

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 158

29 NOVEMBER 2013

TRANSCRIPT PAGES 17958 TO 18062

1 **[PROCEEDINGS ON 29 NOVEMBER 2013]**

2 **[09:10] CHAIRPERSON:** The Commission resumes.

3 Brigadier, you are still under oath.

4 **BRIGADIER CALITZ:** Still under oath.

5 **CHAIRPERSON:** Mr Chaskalson, you are

6 continuing with your questioning about the positioning of

7 the vehicles, and so forth?

8 **MR CHASKALSON SC:** I am. I wonder if I

9 should change my positioning so that the Brigadier and I

10 can see each other, or I suppose the Brigadier will be up

11 at the chart, so we will end up seeing each other.

12 **CHAIRPERSON:** May I make a suggestion; as

13 we sit here facing the table with the, what amounts to the

14 enlarged photograph, on our right-hand side is a Chairperson

15 where the Brigadier is sitting and he is going to have a

16 microphone there, I take it. Is it not possible for you to

17 sit on the other side, on the left side, so you can then

18 have a direct view of what is going on, and you can have a

19 microphone as well? Would that not make it easier? He

20 sits next to where he is now standing and you sit opposite

21 him on the other side. Is that possible?

22 **MR CHASKALSON SC:** I will need to get a

23 microphone though.

24 **CHAIRPERSON:** Possibly attempts can be

25 made, or endeavours can be made to get a microphone for you

1 that works. So both of you obviously must have microphones
2 that record properly. The advantage of that is that if
3 necessary you may, it may be convenient for you to move the
4 odd block yourself to indicate something to the Brigadier
5 for him either to agree with or not. Is there space for
6 your notes?

7 **MR CHASKALSON SC:** There will be.

8 **CHAIRPERSON:** Yes, good.

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

10 Thank you, Chairperson. We have recreated the –

11 **CHAIRPERSON:** I do not think I reminded
12 the witness he is still under oath. You are still under
13 oath, Brigadier, just in case I did not remind you.

14 **BRIGADIER CALITZ:** Thank you.

15 **MR CHASKALSON SC:** And I wonder if we can
16 just get the camera to display the image again so that
17 everyone can see – great. We have recreated the picture
18 where we left it last night and it struck me overnight that
19 what we have to add to this picture is of course the
20 movement of the strikers and what we have now is what the
21 Brigadier has put together, the position of the Nyalas at
22 incident 1, and what I would ask the Brigadier to describe now
23 is how the strikers moved at incident 1.

24 **CHAIRPERSON:** You have got some wooden
25 blocks over the photographs of the strikers on the, which

1 we can now see on the screen. Are those intended to
2 represent some of the strikers?

3 **MR CHASKALSON SC:** Yes. They have been
4 bumped in the furniture rearrangement, so they should be a
5 little bit like that. They were on a line with a clear
6 road up past the right-hand side of the kraal. This is not
7 absolutely precise. We can go back to - I forget which
8 slide it was - I think it is 191. However, they are not going to
9 be relevant to incident 1. They become relevant much
10 later. That is roughly the configuration that we see on
11 191, if we can zoom in to the top left-hand corner of the
12 slide. And if I can just point out the position of the
13 Scorpion and the, if we can just stay in one position for a
14 moment and get rid of the image edits. Can you just click
15 again, or press escape? Can we take it back to where it
16 should be? Yes, great. There is the Casspir and there is
17 the Scorpion. I am marking with a red dot just to the east
18 of the intersection of the two black lines, let us say 100
19 metres and 110 metres on the other side of the TRT officers
20 who are on foot, who I am indicating now? Now if we can try
21 to describe the movement of the protesters, Brigadier, I
22 went back to your evidence-in-chief to look at how you
23 describe the point at which they moved, and the relevant
24 passage is to be found at page 17277 on day 154 where
25 Commissioner Hemraj asked you, "May I just understand,

1 Brigadier" - you are describing incident 1 and Commissioner
2 Hemraj says, "May I just understand, Brigadier, that at the
3 time the group reached Nyala 4, had Nyala 4 already begun
4 to deploy the wire?" and you say, "Commissioner, yes, I saw it that,
5 Nyala 4 moved toward 3 by and when it reached 4, and
6 Nyala 4 started moving, I saw the group moving down in the
7 direction of Nyala 4." So as Nyala 4 begins to move
8 you see the group move in the direction of Nyala 4, and if
9 you can just describe on the chart the movement that you
10 saw.

11 **BRIGADIER CALITZ:** Commissioner, if I stand like
12 this - thank you, Mr Chairperson. When Nyala 3 reached Nyala 4,
13 I think the post is in - Nyala 4 started throwing
14 out the wire at the post, according to what I
15 observed. While they were, busy with the "uncoiling",
16 the Nyala 4 started moving during the hooking of the
17 d "A-frame", the group, maybe
18 three blocks to the front, they started moving
19 into the direction of Nyala 4 - they were in a more
20 "close bend" formation, as we said before, and then the
21 bigger group also came down and looked as if they were following
22 the same formation as the smaller group. Nyala 4 moved forward.
23 The group moved closer to Nyala 4 and that is -

24 **CHAIRPERSON:** I am sorry to interrupt you
25 for a moment. Is this being filmed? So when you talk

1 about "this formation" and "that formation" and so on, we
2 do not have to describe it because it is being recorded. Is
3 that correct? Yes okay, that is fine. Therefore, we do not have to
4 stop every now and again, saying this means that, you know,
5 this is what this means and this is what that means.
6 Alright, so please carry on. I am sorry to have interrupted
7 you. You were saying that you have the three blocks
8 which represent, I presume, the front line or front lines
9 of the group. You have shown them in position, and then
10 you have also shown another five blocks, which represent other
11 members of the, of other strikers who were further back,
12 but adopted the position you have shown us.

13 **BRIGADIER CALITZ:** Correct, Mr
14 Chairperson. This group was not in that formation, but the, I
15 tried to put the group in front closer together, to indicated
16 that they were the group we were referring to,
17 the militant group. The distance may not reflect
18 on the map now, but as
19 Nyala 4 moved forward, they moved toward Nyala 4 – at
20 that stage I contacted Nyala 4 and yelled at
21 the members still busy on the outside to
22 get back into the vehicle. I also instructed
23 them on the radio to get back into the vehicle,
24 as I was not sure of the intentions of group moving into the
25 direction of Nyala 4...

1 **MR CHASKALSON SC:** Thanks, Brigadier.

2 Before we move off here can I just ask a couple of
3 questions for clarification? The first is did you, you
4 speak of the militant group. Did you recognise any
5 individuals in that group from the people who had been part
6 of the negotiation process with you? For instance Mr Noki
7 who presumably you could identify by that stage.

8 **BRIGADIER CALITZ:** Mr Chairperson, if I
9 have to recall a specific face recognition,
10 it would have been very difficult from that distance,
11 but I could see the green of Mr Noki –

12 **CHAIRPERSON:** This is the green blanket.
13 Did you see one of the people with a green blanket and was
14 that the green blanket you had seen earlier having been worn
15 by –

16 **BRIGADIER CALITZ:** The green – I cannot say
17 if it was a blanket or another person with a green
18 jacket.

19 **CHAIRPERSON:** Yes, there were two actually
20 with green –

21 **BRIGADIER CALITZ:** I cannot specifically say
22 it is Mr Noki, yes, but there were a definite group of
23 people that made a specific formation, in the
24 front. According to me the leaders,
25 moved in front of the group.

1 **MR CHASKALSON SC:** And then Brigadier,
2 just to clarify an issue which was not clear to me from your
3 evidence-in-chief read with your statement; in your
4 evidence-in-chief you say that you actually jumped out of
5 your Nyala 4 and shouted at members to get back into Nyala 4.
6 It is 17277, lines 3 to 4. Do you recall – is that correct?
7 Have I understood the evidence-in-chief correctly?

8 **BRIGADIER CALITZ:** Mr Chairperson,
9 correct, if I say, "Jumped out," the door on the right-hand side,
10 at the back was open, so "jumped out" did not mean jump out
11 and run somewhere. I hanged out, yelled
12 at them so that they could hear me and then
13 continued communicating with them on the radio. Therefore, it did
14 not mean I jumped out of the vehicle and ran outside the vehicle,
15 no.

16 **MR CHASKALSON SC:** And can you give us a
17 rough indication of where Nyala 4 was when this happened,
18 again on this chart?

19 **BRIGADIER CALITZ:** Mr Chairperson
20 no, I cannot recall at that stage. I think it
21 was when I saw the group moving down. It can be just when
22 Nyala 4 started to roll out. I saw the group
23 moving down. I was worried about the police officers still
24 outside their vehicle, so I wanted them to move back and
25 get into the vehicle.

1 **MR CHASKALSON SC:** And then can you
2 describe the rest of what you say was incident, what you
3 understand incident 1 to have been?

4 **BRIGADIER CALITZ:** Mr Chairperson,
5 from my position, Pappa1, I observed that Nyala
6 4 and the group moving parallel with
7 each other. Nyala 5 moved towards the inside – when I say
8 “inside” they turned into a eastern direction, Nyala
9 4 kept on moving forward and I told him to proceed
10 so that the group could not break through.
11 That was incident 1.

12 **MR CHASKALSON SC:** And can we take it
13 step by step so that we see the movement of the group and
14 Nyalas 4 and 5 at each stage of the process as you remember
15 it?

16 **BRIGADIER CALITZ:** It was as I explained
17 to you just now. Step-by-step, I do not have
18 the second by second version of the events.
19 The group moved parallel with Nyala 4,
20 and I saw them moving into the same direction,
21 the idea was for them to move in front of them, I then instructed
22 Nyala 4 to move forward faster, in order to cut them
23 off. When Nyala 5 started moving, I cannot
24 say, I see Nyala 6 also moved towards
25 the inside at one stage. That I also cannot

1 tell you about, as I could not see it from my position.

2 **CHAIRPERSON:** What then happened was that

3 Nyala 4 then I take it picked up speed, accelerated, and

4 then went past Nyala 5, passing, it looks like from what

5 you have shown us, the left back corner of Nyala 5. Is that

6 more or less right?

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

8 Chairperson. I can however not tell the position of

9 Nyala 5 when Nyala 4 started to deploy. I know Nyala

10 5, if we look at the photo, he was standing still and at one stage

11 started moving. Nyala 4 moved passed

12 Nyala 5 on the western side in the direction of the small

13 kraal.

14 **MR CHASKALSON SC:** And if we go back to

15 where incident 1 started, can I ask you, was this the first

16 movement that you noticed of the militant group off their

17 starting position in the direction, in an easterly

18 direction?

19 **BRIGADIER CALITZ:** At this stage

20 after I gave instruction for the rolling out of the wire,

21 it was the first movement in our direction,

22 correct, Mr Chairperson.

23 **MR CHASKALSON SC:** And again just to

24 confirm, your evidence-in-chief was that this was a

25 movement in what we call the crouched position. I think

1 the adjective that you used was "crouching" at page 12780,
2 lines 22 to 24.

3 **BRIGADIER CALITZ:** It is correct, Mr
4 Chairperson. It is the first three blocks.

5 There were a more prominent group in front,
6 and then this group, which was the more
7 scattered group.

8 **CHAIRPERSON:** So they were a compact
9 group, and they were moving forward, crouching, bending
10 forward, with the upper parts of their body leaning
11 forward. Is that correct?

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

14 **[09:30] MR CHASKALSON SC:** And against, just to –
15 sorry can we take those blocks back to their starting
16 position, because I just want to clarify another aspect of
17 your evidence in chief?

18 **CHAIRPERSON:** I am sorry, there is a path,
19 a clearly defined path which is more or less parallel with
20 the direction of the wire that was uncoiled and it looks as
21 if the militant group was originally on the other side, the
22 koppie side as it were, of that path, they crossed the path
23 and moved over in the direction that you have shown us and
24 the rest of the group, the ones that you said were not so
25 compact, did they remain on the koppie side of that path?

1 At the moment you will see there, you have got all the blocks
2 on that side of the path but you indicated that the compact
3 front group clearly moved over and approached Nyala 4.

4 **BRIGADIER CALITZ:** Correct.

5 **CHAIRPERSON:** The other lot, did they
6 stay on the hillside of the path or did they also move
7 over the path?

8 **BRIGADIER CALITZ:** No, Mr
9 Chairperson, it is the group that I said was more scattered
10 in the back, they followed the group in front,
11 but at a distance.

12 **CHAIRPERSON:** So what is being called the
13 left compact group also followed the front compact group,
14 they did follow them over the path as well?

15 **BRIGADIER CALITZ:** Where we refer to
16 the militant group in front?

17 **CHAIRPERSON:** Yes, yes, yes.

18 **BRIGADIER CALITZ:** Yes.

19 **CHAIRPERSON:** Well, I thought, - I am not
20 sure whether the left compact group also consisted of
21 people who can be described as militant or not, but -

22 **BRIGADIER CALITZ:** No, Mr
23 Chairperson, there was a distinct difference, with the
24 group in front crouching and those at the
25 back not.

1 **CHAIRPERSON:** Okay, so the compact group,
2 you would describe as the militant group, and you have
3 described they were in this leaning forward posture. The
4 other group were less compact and did they not have that
5 leaning forward posture?

6 **BRIGADIER CALITZ:** Not that I observed,
7 no.

8 **CHAIRPERSON:** Alright, thank you.

9 **MR CHASKALSON SC:** Then, Brigadier, you
10 indicated in your evidence in chief that this militant
11 group got, you said as close to Nyala 4 as the distance
12 between you in your usual Chairperson and the commissioner's. I
13 imagine you were in your usual Chairperson, I think the
14 chairperson estimated it at 4 metres and you said it might
15 have been a little bit longer than that but it was
16 certainly, - well, was it less than 10 metres?

17 **BRIGADIER CALITZ:** If we can revert to my
18 transcript, I do not have it in front of me, I think
19 Chairperson asked me, from here to the evidence
20 leaders, and I said further, I think the distance I used
21 was 20 meters. I think my transcript will
22 indicate that direction, but I cannot say for
23 sure what the distance was.

24 **CHAIRPERSON:** I think I talked about a
25 cricket pitch, 20 metres is about a cricket pitch but there

1 was a measurement from where you were sitting to more or
2 less where I am sitting and I did estimate that as being
3 about 4 metres and you thought that I would been a bit
4 parsimonious in my estimation and you said it was a bit
5 longer and I think that is the point that Mr –

6 **BRIGADIER CALITZ:** I recall the cricket pitch,
7 it is correct.

8 **CHAIRPERSON:** But that is the bit I think
9 that Mr Chaskalson is referring to. What was the cricket
10 pitch length, the 20-metre length? Well, anyway we can
11 find it in the record, it is not important.

12 **MR CHASKALSON SC:** Sorry, Mr Chairperson,
13 I just need to switch on my computer to do that. I have
14 discovered a problem with my new seating arrangements,
15 Chairperson, if you can –

16 **CHAIRPERSON:** Would you like a short
17 adjournment so that you can sort it out?

18 **MR CHASKALSON SC:** Well, we do not need
19 one now but if my battery threatens to die on me we may
20 need one later.

21 **CHAIRPERSON:** Alright, I understand that.

22 **MR CHASKALSON SC:** Thank you,
23 Chairperson. The passage in the brigadier's evidence in
24 chief was, it starts at 17281 in response to a question
25 from Commissioner Hemraj, actually how close that group

1 gets to Nyala 4 and the brigadier's answer was,
2 "Commissioner, it was meters from where I am sitting now,
3 it is difficult to estimate a distance right now, but it was
4 extremely close, to such an extent that it might
5 be the distance between me and the Commissioner, yes, it was
6 closer. When Nyala 4 started moving, the group turned and
7 moved parallel with them toward Nyala 5."

8 That was at lines 15 to 21 at page 17281, and then the
9 chairperson said, "The distance you point with your hand
10 towards me, between yourself and me is about 4 metres at
11 most I would think, is that right," and the brigadier said,
12 "It can be a little further, Mr Chairperson,
13 yes," and Chairperson, you introduced the cricket pitch.
14 "Do you know the length of a cricket pitch which
15 is 22 yards, was it as far as a cricket pitch or half a
16 cricket pitch or is that not a measurement that means
17 anything to you," and then the brigadier said, "Let us say it
18 was that distance, Mr Chairperson, I am not big on
19 cricket," and the chairperson said, "A cricket pitch, 20
20 yards. 11 meter, 22, yes. No, no, a cricket pitch is 22
21 yards but you can mitigate," and the conversation then got
22 stalled and Mr Semenya took us elsewhere, but maybe we
23 should just ask the brigadier now. How far do you estimate
24 that the group got to Nyala 4?

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 when they started rolling out the wire, they started moving
2 down the hill, at one stage, and the closer they got to
3 Nyala 5, the faster
4 Nyala 4 moved forward.
5 So the distance became smaller and at one stage
6 they came very close to 4, and passed 5 where
7 they got cut off and the commander
8 indicated to me that the group almost cut them off.

9 So to be able to do that, he must have -

10 **CHAIRPERSON:** Well, it sounds like less
11 than 4 metres at that point obviously, it must have been
12 less than 4 metres at that point.

13 **BRIGADIER CALITZ:** I think at one stage -
14 -

15 **CHAIRPERSON:** You say they were actually
16 cutting in in front?

17 **BRIGADIER CALITZ:** M r Chairperson,
18 yes, I cannot say I observed that precise distance
19 from where I was, I just saw the group moving
20 closer. I instructed them to move forward
21 and saw the group moving parallel with them
22 at the back. It was difficult to see the precise
23 distance between the Nyala and the group,
24 all the time. I cannot testify to that, or
25 give evidence in that regard.

1 **MR CHASKALSON SC:** Brigadier, just to go
2 back, the point that I am interested in is when they first
3 advanced on Nyala 4, the point at which you first noticed
4 their advance, the arrow that we see described as incident
5 1 in Exhibit L, how close to Nyala 4 did they reach?

6 **BRIGADIER CALITZ:** Mr Chairperson, I said when
7 Nyala 4 started moving from the post, after the wire was rolled out
8 and they started to retreat, that is when
9 the group started moving down from the hill. If anyone
10 know the distance between the wire and the militant group,
11 maybe they can assist, I do not have the distance in meters,
12 no.

13 **CHAIRPERSON:** I am sure we can get it
14 later, yes.

15 **MR CHASKALSON SC:** You see part of what I
16 think maybe the differences between the evidence leaders
17 and the SAPS on incidents 1 and 2, is that what you are
18 describing as incident 1 is really what the presentation
19 describes as both incident 1 and 2, if I understand it
20 correctly. So if you look at slide 200 of the
21 presentation, can we go to slide 200? This is under the
22 heading, incident 2 protestors' second approach to Nyala 4.
23 Now if you look at this diagram and if I can point out
24 Nyala 4, you will see that Nyala 4 has not yet cut off the
25 protestors. It will only cut off the protestors by

1 reaching the kraal, which it does at a certain point. Now
2 you have been describing the distance between the protestors
3 and Nyala 4 as the distance for the purposes of incident 1
4 and you have been describing Nyala 4 as cutting off the
5 protestors as incident 1. We have always understood that to
6 be incident 2. Am I correct in understanding that what you
7 have been describing, as incident 1 is really, what we see in
8 part on the photograph ahead of us?

9 **BRIGADIER CALITZ:** Mr Chairperson,
10 the way I understand it, if I may use the red dot,
11 the post where the incident occurred, or where the Nyala started to
12 roll out, the militant group moved
13 from hill 1 and 2 and at that stage I started
14 yelling at the people to get back in the
15 vehicles. There was no other reason for me to tell them
16 to get back into the vehicle. If you look at the direction the crowd were in,
17 it means they had to come here and
18 walked toward that direction, and then there was no reason for me
19 to say, as you can see it on the record of my radio communication,
20 to get back into the vehicle. I warned
21 my members to get back into
22 the Nyala, because I saw the militant group
23 moving in that direction and the bigger groups on
24 hills 1 and 2 followed them, but at a distance,
25 my vision was restricted,

1 because they were behind Nyala 4, and that
2 when I gave the instruction. What we see here, is what
3 explained happening in incident 2, I saw the people
4 moving back.
5 I think the previous question by the commission was,
6 did everyone move back, ran away and came
7 back? I said, no, it was more as if, if I may use
8 the word pendulum, the group in front was here and the group
9 at the back turned, so the group in front moved
10 moved to the side faster and the group at the back,
11 moved sort of north, more to the kraal,
12 behind them and incident 2 is where
13 they pertinently stormed to get in front of the vehicle.
14 So it is what we referred to, if I may be of assistance, as
15 incident 1 and 2.

16 **CHAIRPERSON:** Sir, may I ask you a
17 question, the question I get from you, if I am wrong you
18 must please help me. If one looks, at slide 197 in Exhibit
19 L, which is the so-called incident 1 and that what you have
20 described to us, I think, and by showing us the blocks
21 moving forward, that the militant group, the compact group
22 moved forward in this forward bending posture, came towards
23 Nyala 4, more or less straight to it as is indicated on
24 that arrow on 197.

25 **MR CHASKALSON SC:** Yes, Chairperson,

1 maybe –

2 **CHAIRPERSON:** That is correct, is it?

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

4 Chairperson.

5 **CHAIRPERSON:** So what then happened was

6 Nyala 4 started moving in the direction of Nyala 5

7 uncoiling the wire and what then happened was, the group,

8 you say may have moved slightly away from the direction of

9 travel of Nyala 4, but they more or less were moving in

10 parallel with it. I mean it would have been crazy for them

11 to describe that wide arc, because they would have lost a

12 lot of time and in fact, what happened was, they more or less

13 kept up, and not only did they keep up with Nyala 4, they

14 actually, according to what you were told because you

15 did not see this; they actually were beginning to cut in

16 front of it and then you then instructed them to, "to

17 accelerate," I think that is what you said, to

18 accelerate, which they did effectively. I think those

19 words, and they accelerated and then shot passed them and

20 got to the point at the edge of the small kraal, is that

21 right?

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson.

24 **CHAIRPERSON:** And then what you

25 described, I think is incident 2, is really what happened.

1 They tried to get in front but because the Nyala was
2 moving, I take it quite fast at that stage, it won the race
3 and got to the kraal first, is that correct?

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

5 Chairperson.

6 **CHAIRPERSON:** So the bottom line of all

7 this is this arc, if you look at 194 which supposedly

8 represents the three incidents, that we can see at 194, the

9 first yellow arrow is right, that is what you saw, alright.

10 The arc is not quite right, what really happened was, there

11 was a slight little arc but basically they stayed in a

12 direction parallel to the direction and travel of the Nyala

13 4 and that must have been so otherwise Nyala 4 would have

14 won the race much easier than it did, is not that so?

15 And then as they approached it and nearly cut in front of

16 it, it accelerated and got to the corner of the kraal and

17 that is where incident 2 happened. Therefore, the point is that

18 that wide arc, the orange arc is not correct.

19 **BRIGADIER CALITZ:** Mr Chairperson,

20 yes, it is where I referred to a pendulum, maybe if I can indicate the TRT,

21 like the group in front, it is like a sort of action,

22 where the group in front was, I do not know if pendulum is

23 the correct word.

24 **CHAIRPERSON:** We better now leave slide

25 194 which has been shown and get back to our picture of

1 your demonstration.

2 **BRIGADIER CALITZ:** Maybe –

3 **CHAIRPERSON:** And then you can show us

4 and that would then be recorded.

5 **BRIGADIER CALITZ:** Maybe where they were

6 parallel, the proportion might not be correct, but the

7 group moved parallel with them, the bigger group

8 - Okay, I would not be able to go as far as the kraal,

9 but the idea I want to create is,

10 - The group in front moved here, and the

11 group at the back followed them while moving in a wider circle.

12 It is not like the militant group in front totally

13 ran away, like you said, otherwise the

14 Nyala would be there long before them.

15 **CHAIRPERSON:** It is not quite a circle,

16 it is more a semi-circle, but they moved away slightly in a

17 semi circle, you say some of the other people joined them,

18 -

19 **BRIGADIER CALITZ:** The back –

20 **CHAIRPERSON:** - but basically they were

21 running in parallel with Nyala 4, they almost got in front

22 and then Nyala 4 shot ahead, is that the story?

23 **BRIGADIER CALITZ:** It is so, Mr

24 Chairperson.

25 **CHAIRPERSON:** I do not know whether that

1 is what Mr Chaskalson understands and if it is not he will
2 correct me, but that is what I understand you to be telling
3 us.

4 **BRIGADIER CALITZ:** Correct, Mr
5 Chairperson.

6 **MR CHASKALSON SC:** Can we then go back to
7 the presentation and see if we agree with what is in the
8 presentation, or not see if we agree, see if you agree with
9 what is in the presentation. If you go to slide 196 which
10 is the narrative of incident 1, "Nyala 1 to 3 deployed wire
11 without any interference from the protestors. Before Nyala
12 4 started deploying its wire a group of armed protestors'
13 formation moved forward and tried to enter the police
14 enclosure in front of Nyala 4," and I understood your
15 evidence to be that that was more or less at the mast, is
16 that correct, where the arrow is on the presentation?

17 **BRIGADIER CALITZ:** It is where they
18 started moving down the hill.

19 **MR CHASKALSON SC:** But they moved down
20 the arrow on the presentation.

21 **BRIGADIER CALITZ:** In the direction of the
22 Nyala 4, correct, Mr Chairperson.

23 **MR CHASKALSON SC:** "At this stage
24 Brigadier Calitz gave command for the water cannons to come
25 in behind the line of negotiating teams. The protestors

1 were aggressive, tapping their weapons against each other
2 and went into an attack formation. Nyala 4 cut the
3 protestors off by driving towards the kraal quickly passing
4 Nyala 5 while deploying its wire." Now that is described
5 as incident 1 when Nyala 4 cuts off the protestors the
6 first time, did you see that?

7 **BRIGADIER CALITZ:** Mr Chairperson,
8 it is what I gave evidence on just now, when
9 I said parallel, yes. I did say I could not
10 see how far they were when they passed Nyala 5
11 from the side.

12 **CHAIRPERSON:** And you have explained that,
13 can I just ask a question about this? This statement in
14 the second bullet on slide 196, that they tried to enter
15 the police enclosure in front of Nyala 4, and then in the
16 last bullet they talk about Nyala 4 cut them off. Now I
17 take it the statement that they try to enter the police
18 enclosure is interpretation. I mean they might have been
19 trying to attack Nyala 4 for all we know, if they were
20 trying to stop the, - and this is speculation obviously,
21 but I mean this is what I am saying according to you, the
22 bullet comment is also a speculation. They were either
23 trying to get past Nyala 4 and past the wire into the
24 police enclosure.

25 **[09:50]** Or they were trying to attack Nyala 4 for some

1 reason. We do not know which it was because wherever they
2 tried to do they were prevented from doing, they were
3 frustrated because Nyala 4 moved forward, cut them off so
4 if they were trying to get into the enclosure they could not
5 at that point. The Nyala 4, whether they were trying to
6 attack Nyala 4 we do not quite know either, because Nyala 4
7 got away from them. Is there a suggestion that they did do
8 something aggressive towards Nyala 4?

9 **BRIGADIER CALITZ:** Mr Chairperson, I believe so,
10 and when I communicated with the commanders afterwards,
11 and I believe there is a statement to this regard by the
12 commander of Nyala 4, which can testify
13 hereto.

14 **CHAIRPERSON:** Well just, give it some, did
15 they do, show aggressive intentions towards Nyala 4?

16 **BRIGADIER CALITZ:** There was
17 definite aggression observed by the people in Nyala 4.

18 **CHAIRPERSON:** Alright.

19 **BRIGADIER CALITZ:** What exactly happened, I
20 cannot-

21 **CHAIRPERSON:** Anyway –

22 **MR CHASKALSON SC:** Chairperson, I would
23 caution against speculation because there is at least a
24 third option as well.

25 **CHAIRPERSON:** Mr Chaskalson, all I was

1 trying to say was that it seemed to me that the statement
2 in the second bullet that they tried to enter the police
3 enclosure in front of Nyala 4 maybe correct but there may
4 be other interpretations, the point is its interpretation.
5 We may have to, I do not know whether we will, we may have
6 to decide whether it is correct but it cannot be made as a
7 statement of objective fact because one does not know what
8 they tried to do and on what we can see, they tried to do
9 one, I thought one of two things that Mr Chaskalson will in
10 due course tell us, reveal to us what the third thing is
11 maybe. However, I do not think we need to worry about that for
12 the moment because we tried to get from you the objective
13 facts, matters of interpretation can come up later.

14 **MR MPOFU:** Mr Chairperson, yes I am sorry I
15 think I also just want to support what Mr Chaskalson says.
16 If we are going to make speculation about what the
17 protestors were trying to do we must include what they say
18 they wanted to do which is on the record. Remember there's
19 a version by Mr Magidiwana that they were trying to do
20 which is to go to Nkaneng.

21 **CHAIRPERSON:** No, you see I am aware of
22 that. I was busy with something different and that was to
23 establish that the last part of the second bullet is in
24 fact interpretation and I was trying to say we must
25 eliminate interpretation; we must stick to the objective

1 facts to which the witness can speak and I did not

2 understand you to quarrel with that, Mr Mpofu.

3 **MR MPOFU:** No.

4 **CHAIRPERSON:** So I have your support.

5 Shall we carry on, Brigadier.

6 **MR MPOFU:** No, Chairperson, I am sorry.

7 All I am saying is that the, when that speculation is done

8 the only thing, all that must be speculation in the air but

9 there's one thing that is evidence is that they were trying

10 to go home, to go to Nkaneng. Therefore, we cannot exclude the only

11 thing that is evidence and only remain with sensible

12 speculation.

13 **CHAIRPERSON:** I did hear you say that.

14 It is a matter, which will be, I am sure very pertinently

15 dealt with when we reach the stage of trying to find out

16 what they were doing. However, at the moment we are not busy

17 with that exercise. I am simply saying we must eliminate

18 interpretation and I am suggesting that the second part of

19 the second bullet is interpretation. So but any way you

20 and I are on the same page at the moment, Mr Mpofu. Let us

21 stay there and let us see the Brigadier and Mr Chaskalson

22 can proceed.

23 **MR CHASKALSON SC:** Brigadier, the

24 question that I still require clarified is did Nyala 4 cut

25 off the protestors in the course of moving from its

1 starting position to the kraal, did Nyala 4 cut off the
2 protestors once or twice because as I read the presentation
3 together with what I understand your evidence to be today
4 you are suggesting that there were really two occasions when
5 Nyala 4 cut off the protestors.

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 I do not believe that was my evidence, I said I instructed
8 Nyala 4 to cut them off, which then did
9 occur. If it was once,
10 twice, or three time, they moved
11 parallel with them and I ordered Nyala 4 to move
12 faster, the protestors moved in a pendulum
13 and Nyala 4 reached the kraal before them
14 The figure I cannot help you with, sir.

15 **COMMISSIONER HEMRAJ:** The description of
16 both incidents one and two in slides 196 and 199 both speak
17 of a cutting in front of Nyala 4. That just supports what
18 Mr Chaskalson is saying. That both incidents have the same
19 description in the two slides, 196 and 199. Do you see the
20 second bulletin 199, Brigadier?

21 **BRIGADIER CALITZ:** Yes.

22 **COMMISSIONER HEMRAJ:** And it is described
23 in the same way in 196, tried to enter the police enclosure
24 in front of Nyala 4.

25 **BRIGADIER CALITZ:** I understand it to being the

1 same, Mr Chairperson, they moved together,
2 tried to move in, in front of them,
3 if you can just give me a chance, the approaching group of
4 protestors attempt to enter in front of Nyala 4 before it
5 reached the kraal. I presume the first one was where they moved
6 together and where I gave the order for them
7 to move faster, if you read, 199 is
8 where they reached incident 2. So that is the two
9 differences I understand, Mr Commissioner.

10 **COMMISSIONER HEMRAJ:** It is just that in
11 exhibit L it is described under incident 1 and incident 2.

12 **BRIGADIER CALITZ:** I believe that was the
13 meaning thereof.

14 **MR CHASKALSON SC:** So if we go back up to
15 196 on, which is the description of incident 1 that bottom
16 bullet point, the protestors were aggressive, tapping their
17 weapons against each other and went into an attack
18 formation the last sentence Nyala 4 cut the protestors off
19 by driving towards the kraal quickly passing Nyala 5 while
20 deploying its wire. Would you accept that that was not
21 where Nyala 4 cut off the protestors but that they were cut
22 off in what you describe as incident 2?

23 **BRIGADIER CALITZ:** Mr Chairperson,
24 again, if I understood the question correctly, I said they moved
25 toward Nyala 4 and Nyala 4 passed 5. There was

1 a first attempt and when Nyala 4
2 reached the kraal, they were definitely moving towards
3 Nyala 4. That is the two incidents I can
4 refer to.

5 **MR CHASKALSON SC:** Yes, but my question
6 is, you see one of the difficulties I have always had with
7 this narrative is it suggested for the narrative to make
8 sense Nyala 4 would have had to cut off the protestors
9 twice which would have meant that the protestors would have
10 had to have overtaken Nyala 4 at least once and that did not
11 make sense to me. Now can you help me with that?

12 **BRIGADIER CALITZ:** Mr Chairperson, if
13 they overtake them, I cannot say.
14 I can just tell you that they moved parallel
15 with Nyala 4 and I instructed Nyala 4 at that stage
16 to move faster, and that is the reason,
17 you saw with the rolling out of the wire,
18 you walk beside it, and I cannot
19 estimate the distance, but you can walk next to the Nyala
20 while rolling out the wire,
21 and in the event of an attack, it is easy
22 for Nyala 4 to move in front of them and that is why I gave
23 Nyala 4 the instruction on the radio to move
24 faster, and cut them off, I presume that
25 is what I referred to the first time and the second time

1 was when he was already at the kraal.

2 **CHAIRPERSON:** Can I ask you a question

3 about that. The front line of the militant group can you

4 estimate more or less how long that was? I take it, it

5 was not just the length of the front line was not the

6 equivalent of the side of the Nyala 4. You understand,

7 Brigadier, if Nyala 4 is the, if the width of Nyala 4 is

8 the same as the width of my glass that I am holding, and if

9 the width of the front line, sorry it is the length of the

10 front line of the militant group, is pretty small, it was

11 the same as the width of my glass, that is one thing, if on

12 the other hand it was much longer then you had have a

13 situation that depending which part of the group came up

14 near the Nyala you had another section sticking out as it

15 were, if you can see what I am showing you who were not in

16 the immediate vicinity of the Nyala 4 because they were an

17 extension of the front line of the militant group, you

18 understand my problem. So can you tell me an estimate what

19 the length of the advancing front line was because that

20 might help us in relation to the point that Mr Chaskalson

21 is putting to you.

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 in my evidence I tried to explain the long

24 TRT line. If you hold the glass between your face and that of

25 Mr Chairperson, then it would be

1 parallel. The smaller group in front, the
2 the militant group, was between Nyala 4 and the
3 wire vehicle, and they moved like that, but the group at the back
4 moved in a more westerly direction. The whole group did
5 not move parallel, like a parallel ruler,
6 the militant group in front, which I observed, moved
7 toward the Nyala and the
8 other group were scattered at the back in the hills, that is why
9 I say, closer to incident 2, but this group
10 stayed and when
11 Nyala 4, passed Nyala 5, the front of the group, moved
12 towards the front. The whole group were not parallel
13 all the time, Mr Chairperson.

14 **CHAIRPERSON:** I understand that but what
15 I am interested in and I am not suggesting it was a square or
16 rectangle or anything of that kind, the militant group but
17 there would have been a, what one could always call a front
18 end of the militant group as they approached. Now whatever
19 the shape of the group was, they are behind the front end as
20 it were, but can you give me approximate as to what the
21 approximation is to the length of the front group, yes, the
22 front line as it, the front edge end of the front group.

23 **BRIGADIER CALITZ:** Mr Chairperson, I would say
24 I could not see them in front of the Nyala and neither
25 with the wire. I was told they were at the western side,

1 so approximate length will then be, from the
2 Nyala to the wire vehicle. I do not have estimate,
3 but a Nyala is four meters and the wire vehicle too,
4 so it is approximately 8 meters.

5 **CHAIRPERSON:** Thank you.

6 **MR CHASKALSON SC:** And, Brigadier, when I
7 asked you about my difficulties with the group overtaking
8 the Nyala. You said that when a Nyala is throwing out wire
9 in the ordinary course of events it goes slowly and you can
10 essentially keep pace with it by walking. Maybe if we go
11 to slide 197, which shows our distances. If we look at the
12 starting position of the various Nyalas you can see Nyala 1
13 up against the fence, then Nyala 2 at the end of the first
14 arrow, Nyala 3 at the end of the second arrow, can you
15 estimate how long once you have rigged up the A-frame and
16 once the Nyalas actually throwing the wire can you estimate
17 how long it would take Nyala 2 to reach Nyala 3 in the
18 ordinary course and Nyala 3 to reach Nyala 4 in the
19 ordinary course.

20 **BRIGADIER CALITZ:** Mr Chairperson,
21 no you cannot make a prediction with the wire. It can happen that
22 if you hook the wire on with the A-frame and the Nyala move at a
23 reasonable speed, I think we saw
24 it on the radio, with wire you can never be sure,
25 as the coils that fall off can hook onto something,

1 it can be on site, it can be a tuft of grass.
2 There can never be an estimate, on the day of the operation,
3 somebody asked a senior instructor the same
4 question and he gave the same answer.
5 There is no set time, saying it must be
6 within minutes or within five minutes. It depends on the area,
7 the circumstances, the
8 hang reaction of the police officer and how quickly they
9 can loosen the wire on the top. There are various factors, Mr
10 Chairperson.

11 **CHAIRPERSON:** So you cannot estimate?

12 **BRIGADIER CALITZ:** I really
13 am not able to estimate.

14 **CHAIRPERSON:** I think we will take a
15 comfort break for five minutes at this point.

16 **BRIGADIER CALITZ:** Thank you, very much, Mr
17 Chairperson.

18 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

19 **[11:07] CHAIRPERSON:** The Commission resumes. We
20 came back a lot later than we thought we would because
21 there was a meeting in chambers. You are still under oath,
22 Brigadier.

23 **BRIGADIER CALITZ:** Still under oath.

24 **CHAIRPERSON:** Mr Chaskalson.

25 **COMMISSIONER HEMRAJ:** Can you just help

1 me with one thing, Mr Chaskalson? The distance between
2 where the – if you look at 197 –

3 **MR CHASKALSON SC:** Yes, Commissioner.

4 **COMMISSIONER HEMRAJ:** The distance where
5 that small group of, what are called the militant strikers
6 are, the distance from there to where the yellow dotted
7 line is where the Nyalas are, what is that approximate
8 distance?

9 **MR CHASKALSON SC:** We can do an estimate
10 on Google Maps and give you a fairly accurate estimate. I
11 would not –

12 **COMMISSIONER HEMRAJ:** The strikers would
13 have to traverse that are and I was just looking at it in
14 terms of time that they would take.

15 **MR CHASKALSON SC:** Yes. We will get that
16 distance.

17 **COMMISSIONER HEMRAJ:** Thank you, very
18 much.

19 **CHAIRPERSON:** Maybe we can more or less
20 estimate if we look at 191, cannot we, because we know what
21 is 80 metres. It is not all of 80 metres, but it is a
22 fraction of that 80 metres, it is at least three-quarters, I
23 would say. That is a guess. It is probably about – but
24 anyway, it looks like at least 60 metres, but we can get
25 accurate information via Google in due course.

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

2 We will do it and we will come back with a precise figure.

3 Brigadier, it feels like quite a long time ago, but I was

4 asking you to estimate how long it would ordinarily take to

5 roll out the barbed wire between Nyalas 2 and 3 after the

6 triangle is up and the vehicle starts moving. You said

7 there is no ordinary because there are too many variables,

8 but earlier on you said ordinarily one can walk alongside a

9 Nyala while it is rolling out barbed wire, and that is an

10 estimate that, I suppose some sort of an estimate of a pace

11 that all things being equal, a Nyala would go. Do you want

12 to qualify that in any way?

13 **BRIGADIER CALITZ:** Mr Chairperson, if

14 I understand you correctly; your question was how long did it

15 take, if we can just go back, from 1 to 2 and from 2 to 3,

16 I said it depends on the people on the vehicle and how long it will take to hook off

17 "A-frame" at the back of the wire and hook it on

18 to a Nyala. When 2 moved, we did not know

19 the distance the

20 wire can go. You can see when Nyala 3 went forward,

21 it moved together with

22 Nyala 4, which then started rolling out

23 wire, and it was rolled out on a shorter

24 distance. These two vehicles

1 would then move together until the
2 wire reached its end and then the next vehicle would then
3 start rolling out its wire, and I testified that Nyala 4 started
4 rolling out wire at the post that was clearly visible. The area,
5 the police officers on the Nyala and the speed at which the wire is
6 rolled out, all plays a role,
7 as I testified.

8 **MR CHASKALSON SC:** No, Brigadier, I am not
9 sure you understood my question. Maybe I did not frame it
10 properly. I am interested in – I mean because I am still
11 interested in this question of whether it would have been
12 possible for Nyala 4 to cut off the protesters twice, and
13 for that to happen, the protesters had to overtake Nyala 4
14 after it started rolling out its barbed wire. Now in the
15 ordinary course of events, after the A-frame has been
16 attached, after the rollout process has begun, as it were,
17 so once the next Nyala is pulling away from the previous
18 Nyala, does a Nyala travel at a speed that is roughly the
19 same as a walking man?

20 **BRIGADIER CALITZ:** The Nyala can travel
21 faster than that. It can travel slower than that,
22 depending on, it is not the speed of the Nyala; it depends
23 on the uncoiling of the wire. So the wire itself will
24 determine the speed of the Nyala. So if that is your
25 question, to cut off twice, yes you can walk next to a

1 Nyala fast pace, but also a Nyala can then out – can I say
2 outrun you, but then the coil at the back becomes a problem
3 because it does not stay as it is designed. It will go flat
4 and longer, if you can understand what I mean.

5 **COMMISSIONER HEMRAJ:** I do not understand
6 how the uncoiling of the wire determines the speed of the
7 Nyala.

8 **BRIGADIER CALITZ:** Commissioner, if I
9 may –

10 **CHAIRPERSON:** I want to say something,
11 but answer the question Adv. Hemraj asked you first and then
12 I will make my little contribution, which may be helpful or
13 may not.

14 **BRIGADIER CALITZ:** Commissioner what I mean by
15 the speed of the Nyala is “determined,” or
16 indicated by the rolling out of the wire, if we
17 roll out the wire, you will always see
18 police officers on the outside that helps getting
19 the wire off the wire vehicle, there is an always a
20 person moving next to the driver, which will instruct the driver to
21 faster or slower. If the wire gets
22 hooked onto the “frame”, it is very dangerous
23 and although the police officers works with gloves,
24 and the wire suddenly pulls away, it can lead to
25 injuries, due to the fact that

1 it is barbed wire, which means it is extremely sharp.
2 What I mean is, if the wire can get stuck or even
3 "coil", they will instruct the driver to drive slower,
4 so that they can pull it down with the hooks,
5 and they will then instruct the driver to go forward again.
6 That is what I mean by the wire determines the speed of
7 the vehicle.

8 **COMMISSIONER HEMRAJ:** Thank you,
9 Brigadier.

10 **CHAIRPERSON:** Now what I am going to say
11 is I appreciate very unscientific, but I will explain why I
12 say that in a minute. According to one of the slides the
13 distance, which the wire was supposed to be uncoiled over,
14 I am talking about 191, appears to be something of the order
15 of 410 metres. If you look at 191, or is it further than
16 that? Do we know the distance over which the – we can work
17 it out, but –

18 **MR CHASKALSON SC:** In actual fact it was
19 slightly less because the corner was cut –

20 **CHAIRPERSON:** No, no, no, what I have done
21 is I have added 330 together with 80, you see. So that is –
22 but I say it is unscientific but let me tell you how I get –
23 because I am looking for a ballpark figure –

24 **MR CHASKALSON SC:** If I might just
25 interrupt, Chairperson; the actual route adopted by the

1 Nyalas on the due cut the corner, so it did not follow the
2 410-metre planned route.

3 **CHAIRPERSON:** Well, in other words
4 there's an error which goes in the way of increasing
5 accuracy, I think, in my calculation. If you take 410
6 metres as the distance covered, and I think the evidence is
7 it was about 12 minutes, and we also know that – I think
8 there were six routes, were not there? I mean there were
9 six Nyalas and therefore each section of the relay race, if
10 one can call them that, was – there were six sections of
11 the relay race.

12 **MR CHASKALSON SC:** Four on the day,
13 Chairperson.

14 **CHAIRPERSON:** No, I know that. I know
15 that, but there were going to be six because there were
16 going to be six Nyalas. Therefore, we are talking about the normal
17 thing. We are not talking about what happened, the
18 extraordinary circumstances. So the six relay distances
19 took 12 minutes, so therefore it looks as if, I am taking a
20 very rough figure, something of the order of two minutes
21 per relay section, and in fact Colonel Scott's evidence was
22 he wanted it done simultaneously and he estimated – but we
23 know, you say that was not conveyed to you and you say if it
24 had you had have said to him it cannot work, but anyway, he
25 was working apparently on a figure of something of the

1 order of two minutes effectively per each relay section,
2 the six being done simultaneously. So on that basis, a
3 rough approximation of the time taken per section was about
4 two minutes, but if you work again on 410 as being the
5 approximation of what the distance was supposed to be and
6 you divide it by 12, because on 12 minutes, you get 34
7 metres per minute, and if you work on the basis of six
8 relay spaces and you divided that into 410, each distance
9 is approximately 68 metres. So those figures seem to me to
10 be not so far away from the correct ones. In other words
11 something of the order of 70 metres is more or less the
12 distance which each relay section was supposed to take up,
13 and each one of those would probably on a normal day with
14 the sun shining and not anything unusual causing a problem,
15 would have taken about two minutes. Is that a – I accept
16 that it is unscientific, but I am trying to get a, what is
17 known in the classics as a ballpark figure and not a
18 precise scientific estimation. Do you go along with my
19 rough calculations, or is there something that I have
20 overlooked?

21 **BRIGADIER CALITZ:** I trust your math
22 is correct, Mr Chairperson. I will agree with you.

23 **CHAIRPERSON:** You can accept, even though
24 I did not use a calculator you can accept my arithmetic, but
25 my reasoning may be defective.

1 **BRIGADIER CALITZ:** I agree with you,

2 Mr Chairperson.

3 **MR CHASKALSON SC:** I also agree,

4 because I am afraid the reasoning is defective, Chairperson.

5 The distances that are measured here for the six Nyalas

6 do not take into account where Nyala 6 was supposed to go.

7 So you have used a base of 410 when the base should probably

8 have been somewhere around 460 or 450 –

9 **CHAIRPERSON:** You can adjust the

10 calculation to – we were trying, we were looking, as I

11 understand it, for approximation. Is that correct? And I

12 made my humble effort. If it is defective, I apologise. I

13 will not sulk and withdraw it. It can simply be improved by

14 putting in figures that are more accurate.

15 **MR CHASKALSON SC:** But Chairperson, I

16 have not been making myself clear because the speed that I am

17 interested in is the speed of the Nyala once it is deploying

18 the barbed wire, not the speed over a, you know from the

19 moment that the previous Nyala arrives to the moment that

20 that Nyala ends, because a large part of that two-minute

21 slot that we estimate for each leg, as it were, is in fact

22 time that is taken to take off the triangle at the back,

23 secure it; lay the wire out – well, take off the triangle,

24 go a bit forward, lay the wire out, pick the triangle up

25 and secure it. I am interested in the time when the Nyala

1 is moving because that is the time that is relevant to
2 whether the protesters could have passed Nyala 4 once it
3 had started moving. So how much of that two-minute leg is
4 ordinarily taken up by changeover business of taking the
5 triangle out, securing it, and so on?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 no, I am sorry to say – I will have to guess, and it will depend
8 on circumstances. On the day of “display,” which was
9 handed in as an “exhibit,” somebody made a
10 remark – I cannot recall who – that the fastening and the
11 off loading of the wire, took about five
12 minutes. The members were not under pressure,
13 and they just rolled out the wire,
14 the people there could see that they did not
15 “deliberately” did it slowly.

16 I am sorry; I cannot give you an indication
17 on how long it will take to download the wire,
18 no.

19 **COMMISSIONER HEMRAJ:** It was an
20 observation I made to you at the demonstration, Brigadier,
21 that just the taking off of the A-frame, dropping it down
22 and tying it to the Nyala behind it, took almost four to
23 five minutes.

24 **BRIGADIER CALITZ:** I apologise not
25 remembering – yes, Commissioner, I know someone asked me.

1 If it was you, I agree.

2 **CHAIRPERSON:** That was not, as you say, it

3 was not being done under pressure and presumably it can be

4 done much quicker if it has to be, and if you had a whole

5 series of Nyalas and you had a competition as to who could

6 do it quicker, with a substantial prize at the end, it

7 would take much less than four minutes, would not it?

8 **MR CHASKALSON SC:** Well, maybe we can

9 look at what distances Nyalas, what time it took Nyala 2 to

10 reach Nyala 3 once Nyala 2 had started moving and what time

11 it took Nyala 3 to reach Nyala 4 once they had started

12 moving.

13 **CHAIRPERSON:** Have you got that

14 information?

15 **MR CHASKALSON SC:** We do have that

16 information from the Rowland Headgear. We may be a second

17 or two out here, but we have Nyala 2 starting to roll out

18 its barbed wire at 16:09:09 on the Rowland Headgear clock,

19 and reach Nyala 3 on the Rowland Headgear clock at,

20 16:09:27. So it is 18 seconds.

21 **CHAIRPERSON:** What is the distance?

22 covered?

23 **MR CHASKALSON SC:** The distance will be

24 slightly less than the 80 metres that was planned. This is

25 after it have started moving. It is not for the whole

1 changeover, but once it starts moving to the point at which
2 it reaches Nyala 3 is 18 seconds.

3 **CHAIRPERSON:** So what speed is that? 18
4 seconds to traverse what?

5 **MR CHASKALSON SC:** To traverse, call it –
6 again we have not measured it exactly, but call it say 65,
7 70 metres. That is four metres per second, and –

8 **CHAIRPERSON:** And four metres a second is
9 how many kilometres an hour? It can be worked out, people
10 who –

11 **MR CHASKALSON SC:** I think you multiply
12 by 3.6 –

13 **CHAIRPERSON:** People who do running-down
14 cases can do these things in their head. I have not done
15 one for a long time. Is there anyone in the house who's
16 recently done a running-down case?

17 **MR CHASKALSON SC:** And the numbers for
18 Nyala 3 to Nyala 4 are roughly the same.

19 **CHAIRPERSON:** Forgive me, how many metres
20 a second?

21 **MR CHASKALSON SC:** Four metres per
22 second.

23 **CHAIRPERSON:** Okay.

24 **MR VAN AS:** Mr Chairperson –

25 **CHAIRPERSON:** Yes.

1 **MR VAN AS:** Roughly 15 kilometres an

2 hour, if my maths is not wrong.

3 **CHAIRPERSON:** Are you a running-down case

4 practitioner?

5 **MR VAN AS:** No, Mr Chairman.

6 **CHAIRPERSON:** You are a labour lawyer.

7 Alright, 15 kilometres an hour. Alright, okay, we will

8 accept that offer for the moment until there is a better

9 one, which there may never be. Thank you.

10 **BRIGADIER CALITZ:** I just want to

11 position, you said Nyala 3 now reached Nyala 4. Is that

12 where they start moving along or where they end up? I just

13 want to move the blocks as you explained.

14 **MR CHASKALSON SC:** Put Nyala 4 back to

15 where it was at the beginning.

16 **BRIGADIER CALITZ:** Here, there's the

17 picture, and there it was.

18 **MR CHASKALSON SC:** But it has already

19 moved a little bit forward, Nyala 4, remember, from the –

20 **BRIGADIER CALITZ:** As Nyala 3 approached

21 they –

22 **MR CHASKALSON SC:** No, no, Nyala 4 had

23 moved forward quite a long time before Nyala 3 approached.

24 We saw that on a video.

25 **BRIGADIER CALITZ:** Yes. I mean there was

1 a time that they moved together, yes.

2 **MR CHASKALSON SC:** Look, I am not sure

3 that we need to do this with blocks because it is really

4 just to give an estimate of what speed Nyalas were

5 travelling on the day when they were rolling out barbed

6 wire.

7 **CHAIRPERSON:** Mr Van As, I make it 14.4

8 kilometres an hour.

9 **MR VAN AS:** Correct, Mr Chairman.

10 **MR CHASKALSON SC:** But if we can leave

11 this point for now - we may come back to it later - and go

12 to incident 2 and at this stage if we can look, your

13 evidence is that your Nyala was still stationary when you

14 witnessed what you were able to see at incident 2. It was

15 still in the same position.

16 **BRIGADIER CALITZ:** Yes, I used, and I

17 referred to the CALS position -

18 **MR CHASKALSON SC:** Photograph, yes.

19 **BRIGADIER CALITZ:** Photograph, yes.

20 **MR CHASKALSON SC:** Now the Nyalas will

21 have changed quite dramatically at incident 2, but at this

22 stage I do not want us to reconstruct the scene for incident

23 2 yet based on photographs. I want you to tell us what you

24 saw and what you can remember seeing at incident 2.

25 **BRIGADIER CALITZ:** Incident 2, where they

1 already were there, or where they were cut off? If I am
2 just understanding you correctly.

3 **MR CHASKALSON SC:** Well, maybe you can
4 describe what you understand incident 2 to be.

5 **[11:27] BRIGADIER CALITZ:** Mr Chairperson,
6 I will use two of our Exhibit L slides, 197, and I think
7 194, I think we already had 197 on
8 the board, it is the yellow arrow that is
9 positioned to, - right down towards the protestors. At
10 this stage Nyala 5, as it is standing now on the,
11 we will call it the footpath and Nyala 6
12 was in the position as indicated there. When Nyala
13 3 and Nyala 4 moved together up to a point where Nyala 3
14 stopped, Nyala 4 started rolling out the
15 wire, and they reached the post. When they moved,
16 I saw the group moving down in a
17 tight formation. _____communications_____

18 I also gave evidence that the team at the back, the people that
19 sat on hill 1 and 2, followed them. Nyala 4
20 moved forward and if you look at slide 194, 194,
21 it is before they reached incident 2, you will see
22 Nyala 4, I just want to show his position properly, just
23 in front of the, - the footpath.

24 **MR CHASKALSON SC:** Sorry, Brigadier, we
25 can get to the photograph later but at this stage I just

1 want you to tell us what you remember seeing. We can

2 reconstruct the photograph quite easily but I do not want us

3 –

4 **BRIGADIER CALITZ:** I will get to that, I want

5 where I can see them and then explain to you where

6 I was and what I could see.

7 **MR CHASKALSON SC:** Okay, but what we

8 would really like is for you to tell us what you can

9 remember seeing, not what you can reconstruct off the

10 photograph.

11 **CHAIRPERSON:** You see, Brigadier, your

12 memory also has to be tested because, so it is important

13 for us to know what you remember.

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

15 Chairperson, I just wanted to say that Nyala 4 moved

16 forward at one stage. You asked me about Nyala 5 and I

17 replied that I do not know where it was at that stage, let us say it was here,

18 and the group moved forward, parallel, with Nyala 4 and

19 I instructed Nyala 4 to move faster and

20 it ended there at the end. The group

21 moved in behind them in a

22 western northerly direction in that formation and then

23 moved closer again. I think that is

24 what I could observe at that stage. When I saw them moving

25 toward incident 2, I gave the instruction to the

1 Pappa vehicles and the water cannons and I gave the
2 order to all my police officers to "engage, the
3 Pappa Nyalas moved forward and dispersed," I also instructed
4 the water cannons to move forward and
5 to started dispersing on the group that was moving
6 toward them.

7 **MR CHASKALSON SC:** Now if we go back to
8 the presentation, if we go to slide 196 it says that you
9 called up the water cannons at incident 1. It is just up
10 on the screen in front of you. It is the third bullet
11 point and we are talking incident 1. "At this stage
12 Brigadier Calitz gave a command for the water cannons to
13 come in behind the line of the negotiating teams," and then
14 if we go down to slide 199, we see on the fourth bullet
15 point that it says, "Water cannon started spraying the
16 attacking protestors to prevent them from entering the
17 police enclosure." Did you see that?

18 **BRIGADIER CALITZ:** Mr Chairperson, on
19 the first point it is negative. It was not during the
20 first incident, I said in my evidence, in 111 that, "The group
21 then moved back in that shape," and it was when
22 when they moved back to the kraal, it is when
23 I gave the order to the water cannons, and I see
24 what is standing in Exhibit L, but I testify that I gave the order
25 the second time they moved toward them,

1 at this stage they only came down and I though

2 Nyala 4 sufficient to cut off the people, so –

3 **CHAIRPERSON:** Alright, so may I ask,

4 sorry to interrupt.

5 **BRIGADIER CALITZ:** I beg your pardon?

6 **CHAIRPERSON:** May I ask whether this has

7 been filmed because I have not adopted the practice of

8 saying what this and that means, because I understood it is

9 being filmed. If it is not being filmed then we will have to

10 say what this and that mean, you know because people will

11 follow, we who will read it ourselves later will not know what

12 exactly you are saying.

13 **BRIGADIER CALITZ:** If I may repeat, Mr

14 Chairperson.

15 **CHAIRPERSON:** So what is happening, if it

16 is not being filmed I think we better go back to –

17 **MR CHASKALSON SC:** It is being recorded,

18 it has been recorded.

19 **CHAIRPERSON:** No, has it been recorded

20 visually as well - I see, okay. Oh, one of the problems is

21 that while you were explaining, even though it was being

22 filmed we of course did not see it on the screen at that

23 time, but anyway, perhaps you can go back a couple of steps

24 as it were and start telling again for the benefit of

25 everybody here in the Chamber, so that they can follow,

1 including us.

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 yes, thank you. I said it was the slide that the advocate

4 referred to, I cannot recall the number now, on top

5 it said that I gave the order at

6 incident 1, it would have been to Pappa1 and it is here

7 where the group moved down. I had no reason to do this,

8 as I found the wire being sufficient to keep the people

9 from moving down. Nyala 4 moved

10 on and ended near the

11 kraal, I then saw the protesters, the small

12 group in front, as well as the bigger group, which we can clearly see

13 on the photo in slide 194 of Exhibit L,

14 I think it is a very clear photo, if I can refer to

15 the photo.

16 It is where they saw them not moving

17 in a westerly direction.

18 I also realised the wire would not be enough

19 to stop the protestors and I then proceeded to the next step,

20 where I ordered the water cannons to move forward,

21 my Pappa Nyalas went to assist,

22 and disperse the group as per our force

23 continuum.

24 **MR CHASKALSON SC:** And, Brigadier, did

25 the water cannons respond in time to engage the strikers at

1 incident 2?

2 **BRIGADIER CALITZ:** I cannot tell you

3 exactly what happened at scene 2,

4 no. I think I moved toward incident 3 at one stage,

5 I moved from here, if I say here, I refer to the position of

6 Pappa2 at the eastern side of the small kraal, where the

7 water cannons were positioned. I was later informed –

8 **CHAIRPERSON:** We see that at some stage

9 where you went, but anyway I do not want to interrupt the

10 narratives as yet.

11 **BRIGADIER CALITZ:** I was later informed

12 that the water cannons was used, where

13 exactly I could not say at this stage, no.

14 **CHAIRPERSON:** As we understand you were

15 travelling, as it were, from the place where Pappa1 had been

16 situated to a spot on the other side of the small, -

17 **BRIGADIER CALITZ:** I will –

18 **CHAIRPERSON:** In the vicinity of the

19 small kraal?

20 **BRIGADIER CALITZ:** I will indicate it, yes.

21 **CHAIRPERSON:** And so therefore, you did not

22 actually see what was happening in incident 2 but, did you

23 not see it at all, or did you not see some of it, what is

24 the position because you were travelling, as I understand

25 it?

1 **BRIGADIER CALITZ:** Mr Chairperson,
2 when the group came there, I did observe the protestors in
3 that formation at the small kraal and I did not
4 observe Pappa9, Pappa7, or
5 Pappa3, the different vehicles, at that stage, the call sign is on the roof,
6 so from the side all the Nyalas look the same,
7 and the only difference is the two water cannons that came
8 into position at a later stage. I cannot tell you when
9 we passed them, and where
10 exactly they were positioned before they were used.
11 I went to incident 2 with quite a speed, from this
12 side, but I think –

13 **CHAIRPERSON:** You gave the instruction
14 that water cannons should be employed and so forth and
15 after you had given those instructions or possibly while you
16 were giving it; you then proceeded to a spot near the small
17 kraal, which you are going to show us in a minute?

18 **BRIGADIER CALITZ:** Mr Chairperson, -

19 **CHAIRPERSON:** Is that correct?

20 **BRIGADIER CALITZ:** - yes, in terms of
21 Standing Order 262, our policy, on how orders are given in
22 a dispersing action and the water cannons would then be
23 part of that force continuum. It depends on the
24 attack, we can use the water cannon, or
25 directly go on to using the stun

1 grenades, it depends on the distance, it depends on the action
2 lodged, but the
3 Pappa Nyalas, was ordered to use the water cannons and
4 disperse.

5 **MR CHASKALSON SC:** Brigadier, I just want
6 to clarify some confusion in my own mind because I always
7 understood your evidence to have been that, I must put it
8 to you that if it is as I understood it, it would be
9 correct in terms of the photographic evidence, that you
10 were in your position, your original Pappa1 position until
11 after incident 2, you did not leave, you saw incident 2 from
12 your Pappa1 position, I understood that to be your evidence
13 and I must put to you that is what the photographic and
14 video evidence also confirms.

15 **BRIGADIER CALITZ:** As I said, Mr
16 Chairperson, it is correct. I saw the group of protestors,
17 and my vehicles saw the
18 movement toward that specific point,
19 and I then gave my driver to move, so that we can
20 follow the Pappa Nyalas.

21 **MR CHASKALSON SC:** Now in incident 2 - that
22 we see described in the presentation, -

23 **CHAIRPERSON:** At 119?

24 **MR CHASKALSON SC:** 119, can we call that
25 up? We have dealt with the fourth bullet point, water cannon

1 started spraying the attacking protestors to prevent them
2 from entering the police enclosure. I understood your

3 evidence to be that you yourself did not see that.

4 **BRIGADIER CALITZ:** Not at that

5 stage, no, Mr Chairperson.

6 **MR CHASKALSON SC:** Now can I ask you, you

7 pointed out that water cannons are readily distinguishable

8 from Nyalas, whereas, we can understand if you will not know

9 which was Pappa9 and which Pappa8 and which was Pappa5, you

10 would be able to distinguish between a water cannon and a

11 Nyala at the distance from which you were looking.

12 **BRIGADIER CALITZ:** Mr Chairperson,

13 forgive me for putting it this way, but during the circumstances

14 we could not go through it minute by minute,

15 we did not have time. In these circumstances, I gave my vehicles an order to

16 disperse

17 and shouted at my driver, to move forward,

18 I was under pressure,

19 – I cannot recall exactly where I saw

20 the water cannon.

21 There was not time, I was sitting at the right-hand side at the back,

22 and if the Nyala moved in that direction and the

23 water cannon was on my left-hand side,

24 I would not be able to see them. If they were on my right-hand

25 side, maybe, I cannot tell, no,

1 the situation on that day was not of such that we had time to
2 look around.

3 **MR CHASKALSON SC:** But, Brigadier, your
4 attention would have been focused on the incident where the
5 strikers were allegedly trying to break into the police
6 enclosure, surely?

7 **BRIGADIER CALITZ:** Mr Chairperson,
8 yes, I already gave evidence thereto and said that I saw the
9 group moving in that direction, I referred to 194, where
10 you could see me. It is before Nyala 4 reached the kraal,
11 I was static and saw the group moving
12 toward the Nyala.

13 **MR CHASKALSON SC:** And when a water
14 cannon sprays that is obviously visible from a distance, is
15 it not?

16 **CHAIRPERSON:** Can we please now, if we are
17 not looking at slide 109, can we go back to seeing what is
18 happening on the, with the models?

19 **MR CHASKALSON SC:** In fairness to the
20 brigadier, I think the model is now a little misleading
21 because the original position he has not attempted to change
22 and I have not asked him to change.

23 **CHAIRPERSON:** No, but he was
24 demonstrating something which we could not see, that is the
25 reason why I raised the question.

1 **BRIGADIER CALITZ:** That is why I wanted
2 to set it up, I attempted to but I was stopped by my
3 learned colleague to do that. I wanted to set it up.

4 **CHAIRPERSON:** You are running the cross-
5 examination, but your learned colleague points out that he
6 wanted to do something different.

7 **MR CHASKALSON SC:** Well, he wanted to
8 recreate the image on slide 194 which is the slide of
9 incident 2. If he wants to do that by all means, I wanted,
10 before we got there just to ask the brigadier what he could
11 remember seeing because I would like to test his memory.

12 **CHAIRPERSON:** I think that was the point
13 being made, one of the things that is being done is testing
14 your memory and you know we cannot test your memory if you
15 look at slide 194 and put on the board what is on slide
16 194, because that is not your memory, you are just taking it
17 from 194, do you understand? So Mr Chaskalson will repeat
18 his question, you will answer it and then I take it that
19 after that you can move the box around.

20 **BRIGADIER CALITZ:** I accept it like that, Mr
21 Chairperson.

22 **MR CHASKALSON SC:** So I was asking about
23 the visibility of a water cannon spraying and I was putting
24 to you that if a water cannon had sprayed, that is
25 something that is visible from a long distance away, would

1 you accept that?

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

3 accept it with the words; it depends from where you saw it,

4 and if there was any obstruction. If there were no

5 obstruction, it would be able to observe

6 on a distance, correct.

7 **MR CHASKALSON SC:** Well, can we put it

8 this way, the cannon of a water cannon is mounted at a

9 height that is higher than a Nyala, would you accept that?

10 **BRIGADIER CALITZ:** I cannot recall

11 for sure, I know it is on the roof, I did not measure

12 heights, but I believe it can be

13 possible.

14 **MR CHASKALSON SC:** And if the water

15 cannon spray one will see something coming out of the water

16 cannon.

17 **BRIGADIER CALITZ:** Again,

18 it is so, you can see the water, the water canon sprays

19 in different valuations. It can spray

20 a meter in front of the Nyala is, I can lift it up

21 and I can spray 18 to 20 meters further,

22 so I would not be able to tell you if he sprayed at that stage,

23 if he was a meter in front of the water cannon, I do not think

24 the people at the back or at the side, would be able

25 to observe, it depends. The cannon is not on a fixed

1 position, if I may put it that way, all the time.

2 **MR CHASKALSON SC:** Well, the cannon is on

3 a fixed position, the angle of the cannon changes, the base

4 of the cannon are always fixed.

5 **BRIGADIER CALITZ:** We can demonstrate it

6 to the advocate at a stage, Mr

7 Chairperson. He can move to the left, right, up and down,

8 although it is mounted on the top, you pertinently referred

9 to when it is being sprayed, and I refer to your

10 question, if something comes out,

11 water, tear gas, coloured water, if it is mixed, it will show in

12 a direction or evaluation.

13 **MR CHASKALSON SC:** But you saw no water

14 cannon spraying at your incident 2?

15 **BRIGADIER CALITZ:** It is what I already

16 testified, Mr Chairperson.

17 **MR CHASKALSON SC:** Can we go back to

18 slide 199 to see what the next stage in the bullet point

19 is? So according to the slide after the water cannons had

20 sprayed this action had no effect on the protestors and

21 they kept on coming forward. POP members applied the less

22 than lethal measures including stun and tear grenades,

23 let us stop there. Did you see any stun grenades being used

24 at incident 2?

25 **BRIGADIER CALITZ:** I did hear the sound of a

1 stun grenade during the incident, it is

2 correct. I cannot recall from where, but I did hear

3 the sound.

4 **MR CHASKALSON SC:** Now when a stun

5 grenade is thrown one does not only hear it, one sees it as

6 well, is that not correct?

7 **BRIGADIER CALITZ:** There can be smoke,

8 but it depends on the circumstances of the day.

9 **MR CHASKALSON SC:** Well, when does one

10 not see smoke from a stun grenade?

11 **BRIGADIER CALITZ:** As I said,

12 it depends on the circumstances of the day, is there wind,

13 what is the direction of the wind, how strong is the wind,

14 it is not like tear gas that makes a huge cloud,

15 no.

16 **MR CHASKALSON SC:** But the stun grenade

17 in mid smoke, the question is whether it emits it high

18 enough for you to see?

19 **BRIGADIER CALITZ:** I will not be able

20 to tell you that, it is higher than my vision from the Nyala,

21 at that stage, so I cannot tell you I saw that, Mr

22 Chairperson.

23 **[11:46] CHAIRPERSON:** Sorry to interrupt you.

24 There are two points, are not there? The one is whether

25 there is visible smoke when a stun grenade is fired off.

1 Second question is if there is visible smoke, could a
2 particular person see it because his or her vision is
3 obscured by something else? The first question is, when a
4 stun grenade is fired, is there always visible smoke? If
5 you were standing right next to the shotgun – you use a
6 shotgun for stun grenade, do not you? So if you were
7 standing next to the shotgun, or you were firing the
8 shotgun yourself, would you see some smoke at least every
9 time a stun grenade is fired off?

10 **BRIGADIER CALITZ:** I believe there will be,
11 Mr Chairperson.

12 **CHAIRPERSON:** Right, that is the first
13 point. The next question is whether someone else at a
14 distance or an angle could see the stun grenade smoke,
15 would depend I suppose (a), on the amount of smoke there
16 was and the wind direction and so forth, but also on
17 whether his or her vision was obscured by something else.

18 Is that correct?

19 **BRIGADIER CALITZ:** It is correct, Mr
20 Chairperson.

21 **CHAIRPERSON:** Right, now I think that is
22 where Mr Chaskalson is now. Is that correct, Mr
23 Chaskalson?

24 **MR CHASKALSON SC:** It is correct,
25 Chairperson. Therefore, you say you heard something that you

1 identified as a stun grenade, but you did not see any smoke
2 from a stun grenade.

3 **BRIGADIER CALITZ:** It is my evidence,
4 Mr Chairperson. I heard that they were
5 busy with a dispersing action and I then instructed
6 the driver to move in that
7 direction.

8 **MR CHASKALSON SC:** But Brigadier, I have
9 to ask you to confine yourself to answering my question,
10 which was you heard something which you identified as a
11 stun grenade. Is that correct?

12 **BRIGADIER CALITZ:** Correct.

13 **MR CHASKALSON SC:** But you did not see any
14 evidence of that in the form of smoke from the stun
15 grenade?

16 **BRIGADIER CALITZ:** Correct, Mr
17 Chairperson.

18 **COMMISSIONER HEMRAJ:** A stun grenade.
19 Did you just hear a single stun grenade, or did you hear
20 more than that?

21 **BRIGADIER CALITZ:** Commissioner no, I cannot
22 can recall minute by minute – I did hear a sound from
23 that direction and then I yelled
24 at my driver, as the Nyala moved forward,
25 as I indicated,

1 and those that was inside the Nyala vehicle will know,

2 you cannot really hear what goes on, on the outside.

3 **CHAIRPERSON:** Teargas, did you see

4 teargas smoke?

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

6 think when we reached incident 3 –

7 **CHAIRPERSON:** No, we are busy with

8 incident 2 now. Did you at incident 2 see, roughly about

9 the time when you heard the stun grenade that you mentioned

10 to Mr Chaskalson, did you see teargas smoke?

11 **BRIGADIER CALITZ:** It is what I wanted to say,

12 Mr Chairperson, from this position, no. On my

13 to incident 3, while still at incident 2,

14 yes, there was smoke in the air.

15 **MR CHASKALSON SC:** Sorry, Brigadier, I

16 did not follow that answer. You say while you were on the

17 way, on the move, you then saw tear smoke in the air?

18 **BRIGADIER CALITZ:** May I say between the

19 “shack” and the – I mean the zinc house and the small kraal,

20 while moving there we could see smoke in the

21 air.

22 **MR CHASKALSON SC:** Yes, but that is quite

23 a long time after the alleged incident 2. While you were

24 stationary in that position, did you see any tear smoke?

25 **BRIGADIER CALITZ:** Not while I was

1 static, no.

2 **MR CHASKALSON SC:** Is it possible that

3 tear smoke would have been fired at incident 2 while your

4 vision was trained on incident 2, without your noticing the

5 teargas smoke?

6 **BRIGADIER CALITZ:** It is possible, Mr

7 Chairperson.

8 **MR CHASKALSON SC:** You say it is possible.

9 Could you explain to me how that may be possible?

10 **BRIGADIER CALITZ:** If you can maybe

11 just repeat the question. You said there were

12 "visual obstruction," or something in the way,

13 if I understand you correctly –

14 **MR CHASKALSON SC:** But smoke rises, does

15 it not?

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

17 Chairperson.

18 **MR CHASKALSON SC:** And even if you did not

19 see the tear smoke canister immediately, I would have

20 thought that after about five seconds there would be a tear

21 smoke cloud above incident 2 if tear smoke had been fired.

22 **BRIGADIER CALITZ:** I cannot testify under oath

23 that I saw it, no. When I moved into that

24 direction, I saw the smoke hanging in the

25 air.

1 **MR CHASKALSON SC:** You have said that
2 already, Brigadier, but again my question is, is it
3 possible that tear smoke would have been fired at incident
4 2 without your seeing it?

5 **BRIGADIER CALITZ:** I believe so, Mr
6 Chairperson.

7 **MR CHASKALSON SC:** Well, can you explain
8 how it would have been possible for you not to see tear
9 smoke that was fired at incident 2?

10 **BRIGADIER CALITZ:** It depends on when
11 the teargas was used, Mr Chairperson, and it depends
12 at which stage you moved away from
13 Pappa1, into that direction. I can tell you that while I
14 was static, it happened in front of me and when I looked
15 into that direction, I could see it. I said I yelled at the
16 driver and we moved into that
17 direction. That is the best explanation I can give.

18 **MR CHASKALSON SC:** But you see,
19 Brigadier, I have this difficulty about trying to pin down
20 your movements relative to incident 2 because at some
21 stages your testimony is that, or your basic testimony is
22 that you were stationary in that starting position until
23 after incident 2, and I have said to you that the
24 photographic and video evidence confirms that basic
25 testimony. Now assuming that to be the case, how would it

1 have been possible for you to miss tear smoke that had been

2 fired at incident 2?

3 **BRIGADIER CALITZ:** Mr Chairperson, if

4 there is such evidence, I would like it to be presented to me so that I can

5 see until when I was standing here. My they way I recall it, the group

6 made formation, as I explained in "slide" 194 of the

7 "presentation," and when my people started to operate there,

8 I ordered my Nyala to move forward. According to me

9 I gave the best possible explanation, but if there is "footage"

10 or evidence, maybe a photograph

11 taken from my position, proofing that there was smoke

12 and that I was standing outside my vehicle, looking into that

13 direction, then I will look at it. However, I can definitely not give

14 a second-by-second breakdown of how it happened and at what

15 stage the grenades were thrown. That I cannot do.

16 **MR CHASKALSON SC:** You see, I am wondering

17 how this narrative of incident 2 came into the presentation

18 about stun grenades in respect of which smoke was not

19 visible and tear grenades in respect of which clouds of

20 smoke were not visible to someone who was looking at

21 incident 2. Do you know who gave the information on the

22 basis of which this part of the presentation was included?

23 **BRIGADIER CALITZ:** Mr Chairperson,

24 yes, it is, the "narrative," if the Advocate asked, he are not aware

25 how it was compiled, I was not the only

1 person issuing orders, nor was I the only commander on that
2 day. The drivers of each vehicle will present
3 evidence, and there will also be evidence from the
4 people that fired their weapons. There are also statements
5 from the people throwing the "stun grenades" and the
6 teargas and I presume they will stipulate in their statements,
7 at what stage they did that.

8 Remember I said at, Roots in Potchefstroom all
9 the commanders were called to a meeting, and they had broken up
10 into groups. Luitenant-colonel Pitsi's group,
11 Luitenant-Colonel Mere's group and also the
12 Nyala group. To answer your question correctly,
13 Mr Chairperson, various statements
14 and inputs were used to determine what happened at
15 what stage.

16 **MR CHASKALSON SC:** But did you have
17 anything to do with the narrative that we see under this
18 fourth bullet point?

19 **BRIGADIER CALITZ:** Mr Chairperson, I cannot give input on
20 the "fourth bullet point",
21 I also gave my input at Roots,
22 regarding the negotiations, what I saw
23 at the scene and what orders and instructions I
24 gave.

25 **CHAIRPERSON:** Mr Chaskalson, I am sorry, I

1 think it is the fifth bullet point. It is the one beginning

2 with "This action had no effect."

3 **MR CHASKALSON SC:** Yes, well it is the

4 fourth and the fifth in fact -

5 **CHAIRPERSON:** The fourth is the water

6 cannon -

7 **MR CHASKALSON SC:** It was the fifth to

8 which I should have been referring.

9 **CHAIRPERSON:** I am sorry to speak over

10 you. The fourth relates to the water cannons. You say you

11 did not see the water, but you have explained how that could

12 have been. But so you could not have said the water cannon

13 started spraying from your own knowledge because you did not

14 see water. Is that correct? But others obviously, if

15 water was indeed sprayed there, would be able to give that

16 information, but the information could not have come from

17 you. Is that correct?

18 **BRIGADIER CALITZ:** I did not give that

19 information, no.

20 **CHAIRPERSON:** That is right, and then when

21 we move on to the next bullet point the stun grenades, you

22 say you heard stun grenades, a stun grenade, you cannot say

23 whether it was more than that. You did not see stun grenade

24 smoke, but that does not mean there was not but it means you

25 cannot, the information could not come from you, although you

1 could have talked about a stun grenade, from what you tell
2 us. You did not see at that stage, as I understand you,
3 teargas smoke, which was necessarily part of that. You did
4 see teargas smoke in the area at some stage, as I
5 understand you. Is that correct?

6 **BRIGADIER CALITZ:** Correct, Mr
7 Chairperson.

8 **CHAIRPERSON:** And you did not know, I take
9 it you do not know anything about the firing of rubber
10 rounds because you did not see that, did you?

11 **BRIGADIER CALITZ:** It will not come
12 from my evidence.

13 **CHAIRPERSON:** Yes, so the source or
14 sources of the information contained in the fifth bullet
15 point would be some person or persons other than you. Is
16 that right?

17 **BRIGADIER CALITZ:** Correct, Mr
18 Chairperson.

19 **MR CHASKALSON SC:** Well, what about the
20 conduct of the strikers? Did you see any of that?

21 **BRIGADIER CALITZ:** In my evidence, Mr
22 Chairperson, I only said the group stormed in
23 an "attacking position." From where I was standing,
24 I could see the crouching group in front, as well as the
25 bigger group that followed them, and that is why I gave

1 Nyala 4 the order to drive faster, and also gave the other
2 Pappa Nyalas the order to
3 "disperse", as a result of the behaviour of the "protesters" that I
4 observers, from the angle of the blocks
5 in front, toward the small kraal, I also ordered the
6 Public Order Policing Members to use
7 the water cannons to disperse.

8 **CHAIRPERSON:** In the fourth bullet point
9 it said "Water cannon started spraying the attacking
10 protesters." Now it seems from what you have told us that
11 you did not see any attacking protesters at that stage and
12 you did not see them being sprayed by water cannon in the
13 sense you did not see the streams of water coming into
14 contact with any of the strikers. Is that, from your own
15 knowledge you cannot tell us that. Is that correct? So
16 that information also must have come from some other person
17 or persons. Is that correct?

18 **BRIGADIER CALITZ:** No, Mr
19 Chairperson, yes, the first part; I did see the group in that
20 position ran toward them, that is the
21 "attacking," group in front, but I did not see
22 see the water cannon spraying in their direction.
23 It is correct, Mr Chairperson.

24 **CHAIRPERSON:** I understand you would have
25 been able to have seen the strikers at some stage, but

1 whether they were attacking is something that you cannot
2 tell us from your own knowledge. Is that right? You may
3 have received information about it, but you cannot from your
4 own knowledge tell us. Am I correct?

5 **BRIGADIER CALITZ:** The physical deed no,
6 just their position. You are correct, Mr
7 Chairperson.

8 **MR CHASKALSON SC:** Now Brigadier, the
9 verbs that you used were "stormed and running." Can I
10 assume then that what you saw were people, who were running,
11 moving fast?

12 **BRIGADIER CALITZ:** I think
13 we saw various videos of the formation. I will not
14 say running in meters per second, no, but
15 crouching, "clinging," and moving forward in that
16 formation. Crouching, forward
17 movement.

18 **MR CHASKALSON SC:** So running,
19 probably not a good word to use to describe them.

20 **BRIGADIER CALITZ:** Yes, in Afrikaans, no
21 I would say moving closer, while crouching, will state it
22 better.

23 **CHAIRPERSON:** Without an indication of
24 speed.

25 **BRIGADIER CALITZ:** Yes, no I did not

1 refers to the speed.

2 **MR CHASKALSON SC:** So why did you use the

3 words "stormed and running"?

4 **BRIGADIER CALITZ:** I cannot recall at what

5 stage I said that, or when I was asked the question.

6 I did see the group moving closer here and there.

7 Maybe you can help me with that.

8 **MR CHASKALSON SC:** Well, you used

9 "stormed" in response to my question. I think "running"

10 was in response to the Chairperson's question, but why did

11 you – well, let us start with "running." Why did you say

12 they were running when in fact you now say they were not

13 running?

14 **BRIGADIER CALITZ:** I think both you and the Chairperson, asked me

15 an explanation,

16 and I told you the formation in which they were and how they

17 moved. So at this stage the word running

18 did not indicated a 100m "relay",

19 no, it only indicated a group of people moving

20 into a direction with a specific purpose.

21 **MR CHASKALSON SC:** Now was this group

22 moving quickly or slowly?

23 **BRIGADIER CALITZ:** Mr Chairperson,

24 again, if I have to refer to speed,

25 if we crouch and walk forward, the speed you can

1 this at, that will be the speed. They did not
2 storm, nor ran from the group at the back.
3 They moved in that position, together as a
4 group.

5 **MR CHASKALSON SC:** And the verb "storm,"
6 why did you use that verb?

7 **BRIGADIER CALITZ:** Mr Chairperson, I
8 will describe it the same – stormed and running, in my language,
9 does not mean the same here,
10 so I will give the same explanation here as before.

11 **MR CHASKALSON SC:** And you from your
12 position could see them, you say, in this "crouching"
13 position, the crouched position?

14 **BRIGADIER CALITZ:** That is how they moved
15 closer during the first incident, then my vision was blocked,
16 I also saw,
17 incident 2.

18 **MR CHASKALSON SC:** At this stage I am
19 interested in incident 2 alone. You could see them in this
20 "crouching" position at incident 2.

21 **BRIGADIER CALITZ:** The persons in front,
22 correct.

23 **MR CHASKALSON SC:** Let us then follow your
24 movements a little further before we get to photographs and
25 videos. You say that shortly after incident 2, or just at

1 the point at which the SAPS engaged at incident 2, you

2 moved away from your starting position. Can you remember

3 why you did that?

4 **BRIGADIER CALITZ:** Mr Chairperson, I ordered my

5 Public Order Policing, the Pappa

6 Nyalas, to "disperse". I observed them and at this

7 stage I saw the people moving out from the hill, and

8 saw them forming a point towards us, in the direction

9 of the small kraal. I gave the order for the

10 "dispersion action" and moved forward as any commander would do,

11 so that I could see what was

12 happening.

13 **CHAIRPERSON:** Mr Chaskalson, when it is

14 convenient we will take another comfort break, but I am in

15 your hands to indicate when it will be.

16 **MR CHASKALSON SC:** Now is a convenient –

17 **CHAIRPERSON:** Alright, we will take a

18 comfort break for 10 minutes.

19 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

20 **[12:21] CHAIRPERSON:** The Commission resumes,

21 Brigadier, you are still under oath.

22 **MR CHASKALSON SC:** Thank you,

23 Chairperson. Brigadier, we were, you had just given us

24 your reason for moving from your starting position and if I

25 heard your testimony correctly, you said you had been

1 watching the koppie, in other words the main koppie, koppie
2 1 and you saw that everyone had now left that. You noticed
3 and I think your words were, "a point forming in
4 the direction of the hill," I think that is what you
5 said, that is my note of it, and you then gave an
6 instruction to your Pappa Nyalas to a dispersion action and
7 like every commander must do, you moved to get closer to
8 that position so that you could make yourself better aware
9 of what was going on. Did I understand your evidence
10 correctly?

11 **BRIGADIER CALITZ:** Sort of, Mr
12 Chairperson, yes, for example, at the hill, I did not wait
13 wait for all, some of the people were still there, but the point is,
14 I agree.

15 **MR CHASKALSON SC:** Now is this before or
16 after you have seen the Pappa Nyalas at incident 2 essentially
17 repel the strikers? —communications—

18 **BRIGADIER CALITZ:** If you say, this, what
19 are you referring to?

20 **MR CHASKALSON SC:** Well, when you took
21 the decision to move from your position?

22 **BRIGADIER CALITZ:** Mr Chairperson,
23 no, I thought I explained it earlier, I decided to leave my
24 position, because I ordered my Public Order
25 Policing Members, to move around the point,

1 and take action, I already told
2 my driver to move in that direction, so that
3 I could observe for myself what was happening there.

4 **MR CHASKALSON SC:** So you were looking,
5 you were telling your driver to go in the direction of
6 where incident 2 was happening at the kraal?

7 **BRIGADIER CALITZ:** Yes, maybe not at this point,
8 no, Mr Chairperson, but in that direction.

9 **CHAIRPERSON:** In a direction which would
10 bring you to a point from which you could see what was
11 happening in the vicinity of the kraal, is that correct?

12 **BRIGADIER CALITZ:** Just to get a better
13 position, Mr Chairperson, -

14 **CHAIRPERSON:** As I understand it you had
15 a difficulty from where you were in seeing what was going
16 on at the kraal, is not that so? You explained that, I
17 think?

18 **BRIGADIER CALITZ:** Correct.

19 **CHAIRPERSON:** So you decided, you had given
20 instructions that certain things were to be done, so you
21 decided to go closer so that you would be in a position to
22 see what was happening and presumably give further
23 instructions as and when they were required, is that
24 correct?

25 **BRIGADIER CALITZ:** Correct, Mr

1 Chairperson.

2 **COMMISSIONER HEMRAJ:** What was the

3 instruction that you gave to the Pappa Nyalas, to do what?

4 **BRIGADIER CALITZ:** Commissioner, when I was here,

5 I ordered the Pappa Nyalas, I used the

6 word "engage" and that is the

7 sign we used in order for all the members to

8 move into action.

9 I ordered the water cannons to

10 "Move forward, disperse," and for the Pappa Nyalas, "Go and

11 assist and disperse the crowd," so it will be a sign

12 to the other commanders, as each

13 Nyala vehicle has a group commander,

14 to give further orders to their members.

15 **MR CHASKALSON SC:** Now, Brigadier, two

16 things, firstly I think I said small hill, what I meant

17 to say was small kraal, is that correct?

18 **CHAIRPERSON:** I think we all understood

19 you to mean small kraal, did you understand him, Brigadier?

20 **BRIGADIER CALITZ:** I understood it.

21 **CHAIRPERSON:** That -

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson.

24 **MR CHASKALSON SC:** But your answer to

25 Commissioner Hemraj, you said that you, after using the

1 instruction "engage" you asked the Pappa Nyalas to disperse
2 and you called up the water cannons to engage in a
3 dispersion action, so were the water cannons called up for
4 your dispersion action only at about the point at which you
5 left your starting position?

6 **BRIGADIER CALITZ:** No, again I cannot tell
7 you the time, Mr Chairperson, but I would
8 have given that order. When I saw the crowd moving forward,
9 I gave a simultaneous order for the water cannons to move forward,
10 and for the Pappa Nyalas to move forward and
11 disperse. This would happen at the
12 stage when I was
13 static.

14 **MR CHASKALSON SC:** Okay, so you have
15 already given that dispersion instruction and then at a
16 certain point you decided to move. Is it because you want
17 to get closer to where the dispersion action is going to
18 take place so that you can see what is going on and control
19 it?

20 **BRIGADIER CALITZ:** Mr Chairperson, I
21 think we answered this question a few times already,
22 the commander, and me myself as a operational
23 commander, will move closer to observe
24 what is going on.

25 **MR CHASKALSON SC:** And at that stage the

1 action that was happening was on the west edge of the small
2 kraal, is that correct?

3 **BRIGADIER CALITZ:** On the corner where Nyala
4 4 arrived at the kraal, if that is what you are referring to,
5 in a westerly direction, yes.

6 **MR CHASKALSON SC:** And –

7 **CHAIRPERSON:** May I ask a question before
8 you proceed to the next one? Did you actually see Nyala 4
9 reaching that corner of the small kraal or was that
10 something that you assumed had happened and you know later,
11 from what you heard later did happen, but did you not
12 actually see it?

13 **BRIGADIER CALITZ:** No, Mr
14 Chairperson, it is what I answered a while ago,
15 the group stormed before Nyala 4 reached the kraal,
16 and I ordered my driver to exhilarate,
17 I also ordered the water cannons and the dispersion
18 action, because at that stage
19 I saw the possibility that they could
20 break through and because of various reasons,
21 we did not want that, if that answers the
22 question.

23 **CHAIRPERSON:** You have not actually
24 answered directly but never mind, I take it what you mean
25 is, you did not actually see the, I do not think it is

1 disputed that it did happen, but you did not actually see

2 Nyala 4 reaching the corner of the little kraal, is that

3 right?

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

5 Chairperson.

6 **MR CHASKALSON SC:** Now, Brigadier, while

7 your vehicle was moving where were you, first of all, where

8 were you? Were you still seated in the back right seat?

9 **BRIGADIER CALITZ:** Correct, Mr

10 Chairperson.

11 **MR CHASKALSON SC:** And where were you

12 looking?

13 **BRIGADIER CALITZ:** Mr Chairperson,

14 out of the seat in front, I gave the driver

15 instructions, while trying to observe,

16 what you can from a Nyala, as your vision is

17 limited, so –

18 **MR CHASKALSON SC:** But presumably you

19 were trying to see what you could of where the action point

20 was because that is where you wanted to, that is the

21 direction in which you wanted to move?

22 **BRIGADIER CALITZ:** If Pappa1 moved into

23 a northerly direction and I sit at the right hand side

24 in the back, I would have had to stand up or on my

25 knees to see pass the driver from my

1 commander seat. These seats are
2 raised, but from where we sat, we still had limited visibility on what
3 was happening in the front.

4 **MR CHASKALSON SC:** So you saw very little
5 while you were on the move?

6 **BRIGADIER CALITZ:** Correct, Mr
7 Chairperson.

8 **MR CHASKALSON SC:** Can you now tell us
9 the, - try to reconstruct your movements and maybe for this
10 we should take the four reserve Nyalas out the way because
11 they were nowhere near there anymore, but can you show us
12 roughly the movement that you made when you left your
13 starting position?

14 **BRIGADIER CALITZ:** Mr Chairperson,
15 yes, Pappa1 was this vehicle and I moved in a
16 north-easterly direction, the vehicle would have moved
17 straightforward. I cannot tell you if it was the route that
18 we followed. If I may indicate,

19 at this stage we could see action and
20 a bigger group at the top,
21 and realised the only exit was between the
22 zinc house and the kraal, and I then instructed
23 the vehicles, the
24 Pappa vehicles to block the group, the crowd.
25 I moved passed and ended in that

1 position, if it can be picked up, in the communication between me and

2 Pappa1, there is a wire there.

3 That was the approximate position where I ended.

4 **CHAIRPERSON:** For my benefit, can you

5 indicate where that wire was, do you remember there was a

6 wire and there were two poles, I think and there was an

7 entrance that you could go through? Can you more or less

8 indicate where that is?

9 **BRIGADIER CALITZ:** We agreed

10 that -

11 **CHAIRPERSON:** I understood you to say at

12 point you were between the two poles as it were, the fence,

13 at a gap in the fence, is that correct?

14 **BRIGADIER CALITZ:** At the right-hand side of

15 the -

16 **CHAIRPERSON:** Yes, you can mark that,

17 show that to us.

18 **BRIGADIER CALITZ:** M r Chairperson,

19 we agreed, Mr Chaskalson must just, - I will

20 indicate to him, I just cannot reach it myself.

21 **CHAIRPERSON:** That is the wire fence.

22 **BRIGADIER CALITZ:** I am not a 100% sure

23 about this fence here but, that fence are there.

24 **CHAIRPERSON:** So which fence are you not

25 entirely sure about? It is either the fence with the gap

1 in it that we can see, or the fence which surrounds the
2 plots on which the shack is situated, which is the one
3 you are not entirely sure of?

4 **BRIGADIER CALITZ:** No, Mr

5 Chairperson, it is correct, there where my Nyala is positioned,
6 that fence is correct, the one behind the shack,
7 I am not entirely sure to where it goes, - but I do not
8 think it is applicable.

9 **CHAIRPERSON:** The fence does not appear to
10 play any role in your actions, is that right?

11 **BRIGADIER CALITZ:** I know that.

12 **CHAIRPERSON:** As long as the fence with
13 the gap in it is correct, and then we can follow your story.

14 **BRIGADIER CALITZ:** Correct, Mr
15 Chairperson.

16 **CHAIRPERSON:** As you said, thank you.

17 **COMMISSIONER HEMRAJ:** And Pappa1, facing
18 in which direction in that position, Brigadier?

19 **BRIGADIER CALITZ:** Towards the, can we
20 call it the kraal on the north, Commissioner, I will have to
21 indicate it.

22 **CHAIRPERSON:** I think there are three
23 kraals there, are not there and the biggest one is the one
24 that you are referring to, is that correct?

25 **BRIGADIER CALITZ:** Yes, there were other

1 vehicles on my inside, two Casspir vehicles and another
2 vehicle.

3 **CHAIRPERSON:** I think we better move the
4 Casspirs now so that we can see where they were.

5 **BRIGADIER CALITZ:** I will just –

6 **CHAIRPERSON:** We have got some Casspirs
7 there, I believe?

8 **BRIGADIER CALITZ:** It is where I asked the
9 support from the,
10 the people in the vehicles on my inside, I think
11 two Casspir vehicles, – I mean, a Nyala vehicle and the
12 Casspir vehicles were standing on the corner and around the corner.
13 I think you can see it in the photo of Colonel Vermaak,
14 that we used. If we can maybe, move the vehicles as they
15 are in the vehicle –

16 **CHAIRPERSON:** Hopefully if we had them
17 where they were because –

18 **BRIGADIER CALITZ:** I will do it now for you,
19 –

20 **CHAIRPERSON:** - it is quite important for
21 us in order to follow your story.

22 **BRIGADIER CALITZ:** Pappa11 was right in front,
23 on the left hand side of the fence, right in front,
24 even more to the front, yes, that was the position of Pappa11, and then
25 the Scorpion vehicles were behind him.

1 **CHAIRPERSON:** The Casspir, sorry, that is
2 the Scorpion? Is that the Special Task Force Casspir? So
3 where was the Scorpion or was it where no –
4 **BRIGADIER CALITZ:** I have it, yes, no,
5 it the Casspir, maybe, I do not know if they will all
6 fit, and then on the photo I can see Pappa2 and Pappa4, Mr
7 Chairperson, if we have it like that –

8 **CHAIRPERSON:** Put the Casspirs in
9 position and the Nyalas and so on. Have we got yet, - has
10 the TRT line being formed yet or are we going to see that
11 later, and the POP line as well? You know these are all
12 going to be shown to us in due course, I think?

13 **BRIGADIER CALITZ:** Mr Chairperson,
14 it is almost as we have it,-

15 **MR CHASKALSON SC:** Sorry, Brigadier, my
16 concern is we are reconstructing possibly across two
17 separate times, so let us start with the reconstruction of
18 when you arrived, at the point that you arrived at the
19 kraal?

20 **BRIGADIER CALITZ:** At the point that I
21 arrived at the kraal; a lot of these vehicles were moving
22 in that direction, I think Nyala 6 was also, I remember
23 well, passing because that was a barbed wire Nyala, that
24 the driver said and we passed the barbed wire Nyala and
25 then to the far right I parked my vehicle. The other

1 vehicles there were –

2 **CHAIRPERSON:** I am sorry to interrupt, did

3 you park your vehicle where we see it now, or did

4 you park it somewhere else?

5 **BRIGADIER CALITZ:** No, against the

6 fence, Mr Chairperson. The Casspir blocks is a

7 little big, it needs to be smaller, I do not know if we

8 can replace them –

9 **CHAIRPERSON:** I suspect one Casspir block

10 will cover the area covered by two Casspirs, is that

11 correct?

12 **BRIGADIER CALITZ:** I want it to look like

13 the view was obstructed, there were quite some

14 space between the vehicles, if we look at the photo.

15 **MR CHASKALSON SC:** We have got a real

16 problem with scale because even the blocks behind are too

17 big for the scale, so the length that they stretch over is

18 longer than the actual length.

19 **CHAIRPERSON:** The scale is not so

20 important, it is the position really at this stage.

21 **BRIGADIER CALITZ:** Mr Chairperson, if

22 I look there, -

23 **COMMISSIONER HEMRAJ:** Mr Chaskalson,

24 because of the problem with the scale will it help for next

25 week to have a photograph of just that area that we are

1 dealing with which encompasses scene 1 and then try and set
2 that up for Monday to better understand perhaps the area
3 and the scale in particular.

4 **CHAIRPERSON:** Have that blown up you see,
5 so then the blocks most probably will be the right size, to
6 scale.

7 **MR CHASKALSON SC:** I think –

8 **CHAIRPERSON:** I understand we have to
9 have a bigger photograph to get the whole area, but if
10 we are going to concentrate now on what happened at scene 1,
11 which is effectively incident 3, we can presumably do it
12 more easily with the blown up picture of that portion of
13 the terrain.

14 **MR CHASKALSON SC:** No, I think that is an
15 excellent suggestion, Commissioners, we will, between us and
16 SAPS we will ensure that that happens. Maybe to avoid the
17 problems of scale now, Brigadier, if we could just talk
18 about the movements that you remember before you entered
19 the kraal area and I have just flicked your Pappa1 back. You
20 moved across, as you were saying, driving broadly in a
21 north/north-easterly direction. Can you recall as you came
22 by whether you passed any TRT members forming up?

23 **[12:41] BRIGADIER CALITZ:** Mr Chairperson, I
24 cannot recall it, but I might be possible.

25 **MR CHASKALSON SC:** So would you have

1 noticed them if they were forming up as you passed them?

2 **BRIGADIER CALITZ:** In the specific line where they
3 were standing in, specifically. It would have meant that I
4 drove through them. So if they went into formation,
5 it would be near the vehicle of Captain
6 Loest right in front. I believe at that stage
7 when they started with the action, they would have
8 gone into formation.

9 **CHAIRPERSON:** It sounds as if you are
10 speculating a bit. You said "it is what they would have
11 done" –

12 **BRIGADIER CALITZ:** I did not see
13 it –

14 **CHAIRPERSON:** You cannot from your own
15 knowledge say –

16 **BRIGADIER CALITZ:** I did not see it,
17 Mr Chairperson.

18 **CHAIRPERSON:** When Captain Loest comes, I
19 take it he can explain.

20 **BRIGADIER CALITZ:** That is what I try –
21 yes.

22 **CHAIRPERSON:** He will have the benefit of
23 this plan as well, of these blocks and so on, so he can
24 show us.

25 **BRIGADIER CALITZ:** They will definitely be able

1 to, Mr Chairperson.

2 **MR CHASKALSON SC:** And Brigadier, you

3 said that you had given an instruction to your POPS Nyalas

4 to block the, I presume the strikers. Where were they to

5 do the block, and where were the strikers that needed to be

6 blocked?

7 **BRIGADIER CALITZ:** It was at incident 2.

8 If you can recall, at one stage I said Nyala 4 did not reach the

9 yet, so while I ordered the Nyalas to

10 "disperse," I also instructed them to "assist" and

11 "block". What we mean with the word

12 "blocking," is, the Nyalas try to assist

13 with the wire. If the wire could not reach the

14 kraal, then the

15 Nyalas had to take in a position from where they would be able to

16 lodge an "dispersion action".

17 **COMMISSIONER HEMRAJ:** I am sorry, I do not

18 understand that blocking. Can you explain it again for me,

19 please?

20 **BRIGADIER CALITZ:** Commissioner, at this stage Nyala

21 4, did not reach the kraal as yet, and I ordered the

22 Pappa Nyalas to move closer and to

23 "disperse" and I instructed them to

24 "disperse and block." To block is one of our force

25 continuums. If needed the Nyala's would reach a stage and the

1 group commanders will give orders,
2 and I think it is –Pappa5, I think it was Colonel
3 Pitsi that ordered his vehicle to
4 move in and assist the vehicles,
5 where the “dispersion action” would take place. I
6 talk under correction but believe there will be evidence to that. So to
7 block means the vehicles closes a gap, which was not
8 covered by the wire. That is the meaning of the word
9 block –

10 **COMMISSIONER HEMRAJ:** Thank you.

11 **MR SEMENYA SC:** Yes, Chairperson, we must state
12 for the record as well, we have not interfered with the
13 evidence that Nyala 4 is hitting the corner of the kraal.
14 The evidence is it is Colonel Pitsi who does that. Nyala 4
15 did not get up to the corner of the kraal.

16 **CHAIRPERSON:** Nyala 4 did not actually
17 reach the kraal and the space between its front and the
18 kraal was occupied by Colonel Pitsi –

19 **MR SEMENYA SC:** Colonel Pitsi’s Nyala.

20 **CHAIRPERSON:** His Nyala, yes. Thank you.

21 Just remind me what was his number?

22 **MR CHASKALSON SC:** 5.

23 **CHAIRPERSON:** 5, I see, thank you.

24 **MR CHASKALSON SC:** Chairperson, at some
25 stage Nyala 4 did reach the kraal because there are a

1 series of aerial photographs that show it right up against
2 the kraal. Whether Colonel Pitsi got there first or not
3 may or may not be relevant to later evidence. So
4 Brigadier, you were intending, when you mentioned the block
5 you were talking about still incident 2 to the west of the
6 kraal, but you then drove up to the east of the kraal.

7 **BRIGADIER CALITZ:** Yes, I never gave the order to go to
8 western side of the kraal or to go around the
9 kraal. I told the "commanders" to "Move forward
10 and block." If you can recall, the initial briefing we gave them,
11 Mr Chairperson, was that we would move out between
12 the zinc house and the small kraal – we never
13 got to that – the police formed a formation
14 and we would have
15 dispersed with our actions. The group commanders would have
16 decided for themselves. It is impossible for – I think there was
17 16 Nyalas on that day– for all to move to one point,
18 so the group commanders would see that there
19 is a space being closed up, there
20 is an opening on that side, and we knew
21 it was the only exit point,
22 so the group commanders, would make their own decisions,
23 on how to move. I testified that when
24 Pappa1 moved forward there were already vehicles
25 between the zinc house and the small kraal.

1 At that stage, we were in the blocking process and
2 Pappa5 did it correctly, and I did not observe
3 Nyala 4 at that stage, but it was later
4 established and then the commanders would decide
5 and how to move into the block action around the
6 kraal and the
7 Public Order Policing Members would "deploy" on the sides,
8 from where the dispersing action would begin.

9 **CHAIRPERSON:** Am I correct in thinking
10 that one of the reasons why you went to the position that
11 you showed us was because you thought that the disperse and
12 disarm operation was going to take place and this would be
13 a good place to see the disperse and disarm operation from,
14 or am I misunderstanding?

15 **BRIGADIER CALITZ:** Mr Chairperson,
16 it was the only place I could move through and it
17 was the best position –

18 **CHAIRPERSON:** Yes, but the reason you
19 went was, you thought that eventually in due course that
20 day, that afternoon, the disperse and disarm operation was
21 going to take place –

22 **BRIGADIER CALITZ:** Yes.

23 **CHAIRPERSON:** And is that why you chose
24 to go to that spot?

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

1 Chairperson.

2 **CHAIRPERSON:** And then presumably when

3 you gave the warnings and so on, you would have given them

4 from there.

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

6 Chairperson.

7 **CHAIRPERSON:** Is that correct? I see.

8 **BRIGADIER CALITZ:** If it worked.

9 **COMMISSIONER HEMRAJ:** And were you the

10 first Nyala to go then through that gap between the small

11 kraal and the shack?

12 **BRIGADIER CALITZ:** No, Commissioner, I testified

13 that there were various group commanders that took their

14 Nyala vehicles through the zinc house and the kraal.

15 I think the one right in the front was Pappa11,

16 when we were stationed, they were on my far

17 left-hand side. Pappa11 was right in front, as you can clearly

18 see on the aerial photos of Colonel Vermaak.

19 He moved out the furthest and he is also the Nyala

20 that was attacked later on.

21 Where is 11? That is where Pappa11 was

22 positioned when I reached the fence,

23 I presume we are not at incident 3 yet,

24 but there were already vehicles positioned –

25 **CHAIRPERSON:** I am trying to get your

1 state of mind at the time you got to the positions you
2 showed us. So you said that is where you, from that
3 position you were going to give the warning before the
4 disarm and disperse operation began. From that position
5 you could best see what was going to happen in that area
6 where the disarm and disperse operation was to take place,
7 and did you think – this is your state of mind – did you
8 think that the blocking instruction that you had given
9 would be successful, in other words that the strikers
10 would not be able to move through; they would be confined to
11 the space on the other side of the small kraal, the space
12 where you intended them to be when the warning was to be
13 given and the disperse and disarm operation was going to
14 take place. Is that correct?

15 **BRIGADIER CALITZ:** Definitely, Mr
16 Chairperson. That was the idea and we believed
17 they would turn around in a western direction, which was a
18 200-degree open area at their back, or toward the
19 settlement. I believed the block and
20 “dispersion” would have the necessary effect on the crowd.

21 **MR CHASKALSON SC:** Picking up from the
22 Chairperson’s question, Brigadier, I just want to put to
23 you what seems to me a slight inconsistency in your
24 testimony today and your testimony in chief, because in
25 chief, if I understand your testimony correctly, you said

1 that you stayed in your starting position until Nyala 4 had
2 reached the kraal and you had seen the people turn around;
3 you had seen the strikers turn around at the kraal and you
4 thought that they were in the process of moving away, and
5 at that point you wanted to mount the dispersion action.
6 Can I take you to the relevant passage? It is page 17295,
7 at the bottom of the page, I will just read, "As I testified
8 earlier, the nose of the Nyala was now against the
9 kraal and the group moved away," and the
10 Nyala you are talking about I think is Nyala 4, "and when I
11 saw," and you say, "Just remember at that stage, by
12 vehicle, Pappa1 was still near to Nyala 3," in other words at
13 your original position, "when I saw the vehicle moving
14 away and the group moving around, I thought
15 the group was busy to 'disperse,' they were
16 scattering. In other words they were moving into the direction of the
17 Nkaneng settlement. I ordered the
18 Pappa vehicles, as we already had action at
19 incident 2 and already used some of the dispersing techniques,
20 we ordered the Pappa
21 Nyalas, which is the POP,
22 to follow me,
23 - between the zinc house and the kraal was the only
24 opening, I went through with my vehicle and
25 positioned myself against the fence. Now if I

1 understand that correctly, what it is suggesting is several
2 things; the first is that you only left your starting
3 position after you had seen the strikers turn around and
4 essentially be repelled at incident 2.

5 **CHAIRPERSON:** And after the Nyala 4 had
6 reached the corner of the small kraal.

7 **MR CHASKALSON SC:** Yes, I do not want to
8 say it is Nyala 4 because it may be Colonel Pitsi's Nyala.

9 I said Nyala 4; I should possibly withdraw that –

10 **CHAIRPERSON:** Okay, after the, whatever
11 Nyala it was that came into contact with the corner of the
12 small kraal, came into contact with the corner of the small
13 kraal. So it is either 4 or 5. Perhaps you can say after
14 either Nyala 4 or 5 came into contact with the corner of
15 the small kraal, and the strikers turn around. That is
16 correct, is not it?

17 **MR CHASKALSON SC:** And when you gave the
18 disperse order; it was not an order to disperse the strikers
19 at incident 2; it was in fact an order to embark on the
20 dispersion action that had previously been planned, which
21 was to disperse all of the strikers, disperse, disarm, and
22 arrest, as it were.

23 **CHAIRPERSON:** That is the continuation of
24 phase 3.

25 **MR CHASKALSON SC:** Indeed, Chairperson.

1 **CHAIRPERSON:** The first part of phase 3
2 was the uncoiling of the wire and thereafter things would
3 happen, but of course, he first had to be in position to
4 give the warning and allow time for the people to go and
5 that sort of thing.

6 **BRIGADIER CALITZ:** Mr Chairperson, if
7 I may answer the question in the points I have written it
8 down, I firstly said that I was
9 static until I saw the people turning around and running away,
10 did I say the people in front turned around and
11 ran away? I testified just now that
12 I saw the front point, where there were a
13 "dispersion" action in progress, I did say I saw
14 the group at the back moving and that is why
15 I gave my vehicles the instruction to
16 block. I cannot recall that I said I saw the whole group
17 in front moving back into a
18 westerly direction, no.

19 **MR CHASKALSON SC:** Brigadier, I think it
20 would be fairer to you if you had an opportunity to read
21 what you said at pages 17295 and 296, so I cannot put it up,
22 unfortunately, so can I –

23 **BRIGADIER CALITZ:** I trust your words,
24 if you can –

25 **MR CHASKALSON SC:** Yes, but just

1 heard it once.

2 **BRIGADIER CALITZ:** Okay.

3 **CHAIRPERSON:** While you are looking at it,

4 may I say I think the use of the word "dispersion" in that

5 context is possibly misleading. If you confine the word

6 "dispersion" to the implementation of the rest of phase 3,

7 you know the dispersion and disarming, so perhaps there's

8 another word to – can you think of another word, Mr

9 Chaskalson, to describe what he wanted to happen at the

10 point that he is now talking about? I think it is blocking

11 and - dispersing I suppose, yes alright. So if we use

12 "dispersing" just for the action of getting people to go

13 away, and we use the word "dispersal" to cover what was

14 going to be part of the continuation of phase 3, because

15 remember phase 3 was going to start with rolling out the

16 wire, then you were going to give a warning, and other

17 things would happen, and then one of the things that was

18 going to happen thereafter was dispersal. So if use those

19 wording – I do not know how you can do it in Afrikaans, but

20 otherwise, I mean if you talk about dispersal, dispersing,

21 in the context of what was happening on the other side of

22 the small kraal then there may be confusion.

23 **BRIGADIER CALITZ:** Which part do you want

24 me to read?

25 **MR CHASKALSON SC:** Fro, "Mr

1 Chairperson, you will see.”

2 **BRIGADIER CALITZ:** Line number?

3 **MR CHASKALSON SC:** 23.

4 **BRIGADIER CALITZ:** “At this stage you will see Nyala 4

5 stopped at the kraal.” Remember from my position,

6 it was me who gave him the instruction to go

7 there. I did testify that I saw him moving in

8 that direction and it was my conclusion that

9 he stopped. We now heard that he did not reach the kraal,

10 so it just confirmed what I said. “As I testified earlier,

11 the nose of the Nyala was now against the” –

12 **MR CHASKALSON SC:** And can we go up to

13 the next page, 17296?

14 **BRIGADIER CALITZ:** - “kraal and the group

15 moved away.” What I am saying is,

16 I presumed that the nose of the Nyala was against the fence,

17 and the group did move away at that stge.

18 If you recall the questions you asked me earlier,

19 I said that there was a

20 dispersing action, and that is what we refer to as the

21 order, “go and disperse,” which means

22 dispersing with “stun” grenade, teargas,

23 water and shotguns. While dispersing,

24 it looked to me that there were

25 people moving away and that was what I referred to there.

1 I never said the whole group turned around and moved away,
2 as you said just now. "When I saw the vehicle,
3 I" – where was I now? – "near
4 Nyala 3, at that stage my Nyala vehicle,
5 Pappa1 was still near Nyala 3," next to Nyala 3 –
6 **CHAIRPERSON:** That is where it was
7 positioned, was not it?

8 **BRIGADIER CALITZ:** It is right behind the
9 wire vehicle. It is correct. It was at the post,
10 we talked about the shadow at that
11 stage. "When I saw the vehicles moving away and the group
12 moving around," that is what I told you,
13 the group at the back moved around, it was closer to the
14 settlement, "I thought the people was busy to
15 'disperse'." In other words, after the
16 action lodged at incident 2, after they were fired at with
17 shotguns, the idea was that they
18 would scatter. I think Mr Chairperson
19 asked me the same question, what did I think
20 when driving around and did I think it would work. That is
21 what I meant in my evidence from earlier,
22 if the group was going to
23 "disperse" they would have reacted,
24 because we used rubber bullets and all the methods from
25 incident 2 against them, and I could not foresee any

1 reason why they would return, but rather just
2 retreat and move to the back where there were no
3 threat. "They
4 disperse."
5 "In other words they move away in the direction of the
6 Nkaneng settlement." That is how the
7 bigger group at the back turned.
8 Up to where must I - "I ordered the
9 Pappa vehicles, because we had action at incident
10 2 and used the dispersing techniques"
11 when I say used
12 dispersing techniques, it was not on "own
13 initiative" it was my orders and I
14 "continuously," communicated with the Pappa vehicles.
15 -
16 **[13:00]** It is where I ordered the
17 Pappa vehicles due to the action we had at incident,
18 2 to use the dispersing techniques, it is
19 the dispersion actions, we ordered the
20 Pappa Nyalas, the POP to
21 follow me as I moved in between,
22 the only opening between the zinc house
23 and the small kraal. I moved my Nyala
24 vehicle and took up my position at the fence.
25 I told them to disperse and

1 again gave the instruction that the Pappa Nyalas must follow me,
2 so those that were there already, and those at the back,
3 I told them to follow me. The plan was to go in to the
4 phase as it was initially planned, I think
5 that is what you refer to, Mr Chairperson, the
6 dispersal, the last phase.

7 **CHAIRPERSON:** The continuation to phase
8 2, that is in fact what you say because you wanted to give
9 the instruction.

10 **BRIGADIER CALITZ:** Yes.

11 **CHAIRPERSON:** And gave the order to
12 my Pappa Nyalas, to then make a line as with the planning of
13 phase 2. So in other words you were going to carry, at
14 that stage you were going to proceed with, is what you are
15 telling us, with phase 2?

16 **BRIGADIER CALITZ:** It is from where the
17 dispersement and follow up procedure would start.

18 I said against the fence, and on another
19 photo we will clearly see on the northern side,
20 under the police line –

21 **MR CHASKALSON SC:** Brigadier, from my
22 side I do not need you to repeat that further –

23 **BRIGADIER CALITZ:** Oh, okay.

24 **MR CHASKALSON SC:** - but I do have a
25 follow up question, if I can ask?

1 **CHAIRPERSON:** What Mr Chaskalson was

2 doing, he was suggesting to you-

3 **BRIGADIER CALITZ:** I understand -

4 **CHAIRPERSON:** - that the evidence which

5 we now see on the screen, which was evidence in chief, is

6 now different from the evidence that you have given us today.

7 Now he has not had a chance yet to put the second half of

8 what he says is a contradiction to you, is that right, Mr

9 Chaskalson?

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

11 Chairperson, contradiction may be too harsh but, Brigadier,

12 let me put to you what my concern is. This line of

13 questioning started with my asking you, when you took your

14 decision to move your starting position why did you it, and

15 your answer to me today was, if I can paraphrase, I did it

16 because there was an incident taking place at incident 2

17 and I needed to give some instructions to deal with that

18 incident and I needed to move my Nyala closer to where it

19 was happening so that I could get a better sight of it all

20 because as a commander I needed that to be in a position

21 where I would be best informed. That is broadly what your

22 answer was today. The evidence in chief is different.

23 The evidence in chief says you watched incident 2

24 from your starting position and when you saw that your

25 forces had successfully repelled incident 2, you then

1 decided to move your Nyala and to come around the kraal
2 because you then wanted to get on with what had originally
3 been phase 2. That is how I read the evidence in chief and
4 I need clarity from you on which of the two it was, because
5 if you were moving to deal with an incident at incident 2
6 then your focus would obviously have been there and certain
7 things will flow from that. If you thought that incident 2
8 had been dealt with and you were getting into position to
9 start or restart phase 2 of the original plan, then your
10 focus would have been elsewhere and different consequences
11 would flow from there. So I need to know which of the two
12 it was.

13 **MR SEMENYA SC:** Well, Chairperson, my following
14 of the evidence is different. Of course Mr Chaskalson kept
15 on saying, you were going there to solve what is happening
16 at incident 2 but the answers were never a, yes.

17 **CHAIRPERSON:** It is now one o'clock, I
18 think that the best way to deal with this will be when,
19 assisted by the transcript, which you will have on Monday.
20 We are not going to on any further now anyway, it is one
21 o'clock. I must confess my recollection is the same as Mr
22 Chaskalson, but my memory may be shown to be incorrect by
23 reference to the transcript, so we will wait for the
24 transcript. We then will be able to do it scientifically
25 as it were, on the basis of the exact words used and in the

1 meanwhile we will adjourn until Monday morning at nine
2 o'clock.

3 **[COMMISSION ADJOURNED]**

