON: - what's left is a matter 2 for argument. You don't have to - 3 MR MPOFU: Indeed. Indeed. 4 CHAIRPERSON: - cross-examine him on it 5 further. 6 MR MPOFU: Indeed. Indeed, Chairperson. 7 Brigadier, well, I think as you may have - just to short- 8 circuit this whole thing - as you may have gathered, I'm 9 going to argue that your various explanations on the usage 10 of the word "engage" are just a fabrication and a pack of 11 lies and should not be believed. 12 CHAIRPERSON: Mr Mpofo, do me a favour; 13 don't use the word "pack of lies." It's not necessary for 14 counsel to do that. When Mr Ngalwana was here I 15 reprimanded him for using the word. Good counsel when 16 they're cross-examining witnesses, even if they're 17 attacking their credibility, are able to avoid using that 18 word. It introduces an unpleasant - 19 MR MPOFU: Yes. 20 CHAIRPERSON: Right. 21 MR MPOFU: Sorry. 22 CHAIRPERSON: I don't like it. So 23 please - 24 MR MPOFU: Yes. No, no, one day - 25 CHAIRPERSON: Please avoid it.</p>

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1 MR MPOFU: Yes. One day I'll be good
 2 counsel. Let's use the one –
 3 CHAIRPERSON: You can be one immediately,
 4 Mr Mpofu.
 5 MR MPOFU: Yes, I intend to do that right
 6 now. So I'm going to suggest that those explanations of
 7 yours on the word "engage" are ridiculous, or "belaglik."
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 die teengevoel sal maar wederkerig wees. Dit is enige
 10 persoon wat die lees in die konteks wat dit hier gesê is en
 11 die presiese woorde soos wat dit gesê is, sal sien wat ek
 12 daarby bedoel het. Dit is vir my duidelik, en die lede wat
 13 gereageer het op wat ek gesê het, het ook gereageer soos
 14 wat ek dit bedoel het. So ek kan nie meer sê as net ek
 15 verskil van u nie.
 16 MR MPOFU: Yes, but listen to this
 17 carefully. The thrust of my argument is not going to be so
 18 much the semantic differences between engage and this,
 19 that, and the other. The thrust of my argument will be
 20 that to your knowledge, to your knowledge the word "engage"
 21 does not exclude the use of live ammunition, and the reason
 22 why you are having this, that you are evading that issue is
 23 exactly because you know that you used that word and you
 24 know the consequences and you are just running away from
 25 those consequences. That's the thrust of what I'll say.

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
 2 nee, glad nie. Ek was die operasionele bevelvoerder op die
 3 dag. Die presiese woorde wat ek gesê het en my bedoeling
 4 daarvan en die gevolge daarvan en die optrede van my lede,
 5 dit is wat ek gekoördineer het en dit was my opdragte
 6 gewees, en ek hardloop weg van niks af nie. Ek het dit
 7 duidelik gestel hoekom ek dit gesê het en ek is 'n persoon
 8 wat nie, soos u stel, weghardloop van iets af nie. Ek is
 9 nie bang daarvoor nie. Dit was my woorde. Dit is op
 10 rekord en ek getuig daarvoor, en ek is onder eed hier, so ek
 11 vertel die waarheid presies soos wat ek dit op daardie dag
 12 bedoel het en soos wat dit gesê is op daardie dag. Ek
 13 verstaan van u kant af wat u die beweringe maak, u moet dit
 14 doen. Dit is, maar ek verskil van u.
 15 MR MPOFU: And finally on that point I
 16 will argue that you are running away from the clear meaning
 17 of the word "engage" exactly because you know that it's
 18 incompatible with the police version of self-defence and
 19 it's only incompatible with someone having given a command
 20 which would make it premeditated murder.
 21 CHAIRPERSON: [Microphone off, inaudible]
 22 was only compatible with someone having given a command,
 23 etcetera.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: You used the

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1 word "incompatible" instead of "compatible."
 2 MR MPOFU: Thank you. Yes, yes. Yes, I
 3 was saying the first one –
 4 CHAIRPERSON: You see, these slips of the
 5 tongue do happen sometimes.
 6 MR MPOFU: Yes, it does, Chairperson.
 7 Ja, especially when it comes to murder. So what I'm saying
 8 is you, that the explanation of "engage" that you want to
 9 sell here - or rather to your knowledge you know that if an
 10 instruction was given, which I'm going to argue it was,
 11 then that would be incompatible with self-defence, which in
 12 normal circumstances is a spontaneous reaction, and that if
 13 the instruction to engage, which is to shoot, was given,
 14 that is more compatible with premeditated murder and that
 15 is why you are running away from the obvious meaning of
 16 that word which we have demonstrated by so many examples
 17 that I've lost count myself.
 18 BRIGADIER CALITZ: Ekskuus, mnr die
 19 Voorsitter, ek het net gesien u was besig. Nee, mnr die
 20 Voorsitter, ek kan maar net weer sê ek verskil van u gegewe
 21 die redes wat ons nou hoeveel keer al gegee het. Sover my
 22 mening strek was daar geen opdrag gegee om te skiet nie -
 23 ek praat nou van die TRT lede. Tot op huidiglik weet ek
 24 van geen bevelvoerder wat ek iewers in 'n verklaring gesien
 25 het en gesê het ek het opdrag gegee nie. Ek weet daar is,

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1 uit die Pappa Nyalas uit is daar een of twee persone wat
 2 gesê het hy het opdrag gegee om te skiet toe hulle iemand
 3 sien wat op die polisie geskiet het. Dit weet ek van 'n
 4 opdrag, maar verder as daardie opdragte weet ek van geen
 5 ander opdrag op hierdie stadium. Tot op hede van vandag -
 6 ons is my 21ste dag vandag in getuienis – weet ek glad nie
 7 van enige so iets wat nog voor die Kommissie gelê is nie,
 8 en dat ek hardloop beslis weereens nie weg, wat u weer
 9 beweer nie. My opdragte is gegee en my opdragte is
 10 uitgevoer in die sin wat ek dit wel gegee het. En dan
 11 miskien om te sê dat die opdrag teenoor TRT, dit is volgens
 12 my waar ek was in my posisie, was dit vir my onmoontlik om
 13 te sien wat agter aangaan. So selfs in daardie geval – ek
 14 wil nie weer die woord "belaglik" gebruik nie want ek
 15 probeer om nie persoonlik te wees nie, maar dit is feitlik
 16 onmoontlik om vir iemand 'n opdrag te gee terwyl jy nie
 17 eers kan sien wat daar aangaan nie.
 18 MR SEMENYA SC: Chair, can we request,
 19 through you, that if parts of these cross-examinations are
 20 reported in the media it must be made plain this is not
 21 evidence; it's just Mr Mpofu's intention to make arguments
 22 about premeditated murders, for which we have no evidence
 23 as yet.
 24 CHAIRPERSON: Yes, I think that –
 25 MR MPOFU: Well, Chairperson, can I say

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1 something about this first?

2 CHAIRPERSON: Of course you can say

3 something.

4 MR MPOFU: Yes. Well, Chairperson, I

5 think that what Mr Semenya is doing now is irregular and

6 uncalled for. I have put to a witness propositions based

7 on – he invited me earlier to sustain my proposition when I

8 was introducing the topic that I was going to go onto a

9 course which would show that this witness gave the

10 instruction. Since that invitation was given I've been

11 busy with nothing else but to accept it, and I am now at a

12 point at which I should think I'm entitled – at that point

13 maybe I was not because I was just putting the topic, but

14 now, having canvassed this very carefully with all this

15 material, I must be entitled to put to the witness firstly

16 that he cannot be believed on the word "engage," but I'm

17 going further and saying that there's a motive - it's not

18 just a matter of English or whatever - that the motive for

19 that is because he knows exactly that if the instruction

20 was given, as I'm suggesting, then it's incompatible with

21 self-defence, and if it's incompatible with self-defence,

22 that can only mean murder. So I don't think Mr Semenya

23 should be, you know, gratuitously telling the media how to

24 report it. I'm saying, and I will say it again, the reason

25 for this witness to lie about the word "engage" is because

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1 he knows the implications are inimical to the self-defence

2 theory, and if the self-defence theory is done away with,

3 we are left with premeditated murder, and I think anyone

4 else can report it as they like. That's the fact, that's

5 what it is. That's what I'm putting to the witness and I'm

6 entitled to it without the commentary from my learned

7 colleague.

8 CHAIRPERSON: Yes, I don't think that it

9 could be really described as commentary. The press have

10 maintained a high standard in regard to reporting the

11 proceedings, particularly those I think who are present

12 with us today, if I may say that. I'm sure that when they

13 report today's hearing, if they report the cross-

14 examination they will make clear that the cross-examination

15 was based upon an inference, a contention that the language

16 used by the witness, which included the word "engage," had

17 a particular meaning.

18 [15:59] The witness didn't agree with that meaning, and

19 at the end of the day Mr Mpofu will argue that the evidence

20 of the witness on this point is not correct, and the word

21 "engage" means what he says it means, but equally there

22 will be contention from the other side that that word

23 doesn't mean what Mr Mpofu says it means and that the

24 inference can't be drawn. That's a matter for us to decide

25 at the end of the day but there has been a full and

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1 vigorous cross-examination of the witness on the point.

2 The case of the injured and arrested persons has been put

3 very forcibly to him but it rests very largely on the

4 meaning of this word "engage" which has been the subject of

5 quite vigorous coverage and debate this afternoon and for

6 all we know there may be further evidence on the meaning of

7 the word in later proceedings and of course we also will

8 have Colonel Vermaak who will testify as to what he heard

9 and what exactly the words were that he heard, but I think

10 that covers the situation.

11 MR MPOFU: Yes.

12 CHAIRPERSON: I don't think Mr Semenya

13 was trying to stifle the cross-examination, he was merely

14 concerned that there might be misapprehension created by

15 reporting that this is possibly a little bit too sparse

16 which can lay the wrong impression, but I think we can be

17 confident that the representatives of the media here will

18 handle the matter properly.

19 MR MPOFU: Yes.

20 CHAIRPERSON: This seems a suitable stage

21 to take the adjournment, Mr Mpofu?

22 MR MPOFU: Yes, Chairperson, except, if

23 I'm just allowed to say that if that is what is going to

24 happen then every time a person is cross-examined at the

25 end of it the media must be reminded that those are just

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1 contentions from Mr Semenya, myself, Mr Chaskalson, Mr

2 Budlender, Mr whoever. I think this is completely uncalled

3 for, why must it only happen when we talk about

4 premeditated murder when the shoe is pinching?

5 CHAIRPERSON: Well, it is a matter of

6 course of judgment on my part whether I think there is a

7 danger of a wrong impression being created. It is

8 certainly not something that will be allowed except by way

9 of exception. I don't think we need to take the matter any

10 further –

11 MR MPOFU: Thank you, Chairperson.

12 CHAIRPERSON: We will adjourn until nine

13 o'clock on Thursday, this Chamber is required by the

14 municipality tomorrow, but that doesn't mean that a lot of

15 work won't be done tomorrow by all those connected to the

16 Commission who is –

17 MR MPOFU: Chair, -

18 CHAIRPERSON: - preparing for Thursday

19 and also reviewing some of the evidence led so far.

20 MR MPOFU: Thanks, Chairperson.

21 CHAIRPERSON: Mr Brigadier?

22 BRIGADIER CALITZ: Sorry, if I just may

23 ask a question, we had a discussion, I just want to know on

24 Thursday, Mr Mpofu, so that I can bring the next part –

25 MR MPOFU: Yes, you must bring, yes, yes,

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1 thanks Mr Brigadier, yes, you can bring both my material
2 and the AMCU one because at some stage they will take over.

3 BRIGADIER CALITZ: So we'll finish on
4 Thursday so that I can –

5 MR MPOFU: I don't know –

6 BRIGADIER CALITZ: - just bring along
7 the, - no, no, if we continue it is fine, they still have
8 Friday, I just wanted to know, because they must prepare
9 for me the files for –

10 CHAIRPERSON: Ja, there is a suggestion
11 that Mr Mpfu may finish by teatime on Thursday, I'm not
12 sure whether that's morning tea or afternoon tea –

13 BRIGADIER CALITZ: Or next week –

14 CHAIRPERSON: Is there any suggestion
15 that he will finish by teatime on Thursday and then Mr Gotz
16 who is appearing for AMCU, I think it is, will then cross-
17 examine you further and you've already received a bundle I
18 think of the materials on which he is going to rely and
19 thereafter –

20 BRIGADIER CALITZ: He will give it
21 through my legal team, so I will get it from them.

22 CHAIRPERSON: Yes, yes, and thereafter Mr
23 Gumbi who is appearing for Lieutenant Baloyi is going to
24 cross-examine you also, I'm not sure if you got his
25 materials yet, I don't know if there are any materials, but

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1 he tells me the cross-examination is not likely to be more
2 than a quarter of an hour to half an hour, but if there are
3 materials on which he is going to rely I'm sure he will
4 give them to the SAPS legal team before, or sometime
5 tomorrow I hope, so that you'll have an opportunity of
6 studying it, but it is only a very short cross-examination
7 he tells me.

8 BRIGADIER CALITZ: It is no problem, Mr
9 Chair.

10 MR MPOFU: Yes, Chairperson, I just
11 wanted to make my position clear, as to the question
12 whether it is morning tea or afternoon tea, if we were in
13 America I'm taking the fifth amendment, thank you, Chair.

14 CHAIRPERSON: On that hopeful note we
15 will adjourn until nine o'clock on Thursday.

16 [COMMISSION ADJOURNED]

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18 .
19 .



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