

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 164

7 JANUARY 2014

PAGES 18910 TO 18966



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1 [PROCEEDINGS ON 7 JANUARY 2014]
 2 [09:05] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath.
 4 ADRIAAN MARTHINUS CALITZ: Thank you,
 5 Commissioner.
 6 CHAIRPERSON: Mr Chaskalson.
 7 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 8 Brigadier, I'm going to pick up with your movements around
 9 scene 2. We closed yesterday with your clarifying the
 10 events that are described in paragraphs 122 to 125 of the
 11 statement, and you'll recall that your group had arrested
 12 strikers northwest of scene 2 and Warrant-Officer Nong was
 13 photographing the arrested strikers. Together with
 14 Lieutenant-Colonel Vermaak you were instructing the POPS
 15 members in koppie 3, that's in koppie 3 itself, to get out
 16 of their Nyalas under protection and to engage with the
 17 support of the task force, and then Lieutenant-Colonel
 18 McIntosh saw Mr Mpumza apparently attacking a member and
 19 shouted and headed off in the direction of the incident.
 20 Now if I understand your evidence correctly, at the time
 21 when you saw Lieutenant-Colonel McIntosh running off alone
 22 you thought that he was at risk and you had to respond
 23 immediately. Is that correct?
 24 BRIGADIER CALITZ: Korrek, mnr die
 25 Voorsitter.

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1 MR CHASKALSON SC: So you called Warrant-
 2 Officer Nong back from his photographs and ordered him to
 3 drive after Lieutenant-Colonel McIntosh. Is that correct
 4 too?
 5 BRIGADIER CALITZ: Dit is korrek, mnr die
 6 Voorsitter.
 7 MR CHASKALSON SC: Did you get out of the
 8 Nyala to call Warrant-Officer Nong?
 9 BRIGADIER CALITZ: I don't think so. I
 10 think I just stood in the door. If you look at the
 11 photograph, the Nyala and the Canter is close by, so I
 12 don't think it's a far distance.
 13 MR CHASKALSON SC: So you could call to
 14 Warrant-Officer Nong from your position?
 15 BRIGADIER CALITZ: No, that is correct,
 16 yes.
 17 MR CHASKALSON SC: And did Warrant-
 18 Officer Nong respond immediately to your call?
 19 BRIGADIER CALITZ: Ja, he came to the
 20 Nyala and then we drove to the direction of where Colonel,
 21 or Lieutenant-Colonel McIntosh were.
 22 MR CHASKALSON SC: Now were any other
 23 members of your Nyala outside the Nyala involved in the
 24 arresting or securing of the strikers who were on the
 25 ground at that point?

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1 BRIGADIER CALITZ: I can't recall at this
 2 stage. There might be there's two or three other members.
 3 I need to look at their statements, so I can't recall if
 4 they all went with me there. That I can't recall at the
 5 moment, no.
 6 MR CHASKALSON SC: When you went off, do
 7 you recall whether most of your original team was with you
 8 in the Nyala, or was the Nyala relatively empty?
 9 BRIGADIER CALITZ: No, I think most of
 10 them was there, that's why I'm saying I'm not sure if one
 11 of the members – remember there was three police officials
 12 that I testified in the beginning, I'm not sure if one of
 13 them stayed in the, and joined us later. I can't recall
 14 that at the moment.
 15 MR CHASKALSON SC: And if I understood
 16 your evidence correctly you were happy to leave the scene
 17 where you'd been because the members and the other vehicles
 18 who remained behind were sufficient to control the scene.
 19 There wasn't a risk in leaving the scene.
 20 BRIGADIER CALITZ: Ja, it was only my
 21 vehicle leaving. If you went back to the photograph again
 22 of yesterday you will see that there was sufficient TRT
 23 members as well on the ground giving protection to those
 24 people busy with the arrests.
 25 MR CHASKALSON SC: Now in the photographs

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1 we see another armoured vehicle there, which is a Nyala,
 2 and in some of the photographs we see a Casspir as well.
 3 Were those vehicles also left behind?
 4 BRIGADIER CALITZ: As far as I know it
 5 was my vehicle driving off and then later on I testified I
 6 think I was informed by Colonel Pitsi, who also joined us
 7 at that stage where the body was found, who then informed
 8 me about the situation of his Nyala. I think it was Papa5,
 9 if I'm not mistaken.
 10 MR CHASKALSON SC: Yes, but Papa5 had
 11 been with you up at the scene of the arrested strikers as
 12 well.
 13 BRIGADIER CALITZ: That is why I'm saying
 14 I think he was left behind until all the strikers was in
 15 the Canter. I'm not sure. I didn't observe their
 16 movements at that time.
 17 MR CHASKALSON SC: When you deal with
 18 what happened when you reached the body of victim C – or
 19 first of all, by the time you actually caught up with
 20 Lieutenant-Colonel McIntosh he was already at the body.
 21 That's correct, is it not?
 22 BRIGADIER CALITZ: When I climbed out of
 23 the vehicle he was at a kneeling position at the body, yes.
 24 MR CHASKALSON SC: And you quickly
 25 established that both he and the SAPS member about whom he

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1 had been concerned were alright, but Mr Mpumza was in fact
2 dead.

3 BRIGADIER CALITZ: I was told by Colonel
4 McIntosh that the person passed on, yes.

5 MR CHASKALSON SC: But there was no SAPS
6 member who was at risk any longer?

7 BRIGADIER CALITZ: SAPS member who was
8 what?

9 MR CHASKALSON SC: Who was at risk any
10 longer. You'll recall Lieutenant-Colonel McIntosh went
11 off, we understood, or I understood from your evidence,
12 because he thought a SAPS member was being attacked.

13 BRIGADIER CALITZ: That is what he told
14 me, yes.

15 MR CHASKALSON SC: And when you got
16 there, there was no SAPS member who was still at risk or
17 injured?

18 BRIGADIER CALITZ: No, as I testified,
19 the person passed on, so there was no other attack on that
20 members there at that moment.

21 MR CHASKALSON SC: And from your
22 statement I understand that you realised that the death of
23 victim C was something that had to be reported to the JOC,
24 so you called Lieutenant-General Annandale at 16:47 to make
25 this report and this you say was the first time you found

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1 out anything about the other shootings and deaths in the
2 operation.

3 BRIGADIER CALITZ: That is correct, mnr
4 die Voorsitter.

5 MR CHASKALSON SC: But it seems from your
6 statement that before you called Lieutenant-General
7 Annandale you had some exchanges with Captain Kidd and
8 Lieutenant-Colonel Pitsi at the scene of Mr Mpumza's body.
9 Am I correct in reading your statement that these exchanges
10 with Captain Kidd and Lieutenant-Colonel Pitsi happened
11 before you called?

12 BRIGADIER CALITZ: Ja, again like
13 yesterday I can't say my statement is in sequence. I can't
14 remember really the time that Colonel Pitsi told me about
15 the Nyala. I know when we were at, standing at the
16 position where the body was lying, I was approached by
17 Colonel Pitsi and informed that his Nyala was shot at
18 during what we call I think incident 2, but when it
19 happened before or after I made the call, I can't really
20 tell you, but there were exchange, yes, because when I
21 arrived at the body I found the TRT members there, which I
22 saw for the first time.

23 MR CHASKALSON SC: Yes, if we look at 126
24 and 127, 126 you talk about the TRT members and you explain
25 that you instructed Captain Kidd to make a report to the

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1 JOC. Then you say at about the same time Lieutenant-
2 Colonel Pitsi arrived at the scene. Now did he arrive in
3 his Nyala?

4 BRIGADIER CALITZ: That is correct, yes.

5 MR CHASKALSON SC: And did you actually
6 see his Nyala arrive at the scene?

7 BRIGADIER CALITZ: He showed me the
8 Nyala. I also saw there was marks on the Nyala and
9 therefore later on I've instructed the Local Criminal
10 Record Centre to take photographs of that Nyala and they
11 said to him he must not remove his Nyala from that scene
12 there.

13 MR CHASKALSON SC: But when you say
14 Lieutenant-Colonel Pitsi arrived at the scene, do you mean
15 that his Nyala actually arrived at the scene while you were
16 there, or that he came up to you while you were there and
17 then showed you his Nyala?

18 BRIGADIER CALITZ: We were standing there
19 where the body's position was, so the Nyala obviously drove
20 to where we were and then he climbed out, told me and we
21 saw the Nyala.

22 MR CHASKALSON SC: And you saw the Nyala
23 driving to where you were?

24 BRIGADIER CALITZ: The Nyala was a few
25 metres away from mine, yes, but I didn't actually saw them

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1 from where they were driving into my direction, no. But if
2 you look at the photographs of where we all were, I think
3 Papa5, it's indicated on your photograph, I presume that is
4 from the position where he left to come to me.

5 CHAIRPERSON: Are you saying that you
6 didn't see the Nyala arrive? I take it you were presumably
7 looking at Colonel McIntosh and looking at the body and so
8 on. You didn't see the Nyala arrive, but after it had
9 arrived you saw it, you –

10 BRIGADIER CALITZ: Dit is korrek.

11 CHAIRPERSON: You saw the damage marks
12 and so forth.

13 BRIGADIER CALITZ: Ja. Nee, dit is
14 korrek, mnr die Voorsitter.

15 CHAIRPERSON: And spoke to Colonel Pitsi?

16 BRIGADIER CALITZ: I definitely spoke to
17 Colonel Pitsi.

18 MR CHASKALSON SC: And when you arrived
19 in your Nyala had you seen any other Nyala at the scene of
20 victim C?

21 BRIGADIER CALITZ: No, not that I can
22 recall. Like I said, I am not sure which time he arrived
23 or - I looked at him when they arrived, that is why I say
24 at about the same time, so I was busy with – remember there
25 was now a body who's dead, so I was talking to the TRT

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1 people. I was trying to calm everybody down, so my
2 attention was there, not at which vehicles was there. I
3 didn't really look at that, no.

4 MR CHASKALSON SC: Would you not have
5 thought that it was important to call the JOC immediately
6 to report the death of Mr Mpumza?

7 BRIGADIER CALITZ: The first opportunity,
8 that's why I said I called the JOC. I don't know if the
9 photographs indicated when I arrived there and when I
10 called what is the difference, but according to me after I
11 established what happened there with the facts then
12 immediately I called the JOC.

13 MR CHASKALSON SC: So your conversation
14 with Lieutenant-Colonel Pitsi about the damage to the
15 Nyala, that was something that could have waited until
16 after you had called the JOC.

17 BRIGADIER CALITZ: I've testified to you,
18 mnr die Voorsitter, dat ek het nie bewus gewees of ek voor
19 of na die oproep met Kolonel Pitsi gepraat het nie. Dit is
20 wat ek nou-nou vir u gesê het, so as ek voor die tyd met
21 hom gepraat het, het hy vir my dit gewys, of as ek na die
22 tyd – ek kan nie vir u sê presies wat het eerste
23 plaasgevind nie.

24 MR CHASKALSON SC: Did you issue any
25 instructions about preserving the integrity of the crime

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1 scene around Mr Mpumza's body?

2 BRIGADIER CALITZ: Dit is wat ek vir u
3 getuig het daar by, ek dink 126, toe Kaptein Kidd op die
4 toneel arriveer, "I instructed him to find out what
5 happened and to give the situation report to the JOC." Dit
6 is ook waar dan hulle daardie toneel bewaar het.

7 MR CHASKALSON SC: Did you put anyone in
8 particular in charge of preserving that crime scene?

9 BRIGADIER CALITZ: Ek het met Kaptein
10 Kidd gepraat, maar sy lede wat daar was, was genoegsaam.
11 Hulle het by die persoon gebly, asook ek dink Kolonel Pitsi
12 se Nyala was ook staties daar, as ek kan reg onthou, tot
13 later die aand.

14 MR CHASKALSON SC: But I'm asking about
15 responsibility. Was there someone who was given
16 responsibility for preserving that crime scene, an
17 individual who is responsible if anything went wrong with
18 that crime scene?

19 BRIGADIER CALITZ: Ek het met Kaptein
20 Kidd gepraat op daardie stadium.

21 MR CHASKALSON SC: So Captain Kidd was
22 responsible for the integrity of that crime scene?

23 BRIGADIER CALITZ: Hy was die senior op
24 die toneel, so dit is normaalweg hoe dit plaasvind, ja.

25 MR CHASKALSON SC: Well, Lieutenant-

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1 Colonel Pitsi, who was there if not at the time of Captain
2 Kidd then shortly thereafter, was he not given
3 responsibilities about the crime scene?

4 BRIGADIER CALITZ: Nee, ek het vir
5 Kaptein Kidd gesê omdat sy mense teenwoordig was en dat sy
6 lede betrokke was by die skietvoerval, so ek het aan hom
7 opdrag gegee en gesê hy moet uitvind wat daar plaasgevind
8 het en dat as die situasie, al die feite het, moet hy dit
9 aan die JOC deurgee.

10 MR CHASKALSON SC: And then if I
11 understand your statement, Warrant-Officer Nong drove you
12 from victim C to your final position at koppie 3. Is that
13 correct?

14 BRIGADIER CALITZ: Dit is nou nadat ek
15 die oproep gemaak het – is ek met u? U bedoel toe ek na
16 koppie 3 toe gegaan het?

17 MR CHASKALSON SC: Sorry, you made the
18 call to Major-General Annandale. Did you make that from
19 the scene of victim C?

20 BRIGADIER CALITZ: Dit is korrek, ja.

21 MR CHASKALSON SC: And thereafter you
22 went in your Nyala to koppie 3. Is that correct?

23 BRIGADIER CALITZ: Dit is korrek. Ek het
24 daar gesê "to the northern side," dit is noordwestelike
25 rigting. If you look at the photograph, there is an

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1 opening between the rocks where everybody was on the
2 ground, so my Nyala was positioned about, I would say a few
3 metres, 10, 20 metres in front of that, of koppie 3, yes.

4 MR CHASKALSON SC: I wonder, maybe we
5 should look at a photograph so we can just point it out to
6 the Commissioners. To my mind the best photograph to show
7 the position of your Nyala in its final position is
8 Lieutenant-Colonel Vermaak's photograph 4552. I've just
9 lost a reference, a JJJ reference for that.

10 CHAIRPERSON: It's already an exhibit?

11 MR CHASKALSON SC: Yes, it is already an
12 exhibit in the JJJ-series, but I'm looking for its number.
13 It's JJJ10, 4552. JJJ10. Can we get JJJ10 up? 4552. We
14 want the file of 4552. There should be a folder of them.
15 Maybe to save time we can look at it later because we'll be
16 able to point it out later and we can talk – Brigadier, you
17 can see it and I can see it, so I think we're going to need
18 a better copy of this. We're going to need the one that's
19 actually called up on screen, but Brigadier, let's quickly
20 run through the movements. We'll go back to it once we've
21 got 4552 up on screen. Can I clarify with you that it was
22 Warrant-Officer Nong who drove you first from – well,
23 you've already confirmed that it was Nong who drove you
24 from the scene of the arrests to the northwest to the scene
25 of victim C. What I now want to clarify is that he again

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1 drove the Nyala from the scene of victim C to its final
2 position. Can you answer that question?
3 BRIGADIER CALITZ: Yes, the only answer I
4 can give you is it must have been him. I can't think of
5 anybody else that would climb in my Nyala –
6 MR CHASKALSON SC: Well you see, why I
7 ask –
8 BRIGADIER CALITZ: There was no
9 communication really there, but yes, it must have been him.
10 MR CHASKALSON SC: Why I ask, Brigadier,
11 is Warrant-Officer Nong was also taking photographs. So we
12 can plot some of his movements and the times of his
13 movements with reference to when he got out and took
14 photographs. So it's important for us to know if anybody
15 else at any stage was moving you around because we don't
16 want to say well, Warrant-Officer Nong was now in this
17 position having got out of the Nyala there and it turns out
18 somebody else was driving the Nyala. But to the best of
19 your knowledge he was the only person who drove your Nyala
20 that day?
21 BRIGADIER CALITZ: To the best of my
22 knowledge, yes. If there was another person jumping in and
23 driving, I mean where my concentration was, was not really
24 with the driver at that stage. But according to me, to the
25 best of my knowledge it must have been him, yes.

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1 MR CHASKALSON SC: We've got the
2 photograph up, Brigadier. Do you have a pointer?
3 CHAIRPERSON: Can we be told where north
4 was? I think I can work it out by reference to the shadows
5 of the vehicles, but that would be a rough guess really.
6 Do we know where north is?
7 MR CHASKALSON SC: Broadly, Chairperson,
8 north is on the left-hand side of this photograph.
9 BRIGADIER CALITZ: Yes.
10 MR CHASKALSON SC: This is later in the
11 afternoon, so the shadows are cast from west to east.
12 CHAIRPERSON: So if one looks, the
13 picture we're looking at now, there are two vehicles near
14 the foot of the page in the middle. The shadows are behind
15 them. So I take it that's an easterly direction, the
16 direction of the shadows.
17 MR CHASKALSON SC: That's slightly sort
18 of – it's probably east-northeast, or east-east-northeast.
19 CHAIRPERSON: Anyway, you're saying north
20 is on the left-hand side. Do we know where body C was?
21 BRIGADIER CALITZ: I think body C at this
22 stage, mnr die Voorsitter, is agter waar my Nyala
23 geposisioneer is aan sy, op sy 6-uur, aan die agterkant van
24 die voertuig.
25 CHAIRPERSON: But can you perhaps show me

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1 your Nyala on this?
2 BRIGADIER CALITZ: Ek het nou net 'n
3 pointer. As u agter u – dit sal my, so ek neem aan "body
4 C" sal in hierdie posisie wees –
5 CHAIRPERSON: Okay, I see. Thank you.
6 So it's actually the vehicle the closest to the bottom left
7 corner of the photograph?
8 BRIGADIER CALITZ: Dit is korrek, mnr die
9 Voorsitter.
10 CHAIRPERSON: Thank you. Do you say body
11 C is close to that?
12 BRIGADIER CALITZ: Hy is nie sigbaar in
13 hierdie "picture," of prentjie nie, maar ek neem aan hy is
14 so net op die, soos ek in ons taal op die Nyala se 6-uur,
15 agter, so net uit die foto uit op die, in die
16 noordwestelike rigting.
17 CHAIRPERSON: So what you're indicating I
18 think is just beyond the bottom left-hand corner of the
19 photograph. Is that right?
20 BRIGADIER CALITZ: I don't know if it can
21 be zoomed out more, or is this the furthest?
22 MR CHASKALSON SC: I think that's as far
23 as it goes.
24 BRIGADIER CALITZ: Ja, so it's just out
25 of picture, mnr die Voorsitter, op die linkerkantste

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1 onderste hoek van hierdie foto, net buite beeld.
2 CHAIRPERSON: But close to the bottom
3 left-hand corner of the photograph, but off the picture,
4 beyond the frame, as it were.
5 BRIGADIER CALITZ: Dit is korrek, mnr die
6 Voorsitter.
7 CHAIRPERSON: Thank you.
8 [09:25] MR CHASKALSON SC: Brigadier, I just want
9 to take issue with that because I think body C is in fact a
10 bit more – I would put body C broadly on a line, if you
11 take this line of the shadow in one direction through your
12 vehicle and you run that run in the opposite direction I
13 would put body C closer to that line, but we've got other
14 photographs and that's where we can –
15 CHAIRPERSON: It's not material, it's in
16 that vicinity.
17 MR CHASKALSON SC:
18 BRIGADIER CALITZ: Mnr die Voorsitter, ek
19 dink op die vorige foto waar ons Nyalas bymekaar was waar u
20 die rooi kolletjie, ek dink ons -
21 MR CHASKALSON SC: That is correct.
22 BRIGADIER CALITZ: Ek dink as ons na
23 daardie foto kan gaan dan kan ek op daardie foto vir die
24 Voorsitter wys waar my Nyala op hierdie foto is. So dit
25 sal miskien dalk 'n aanduiding wees.

<p style="text-align: right;">Page 18926</p> <p>1 MR CHASKALSON SC: That's JJJ178 GW. 2 BRIGADIER CALITZ: Dis net as dit, as dit 3 van belang is dan kan ons op daai - 4 CHAIRPERSON: We saw that photograph 5 yesterday and if it's important - 6 BRIGADIER CALITZ: Oh nee, nee ek wil net 7 vir u wys. 8 CHAIRPERSON: If you particularly want it 9 obviously I won't stop you. But I don't think it's 10 necessary, because I'm just trying to understand how it 11 fits together. 12 BRIGADIER CALITZ: Dan is ek tevrede, mnr 13 die Voorsitter. 14 CHAIRPERSON: Because you did say in your 15 statement that you positioned your Nyala, this is paragraph 16 129, when you got to koppie 3 in front on the northern side 17 that's why I wanted to know where the northern side was. 18 But now I understand that and I understand where more or 19 less where body C was. 20 BRIGADIER CALITZ: Dit is korrek. 21 CHAIRPERSON: Ja, I think I can follow 22 and if I can't follow it I'll let you know. 23 BRIGADIER CALITZ: Dankie, mnr die 24 Voorsitter. 25 MR CHASKALSON SC: And, Brigadier, you</p>	<p style="text-align: right;">Page 18928</p> <p>1 regs, dit is waar ek die persone gesien, tussen daardie 2 daar was ek nie bewus van enige persone wat, want dit is 3 die middel kol waar die persone net gearresteer was. Ek 4 weet, ek's nie bewus van een van hulle wat miskien dalk 5 heen gegaan het terwyl hulle daar besig was met die mediese 6 personeel. 7 CHAIRPERSON: So the position is then 8 those bodies if one can call them that which are close to 9 the Cantors, there's two Cantors parallel with each other 10 and immediately above them on the photograph the whole 11 group of, what looks like bodies, those are the arrested 12 people are they? 13 BRIGADIER CALITZ: Dit is die persone wat 14 op die grond lê selfde posisie as die vorige ses wat ons - 15 CHAIRPERSON: And then if one goes up, 16 slightly to the right there's a group of other people lying 17 on the ground to the right. Are those the dead bodies? 18 MR CHASKALSON SC: Chairperson, if I can 19 help you there are no dead bodies at this scene at all. 20 BRIGADIER CALITZ: Ek dink, ja ek het - 21 CHAIRPERSON: Oh I see. Alright so - 22 BRIGADIER CALITZ: Nie op hierdie foto 23 nie, mnr die Voorsitter. 24 CHAIRPERSON: Not on this, okay. 25 BRIGADIER CALITZ: Boontoe.</p>
<p style="text-align: right;">Page 18927</p> <p>1 mentioned before the photo came up that there was, I think 2 you said a passage or an opening or a clearing into the 3 koppie, can you just mark that so that the Commissioners 4 can see what you are referring to. 5 BRIGADIER CALITZ: Ek het verwys my 6 voertuig het gestop voor die rotse, daar's 'n opening 7 tussen die rotse het ek gesê. So as u sien waar net links 8 of regs voor my voertuig staan daar twee oprit trokke wat 9 ons na verwys as Cantors, dit is die opening dan as u met 10 my Nyala reguit vorentoe sal ry sal jy dan daardie opening 11 in ry, dit is die opening waarna ek verwys het. 12 MR CHASKALSON SC: And if you were to 13 drive straight through that opening you would have reached 14 the place which doubled as an arrest collection point and a 15 field hospital? 16 BRIGADIER CALITZ: Ek kan sê agter die 17 tweede groep voertuie wat daar staan sal u sien daar is 'n 18 groep persone, as ons miskien in zoom sal u sien dit is die 19 gearresteerdes wat dan agter daai voertuie, as jy nog nader 20 gaan daar kan u van hulle sien waar hulle dan, soos - 21 CHAIRPERSON: Are there also bodies 22 there? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 die persone wat gedood is tussen die rotse, ek dink dis 25 meer in 'n suidelike, as ons nou na die foto kyk boontoe en</p>	<p style="text-align: right;">Page 18929</p> <p>1 MR CHASKALSON SC: When I say at the 2 scene I mean this photograph, at what is photographed here. 3 BRIGADIER CALITZ: Ja. 4 MR CHASKALSON SC: Now, Brigadier, 5 yesterday at the end of the day when you were clarifying 6 that time when you moved off after Lieutenant Colonel 7 Macintosh you said in answer to the Chairperson that the 8 photographing of the arrested persons, your radio exchange 9 with Lieutenant Colonel Vermaak about engaging inside the 10 koppie and Lieutenant Colonel Macintosh's flight to the 11 scene of victim C happened more or less at the same time, 12 maybe not exactly at the same time, do you recall that? 13 BRIGADIER CALITZ: Ja, ek het verwys na 14 die transkripsie en ek het gesê as ons gaan kyk na die, 15 waar ons was het ek verwys as L25 tot het ons na 'n tyd 16 verwys 13:28 in die gesprek in en dit is waar Kolonel 17 Vermaak vir my aangedui het dat die persone is encircle. 18 So dit is, tussen waar ons was 1125 in die gesprek in na 19 13:28 so ongeveer, as ek na die recording kyk twee, drie 20 minute. Dit kan omtrent die - 21 MR CHASKALSON SC: Sorry, I'm not, I'm 22 not following. You're saying it's approximately two or 23 three minutes - 24 BRIGADIER CALITZ: Ek sê as ek na die 25 transkripsie kyk wat voor my is. Ek het dit nie self op my</p>

<p style="text-align: right;">Page 18930</p> <p>1 horlosie dopgehou, ek bedoel ek was nie op daardie stadium 2 tyd gehou nie. Ek sê dit kan maklik uitgewerk word volgens 3 die transcript voor ons.</p> <p>4 MR CHASKALSON SC: You see if we go back 5 to your statement and can we call up the statement, 6 paragraph 124 and 5. Your statement suggests that you had 7 literally just got off the radio when you or you had just 8 been community with Lieutenant Colonel Vermaak when at that 9 moment I shouted at Warrant Officer Nong to quickly come to 10 the Nyala. So your statement conveys is that immediately 11 after you had issued your instruction to the POPS members 12 to engage at the koppie on the radio you called Warrant 13 Officer Nong to come back to the Nyalas so that he could 14 drive you to Lieutenant Colonel Macintosh. Is that how you 15 remembered it?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, 17 nee ek het gister vir u getuig dat die verklaring is nou 18 nie in sequence geskryf soos wat u telkens vir my gevra het 19 nie. Ek het gesê en ek dink, mnr die Voorsitter, het gesê 20 daar was twee of drie insidente wat min of meer dieselfde 21 tyd plaasgevind het. So ek het u gevra ook op 'n stadium 22 dat u het die tyd lyne, ek het nie die timelines voor my 23 nie. Dit is maklik daar volgens te kan sien watter een het 24 voor watter een plaasgevind. Ek het wel getuig dit is min 25 of meer -</p>	<p style="text-align: right;">Page 18932</p> <p>1 tyd plaasgevind, ek kan nie onthou toe ons oppad was en 2 gery het laat ek dit gesê het of toe ons nog staties was 3 nie. Maar dit was soos ek dit onthou het, het dit ongeveer 4 in daardie selfde tyd gebeur. Soos ek sê in die transcript 5 kan ons sien dat 13 minute 28 volgens myne het, in die 6 transcript in het Kolonel Vermaak vir my daardie opdrag 7 gegee. So ek het gevra dat 'n ou kan kyk, ek dink die 8 skiet voorval was rondom 16:20 gewees wat ek op die tydlyn 9 vasgestel het. So ek weet nie of die tye ooreenstem nie.</p> <p>10 CHAIRPERSON: It looks then as if 11 paragraph 124 is in the wrong position in your statement.</p> <p>12 BRIGADIER CALITZ: It can maybe be just 13 exchange with 125, daarom het ek gesê, mnr die Voorsitter, 14 dit is nie in sequence.</p> <p>15 CHAIRPERSON: Yes, I'm just trying to 16 ascertain what the position is. It looks from what you now 17 tell us that 124 is wrongly placed in the statement, you 18 say it should actually come after 125, is that right, in 19 other words 125 should be 124 and 124 be 125, would that be 20 more accurate?</p> <p>21 BRIGADIER CALITZ: Mnr die Voorsitter, ja 22 ek kan saam met u stem, ek sê soos ek onthou het op daardie 23 stadium het, dit is hoe ek die gebeure onthou het en dit is 24 hoe ek die verklaring geskryf het.</p> <p>25 CHAIRPERSON: That's why I asked you when</p>
<p style="text-align: right;">Page 18931</p> <p>1 CHAIRPERSON: But, Brigadier, but it does 2 look, if you look at paragraph 124 and 125 together that 3 when you made your statement the way you remembered it was 4 that you shouted to Nong, Warrant Officer Nong to come to 5 the Nyala so that, and then you went off in the direction 6 of Lieutenant Colonel Macintosh. That expression at that 7 moment clearly it refers back to what you say in 124 and 8 124 deals with the report you heard over the radio from 9 Lieutenant Colonel Vermaak that the armed strikers were 10 encircled which is on the koppie and you then gave 11 instruction to all the POP members in the Nyalas to get out 12 of their vehicles and do various things, to disperse the 13 group into smaller pockets, encircle them, disarm them and 14 arrest them. But the use of the expression at that moment, 15 op daardie oomblik creates the clear impression that as you 16 remembered it then when you made the statement you thought 17 that those two things had happened more or less 18 simultaneously. That does seem correct, doesn't it?</p> <p>19 BRIGADIER CALITZ: Ek dink ons kan 125 20 link met 123, Kommissaris, waar ek dan toe Macintosh 21 uitgespring het en gehardloop het kan ek onthou het ek 22 geskree weet wag eers vir die, vir dinges en hy het gesê 23 nee die persoon is onder aanval en hy het gehardloop. Ek 24 het op daardie stadium toe, at that moment het ek vir Nong 25 geskreeu. Ek dink die radio gesprek het in daardie selfde</p>	<p style="text-align: right;">Page 18933</p> <p>1 you made your statement is that how you remembered it.</p> <p>2 BRIGADIER CALITZ: Dit is korrek, mnr die 3 Voorsitter.</p> <p>4 MR CHASKALSON SC: You see, Brigadier, 5 the statement is very misleading in that respect because 6 these two events didn't happen even remotely close to one 7 another in the broader scheme of the operation. They 8 happened a long time apart from one another. Your 9 communication with Lieutenant Colonel Vermaak was as you 10 mentioned at 13:48 on the transcript of the Protea Coin 11 chopper that was at ETV time 16:11:18. The episode with 12 Lieutenant Colonel Macintosh running out of the Nyala 13 happened more than eight and a half minutes later because 14 Mr Mpumza was only killed at 16:19:47 and that is a time 15 that we take from Captain Ryland's video, if I can give you 16 the reference to Captain Ryland's video. It's Captain 17 Ryland's video 26, which is exhibit I2 one minute into that 18 video, you hear the shoots that killed victim C, Mr Mpumza. 19 So you're talking about incidents that were eight minutes, 20 eight and a half minutes apart at least because until, 21 Lieutenant Colonel Macintosh could only have run out after 22 victim C had been killed but that's not the only misleading 23 aspect about your evidence in relation to the incident with 24 Lieutenant Colonel Macintosh. In fact there's much more 25 misleading aspects and most of the version that you're</p>

<p style="text-align: right;">Page 18934</p> <p>1 putting forward in this commission today can be shown to be 2 incorrect with reference to the video footage. I'm going 3 to say out all of the inaccuracies so you can consider them 4 all before I ask you to respond to each one.</p> <p>5 CHAIRPERSON: Before you do that, can I 6 ask you a question, Mr Chaskalson. I asked the Brigadier 7 whether 124 and 125 were in the wrong order and I 8 understood him to say that 125 in 124 and 124 should be 9 125, if that's correct that means that the Vermaak 10 incident, report by Vermaak and the instruction to the POP 11 members in the Nyalas to get out of their vehicles on 12 koppie 3 took place after the events described in paragraph 13 125. Now you say, I understand you to say that's not 14 correct but in fact the, those incidents took place 15 something like ten minutes before.</p> <p>16 MR CHASKALSON SC: Eight and a half 17 minutes before.</p> <p>18 CHAIRPERSON: Eight and a half. May I 19 ask you this, now if that's correct, obviously we don't 20 know if that's so. Do you, are you able to tell us from 21 your timeline and the examination of the videos and so on 22 at what time the events in the second sentence of 23 paragraph, the event in the second sentence of 122 24 occurred, that's Warrant Officer Nong getting out of the 25 Nyala at the place that the arrests took place to take</p>	<p style="text-align: right;">Page 18936</p> <p>1 MR CHASKALSON SC: It's JJJ63674, 2 JJJ63674.</p> <p>3 CHAIRPERSON: And what time is that? 4 MR CHASKALSON SC: That's at ETV time 5 16:12:20.</p> <p>6 CHAIRPERSON: 16:12 - 7 MR CHASKALSON SC: 20.</p> <p>8 CHAIRPERSON: 20. 9 MR CHASKALSON SC: So that's roughly a 10 minute after the exchange between Lieutenant Colonel 11 Vermaak and Brigadier Calitz.</p> <p>12 CHAIRPERSON: Now we come to the next 13 point. The next point is the report from Lieutenant 14 Colonel Vermaak followed by the instruction given by the 15 witness which is the first two sentences, in fact it's the 16 two sentences of paragraph 124 what is ETV time of that? 17 MR CHASKALSON SC: Lieutenant Colonel 18 Vermaak is 16:13:21.</p> <p>19 CHAIRPERSON: 16:13:21, in other words a 20 minute after the first photograph.</p> <p>21 MR CHASKALSON SC: And the witness's 22 reply is 16:13:31, so it's 16:13:21 to 16:13:31.</p> <p>23 CHAIRPERSON: Yes, I understand, and 24 then the last one I want is the – 25 MR CHASKALSON SC: Sorry, Chairperson,</p>
<p style="text-align: right;">Page 18935</p> <p>1 photographs of the arrested strikers. In other words did 2 those, that incident that's dealt with effectively in 3 paragraph 122, the arrest of some of the strikers, making 4 them lie down, they them being photographed by Warrant 5 Officer Nong, do we know at what time that happened? Are 6 you –</p> <p>7 MR CHASKALSON SC: Yes, we can give you 8 the time of the very first photograph that Warrant Officer 9 Nong took.</p> <p>10 CHAIRPERSON: Yes, what's that? 11 MR CHASKALSON SC: Well I'll have to look 12 for it.</p> <p>13 CHAIRPERSON: I just want to understand 14 what you're putting and the way I propose doing it is to 15 annotate my copy of the witness's statement with the 16 relevant times against some of the key paragraphs. So what 17 I'm looking for at the moment is to write a time, an ETV 18 time I take it against the second sentence of paragraph 19 122.</p> <p>20 MR CHASKALSON SC: The first photograph 21 taken by Warrant Officer Nong is JJJ, not the first 22 photograph taken by him but the first photograph taken by 23 him at the scene to the north west of the koppie where the 24 strikers are being arrested.</p> <p>25 CHAIRPERSON: Yes.</p>	<p style="text-align: right;">Page 18937</p> <p>1 while I'm doing this just in case any of the parties want 2 to check this, can I give the references to the video.</p> <p>3 CHAIRPERSON: Of course. 4 MR CHASKALSON SC: That's at 13:57 is 5 the, is the communication from Lieutenant Colonel Vermaak 6 on the Protea Coin video, 14:09 from, is the answer from 7 Brigadier Calitz.</p> <p>8 CHAIRPERSON: Yes, and what's the 9 exhibit order? Well it doesn't matter.</p> <p>10 MR CHASKALSON SC: It's the Protea Coin 11 video.</p> <p>12 CHAIRPERSON: If they want it, they'll 13 ask you for it and then 125 is shouting, he shouts to 14 Warrant Officer Nong to quickly come to the Nyala so they 15 could go off to, they could drive off to where Lieutenant 16 Colonel Macintosh was attending to the striker, this is 17 victim body C, what do we know when that was? 18 MR CHASKALSON SC: We don't know when the 19 instruction came –</p> <p>20 CHAIRPERSON: Do we know – 21 MR CHASKALSON SC: We know when Mr Mpumza 22 was killed.</p> <p>23 CHAIRPERSON: That was? 24 MR CHASKALSON SC: And that was at ETV 25 time 16:19:47.</p>

<p style="text-align: right;">Page 18938</p> <p>1 CHAIRPERSON: 16:19:47. 2 MR CHASKALSON SC: And that – 3 CHAIRPERSON: I understand. So when, so 4 the statement in 125 on his arrival, that's Nong's arrival 5 back at the Nyala we drove to where Macintosh attending to 6 the striker he's lying on the ground, Macintosh informed me 7 he died. So that information was given by Colonel 8 Macintosh after Mpumza, Mr Mpumza died. So obviously given 9 after 16:19:47? 10 MR CHASKALSON SC: It's more than that, 11 Chairperson, because the incident involving the death of 12 victim C was almost instantaneous in the attack as it's 13 described by the – 14 CHAIRPERSON: Yes, yes I understand 15 that. But what we're concerned with is what Lieutenant 16 Macintosh is informing the witness that the person had 17 died, he couldn't have informed him if he died before he 18 died. 19 MR CHASKALSON SC: Yes, but – 20 CHAIRPERSON: Some time after 16:19, 21 there may have been instantaneously after, it may have been 22 a minute later but it was – 23 MR CHASKALSON SC: No, I'm making a 24 different point, Chairperson, that if Lieutenant Colonel 25 Macintosh saw the attack which is what triggered his</p>	<p style="text-align: right;">Page 18940</p> <p>1 scene of the arrests to the Northwest. The Casspir and 2 Papa5 responded to the shooting of Mr Mpumza much quicker 3 than your vehicle. The Casspir is not visible on the 4 Protea Coin video at the time of the shooting of Mr Mpumza 5 which is 22:17 on the Protea Coin video. It seems to have 6 been moving off from the scene when the shooting took 7 place, but it then changed direction and drove in the 8 direction of Mr Mpumza's body, which we see from 22:27 to 9 24:07 on the Protea Coin video. And in fact at 22:01 on 10 the Protea Coin video, which is eTV 16:20:31, 16:20:31, it 11 stopped near Victim C where it stayed for 35 seconds. It 12 starts moving off again at eTV time 16:21:06. We also see 13 it driving slowly behind the body in the direction towards 14 the body on Captain Ryland's video at 26 - that's exhibit 15 I2 – at 1:38 into the video, which is eTV 16:20:25. And we 16 see it apparently stationary behind Colonel Macintosh, 17 who's already at the body, 37 seconds later, on the same 18 video, Captain Ryland's video, 26 I2 exhibit, at two 19 minutes, 15 seconds. That's eTV 16:21:02, before it pulls 20 off slowly from the scene at 2:19 into the video, which is 21 eTV time 16:21:06. So the Casspir was the first vehicle to 22 respond. It stopped. It was stationery while Colonel 23 Macintosh was already there and presumably was satisfied 24 that there was no problem and moved off. 25 The second vehicle to respond was Papa5. It</p>
<p style="text-align: right;">Page 18939</p> <p>1 decision to get out of the Nyala that would have happened 2 almost simultaneously with the death of victim C because 3 victim C was shot immediately he jumped up and tried to 4 attack Constable Sebatchane. 5 CHAIRPERSON: Well after that of 6 Lieutenant Colonel Macintosh arriving there the, Nong 7 coming back to the Nyala, driving the Nyala as described in 8 the statement. Anyway, thank you, you've given me the 9 relevant times that I want to enable me I hope to follow 10 the evidence. 11 MR CHASKALSON SC: Brigadier, I said I 12 was going to set out all of the inaccuracies so that you 13 could hear what my concerns were before I asked you to 14 respond to any one of them. So here they are. The first 15 inaccuracy is that your team did not respond immediately to 16 the death, to the departure of Lieutenant Colonel 17 Macintosh. After the death of Mr Mpumza Warrant Officer 18 Nong continued to photograph suspects and in fact took 19 another seven mug shots. Your vehicle was in fact the last 20 of the armoured vehicles to leave the scene of the arrests 21 to the north west. It only started moving from its 22 position at 16:22:52 ETV time where we see it on the Protea 23 Coin video at 25:22. So this was more than three minutes 24 after the death of Mr Mpumza. 25 [09:45] The two other armoured vehicles that were at the</p>	<p style="text-align: right;">Page 18941</p> <p>1 moved off the scene to the Northwest at Lonmin chopper, 2 24:19, which is eTV 16:21:49 and more than a minute before 3 your Nyala moved off. It headed straight to the body of 4 victim C, where it stopped around Lonmin chopper, 25:18, 5 which was eTV, 16:22:48, and it stayed at the body of 6 victim C for a lengthy period. 7 Your vehicle, as I've already indicated, started 8 moving only at 16:22:52, which is Protea Coin video, 25:22. 9 Now, not only was your vehicle the last to leave, but it 10 didn't even head in the direction of the body of Mr Mpumza. 11 It didn't drive to Mr Mpumza at all. It drove straight to 12 koppie 3 in its final position to the Northwest of the 13 koppie, which it reached at Protea Coin video at 26:10, eTV 14 26:23:40. It seems that if you did in fact go to the scene 15 of victim C's body at all it wasn't in the immediate 16 aftermath of the shooting, but it was much, much later. It 17 also seems that at least someone inside your vehicle knew 18 that koppie 3 was a massive crime scene that needed to be 19 attended, because Warrant Officer Nong was out of the 20 vehicle taking photographs of suspects less than two 21 minutes after the vehicle arrived at scene 2 at eTV time, 22 16:25:22, where we see this first photograph, which is 23 JJJ83, 36966. And he was photographing dead bodies by eTV 24 time, 16:37:50. That's 10 minutes before your call to 25 Major-General Annandale, JJJ8,3729.</p>

<p style="text-align: right;">Page 18942</p> <p>1 So those are the inaccuracies. I've got a range 2 of concerns about the inaccuracies, which I want to put to 3 you. I'm happy to put them to you now, so you know where 4 I'm going, or if you want to respond to the inaccuracies 5 first you can do that, it's your choice. Do you want to 6 hear my concerns?</p> <p>7 BRIGADIER CALITZ: U kan voortgaan, Mnr 8 die Voorsitter.</p> <p>9 MR CHASKALSON SC: You see my concern 10 about these misleading statements and inaccuracies is I'm 11 worried that they may have been deliberate. First, if we 12 read your statement, your affidavit, there's a clear 13 suggestion that the exchange with Lieutenant-Colonel 14 Vermaak and the incident with Lieutenant-Colonel Macintosh 15 happened at the same time. That's one understands if one 16 reads the affidavit. In truth, as we know, they didn't 17 happen in anything like the same time, they happened 8 and 18 a half minutes apart. And at the time of your exchange 19 with Lieutenant-Colonel Vermaak, which was 8 and a half 20 minutes earlier, it seems to us that only one person had 21 been killed at scene 2. That's victim N. So he was the 22 first victim killed at scene 2, and who's body was reported 23 by Lieutenant-Colonel Vermaak Protea Coin chopper 12:02. 24 which is eTV time, 16:09:32. 1.46 seconds before your 25 exchange with Lieutenant-Colonel Vermaak. That's when</p>	<p style="text-align: right;">Page 18944</p> <p>1 the koppie, because if it happened simultaneously you were 2 facing an immediate crisis about the safety of Lieutenant- 3 Colonel Macintosh, and you had to respond to that, you 4 couldn't do anything else, but if incidents happened 8 and 5 a half minutes apart, we have to ask the question, should 6 you have taken a more active response and attempted to 7 command and control the operation that was about to unfold 8 at the koppie.</p> <p>9 You just ordered your POPS members to get out of 10 their Nyalas under protection and to engage the strikers 11 who had regrouped at the koppie that were now surrounded. 12 You understood that the militant group had reformed in the 13 line behind koppie 2, before they were dispersed by the 14 water canons and had now regrouped inside the koppie. So 15 you knew that inside the koppie was the militant group, or 16 at any rate large numbers of the militant group. So you 17 knew that the strikers who your POPS members were going to 18 engage would include many members of the militant group and 19 you'd been informed that these members were armed. Some of 20 them with firearms, others with traditional weapons. You 21 knew that the terrain at the koppie was difficult terrain 22 and that there'd be lots of places militant strikers to 23 conceal themselves. In particular, you must have known 24 that the terrain at the koppie was much more complicated 25 than the open area where you'd arrested people to the</p>
<p style="text-align: right;">Page 18943</p> <p>1 Lieutenant-Colonel Vermaak reported to the JOC that there 2 were two bodies at the small koppie. One of those two 3 bodies that appears at that time was victim N, the other 4 body was a body of a man who was still alive and survived. 5 Now that was what the situation was when you had your 6 exchange with Lieutenant-Colonel Vermaak, only one person 7 had been killed.</p> <p>8 By the time of the incident with Lieutenant- 9 Colonel Macintosh, all 14 victims at scene 2 had been 10 killed and another three had been fatally wounded. And 11 your version is that all of this happened without your 12 knowledge in an operation that you were supposed to be 13 commanding. What's clear is that it happened without any 14 apparent attempt on your part to control the processes that 15 actually led to the deaths of the victims. And it also 16 happened, after you'd ordered your men to engage the 17 strikers in the koppie and you had then not taken any steps 18 to control what happened in that engagement.</p> <p>19 Now, if your radio exchange with Lieutenant- 20 Colonel Vermaak and the incident with Lieutenant-Colonel 21 Macintosh happened more or less simultaneously, I could 22 understand why you didn't take a more active response, as 23 operational commander, to the report from Lieutenant- 24 Colonel Vermaak and to your duty as operational commander 25 to control the engagement that was about to take place in</p>	<p style="text-align: right;">Page 18945</p> <p>1 Northwest and where you were still positioned. And from 2 what you'd witnessed at scene 1, you must have realised 3 that it was going to be a highly risky operation for the 4 POPS members.</p> <p>5 You also knew that some of the members needed to 6 be controlled on the use of force, because after the 7 dispersion of the line behind koppie 2, they'd been 8 shooting rubber bullets at strikers from inside the Nyalas 9 in circumstances where this was not justified. That was 10 your testimony on day 154, at page 17345. And from your 11 position to the north or the northwest, you'd have no way 12 of seeing what happened when your members got out of the 13 armoured vehicles to engage the strikers on the koppie and 14 no way of controlling what happened there. And before you 15 respond, I want to refer to an answer you gave to me in 16 cross-examination on day 158, 29 November, when you were 17 explaining why you moved from your position at scene 1 in 18 response to incident 2. The reference is 18026, line 23. 19 I asked you, "Can you remember why you did that?" That was 20 moving away from your starting position, and you said, "mnr 21 die Voorsitter, ek het die opdrag gegee vir my openbare 22 orde, die Papa Nyalas, om te gaan disperse. Ek het 23 dopgehou op hierdie stadium tot ek sien die persone op die 24 koppie het uit beweeg en ek het gesien daar is 'n punt wat 25 vorm na my, na die klein kraal se rigting. Toe het ek</p>

<p style="text-align: right;">Page 18946</p> <p>1 opdrag gegee vir die dispersion action en daarna, soos 2 enige bevelvoerder moet dan nader beweeg om te gaan sien en 3 self te vergewis wat daar aan die gang is.” 4 So as an operational commander, on your own 5 terms, I'd have expected you, before ordering people to 6 engage the militant group in the most difficult terrain of 7 the operation to move to a position where you would be able 8 self te vergewis wat daar aan die gang is and to exercise 9 some control over what happened. So those are my concerns. 10 MR SEMENYA SC: Mr Chairperson, even 11 before Mr Semenya, can we just get that reference of the 12 last transcript page, please. 13 MR CHASKALSON SC: It's 18027, lines 4 to 14 12. 15 CHAIRPERSON: Is there anywhere that what 16 you said has been translated - the Afrikaans section you 17 read has been translated. Can you perhaps give us a 18 translation, or if necessary give me the page and I'll - 19 MR CHASKALSON SC: Mr Chairperson, I gave 20 the order for my public order, the Papa Nyalas to go and 21 disperse. I observed - ek het doggehou - I observed at 22 that stadium or I kept - 23 CHAIRPERSON: Stage, I observed that 24 stage - 25 MR CHASKALSON SC: Until I saw that the</p>	<p style="text-align: right;">Page 18948</p> <p>1 should allow this narrative, but I thought in fairness to 2 the witness, to give him a chance to understand the thrust 3 of the criticism to take it all in one, and then obviously 4 we'll proceed to deal with it piece by piece. So the point 5 you're raise is correct, but in fairness to Mr Chaskalson, 6 he did what he did at the request of the witness. And I 7 can understand why the witness would like to get the whole 8 picture before he answers, but Mr Chaskalson, you've heard 9 the exchange between Mr Semenya and myself, is there any 10 more narrative you want to give or if the time now comes to 11 take the pieces one by one, give the witness a chance to 12 deal with it, unless the witness himself chooses to give a 13 general reply first before dealing with the details. It's 14 his evidence after all. 15 MR CHASKALSON SC: In fairness to the 16 witness, there's one other concern that I will be, would be 17 questioning him on. 18 CHAIRPERSON: Sorry, Mr Chaskalson. 19 Brigadier, would you like to hear Mr Chaskalson's other 20 concern, in other words, to get the whole picture of his 21 concerns before we get into the details, one by one. 22 BRIGADIER CALITZ: As dit 'n kort concern 23 is. Met die vorige een het ek gedog daar's miskien net 24 ietsie. Ek het self deurmekaar geraak met die tye en die 25 goed soos ek probeer byhou en skryf. So ek dink ons kan</p>
<p style="text-align: right;">Page 18947</p> <p>1 people on the koppie had moved out and I saw that there was 2 a point that formed na my. 3 CHAIRPERSON: Towards me, I would think. 4 MR CHASKALSON SC: Towards me in the 5 direction of the small kraal. 6 CHAIRPERSON: Yes. Then I gave 7 instruction for the dispersion action and thereafter, as 8 any commander must do, I then moved closer to go and see 9 and to inform myself what was on the go there. 10 MR SEMENYA SC: Chair, I was going to 11 raise the concern that Mr Chaskalson has clearly made 12 assertions that may be or may not be correct, which are a 13 long narrative. I think he has referred us to elements of 14 the statement which he contends are misleading. Others to 15 which he says are inaccuracies and others are concerns, 16 just so that I'm not befuddled by this, can I invite him to 17 break each inaccuracy, so that we have a response? 18 CHAIRPERSON: I understood him - the way 19 it works was he said he was going to explain to the witness 20 what, what they were based on, to enable the witness to 21 answer, and he then said to the witness, do you want me to 22 break it up or do you want me to give it all now, and the 23 witness said, gaan maar voort. But it may well be that 24 when he re-traverses the ground, he must do it section by 25 section, but I thought, to be fair, I wondered whether I</p>	<p style="text-align: right;">Page 18949</p> <p>1 dit aanhoor en dan miskien terug gaan en dan kan ek punt 2 vir punt - 3 CHAIRPERSON: Is it a short concern, Mr 4 Chaskalson? 5 MR CHASKALSON SC: Yes, it is a short 6 concern and it colours where this questioning goes in a 7 separate direction. The concern is that if one reads the 8 statement, the episode in relation to Colonel Macintosh and 9 victim C looms large, but if one looks at the video, it 10 seems not to have bothered you too much at the time. You 11 claim that your Nyala drove straight after Lieutenant- 12 Colonel Macintosh, but it didn't, it drove straight to the 13 koppie in scene 2 and it reached scene 2 at approximately 14 23 minutes before your call to Major-General Annandale. 15 You knew that the death of suspect in an operation was 16 something that had to be reported to the JOC, and you're 17 asking this Commission to accept your statement that 18 despite the fact that your Nyala was at scene 2 by 19 16:23:40, that's 23 minutes before your call to Major- 20 General Annandale, where there was a massive crime scene in 21 front of you and if you had asked anyone there, you would 22 have found out that many people had been killed in that 23 koppie. It took you another 23 minutes before you first 24 found out that anyone other than victim C had been killed. 25 So those are the concerns.</p>

<p style="text-align: right;">Page 18950</p> <p>1 CHAIRPERSON: The witness has said and I 2 can quite understand what he said, but his difficulty in 3 getting it all down, and he says he got a bit confused. 4 Now, you seem to me to be reading from notes. 5 MR CHASKALSON SC: I am. What I propose 6 to is put each paragraph – 7 CHAIRPERSON: What I was wondering 8 whether it wouldn't be fairer to the witness if we adjourn 9 – I'm in Mr Semenya's hands, it's his witness, whether we 10 shouldn't adjourn now. Whether the notes that you were 11 reading from shouldn't be photostatted quickly and given to 12 the witness. And then I think he will be better able to 13 deal with the points that you're making. It's very 14 important allegations you're making, very important point 15 in the case, as I understand it, and we have to be fair to 16 all concerned and that seems to me to be a fair way. Well, 17 let's see what he says. Would you prefer us to do that, 18 Brigadier? 19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 dit sal definitief help as ek kan sien die tye, laat ek dit 21 net kan vergelyk met die transcript wat voor my is en die 22 getuienis. 23 CHAIRPERSON: He was talking quite fast 24 and you were making notes, but you say you understandably 25 weren't able to keep up.</p>	<p style="text-align: right;">Page 18952</p> <p>1 witness Mr Chaskalson has dealt with various references and 2 minutia of a whole host of issues that he has identified to 3 constitute, inconsistencies which he says they point to 4 areas of concern about the conduct of the witness and the 5 witness has not had an opportunity to look at the 6 background documents that inform the challenge which Mr 7 Chaskalson is making. 8 CHAIRPERSON: And the video as well. 9 MR SEMENYA SC: And the videos as well, 10 and we submit that a witness of the brigadier's stature 11 surely requires to give informed and advised answers in 12 relation to that material. Our estimate is that he will 13 require a whole good number of hours to do so. It is not 14 possible for him to do it whilst they we standing down 15 today. Happily we are not sitting tomorrow because of the 16 commitments of this facility we have with the municipality 17 and we were proposing to use tomorrow, together with our 18 own expert in examining this technical material that 19 informs the cross-examination and which in turn will inform 20 and enable the witness to be able to speak accurately on 21 the issues that are raised with him. 22 There was a suggestion that we could interpose 23 somebody else in further cross-examination for the day and 24 that too raises the same concerns we have about whether or 25 not it would be fair to the witness to handle them today.</p>
<p style="text-align: right;">Page 18951</p> <p>1 BRIGADIER CALITZ: Dit is korrek. 2 CHAIRPERSON: Are you happy with that 3 suggestion of mine, Mr Semenya? 4 MR SEMENYA SC: I am indeed, Chair. 5 CHAIRPERSON: Then we'll take a short – 6 MR CHASKALSON SC: Chairperson, may it be 7 a bit longer than a short adjournment, because I've got 8 handwritten annotations on follow-up questions, so what 9 I'll have to do is to essentially reproduce what I have 10 read to the Brigadier, which may take a while. 11 CHAIRPERSON: Alright, I understand your 12 point. You don't want him to see your follow-up questions. 13 So we'll take an adjournment now. We'll take an early tea 14 adjournment I think, and when you're ready, you'll let us 15 know. We will now take the premature tea adjournment. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [10:42] CHAIRPERSON: The Commission resumes, we 18 had some discussions in Chambers with the representatives 19 and the evidence leaders and the SAPS and I understand that 20 an agreement has been reached in regard to the future 21 handling of the aspect of cross-examination we're now busy 22 with. Mr Semenya, do you wish to speak to us on the 23 matter? 24 MR SEMENYA SC: Thank you, Chair. Chair 25 and the Commissioners, we submit that in fairness to the</p>	<p style="text-align: right;">Page 18953</p> <p>1 We would then be asking for a stand down of this hearing to 2 Thursday, one, to enable us to look at this material and to 3 familiarise the witness with that material and for him to 4 be able to speak and give considered answers to it. We 5 would also, if Chair and Commissioners, you were minded to 6 grant us the indulgence, invite the legal team because, the 7 legal teams, because Mr Chaskalson has offered to use the 8 time for today in illustrating to, at least the SAPS' legal 9 team as well as those that may want to stay behind, how he 10 comes to the conclusions that he has, so that we can also 11 follow the cross-examination, where it is going. 12 If Chair and Commissioners, you are so minded, we 13 would ask the matter to stand down until Thursday. We'll 14 use the rest of today with our experts looking at the 15 material, the video material that Mr Chaskalson intends to 16 use. 17 CHAIRPERSON: Thank you, Mr Semenya. 18 MR BIZOS SC: Mr Chairman? 19 CHAIRPERSON: Yes, Mr Bizos? 20 MR BIZOS SC: I am sorry to interrupt, I 21 am concerned by the content of this application. The 22 witness is under cross-examination. My learned friend 23 claims the right to consult with him and advise him as to 24 what answers to give. It is not permissible. 25 CHAIRPERSON: Mr Bizos, Mr Bizos, I'm</p>

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1 sorry.

2 MR BIZOS SC: What does he mean when he

3 says that he wants to advise him, Mr Chairman?

4 CHAIRPERSON: This is a matter that was

5 discussed in chambers, perhaps Mr Semenya can answer

6 himself. My understanding is that it is felt that the

7 witness will not have the technical expertise to summon up

8 the videos in question and zoom in on the particular

9 portions that are going to be relied on by Mr Chaskalson,

10 so it is only fair that he should be shown those videos,

11 someone must show it to him. The matter was discussed in

12 chambers, there is no question of him being told what

13 answers to give. Mr Chaskalson was quite happy to accept

14 that the person who would be present while this would

15 happen will be Mr Semenya, who as you know is an advocate

16 with the highest integrity, in whom we have full confidence

17 and there is no question at all that Mr Semenya would do

18 anything improper. He himself was originally concerned

19 that he couldn't speak to the witness because he was under

20 cross-examination and it seems to us that that problem was

21 removed on the basis which I've explained to you, but what

22 – let him explain further, but I think I've captured some

23 of it anyway. Mr Semenya, would you like to deal with it?

24 MR SEMENYA SC: Chair, I can –

25 CHAIRPERSON: Would you like to satisfy,

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1 - Mr Bizos I understand your concern.

2 MR SEMENYA SC: I can satisfy Mr Bizos

3 that I intend to do nothing unethical of the kind he is

4 suggesting. I am not going to be advising the witness on

5 anything and if I have articulated myself that way it was

6 completely not what I intend to convey. What I intended to

7 convey is that there would be an expert who will manipulate

8 the material for the benefit of the witness, not for us or

9 the witness to be given answers by anybody. I can assure

10 you, Mr Bizos, I have absolutely no intention to do

11 anything unethical. I haven't done it in the past.

12 CHAIRPERSON: I understand you are going

13 to be present.

14 MR BIZOS SC: Mr Chairman, with respect,

15 to use the word "advise", I have known Mr Semenya for a

16 long time and I have no personal quarrel and I accept his

17 integrity, but to say that for the witness to consult with

18 an expert, what is the expert going to advise him on? He

19 is under cross-examination, Mr Chairman, he is under cross-

20 examination. The cross-examination relates to facts that

21 were in his statement, why does he need a consultation with

22 an expert as to what answers to give?

23 CHAIRPERSON: I don't –

24 MR BIZOS SC: I am ready, Mr Chairman, to

25 cross-examine the witness, we've been waiting for a long

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1 time. I oppose the application for a stand down, the

2 witness should not be assisted either by an expert or by

3 counsel, it is contrary to the long standing rules that if

4 you are under cross-examination and more particularly in

5 relation to what you have said in your statement, it is not

6 a matter for consultation or advice, Mr Chairman. It is

7 completely irregular in my submission and I oppose the

8 application and I appeal for the witness not to have to

9 answer, if he has got to go and look at the documents, they

10 have been identified by my learned friend, he is the

11 brigadier and he can look after himself. We cannot have,

12 we can't have in perpetuity people being assisted in what

13 evidence they have to give, particularly as has happened

14 here this morning. They have been exposed to

15 contradictions between their evidence and what the evidence

16 shows and what they have said in their statements. It is

17 completely irregular and we strongly object to the

18 application for the stand down of further cross-

19 examination, Mr Chairman.

20 CHAIRPERSON: Mr Semenya? I must confess

21 I didn't quite understand –

22 MR SEMENYA SC: Chair –

23 CHAIRPERSON: - the expert's role to be

24 as Mr Bizos has explained it, but perhaps you could explain

25 it fully for the benefit of everybody so that there can be

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1 no suspicion even of any improprieties. I personally am

2 satisfied there won't be, but it is very important –

3 MR SEMENYA SC: If –

4 CHAIRPERSON: It is very important for a

5 commission of this kind, that the Commission should retain

6 its credibility throughout and obviously nothing would

7 happen which creates even a suspicion. We must be like

8 Caesar's wife, but perhaps you can explain more fully, Mr

9 Semenya.

10 MR SEMENYA SC: Chair, the –

11 CHAIRPERSON: One thing I should make, a

12 point I should make clear before you answer, Mr Semenya,

13 and that is that the idea for proceeding this way came from

14 us. It is not an application you were bringing actually, I

15 think you may have put it that way but it is not actually,

16 you submitted it should happen, it is not really an

17 application brought by the police, as I understand it and I

18 think that's the important point to make but I think, - but

19 that's not the concern really of Mr Bizos. Mr Bizos is

20 concerned and I can imagine it is a concern, it might well

21 be shared by other people outside, looking at the

22 activities of this Commission, but somehow things are being

23 done which are inappropriate and would undermine some of

24 the credibility of the Commission, so perhaps you can relay

25 those concerns.

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1 MR SEMENYA SC: Chair, the expert we
 2 intend to call is certainly not one who is going to tell
 3 the witness what answers to give to which questions. What
 4 we intend to have him look at is, for instance the evidence
 5 leaders would say, we can tell that Papa1 moved from this
 6 point to this point and we come to that conclusion based on
 7 looking at this video material, that video material, that
 8 photograph, that, whatever instrument they use to come to
 9 that conclusion. The expert is helping us also understand
 10 the correctness of the inferences which the evidence
 11 leaders are doing. It is nothing to do with what answers
 12 must be given.

13 CHAIRPERSON: I suppose my understanding
 14 was, as it was explained to us by Mr Chaskalson, is that it
 15 is not enough just to look at a particular video clip which
 16 Mr Chaskalson has given a reference, it is necessary to
 17 zoom in on particular portions of a particular clip and
 18 magnify it to the greatest possible extent. So what looks
 19 like an ant, as it was put to me on the main video, then
 20 becomes, if this is so, becomes clearly this witness's
 21 Nyala, so that's the kind of thing that's required. So it
 22 is not enough to say, here is a list of videos, go into a
 23 room and look at them. That won't help the witness because
 24 he will require assistance of the kind I've mentioned.
 25 That's my understanding, I take it that's yours as well.

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1 MR SEMENYA SC: And also, Chair, Mr
 2 Chaskalson can do it in an open auditorium, it will take
 3 him, as he says, another additional day or two just to
 4 illustrate those six minutes in substance. We think it is
 5 better it is done and we're inviting Mr Bizos as well to be
 6 present to see that this has nothing to do with informing
 7 the witness or advising him about the possible questions
 8 that would arise.

9 CHAIRPERSON: Yes, I didn't understand
 10 that the witness would be present this afternoon if it was
 11 done here in Chamber, am I right?

12 MR SEMENYA SC: No, Chair.

13 CHAIRPERSON: He would be excused, in
 14 fact only parties would remain, counsel would remain, the
 15 parties, legal representatives would remain.

16 MR SEMENYA SC: Indeed, Chair.

17 CHAIRPERSON: The witness will go
 18 privately with you and your experts and be simply shown the
 19 relevant video clips with the necessary zooming in that's
 20 to be done, is that also correct?

21 MR SEMENYA SC: It can also be done
 22 without the legal team, just the expert in illustrating the
 23 conclusions which the evidence leaders have done.

24 CHAIRPERSON: Mr Semenya, is there
 25 anything you want to add further before I call on Mr

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1 Chaskalson?

2 MR SEMENYA SC: No, Chair.

3 CHAIRPERSON: Mr Chaskalson, - sorry, I
 4 see Ms Lewis wants to say something. Do you want to say
 5 something before Mr Chaskalson has given further
 6 explanation?

7 MS LEWIS: I think so, yes.

8 CHAIRPERSON: Alright.

9 MS LEWIS: Mr Chair, on behalf of the
 10 families we would support certainly in principle the
 11 objection by Mr Bizos and the suggestion would be for the
 12 process to be done in public. If Mr Chaskalson is going to
 13 take the parties through the relevant videos and explain
 14 how he draws the particular conclusions, could that not be
 15 done in the presence of the witness and then that would
 16 enable him to also or to have the explanation that he seeks
 17 -

18 CHAIRPERSON: So what you are saying -
 19 MS LEWIS: - be given to him.

20 CHAIRPERSON: I'm sorry to interrupt you,
 21 what you're saying in effect is that when, this invitation
 22 has been extended to the parties to be present once we
 23 adjourn, it is not desirable that we should stay because
 24 what's put up may well be rebutted. It is probably best
 25 that we not be present while this happens, - we, the

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1 commissioners be present, but your suggestion is that the
 2 witness should stay and all the parties' representatives
 3 would be present and they would be able to satisfy their
 4 clients that everything be done correctly, that's your
 5 case? Alright, that's the suggestion that Advocate Hemraj
 6 has always been making to me. Mr Chaskalson, how do you
 7 react to that?

8 MR CHASKALSON SC: Mr Chairperson, I
 9 would be quite happy with that suggestion, I've got no
 10 difficulty. I think in fairness to the brigadier he needs
 11 as much time, he is entitled to as much time as he needs to
 12 understand the basis of my concerns and I've got no
 13 difficulties with him being present when we take the legal
 14 representatives through the underlying reasoning. It seems
 15 a sensible compromise to deal with the difficult situation.

16 CHAIRPERSON: Mr Semenya, are you happy
 17 with that?

18 MR SEMENYA SC: I am, Chair.

19 CHAIRPERSON: Mr Bizos, are you now
 20 satisfied?

21 MR BIZOS SC: Mr Chairman, I have an
 22 alternative solution which is in accordance with the rules
 23 of our profession. I understand Mr Semenya's difficulties,
 24 our rules make it easy for him. He can say that I want to
 25 see the videos in order to re-examine the witness in case

1 Mr Chaskalson misunderstood it and put it correctly and let
2 the witness answer. This is how the business of courts and
3 commissions are done, not by having private arrangements.
4 CHAIRPERSON: What's proposed, sorry Mr
5 Bizos, what is proposed now by Mr Lewis which is accepted
6 by Mr Chaskalson and Mr Semanya is, there won't be a
7 private arrangement, we will have it in public. You will
8 be here, the representatives of all the other parties will
9 be here, if you choose to stay, you will be satisfied that
10 everything is done. The problem with the suggestion you
11 make is this, but if the witness isn't present while this
12 happens and the witness is simply given a list of videos to
13 go and look at without being told what to zoom in and
14 where, he may well be giving answers in cross-examination
15 and agreeing to things on an uninformed basis and he may be
16 making answers. Now it may well be that humpty dumpty can
17 be put together again when Mr Semanya re-examines, but
18 damage may well have been done in cross-examination which
19 the king's men weren't able to put right in the story that
20 I referred you to.

21 So I would thought, think myself that Ms Lewis'
22 suggestion is the best one to adopt and I can't see any
23 prejudice to anybody. Remember we're concerned about
24 prejudice in three ways. One is the credibility of the
25 Commission and its ultimate findings. One is the

1 perception outside the public, they must be satisfied that
2 fair play has been observed, but there is also fair play to
3 the witness, so all those factors have to be borne in mind,
4 so it seems to me that your intervention in fact led to Ms
5 Lewis' proposal which, I think has found general favour and
6 I think that's the way we should proceed.

7 MR BIZOS SC: Well, Mr Chairman, the
8 final concern that I have has not been dealt with but time
9 is of the essence and if we offer to cross-examine the
10 witness but not on any of the subjects that were dealt
11 with, we can make very useful time of the time available,
12 three quarters of a day having regard to the limitations
13 that we have had and the limitations of that should not be
14 squandered, Mr Chairman.

15 CHAIRPERSON: I'm very conscious to that
16 point but there are two factors that we have to borne in
17 mind there. Firstly, yes, the time that's being spoken
18 about would be time that will be spent today, which would
19 obviously not have to be used in the Commission later
20 because we wouldn't have to have all the videos shown in
21 detail in the Commission. Secondly, tomorrow we're not
22 sitting as Mr Semanya points out because this chamber is
23 not available. So we would only be losing the three
24 quarters of a day, losing in one sense but in fact saving
25 on it in another because we wouldn't then have to cover

1 that ground again later on, on Thursday.
2 [11:02] That's the first point, but the second point is,
3 I understand from Mr Semanya and Mr Pretorius that the
4 witness has not had the opportunity to go through the
5 bundle of documents to which you referred which you're
6 going to rely in cross-examination and I was told that on
7 that basis they would not agree to the suggestion I made,
8 based upon what you told me during the adjournment, that we
9 interpose your cross-examination at this stage. That is
10 the response I got, which is – and I've seen the bundle of
11 documents that you're going to rely on and the witness can
12 in fact spend tomorrow reading your documents in
13 preparation for your cross-examination on the non-sitting
14 day and he can be present this afternoon, the rest of the
15 morning as well, while the videos are gone through, so that
16 we don't have to spend time in Commission looking at all
17 those videos in great detail. That needs to be the way
18 forward.

19 MR BIZOS SC: Mr Chairman, with respect,
20 we will accept any ruling that the Commission may make, but
21 I want to associate myself with the remark made that we
22 don't want any private discussions. I don't want to be
23 present at anything that Mr Semanya does. I trust him to
24 make, or his attorney to make available the information and
25 let the witness, who is under oath, work out for himself

1 what his answers are going to be and that he will answer
2 the questions without any discussion with any legal
3 representative.

4 CHAIRPERSON: The way I propose dealing
5 with the matter will address that concern. We accept Ms
6 Lewis's proposal that the witness be present when Mr
7 Chaskalson takes the police representatives and the
8 parties' representatives through the relevant videos.
9 Nothing will be told to the witness as to what he's to say.
10 No advice will be given to him. He will merely understand,
11 as everyone else will understand, what the thrust is of the
12 criticism, what he has to deal with by way of the video and
13 other material which is available. There's also audio
14 material apparently which is going to be referred to. So
15 I'm pleased that you raised your objection because I think
16 it helps us to clarify the way forward in a way which I
17 believe will not undermine the credibility of the
18 Commission, satisfy all reasonable people that fairness is
19 being observed to all concerned. So that is what will
20 happen and at this point therefore we will adjourn until
21 Thursday – oh, sorry, I beg your pardon, Mr Chaskalson,
22 you've got another point.

23 MR CHASKALSON SC: I do. Well, I don't
24 want to have to run through the same process on my next
25 topic of cross-examination, but it may be that's something

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1 that I can address by just giving a list of references,
2 detailed references to Mr Semanya who can allow, or give
3 that list to the Brigadier and the Brigadier can just
4 listen to the videos with reference to that list of
5 references. That's not something that needs to be
6 manipulated. It's an issue of listening to a poor quality
7 audio on a video –

8 CHAIRPERSON: What you're stating
9 therefore is that the exercise that's now going to be
10 performed in our absence, the absence of the Commissioners,
11 but in the presence of the representatives of the parties
12 and the witness will be confined to the video material.
13 You've got certain audio material you're going to refer to
14 in cross-examination. The witness will merely be given a
15 list of the material, audio material you're going to refer
16 to. I don't know if he's got a recording of them, but
17 presumably if he hasn't, that can be arranged. That's what
18 you're proposing?

19 MR CHASKALSON SC: Yes, Chairperson, he
20 does have the recording. It's the Protea Coin video.

21 CHAIRPERSON: Ja, alright. Well, on that
22 basis then we will adjourn until Thursday morning at 9
23 o'clock.

24 [COMMISSION ADJOURNED]

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