

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 166

Lukmos
—communications—

10 JANUARY 2014

TRANSCRIPT PAGES 19172 TO 19307

1 **[PROCEEDINGS ON 10 JANUARY 2014]**

2 **[09:14] CHAIRPERSON:** The Commission resumes.

3 Before we start this morning I just want to say the
4 Commissioners and I have been thinking about the topic that
5 was discussed yesterday in relation to the establishment of
6 the times at which various important events took place and
7 we think that what must happen is this; I think this would
8 be the most appropriate way of dealing with it, avoiding
9 all sorts of problems later, and that is that a report
10 should be prepared – I don't think it has to be done by an
11 expert, but a report must be prepared setting out the
12 events in respect of which the times have been established,
13 the time established, and then setting out the basis of the
14 establishment. I take it that will happen because I assume
15 something along those lines is already in preparation by
16 the evidence leaders to be given to the parties, but we
17 would be grateful if the final product could be produced
18 sooner rather than later because it will be very important
19 for our work from now on. One of the points that was stood
20 over from yesterday was the question of which incidents
21 should be the subject of the establishment of time, but I
22 said that the parties – and I know the evidence leaders
23 have done a lot of work on that and set out a number of key
24 incidents in respect of which they have established the
25 time, but the parties may wish to add others which they

1 regard of importance. Brigadier, you are still under oath.

2 **ADRIAAN MARTHINUS CALITZ:** Thank you,

3 Commissioner.

4 **CHAIRPERSON:** Mr Chaskalson.

5 **MR CHASKALSON SC:** Chairperson, before we

6 resume the cross-examination, can I clarify, for the

7 purposes of this exercise can we take JJJ37 as an agreed

8 starting point, or does each of the time conversion factors

9 have to be shown as well?

10 **CHAIRPERSON:** I see what you mean. JJJ13

11 is a – sorry, JJJ what is it?

12 **MR CHASKALSON SC:** 37.

13 **CHAIRPERSON:** 37, yes, I get the number

14 wrong. JJJ37 is effectively the conversion table.

15 **MR CHASKALSON SC:** That is correct,

16 **CHAIRPERSON.**

17 **CHAIRPERSON:** I have not discussed it with

18 the Commissioners; I would have thought that is – I mean all

19 that need be said is that the conversion table was produced

20 based on identifying an incident on each photograph,

21 or sorry, taken by each camera, video camera or stills

22 camera, and then correlating it – sorry, I am getting it

23 wrong. What happened was you sought to show what the

24 correct reading on the clocks of each still camera or video

25 camera should have been, using the ETV time and the ETV

1 camera as the correct time, which is why you talk about ETV
2 time, and then the way it was done was an incident would be
3 identified on the photograph for example and that would be
4 correlated against either the ETV material or some other
5 material, and in that way it would be, it is possible to
6 ascertain to what extent each clock was out so that the
7 clocks could notionally be adjusted in the conversion
8 table. That is my understanding of it.

9 **MR CHASKALSON SC:** Correct, Chairperson -

10 **CHAIRPERSON:** I accept that that is all
11 that need be said, but if the other parties, and they've
12 all agreed because you have put it to them before, but if
13 there are questions arising once the report is produced
14 along those lines, it can be elaborated further, if
15 necessary.

16 **MR CHASKALSON SC:** Thank you,
17 Chairperson.

18 **CHAIRPERSON:** The major task which I
19 assume has been largely performed already is in relation to
20 the identification of the incidents, the time of which has
21 to be established, and then the basis on which the
22 establishment is done, but -

23 **CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):**

24 Brigadier, before we pick up on the topic that we were
25 dealing with last night, I would just like to tie up several

1 loose ends that I identified when I was reflecting on your
2 evidence last night, and then we will come back to finish off
3 on the topic that we were dealing with at the close
4 yesterday.

5 Sorry, Chairperson, there is another issue which
6 needs to be put on record, which is that when we played the
7 Protea Coin chopper video yesterday, CC22, in Commission,
8 it was being played on an Apple, through an Apple computer.
9 It seems that the clock on the Apple computer functions
10 differently from the clock on Windows-based computers, so
11 although the video starts from 0 and ends at 38:34, the
12 points in the middle, you know if you stop at point 22:15
13 on the Apple computer that was played yesterday it is not
14 the same point as all of our Windows computers would recall
15 as 22:15. All of our timelines have been done on the
16 Windows computer and our times correlate with the times
17 that SAPS has found using the same software that we use on
18 our machine. So the specific references that were given
19 yesterday in relation to particular moments where we
20 stopped the clock in hearing yesterday on the Apple
21 computer may be 4 or 5 seconds out either way for everybody
22 else who's working with Windows computers, and we just
23 wanted to put that on record and what we would propose is
24 that it is the Windows, that the Windows timeline is the
25 timeline that ought to be used by everybody.

1 **CHAIRPERSON:** I take it that that can be
2 fixed up; possibly a little schedule can be produced
3 indicating, to be read together with the transcript of
4 yesterday's evidence.

5 **MR CHASKALSON SC:** Yes, Chairperson, that
6 would be very helpful because otherwise what will happen is
7 someone will see a reference in the record of when the
8 video was playing yesterday, will look for it and won't see
9 what is there.

10 **CHAIRPERSON:** Yes, yes. So if that can
11 be attended to, I think that will be – you're happy with
12 that, Mr Semenya?

13 **MR SEMENYA SC:** We are, Chairperson.

14 **CHAIRPERSON:** Good. Alright, thank you.

15 Can we now resume cross-examination? By the way, I know
16 it is difficult to estimate issues but is it possible to
17 give us – I am not asking for a guess but more a guesstimate,
18 I suppose, of how long you're likely to be. It depends on

19 all sorts of factors, I understand, but –

20 **MR CHASKALSON SC:** I will finish by
21 teatime.

22 **CHAIRPERSON:** I like that "will."

23 **MR CHASKALSON SC:** Brigadier, just a
24 couple of loose ends. I understood you yesterday to accept
25 with the benefit of hindsight, not to say that this was

1 your knowledge at the time but to accept with the benefit
2 of hindsight that if the strikers in the hill were to be
3 engaged it would have been easier to engage them if they
4 could have been flushed out of the hill first. Is that
5 correct? With the benefit of hindsight about what the
6 terrain in the hill was like.

7 **BRIGADIER CALITZ:** I haven't received the
8 transcript, so I am not sure my exact words yesterday. With
9 the benefit of hindsight now I think the process was
10 successful because we were busy with the water cannons
11 flushing the people out and they were then to be broken up
12 into smaller groups, disarmed
13 and arrested.

14 I do not know if I testified
15 about the smaller hill,
16 but they were to be arrested.

17 **MR CHASKALSON SC:** But Brigadier, you say
18 the process was successful. 17 people were killed. Do you
19 regard that as irrelevant to the success of the process?

20 **BRIGADIER CALITZ:** Not at all Mr
21 Chairperson. I did, I think with the first incident
22 they asked me the same question. Not at all. At that
23 moment, now in hindsight we know that 17 people were killed.
24 At that stage it was normal procedure with POP.
25 I did testify that I did communicate with Pappa vehicles,

1 just with POP and that the dispersing of
2 water cannons and non-lethal
3 rubber bullets.
4 So, the success I mentioned to
5 Colonel Vermaak who said the
6 water cannons can wait the persons is armed and an en-circle
7 means it was a successful dispersing.

8 The group was dispersing, so that we can make arrests.

9 That is what I referred to.

10 **MR CHASKALSON SC:** Yes, but Brigadier, my
11 question is a question with the benefit of hindsight, and I
12 want to make that very clear – with the benefit of
13 hindsight, and assessing the success or failure of the
14 operation with the benefit of hindsight. Do you accept
15 that if it was necessary to, if it was going to be
16 necessary to engage the strikers, it would have been more
17 advisable to engage them after they had been flushed out of
18 the hill into open veld?

19 **BRIGADIER CALITZ:** Mr Chairperson , as
20 I again refer to benefit van hindsight, a person
21 must – I had to excuse myself for what
22 was said on air.

23 **CHAIRPERSON:** No, no, you're not
24 understanding the question. You're not using hindsight if
25 you're relying upon the information the eye in the sky gave

1 you. The information the eye in the sky gave you is
2 relevant to your state of mind at the time and you've told
3 us you thought that the dispersal operation had succeeded
4 because that is what you understood Lieutenant Colonel
5 Vermaak to be telling you and that is why you thought it had
6 succeeded, but now with the benefit of hindsight we know
7 that that hadn't happened, that there were still people on
8 hill 3 and in the situation where it was a difficult
9 terrain, there were rocks and bushes and that kind of
10 thing, so that if POP people came into that area to drive
11 them out, well to disarm them and arrest them and so forth,
12 there were all sorts of problems that were going to happen.
13 They would be hiding behind rocks. They would be able to
14 launch attacks upon the POP people. Those who had firearms
15 could shoot at them. Those that had pangas or assegais
16 could jump out and attack them, and a situation could then
17 arise where the POP people would be obliged to defend
18 themselves, and we know that they had pistols to defend
19 themselves with. One person on each Nyala had a rifle. So
20 we know that they would have been – they might well in that
21 terrain have been in a situation where they were called
22 upon to defend themselves and with fatal consequences for
23 some of the strikers, and of course there were always a
24 danger that they might in fact exceed the bounds of self-
25 defence in particular circumstances, so that all those

1 problems in fact arise because the attempt was made to deal
2 with them still on hill 3. Isn't that correct?

3 **BRIGADIER CALITZ:** Mr Chairperson,

4 I do understand better now that you have explained.

5 I do believe Mr Chaskalson refers to "in hindsight,"

6 as it happened that day. That is why I refer to it

7 again. I understand what you are saying. If we –

8 **CHAIRPERSON:** Do you agree with what I

9 put to you?

10 **BRIGADIER CALITZ:** I agree –

11 **CHAIRPERSON:** It is not really rocket

12 science; it seems to be pretty clear.

13 **BRIGADIER CALITZ:** I agree, Mr

14 Chairperson, that we , that we, the "flushing out"

15 of persons and that we would move, and then

16 it would have been better to do the arresting

17 if it was broken up in groups.

18 **CHAIRPERSON:** [*Microphone off, inaudible*]

19 needs to be blunt. If you had been told at the time that a

20 number of these people are still on hill 3, they are

21 still hiding behind bushes, hiding behind rocks, they are

22 armed with dangerous weapons, do you think it appropriate

23 for us to go there and try to disarm and arrest them there,

24 or is it a risky proposition, what would you have said?

25 **BRIGADIER CALITZ:** It is fine Mr

1 Chairperson. With the benefit van hindsight, I did say it would have been better
2 to completely, what the words "flushed out" means and that is what I meant
3 yesterday, is that if I refer to the words "flushed out" it refers to
4 the success we had in "flushed out".

5 They would have moved to the open area and it would have
6 been much safer. So, in that instance I do agree with you
7 that with the benefit of hindsight,
8 it would have been
9 much better.

10 **CHAIRPERSON:** You haven't answered my
11 question. I said if the question was being put to you at
12 the time –

13 **BRIGADIER CALITZ:** O, excuse me.

14 **CHAIRPERSON:** - what would your answer
15 have been? Shall we go in and try to arrest them and
16 disarm them and so forth on that terrain, or will it be a
17 risky proposition to try to do that? What would your
18 answer have been if I had been there at the time and put
19 that question to you?

20 **BRIGADIER CALITZ:** Mr Chairperson, I
21 would then , if I was contacted by them, asked
22 what the situation was on the small hill, is
23 there persons – you said that persons were hiding behind
24 the small hill, or there were danger, i think you were referring
25 to the –

1 **CHAIRPERSON:** Well, there were rocks and

2 bushes to hide behind –

3 **BRIGADIER CALITZ:** That type of

4 information, no, then the instruction would have been to use

5 the water cannons and with the dispersing guiding them to

6 the open area. That is correct.

7 **CHAIRPERSON:** Yes, alright. Thank you.

8 I am sorry to interrupt you, Mr Chaskalson. I hope that

9 helped a bit.

10 **MR CHASKALSON SC:** Now you've spoken

11 about using the water cannon to flush people out of the

12 hill. I'd have thought another obvious device to get

13 people to leave an area in the nature of the hill, or of

14 the nature of the hill would be to use teargas. Would

15 you accept that?

16 **BRIGADIER CALITZ:** That is one

17 option of dispersing, yes.

18 **MR CHASKALSON SC:** Because one of the

19 features of the operation at hill 3 that is always struck

20 me as odd is that no teargas whatsoever was used. Are you

21 aware of that?

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 yes, in hindsight we look at statistic, we know

24 there was – I think stun grenades were used, rubber and

25 water, so the teargas, I do not know what the situation was

1 of the commanders was, the wind direction,
2 or any factors, so I do not know what the
3 situation was and what was used,
4 but what I know, it was not used.

5 **CHAIRPERSON:** Let me ask you this
6 question. Was the wind blowing strongly on that day, at
7 that time? You were there; at least you'd know that.

8 **BRIGADIER CALITZ:** Commissioner, it is –

9 **CHAIRPERSON:** No, but seriously –

10 **BRIGADIER CALITZ:** no, no, no, I
11 understand –

12 **CHAIRPERSON:** I understand wind is a big
13 problem –

14 **BRIGADIER CALITZ:** I understand what you are saying,
15 but I really would not –

16 **CHAIRPERSON:** I am sorry to talk over you.

17 I understand wind is a big problem if you're using teargas,
18 particularly if it is going to blow the teargas back at you,
19 and I don't think you people had gas masks that day.

20 **BRIGADIER CALITZ:** The POP
21 do have in their vehicles.

22 Because of the first attack, they did not wear them.

23 Yes.

24 **CHAIRPERSON:** Alright, okay. So can you
25 remember whether there was a wind problem that day?

1 **BRIGADIER CALITZ:** Mr Chairperson,
2 the only, what I in hindsight, after watching the video
3 we watched on scene 1 where we saw the smoke,
4 the direction of the wind- but I would not say
5 it was a strong wind, no. But there was
6 the smoke that moved away but on hill 2, I am
7 honest -

8 **CHAIRPERSON:** Hill 3.

9 **BRIGADIER CALITZ:** I mean Hill 3, excuse me,
10 scene 2 -

11 **CHAIRPERSON:** I take it certain exercises
12 can be performed; we can get one of the people to look at
13 some of the videos and see what happens to the bushes and
14 so on, if there's a strong wind blowing we will see the
15 branches moving around and if it is relatively, still we will
16 see that too. So, that is something we could ascertain with
17 almost scientific accuracy -

18 **BRIGADIER CALITZ:** It could help -

19 **CHAIRPERSON:** But you can't tell us from
20 your knowledge -

21 **BRIGADIER CALITZ:** Yes, I cannot really
22 help, no Mr Chairperson.

23 **MR MPOFU:** Sorry, Chairperson, just for
24 my own clarity, is it suggested that there were differences
25 between the wind at scene 1 and scene 2 in this analysis?

1 **CHAIRPERSON:** He's not saying anything,
2 but it sometimes can be. You know the question is was
3 there a wind problem which prevented the use of teargas.
4 That is the question.

5 **MR MPOFU:** Only at scene 2?

6 **CHAIRPERSON:** Well, we are busy with scene
7 2 at the moment. Let us keep our eyes on this particular
8 ball and not – we are busy with the second half now. The
9 whistle has already gone at the end of the first half, so
10 let him carry on with this question.

11 **MR CHASKALSON SC:** Have you ever made an
12 enquiries from the members under your command, the POPS
13 members, as to why they chose not to use teargas on that
14 day?

15 **BRIGADIER CALITZ:** Not at that stage.

16 No.

17 **MR CHASKALSON SC:** No, I am talking about
18 "at this stage" –

19 **Chairperson:** Not at that stage,
20 we are taking at this stage.

21 **BRIGADIER CALITZ:** O, in hindsight.

22 Mr Chairperson, till today.

23 **BRIGADIER CALITZ:** Mr Chairperson, I
24 still cannot remember exactly. I think it was
25 they way it played out, the members said

1 stun grenades were used and rubber bullets were also used

2 together – I cannot think that they were

3 specifically talking about teargas, no.

4 **MR CHASKALSON SC:** Brigadier, I think

5 you'll find that none of your members used stun grenades

6 either. The only stun grenades that were thrown were

7 thrown by two members of the Dog Squad.

8 **BRIGADIER CALITZ:** No, I did not

9 who threw them. I am saying that on day

10 it was used. Remember, on that day i did testify

11 that I was not aware –

12 **MR CHASKALSON SC:** I am asking about

13 enquiries that you've made after the event about this

14 operation in respect of which you were the commander. Do

15 you remember who you spoke to about why teargas wasn't

16 used?

17 **BRIGADIER CALITZ:** No Mr Chairperson

18 I believe it was that short time in Roots when

19 everything came together and when the groups was

20 dispersing, and I think this is where the

21 information came from, but I am not aware –

22 If you are referring to the Dog Unit, it means

23 on the south side the stun grenades was used.

24 **MR CHASKALSON SC:** Then just to move to

25 another loose end, the corrected version about Lieutenant

1 Colonel McIntosh, victim C and the movement of your Nyala,
2 I understand your evidence now to be that you accept that
3 your Nyala moved straight to the hill, but that you can't
4 remember why this was the case and you were hoping that
5 maybe Warrant Officer Nong would throw some light on that
6 at a later stage. Is that correct?

7 **BRIGADIER CALITZ:** That is correct - Mr
8 Chairperson.

9 **MR CHASKALSON SC:** And you accept that
10 your Nyala did stop at the hill?

11 **BRIGADIER CALITZ:** That is correct - Mr
12 Chairperson.

13 **MR CHASKALSON SC:** Now when you got out
14 of the Nyala as it stopped at the hill, surely it was
15 clear to you that there was a massive crime scene inside
16 the hill?

17 **[09:34] BRIGADIER CALITZ:** According to me it was the
18 arrests that was taking place after the dispersion
19 action that the command was given and in between the vehicle we could see
20 people lying on the ground.

21 I think there were Canter vehicles, also under
22 correction they were busy with people during the
23 arrests.

24 **CHAIRPERSON:** The expression crime scene
25 can possibly lead to confusion but the fact is there were

1 people there who were or had been perhaps by that time in
2 possession of dangerous weapons, right? So it was a scene
3 where people had been apprehended at the lowest as it were
4 in possession of dangerous weapons, isn't that so. So in
5 that sense it was a crime scene. The sort of scene you
6 would want, if you, I understand there's problems with
7 medical people but leaving that part aside it is a scene
8 that you would want to leave intact for the LRC people,
9 what are they called, LCRC people to deal with, isn't that
10 so?

11 **BRIGADIER CALITZ:** That is

12 correct - Mr

13 Chairperson.

14 **CHAIRPERSON:** Yes and did you, I take it

15 you didn't know at that stage that people had died or did

16 you?

17 **BRIGADIER CALITZ:** Not at all - Mr

18 Chairperson.

19 **CHAIRPERSON:** Did you know that firearms

20 had been fired, had you heard shots of any kind?

21 **BRIGADIER CALITZ:** Mr Chairperson,

22 no, I was asked yesterday about live fire, I can under no

23 circumstances say that i heard any gunshots and that

24 i suspected anything funny. I believe yesterday

25 I testified that there might have been a shotgun seeing people

1 disperse in the North West side, but there were
2 helicopters in the air. So, I cannot with
3 certainty say that i heard
4 any gunshots.

5 **CHAIRPERSON:** This is the point I was
6 coming to. Is it that you can't remember whether you heard
7 firearms being discharged or you can remember that you
8 didn't hear firearms being discharged, you understand the
9 difference.

10 **BRIGADIER CALITZ:** Mr Chairperson, I
11 I thought about this in my mind and at no stage can I
12 say that I can come to a point where I heard any shots
13 being fired.

14 So, according to me,
15 I did not hear it.

16 **CHAIRPERSON:** Thank you.

17 **MR CHASKALSON SC:** Well, Brigadier,
18 presumably, if you had heard the sounds of firearms, sharp
19 point firearms being fired you would have wanted
20 immediately to get a report on what was going on.

21 **BRIGADIER CALITZ:** That is correct. I would
22 have asked on radio if I heard it for someone
23 to give a report, not from the air, because
24 aerial command would not have heard, but
25 the commanders that were there. I had communication with

1 the Pappa Nyalas, so I would have immediately asked for
2 a situation report, who shot, who
3 is shot and why.

4 **MR CHASKALSON SC:** You say you had communication
5 with the Pappa Nyalas, what were those Communication?

6 **BRIGADIER CALITZ:** It was at the
7 rendezvous line where we went forward and gave instructions
8 to Pappa vehicles to go left, Pappa
9 vehicles, come to our side, and that type of
10 communication on radio.

11 **MR CHASKALSON SC:** Sorry I misunderstood
12 you. I was, I thought you were referring to means of
13 communication not individual communications. So you're
14 talking about communications that were made over the radio?

15 **BRIGADIER CALITZ:** The radio, that is
16 correct Mr Chairperson.

17 **MR CHASKALSON SC:** So if you say that you
18 can't, we know that you didn't at any stage call for
19 reports about, call for reports from the Pappa vehicles
20 inside the hill for, about incidents of gunshot fire.

21 **BRIGADIER CALITZ:** That is correct, it is
22 clear on the transcript

23 **MR CHASKALSON SC:** And if you had heard
24 or been alerted to gunshot fire that would have been the
25 responsible thing for you to have done?

1 **BRIGADIER CALITZ:** That is correct, if I heard that, I
2 would have definitely reacted on it.

3 **MR CHASKALSON SC:** So when you said to
4 the Chairperson you've gone over it in your memory again
5 and again and you can't recall ever having heard gunshots
6 surely there's a much simpler way for you to know that you
7 never heard gunshots which is that you never made any
8 inquiries about them, you know that you never made any
9 inquiries about them.

10 **BRIGADIER CALITZ:** Mr Chairperson, yes,
11 the only one I saw , was in hindsight
12 and with the transcription and video footage
13 that we listened to, there were comments
14 about it.

15 **MR CHASKALSON SC:** So now that you've
16 listened to the video you realise that there were in fact
17 some reports of gunshots?

18 **BRIGADIER CALITZ:** if you remember,
19 the parts you gave me, I think on Tuesday, I listened
20 to certain parts that you were
21 referring to.

22 **CHAIRPERSON:** You use the expression -

23 **BRIGADIER CALITZ:** With timelines, yes.

24 **CHAIRPERSON:** Sorry, Mr Chaskalson, you
25 use the expression reports of gunshots, do you mean -

1 **MR CHASKALSON SC:** Radio reports.

2 **CHAIRPERSON:** Radio reports?

3 **MR CHASKALSON SC:** Radio reports.

4 **CHAIRPERSON:** You found the discharge of

5 a firearm.

6 **MR CHASKALSON SC:** No, I mean one hears

7 the sound of a discharge of a firearm on Captain Ryland's

8 videos, several times but that is of little relevance to the

9 Brigadier's position because it is possibly a 140, 150

10 metres away from his position. So we don't know what

11 Captain Ryland's but one can hear on Captain Ryland's cell

12 phone, is something that he could have heard from his

13 position. But there are radio reports of gunshots and

14 maybe we can go to them now.

15 **CHAIRPERSON:** Captain Ryland's is a bit

16 further away from hill 3 and the witness.

17 **MR CHASKALSON SC:** Not at the time –

18 **CHAIRPERSON:** Not at the time the gun, I

19 see, I am sorry. At the time the sounds of discharge of

20 firearms are heard that was before he got to the close

21 vicinity of hill 3 when he was still up in the area where

22 people were being arrested, is that correct?

23 **MR CHASKALSON SC:** That is correct,

24 **CHAIRPERSON.**

25 **COMMISSIONER HEMRAJ:** And, Mr Chaskalson,

1 the sounds of fire on the Captain Ryland's video has that
2 been identified as live ammunition fire?

3 **MR CHASKALSON SC:** We haven't had an
4 expert refer to that, we can do that but I mean it is, one
5 doesn't need much expertise, people are in what looks like
6 a war situation from the visuals on Captain Ryland's video,
7 one can infer immediately that is what is and every now and
8 again he says get down, get down, they're shooting and hear
9 pop, pop, pop. So it is, I mean we can do the exercise, my
10 own view is that it would be unnecessary.

11 **CHAIRPERSON:** Maybe it is necessary to
12 the untutored ear the discharge of a shotgun, the firing of
13 a shotgun, which discharges rubber pellets, may sound like
14 sharp ammunition being used or, the untutored ear may be
15 unable to distinguish between sharp ammunition and rubber
16 bullets being fired. So possibly, it is an exercise that has
17 to be performed. If we are going to argue from inference
18 later, or be asked to argue from inference the, each fact
19 from which inference is sought to be drawn must be
20 established with a high degree of accuracy.

21 **MR CHASKALSON SC:** Well we can discuss
22 that further at a later stage. Maybe if we can go to the
23 radio reports and the, I have already, the radio reports
24 really need to be split into two separate categories.
25 There are the radio reports that we hear audibly either on

1 the Protea coin chopper video which is CC22 or on Captain
2 Ryland's videos when his cell phone is close to his radio
3 but that is the I series videos. That is one category. Then
4 there are another category of radio reports because there
5 are radio reports, which were recorded in the JOC and which
6 are not audible on either the Protea Coin chopper video or
7 Captain Ryland's videos either because at that stage there
8 was the relevant video cameras weren't near the radios or
9 because it was at a period when before or after the
10 relevant videos were on.

11 **CHAIRPERSON:** You say record in the JOC
12 I think you mean recorded in writing.

13 **MR CHASKALSON SC:** Indeed, recorded in
14 writing.

15 **CHAIRPERSON:** Written down in the JOC,
16 yes.

17 **MR CHASKALSON SC:** That is correct,

18 **CHAIRPERSON** and that is the list of radio communication
19 reports in JJJ168, Captain Van Heerden's list. So let us
20 start with the one that we can still hear today. We have
21 already dealt with the report of two bodies at the back of
22 the hill, we have heard your explanation for it. I don't
23 want to go back to that. But if we go approximately, sorry
24 that was at ETV time 16:09:17. If we go one and a half
25 minutes later to Protea Coin 13:20 at 16:10:50 ETV time we

1 hear on the radio, "shoot again target." We gave you these
2 references, do you accept that that is what we hear on the
3 radio?

4 **BRIGADIER CALITZ**: It is correct, it

5 is like in the transcript I have – number - GGG35.

6 **CHAIRPERSON**: - in the transcript you've

7 got, is that what you hear? I mean the transcript could be

8 wrong. We want to know whether you accept that the

9 transcript correctly records what can be heard.

10 **BRIGADIER CALITZ**: I can hear it on -

11 -

12 **CHAIRPERSON**: Okay so the answer is yes

13 you can hear it. The fact that you have the transcript

14 doesn't take it any further.

15 **BRIGADIER CALITZ**: That is correct Mr

16 Chairperson.

17 **CHAIRPERSON**: It is your ears that we are

18 interested in now, not the ears of the transcriber.

19 **BRIGADIER CALITZ**: It is C22 what I heard

20 on the Coin chopper, correct Mr Chairperson.

21 **MR CHASKALSON SC**: Then if we go again –

22 **COMMISSIONER HEMRAJ**: Sorry, whose voice

23 is that, "shoot again target," do we know?

24 **MR CHASKALSON SC**: We haven't identified

25 that voice.

1 **BRIGADIER CALITZ:** That is my voice Mr

2 Chairperson.

3 **MR CHASKALSON SC:** That is your voice

4 shoot again target?

5 **BRIGADIER CALITZ:** That is why I am saying,

6 maybe if we look at the video, I can explain

7 how I recognised it.

8 **MR CHASKALSON SC:** Can we –

9 **CHAIRPERSON:** I don't think the video

10 can help us, we are listening to an audio recording I

11 believe.

12 **BRIGADIER CALITZ:** We did yesterday out of the

13 Protea Coin, so that is what we can reference too.

14 **MR CHASKALSON SC:** We're now going to run

15 into the same problem that we ran into yesterday because –

16 **CHAIRPERSON:** I understand that it won't

17 work, having a debate with the Commissioner on the question

18 of terminology. I know it is on the video but it is on the

19 video soundtrack, you play the video and you hear the sound

20 track, is that right?

21 **MR CHASKALSON SC:** That is correct.

22 **CHAIRPERSON:** On the sound track you

23 hear a voice and the owner of the voice has put his hand up

24 and said it is my voice, is that the position and the

25 question is what does that voice say, what do other voices

1 say and that is what we are going to listen to now, is that

2 right?

3 **MR CHASKALSON SC:** Well maybe the

4 Brigadier should explain the circumstances in which he said

5 those words and then we can look at the video.

6 **CHAIRPERSON:** Alright let us do that.

7 Now, the problem that we had yesterday is we are going to

8 have again today because the spots at which particular

9 things can be heard will be wrongly, will be identified by

10 the Apple people in a different way, they speak, they use

11 different system of chronology it would seem from the work,

12 who are the other people –

13 **MR CHASKALSON SC:** Microsoft.

14 **CHAIRPERSON:** Microsoft. So these are

15 rival commercial enterprises which are not singing from the

16 same hymn sheet.

17 **MR CHASKALSON SC:** We may introduce

18 Google at a later stage.

19 **BRIGADIER CALITZ:** Mr Chairperson,

20 if I may -

21 **CHAIRPERSON:** So the first, before we

22 have this interesting exercise of the one commercial

23 enterprise playing something that we normally listen to,

24 with the instruments of another commercial enterprise, can

25 you explain as Adv. Chaskalson asked you to, why you said

1 what you admit you said and what you meant by it.

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 yes, I did ask, I understand the Apple computer.

4 If you look and I am referring to the GGG35,

5 if I may, I do not know whether the transcription

6 that ended yesterday, if I can read the words,

7 I think everyone can recall

8 because it was yesterday, I did not receive

9 a transcript from yesterday. I thought I can

10 use it, but have not received it yet. According to

11 16:10:05, between 16:09, 16:10 according to the times, I

12 understand seconds are different. But, I believe

13 it is not making a difference, there is a voice that says,

14 "water cannon go forward, water cannon go forward," my

15 voice. "There's a group hiding in the middle there, go

16 forward, go forward, I said go forward no, no, no go left,

17 left, left, I did testify that after Colonel

18 Vermaak gave instructions to go left. I told them,

19 forward, forward and as I looked, oh no,

20 I should have told them go left, but it was

21 operational pressure time. The next word was Colonel

22 Vermaak that said, "Yes water cannon and the Nyala go

23 straight go straight and go to your right man there's a

24 road there where you can drive in." So, I could hear the

25 frustration in his voice and was struggling with the water cannon.

1 I am not sure as there was no return from these
2 people. Then he says, "I am saying the one that
3 is with Pappa7, in other words, water canon with Pappa7,
4 it states in the transcript, "you are driving into the
5 bush now, yes passed the Nyala." At the time we
6 checked, I am not sure what computer program was used,
7 but it was 13:15, 13:19 in the transcript, "you're
8 driving into the bush now yes past the Nyala go straight
9 now." So, I thought at that stage they were in the
10 bush, go straight now, so in other words the grouping
11 that we had originally was in front of him. Then there is
12 n break in transmission on the radio. According to me, I was
13 talking to the water cannon, so all that came through on the radio was
14 shoot again target and then the radio made blib, blib,
15 blib so with the analogue radio system, and that was maybe
16 a problem with the radio, that when you talk
17 either it was pressed to early or the signal did not go
18 through. I did tell the water cannon,
19 shoot again at the target, that was between
20 13:20 till about 13:21. Then you can see, the
21 the same action, that zoom,
22 you can see that at
23 13:24, two seconds after, the water cannon did fire
24 So, they did hear me and
25 reacted on my command.

1 A few seconds later, under correction, 10, 8 seconds later,
2 I did speak to the water cannon, the transcription says
3 inaudible, it just starts with small hill.
4 During that inaudible, I did speak to the water cannon and the vehicles
5 in the small hill they are coming up and
6 move towards the
7 substation. It is perhaps an answer on hindsight now
8 now that we are flushing them out t they would run.
9 It was my opinion we flush them out and we break them up
10 in smaller groups. Immediately after,
11 Colonel Vermaak and it was witnessed, he
12 reacted and said Pappa1 if that water cannon can wait
13 there, in other words, the command I gave the water cannon
14 and told them to fire and be careful, they are coming from the
15 other side, that was the movement I saw from the
16 hill, if those people can wait there the
17 people are encircled now. At that stage, I thought he had
18 a better view from the air, and I told the water cannons,
19 okay hold back and then told everyone to go out, as
20 he had a better line of sight and they have to make the arrests.
21 So, that is the story, however, the words you
22 will hear on the transcript.
23 I believe there is a new transcript, so if I need to repeat,
24 I will. I was just asked to talked slower
25 Mr Chairperson, for the translator.

1 So the words you hear on the radio is only,
2 shoot again target, and goes quite .
3 But I know that I was talking to the water cannons.
4 So the break in transmission you heard on the radio that
5 was recorded was not the whole sentence.

6 **MR CHASKALSON SC:** So, Brigadier, let me
7 see if I understand correctly. Your instructions were not
8 about live fire, they were about getting the water cannon
9 to shoot first?

10 **BRIGADIER CALITZ:** Yes there could not be an
11 instruction to use live ammunition, it would only be
12 to disperse.

13 **MR CHASKALSON SC:** Now when we dealt with
14 this, well with the seconds immediately leading up to here
15 and the seconds immediately after it you indicated that you
16 couldn't see what was going on in the hill and you
17 couldn't see the water cannon, you were merely just
18 repeating what Lieutenant Colonel Vermaak had told you? Do
19 you recall that?

20 **BRIGADIER CALITZ:** Yes, I think I must look at
21 the transcription again. I did say when I looked
22 back, I think on the left hand side, I think you were referring to
23 the bigger one, where the vehicles in a distance
24 of 100, what you said 150 meter, that is about one and
25 half rugby fields, I see he was struggling

1 with the water cannon.

2 **MR CHASKALSON SC:** So you're now saying

3 you could see the water cannon?

4 **BRIGADIER CALITZ:** Yes, I think I also mentioned the same

5 yesterday.

6 **MR CHASKALSON SC:** We had a lengthy

7 exchange about when you are saying, directing the water

8 cannon to go left whether you could or couldn't see the

9 water cannon. Yesterday I understood you to be saying you

10 couldn't see it, you were just repeating what Lieutenant

11 Colonel Vermaak had said. Now you say you could see it.

12 **BRIGADIER CALITZ:** I think on the video

13 we referred to the lower end of the hill, the big

14 vehicle, yes

15 **[09:53] MR CHASKALSON SC:** So, at the time you

16 could see the water cannon.

17 **BRIGADIER CALITZ:** Correct Mr

18 Chairperson.

19 **MR CHASKALSON SC:** And it seems that not

20 only could you see the water cannon, but you also had a

21 sense of where you wanted the water cannon to shoot or

22 where and when you wanted the water cannon to shoot,

23 because you are instructing the water cannon to shoot, not

24 Lieutenant-Colonel Vermaak, and you're saying shoot at the

25 target.

1 **BRIGADIER CALITZ:** If you remember yesterday,
2 there is a difference between an aerial
3 command and commanders on the ground, the commanders
4 on the ground is still in charge of their members and what they
5 see in front of them. So, the aerial command can give the people on
6 the ground instructions, go this way,
7 go that way, and that is why I read the words,
8 "You're driving in the bush now? Yes, pass the Nyala.
9 Go straight now." So, then I heard, straight now, it was
10 in my mind it is – they were at the persons and that is
11 when I gave the instruction to the water cannon
12 to flush them out..

13 **MR CHASKALSON SC:** But you'll recall also
14 yesterday that the identification of people hiding in the
15 hill came from you, not from Lieutenant-Colonel Vermaak.

16 **BRIGADIER CALITZ:** We did testify
17 to that.

18 **MR CHASKALSON SC:** Now you say that the
19 water cannon was going to – that you issued an instruction
20 – let me get my note – not an instruction, almost a warning
21 or a report to your men, "They're coming out in the small
22 hill, they're coming out and moving towards the
23 substation." That was your voice.

24 **BRIGADIER CALITZ:** I trust this is
25 what I said when I spoke to the water cannon,

1 and at that distant, you could see there was movement.

2 I cannot tell you who it was, what they looked like,

3 it was at a distant, but you can see when the

4 water cannon fired, there was movement. That is what

5 I saw.

6 **MR CHASKALSON SC:** You see what concerns

7 me and maybe we should just give the reference to that

8 passage in the transcript. My note on it is between 13:38

9 and 13:46 of the video, CC22, 13:38, 13:46, which is ETV

10 time 16:11:08 to 16:11:16. If you – in order to know that

11 the people were going to be flushed out in the direction of

12 the substation, you'd really have to know where the water

13 cannon was and where the people were, because there were

14 broadly two different directions where a water cannon

15 firing from the north could flush people out. Could flush

16 them out to the – sorry, I must just get my bearings right,

17 because - water cannon will be firing from the northwest,

18 the –

19 **CHAIRPERSON:** Mr Chaskalson, I am sorry to

20 interrupt you. GGG35 is the transcript we have got. Your

21 one has obviously been annotated or something, it is got

22 extra material on it, that is not on the document we have,

23 but can you tell us where exactly the passage you're now

24 reading to us, is to found so we can follow. We will

25 obviously have to update our transcript and so on later,

1 but let us just – if you can tell us where we must look?

2 **MR CHASKALSON SC:** I am just getting a

3 copy of GGG35.

4 **COMMISSIONER HEMRAJ:** Our transcript

5 doesn't have the time reference that you've just given,

6 that is why we are having difficulty in finding the passage

7 you're referring to.

8 **MR CHASKALSON SC:** At the top of page 5

9 of on GGG – at 35 the – and now if we just go back up to

10 page 4. Stop. Where it says male voice, Brigadier Calitz

11 has identified himself and the inaudible to the small

12 hill is, "They're coming out in the small hill, and they're

13 coming out and move towards the substation." Sorry, let us

14 go back at the bottom of page 4. So that is the

15 communication and the reference is 13:38 to 13:46.

16 **CHAIRPERSON:** Yes, thank you. And the

17 passage – the bottom line on page 4, where we have in

18 square brackets the words **[inaudible]**, I think the witness

19 has expanded that from his memory.

20 **MR CHASKALSON SC:** Yes, he expanded it

21 along the lines that I just have. Not from his memory, I

22 think from the transcript, from the listening more

23 carefully to the transcript to himself – the recording.

24 So, Brigadier, you knew that the water cannon was going to

25 flushing people out, but if people were to go flushed out,

1 there are broadly two escape routes southeast, which is
2 where – maybe we can call up a different image of the
3 hill to illustrate this.

4 **CHAIRPERSON:** You mention that you want
5 it called up, then don't leave it to the discretion of the
6 machine operator.

7 **MR CHASKALSON SC:** Let us try KKK17.1. At
8 the back of the hill, there is a cluster of rocks and
9 bushes, which I am marking on KKK17.1 now. They are – let us
10 start with the rocks and bushes that go into the dam, the
11 dry dam, they are the first outcrop of rocks and bushes
12 from the right-hand side of the picture. Then to their
13 left there is a dense outcrop of rocks and bushes. The two
14 obvious escape routes if one is trying to get out of the
15 hill are either through the dry dam to the right of the
16 picture and then out to the south – up to the west,
17 southwest here, or through a passage which I am marking – I
18 think that is the passage that I am marking there, which will
19 take you in the south easterly direction towards the
20 substation.

21 **CHAIRPERSON:** That past the – near the
22 top of the picture we see a whole cluster of - it looks
23 like about a dozen vehicles. I haven't counted them, it
24 must be about a dozen vehicles, and then there's an opening
25 and then there are I think some more vehicles to the left.

1 One of them being a Canter, I think. So what you're
2 suggesting is that that is a possible exit route, and the
3 other one you say is through the dry dam. Is that correct?

4 **MR CHASKALSON SC:** That is correct,

5 **CHAIRPERSON.** So there are at least two possible ways in
6, which people flushed out of the hill, will go. Now, you
7 gave the report to your men that – not just your men, your
8 men and women, that the strikers were going to move out in
9 the direction of the substation. Direction of substation
10 I am marking now and it is sort of in the first, at a point,
11 a third of the way from the left of the top of the picture.
12 Do you accept that that is the direction of the substation?

13 **BRIGADIER CALITZ:** Mr Chairperson, on
14 photo, i know the substation .

15 I cannot say in detail where. I think
16 there are better photos what that could be used,
17 but I know the substation is on the side where that
18 sedan vehicles on the North side –

19 on the photo on the top side.

20 **BRIGADIER CALITZ:** It is just below the
21 top of the photograph. There's a line of vehicles. There
22 appears to be road there.

23 **BRIGADIER CALITZ:** That is the area
24 where the substation is.

25 **COMMISSIONER HEMRAJ:** - possible route is

1 unimpeded, clear ways out of the hill.

2 **MR CHASKALSON SC:** Indeed, indeed,

3 **COMMISSIONER HEMRAJ.**

4 **COMMISSIONER HEMRAJ:** No accounting for

5 persons who would want to go over the rocks through the

6 bush in a different direction.

7 **MR CHASKALSON SC:** True. I mean that

8 increases the range of options. Maybe to illustrate it

9 more clearly, let us go to KKK5134. Colonel Botha's

10 photograph, which shows the substation relative to the

11 hill. And now if we can just mark certain positions.

12 This is Pappa1 that I am marking now. There is a group of

13 seven vehicles at the bottom of the picture. Pappa1 is the

14 second left most of these vehicles. The hill speaks for

15 itself. The substation is on the left hand side of the

16 picture in the middle of the page. Now, Brigadier Calitz,

17 and in fact we can – can we just zoom in where I am marking

18 now, because one of these vehicles is the water cannon, and

19 if we zoom in, we will identify which one it is. There is

20 the northwest water cannon, and if we can zoom back so that

21 we can describe it? Inside the hill itself there is a

22 group of three vehicles together and one further to the

23 left of that group. The water cannon is in the group of

24 three and is the left vehicle in the group of three. So,

25 Brigadier, I am marking your position, I am marking the

1 position of the water cannon, and I am marking the
2 substation. To know that the water cannon was going to be
3 driving people out to the substation as opposed to the area
4 – to a different area, you had to have a sense at the very
5 least of where the water cannon was, where it was firing
6 and where those people were. Did you have that sense?

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 According to me, the water cannon was little forward. As
9 I did not write down the reference,
10, which photo, are we referring too?

11 **MR CHASKALSON SC:** This if from a much
12 later time, I shall grant you that.

13 **BRIGADIER CALITZ:** That is why I am saying,
14 according to me, where the water cannon sprays, we said the colour
15 was blue-green that you see. So,
16 on this photo, let me agree, it is the
17 substation on the background.

18 **COMMISSIONER HEMRAJ:** Can I just ask
19 something for clarity, please? When you gave these orders
20 to the water cannon and the other vehicles to go left or
21 right or straight, you would doing this from inside the
22 Nyala?

23 **BRIGADIER CALITZ:** That is correct, it is me
24 at the vehicle.

25 **COMMISSIONER HEMRAJ:** And your Nyala was

1 in the position as is shown on KKK17.1 at the time you gave
2 these orders? It is the previous photograph that was up.

3 **BRIGADIER CALITZ:** No Commissioner. I did
4 give commands till the previous photo, the one
5 we were at just now.

6 **MR CHASKALSON SC:** 5.34.

7 **BRIGADIER CALITZ:** I did give instructions
8 to the water cannons when we were 150 meter away
9 from the hill as he says. I looked back and said
10 at the back I saw the water cannon and we need to look
11 where the blue or green part was on the grass,
12 I think under correction, where he then
13 sprayed.

14 **COMMISSIONER HEMRAJ:** What I'd like to
15 understand is from your position in the Nyala in that
16 position, what was within your field of vision?

17 **BRIGADIER CALITZ:** I looked back, if you
18 see where I was, looking back from the left back window of
19 my vehicle. If I need to on this photo – I know
20 this one is much later –

21 **COMMISSIONER HEMRAJ:** Would perhaps use
22 the pointer just to show us on the photograph what was
23 within your field of vision, please?

24 **BRIGADIER CALITZ:** I know this was at a later stage
25 That is my vehicle. So, what I could see from there

1 looking from the window

2 you could see from here.

3 So, the back part

4 of my vehicle

5 is in this

6 direction, and

7 the left back window is here.

8 **COMMISSIONER HEMRAJ**: You have a lot of

9 that and –

10 **BRIGADIER CALITZ**: Oh, excuse me , where the green,

11 the water is visible

12 on the photo.

13 **COMMISSIONER HEMRAJ**: From the rear

14 window of the Nyala, you could see to the right of the

15 hill – beg your pardon, to the left of the hill?

16 **BRIGADIER CALITZ**: To the left of the

17 hill.

18 **COMMISSIONER HEMRAJ**: And through the

19 side window of the Nyala?

20 **BRIGADIER CALITZ**: You can see to the

21 right of the hill past that Nyala that is – I don't know,

22 that Nyala, it is the one to my top right.

23 **COMMISSIONER HEMRAJ**: And those vehicles

24 that appear in the middle of the hill, were those visible

25 to you?

1 **BRIGADIER CALITZ:** Like here now, this is

2 much –

3 **COMMISSIONER HEMRAJ:** There are three

4 vehicles in the middle of the hill. Were they visible to

5 you? Those that you're pointing out, yes, where the water

6 cannon is.

7 **BRIGADIER CALITZ:** At this stage, I think

8 this bushes would have been – there's an opening maybe in

9 between, maybe on this TV it shows better there. There's

10 an opening where you can see through, and then there's

11 bushes and rocks on that side. So but there's a large

12 opening where you enter where you can see through.

13 **CHAIRPERSON:** Large opening is the one

14 where one can see dye on the ground, and to the left of it

15 one can see a rock, or a couple of rocks with dye on them

16 as well.

17 **BRIGADIER CALITZ:** That is correct Sir.

18 **CHAIRPERSON:** Now, the position we see on

19 this photograph, is this the position where you were when

20 the arrests were made and Warrant Officer Nong took the

21 photographs of the arrested of the arrested people, is that

22 the position, the one we are talking about?

23 **BRIGADIER CALITZ:** That is correct Mr

24 Chairperson.

25 **CHAIRPERSON:** So it is the place where you

1 were when the arrests were made, when Warrant Officer Nong
2 took the photographs of the arrested persons. That was
3 northwest I think of hill 3.

4 **BRIGADIER CALITZ**: It is correct, Mr
5 Chairperson.

6 **CHAIRPERSON**: That is what you're talking
7 about. And you looked in that direction, you've explained
8 to Advocate Hemraj what was within your field of vision.

9 **BRIGADIER CALITZ**: That is correct Mr
10 Chairperson.

11 **CHAIRPERSON**: Thank you.

12 **MR CHASKALSON SC**: And can I just
13 clarify, Brigadier, that the vehicle that I am marking now,
14 which is the group of six vehicles at the bottom of this
15 photograph, the one furthest into the photograph, that
16 vehicle wasn't there when you were making these
17 communications. You – that vehicle arrived much later. So
18 you would have had a field of view that would have
19 encompassed the whole of the hill through your back two
20 windows.

21 **BRIGADIER CALITZ**: Yes, I did asked you
22 the time, because that Canter I think was part of the vehicles
23 that was in front of us when arrests was made. You remember there
24 were two Canter vehicles during the arrests, and I see at this
25 it looks like the Canter vehicle that is moving to that

1 side.

2 **MR CHASKALSON SC:** Yes, but my point is

3 through those two windows, your field of view would have

4 encompassed the whole of the hill, subject to obstruction

5 by rocks and bushes inside the hill?

6 **BRIGADIER CALITZ:** Yes, the bush, the

7 rocks, the fire on the ground, the smoke, all those, yes,

8 but I can't recall that there was any vehicle. I must go

9 to the photographs taken at that time, but I can't recall

10 any vehicle. I think the one to my far right top, I don't

11 know which time that one, yes, which vehicle.

12 **MR CHASKALSON SC:** That is perhaps Pappa4

13 and that is there from the moment that you arrive until

14 about 5 minutes before you leave.

15 **BRIGADIER CALITZ:** That is maybe the only

16 one, yes, that will cover the area to, what you call the dry

17 dam.

18 **COMMISSIONER HEMRAJ:** Can you just

19 clarify for us, I am not sure if you have. From the

20 position you were in looking towards the hill, could you

21 see those three vehicles in the centre of the hill? Did

22 you say you could or you could not?

23 **BRIGADIER CALITZ:** Commissioner, no, it is

24 difficult to say on this photo. I am trying to look –

25 **COMMISSIONER HEMRAJ:** Can you remember,

1 perhaps, if you could?

2 **[10:13] BRIGADIER CALITZ:** No, I can't remember

3 inside now which vehicles I can't. I am trying to see my

4 vision, on this photo 17.1 to see where I stood

5 and where he could look into. I think you could only

6 see that part of the opening and then there is a big

7 brush in front on the left side of my vehicle on 17.1 and rocks on the

8 right. So, I think this area is more limited to the inside

9 of the hill.

10 **CHAIRPERSON:** Well of course we are going

11 to have another inspection at some stage and possibly at

12 the inspection we can stand in the relevant place and see

13 what can be seen from there.

14 **BRIGADIER CALITZ:** That would help, yes.

15 **CHAIRPERSON:** But anyway, we are

16 speculating at the moment.

17 **COMMISSIONER HEMRAJ:** Do you remember

18 seeing the water cannons spraying the water from inside the

19 hill?

20 **BRIGADIER CALITZ:** Say again, Commissioner,

21 Excuse me.

22 **COMMISSIONER HEMRAJ:** Do you remember

23 seeing the water cannons spraying the water inside the

24 hill?

25 **BRIGADIER CALITZ:** Directly after I told him

1- yes, it is difficult now,
2 if I can remember, in hindsight I saw it now,
3 so it is difficult to distinguish between what I
4 remember and what I saw,
5 I know I saw the people moving,
6 so I had to be looking in that direction. So
7 in hindsight I would say yes, I could see it too.

8 **COMMISSIONER HEMRAJ:** Thank you.

9 **MR CHASKALSON SC:** And Brigadier, do you
10 recall seeing vehicles moving around in the hill, or if
11 not moving around, then stationary in the hill from your
12 position to the northwest?

13 **BRIGADIER CALITZ:** No –

14 **MR CHASKALSON SC:** Any vehicles, not
15 these specific ones.

16 **BRIGADIER CALITZ:** No, Mr
17 Chairperson, the vehicles I saw moving was the
18 Canters and the water cannons, no, I mean
19 the one water cannon on my side.

20 **MR CHASKALSON SC:** Can I ask us to go
21 back to 5130, KKK16.5130, which shows the three vehicles
22 and your vehicle from a different angle. I am marking your
23 vehicle now. There are four vehicles to the top of the
24 picture in a sort of a cross configuration. Yours is on
25 the right side of that cross. The two vehicles further to

1 the right are the Canters that are moving in, one of which
2 will appear in 5134. The three vehicles that we saw
3 earlier inside the hill are being marked now; they are
4 the three vehicles at the very centre of the photograph
5 inside the hill in a group of three. Now if we look at
6 this right-sided vehicle – or first of all we can see that
7 there are two gaps into the hill. There's the one that
8 you marked, which I am marking now, which is slightly to the
9 right of the tail of the helicopter. If one draws a line
10 down into the hill from the tail of the helicopter, that
11 opening would be to the right of that line, but there's
12 also another one which is almost directly below the front
13 wheel of the helicopter, and between those two openings is
14 a very loosely leafed bush or tree, or clump of bushes and
15 trees through which one presumably can see. Are you saying
16 that you wouldn't have a line of sight to that vehicle from
17 your position to the right-hand side of the group of three
18 in the hill?

19 **BRIGADIER CALITZ:** Mr Chairperson, my evidence was
20 and if I may use the pointer again,
21 my vehicle is on the left hand bottom side from the
22 white Oryx helicopter, if we move down in a straight line
23 we will get a large group of rocks. There is a bush -
24 if you look from my vehicle towards the hill,
25 you will find

1 bush on my right-hand side,
2 which I saw, but it has limited access.
3 If you are in front of the bush,
4 you will be between the water cannon and
5 the rocks, so it seems that this opening
6 is on a 45 degree angle
7 but I doubt if you can see the vehicles from there.
8 The bigger opening is the one straight
9 underneath the helicopter on my
10 left hand side and you look down on my vehicle,
11 with the green "water dye" – there is bigger openings,
12 from which you can see.
13 **CHAIRPERSON:** There were a lot of "here's"
14 and "there's" there. I mean I take it –
15 **BRIGADIER CALITZ:** I tried –
16 **CHAIRPERSON:** - the way you describe it
17 is if one looks at the photograph and looks at your Nyala
18 and then looks in the direction you were looking to try to
19 capture your field of vision, in what would have been your
20 field of vision, on the extreme right-hand side of your
21 field of vision, obviously on the left, it is in the back,
22 almost directly in the middle of the photograph on the
23 left-hand side of the hill one sees this area with the
24 bushes that you're referring to and some rocks. Then
25 there's a gap. Then there's some more bushes, not as thick

1 I think as the ones, the first lot. Then there's another

2 gap and then there are some more bushes and rocks. Is that

3 a description of what you said –

4 **BRIGADIER CALITZ:** It is correct, it –

5 **CHAIRPERSON:** That captures your "here's"

6 and "there's" and things like that.

7 **BRIGADIER CALITZ:** It is correct.

8 **CHAIRPERSON:** Alright, I think we should

9 take a comfort break at this point and then we will run on

10 from after the comfort break until the end of Mr

11 Chaskalson's cross-examination, which he says will be

12 before tea.

13 **[COMMISSION ADJOURNS/ COMMISSION RESUMES]**

14 **[10:29] CHAIRPERSON:** - Along but I hope in

15 future this problem arises we won't have a repetition.

16 Brigadier, you're still under oath. Mr Chaskalson?

17 **MR CHASKALSON SC:** Brigadier, maybe we

18 should play this exchange because when I listened to the

19 audio I think it is quite instructive. So if we can just go

20 back to CC22 and play the audio from, let us start with this

21 whole water cannon exchange which starts at approximately

22 12:35. So if we can take the audio from 12:30 and we are

23 interested principally in the audio rather than the video

24 for this and if we can play the audio, it will start with

25 around your exchange with Lieutenant Colonel Vermaak about

1 directing the water cannon and we will just run it through.

2 **[VIDEO SHOWN]**

3 **MR CHASKALSON SC:** Just stop there. So

4 those voices saying very quickly, "shoot again target,"

5 that is your voice?

6 **BRIGADIER CALITZ:** I testified

7 to that.

8 **MR CHASKALSON SC:** And you're saying that

9 was at, an instruction to the water cannon?

10 **BRIGADIER CALITZ:** Yes, that is why

11 I said the whole conversation was not heard on the radio.

12 It sounds like the radio cut off there, or the

13 key to the analogue radio cut off there.

14 **MR CHASKALSON SC:** And you say shoot

15 again. When was the first time that the water cannon had

16 shot?

17 **BRIGADIER CALITZ:** Mr Chairperson, we

18 will have to look at the video, it was where they sprayed

19 as part of dispersing.

20 **MR CHASKALSON SC:** That was about nine

21 minutes previously.

22 **BRIGADIER CALITZ:** Yes, I do not know.

23 I know they continuously flushed out

24 the people with water, but I do not have the time

25 on it, no.

1 **MR CHASKALSON SC:** But you accept it was
2 a fairly lengthy period before that instruction was issued.

3 **BRIGADIER CALITZ:** I just told you
4 that I cannot tell you the time, but that it was
5 a continuous dispersing action.

6 **MR CHASKALSON SC:** Maybe I should correct
7 a proposition that I just put to you because you were
8 talking about the, you were talking about the previous time
9 being when the water cannon sprayed at the dispersion
10 action behind hill 2 and I understood you to be referring
11 to. Of course, there was a subsequent spray by the water
12 cannon when it reached hill 3. So it wasn't nine minutes
13 previously it was a shorter period. But you are saying
14 that that instruction that you issued was an instruction
15 which you would have expected to be understood by the water
16 cannon at that point to fire water?

17 **BRIGADIER CALITZ:** It is correct, I
18 talked to the water cannon directly, and they
19 reacted thereto.

20 **MR CHASKALSON SC:** Sorry you had spoken
21 directly, you had spoken yourself to the water cannon,
22 when, when you were directing the water cannon?

23 **BRIGADIER CALITZ:** No, I testified,
24 I did not say, shoot the targets, the whole
25 conversation was not captured,

1 it can be a problem with the radio or

2 the Coin recording, but I gave the

3 water cannon direct orders.

4 **MR CHASKALSON SC:** Well -

5 **BRIGADIER CALITZ:** The next.

6 **MR CHASKALSON SC:** It couldn't have been

7 a problem with the radio because there's almost no break

8 between the communication of Lieutenant Colonel Vermaak and

9 your shoot again target, maybe we can go back three

10 seconds. Let us go back, say five seconds because we can

11 hear the whole of Lieutenant Colonel Vermaak.

12 **[VIDEO SHOWN]**

13 **MR CHASKALSON SC:** So Lieutenant-Colonel

14 Vermaak in his sort of slow measured tones in his

15 communication, I don't know I haven't measured it but my

16 guess is not more than two seconds before yours before we

17 hear, "shoot again target." Are you saying that in those

18 two seconds there was some communication from you to the

19 water cannon that identified that you were speaking to the

20 water cannon but this wasn't picked up?

21 **BRIGADIER CALITZ:** I testify that

22 the words, "shoot again

23 target," anyone reading this can see it does

24 not makes sense, this was part of

25 a sentence that did not come through on the

1 radio recording.

2 **MR CHASKALSON SC:** Well maybe let us move

3 to the next communication relating to shooting.

4 **CHAIRPERSON:** I want to ask a question

5 before we move on. Would it have been clear to other

6 people at the hill that you were talking only to the

7 water people, water cannon people?

8 **BRIGADIER CALITZ:** Mr Chairperson, yes

9 if you go back and

10 conversation with shoot

11 again target – I went on to the next sentence,

12 seconds later Colonel Vermaak reacted

13 on what I said, so he should have heard and said,

14 “yes Pappa1 if that water cannon can wait there,” in

15 other words, he heard me talking to the water cannon,

16 “the people are encircled now.” But I think it was

17 seconds later when he said, yes, Pappa1,

18 and said, if that water cannon can wait there, in other words,

19 my orders and conversation with the water cannon had to

20 stop.

21 **MR CHASKALSON SC:** Well let us play the

22 tape because in fact what Lieutenant Colonel Vermaak seems

23 to be reacting to is your instruction or your report that

24 they’re coming out in the small hill, they’re coming out

25 and moving towards the substation. So let us play forward.

1 **[VIDEO SHOWN]**

2 **MR CHASKALSON SC:** Was that the passage

3 that you wanted played?

4 **BRIGADIER CALITZ:** Yes, Mr

5 Chairperson, that is what I referred to and what you read,

6 and why I asked them to play it. I have

7 13:38, and you said you think it is 16:11:08, if

8 we show that part, we will see all my words

9 did not come through. I did say, the water

10 cannon and the vehicles in the small hill, "they are

11 coming out, they are moving towards the substation." I

12 talked to the vehicles, but the

13 audibility on radio you only heard,

14 "to the small hill," again I refer to JJJ35. If we can

15 just look at the part from 13:38 again.

16 **COMMISSIONER HEMRAJ:** Sorry can you just,

17 can you just repeat that, where it says inaudible, what do

18 you say -

19 **BRIGADIER CALITZ:** 13:38 – It is on GGG35,

20 at the bottom of the page, Commissioner.

21 **COMMISSIONER HEMRAJ:** And what do you

22 say you hear there?

23 **BRIGADIER CALITZ:** No, no I just

24 want to proof that everything did not

25 come through on the radio,

1 I just want to put on record how the
2 recording came through,
3 from 13:38 you will hear it is very unclear and then it
4 starts with, "to the small hill." I think on my it is
5 13 -

6 **[VIDEO SHOWN]**

7 **BRIGADIER CALITZ:** You will hear,
8 the vehicles in front cannot be heard,
9 the words, to the small hill is the first
10 time when it was clear. I am just trying to proof the
11 inaudibility.

12 **MR CHASKALSON SC:** I am conscious about
13 time because I still have some ground to cover. So I'd
14 like to move to the next communication.

15 **BRIGADIER CALITZ:** Okay, we
16 can continue.

17 **MR CHASKALSON SC:** The next one is at
18 14:45 of the video, ETV time 16:12:15 where you hear, "live
19 fire." Do you accept that that is what you hear on the
20 audio, the video at that point?

21 **BRIGADIER CALITZ:** In hindsight now when
22 I listen to this C2022 - yes.

23 **MR CHASKALSON SC:** You didn't hear it at
24 the time?

25 **BRIGADIER CALITZ:** It is correct, Mr

1 Chairperson.

2 **MR CHASKALSON SC:** If you had heard it

3 would you have taken steps to investigate what was

4 happening with the shooting?

5 **BRIGADIER CALITZ:** That was my evidence

6 earlier on. It is correct.

7 **MR CHASKALSON SC:** Then going forward to

8 15:11, 16:12:41 on the radio one hears, "hey they are

9 firing in the direction of the," and it is indistinct but I

10 think it is dogs, "they are firing, they are firing in the

11 direction of the dogs." Do you accept that that is what you

12 hear on the radio?

13 **BRIGADIER CALITZ:** Mr Chairperson,

14 maybe we can play it so that Mr

15 Chairperson, can hear it first-hand. If you look at GGG35

16 on the translation they are talking inside the

17 chopper, "the chopper, they are firing, they are firing the

18 chopper." That is the

19 translation on the transcription I have.

20 I tried to listen carefully,

21 but could not hear what was said, maybe if we play it here,

22 it would be clearer.

23 **MR CHASKALSON SC:** Let us play it. 15:11,

24 yes, 15:11.

25 **[VIDEO SHOWN]**

1 Can we go back.

2 **[VIDEO SHOWN]**

3 Can we, well the audio speaks or does speak for

4 itself. My submission if needs be there will be argument

5 on it later is what one hears is they are firing in the

6 direction of the dogs. One certainly hears they are

7 firing.

8 **CHAIRPERSON:** Can we increase the

9 volume, can we play it again with increased volume.

10 **MR CHASKALSON SC:** The problem is not the

11 volume it is because one has to, it is picking up the radio

12 communication which is not next to the camera. So

13 amplifying the volume amplifies the background noise and

14 possibly makes it worse. It is something that one has to

15 listen to, but this is a particular passage which will be

16 very easy to enhance and we will get it enhanced.

17 **CHAIRPERSON:** Does it make sense if it is

18 dogs. Were the K9 people in the vicinity, did they have

19 there, in hindsight did they have their dogs - I mean

20 Breedt for example says he, when he moved the weapons away

21 he wasn't able to make a note where they came from because

22 he had a dog in one hand and the weapon in the other. So,

23 and he was one of the people there I take it. So were

24 there K9 people there on the scene?

25 **BRIGADIER CALITZ:** In hindsight,

1 they were at the scene on the south side, I refer to the
2 substation and the sedan vehicles that were there, were
3 a majority of K9 vehicles.

4 **CHAIRPERSON:** There were dog handlers
5 there, there were dogs there to I take it?

6 **BRIGADIER CALITZ:** Say again Commissioner?

7 **CHAIRPERSON:** There were dogs there as
8 well?

9 **BRIGADIER CALITZ:** Yes, in hindsight, I
10 did -

11 **CHAIRPERSON:** I am trying to get an
12 objective fact, I am not interested in -

13 **BRIGADIER CALITZ:** It is correct, Mr
14 Chairperson.

15 **CHAIRPERSON:** So they're shooting at the
16 dogs, what exactly, if that is what was said what would it
17 have meant do you think?

18 **BRIGADIER CALITZ:** If I read hear, it says,
19 "they are firing in the direction of the dogs they
20 are firing, they are firing in the direction of the dogs,"
21 if it means what it said,
22 it was said by one of the K9 members,.

23 In hindsight, they approached the hill
24 from the south, so this means that
25 they shot at them from the hill,

1 that is my perception of what is

2 said here.

3 **CHAIRPERSON:** Now of course now if some

4 of the people on the other side had been firing, and there

5 was a suggestion that shots were being fired from one end

6 of the hill to the other and the police on the other end

7 were as it were in the firing line, I am not sure if it

8 happened at this stage but presumably if police had been

9 firing in a southerly direction they could have in effect

10 have been firing at the dogs to? It isn't necessarily the

11 strikers who were -

12 **BRIGADIER CALITZ:** In hindsight -

13 **CHAIRPERSON:** Who were firing at the dogs

14 if in fact that is what happened. I am just trying to work

15 out what it meant. If that is what is said. It sounds

16 like dogs to me I must tell you but I am not entirely

17 satisfied that is why, satisfied that is so. That is why I am

18 trying to work out if it could have meaning if it was dogs.

19 You see that is what I am busy with.

20 **BRIGADIER CALITZ:** Mr Chairperson, I

21 agree, in hindsight we know the K9 unit

22 was at the south side of the hill,

23 and the TRT members was at the west side, and the

24 NIU was at the east side.

25 I was not aware

1 of shots fired from my side,

2 but it was possible

3 from the other directions.

4 **CHAIRPERSON:** So it is possible that in

5 fact it was not striker fire but police fire that was being

6 discharged in the direction of the dogs, that is a

7 possibility?

8 **BRIGADIER CALITZ:** It is a

9 possibility, Mr Chairperson.

10 **COMMISSIONER HEMRAJ:** What would be the

11 distance from where for example the TRT were stationed to

12 where the K9 unit had been on side, what sort of distance

13 is being spanned there by the hill because they're on

14 different sides of the hill.

15 **BRIGADIER CALITZ:** Commissioner if we go on to

16 the other photo, closer to the

17 hill, in hindsight, we can see where the

18 vehicle of the K9 unit was parked -

19 **MR CHASKALSON SC:** I don't want to

20 interrupt you, Brigadier, we will go there but can I just

21 suggest that what we do is we roll the video back about 20

22 seconds so that we can see what the position of vehicles

23 was at the time the communication was -

24 **BRIGADIER CALITZ:** Then, Commissioner I

25 shall -

1 **MR CHASKALSON SC:** And then we will have to
2 go to your photo to be able to see in greater detail.

3 **BRIGADIER CALITZ:** Oh, I just
4 want to answer her, okay.

5 **MR CHASKALSON SC:** We have a very poor
6 quality screen so that theory of mine is not going to work.

7 **BRIGADIER CALITZ:** That is why

8 I suggested the photo will be a better -

9 **MR CHASKALSON SC:** All, what I didn't
10 want was a photo that shows positions much later which had
11 moved but one does see TRT and K9 on the video in there,
12 broadly in their later positions.

13 **COMMISSIONER HEMRAJ:** Just an approximate
14 distance.

15 **BRIGADIER CALITZ:** No, I want to look at the photo of
16 Vermaak, the one you referred to, 4552, if
17 we can look at, exhibit JJJ10.

18 You referred thereto on Tuesday as,
19 4552, to me it is the best photo, so
20 if we can just have a look at that.

21 **MR CHASKALSON SC:** It will be JJJ10 4552.

22 **BRIGADIER CALITZ:** Yes,
23 JJJ10 4552, Mr Chairperson, or Commissioner
24 on the top

25 of the photo, you will see there is a

1 cluster of sedan vehicles,
2 on top of the photo is a Canter vehicle, and on its 6 o' clock
3 there is a group of vehicles.
4 **[10:49]** That is the position of the K9 Unit
5 and in the westerly direction,
6 was Captain Kidd's personnel.
7 – afterwards they informed us that
8 they took position behind the bushes and the
9 rocks. So they were in that direction,
10 and by that I mean the
11 dry dam in the middle of the hill,
12 the K9 unit was in
13 that direction –
14 **CHAIRPERSON:** When you say "Dog Unit were there"
15 you're referring back now to the position to the
16 south –
17 **BRIGADIER CALITZ:** Toward the cluster of
18 vehicles –
19 **CHAIRPERSON:** The south –
20 **BRIGADIER CALITZ:** The vehicles in
21 the south -
22 **CHAIRPERSON:** - cluster of sedan
23 vehicles, yes.
24 **BRIGADIER CALITZ:** It is correct. I am
25 cautious with the distance, yesterday 40 changed to 55 – the

1 Nyala is five meters,
2 we will then be able to
3 fit in four or five Nyalas, which would help us to
4 determine the distance. This photo was
5 taken after the fact as Mr Chaskalson
6 said, so I do not know if it was their initial position.
7 There is also vehicles at the back, so it may be where
8 they started, I do not know –

9 **CHAIRPERSON:** [*Microphone off, inaudible*]

10 "at the back" –

11 **BRIGADIER CALITZ:** Oh, sorry it is

12 the –

13 **CHAIRPERSON:** Now "at the back" is a reference
14 to further, we referred to them earlier, this cluster of

15 vehicles right at the top of this photograph on what looks
16 like a path.

17 **BRIGADIER CALITZ:** On the south, it is

18 correct.

19 **CHAIRPERSON:** On the southern end, yes.

20 **BRIGADIER CALITZ:** Then the

21 National Intervention Unit,

22 came toward the hill from the

23 eastern side.

24 **MS LE ROUX:** Chairperson, if I could assist,

25 from the Botha photographs there are contemporaneous

1 photographs that may be more accurate, given that Brigadier
2 Calitz, you know, from his recollection couldn't place the
3 K9 unit. So Botha 5141 in particular may be of assistance
4 at this point.

5 **MR CHASKALSON SC:** KKK16.5141.

6 **CHAIRPERSON:** Just have a look at that,
7 because I was into – of course he was in the other
8 helicopter, wasn't he? One of the photographs we saw,
9 which was taken by Lieutenant Colonel Vermaak, we saw
10 another helicopter in the vicinity. That is the one that
11 Botha was in, I take it.

12 **MR CHASKALSON SC:** That is correct, but
13 it is got the position of the K9 unit during the operation
14 in this photograph.

15 **BRIGADIER CALITZ:** Mr Chairperson,
16 yes, I have the photo, the photo
17 we just saw was from the other side,
18 and by that I meant the photo was turned around.

19 The K9 Unit was at the bottom,
20 I will show with the pointer,
21 at the bottom of the photo is a white riot truck,
22 which we call Canters and then there are
23 about five soft-top vehicles,
24 if we zoom in it looks like
25 the K9 unit taking in position. Yes,

1 on the left hand side of the vehicles,

2 you will see people lying in the field.

3 It is just on the right-hand side

4 of the photo –

5 **CHAIRPERSON:** Right-hand side? You mean on

6 the left-hand side?

7 **BRIGADIER CALITZ:** If we look at the screen,

8 on my right-hand side.

9 Here is the vehicles, on the

10 the right-hand side of the vehicle -

11 sorry -

12 there is vehicles at the back too –

13 **CHAIRPERSON:** At the back of those vehicles –

14 **BRIGADIER CALITZ:** It is the –

15 **CHAIRPERSON:** What vehicles are those?

16 Please describe them.

17 **BRIGADIER CALITZ:** It is the

18 vehicle on the 12 o' clock of the Canter vehicles,

19 and on the left-hand side is a bakkie,

20 it looks like the left-hand side door of the soft-top sedan is open,

21 there is also a group of police officers in the direction

22 of the K9 Unit,

23 I cannot testify if they are all part of the K9 Unit or

24 not and then –

25 **CHAIRPERSON:** That is where the dogs –

1 **BRIGADIER CALITZ:** - if we
2 go down further –
3 **CHAIRPERSON:** Sorry to interrupt you.
4 That is where the dogs would have been.
5 **BRIGADIER CALITZ:** Yes, if we look to the right,
6 it looks like we can see a dog,
7 on the right-hand side of the vehicle, which
8 we just referred to, both doors of the
9 vehicle is open and
10 at the back it looks like a dog trainer with a light colour dog
11 and in front of him there is a person with a darker colour in front,
12 which might also be a dog, it is left -
13 **CHAIRPERSON:** There's two vehicles
14 parallel to each other and there's, it looks like two
15 people standing between them, one of them more or less in
16 line with the left front door of the vehicle on the right
17 and the other one just below the line which joins the back
18 bumpers of the two vehicles, and certainly it looks as if
19 that person has got a dog with him. I am not sure if the
20 other one has, but there's – so there's at least one dog on
21 the scene –
22 **BRIGADIER CALITZ:** It may be one or two.
23 If we can zoom in, I can answer the question of the
24 Commissioner on the distance,
25 we see the field and then I do not know if we can see the TRT

1 if we zoom in. In hindsight we know they were
2 at the back,
3 there at the left-hand side of the hill,
4 as we look at the hill on the photo, there
5 is rocks away from the hill, and behind that
6 hill is also people.
7 If we can go up a little,
8 more to the left, more upwards,
9 yes, in hindsight they said they took cover
10 on the left-hand side at the back,
11 if we go way to the right on the photo,
12 just to assist the Commissioner,
13 – way to the right and then please zoom in, it will
14 be easier,
15 on the right-hand side or eastside of the photo,
16 I think this is the question I was asked
17 yesterday or Tuesday, about the
18 TRT line, which is on the eastern side. –

19 **MR CHASKALSON SC:** NIU.

20 **BRIGADIER CALITZ:** Sorry, sorry,

21 I mean the NIU line,

22 you said we have to look at the photo,

23 maybe it will assist if we see the field burning

24 there are a lot of smoke, which I

25 do not know if it could be an indication of

1 what we talked about –

2 **CHAIRPERSON:** The smoke seems to go up

3 straight –

4 **BRIGADIER CALITZ:** - the wind and the

5 wind direction. –

6 **CHAIRPERSON:** - straight up in the air,

7 so it doesn't seem to indicate that there's much wind

8 blowing, as far as I can see. Isn't that right?

9 **BRIGADIER CALITZ:** Sorry –

10 **CHAIRPERSON:** If you look at the smoke

11 near the top of the picture next to that group of vehicles,

12 it looks to me as if it is going up straight in the air. So

13 it would be an indication that the wind wasn't blowing

14 strongly in one or other direction. But that is just an

15 amateur impression.

16 **BRIGADIER CALITZ:** Yes, I think the wind

17 is in a southerly direction, the smoke

18 is in our direction, we look down south.

19 The smoke of the fire at the bottom,

20 the previous photo,

21 there is a huge ball of fire,

22 and it looks like the wind is blowing south, but I may be corrected.

23 **COMMISSIONER HEMRAJ:** Mr Chaskalson, is

24 there anything that can assist us with what the distances

25 are from one end of the hill to the other?

1 **MR CHASKALSON SC:** We can call up Google
2 Earth and do that in an adjournment and come back to you
3 with an exact number.

4 **COMMISSIONER HEMRAJ:** Thank you.

5 **MR CHASKALSON SC:** But getting back to
6 the communication, Brigadier, I presume you didn't hear it
7 on the day.

8 **BRIGADIER CALITZ:** Did not hear
9 what?

10 **MR CHASKALSON SC:** "They are firing, they
11 are firing in the direction of the dogs. They are firing
12 in the direction of the dogs."

13 **BRIGADIER CALITZ:** No, I will go and
14 look at the time you indicated.

15 Sorry, Mr Chairperson, the document I got from you,
16 with the words at the top saying,
17 "Pretoria Coin Chopper 13:20, Shoot again," again did
18 not make mention of the time, although we requested it.

19 I am therefore trying to establish my own time and
20 if you take the three times,
21 the

22 "live fire", the dogs and

23 the arrests. It is all during the same time,

24 which I have here as 16:12:33, we now the first photo of

25 W/O Nong was taken at 16:12:20. So it could

1 have happened in the same 10 to 15 seconds while the arrests
2 took place, so to get back to my
3 answer, no, I do not have those
4 two -

5 **MR CHASKALSON SC:** And if you had heard
6 them you would have called for a report obviously.

7 **BRIGADIER CALITZ:** It is correct.

8 **MR CHASKALSON SC:** Let us move on. I am
9 going to finish with this video before we call up the next
10 video, although it will involve taking us out of sequence
11 because there's some from Captain Ryland beforehand that
12 should be interspersed in between, but the last Protea Coin
13 reference is at 34:40 of that video, CC22. Can we play
14 from – well, let me give you my, read my transcription that
15 you've seen, 34:40 to 35:20, which is ETV time 16:32:10 to
16 16:32:50, and this is a very indistinct communication and
17 it is one which we will be having properly enhanced, but we
18 understand it to go as follows. "Chopper 2, can you give
19 me an indication?" Lieutenant Colonel Vermaak then says,
20 "Chopper (or it may be Pappa) 2, can you give me an
21 indication of the people wounded there?" A reply comes
22 back, "We are counting." Then it is indistinct and then
23 Lieutenant Colonel Vermaak says, "How many are dead?" Have
24 you listened to this recording?

25 **BRIGADIER CALITZ:** Now in hindsight yes,

1 I listened to the Chopper Coin recording.

2 **MR CHASKALSON SC:** And you accept that my

3 transcription is a good transcription of that passage?

4 **BRIGADIER CALITZ:** I do not know what you mean with

5 "good" –

6 **MR CHASKALSON SC:** Do you take issue with

7 anything that I have –

8 **BRIGADIER CALITZ:** No, it only says –

9 **CHAIRPERSON:** "Good" means accurate.

10 **BRIGADIER CALITZ:** It only says

11 "indistinct" – but that is what

12 was said.

13 **CHAIRPERSON:** So the meaning is correct?

14 **BRIGADIER CALITZ:** Sorry, sir?

15 **CHAIRPERSON:** The meaning is correct?

16 The general thrust of it is correct?

17 **BRIGADIER CALITZ:** It is correct,

18 it is clearly visible on the video,

19 I accept those words as correct.

20 **MR CHASKALSON SC:** Did you hear this at

21 the time?

22 **BRIGADIER CALITZ:** No, Mr

23 Chairperson, if I look at the times, no,

24 Mr Chairperson.

25 **MR CHASKALSON SC:** Then let us look at a

1 number of communications from Captain Ryland. Can we go to

2 exhibit I1, which is Captain Ryland's video 25, at 1:14.

3 **CHAIRPERSON:** Have we had transcripts of

4 Captain Ryland's video?

5 **MR CHASKALSON SC:** There is a transcript,

6 but it is a very poor transcript.

7 **CHAIRPERSON:** Is it an exhibit?

8 **MR CHASKALSON SC:** It is an exhibit.

9 There is a consolidated transcript of Captain Ryland's

10 video. I shall get an exhibit number. It is GGG36, and then

11 there's a 36.1 which includes Sesotho communications, but

12 again these are transcripts which need to be improved and

13 also to be reformatted so each communication has a time to

14 it. Before you play Captain Ryland's 45 – actually we do

15 need to play this one; Captain Ryland's 25, it is exhibit I1

16 at 1:14, can we play that? Because I am going to ask you to

17 identify the voice. Can we maybe go back a second or two

18 so that we have some – okay, let us play it. Can we play

19 the audio?

20 **[VIDEO SHOWN]**

21 Stop. That "Stop shooting, cease fire," do you

22 recognise that voice?

23 **BRIGADIER CALITZ:** Mr Chairperson,

24 it sounds like it is

25 Captain Ryland shouting – it sounds

1 like his voice – if we can just listen

2 again –

3 **MR CHASKALSON SC:** Well, can I ask you a

4 different question? Do you know the voice of Colonel

5 Gaffley?

6 **BRIGADIER CALITZ:** I talked to him before,

7 but on the radio I am not sure,

8 we sound different when we are recorded,

9 but if we play it again, we might

10 be able to hear.

11 **[VIDEO SHOWN]**

12 **MR CHASKALSON SC:** You see, why I asked

13 whether it was Colonel Gaffley is that Lieutenant Colonel

14 Scott testified that he heard Lieutenant-Colonel Gaffley –

15 he heard on the radio because he could only hear on the

16 radio, he was in the JOC, he heard Lieutenant-Colonel

17 Gaffley shouting "Cease fire." The reference is page

18 14718, line 17 to 25, 14718. 14718, line 17 to 25, and

19 then again on 24 October at 15006, line 6 to 16 -

20 **BRIGADIER CALITZ:** Just repeat

21 the second one.

22 **MR CHASKALSON SC:** 15006, 6 to 16, where

23 he was under cross-examination by Mr Bizos where he

24 suggested that the time that he heard it, where he says, Mr

25 Bizos was asking him when he first found out about

1 shootings and Mr Bizos says, "4:20 you say," and Colonel
2 Scott says, "Any time from then possibly on, because I was
3 listening to the radio as far as I could go. One of the
4 last reports I can remember hearing was Colonel Gaffley
5 saying 'Cease fire.'" So Colonel Scott heard on the radio
6 sometime around or before 4:20PM Colonel Gaffley saying,
7 "Cease fire." Did you hear that?

8 **BRIGADIER CALITZ:** No, as I testified,
9 I thought it was the voice of Captain Ryland. If
10 you look at the time,
11 it coincides with the time during when
12 we made the arrests, so I could have been
13 out of the vehicle at that time,
14 but I did not hear it.

15 **COMMISSIONER HEMRAJ:** The question
16 relates to 18 people having been killed. Was that question
17 not geared towards scene 1?

18 **MR CHASKALSON SC:** No, there were 15
19 people killed at scene 1 and 17 in fact at scene 2. We
20 initially thought that the four victims who died after the
21 event had been killed, had all been killed at scene 2, so
22 the original numbers were 18 and 16, but in fact one of
23 those victims was killed at scene 1, so the numbers are in
24 fact 17 and 17. 17 and 17. And just for a further
25 reference, the statement of Colonel Gaffley himself, FFF8,

1 paragraph 14 he speaks of "screaming the command 'Cease
2 fire' at the members who were shooting from behind us."

3 Now I imagine that if people were shooting from behind you
4 and you wanted them to hear through that sort of situation,
5 you'd use your radio to try and tell them to stop.

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 yes, I do not have his statement in front of me,

8 he shouted at them,

9 I spoke to them on the radio,

10 If he said he shouted at them,

11 it means he was quite close to them to

12 shout at them.

13 **MR CHASKALSON SC:** Well anyway, Colonel

14 Scott heard him on the radio, so it was on the radio. You

15 didn't hear it. Can we go to the next one, which is

16 Ryland's exhibit I3, 4 seconds in.

17 **[11:09]** Because there a specific question is addressed to

18 you. That is 16:35:54, exhibit I3. We can just play it

19 from the start because it is 4 seconds in. Maybe before we

20 play it, can I – I have given you the transcript. My

21 transcript is you hear someone saying "The first people

22 were shot. Brigadier Calitz, is that area, is it secure

23 where Charlie2 is now?" and then Lieutenant Colonel Vermaak

24 says, "Okay, I am going to fly in the direction of the

25 hill." Do you accept that that is what one hears on the

1 video?

2 **BRIGADIER CALITZ:** Yes, more or less, there were

3 in front of the "The first people." I want ,

4 to say, "We are now at where the first people were shot,"

5 but the rest is audible on the Ryland 27, which I

6 listened to, yes.

7 **MR CHASKALSON SC:** So you say "We are now

8 at the area where the first people were shot" –

9 **BRIGADIER CALITZ:** Yes –

10 **MR CHASKALSON SC:** - is what was there?

11 **BRIGADIER CALITZ:** No, I said

12 I tried to listen,

13 and it sounds to me as if it came from the direction of the dots –

14 in other words it is people that

15 moved from scene 1.

16 **MR CHASKALSON SC:** And a question was

17 addressed to you, "Is that area secure?"

18 **BRIGADIER CALITZ:** Yes, the

19 voice talking there is that of Lieutenant Colonel

20 Stapelberg, and he is in charge of the horses

21 and I believe he called on the radio

22 and said, "Is that area secure?" where Charlie2 is now.

23 I am not sure to whom the call sign Charlie2 belonged

24 at that stage.

25 "Okay, I am going to fly in that direction to the

1 hill," so Colonel Vermaak answered him

2 and told him he was going to fly in that direction and

3 gave him feedback.

4 **MR CHASKALSON SC:** And did you hear that

5 communication at the time?

6 **BRIGADIER CALITZ:** No, Mr

7 Chairperson, if you look at the time,

8 I wanted to safe time,

9 on the previous one, "Pretoria Coin Chopper

10 34" where Colonel said, "How many dead? How

11 many what?", you will recall, Mr Chairperson, this is the

12 time when my vehicle was static, it was 16:23 where

13 I got out and then at

14 16:46 I phoned General Annandale – so all these

15 times of 32, 32, 37:15, was the times I was outside

16 my vehicle with Colonel Macintosh and Colonel Pitsi and

17 back in the hill – so I did not hear these

18 conversations at this stage.

19 **MR CHASKALSON SC:** Well, can we then just

20 quickly run through the last one of this communication,

21 it is Ryland 28, which is exhibit I4, 2 seconds in, ETV

22 16:37:16, where it is said, "Okay, now it is a little bit

23 more quiet. Where do you want to go to? To the General

24 Naidoo?" "Yes, that is positive." "Where the first

25 shooting took place?" "Okay, this is where we are circling

1 now, where we are circling now. That is where they are," and
2 then at 28 seconds, "Are you with the horses? Okay, I have
3 got your visuals, go straight, go straight with horses."

4 You accept that is what one hears on the video?

5 **BRIGADIER CALITZ:** It is what we

6 heard on Ryland 28, correct.

7 **MR CHASKALSON SC:** And that is radio

8 communication.

9 **BRIGADIER CALITZ:** It is

10 radio communication between Colonel Stapelberg and

11 Colonel Vermaak.

12 **MR CHASKALSON SC:** But again it was radio

13 communication which you didn't hear because you say you

14 were with Lieutenant Colonel McIntosh at the scene of

15 victim C.

16 **BRIGADIER CALITZ:** Yes, I just wanted

17 to say I was not with Colonel

18 McIntosh - I said it was during the time I was out of my

19 vehicle, between 16:23 and 16:47 -

20 you will see the two conversations is

21 two seconds apart.

22 **MR CHASKALSON SC:** Now you see, you were

23 operational commander. Was it not incumbent on your even

24 if you were going to take 20 minutes around Lieutenant

25 Colonel McIntosh to listen to your radio during those 20

1 minutes?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 yes, if you recall I said the hand radio that was in the

4 vehicle with Colonel McIntosh, we gave to the water cannon,

5 I had a basis set in the back of my vehicle.

6 I swapped my hand radio on

7 scene 1, due to the fact that

8 it did not work.

9 Therefore, I requested the basis set, but

10 you cannot carry it around -

11 but I informed the people when

12 I got out so that they knew where I was.

13 **MR CHASKALSON SC:** So by wandering off to

14 Lieutenant Colonel -

15 **CHAIRPERSON:** "Wandering off" is an

16 unkind expression. I think you must withdraw that.

17 **MR CHASKALSON SC:** By moving off to

18 Lieutenant Colonel McIntosh and victim C you took yourself

19 out of radio communication for 23 minutes at the, towards

20 the end of an operation you were supposed to be commanding.

21 **BRIGADIER CALITZ:** It is where all the other

22 commanders were around me with their hand radios.

23 I was with Captain Kidd,

24 Colonel Pitsi, and with the others when I moved back

25 into the hill,

1 so if there were any serious injuries or fatalities it

2 could have been reported to me.

3 **CHAIRPERSON:** You know, you're not

4 answering the question.

5 **BRIGADIER CALITZ:** I did not have a radio

6 with me –

7 **CHAIRPERSON:** You're giving an

8 explanation. The question was – simple question – is it

9 correct that for 23 minutes you took yourself effectively

10 away from radio communication to attend to this other

11 matter at the, perhaps it wasn't put this way but what

12 might be described as an important stage of the operation

13 of which you were the operational commander. So the answer

14 to that has got to be yes, you did, didn't you?

15 **BRIGADIER CALITZ:** Correct –

16 **CHAIRPERSON:** Right, so now if something

17 important had come over the radio during that period, how

18 could it have been brought to your attention?

19 **BRIGADIER CALITZ:** As I said, there were

20 senior officers on the scene. I immediately moved to

21 Lieutenant Colonel Pitsi,

22 as he was static at the scene, and I spent quite some time there.

23 They had a vehicle, a hand radio and

24 a hand radio, so they would inform me immediately of

25 any incidents. Captain Kidd also

1 had a radio with him,
2 and when I moved into the hill,
3 one of the senior officers there would
4 also inform me immediately of any serious incidents.

5 **MR CHASKALSON SC:** Would you have
6 regarded the discovery of 13 dead bodies as something
7 important?

8 **BRIGADIER CALITZ:** It is correct, it is
9 very important to have that
10 reported to me.

11 **MR CHASKALSON SC:** But you say that that
12 information didn't get communicated to you in those 23
13 minutes.

14 **BRIGADIER CALITZ:** Not before it occurred,
15 nor during the 23 minutes I was
16 on the ground.

17 **MR CHASKALSON SC:** And is there any
18 reason why you chose not to go into the scene when you
19 stopped there? Your Nyala arrives at the scene 23 minutes
20 previously. It is clearly a scene at the very least where
21 there are multiple arrests taking place, where there are a
22 lot of your men moving around. It is a scene that you
23 hadn't previously seen. Did you not think that it was
24 important to go in to find out what had happened with the
25 operation in the hill, whether all your men were alright,

1 whether there were any injuries to strikers? I mean you

2 had after all heard a report of two bodies down. You

3 didn't think to go in and look?

4 **BRIGADIER CALITZ:** Mr Chairperson,

5 it is the call I made when I stopped there.

6 I saw the people in front of me,

7 I saw them busy with

8 arrests and according to me it was a

9 dispersing process. Nobody informed me of

10 any injuries – except for the two bodies

11 that was reported earlier.

12 I decided to move back to

13 Colonel McIntosh, was due to the

14 shouting, they were storming

15 at a police officer, I presumed there was a police officer

16 injured. I made the call

17 as it was a serious scene

18 according to the information that

19 I had to my disposal.

20 I did go back to the original scene

21 after I knew what was going on at the scene of Colonel McIntosh.

22 I moved

23 back to the hill to find out what

24 occurred there.

25 **MR CHASKALSON SC:** So you thought

1 Lieutenant Colonel McIntosh's scene was a more important
2 scene, on the basis of the knowledge that you had at your
3 disposal, than the scene inside the hill at the time that
4 your vehicle stopped at the hill?

5 **BRIGADIER CALITZ:** With the information
6 I had to my disposal, it is correct.

7 **MR CHASKALSON SC:** Did you go into the
8 hill or ask anyone for a report on what was going on at
9 the hill?

10 **CHAIRPERSON:** When? You mean before he
11 went off to the Colonel McIntosh scene –

12 **MR CHASKALSON SC:** Before you went off to
13 Colonel McIntosh.

14 **BRIGADIER CALITZ:** No, you can
15 see I was quite a distance away at that stage. I
16 am trying to look at the photo of Colonel
17 Vermaak, 4552, I think this might be a
18 indication that I did not stop inside the hill - but

19 **MR CHASKALSON SC:** So you didn't after
20 you got out of the vehicle go into the hill itself to ask
21 for a report?

22 **BRIGADIER CALITZ:** No, I think I went to the hill first.
23 I went to Colonel Vermaak and then
24 back to the hill as I changed in
25 my statement –

1 **MR CHASKALSON SC:** Colonel McIntosh, not

2 Colonel Vermaak. You –

3 **BRIGADIER CALITZ:** Sorry.

4 **MR CHASKALSON SC:** And that is because you

5 thought that on the basis of the knowledge at your disposal

6 at the time, that of the two scenes the McIntosh scene was

7 going to be the more pressing scene?

8 **BRIGADIER CALITZ:** I am not saying –

9 **MR CHASKALSON SC:** Or the scene that

10 needed more immediate attention.

11 **BRIGADIER CALITZ:** Yes, I am not saying -

12 with the benefit of hindsight,

13 I thought I drove there and then to the other side,

14 – I did not observe what happened in front of me,

15 but you asked if I got a

16 SITRAP, no, not there.

17 **MR CHASKALSON SC:** And you believed at

18 the time that of the two scenes the one that needed your

19 immediate attention was McIntosh, not the hill itself?

20 **BRIGADIER CALITZ:** I think it was

21 the information to my disposal, it is correct.

22 **CHAIRPERSON:** He's said that several

23 times already.

24 **MR CHASKALSON SC:** You see my difficulty

25 with that is that if that was your state of mind, it is very

1 difficult to understand why you didn't just ask for the
2 Nyala to go to Colonel McIntosh. Why did you let the Nyala
3 stop 55 metres away and then at a – 55 metres away at the
4 one scene, which wasn't the scene that needed your
5 immediate attention, and then not tell it to go to the
6 other scene, which was the scene that needed your immediate
7 attention? You were in command of it.

8 **BRIGADIER CALITZ:** I just want to make sure
9 what 35 meter are you referring to?

10 **MR CHASKALSON SC:** 55, not 35. 55 metres
11 between the point at which your Nyala stopped and where
12 body C is, or was.

13 **BRIGADIER CALITZ:** Yes, I think
14 that is where the vehicles topped,
15 if we look at the photo and the distance of the people
16 in front of me, it is almost the same
17 distance.

18 **MR CHASKALSON SC:** My question remains,
19 if you thought that you had to get to Lieutenant Colonel
20 McIntosh because that was an urgent, it demanded your
21 urgent attention, why didn't you say to the driver of the
22 vehicle, "Nong, why have you stopped here? I want to go to
23 McIntosh; turn right."

24 **BRIGADIER CALITZ:** Mr Chairperson, all
25 I can think of is the distance of 30

1 – I said 40 meter, you say 55 meter, when the vehicle
2 stopped, I saw him, as I walked in front at that stage.

3 I cannot think of any reason to ask

4 W/O Nong to go there,

5 I cannot testify to that

6 as I cannot recall that conversation taking
7 place.

8 **CHAIRPERSON:** You asked him this

9 yesterday and he said he couldn't remember why, perhaps

10 Warrant Officer Nong would tell us. He obviously made a

11 priority call, if one can call it that, as to which of the

12 two was more important at the time. The question may well

13 be at what time he made that priority call. If he made

14 the priority call only when Nong started driving and had

15 got to the place where the vehicle stopped, he would then

16 have had to walk back to where, either walk back to where

17 McIntosh was or asked Nong to drive there, but if he

18 thought it was a relatively unimportant distance he could

19 easily walk there, and besides which, the other people

20 would be near the position at hill 3 and if any problem

21 arose they could deal with it. Who was with you in the

22 Nyala?

23 **BRIGADIER CALITZ:** It was –

24 **CHAIRPERSON:** Apart from Nong.

25 **BRIGADIER CALITZ:** It was almost

1 the whole group,

2 Captain Greyling, is the other witness –

3 **CHAIRPERSON:** Yes, okay. So there was

4 quite senior – there was at least one senior person –

5 **BRIGADIER CALITZ:** A person from Lonmin,

6 the –

7 **CHAIRPERSON:** Never mind the Lonmin

8 person. There was a senior police officer there with you,

9 Captain Greyling.

10 **BRIGADIER CALITZ:** Captain Greyling was

11 there with me as well as captain,

12 Malatsi, I think it is the other –

13 **CHAIRPERSON:** Yes, okay –

14 **BRIGADIER CALITZ:** - members.

15 **CHAIRPERSON:** Yes, alright. How long did

16 you think you would be away when you decided to walk

17 towards what is called, to where body C, Lieutenant Colonel

18 McIntosh was, how long did you think when you walked there,

19 how long did you think you'd be away? In other words, how

20 long did you think you would spend dealing with that scene

21 before you went back to where the –

22 **BRIGADIER CALITZ:** No, not at all –

23 **CHAIRPERSON:** - Nyala was –

24 **BRIGADIER CALITZ:** Not long.

25 **CHAIRPERSON:** - to deal with the hill 3

1 scene?

2 **BRIGADIER CALITZ:** Yes, not long,

3 Mr Chairperson, as I did not know of the deceased

4 person at that stage. So, I thought I would just walk around,

5 and see for myself what is happening at the scene,

6 but unfortunately, when I got

7 there –

8 **CHAIRPERSON:** You've explained there were

9 things you had to attend to –

10 **BRIGADIER CALITZ:** All the

11 other –

12 **CHAIRPERSON:** - *inter alia* giving therapy

13 to the person to –

14 **BRIGADIER CALITZ:** That is the delay

15 that occurred, yes.

16 **CHAIRPERSON:** Yes.

17 **MR CHASKALSON SC:** I have one more radio

18 communication that I want to put to you. It isn't a

19 communication that was picked up on the audio that we have,

20 but it was picked up in the JOC. It comes from JJJ168 and

21 I wonder if we can call up JJJ168, Captain Van Heerden's

22 notes. JJJ168. Maybe if I can just read it to you because

23 it is relatively short. There's –

24 **CHAIRPERSON:** We're nearly there.

25 **MR CHASKALSON SC:** After all that I have

1 got the wrong reference.

2 **CHAIRPERSON:** No, this is –

3 **MR CHASKALSON SC:** It is at the end of

4 this, it is in handwriting and in typescript right at the

5 end of this, the last page. Second-last entry from the

6 bottom says, “30 people lying down, some dead, some

7 injured.” Now by looking at the communications that are

8 recorded around it we – “Instruction for medics; Go in at

9 holding area, 30 people lying down, some dead, some

10 injured.” Now we look at the one immediately above,

11 “People in circles, arrests can be made.” That looks very

12 much like Captain Van Heerden’s annotation of the exchange

13 between you and Lieutenant Colonel Vermaak. It is close to

14 what Lieutenant Colonel Vermaak says, “The people are

15 encircled. You can make arrests there,” and “The water

16 cannon must stop spraying,” we hear from Lieutenant Colonel

17 Vermaak at 30 seconds into exhibit I1, which is 16:13:50

18 ETV time. So we can place that communication, “30 people

19 lying down, some dead, some injured,” roughly between ETV

20 time 16:13:50 and ETV time 16:11:18. Did you hear anything

21 like that?

22 **BRIGADIER CALITZ:** No, - I said I could be the

23 time I asked Colonel Vermaak

24 to fly and check out the scene for me,

25 you mentioned another time -

1 at the top I see

2 "18 bodies." At one stage Colonel Vermaak counted

3 25 people "lying down," but these "some

4 dead, some injured," was much later.

5 **MR CHASKALSON SC:** But you didn't hear

6 it?

7 **BRIGADIER CALITZ:** No, it is – she

8 will have to testify on that.

9 **MR CHASKALSON SC:** Brigadier, I made a

10 promise to end by teatime. If we do that we can – I have

11 one last relatively short topic to deal with you, which is

12 the movements of Pappa11. Chairperson –

13 **CHAIRPERSON:** If you undertake to deal

14 with it fairly crispy, both of you. We will take the tea

15 adjournment now.

16 **[COMMISSION ADJOURNS/ COMMISSION RESUMES]**

17 **[11:52] CHAIRPERSON:** The Commission resumes. You're

18 still under oath, Brigadier. Last lap, Mr Chaskalson.

19 **ADRIAAN CALITZ:** s.u.o.

20 **CROSS-EXAMINATION BY MR CHASKALSON SC:** I hate to

21 keep doing this but Brigadier, you say you didn't have a

22 hand-held radio when you were with Lieutenant-Colonel

23 McIntosh?

24 **BRIGADIER CALITZ:** At that time when I

25 walked there?

1 **MR CHASKALSON SC:** Yes.

2 **BRIGADIER CALITZ:** At the river, yes. No,
3 it was a base radio at the back of my vehicle.

4 **MR CHASKALSON SC:** Yes. Did you not ask
5 anyone for a hand-held radio?

6 **BRIGADIER CALITZ:** Mr Chairperson,
7 remember I testified that I was not under the impression
8 that I am going to be there for such a long time,
9 I thought I was going there, go back to my vehicle and
10 move in from there.

11 **MR CHASKALSON SC:** But once you got
12 there, I mean, and once it became clear that this wasn't a
13 sort of two minute stop, it was going to be longer, did you
14 not ask anyone for their radio?

15 **BRIGADIER CALITZ:** No, I
16 did not take radios away of any commanders.

17 **MR CHASKALSON SC:** So you didn't get a
18 radio from anyone. Did you ever have a hand-held radio on
19 the 16th at scene 2?

20 **BRIGADIER CALITZ:** When we got to the scene
21 we used the hand radios,
22 – when we got to General Naidoo
23 he informed me that he
24 did inform the JOC with his radio
25 – I then contacted the

1 JOC to arrange for water, lightning and various other

2 supplies. I cannot recall

3 on which radio it was, no.

4 **MR CHASKALSON SC:** And when would you say

5 you got this radio?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 no, it will be during the time when

8 I stopped there.

9 **CHAIRPERSON:** Let me just understand it.

10 You had given your hand radio to the water cannon people

11 because their radio wasn't working, is that right?

12 **BRIGADIER CALITZ:** The one of Colonel

13 McIntosh, it is correct.

14 **CHAIRPERSON:** So did you give McIntosh's

15 hand radio to the water cannon people?

16 **BRIGADIER CALITZ:** Yes, we had the hand-

17 radio of Colonel Macintosh –

18 **CHAIRPERSON:** Yes.

19 **BRIGADIER CALITZ:** He jumped out

20 and gave him the –

21 **CHAIRPERSON:** The water cannon people,

22 the water –

23 **BRIGADIER CALITZ:** It is correct, I did

24 –

25 **CHAIRPERSON:** When was that? When was

1 that?

2 **BRIGADIER CALITZ:** It was when

3 we lined up next to hill 2 with the –

4 **CHAIRPERSON:** Okay.

5 **BRIGADIER CALITZ:** - the riverbed.

6 **CHAIRPERSON:** By the dry riverbed.

7 **BRIGADIER CALITZ:** It is correct.

8 **CHAIRPERSON:** Okay. Now, you obviously –

9 and you got the other radio that you're now talking about

10 from General Naidoo.

11 **BRIGADIER CALITZ:** No, Mr

12 Chairperson, I was just asked if I talked

13 on the radio at any stage –

14 **CHAIRPERSON:** Yes.

15 **BRIGADIER CALITZ:** - and I said yes, until

16 we got inside and

17 then we used the hand-radio of one of the

18 members.

19 **CHAIRPERSON:** When you went where?

20 **BRIGADIER CALITZ:** It was when I moved

21 in to where General Naidoo was –

22 **CHAIRPERSON:** Yes, okay. So it was when

23 you, after this 23 minute interlude when you went back to

24 the Nyala and passed it into hill 3 where you met Naidoo

25 and you saw the people who had been arrested, is that

1 right, it was after that, is that right?

2 **BRIGADIER CALITZ:** To the best

3 of my knowledge.

4 **CHAIRPERSON:** Well, it couldn't have been

5 earlier, could it?

6 **BRIGADIER CALITZ:** No, I cannot recall

7 having a hand-radio while I was with Colonel McIntosh.

8 -

9 **CHAIRPERSON:** No, I say it couldn't have

10 been earlier, on what you've told us up to now.

11 **BRIGADIER CALITZ:** It is - yes.

12 **CHAIRPERSON:** So it has to be when you

13 went back, at the end of the 23 minute interlude when you

14 went back to your Nyala and beyond into hill 3, is that

15 correct?

16 **BRIGADIER CALITZ:** I -

17 that is how I recall it to the best of my knowledge, it is correct.

18 **CHAIRPERSON:** Right. And how long was

19 that approximately before you phoned, before you

20 established contact, by radio I take it, with General

21 Annandale which was at 16:47, wasn't it?

22 **BRIGADIER CALITZ:** Yes. Mr

23 Chairperson yes, I explained that

24 various incidents occurred simultaneously,

25 I then phoned General Annandale and talked

1 to him.

2 **CHAIRPERSON:** That was 16:47.

3 **BRIGADIER CALITZ:** It was, yes, thereafter

4 I went to the hill and met up with General Naidoo.

5 -

6 **CHAIRPERSON:** So you spoke to General

7 Annandale in fact before you went into hill 3.

8 **BRIGADIER CALITZ:** Yes, yes, it is, it is,

9 -

10 **CHAIRPERSON:** Did you use your radio on

11 the Nyala to speak to him?

12 **BRIGADIER CALITZ:** No, no, cellphone.

13 **CHAIRPERSON:** Oh, you spoke to him by

14 cell phone.

15 **BRIGADIER CALITZ:** It is correct.

16 **CHAIRPERSON:** I see. Alright, no, thank

17 you.

18 **MR CHASKALSON SC:** Can I ask that we go

19 back to CC32, sorry, CC22 to a point at 30 minutes and five

20 seconds into that video. ` 30:05, can we play the audio from

21 30:05?

22 **[VIDEO IS SHOWN]**

23 **MR CHASKALSON SC:** Do you recognise that

24 as your voice?

25 **BRIGADIER CALITZ:** I could

1 not hear what was saying,

2 if you can just tell what to listen to, I might be able to hear.

3 **MR CHASKALSON SC:** It seems to be saying

4 let them go through, the area is secure, but let us go back

5 again and play it again.

6 **[VIDEO IS REPLAYED]**

7 **MR CHASKALSON SC:** Can we stop? Let them

8 go, area is secure, let them go through. Is that your

9 voice?

10 **BRIGADIER CALITZ:** No, I cannot say it is not.

11 It is not clear enough

12 for me to recognise my voice, no.

13 **MR CHASKALSON SC:** Maybe we should play

14 it a third time. Can we go back just to give you, yourself

15 an opportunity.

16 **[VIDEO IS REPLAYED]**

17 **MR CHASKALSON SC:** Does that help at all?

18 **BRIGADIER CALITZ:** No, not at all, sorry.

19 **MR CHASKALSON SC:** You see it sounds very

20 much like your voice to me.

21 **BRIGADIER CALITZ:** I disagree with you,

22 Mr Chairperson.

23 **MR CHASKALSON SC:** You must know your own

24 voice better than me. For the record, that time is

25 16:27:37 ETV time, 16:27:37 which is approximately four

1 minutes after your Nyala stopped at scene 2 and if it was
2 you speaking, you were saying that the area is secure and
3 someone could go through. It seems to be the medics who
4 could go through because at that stage the medics were
5 being brought to the scene and a request had been made in
6 that regard, but you say it wasn't your voice.

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 yes, I – I was never contacted at any stage
9 regarding medical support – as
10 I was not in command thereof. I became aware of the
11 medics when I got inside the
12 hill, that I said I was not – I could
13 not say the area is secure before
14 I was inside the hill.

15 -

16 **MR CHASKALSON SC:** You see if you'd gone
17 into hill 3 at that stage you would've known that area
18 was secure.

19 **BRIGADIER CALITZ:** Yes, we know

20 that I only went in much later.

21 **MR CHASKALSON SC:** That at least is your
22 version. Warrant Officer Nong went in immediately. He was
23 the man with the camera in your team, is that correct?

24 **BRIGADIER CALITZ:** I do not know

25 if he was first at the scene, but he was at the scene,

1 it is correct.

2 **MR CHASKALSON SC:** We know that he was

3 taking photographs less than two minutes after your Nyala

4 stopped because we have done that exercise already. Did he

5 do that of his own volition or was it on your instruction

6 that he went into the scene?

7 **BRIGADIER CALITZ:** It was part of the briefing.

8 He had the camera in his possession

9 all the time and

10 he would photograph the people as they were

11 arrested.

12 **MR CHASKALSON SC:** But wouldn't it have

13 been important for him to come with you to the scene of a

14 possible dead body of someone who had apparently attacked a

15 police officer where Lieutenant-Colonel McIntosh was?

16 **BRIGADIER CALITZ:** I just

17 wanted to inform you that it was his work to photograph

18 the people that was arrested. The person next to whom

19 Colonel McIntosh sat, the person was lying still,

20 and did not look like he was being arrested.

21 W/O can come and testify

22 for himself, but he

23 photographed the people being arrested and I went to the

24 person lying still in the field.

25 **MR CHASKALSON SC:** And you didn't direct

1 him to do that, you didn't – he did that in terms of an
2 earlier briefing?

3 **BRIGADIER CALITZ:** I already
4 answered that question.

5 **MR CHASKALSON SC:** Well, let us then go to
6 Pappa11. You will recall that Pappa11 was part of the team
7 that went to the north where you, the north-west where you
8 were doing the arrests. You recall that?

9 **BRIGADIER CALITZ:** I do not
10 think I testified that the people moved with me in a
11 north-westerly direction, I think I referred to Pappa11
12 as the vehicle being at scene 1 before us, that is what
13 I referred to.

14 **MR CHASKALSON SC:** Well, maybe let us –
15 can I ask that GW6C, JJJ178, GW6C is called up. Or in fact
16 I put all of the individual exhibits that I need into that
17 PowerPoint presentation you took earlier called "Movement
18 of Pappa11." If you can call that up and go to the first
19 slide.

20 **CHAIRPERSON:** This is a PowerPoint
21 presentation, it is not an exhibit, is it? Does it have to
22 be an exhibit?

23 **MR CHASKALSON SC:** We can make it an
24 exhibit.

25 **CHAIRPERSON:** If it contains material

1 from other exhibits then you simply have to identify the
2 other exhibits but if it is important and useful to have
3 them altogether – I have been handed a document which perhaps
4 we can make an exhibit. What's the next exhibit? We
5 haven't got – Ms Pillay must come back as a matter of
6 urgency, we need her.

7 **MR CHASKALSON SC:** My team has stepped
8 into the breach behind her and it is KKK19.

9 **CHAIRPERSON:** KKK19, movement of Pappa11,
10 alright.

11 **MR CHASKALSON SC:** And sorry, there was a
12 sub-title which I am afraid has just been deleted on screen
13 because it had the key. That is the key, so I have
14 annotated on this, on these slides of which I think colour
15 copies will be made available in due course but for present
16 purposes can we just look at the screen where colour will
17 come out.

18 **CHAIRPERSON:** We have got colour on our
19 copies or is there some colour that we haven't got?

20 **MR CHASKALSON SC:** No, no, if you have
21 colour, you have colour. I didn't realise we had time to
22 do colour printing. Pappa1 will be circled in red, Pappa5 in
23 blue, Pappa11 in yellow and Pappa4 in green. So if we go to
24 the first slide, that is the slide we have seen several times
25 before, it is annexure GW6C, page 17 of exhibit JJJ178. For

1 present purposes I am interested in your group of vehicles
2 to the north-west so if we can zoom into the top left-hand
3 corner of that and you'll see that at 11:22 on the Protea
4 Coin chopper, which was 16:08:52, we have what we can call
5 the original configuration of vehicles to the north. So we
6 have your Pappa1, Pappa1 as marked on the diagram, I shall just
7 identify it quickly with the pointer - Pappa4 against the
8 bush to your south-east, Pappa11 to your west/south-west and
9 Pappa5 to your north-west. Pappa11 was that vehicle that
10 was, that I am marking now, that was part of your group of
11 four vehicles and with the possible exception of Pappa5, was
12 the vehicle closest to you. Do you recall that the vehicle
13 that I have identified was part of your team up there?
14 **BRIGADIER CALITZ:** Pappa11 was definitely
15 part of the Pappa vehicles that followed up.
16 I never said that he was in
17 that area at that stage, yes, but he was part of
18 the -

19 **MR CHASKALSON SC:** And you accept, were
20 you aware at that stage that there were four Nyalas in
21 addition to the Casspir up to the north with you?

22 **BRIGADIER CALITZ:** I think, Mr
23 Chairperson, the reason I said no,
24 was that the photos you showed me was
25 Pappa1, which was myself and Pappa5, which was

1 Colonel Pitsi and the Casspir with the two Canters.

2 Those were the vehicles

3 used in the arrest process.

4 I do not think

5 Pappa11 was in that photo, that is why I could

6 know if he was there, but I can

7 see he was there in the photo.

8 **MR CHASKALSON SC:** So let us go to the

9 next slide which is sometime later, ETV time 16:13:51 and

10 Pappa11 is still in the same position and the configuration

11 of the four Pappa vehicles is identical. They've been

12 stationary over that period, do you accept that?

13 **CHAIRPERSON:** You say it is Pappa11, of

14 course. Are we going to see something in due course which

15 makes it clear that it is Pappa11? To zoom in on that one,

16 will the clarity be sufficient for us to make –

17 **MR CHASKALSON SC:** No, but we will follow

18 its movements to its final position and then we will zoom

19 in then.

20 **BRIGADIER CALITZ:** I just want to

21 check the time – it is correct, the ETV time is 16:13?

22 **MR CHASKALSON SC:** That is correct.

23 **BRIGADIER CALITZ:** Okay, can we zoom in,

24 as on a previous photo with the same time,

25 there were a vehicle between us and the

1 hill – but we can follow you and then I will look at it.

2 I was just asking as

3 your previous photo showed

4 my vehicle to be the closest to the

5 hill, so I was uncertain about the time

6 on this photo.

7 **MR CHASKALSON SC:** Well, if we go back,

8 if we zoom back out we will see, these are stills that are

9 taken out of the Protea Coin chopper video CC22. Go up a

10 little – no, sorry, down a little and there's the time,

11 16:21, of the video.

12 **CHAIRPERSON:** The ETV time has been

13 established or calculated, I take it using the conversion

14 table and as you heard this morning, we are going to have –

15 a record is going to be compiled because I have said it must

16 be done –

17 **BRIGADIER CALITZ:** I agree.

18 **CHAIRPERSON:** Setting out how each of the

19 key times is established but it take it we can

20 provisionally accept –

21 **BRIGADIER CALITZ:** I agree.

22 **CHAIRPERSON:** - that they've got it

23 right.

24 **BRIGADIER CALITZ:** Thank you, Mr

25 Chairperson.

1 **MR CHASKALSON SC:** Now were you in
2 command of all of the armoured vehicles at that scene?
3 When I say at that scene I mean the four, or let us just
4 confine ourselves to the four Nyalas that we see there.
5 Would you have been in command of that team of four Nyalas?

6 **BRIGADIER CALITZ:** As I testified
7 earlier, I was the operational commander,
8 yes, but each vehicle had its own section
9 commander and then we also had group commanders, which
10 was in control of the section commanders, as I said,
11 each vehicle has his own section commander.

12 **MR CHASKALSON SC:** Well, if Pappa¹¹ at
13 this point decided that it wanted to go into the hill to
14 investigate what was happening there, is this something
15 that it would have done independently or on your command?

16 **BRIGADIER CALITZ:** Mr Chairperson,
17 no, I will not be able to instruct the
18 movements of all the vehicles – the area was
19 kilometres in radius
20 and it would be impossible for me to
21 instruct each vehicle where to go. That
22 was the work of the section commander to see what
23 occurs and then
24 react on that, and they will then
25 contact me.

1 **MR CHASKALSON SC:** So if Pappa11's section
2 head decided Pappa11 would be better used in the heart of
3 the hill, that was a decision that he could take without
4 reference to you?

5 **BRIGADIER CALITZ:** It –

6 **MR CHASKALSON SC:** Even though Pappa11 was
7 right next to you?

8 **BRIGADIER CALITZ:** It is correct. If
9 he saw movement
10 in that direction, he would have reacted on that,
11 that is why I asked about the time of 16:13, I recall
12 the photos taken by W/O Nong was done at 16:12, so he
13 could – there is various possibilities.

14 **[12:12]** He could thought that
15 he had enough people to make the arrests,
16 saw something else occurring and moved
17 into that direction.

18 **MR CHASKALSON SC:** And you'd have no
19 difficulties with that even if he didn't tell you what he
20 was doing, why he was doing it?

21 **BRIGADIER CALITZ:** Mr Chairperson,
22 each Pappa vehicle moved in the direction as the
23 scenes and incidents occurred. When we moved forward at
24 the river bend, we informed the Pappa vehicles
25 that we are going to move forward

1 with a dispersing actin and each section commander

2 got that command.

3 **MR CHASKALSON SC:** But you're supposed to

4 be coordinating all of these movements. Now presumably if

5 someone notices something that has to be attended in the

6 heart of the hill that is something to report to the

7 operational commander because it may make sense in terms of

8 the operation for another vehicle to attend to it.

9 **BRIGADIER CALITZ:** If this

10 person could see what occurred at the

11 centre of that hill, and went there,

12 I agree with you, he had to

13 report it to me.

14 **CHAIRPERSON:** He should as a matter of

15 courtesy if nothing else, had told you where he was going

16 so that you'd know where he was and what he was doing,

17 isn't that right. So one would have expected him -

18 **BRIGADIER CALITZ:** It is correct.

19 **CHAIRPERSON:** To have said to you

20 Brigadier I have seen something down there, I am going off to

21 deal with it and you would have said fine go ahead, isn't

22 that right?

23 **BRIGADIER CALITZ:** It is correct, Mr

24 Chairperson, if he saw it, he would

25 have informed me.

1 **MR CHASKALSON SC:** But it goes a little
2 beyond that. I mean you're dealing with a situation which
3 you at any rate seem to be a situation involving some
4 threats, correct, to the northwest of the hill there.

5 **BRIGADIER CALITZ:** I do not understand, if you
6 will repeat the question.

7 **MR CHASKALSON SC:** You're attending, you
8 were attending to some arrests and remember we had this
9 exchange where I used the word relaxed and you took issue
10 with that and you said this was a very tense situation and,
11 so you were dealing with a situation which you understood
12 to involve some material threats to your team and the SAPS
13 people there.

14 **BRIGADIER CALITZ:** I testified
15 that we received threat and
16 there were a possibility of weapons
17 and that is why we had the protection of the
18 TRT members while making arrests.

19 **MR CHASKALSON SC:** But you thought that,
20 that while you were at that arrest position this was not a
21 relaxed situation?

22 **BRIGADIER CALITZ:** Mr Chairperson,
23 it was my evidence. On the photo
24 we can see the people doing
25 arrests and we could see the TRT

1 members giving protection, due to the fact that

2 there is always a possibility of an incident

3 occurring, so we have to be pro-active.

4 **MR CHASKALSON SC:** So presumably - I find

5 it difficult to accept that if you have four armoured

6 vehicles there and it is a situation which you perceived to

7 be a situation fraught with risk and threat one of those

8 armoured vehicles can just drive off in its own direction

9 where it thinks it would be better used without reference

10 to the operational commander? Are you saying that if the

11 section head thought that was right that was alright?

12 **BRIGADIER CALITZ:** Mr Chairperson, I

13 already testified to that,

14 if he saw something at a distance,

15 his duty was to say, Brigadier, I am seeing

16 something at 9 o'clock and I am going to investigate.

17 I told you at that stage it was

18 my Pappa1, Pappa5, and the Casspir, I am not sure of

19 his call sign, as well as the two Canters at the

20 people on the ground. If you compare the

21 the police officers with the people lying

22 on the ground to be arrested, I think the

23 situation was under control.

24 **MR CHASKALSON SC:** Well the photos that

25 we saw come a little later but did you notice Pappa 11

1 driving off while you were at the scene there?

2 **BRIGADIER CALITZ:** No, Mr

3 Chairperson.

4 **MR CHASKALSON SC:** So there were four

5 armoured vehicles, one of them left but, left without

6 reference to you and you didn't see it going?

7 **BRIGADIER CALITZ:** I did not

8 see him at that stage at all,

9 no.

10 **CHAIRPERSON:** Do you accept that later

11 on, a few minutes after the time that is been talked about,

12 before, has been talked about, before you went down towards

13 hill 3 that you had three vehicles there, three armoured

14 vehicles, three Nyalas.

15 **BRIGADIER CALITZ:** Yes, on the

16 photo that I was aware of – yes.

17 **CHAIRPERSON:** The three.

18 **BRIGADIER CALITZ:** When I,

19 Pappa5, which was Colonel Pitsi and the white

20 Casspir, as well as the two Canters, got out.

21 **CHAIRPERSON:** Okay.

22 **BRIGADIER CALITZ:** In which

23 the suspects were loaded.

24 **CHAIRPERSON:** Now if we look at the

25 second photograph that we have been shown here, the one

1 that is one the scene. There we see there's four vehicles,

2 four Nyalas, is that correct, do you accept that?

3 **MR CHASKALSON SC:** There are in fact five

4 because –

5 **CHAIRPERSON:** Five.

6 **MR CHASKALSON SC:** There's four Nyalas

7 plus the Casspir, the Casspir hasn't been circled.

8 **CHAIRPERSON:** Yes, I know there's four

9 Nyalas, what has been put to you, you see is there were four

10 Nyalas here on this picture and a little bit later on there

11 were three. So there was obviously one there that had

12 gone. Now Mr Chaskalson says it was Nyala11, you didn't

13 see Nyala11, you don't remember seeing Nyala11. You also

14 don't remember anybody coming to you and saying I am going

15 off now but I have seen something I am going to deal with it,

16 in which you would have, wouldn't have objected, you would

17 have said fine. But no one said that to you. That is your

18 evidence.

19 **BRIGADIER CALITZ:** It is correct, Mr

20 Chairperson.

21 **CHAIRPERSON:** But what does seem to be

22 clear if one looks at these photographs is that initially

23 there were four Nyalas and now there were three. You

24 accept that?

25 **BRIGADIER CALITZ:** It is correct, according

1 to the photos, that is why i asked for the

2 times, Mr Chairperson.

3 **COMMISSIONER HEMRAJ**: Who was in command

4 of Pappa11?

5 **BRIGADIER CALITZ**: Commissioner, I have

6 to get back to you, I do not have it on me, but I

7 can establish it and

8 then give you the answer.

9 **MR CHASKALSON SC**: So you didn't notice

10 the movements of Pappa11?

11 **BRIGADIER CALITZ**: It is correct. My

12 attention was not

13 with the arrests or the vehicle there,

14 no.

15 **MR CHASKALSON SC**: But I would imagined

16 that that vehicle was there because it was part of the

17 operation to attend to those arrests, is that not the case?

18 **BRIGADIER CALITZ**: Mr Chairperson,

19 I do not know, but it sounds like I am giving the same

20 answer repeatedly. As I said, I saw the vehicles moving,

21 we saw what happened in front of us,

22 approached the group and warned them, they were split

23 up in smaller groups, encircled, disarmed and

24 arrested. At this 16:13

25 we know the arrests and the action against the

1 police occurred just before this photo was taken. I am working
2 on the time of the photo taken by W/O Nong, which was
3 16:12 – so the arrests
4 and the movement of the vehicles must have been
5 about three minutes before this photo was taken.

6 **MR CHASKALSON SC:** Well you say you
7 didn't follow the movements of Pappa11. I am not going to
8 question you on this, but I just want to put to you that
9 what the stills that we have taken out from the various
10 videos shows that is that Pappa11 drove from that point
11 right into the heart of the hill. Maybe if we can go to
12 the last photograph in that, sorry 7, slide 7. We have been
13 tracking the movement of Pappa11 through the previous ones
14 in time. By 16:15:01 Pappa11 is in the heart of the hill
15 and if we go back up to the, sorry this is 16:11:01 and
16 there's your Pappa5, your Pappa1, that I am marking now,
17 circled in red, in blue is Pappa5, in green is Pappa4. If we
18 can go to the next slide which zooms in that is Pappa11 at
19 16:15:01 and we have plotted Pappa11's position on the next
20 slide, can we go to the next slide on page, on a still that
21 we took from page 46 of exhibit B which is Captain Mohlaki,
22 it is marked Google Earth map of scene 2 and if we zoom in
23 there, can we zoom further in. Now all of the little
24 yellow men are dead bodies, in fact the little yellow man
25 that I am marking now, sorry D and E should be two yellow

1 men because there's two dead bodies there. Now on Google
2 Earth we have worked out that there were ten dead bodies
3 within a 30 metre radius of where Pappa11 was by 16:15:01.

4 Did Pappa11 never make any reports to you about what it
5 could see from the heart of the hill?

6 **BRIGADIER CALITZ:** No, Mr

7 Chairperson. I said I did not follow him,

8 and he did not give me any report on his whereabouts.

9 On that photo,

10 I do not know if one look at the scene itself,

11 if body D, E or C

12 are visible,

13 I do not know if Pappa11 got

14 out at the scene, I do not know if he acquainted

15 himself on what was happening at the scene. I have no information on the
16 actions of Pappa11.

17 **MR CHASKALSON SC:** I am maybe a, the

18 proposition I put to you earlier was insufficiently, was

19 framed with insufficient precision. I am not suggesting

20 that at the point that Pappa11 moved in there, there were

21 ten bodies. I think most of the ten bodies were killed

22 after Pappa11 moved in there. But the point is that Pappa11

23 was in the heart of the hill, at the very heart of the

24 area where people were being killed by 16:15:01 and you are

25 saying that you never received –

1 **CHAIRPERSON:** Before you carry on, Mr

2 Chaskalson, Mr Semenya wants to say something.

3 **MR SEMENYA SC:** Chairperson, throughout the

4 cross-examination Mr Chaskalson is putting factual

5 statements to the witness. I wonder whether he's going to

6 be producing this evidence. Like the statement he now

7 makes that Pappa¹¹ came in or the people were killed

8 subsequent, where does he get these things.

9 **MR CHASKALSON SC:** I cannot prove that

10 people were killed subsequent. I can't prove that. I

11 would imagine –

12 **CHAIRPERSON:** You did put it as a fact

13 you know.

14 **MR CHASKALSON SC:** Did I put it as a

15 fact, did I not say we think?

16 **CHAIRPERSON:** Well even we think, I mean

17 what is the point of telling us what you thought.

18 **MR CHASKALSON SC:** No, no –

19 **CHAIRPERSON:** You're putting the basis

20 of, I mean I would have thought that there's substance in

21 the contention raised by Mr Semenya, possibly the question

22 can be formulated differently. The fact is that if you, if

23 one looks at I take it the photograph taken 16:15:01 we do

24 see an Nyala there, we haven't yet been shown it is Nyala 11

25 but there's a Nyala there and I don't see any bodies there

1 at the time. If it is correct that that spot in which the
2 Nyala is to be found in the photograph to which I referred
3 is correctly plotted onto the Google Earth map then
4 according to Captain Mohlaki there were a number of dead
5 bodies there later. One can't take it any higher than that
6 but I presume on that basis the point to proceed but Mr
7 Semenya's right you know it doesn't help to say what you
8 think. Tell us what you think, facts must be put but the
9 photograph to which I referred plus the Google map thing
10 would go some of the way to establishing the point being
11 made. Any way it doesn't look as if you can help us on
12 that, am I right?

13 **BRIGADIER CALITZ:** Mr Chairperson, I
14 cannot assist you on that, it is correct, yes.

15 **CHAIRPERSON:** And do we know, Mr
16 Chaskalson, that this is indeed Nyala11, can that be
17 established?

18 **MR CHASKALSON SC:** Yes, can we go to JJJ6
19 1270, JJJ6 1270. I am marking Pappa11 now which is in the
20 same position that we saw it in the previous photograph, if
21 we will zoom in we will see the call sign on the roof.

22 **CHAIRPERSON:** So if one looks at this
23 photograph one sees on the right hand side an Nyala. Can
24 we zoom out first please so that I can identify the exact
25 position on the photograph, can we zoom out please

1 completely. Yes, if one looks at the photograph it is the,
2 it is clearly the vehicle on the extreme right hand side of
3 the photograph and we have now zoomed into it and, can we
4 zoom back into it please. You've got to go to the right
5 now to see it and one does see the letters P11 painted on
6 the top. The question arises of course if the place where
7 we now see it is that the place which is depicted on the
8 photograph taken, Botha's photograph KKK16 5130.

9 **MR CHASKALSON SC:** It is the same place,
10 Chairperson, we can call up the previous photograph. I
11 should just indicate that the ETV time of the JJJ6
12 photograph was 16:22:21, approximately seven minutes later.
13 But there is no movement of this vehicle over those seven
14 minutes.

15 **CHAIRPERSON:** Mr Semanya, do you want to
16 say something?

17 **MR SEMENYA SC:** What is the missing link
18 to me, Chairperson, is I see on that photograph there are people
19 already arrested where Pappa11 is clearly identifiable. I
20 don't know necessarily that as you see it on the subsequent
21 one it never shifted throughout that period.

22 **MR CHASKALSON SC:** I'd invite Mr Semanya
23 and his team to study the Protea Coin video and to see if
24 there is any movement of vehicles from that position. If
25 they have a problem in that regard they should come back to

1 us and we can flesh it out.

2 **CHAIRPERSON:** It is all and well Mr

3 Semenya must study it but the fact is it doesn't appear

4 from the evidence before us that that is the case. But that

5 can be done presumably later. We do see, we see some dye

6 on the rocks, we see some rock formations. It may be

7 possible by looking at some of the other earlier

8 photographs to see whether the spot can be identified by

9 reference to the physical features of the ground round

10 about. But maybe we can, that is something that can be done

11 later if it is an issue. Maybe it will have to be done to

12 persuade us that this is, that indeed we have been looking at

13 P11 all the time but –

14 **MR CHASKALSON SC:** Chairperson, if you

15 want persuasion that the position is the same I can do that

16 now. The separate issue to show that there's no movement

17 is a very laborious issue.

18 **CHAIRPERSON:** You've got your light on

19 now, do you want say –

20 **MS LE ROUX:** Yes.

21 **CHAIRPERSON:** Contribution to the

22 debate?

23 **MS LE ROUX:** Thank you, Chairperson, just two

24 contributions. The first is that, to assist my learned

25 friend Mr Chaskalson Botha 5139 which is ETV time 16:16:51,

1 so it is earlier than this, if he wants to use that one
2 then, if you zoom in on that I believe you see members
3 outside of Pappa11 and there are what appear to be bodies.
4 So that is closer to the time of the shootings at scene 2
5 and then my second contribution –

6 **CHAIRPERSON:** Can one see from this if
7 one zooms in that, from the rock formation to the vicinity
8 that is exactly the same place?

9 **BRIGADIER CALITZ:** Mr Chairperson,
10 sorry, if I can just get the reference of that photo, please.
11 Did you say Botha?

12 **MS LE ROUX:** 5139.

13 **BRIGADIER CALITZ:** Thank you, very much.

14 **MS LE ROUX:** And then, Chairperson, if we zoom
15 in on Pappa11 which is the vehicle on the right of the
16 screen at present –

17 **CHAIRPERSON:** Well that certainly does
18 look as if it is in the same position as the other one if
19 one has regard to the dye marks on the rocks –

20 **MS LE ROUX:** And if we zoom in further –

21 **CHAIRPERSON:** And so on.

22 **MS LE ROUX:** And if we can zoom in
23 further –

24 **CHAIRPERSON:** If we zoom in further

25 we will see the 11?

1 **MS LE ROUX:** I believe you can see
2 members that appear to be standing next to the vehicle and
3 in the foreground you can see what end up being bodies.
4 But Chairperson, before I, just quickly the second contribution I
5 wanted to make is in response to Mr Semenya regarding
6 movements. The Human Rights Commission team submitted a
7 document on the movements of the vehicles months ago. The
8 SAPS have had the document were repeatedly invited to make
9 any corrections, objections –

10 **CHAIRPERSON:** That is' the debate we have,
11 that is a debating point you're making now. Do we know this
12 is P11, it certainly appears to be in the position in which
13 P11 was a few minutes later judging by the other
14 photograph, so it looks as if we can provisionally accept
15 that it was P11 and so it, we have a situation, you had
16 four Nyalas then you had three and the fourth one appears
17 to, at an earlier stage, while you people were still busy
18 with the arrested people and so on appears to have moved
19 down to the, to hill 3 and it appears from what we have
20 seen to have gone into the, what is described as the heart
21 of hill 3 and come to rest in this position near the dyed
22 rocks and so on.

23 **[12:32]** That seems provisionally to be the case, so
24 perhaps Mr Chaskalson can then ask you the question he
25 wants to ask you on the basis of that, which you can

1 provisionally accept and if need be we can, you can
2 withdraw the acceptance if it turns out to be incorrect,
3 but it looks right to me at the moment, I must say.

4 **BRIGADIER CALITZ:** Mr Chairperson,

5 I will accept that for now,

6 if I may just ask the time of that

7 photo 5139.

8 **MS LE ROUX:** 16:16:51.

9 **BRIGADIER CALITZ:** 16:16:51 – For now

10 yes, I shall accept it –

11 **CHAIRPERSON:** Now you've got provisional

12 acceptance, which is not the same as provisional sentence.

13 You can proceed, Mr Chaskalson.

14 **MR CHASKALSON SC:** Chairperson, the only

15 question – well, let me take a step back. The presentation

16 tracks the movements of Pappa11 on stills, on videos, into

17 that position. So we can accept that the vehicle –

18 **CHAIRPERSON:** He's provisionally accepted

19 that, so we don't have to spend time on that at the moment.

20 While you've got his provisional acceptance on the table,

21 take it. Don't –

22 **MR CHASKALSON SC:** Can I just make this

23 point; what we can show beyond any reasonable doubt is that

24 the vehicle that ends there is the vehicle that starts up

25 next to Brigadier Calitz's vehicle to the north. That is

1 charted on the videos.

2 **CHAIRPERSON:** I think he's provisionally

3 accepted that.

4 **MR CHASKALSON SC:** The only question that

5 I want to put to you is that would you not have expected

6 one of your commanders who takes his vehicle into the heart

7 of the hill without reference to you and who ends up in

8 the position that Pappa11 ends up, to have made some sort of

9 report to you so that you as operational commander would

10 know that there is something of a fire-fight taking place

11 around this hill?

12 **BRIGADIER CALITZ:** Mr Chairperson,

13 yes, it was my evidence earlier on,

14 that it depended on what he saw at that stage.

15 The way it looks to me the Advocate said

16 there were bodies in the front, if I look at the

17 photos and he saw

18 the people and he knew they were deceased, he would

19 have informed, yes.

20 **CHAIRPERSON:** And you did say it wasn't.

21 You say it wasn't. It wasn't reported.

22 **BRIGADIER CALITZ:** It was not, no. It

23 was not.

24 **CHAIRPERSON:** So what we have to do – you

25 don't have to do it; I am sure Mr Semenya will tell us on

1 Monday who was in charge of Nyala P11 and we will then see
2 if there's a statement from the person concerned and if
3 there isn't, we will obviously have to get one. But that is a
4 matter that can be dealt with in due course, I take it.

5 **MR CHASKALSON SC:** Chairperson, I just
6 want to put my position in relation to these people who can
7 be seen there. We do not believe, or our analysis does not
8 suggest that any of these three people were ultimately
9 killed. In fact if you track the photographs further they
10 appear to move. I think they were probably arrested at
11 that point. They may have been injured.

12 **CHAIRPERSON:** The important point that is
13 hanging in the air at the moment, if I can put it that way,
14 is what happened exactly in relation to P11, who the
15 commander was, what they did, why the commander didn't
16 report to the operational commander, if what the
17 operational commander says in that regard is correct.
18 These are all matters which he can't help us on. These are
19 matters that have to be explored with the commander of P11
20 and I would imagine the way forward – we will find out who he
21 is; we will have a look at his statement and we will take it
22 from there. Is that correct?

23 **MR CHASKALSON SC:** Thank you,
24 Chairperson, and that finally concludes my cross-
25 examination. But before I do conclude the cross-

1 examination I do want to acknowledge that most of the data
2 that I have ended up using in relation to vehicle movements
3 is the product of very detailed research that the South
4 African Human Rights Commission did in relation to plotting
5 positions of vehicles on a range of different photographic
6 and video sources and drawing that to our attention, and I
7 want to thank them for that because there is a formidable
8 amount of work that has gone into it. Sorry, Chairperson,
9 and also in relation to radio communications, they have
10 been of great assistance.

11 **CHAIRPERSON:** Yes, and I take it that
12 acknowledgement has been duly noted by those to whom it has
13 been addressed. Ms Le Roux, as one of the persons to whom
14 that acknowledgement was addressed, I understand you have
15 some questions for the witness. But before you ask them,
16 sorry, I am reminded – I have forgotten – that Adv. Hemraj
17 wants to ask a few questions first.

18 **COMMISSIONER HEMRAJ:** Brigadier, you
19 indicated that you had received a report from Colonel Pitsi
20 about his Nyala being fired at. Did you receive any other
21 reports about live ammunition, ammunition being fired prior
22 to scene 1 taking place?

23 **BRIGADIER CALITZ:** Commissioner, sorry
24 I am a bit confused – “prior to scene” 1 of
25 scene –

1 **COMMISSIONER HEMRAJ:** Prior to scene 1.

2 Prior to the shooting at scene 1.

3 **BRIGADIER CALITZ:** No. No, there were no

4 shooting incidents before scene 1.

5 **COMMISSIONER HEMRAJ:** Did you –

6 **BRIGADIER CALITZ:** If I understand you correctly,

7 yes, if I –

8 **COMMISSIONER HEMRAJ:** Yes, prior to the

9 firing –

10 **CHAIRPERSON:** There are a couple of

11 possibilities. Sorry, forgive my interrupting. Were shots

12 fired on the 16th of August prior to the firing at scene 1?

13 Shots fired, sharp ammunition fired by anybody to your

14 knowledge, reported to you, of which you're aware.

15 **BRIGADIER CALITZ:** Not reported to me,

16 but in hindsight we could see on the video

17 the people were shooting at the

18 police.

19 **CHAIRPERSON:** Ms Le Roux, you can now

20 commence your cross-examination.

21 **CROSS-EXAMINATION BY MS LE ROUX:** Thank

22 you, Chairperson and Commissioners. Good afternoon, Brigadier

23 Calitz.

24 **BRIGADIER CALITZ:** Good afternoon. Can I

25 just, maybe just get a moment. You gave me a bundle, I

1 think it is two files, so that I can just take them out

2 and –

3 **MS LE ROUX:** Sure. Chairperson, perhaps if I

4 can then start with something which is not for the –

5 **CHAIRPERSON:** I am sorry, before you get

6 there –

7 **MS LE ROUX:** Yes.

8 **CHAIRPERSON:** There is a point I think you

9 have to put on record, do you not? That is what you gave us

10 some documents, some of which are going to be handed in as

11 exhibits, statements that were not previously before us.

12 They are typed versions of affidavits, which are in

13 manuscript. The manuscript copies I understand are not

14 available today, but will be made available next week. The

15 typed versions are given to us to make it easier for us to

16 read the statements, easier to read the manuscript.

17 They are all headed "Warning statement." I understand that

18 that is incorrect, that they were not warning statements;

19 they were simply affidavits in manuscript, which were typed

20 out I think by someone from the attorneys representing the

21 SAPS. Is that correct?

22 **MS LE ROUX:** Chairperson, those are my

23 instructions on that and we will make the manuscript

24 versions available. As you said, we provided the

25 typescript versions since they are more legible than the

1 handwritten ones, but the content should be identical.

2 **CHAIRPERSON:** Yes, and the manuscript

3 versions are actually affidavits.

4 **MS LE ROUX:** Correct.

5 **CHAIRPERSON:** Alright.

6 **MS LE ROUX:** Correct.

7 **CHAIRPERSON:** Now I see you have some

8 statements, which you describe in the bundle you, gave us all

9 as new exhibits. Would it be sensible for us to do some

10 housekeeping and mark them all now as exhibits, rather than

11 numbering them as you go along? What do you want me to do?

12 **MS LE ROUX:** Chairperson, I am in your hands.

13 We could mark them all now. That would probably make

14 Monday go a little quicker.

15 **CHAIRPERSON:** Well, I am interested in

16 making things go as quickly as they can possibly go. So

17 the first one that is new is Lieutenant Colonel Ntumkulu.

18 Now what are we going to call your exhibits? LLL?

19 **MS LE ROUX:** I think we are on KKK. I

20 think we just continue the KKK-series.

21 **CHAIRPERSON:** Are we staying with – I beg

22 your pardon, I am sorry.

23 **MS LE ROUX:** If the evidence leaders –

24 **CHAIRPERSON:** This witness is the K-K-K

25 witness, so we will stick with that, and we are at the moment

1 – yes, you are the K-K-K witness, you see, we will stay there.

2 **BRIGADIER CALITZ:** I had various

3 remarks on that, it is correct.

4 **CHAIRPERSON:** Alright, so Lieutenant

5 Colonel Ntumkulu is KKK20. Sergeant F Baloyi is KKK21.

6 Warrant Officer Mokoena is KKK22. Constable Mjefi is

7 KKK23. The anonymous Lonmin interpret, I don't know

8 whether his statement, well I suppose it will have to go –

9 is it not in already?

10 **MS LE ROUX:** Chairperson, I believe that may be

11 in the JJJ series.

12 **CHAIRPERSON:** Alright, well we will not mark

13 that one. I think it has been marked already. Warrant

14 Officer Nong will then be KKK24. Warrant Officer Shange

15 will be KKK25. Constable Seeko is KKK26, and Warrant

16 Officer Kgosana is KKK27. Statement of the commander of

17 Pappa4, that is Warrant Officer Malutswena, is KKK28. The

18 statement of Warrant Officer Makanye, the driver, is KKK29.

19 Constable Mabena is KKK30. Captain Msiza is KKK31.

20 Sergeant FK Baloyi is KKK32 –

21 **BRIGADIER CALITZ:** Mr Chairperson,

22 sorry – my administration informed me of this

23 KKK21 and this Sergeant FK

24 Baloyi, we only get one Foxtrot Kilo Baloyi on records,

25 so I do not know if you placed it on record twice,

1 if you can just

2 confirm that it is two separate people –

3 **CHAIRPERSON:** Well, either different

4 people or either different people or different statements.

5 I mean the same man may have made two statements.

6 **BRIGADIER CALITZ:** We just got one.

7 That is what I was informed, I just wanted to say -

8 **MS LE ROUX:** Chairperson, I believe they are

9 the same person. We should not mark Baloyi a second time.

10 **CHAIRPERSON:** Sorry, are they the same

11 statement and the same person?

12 **MS LE ROUX:** As the statement we have just

13 marked on the first –

14 **BRIGADIER CALITZ:** Then it can be 21.

15 **CHAIRPERSON:** So the second statement,

16 the one I have marked KKK32, that is a separate statement by

17 Sergeant F –

18 **MS LE ROUX:** No, it is the same statement

19 as what we have marked KKK21.

20 **CHAIRPERSON:** Oh, I see. Therefore, I will just

21 keep the number then which we have already for him, which

22 is KKK21.

23 **MS LE ROUX:** Yes.

24 **CHAIRPERSON:** Okay. Then we have

25 Constable Mbotsana, he will be KKK22, his statement rather.

1 Sorry, I beg your pardon, 32, yes. Yes, then the statement

2 of Lieutenant Malobe is KKK33. Constable PS Dlamini is

3 KKK34. Constable Mahume –

4 **MS LE ROUX:** Is already an exhibit HHH31.

5 **CHAIRPERSON:** Sorry, HHH?

6 **MS LE ROUX:** 31.

7 **CHAIRPERSON:** 31, thank you. And

8 Constable Bhika, IZ Bhika, his statement will be KKK35.

9 Constable Mokedi is KKK36, his statement, rather, KKK36.

10 Sergeant Monokwane, KKK37, and Warrant Officer Tawana,

11 KKK38, and then there's a statement which is listed which I

12 did not get, but that is the fault of someone who is got to

13 provide a cake to the counsel, which is the statement of

14 Warrant Officer Kruger and that will be KKK39.

15 **MS LE ROUX:** And Chairperson, which has been

16 delivered to your chambers.

17 **CHAIRPERSON:** Oh well, I see. But –

18 **BRIGADIER CALITZ:** Mr Chairperson, as

19 I –

20 **CHAIRPERSON:** I think the need for a cake

21 to be given to the council is still there.

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 sorry,

24 W/O Kruger, there is one typed and one

25 handwritten statement, which

1 one must I use? I have three of him.

2 **MS LE ROUX:** Brigadier Calitz, I will have

3 a look at the three you have. We have two handwritten

4 statements –

5 **BRIGADIER CALITZ:** I received them – it is

6 the ones that I received from you.

7 **MS LE ROUX:** We should have just given

8 you two handwritten statements, but we can check it when we

9 adjourn.

10 **CHAIRPERSON:** Sorry, are there two

11 statements by Warrant Officer Kruger?

12 **MS LE ROUX:** Yes.

13 **CHAIRPERSON:** So we will call them KKK39.1

14 and 39.2.

15 **BRIGADIER CALITZ:** Thank you.

16 **CHAIRPERSON:** Point 2, and then there's a

17 CALS documents, that is already an exhibit, exhibits

18 actually, JJJ194, JJJ197, and then there's a –

19 **MS LE ROUX:** No, Chairperson, sorry, that CALS

20 document analyses JJJ194 and 197. It needs an exhibit

21 numbers, which would then –

22 **CHAIRPERSON:** Oh, I see. It needs a new

23 number then. So that will be KKK40, and then the

24 chronology opportunities will be KKK –

25 **MS LE ROUX:** 41.

1 **CHAIRPERSON:** 41. Fine. Now that the
2 housekeeping has been done, we can carry on with the cross-
3 examination.

4 **BRIGADIER CALITZ:** Mr Chairperson,
5 I received all the documentation,
6 except the last one, KKK41.

7 **MS LE ROUX:** That is correct, Brigadier.
8 I will hand it up to you when we get there in the cross-
9 examination.

10 **BRIGADIER CALITZ:** Okay, no I just
11 want to know if I may go through them
12 beforehand.

13 **MS LE ROUX:** Yes.

14 **BRIGADIER CALITZ:** Thank you.

15 **CHAIRPERSON:** Is there a reason why he
16 can't get it now?

17 **MS LE ROUX:** Well, Chairperson, in light of
18 today's cross-examination I now need to revise it –

19 **CHAIRPERSON:** Oh, I see. Okay.

20 **MS LE ROUX:** - over the weekend. So I
21 will do that.

22 **CHAIRPERSON:** You'll waste your time
23 looking at an unrevised document if you're going to get a
24 new one on Monday – Monday morning?

25 **BRIGADIER CALITZ:** Mr Chairperson, I am

1 just afraid that if I get it on Monday, and questioned on it,

2 but it is not such a huge issue –

3 **CHAIRPERSON:** I take it that – how

4 extensive is the revision going to be? I mean is there a

5 reason why he can't see it now?

6 **MS LE ROUX:** Chairperson, there are some

7 revisions that I do need to make and will –

8 **CHAIRPERSON:** No, I understand that, but

9 is there any harm in his seeing the unrevised one?

10 **MS LE ROUX:** I'd prefer that he didn't

11 and I'd prefer to conduct my cross-examination with the

12 correct document –

13 **CHAIRPERSON:** Alright.

14 **MS LE ROUX:** - because I may make some

15 significant edits to it once I have taken some instructions.

16 So I'd rather just hand it to him when we get there in the

17 cross-examination.

18 **CHAIRPERSON:** You see, it may cause us

19 problems on Monday because when you give him the new

20 document he'll need time to study it.

21 **MR CHASKALSON SC:** Can I suggest that we

22 might resolve this problem by arranging through email for a

23 revised document to be made available to Brigadier Calitz

24 by Saturday afternoon at the latest?

25 **CHAIRPERSON:** I take it you wouldn't

1 object to that, Brigadier?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 I just want to get the document -

4 the document was emailed, but too large

5 to be delivered.

6 **MS LE ROUX:** No, no, no Brigadier Calitz,

7 that was the field of view documents. The chronology is a

8 two-pager. We will make the revisions and we can provide

9 them to the SAPS -

10 **CHAIRPERSON:** So if you get it by

11 tomorrow afternoon it will spoil some of your weekend but

12 at least you won't be taken by surprise on Monday morning.

13 That is fair, is it?

14 **BRIGADIER CALITZ:** If I can get it by

15 tomorrow - I am willing to go through

16 it.

17 **CHAIRPERSON:** Okay, you're being very

18 cooperative. Thank you.

19 **BRIGADIER CALITZ:** Thank you, very much.

20 **CHAIRPERSON:** I appreciate it. Right,

21 let us carry on, Ms Le Roux.

22 **MS LE ROUX:** Thanks, Chairperson, but before we

23 start I do need to raise one concern which the Human Rights

24 Commission team have and I must raise it on the record,

25 which is that we have noted during the evidence leaders'

1 cross-examination of Brigadier Calitz two issues that have
2 arisen that we would seek the Commission's guidance and
3 direction on.

4 The first is that objections have been made and
5 doubt seems to have been cast during the testimony on some
6 conclusions reached in the analysis of objective evidence,
7 documents that the evidence leaders were using during their
8 cross-examination, and then the transcript for both the
9 Ryland video and the Protea Coin Chopper video, there still
10 seems to be some discrepancies about who's speaking and
11 what is being said.

12 Now of course these documents have been
13 previously circulated and provided to all parties and the
14 evidence leaders have repeatedly requested that parties
15 make any corrections, suggest any modifications and the
16 like, but it is more than merely coming to an agreement
17 between the parties in the room as to what is there because
18 this needs to become the evidence before the Commission,
19 and there is only one party that can prove the contents of
20 those documents to this Commission and that is the SAPS.

21 So while SAPS has repeatedly been requested to
22 perform the analysis and listen to the transcript,
23 undertake the exercise to identify all the voices, put down
24 in a transcript to their best possible recollection what
25 the words are, similarly with the documents like the

1 movement analyses, there's only the SAPS can tell us if
2 anything is wrong there and point us to other objective
3 evidence that contradicts those conclusions. Repeated
4 requests have been made and we would ask that the
5 Commission direct the SAPS to do that, and if it can be
6 done with a similar deadline to when they will be provided
7 the witness statements by next Friday, that would be most
8 helpful because we keep using these documents and there
9 still seems not to be agreement on it.

10 **CHAIRPERSON:** Alright, okay. Let us see
11 what Mr Semenya says about it. Mr Semenya?

12 **MR SEMENYA SC:** Chairperson, this is a very
13 curious way - and I am using that word politely - of
14 treating evidence. The last time when we went to ask Mr
15 Lubbe to do the exercises that informed these conclusions,
16 we are just being given documents. We are not told how
17 those conclusions are arrived at and we are invited to
18 admit them, or to show error in them. That is not how it
19 works. If they want an admission from us, they must then
20 sit with us and say we have come to this conclusion using
21 material A, B, C, D, E, F, G, and that is why we come to
22 this conclusion. Then we can make an admission, not give
23 us conclusions and -

24 **CHAIRPERSON:** That sounds fair -

25 **MR SEMENYA SC:** - to make admissions.

1 **CHAIRPERSON:** But that is something that
2 can be sorted out outside the chamber. I understand the
3 situation. You're asked to make a whole series of
4 admissions. You'd like to know how the requested admission
5 is arrived at. It doesn't seem to be unreasonable but
6 that is something that you can sort out outside the chamber
7 I think.

8 **[12:52] MS LE ROUX:** Chairperson, the difficulty is
9 that –

10 **CHAIRPERSON:** Yes, let us be patient. I
11 can understand the point you make and I can understand Mr
12 Semanya's one, but this isn't something really that take up
13 our time here in the Commission. I would have thought
14 parties can get together. I know you've asked for
15 admissions and they haven't replied and all that kind of
16 thing, but I am sure that they had a number of other things
17 to attend to as well, but Mr Semanya may I ask you, when we
18 adjourn today, to arrange a meeting with Ms Le Roux, you
19 and your attorney, to arrange a meeting with Ms Le Roux and
20 those instructing her and see whether a practical solution
21 can't be found to this problem. In the meanwhile, we will
22 proceed on the basis that we are proceeding on so far, that
23 these things are provisionally accepted as correct and we
24 will proceed on that basis. As far as conclusions in
25 relation to movements of vehicles is concerned, I am not

1 sure how much of that we are going to deal with today
2 anyway, but I would hope that – yes, it is been drawn to my
3 attention that we have been having so much fun that I lost
4 track of time. It is actually five to one already. So I
5 don't know if there's any point actually in him flying off
6 your first knockout blow question.

7 **MS LE ROUX:** Probably not, Chairperson.

8 **CHAIRPERSON:** So keep your first knockout
9 blow question for Monday morning, but in the meanwhile that
10 means there are five sitting minutes that you can devote
11 talking to Mr Semenya on the topic I discussed with you and
12 we will now adjourn until 9 o'clock Monday morning.

13 **[COMMISSION ADJOURNED]**

