

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 133

19 SEPTEMBER 2013

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<p style="text-align: right;">Page 14055</p> <p>1 [PROCEEDINGS ON 19 SEPTEMBER 2013] 2 [10:54] CHAIRPERSON: The Commission resumes, 3 somewhat later, I'm afraid, than the scheduled time, but 4 there were matters that had to be discussed in chamber. 5 You're still under oath, Colonel. 6 DUNCAN GEORGE SCOTT: s.u.o. 7 CHAIRPERSON: Mr Chaskalson. 8 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.): 9 Thank you, Mr Chairperson. Colonel, I'd like to start off 10 today's cross-examination with an apology to you. When we 11 were last here on Tuesday the 10th, I cross-examined you on 12 how SAPS had withheld Captain Nel's videos 229 and 230 from 13 the evidence leaders. You recall those were the videos 14 which showed Sergeant Venter throwing stun grenades from 15 the helicopter commanded by Brigadier Fritz, and you'll 16 also of course recall that in cross-examination I suggested 17 that you may have been responsible for this apparent 18 attempt to withhold relevant evidence from the evidence 19 leaders. You denied that that was the case, and to 20 substantiate your denial you invited us to examine the hard 21 drive on your laptop and the two external hard drives that 22 you've used in relation to Marikana. 23 Well, I'm happy to report to the Commission that 24 our experts have examined all three drives, analysed the 25 material on those drives, and the material that has</p>	<p style="text-align: right;">Page 14057</p> <p>1 under oath that you've not been party to, or aware of any 2 attempt by SAPS to tamper with the electronic evidence in 3 question. 4 COLONEL SCOTT: No, I haven't. 5 MR CHASKALSON SC: Well, let me put the 6 concerns on record so that you know exactly what it is that 7 I want you to confirm. I'll get to that in a minute, just 8 to tell you where I'm going – 9 CHAIRPERSON: Sorry to interrupt you. 10 You may also have some information about these points which 11 you can give us, even – you've already denied in advance 12 that you were involved in any sinister way, but if you have 13 any information which will help us to find the truth about 14 these matters, obviously we would encourage you to tell us 15 so we can take the matter forward. 16 COLONEL SCOTT: Understood, Commissioner. 17 MR CHASKALSON SC: In relation to Colonel 18 Vermaak's BlackBerry photographs and the water cannon 19 footage, I've got a few clarificatory questions which I'd 20 like to put to you, and then I'll put our concerns on 21 record and again ask you to confirm under oath that you've 22 not been party to or aware of any attempt to tamper with 23 the evidence. So if we can start then with the Sergeant 24 Mhlatsi videos, and we touched on this earlier in the 25 cross-examination last week, and if I can recap; you'll</p>
<p style="text-align: right;">Page 14056</p> <p>1 previously been deleted from those drives since August 2 2012, and I can confirm that the original set of Captain 3 Nel's videos that was downloaded onto your computer was 4 missing videos 229 and 30, and that videos 229 and 30 were 5 first loaded onto your computer only after the evidence 6 leaders had requested them. So I would like to apologise 7 for suggesting that you were the party within SAPS who was 8 responsible for the apparent attempt to hide videos 229 and 9 30. I understand that SAPS is now conducting its own 10 investigation to establish who that party was. When the 11 outcome of that investigation is reported to us we'll take 12 the matter further with whoever that responsible individual 13 is. 14 COLONEL SCOTT: Thank you. 15 MR CHASKALSON SC: There are three 16 remaining concerns I need to traverse with you in relation 17 to possible interference with the video and photographic 18 evidence. They concern Sergeant Mhlatsi's cell phone 19 videos, Lieutenant-Colonel Vermaak's BlackBerry photographs 20 of the 16th, and the Johannesburg water cannon footage of 21 the 16th. In the first two of these cases there are ongoing 22 investigations by SAPS; in the third there's an ongoing 23 investigation by the evidence leaders. So at this stage in 24 relation to Sergeant Mhlatsi's video I merely propose to 25 place our concerns on record and to ask you to confirm</p>	<p style="text-align: right;">Page 14058</p> <p>1 recall that the original set provided to us by SAPS was 2 exhibit JJJ25.1, and if we can just put that up on the 3 screen. Page 104 of file 1, Commissioners. 25.1, and 4 Colonel, you'll recall that that set was on its face 5 missing video 353, so the evidence asked for 353 and SAPS 6 provided the evidence leaders on 7 November with not only 7 353, but also 348 and 349. So the set after 7 November 8 that had been given to the evidence leaders was the set 9 that we showed at JJJ25.2 and 25.3. We can move forward 10 there. 25.2 and 25.3. So we hadn't been aware of the 11 existence of 348 and 349 until SAPS volunteered them. We 12 got the 353 for which we'd been looking, but it now appears 13 that 350 was missing as well because there's now a gap 14 between 348 and 350. 15 If we can shift to the next exhibit, which is – 16 sorry, well before we get to the next exhibit, we then 17 asked for 350 from SAPS and it was provided shortly after 18 the 7th of November. Can we have the next set, which is 19 25.4, which will show the full directory. This is a 20 properties view of the directory on the 7th of November. 21 I'm looking for 25.4. So this is the full directory that 22 we received from SAPS that runs continuously from 348 to 23 365. If we can shift to the properties view, which is 24 25.6, and what the properties view shows is that although 25 these videos were taken on the 18th, SAPS was unable to</p>

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1 download the original files with their original metadata
2 which would show us the date and time of the files.
3 So you see the files all have dates in October or
4 November, and indeed the three files that were provided to
5 us on the 7th of November have dates on the 6th of November,
6 that's 348, 349, and 353, and the file that came after the
7 7th of November, 350, has a date of the 8th of November. We
8 were interested in the real times, so we asked to see
9 Sergeant Mhlatsi so that we could download from his cell
10 phone his original files because we were confident we could
11 get the metadata off his cell phone.

12 If we can then move to JJJ83, which is the
13 directory we took from Sergeant Mhlatsi, and that is the
14 directory that we ourselves took from Sergeant Mhlatsi's
15 cell phone and if we can then shift to JJJ83.1 or 83.2,
16 which is the properties view, and you'll see that those
17 files have the correct original dates. They've got the
18 date and time stamps because we were able to recover that
19 from Sergeant Mhlatsi, but there was something very
20 significant about what we found on Sergeant Mhlatsi's cell
21 phone, which is illustrated in this list; if we can go back
22 to the thumbnails, which is 83.1. There isn't a 350 on
23 Sergeant Mhlatsi's cell phone. So when we examined
24 Sergeant Mhlatsi's cell phone there was no 350, but we've
25 been given a 350 by SAPS. So we then went back to look at

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1 the 350 that we had been given by SAPS and if we can play –
2 and here I, or if I can ask that we call up 83.3, which is
3 the thumbnail of the 350 that we'd been given by SAPS,
4 exhibit JJJ83.3, or is it a video? Sorry, it's a video.

5 If we can play the 350 that we were given by
6 SAPS, that's JJJ83.3, a short 17-second video.

7 [VIDEO SHOWN]

8 When we looked at it, we realised that it was
9 actually identical to the 353 that we had found on Sergeant
10 Mhlatsi iPhone, if I can just ask that the 353 from
11 Sergeant Mhlatsi's iPhone be played, that's 83.4.

12 [VIDEO SHOWN]

13 So this is the real 353 on Sergeant Mhlatsi's
14 iPhone and it's the same video that SAPS had given us as
15 350. But when we looked at the properties of the 350 that
16 SAPS had given us, they were very different from the
17 properties of the 353 on the iPhone original, so if we can
18 show now 83.8 and 83.9, which will illustrate that. There
19 we put up the two properties together. On the left are the
20 properties of the 350 that SAPS gave us, and – oh, no,
21 sorry. These are the wrong properties that are being
22 showed here. These are properties of the – on the left are
23 the properties of the 350 that SAPS gave us. On the right
24 are the properties of the 353 that SAPS gave us, which also
25 was the same video. I'm sorry, we've produced the wrong

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1 exhibit here. The comparison is the wrong comparison.
2 It's a comparison between the 350 that SAPS gave us and the
3 353 that SAPS gave us, which are also the identical video.
4 This cross-examination is running awry. It is the correct
5 comparison, but what I said to you was the – can we go back
6 to 83.4, which is the – 83.5, 83.5, I'm sorry, 83.5, which
7 should be the 353 that was on the SAPS list that was given
8 to us. Play 83.5.

9 [VIDEO SHOWN]

10 And again you'll see it's the same video. So
11 there are three identical videos, the 353 that SAPS gave
12 us, the 350 that SAPS gave us, and the 353 that we
13 retrieved off Sergeant Mhlatsi's cell phone. But if we
14 compared the properties of the two identical videos that
15 SAPS gave us, that would be the 350 and the 353, they
16 weren't the same, and that was what I was hoping to
17 illustrate with 83.8 and 83.9. So let's go back to 83.8.
18 So although the videos show the same images and were given
19 to us by SAPS as 350, the 8 November file, and 353, the 6
20 November file, they have different properties. So when you
21 look at them in a directory you won't see that they are
22 identical. The one is 47.4 megabytes, the other is 3.47
23 megabytes. One's much bigger than the other, and if we
24 look at the details view, which is the next exhibit, 83.9,
25 the frame width of the videos is different. The frame

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1 width of the one is 1280; the frame width of the other is
2 480, and then if we look at the thumbnail images on the two
3 videos, which are what one would see if one looked at the
4 thumbnail view of the directory, which is 83.6 and 83.7,
5 this is the thumbnail of 350, and one can see the SAPS
6 member standing on the left-hand side of this image,
7 which is what one would see when one looked at it in the
8 directory, and if one cuts to 353, one sees a different
9 image. The SAPS member is not in that image.

10 So what appeared to us was that an attempt had
11 been made to change the superficial appearance of one of
12 the two files so that they couldn't be seen to be identical
13 files. We've been given two identical files; one is 350
14 and is 353, but the properties were different, the
15 thumbnail was different. It looked to us as though someone
16 had created a false 350 by copying 353 and then changed the
17 appearance so that it couldn't be seen as a copy of 353,
18 and our technical expert has tried to recover file 350, the
19 real file 350 from Sergeant Mhlatsi's cell phone, but he
20 reports that the file has been removed from the phone in a
21 manner that has left no recoverable trace of that file.

22 Now as I indicated earlier, there is now an
23 ongoing investigation by SAPS into this issue, and I don't
24 want to deal with this matter in cross-examination until
25 that investigation has been completed. But for now I just

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1 want to ask you a series of questions so that you can
 2 confirm under oath that you have had nothing to do with
 3 what appears prima facie at any rate, to be an attempt to
 4 tamper with the video evidence in Sergeant Mhlatsi's cell
 5 phone. So the first question I'm going to ask you is have
 6 you ever seen the real file 350 on Sergeant Mhlatsi's cell
 7 phone?
 8 COLONEL SCOTT: No.
 9 MR CHASKALSON SC: Okay, the second
 10 question is, were you involved in any way with the creation
 11 of the videos 350 and 353 that were provided by SAPS to the
 12 evidence leaders?
 13 COLONEL SCOTT: No.
 14 MR CHASKALSON SC: And finally I'm going
 15 to ask you, are you aware of the identity of anyone within
 16 SAPS who's been party to an attempt to tamper with the
 17 videos on Sergeant Mhlatsi's cell phone, or to withhold the
 18 real file 350 from the evidence leaders?
 19 COLONEL SCOTT: No, I'm not aware of that
 20 either.
 21 MR CHASKALSON SC: Okay. Well at this
 22 stage I don't want to take the matter further with you
 23 until the –
 24 CHAIRPERSON: Do you know anything about
 25 those two items?

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1 COLONEL SCOTT: Chairperson, no, and I've
 2 just checked on my computer and the only place that that
 3 file does come up is in the evidence leaders' package that
 4 was given to me, and at the date I saw the properties when
 5 that file was downloaded to the evidence leaders is the 8th
 6 of November, I think it is, I was actually physically
 7 presenting the police presentation to the Commissioner at
 8 that time as well. So I don't know how it got there. I
 9 don't know, no reference to it, Chairperson.
 10 CHAIRPERSON: Thank you. Are you now
 11 moving on to a different topic? Is this an appropriate
 12 time for us to take the tea adjournment, or do you want to
 13 ask some questions before we do that?
 14 MR CHASKALSON SC: Chairperson, I'm going
 15 to move to the Johannesburg water cannon footage. It will
 16 be a while, so it would be an appropriate time.
 17 CHAIRPERSON: We'll take the tea
 18 adjournment at this point.
 19 [COMMISSION ADJOURNS COMISSION RESUMES]
 20 [11:34] CHAIRPERSON: The Commission resumes,
 21 you're still under oath, Colonel. Yes Mr –
 22 MR CHASKALSON SC: Colonel, I'm going to
 23 move now to the video footage from the Johannesburg water
 24 canon. This footage came to the evidence leaders in three
 25 instalments. The exhibit describing the files that came to

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1 us exhibit JJJ15 and maybe if I can ask for JJJ15.2 to be
 2 shown on screen which is a thumbnail view of the directory
 3 holding all three Jo'burg water canon files. It's page 192
 4 of the bundle in file 3. What you see there first is a
 5 folder called copy 12-11-19, we'll get to that. That is
 6 fact the third instalment. The first instalment that came
 7 to us on the 12th of November was the file with the name
 8 Jo'burg 2012-08-16, time 15:32:18. Are you familiar with
 9 that file?
 10 COLONEL SCOTT: Yes, I am.
 11 MR CHASKALSON SC: And that file, will
 12 you confirm, has footage from the water canon video on the
 13 water canon camera time that runs from 15:30:28 through to
 14 the end of the operation at Marikana. Can you confirm
 15 that?
 16 COLONEL SCOTT: Yes.
 17 MR CHASKALSON SC: And can you confirm
 18 also that the water canon camera clock is just over half an
 19 hour slow, so the real time of that footage runs from
 20 approximately 16h00 in real time which was approximately –
 21 sorry I've got it as running from approximately six minutes
 22 after the shootings at scene 1. Would you confirm that?
 23 COLONEL SCOTT: I'll take your word on
 24 that, I haven't checked it up in that way but I'll accept
 25 that, yes.

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1 MR CHASKALSON SC: Then on – so the
 2 footage starts from a point after the shootings at scene 1,
 3 you can confirm that?
 4 COLONEL SCOTT: Yes.
 5 MR CHASKALSON SC: Then on 15 November we
 6 were given the file Composite 2012-11-14 11:02 do you
 7 recognise that file?
 8 COLONEL SCOTT: I do, I know it's part of
 9 the water canon footage, I haven't spent much time in
 10 actually going through these. I think I watched them once
 11 each just to see what I could see which wasn't much, so
 12 I've never given them much attention.
 13 MR CHASKALSON SC: Well that file was
 14 supposed to have continuous footage from the water canon
 15 video that would show its operations earlier in the day in
 16 Muldersdrift and then runs straight through into Marikana.
 17 But in fact it only showed some operations in Muldersdrift.
 18 It had no footage from Marikana. Does that ring a bell for
 19 you?
 20 COLONEL SCOTT: Again I'll take your word
 21 on it, yes.
 22 MR CHASKALSON SC: And then we got the
 23 third copy, the third version which in the folder Copy 12-
 24 11-19 and if I can ask that we shift to exhibit JJJ15.3
 25 which is at page 193 where that file is described. There

<p style="text-align: right;">Page 14067</p> <p>1 the footages in that file VR movie, do you recognise that 2 file?</p> <p>3 COLONEL SCOTT: No, but again I'll take 4 your word that is the footage.</p> <p>5 MR CHASKALSON SC: Well that footage, if 6 needs be can be played at some stage, I wouldn't will that 7 on anybody though. It shows footage of the water canon 8 from Muldersdrift running through to 10:17:55 in the 9 morning and then cuts immediately water canon time 15:30:28 10 at Marikana which is in fact after the scene 1 shootings. 11 Are you familiar with the video that does that?</p> <p>12 COLONEL SCOTT: As I say I've watched 13 them but I haven't watched those that – I wasn't even aware 14 there was a build up to – I've only watched those two 15 videos from the water canons while they were at Marikana 16 itself. And I recall that because I think one of the 17 screens was very dirty, I don't know what the issue was 18 with the other one but there wasn't much to be seen in my 19 opinion.</p> <p>20 MR CHASKALSON SC: But the Jo'burg water 21 canon footage starts only after the scene 1 shootings. 22 You've never seen footage from the Jo'burg water canon from 23 before the scene 1 shootings have you?</p> <p>24 COLONEL SCOTT: No, that I can recall, 25 no.</p>	<p style="text-align: right;">Page 14069</p> <p>1 COLONEL SCOTT: I'll be honest, I didn't 2 – sorry I know, just as a figure of speech, I didn't even 3 know the water canons had a video capability.</p> <p>4 MR CHASKALSON SC: And when was the first 5 time people brought to your attention that the water canons 6 had a video capability?</p> <p>7 COLONEL SCOTT: That I can recall, we 8 were in consultation in Sandton. There may have been talk 9 about it before then but the first time that I can 10 definitely recall was in Sandton where the video operators 11 or the water canon operators were called in for 12 consultation there to explain why there wasn't video 13 footage for that matter.</p> <p>14 MR CHASKALSON SC: But presumably when 15 someone's called in to explain the absence of video footage 16 or one is aware of the ordinary situation being one where 17 there would be video footage –</p> <p>18 COLONEL SCOTT: That is so but as I say, 19 I met the members there in – it could have been made known 20 at Roots as well. I'm not sure, this is why I can't 21 remember but the time I can recall being with those members 22 was in Sandton because they were called at the same time as 23 me for consultation.</p> <p>24 MR CHASKALSON SC: And can you date that 25 approximately?</p>
<p style="text-align: right;">Page 14068</p> <p>1 MR CHASKALSON SC: I want to ask you 2 questions about the water canon footage. When you were 3 tasked by General Annandale to collect video footage did 4 you expect to receive water canon video evidence?</p> <p>5 COLONEL SCOTT: Well I did. I was told 6 to go to the Hawks, their offices in Pretoria. It was over 7 a weekend, I know that and I think it may have been at the 8 same time as I was presenting in the Commission. And I do 9 recall it was definitely a day off being a Sunday because 10 the guards had to still open up a little office and let me 11 sign for whatever the evidence was which I now know was a 12 hard drive but it was in a sealed envelope which I then 13 delivered back to General Annandale that Monday morning.</p> <p>14 MR CHASKALSON SC: But what you're 15 describing is presumably something that took place in 16 November.</p> <p>17 COLONEL SCOTT: Yes</p> <p>18 MR CHASKALSON SC: 2012. My question was 19 directly slightly differently. You were originally tasked 20 back in August 2012 to gather all video evidence or to be 21 the archive for all video evidence of the event.</p> <p>22 COLONEL SCOTT: To be the archive, yes.</p> <p>23 MR CHASKALSON SC: At that stage did you 24 expect video evidence from the water canons to be brought 25 through to you?</p>	<p style="text-align: right;">Page 14070</p> <p>1 COLONEL SCOTT: I'm not sure, we were in 2 your office, I'm not sure.</p> <p>3 MR CHASKALSON SC: Then I'll probably be 4 able to date it but that would have been in October.</p> <p>5 COLONEL SCOTT: In October, yes.</p> <p>6 MR CHASKALSON SC: Before that stage were 7 you – is your evidence that you were unaware that the water 8 canons had a video capacity?</p> <p>9 COLONEL SCOTT: Well I'm not familiar 10 with them. I don't recall it ever being discussed in any 11 circles that I was in. It may have been but it was never 12 pertinently a point that I had taken up.</p> <p>13 CHAIRPERSON: We know that Colonel 14 Vermaak I think, when he came down back to the ground after 15 being up in the helicopter on the afternoon of the 16th of 16 August, according to a note in the occurrence book he asked 17 for all video material. Now I take it he would have known 18 that the water canons had video cameras, so do you know 19 anything about that, the request from him or from anybody 20 else for that matter for video material to view on the 21 afternoon of the 16th after the shootings?</p> <p>22 COLONEL SCOTT: I don't, Commissioner, 23 it's the first I'm hearing that Colonel Vermaak would have 24 asked for that as well. I'm not sure why he would have 25 asked for it. All I'm aware was that General Annandale</p>

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1 gave instruction on the days following that all video
2 footage should be brought to me. I didn't go out looking
3 for it thus because you know people would be coming to me
4 with what they had. So no I wasn't aware of that, no.
5 MR CHASKALSON SC: I'd like to refer you
6 to what will be exhibit JJJ166 which is an email from
7 SAPS's attorneys on 12 November 2012. Commissioners, I
8 must apologise, a copy of this email is still being printed
9 for your files, so we will have them –
10 CHAIRPERSON: But I must give it an
11 exhibit number mustn't I?
12 MR CHASKALSON SC: JJJ166.
13 CHAIRPERSON: JJJ166, email evidence,
14 this is the SAPS is it? Yes, Mr Pretorius, SAPS attorney
15 to evidence leaders.
16 MR CHASKALSON SC: To evidence leaders 12
17 November 2012.
18 CHAIRPERSON: Yes, that document will be
19 exhibit JJJ166.
20 MR CHASKALSON SC: This was the
21 explanation that came to us from the SAPS attorneys for the
22 initial absence of water canon footage and its subsequent
23 emergence. "We confirm that the personnel who worked with
24 the water canons indicated they did not use the video
25 cameras of the water canons due to the following reasons,

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1 1. Lack of training in respect of the one water canon. 2.
2 Due to a lack of time caused by the sudden attack by the
3 protestors the video camera of the second water canon was
4 not used. One of the commanders of POPs investigated the
5 possibility that the water canon video cameras could have
6 recorded automatically. We confirm that there are some
7 video footage available which was downloaded by the experts
8 due to the difficulty and technicality thereof. We confirm
9 that the available video footage will be submitted to the
10 evidence leaders as soon as possible." Now the reference
11 in the penultimate paragraph to footage downloaded by the
12 experts, does that refer to what you were describing in
13 relation to your visit to the Hawks?
14 COLONEL SCOTT: I would think so, yes.
15 I'd heard General Annandale mentioning that they even went
16 as far as going to a university to assist with the
17 downloading process. I'm not sure at what stage they
18 became aware that there was footage but that was just in
19 the sort of side bar talking but where I'd gone to I'm
20 presuming those experts or either the Hawks dealt with
21 those experts or possibly those experts reside within the
22 Hawks. I'm not sure but I collected the package from the
23 Hawks' office.
24 MR CHASKALSON SC: And is the officer
25 Hawks who was responsible for the downloading Colonel

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1 Sales?
2 COLONEL SCOTT: I can't say with
3 certainty, I have heard his name mentioned. As I say I was
4 there on a day when no one was there. The security guards
5 posted at the gates, opened up and were told to give me a
6 package which was locked inside which I signed for there.
7 MR CHASKALSON SC: So you, yourself
8 didn't have any direct dealings with the Hawks' experts who
9 did the downloading?
10 COLONEL SCOTT: No.
11 MR CHASKALSON SC: You say General
12 Annandale sent you to collect it from the Hawks.
13 COLONEL SCOTT: Yes.
14 MR CHASKALSON SC: To collect the package
15 of video footage from the Hawks. At the time prior to
16 General Annandale sending you to the Hawks were you aware
17 that video footage had emerged from the water canons?
18 COLONEL SCOTT: I think, as I say there
19 was the chatter that there was – well obviously I must have
20 been aware because I had heard of the difficulty in the
21 actual downloading it off the cameras. I'm just trying to
22 recall but I think they said that they were able to view
23 it, I think inside the water canon and that's how they
24 became aware of it but they didn't know how to get it off
25 the device inside the water canon. That's about as much as

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1 I know concerning that.
2 MR CHASKALSON SC: And when did you first
3 see footage from the water canons?
4 COLONEL SCOTT: No, it was after the – I
5 think it was maybe a day or two after I delivered it.
6 MR CHASKALSON SC: So you, yourself never
7 viewed footage inside a water canon?
8 COLONEL SCOTT: No.
9 MR CHASKALSON SC: Are you familiar with
10 the inside of a water canon and a video consol inside a
11 water canon?
12 COLONEL SCOTT: No, also not.
13 MR CHASKALSON SC: Well, Colonel, the
14 evidence leaders do have remaining concerns about why the
15 Johannesburg water canon footage that we now have starts
16 only at Etv time 16h00 and doesn't cover any of the events
17 at scene1, so we are investigating this issue. I'm not
18 going to take it further with you now, but I would want to
19 put to you a series of questions again just to confirm that
20 you're not aware of anything untoward in this regard. So
21 the first question is, well you have already answered.
22 Well let me put it to you again because your answer wasn't
23 necessarily unequivocal. Have you ever seen any footage of
24 scene 1 from the Johannesburg water canon?
25 COLONEL SCOTT: From scene 1, no.

<p style="text-align: right;">Page 14075</p> <p>1 MR CHASKALSON SC: And you're clear on 2 that?</p> <p>3 COLONELS SCOTT: Well to be honest I'm 4 taking your word on it. I watched it, I couldn't really 5 see what I was seeing. I don't even know if it's the one 6 with the dirty screen.</p> <p>7 MR CHASKALSON SC: No, no, no it's the 8 one with the clean screen.</p> <p>9 COLONEL SCOTT: I think it would have 10 made an impact if I had seen it, so I'll agree with you, 11 no.</p> <p>12 MR CHASKALSON SC: And are you aware of 13 any attempt within SAPS either to destroy footage taken by 14 the Johannesburg Water Canon at scene 1 or to withhold it 15 from the Commission?</p> <p>16 COLONEL SCOTT: No, I'm not aware.</p> <p>17 MR CHASKALSON SC: Alright, Colonel, if 18 we can move to –</p> <p>19 CHAIRPERSON: Can I ask a question if 20 you're moving on? Was the question of the Johannesburg 21 water canon video footage, the availability thereof or the 22 non-availability thereof discussed at Roots at all in your 23 presence?</p> <p>24 COLONEL SCOTT: Commissioner, not that I 25 can recall. It may have been discussed on side bars when</p>	<p style="text-align: right;">Page 14077</p> <p>1 sending the photos sporadically over the days from his 2 Blackberry to Brigadier Pretorius as situation reports. 3 "Brigadier Pretorius would forward these photos to me to 4 assist with keeping me up to date. At the end of each day 5 Lieutenant-Colonel Vermaak would download photos onto my 6 computer." And you clarify a couple of pages down at 7 paragraph 45.7.1 that this process started on the 15th of 8 August where you say "Blackberry photos from Lieutenant- 9 Colonel Vermaak sporadically sent via GSM networks since 10 Wednesday 15 August but fully downloaded sometime in the 11 immediate days following 16 August 2012." Now if Colonel 12 Vermaak was sending you situation reports they were 13 presumably designed to get to you as a planner and to get 14 to the JOC commanders as quickly as possible because 15 there's no purpose in a situation report that arrives after 16 the situation has changed materially.</p> <p>17 COLONEL SCOTT: Ja, what I can say is he 18 was BBM-ing them to Brigadier Pretorius and she was 19 emailing them to me. I've looked at them since and there's 20 an actual email how you can see they were sent to me from 21 Brigadier Pretorius. As far as I'm aware she was also 22 giving them to the senior officers in the JOC, the 23 commanders, so I was sort of a CC to it.</p> <p>24 MR CHASKALSON SC: So it would be one 25 email that would go out from Brigadier Pretorius to</p>
<p style="text-align: right;">Page 14076</p> <p>1 they brought the groupings in to speak about things that – 2 not that I can recall. I've got no specific memory of that 3 being mentioned. As I say, the only time I can 4 specifically remember that was when we met at Advocate 5 Chaskalson's office when the same video operators were 6 there or the water canon operators were there. And I was 7 actually sitting down loading videos while they were in 8 consultation and I was listening at the same time, picking 9 up what was going on. But outside of that I don't recall 10 any other time.</p> <p>11 MR SEMENYA SC: Chair, just for the 12 record, we are not taking issue with the questions because 13 they are probing questions but it must not be left 14 lingering that there is evidence by the evidence leaders of 15 any attempts to destroy images on a water canon depicting 16 scenes of scene 1.</p> <p>17 CHAIRPERSON: I think the questions were, 18 as you say, probing questions, they weren't based on 19 anything being put so it's right for you to note the point, 20 it is now noted on record.</p> <p>21 MR CHASKALSON SC: Colonel, if we can 22 move to Colonel Vermaak's Blackberry photographs and these 23 are addressed at various points in your statement. At page 24 127, paragraph 45.1, you mention that there were photos 25 which were provided by Lieutenant-Colonel Vermaak who was</p>	<p style="text-align: right;">Page 14078</p> <p>1 yourself and other members of the JOC.</p> <p>2 COLONEL SCOTT: As far as I can put 3 together, yes.</p> <p>4 [11:54] CHAIRPERSON: Can I ask a question about 5 that? I see that in paragraph 19.2 of your statement, 6 that's your statement HHH20, page 92. You say after the 7 accident which was mainly coordinated by the voice of 8 Brigadier Calitz – sorry, can't you find it? I'll read 9 again from the beginning of the paragraph. "After the 10 accident which was mainly coordinated by the voice of 11 Brigadier Calitz Lieutenant-Colonel Vermaak started 12 providing situational awareness from the peace helicopter 13 call sign Chopper 1." And then you go on to say what he 14 reported. Now, that situational awareness that he was 15 providing was that simply by voice or was that also 16 Blackberry photographs?</p> <p>17 COLONEL SCOTT: Chairperson, I've also 18 checked up on – I'll answer that question. It was by 19 voice. I have checked up when was the last BBM that I 20 received via email and that was sometime in the morning of 21 the 16th, but the situational awareness I'm speaking of here 22 was through his voice speaking out, giving direction to the 23 ground and we were listening obviously to what was going on 24 and receiving situational awareness by listening to what he 25 was saying during the operation.</p>

<p style="text-align: right;">Page 14079</p> <p>1 CHAIRPERSON: Wasn't one of the things he 2 was supposed to be doing taking pictures on his Blackberry 3 and then sending them through to the JOC? Wasn't that one 4 of the reasons he was up there in the helicopter? 5 COLONEL SCOTT: Yes, well, we know that 6 he did take pictures with his Blackberry because they're 7 available. Whether they were sent through at the time that 8 he took them I'm unsure, but I could imagine that he got – 9 you know, there was a lot going on, on the ground. To 10 still sit and want to find and send and – would be a 11 problem. 12 CHAIRPERSON: To whom would he have sent 13 them if he did send them? 14 COLONEL SCOTT: Well, if he was sending 15 he would've probably followed the same chain he had been 16 through the days and that would've been to Brigadier 17 Pretorius. 18 CHAIRPERSON: Thank you. 19 MR CHASKALSON SC: Maybe if I can just 20 pick up from the chairperson's evidence, you – evidence, 21 question, your evidence in response to the chairperson. 22 CHAIRPERSON: I'm not under oath. 23 MR CHASKALSON SC: If we go to page 97 of 24 that statement, paragraph 25.2 – I apologise for that. 25 There you said, "I received input from" and there you were</p>	<p style="text-align: right;">Page 14081</p> <p>1 specific case where you had two or three photographs from 2 Colonel Vermaak describing the movement of the crowd and 3 you later called for more. 4 COLONEL SCOTT: Ja. It was either on 5 Thursday going into the evening or it could've been Friday 6 morning. I'm not too sure, but it was definitely before 7 the briefing that I had to set up for the national 8 commissioner because I remember Colonel Vermaak showing me 9 on his Blackberry these photos of that and, I mean, that 10 was, to us at that time made a lot of sense to what we'd 11 been hearing over the radio, thus necessary for putting 12 into the peace presentation for the national congress media 13 briefing. 14 MR CHASKALSON SC: So do I understand you 15 correctly that while you were preparing the presentation or 16 the media briefing Colonel Vermaak was there with his 17 Blackberry and you identified certain photographs on his 18 Blackberry that you wanted to use in the presentation? 19 COLONEL SCOTT: He actually approached 20 and showed certain photographs. 21 MR CHASKALSON SC: And then you 22 downloaded those photographs specifically but not the full 23 set? 24 COLONEL SCOTT: I don't recall how they 25 were downloaded. They could've just been passed on via the</p>
<p style="text-align: right;">Page 14080</p> <p>1 speaking about the sources at your disposal on the evening 2 of the 16th of August for the briefing memo you drafted for 3 the president. 4 COLONEL SCOTT: Yes. 5 MR CHASKALSON SC: And you state, "I 6 received input from many sources, including Brigadier 7 Pretorius, with regard to the history and statistics to the 8 violence and from Captain Adriaio who was monitoring the 9 video footage, then from the photographs handed in by 10 Lieutenant-Colonel Vermaak. I do not recall the other 11 sources of information although there were many." And then 12 in evidence on Monday last week at page 1383 you clarified 13 I think with reference to this passage that the only 14 photographs that you – the only Colonel Vermaak photographs 15 that you've received by the evening of the 16th were two or 16 three Blackberry photographs which showed the movement of 17 the crowd. If I can read your evidence at page 1381, "I 18 was however aware of Colonel Vermaak's on his Blackberry 19 specifically because those were important to us for the 20 presentation. We wanted to know because initially we just 21 – I think we got the two or three which showed the movement 22 of the crowd and we knew there were more." Do you recall 23 when the chair – I think it was in response to questioning 24 from the chairperson about when you called for further 25 photographs and you answered with reference to this</p>	<p style="text-align: right;">Page 14082</p> <p>1 Blackberry or – but I know I didn't have the full set at 2 that time, yes. 3 MR CHASKALSON SC: To move to a different 4 topic in relation to Colonel Vermaak's Blackberry 5 photographs, the evidence leaders are concerned about a 6 strange and inconsistent pattern in that it's a strange 7 pattern, it's also an inconsistent pattern in the 8 properties of the electronic files of the Blackberry 9 photographs of Colonel Vermaak and you know what I'm 10 referring to because we've discussed it before, but we need 11 to go slowly through it for the benefit of the record and 12 the commissioners and the parties present. In the file 13 properties of the photographic file that is stored on a 14 computer – Colonel, you're aware that in the file 15 properties of a photographic file that's stored 16 electronically there are fields for date taken and for date 17 modified? 18 COLONEL SCOTT: Yes. 19 MR CHASKALSON SC: And normally the times 20 that are recorded under date taken and date modified at 21 least initially start off a few seconds within one another. 22 Are you confirming that? 23 COLONEL SCOTT: Yes, yes. 24 MR CHASKALSON SC: And what we've been 25 informed is that the date taken records the Blackberry</p>

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1 clock time when a photograph is taken and the date modified
 2 records the Blackberry clock time when it is originally
 3 saved onto the Blackberry memory card or if anything in the
 4 photographic file is subsequently modified on computer.
 5 The date modified field will then record the time on that
 6 computer's clock when the modification was made.
 7 COLONEL SCOTT: And then saved on the
 8 device.
 9 MR CHASKALSON SC: Well, not just saved,
 10 modified. Because if one copies a Blackberry file onto a
 11 computer –
 12 COLONEL SCOTT: Ja, but I mean saved on
 13 the source device, onto its own hard drive, internal hard
 14 drive. Is that the modified?
 15 MR CHASKALSON SC: The first modified is
 16 that.
 17 COLONEL SCOTT: Yes.
 18 MR CHASKALSON SC: Thereafter if you
 19 change the file in any way the modified date will change to
 20 reflect the date on which the file was changed.
 21 COLONEL SCOTT: To date created I think.
 22 I'm also learning in these –
 23 MR CHASKALSON SC: I'm interest in date
 24 taken and date modified at this stage.
 25 COLONEL SCOTT: I just want to clarify.

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1 Date taken is when he pushed the button and the shutter
 2 went. Date modified is when it saved itself onto the
 3 device that it was taken on.
 4 MR CHASKALSON SC: That's correct and
 5 then –
 6 COLONEL SCOTT: Date created is when it's
 7 downloaded onto a second device.
 8 MR CHASKALSON SC: I'm not interested in
 9 date created at this stage. The date taken field is a
 10 field that can be changed by people like you and me
 11 relatively simply. Are you aware of that?
 12 COLONEL SCOTT: The date taken field?
 13 MR CHASKALSON SC: Indeed.
 14 COLONEL SCOTT: No, no, I wasn't.
 15 MR CHASKALSON SC: Let me –
 16 COLONEL SCOTT: If it's the name of the
 17 actual file I'm aware that you can actually – because I
 18 have put timeframes in front of other names, but if it's in
 19 the details I wasn't aware that you can modify things in
 20 the actual details, no.
 21 MR CHASKALSON SC: Well, what I'd like to
 22 clarify before the commission is that if one goes to the
 23 file properties and goes to the details tab on the file
 24 properties you can just change the time or the date in the
 25 date taken field and anyone can do that once they know

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1 that. Are you, will you accept that?
 2 COLONEL SCOTT: Ja, I accept that.
 3 MR CHASKALSON SC: The next detail that I
 4 need you to accept is that if you change the time in the
 5 date taken field you are in a way modifying the file
 6 because it's now going to reflect a different time as the
 7 time taken, so when you then save the file with the new
 8 date taken time the date modified file will also change.
 9 It will change to reflect the date on which – the date and
 10 time on which you have modified the date taken field.
 11 COLONEL SCOTT: Okay, no, I wasn't aware
 12 of that, no.
 13 MR CHASKALSON SC: You can accept it from
 14 me.
 15 COLONEL SCOTT: Yes.
 16 MR CHASKALSON SC: But there's no simple
 17 way of changing the date modified field by just going into
 18 properties and playing around with it. You need some
 19 fairly sophisticated technical expertise to change it to
 20 order.
 21 COLONEL SCOTT: Okay, I accept that.
 22 MR CHASKALSON SC: The date taken field
 23 on the other hand you can change to order by just going
 24 into the properties and changing the date and time. So if
 25 one wanted to change the date modified field for people

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1 like you and me who don't have a great deal of technical
 2 expertise, the only way to do that would be to reset a
 3 computer clock manually to a time that you want that date
 4 modified time to reflect and then to resave the file at
 5 that time on the changed computer clock time and then it
 6 would reflect a date modified time of the artificially
 7 changed computer clock time. Will you accept that?
 8 COLONEL SCOTT: Ja, I will accept that,
 9 yes. You're talking about the device now itself, the
 10 Blackberry, or a computer?
 11 MR CHASKALSON SC: Either.
 12 COLONEL SCOTT: Alright.
 13 MR CHASKALSON SC: Because the modified
 14 will reflect when the file is altered and saved – saved in
 15 an altered form. Now, I'd like to show you a directory
 16 list of the Colonel Vermaak Blackberry photographs of the
 17 afternoon of the 16th and this will be exhibit JJJ11.1 and
 18 again, Commissioners, I must apologise for the absence of a
 19 file at this stage, a hard copy at this stage. We have
 20 printed out an extract from the directory of Colonel
 21 Vermaak's Blackberry photos on which we've made certain
 22 annotations, and the date modified and date taken fields
 23 are described in the last two columns on the right hand
 24 side. Date modified is the second last column.
 25 Date taken is the last column. Now, as we

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1 described earlier ordinarily date modified and date taken
 2 would correlate with one another to within a few seconds on
 3 an individual file, but if we look at that directory at a
 4 certain point in that directory the date taken entry in
 5 relation to a particular photo, that's the right hand, the
 6 far right column, correlates not with the date modified of
 7 that photo but with the date modified of the preceding
 8 photo. That's what those diagonal red lines on the
 9 document illustrate. So if we run down, to begin with they
 10 correlate.

11 The first entry is 3.30pm, 3.30pm. Then 3.31,
 12 3.30, that might be a difference of a couple of seconds at
 13 the end of the – you know, as the minute, as the seconds
 14 approach the minute. 3.31, 3.31, 3.32, 3.31 which is a bit
 15 odd. Then 3.35, 3.35 correlates. Then we have 3.42, 3.35
 16 which doesn't correlate, but the 3.42 is picked up in the
 17 next entry at 3.42. Then we have 3.42 being picked up at
 18 the next entry at 3.42 again, 3.43 being picked up at the
 19 next entry at 3.43. 3.46 being picked up at the next entry
 20 at 3.46 as opposed to the 3.43 on the same entry.

21 3.55 doesn't correlate with 3.46 on the same
 22 entry but does correlate with 3.55 on the next entry. 3.56
 23 and so on. The pattern isn't consistent, so if we go down
 24 to where the horizontal lines are suddenly the files start
 25 correlating – the fields start correlating within the

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1 individual file whereas previously they were correlating
 2 across files. Now, our expert can't offer us an innocent
 3 explanation for this broken pattern. Are you aware of any
 4 explanation for this pattern?

5 COLONEL SCOTT: I'm not, no.

6 MR CHASKALSON SC: We've discussed it and
 7 on of the possibilities that has occurred to us is that it
 8 may reflect – and I emphasise "may", I'm putting it no
 9 higher than that, that someone tried to change the times on
 10 the date taken file and then thought better of it and tried
 11 to undo his or her handiwork by re-entering the original
 12 times or a best estimate of them but bungled the re-
 13 entering process because they were being entered across –

14 CHAIRPERSON: Yes, Mr Semenya's turned
 15 his microphone on.

16 MR SEMENYA SC: Well, perhaps again for
 17 the record to make two statements, Chair. The first is
 18 that the comment of the expert that he cannot find any
 19 innocent explanation cannot amount to saying there is no
 20 innocent explanation.

21 CHAIRPERSON: That follows, yes.

22 MR SEMENYA SC: The second is this
 23 speculation is not helpful as to what would be the
 24 probabilities. It's conjecture and I think inadmissible,
 25 Chair.

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1 CHAIRPERSON: Mr Chaskalson, how do you
 2 respond to that contention?

3 MR CHASKALSON SC: I only want to explain
 4 what occurred to us, to put the question to Colonel Scott
 5 whether he was responsible for anything like that or was
 6 aware of anything like that. If he says no I'm not going
 7 to take it further at this stage.

8 CHAIRPERSON: That seems to deal with the
 9 point, Mr Semenya. Carry on, Mr Chaskalson.

10 MR CHASKALSON SC: So just to clarify so
 11 that you understand what I'm asking you to answer a
 12 possibility that occurred to us is that someone tried to
 13 change the times on the date taken file then thought better
 14 of it and tried to undo the, his or her handiwork in this
 15 regard but bungled the re-entering process by re-entering
 16 the times incorrectly so that they are out by one. And I
 17 have to ask did you do anything like that?

18 COLONEL SCOTT: No, I did not, and I'm
 19 just trying to have a look in the photos that I received at
 20 that time. I'll tell you now. I received eight BBM
 21 photographs which were downloaded to me, 08.18, and
 22 strangely none of them fall within that category.

23 MR CHASKALSON SC: Sorry, 08.18?

24 COLONEL SCOTT: 08, 2012, 08.18, date
 25 created on my computer.

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1 CHAIRPERSON: You received them on the
 2 18th of August.

3 COLONEL SCOTT: Yes.

4 CHAIRPERSON: Are you saying none of
 5 those you received is on this list or is one of those
 6 marked on the exhibit? Is that what you're saying?

7 COLONEL SCOTT: My image number starts at
 8 1490 to 1503 and that's before what is shown there.

9 COMMISSIONER HEMRAJ: Mr Chaskalson, your
 10 expert, does he say where the first arrow, where does it
 11 originate if that photograph was taken at 3.35 that it
 12 could not be saved at 3.42 which was reflected on the left
 13 of that?

14 MR CHASKALSON SC: Well, I don't want to
 15 give evidence for my expert, but it could've been saved at
 16 3.42 but it would have to have been modified at 3.42 and it
 17 wouldn't have been saved - on the Blackberry there wouldn't
 18 be a gap of seven minutes between the initial capture of
 19 the film on the Blackberry, the capture of the shot on the
 20 Blackberry and the saving onto the Blackberry hard drive.
 21 So if it – the only way that time, that gap could have been
 22 accounted is if the file – through the process that you
 23 describe, Commissioner Hemraj, is if the file was BBM'd
 24 down to somebody else who then saved it on their machine in
 25 a modified form seven minutes later.

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1 COLONEL SCOTT: I also – I'm just looking
 2 at another file on my hard drive. I have others which
 3 include those which are downloaded 08.50am on the 17th, so
 4 the Friday the 17th at 08.50am. I can't see the properties
 5 as you have them with – I've only got date. I'm not sure
 6 how to get date modified – or I can look down at the
 7 bottom.
 8 [12:13] If I go to, one of the contentious ones is 1512,
 9 I think it falls within that range. 1512 is one of the
 10 contentious ones, and I have it as date created, but that's
 11 on my computer date modified, date taken, 2012-08-16 at
 12 3:42. Date modified, 2012-08-16 at 3:42.
 13 MR CHASKALSON SC: That's a perfect
 14 correlation, which is what they should be.
 15 COLONEL SCOTT: Ja.
 16 MR CHASKALSON SC: Of course that's at a
 17 point in the pattern where a whole series of photographs
 18 were taken at 03:42.
 19 COLONEL SCOTT: Yes.
 20 MR CHASKALSON SC: So the line could just
 21 as easily have gone horizontally.
 22 COLONEL SCOTT: Yes.
 23 MR SEMENYA SC: Chair, I also am cautious
 24 that the witness is not speaking out of his field of
 25 expertise, and then making comments within which he's not

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1 qualified.
 2 CHAIRPERSON: That sounds as if it's a
 3 point that may have some substance, Mr Chaskalson. What do
 4 you say about that? I mean if you're asking him things
 5 about things that he doesn't even know about, then his
 6 answers actually don't help us very much, do they?
 7 MR CHASKALSON SC: No, I don't need to
 8 take this matter further with this witness at this stage.
 9 I mentioned that there is an ongoing investigation. The
 10 witness has confirmed that he –
 11 CHAIRPERSON: I understand that. You're
 12 putting these things to him and he's excluded himself from
 13 any misconduct that may – or if that's the correct word –
 14 that may or may not have taken place, but he says whatever
 15 happened, whether it's right or wrong, he didn't do it.
 16 That's his –
 17 MR CHASKALSON SC: Indeed. That's all
 18 that I wanted this witness to confirm while he was giving
 19 evidence at this stage. If the investigation yields
 20 further information and it's necessary to ask for Colonel
 21 Scott to be recalled to answer flowing from that, then
 22 we'll deal with that if it arises.
 23 CHAIRPERSON: Ja, I don't know whether he
 24 can help us, but I'm rather interested in the penultimate
 25 one on this page, which is taken on the 16th of August 2012

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1 and modified on the 22nd of May this year. Is that
 2 something that –
 3 MR CHASKALSON SC: Chairperson, I can
 4 answer that. That in fact is not a BlackBerry photograph
 5 and shouldn't have been in –
 6 CHAIRPERSON: I see. Okay, no I –
 7 MR CHASKALSON SC: - in that list. It's
 8 one of Captain Van Heerden's photographs and it was resaved
 9 on one of the evidence leaders' hard drives on that date.
 10 CHAIRPERSON: So it's not relevant at
 11 all?
 12 MR CHASKALSON SC: It's not relevant at
 13 all.
 14 CHAIRPERSON: Thank you.
 15 COMMISSIONER HEMRAJ: Might a series of
 16 photographs have been taken without being saved and then
 17 saved subsequent to three or four photographs being taken?
 18 MR CHASKALSON SC: It's not something
 19 that we've discussed with our expert, but we can raise that
 20 with our expert. We'd also have to check to see whether
 21 that would explain these particular time differences.
 22 COMMISSIONER HEMRAJ: There's more than
 23 one photograph that appears to be saved at the same time.
 24 MR CHASKALSON SC: Commissioner, it
 25 wouldn't be at the same time. It would be within the same

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1 minute, because if –
 2 COMMISSIONER HEMRAJ: Yes.
 3 MR CHASKALSON SC: If one could see the
 4 seconds, they would be different seconds.
 5 COMMISSIONER HEMRAJ: Right.
 6 COLONEL SCOTT: Chairperson, for the, I'm
 7 just looking also at mine. I've downloaded Colonel
 8 Vermaak's photos twice. I made a separate file which said
 9 "copy thereof" and in the separate file, which is on the
 10 30th of October which I downloaded, they are still in order.
 11 So I'm not too sure where or how that happened, but the
 12 versions I have are in line.
 13 MR CHASKALSON SC: Colonel, are you
 14 saying that both sets of your Colonel Vermaak photographs
 15 have those properties?
 16 COLONEL SCOTT: Well, if I look here,
 17 it's the image 1512, image 1512, it says 03:40 – oh, but
 18 hang on, it also says 03:42 across, if you actually go
 19 across, it's also 03:42 on that one. I think I must choose
 20 another one which is not in line.
 21 MR CHASKALSON SC: Maybe if I can pick up
 22 from my learned friend Mr Semanya at this stage, Colonel, I
 23 don't think we need to take this further at this stage. If
 24 something arises and we do need to take it further, then we
 25 will.

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1 COLONEL SCOTT: Okay.

2 MR CHASKALSON SC: There are two

3 outstanding issues on –

4 CHAIRPERSON: No, no, Mr Chaskalson, we

5 have another objection or comment.

6 MR NTSONKOTA: It's not an objection,

7 Chair. I just want to ask for my edification and to be

8 able to follow the debate, Chair, I understand that my

9 learned colleague Mr Chaskalson is asking these questions

10 really in a probing fashion, but if I may just ask a direct

11 question. Is it his case that if these inconsistencies

12 that he has so meticulously taken us through hadn't

13 occurred, a different picture would have emerged as to what

14 happened on the day, different from what SAPS has up until

15 now told us was the case on the day in question? In other

16 words, I'm just trying to understand where is Mr Chaskalson

17 taking us to by drawing our attention to all these

18 inconsistencies that he says occurred as to what happened

19 on the day.

20 CHAIRPERSON: Yes, Mr Chaskalson?

21 MR CHASKALSON SC: Mr Chairperson, the

22 photograph would show what the photograph shows. The time

23 of the photograph - I must say the evidence leaders' view

24 at the moment is that the times recorded on these

25 photographs under "date modified" are in fact the correct

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1 times of these photographs. We can see by the time

2 correlation exercise that we've done against other

3 photographs that these times are accurate times, and that

4 what the photographs describe in those particular images

5 correlate with what we would expect to see described at

6 that time on the Colonel Vermaak BlackBerry. So the date

7 modified field as we see it today, we believe is a reliable

8 indicator of the time on which those photographs were

9 taken. Our only concern is that there may have been some

10 earlier attempt to attempt to change times in the date

11 taken field and then an attempt to reverse it. It's not

12 going to, it would only go to questions of whether there

13 has been interference and attempted interference with

14 evidence by SAPS. It won't go to the reliability of the

15 evidence as we now have it. Those date modified fields are

16 in our view accurate times of when those photographs were

17 taken.

18 CHAIRPERSON: Thank you. Mr Ntsonkota,

19 are you happy with that explanation?

20 MR NTSONKOTA: Not entirely, Chair,

21 because I'm still not so sure as to what it is that we're

22 now being asked to infer from these inconsistencies.

23 CHAIRPERSON: As I understand it we're

24 not being asked to infer anything at the moment. There

25 will, or may be evidence, as I understand it, later to

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1 indicate that some attempt may have been made, apparently

2 it would appear ultimately unsuccessfully, to change

3 things. But whether that's so or not, this witness is now

4 being asked if anything of that kind happened, did you do

5 it, and he says no, and I think the purpose of the question

6 is simply to exclude him. So if evidence comes later from

7 the experts that there was something sinister about this,

8 or may have been, one doesn't have to get him back to say

9 did you do it. He's already said "I didn't do it." That's

10 my understanding of it. Is that right, Mr Chaskalson?

11 MR CHASKALSON SC: Yes, and of course if

12 Colonel Scott were to put up his hand and say yes, I am

13 aware of it, you know, so and so tried to do this, well

14 then we'll pursue that, but Colonel Scott is not aware of

15 it.

16 CHAIRPERSON: Yes, and it's not been

17 established that there was anything untoward, but the

18 question is if something untoward happened, was it you, and

19 he says no. That seems to be the answer.

20 MR CHASKALSON SC: Yes.

21 COLONEL SCOTT: Chairperson, I'm not sure

22 if the, there is possibly a plausible explanation because

23 I'm looking at my computer as well and I've chosen one that

24 doesn't have a –

25 MR SEMENYA SC: Chair, I'm trying to stop

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1 my witness –

2 COLONEL SCOTT: Okay.

3 MR SEMENYA SC: - from going into fields

4 where he doesn't belong.

5 CHAIRPERSON: It's sensible sometimes to

6 follow the advice of your own counsel, particularly on this

7 issue. I know you're trying to be helpful and I understand

8 that, but I think if Mr Chaskalson wants you to be helpful,

9 he will ask you, and if Mr Semenya wants to raise the

10 matter in re-examination, he will do so also.

11 MR CHASKALSON SC: Colonel, finally two

12 short remaining video issues; they concern a directory on

13 the SAPS master hard drive called \Videos\Coin, which I

14 understand to be a directory where video material obtained

15 from Coin Security is located on the SAPS master hard

16 drive. Is my assumption correct?

17 COLONEL SCOTT: Yes.

18 MR CHASKALSON SC: If we can call up a

19 thumbnail of that directory - Commissioners, this will be

20 exhibit JJJ104, the Coin directory. The first two files

21 from the left, Lonmin_MP4, Lonmin_WMV, V9.WMV, there are

22 two versions, or two different file types of what has been

23 called the Coin – what is the official name for what used

24 to be called the Lonmin chopper video? The Coin Security,

25 is it the Coin Security video?

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1 CHAIRPERSON: Protea Coin –
 2 MR CHASKALSON SC: The Protea Coin, so
 3 those are the Protea Coin videos. Will you confirm that?
 4 COLONEL SCOTT: Yes.
 5 MR CHASKALSON SC: The third is a video
 6 taken of the 15th with which I don't want to concern myself
 7 now. The fourth, that's Marikana 2012-08-16, 12:24 ABI, is
 8 what appears to be footage from the Protea Coin chopper
 9 taken at 12:24, approximately 12:24 on the 16th. Would you
 10 confirm that?
 11 COLONEL SCOTT: I confirm that, yes.
 12 MR CHASKALSON SC: Commissioners, in our
 13 view it's – well, it is footage that had previously not
 14 been made available. In our view it's footage that should
 15 be evidence before the Commission. We don't need to play
 16 it now, but we'd like to identify it and to give it an
 17 exhibit number, and can we ask that it be called exhibit
 18 JJJ105. It's an aerial, what it provides is aerial footage
 19 of the koppie at approximately 12:24 on the 16th at the time
 20 that Mr Mathunjwa was addressing the koppie, but it is
 21 aerial footage.
 22 CHAIRPERSON: Yes, very well, it will be
 23 JJJ105, and I've described it as aerial footage of koppie
 24 at 12:24 on the 16th of August 2012.
 25 MR CHASKALSON SC: If we can just go back

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1 to the thumbnail of the directory, the last file, UAV2013-
 2 08-16 15:19 MOV, will you confirm that this is an aerial
 3 video taken of the koppie and the surrounding areas at
 4 approximately 15:19 on the 16th, taken from a remote
 5 controlled model aeroplane?
 6 COLONEL SCOTT: Yes.
 7 CHAIRPERSON: Described as 2013, is that
 8 correct? I see the 16th of August, but the year is 2013,
 9 unless that's -
 10 MR CHASKALSON SC: It is in fact, it
 11 should be 2012. It is footage taken from the day. In our
 12 view this footage may have implications for recommendations
 13 that this Commission makes at the end of its hearing in
 14 relation to methods of monitoring gatherings of this
 15 nature. So I would like it to be played in Commission so
 16 that the Commission can see what can be taken from a model
 17 aeroplane, a remote controlled model aeroplane, and can I
 18 ask that we call this exhibit JJJ106?
 19 CHAIRPERSON: I'll call it JJJ106, aerial
 20 footage, is this taken from model aeroplane?
 21 MR CHASKALSON SC: Mr Chairperson, I've
 22 just been corrected; it's not a model aeroplane. I'm told
 23 emphatically it's an unmanned aerial vehicle, UAV.
 24 CHAIRPERSON: Oh, hang on. The sort of
 25 thing they use in Afghanistan. Unmanned aerial vehicle,

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1 that's UAV, yes. So it's aerial footage taken from
 2 unmanned aerial vehicle on 16 August 2012.
 3 MR CHASKALSON SC: Indeed, Chairperson.
 4 If we could then play the video.
 5 [VIDEO SHOWN]
 6 If we could stop the video at this stage.
 7 Colonel, I understand that Brigadier Fritz was responsible
 8 for the arrangement of this particular flight of the UAV,
 9 and if needs be we'll have to pose these questions to him,
 10 but I wonder if you could just describe to the
 11 Commissioners in response to my questions certain features
 12 of what we've seen, because it does seem to us that this
 13 might be a very useful means of monitoring gatherings of
 14 this nature for the SAPS. So the first question I need to
 15 ask you, and if you don't know the answers we'll just
 16 canvass them with Brigadier Fritz; we understand that the
 17 footage that we've seen is from a camera that's mounted on
 18 what I would call a remote controlled model aeroplane, what
 19 I've been told is an unmanned aerial vehicle, is that
 20 correct?
 21 COLONEL SCOTT: That's correct.
 22 MR CHASKALSON SC: And the vehicle in
 23 question is small. In fact it is being carried by the man
 24 whose shadow we see on the image on the screen now.
 25 COLONEL SCOTT: That's correct.

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1 MR CHASKALSON SC: The vehicle that, from
 2 which this footage is taken can be pre-programmed to fly a
 3 particular flight path.
 4 [12:33] COLONEL SCOTT: I don't know that one,
 5 but I'm aware that you do get those, yes, you can actually
 6 fly them by computer, not necessarily with a radio control.
 7 So one doesn't have to be a radio remote control pilot to
 8 fly them, it can actually be done via computer by plotting
 9 on Google Earth and then it flies its own course for you.
 10 MR CHASKALSON SC: Indeed, so you can
 11 pre-programme its flight path, and you can change its
 12 flight path in flight.
 13 COLONEL SCOTT: That's correct.
 14 MR CHASKALSON SC: And the programming
 15 unit shows you a video feed that is live.
 16 COLONEL SCOTT: Yes.
 17 MR CHASKALSON SC: Do you have any idea
 18 of what the cost of these sorts of units is relative to the
 19 cost of sending up a helicopter for someone to film from a
 20 helicopter?
 21 COLONEL SCOTT: I am not sure of the cost
 22 per hour for a helicopter but I think it's ranging R10 to
 23 R12 000 an hour, an unmanned aerial vehicle like this
 24 depending on what you are purchasing again, we've looked at
 25 these for the Football World Cup 2010, also for similar

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1 reasons, but they can go up into the millions obviously but
 2 you do get those at the lower scale. I think some of them
 3 are actually even produced in South Africa for maybe 100 or
 4 200 000, and I think they are getting cheaper as technology
 5 gets more available. So, I am not sure if I've answered
 6 the question for you.

7 MR CHASKALSON SC: We, I don't this is
 8 going to be contentious evidence, but we will get details
 9 put before this Commission. The advantages that we have
 10 identified in relation to this is, cost and also a live
 11 video feed.

12 COLONEL SCOTT: I agree, yes.

13 MR CHASKALSON SC: Can you identify any
 14 other advantages?

15 COLONEL SCOTT: Well, for that matter,
 16 depending whether you want to be clandestine or not, some
 17 of these vehicles are made so that they are not easily
 18 heard running on battery power, thus, you can have it up in
 19 the air and not know that the group below is being
 20 monitored for that instance.

21 MR CHASKALSON SC: There would possibly
 22 be an additional advantage which would may have been
 23 relevant in a situation like Marikana, in circumstances
 24 where there are a whole lot of power lines which would
 25 impair the mobility of a helicopter. You could pre-

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1 programme the flight of a vehicle like this, to make sure
 2 that it avoided power lines and could get into places
 3 without any risk to human life.

4 COLONEL SCOTT: Yes, obviously, it does
 5 have its application, and I think that's why SAPS followed
 6 the route in the 2010 World Cup to have these type of
 7 cameras placed on our helicopters for that matter, but when
 8 we are talking in South Africa, having up to 15 000 crowd
 9 unrest related or crowd management related incidents in a
 10 year, to simply have helicopters deployed for all of those,
 11 becomes a tasking on its own, whereas vehicles such as
 12 these could assist obviously with the video taping of the
 13 incident from the air, to give a more holistic picture.

14 MR CHASKALSON SC: And are you aware of
 15 any details relating to the use of that particular vehicle
 16 on the 16th of August?

17 COLONEL SCOTT: No. I wasn't actually
 18 part of that. I am not sure, I think it was a privateer,
 19 it wasn't necessarily a company based one, from what I got
 20 to hear afterward, but just to mention restrictions on
 21 these though as well, they are also weather based.
 22 Obviously the larger the aircraft, the more it costs, the
 23 better weather conditions it can fly in or the worse
 24 weather conditions it can fly in. So the smaller the
 25 aircraft, the cheaper it becomes, obviously the more

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1 limited you become again with weather conditions.

2 MR CHASKALSON SC: Thank you, Colonel.

3 CHAIRPERSON: Can I ask you a question
 4 about that. Are you moving away from this?

5 MR CHASKALSON SC: If I might just -

6 CHAIRPERSON: UAV. I want to know, was
 7 any material retained through this particular UAV on the
 8 16th of August which helps us?

9 COLONEL SCOTT: Other than from what
 10 we've seen here, no, Commissioner.

11 CHAIRPERSON: What we saw didn't tell me
 12 anything, but perhaps I missed things that I should have
 13 seen. Mr Chaskalson?

14 MR CHASKALSON SC: This footage was taken
 15 at 23 minutes past three, which is approximately 20 minutes
 16 before the operation started, so it wouldn't have shown or
 17 doesn't show anything of the operation itself, and we have
 18 established from the person who took this footage that this
 19 was a test flight and that it was, this was the only
 20 footage that was taken on that day. We are not showing it
 21 for the purposes of what it shows in terms of footage, but
 22 for the purposes of what it shows in terms of what footage
 23 can be obtained from vehicles like this in situations of
 24 this nature. Colonel Scott, that brings me to the end of
 25 the questions I have for you in relation to videos. There

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1 are a series of other topics that I want to canvass with
 2 you but due to developments in the last week, the evidence
 3 leaders do not want to canvass those topics with you now.
 4 We will want to canvass those topics with you in the
 5 future, but I wonder if I can ask Mr Budlender at this
 6 point to indicate the position of the evidence leaders, and
 7 subject to the ruling of the Chairperson, we may or may not
 8 proceed to those topics today.

9 CHAIRPERSON: Mr Budlender?

10 MR BUDLENDER SC: Thank you, Chairperson.

11 Mr Chairperson and members of the Commission, over the past
 12 ten days, the evidence leaders have obtained access to the
 13 computer hard drives of members of the SAPS, and have
 14 obtained copies of SAPS documents to which we have not had
 15 access before. We are still examining the new material
 16 which we have obtained. It runs to thousands of pages. As
 17 we speak, as we proceed here, in another room, the
 18 technical people are continuing the painstaking and slow
 19 task of identifying and copying the further SAPS hard drive
 20 material of which we will be given copies. We intervene
 21 now, I intervene now to say that the examinations which
 22 we've undertaken have thus far, have revealed the
 23 following. First, we have obtained certain documents which
 24 the SAPS previously said were not in existence. Second, we
 25 have obtained documents which in our opinion ought to have

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1 been previously disclosed by the SAPS, but were not.
 2 Third, we have obtained documents which give the impression
 3 that they are contemporaneous documents, contemporaneous
 4 with the events which they describe, but which appear in
 5 fact to have been constructed after those events to which
 6 they refer, in some instances at the time of the nine day
 7 Potchefstroom meeting, at which members of the SAPS
 8 prepared the case which they were to present to this
 9 Commission. Fourth, we have obtained documents which in
 10 our opinion, demonstrate that the SAPS version of the
 11 events at Marikana as described in the SAPS presentation to
 12 this Commission, and in the evidence of SAPS witnesses in
 13 this Commission, is in material respects not the truth.
 14 CHAIRPERSON: It is or it may be?
 15 MR BUDLENDER SC: In our opinion, it is
 16 not the truth.
 17 CHAIRPERSON: Well that's a matter we
 18 will obviously –
 19 MR BUDLENDER SC: That remains to be
 20 seen.
 21 CHAIRPERSON: It may not be so.
 22 MR BUDLENDER SC: But it's a matter of
 23 course for the Commission to decide ultimately, not for us
 24 to decide. We don't –
 25 CHAIRPERSON: Mr Semenya, so – Mr

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1 Semenya's turned his light on, do you want to intervene now
 2 or do you want to wait for Mr Budlender to finish?
 3 MR SEMENYA SC: I will wait.
 4 CHAIRPERSON: Right. Carry on, Mr
 5 Budlender.
 6 MR BUDLENDER SC: Chair, we do not make
 7 the statement lightly, and we recognise two things,
 8 firstly, that it is important that the SAPS should have the
 9 opportunity to explain the matters which have raised our
 10 concern, and secondly, that it's ultimately for the
 11 Commission to decide whether we are correct in our
 12 assessment of what we have seen, as I describe it. But we
 13 do say that absence a convincing explanation or a
 14 satisfactory explanation, this material has serious
 15 consequences for the future conduct of this Commission.
 16 The result is that at this stage, we do not wish to
 17 continue the cross-examination of Colonel Scott. We
 18 anticipate that it will be necessary for him to be recalled at
 19 a later stage, but at this stage, in our view, it is
 20 necessary for the matters which we've identified to be
 21 addressed, because of their consequences for the further
 22 conduct of the Commission. In the light of the documents
 23 which we found, it's also necessary for us to work through
 24 all of the new material in our possession, and to obtain
 25 access to additional hard drives and electronic records

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1 before we are ready to continue with the hearing, and of
 2 course, it will be necessary for the SAPS legal team to
 3 consult with their clients on these matters in order to
 4 obtain their account of the documents in question. So
 5 Chairperson, we therefore propose that the –
 6 CHAIRPERSON: I take it you will be
 7 indicating to the SAPS the points on which you would expect
 8 some kind of explanation.
 9 MR BUDLENDER SC: Yes, we'll identify the
 10 documents which cause us concern and if they – if it's not
 11 clear what the concern is, we will explain what the concern
 12 is. Obviously, we wish to play open cards in this regard.
 13 These are serious matters and they have to be dealt with in
 14 a serious and careful manner. We therefore propose that
 15 the Commission should stand down until Wednesday next week,
 16 Tuesday being a public holiday, for the evidence leaders to
 17 continue their investigation and for the SAPS legal team to
 18 consult with their clients on these matters. That is our
 19 proposal, Chair.
 20 CHAIRPERSON: Thank you. Mr Semenya?
 21 MR SEMENYA SC: Chair, may we place three
 22 things on record? The address by Mr Budlender seems to
 23 suggest they obtained documents, but the correct position
 24 is they obtained them from SAPS. It mustn't convey as
 25 though they have been going somewhere and obtained these

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1 documents without the co-operation of SAPS. The second
 2 thing is, it's regrettable. If the evidence leaders
 3 already know what the truth is, maybe they must give it to
 4 us. To purport to say there is something untruthful about
 5 our account, without even the investigation having been
 6 done, it's unfair. Thirdly, we had agreed in chambers with
 7 you, Chair and the Commissioners, that we were going to be
 8 placed with all the concerns that are raised, to see
 9 whether or not we are able to meet them, and if we are
 10 unable to meet them then this commentary would be
 11 appropriate, but before we are given an opportunity to see
 12 whether or not there is exculpatory information or evidence
 13 in relation to those concerns, it's entirely prejudicial.
 14 CHAIRPERSON: You've placed those points
 15 on record. What is your attitude to the application which
 16 Mr Budlender made?
 17 MR SEMENYA SC: If it's a cogent
 18 application, we support it.
 19 CHAIRPERSON: I see, thank you. Mr
 20 Budlender –
 21 MR BUDLENDER SC: Chair, very briefly –
 22 CHAIRPERSON: Sorry, perhaps before you
 23 reply, some of the other parties present may wish to say
 24 something. You can give a reply to all. Are there any of
 25 the legal representatives of any of the other parties

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1 present, wish to say something in regard to this
2 application? No. Yes, Mr Budlender, you only have one
3 submission to reply to.

4 MR BUDLENDER SC: Chair, just two points.
5 Firstly, Mr Semenya is absolutely correct that we obtained
6 these documents from the SAPS legal team. What's happen is
7 that we identified files, documents or hard drives which we
8 wished to see and they made them available to us.

9 CHAIRPERSON: To be fair, did this not
10 flow from the attitude expressed by the present witness,
11 when he was cross-examined? If you want to, you can look
12 at my computer. Is that correct?

13 MR BUDLENDER SC: Very largely, yes,
14 Chairperson. And so that is correct, and I wouldn't want
15 to correct an impression that we found these materials
16 anywhere else, they were obtained through the SAPS legal
17 team. The second thing I wish to say is that I appreciate
18 that what we are saying is serious, but the reason we say
19 it is not because we say that these are conclusions which
20 must now be made, they are matters, as I emphasised to be
21 decided ultimately by the Commission. Suspicions have been
22 raised, or concerns have been raised, and it was necessary
23 for us, we believe, to explain to the Commission why we
24 seek a postponement now which is something ordinarily we
25 would never want to do, we all want to get the Commission

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1 moving forward as rapidly as possible but it's only because
2 of the, what I perhaps should refer to as the potential
3 seriousness of the matter, that we seek this postponement
4 now and it was necessary to explain to the Commission and
5 generally, why we would seek a postponement at this time.

6 CHAIRPERSON: Thank you. In the
7 circumstances, the application for a postponement will be
8 granted. As you say, Tuesday is a public holiday, so we
9 will resume then – so we will adjourn then until Wednesday
10 at 09:30. I think it appropriate to place on record these
11 are at the moment only concerns, there are no findings
12 made, these are matters that have to be looked at, and we
13 don't know what the results of the examination of these
14 points will be, but clearly from what you tell us, these
15 are matters that require careful consideration, which I am
16 sure they will receive. So at this stage, we will adjourn
17 until 09:30 on Wednesday.

18 [COMMISSION ADJOURNED]
19
20



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