

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 160

3 DECEMBER 2013

PAGES 18230 TO 18431



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1 [PROCEEDINGS ON 3 DECEMBER 2013]
 2 [09:10] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath.
 4 ADRIAAN MARTHINUS CALITZ: s.u.o.
 5 CHAIRPERSON: Mr Chaskalson.
 6 MR CHASKALSON SC: Thank you,
 7 Chairperson. Brigadier, I haven't engaged in a tactical
 8 retreat; it's just that we're not going to be moving blocks
 9 around, so I'd prefer to go back where I have my usual
 10 position.
 11 CHAIRPERSON: You can also stage a
 12 tactical retreat if you wish. You can stay where you are,
 13 if you want to, or you can go to –
 14 BRIGADIER CALITZ: No, no, no, mnr die
 15 Voorsitter, ek het hier ingeneem, gistermiddag was die
 16 voorstel dat ons van hier af nou verder sal met die
 17 blokkies – maar ek gaan nou terugbeweeg. Dankie, mnr die
 18 Voorsitter.
 19 CHAIRPERSON: You can decide. I won't
 20 dictate to you. Are we ready to go now?
 21 MR CHASKALSON SC: Brigadier, are you
 22 ready in your new place, or in your old place?
 23 BRIGADIER CALITZ: My old place. Ek is
 24 reg, dankie, mnr die Voorsitter.
 25 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):

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1 Brigadier, just to finish off on scene 1, your evidence was
 2 that you realised that after incident 2 the strikers were
 3 moving around the kraal and you realised that the only way
 4 through for them would be through passage A. Do you
 5 confirm that?
 6 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 7 dink as ons miskien voor ons daar kom, u het ons 'n taking
 8 gegee rondom die "passage A, passage B" –
 9 CHAIRPERSON: I did give you homework and
 10 I rather –
 11 BRIGADIER CALITZ: Ons sal miskien net –
 12 CHAIRPERSON: - rather inconsiderately
 13 didn't ask you to give us the results of your homework.
 14 Are you ready to do that? Mr Chaskalson was given homework
 15 too, but he -
 16 BRIGADIER CALITZ: Ek dink dit gaan die
 17 antwoord beïnvloed, mnr die Voorsitter, want as ek nou sê
 18 nee ek stem nie saam nie dan gaan ons weer begin op A en B,
 19 miskien as ek –
 20 CHAIRPERSON: Let's get that issue off
 21 the table, let's deal with it now.
 22 BRIGADIER CALITZ: Kan ek net na die
 23 "transcript" toe gaan en dan kan ons sien waar ek dan
 24 bedoel het rondom die A en B. Mnr die Voorsitter, kan ek
 25 terwyl ek op die huiswerk is miskien net vir u bevestig,

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1 die Nyala se registrasienommer, terwyl ek die lêer voor my
 2 oop het, dit was inderdaad Bravo Hotel Lima 297 Bravo.
 3 So –
 4 CHAIRPERSON: That's the one we saw on
 5 the screen?
 6 BRIGADIER CALITZ: Dit is as –
 7 CHAIRPERSON: So Mr Chaskalson's
 8 contention that this was Papa1 is correct?
 9 BRIGADIER CALITZ: Die nommerplaat wat
 10 ons gesien het op die – so ek het die dokument gaan trek en
 11 ek wil net – dit was my eerste –
 12 CHAIRPERSON: Ja, alright, thank you.
 13 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 14 het die transkripsie vanoggend net na 8 gekry, so verskoon,
 15 ek het net vinnig notas gemaak. Ek dink waar dit begin het
 16 is waar mnr Chaskalson verwys het op bladsy 18152, 18152,
 17 as ek dit maar net kan lees, paragraaf 16, "Brigadier
 18 Calitz, I must correct –"
 19 VOORSITTER: Nee, nee, dis nie 'n
 20 paragraaf nie, dis 'n reël nommer.
 21 BRIGADIER CALITZ: O, reël 16, ekskuus,
 22 mnr die Voorsitter, ek verstaan. Die reël nommer 16,
 23 Brigadier Calitz, "I must correct you here; passage A
 24 wasn't my suggestion, it was your suggestion. I asked you
 25 where you wanted to block to be, block to be placed" – I

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1 think that is "where you wanted them to be blocked, and you
 2 marked the position as position A where I want them to be
 3 blocked." So dit is waar ons verskil het, mnr die
 4 Voorsitter, so as ek u kan terugneem na die transkripsie
 5 van gister, bladsy 18136, daar is maar net weer 'n paar
 6 verwysings hoe ek dit verstaan het. Mnr die Voorsitter, ek
 7 kan lees, ek sien dis nie op die – so laat ek maar net -
 8 mnr die Voorsitter het in lyn, reël 11 van bladsy 18136
 9 gesê, "You wanted the second blockage to take place in the
 10 vicinity of what I call your second position." Brigadier
 11 Calitz, ek lees dit maar soos dit hier voor my staan, "Ek
 12 noem dit om insident 3 te keer voor dit kon plaasvind, mnr
 13 die Voorsitter." So dit is waar, die eerste deel waar ek
 14 gesê het nie A nie voor dit kon plaasvind.
 15 Die volgende een is bladsy 18138, reël nommer 5,
 16 waar mnr Chaskalson dan gesê het, "And what were you hoping
 17 to block in that instruction? What passage were you hoping
 18 to block?" Dit is die eerste voorstel deur mnr Chaskalson
 19 na 'n "passage" toe, waar die woordjie die eerste keer
 20 verskyn. So dit was mnr Chaskalson se voorstel, soos ek
 21 dit verstaan. Lyn 10 en 11 net onder dit, toe het ek
 22 geantwoord, "The only entrance that is available there,"
 23 dit is waar ek mnr Chaskalson se vraag geantwoord het wat
 24 pertinent na die "passage" verwys, "So you wanted Papa
 25 vehicles to block the only entrance around the west side of

<p style="text-align: right;">Page 18234</p> <p>1 the kraal." Dit is die tweede voorstel deur mnr Chaskalson 2 en nie my – hy het weer verwys na die "entrance." So ek 3 het vir hom dan gesê hy praat van die "east," I said "I 4 have it more to the north, north-westerly direction." Wat 5 mnr Chaskalson dan gesê het, "No, I think you are right," 6 en by lyn 18 op dieselfde bladsy het hy gesê "So you wanted 7 your Papa vehicles to block the northeast" – toe kom hy 8 terug na "northeast" – "the opening to the northeast of the 9 kraal?" So weereens het mnr Chaskalson verwys na die 10 opening en dit is waar ek sê die derde keer waar hy die 11 voorstel gemaak het en nie ek nie. Op bladsy 139 – 12 VOORSITTER: Maar wat was u antwoord 13 daarop? 14 BRIGADIER CALITZ: Dis korrek, mnr die 15 Voorsitter. 16 VOORSITTER: Wat was u antwoord daarop? 17 Kyk, dit was sy vraag gewees, maar hoe het u daarop 18 geantwoord? 19 BRIGADIER CALITZ: Mnr die Voorsitter, ek 20 het deurentyd met my voertuig gepraat. Ek dink later as 21 ons deur die "transcription" self, die video "recording" 22 sien sal u hoor dat daar was breuke van minute, van 23 sekondes waar ek stil was. Ek het heelyd met my mense 24 gepraat en ek het gery na die kant toe, na daardie kant 25 toe, en dit is waar ek wil kom na die volgende voorbeeld.</p>	<p style="text-align: right;">Page 18236</p> <p>1 waar mnr Chaskalson my dan onderbreek het dat ek nie verder 2 kon verduidelik nie en hy het gesê, Mr Chaskalson, die sin 3 lees so; "Miskien bietjie voor dit, mnr die Voorsitter, en 4 daar by die draad aan die," en toe val mnr Chaskalson in 5 die rede en sê, "Perhaps, Brigadier, if you can just 6 indicate on the map and we can put the camera on it." So 7 dit was daar onderbreek en dan as ons net afgaan, bladsy 8 139, dan wil ek net iets regstel, mnr die Voorsitter. U 9 het gepraat van, of Brigadier Calitz het gesê, "Miskien 10 bietjie voor dit," en dan later in die sin, Chairperson, 11 "Is that correct that you did actually want to block, to be 12 further back as you've now indicated?" So dit het ek net 13 reggestel dat dit vorentoe was en nie, not back, en dan 14 bladsy 18140, lyn nommer 13, ek lees die woorde, mnr 15 Chaskalson, "And Brigadier, can we just clarify that, so 16 that there's no doubt at all, because it seems to me there 17 are two possible points to block." Dit is die, ek dink die 18 vierde voorstel weereens na die "two possible points to 19 block" wat ek nie voorgestel het nie, en dan bladsy 140 wat 20 oorgaan na 141, dit is 'n paar lyne, van lyn 18 af, 21 Brigadier Calitz, "Ja, die opdrag was" – miskien net om te 22 verwys na mnr Chaskalson se vorige een, "It seems to me 23 there are two possible points to block, as you have 24 indicated now." Brigadier Calitz reageer, ek het gesê, "Ja 25 die opdrag was net versigtig wees" - wat ek bedoel het, u</p>
<p style="text-align: right;">Page 18235</p> <p>1 Daar is geen opdrag, daar is een opdrag en dit bly dat ek, 2 "Daar is nie net een opdrag nie en ek bly nie stil nie, so 3 ja, ek het gekommunikeer met die Pappa voertuie." Toe het 4 u gevra, mnr Chairperson, dit is bladsy 139 lyn 5 tot 11 – 5 VOORSITTER: Is dit ek wat vra of mnr 6 Chaskalson wat vra? 7 BRIGADIER CALITZ: U, mnr die Voorsitter. 8 Kan ek dit maar miskien lees soos dit hier – dan is dit 9 makliker as die name wat – 10 VOORSITTER: Dis die "Chairperson" of 11 iets. 12 BRIGADIER CALITZ: Dit is wat hulle – 13 VOORSITTER: In die transkripsie praat 14 hulle van "Chairperson." Dit is korrek – 15 BRIGADIER CALITZ: Ek sal dit lees soos 16 dit voor my staan, mnr die Voorsitter. Chairperson, "Would 17 I oversimplify if I said that you wanted to block was the 18 passages effectively" - ek dink dit was 'n reaksie dan soos 19 ek dit verstaan het op – "between the corrugated iron shack 20 on the one side and that, what I think you've called the 21 north-eastern wall of the kraal. Is that correct?" Toe 22 het ek geantwoord, Brigadier Calitz, "Miskien bietjie voor 23 dit, mnr die Voorsitter." Dit is in lyn 11. "Miskien 24 bietjie voor dit, mnr die Voorsitter, en dan daar by die 25 draad," en toe ek wil aangaan, dit is waar ek, in lyn 12</p>	<p style="text-align: right;">Page 18237</p> <p>1 verstaan my dalk verkeerd met die woorde 'net versigtig 2 wees,' mnr die Voorsitter – "en soos u vroeër gesê het, die 3 opdrag was nie vir my voertuie om op te lyn, soos u vroeër 4 tereg opgery het nie. Dit was nie, die opdrag vir my lede, 5 'Move around and block the participants.'" Dit was die 6 opdrag. "So die 'moving around,' die lede en die 7 bevelvoerder sal dan terugval op die voorligting wat aan 8 hulle gegee is omdat elkeen, soos ek gesê het, seksieleiers 9 gaan nie uit sy eie besluit vat nie; hulle gaan op opdrag. 10 So die opdrag wat gegee was en die voorligting is dat die 11 mense moet uitbeweeg" - so die woordjie "uitbeweeg" dui 12 verder as die punt – "in daardie formasie, en dit was die 13 enigste pad wat ons kon uitbeweeg so vroeg as moontlik, 14 maar nie pertinent het ek vir hulle gesê in 'n lyn tussen 15 die kraal en die draad nie, nee, mnr die Voorsitter." So 16 hier het ek dit duidelik gesê in lyn nommer 6 en 7 van 17 bladsy 18141. 18 Mnr die Voorsitter, dan net onder dit, 19 Chairperson, "I see. So Mr Chaskalson is suggesting that 20 there were two possible places" - so ek verstaan mnr 21 Voorsitter het dan vir mnr Chaskalson gesê dit was sy 22 voorstel – "passages perhaps where the blockage could take 23 place. The one is the one that he was indicating, which I 24 think is more or less what you've indicated to us," en my 25 antwoord op u vraag was, mnr die Voorsitter, in lyn 13 van</p>

<p style="text-align: right;">Page 18238</p> <p>1 bladsy 18141, is, "So vroeg as moontlik," nie weereens nie 2 daar by die punt nie.</p> <p>3 As ons bietjie ondertoe kan beweeg, 18141, lyn 4 nommer 18, "That is the first position and that is the 5 other one you wanted to show, Mr Chaskalson," waar die 6 Chairperson dan vir hom gevra het. Hy het gesê, "The other 7 one would be the one I'm indicating now at the base of the 8 kraal." Dit sal weereens wees – ek dink dis die vyfde of 9 sesde voorstel van mnr Chaskalson wat dan na punt B verwys 10 het.</p> <p>11 Op bladsy 18142 – ek is amper klaar, mnr die 12 Voorsitter – lyn 19 het Kommissaris Hemraj vir my gevra, ek 13 dink ter verduideliking, "Well, if you say those are the 14 areas you possibly want to block, and where you would 15 contemplate that the vehicles are placed?" Toe sê ek, "Dit 16 is korrek, uit die beweeg van die voertuie, Kommissaris." 17 Die uitbeweeg van die voertuie, Kommissaris. So daarna het 18 ek nie na die stasies nie maar die uitbeweeg van die 19 voertuie het ek na dit verwys.</p> <p>20 Dan die volgende bladsy, bladsy 18143 – ekskuus 21 as ek te vinnig gaan vir die "translators" miskien – lyn 22 nommer 9 en 11, Brigadier Calitz, of die Chairperson, dit 23 was gewees, "You are indicating the position more or less 24 what you call incident 2 took place?" Dan het ek gesê, 25 "Dit is korrek, mnr die Voorsitter. Hierdie is nou – die</p>	<p style="text-align: right;">Page 18240</p> <p>1 het ek maar net verwys weer na die "positive attraction 2 point" wat dan nie van "passage" A kon wees nie want 3 "passage" A sou dan, daar was 'n draad die kant en 'n kraal 4 die kant. So die "positive attraction point" het ek 5 weereens verwys na my voertuie wat om sou beweeg en van 6 daar af dan die aksie sou loods. So dit miskien net die 7 antwoorde op die vrae dat dit my voorstel was en ek glo uit 8 die transkripsie uit spreek vanself. Dankie, mnr die 9 Voorsitter.</p> <p>10 MR CHASKALSON SC: Chairperson, if I can 11 just respond by referring the Commission to page 18139, 12 lines 12 to 16, because unfortunately what the transcript 13 doesn't show is what was going on in the map and was being 14 recorded at the same time, but at page 12 to 16 I –</p> <p>15 CHAIRPERSON: Line 12.</p> <p>16 MR CHASKALSON SC: - line 12 to 16, 17 18139, I say, "Perhaps if the Brigadier can just indicate 18 on this map and we can put the camera on so we can 19 understand exactly where he wanted the block," and at that 20 point the Brigadier put a wooden block across passage A, 21 between lines 15 and 16 and then from line 16, Chairperson, 22 you describe the position that you saw on the map.</p> <p>23 CHAIRPERSON: How did I describe it?</p> <p>24 MR CHASKALSON SC: "So it's essentially 25 the passage, if one describes it in a simple form, between</p>
<p style="text-align: right;">Page 18239</p> <p>1 lyne is nie korrek nie, maar die uiteendryf aksie," dit is 2 waar ek met die rooi gemaak het waar ons dan die uiteendryf 3 aksie gehad het, as u kan onthou. "So dit was om die 4 persone te keer om om te beweeg en daar deur te beweeg." 5 So weereens nie eers as hulle by A kom, maar om te keer dat 6 hulle dan om beweeg. So dit is die lyn wat ek verwys het.</p> <p>7 Dan 143, paragraaf 15 het Chairperson gesê, "In 8 daardie rigting?" Brigadier Calitz, "In daardie rigting, 9 mnr die Voorsitter." Chairperson, "Passage A." Toe sê ek, 10 "Passage A. Die voorligting aan die groep was dan dat die 11 Openbare Orde Polisiëring voertuie om beweeg, sou hulle dan 12 'n lyn vorm - 'n lyn sou aan die buitekant wees." Dit is 13 waar ons verwys het na "passage A" aan die buitekant van 14 die "passage A" wat ons dan verwys het, mnr die Voorsitter.</p> <p>15 Dan tweede of derde laaste enetjie, net verder 16 af, page 18143, lyn nommer 21 tot 22, Chairperson, "Passage 17 B," het u toe vir my gevra, of die sin het verder gelees, 18 laat ek dit net aanmekeer lees, dit sou die lyn vorm waar 19 hulle aan die buitekant sou wees. Die enigste opening in 20 die kraal waar hulle kon uitbeweeg, passage B het u na 21 verwys. Toe sê ek, "Verby passage B, verby passage A en 22 hulle sou dan basies op vorm om 'n uiteendryf aksie in die 23 rigting van koppie 2 te loods. Dit was die aanvanklike – 24 die voorligting aan die lede," mnr die Voorsitter, en dan 25 ek dink die laaste enetjie, as ek kan verwys, 144, lyn 23,</p>	<p style="text-align: right;">Page 18241</p> <p>1 the corrugated iron shack which has been described as the 2 'sinkhuisie' and the wall of the kraal which is facing it, 3 and you've now – is that correct, or did you actually want 4 the block to be further back, as you've indicated it, in 5 other words along that wall of the kraal, moving across to 6 the fenced enclosure on the other side? Is that right? In 7 other words they wouldn't have got to the kraal; they would 8 have to more or less turn around, not around, they would 9 have to turn slightly to come further on in the gap between 10 the corrugated iron shack and the kraal. You wanted to 11 stop them from getting there. You wanted actually to stop 12 them from passing between the edge of the kraal and the 13 opposite side, where one sees the corner of the fenced 14 enclosure. Is that correct?" and Brigadier Calitz says, 15 "Ek dink dit is korrek, mnr die Voorsitter. Die hoek van 16 die draad, as ek nou so vinnig kan sê, en die in lyn met 17 die hoek van die kraal op so 'n vroeë stadium as moontlik, 18 as ek dit so kan stel?" So the positioning of the block 19 was positioning that was chosen by the Brigadier in 20 response to a question that I put to him, which said, 21 "Perhaps if the Brigadier can just indicate on this map and 22 we can put the camera on so that we can understand exactly 23 where he wanted the block."</p> <p>24 [09:30] CHAIRPERSON: I must say I agree with the 25 comment that Adv Hemraj just made to me that the record</p>

<p style="text-align: right;">Page 18242</p> <p>1 speaks for itself. I understand you have a contention 2 based upon the passage you've read. The Brigadier has 3 another contention based on other passages that he read, so 4 I think maybe to be fair it may have included those pages 5 but I take it that that's really as far as one can go. The 6 record must now speak for itself, I would've thought, 7 unless you're proposing to ask further questions. 8 MR CHASKALSON SC: Only, it must speak 9 for itself but it must be read also with the video 10 recording which shows the movement of the blocks on the map 11 at the corresponding time. 12 CHAIRPERSON: Yes, Adv Tokota and Adv Hemraj and 13 I, all three of us think that this point has been taken as 14 far as it can go. From now on the record must speak for 15 itself. 16 MR CHASKALSON SC: But then, Brigadier, 17 to return to the question I asked you before you reported 18 on the homework, you realised that after incident 2 the 19 strikers were moving around the kraal, that's been your 20 evidence thus far and you realised that the only way 21 through for them was through passage A, if they were to get 22 into the police enclosure by going around the kraal. Do 23 you take issue with either of those propositions? 24 BRIGADIER CALITZ: Mnr die Voorsitter, as 25 ons dalk nou net – daar is nou twee of drie vrae in</p>	<p style="text-align: right;">Page 18244</p> <p>1 ek net die vraag kan reg verstaan, bedoel die advokaat dit 2 is die enigste ingang na – as hy verwys tussen die shack en 3 die kraal, was dit die enigste ingang in daardie rigting of 4 bedoel hy na die, na die nedersetting? Ek wil net seker 5 maak ek verstaan die vraag korrek. 6 MR CHASKALSON SC: My question is once 7 the gap to the east, to the west of the kraal had been 8 closed, you realised that the only way that the strikers 9 could get into the police safe enclosure was by coming 10 round the east side of the kraal. 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek 12 dink dit was presies wat ek getuig het toe ek die voertuie 13 gesê het – 14 CHAIRPERSON: He is just trying to get you to 15 confirm that that's your evidence. My recollection is that 16 that's what you said but he's just asking you to confirm 17 that that is so and you do so, so we can move on. 18 MR CHASKALSON SC: And you knew also that 19 you could block access to the east side of the kraal by 20 blocking passage A. 21 BRIGADIER CALITZ: Nee, mnr die 22 Voorsitter, ek het voorheen getuig dat dit was nooit deel 23 van die plan dat ons gesien het daar is 'n passage A en dat 24 ons daardie deel so kan blok, maar wel vroeër, as die 25 voertuie uitbeweeg was daar wel 'n linie waar die</p>
<p style="text-align: right;">Page 18243</p> <p>1 daardie. As ons net vraag per vraag, wat was u eerste 2 vraag, asseblief? 3 MR CHASKALSON SC: You realised that the 4 strikers were moving around the kraal. 5 CHAIRPERSON: From – 6 MR CHASKALSON SC: From incident 2. 7 CHAIRPERSON: When do you say the incident at the 8 kraal took place. 9 BRIGADIER CALITZ: Dit was my getuienis, 10 mnr die Voorsitter, dat terwyl ek beweeg het, het ek gesien 11 die agterste groep het ombeweeg en dit was my idee dat ons 12 dan na die volgende fase sou oorgaan, dat hulle dan – 'n 13 uiteendryfaksie. Dit was ook my getuienis dat toe ek 14 ombeweeg en my posisie voor by die draad waar ons nou weet 15 papa2 geëindig het, as ek dit kan noem posisie 2, dit is 16 waar ek gesien het dat die strikers ombeweeg en inderdaad 17 nie uiteen gedryf het nie. 18 MR CHASKALSON SC: But at all stages you 19 knew that the only way that the strikers could get, once 20 the gap to the west of the kraal had been closed the only 21 way the strikers could get into the safe enclosure was now 22 by going round the kraal and through the passage A on the 23 north-east side of the kraal. You were aware of that at 24 all times, is that not correct? 25 BRIGADIER CALITZ: Mnr die Voorsitter, as</p>	<p style="text-align: right;">Page 18245</p> <p>1 uiteendryfaksie dan sou plaasvind. 2 MR CHASKALSON SC: But Brigadier, the 3 record will speak for itself in this respect but your 4 testimony was that you realised that by blocking passage A 5 you could block access to the eastern side of the kraal. 6 BRIGADIER CALITZ: Mnr die Voorsitter, op 7 'n vroeë stadium, ja. Ek het gesê sover as moontlik 8 vorentoe. As ons daar blok dan was dit waar die 9 uiteendryfaksies dan sou plaasgevind het, dit is korrek. 10 MR CHASKALSON SC: And you knew also that 11 if you couldn't block the strikers from getting down the 12 eastern side of the kraal there was likely to be a 13 confrontation between the strikers and the TRT who were 14 supposed to be forming up behind. 15 CHAIRPERSON: I don't know that that's correct, Mr 16 Chaskalson. You remember there were two lines. The first 17 one was the POP line. I know that if the POP – and they 18 were going to use the so-called force continuum, less than 19 lethal force. Now we know also the plan was that if that 20 failed, if that did not prevent the strikers from advancing 21 further then the POP people were going to retreat to the 22 safety of the Nyalas and the next line of defence would be 23 the TRT, but you've left out the POP part of the plan in 24 the question you've asked. 25 MR CHASKALSON SC: Maybe we need to</p>

<p style="text-align: right;">Page 18246</p> <p>1 clarify that because I always understood that the POP part 2 of the plan was essentially the block that you had in mind. 3 Who was going to effect the block? 4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 weereens die rekord sal wys, ons het soveel keer daaroor 6 gepraat, dat die openbare orde Polisiëringslyn se opdrag 7 was, gaan blok, om uiteen te dryf en dan gaan ons oor na 8 die volgende fase. Die vraag was aan my pertinent gestel 9 wat beteken block? Ek het aan u verduidelik by insident 2 10 sou die lede uitklim langs die voertuie. Ek dink dit was 11 by insident 3, ons kon dit sien op die TV, so daar was 'n 12 pertinente lyn van openbare orde polisiëring – 13 CHAIRPERSON: So the block was going to be the 14 line of POP members. If for some reason they couldn't 15 block because the people were, the strikers were undeterred 16 by the teargas and the stun grenades and the water cannon, 17 then they were going to go back, go back to the safety of 18 the Nyalas and the next line of defence was going to be the 19 TRT. That's the question being put to you and I take it 20 that is correct. 21 BRIGADIER CALITZ: As dit die vraag is, 22 dit is korrek, mnr die Voorsitter. 23 MR CHASKALSON SC: And if there was a 24 confrontation between the TRT and the strikers there was 25 likely to be a high risk of loss of life, at least on the</p>	<p style="text-align: right;">Page 18248</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 dit is altyd my, kan ek sê my verantwoordelikheid gewees om 3 die openbare orde Polisiëringslyn in plek te kry so vinnig 4 as moontlik soos wat die voorligting dan verloop het, sodat 5 hulle dan op 'n baie vroeë stadium – ons weet nou die plan 6 was ge-interrupt, so ons moes in plek sit soos wat ons sou 7 beweeg het van fase 2, 3, moes nou maar net baie vroeër in 8 plek kom en soos ons gister gesien het, ek dink 'n minuut 9 en 30 sekondes as ek op die video gekyk het, dit is die tyd 10 wat ek gehad het om dit in te sit. So beslis ja, dit sal 11 altyd, ons opsie sal altyd 'n veilige opsie wees, non- 12 lethal tot waar die polisie nie meer kan nie en dan het ons 13 geen ander keuse gehad as om tactically te retreat nie. 14 MR CHASKALSON SC: And Brigadier, to 15 block and to disperse are basis crowd management 16 techniques, you don't need to spell out what you have in 17 mind, your POPS people know what that means. 18 BRIGADIER CALITZ: Die groep 19 bevelvoerders, die seksie leiers en selfs die lede, dit is 20 deel van ons opleiding en dit is deel van wat ons, ek kan 21 amper sê op 'n daaglikse basis doen. Dit is my werk vir 22 die afgelope 20 jaar, mnr die Voorsitter. 23 MR CHASKALSON SC: And when Brigadier 24 Mkhwanazi was giving evidence, training manuals were handed 25 in which indicated that there was training on a range of</p>
<p style="text-align: right;">Page 18247</p> <p>1 part of the strikers. Would you accept that? 2 BRIGADIER CALITZ: Mnr die Voorsitter, u 3 kan nooit regtig voorspel wat sal gebeur nie. Indien die 4 openbare orde polisiëring soos in hierdie geval die aanval 5 nie kon keer nie en daar was geen ander metode want ons 6 laaste lyn van verdediging is haelgeweer rubber en as dit 7 die protesters nie gestop het nie en hulle keuse was dan om 8 verder aan te val deur na die TRT lyn, soos u dit stel, sou 9 daar 'n konfrontasie gewees het met dan tragiese gevolge. 10 Ek kan nie net sê soos u dit gestel het, net aan die een 11 kant nie. Dit hang van die omstandighede af wat daar 12 plaasgevind het. 13 MR CHASKALSON SC: Well, at any rate that 14 was a consequence that you wanted to avoid. 15 BRIGADIER CALITZ: Mnr die Voorsitter, 16 daarom het ons die uiteendryfaksie so beplan en daarom sou 17 ons uitbeweeg, die groep waarsku, vir hulle genoeg tyd gee 18 om uiteen te gaan. Dit is, ek dink al daardie stappe wat 19 ons in plek gesit het, was om dit te – wat is die woord – 20 avoid, te verhoed. 21 MR CHASKALSON SC: And in relation to the 22 specific incident that we're dealing with, that is why you 23 issued your instruction to your POPS team to block and to 24 disperse, is that not correct? You wanted to avoid a 25 situation where all that was left was the TRT.</p>	<p style="text-align: right;">Page 18249</p> <p>1 measures which included blocking and a range of measures 2 which including dispersing, that's basic POPS training, is 3 that not correct? 4 BRIGADIER CALITZ: Daar is verskillende 5 aksie metodes, ons noem dit action modes. Soos ek gister 6 vir u gesê het, mnr die Voorsitter, daar is to encircle, to 7 block, to disperse, to channel, to canalise, daar is 8 verskillende – dit is deel van die curriculum opleiding. 9 MR CHASKALSON SC: And a block is 10 essentially a defensive tactical measure as opposed to an 11 offensive tactical measure. 12 BRIGADIER CALITZ: 'n Blok is om te keer 13 dat persone sal deurkom. Dit is 'n formasie wat gevorm 14 word in so 'n mate wat dan sal dien as 'n show of force 15 asook waar u u magte in lyn kry om dan, indien dit nie werk 16 nie, oor te gaan na die volgende aksie metode. 17 MR CHASKALSON SC: And dispersal is 18 actually an offensive tactical measure, is it not? 19 BRIGADIER CALITZ: As ek offensive reg 20 verstaan, korrek mnr die Voorsitter, dit is waar ons dan 21 fisies die skare sal op 'n non-lethal manier uiteendryf. 22 Ek dink die force continuum is beskryf, die waterkanon, die 23 traangas, die stun grenades en dan as 'n last resort wat 24 ons tot ons beskikking het, die haelgeweer rubber. 25 MR CHASKALSON SC: Now Brigadier, the</p>

<p style="text-align: right;">Page 18250</p> <p>1 block command in relation to – or the second block command 2 wasn't of course the first block command that you issued on 3 the 16th. You'd already previously issued a block command 4 in relation to what you describe as incident 2. That's 5 been your testimony previously, you recall? 6 BRIGADIER CALITZ: Korrek. 7 MR CHASKALSON SC: And if a block is a 8 standard POPS defensive measure or technique, we can see by 9 looking at how the commanders responded to your first block 10 command, what the standard block technique involves. Would 11 you accept that? 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 nee, ek weet glad nie waarna die advokaat verwys nie. As 14 hy vir my 'n video kan wys of miskien waarna hy verwys. Ek 15 kan nie sê wat, hoe hy kan seker wees hoe my lede gereageer 16 het nie op daardie stadium. 17 MR CHASKALSON SC: Well – 18 CHAIRPERSON: Can I ask a question? Can you tell 19 us your understanding of what effected the block which 20 prevented the strikers from coming into the police 21 protected area at incident 2? They were prevented from, 22 they were trying to get into it, weren't they? Or whether 23 they were trying to get into it to do something offensive 24 or whether they were trying to get into it on their way to 25 Nkaneng is a matter that we'll have to decide later but</p>	<p style="text-align: right;">Page 18252</p> <p>1 ombeweeg en onder my indruk toe ek op pad was soontoe is 2 dat toe die agterste groep wegbeweeg het ek gedink dit was 3 suksesvol, die persone beweeg nou in daardie rigting. Ek 4 het ombeweeg en toe ek by die kraal kom voor, dit is waar 5 ek dan getuig het wat ek gesien het dit is inderdaad nie 6 wat gebeur nie, die persone kom weer. So die blok 7 gedeelte, as ek dit dan reg kan beskryf, is die Nyala- 8 voertuie, die uitklim van die persone langs die voertuie en 9 'n linie vorm vanwaar dan dit verder na dispersion kan 10 oorgaan. As dit die vraag - 11 MR CHASKALSON SC: Brigadier, in a moment 12 I'll ask you to go to slide 200 which illustrates what you 13 are saying but I just want to confirm again that you 14 didn't, you've spoken about stun grenades and I think 15 teargas and water cannon but you didn't see any of that in 16 the block at incident 2, was your earlier testimony. Are 17 you confirming or have you now remembered that you saw some 18 of these devices? 19 BRIGADIER CALITZ: Nee, mnr die 20 Voorsitter, dit is wat ek gesê het toe ombeweeg het, dit is 21 wat ek aangeneem het wat daar wel gebeur het. Dit was my 22 relocation, het ek geantwoord. 23 CHAIRPERSON: What he understood to have happened 24 and he said, he told us what he understood to have 25 happened.</p>
<p style="text-align: right;">Page 18251</p> <p>1 they were trying to get into it and they were stopped from 2 getting into it, weren't they? Now what stopped them? 3 BRIGADIER CALITZ: Mnr die Voorsitter, ek 4 kan nie sê ek het al die aksies myself presies waargeneem 5 omdat ek nie daar gaan stop het. As ek die vraag kan 6 antwoord wat u gesê het wat verstaan ek onder die blok en 7 wat was my opdrag gewees, die blokformasie sou dan gewees 8 het eerstens die draad wat vinniger moet ry om dan te keer 9 dat hulle daar kom. Soos ons weet het die draad, ag, die 10 draadkar Nyala 6 nie by die punt gekom nie, so die ander 11 voertuie sou dan so vinnig as moontlik met hulle neuse na 12 die skare toe probeer die gate toemaak, spasio laat vir 13 openbare orde polisiëringslede om uit te klim aan die 14 kante, daarom het ons twee deure aan die kante van 'n 15 Nyala. Ons noem dit debus, waar die lede dan vinnig sal 16 uitbeweeg en 'n linie vorm en kyk in so 'n geval om te 17 blok. Dit is meer, soos ek voorheen vir u gesê het, 'n 18 show of force. Ons wys ons linie, ons wys ons magte, maar 19 daarom ook die opdrag disperse saam met blok, so dit is nie 20 net dat ek vir hulle gesê het gaan staan stil en doen niks. 21 Wat ek dan gesien gebeur het by insident 2 of wat daar wel 22 dan gebeur het is dat die lede het gebruik gemaak van, ek 23 verneem die waterkanon, die stun grenades, die force 24 continuum, as ek dit so kan stel. Dit het nie gewerk by 25 insident 2 nie. Die persone het wegbeweeg en hulle het</p>	<p style="text-align: right;">Page 18253</p> <p>1 MR CHASKALSON SC: Well, the electronic 2 record will show conclusively that there was no water 3 sprayed at incident 2, there was no teargas and we would 4 put also that there were no stun grenades but let's see 5 what there was and that we see in slide 200 of exhibit L, 6 and can we call up slide 200? And maybe if we can zoom in 7 to the top left hand corner of this picture so that we can 8 see a bit more detail of the block. Move a bit, can we see 9 the left edge of that picture as well? Thanks and push it 10 up a little bit. So Brigadier, I'm going to point out 11 certain – well, I'm going to put certain propositions to 12 you. The first proposition is, would you agree that the 13 gap that had to be blocked was the gap that hadn't yet been 14 closed by barbed wire from Nyala 4 and I'm going to 15 identify the barbed wire from Nyala 4. It's the dotted 16 yellow line that stretches from the back of the Nyala 17 through to the Nyala preceding it at the mast. So the gap 18 that you wanted to block was the gap that had not yet been 19 closed by the barbed wire from Nyala 4. 20 CHAIRPERSON: Do you agree with that? 21 BRIGADIER CALITZ: Korrek, mnr die 22 Voorsitter, die spasio tussen, as ek reg verstaan, die neus 23 van Nyala 4 en die hoek van die kraal. Dit is korrek. 24 MR CHASKALSON SC: And what we see now is 25 of course a moment in time while Nyala 4 is moving. So</p>

<p style="text-align: right;">Page 18254</p> <p>1 that gap that had to be blocked would gradually become 2 smaller and smaller because Nyala 4 itself was in the 3 process of closing it, but in this moment we see how the 4 gap is blocked. We have two barbed wire Nyalas positioned 5 parallel to the gap, almost length-on-length, leaving space 6 for Nyala 4 to come in front of them to close the gap but 7 essentially closing the gap that would be there before 8 Nyala 4 reaches. Would you accept that that's what they 9 are doing?</p> <p>10 BRIGADIER CALITZ: Hulle het gereageer, 11 mnr die Voorsitter, op my opdrag op Nyala 4 wat ek dan vir 12 hom opdrag gegee het om vinniger te beweeg en voor die 13 persone in te beweeg. Ek glo die drywers van Nyala 5 en 6, 14 soos ons gesê het, het radiostelle en hulle het dan soos ek 15 die foto aflei, gereageer, binnetoe beweeg dat Nyala 4 met 16 'n spoed kan verbykom en dan voor daardie protesters wat op 17 pad was na insident 2 waarna ons verwys, om Nyala 4 die 18 geleentheid te gee om verby te kom –</p> <p>19 MR CHASKALSON SC: But they're not just 20 moving out the way, they're also serving a temporary 21 blocking function as well if you look at this picture.</p> <p>22 BRIGADIER CALITZ: Mnr die Voorsitter, my 23 getuienis was, as jy reg onthou, blok sou my openbare orde 24 polisiëringslede wees wat ek gesê het gaan met die 25 voorkant, die neus na die skare waar die lede dan kan</p>	<p style="text-align: right;">Page 18256</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 ja, ek kan ongelukkig nie saamstem nie, so as ons praat van 3 'n temporary wall sou ek dan gesê het indien hulle ook 4 gepoog het om te blok sou hulle dan 'n lyn probeer vorm het 5 tussen die kraal en Nyala 4 om dan in so 'n mate te blok. 6 Wat ek hier sien is 'n reaksie op my woorde, weereens Nyala 7 4 beweeg verby so vinnig moontlik en sny die protestors af 8 wat ek duidelik met Nyala 4 gekommunikeer het, so mnr die 9 Voorsitter, nee, ek kan nie, - hulle het inwaarts beweeg, 10 so nie sywaarts miskien om 'n langer, om 'n muur te vorm as 11 ek dit so kan stel.</p> <p>12 CHAIRPERSON: It is not quite as simple 13 as that because you'll remember that Advocate Semenya told 14 us that Mr Chaskalson was wrong when he suggested or I was, 15 one of us was wrong, when he suggested that Nyala 4 got as 16 far as the kraal, he said they didn't get that far. In 17 fact one of the other Nyalas, I think it was Nyala 5 18 actually, filled up that last little gap. If I'm correct 19 Mr Semenya will correct me. So what I'm saying to you is 20 that what you put isn't entirely accurate, or I am not 21 viewing this as critical, but that is part of it as well 22 which Mr Semenya gave us, is that what you understand it to 23 be the case as well?</p> <p>24 BRIGADIER CALITZ: Mnr die Voorsitter, 25 soos ek dit verstaan het, miskien my verstaan daarvan is</p>
<p style="text-align: right;">Page 18255</p> <p>1 uitklim aan beide kante om so 'n linie te vorm. 2 [09:50] Daardie opdrag sou gegee gewees het vir die 3 Openbare Orde uiteendryf linies. Dit is 'n ander taak as 4 die barbed wire mense wat getaak was om uit te klim en die 5 draad af te gooi, een bo op die draad, een langs die Nyala, 6 een wat met die drywer praat, so dit is my antwoord aan u, 7 as ek miskien kan verwys na die onderste Nyalas wat almal 8 dan nou op pad was met hulle neuse in die rigting, dit is 9 die blok wat ek het –</p> <p>10 MR CHASKALSON SC: Ja, I'm not suggesting 11 that the Nyalas 5 and 6 were throwing wire of their own to 12 block, but I'm putting to you that they physically were 13 also blocking a gap that hadn't yet been closed by Nyala 4, 14 simply by placing themselves in the position that they did, 15 and if I can just describe what I'm saying, the gap from –</p> <p>16 CHAIRPERSON: Can I paraphrase? I think 17 what Mr Chaskalson is trying to convey to you is that in 18 effect what amounted to a physical wall was created, 19 closing off the gap, the physical wall, not being made of 20 bricks and water but being made as a temporary wall being 21 comprising those two Nyalas with the wire trailers behind 22 them, not having thrown out the fire but simply being part 23 of the temporary wall, is that what you're saying?</p> <p>24 MR CHASKALSON SC: That's broadly what 25 I'm putting to the brigadier, Chairperson.</p>	<p style="text-align: right;">Page 18257</p> <p>1 dat Advokaat Semenya verwys na Nyala 4 wat nie die gap 2 totaal en al kon toemaak en dit is waar ek vir die advokaat 3 gesê het, as u kyk na die onderste voertuie wat dan in 4 opdrag van my geblok het met hulle neuse na dit toe, waar 5 hy dan gesê het, ons is nog nie daar nie, so dit was die 6 antwoord.</p> <p>7 MR CHASKALSON SC: Well, maybe let's get 8 there because that is in fact to my mind the most 9 significant or interesting feature of this photograph. I'm 10 indicating now Papa5 which is Lieutenant Colonel Pitsi's 11 Nyala which is the Nyala which Mr Semenya said ultimately 12 came to the edge of the kraal. It is the Nyala closest to 13 the kraal in this photograph for the purposes of the 14 record, it is just on the path that runs south of the 15 kraal. Now behind Nyala 5, - Papa5, I'm sorry,-</p> <p>16 CHAIRPERSON: It wasn't a Nyala, because 17 it hasn't got a wire trailer behind it.</p> <p>18 MR CHASKALSON SC: Behind Papa5 there are 19 two other Nyalas in, what's broadly a line behind Papa –</p> <p>20 CHAIRPERSON: Nyalas or Papas?</p> <p>21 MR CHASKALSON SC: These are Papa Nyalas, 22 so there is a line of three Papa Nyalas which still have 23 the flexibility to break out and form the block in the type 24 of formation that you described. To the east of that line 25 of three Nyalas there are two further Nyalas. At a later</p>

<p style="text-align: right;">Page 18258</p> <p>1 stage we can identify what their designation is, but it is 2 not relevant for present purposes. They are lined up to 3 drive, if they were to drive straight they would find 4 themselves driving on a line to close that part of the gap 5 that might remain if Papa5 keeps its line, and further to 6 the east there is another Nyala which is also on a line to 7 close a gap which would remain if the gap to the kraal 8 still required closing. So you have Nyalas lined up so 9 that if they were to keep and hold their line and keep 10 driving to the edge of the kraal they would be in a 11 position where that block formation that you described 12 could be affected. So would you agree that that is what we 13 see?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 ja, dit is wat u nou net gesê het, "if Papa5 keeps its 16 line," hierdie foto is geneem, ek kan nie die tyd regtig 17 sien nie en weet nie hoeveel sekondes, of die afstand neem, 18 ek dink ons het nou die dag bepaal hoe vinnig beweeg 'n 19 Nyala, tussen Nyala 4 en die kraal, so die foto sê vir my 20 dat daar was vier Nyalas op pad om daardie aksie dan van 21 blok uit te voer, maar teen die tyd wat Nyala 4 daar gekom 22 het kon die posisie totaal verander en die ander Nyalas kon 23 dalk aan die anderkant gaan blok het.</p> <p>24 MR CHASKALSON SC: Yes, I agree 25 completely with you in the end, my proposition to you in</p>	<p style="text-align: right;">Page 18260</p> <p>1 physical instruction, as it were, that's the point but it 2 wasn't only composed of Nyala 4 and its wire and the other 3 Nyalas and their wire, it was composed of something else. 4 I'm not sure that very much turns on the point but it is 5 useful to get the facts accurately stated if that is an 6 accurate statement of facts.</p> <p>7 MR CHASKALSON SC: Well, it is an 8 accurate statement of the SAPS case.</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, as 10 ek gevra word om te reageer, u woorde, Advokaat, u het gesê 11 "the block was," ek weet nie, "absolute" of "not 12 necessary," ek kan vir u getuig uit my ervaring uit as 'n 13 operasionele bevelvoerder vir 20 jaar, u is totaal 14 verkeerd, daar is altyd 'n nodigheid om vir die mense te sê 15 gaan blok en dan disperse. Ek weet nie waarop baseer u u 16 afleiding dat dit nie nodig was nie, dit is 'n baie 17 gevaarlike afleiding om te maak operasioneel. Ek praat 18 van, asseblief mnr Chaskalson, ek sien u lag en u glimlag, 19 so ek weet nie, dit is vir my nie 'n snaakse –</p> <p>20 MR CHASKALSON SC: Brigadier, I think 21 we're at cross purposes –</p> <p>22 BRIGADIER CALITZ: Asseblief, as ek kan 23 klaarmaak, mnr die Voorsitter, ek vra, dit het gister ook 24 gebeur?</p> <p>25 CHAIRPERSON: Yes, carry on, he says</p>
<p style="text-align: right;">Page 18259</p> <p>1 the end, the block wasn't necessary or the block served its 2 purpose temporarily because it allowed na 4 to close the 3 gap entirely, but –</p> <p>4 CHAIRPERSON: That's the point, Mr 5 Chaskalson, that Mr Semenya made, that isn't correct, it 6 wasn't said –</p> <p>7 MR CHASKALSON SC: Well, Mr Chairperson, 8 -</p> <p>9 CHAIRPERSON: - the effect was, sorry?</p> <p>10 MR CHASKALSON SC: The SAPS case is that 11 it isn't correct, the electronic evidence is otherwise.</p> <p>12 CHAIRPERSON: No, Mr Chaskalson, give me 13 an opportunity. What I understood Mr Semenya to say is 14 that, the electronic evidence against this, we'll deal with 15 it later, but what he said was, Nyala 4 didn't get 16 completely to the kraal and another Nyala actually blocked 17 it and I think he said was Nyala 5, but he will correct me 18 if I'm wrong, but the SAPS case is effectively, as I 19 understand it, there was some kind of physical barrier 20 consisting of the wire as far as it goes, Nyala 4 and then 21 there is a little space left that was covered by another 22 Nyala, that's what Mr Semenya –</p> <p>23 MR CHASKALSON SC: Yes, Papa5, the SAPS 24 case is Papa5 was part of the block.</p> <p>25 CHAIRPERSON: Yes, yes, so there was a</p>	<p style="text-align: right;">Page 18261</p> <p>1 you're at cross purposes but you finish what you have to 2 say.</p> <p>3 BRIGADIER CALITZ: Asseblief.</p> <p>4 CHAIRPERSON: And if there is a problem 5 he will then get a chance to reply.</p> <p>6 BRIGADIER CALITZ: Ja, ek wil net sê met 7 respek, hierdie was 'n baie traumatiese ervaring, so u lag 8 en dit is miskien vir my net 'n bietjie onvanpas. Ek vra 9 net dit, mnr die Voorsitter, terwyl ek antwoord. Wat ek 10 wel sê is, operasioneel as ek vir u die antwoord kan gee, 11 operasioneel is dit vir my baie belangrik om altyd die 12 opdrag te gee, gaan blok en dan disperse en nie "not 13 necessary" soos wat u aangedui het nie, dit is al wat ek 14 wil sê, dankie, mnr die Voorsitter.</p> <p>15 COMMISSIONER HEMRAJ: Can I –</p> <p>16 MR CHASKALSON SC: Brigadier, I'm not for 17 a minute suggesting –</p> <p>18 COMMISSIONER HEMRAJ: Can I just ask you 19 something, Brigadier? After you gave the instruction to 20 block would all those Papa Nyalas come under the command of 21 Colonel Pitsi?</p> <p>22 BRIGADIER CALITZ: Kommissaris, nee, nie 23 net Luitenant-Kolonel Pitsi nie, maar ook Luitenant-Kolonel 24 Mere.</p> <p>25 COMMISSIONER HEMRAJ: Yes.</p>

<p style="text-align: right;">Page 18262</p> <p>1 BRIGADIER CALITZ: U sal verstaan dat 2 weerskante van my was voertuie, Luitenant Kolonel Mere en 3 dan Luitenant Kolonel Pitsi het vier Nyalas asook 'n 4 Casspir voertuig gehad, so daar was verskeie bevelvoerders. 5 Dit was net die groep bevelvoerders en dan onder hulle het 6 elke Nyala drywer, - ag, elke Nyala voertuig het dan, ek 7 het die name van die bevelvoerders wat dan so voorgelig is 8 en hulle sou dan hulle besluite daarop neem. 9 COMMISSIONER HEMRAJ: Are you aware 10 whether any of the other commanders gave any other command 11 as to what occurred there as regards to the blocking of 12 that gap between the front of Nyala 4 and the edge of the 13 kraal as it appears on this photograph 200? 14 BRIGADIER CALITZ: Ongelukkig kan ek u 15 nie daar help nie, nee, Kommissaris, ek is nie bewus van 16 enige iets nie. 17 COMMISSIONER HEMRAJ: Thank you. 18 MR CHASKALSON SC: Brigadier, I said we 19 were at cross purposes, I'm not suggesting that the 20 instruction to block was an unnecessary instruction. All 21 that I'm suggesting is that the ultimate blocking was 22 effected by Nyala 4. I don't for a minute suggest that you 23 issued the wrong instruction, I suggest that you issued the 24 right instruction and that if you issued the same 25 instruction in relation to what ultimately happened at</p>	<p style="text-align: right;">Page 18264</p> <p>1 was miskien daardie voertuig ook op pad wat verder in die 2 agtergrond was, so nee, dit is nie 'n pertinent punt wat ek 3 wou maak nie. 4 MR CHASKALSON SC: I take that point, 5 that vehicle I don't think is an armoured vehicle, so it 6 wouldn't be of much use in the block, but the point that I 7 want to make around incident 2 is, what we don't see at 8 incident 2 is any crescent structure like we see around the 9 eastern side of the kraal leading up to scene 1, would you 10 agree with that? The Nyalas are driving at right angles to 11 the gap, not in a concentric half circle around the gap. 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 weereens, ek dink u het u vraag nou in twee en drie 14 opgebreek. U het gepraat van iets van question movements, 15 then concentric rings, as ons dit miskien net stap vir stap 16 vat, dan kan ek miskien makliker verstaan en antwoord. 17 MR CHASKALSON SC: Well, let's maybe call 18 up the sketch plan of the positions of the SAPS vehicle at 19 the time of the shooting which is the last page of 20 JJJ178.2. Can we call that up? Now, Brigadier, the gap 21 which you marked as the gap that you wanted blocked, where 22 you put that block down on the map, is being indicated by 23 me now, it is the cap between the back edge of Casspir B on 24 the diagram and the edge of the kraal. Will you confirm 25 that that is the gap where you placed the block on the map?</p>
<p style="text-align: right;">Page 18263</p> <p>1 scene 1 and if it had been implemented we wouldn't have had 2 scene 1, but I want to, - so you understand what I'm 3 saying? I'm saying in this case Nyala 4 managed to do the 4 blocking on its own although it had, there were people 5 getting into position to cater for a situation if it 6 wouldn't manage to do the blocking. That's all that I'm 7 saying, but you said that there were four Nyalas that were 8 moving into position to block. 9 I want to put to you that there are actually six 10 Nyalas that are moving into the position to block. There 11 are the three in the line behind Colonel Pitsi, there are 12 the two to the east of that line and then there is the one 13 even further east, and all six of these Nyalas appear to be 14 moving in order to affect the block to the western side of 15 the kraal. Do you take issue with that proposition? 16 BRIGADIER CALITZ: Mnr die Voorsitter, ek 17 dink dit was net 'n aanduiding gewees, ek het dit nie 18 gestel as 'n feit nie, ek het gepraat van die voorste vier, 19 daardie vier. Daar was wel 'n lyn van Nyalas wat staties 20 was vroeër die dag wat die noordekant aandui, so ek kan nie 21 sê regtig of daardie een staties was nie. U sê "It 22 appeared to be moving," ek kan hulle nie sien beweeg op 23 daardie stadium nie, so ek het maar net verwys na die wat 24 ek kan sien wat nader aan die punt is, as ek die afstand 25 vat. So dit was maar net 'n rowwe skatting, as ons kan sê,</p>	<p style="text-align: right;">Page 18265</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek 2 het nie gestry oor die blokkie op die kaart nie, maar ek 3 dink daar was genoeg gesprekvoering op die transkripsie om 4 te verduidelik die kaart is nie op skaal nie, daardie blok 5 is 'n lang lyn, so dit is hoekom ek aan die begin net 6 daardie misunderstanding, ons gaan weer terug na A toe, 7 nee, my voertuie moes vroeër uitbeweeg het aan die voorkant 8 om dan te blok, maar dit was die posisies waar hulle 9 geëindig het. 10 MR CHASKALSON SC: Well, Brigadier, you 11 wanted to prevent the strikers passing through this gap, 12 passage A? 13 BRIGADIER CALITZ: Mnr die Voorsitter, 14 nee, die doel van die fase 2 en 3 is om op te vorm langs 15 die kraal in die rigting van koppie 2 en hulle dan 'n 16 waarskuwing te gee, 20 tot 30 minute, gaan uiteen 17 asseblief, sit neer die wapens, die wat sou agterbly sou 18 ons dan wel 'n tyd af getel het en vir hulle gesê het, hier 19 sal wel dan 'n optrede geloods word teen u en u sal 20 gearrester word. Dit was die posisie waar my voertuie 21 dan, waar ek wou gehad het die posisie waar die voertuie 22 moes oplyn, dit was die voorligting gewees. Soos ek 23 herhaaldelik vir u gesê het, daar was 'n onderbreking in 24 die plan, so ek moes in daardie paar sekondes die voertuie 25 uitkry en ek dink die voertuie, toe Papa11 daar kom waar hy</p>

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1 nou kom en teen die tyd wat ek daar kom, het die groep
 2 klaar ombeweeg. So dit was vir ons onmoontlik om daardie
 3 lyn te gaan opneem weereens waar ons "intended to do it."
 4 Dit was die naaste moontlike manier waar ons dan die
 5 uiteendryf aksie kon doen.

6 MR CHASKALSON SC: Brigadier, I didn't
 7 understand that to be your evidence at all in relation to
 8 where the block and disperse was going to take place. We
 9 asked you to describe on the map where you wanted to block
 10 and you put a block down where you wanted to block and that
 11 block was put down on this passage that I'm indicating now,
 12 from the back of Casspir B to the edge of the kraal.

13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 weereens ek het gesê ek het nie teen u gegaan op die blok
 15 nie, u vra dieselfde vraag. Wat ek wel gesê het, ek dink
 16 ek het 9 of 12 keer verwys, ek weet nie of die translation
 17 miskien moes, - waar ek wel gesê het waar ek voor moes
 18 uitbeweeg, ek het wel pertinent gesê nie op die punt tussen
 19 die kraal en die draad nie, maar vorentoe waar ek
 20 vooruitbeweeg het. Ek het dit vir die, ek dink, ek weet
 21 nie of ek dit moet stel nie, mnr die Voorsitter, ek dink
 22 dit was –

23 MR CHASKALSON SC: Well, Brigadier, your
 24 evidence on this –

25 CHAIRPERSON: No, no, please don't

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1 interrupt –

2 BRIGADIER CALITZ: Ek dink dit is 29 keer
 3 waar ek dit vir u nou gewys het uit 'n transkripsie uit, so
 4 mnr die Voorsitter, ek kan regtig nie-
 5 CHAIRPERSON: Brigadier, we already, I
 6 think agreed and the record will speak for itself on that.

7 BRIGADIER CALITZ: Dankie, mnr die
 8 Voorsitter.

9 CHAIRPERSON: But I think, if I can
 10 intervene, I think you and Mr Chaskalson are, I'm not sure
 11 that you're approaching this, looking at the same point.
 12 My understanding of your evidence is this, the dispersal
 13 and disarm exercise was intended to be performed, if it is
 14 spotted, can be can seen here on this map at all, somewhere
 15 on the right hand side, but probably off the screen, we'll
 16 have to go to the top of the screen and beyond, it is
 17 intended to be performed, as I understand it more or less
 18 in line with the koppie, is that right, but what had
 19 preceded that was a clear intention to stop the strikers or
 20 any of them really, getting into what you call the police
 21 protected area or the police neutral area, for reasons that
 22 you've explained. Now when they approached in the way they
 23 did, in the space where they were, around the kraal, there
 24 was a danger that they were going to do the very thing that
 25 the barbed wire protection was designed to prevent, namely

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1 they were going to get into the police neutral area and
 2 either go on into Nkaneng and do the things that you were
 3 afraid they do there, or attack the police, so we won't
 4 decide which of the two, whether it was both at the time.

5 So you did have a pressing need at that stage to
 6 prevent them from getting into the police neutral area and
 7 beyond, isn't that so? So even before you go to the
 8 dispersal stage you had to do what the wire barrier was
 9 designed to achieve, namely prevent them from getting into
 10 the police area, that is correct, isn't it?

11 BRIGADIER CALITZ: Dit is heeltemal
 12 korrek, mnr die Voorsitter.

13 CHAIRPERSON: I suspect that that's what
 14 Mr Chaskalson thinks about, but if he isn't perhaps he
 15 could go there.

16 MR CHASKALSON SC: Yes, I mean you had to
 17 prevent them entering the safe area and that's what I
 18 understood the purpose of the block to be.

19 BRIGADIER CALITZ: Dit is die hele
 20 opdrag, "block and disperse," and-

21 CHAIRPERSON: Getting into the area, but
 22 the record will speak for itself.

23 MR CHASKALSON SC: But if we look at this
 24 configuration of vehicles we don't see anything that
 25 corresponds to the formation of vehicles that we saw on

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1 slide 200. Let's go back to slide 200 and I can show you
 2 what I would have expected to see. Slide 200, there is a
 3 gap that needs to be blocked.

4 [10:10] The gap between the kraal and the Nyala. Part of
 5 that gap is blocked by barbed wire Nyalas or will be closed
 6 by Nyala 4. To cater for the remaining part of the gap,
 7 you have a series of Nyalas driving at right angles to that
 8 gap, presumably in accordance with your evidence so that if
 9 needs be, they can put themselves a car's door apart, and
 10 open their car's – well, put themselves a car's door apart
 11 so that they will effect a physical barrier to passage
 12 through that gap. Is that what we see in slide 200?

13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 ja, ek nie getuig a physical car's door apart, die woorde
 15 wat – ek het wel gesê die Nyalas sal met hulle neus in die
 16 rigting ry van waar die protesters aankom, en hulle sal
 17 hulle so posisioneer waar die lede dan kan uitbeweeg aan
 18 beide kante en 'n direkte lyn – as ek dit kan noem 'n vuur
 19 lyn – dit klink nou sleg – maar 'n dispersion lyn met –
 20 waar ons kan dan aksie loods van die openbare orde polisie
 21 in so 'n lyn wat ons hulle dan kan sien.

22 CHAIRPERSON: We've gone over this ground
 23 several times. It's been ploughed over about six times, I
 24 don't know if we'll get any extra crops from the ground if
 25 we plough it for a seventh time.

<p style="text-align: right;">Page 18270</p> <p>1 MR CHASKALSON SC: So if we go back to 2 the picture at the end of JJJ1782, can you indicate to the 3 Commission, for the purposes of a blocking manoeuvre, what 4 advantage, if any, this crescent-shaped structure served 5 for a block? 6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 daardie, volgens my, is 'n perfekte blok. Ek kan sê hoekom 8 ek dit vir u sê, die groep protesters het, as ek met die 9 rooi kolletjie beweeg, in 'n – ek het voorheen getuig – 'n 10 45 grade angle, hulle het nie reguit afgekom hier teen die 11 draad, hulle het, as jy sien op die foto, en dit is waarom 12 ek sê, verwys na die foto, so beweeg. Onthou ek het nou 13 net in my getuienis vir u gesê die voertuie moet so 14 geposisioneer wees dat die lede kan uitklim en dan tussen 15 die voertuie spasies het om dan – ek het verwys na 'n 16 dispersion lyn om dan aksie te loods teen die – so wat die 17 protestors dan kan sien, en ek is die vorige keer gevra, 18 die elips, die wit elips, as u kan onthou, was in daardie 19 rigting. So wat hulle dan sou sien indien hulle aankom, 20 was hierdie fisiese blok lyn wat voor hulle staan, asook 21 een in hierdie rigting, wat dan reeds aksie kon geneem het 22 van Papa 11 af na die protestors, Casspir B – tussen 23 Casspir B en A, en ek verneem agtertoe en dit is wat die TV 24 vir ons wys en ander footage wat ek nie wel gesien het nie, 25 maar dat daar POP lede tussen die voertuie was wat dan ook</p>	<p style="text-align: right;">Page 18272</p> <p>1 CHAIRPERSON: I think there's substance 2 in that objection, Mr Chaskalson. Perhaps you can approach 3 the matter in a slightly different angle? 4 MR CHASKALSON SC: Well, Chairperson, can 5 I – the SAPS training manual speaks of block and disperse 6 as two completely different actions. The one is a 7 defensive action, the other is an offensive action. Can I 8 – I hadn't intended to refer to this, but I – because I 9 haven't the witness a copy, but I can refer to exhibit Q, 10 slide 28, which describes training in respect of – or 11 training for tactical options which members are given and 12 draws a very clear distinction between certain defensive 13 actions and certain offensive actions, and block is in the 14 defensive category, disperse is in the offensive. 15 MR SEMENYA SC: But, Chair, in reply, 16 there is nothing in that manual that says the two can't be 17 done together. 18 CHAIRPERSON: No, well the – I take it 19 the point is they can be done together, I take it what Mr 20 Chaskalson suggests, they can also be done separately. So 21 anyway, but let's see what the witness has to say. The 22 witness is an experienced POP man. I take it, he's 23 familiar with the training manual, probably participated in 24 training courses often, so he's the best person for us to 25 ask. What do you say about the proposition? What Mr</p>
<p style="text-align: right;">Page 18271</p> <p>1 aksie geloods het op die protestors. So, ja, die voertuie 2 het inderdaad – ek weet nie wat die commanders se opdrag 3 was nie, maar hulle het hulle so geposisioneer dan om 4 hierdie protestors uiteen te dryf en terug te dryf. 5 MR CHASKALSON SC: Brigadier, the purpose 6 of a block is to stop people moving through a gap, is it 7 not? 8 BRIGADIER CALITZ: Mnr die Voorsitter, ek 9 dink ek het nou net verduidelik, as ek kan sê daar's een – 10 as ek van voor af kan reg tel, een, twee, drie, vier, vyf, 11 ses pantser voertuie, as ons nou sewe en agt uitlaat, wat 12 reg in 'n linie voor die protestors is. Nou as u vir my 13 sê, "The purpose of block," ek praat van agt pantser 14 voertuie met openbare order polisiëringslede teen – tussen 15 in, wat 'n direkte lyn van haelgeweer rubber op vuur. Nou 16 is ons verby die blok, dit gaan nou oor dispersal. 17 MR CHASKALSON SC: I don't want us to get 18 past the block. I'm still staying at the block. 19 MR SEMENYA SC: Yes, Chair, this is 20 precisely the objection. On countless occasions Mr 21 Chaskalson wants to treat these as separate activities. 22 There's going to be a blocking and afterwards there'll be a 23 dispersal. The witness repeatedly says the instruction was 24 to block and disperse. 25 MR CHASKALSON SC: Chairperson –</p>	<p style="text-align: right;">Page 18273</p> <p>1 Chaskalson is suggesting to you is that according to the 2 textbook or the training manual, what is said is that you 3 can use tactical options under the heading "Defensive," and 4 tactical options under the heading, "Offensive." And he 5 says that disperse, you'll find at the bottom of the 6 offensive list, and block protestors, you'll find at the 7 top of the defensive list. So, I don't understand him to 8 be suggesting you can't combine them, but what he's asking 9 you, is it not possible to do them separately? That's the 10 question, if I understand it correctly, and what's your 11 comment on - as an experienced POP commander, how do you 12 deal with that question? 13 BRIGADIER CALITZ: Mnr die Voorsitter, as 14 dit 'n – kom ek sê uit my ondervinding uit, as dit 'n 15 vreedsame groep was wat 'n optog geloods het oor – ag, ek 16 weet nie – 17 VOORSITTER: Verhoogde huurgelde. 18 BRIGADIER CALITZ: Ek is bang om soontoe 19 te gaan want hulle het ook verhoogde huurgeld gevra, mnr 20 die Voorsitter. 21 CHAIRPERSON: Ja, no, rents, increased 22 rental - 23 BRIGADIER CALITZ: Dit is reg. 24 CHAIRPERSON: You often get – I was in 25 case - increased rental.</p>

<p style="text-align: right;">Page 18274</p> <p>1 BRIGADIER CALITZ: Daar is soveel 2 optogte. Kom ons sê teen die e-toll wat tans plaasvind – 3 die huidige, die huidige. Kom ons praat oor wat tans en 4 gister op die TV – 5 CHAIRPERSON: The topical? 6 BRIGADIER CALITZ: Die topical. Dan sou 7 ek sê om te blok beteken om die openbare orde 8 polisiëringslede in so 'n lyn te sit met ons skilde, ons 9 formasies, dat ons 'n sekere sleutelpunt, 'n sekere deur, 10 sekere areas wat ons dan wil afsny fisies mense daar te 11 sit. So dit is 'n blocking position. Met ander woorde, 12 ons staan daar – dit hang van die dreigement af – as ons 13 voel die persone het dalk, terwyl hulle in 'n optog stokke 14 by hulle het of so iets, dan sal ons miskien die skilde by 15 ons gehad het, net om te keur vir sulke tipe goed, dat die 16 helmets – dit is ook 'n show of force, so dit is waar ons 17 block gebruik as 'n baie rustiger crowd management 18 techniques. U sal sien van bo af, ek het nie die dokument 19 ongelukkig ge-bestudeer, maar ek werk jare met dit, so dit 20 is – 21 CHAIRPERSON: Maar, u het hom al 22 vantevore gesien en ook daarmee gewerk? 23 BRIGADIER CALITZ: Ek het daarmee gewerk 24 en ek werk al hoeveel jaar daarmee, mnr die Voorsitter. 25 Dis hoekom ek sê, daar as jy kyk na platoon and section</p>	<p style="text-align: right;">Page 18276</p> <p>1 gevalle wat ek hanteer het in my twintig jaar, so my 2 actions must solve the problem, not create a bigger one, en 3 dit is wat ons presies hier probeer doen het. My actions 4 was to solve the problem, not to create a bigger one. Ons 5 het 'n linie probeer sit. Ons het non-lethal, ons het alle 6 moontlike taktiek probeer en daar oor ook dan die 7 dispersion action, want dit was vir my nog steeds 'n non- 8 lethal metode, om dan juis wat gebeur het, to create a 9 bigger one, en in proportionality, are my actions 10 proportional to the threat? 100% so. Hier kom 'n groep 11 protestors aan, ek maak 'n linie, ek het genoeg pantser 12 voertuie, ek het genoeg openbare orde polisiëringslede aan 13 die buitekant, die show of force is daar, daar is hoeveel 14 pantser voertuie. So dit is die blok aksie en die aksie 15 wat ons dan sien op hierdie skerm, as ek daarna kan getuig. 16 So daar was genoeg, in my opinie, as operasionele 17 bevelvoerder, in my ondervinding, vir die mense om te draai 18 en te besef dat hierdie area is nie geleë nie, eerder die 19 270 grade agter my, of dan veilig na Nkaneng toe in die 20 fotos wat ek vir u kan wys, maar die voorste groep het net 21 persist en ons weet daar is getuienis aandui hoekom hulle 22 dit gedoen het, en die aanval op die polisie dan, wat dan 23 gelei het tot 'n tragiese geval. 24 CHAIRPERSON: I was proposing to take a 25 comfort break round about now. If it's convenient for you,</p>
<p style="text-align: right;">Page 18275</p> <p>1 formations – formasies verwys spesifiek na seksie 2 formasies. Elke seksiebevelvoerder sal sy agt lede vat. 3 Byvoorbeeld, ons sal by 'n garage staan waar ons nie wil hê 4 die mense moet na die water punt toe gaan of miskien by die 5 tuck shop instorm en die plek te loot, want almal in 'n 6 optog is nie altyd met dieselfde doel daar nie. So daar 7 sal ons dan van die blok aksies gebruik maak. As jy dan 8 verder gaan, indoor techniques, ons het 'n blok aksie vir 9 indoor techniques. Dit is binnenshuis, soos byvoorbeeld 10 hier as ons dan met 'n blok aksie kom, is dit baie maklik 11 om met skilde by die deur en dan iemand fisies te blok en 12 dan wat ons noem 'n push back, ek dink dit is meer 'n 13 offensive, maar dit is dan waar dit kontak maak met die 14 skilde. 15 As ons verder afgaan, "Principles and rules of 16 intervention, legality," – dit spreek vanself, dis die 17 wetgewing. "The optimal use of equipment," so dit is wat 18 ons op die dag beskikbaar het. So optimal use of equipment 19 verwys net dan ook daarna, en dan baie belangrik, 20 situational appropriateness. 21 CHAIRPERSON: There's a lot about that in 22 this case. Sorry to interrupt, we've heard a lot about 23 that one – 24 BRIGADIER CALITZ: Ag, Mnr die 25 Voorsitter, ek het, soos ek gesê, meer as 2 000 plus</p>	<p style="text-align: right;">Page 18277</p> <p>1 Mr Chaskalson, I'll do so now, unless there's point you 2 wanted to make or question maybe. So I'm in your hands. 3 MR CHASKALSON SC: Chairperson, is the 4 tea break at 10h30 or at 11h00? 5 CHAIRPERSON: Well, I thought if we take 6 a comfort break now, we can have tea after 11, because 7 remember we've got to go on till one o'clock, so – but 8 unless everyone would prefer that we carry on until half 9 past ten – 10 MR CHASKALSON SC: Can I just ask two 11 more questions on this topic? Brigadier, whether you are 12 blocking separately or blocking and dispersing, you'll 13 agree that you still have to block? 14 BRIGADIER CALITZ: Mnr die Voorsitter, ek 15 het al hieroor getuig. Ek het vir u gesê dit hang af wat 16 voor die – wat het ek dit genoem? Die bevelvoerder of die 17 seksiebevelvoerder, dit hang af wat voor hom afspeel. As 18 hy daar aankom en die aksie is van so 'n aard dat hy nie 19 sy lede kan sê, "Klim uit, vorm op," en dis 'n gevaar 20 situasie waar dit te na aan mekaar is, dan sal die blok 21 glad nie plaasvind nie, dan sal u direk oorgaan in 'n 22 dispersion action. So, nee, ek stem nie saam met u nie, 23 Mnr die Voorsitter. 24 CHAIRPERSON: Mr Chaskalson, I think on 25 balance, but let's go on till half past ten and take the</p>

<p style="text-align: right;">Page 18278</p> <p>1 tea adjournment then, if that's what people are expecting. 2 MR CHASKALSON SC: Thank you, 3 Chairperson. I'll structure the cross-examination 4 accordingly, but, Brigadier, a few minutes ago you said, in 5 relation to this picture at JJJ178.2, that that described 6 the perfect block and you mentioned that there were POPs 7 members outside between the Nyalas. 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, ek het vir u verduidelik en ek het met my rooi pointer, 10 daar waar die rekenaar se muis pyltjie nou is, die 11 protesters op die foto het op 'n 45 grade angle aangekom. 12 So hier was dit nog veilig genoeg om die openbare order 13 polisiëringslede te laat uitklim en dan 'n uiteendryf aksie 14 op hulle toe te pas. Ons kon sekerlik nie gewag het tot hy 15 teen jou is, en dan besef hulle is bo op die polisiemanne. 16 Dit sou weer tragiese gevolge gehad het, wat definitief 17 vermy moet wees. 18 MR CHASKALSON SC: Wel, you see, 19 Brigadier, if you look at the block that we see here – 20 CHAIRPERSON: I'm reminded that this 21 isn't a case where the movements on the plan are being 22 filmed, so can you repeat that again and I will endeavour 23 to – or perhaps Mr Chaskalson can endeavour to translate 24 what you're indicating into words, so that when we follow 25 the record later, we can understand. You talk about here</p>	<p style="text-align: right;">Page 18280</p> <p>1 geposisioneer was om 'n linie – hierdie voertuie – 2 CHAIRPERSON: The Casspir A and B and – 3 BRIGADIER CALITZ: Papa 2, Papa 4, Papa 4 5, Papa 19 op die diagram, mnr die Voorsitter. 5 CHAIRPERSON: Yes, thank you. 6 BRIGADIER CALITZ: Dat die voertuie agter 7 die Casper, Papa 2, 4, 5, 19, dit is die voertuie wat in 8 'n half maan na 'n suidelike rigting neig, dat hulle so 9 geposisioneer was dat hulle – hulle verwys ek na die 10 voertuie wat ek nou net genoem het, se voorkante, as dit na 11 die draad toe wys. Die draad is die draad voor Papa9, 12 Papa7, die wit draad waarteen my tweede posisie was. 13 CHAIRPERSON: Sorry, this is the fence 14 which encloses the larger the kraal? 15 BRIGADIER CALITZ: Dit is korrek, die een 16 wat net – 17 CHAIRPERSON: We call it the larger 18 fenced enclosure as opposed to the smaller fenced 19 enclosure, which encloses inter alia where the corrugated 20 iron – 21 BRIGADIER CALITZ: Die een waar deur ek 22 gery het, Mnr die Voorsitter. Miskien is dit die beter 23 beskrywing. 24 CHAIRPERSON: That's correct. 25 BRIGADIER CALITZ: So as ons kyk dat die</p>
<p style="text-align: right;">Page 18279</p> <p>1 and there and where the arrow is and so on. I'm not 2 criticising you, you're entitled to give your evidence that 3 way, but it's my job to see to it that a record is produced 4 that we can follow later, but inasmuch as I have to turn my 5 back on my microphone to see the screen above me, I'd be 6 grateful if Mr Chaskalson would translate into words what 7 you were saying. Can you go back to where you started 8 giving these here's and there's, arrows on the computer, so 9 that we can then get that recorded in a proper form? 10 BRIGADIER CALITZ: Mnr die Voorsitter, ek 11 is 'n klein bietjie ge-disoriënteer op hierdie kaart, as my 12 rigting reg is, is dit – as ek sê dit, dan bedoel ek die 13 westekant van die klein kraal en die sink huisie is aan 14 die oostekant van die klein kraal. Die Casspirs A en B in 15 lyn met die draad is 'n noordelike rigting en as ek kan sê 16 die waterkanon Noordwes – Noordwes Johannesburg, wys in 'n 17 suidelike rigting. As ek dan my rigting reg het. So die 18 protestors het ek gesê op die fotograaf – ag, op die foto 19 wat ons gesien het, het op 'n 45 angle inbeweeg vanaf 'n 20 westelike rigting na – ek kan amper vir u sê, in die 21 rigting van – as ek die foto nou net voor my het, anderster 22 moet ek onder korreksie praat, maar laat ek onder korreksie 23 praat, op 'n 45 angle in na die sink huisie toe. So van 'n 24 westelike rigting na 'n oostelike rigting, as ek dit so kan 25 stel, en my getuienis was dan dat hierdie voertuie so</p>	<p style="text-align: right;">Page 18281</p> <p>1 neuse van die voertuie, Papa 19, 5, 4, 2, Casper A, Papa 9, 2 Papa 7, die neus van die pantser voertuig na die draad toe 3 wys – die draad verwys ek wat ek afgery het waar my posisie 4 was – sou u dan sien dat aan daardie voertuie se linkerkant 5 – dit is nou soos die neuse na die draad toe wys. As jy 6 uit 'n voertuig uit klim en jy klim aan die linkerkant van 7 'n voertuig uit, aan die linkerkant, dan direk na die skare 8 wat van die westekant af inkom, dit dan die lyn is wat die 9 openbare orde polisiëringslede tussen die voertuie sou 10 stelling in neem en van daardie posisie af, aksie geneem 11 het op die uiteendrywing van die groep wat uit die 12 westelike rigting uit kom. As dit 'n beter verduideliking 13 is. 14 MR CHASKALSON SC: Well, Brigadier, if I 15 describe the crescent that runs from Casper B, through 16 Casper A, all the way to Papa 19, there are clearly two 17 things that it doesn't block. The one is passage A, which 18 runs from the back of Casspir B to the edge of the kraal, 19 the other is passage B, which runs from the corner of the 20 fence at the shack to the south edge of the kraal. Both of 21 those gaps remain open. What's your comment on that? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 met alle respek, ek dink die advokaat verstaan nie die term 24 – operasionele term blok nie. Ek dink hy verstaan dit 25 miskien as a reguit lyn, om die voertuie – kom ons gaan</p>

<p style="text-align: right;">Page 18282</p> <p>1 miskien by – ag, ek weet nie, ek sal later daarna toe kom, 2 ek dink, as ons weer daarna toe kom, mnr die Voorsitter. 3 CHAIRPERSON: Intervene – if I'm stopping 4 you unduly, please say so. Can I intervene to explain how 5 I understand, which I think may solve the problem? When Mr 6 Chaskalson says it remains open, I think he means it 7 remains unblocked by physical objects, such as vehicles. 8 When you say it isn't open, you mean it is "blocked" by 9 members of the force, members of the POP, who have got out 10 of – alighted from their vehicles with the equipment that 11 they have which will enable to apply the forced continuum, 12 a non-lethal methods of hopefully dispersing or repelling 13 advancing people, so you use the word "open" in different 14 senses. Is that correct, Mr Chaskalson? 15 [10:29] MR CHASKALSON SC: Well, I'd like the 16 Brigadier to answer it because – 17 CHAIRPERSON: No, no, no, but did I – I 18 also said, part of what I said involved your understanding, 19 and did I correctly convey what you meant when you said 20 that these two passages were open on the configuration we 21 have on the photograph? 22 MR CHASKALSON SC: Chairperson, in 23 relation to passage A my understanding goes further than 24 that because there were no POP members placed in passage A. 25 In relation to passage B there may have been POP members.</p>	<p style="text-align: right;">Page 18284</p> <p>1 liewer om die bewees. So mens kan nie sê as daar 'n 2 persoon wel aan die noordekant verby my mense kom en hy 3 storm in die kafee in, dat ons moes mense fisies dan binne- 4 in die – dit is die operasionele deel wat, ek nie fisies 'n 5 linie maak met lede. In daardie geval sou dit egter die 6 lede se lewens baie, baie in gevaar gestel het, maar fisies 7 'n linie maak met lede en sê so gaan ons nou blok, totdat 8 die mense meters van jou af is en dan eers mag jy oorgaan, 9 en dit is nie wat operasionele blok beteken nie. 10 CHAIRPERSON: Perhaps we – Mr Chaskalson, 11 you want to ask one more question before we take tea? 12 MR CHASKALSON SC: One last question. 13 But Brigadier, when we described a block, or when you 14 described a block in relation to incident 2, what you 15 described wasn't just the positioning of members, but also 16 the positioning of vehicles. You described vehicles 17 driving with their noses in the direction of the block and 18 you used the metaphor of car door's length apart with the 19 members between the vehicles. You recall that? 20 BRIGADIER CALITZ: Ek "recall" dit, en 21 dit is ook wat hier gebeur het, mnr die Voorsitter. 22 MR CHASKALSON SC: But not in relation to 23 the gap. What's blocked by the members here is not the 24 gap; it's the fenced area to the east of the gap. 25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>
<p style="text-align: right;">Page 18283</p> <p>1 There was certainly one or two POP members that for 2 instance, I think is it Sergeant Kuhn, or Warrant-officer 3 Kuhn who we see stumbling backwards, but in terms of 4 physically placing people in those gaps to act as a block, 5 there certainly wasn't anyone placed at passage A. 6 CHAIRPERSON: Before the witness answers 7 the question, Adv Hemraj wants to ask a question. 8 COMMISSIONER HEMRAJ: Brigadier, perhaps 9 to resolve this you need to explain to us what is meant by 10 the operational concept block. 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek 12 dink die maklikste as ons teruggaan na die huidige situasie 13 waar ek vir u gesê het "blocking," waar ons die lede 14 gebruik, dis waar ons dan lede gebruik. Ek het die 15 voorbeeld gebruik indien hulle by 'n motorhawe, vulstasie 16 verbybeweeg dat ons 'n lyn vorm om te verhoed dat die mense 17 by die winkeleienaar inhardloop en stroop, wat soveel kere 18 al gebeur het. Maar nou kom ons vat daardie situasie. Dit 19 is tog nie moontlik om lede te posisioneer van die buurman 20 se lyndraad reg rondom, die besigheid heeltemal af te sny 21 tot op die regterkant, fisies 'n skild linie te vorm, blok. 22 Blok beteken u plaas mense daar – en ek het dit hoeveel 23 keer gesê – as 'n "show of force," as 'n linie vir die 24 persone wat aankom om te sien hier is aksie voor my, 25 operasionele aksie, ek kan nie soontoe gaan nie; laat ek</p>	<p style="text-align: right;">Page 18285</p> <p>1 nee, weereens dink ek Advokaat verstaan verkeerd. Hier 2 beweeg die lede – ag, die voertuie, wat ons voorheen genoem 3 het ook met hulle neus in die rigting van die draad wat ons 4 afbeweeg het. Die lede het wel onder getuienis, en ek dink 5 daar sal getuienis volg van die ander bevelvoerders waar 6 die lede uitgeklim het. Ek dink dit was baie duidelik – 7 nie in my sig nie, maar dit was baie duidelik in die 8 "footage" van verskillende TV uitsendings waar Openbare 9 Orde lede tussen die voertuie gestaan het. Ek onthou 10 pertinent waar hulle hulle "ge-disperse" het en waar daar 11 dan van die skare op ons polisie ook gevuur was. So dit is 12 waar ons lede geplaas het en daar was Openbare Orde 13 Polisiëringslede tussen daardie voertuie. U plaas nooit u 14 Openbare Orde Polisiëringslede verder weg van voertuie af 15 waar hulle dan – dit moet altyd onder beskerming, of naby 16 voertuie wees. 17 MR CHASKALSON SC: That's not my 18 concerned, Brigadier. My concern is if you want to put 19 members between the vehicles to block a gap, you need to 20 put the vehicles in a position where they together with the 21 members between them will block that gap, not where they 22 will create a crescent which effectively funnels people 23 down towards the TRT line. 24 CHAIRPERSON: What do you say to that? 25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>

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1 weereens hierdie voertuie was nie daar gesit om die persone
2 te "channel," te "funnel," te lei, te begelei in 'n rigting
3 nie. Die voertuie was so gesit, 'n fisiese lyn voor hulle
4 waar daar dan 'n aksie teen die "protesters" was en daar
5 was, kon geen ander verduideliking in die "protesters" se
6 "mind" gewees het as om om te draai, hier word 'n aksie
7 teen my geloods nie. Ons, as daardie persone stilgestaan
8 het en ons het 'n linie gevorm, 'n skild tussen die
9 voertuie en ons het gesê met ons hande, "Beweeg verby, gaan
10 maar, gaan maar," ja, dan het ons hulle "ge-funnel," of
11 soos u sê, in 'n rigting in gedui. Dit was nie die aksie
12 nie, mnr die Voorsitter, glad nie.

13 CHAIRPERSON: Can I ask one more question
14 before we take tea? You're talking about where the members
15 were. Would I be correct in thinking – and if I'm wrong,
16 please correct me – that they were effectively standing in
17 the spaces between the vehicles in that crescent? In other
18 words, there would have been members perhaps between P19
19 and P5, between P5 and P4, P4 and P2, P2 and Casspir A, and
20 so on. Is that correct? That's where they were?

21 BRIGADIER CALITZ: Mnr die Voorsitter,
22 dis wat ek getuig het wat ek gesien het in "hindsight" op
23 die televisie, ja.

24 CHAIRPERSON: Yes, that's the way they
25 were positioned. Ja.

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

3 CHAIRPERSON: Right, and we see one of
4 those people so positioned, I take it, in slide 206. Slide
5 206, this is in exhibit L that I'm talking about. Can we
6 get there? Exhibit L, slide 206.

7 MR CHASKALSON SC: Sorry, can we have
8 slide 206 in exhibit L?

9 CHAIRPERSON: I take it that's a POP
10 member.

11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 ja, hierdie is 'n Openbare Orde Polisiëringslid. Ek glo
13 hulle kan vir ons sê daardie voorste, of dit 'n agterkant
14 van 'n Casspir, Nyala, ek kan nie, as ek so na hom kyk –

15 VOORSITTER: Ja.

16 BRIGADIER CALITZ: Maar daardie persoon
17 definitief, die geel sirkel dui die vuurwapen aan en dit is
18 dan die persoon wat direk op die polisie ook gevuur het met
19 'n vuurwapen.

20 CHAIRPERSON: Yes, no I know that. We
21 know.

22 BRIGADIER CALITZ: Ek sê net wat ek sien
23 op die foto.

24 CHAIRPERSON: Ja, I know you're making
25 that point. I can understand why. Now let's look at slide

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1 207, the next one. There again we see the vehicles apart,
2 as indicated on that earlier slide we were looking at, and
3 we see the strikers coming past the gap between the two.
4 There isn't a POP man standing there, but for all we know
5 he may well have been next to the cameraman or something of
6 that sort, so, but that also illustrates the point, doesn't
7 it?

8 BRIGADIER CALITZ: Mnr die Voorsitter,
9 dit wys vir my na die twee voertuie. As ek 'n afleiding
10 kan maak, dit is hier waar ek na die woorde "tactically
11 retreat" verwys, waar die afstand heeltemal te naby is op
12 hierdie afstand om dan –

13 CHAIRPERSON: Yes, yes.

14 BRIGADIER CALITZ: Dit 'n "last resort,"
15 so hier –

16 CHAIRPERSON: I understand there were
17 probably very sensible good reasons why the POP people –

18 BRIGADIER CALITZ: Korrek, mnr die
19 Voorsitter.

20 CHAIRPERSON: - POP person in that gap
21 had taken refuge in one of the armoured vehicles.

22 BRIGADIER CALITZ: Korrek, mnr die
23 Voorsitter, maar dit was die afstande tussen die voertuie
24 wat –

25 CHAIRPERSON: No, I understand. Alright,

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1 that's the point I –

2 BRIGADIER CALITZ: Dankie, Meneer.

3 MR CHASKALSON SC: Chairperson, can I ask
4 one last question and then I'm going to leave this topic?

5 CHAIRPERSON: Alright, on the basis of
6 that promise I'll let you ask a question.

7 MR CHASKALSON SC: Brigadier, are you
8 aware of a single striker who passed between any of the
9 POPS vehicles in that crescent, who passed between any two
10 POPS vehicles in that crescent at scene 1? Have you heard
11 any reports of a striker moving between any of those POPS
12 vehicles at scene 1?

13 BRIGADIER CALITZ: Mnr die Voorsitter,
14 nee, nie wat nou tot my – ek probeer dink aan, terugdink
15 wat die bevelvoerders gesê het waar hulle was. Ek probeer
16 dink aan die TV "footage." Nee, ek dink die laaste een is
17 waar hulle om die – ek weet nie of daar 'n voertuig agter
18 die laaste Nyala was. Ek weet daar was 'n Nyala voor die
19 skare en toe die skare, toe daardie Nyala wegbeweeg het
20 Adjudant-offisier Kuhn die skare waargeneem, en dit is waar
21 ons sien het hy geretireer en geval, maar hy was nog agter
22 die – daar was 'n voertuig voor hom. So die voertuig, toe
23 hy wegbeweeg is dit waar hy die skare sien en ek vermoed op
24 die TV beeld het ek gesien daar is 'n voertuig aan die
25 linkerkant, maar ek praat onder korreksie, mnr die

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1 Voorsitter.

2 CHAIRPERSON: I must say my impression is

3 that he was in what we call passage B, but I could be

4 totally wrong on that. We'll explore that point later, but

5 before we take the tea adjournment, there's one aspect that

6 Commissioner Hemraj would like to clear up.

7 COMMISSIONER HEMRAJ: Brigadier, Papa11

8 was the one vehicle that was the closest to the direction

9 from which the strikers were approaching. Is that correct?

10 BRIGADIER CALITZ: Hy was heel voor aan

11 die buitekant gewees, dit is korrek, Kommissaris.

12 COMMISSIONER HEMRAJ: And part of his

13 instructions, or part of their instructions were also to

14 block and disperse?

15 BRIGADIER CALITZ: Dit is korrek,

16 Kommissaris.

17 COMMISSIONER HEMRAJ: Were you able to

18 see what it is that the members from that Nyala did in

19 carrying out those instructions?

20 BRIGADIER CALITZ: Kommissaris, ek het

21 glad nie daardie lede buitekant die voertuig gesien nie.

22 Ek dink toe ek aankom op daardie stadium was hulle op so 'n

23 stadium naby dat dit is die aksie wat ek gesê het aan die

24 linkerkant nie fisies kontak maak, waarna mnr die

25 Voorsitter verwys het, maar ek het gesien dat hulle wel

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1 verbygaan en daar was aksie geloods. Ek sit ook met 'n

2 verklaring van die lede binne-in Pappa11, wat ek glo sal

3 dan later as 'n bewysstuk kom, waar hulle hier pertinent sê

4 waar die aanval op hulle was en wat die aksie op hulle was.

5 COMMISSIONER HEMRAJ: So they did take

6 some action against the strikers to try and disperse?

7 BRIGADIER CALITZ: Dit is beslis so,

8 Kommissaris.

9 CHAIRPERSON: But the strikers still

10 continued past Papa11?

11 BRIGADIER CALITZ: Hy was heel voor.

12 Hulle het toe verbybeweeg en toe hulle by die Casspirs,

13 daardie rigting daar naby, dit is toe ek vorentoe – dit is

14 korrek, mnr die Voorsitter.

15 COMMISSIONER HEMRAJ: Thank you,

16 Brigadier.

17 CHAIRPERSON: I think we'll now take tea.

18 It's now by my watch 20 to 11 –

19 BRIGADIER CALITZ: Mnr die Voorsitter,

20 ekskuus tog, ek weet net die –

21 CHAIRPERSON: Alright, well carry on.

22 What do you want to say?

23 BRIGADIER CALITZ: Ek wil u nie in die

24 rede val nie, met respek.

25 CHAIRPERSON: No, no, you can say

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1 something.

2 BRIGADIER CALITZ: Daar was nog huiswerk

3 gewees.

4 CHAIRPERSON: Can we do that after tea?

5 BRIGADIER CALITZ: Ek wil vra dalk nou as

6 ons breek, die wat belangstel, hier is 'n Nyala voertuig.

7 Gister by die huiswerk was dit net ek gewees en toe

8 verstaan ek nie waar is die res nie.

9 CHAIRPERSON: I see we have some

10 volunteers who're prepared to sacrifice their tea.

11 BRIGADIER CALITZ: As ek kan getuienis

12 gee, toe ek op die sitplek sit en ek sit my arm reguit voor

13 my deur die skietgat, het dit 'n 90-grade hoek gemaak. Ek

14 dink dit is Charles wat gesê het, miskien hy het gebuk,

15 maar ek dink hy is bietjie korter as ek, of iemand het dit

16 genoem – ek is onder korreksie as ek dit sê, verskoon my as

17 ek jou verkeerd aanhaal –

18 CHAIRPERSON: I'm glad you raised the

19 point. It is appropriate to raise it before tea because

20 we'll get some volunteers who are prepared to forego their

21 tea –

22 BRIGADIER CALITZ: Hy staan net hier

23 agter –

24 CHAIRPERSON: - and take part in this

25 demonstration and then they can report back and we could

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1 have an agreement on the point that you make.

2 BRIGADIER CALITZ: Dit was, dankie, mnr

3 die Voorsitter.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [11:03] CHAIRPERSON: I received two queries

6 about our sitting times this week. There is one query

7 asking whether we are sitting only until one o'clock today,

8 that is an erroneous belief. We are sitting the full day

9 today and equally on Thursday we will be sitting through

10 the full day, even though it is the last day of term, so if

11 you asked questions about that you know the answers.

12 You're still under oath, Brigadier.

13 BRIGADIER CALITZ: Dankie, mnr die

14 Voorsitter.

15 CHAIRPERSON: Mr Chaskalson?

16 MR CHASKALSON SC: Mr Chairperson, if I

17 can report on our homework, the brigadier showed me around

18 the inside of the Nyala which was very illuminating for me

19 but I won't put on record what I saw beyond the distances

20 or the heights, we estimated that the top of the Nyala

21 windows is approximately 2 metres above ground level. So

22 the top of a Nyala window is approximately 2 metres above

23 ground level and the eye line of the brigadier when seated,

24 we estimated at approximately 1.78, are you happy with

25 1.78, a little bit shorter than Charles, with two inch

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1 heels.

2 BRIGADIER CALITZ: Mnr die Voorsitter, ek

3 weet nou nie, ek wag maar om te hoor, ons het buitekant

4 ooreengekom wat ons gaan sê. Dit is, wat beweer is dat,

5 wat u gesê het is dat 'n persoon wat binne in die Nyala sit

6 moet sy kop laat sak om by die ruit uit te sien en ek het

7 gesê dit is nie so nie. Waar ons nou gesit het is dat my

8 gesigsveld was regoor die gat gewees. Ek het 'n papier

9 gevat, 90 grade en die bokant van my, sê wenkbroue, was aan

10 die bokant van die gat, so as u sal uitskiet in 'n 90 grade

11 dan is die gesigsveld waar die gat is en die gat is in die

12 middel van die ruit, so dit is maar net al wat ek wou

13 reggestel het.

14 MR CHASKALSON SC: Ja, that height of

15 1.78 is the height that we estimate to the top of the

16 shooting hole on the Nyala window.

17 CHAIRPERSON: What it amounts to is that

18 if the brigadier was sitting in his seat, that we've

19 indicated, and looking out of the window he would look

20 through effectively the porthole or the shooting hole and

21 he would be able to see through the porthole, from his

22 position sitting in a Nyala, do I understand correct?

23 MR CHASKALSON SC: That's correct, his

24 eye line in a seated position out the Nyala would be

25 approximately 1.78 metres above the ground which would

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1 correspond to the height of the top of the porthole.

2 CHAIRPERSON: Is that the way you

3 understand it?

4 BRIGADIER CALITZ: Dit is korrek, mnr die

5 Voorsitter, ek het ook dat mnr Chaskalson in my sitplek sit

6 en dan het hy my gevra om hom te verduidelik die tweede

7 posisie van my voertuig, net om te wys die groot figuur,

8 Bakkies Botha figuur in die ander een en ek het hom die

9 sitplekke gewys en so miskien kan hy dan sê wat sy visie

10 was vorentoe en aan die linkerkant.

11 MR CHASKALSON SC: Well, I don't want to

12 sort of get into a –

13 BRIGADIER CALITZ: No, -

14 MR CHASKALSON SC: I haven't sort of

15 formulated what I saw or attempted to put on record or

16 reached agreement on that, so what I can see is that there

17 is, you know that one does have vision out of a Nyala, that

18 much, I'm not suggesting that the vision was obstructed and

19 that there is some vision through the front window and

20 vision through the left hand side from the right seat as

21 well, as well as through the right window, and that there

22 is also vision through the back window but that would be

23 partially obstructed if the person in seat 9 hasn't moved.

24 COMMISSIONER HEMRAJ: Brigadier, I think

25 you also said at some stage you were kneeling on your seat

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1 and giving out instructions. At that stage what was your

2 vision?

3 BRIGADIER CALITZ: Mnr die Voorsitter,

4 ja, dit is waarna ek verwys het toe ek gesê het ek het mnr

5 Chaskalson in my sitplek gesit. Hy het omgedraai en met sy

6 knie op my sitplek en ek wou graag gehad het dat dit wat

7 ons buite ooreengekom het wel hier binne gesê word, as ons

8 kan eerlik wees daaroor.

9 MR CHASKALSON SC: Well, I'm not sure

10 what the brigadier is referring to, -

11 CHAIRPERSON: He says you knelt, as I

12 understand it, on his seat and looked out and the question

13 is, what could be seen by some, because he apparently did

14 that at some stage, what can be seen from that position?

15 MR CHASKALSON SC: Brigadier, -

16 BRIGADIER CALITZ: Mnr die Voorsitter, as

17 ek –

18 CHAIRPERSON: Perhaps the brigadier can

19 tell us.

20 BRIGADIER CALITZ: As ek 'n vraag kan

21 vra, as ons net gou miskien kan rolle omruil met alle

22 respek, mnr Chaskalson het u op u knie gestaan op die

23 sitplek langs my, op sitplek nommer 7?

24 MR CHASKALSON SC: Brigadier, honestly I

25 can't recall whether I did or I didn't, I wasn't, - I was

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1 interested in height of eye line, that's what –

2 BRIGADIER CALITZ: Okay –

3 MR CHASKALSON SC: - I was paying

4 attention to, you were indicating to me that there was

5 certain –

6 BRIGADIER CALITZ: Ek kan –

7 MR CHASKALSON SC: - spaces through which

8 you could see.

9 BRIGADIER CALITZ: Ek kan u kollega net

10 langs u vra, Ms Pillay het gesit –

11 COMMISSIONER HEMRAJ: Brigadier, perhaps

12 you can just tell us what your line of vision is when you

13 were kneeling on the seat, perhaps that would –

14 MR CHASKALSON SC: Sorry, Brigadier,

15 you're referring to what's at shoulder level when one

16 shoots through a porthole.

17 CHAIRPERSON: May I suggest –

18 BRIGADIER CALITZ: I will –

19 CHAIRPERSON: Sorry, can I interrupt?

20 May I suggest that this demonstration was not entirely

21 successful in the sense that there isn't unanimity at all

22 the things that are on the table for discussion, so I

23 suggest that we repeat, as punishment to those who didn't

24 do their homework properly, that you go at lunch time and

25 do it again and come back. You don't have to write it out

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1 twice, just write it out once and I want an agreement
 2 please on these outstanding matters, is that fair?
 3 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 4 dink as ek een vragie kan vra sal mnr Chaskalson weet
 5 waarna ek verwys. I will do it in English, not the time
 6 that I asked you to put the shotgun, when I asked you, are
 7 you a hunter, and you said, yes, may I ask you, put a
 8 shotgun or a rifle in your shoulder and pointed it out of
 9 the hole, not that time, the other proposition where I
 10 asked you, turn around –
 11 MR SEMENYA SC: No, we'll go with the
 12 chair that this thing will be demonstrated at lunch, Chair.
 13 CHAIRPERSON: Do you agree with my
 14 proposal, Mr Semenya, as a punishment they do it again at
 15 lunch time and give us the agreed answer after lunch, are
 16 you happy with that, Mr Semenya?
 17 MR SEMENYA SC: Yes, Chair.
 18 MR CHASKALSON SC: Are you asking if I'm
 19 happy with that, Chair, because I wouldn't say happy but
 20 I'm quite –
 21 CHAIRPERSON: Counsel –
 22 MR CHASKALSON SC: I reconcile to –
 23 CHAIRPERSON: Counsel from the other
 24 parties are welcome to be there as well. I suggested that
 25 some of them in tea time they go, but I didn't find any

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1 takers but perhaps in order to avoid problems of this kind
 2 in the future, some of them should make it their business
 3 to be there.
 4 MR CHASKALSON SC: Alright.
 5 CHAIRPERSON: Can we now carry on with
 6 the evidence?
 7 MR CHASKALSON SC: Brigadier, we talked
 8 about the first block that was successfully executed at the
 9 western side of the kraal. Now if I understand your
 10 evidence correctly your instruction to execute that block
 11 was an instruction that you issued after incident 1, is
 12 that correct?
 13 BRIGADIER CALITZ: Ek verstaan nie u
 14 vraag, net weer vir my herhaal, asseblief?
 15 MR CHASKALSON SC: When you instructed
 16 the first block to be executed, the so called incident 2,
 17 that's the block that was affected there, that was an
 18 instruction that you gave only after incident 1.
 19 BRIGADIER CALITZ: Mnr die Voorsitter,
 20 ja, ek het getuig by insident 1 was daar geen nodigheid
 21 daarvoor –
 22 CHAIRPERSON: The point is a simple one,
 23 after incident 1, thereafter there was a problem further
 24 down the line, shall we say, of what you call incident 2
 25 and you gave an instruction as to how that should be dealt

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1 with and the point counsel is putting to you is that it was
 2 after incident 1 and I take it that's in line with your
 3 evidence, that is correct, isn't it?
 4 BRIGADIER CALITZ: Ja, mnr die
 5 Voorsitter.
 6 MR CHASKALSON SC: So I take that it
 7 would have been after Nyala 3 and Nyala 4 had reached the
 8 mast, because that's what I take as the starting point of
 9 incident 1, Nyala 3 and Nyala 4 together at the mast.
 10 BRIGADIER CALITZ: After Nyala 4 started
 11 moving deploying from the mast.
 12 CHAIRPERSON: Ja, the first thing that
 13 happened was Nyala 3 got roughly to the mast, more or less
 14 where Nyala 4 had been, and then Nyala 4 started.
 15 MR CHASKALSON SC: Well, we –
 16 CHAIRPERSON: Started uncoiling wire, is
 17 that right?
 18 MR CHASKALSON SC: The time when Nyala 4
 19 started uncoiling wire from the CCTV footage and that was
 20 at 15:51:26. It moved away from Nyala 3 and started
 21 deploying its wire at 15:51:26. The picture that we have
 22 on slide 200, if we can call up slide 200 which is the
 23 block to the west of the kraal, that picture is 15:51:47,
 24 15:51:47. So there were only 20, a maximum of 21 seconds
 25 for the Papa Nyalas to move themselves into this block

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1 formation after Nyala 4 moved away from Nyala 3. So in
 2 response to an instruction that couldn't have been given
 3 more than 21 seconds previously they managed to affect this
 4 block that we see there.
 5 Now if we go to the footage that we saw yesterday
 6 where your Nyala reached the path south of the kraal, that
 7 was JJJ198.16 at 23 seconds in, which was ETV time
 8 15:52:36. So that was 1 minute and 14 seconds before the
 9 shooting, it was 45 seconds before slide 205, can we see
 10 slide 205? It is 45 seconds before this slide. Ahead of
 11 you in the gap were Papa11, the SDF Casspir, Papa7, Papa18,
 12 the POP's Casspir and Nyala 6. So including yourself there
 13 were already 7 armoured vehicles either on the path or
 14 across the path. Behind you there were another 7 armoured
 15 vehicles, Nyala 5, Papa2, Papa9, Papa5, Papa10, Papa4 and
 16 Papa3. We measured the gap at passage A on Google Earth,
 17 it is 18.5 metres, 18.5 and what I want to put to you is
 18 that if you and the Nyalas in front of you had reacted with
 19 the same purpose and speed that the Nyalas reacted at the
 20 so called incident 2 to your instruction, where in 21
 21 seconds they closed that gap, with 7 armoured vehicles and
 22 7 in reserve it would have been possible to close the gap
 23 at passage A within the 45 seconds that was left to you
 24 before we see slide 205. What's your response to that?
 25 BRIGADIER CALITZ: Nee, ek stem nie saam

<p style="text-align: right;">Page 18302</p> <p>1 nie, mnr die Voorsitter.</p> <p>2 MR CHASKALSON SC: And can you say why?</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>4 verskeie faktore, dit hang af wat gebeur het, dit hang van</p> <p>5 die omstandighede af, ek kan nie sê dieselfde roete wat</p> <p>6 daardie voertuig gevolg het en u, wat het u gesê, 21</p> <p>7 sekondes, dit is dieselfde roete wat die ouens gevolg het</p> <p>8 of wat voor hulle was en die 45 sekondes, ek dink daardie</p> <p>9 hele prentjie, dit is twee verskillende rigtings wat beweeg</p> <p>10 is, so daar is verskeie redes, mnr die Voorsitter. Ek stem</p> <p>11 nie saam met u nie.</p> <p>12 CHAIRPERSON: If you say, there are</p> <p>13 "verskeie redes", it might be obvious that this is the</p> <p>14 point to which Mr Chaskalson is been leading up to, so I</p> <p>15 think it would be helpful for us if you give us the</p> <p>16 "verskeie", all the "verskeie redes" that you are thinking</p> <p>17 of. I understand, well, I think I understand your question</p> <p>18 but give it to us again and then give us all the "verskeie</p> <p>19 redes" slowly so that we can take them in.</p> <p>20 BRIGADIER CALITZ: Mnr die Voorsitter,</p> <p>21 die eerste foto wat gewys is het hy gewys dat daar is</p> <p>22 sekere, ek dink vier of vyf karre gereageer het binne 21</p> <p>23 sekondes. Ek kan nie sê wat voor daardie bevelvoerders was</p> <p>24 nie, ek kan nie sê wat die terrein was op pad soontoe nie,</p> <p>25 wat hulle waargeneem het, die spoed wat daardie Nyalas</p>	<p style="text-align: right;">Page 18304</p> <p>1 determined by the distance that they are away from that</p> <p>2 point when the command is given, isn't that so?</p> <p>3 BRIGADIER CALITZ: Dit is korrek,</p> <p>4 Kommissaris, ek dink ek het op een stadium getuig, die</p> <p>5 advokaat het vir my gevra of ek het verwys na vier voertuie</p> <p>6 en daar was vyf of ses en ek het gesê miskien is dit een</p> <p>7 van die statiese posisies wat daardie Nyalas ingeneem het</p> <p>8 na die noordelike rigting, so daar was inderdaad ook 'n</p> <p>9 afstand aspek.</p> <p>10 MR CHASKALSON SC: If I can possibly help</p> <p>11 in that regard, I put it to you that there were six Nyalas</p> <p>12 ahead of you already, in other words closer to channel A,</p> <p>13 passage A. You are on the path, the distance from the path</p> <p>14 to the furthest point on passage A is 52 metres on Google</p> <p>15 Earth, 52 metres. So the furthest distance that anyone</p> <p>16 would have to travel is 52 metres, and that's assuming that</p> <p>17 one required all 7 armoured vehicles to block a gap of 19,</p> <p>18 - of 18.5 metres.</p> <p>19 BRIGADIER CALITZ: Mnr die Voorsitter, as</p> <p>20 dit die kalkulasie is, ek kan nou nie daarmee saamstem nie</p> <p>21 want ek het op daardie stadium nie afgetree of gemeet</p> <p>22 vanwaar ek was, my oorspronklike posisie tot by die pad en</p> <p>23 van die pad af vorentoe, so ek kan nie ongelukkig nie</p> <p>24 saamstem nie maar ek glo dit kan bewys word.</p> <p>25 CHAIRPERSON: I take it you're not saying</p>
<p style="text-align: right;">Page 18303</p> <p>1 beweeg het, ek kan nie getuig nie want ek was nie binne in</p> <p>2 daardie bevelvoerder se voertuie nie, ek het ook nie vir</p> <p>3 daardie drywers opdrag gegee nie, dit sou deur daardie</p> <p>4 bevelvoerders gedoen word. Die voertuie wat ombeweeg het,</p> <p>5 het ek wel gesê dat toe ek daar kom, en ek dink dit was in</p> <p>6 hulle video evidence gewees, as ek verwys na "hulle" is dit</p> <p>7 die evidence leaders se video evidence, dat daar reeds</p> <p>8 voertuie was, so ek dink nie ek was die eerste een wat</p> <p>9 gearriveer het daar nie.</p> <p>10 Soos dit vir my lyk was ek amper die laaste een</p> <p>11 om verby hulle te ry en dan voor te kom. So ek kan ook nie</p> <p>12 vir u sê wat is die tyd verloop wat die eerste voertuig</p> <p>13 daar aangekom het wat hy gesien het en hoekom hulle besluit</p> <p>14 het om dan so agter mekaar, weereens verwys ek terug na my</p> <p>15 voorligting, ek verwys na wat moes gebeur het by fase 2 en</p> <p>16 fase 3 met die uiteendrywing. So as ek 'n afleiding kan</p> <p>17 maak, maar ek dink die bevelvoerders kan beter getuig oor</p> <p>18 wat voor hulle afgespeel het, wat hulle ondervinding was</p> <p>19 van die voorligting wat hulle ingegee het en wat dan hulle</p> <p>20 opdrag aan hulle drywers was, mnr die Voorsitter.</p> <p>21 COMMISSIONER HEMRAJ: Doesn't it also</p> <p>22 depend on the distance where the various vehicles were from</p> <p>23 the point at which the commanders wanted them to be? The</p> <p>24 distance from where the vehicles were at incident 2, the</p> <p>25 time that it takes for them to get to that point would be</p>	<p style="text-align: right;">Page 18305</p> <p>1 you disagree, you're saying you simply cannot agree because</p> <p>2 you don't know?</p> <p>3 BRIGADIER CALITZ: Dit is korrek.</p> <p>4 CHAIRPERSON: And presumably it is a</p> <p>5 fairly mechanical exercise which I don't propose asking you</p> <p>6 to get a Google Earth photograph, once one knows the scale</p> <p>7 one knows the relevant positions and one can measure, but</p> <p>8 the point is you haven't done that, so you can't agree or</p> <p>9 disagree, is that correct?</p> <p>10 BRIGADIER CALITZ: Korrek, mnr die</p> <p>11 Voorsitter, ek wil net verwys, 'n Google Earth foto is 'n</p> <p>12 baie gevaarlike operasionele tool, as ek dit so mag stel,</p> <p>13 as ons afstand en spoed moet bepaal. Die terrein moet ook</p> <p>14 definitief in ag geneem word.</p> <p>15 CHAIRPERSON: Yes, I suspect we may at</p> <p>16 some stage have to have another inspection but even if we</p> <p>17 don't, if this is an important point, I don't know whether</p> <p>18 it is, but if it is an important point then presumably it</p> <p>19 is something that can be physically measured, it is not</p> <p>20 something that we never know how to find the answer to, but</p> <p>21 can I put something else to you before Mr Chaskalson moves</p> <p>22 on? He put a proposition to you, you said you didn't agree</p> <p>23 for various reasons and then you spoke about variables,</p> <p>24 speed and distance and so on, position of vehicles and so</p> <p>25 on. So am I correct, and you also spoke about what the</p>

<p style="text-align: right;">Page 18306</p> <p>1 commanders would be able to say and so on. So if I 2 incorrectly summarise your evidence please correct me and 3 the impression I got was, you say you're going to give 4 various reasons, but these various reasons don't amount to 5 reasons for disagreement necessarily, but what you were 6 saying is there are a whole lot of variables which you 7 can't determine and therefore you can't necessarily agree, 8 is that a fair summary of what you say? 9 BRIGADIER CALITZ: Korrek, mnr die 10 Voorsitter. 11 CHAIRPERSON: You're not saying it is not 12 so because of such and such, you're saying it may not be so 13 because of such and such. I don't know what the such and 14 such is, is that a fair paraphrase? 15 BRIGADIER CALITZ: Heeltemal, dankie, mnr 16 die Voorsitter. 17 CHAIRPERSON: Ja, thank you. 18 MR CHASKALSON SC: Brigadier, you 19 mentioned terrain, maybe if we can address that by looking 20 at the slide at the end of JJJ178.2 again, the slide with 21 the positions of the Nyalas, can we call that slide up and 22 zoom in? Now the distance of 52 metres that I have 23 measured is, on Google Earth is from where I'm pointing 24 with the marker here, just on the path close to the corner 25 of the fence around the kraal, through to the corner of the</p>	<p style="text-align: right;">Page 18308</p> <p>1 hierdie rigting uit die hoogte te bepaal van daardie, as 2 ons dan dit noem, obstruksie. 3 MR CHASKALSON SC: Can I ask this 4 question; did every single Nyala that went into the 5 operation either at koppie 2 or at koppie 3 pass over this 6 stretch of road that we're referring to, or stretch of veld 7 that we're referring to? 8 BRIGADIER CALITZ: As u sê elke Nyala, 9 kom ek net terug na u vraag toe? 10 MR CHASKALSON SC: Every Nyala that was 11 part of the operation thereafter at koppie 2 and koppie 3. 12 BRIGADIER CALITZ: U verwys na die tweede 13 toneel? 14 MR CHASKALSON SC: Yes, Brigadier. 15 BRIGADIER CALITZ: Dit sou die pad wees. 16 Dit is die enigste opening en dit is die pad waardeur hulle 17 dan moes beweeg het na my toe. 18 MR CHASKALSON SC: So it was used by, we 19 can say every Nyala and water cannon as well that 20 participated in the subsequent scene? 21 BRIGADIER CALITZ: Dit is korrek, mnr die 22 Voorsitter. 23 MR CHASKALSON SC: And did any of them 24 report difficulties with the terrain in getting through 25 that gap?</p>
<p style="text-align: right;">Page 18307</p> <p>1 fence around the big kraal, that distance is 52 metres. 2 [11:23] CHAIRPERSON: I'm sure that will be 3 cleared through those who come after us and read the record 4 or even ourselves when we read the record later. The point 5 you indicated was the corner of the kraal – sorry, the 6 corner of the fence which is part of the enclosure around 7 the corrugated iron house, the so-called shack – 8 MR CHASKALSON SC: A little bit behind 9 that on the path, Chairperson. 10 CHAIRPERSON: A little bit behind that, 11 yes, about a metre or so into the path I suppose, and then 12 from there to a point very close to where Casspir B is 13 indicated on this photograph, which is the corner of the 14 enclosure around the large kraal. That's correct, isn't 15 it? 16 MR CHASKALSON SC: That's correct, 17 Chairperson. Now is there anything in the terrain over 18 that stretch that you can see on this picture or of which 19 you are aware from having been in the field on that day 20 that would have posed difficulties of movement to Nyala 21 vehicles? 22 BRIGADIER CALITZ: Mnr die Voorsitter, ek 23 dink die foto spreek vanself. Daar is verskeie graspolle, 24 struike, bosse. As 'n ou dit vergelyk met die kraal aan 25 die kant, dan kan 'n ou sien dit is baie moeilik om uit</p>	<p style="text-align: right;">Page 18309</p> <p>1 BRIGADIER CALITZ: Die enigste wat ek kan 2 onthou is dat ons het 'n baie lank en geruime tyd gewag vir 3 die waterkanon om op te vang by my toe ek by koppie 2, tot 4 ek die "regrouping" lyn geroep het, en die waterkanon wat 5 'n 2x4 voertuig is het gesukkel met die terrein. 6 MR CHASKALSON SC: Well, I think we'll 7 find that the water cannon didn't struggle with the 8 terrain; the water cannon struggled with direction because 9 the water cannon drove around in circles a few times behind 10 the barbed wire. It couldn't find that opening. That's 11 clear from the CCTV footage. When it found it, it had no 12 difficulty going through at high speed. 13 BRIGADIER CALITZ: As daar miskien 14 daardie "voice recording" of iets is wat dit kan bewys, 15 miskien is dit soos ek gesê het die terrein voor hom en hy 16 het 'n spasie gesoek waardeur hy kan gaan. Met ander 17 woorde daar was 'n obstruksie of iets voor hom en hy kan 18 nie daar deur nie, anders het hy in 'n reguit lyn daar 19 deurgery. So hy moes om iets beweeg het, of die terrein 20 speel 'n groot rol. 21 MR CHASKALSON SC: Yes, I want to put to 22 you whatever terrain may have played a role wasn't the 23 terrain in the 52 metres with which we are concerned. 24 BRIGADIER CALITZ: Ek stem nie saam met u 25 nie, mnr die Voorsitter.</p>

<p style="text-align: right;">Page 18310</p> <p>1 CHAIRPERSON: It's a matter that – the 2 terrain is still there, I take it, and it hasn't been 3 ploughed up or anything like that, so if there's a debate 4 about it someone can go and an agreement can be reached on 5 the nature of the terrain, if it's a point of importance. 6 I don't know that it's necessary to debate it with the 7 witness because he hasn't – I don't know when he was last 8 there. When were you last there, Brigadier? 9 BRIGADIER CALITZ: Ek het net verneem dit 10 lyk al baie anderste en daar is paaie geskraap. Ek was 11 laas saam met, ek dink u toe ons die – nee, nee, ja ek dink 12 toe ons die terrein gestap het op die eerste geval. 13 CHAIRPERSON: At the inspection, that was 14 in October – 15 BRIGADIER CALITZ: Inspection in loco. 16 CHAIRPERSON: That was in October last 17 year. 18 BRIGADIER CALITZ: Dit is dan. 19 MR CHASKALSON SC: Well, I won't take 20 this line further, but Brigadier, I want to refer you to a 21 passage in your statement at page 28. It's paragraphs 146 22 to 148 – 23 CHAIRPERSON: Which statement? He's made 24 three statements, Mr Chaskalson. 25 MR CHASKALSON SC: The latest statement.</p>	<p style="text-align: right;">Page 18312</p> <p>1 MR CHASKALSON SC: Well, Brigadier, you 2 drove your Nyala through the fence of the big kraal after 3 the shootings. 4 BRIGADIER CALITZ: Dis nie korrek nie, 5 mnr die Voorsitter. 6 CHAIRPERSON: I think he's taking an 7 accurate point, namely he wasn't the driver. He caused it 8 to be driven by instructing his driver. That's the 9 accurate answer. 10 MR CHASKALSON SC: Okay, well let's not 11 get into a dispute over whether it was at the time of the 12 shootings, before or after. You ordered your driver to 13 drive through the fence of the big kraal en route to the 14 dispersion line at koppie 2? 15 BRIGADIER CALITZ: By my posisie 2, dit 16 is korrek, mnr die Voorsitter. 17 MR CHASKALSON SC: Are you suggesting 18 that it wouldn't have been possible for SAPS Nyalas 19 similarly to drive through the fence around the shack? 20 BRIGADIER CALITZ: Ek verstaan nie die 21 vraag nie, as u net kan herhaal, asseblief? 22 MR CHASKALSON SC: In paragraph 148 you 23 say that if barbed wire had been rolled out to close the 24 gap between the kraal and the shack, that would have left 25 police members who, as you were, behind the armed attacking</p>
<p style="text-align: right;">Page 18311</p> <p>1 CHAIRPERSON: JJJ107. 2 MR CHASKALSON SC: JJJ107. 3 CHAIRPERSON: Which paragraph? 4 MR CHASKALSON SC: 146. 5 CHAIRPERSON: Thank you. It's page 28. 6 MR CHASKALSON SC: And there you say, 7 "Concerns have been raised during the hearing, particularly 8 during cross-examination, that at scene 1 the driver of 9 Nyala 5 could and should have moved to close the gap 10 between the kraal and the shack, thereby preventing the 11 armed protesters from confronting the police. I'm not 12 aware what was in the mind of the driver of the Nyala at 13 the time. However, I must indicate that the deployment of 14 barbed wire is not instantaneous. Somebody must physically 15 dislodge the barbed wire and unhook the barbed wire if it 16 gets jammed. The reason why it would have been ill-advised 17 to close the gap between the kraal and the shack is that 18 the police members who were, as I was, behind the armed 19 attacking strikers would have been isolated and vulnerable 20 to attack unassisted by other members. Further the police 21 members would have barricaded themselves. The gap was the 22 only space we had left for open police movement in the 23 dispersal action." Do you stand by that statement? 24 BRIGADIER CALITZ: Korrek, mnr die 25 Voorsitter.</p>	<p style="text-align: right;">Page 18313</p> <p>1 strikers, in other words already on the other side of 2 channel B. "They would have been isolated and vulnerable 3 to attack, unassisted by other members. Further, the 4 police members would have barricaded themselves. The gap 5 was the only space we had left open for police movement in 6 the dispersal action." So are you saying that if the 7 barbed wire had been rolled out to close the gap to the 8 fence at channel B, those of you on the other side of that 9 barbed wire would have been isolated and vulnerable, and it 10 wouldn't have been possible for police vehicles on the safe 11 side of the fence around the kraal to get through to you? 12 The fence around the shack. 13 BRIGADIER CALITZ: Korrek, mnr die 14 Voorsitter. 15 MR CHASKALSON SC: Would it not have been 16 possible for them to drive through the fence? 17 BRIGADIER CALITZ: Deur watter "fence," 18 mnr die Voorsitter? 19 MR CHASKALSON SC: The fence around the 20 kraal. 21 CHAIRPERSON: I think the question – 22 MR CHASKALSON SC: Sorry, the fence 23 around the shack. 24 CHAIRPERSON: Sorry, I think the question 25 relates to you were able to get your driver to drive</p>

<p style="text-align: right;">Page 18314</p> <p>1 through the fence around the, which is part of the 2 enclosure around the large kraal. Remember? In fact he 3 went through it twice. You went into the enclosure and 4 then across and through out the other side. Now what Mr 5 Chaskalson says, if your driver was able to do that with 6 the fence around the, what we will call the large 7 enclosure, i.e. the enclosure around the large kraal, the 8 other police members, drivers of other vehicles which are 9 on the footpath side of passage B if it had been 10 barricaded, would surely have been able to have got through 11 by driving through the fence around the corrugated iron 12 shack enclosure, as you did with the large enclosure. They 13 could have done that. That's the point he's putting to 14 you. He's asking you whether you agree with that or 15 disagree.</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, 17 ja, dit is nou twee dele. Dit sal moontlik wees vir 'n 18 Nyala om daar deur te ry. Weereens die terrein, die 19 besluit hoekom ek dit gedoen het was totaal om die groep 20 uiteen te dryf uit 'n desperate – die vraag is agter die 21 Nyala, as ek weereens kyk na die terrein, daar is sinkhuis, 22 ek weet nie of dit bewoon is deur mense nie. Daar is hoë 23 rotse. Ek onthou spesifiek, ek dink daardie rots is hoër 24 as die sinkhuis. Ek praat onder korreksie. As u na die 25 foto kyk, ek kyk weereens na die foto wat – miskien as u</p>	<p style="text-align: right;">Page 18316</p> <p>1 just said I instructed the Nyala to move in between the 2 group of the strikers. So dit is die –</p> <p>3 CHAIRPERSON: I don't think you said it, 4 Brigadier, but the question is whether your omission is 5 significant. But I'd like to ask you something about 148. 6 The last sentence says, "The gap was the only space we had 7 left open for police movement in the dispersal action." 8 Now that's technically correct because it was the only 9 space left open, but the point being put to you is it may 10 well be that it would have been possible for police 11 vehicles and Nyalas on the TRT side, as it were, on the 12 footpath side of passage B to have got to the help of 13 people who were "isolated" on the other side by doing what 14 your driver had done and driving through the fence. Now I 15 get the impression – and if I'm wrong you'll correct me, I 16 hope – that you can't really say that isn't right, but you 17 say it may be that there was a reason, based on the terrain 18 and so on, why it couldn't be done. So you're not prepared 19 to agree that it could have been done, but I'm not sure that 20 you can say sitting there that it definitely could not have 21 been done. Is that fair?</p> <p>22 BRIGADIER CALITZ: Mnr die Voorsitter, al 23 wat ek probeer sê het is ek het na 'n foto probeer soek om 24 te sien wie was agter my, omdat ek nie weet nie. Ek glo 25 dit is moontlik om dit te sien, en dan het ek gesê as daar</p>
<p style="text-align: right;">Page 18315</p> <p>1 die JJJ of iets – dis maar net die foto waarna ek verwys. 2 So daar is verskeie "obstacles" by daardie draad.</p> <p>3 COMMISSIONER HEMRAJ: But there's another 4 aspect to that. You would have effectively, those of you 5 who were on the strikers' side of the barricade would have 6 been cut off from the TRT line. Isn't that so?</p> <p>7 BRIGADIER CALITZ: Hulle sou glad nie kon 8 deurkom met die voertuie nie, so ek probeer kyk op die foto 9 wie agter my was om dan daardie vraag effektief te 10 antwoord, maar ek kan op hierdie foto nie sien presies wie 11 sou voor en wie sou agter gewees het. Ek dink onder andere 12 die waterkanonne sou agter gewees het en hulle sou beslis 13 nie deurgekom het. Dis nie pantser voertuie nie.</p> <p>14 MR CHASKALSON SC: Brigadier, you didn't 15 mention in your statement that you drove through the fence 16 of the kraal. Is there any reason why you didn't?</p> <p>17 BRIGADIER CALITZ: Mnr die Voorsitter, ek 18 sal kyk. Ek kan nie so uit my gedagte onthou.</p> <p>19 CHAIRPERSON: I don't think it's in the 20 statement. I'm not sure that it's the sort of point that 21 one would necessarily expect a witness to have –</p> <p>22 BRIGADIER CALITZ: I try to find my –</p> <p>23 CHAIRPERSON: - put in his statement.</p> <p>24 I'm not sure the omission is necessarily –</p> <p>25 BRIGADIER CALITZ: I think I – ja, no, I</p>	<p style="text-align: right;">Page 18317</p> <p>1 'n Nyala voertuig, 'n 4X4 Nyala voertuig agter my was, was 2 dit vir hom moontlik, maar ek het gesê dit sou onmoontlik 3 gewees het vir die 2X4 waterkanonne wat dan "obviously" 4 agter my was, wat die veld moes blus, en-en-en, en dan die 5 TRT wat moes opvolg in 'n lyn, weet ek glad nie of hulle 6 voertuie – dit is, dit sou nie moontlik gewees het nie.</p> <p>7 CHAIRPERSON: I understand. I take it 8 what was implied in the question was a vehicle like your 9 vehicle could possibly have got through, as your vehicle 10 did, through the fence –</p> <p>11 BRIGADIER CALITZ: Ja, ek stem saam.</p> <p>12 CHAIRPERSON: That you agree with.</p> <p>13 BRIGADIER CALITZ: Ek stem saam.</p> <p>14 CHAIRPERSON: Okay. Can we move on to 15 the next point?</p> <p>16 MR CHASKALSON SC: Well, just in closing, 17 once the Nyala has driven through the fence and once 18 several Nyalas have driven through the fence, why is it not 19 possible for the remaining vehicles to follow the gap that 20 the Nyalas have made?</p> <p>21 BRIGADIER CALITZ: As u dan vir my net 22 kan verwys na "remaining," wat u bedoel, want ek het dit 23 nie voor my nie.</p> <p>24 MR CHASKALSON SC: You referred, you were 25 concerned about the water cannons, both of which were still</p>

<p style="text-align: right;">Page 18318</p> <p>1 on the safe side of the path, and the STF Scorpion, I would 2 imagine. Why would it not have been possible for them to 3 follow a train of Nyalas that had broken down the fence? 4 BRIGADIER CALITZ: As u praat van die 5 waterkanon wat deur die "fence" moet ry by die "shack," by 6 die sinkhuisie en by die rotse, verwys u daarna? 7 MR CHASKALSON SC: Yes, I don't want to 8 belabour this point, but you'll see that there's plenty of 9 space around the rocks. 10 BRIGADIER CALITZ: Op daardie hoek, of op 11 daardie – die waterkanon is 'n 2X4 voertuig en hy is nie 12 pantser nie. So hy sal dieselfde effek hê as 'n sedan 13 voertuig wat dan deur 'n draad moet breek, kan ek sê. Ek 14 dink daar sal baie skade op die voertuig wees – 15 CHAIRPERSON: No, no, I think the 16 question is once that's been done, once the fence has been 17 knocked over, once a hole has been punched, as it were, in 18 the fence by the Nyala, you see, then what Mr Chaskalson 19 says, was it not then possible for, to take your example, a 20 sedan car to get through the gap that's been punched by the 21 Nyala? I take it the answer has got to be, subject to 22 question of terrain and so on, that was possible. 23 BRIGADIER CALITZ: Ek verstaan nou – 24 CHAIRPERSON: Is that correct? 25 BRIGADIER CALITZ: Ek verstaan nou</p>	<p style="text-align: right;">Page 18320</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 weereens, ek het gesê ek kan nie onthou nie. Dit kon wees 3 op 'n stadium toe ek staties was. Ek het op 'n stadium 4 gesê die deur was oop. Die Nyala het net geluier. Daar 5 was geen geskietery uit my voertuig uit nie. So weereens, 6 dit is twee heeltemal verskillende omstandighede. Ek weet 7 nie of ek weer al die redes moet noem waarom ek dit nie 8 gehoor het van die TRT skietery nie. 9 CHAIRPERSON: No, all you're being asked 10 to do is to explain why, if you heard the stun grenade at 11 incident 2 from apparently 92 metres, so it's said, why you 12 didn't hear the shooting at position 2 at 72 metres. 13 You've said there were differences. You've explained in 14 the one case I think the door was open. The vehicle was 15 simply – "luier" – I'm trying to think of the English word 16 for "layer" – 17 COMMISSIONER HEMRAJ: Idling. 18 CHAIRPERSON: Idling, thank you. I'm 19 grateful that there are English speaking people here to 20 help me. The vehicle was idling and there were a number of 21 factors you have now mentioned as to why you say your 22 ability to hear the stun grenade from the first position 23 can't be compared with your position to hear the shooting 24 when you were at position 2. Is that – I take it that's 25 enough –</p>
<p style="text-align: right;">Page 18319</p> <p>1 korrek. Dit is net die terrein dan wat oorbly, mnr die 2 Voorsitter. 3 MR CHASKALSON SC: Brigadier, if we move 4 then to incident 2, I don't want to labour incident 2 5 because you don't claim to have witnessed any teargas, 6 water cannon, or rubber. You say you heard a stun grenade 7 at incident 2 – 8 CHAIRPERSON: I'm sorry, are you talking 9 about incident 2, or are you talking about scene 2? 10 MR CHASKALSON SC: Incident 2. 11 CHAIRPERSON: You're talking about 12 incident 2? Sorry, okay. 13 MR CHASKALSON SC: You say you heard a 14 stun grenade at incident 2. Was that before or – can you 15 recall whether this was before or after you moved off from 16 your starting position at Nyala 3? 17 BRIGADIER CALITZ: Nee, ek kan glad nie 18 vir u daardie presiese oomblik sê nie, nee. 19 MR CHASKALSON SC: And can you explain to 20 the Commission why you would have heard a stun grenade at 21 incident 2, but wouldn't have heard a volley of over 300 22 gunshots at scene 1 when you were, we've measured your 23 position to the TRT line at scene 1, we put it at 72 24 metres, as opposed to 95 metres from where the mast was, 25 where your position was at the mast to incident 2?</p>	<p style="text-align: right;">Page 18321</p> <p>1 BRIGADIER CALITZ: Korrek – 2 CHAIRPERSON: If there's anything else 3 you want to add, you can, but it seems to me you've made 4 the point. 5 BRIGADIER CALITZ: Korrek, mnr die 6 Voorsitter. 7 CHAIRPERSON: Whether what you say is to 8 be accepted or not of course depends on argument, but I 9 think you've taken it as far as you can, unless there's 10 something else you want to add. 11 BRIGADIER CALITZ: Op hierdie stadium is 12 dit tot daar waar op – 13 CHAIRPERSON: You said you were shouting 14 out commands too, I think. 15 BRIGADIER CALITZ: Dit is nou as ek – 16 CHAIRPERSON: At the first position. 17 BRIGADIER CALITZ: Toe ek – 18 CHAIRPERSON: The second. Pardon me, the 19 second. I've got it wrong. At the second position you say 20 you were shouting out commands. 21 BRIGADIER CALITZ: Daar was verskeie, dit 22 is hoekom ek vra, mnr die Voorsitter, omdat – moet ek dit 23 weer noem? Daar was verskeie omstandighede – 24 CHAIRPERSON: It's already, it's on 25 record. I mean we'll read it.</p>

<p style="text-align: right;">Page 18322</p> <p>1 BRIGADIER CALITZ: Dit is, ja. 2 CHAIRPERSON: You don't have to repeat it 3 again. 4 BRIGADIER CALITZ: Nee, daar was, dit was 5 verskeie van omstandighede by die tweede punt. 6 MR CHASKALSON SC: Brigadier, if the 7 vehicle is idling I presume it was before you'd moved off 8 from your starting position at the mast. Will you accept 9 that? 10 BRIGADIER CALITZ: Korrek, mnr die 11 Voorsitter. 12 MR CHASKALSON SC: I do want to put to 13 you that the electronic evidence I would say shows that 14 there were no stun grenades at incident 2, but we will show 15 that evidence in due course if the Commission – 16 CHAIRPERSON: If that's so, then your 17 audibility comparison point falls away. 18 MR CHASKALSON SC: Indeed. 19 MR SEMENYA SC: Neither can the witness 20 be expected to answer if the evidence will be produced 21 later. 22 CHAIRPERSON: I don't think he expects 23 him to comment on it. I'm merely pointing out to him that 24 if that's correct, then the audibility comparison point 25 falls away.</p>	<p style="text-align: right;">Page 18324</p> <p>1 slowly at a stretch of footage that runs at a very, very 2 slow pace off a lengthy period and then comparing that with 3 other footage which shows what the same camera reveals when 4 teargas is fired and when stun grenades are fired. It's a 5 very lengthy process. 6 COMMISSIONER HEMRAJ: Mr Chaskalson, 7 you've put on more than one occasion to the witness that 8 his version is not consistent with what the electronic 9 evidence will show and he must comment on that. He must be 10 given an opportunity. 11 MR CHASKALSON SC: I'm happy – 12 COMMISSIONER HEMRAJ: It would be totally 13 unfair to him otherwise. 14 MR CHASKALSON SC: I'm very happy to give 15 him that opportunity, but not under the constraints of 16 finishing at lunchtime today. 17 MR SEMENYA SC: Chair – 18 CHAIRPERSON: Yes, Mr Semenya? 19 MR SEMENYA SC: We're not going to 20 suggest – 21 CHAIRPERSON: You see, the constraint was 22 imposed because of Mr Ntsebeza's need to start cross- 23 examining just after lunch while his clients are still 24 here, because for some reason they're going at lunchtime 25 tomorrow, and he wants them to hear him cross-examining the</p>
<p style="text-align: right;">Page 18323</p> <p>1 [11:42] The point raised actually is if this electronic 2 evidence contradicts his, then to be fair he should be 3 given the opportunity to see it and deal with it. I think 4 that's Mr Semenya's point. In other words whenever you put 5 a point and say to the witness what you say is contradicted 6 by electronic evidence, as a matter of fairness the 7 electronic evidence which you contend contradicts his 8 evidence should be put to him for him to get an opportunity 9 to deal with it. 10 MR CHASKALSON SC: Well, Chairperson, I 11 can do that. I can't do that now because it involves 12 setting up a CCTV film that can't be played off the players 13 here. We can arrange, if needs be I can show that footage 14 at a later stage. 15 CHAIRPERSON: Yes, the problem is when is 16 it going to be done if not now? I mean you were scheduled 17 to end your cross-examination of this witness at 1 o'clock. 18 We have set our faces against the idea of people coming 19 back in exceptional circumstances, so how long will it take 20 to set it up? 21 MR CHASKALSON SC: Mr Chairperson, if 22 that CCTV footage is to be played, it's going to make it 23 impossible for me to finish at 1 o'clock, possibly even 24 later today. I'm happy to show it first thing in the 25 morning on Friday, if that's an – it involves looking very</p>	<p style="text-align: right;">Page 18325</p> <p>1 witness. It will take a day. Anyway, that's where the 2 problem comes from. But anyway, you wanted to say 3 something, Mr Semenya? 4 MR SEMENYA SC: Whatever the constraint, 5 Chair, what is not fair to a witness is to suggest that his 6 version is inconsistent with material that's not put to 7 him, whatever the constraints. It's either Mr Chaskalson 8 does not press for that contradiction and he leaves it 9 because he respects the constraints, or whatever else he 10 accommodates those constraints, but still puts the witness 11 to fairly react to that attack. 12 MR CHASKALSON SC: Chairperson, this is 13 an exceptional situation. I would propose a reasonable way 14 of doing this is for me to come back with that video 15 footage after Mr Ntsebeza has cross-examined – it will be 16 half an hour to 45 minutes – and Brigadier Calitz can react 17 to that video footage then if he wants to. It's on a very 18 discreet issue, but what I'm not prepared to do is to do it 19 now and not traverse very important issues with this 20 witness accordingly. 21 CHAIRPERSON: Mr Ntsebeza, what's your 22 reaction to that? Sorry, when Mr Ntsebeza comes I'll 23 probably end up calling him by your name. Sorry, Mr 24 Semenya, what's your reaction to that? 25 MR SEMENYA SC: Chair, Mr Chaskalson can</p>

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1 make the election. What he must not do now that he says
2 that he cannot do now, he shouldn't do it now. If he
3 elects to do it after Mr Ntsebeza, let him do it then.

4 CHAIRPERSON: That seems the answer then,
5 thank you, Mr Semenya. Yes, carry on, Mr Chaskalson, with
6 something else.

7 MR CHASKALSON SC: If we can quickly run
8 back to incident 1 now, and again I would like to put up a
9 timeline that CALS and the Human Rights Commission have put
10 together on incident 1 –

11 MR SEMENYA SC: Chair, we can't run like
12 this. Again we haven't studied this document. I don't
13 know its accuracy. I don't know its information. It was
14 never a matter canvassed with the witness and we are
15 presented with this at the tail end of the cross-
16 examination.

17 MR CHASKALSON SC: Chairperson, this
18 document merely processes information which is there on a
19 series of videos –

20 CHAIRPERSON: I understand what you're
21 saying. Is it necessary to put this to the witness? I
22 don't know what you're going to do with it, but what you
23 tell us is the objective evidence timeline is as you've
24 depicted it on this document. So it's something which can
25 be demonstrated to be correct or incorrect at a later

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1 stage, but I mean the witness, you can't expect the witness
2 to agree with it or not because he certainly hasn't done
3 any exercise –

4 MR CHASKALSON SC: I'm not going to ask
5 the witness to agree with it. I'm going to put to him that
6 this is what the evidence leaders say the electronic times
7 show.

8 CHAIRPERSON: My understanding is that
9 the SAPS experts haven't look at this yet. Is that
10 correct, Mr Semenya?

11 MR SEMENYA SC: That's correct, Chair.
12 And secondly, this witness –

13 CHAIRPERSON: I wonder whether the – I
14 mean this raises almost housekeeping problems, isn't it?
15 Should we not take a short adjournment, discuss it with
16 counsel in chambers, and then come back? I understand
17 there are time constraints, but if necessary we can take a
18 little bit of Mr Ntsebeza's time to deal with it, but it's
19 not satisfactory for something to be put which is alleged
20 to be –

21 MR CHASKALSON SC: Chairperson –

22 CHAIRPERSON: But I'm not suggesting, you
23 know, that you're wrong, but SAPS say we haven't had a
24 chance to check it yet. It is a bit unsatisfactory to put
25 it in an unagreed form, but anyway, let's take a –

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1 MR CHASKALSON SC: Sorry, Chairperson,
2 I'm happy not to refer to it. It's a convenient, it's a
3 tool of convenience for everyone other than me who hasn't
4 processed these times, but I'm happy to cross-examine the
5 witness without referring to it.

6 CHAIRPERSON: Well, thank you for giving
7 it to us, and if you're not going to refer to it in cross-
8 examination, then the point falls away.

9 MR CHASKALSON SC: Well, can we then in
10 relation to incident 1 show a series of videos which show,
11 I submit, that your account of incident 1 cannot be
12 correct, and we'll start with JJJ11. Sorry, JJJ194.11.
13 We'll be showing JJJ194.11 through to 15. Can we move to a
14 point six seconds into this video?

15 CHAIRPERSON: I trust this is a video
16 taken on the 16th, at about what time?

17 MR CHASKALSON SC: It's a video taken on
18 the 16th and the time is six seconds into the video.

19 CHAIRPERSON: Yes, but what time does the
20 video start?

21 MR CHASKALSON SC: The video starts –

22 MR SEMENYA SC: Chair, I –

23 CHAIRPERSON: Was this video one of the
24 ones to which his attention was drawn?

25 MR CHASKALSON SC: Yes, Chairperson, it's

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1 in the Human Rights Commission list of documents and
2 videos, which is what I said I would be working off because
3 they were supposed to deal with this –

4 CHAIRPERSON: Okay, I understand. So he
5 has been – yes, Mr Semenya?

6 MR SEMENYA SC: Chair, I'm really not
7 being difficult, but I cannot understand how a video can
8 show something didn't happen conceptually, unless it's a
9 video that is continuously running for the period of time,
10 uninterrupted by anything, within which you can say
11 something did not happen. That's my first difficulty, but
12 secondly, we had the evidence of Magidiwana and them saying
13 that they did walk along the Nyala that was trying to close
14 them, which is our incident 1.

15 CHAIRPERSON: Shouldn't we look at the
16 video first before we decide on the point? I'm reluctant
17 to – if he's not had notice of this video, an opportunity
18 to see it, I think we should see it. It may well be that
19 showing it will be a non-event, but alternatively it may
20 not be. So let's look at it. How long does it take, Mr
21 Chaskalson?

22 MR CHASKALSON SC: There will be a series
23 of videos where I will show particular clips. This process
24 may take 20 minutes.

25 CHAIRPERSON: Alright, we'll take the

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1 comfort break now and then we'll have the video shown.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [12:17] CHAIRPERSON: Brigadier, you're still
 4 under oath.
 5 BRIGADIER CALITZ: s.u.o.
 6 CHAIRPERSON: Mr Chaskalson?
 7 MR CHASKALSON SC: Thank you,
 8 Chairperson. Mr Semanya and I have agreed and, as we
 9 discussed with you, that I will finish my cross-examination
 10 on scene 1, including all of the relevant video props that
 11 I need, and then Mr Ntsebeza will intercede, and I'll come
 12 to scene 2 after Mr Ntsebeza has departed.
 13 CHAIRPERSON: Yes, I take it – I don't
 14 see Mr Ntsebeza here, but I see his side is represented.
 15 Do we have the assurance that he will be able to commence
 16 when we resume after lunch? To whom must I address the
 17 question? Ms Lewis or Mr -
 18 MS LEWIS: Yes, Mr Chair, Mr Ntsebeza
 19 will be here after the lunch break.
 20 CHAIRPERSON: Thank you. And is it
 21 anticipated he will finish in about a day? Because I
 22 gather the families are leaving, I think, tomorrow
 23 afternoon. I don't know why that was arranged, but that is
 24 what's happened. It is obviously important that they
 25 should here be able to be present when he cross-examines

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1 this witness, particularly. That's going to happen, isn't
 2 it?
 3 MS LEWIS: Yes, Mr Chair, the hope and
 4 the plan is that Mr Ntsebeza will be able to finish within
 5 a day.
 6 CHAIRPERSON: - do if he doesn't finish
 7 in a day? That's his problem, isn't it? You understand
 8 we've got terrible problems in this Commission, because
 9 we've got to finish by the end of April and time is very
 10 precious. On the other hand, we also have duties of
 11 fairness and responsibility and openness to these people
 12 who have given up a lot of their lives actually to be here
 13 to hear the evidence. I think partly out of respect for
 14 their deceased relatives, but partly for their own purposes
 15 of closure and so on. So – and we must always be conscious
 16 of that. And they also want to be here, I'm sure, so they
 17 can assure themselves that we are being fair and open about
 18 the thing and doing our best to do one thing and one thing
 19 only, and that's to find the truth, but anyway, I've said
 20 that. I take it you'll convey that to Mr Ntsebeza. Thank
 21 you.
 22 MR CHASKALSON SC: Brigadier, because
 23 we're now going to finish the whole of scene 1, let me take
 24 you to the video evidence to support my proposition that
 25 there wasn't a stun grenade thrown at incident 2, first of

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1 all, and to begin with, that video footage is the
 2 continuous video footage of the area covered by incident 2,
 3 that one sees from the Rowland headgear, but before we get
 4 to that what I want to show you is video footage from the
 5 Rowland headgear a few minutes later of a stun grenade and
 6 a teargas canister, so we know what we want to compare it
 7 with. So if we can start at 16:55:55 of the Rowland
 8 headgear, 16:55:55.
 9 CHAIRPERSON: What's the exhibit number?
 10 MR CHASKALSON SC: In fact, Chairperson,
 11 I think that the whole of the Rowland headgear camera has
 12 not been given its own exhibit. We took an off-cut, which
 13 we entered as an exhibit in one of those early videos here.
 14 So if we can give it a new exhibit?
 15 CHAIRPERSON: Would it then be KKK8?
 16 MR CHASKALSON SC: KKK9, apparently,
 17 Chairperson.
 18 CHAIRPERSON: What's KKK8? I haven't got
 19 a note of that. Alright, never mind –
 20 MR CHASKALSON SC: KKK8 was possibly
 21 going to be the timeline – the first timeline.
 22 CHAIRPERSON: Alright, so what do we call
 23 this then, KKK?
 24 MR CHASKALSON SC: 9.
 25 CHAIRPERSON: 9, and we describe it

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1 Rowland –
 2 MR CHASKALSON SC: Rowland headgear, CCTV
 3 footage.
 4 CHAIRPERSON: Rowland headgear, CCTV
 5 footage. 16 – well, you're going from when to when?
 6 16.8.2012, from when to when?
 7 MR CHASKALSON SC: The full clip,
 8 Chairperson, runs from 15h00 on the Rowland headgear clock
 9 through to 17h00 on the Rowland headgear clock. 16:59:59.
 10 CHAIRPERSON: We're not going to spend
 11 two hours watching it.
 12 MR CHASKALSON SC: No, we're going to –
 13 CHAIRPERSON: You may be, but I'm not,
 14 but what are the exact time translated eTV time, this 15h00
 15 to 17h00 is what, do we know?
 16 MR CHASKALSON SC: Chairperson, I can't
 17 give you the exact conversion. I will give the conversion
 18 of the clips that I'm showing.
 19 CHAIRPERSON: Alright, so the clips that
 20 you're showing, can you just – they are – can you just give
 21 us where they are to be found on the video, so for purposes
 22 of the record.
 23 MR CHASKALSON SC: The first one will be
 24 at 16:15:55.
 25 CHAIRPERSON: This is Rowland headgear

<p style="text-align: right;">Page 18334</p> <p>1 clock time?</p> <p>2 MR CHASKALSON SC: Rowland headgear clock</p> <p>3 time, which is 15:53:26, eTV time. 15:53:26.</p> <p>4 CHAIRPERSON: What is it, sorry?</p> <p>5 MR CHASKALSON SC: 15:53:26.</p> <p>6 CHAIRPERSON: 15:53 20 seconds?</p> <p>7 MR CHASKALSON SC: 26.</p> <p>8 CHAIRPERSON: Sorry, 15:56?</p> <p>9 MR CHASKALSON SC: 53 and 26 seconds.</p> <p>10 CHAIRPERSON: Oh, 15 and 26 seconds. No,</p> <p>11 hang on, is it 15 – I see, alright, 15:53 and 26 seconds.</p> <p>12 I finally got there. I'm sorry for being so tedious.</p> <p>13 Thank you, shall we roll.</p> <p>14 [VIDEO SHOWN]</p> <p>15 CHAIRPERSON: I understand these videos</p> <p>16 were listed in the Human Rights Commission –</p> <p>17 MR CHASKALSON SC: Can we just stop the</p> <p>18 roll? I do understand – in truth, Chairperson, I cannot</p> <p>19 say. I was told that they would be and the stills to which</p> <p>20 I'm referring are in the Human Rights – stills taken from</p> <p>21 these passages are in the Human Rights Commission annexure</p> <p>22 to which they were referring, which is 178.2, annexure 3,</p> <p>23 which deals with stun grenades and teargas.</p> <p>24 COMMISSIONER HEMRAJ: But if the entire</p> <p>25 video was not been an exhibit, would the witness have been</p>	<p style="text-align: right;">Page 18336</p> <p>1 the entire period from when Nyala 4 left the mast to where</p> <p>2 Nyala 4 reached the kraal, to see if there is any similar</p> <p>3 evidence. That passage will start at 16:13:21, which</p> <p>4 translates to eTV time, 15:50:52, 15:50 and 52 seconds.</p> <p>5 16:13:21 -</p> <p>6 CHAIRPERSON: 16:13:21 to when?</p> <p>7 MR CHASKALSON SC: Which translates –</p> <p>8 we'll run it to 16:14:37, which is while after the Nyala 4</p> <p>9 –</p> <p>10 CHAIRPERSON: A minute and 16 seconds and</p> <p>11 that translates into eTV time?</p> <p>12 MR CHASKALSON SC: 15:50 and 52 seconds.</p> <p>13 CHAIRPERSON: Ja, to?</p> <p>14 MR CHASKALSON SC: Chairperson, I'm just</p> <p>15 doing my calculation.</p> <p>16 CHAIRPERSON: To a minute and 16 seconds</p> <p>17 thereafter?</p> <p>18 MR CHASKALSON SC: Yes.</p> <p>19 CHAIRPERSON: So that will be 15 –</p> <p>20 MR CHASKALSON SC: 52:08.</p> <p>21 CHAIRPERSON: 15:52:08. Alright, let's</p> <p>22 watch it.</p> <p>23 MR CHASKALSON SC: And before we start,</p> <p>24 if I can just – ja, let's start rolling and I will ask for</p> <p>25 the roll to be stopped at certain points, so that I can</p>
<p style="text-align: right;">Page 18335</p> <p>1 notice to look at the entire video – the entire CCTV video?</p> <p>2 MR CHASKALSON SC: He's not going to have</p> <p>3 to look at the entire CCTV, he's going to have to look at</p> <p>4 approximately 1 minute and 15 seconds.</p> <p>5 CHAIRPERSON: Well, let's roll.</p> <p>6 MR CHASKALSON SC: Can we go back to</p> <p>7 16:15:55?</p> <p>8 CHAIRPERSON: 16:15:55?</p> <p>9 MR CHASKALSON SC: On the clock, which is</p> <p>10 15:53:26, and why I'm showing this clip, which starts 27</p> <p>11 seconds before the shooting is, what we will see here is</p> <p>12 what teargas and stun grenades that were fired then, how</p> <p>13 they show up on this camera. So if we can play and I will</p> <p>14 ask for the roll to be stopped at certain points. First</p> <p>15 we'll see a teargas plume going up, and then we'll see a</p> <p>16 double plume from a stun grenade following that. Can we</p> <p>17 roll?</p> <p>18 [VIDEO SHOWN]</p> <p>19 MR CHASKALSON SC: That is a teargas</p> <p>20 plume rising up and if we can carry on rolling, we'll see</p> <p>21 how high it rises.</p> <p>22 That was the double blast of a stun grenade,</p> <p>23 which is less smoke, a bit marked by its double emission.</p> <p>24 That's what I wanted to show here.</p> <p>25 What we'll now do is we will roll the tape across</p>	<p style="text-align: right;">Page 18337</p> <p>1 identify what we're looking at.</p> <p>2 [VIDEO SHOWN]</p> <p>3 MR CHASKALSON SC: Can we just stop? The</p> <p>4 two Nyalas I'm circling with my red pointer at this point,</p> <p>5 there's the one Nyala, and there's the other. And what</p> <p>6 we'll see is that Nyala 4 is about to move off ahead of</p> <p>7 Nyala 3. If we can roll?</p> <p>8 [VIDEO SHOWN]</p> <p>9 MR CHASKALSON SC: Other vehicles are</p> <p>10 starting to move and the smoke that we're seeing is exhaust</p> <p>11 and dust. Nyala 4 has started to move. Can we stop?</p> <p>12 There's Nyala 4, which has now moved away. It's to the</p> <p>13 right of the pylon that we see in the foreground. If we</p> <p>14 keep watching – keep rolling.</p> <p>15 [VIDEO SHOWN]</p> <p>16 MR CHASKALSON SC: If we can pause? The</p> <p>17 kraal is roughly where I'm describing with my pointer at</p> <p>18 this point on the left-hand side of the screen. We can see</p> <p>19 no evidence of lingering smoke from stun grenades or</p> <p>20 teargas. Keep rolling.</p> <p>21 [VIDEO SHOWN]</p> <p>22 MR CHASKALSON SC: Can we stop? This is</p> <p>23 already after incident 2, because the Nyalas are moving</p> <p>24 round the right-hand side of the kraal on the right-hand</p> <p>25 side of our picture, and Nyala 4 has already reached the</p>

<p style="text-align: right;">Page 18338</p> <p>1 kraal at this point, and if we carry on rolling, we'll see 2 that the first teargas and the stun grenades come quite a 3 long way later and that they're very clearly definable by 4 the plumes that they leave. 5 [VIDEO SHOWN] 6 MR CHASKALSON SC: Stop. That's the 7 first teargas, and I'd ask the Brigadier and the 8 commissioners just to look for how long that teargas cloud 9 waits - is visible. 10 [VIDEO SHOWN] 11 MR CHASKALSON SC: And there are the stun 12 grenades. This is the clip that we've seen previously. 13 [VIDEO SHOWN] 14 MR CHASKALSON SC: So now if we can stop 15 the tape at this point? 16 CHAIRPERSON: The teargas is still 17 visible and it seemed to start by the Rowland headgear 18 clock at 16:02, I think. So does that mean it was visible 19 for at least 20 seconds? 20 MR CHASKALSON SC: Well, longer, 21 Chairperson, if we were to carry on. 22 CHAIRPERSON: I think so, because it's 23 still there. 24 MR CHASKALSON SC: Indeed, Chairperson. 25 Now -</p>	<p style="text-align: right;">Page 18340</p> <p>1 to raise an objection if there is anything that is 2 inconsistent with my instructions by my experts. I should 3 be able to say Mr Chaskalson can't make that point, because 4 he's evidence is going to be X, Y, Z. I can't do that, 5 because I have no benefit of that information, which is an 6 expert opinion, that I'm entitled to have if I'm to test 7 the correctness of what you are seeing. 8 MR CHASKALSON SC: Chairperson, if I 9 might respond? I have a twofold response. The first is, I 10 obviously couldn't object at any level to Mr Semenya and 11 SAPS producing their own response to this at a later stage 12 or raising it in re-examination with Brigadier Calitz, if 13 that's what they want to do, but the suggestion that they 14 have never been alerted to this evidence before is, with 15 respect, I think, incorrect, because everything that I am 16 putting on the basis of this evidence, derives essentially 17 from annexure GW6D to the statement of Mr White. In 18 section 2, the use of teargas and stun grenades, an 19 analysis of the objective evidence, which is a document 20 that SAPS have had for well over a month now, and there is 21 nothing new that I am putting on that regard. This is an 22 attempt by the Human Rights Commission, that document, to 23 identify all of the objective video footage of teargas and 24 stun grenades. It's been in SAPS' possession for over a 25 month.</p>
<p style="text-align: right;">Page 18339</p> <p>1 MR SEMENYA SC: Chair, clearly Mr 2 Chaskalson has had an ample opportunity to look at this 3 material to make the deductions that he's making, to come 4 to conclusions that he has, and probably he's right, but we 5 are incapacitated at looking at this thing, because I don't 6 know which objections I must make, because I'm seeing it 7 for the first time. Particularly the point that this is 8 intended to prove that a stun was not shot at scene 2. 9 I've never had to investigate that. It's material I would 10 probably want to subject to my own expert as well to make 11 sure that his observation are consistent with their own 12 professional opinions. We can't do it like this, it's just 13 completely unfair. 14 CHAIRPERSON: I don't see the problem. 15 Why can't you, once you've spoken to your experts, if your 16 experts say it's correct, it's the end of the matter. If 17 your experts say it isn't correct, then you can call them 18 to say that. I don't see any unfairness, I'm afraid, but 19 the - 20 MR SEMENYA SC: Chair - 21 CHAIRPERSON: Obviously if you were to be 22 deprived of getting expert advice on this and dealing with 23 it, it's fine, but - 24 MR SEMENYA SC: But I'm inarticulate, 25 perhaps, Chair. I'm saying I should be at this point able</p>	<p style="text-align: right;">Page 18341</p> <p>1 MR SEMENYA SC: No, Chair. The material 2 has been in our possession, that's not my contestation. 3 I'm saying my focal point of concern is that they are 4 serialised to establish a point that a stun grenade was not 5 shot at scene 2. Now, where would I have had an 6 inclination that there are a series of videos that are 7 intended to convey that conclusion? 8 [12:37] And it is those serialised videos which I submit 9 would have to be taken and looked at also by our own 10 experts to come to the conclusions that Mr Chaskalson has 11 arrived to which is possible but not necessarily so. 12 MR CHASKALSON SC: Chairperson, I would 13 like to respond again because it seems that SAPS hasn't 14 read the document because - 15 CHAIRPERSON: Is it possible to - 16 MR CHASKALSON SC: It is 178 - 17 CHAIRPERSON: But what does it say - 18 MR CHASKALSON SC: Well, if I can read 19 page 11, part 2 of video evidence. The video evidence 20 confirms what's apparent from the photographic evidence. 21 "According to Exhibit L and the statement of Brigadier 22 Calitz incident 2 is alleged to have taken place on the 23 south western side of the kraal shortly after Nyala 4 24 blocked the route of the crowd with barbed wire. Nyala 4 25 reached the kraal at 15:52:03, see CALS scene 1 vehicle</p>

<p style="text-align: right;">Page 18342</p> <p>1 analysis. By 15:53:20 no protestors were anywhere Nyala 4 2 and the lead protestors were already heading around the 3 kraal, Vermaak Blackberry 01516. 4 As such if incident 2 occurred at all it occurred 5 between 15:52:02 and 15:53:100, however on the CCTV footage 6 taken from the Rowland headgear, (Exhibit CC37), no smoke 7 from teargas or stun grenades is visible prior to 8 15:53:30." So this very footage is referred to in the 9 document and all that I'm doing is playing what the 10 document says and a chronology of stills from video images 11 is set out below and some of the important stills where I 12 have stopped is set out in the document. My cross- 13 examination is essentially based on what the Human Rights 14 Commission have set out in their document, Annexure GW62, 15 the statement of Gary White. 16 CHAIRPERSON: Mr Semenya, is there 17 anything further you wish to say? What I'm reminded to do, 18 subject to what you have to tell me, what you're going to 19 say to me is to allow the cross-examination on the basis 20 that it takes the point really no further than the summary 21 that's being read but I understand and you had notice of 22 it, but I understand you obviously haven't been advised 23 about it and I don't want prejudice to be suffered by your 24 side, but the way to do it I think is the following. It is 25 obvious that the witness is not going to finish by</p>	<p style="text-align: right;">Page 18344</p> <p>1 Nyala 4 and the western edge of the kraal before, during 2 and after alleged incident 2. 3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter, nee, ek het net verstaan, ek het nie geweet 5 moet ek nou antwoord of – 6 CHAIRPERSON: Are you going to answer? I 7 don't know what answer you can give, but – 8 BRIGADIER CALITZ: Nee, goed – 9 CHAIRPERSON: Do you have comments on 10 what's being put to you - 11 BRIGADIER CALITZ: Ek sal antwoord, mnr 12 die Voorsitter. Ek kan op hierdie stadium nie sien, ek 13 weet die advokaat het verduidelik, hier het hulle begin, 14 ons het mense sien ombeweeg, so as ek moet sê, ek kan nie 15 "in relation" tot die rook sien op hierdie stadium watter 16 kant van die kraal is dit, waar is die kraal duidelik, so 17 nee, ek kan nie saam met hom stem op hierdie stadium nie. 18 MR CHASKALSON SC: Maybe that's an issue 19 which your counsel can take up with you and you can 20 traverse in re-examination if you have a firm answer at 21 that stage, I think. 22 CHAIRPERSON: It sounds to be fair, he 23 says he is not able to comment really but by the time re- 24 examination comes he would be able to, so let's move on. 25 MR CHASKALSON SC: If we move on then to</p>
<p style="text-align: right;">Page 18343</p> <p>1 Thursday, he will come back in January and at that stage he 2 will be cross-examined by certain of the other counsel and 3 so by the time you re-examine you will be able to get 4 information and advice on this point and you can return to 5 the point and deal with it in re-examination. I think 6 that's the way I propose, subject to what you're going to 7 say to deal with the matter. I understand my duty is to be 8 fair to both sides and I think I would do that if I follow 9 the course I propose, but I would like to hear what you 10 have to say on that? 11 MR SEMENYA SC: Chair, I would abide with 12 this caveat that the witness is not going to be called to 13 answer until such time as we know what is there, what has 14 been confirmed by our own experts and would answer those 15 questions in January, if need be. 16 CHAIRPERSON: I don't know about that, it 17 depends on the answer he gives, he can also raise a caveat 18 when he gives an answer, but I'm not going to raise a 19 caveat by way of allowing a kind of a pre-objection. So 20 anyway that's my ruling, let's carry on? 21 MR CHASKALSON SC: So, Brigadier, my 22 purpose in showing that footage to you was to put to you 23 that if there had been a stun grenade at incident 2 we 24 would have seen evidence of it in the CCTV footage that we 25 saw of the Rowland headgear covering the field traversed by</p>	<p style="text-align: right;">Page 18345</p> <p>1 incident 1 and we start with JJJ, - I'm going to show you a 2 series of videos which I will put to you are evidence that 3 your description of incident 1 and in particular a move 4 forward by the militant group at the point at which Nyala 4 5 reached the mast, I'm going to put to you that these videos 6 show that could not have happened. 7 CHAIRPERSON: Is this still part of 8 Exhibit KKK9? 9 MR CHASKALSON SC: No, Chairperson, this 10 is based on, the videos are going to be JJJ194 videos, and 11 if we can start with JJJ194.11, - 12 CHAIRPERSON: And that's on your list 13 that you've given us or going to give us, explaining what 14 all the JJJs are? 15 MR CHASKALSON SC: These are the videos, 16 I've in fact been through this entire cross-examination 17 with Colonel Scott already. 18 CHAIRPERSON: Alright, so, no it is fine 19 – 20 MR CHASKALSON SC: It is the videos – 21 CHAIRPERSON: I'm just keeping an eye on 22 the record, the record is satisfactorily in order as far as 23 this exhibit is concerned, JJJ194.11. 24 MR CHASKALSON SC: Yes, yes, Chairperson. 25 This video starts at ETV time 15:48:21 and if we can go,</p>

<p style="text-align: right;">Page 18346</p> <p>1 15:48:21, if we can go 6 seconds in? Brigadier, are you 2 able to identify Mr Noki having just emerged onto the left 3 hand side of that screen, at 6 seconds into the video? 4 BRIGADIER CALITZ: As ek gaan, mnr die 5 Voorsitter, net op die wit hemp en die groen, ek kan glad 6 nie die gesig erken op hierdie foto nie, nee. 7 MR CHASKALSON SC: Maybe if we play 8 further that will help a little, play past the Casspir. At 9 this point, does that look like Mr Noki to you? 10 CHAIRPERSON: By that you're referring to 11 the figure – 12 MR CHASKALSON SC: The man with the green 13 blanket draped around his shoulders. 14 CHAIRPERSON: The green blanket draped 15 around his shoulders, it looks like a white T-shirt or a 16 white shirt of some kind, white sleeves and he is to the 17 right of the Casspir as we look at the screen. Give us the 18 reading of the screen at the moment? 19 MR CHASKALSON SC: 20 seconds. 20 CHAIRPERSON: 20 seconds? 21 MR CHASKALSON SC: Yes, which would be 22 ETV time 15:48:41. 23 CHAIRPERSON: Are you able to say whether 24 the person to whom I'm referred is Mr Noki you dealt with 25 earlier?</p>	<p style="text-align: right;">Page 18348</p> <p>1 also ask you to look at the group of which Mr Noki is a 2 part that's moving and tell me if that is the group to 3 which you refer as the militant group, as we play the video 4 further. Can we stop? Can I ask you now to indicate 5 whether the group that we see is what you refer to as the 6 militant group? 7 BRIGADIER CALITZ: Dit is die voorste 8 groep waarna ons verwys het, ja, mnr die Voorsitter. 9 MR CHASKALSON SC: And the man who I have 10 suggested to you is Mr Noki, we see now about to pass 11 behind a mast. Can we play the video further and the time 12 now is 34 seconds into that video which will translate to 13 ETV 15:48:55, and you see Mr Noki and his group moving past 14 the mast. 15 [VIDEO SHOWN] 16 BRIGADIER CALITZ: Ek kan nog niemand 17 verby die paal sien nie, ek sien net daar is 'n paal met 'n 18 groep aan die linkerkant. 19 CHAIRPERSON: If the film – 20 BRIGADIER CALITZ: Ek glo hy gaan aanrol 21 – 22 CHAIRPERSON: It goes back a bit you will 23 see, as we saw, let's go back? 24 BRIGADIER CALITZ: Aan die agterkant, ja. 25 CHAIRPERSON: Do you see? Ja, that looks</p>
<p style="text-align: right;">Page 18347</p> <p>1 BRIGADIER CALITZ: Weereens, mnr die 2 Voorsitter, as ons gaan op die kleredrag, in hierdie geval 3 lyk dit of die groen om sy nek, so op die kleredrag, die 4 wit hemp, die groen, maar glad nie 'n identifikasie op die 5 gesig of – 6 CHAIRPERSON: What you're saying, I'm 7 sorry to interrupt you, what you're saying is it looks like 8 him but you can't be entirely sure because you can't make 9 out the face properly? 10 BRIGADIER CALITZ: Die identifikasie. 11 CHAIRPERSON: You're relying on the 12 clothes, but – 13 BRIGADIER CALITZ: Op die kleredrag, mnr 14 die Voorsitter. 15 CHAIRPERSON: When you dealt with Mr Noki 16 earlier or he was one of the people who came to the Nyala 17 and spoke and so on, was he dressed like that? 18 BRIGADIER CALITZ: Mnr die Voorsitter, 19 onder korreksie, ja, hy het 'n wit, ek kan nie presies sê 20 soos daar nie maar wit met groen gekombineer. 21 CHAIRPERSON: Alright. 22 MR CHASKALSON SC: And, Brigadier, - 23 CHAIRPERSON: So it sounds like a 24 conditional identification. 25 MR CHASKALSON SC: Brigadier, I would</p>	<p style="text-align: right;">Page 18349</p> <p>1 like the person you conditionally identify as Mr Noki. 2 BRIGADIER CALITZ: Korrek, mnr die 3 Voorsitter. 4 CHAIRPERSON: He is now to the left, this 5 is at 33 seconds into the video. 6 BRIGADIER CALITZ: Korrek. 7 CHAIRPERSON: He is now to the left of 8 the mast and then as the film goes on you will see him 9 walking and then disappearing behind the bars and then 10 going off the screen, as far as I can see. 11 MR CHASKALSON SC: And if we see here, 12 can we see more of your militant group moving past the 13 mast? 14 BRIGADIER CALITZ: Weereens, mnr die 15 Voorsitter, ek sien hulle beweeg in daardie rigting. 16 MR CHASKALSON SC: Can we keep rolling to 17 the end of the tape? We're at the end of the tape which is 18 40 seconds in which would be ETV time 15:49:01. If we can 19 then move to the next clip which is 12 in this series and 20 it starts 4 seconds, there is a 4 second gap between the 21 two clips and this one starts at 15:49:05, ETV time. 22 CHAIRPERSON: Sorry, in this clip we can 23 see a Nyala, can you tell us what that Nyala is? The 24 number plate is obscured by a bush. Mr Chaskalson, are you 25 able to help us?</p>

<p style="text-align: right;">Page 18350</p> <p>1 MR CHASKALSON SC: I will be able to, it 2 is the Nyala on the far left of the line up of 4, I don't 3 at my finger tips have the identification, but I will have 4 it, I can come back to you after lunch with an 5 identification of that Nyala. 6 CHAIRPERSON: Mr Ntsebeza will let you 7 tell us. 8 MR CHASKALSON SC: Can we then roll this 9 clip and I ask you, Brigadier, to keep your eye on the mast 10 because that is the mast to which Nyala 4 will eventually 11 arrive. Can we just roll the whole of this tape? 12 [VIDEO SHOWN] 13 Now there are two issues I would like to take up 14 with you, first would you confirm that most of what you've 15 described as the militant group has now passed the mast? 16 BRIGADIER CALITZ: Van die rigting van 17 die kamera wat ons nou sien lyk dit so, mnr die Voorsitter. 18 MR CHASKALSON SC: Yes, at a later stage 19 we can show you what the camera angles are with reference 20 to, I mean the Nyala is the key identificatory mark that 21 will give us the camera angle because it is the fourth of 22 the reserved Nyalas on the left hand side. The second 23 point I want to put to you is that as far as we can see 24 from this video the end of the militant group or the last 25 members of the militant group are about to past the mast as</p>	<p style="text-align: right;">Page 18352</p> <p>1 BRIGADIER CALITZ: Daarso – 2 CHAIRPERSON: - past where we see their 3 right sides and it does look as if – 4 BRIGADIER CALITZ: Ek dink hulle het – 5 CHAIRPERSON: At the tail end there is a 6 man in a sort of, with a black T-shirt on, is that right? 7 It looks like that, unless I'm seeing – 8 BRIGADIER CALITZ: Dit is reg, mnr die 9 Voorsitter, ek dink as hy 'n bietjie vorentoe gaan sal u 10 sien aan die linkerkant van die paal, soos ek nou na die 11 paal kyk, is daar ook dan die agterste deel waar daardie 12 pyltjie omtrent nou is, daar is ook 'n groepie van hulle 13 wat dan deel vorm van die voorste groep. Daar is – 14 CHAIRPERSON: I see. 15 BRIGADIER CALITZ: Daar is so vier, vyf, 16 ses van hulle aan die linkerkant. 17 CHAIRPERSON: But the man I'm talking 18 about, the one with, it looks like a black T-shirt, he 19 seems to be the agterryer or the tail ender of the group or 20 am I not seeing correctly? 21 BRIGADIER CALITZ: Ek verwys na daardie 22 paar mense aan die linkerkant- 23 CHAIRPERSON: Yes, there are still people 24 on the left hand side, but my point is that the one who 25 appeared, when we saw them earlier to be walking at the</p>
<p style="text-align: right;">Page 18351</p> <p>1 well. Can you see to the left of the people in the screen 2 who are moving in the direction past the mast, there appear 3 to be no other members of the militant group? 4 BRIGADIER CALITZ: Nee, mnr die 5 Voorsitter, ek dink nie dit is so visueel sigbaar nie, daar 6 is nog mense aan die linkerkant wat ook in daardie rigting 7 beweeg, so ek kan nie vir u sê op hierdie afstand. 8 CHAIRPERSON: I got the impression and I 9 don't want to cross swords with you, but I have the 10 impression that the militant group were walking past the, 11 as they were walking past the mast, we appear to be able to 12 see their sides, their right sides and we see a few people 13 still to the left of the mast whose right sides we can see. 14 The other people further to the left appear all to be 15 facing the camera and this is just an impression I'm 16 putting, appear to be part of what I think you described as 17 the larger group. Is your impression the same as mine or 18 do you think I've seen it incorrectly? 19 BRIGADIER CALITZ: Mnr die Voorsitter, as 20 hulle hom nou net speel sal u sien daar waar hy gestop was, 21 was daar 'n groepie aan die linkerkant, asook aan die 22 regterkant van die paal. Al wat ek gesê het is ek dink 23 daardie groep was dan, ons praat nie van die mense wat bo 24 op die koppie sit nie, ons praat van die wat beweeg. 25 CHAIRPERSON: We see the people coming –</p>	<p style="text-align: right;">Page 18353</p> <p>1 very rear of that group is the one, the gentleman with the 2 black T-shirt. 3 BRIGADIER CALITZ: Met die streep. 4 CHAIRPERSON: He is still to the left, he 5 is still to the left of the pole, as we see it now, but it 6 looks as if he is the end of that proceeding group of 7 people who were walking past the mast. 8 BRIGADIER CALITZ: Dit is korrek. 9 CHAIRPERSON: You agree with me, yes, I 10 see. 11 MR SEMENYA SC: Chair, at least to help 12 orientate me to follow, where is slide 198 in relation to 13 this episode because we are being told this is now, we've 14 seen the tail end of the militant group going past the 15 mast, how does 198 come about? 16 CHAIRPERSON: You'll remember we had a 17 lot of evidence about 198 and there were problems about, 18 problems with parallax and perspective and all those kind 19 of things, but anyway, you've asked the question which 20 obviously you don't expect me to answer, but perhaps Mr 21 Chaskalson can give us the answer. 22 MR SEMENYA SC: So that I'm able to see 23 the answer in relation to the mast we see on 198 and the 24 tail end of that militant group still far behind it. It is 25 that confusion I want cleared for me.</p>

<p style="text-align: right;">Page 18354</p> <p>1 [12:56] CHAIRPERSON: You'll notice in 198, in 2 the extreme left of 198 you will see what appears to be 3 someone with a green blanket draped around his shoulders. 4 So I take it if that is indeed the militant group, that's 5 the front end of the militant group, but you'll remember 6 there had been various problems about this slide and the 7 question of where it was taken from and the question of 8 perspective and that kind of thing. But anyway, I 9 shouldn't even be trying to answer the question. Mr 10 Chaskalson will help us. 11 MR CHASKALSON SC: Chairperson, that will 12 become clearer in the next clip because in fact what we're 13 looking at here is not Nyala 4, but Nyala 5, and we will 14 see in the next clip the movement of the crowd past Nyala 15 5. 16 MR SEMENYA SC: Now in relation to the 17 mast, Chair, that's my difficulty. 18 CHAIRPERSON: Of course it depends upon 19 the question as to where the cameraman who took this slide 20 was standing and which side of the mast he was and where he 21 was, what the angle were, and so on. So – 22 MR CHASKALSON SC: We have identified the 23 camera position. One can do that with reference to those 24 masts and that mast, and this shot is taken – it's taken 25 from the other side of the kraal. That's where we get this</p>	<p style="text-align: right;">Page 18356</p> <p>1 CHAIRPERSON: We weren't on slide 198; we 2 were at a clip which is part of the Human Rights 3 Commission's presentation, is it? 4 MR CHASKALSON SC: If you can just bring 5 up the end of clip 12 again, just to confirm the time. It 6 runs to 22 seconds, this is a 22-second clip or a – and 7 that would take us to 15:49:27. That image would be 8 15:49:27. If we can move now to clip 13, and if I might 9 indicate where we are in terms of the rollout at this 10 stage, at the start, at the end of clip 12 Nyala 3 hasn't 11 even left Nyala 2 yet. Nyala 3 leaves Nyala 2 at 15:50:06. 12 15:50:06. So at the end of the previous clip, clip 12, 13 where the stragglers of the militant group were about to 14 pass the mast, Nyala 3 still hadn't left Nyala 2. 15 CHAIRPERSON: What do we see now? 16 MR CHASKALSON SC: 13. We're seeing a 17 picture similar to the picture that we just saw on slide 18 198, but from a very different angle. This is Nyala 5 near 19 its starting position, and for its starting position we can 20 go back to – if I can just get a slide which will indicate 21 where its starting position is. We can take one from the 22 presentation. 23 CHAIRPERSON: 197 perhaps? Exhibit L, 24 197 I think - 25 MR CHASKALSON SC: 197 is good,</p>
<p style="text-align: right;">Page 18355</p> <p>1 angle. It's taken from a position, we don't know by whom, 2 but we can – I mean if it's contested at any stage we can 3 identify the landmarks. In fact I think the South African 4 Human Rights Commission have done that on their movement of 5 protester analysis, which is an annexure to Mr White's 6 statement. I'll find the precise reference, where they 7 have the field of vision marked out for this shot. 8 CHAIRPERSON: Sorry to interrupt you. Do 9 I understand you to say that the Nyala we see in this slide 10 is not Nyala 4 as the caption says, but Nyala 5? Is that 11 correct? 12 MR CHASKALSON SC: Yes, Chairperson, that 13 was canvassed with Colonel Scott and he confirmed it. 14 CHAIRPERSON: No, okay. So you see Mr 15 Semanya's question was I think based on the fact here's 16 apparently Nyala 4, here's the mast, but anyway, part of 17 his objection or query was based on that. But let's 18 proceed – 19 MR SEMENYA SC: [Microphone off, 20 inaudible] 21 CHAIRPERSON: Mr Semanya is disagreeing 22 with me, but let's carry on for the time being. He will 23 have ample opportunity to deal with this slide at some 24 later stage, but let's go back to where we were and – 25 MR CHASKALSON SC: Now the next clip –</p>	<p style="text-align: right;">Page 18357</p> <p>1 Chairperson. So if we can start with 197, and the starting 2 position of Nyala 5 is here, and the crowd that we see in 3 that clip are moving around Nyala 5 – sorry, Nyala 5, not 4 Nyala 7. This is the starting position of Nyala 5. I'm 5 marking the Nyala that's with its trailer straddling the 6 path to the left of the arrow which is designed to indicate 7 the movement of incident 1, and the footage that we are 8 seeing is taken from the side that I'm indicating now, and 9 is showing a crowd - which is inside the safe area and is 10 showing the crowd moving, will be showing the crowd moving 11 past Nyala 5, broadly parallel to that path to Nkaneng. 12 CHAIRPERSON: Sorry, can I ask you two 13 questions? (1), when the crowd passed Nyala 5, can you 14 show us the side on which they passed? 15 MR CHASKALSON SC: Yes, if we can – the 16 crowd is passing on the outside of Nyala 5. 17 CHAIRPERSON: And can you show us where 18 the cameraman was who took slide 198? 19 MR CHASKALSON SC: Well, in that regard 20 there is a document that the Human Rights Commission has 21 prepared, which for all of these clips tries to identify 22 the field of view of the camera, which is a very useful 23 document. We can make it available to all of the parties. 24 For present purposes I can call it up and indicate what it 25 states about the –</p>

<p style="text-align: right;">Page 18358</p> <p>1 CHAIRPERSON: This will be obviously a 2 preliminary indication to be proved later, but what is the 3 evidence leaders' case, which I take it on this point is 4 the same as the Human Rights Commission's case, what will 5 be the case in respect of the position of the cameraman who 6 took slide 198? 7 MR CHASKALSON SC: Oh, 198. Sorry, 8 Chairperson, I misheard you. 9 CHAIRPERSON: Yes, 198. 198. Can you 10 show us on slide 197 where, if it's visible on this slide, 11 where the cameraman who took slide 198 was when he took the 12 picture? 13 MR CHASKALSON SC: Chairperson, that I 14 cannot do now. I may be able to do it after lunch. 15 CHAIRPERSON: Well, let's not waste 16 time – 17 MR CHASKALSON SC: The document that the 18 Human Rights Commission has prepared tries to locate the 19 cameraman who took JJJ194 clips. 20 CHAIRPERSON: Let's then move on. Let's 21 not waste further time then. It's a matter that will be 22 dealt with later. I was just hopeful you could give us the 23 answer now, but I will suppress my disappointment. Let's 24 proceed. 25 MR CHASKALSON SC: If we can briefly look</p>	<p style="text-align: right;">Page 18360</p> <p>1 and ends at 15:50:27. Nyala 3 reaches Nyala 4 at 15:50:22, 2 but they don't, they aren't anywhere near the mast yet. If 3 we can then show clip 14 – Chairperson, I'm aware that 4 we're now running into lunch. There are two more clips to 5 play. 6 CHAIRPERSON: I will go on. How long are 7 these two clips going to take? 8 MR CHASKALSON SC: Maybe 10 minutes in 9 total. 10 CHAIRPERSON: Well, I suppose we could 11 break into the luncheon and start later when we come back. 12 Alright, let's go on. 13 MR CHASKALSON SC: If we can start very 14 slowly here and pause almost immediately, or in fact, 15 before we start, what we see on the left-hand side of this 16 clip, which is 14, is Nyala 4. That will be Nyala 4 that 17 we see to the left of the STF Casspir, and if we run it, we 18 will see the lead group of the militant group, or the group 19 that the Brigadier calls the militant group, are now quite 20 a long way past Nyala 5, which will come into picture in 21 the course of this shot. Can we stop? That is Nyala 5, 22 again the low bulbar and the blue beading. The militant 23 group has moved to the right, past Nyala 5. Again if we 24 just run the tape. 25 CHAIRPERSON: Not necessarily all of the</p>
<p style="text-align: right;">Page 18359</p> <p>1 at 194, which is a short clip of approximately five seconds 2 – sorry, clip 194.13. Clip 194.13, and just play it to the 3 end. We see the crowd passing Nyala 5 again and that's the 4 same Nyala that we see in Nyala 8, which is identifiable by 5 its blue beading without any yellow markings, and its low 6 bulbar, or its small bulbar. 7 CHAIRPERSON: So you say we see in Nyala 8 8. You don't mean in Nyala 8. It's the same Nyala we see 9 in? In 198. 10 MR CHASKALSON SC: 198, and if we can 11 just play. 12 CHAIRPERSON: [Microphone off, inaudible] 13 of the kraal on the right-hand side. 14 MR CHASKALSON SC: No, we're just passing 15 Nyala 5 in its starting position. 16 CHAIRPERSON: Oh, I see, in its 17 original – 18 MR CHASKALSON SC: So they're still quite 19 a long way away from the kraal. 20 CHAIRPERSON: Thank you. It's in its 21 original position, Nyala 5. 22 MR CHASKALSON SC: Now Chairperson, at 23 the end of this clip Nyala 3 has just reached Nyala 4. So 24 this clip ends at 15:50:27 eTV time. 15:50:27. Sorry, 25 it's at the start of this clip. The clip starts 15:50:22</p>	<p style="text-align: right;">Page 18361</p> <p>1 militant group. 2 MR CHASKALSON SC: But the front, the 3 leaders of the militant group. Can we run the tape through 4 to the end? It is at its end. It's 11 seconds in and that 5 is at eTV time 15:50:59. Now the point at which Nyala 5 6 starts to deploy its barbed wire was 15:51:26. 15:51:26, 7 just 27 seconds after what we see now. 8 COMMISSIONER HEMRAJ: You say Nyala 5. I 9 didn't understand Nyala 5 – 10 MR CHASKALSON SC: No, it was Nyala 4. 11 Nyala 4 to deploy its – 12 CHAIRPERSON: You did say 5. You meant 13 4. 14 MR CHASKALSON SC: I beg your pardon, and 15 if we look at JJJ194.15 now, it commences 12 seconds after 16 Nyala 4 has started to deploy its barbed wire, at 15:51:38. 17 Can we roll this tape? And if we just stop before the 18 Nyalas are going to close our view, can we go back a little 19 bit? We will see that the militant group is visible just 20 to the right of what is Nyala 6 with its distinctive 21 diagonal markings in blue up the right front, and so the 22 militant group is passing Nyala 6. This is almost at the 23 point at which slide – I think it's 197 is taken. That's 24 the timeline that the clips show. What I would put to you 25 on the basis of these clips, Brigadier, is that they show</p>

<p style="text-align: right;">Page 18362</p> <p>1 that there was no movement forward to the mast by the 2 militant group from its position at the point that Nyala 4 3 arrived, nothing approximating the arrow that we see on 4 slide 197, because the militant group, or the group that 5 you describe as the militant group, had in fact moved past 6 the mast quite a long time before Nyala 4 even approached 7 the mast. What would your response to that be? 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 weereens uit die hoek van wat dit geneem is, ek kan nie 10 sien van waar my Nyala was in daardie rigting, in watter 11 rigting, of hy direk na my toe beweeg het. So dit is net 12 moeilik vir my om te sê uit my Nyala se posisie uit, kan ek 13 dit nie antwoord nie. Maar ek glo as ons later die lyne, 14 kan dit dalk duideliker raak. 15 MR CHASKALSON SC: That is, barring one 16 last question, what I would want to put to you in relation 17 to Nyala 1. If you want to come back – incident 1 – 18 CHAIRPERSON: Incident 1. 19 MR CHASKALSON SC: If you want to come 20 back after your – I mean if your counsel wants to traverse 21 the matter with you in re-examination again, my – 22 CHAIRPERSON: He doesn't need your 23 permission, Mr Chaskalson. 24 MR CHASKALSON SC: He doesn't need my 25 permission. My primary criticism of your version in</p>	<p style="text-align: right;">Page 18364</p> <p>1 strikers, he called them, in terms that didn't make any 2 mention of incident 1 and that were much closer to what the 3 video evidence suggests is the truth than the version that 4 SAPS ultimately presented in exhibit L. Can I ask that we 5 see slide 47 of JJJ34B? JJJ34B. 6 MR SEMENYA SC: Now I have difficulty 7 with this. Chair, again Mr Chaskalson gives a whole lot of 8 commentary which is not seeking any answer and then says at 9 the end, let's watch slide XYZ. 10 CHAIRPERSON: Well, let's excise from our 11 mind what he said by way of commentary. Let's just look at 12 the exhibit he's going to show us. 13 MR CHASKALSON SC: Slide 47 of JJJ34B. 14 If you've just got the hardcopy of JJJ34 and not the 15 PowerPoint file, then you can call that up and it will be 16 roughly page 47. 17 CHAIRPERSON: 47? 18 MR CHASKALSON SC: 46 of JJJ34. 19 CHAIRPERSON: We're looking at page 47 at 20 the moment, I think, which is the same as slide 198 of 21 exhibit L. Here we go. 22 MR CHASKALSON SC: You see, this was 23 after the first night of Roots when, the first day of Roots 24 when Colonel Scott prepared this presentation. It was I 25 think 6:22PM on the 27th of August.</p>
<p style="text-align: right;">Page 18363</p> <p>1 relation to Nyala 1 relates to this arrow on 197. What I'm 2 putting to you is that – 3 CHAIRPERSON: You say Nyala 1. You mean 4 incident 1? 5 MR CHASKALSON SC: Incident 1. 6 CHAIRPERSON: You don't like the arrow on 7 slide 197. 8 MR CHASKALSON SC: I don't like the arrow 9 on slide 197 and I – well, what I'd put to Brigadier Calitz 10 is that the video evidence shows that that arrow is clearly 11 wrong. But there is one last question that I do want to 12 put to you in relation to incident 1, and that is when did 13 you first describe incident 1 to the commanders in the JOC? 14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 nee, ek kan nie onthou of ons dit daardie dag of daardie 16 aand bespreek het pertinent in 'n – ek kan nie vir u nou so 17 uit die vuus uit sê. Ons moet gaan kyk na dokumente, as 18 daar iemand is wat daaroor kan getuig. Ek kan nie nou vir 19 u sê wanneer dit in die JOC bespreek was nie. 20 MR CHASKALSON SC: You see, what's always 21 struck me as strange about incident 1 is that on the first 22 night of Roots Colonel Scott produced a presentation, which 23 we've had in the Commission as JJJ34. It is called 24 Marikana Master, and on slide 47 of that presentation he 25 described the movement of the protesters, or of the</p>	<p style="text-align: right;">Page 18365</p> <p>1 [13:16] That's 11 days after the incident after a full 2 day's workshop session at Roots and the Roots that Colonel 3 Scott describes in this slide has no incident 1 in it. 4 There is no arrow going down to the mast. In fact what 5 there is is a movement which is much closer to the movement 6 that we see on the videos. What's your response to that? 7 BRIGADIER CALITZ: Mnr die Voorsitter, as 8 dit is soos u sê Kolonel Scott getuig het dat dit op die 9 eerste dag was, dit was 'n, ek dink 'n nege dag sessie, so 10 al die groepe se inputs en verklarings en insette moes 11 seker ingekom het, so op hierdie stadium weet ek nie of 12 Kolonel Scott, watter inligting tot sy beskikking was toe 13 hy op hierdie stadium die merk gemaak het nie, nee. 14 MR CHASKALSON SC: Well, Colonel Scott 15 did confirm to us that he had consulted with you in 16 relation to an even earlier draft of the presentation. Do 17 you recall consultations with Colonel Scott in which he 18 asked you to describe what had happened at scene 1? 19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 ja, soos ek getuig het die persone, of ons het in groepe en 21 daar was, u sê konsultasie, daar was gesprekvoering tussen 22 Kolonel Scott en dan ons groepe asook die bevelvoerders. 23 MR CHASKALSON SC: No, consultations 24 before Roots, before Roots? 25 BRIGADIER CALITZ: As dit sy getuienis</p>

<p style="text-align: right;">Page 18366</p> <p>1 was sal ek graag wil weet wanneer en waar en dan kan ek 2 miskien kyk. Ek kan nie vir u presies sê waar het ons oor 3 die slides spesifiek gepraat voor Roots nie. 4 MR CHASKALSON SC: He didn't specifically 5 say he had spoken to you about the slide, but he did say he 6 had spoken to you for information before he presented, 7 before he issued this presentation. It was in relation to 8 a different issue which his in this presentation but can 9 you not recall the first time that you mentioned incident 1 10 to any person? It is an incident that happened right in 11 front of you, you say? 12 BRIGADIER CALITZ: Mnr die Voorsitter, 13 weereens nee, ek kan nie nou vir u sê presies op watter 14 stadium. Daardie aand toe ons terugkom, dink ek het ons 15 maar net alles probeer re-cap en ek kan nie vir u sê op 16 watter stadium ons begin het om die ding te rekonstrueer 17 nie, nee. 18 MR CHASKALSON SC: No, - and before 19 Roots, you didn't mention incident 1 to people before Roots 20 in the immediate aftermath of the 16th? 21 BRIGADIER CALITZ: Nie wat nou tot my 22 geheue kom nie, nee, ek kan nie nou u van hulp wees nie. 23 MR CHASKALSON SC: Chairperson, I don't 24 have – 25 CHAIRPERSON: May I interrupt you, about</p>	<p style="text-align: right;">Page 18368</p> <p>1 take it the last Nyala with the barbed wire trailer not yet 2 deployed, would that be Nyala 6 or 5? 3 BRIGADIER CALITZ: Mnr die Voorsitter, 4 ons het op hierdie een verwys na 4 wat ek dink later 5 was. 5 CHAIRPERSON: Okay, so actually it was – 6 BRIGADIER CALITZ: Ek dink dit is bewys 7 dat dit 5 was en nie – 8 CHAIRPERSON: 5, okay, no, I thought it 9 was that, but what you say is, "The group moved in a closed 10 formation directly to the last exactly with the barbed wire 11 trailer not yet deployed. All the men were aggressive and 12 were chanting as they moved towards the Nyala. I then 13 informed the driver of the Nyala over the radio to close 14 the doors." So that appears to be the passage in your 15 first statement that we have, describing what we've been 16 talking about or what you've been talking about with Mr 17 Chaskalson, and I must tell you it doesn't look as if 18 incident 1 is there, but I don't expect you to answer now. 19 Let's take lunch, you can come back afterwards and tell me 20 whether I'm wrong or correct in the observation I've just 21 made. Sorry? 22 COMMISSIONER HEMRAJ: Mr Chaskalson, can 23 you assist me with something after lunch please? Is there 24 anything on any video that shows the road or the movement 25 of the militant group from where they were across the 52</p>
<p style="text-align: right;">Page 18367</p> <p>1 Exhibit GGG13, para 16, but perhaps we need to, I don't 2 know how long this will take? 3 MR CHASKALSON SC: I have now finished in 4 relation to scene 1, Chair- 5 CHAIRPERSON: I'm not going to ask him 6 about this paragraph, but perhaps he can just read it in 7 the interval, or I read it aloud and he can then perhaps 8 think about it and reply after lunch. This is your 9 statement that you made on the, - it's been referred to it 10 before, on the 19th of authority, this is before Roots, it 11 is Exhibit GGG13, it is a typed statement and para 16 says, 12 you've talked about how you went to the forward holding 13 area 1 and you were briefed by Lieutenant-Colonel Scott and 14 you went back, briefed the section commanders and drives 15 with the police vehicles, etcetera, and then you say, "At 16 about 15:40," this is para 16, "At about 15:40 the first of 17 the barbed wire were deployed. At the same time a person 18 with a green blanket approached us. He was very aggressive 19 and again said, we will die and he is not returning again. 20 While we were busy deploying the barbed wire the whole 21 group, those who were on the ground and those on the koppie 22 moved in their identified formation, bended closer to each 23 other with the leaders to the front towards the SAPS. The 24 group moved in a closed formation directly to the last 25 Nyala with the barbed wire trailer not yet deployed." I</p>	<p style="text-align: right;">Page 18369</p> <p>1 metres to when they first appear alongside on the Nyalas? 2 MR CHASKALSON SC: There is nothing, the 3 best footage of that that we have is the JJJ194 that we've 4 seen. It doesn't show the very first movement of the group 5 but it starts from a point before Nyala 3 has even left 6 Nyala 2, the footage that we've just seen. So the first 7 footage of Mr Noki was before Nyala 3 had left Nyala 2 in 8 terms of timing. We can also look at the Roland headgear 9 CCTV footage and show it to you but it is a very long 10 range, so working out how people are moving, whether 11 they're moving towards the camera or as well as horizontal, 12 - well, in a horizontal direction is very difficult to 13 determine from that length. 14 COMMISSIONER HEMRAJ: This was apropos 15 the yellow arrow that seems to move directly from the 16 militant group towards the Nyalas, I just wanted to know if 17 perhaps that movement was in another direction, but there 18 is nothing that shows that and we shouldn't speculate 19 obviously. 20 MR CHASKALSON SC: I'm not aware of 21 anything. 22 COMMISSIONER HEMRAJ: Thank you, Mr 23 Chaskalson. 24 CHAIRPERSON: We'll now take the lunch 25 adjournment, you'll answer the question I asked you after</p>

<p style="text-align: right;">Page 18370</p> <p>1 lunch and then Mr Ntsebeza who has arrived, will start his 2 cross-examination. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [14:08] CHAIRPERSON: The Commission resumes. 5 Brigadier, you're still under oath. 6 ADRIAAN MARTHINUS CALITZ: s.u.o. 7 CHAIRPERSON: Just before we adjourned I 8 asked you a question in relation to paragraph 16 of exhibit 9 GGG13, which is the statement you made, I think it's the 10 first statement you made on the 19th of August. I take it 11 you had an opportunity to think about it over the lunch 12 adjournment. Are you able to answer what I've put to you, 13 asked you about? 14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 ja, ek sou sê in verwysing na hierdie paragraaf, die 16 gedeelte wat sê, "The group moved in a close formation 17 directly to the last Nyala with the barbed wire not yet 18 deployed," ek het dan gesê soos bewys dit is dan Nyala 5 op 19 die foto en nie 4 nie. So dit gee ek toe. In so verre die 20 geel pyl aangaan, mnr die Voorsitter, ek dink wat ons na 21 insident 1 verwys, in my woorde, as ek dit nou so kan stel, 22 is die afbeweeg van die voorste, die militante groep 23 afbeweeg en dan die eerste beweging, en ek het dan verder 24 getuig dat die voorste punt het dan parallel, as ek kan sê 25 die woord "parallel," saam met die Nyala, of in die rigting</p>	<p style="text-align: right;">Page 18372</p> <p>1 of that document, read with page 12, the Human Rights 2 Commission have reconstructed the position from which the 3 photograph in slide 198 is taken, and it's a position – I 4 wonder if we can just call up slide 13 of GW6A. That would 5 be JJJ1-9 – 6 CHAIRPERSON: Are we going to see it now? 7 While it's being looked for, perhaps I should say that one 8 point that we have to think about carefully is that a lot 9 of these things aren't self-evident, don't prove themselves 10 on mere production, and so unless there's agreement I take 11 it some proof is going to have to be furnished that these 12 things are correct, not necessarily oral evidence, but 13 certainly evidence, and the same of course applies to a 14 number of the points that you put, Mr Chaskalson, in the 15 course of cross-examining the witness. You made what 16 amounted to factual assertions from the bar. I understand 17 why you did it, but if they're not agreed to be correct, 18 and they're not obviously self-evidently so, then we're 19 going to have to have some evidence possibly, not 20 necessarily written evidence, but we have to have some 21 evidence on the point. That's something to be thought 22 about in the future, and also of course it's linked up with 23 another point that I mentioned earlier, and that's the 24 desirability, or I would say the necessity for having 25 agreed narratives on what can be seen on the videos.</p>
<p style="text-align: right;">Page 18371</p> <p>1 van die Nyala beweeg, en dit was my getuienis vroeër dat 2 die groter groep aan die bokant nie wel daardie "horseshoe" 3 gemaak het nie maar dat hulle soort van "ge-drift" het saam 4 met hulle. So as dit my, dit is die volledige antwoord wat 5 ek het. 6 CHAIRPERSON: Right, thank you very much, 7 Brigadier. 8 BRIGADIER CALITZ: Dankie, mnr die 9 Voorsitter. 10 CHAIRPERSON: Mr Chaskalson. 11 MR CHASKALSON SC: Chairperson, if I can 12 come back to you with the reference that I promised from 13 the Human Rights Commission with the angle that the 14 photograph in slide 198 is taken from, it's a document 15 which is an annexure to Prof White's statement, triple – 16 CHAIRPERSON: Is he a professor now? 17 MR CHASKALSON SC: No. Brigadier White. 18 CHAIRPERSON: I know he's a – 19 MR CHASKALSON SC: Brigadier White, OBE – 20 CHAIRPERSON: I know he's a member of the 21 Order of British Empire. I didn't know he was a professor. 22 So they do have military ranks? 23 MR CHASKALSON SC: There is an annexure 24 to his statement called "Scene 1 protester route analysis," 25 which has a – I'm trying to get, it's GW6A and on page 13</p>	<p style="text-align: right;">Page 18373</p> <p>1 That's, and again if there can't be agreement on some 2 things by some parties that are to be seen on the videos, 3 then again there will have to be evidence on that. But 4 anyway, I just mention that as a sort of a housekeeping 5 remark to be borne in mind for the future. But we've now 6 found the, or you've now found the relevant page of this 7 annexure GW6A. 8 MR CHASKALSON SC: It must be page 12. 9 CHAIRPERSON: Yes, which is part of 10 exhibit JJJ178.1, but can we please now go to page 12? 12 11 shows us that photograph, that's slide 198 of exhibit L. 12 MR CHASKALSON SC: And what the Human 13 Rights Commission have done on page 12 is they have 14 encircled four landmarks. In green are two pylons. In 15 blue is the double pole, and in red is the mast, and on the 16 following page they've plot those onto an aerial photograph 17 to show the angle of the shot. Now the blue line is 18 definitely the centre point of the shot because you can 19 mark it with reference to the double mast and the single 20 mast. It has to pass between them. How wide the angle of 21 the shot is I can't vouch for, and how far back it is taken 22 from I also can't vouch for because there's the possibility 23 of a zoom. So I think that yellow point as the position of 24 the camera is not necessarily beyond dispute, but the blue 25 line, which is the angle of the shot, seems to be fairly</p>

<p style="text-align: right;">Page 18374</p> <p>1 clear.</p> <p>2 CHAIRPERSON: In any event, I take it</p> <p>3 that the police will be studying these documents with the</p> <p>4 aid of experts, these reports with the aid of experts and</p> <p>5 they will, they may well agree that this is correct and if</p> <p>6 they don't, presumably that's a matter that will be put on</p> <p>7 the table for consideration by the Commission. Anyway,</p> <p>8 thank you for the reference, Mr Chaskalson.</p> <p>9 MR CHASKALSON SC: But Chairperson, there</p> <p>10 is also a follow-up question I have from a question that</p> <p>11 Commissioner Hemraj put to me at the end of the session,</p> <p>12 and also the Brigadier's last answer to your question,</p> <p>13 because it may be that my focus on the arrow in slide 197</p> <p>14 is being misunderstood. If we can call up slide 197. What</p> <p>15 incident 1 describes, or purports to describe is the armed</p> <p>16 group will approach the vehicle Nyala 5 and attempt to –</p> <p>17 Nyala 4, and attempt to enter the police enclosure, and the</p> <p>18 entry attempt is marked on the arrow. Now what I would put</p> <p>19 to the Brigadier is essentially related to the alleged</p> <p>20 attempt to enter the police enclosure, and in relation to</p> <p>21 the arrow. I put what I want to put in relation to the</p> <p>22 arrow, but the significance of the arrow is it purports to</p> <p>23 describe an attempt to enter the police enclosure, and what</p> <p>24 I would put to the Brigadier is on the basis of that video</p> <p>25 footage, including the response of the police members that</p>	<p style="text-align: right;">Page 18376</p> <p>1 meer tot u tweede voorstel dat daar was wel 'n "attempt"</p> <p>2 sou ons net toegemaak het, hulle het definitief nie</p> <p>3 wegbeweeg as ek kan sê in 'n westelike rigting nie, maar</p> <p>4 hulle het in 'n – as ek nou net die rigting kan gebruik, in</p> <p>5 'n oostelike rigting. So dit was reguit, u weet, manier om</p> <p>6 in die, as ons kan s'n "police safe zone" in te beweeg, so</p> <p>7 as dit die "attempt" is.</p> <p>8 MR SEMENYA SC: Chair, might I request we</p> <p>9 show the other frame so that I can place something on</p> <p>10 record, just the frame before this one?</p> <p>11 CHAIRPERSON: You mean 198?</p> <p>12 MR SEMENYA SC: No, the recreation.</p> <p>13 COMMISSIONER HEMRAJ: Page 12.</p> <p>14 CHAIRPERSON: Oh, page 12, yes. That's</p> <p>15 the one you want, Mr Semenya?</p> <p>16 MR SEMENYA SC: Yes, and may we place</p> <p>17 this as our difficulty; if that is the correct place where</p> <p>18 the slide appears, it is definitely not at scene 1 – at</p> <p>19 scene 2, at incident 2, and I don't understand if we're</p> <p>20 seeing those marchers next to the car, whatever Nyala it</p> <p>21 is, 4 or 5, that we can say that incident 1 did not happen,</p> <p>22 but the unfortunate place we have is that this is narration</p> <p>23 by an evidence leader who we cannot cross-examine, and I</p> <p>24 don't know which witness is going to be brought up so that</p> <p>25 he can explain to us under cross-examination what incident</p>
<p style="text-align: right;">Page 18375</p> <p>1 one sees in that video footage, is that there hasn't been</p> <p>2 an attempt to enter the police enclosure, and –</p> <p>3 CHAIRPERSON: Let's hear what the</p> <p>4 Brigadier says about it. Brigadier, you hear what Mr</p> <p>5 Chaskalson says –</p> <p>6 MR CHASKALSON SC: At the point that you</p> <p>7 say.</p> <p>8 CHAIRPERSON: The video, now you're not</p> <p>9 responsible of course for the legend at the top of slide</p> <p>10 197. I think that was Colonel Visser's work. Now what Mr</p> <p>11 Chaskalson wants to know is are you able from what you saw</p> <p>12 yourself on the day, and what you've seen subsequently on</p> <p>13 the videos, to say that that group were trying to enter the</p> <p>14 police enclosure, i.e. get beyond where the wire barricade</p> <p>15 was going, or can you simply say that – as I understood</p> <p>16 your evidence to be – that they approached and then you</p> <p>17 said the group at the back - there wasn't this wide arrow</p> <p>18 story – the group at the back followed one route; the group</p> <p>19 at the front followed another, and the route they appeared</p> <p>20 to follow was one parallel with the wire barricade. Can</p> <p>21 you go further from your own knowledge and say no, no, no,</p> <p>22 from what you saw they were attempting to enter the police</p> <p>23 enclosure at that spot near the mast? How do you respond</p> <p>24 to that point?</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>	<p style="text-align: right;">Page 18377</p> <p>1 that is.</p> <p>2 MR CHASKALSON SC: Chairperson, if I can</p> <p>3 respond, I have merely responded and cross-examined on the</p> <p>4 basis of the police version as it is set out in the</p> <p>5 presentation, which suggests an attempt to enter the police</p> <p>6 enclosure at the mast. The video footage shows that that</p> <p>7 didn't happen. The video footage also shows that the</p> <p>8 protesters – it's argument on video footage. Mr Semenya</p> <p>9 can also argue on video footage if he wants.</p> <p>10 CHAIRPERSON: I'm sure he will, but Mr</p> <p>11 Semenya raises a specific difficulty, as I understand it,</p> <p>12 in relation to this particular slide we're looking at now,</p> <p>13 and you yourself conceded that it's not quite clear where</p> <p>14 the photographer actually stood. You say that if one looks</p> <p>15 at the blue line one can assume that's more or less the</p> <p>16 centre of his photograph, and he was obviously standing</p> <p>17 somewhere along his blue line, and we've got the other</p> <p>18 features to look at as well, the double pole and the two</p> <p>19 pylons and so on, but there is room for debate as to where</p> <p>20 exactly the photographer was standing. I think that's</p> <p>21 correct, Mr Semenya, is it not? Am I summarising your</p> <p>22 point?</p> <p>23 MR SEMENYA SC: You are correct, Chair,</p> <p>24 and we must add, photographs can't show an intention,</p> <p>25 whether they intend to cross or don't intend to cross, but</p>

<p style="text-align: right;">Page 18378</p> <p>1 what we can say is that we see a group of people far away 2 from incident 2, which is where incident 1 we contend 3 happened, but it's contested by the evidence leaders. All 4 we want is an opportunity to know which witness we will 5 cross-examine to refute that contention. 6 COMMISSIONER HEMRAJ: Mr Chaskalson, on 7 this slide where approximately would the photographer be? 8 I'm just trying to understand that. 9 MR CHASKALSON SC: The photographer would 10 be at the yellow point at the bottom of the page. 11 COMMISSIONER HEMRAJ: But wouldn't the 12 front of the Nyalas then be facing the photographer from 13 that position? 14 MR CHASKALSON SC: No, because firstly 15 this photograph is not a photograph at the same time, so 16 the position of Nyala 5 over here, the orientation of Nyala 17 5 may have changed, but also Nyala 5 is not oriented on the 18 blue line; it's tilted a little bit to the northeast of the 19 line. 20 CHAIRPERSON: At any rate, one of the 21 important issues of course is whether what we see on slide 22 198 is Nyala 4 or Nyala 5. That presumably can be, if 23 that's disputed by the police - you said it was Nyala 5 - 24 if that's disputed by the police, presumably there will be 25 a basis put up for that, and if necessary Mr Fischer or</p>	<p style="text-align: right;">Page 18380</p> <p>1 your oath, that your oath is binding on your conscience, 2 then I will not take it any further than that. 3 BRIGADIER CALITZ: Goeiemiddag, mnr 4 Ntsebeza. Ja, ekskuus tog, ek het net die lêers uitgehaal. 5 Ek wil net die "cross-examination" lêers bêre. So ek het 6 nie redelik gevolg wat u nou gesê het nie. So as u dalk 7 net kan - 8 CHAIRPERSON: He reminds you, well I 9 reminded you you're still under oath, and he accepts that, 10 that you're aware of it. I think that's all he - 11 BRIGADIER CALITZ: Ek het dit reeds 12 aanvaar van u, mnr die Voorsitter, dankie. 13 MR NTSEBEZA SC: Now if we put up exhibit 14 GGG13, that is your statement, is it not? 15 BRIGADIER CALITZ: Korrek, mnr die 16 Voorsitter. 17 MR NTSEBEZA SC: And it's written in 18 English, but it looks like you were speaking in Afrikaans. 19 Were you speaking in Afrikaans? It looks like you were - 20 it was in English. Did you make the statement in English, 21 even though, and that thing in brackets is meant to say 22 though you are Afrikaans-speaking, you made your statement 23 in English? 24 BRIGADIER CALITZ: Dit is wat dit bedoel, 25 ja. Die verklaring is in Engels afgelê en ek het aangedui</p>
<p style="text-align: right;">Page 18379</p> <p>1 somebody is going to have to come and give evidence as to, 2 or someone else, on why he said this is Nyala 5, but these 3 are matters I take it that can be considered in the period 4 that lies ahead of us. What I've said merely was to 5 indicate that there are certain controversial areas ahead 6 of us, open before us at the moment, which we'll obviously 7 have to find a way of resolving. But anyway, you have 8 drawn our attention to the passage we wanted to see. 9 COMMISSIONER HEMRAJ: Can I just ask you, 10 Mr Chaskalson, where does slide 198, where does that 11 photograph emanate from? Because I know there was a lot of 12 discussion initially about it and then at some stage it was 13 seen on the eNCA website. 14 MR CHASKALSON SC: As I understand 15 Colonel Scott it's a photograph that SAPS found on the 16 internet. It's certainly not from a SAPS photographer. 17 CHAIRPERSON: So a bit of work may have 18 to be done in relation to that photograph, if it's going to 19 help us at all to reach conclusions. Alright, shall we now 20 move on? Mr Ntsebeza, you've been waiting very patiently 21 for your chance to cross-examine the witness. Would you 22 like to avail yourself of the opportunity now? 23 CROSS-EXAMINATION BY MR NTSEBEZA SC: 24 Thank you, Mr Chairman. Brigadier, I will proceed on the 25 basis that when you say the, when you have been reminded of</p>	<p style="text-align: right;">Page 18381</p> <p>1 dat ek Afrikaanssprekend is, mnr die Voorsitter. 2 MR NTSEBEZA SC: Oh, I see. I just 3 wanted to clarify that. Ja, because I've noticed that you 4 are fairly fluent in English and in most of the clips that 5 I've seen I do not recall any of them in which you were 6 speaking in Afrikaans even to your other colleagues. Is 7 that right? 8 BRIGADIER CALITZ: Mnr die Voorsitter, ek 9 dink dit is twee heeltemal anderste gevalle as waarmee ons 10 hier besig is. 11 MR NTSEBEZA SC: So for the most part 12 even when you were talking to your colleagues, the language 13 you used was English? 14 BRIGADIER CALITZ: Dit is die algemene 15 gebruikstaal in die polisie as ek met my kollegas gesels, 16 korrek, mnr die Voorsitter. 17 MR NTSEBEZA SC: Now in paragraph 19 of 18 this exhibit, would it be correct to say that that's in 19 reference to what happened in scene 2? 20 [14:28] BRIGADIER CALITZ: Die paragraaf waarna 21 dit verwys, verstaan ek u reg? 22 MR NTSEBEZA SC: Yes. 23 BRIGADIER CALITZ: Dit is 'n samevatting 24 van my verklaring oor die persone wat dan gearrester was, 25 dit is korrek.</p>

<p style="text-align: right;">Page 18382</p> <p>1 MR NTSEBEZA SC: Now what you really want 2 to be focussing on is an indication of where your mindset 3 is, is your description of the crowd, your impression is 4 that they were unruly and very aggressive. 5 BRIGADIER CALITZ: Korrek, mnr die 6 Voorsitter. 7 MR NTSEBEZA SC: And your testimony or 8 certainly in that exhibit, you convey in so many words that 9 what the SAPS were dealing with were people who were all, 10 according to you, armed with extremely dangerous homemade 11 and bought weapons which they clearly intended using to 12 injure or kill SAPS members. You stated that in that 13 statement, and do you as you sit there still hold that 14 view? 15 BRIGADIER CALITZ: Dit is, ek dink ons 16 het reeds, mnr die Voorsitter, het my ook hieroor gevra en 17 dit was my antwoord gewees op daardie stadium ook, ja, mnr 18 die Voorsitter. 19 MR NTSEBEZA SC: Now I'm not sure that I 20 understand that answer. Can I break it up? Was that your 21 view at the time that you were making that statement, that 22 all the people that were assembled on the koppie were armed 23 with extremely dangerous homemade and bought weapons which 24 they clearly intended using to injure or kill SAPS members? 25 BRIGADIER CALITZ: Mnr die Voorsitter, as</p>	<p style="text-align: right;">Page 18384</p> <p>1 die persone wat ons ge-disperse het was gewapen, wat 2 weggehardloop het. Hulle het weer op gevorm agter koppie 3 2, so soos hulle gerapporteer het aan my is dan ook wat ek 4 dan uit my eie uit waargeneem het tussen, as ons dan praat 5 van insident 3 en die opvolgaksie na koppie 2 waar ons dan 6 ge-hergroepeer het, as dit die – 7 MR NTSEBEZA SC: Brigadier, I would like 8 us not to really get ahead of ourselves. That paragraph 9 which you state under oath does not say, I was told by my 10 colleagues that the crowd that had assembled at the koppie 11 was unruly and very aggressive, is that not right? 12 BRIGADIER CALITZ: Mnr die Voorsitter, ek 13 het reeds nou net na dit verwys waar mnr die Voorsitter vir 14 my dieselfde vraag gevra het en die getuienis of die rekord 15 sal dan vanself spreek. 16 CHAIRPERSON: Mr Ntsebeza, this topic 17 that you're busy with now was extensively covered when Mr 18 Budlender cross-examined the witness and I asked a few 19 questions as well, as the witness has mentioned and he 20 conceded, as he has already done this afternoon, that he 21 should have said and he didn't, that the passages that 22 you've relied on, put to him, were hearsay evidence. He 23 was stating what had been reported to him and so that point 24 we have already and he has already admitted that that's the 25 case, so I don't know if there is any point in repeating</p>
<p style="text-align: right;">Page 18383</p> <p>1 ek die eerste gedeelte van die vraag, as u sê u wil my 2 opinie weet, is ek reg as ek dit sê? 3 MR NTSEBEZA SC: I'll repeat the 4 question. Was it your stated view as is born out by that 5 sentence, that all the people that had assembled on the 6 koppie, whom you first characterised as having been unruly 7 and very aggressive, now was it your stated view that they 8 were all armed with extremely dangerous homemade and bought 9 weapons which they clearly intended using to injure or kill 10 SAPS members? 11 BRIGADIER CALITZ: Mnr die Voorsitter, as 12 ek die woorde "stated mind" reg verstaan, ek het reeds aan 13 u gerapporteer of getuig dat van dit was gerapporteer aan 14 my deur die persone wat dan die arrestasies gemaak is. Ek 15 dink u het dan ook gesê die, nagelaat van, soos 16 gerapporteer aan my en ek het dit dan ook so op daardie 17 stadium vir u gesê. Wat ek wel kan getuig uit my eie uit 18 is dat die groep wel van toedeel 1 af waar ons ge- 19 hergroepeer het langs groep 2 kon ons duidelik die 20 militante groep sien op vorm. So as u vir my vra in my 21 opinie die groep wat dan daarnatoe beweeg het was almal 22 gewapen, ja, hulle intensies en doel, dit is korrek, mnr 23 die Voorsitter, so wat ek waargeneem het van toneel 1, soos 24 ons beweeg het toneel 2 toe, die persone wat wegbeweeg het, 25 daar was wel 'n aanval op die polisie lyn by insident 3,</p>	<p style="text-align: right;">Page 18385</p> <p>1 that cross-examination, it is already on record. 2 MR NTSEBEZA SC: Thank you, very much, Mr 3 Chairman, I don't intend to repeat cross-examination by Mr 4 Budlender, I just want to make sure that when the time 5 comes for me to make submissions it is not on the basis 6 where there was doubt in my own mind as to what the witness 7 was saying. Now which of that paragraph is it your own 8 opinion and which is based on hearsay from your memory? 9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 weereens ek dink ons is deur hierdie vraag wat mnr die 11 Voorsitter, wat u nou net gestel het. Ek het gesê soos 12 gerapporteer aan my maar ek het verder nou gegaan – 13 CHAIRPERSON: Sorry, what I think, sorry 14 to interrupt you. What I think Mr Ntsebeza would like you 15 to do is to point us to the sentences in paragraph 19 which 16 are based on your own knowledge and those which are based 17 on hearsay. Now can you do, I think that's what he wants. 18 BRIGADIER CALITZ: Ja, nee, ek was – 19 CHAIRPERSON: So you don't have to read 20 them out but you can just say the first sentence is hearsay 21 and the second sentence isn't or whatever. Do it is as 22 quickly as you can because I'm sure Mr Ntsebeza has got a 23 lot of other questions he wants to ask you, but he would 24 like to know what is hearsay and what is direct evidence so 25 that he can concentrate on the direct evidence in his</p>

<p style="text-align: right;">Page 18386</p> <p>1 cross-examination. Is that right, Mr Ntsebeza?</p> <p>2 MR NTSEBEZA SC: Yes, Mr Chairman.</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter, as</p> <p>4 ons dan begin by sin 1, "The crowd assembled on the koppie</p> <p>5 was unruly and very aggressive," die groep kon ek waarneem</p> <p>6 reeds op toneel 1 en dit is dan dieselfde groep wat ek</p> <p>7 gesien beweeg het in daardie rigting van groep 2, alhoewel</p> <p>8 dit aan my gesê was kon ek dan ook hierdie groep waarneem</p> <p>9 en hulle aksies reeds by insident 1, 2, 3, hulle het nie</p> <p>10 van elsewhere afgekome nie, they were all –</p> <p>11 CHAIRPERSON: I'm sorry to interrupt, I</p> <p>12 take it sentence 1 is partly hearsay and partly based on</p> <p>13 your own knowledge, because you only saw a fraction of the</p> <p>14 group yourself, particular at incident 3 and later on</p> <p>15 koppie 3 and so on. So you only saw a fraction, so it is</p> <p>16 partly hearsay and partly direct evidence, sentence 1, is</p> <p>17 that right?</p> <p>18 BRIGADIER CALITZ: Korrek, mnr die</p> <p>19 Voorsitter. Dan, "They were all armed with extremely</p> <p>20 dangerous homemade and bought weapons which they clearly</p> <p>21 intended using to injure and kill the SAPS," dit is ook</p> <p>22 gerapporteer aan my deur die kollegas wat dan, ek het</p> <p>23 verwys myne is A15, die verklaring, daar is ander</p> <p>24 verklarings in die dossier wat dan sal wys en sal getuig</p> <p>25 waarmee hierdie mense gewapen was. Ek het hulle, weereens</p>	<p style="text-align: right;">Page 18388</p> <p>1 you saying you never saw that, it is something that was</p> <p>2 told to you by your colleagues?</p> <p>3 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>4 dink ek was besig om dit te verduidelik. Ons het nou weer</p> <p>5 teruggegaan na die sin toe wat ek klaar vir u verduidelik</p> <p>6 het. Ek weet nie of ek dalk te vinnig praat vir die, ek</p> <p>7 sien mnr Charles –</p> <p>8 CHAIRPERSON: Dalk, ja –</p> <p>9 BRIGADIER CALITZ: - wys vir my ek moet</p> <p>10 dalk 'n bietjie, so dit is miskien die transkripsie wat nie</p> <p>11 byhou, dat die advokaat dalk nie mooi hoor wat ek gesê het.</p> <p>12 CHAIRPERSON: Die transkripsie, die –</p> <p>13 BRIGADIER CALITZ: Ag, die –</p> <p>14 CHAIRPERSON: - vertolking?</p> <p>15 BRIGADIER CALITZ: Die vertolking,</p> <p>16 ekskuus, mnr die Voorsitter.</p> <p>17 MR NTSEBEZA SC: Yes, go ahead.</p> <p>18 BRIGADIER CALITZ: Kan ek voortgaan in</p> <p>19 Afrikaans, ek sien die oorfone–</p> <p>20 MR NTSEBEZA SC: Nee, nee.</p> <p>21 CHAIRPERSON: Mr Ntsebeza is taking off</p> <p>22 his earphones to show he does know some Afrikaans.</p> <p>23 BRIGADIER CALITZ: Mnr die Voorsitter, en</p> <p>24 dan wil ek net sê, ek is reeds op die vraag wat u nou net</p> <p>25 aan my gestel het, het ek reeds daardie sin aan u</p>
<p style="text-align: right;">Page 18387</p> <p>1 'n fraction van die groep gesien wat beweeg in daardie</p> <p>2 rigting en ek het gesien dat hulle wel wapens by hulle</p> <p>3 gehad het en teen die tyd wat ek in koppie 2 ingekom het,</p> <p>4 het ek ook die wapens ook waargeneem wat dan die persone</p> <p>5 aan my gesê is, het hulle weggeneem by die persone. So</p> <p>6 daardie is weereens my eie waarneming, asook wat</p> <p>7 gerapporteer is aan my. "They acted as one group and all</p> <p>8 associated themselves with the actions of each other." Dit</p> <p>9 is vir my duidelik ook weer gegee deur my kollegas wat daar</p> <p>10 was en gesê het watter aksies daar geloods was, maar</p> <p>11 weereens het ek ook dan waargeneem dat die groep waar ek in</p> <p>12 'n westelike rigting beweeg het na die groter groep toe het</p> <p>13 die groepie hulleself gaan konsentreer binne 'n koppie. So</p> <p>14 dit het ek dan van bewus gewees, asook dit is gerapporteer</p> <p>15 aan my en dan aan –</p> <p>16 MR NTSEBEZA SC: Can I interrupt you</p> <p>17 there?</p> <p>18 BRIGADIER CALITZ: - Meneer –</p> <p>19 MR NTSEBEZA SC: Can I interrupt you</p> <p>20 there, Brigadier, and ask, since you were there and for the</p> <p>21 most part you were a commander, are you saying that you are</p> <p>22 not in a position to testify on the basis of what you saw,</p> <p>23 particularly because I heard you refer to scene 1 or what</p> <p>24 you say in scene 1, whether these people were all armed</p> <p>25 with extremely dangerous homemade and bought weapons, are</p>	<p style="text-align: right;">Page 18389</p> <p>1 verduidelik, so die rekord is dan van, as ek dan toegelaat</p> <p>2 kan word om verder te gaan waar ek opgehou het. "Their</p> <p>3 actions threatened law and order and constitute the crime</p> <p>4 of public violence." Die aksie het ons van die begin af</p> <p>5 vir hulle gesê van koppie 1 af, dat dit is 'n onwettige</p> <p>6 vergadering en dat ons kan nie hulle toelaat, dit is 'n</p> <p>7 illegal gathering wat gewapen was. So sou dieselfde groep</p> <p>8 of 'n deel van daardie groep na koppie 2 beweeg of koppie</p> <p>9 3, sou dieselfde beginsel daar geld, dit was nog steeds 'n</p> <p>10 byeenkoms en so dit is dan in my eie kennis, ook in die</p> <p>11 geval. "To disturb public order and peace," dit is wat ons</p> <p>12 gesien het uit al die dossier wat opgemaak is tot op</p> <p>13 daardie stadium. "I am of the opinion that if the members</p> <p>14 of the SAPS did not act in the way they did, that many</p> <p>15 members of SAPS would have been killed/injured during that</p> <p>16 incident."</p> <p>17 Dit is my opinie en daarom het ek die opdrag</p> <p>18 gegee dat ons moet gaan blok en disperse en ons het so ver</p> <p>19 as moontlik probeer om 'n non lethal, kan ek begin vroeër</p> <p>20 as dit? Ons het begin op die Dinsdag, mnr die Voorsitter,</p> <p>21 reeds met onderhandelinge, ons het 'n tipe van 'n mediation</p> <p>22 role gespeel tussen die partye asook die strikers. Ons het</p> <p>23 hulle boodskap oorgedra, ons het gereël dat die leiers na</p> <p>24 hulle toe kom, so ek dink van die polisie se kant af, as ek</p> <p>25 daardie sin sê, het ons alles probeer om so ver as moontlik</p>

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1 op 'n peaceful manier te doen en ek dink as die polisie nie
 2 ge-act het op die stadium waar ons dan hulle uiteen gedryf
 3 het nie, dan sou daar 'n groter insident gewees het.
 4 "We tried to negotiate," hier wys ek dit dan nou,
 5 "with the crowd and we start off by using minimum force to
 6 no avail." Hulle het glad nie gehoor gegee op insident 2
 7 nie, hulle het glad nie gehoor gegee op insident 3 nie en
 8 my operasionele ondervinding, 20 jaar net by Openbare Orde
 9 Polisiëring, is dit die eerste keer in my geskiedenis of in
 10 my loopbaan dat ek sien dat ek mense disperse met rubber,
 11 traangas en wat dan nog steeds op daardie stadium die
 12 polisie storm. 'n Kleiner hoeveelheid, maar ek dink die
 13 groter hoeveelheid, die 2 tot 3,000 wat agter is het wel
 14 besluit dit is veiliger om weg te beweeg in 'n westelike
 15 rigting. Dit is wat ek in daardie sin probeer sê. Ek wil
 16 net my plek weer kry, en dan sê ek, "No members of the SAPS
 17 were injured or killed during this incident on the 16th."
 18 Dit is my eie sin daardie en dit is ook soos dit aan my
 19 gerapporteer is, geen persone nie.
 20 "I did not fire any shots during the incident."
 21 Dit is waar ek getuig het dat ek geen wapen gebruik het op
 22 daardie stadium nie, myne. "Later after the whole incident
 23 Lieutenant Colonel Pitsi, one of my commanders who was in
 24 command of the group, showed the Nyala vehicle in which he
 25 was. I saw three bullet marks on the front side and on the

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1 body on an armoured vehicle and two bullet marks on an
 2 armoured glass window in front of the vehicle." Dit is my
 3 waarneming wat ek dan op die voertuig gesien het. "He made
 4 a report to me that as they were advancing towards the
 5 crowd near the cattle kraal someone within the crowd shot
 6 at the police vehicle," en dit was 'n stelling wat hy aan
 7 hy gemaak het en dit was toe ons, as ek reg is, by liggaam
 8 C, - mnr Mpumza, as ek dit korrek uitspreek, toe ons op
 9 daardie punt was waar die mededeling aan my gemaak is.
 10 "At no stage during the whole negotiation process
 11 did I get the impression that the crowd was willing to
 12 listen to reason," en dit is duidelik aan ons uitgewys deur
 13 die verskillende gespreksvoeringe tydens ons
 14 onderhandelinge, "and laid down their weapons." Ons het
 15 ook vir hulle gevra tydens die onderhandelinge om verskeie
 16 kere hulle wapens neer te sit, ons is daar vreedsaam en ons
 17 wil graag dit dan so met hulle onderhandel. "Instead I
 18 come to a conclusion that they will never surrender their
 19 weapons." Dit is aan ons gerapporteer deur Crime
 20 Intelligence asook dat dit my eie ondervinding was, want ek
 21 het gesien daardie oggend dat die groep voor totaal en al
 22 nie die wapens wat hulle het gaan neersit nie," and that
 23 they were prepared to fight with the police. Dit was my
 24 siening aangesien ek dit waargeneem het, die aggressie,
 25 asook dit is 'n verslag wat alreeds ingedien is deur ons

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1 Misdaad Intelligensie wat dan die woord "fight" pertinent
 2 genoem het, en dan die laaste sinnetjie, "With the police
 3 and to die."
 4 Hoekom ek dit ingesit het is dat mnr Noki en op
 5 ander verskeie ander gevalle het hulle die polisie gedreig
 6 en pertinent die woorde gebruik van, u sal of julle sal
 7 doodgaan vandag, ons gaan die voertuie brand. So ek hoop
 8 dit is miskien 'n stadige verduideliking van wat aan my
 9 gerapporteer is, wat my afleiding was asook wat die ander
 10 persone aan my gesê het. So wat ek wel toegegee het, mnr
 11 die Voorsitter, is op sekere van hierdie dele moes ek die
 12 woordjie, soos aan my gerapporteer, dalk ingebring het maar
 13 grotendeels het ek dan ook baie van hierdie waargeneem.
 14 MR NTSEBEZA SC: Thank you, Brigadier.
 15 BRIGADIER CALITZ: Dankie, mnr die
 16 Voorsitter.
 17 MR NTSEBEZA SC: So can I safely then say
 18 that suddenly at the time that you made the statement there
 19 are unequivocally certain things that you were convinced
 20 of. The first one is that the strikers were armed with
 21 extremely dangerous weapons, is that a fair reflection of
 22 what you thought at that time?
 23 BRIGADIER CALITZ: Korrek, mnr die
 24 Voorsitter.
 25 MR NTSEBEZA SC: And you say there, can I

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1 proceed on the basis that you came to the conclusion,
 2 especially after what you consider was a failure of the
 3 negotiation process, that the crowd, the mineworkers were
 4 not willing to listen to reason and that they were not
 5 going to lay down their weapons, is that right? "At no
 6 stage during the whole negotiation did I get the impression
 7 that the crowd was willing to listen to reason and lay down
 8 their weapons."
 9 BRIGADIER CALITZ: Dit is korrek, mnr die
 10 Voorsitter.
 11 MR NTSEBEZA SC: If anything, your
 12 conclusion was that they will never surrender their
 13 weapons, right?
 14 [14:48] BRIGADIER CALITZ: Dit was nie net 'n
 15 "conclusion" nie, dit was aan ons gerapporteer ook deur
 16 Misdaadintelligensie.
 17 MR NTSEBEZA SC: No, let's not try to
 18 ride two horses, Brigadier. You say there "I came to the
 19 conclusion that they will never surrender their weapons."
 20 I see you nod.
 21 BRIGADIER CALITZ: Dit is presies wat ek
 22 u nou net geantwoord het, mnr Ntsebeza.
 23 CHAIRPERSON: I take it his point is that
 24 his conclusion was based upon two things; what he saw and
 25 the information that he'd received from Criminal

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1 Intelligence.

2 MR NTSEBEZA SC: Yes, it speaks to his

3 state of mind, Mr Chairman. I agree with you. It's a

4 combination of all of those, but he clearly came to that

5 conclusion after having experienced - and your experience,

6 as you stated, was that these were people who were prepared

7 to fight with the police and to die.

8 BRIGADIER CALITZ: Dit is weereens soos

9 ek getuig het, mnr die Voorsitter.

10 MR NTSEBEZA SC: Yes, indeed last week on

11 one of the occasions that I was here you were led by my

12 colleague relevant to three slides in exhibit L, if they

13 can be put up, 121, 172, and 173. Now when that slide was

14 put up you seemed to concur with the suggestion that this

15 was somewhat unique in your experience, that this crowd,

16 armed as it was with those dangerous weapons, was something

17 out of the ordinary in your entire experience. Is that a

18 correct reflection of your evidence?

19 BRIGADIER CALITZ: Beslis die gedrag van

20 die groep wat ons hier sien in die foto's. As ons na die

21 eerste foto - ek wil nou net seker maak, 1-7, which is the

22 first slide? O, ek sal hom sommer daar volg op die

23 "screen," mnr die Voorsitter.

24 CHAIRPERSON: The slide is 121, exhibit

25 L. The one on the screen -

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1 MR NTSEBEZA SC: I think that's - yes,

2 thank you, Mr Chairman.

3 BRIGADIER CALITZ: Ek sal hom sommer daar

4 - beslis, mnr die Voorsitter, as u sien dat die gedrag van

5 die persone met die panga, die aflek van die spies in ons

6 rigting, die gevaarlike wapens, as u daarna verwys, ja dit

7 is gedrag wat nie normaalweg voorkom in my omgewing van

8 "crowd management" nie, nee.

9 MR NTSEBEZA SC: And if you would go to

10 slide 172, that is also one of the slides you sought to

11 rely upon for holding the view that these people were armed

12 with extremely dangerous weapons.

13 BRIGADIER CALITZ: Mnr die Voorsitter, ek

14 het wel dink ek onder korreksie getuig dat die stokke, of

15 die knopkieries, daardie tipe van wapens, daar is wel al in

16 my "experience," maar nie die pangas en die skerp voorwerpe

17 wat andersins gebruik is nie.

18 MR NTSEBEZA SC: Yes, the point though,

19 unless your view is that sticks are also extremely

20 dangerous weapons, it seems to me that in that photo the

21 majority of weapons are sticks.

22 BRIGADIER CALITZ: As u praat in hierdie

23 een foto, wat ek kan waarneem, u noem hulle "sticks;" ek

24 sal sê knopkieries. Voor sien ek 'n panga. Ek kan nie

25 rêrig sê daar aan die regterkant, daardie skerp voorwerp,

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1 is dit 'n spies of is dit 'n stok. So op hierdie een foto,

2 dit is wat ek kan waarneem.

3 MR NTSEBEZA SC: Yes, in this one photo

4 in fact it seems that there is one panga. Does it not seem

5 like that?

6 BRIGADIER CALITZ: Weereens, mnr die

7 Voorsitter, as u net vir my na die een foto verwys, ja.

8 MR NTSEBEZA SC: Yes, in this photo which

9 was shown to you by my learned colleague last week.

10 BRIGADIER CALITZ: Ek verstaan nie; is

11 daar 'n vraag in die stelling, of wat is die vraag, Meneer?

12 MR NTSEBEZA SC: No, the question is a

13 clear one. It does appear in this one photo 172 that there

14 is only one panga in a sea of sticks, or what you call

15 knobkieries.

16 BRIGADIER CALITZ: Weereens, mnr die

17 Voorsitter, op hierdie een foto sien ek die een panga voor,

18 ja.

19 MR NTSEBEZA SC: I see. 172, 173, let's

20 see what we have there. This was one of the photos that

21 was put up. What do you see there, Brigadier?

22 BRIGADIER CALITZ: Mnr die Voorsitter, in

23 die voorgrond is 'n persoon wat, ek weet nie of hy skreeu

24 of hy sing of wat maak hy nie, met 'n kombes om hom

25 gedraai. In sy linkerhand hou hy 'n, lyk soos 'n spies

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1 vas, in die regterhand hou hy ook 'n spies vas. Dit is in

2 'n gekruisde posisie, en agter hom sien ek, onduidelik, 'n

3 groep van persone wat gehurkend sit. Die getal en die

4 detail op die foto is, kan ek nie sien nie.

5 MR NTSEBEZA SC: You see one spear in

6 that crowd of people, but there may be more, but at first

7 blush isn't it that we see only the spear of the person in

8 front? Spear or spears -

9 BRIGADIER CALITZ: Ja, u verwys na een

10 "spear." Ek sien twee. Of hy 'n ander naam het dalk -

11 MR NTSEBEZA SC: Oh, you mean the guy -

12 BRIGADIER CALITZ: U kan my dalk help,

13 maar ek sien wel twee spiese met skerp staal, "stainless

14 steel," watse punte hulle ook al van gemaak is.

15 MR NTSEBEZA SC: Yes. We are talking

16 about the man in front who's holding two objects in front

17 of him.

18 BRIGADIER CALITZ: Dit is wat ek reeds

19 getuig het, mnr die Voorsitter.

20 MR NTSEBEZA SC: Yes, it was my mistake,

21 Brigadier. It looks like it's two metals of spears. There

22 doesn't seem to be any pangas in sight in that photo.

23 BRIGADIER CALITZ: Nie op hierdie foto

24 nie, mnr die Voorsitter. Ek sien geen pangas op hierdie

25 stadium nie.

<p style="text-align: right;">Page 18398</p> <p>1 MR NTSEBEZA SC: Yes, and other than the 2 person in front, it does not appear that there is anyone in 3 that crowd who's holding any spears. 4 BRIGADIER CALITZ: Op hierdie foto wat 5 van hierdie hoek afgeneem is, korrek, mnr die Voorsitter. 6 MR NTSEBEZA SC: And these are the photos 7 that I am drawing your attention to because they were 8 brought up in examination-in-chief by my learned friend. 9 Now it seems to me that from the three photos that we have 10 seen it is an exaggeration to say that all the people who 11 constituted the crowd at the koppie were armed with 12 extremely dangerous weapons. Would you agree? 13 BRIGADIER CALITZ: Nee, mnr die 14 Voorsitter. 15 MR NTSEBEZA SC: Tell me why. Or tell 16 the Commission why. Why don't you agree? On these three 17 footages that were put to you in examination-in-chief as an 18 indication of an extremely dangerous crowd, something which 19 you said is unique in your experience of almost two decades 20 as a police person. 21 BRIGADIER CALITZ: Mnr die Voorsitter, ek 22 probeer nou net kyk op 'n gedeelte van die verklaring. 23 Gebaseer op net die drie foto's, maar u het my gevra op die 24 groep. Ek het wel iewers in my verklaring – ek praat onder 25 korreksie – verwys na die verskillende items wat hulle dan</p>	<p style="text-align: right;">Page 18400</p> <p>1 in which I hold the view that you refer to pangas and 2 assegais, and you saw this picture and the others that I've 3 seen, would you not concede that that's an overstated case 4 by whoever told you? 5 BRIGADIER CALITZ: As ek u net weer kan 6 vra, u het gesê as ek verwys na wat in Afrikaans? Ek kon 7 nie die woorde hoor nie. Ek het die woord "panga" gehoor, 8 maar ek was nie seker nie. Ek wil net hoor wat was die 9 vraag. 10 MR NTSEBEZA SC: No, I'm saying you only 11 were able to point out in 172 only one panga in that 12 picture. In this picture, in 173, you are only able to 13 point two assegais, no pangas. Now if someone came to you 14 and said you know that all the people on that mountain are 15 armed with extremely dangerous weapons, pangas and 16 assegais, would you agree with me that on the evidence of 17 these photos that would be an overstatement? 18 BRIGADIER CALITZ: Nee, mnr die 19 Voorsitter. 20 MR NTSEBEZA SC: I will argue, when the 21 appropriate time comes, that you are deliberately trying to 22 evade the obvious. Now there is a photo in, I think 23 there's a bundle, it's what - Mr Chairman, I don't know 24 this thing, Ramanala 172, and may it be made an exhibit. 25 BRIGADIER CALITZ: Watse "exhibit" is</p>
<p style="text-align: right;">Page 18399</p> <p>1 gehad het, wat ek nie net na 'n spies verwys het nie. Ek 2 dink dit was so iets soos knopkieries, pangas, spiese, 3 assegaie, "sharp and homemade weapons." So daar is 'n 4 verskeidenheid wat ek dan waargeneem het vanaf die dag dat 5 ons begin onderhandel het. 6 MR NTSEBEZA SC: So that is the basis on 7 which you are saying it is not an exaggeration to say all – 8 and all means all, without exception; all means everyone – 9 are you then saying it's not an exaggeration to say all 10 were armed with extremely dangerous weapons on the koppie? 11 BRIGADIER CALITZ: Mnr die Voorsitter, ek 12 verwys weer na mnr die Voorsitter se eie woorde wat hy gesê 13 het toe ek dit aan u verduidelik het paragraaf vir 14 paragraaf, dat 'n gedeelte het ek wel waargeneem en dan 'n 15 ander gedeelte is dan aan my gerapporteer. So ja – 16 MR NTSEBEZA SC: Yes, I'm not by any 17 means suggesting on your evidence that it is you who says 18 this. I'm simply saying now that we have at least three 19 photos which were introduced into your evidence-in-chief by 20 you, there is hardly any dangerous weapons that are far in 21 excess of the other weapons, kieries and knobkieries. You 22 have been only able to show off one panga in one 23 photograph, two assegais held by one person in one 24 photographs. Now if you were told, as you claim you were, 25 that all of the people were armed with dangerous weapons,</p>	<p style="text-align: right;">Page 18401</p> <p>1 dit? Ek het u lys gekry. 2 MR NTSEBEZA SC: No, it's not been made 3 an exhibit yet, Brigadier. 4 CHAIRPERSON: I've got one that I've got, 5 did you get that one? 6 BRIGADIER CALITZ: Hulle het vir my vroeg 7 vanoggend 'n lêer gegee, mnr die Voorsitter. Ek sal – 8 CHAIRPERSON: The first picture – 9 MS PILLAY: Chair, the exhibit is 10 JJJ29.172. 11 CHAIRPERSON: Alright. JJJ29 – 12 MS PILLAY: Point 172. 13 CHAIRPERSON: Point 172. So this 14 photograph was already before the Commission. In that file 15 you've got - which you said you got this morning, so you 16 got it before I did; I got mine at lunchtime – you will see 17 the first picture in that file is a picture of a number of 18 sticks and metal bars and things, and it's headed "Ramanala 19 172," and Adv Pillay has already given us the exhibit 20 number. It's already an exhibit before the Commission. 21 Now we've identified it. Ramanala I gather was a policeman 22 who was taking – was Ramanala a policeman or a private 23 photographer? 24 MR NTSEBEZA SC: It could have been both, 25 Mr Chairman, but I think it would –</p>

<p style="text-align: right;">Page 18402</p> <p>1 CHAIRPERSON: He was a policeman, as far 2 as I remember. 3 MR NTSEBEZA SC: I think he's a police 4 officer, but – 5 CHAIRPERSON: He's a police officer, a 6 warrant-officer, who went around with a camera taking 7 photographers. 8 MR NTSEBEZA SC: Indeed, Mr Chairman. 9 CHAIRPERSON: And this is one of the 10 photographs that he took. I seem to remember he was a 11 member of the LCRC, but I could be wrong. 12 MR NTSEBEZA SC: Yes, we'll come to that, 13 Mr Chairman. 14 CHAIRPERSON: It doesn't matter. 15 MR NTSEBEZA SC: LCRC – 16 CHAIRPERSON: That's the picture we have 17 on the screen. The witness can see it and you're going to 18 ask some questions about it. 19 MR NTSEBEZA SC: Now Brigadier, these I 20 am reliably informed were weapons whose photos were taken – 21 or put it this way; these were weapons which were taken off 22 those people who were killed and injured in scene 1. You 23 have no reason to dispute that? 24 BRIGADIER CALITZ: Ek stem nie saam nie, 25 mnr die Voorsitter.</p>	<p style="text-align: right;">Page 18404</p> <p>1 BRIGADIER CALITZ: Daardie lyk vir my 2 na – 3 [15:07] MR NTSEBEZA SC: Ja, I think when Mr 4 Chairman sought to enquire whether Mr Ramanala is a 5 policeman and a police officer, I think he was seeking to 6 indicate the source. Now it is either that you know that 7 there is a Ramanala who is a police officer, and I take it 8 that you do. You don't? 9 BRIGADIER CALITZ: As daar 'n vraag is ek 10 sal dit moet gaan naslaan, ek dink ons het so 200,000 11 polisiemanne waarop die dag omtrent 600 by ons gewerk het, 12 so dit mag wees dat een van die persone, maar as ek nou 13 moet getuig daaroor, mnr die Voorsitter, kan ek nie vir u 14 sê nie, nee. 15 CHAIRPERSON: You don't know from your 16 own knowledge whether there was Warrant Officer Ramanala 17 but you're prepared to accept there may be and such a 18 warrant officer may have been on the scene on the day, and 19 I think you said there were 600 members of the force? 20 BRIGADIER CALITZ: More or less 600 – 21 CHAIRPERSON: More or less 600 members – 22 BRIGADIER CALITZ: - wat gewerk het, so – 23 CHAIRPERSON: And you didn't know – 24 BRIGADIER CALITZ: - dit is maklik om vas 25 te stel, mnr die Voorsitter, dit behoort nie 'n probleem te</p>
<p style="text-align: right;">Page 18403</p> <p>1 MR NTSEBEZA SC: You don't agree? 2 BRIGADIER CALITZ: Nee, mnr die 3 Voorsitter. 4 CHAIRPERSON: You say "ek stem nie saam 5 nie." That's ambiguous. There are three possibilities. 6 The one is you agree. The second possibility is you 7 disagree in the sense you say it's wrong. The third 8 possibility is you say you don't really know; it could be 9 right, could be wrong, you're not in a position to confirm 10 or deny the correctness of what's being put. So when you 11 say "ek stem nie saam nie," are you saying I disagree, I 12 think it's wrong, or are you saying I'm not in a position 13 to admit or deny? Which of the two? 14 BRIGADIER CALITZ: Mnr die Voorsitter, u 15 derde een, was die vraag aan my gestel was ek bewus 16 daarvan, dan sou my antwoord gewees het nee, ek was nie 17 bewus daarvan nie. Maar die vraag was net nie so aan my 18 gestel nie. 19 MR NTSEBEZA SC: I don't want us to be 20 involved in a verbal joust. 21 BRIGADIER CALITZ: Ek verstaan ongelukkig 22 nie wat daardie woord bedoel nie, as u net vir my kan 23 verduidelik. 24 CHAIRPERSON: When we say "jousting with 25 words," it means -</p>	<p style="text-align: right;">Page 18405</p> <p>1 wees nie. 2 CHAIRPERSON: If it is a matter that's 3 important I'm sure Mr Ntsebeza will ask you directly. 4 BRIGADIER CALITZ: Ons kan dit vasstel, 5 mnr die Voorsitter. 6 MR NTSEBEZA SC: Now, Brigadier, I didn't 7 want to tell you because it is not my function to do so, 8 but I put it to you and you can accept that as fact, that 9 those were weapons which were taken off, those who were 10 killed and injured at scene 1. 11 BRIGADIER CALITZ: Mnr die Voorsitter, 12 dan as die advokaat sê dit was aan hom meegedeel as 'n feit 13 dan sal hy weet wie Ramanala is, want dan neem ek aan die 14 persoon het aan u gesê dit is foto's wat ek daar en daar 15 geneem het, so dan kan u dalk meer inligting hê daaroor as 16 ons op hierdie stadium. Ek dra nie kennis nie en ek was 17 nie op daardie stadium daar nie, so ek kan u ongelukkig nie 18 sê is die foto's geneem daar nie, jammer. 19 MR NTSEBEZA SC: You have no basis to 20 deny that fact, if I put it to you, you will not be able to 21 deny it on the basis of some other facts which you have? 22 Shall we proceed on that basis? 23 CHAIRPERSON: If you can't admit or deny 24 then it is the third alternative which you've already 25 chosen, so we have to, - what Mr Ntsebeza says is, we'll</p>

<p style="text-align: right;">Page 18406</p> <p>1 have to proceed on the basis but you can't say it is 2 correct, you can't say from your knowledge it isn't 3 correct, you've got to say, you don't know, it could be 4 right, it could be wrong or it could be partly right and 5 partly wrong, I don't know. 6 BRIGADIER CALITZ: As dit die stelling 7 is, mnr die Voorsitter, ek het geen probleem om so voort te 8 gaan nie. Soos ek sê ek kan nie daaroor getuig nie, ek was 9 nie daar nie, ek het nie dit gesien nie en dit is nie aan 10 my gerapporteer nie. 11 MR NTSEBEZA SC: Brigadier, this is the 12 question, there are certain things that we take as given 13 like for instance that the police were responsible for the 14 death of mineworkers on the 16th of August in these two 15 places. Well, we have always taken that for granted until 16 one evidence was led to the contrary but can we focus on 17 this? You would not contradict me when I say this police 18 officer took this photograph and this photograph reflects 19 weapons that were taken off those who were killed and 20 injured at scene 1 on the 16th of August, would you? 21 COMMISSIONER HEMRAJ: Mr Ntsebeza, 22 shouldn't the question be qualified that this represents 23 some of the weapons that were recovered? 24 MR NTSEBEZA SC: Well, the witness 25 doesn't seem to, - well, -</p>	<p style="text-align: right;">Page 18408</p> <p>1 to are all scene 1 and it is a valid observation. 2 MR NTSEBEZA SC: No, I'm told, Mr 3 Chairman, that there is a video but in the interest of time 4 we will probably get to what that video is which will show 5 after the volley at scene 1, that a whole assortment of 6 arms were collected. 7 MR SEMENYA SC: Even a firearm was 8 collected at scene 1, Chair, we know that evidence. 9 CHAIRPERSON: Of course – 10 MR NTSEBEZA SC: Excuse me, Mr Chairman, 11 I don't mean – 12 CHAIRPERSON: I don't want to – 13 MR NTSEBEZA SC: I don't mean to be 14 engaged in a dialogue with Mr Semenya – 15 CHAIRPERSON: I don't want to anticipate 16 too much but I see you've got three Ramanala photographs. 17 MR NTSEBEZA SC: Yes. 18 CHAIRPERSON: 183, sorry, 172, 184 and 19 134. 20 MR NTSEBEZA SC: Yes. 21 CHAIRPERSON: Now some of them look more 22 dangerous than others. 23 MR NTSEBEZA SC: Yes, Mr Chairman. Maybe 24 let's take it step by step. Now I'm happy to put it on the 25 basis of my learned colleague, that some, those constitute</p>
<p style="text-align: right;">Page 18407</p> <p>1 CHAIRPERSON: No, - 2 MR NTSEBEZA SC: - can we put it on that 3 basis, some of the weapons? 4 CHAIRPERSON: No, but I mean you're 5 putting it to him, I take it, what you've been instructed 6 and he – 7 MR NTSEBEZA SC: That's not what Mr 8 Ramanala says, Mr Ramanala says, bring those weapons unless 9 there is other evidence contradicting this I'll go with 10 that. 11 MR SEMENYA SC: Chair, of course there is 12 another evidence and in fairness to the witness we must be 13 shown Exhibit B1 to B9, there are a whole host of weapons 14 that were taken from those arrested. 15 MR NTSEBEZA SC: In scene 1. 16 MR SEMENYA SC: There is also scene 1 and 17 scene 2. 18 CHAIRPERSON: Yes, Mr Ntsebeza is 19 concentrating on scene 1 at the moment and he says this 20 comes from scene 1. I mean I can see at least one spear 21 and I think there may be two and there is a panga there as 22 well, but – 23 MR SEMENYA SC: No, there are scene 1 24 photos, Chair, that I'm referring to. 25 CHAIRPERSON: The photos you're referring</p>	<p style="text-align: right;">Page 18409</p> <p>1 some of the weapons that were collected at scene 1. 2 BRIGADIER CALITZ: As dit die vraag is 3 aan my en ons kan bevestig dat mnr Ramanala 'n 4 polisiebeampte is wat dit wel bevestig het aan u, dan het 5 ek geen probleem dat dit dalk van die foto's is nie, ek sal 6 daarmee saamgaan. 7 MR NTSEBEZA SC: Now my learned friend 8 has not objected on that basis. 9 BRIGADIER CALITZ: Dit is hoekom ek gesê 10 het ek sal daarmee saamgaan, mnr die Voorsitter. 11 MR NTSEBEZA SC: Yes, now on that picture 12 172, is it fair to say that there are no pangas visible? 13 BRIGADIER CALITZ: Nee, mnr die 14 Voorsitter, ek sou dink ons moet 'n bietjie in-zoom en dan 15 kyk ons, ek kan op hierdie afstand nie regtig vir u sê of 16 'n panga dalk daar onder die klere lê of – 17 MR NTSEBEZA SC: Ja, let's zoom. 18 CHAIRPERSON: Those who know more about 19 the things that I do say they can see what looks like a 20 blood stained weapon which is three or four weapons in from 21 the left hand side, with what looks like a red handle, 22 whether that's a blood stained handle or a red handle I'm 23 not sure. That's look like a panga, I must say. 24 MR NTSEBEZA SC: There is a suggestion 25 that –</p>

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1 CHAIRPERSON: It looks as if it has been
2 used in a combat because it looks it is blood stained.
3 MR NTSEBEZA SC: Yes, what's your
4 intelligent guess, Brigadier?
5 BRIGADIER CALITZ: An intelligent guess
6 sal ek aanneem u vra my opinie, daardie een, die foto daar
7 is 'n bietjie onduidelik maar as ek hier kyk op die TV
8 skerm, dit was bo lê met die bruin handvatsel, u het gesê
9 geen panga nie, daardie lyk vir my definitief na 'n panga.
10 MR NTSEBEZA SC: Are you referring to the
11 black broad object that is lying across what seems to be a
12 blanket or –
13 CHAIRPERSON: Use your pointer,
14 Brigadier.
15 BRIGADIER CALITZ: Mnr die Voorsitter,
16 daardie is die handvatsel en daardie is die lem.
17 MR NTSEBEZA SC: I would have thought the
18 other way, I thought you were meaning –
19 BRIGADIER CALITZ: As u nog 'n panga sien
20 is u welkom om vir my nog een te wys, ek sien op hierdie
21 stadium net een, Meneer.
22 MR NTSEBEZA SC: I thought you were going
23 to point at this and say it is a panga, do you see where
24 I'm pointing at?
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 daardie kan maklik dalk 'n lem wees van nog 'n panga, maar
2 die een waarna ek verwys het was die boonste een, baie
3 dankie vir die hulp.
4 MR NTSEBEZA SC: But your suggestion is
5 that this is, is that what you reckon to be a panga?
6 BRIGADIER CALITZ: Ek het net gereageer.
7 MR NTSEBEZA SC: The preponderance of
8 weapons in this photo, you will agree with me, is that
9 there are more knopkieries than any other thing in this
10 photo, would you agree?
11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 nee, weereens ek dink ons gaan verskil. As ek nou kyk op
13 hierdie ligte foto, hierdie aan my linkerkant, sien ek met
14 die pointer daar aan die bokant lyk vir my, dit kan 'n kap
15 byltjie of 'n byltjie of iets wees, hier voor, hier is 'n
16 lem, as ek sê hier, weet ek nie hoe anders om dit te
17 verduidelik nie, die punt van die spies gaan bo-oor die
18 stok aan die linker voorkant. Ek sien daar 'n skerp
19 voorwerp, as ek sê daar, weereens miskien onder die geel
20 stok aan die regter bokant, daar as ek so vinnig kyk is dit
21 'n spies se punt wat daar uitsteek. Hier lyk dit vir my
22 wat daar uitkom is, dit lyk soos 'n yster onder die blou
23 kombes en in 'n regterkantste rigting, dit lyk soos 'n
24 skerp gemaakte stuk yster, definitief nie 'n stok nie.
25 Daardie, wat daar lê het 'n punt, dit lyk ook nie

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1 vir my of dit 'n stok kan wees nie, hy het 'n silwer kleur,
2 so miskien is dit ook 'n, - so nee, mnr die Voorsitter, ek
3 kan nie saam met u stem nie en dan kan ons natuurlik nie
4 sien wat is onder die klere nie. So is hier definitief
5 heelwat gevaarlike wapens. Hierdie een wat bo lê, dit is
6 'n stuk yster met, ek weet nie wat 'n mens dit noem nie, 'n
7 knop aan die bokant. Die res sien ek is knopkieries met
8 knoppe wat dan ook duidelik gevaarlike wapens is volgens
9 my.
10 CHAIRPERSON: Mr Ntsebeza I was proposing
11 to take a tea adjournment at some stage, around about now
12 but when it is convenient for you will you let me know?
13 I'm in your hands.
14 MR NTSEBEZA SC: Mr Chairman, perhaps I'm
15 going to get to the other two photographs and some other
16 place, it would be convenient taking the tea now so that –
17 CHAIRPERSON: We'll take the tea
18 adjournment now.
19 MR NTSEBEZA SC: Thank you, Mr Chairman.
20 [COMMISSION ADJOURNS COMMISSION RESUMES]
21 [15:39] CHAIRPERSON: The Commission resumes.
22 For the benefit of those who had other plans, I'm informing
23 you we decided to sit until quarter past 4 this afternoon
24 to try to make up some of the time that Mr Ntsebeza lost
25 before he could begin cross-examining this afternoon.

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1 You're still under oath, Brigadier.
2 ADRIAAN MARTHINUS CALITZ: s.u.o.
3 CHAIRPERSON: Mr Ntsebeza, you still have
4 questions for the witness.
5 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
6 Thank you, Mr Chairman. If you could put up photograph
7 Ramanala 184 –
8 CHAIRPERSON: In due course I take it we
9 will be told what exhibit number that is, but we will carry
10 on for the moment without it.
11 MR NTSEBEZA SC: I believe, Mr Chairman,
12 it's JJJ –
13 CHAIRPERSON: You can give it to us
14 later.
15 MR NTSEBEZA SC: Thank you, Mr Chairman.
16 It seems to me that is the same photograph from another
17 angle. Would you agree? Ramanala 184.
18 BRIGADIER CALITZ: Mnr die Voorsitter,
19 nee, ek dink nie dis dieselfde foto nie. Ek dink in die
20 eerste een het ons gesien dat die panga oop gelê het. Nou
21 sien ek daar is 'n stok bo-oor die panga. So duidelik hier
22 is egter meer, volgens my meer gevaarlike wapens op hierdie
23 foto, so dit lyk my die foto, die groep het, dit het groter
24 geword, as ek dit so kan stel.
25 MR NTSEBEZA SC: Of course it may well be

<p style="text-align: right;">Page 18414</p> <p>1 that it is a photo that shows the same weapons from another 2 angle and therefore shows what we all thought was a panga 3 is not a panga. Is that not a possibility? 4 BRIGADIER CALITZ: Nee, mnr die 5 Voorsitter. 6 MR NTSEBEZA SC: Are you suggesting that 7 this is another photo? 8 CHAIRPERSON: It is another photograph. 9 You mean it's another scene? It's clearly another 10 photograph, but the question is whether it's another scene. 11 MR NTSEBEZA SC: No, well it's another 12 photo – 13 CHAIRPERSON: A photograph of a different 14 – either a photograph of the same scene from a different 15 angle, or it's a photograph of a different scene. 16 MR NTSEBEZA SC: No, Mr Chairman, we are 17 putting it to the Brigadier that it is actually a 18 photograph of the same scene as 172. 19 CHAIRPERSON: I understood you to be 20 putting – 21 MR NTSEBEZA SC: It's just that the angle 22 is different. 23 CHAIRPERSON: And I understood he didn't 24 agree with you. 25 MR NTSEBEZA SC: He was nodding.</p>	<p style="text-align: right;">Page 18416</p> <p>1 opbring. 2 CHAIRPERSON: There it is. 3 BRIGADIER CALITZ: Ja. Weereens daar is 4 net 'n verskil in die foto, maar ons kan bietjie uit zoem, 5 en dan my heel eerste foto waar ek vir u gesê het daardie 6 lyk soos 'n lem van 'n panga, waar u met my verskil het, is 7 tog bevestig dink ek deur hierdie foto. So inderdaad was 8 daar dan meer pangas op die eerste foto waar u gesê het u 9 sien geen. 10 CHAIRPERSON: It does look like that 11 bloodstained panga that I talked about earlier, with the 12 red handle, or possibly blood on the handle. 13 BRIGADIER CALITZ: Ja, dit is, dis die 14 eerste keer wat ek hom op hierdie foto, so hy is duidelik 15 sigbaar. Dit lyk meer soos 'n tipe groot kapmes, mnr die 16 Voorsitter. 17 MR NTSEBEZA SC: Now let me put it at a 18 less ambitious level - because you seem to be driving home 19 the point - that if you look at this collection of weaponry 20 in all three photos, it appears to me that there are more 21 knobkieries or sticks than there are pangas on these 22 photos. 23 BRIGADIER CALITZ: Nee, mnr die 24 Voorsitter, ek stem nie saam nie. 25 MR NTSEBEZA SC: Are you able to count</p>
<p style="text-align: right;">Page 18415</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 nee, ek het gesê – hy het gevra is dit dieselfde foto maar 3 net van 'n ander "angle" af. Ek het gesê nee, dit is nie 4 dieselfde foto nie. Daar is verskille wat uitgewys kan 5 word in die foto, byvoorbeeld die eerste foto, die wit, kan 6 ek sê voorwerp, as u hierdie wit voorwerp sien, die kombers 7 of die hemp of die – hier is omtrent drie of vier voorwerpe 8 wat bo-op die wit hemp lê. As u kyk op die eerste een, kan 9 dit nie daar so waargeneem word soos op die tweede een nie. 10 So daar is definitiewe verskille tussen die twee foto's, 11 maar ek glo dis op dieselfde toneel. Dit is maar net soos 12 hulle dit bygevoeg het. 13 MR NTSEBEZA SC: Can we narrow it to 14 saying, if you're saying it's the same area, same placed on 15 here, that it is, that both photos that we have now looked 16 at are reflective of the kinds of weapons that were found 17 in that area, 172 and 184? They are intended to show 18 weapons that were found and collected and put in one area. 19 BRIGADIER CALITZ: As dit u vraag is aan 20 my, ek kan daarmee saamgaan. 21 MR NTSEBEZA SC: Now there is also 134. 22 Once again I suggest that it's the same pile of weapons, a 23 different photo taken from another angle. 24 BRIGADIER CALITZ: Mnr die Voorsitter, ek 25 sien nie 134 op die skerm nie, as ons miskien net hom kan</p>	<p style="text-align: right;">Page 18417</p> <p>1 more? 2 BRIGADIER CALITZ: Mnr die Voorsitter, as 3 ons net op hierdie een foto kan tel hoeveel hout voorwerpe 4 ons sien en hoeveel skerp voorwerpe ons sien, ek is nou nie 5 – ek sien, as ek so vinnig kyk, een, twee, drie, vier, 6 miskien aan die onderkant vyf, ses, een is toegedraai met 7 'n wit lap, so ek weet nie of dit 'n hout – nee, hier steek 8 die skerp punt aan die onderkant uit, maar ysters en skerp- 9 punt wapens sien ons ook hier tussenin. So ek dink as ons 10 gaan stilsit en ons kan die foto vergroot en ons kan fisies 11 tel, kan dit moontlik wees, maar in hierdie geval sê ek vir 12 u nee, ek dink nie dit is 'n totale "outnumbering" van 13 stokke, soos u dit stel, teenoor gevaarlike wapens nie. 14 MR NTSEBEZA SC: Ja, well maybe what will 15 be even much more conclusive – and I will apply to do so 16 tomorrow when we will have given a proper warning, Mr 17 Chairman – is a video which shows the scene. It's too 18 graphic for it to be shown without an appropriate warning, 19 Mr Chairman, but what I propose to do is to play that clip 20 tomorrow morning, Mr Chairman, and if you will permit me, 21 for me to revisit this part of putting questions to – 22 CHAIRPERSON: Before you do that, I don't 23 know whether you've seen slide 261 of exhibit L, which goes 24 some way to make the point you're seeking to make. If you 25 are going to deal with it later I won't anticipate, but if</p>

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1 it – 261 of exhibit L – but if you weren't proposing to put
2 it to the witness –

3 MR NTSEBEZA SC: Yes.

4 CHAIRPERSON: - it may help you, because

5 I take it that apart from what's listed here there would
6 have been sticks, because we can see some sticks.

7 MR NTSEBEZA SC: Yes.

8 CHAIRPERSON: There would have been

9 sticks which don't qualify as weapons, but if you look at
10 that you then – anyway, it's your cross-examination –

11 MR NTSEBEZA SC: No, no, Mr Chairman,

12 you've hit the nail right on the head. 261 was one of the,
13 of exhibit L, it was one – we may just as well go there.

14 CHAIRPERSON: Have you got 261 of exhibit
15 L, Brigadier?

16 BRIGADIER CALITZ: Ek het hom, mnr die
17 Voorsitter.

18 CHAIRPERSON: Ja, now I know this of
19 course doesn't relate just to what you could see on the
20 photograph. It relates to effectively what the police say
21 was the total number of weapons, apart from firearms, which
22 were retrieved at scene 1 according to the LCRC people, and
23 anyway, Mr Ntsebeza will ask you questions about it. I
24 take it one can assume that there were sticks as well
25 because I think we can see sticks in the photographs, and

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1 ordinary sticks wouldn't have been listed there because
2 they wouldn't have been weapons. I assume so. But anyway,
3 Mr Ntsebeza, it's your cross-examination.

4 MR NTSEBEZA SC: Yes. Yes, Mr Chairman.

5 It seems – I mean this is a report from exhibit L, which
6 was put up by my learned friend for the SAPS. It seems to
7 me on this basis – and if we accept this to be a correct
8 reflection, there seems to have been more knobkieries, and
9 one is not counting sticks.

10 BRIGADIER CALITZ: Mnr die Voorsitter, as
11 ek kan antwoord daar, as my wiskunde my nie in die steek
12 laat nie, u sien knopkieries 33 –

13 MR NTSEBEZA SC: Ja.

14 BRIGADIER CALITZ: Is ek korrek?

15 MR NTSEBEZA SC: Yes.

16 BRIGADIER CALITZ: En dan onder
17 gevaarlike wapens, soos ek dit vir u uitgewys het, "spears,
18 iron rods, knives and pangas," as ek daai getal bymekaar
19 tel kom ek op 39 uit.

20 MR NTSEBEZA SC: Yes.

21 BRIGADIER CALITZ: So knopkieries is dan
22 33 en die ander gevaarlike wapens 39, so dit is waarop ek
23 gebaseer is, as my wiskunde reg is, dat u stelling nie
24 korrek is nie.

25 CHAIRPERSON: But of course the

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1 indications are there were probably sticks as well because
2 we see sticks in the photograph, sticks other than – you
3 know knobkierie is a particular type of stick. An ordinary
4 stick which many people carry or use, isn't a weapon, so
5 wouldn't be regarded as a dangerous weapon. You wouldn't
6 get prosecuted for walking down the street with a walking
7 stick, and we do know I think from the photographs and the
8 videos and so on that a number of the people had sticks as
9 well. So if you add the sticks in to the knobkieries it
10 does look as if there were a significant number of spear,
11 iron rods, knives, and pangas, but still there were a lot
12 of knobkieries and I take it, as far as we can see, a
13 substantial number of sticks as well. That's the point
14 really, isn't it?

15 BRIGADIER CALITZ: Ek stry glad nie
16 daarmee nie, mnr die Voorsitter. Ek het net gereageer op
17 die foto's en die "slide" op die vraag van die Advokaat.

18 MR NTSEBEZA SC: Yes, and whilst we are
19 on the subject of exhibit L, may we go to slide 263? But
20 it's relevant to scene 2, but I think the same point that
21 we are making is being made there. They even count the
22 sjambok there. Would you classify a sjambok as a dangerous
23 weapon?

24 BRIGADIER CALITZ: Ekskuus tog, mnr die
25 Voorsitter, ek het nou geblaai deur die lêer. As u net u

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1 vraag kan herhaal, asseblief?

2 MR NTSEBEZA SC: That's the one; exhibit
3 L –

4 BRIGADIER CALITZ: Ja?

5 MR NTSEBEZA SC: And it's slide 263 and
6 it's up on the screen. Again it's just like the other one
7 from scene 1.

8 BRIGADIER CALITZ: U wil dit vergelyk –

9 MR NTSEBEZA SC: It looks like everything
10 was being –

11 BRIGADIER CALITZ: Ek het dit nou nie
12 bymekaar getel nie. Ek kan maar gou.

13 MR NTSEBEZA SC: On this basis I count
14 128, including a sjambok, as against 163 knobkieries, and
15 this is your report.

16 BRIGADIER CALITZ: Ek sal u – ek het nou
17 nie die somme gemaak nie, so ek sal u getalle aanvaar, mnr
18 die Voorsitter.

19 CHAIRPERSON: It looks correct to me.

20 MR NTSEBEZA SC: So that is what we seek
21 to put, and it is what I was putting to you right from the
22 beginning, that if any reports came to you that suggested
23 that all the mineworkers who were on the koppie and had
24 extremely dangerous weapons, it is a bit of an
25 overstatement because even your own presentation does make

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1 that suggestion. What do you – are you prepared to concede
2 that now?

3 BRIGADIER CALITZ: Nee, mnr die
4 Voorsitter, glad nie.

5 MR NTSEBEZA SC: Yes.

6 BRIGADIER CALITZ: Wat ek na verwys het
7 is dat - as ek die woord "concede" reg verstaan, nee. Die
8 paragraaf 19 waarna u verwys het, het ek gesê was 'n
9 opsomming van die persone wat gearresteer is. So as die
10 getal, ek het dit nou nie bymekaar getel nie, ek dink dit
11 was 259 gearresteer op die dag by toneel 3 – ag, toneel 2,
12 koppie 3, so as ons dan hierdie knobkierie, spies, tipe van
13 wapens bymekaar tel, wat het u gesê wat is die getal? Ek
14 het nou nie –

15 MNR NTSEBEZA SC: 128.

16 BRIGADIER CALITZ: Ekskuus tog?

17 MNR NTSEBEZA SC: 128.

18 BRIGADIER CALITZ: 128, en ons tel 163
19 bymekaar, dan kom ons waar?

20 MR NTSEBEZA SC: If you count the sjambok
21 as a dangerous weapon.

22 CHAIRPERSON: Sjamboks have been proved
23 to be dangerous weapons in the past.

24 BRIGADIER CALITZ: Ja, ek vermoed dit is
25 hoekom ons nie meer dit gebruik by die skole. Dit is

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1 redelik gevaarlik, sou ek sê. Rofweg opgetel kom ek op 291
2 en daar was – wat het ek gesê? – 259 persone gearresteer.
3 So weggevat die stokke wat mnr die Voorsitter ook na verwys
4 het, wat dan nie hier is nie, is dit "actually" meer wat
5 gevind is as die persone. So dit is nie 'n – ek kan nie u
6 woorde onthou nie - 'n verergering, "exaggeration," wat –

7 CHAIRPERSON: "Overstatement" was the
8 word he used.

9 BRIGADIER CALITZ: Ja.

10 VOORSITTER: "Oordrewe stelling," I
11 suppose would be the Afrikaans.

12 BRIGADIER CALITZ: Ja. Nee, dit is nie
13 'n "overstatement," 'n te sterk stelling nie. Ek dink ons
14 is nogal reg op die feite van die dag wat daar gebeur het.

15 MR NTSEBEZA SC: Well, we will argue
16 differently, but you have given a response to a question I
17 put to you. But we will argue that it is clear to us on
18 balance that in any event for anyone to have reported to
19 you that all people were armed with dangerous weapons was
20 an exaggeration of the facts, and that on balance there
21 were more non-dangerous weapons in the form of knobkieries
22 and Sjamboks than there were otherwise.

23 CHAIRPERSON: [Microphone off, inaudible]
24 one sjambok actually, but the –

25 MR NTSEBEZA SC: Knobkieries and sticks –

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1 CHAIRPERSON: The knobkieries were in the
2 majority. That's your point, isn't it?

3 MR NTSEBEZA SC: And sticks.

4 CHAIRPERSON: Ja, well I think it seems
5 to be common cause that ordinary sticks don't count as
6 weapons. They're not listed here. If they were, they
7 would have been listed as ordinary sticks, so you've got
8 your point, knobkieries formed the majority –

9 MR NTSEBEZA SC: Yes, yes. Now as
10 against that, if we go to the SAPS there were TRT, STF, NIU
11 and POP members at both scenes. That you accept, don't
12 you?

13 BRIGADIER CALITZ: Daar was egter meer,
14 maar as u net daardie paar noem aanvaar ek dit so.

15 MR NTSEBEZA SC: I didn't get that.

16 BRIGADIER CALITZ: Mnr die Voorsitter,
17 laat ek net sê dit is korrek. Dit wat u genoem het was
18 daar.

19 CHAIRPERSON: There were actually more,
20 but he said if you're happy with the number you've
21 mentioned, he'll accept it.

22 MR NTSEBEZA SC: Okay.

23 BRIGADIER CALITZ: As ek kan help, die
24 Berede was ook daar, die K9, en as ek net kan van hulp
25 wees.

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1 [15:59] MR NTSEBEZA SC: Mr Chairman, I am just
2 checking the reference. If we look at Exhibit L211, I
3 think it is the wrong reference, Mr Chairman. No, I'm
4 looking for scene 1 where I thought the exhibit, Exhibit L
5 showed and that they were approximately 140 POP members at
6 scene 1 and I thought the reference I was just given was
7 it.

8 CHAIRPERSON: If you look around about,
9 from slide 136 onwards you get the breakdown of the various
10 members of the service who were at the very scenes. Now
11 you're going to do a bit of arithmetic but I mean for
12 example if you look at slide 138, that's the Neutral Area
13 Response Team of which Captain Loest was the commander. We
14 know that Captain Loest was there at scene 1, so let's ask
15 the brigadier. Brigadier, have you got that?

16 BRIGADIER CALITZ: Mm.

17 CHAIRPERSON: Pay attention, slide 138,
18 Exhibit L, have you got that? Have you got that?

19 MR NTSEBEZA SC: Yes.

20 CHAIRPERSON: That's the Neutral Area
21 Response Team, the commander there was Captain Loest. He
22 had 76 TRT members, were they all at scene 1 as far as you
23 know?

24 BRIGADIER CALITZ: Korrek, mnr die
25 Voorsitter.

<p style="text-align: right;">Page 18426</p> <p>1 CHAIRPERSON: Alright, now if we go over 2 the page, well, on the same page above that we've got the 3 monitoring group, they were under the command of Lieutenant 4 Colonel Mere, the 45 POP members, 2 information officers 5 with video cameras as we know they went off early, so we 6 don't have to worry about them, but the 45, or we do worry 7 about them but in another context. The 45 POP members, 8 were they the ones who were at scene 1? 9 BRIGADIER CALITZ: Korrek, mnr die 10 Voorsitter. 11 CHAIRPERSON: Now turning over the page, 12 we've got Colonel Makhubela, this is slide 139. He had 53 13 POP members with him, were they also at scene 1? 14 BRIGADIER CALITZ: Dit was die draad 15 groep, korrek, mnr die Voorsitter. 16 CHAIRPERSON: They were at scene 1? 17 BRIGADIER CALITZ: Korrek, mnr die 18 Voorsitter. 19 CHAIRPERSON: Okay, now I'm not sure 20 about the people in slide 140, but they were the ones who 21 were commanded by Lieutenant Colonel Gaffley. He had SDF 22 members and NIU members, I know they were at scene 2 but I 23 don't think they're at scene 1, am I right? 24 BRIGADIER CALITZ: Daar was van hulle by 25 toneel 1.</p>	<p style="text-align: right;">Page 18428</p> <p>1 think they were the ones who distinguished themselves, - 2 no, I withdraw the word distinguished. Those were the ones 3 who were active at scene 2, this is various people under 4 the command of General Naidoo. They certainly weren't 5 involved in scene 1, but they were involved at scene 2 I 6 think, is that correct, or some of them anyway, is that 7 right? 8 BRIGADIER CALITZ: Mnr die Voorsitter, as 9 ons van die video materiaal kyk sal u wel sien dat die 10 berede eenheid het op toneel 1 al begin uitry om die draad 11 en uitbeweeg, so dit is vanwaar hulle dan ook uitbeweeg 12 het. 13 CHAIRPERSON: Ja, they weren't involved 14 in the shooting, were they? 15 BRIGADIER CALITZ: Nee, nee, nee, die 16 ander het ek ook nie gesê hulle was betrokke by enige 17 skietery nie. 18 CHAIRPERSON: Ja, alright. Then the last 19 one is, I think is relevant or maybe relevant, is slide 20 144, that's Lieutenant Colonel Pitsi's people, 57 TRT, 6 21 K9s, 70 POP, were they at scene 1? 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 net die lede wat ek ingeroep het van Openbare Orde 24 Polisiëring rondom 11:30, 12 uur daardie middag. 25 CHAIRPERSON: Okay, alright.</p>
<p style="text-align: right;">Page 18427</p> <p>1 CHAIRPERSON: Some of them were at scene 2 1 as well? 3 BRIGADIER CALITZ: Korrek, mnr die 4 Voorsitter. 5 CHAIRPERSON: Do you know how many or 6 can't you tell? 7 BRIGADIER CALITZ: Mnr die Voorsitter, 8 nee, nie op hierdie stadium nie - 9 CHAIRPERSON: Okay - 10 BRIGADIER CALITZ: - maar daar was. 11 CHAIRPERSON: And then over the page, 12 141, we have the group under the command of Lieutenant 13 Colonel Modiba, that's the immediate reaction area 2, I 14 don't think they were at scene 1, were they? 15 BRIGADIER CALITZ: Hulle het inbeweeg 16 voor die operasie, so hulle het nader aan scene 1 beweeg en 17 vandaar af die aksie geloods, so hulle het wel op 'n 18 stadium soontoe gekom, maar hulle was by immediate reaction 19 areas 1 en 2. 20 CHAIRPERSON: Yes, I'm trying to help Mr 21 Ntsebeza, he is trying to get everybody at scene 1, so I'm 22 just trying to help him. 23 BRIGADIER CALITZ: Korrek, mnr die 24 Voorsitter. 25 CHAIRPERSON: Then 142, I don't, - I</p>	<p style="text-align: right;">Page 18429</p> <p>1 BRIGADIER CALITZ: Hulle het van forward 2 holding area 2 afgekom. 3 CHAIRPERSON: So have we virtually 4 accounted for all the people at scene 1? Alright, now I 5 take it Mr Ntsebeza's juniors were doing the recording for 6 us, so have you now got the information you want, Mr 7 Ntsebeza? 8 MR NTSEBEZA SC: Yes, Mr Chairman, and 9 I'm indebted to the chair. Now on your assessment of these 10 numbers do you have a sense of whether the members of the 11 POP were the same number as the TRT, STF and NIU or whether 12 they were quite outnumbered by the other unions, the 13 members of the POP? 14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 nee, so as ek nou uit die vuur uit vir u kan sê, nee, ek 16 dink Openbare Orde Polisiëring die meerderheid en dan TRT 17 om hulle te ondersteun, maar ek sal die getalle moet gaan 18 optel, ek het dit nie nou so uit my kop uit dadelik vir u 19 beskikbaar nie, nee. 20 CHAIRPERSON: Mr Ntsebeza, if you want 21 this information - 22 BRIGADIER CALITZ: Maar ons kan dit - 23 CHAIRPERSON: We've been dishing out 24 homework in this Commission, I'm afraid and I presume he 25 can do, if we ask him nicely he'll do it for us overnight,</p>

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1 if you need the information, if you don't then we won't
 2 trouble him.

3 MR NTSEBEZA SC: Yes.

4 CHAIRPERSON: So you want the information
 5 or don't you?

6 MR NTSEBEZA SC: I do, Mr Chairman.

7 CHAIRPERSON: Alright, would you be kind
 8 enough, Brigadier, we'll adjourn in ten minutes, so you've
 9 got from then until tomorrow morning at nine o'clock to
 10 work it out for us.

11 BRIGADIER CALITZ: Ek help graag, Mnr die
 12 Voorsitter, enige tyd.

13 MR NTSEBEZA SC: And I'm asking nicely,
 14 Mr Chairman.

15 CHAIRPERSON: Sorry?

16 MR NTSEBEZA SC: And I'm asking nicely.

17 BRIGADIER CALITZ: Dit is so.

18 CHAIRPERSON: It is a matter of opinion,
 19 but I suppose we'll take it.

20 BRIGADIER CALITZ: Dit is so aanvaar,
 21 dankie Advokaat.

22 MR NTSEBEZA SC: Mr Chairman, did you say
 23 we are going until quarter past? It is eight minutes.

24 CHAIRPERSON: Unless you want me to stop
 25 earlier, but you've lost a bit of time, so I thought I

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1 would give you back, at the beginning, because there was a
 2 -

3 MR NTSEBEZA SC: No, Mr Chairman, -

4 CHAIRPERSON: There were questions that
 5 stood over from before lunch, so if you want to adjourn now
 6 -

7 MR NTSEBEZA SC: Let me rather change the
 8 time tomorrow morning.

9 CHAIRPERSON: If you want to adjourn now
 10 I will, but if you would like another eight minutes it is
 11 available.

12 MR NTSEBEZA SC: I would rather not take
 13 it now, Mr Chairman.

14 CHAIRPERSON: Well, you won't get again
 15 tomorrow. Alright, no, I understand. We'll adjourn now
 16 until nine o'clock tomorrow morning.

17 MR NTSEBEZA SC: Thank you, Mr Chairman.

18 [COMMISSION ADJOURNED]
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