

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 138 23 OCTOBER 2013 PAGES 14731 TO 14924



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1 [PROCEEDINGS ON 23 OCTOBER 2013]
 2 [09:21] CHAIRPERSON: The Commission resumes. We
 3 were due to start at 9, through a combination of accidents
 4 we couldn't do so, for which I apologise. The power is now
 5 restored and we're able to commence. Before I remind the
 6 Colonel that he's still under oath I understand that Mr Tip
 7 has some melancholy news to impart to us.
 8 MR TIP SC: Thank you, Chairperson, for
 9 the opportunity. It is indeed a sorrowful announcement
 10 that I must make and place before the Commission. All of
 11 us will recall that Mr Madusele Setelele gave evidence in
 12 these proceedings in the course of the latter part of
 13 January and into February of this year. He was at the time
 14 the Chairperson of the local NUM branch at Western Platinum
 15 Limited. He was a person with whom I consulted on several
 16 occasions. He was a very fine man and a very strong leader
 17 who played an important part in the gathering of
 18 instructions for the legal team in these proceedings. Most
 19 tragically on Thursday evening last week he was shot dead.
 20 There were four assailants, we believe, and he sustained,
 21 fatally, five bullet wounds and it is a matter of grave
 22 distress to us as the representatives of NUM and we have no
 23 doubt to everyone present in these proceedings and we, on
 24 behalf of NUM, would like to take the opportunity to
 25 express our very, very profound condolences to his family

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1 and his friends and his colleagues. Thank you.
 2 CHAIRPERSON: Thank you, Mr Tip, and on behalf of
 3 all who are participating in the Commission my colleagues
 4 and I wish to extend our condolences to the family, the
 5 friends and colleagues of the former witness who gave
 6 evidence, I think it was last year, wasn't it. It's a
 7 matter of concern that a number of people connected with
 8 this Commission have been, I think one can only use the
 9 word assassinated, have been assassinated. It's a matter
 10 which I'm sure is receiving the attention of the
 11 authorities and I hope that the perpetrators will be
 12 brought to book in due course. Colonel, you're still under
 13 oath. Mr Chaskalson?
 14 MR CHASKALSON SC: Thank you,
 15 Chairperson.
 16 DUNCAN GEORGE SCOTT: s.u.o.
 17 EXAMINATION BY MR CHASKALSON SC (CONTD.):
 18 Colonel, when we broke last week I was questioning you
 19 about your statement that you were not aware in the JOC
 20 that people had been shot and killed at scene 1 and just to
 21 recap, if we go to your original statement that was signed
 22 on 4 September 2012, FFF18, in paragraph 33 you stated, "At
 23 about 15:45 I heard over the police radio in the JOC as the
 24 events unfolded that the police were coming under some form
 25 of attack. Lieutenant-Colonel Vermaak in the police

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1 helicopter was providing situation reports as events
 2 unfolded on the ground. At about 15:55 he reported a
 3 number of protesters lying on the ground. Throughout, a
 4 lot of vehicle movement was ordered by Brigadier Calitz in
 5 implementing the dispersal action." You now say at page 92
 6 paragraph 19.2 and I'll quote again, "Some minutes after
 7 the intensity of what sounded like some form of attack on
 8 the police, Lieutenant-Colonel Vermaak reported over the
 9 radio that he could see persons lying down and counted up
 10 to around 20 which he could see from the air." Where were
 11 you in the JOC relative to the radio in the JOC?
 12 COLONEL SCOTT: I was standing right next
 13 to the table with my back to the wall, looking down onto
 14 the two ladies that were writing as fast as they could.
 15 MR CHASKALSON SC: So how far away from
 16 the radio would you have been, just an estimate?
 17 COLONEL SCOTT: Half a metre.
 18 MR CHASKALSON SC: And so I presume that
 19 anything that was transmitted to the JOC on the radio
 20 would've been heard by you?
 21 COLONEL SCOTT: Yes.
 22 MR CHASKALSON SC: And did you stay in
 23 that position throughout the operation or did you move
 24 away?
 25 COLONEL SCOTT: No, I remained there.

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1 MR CHASKALSON SC: Is it possible that
 2 you would've missed anything that was transmitted over the
 3 radio?
 4 COLONEL SCOTT: Unless there were radio
 5 transmissions going on that we could not hear. We talk
 6 about members working on the TETRA systems from Joburg or
 7 other radio systems that were not being transmitted over to
 8 the system which was being utilised from the JOC to the
 9 commanders. Alternatively, as I say there was a period of
 10 about, I estimate about four minutes where what we call a
 11 PTT personal transmitting, if you push the key in to speak,
 12 it sounded like somebody had pushed that in and was holding
 13 it in. I'm not sure if the radio communications in the
 14 field were still ongoing but in the JOC we could hear
 15 nothing. We could simply just hear the scuffling on the
 16 other side of the radio, just body movement type -
 17 MR CHASKALSON SC: Well, if that period
 18 of four minutes is what you describe it to be, that
 19 somebody had accidentally or deliberately pushed the
 20 transmission button, then people in the field wouldn't have
 21 been able to hear anything either.
 22 COLONEL SCOTT: Yes.
 23 CHAIRPERSON: It sounds from what you say as if
 24 you heard everything that was audible in the JOC, all the
 25 radio messages that were received in the JOC you heard. Is

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1 that right?

2 COLONEL SCOTT: That's correct,

3 Chairperson.

4 MR CHASKALSON SC: Now Colonel, the

5 passage in your statement that I quoted from paragraph 19.2

6 at page 92 where you report Colonel Vermaak reporting over

7 the radio that he could see persons lying down and counted

8 up to around 20 which he could see from the air, we know

9 from the occurrence book, which is FFF25 entry 1017, and

10 Colonel Mpmembe's evidence which is at pages 11475 line 8 to

11 11476 line 2 and 13299 line 21 to 13300 line 8, that that

12 statement was preceded by a report that the TRT were coming

13 under attack. Did you hear the report that the TRT were

14 coming under attack?

15 COLONEL SCOTT: No.

16 MR CHASKALSON SC: So you didn't hear

17 that report?

18 COLONEL SCOTT: No.

19 MR CHASKALSON SC: But it was a report

20 that –

21 COLONEL SCOTT: Well, let me – not that I

22 can recall but I'm sure that if I'd heard the words "the

23 TRT are coming under attack" I would have remembered them.

24 CHAIRPERSON: General Mpmembe heard them.

25 MR CHASKALSON SC: There seem to be three

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1 different people who heard it. General Mpmembe testified

2 that he heard it. Then there are contemporaneous

3 handwritten notes that were taken in the JOC by Captain Van

4 Heerden, we're informed. They are part of annexure JJJ168,

5 if we can go to JJJ168. It's file 4 from page 23 and the

6 notes appear at page 74, I think it is. It's in fact from

7 71 and on the PDF file that will be called up there, we're

8 looking for page 49. Now we're told that these are

9 contemporaneous notes of the – can we go to the handwritten

10 notes, not the typed copy which is – keep going, maybe 52

11 after that typed, those two typed pages. We're told that

12 these are contemporaneous notes that Captain Van Heerden

13 took of the radio transmissions and she recorded "group

14 attack TRT" in that third line.

15 COLONEL SCOTT: I see so.

16 MR CHASKALSON SC: Now, Brigadier

17 Pretorius also appears to have started taking notes of

18 radio communications. If you can go to, it'll be page 27

19 of the PDF which should be page, I think it's 49. It is

20 page 49. Do you see that handwriting in the top left hand

21 corner of the screen?

22 COLONEL SCOTT: Yes.

23 MR CHASKALSON SC: That has been

24 confirmed to us by Brigadier Pretorius, is her handwriting

25 and she recorded "TRT act against" and then there's an

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1 illegible two letters which we can't work out. The next

2 recording that she made was "burning grass." The next one

3 we think says "water can str" as in straight. Now this

4 note doesn't note that the TRT were coming under attack but

5 that they were acting against someone else and if we

6 compare these notes with Captain Van Heerden's notes, I'd

7 ask you to keep that page open and go back to the

8 handwritten notes of Captain Van Heerden at page 71, we can

9 see that the report of burning grass – can we just go back

10 to 71 which would be 51 of the PDF, can we just shift to 51

11 of the PDF? It's the same exhibit, we just need to go down

12 to page 51.

13 CHAIRPERSON: You had it a few minutes ago.

14 MR CHASKALSON SC: So there you see the

15 report of burning grass is a report that Captain Van

16 Heerden also transcribed and can we just scroll up a little

17 bit on that page? And she transcribed it immediately

18 before a report of 18 bodies and for what it's worth, that

19 somewhat cryptic note that we read as "water can str" would

20 be consistent with a communication from Lieutenant-Colonel

21 Vermaak which one can hear one minute and two seconds into

22 the COIN Security helicopter video where he tries to direct

23 the water, the Johannesburg water cannon by saying "Water

24 cannon go forward, go straight, go straight." That's one

25 minute and two seconds into that video. So if we look at

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1 those two sets of notes, we can infer that Brigadier

2 Pretorius knew that the TRT were acting against someone and

3 from the sequence of her notes against the sequence of

4 Captain Van Heerden's notes and the helicopter video

5 transcript, we'd also infer that she had this knowledge

6 before there was a report of burning grass, which would

7 mean from the sequence in Captain Van Heerden, that that

8 was before there was a report of 18 bodies – but you say

9 you heard no report of TRT action or an attack on the TRT

10 on the radio?

11 COLONEL SCOTT: I say I don't remember

12 one but as I say, that's striking because if, I'm sure I'd

13 have heard the TRT was under attack and then the mention of

14 the bodies lying on the ground, they would have more than

15 likely put those two together but it struck me as it was

16 the public order action that caused the people to be lying

17 down because I only recall Brigadier Calitz mostly in the

18 beginning speaking on the radio solely, directing the

19 public order option, tactical option, defensive option

20 against what they resumed was an attack. Later, I think

21 once he'd moved out and around is when Colonel Vermaak was

22 on the air and starting to give situation reports of what

23 he could see from the air and starting to direct the

24 traffic flow. As I say, I don't recall that. I'm not

25 saying it wasn't said but I don't recall it. Those are

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1 mostly the only two people I recall speaking at that time.
 2 MR CHASKALSON SC: Well, someone who did
 3 hear in the JOC – if someone heard in the JOC that the TRT
 4 were coming under an attack or that the TRT were taking
 5 action against someone and if they heard that before a
 6 communication that 18 bodies were down, would you accept
 7 that it would be reasonable for them to assume that some of
 8 those 18 bodies would be dead or critically wounded?
 9 COLONEL SCOTT: I don't know, again it's
 10 open for interpretation because as I say, there was the
 11 POPS action that was also ongoing. To have heard that, it
 12 may have been a sentence that came through somewhere along
 13 the line but in saying this, when you're standing in the
 14 JOC you're trying to build a mental picture of what's going
 15 on according to what we thought was supposed to be going
 16 on. You try and put this in perspective and in saying
 17 this, you're expecting that if it is people that have been
 18 shot and wounded with live ammunition, somebody on that
 19 scene is going to immediately call back and give a
 20 situation report on that because that is a serious
 21 situation. None were sent so – and as I say, it's not as
 22 though the operation stops and the talking on the radio
 23 stops either. The communications are ongoing so you're
 24 still concentrating further on the communications which are
 25 coming through, trying to keep abreast and paint that

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1 mental picture of what's going on, on the ground. That's
 2 the best explanation I can give anyway. From my point of
 3 view that's how I experienced it.
 4 CHAIRPERSON: The TRT were acting, doesn't that
 5 mean the POP people would already have retreated to the
 6 shelter of the Nyalas because the TRT were in the line
 7 behind the POP, weren't they, and they were only supposed
 8 to go into action if the POP people got into difficulties
 9 and retreated and took refuge in the Nyalas, isn't that
 10 right?
 11 COLONEL SCOTT: That's correct.
 12 CHAIRPERSON: And if the TRT people went into
 13 action, what were they going to do?
 14 COLONEL SCOTT: Well, there's –
 15 CHAIRPERSON: Were they going to fire catapults
 16 into the air?
 17 COLONEL SCOTT: No, Chairperson, but
 18 there's a force continuum from their part as well and this
 19 is why I say they were never supposed to be – I can
 20 understand on that day why they went right up to where they
 21 were because this was the police neutral area which was a
 22 safe environment, a refuge for everybody inside, thus them
 23 moving right up to try and block whatever was supposed to
 24 be coming inside but on the operational deployment for the
 25 outside, once the POPS had pulled away with the dispersion

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1 action, they were supposed to give the POPS the opportunity
 2 to go ahead with their dispersion and then follow suit
 3 after the POPS but there's a force continuum –
 4 CHAIRPERSON: The fact that they didn't seem to do
 5 that, the fact that they went into action against, to use
 6 the Brigadier's expression, that seems to indicate that the
 7 POP people must have taken refuge in the Nyalas and the TRT
 8 people had come, had moved over into active mode. Isn't
 9 that right?
 10 COLONEL SCOTT: That's correct but as I'm
 11 saying, there's supposed to be – well, envisioned from my
 12 side there's a force continuum of them as well. The only
 13 time you go directly to using potentially lethal force or
 14 lethal force is when you're under direct threat within the
 15 close vicinity and I tried to act on that by placing out
 16 the task force snipers, so if there was firearms fire it
 17 would be picked up by those people that were sitting on top
 18 of the Nyalas, of the razor wire Nyalas that had been
 19 positioned and were now static. But the TRT line again if
 20 they come under fire obviously would need to assess the
 21 situation and, if necessary, return fire to somebody
 22 shooting at them. It's only when somebody gets really
 23 close to you with a panga or with a spear that you would
 24 need to protect your own life or the life of a colleague.
 25 Thus there were stun grenades, there were warning shots and

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1 preceding all of that still verbal commands which we find
 2 throughout the operation they were trying to implement
 3 still, giving verbal commands, at times throwing stun
 4 grenades to try to get protesters or strikers not to
 5 approach them although when they approached, different
 6 story but they would need to speak to their actions on the
 7 ground but that was what was supposed to have happened.
 8 So from my part, stating that if the TRT came
 9 under attack again one would need to interpret, you know,
 10 or putting yourself in the situation at that time,
 11 listening to the radio at that time although I don't, I
 12 still don't recall hearing that, one would need to assess
 13 what was that, what actually happened. And again I say if
 14 it was something where lethal or live ammunition was fired,
 15 you would be expecting somebody to say so on the ground, to
 16 actually get up and situation report, this is what's gone
 17 on, this is what's happened. In the absence of that, it's
 18 again left to the interpretation of those listening as to
 19 what had actually gone on.
 20 [09:40] MR CHASKALSON SC: Colonel, I just want
 21 to clarify a possible ambiguity. We've been having this
 22 exchange in relation to when people in the JOC knew or
 23 suspected that people had been killed at scene 1.
 24 COLONEL SCOTT: Yes.
 25 MR CHASKALSON SC: When did the people in

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1 the JOC know that there was a need for medical assistance
 2 at scene 1? Was that the same period?
 3 COLONEL SCOTT: I can't speak obviously
 4 for others in the JOC. As I said, I had positioned myself
 5 next to the radio, was listening intently and that was
 6 probably for all of, up to about 20 past, half past four.
 7 If others became aware before then - but I do not recall
 8 over the radio either that there was a request for
 9 ambulances that was made, so I'm not sure about others or
 10 when the JOC, for that matter, as you're putting it as a
 11 global entity, was made aware.
 12 MR CHASKALSON SC: But you're standing
 13 next to the radio so that you first became aware of the
 14 need for medical assistance at scene 1 sometime between 20
 15 past and half past four.
 16 COLONEL SCOTT: Well, I still don't
 17 recall today at what stage. I didn't actually deal with
 18 the medical assistance that was sent in or requested or -
 19 so I wouldn't be able to actually say.
 20 MR CHASKALSON SC: Well, did you hear a
 21 request for medical assistance before you were aware that
 22 people had been shot at scene 1 and that there was a risk
 23 that people may have been killed at scene 1?
 24 COLONEL SCOTT: It's difficult again and
 25 as I say I'm really, I'm not trying to be obnoxious or -

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1 I'm trying to help, it's just an issue of trying to
 2 remember and recall and I can't even really put my finger
 3 on the place where I can recall knowing that there were now
 4 people that were deceased or wounded. I know that I was
 5 made aware but at what time specifically I don't know. One
 6 had operations going and it's flowing and everybody's
 7 rushing around even inside the JOC at some stage, you're
 8 not exactly looking at your watch to start mentally making
 9 notes of things as you're mentioning.
 10 MR CHASKALSON SC: So what are you saying
 11 about when you would have found out that people at scene 1
 12 had been killed, that you can't recall at all but you can -
 13 COLONEL SCOTT: It was in that period
 14 probably between four and five o'clock but it would've been
 15 later in the operation and as I say, I was listening quite
 16 intently to what the radio speech was going on.
 17 MR CHASKALSON SC: But four and five
 18 o'clock, between four and five o'clock is quite a long
 19 period. Are we talking a couple of minutes past four, are
 20 we talking 20 minutes past four, are we talking half past
 21 four?
 22 COLONEL SCOTT: It wasn't while I was
 23 listening on the radio because I'm quite sure that if I'd
 24 heard that there was a number of people wounded or shot,
 25 one of my natural actions, having planned for General

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1 Naidoo who had the medical resources with him, would have
 2 trying to know if that action plan had been put into place
 3 or whether that was being followed now to send him forward
 4 but I didn't, so I don't think that I would've known at
 5 least till 20 past, half past four.
 6 MR CHASKALSON SC: Now you mentioned
 7 earlier that you would've expected the people present at
 8 scene 1 to have given a sitrep?
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: At the very least we
 11 would've expected the commanders at scene 1 to have called
 12 immediately for medical assistance.
 13 COLONEL SCOTT: I would think - well, I
 14 suppose they've got a dual action. At that stage they're
 15 also trying to just secure the scene, it's still an active
 16 scene, firearms were seen at the scene so - but that would
 17 take only probably a couple of minutes at most and
 18 thereafter, or somebody simultaneously could've been
 19 calling in for medical assistance whilst the rest of the
 20 police officials or junior commanders and the officials
 21 were securing the scene of any possible firearms still in
 22 the possession or lying next to wounded persons or -
 23 MR CHASKALSON SC: That's presumably what
 24 one would've expected of responsible police officers
 25 because there were critically wounded people lying in front

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1 of them. I mean some people were literally dying in front
 2 of them.
 3 COLONEL SCOTT: Yes.
 4 MR CHASKALSON SC: Captain Loest was one
 5 of those commanders. He's given a statement HHH44. If we
 6 can call up HHH44? Chairperson, apparently we have
 7 difficulties with our -
 8 CHAIRPERSON: I can see that there's difficulty in
 9 getting HHH24, is it, on the screen but perhaps you can
 10 read - sorry, 44, 44 on the screen. Perhaps you can read
 11 the relevant passage. Perhaps the witness had got a copy
 12 anyway.
 13 MR CHASKALSON SC: Well, Colonel, let me
 14 read it. It is a relatively long passage, about 12 lines.
 15 If you need a copy we'll get one in front of you. At
 16 paragraph 8 of Captain Loest's statement he says the
 17 following, "After the shooting a large group of TRT members
 18 in line moved forwards towards the north but still within
 19 the area of the first incident. I remained behind. I
 20 called to JOC requesting medical people to be brought in to
 21 assist the injured protesters. I then instructed the
 22 members present with me to remove and search for all the
 23 weapons from the deceased and injured protesters and to put
 24 them in a heap. The reason for doing this was that we were
 25 not sure if the injured could still use the weapons to

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1 attack members and for the safety of the members at the
 2 scene. The medical teams were also refusing to come in to
 3 assist if the area was not safe." And then he goes on to
 4 say, "Lieutenant-Colonel Mere confronted me about my
 5 removing the weapons. He said I was not supposed to do
 6 that because the scene has now been changed. I responded
 7 saying I had to remove the weapons for the safety of the
 8 people, of the police and the safety of the medical teams
 9 who had indicated they would not give any medical
 10 assistance if the injured protesters were still armed."
 11 Now, what I would emphasise about Captain Loest's statement
 12 is, first of all he says he called to the JOC requesting
 13 medical people to be brought in. Then he says thereafter
 14 he instructed –
 15 CHAIRPERSON: Could we please, sorry to interrupt
 16 you, could we please have, I think it's paragraph 8 is it?
 17 MR CHASKALSON SC: It is, Chair.
 18 CHAIRPERSON: We've got paragraph 2 on the screen
 19 at the moment. Thank you.
 20 MR CHASKALSON SC: Colonel, maybe if you
 21 could read paragraph 8.
 22 COLONEL SCOTT: I've heard it -
 23 MR CHASKALSON SC: The second point I
 24 would emphasise is, it was after he had called to the JOC
 25 that he instructed the members present to remove and search

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1 for all the weapons and to put them into a heap and he did
 2 that because he'd been told that the medics – well, one, to
 3 secure the scene and also because he'd been told that the
 4 medics wouldn't come in unless the scene was safe. Now –
 5 COLONEL SCOTT: Which, by implication,
 6 means he's probably spoken to somebody concerning the
 7 medics.
 8 MR CHASKALSON SC: That is the same
 9 inference that we would draw, Colonel, and it's an
 10 inference that is borne out by the cell phone records which
 11 SAPS have provided to us so –
 12 CHAIRPERSON: Sorry, before you go on. The third
 13 sentence of paragraph 8 says, in turn, "I called to the JOC
 14 requesting medical people to be brought in to assist the
 15 injured protesters." Then he goes on with the rest of the
 16 narrative so he says it in direct terms there.
 17 MR CHASKALSON SC: Now, Colonel, we've
 18 been given cell phone records of communications from police
 19 cell phones at Marikana on the day. We've prepared an
 20 extract of some of those cell phone records because we
 21 don't want to splash all of them out in the public at this
 22 stage, at any rate, and that extract is JJJ188. It's page
 23 251 of file 4 and if we can just –
 24 CHAIRPERSON: Sorry, JJJ1?
 25 MR CHASKALSON SC: 188.

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1 CHAIRPERSON: 188 and how do I describe it?
 2 Extract from telephone records?
 3 MR CHASKALSON SC: Extract from cell
 4 phone records of police officers.
 5 CHAIRPERSON: Mobile telephone records of police
 6 officers and you say that's page what of what file?
 7 MR CHASKALSON SC: 251 of file 4.
 8 CHAIRPERSON: Thank you.
 9 MR CHASKALSON SC: And Colonel, there
 10 you'll see that at five past four or 4:05:44 on the Vodacom
 11 clock, which may not be the same as the ETV clock, Captain
 12 Loest called Brigadier Pretorius and there was a call of 46
 13 seconds. You'll see also that at 4:08:54 Brigadier
 14 Pretorius called Captain Loest and there was a call of one
 15 minute and nine seconds and there was a later call of 40
 16 seconds at 13 minutes past four, but Captain Loest saying
 17 he called the JOC is borne out by that record of a call
 18 from him to Brigadier Pretorius at five past four. Where
 19 was Brigadier Pretorius in the JOC?
 20 COLONEL SCOTT: I can't particularly
 21 recall but she would've probably been around the radio
 22 area, that's where her sort of desk/table setup was but as
 23 I say, she wasn't sitting. All I remember is the two
 24 ladies sitting at the table, I think they were from the
 25 Marikana police station, that were taking the notes.

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1 MR CHASKALSON SC: And you don't recall
 2 Brigadier Pretorius reporting to anyone a call that she had
 3 received from Captain Loest about scene 1?
 4 COLONEL SCOTT: I never heard a report
 5 but as I say, my concentration would not have been on if
 6 she'd received a telephone call or what she was saying or
 7 listening to.
 8 MR CHASKALSON SC: Now, Brigadier
 9 Pretorius's role inside the JOC was what?
 10 COLONEL SCOTT: Well, she was the
 11 operational commander in a sense, looking at the reporting,
 12 the radio communications in and out of the JOC, amongst
 13 other things record-keeping of events inside the JOC.
 14 MR CHASKALSON SC: And when she received
 15 information, to whom was he supposed to communicate that
 16 information?
 17 COLONEL SCOTT: Ideally, I'm tempted to
 18 say the operational commander but I think she would've
 19 probably been reporting in real-time to General Annandale.
 20 MR CHASKALSON SC: And a report from
 21 Captain Loest at scene 1 is a report that she would, in the
 22 ordinary course of events, have been expected to
 23 communicate to Major-General Annandale immediately.
 24 COLONEL SCOTT: Well, she should have if
 25 the report to her was obviously of the injured and the

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1 wounded and possibly deceased people.

2 MR CHASKALSON SC: If we stay with those

3 cell phone records for a while, what's significant is that

4 two minutes before she received the call from Captain

5 Loest, Brigadier Pretorius sent an SMS to Mr Molatedi of

6 IPID. That was at 16:03:34. Now, in August this year

7 Brigadier Pretorius filed a supplementary statement, that's

8 JJJ187A. Can we call up JJJ187A? It starts at page 239 of

9 file 4 and if we can go down to paragraph 33, there

10 Brigadier Pretorius states "After I received the report of

11 casualties I phoned Mr Molatedi, the acting provincial head

12 of IPID, to inform him about the incident. I am not sure

13 about the time of this call. His phone was on voicemail

14 but he later phoned me back and promised to send Mr Motaung

15 of the IPID office to attend to the scene. Mr Motaung

16 phoned me later and informed me and told me that he and

17 other IPID officials were on their way to Marikana and will

18 report at the JOC." Now we've been through Brigadier

19 Pretorius's cell phone records of the 16th and that SMS at

20 16:03 is the only call to Mr Molatedi reflected on

21 Brigadier Pretorius's cell phone records. So if she tried

22 to contact Mr Molatedi only after she received a report of

23 casualties, the report of casualties must have preceded

24 16:03.

25 COLONEL SCOTT: I understand what you're

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1 saying but do we have confirmation what the SMS said,

2 though?

3 MR CHASKALSON SC: I can tell you broadly

4 what Mr Molatedi has informed us. In due course we'll get

5 a statement from Mr Molatedi but Mr Molatedi has confirmed

6 that that is the SMS that triggered the response of IPID to

7 the Marikana shootings.

8 COLONEL SCOTT: Okay.

9 MR CHASKALSON SC: But you say you

10 weren't aware of any of this at the time?

11 COLONEL SCOTT: No.

12 MR CHASKALSON SC: Before we leave

13 Captain Loest, I'd like to – or Captain Loest's report, I'd

14 just like to go back to his statement at paragraph 8, HHH44

15 and you see there, as I pointed out to you, that Captain

16 Loest records that it was only after he had reported the

17 incident at, or he made his call for medical assistance,

18 that he instructed members to search for the weapons and to

19 put them into a heap. You recall that?

20 COLONEL SCOTT: Yes.

21 MR CHASKALSON SC: We have a photograph

22 and I'm afraid I've just lost my reference so you're going

23 to have to bear with me for a minute – of weapons in a heap

24 at scene 1 taken by Warrant Officer Ramanala. It's Warrant

25 Officer Ramanala's photograph 125 and I wonder if we can

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1 call that photograph up. It will be JJJ29.125, JJJ29.125.

2 MR CHASKALSON SC: This is already an

3 exhibit.

4 MR CHASKALSON SC: It is already an

5 exhibit and if we can just zoom in on 125. Do we just have

6 the thumbnails, not the actual photograph? Well, for

7 present purposes would you accept that that's a photograph

8 of weapons in a heap at scene 1?

9 COLONEL SCOTT: Yes.

10 [10:00] MR CHASKALSON SC: Colonel, the time on

11 Warrant Officer's Ramanala's camera when that photograph

12 was taken was 15:56:10 which translates to an ETV time of

13 16:07:06, 16:07:06 and that is before the police line

14 reached scene 2. The police line – so if we put all of

15 those facts together we see that Captain Loest's report to

16 the JOC would have had to have been some time before the

17 police line reached scene 2.

18 COLONEL SCOTT: Yes, that would make

19 sense.

20 MR CHASKALSON SC: Now Captain Loest was

21 not the only person who reported the need for medical

22 assistance at scene 1, it appears that Colonel Vermaak also

23 made such a report and for that I would take you to the

24 statement of General Naidoo, JJJ108. And can we call up

25 JJJ108? It's file 3.2 from page 880 to 894. If we can go

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1 to page 889 which is page 10 of the PDF file, paragraph 60.

2 "My group and I were still at IRA 1 and at approximately

3 15:45 I heard Lieutenant-Colonel Vermaak, who was in the

4 police helicopter, indicate that people were down at koppie

5 1 and we should get medical assistance for them. He added

6 later that the veld was set alight by the strikers and fire

7 trucks should be deployed. I immediately activated my

8 reserve group to move towards koppie 1 as I had both

9 medical and fire personnel in my group. The said emergency

10 personnel had to be escorted by the SAPS at all times

11 during the deployment as we were responsible for their

12 safety. Due to the fact that my group had soft skin sedans

13 and bakkies I had to use the road around the electricity

14 sub-station to pass what is now known as koppie 3 to move

15 towards koppie 1." Now from the Coin security chopper we

16 can show that Major-General Naidoo's entourage had already

17 turned right, off the main road to move round the south-

18 west corner of the electricity sub-station 40 seconds into

19 that video which would be ETV time 15:58:10. Can I just

20 call up JJ194? Oh, I've got the wrong reference,

21 definitely got the wrong reference. Colonel, I must

22 apologise, I don't have the screenshot to hand but maybe if

23 we can call up the Coin security helicopter video and

24 scroll it to 40 seconds into the video. CC22, CC22. We'll

25 need to freeze it at 40 seconds in.

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1 [VIDEO SHOWN]
 2 MR CHASKALSON SC: Can we now zoom into
 3 the corner of the power station on the left-hand side? The
 4 power station is that rectangular ish structure on the
 5 bottom left-hand corner of the screen. If we can zoom in
 6 there. I wonder if we can bring a memory stick and I'll
 7 just copy the exhibit and we can give it a number.
 8 Chairperson, if we can call this, the photograph that's
 9 going to be put up, JJJ195. It is a zoomed in screen shot
 10 taken from 40 seconds into the Coin security aerial video.
 11 CHAIRPERSON: Zoomed in screenshot taken
 12 40 seconds into what?
 13 MR CHASKALSON SC: The Protea Coin
 14 helicopter video exhibit CC22.
 15 CHAIRPERSON: All I need to say into
 16 exhibit CC22.
 17 MR CHASKALSON SC: 22 yes, Chairperson.
 18 CHAIRPERSON: So it's zoomed in screen
 19 shot taken 40 seconds into exhibit CC22.
 20 MR CHASKALSON SC: Now on the top left-
 21 hand corner one sees the whole image that is visible on the
 22 CC22 at 40 seconds with a little white square marking the
 23 zoomed section and the rest of the image is the zoomed
 24 section, we had circled on the zoomed section some of the
 25 cars from Major-General Naidoo's entourage that has already

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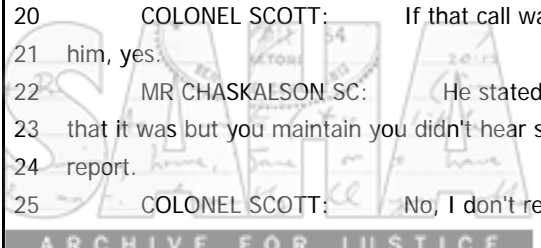
1 turned off the main road and is driving round the south-
 2 west corner of the power station. Colonel, do you accept
 3 that those vehicles were part of Major-General Naidoo's
 4 entourage or would you like further evidence?
 5 COLONEL SCOTT: No, I accept they are.
 6 MR CHASKALSON SC: Now 40 seconds into
 7 the video in exhibit CC22 was only four minutes and 20
 8 seconds after the shootings, four minutes and 20 seconds
 9 after the shootings. So that was more than eight minutes
 10 after any SAPS vehicles reached koppie 3 and at least nine
 11 minutes before any victim was killed at koppie 3.
 12 CHAIRPERSON: You said more than eight
 13 minutes after, I think you meant –
 14 MR CHASKALSON SC: Oh, before, before.
 15 Now, Colonel, to have reached that point with these
 16 vehicles in response to a call for medical assistance at
 17 scene 1 Major-General Naidoo would have had to have heard
 18 that call for medical assistance at scene 1 some time
 19 before that image that we see. Do you accept that?
 20 COLONEL SCOTT: If that call was made to
 21 him, yes.
 22 MR CHASKALSON SC: He stated, under oath,
 23 that it was but you maintain you didn't hear such a radio
 24 report.
 25 COLONEL SCOTT: No, I don't recall

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1 hearing it, no.
 2 MR CHASKALSON SC: Well, Colonel, let's
 3 just add up the evidence that we have of the report of
 4 scene 1 to the JOC on or before or five past four. We've
 5 got Colonel Loest's statement that's corroborated by –
 6 sorry, Captain Loest's statement that's corroborated by the
 7 cell phone records. We've got Brigadier Pretorius's SMS to
 8 IPID as read in context with her own statement and what
 9 IPID have conveyed to us about this being the SMS that
 10 triggered their involvement at Marikana. And we've got
 11 Major-General Naidoo's statement about his response to a
 12 call for medical assistance from Colonel Vermaak coupled
 13 with the objective evidence of the movement of his
 14 vehicles. That's all quite apart from the chronological
 15 listing of radio transmissions that we see in the
 16 handwritten notes from Captain Van Heerden. I want to put
 17 to you that on the strength of that evidence we find it
 18 very difficult to believe that the commanders in the JOC
 19 would not have known about scene 1 at the very latest by
 20 five past four and probably by a couple of minutes earlier.
 21 Do you have any response to that?
 22 COLONEL SCOTT: The only response I have,
 23 obviously I can speak for myself, but I would have no issue
 24 in saying if I knew of scene 1 or that there were deceased
 25 people at scene 1, if I did at that early time, I've got no

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1 reason to withhold saying something like that. I don't
 2 recall hearing it and as I say, I was position next to the
 3 radio, I am quite sure it would have made an impact with me
 4 if it was pertinently mentioned over the radio that there
 5 are people that are down, wounded, possibly deceased and
 6 medical attention was required. Whether it was done via
 7 cell phones, that's a possibility, I don't want to also say
 8 that it was never said over the radio, I just don't recall
 9 that it was.
 10 MR CHASKALSON SC: And a cell phone
 11 report to Brigadier Pretorius you've already confirmed
 12 would be something that she would be expected to
 13 communicate to Major-General Annandale.
 14 COLONEL SCOTT: That would be so.
 15 MR CHASKALSON SC: In the absence of
 16 Major-General Mpembe who was in the air already.
 17 COLONEL SCOTT: Yes.
 18 MR CHASKALSON SC: I want to come back to
 19 a different issue relating to the radio communications and
 20 this is your four to five minutes of radio silence. Can
 21 you recall broadly when that four to five minutes of radio
 22 silence was if you contextualise it in the operation, in
 23 particular was it before or after the report from
 24 Lieutenant-Colonel Vermaak that he could see people lying
 25 down?



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1 COLONEL SCOTT: From what I can recall it
 2 was after, from what I recall.
 3 MR CHASKALSON SC: It was after.
 4 COLONEL SCOTT: Yes. There's not that
 5 much that I can remember from all that radio communication.
 6 As I say I've refreshed my memory from comes from Protea
 7 Coin but those are some of the smaller things I can
 8 remember was his reporting that there were – and he was
 9 counting, as I say from the air so many bodies on the
 10 ground or people lying down. I don't remember the precise
 11 words, but I remember hearing that. But the squelching or
 12 the keying of the radio from what I can remember was
 13 somewhere sort of mid operation.
 14 MR CHASKALSON SC: But your recollection
 15 is it was after he reported bodies down.
 16 COLONEL SCOTT: From what I can remember,
 17 yes.
 18 MR CHASKALSON SC: Now we've listened
 19 very closely to the Lonmin, sorry to the Protea Coin
 20 helicopter video, CC22 which has radio communications
 21 audible on it. And at the start of that video there is a
 22 great deal which is inaudible but what you can hear is a
 23 succession of bleeps which we undertake to signify the
 24 start of a radio communication. Is that a correct
 25 assumption? And the fact that there are a succession of

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1 bleeps would mean that the five minutes silence that you
 2 speak about wouldn't span that period because when there
 3 was silence you wouldn't get a succession of bleeps?
 4 COLONEL SCOTT: I'm not an expert on that
 5 because what I do recall is myself standing in the JOC
 6 trying to key the radio to try and maybe, or even trying to
 7 get a message through from our side in the JOC to say
 8 listen whoever is keying or who's sitting on the radio, I
 9 was hoping that that would go through but it obviously
 10 wasn't. So I'm not sure if you still key a radio whether
 11 that beeping would come through or not, but I'm not sure.
 12 But I don't think it would.
 13 MR CHASKALSON SC: And we've listened
 14 carefully to the whole of the video CC22 and we can't find
 15 a four to five minute break in radio communications, at
 16 least not until well after the operation. Do you accept
 17 that?
 18 COLONEL SCOTT: I'll take your word for
 19 that, yes.
 20 MR CHASKALSON SC: So from that we would
 21 have to infer that the four to five break in radio
 22 communications took place before CC2 started.
 23 COLONEL SCOTT: Just refresh my memory,
 24 CC22 is?
 25 MR CHASKALSON SC: Oh sorry, the Protea

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1 Coin helicopter where we can hear –
 2 COLONEL SCOTT: It is a possibility, as I
 3 say it's a long time back to recall specifically when but I
 4 can just recall – as I say the small amounts that I recall
 5 definitely I could hear Brigadier Calitz with the initial
 6 move of the POPs calling Papa call signs and etcetera. But
 7 then as you say then I remember the Vermaak body sort of
 8 count on the ground. So it's possible it happened at that
 9 time.
 10 MR CHASKALSON SC: But now I'm not asking
 11 you to speak from memory, I'm asking you to speak from what
 12 we can deduce from the absence of a four to five minute
 13 break in radio communications on this video.
 14 COLONEL SCOTT: Yes.
 15 MR CHASKALSON SC: So if there was a four
 16 to five break it would have to have happened before this
 17 video started.
 18 COLONEL SCOTT: Yes.
 19 [10:20] MR CHASKALSON SC: Now we know from our
 20 analysis of this video and the photographic evidence, that
 21 no-one had been killed at scene 2 for 10 minutes after the
 22 start of this video, the first deaths at scene 2 take place
 23 after 10 minutes into this video, do you accept that?
 24 COLONEL SCOTT: Yes.
 25 MR CHASKALSON SC: So if there is a

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1 report about bodies down which comes before a four to five
 2 minute silence and if that four to five minute silence has
 3 to take place before this video starts, we can work out
 4 that between the report of bodies down and the first death
 5 at scene 2 there would have to be at least 14 minutes, 14
 6 to 15 minutes at least. That's assuming this video starts
 7 as soon as that five minute break ends, four to five minute
 8 break ends, and the four to five minute break starts as
 9 soon as the communication that bodies are down is made.
 10 COLONEL SCOTT: There's the possibility
 11 also there that the Calitz communications took place on the
 12 defensive action of the POPS, possibly then someone was
 13 keying a radio and after that at some stage, possibly four
 14 minutes after that Vermaak comes back on the air with the
 15 body count.
 16 MR CHASKALSON SC: It's a hypothetical
 17 possibility but it isn't how you recalled it when –
 18 COLONEL SCOTT: As I recall the
 19 different, those conversations happening, whether they were
 20 back-to-back I can't particularly say.
 21 MR CHASKALSON SC: Well, at the very
 22 least, between that communication and the first deaths at
 23 scene 2 there are at least 10 minutes because we don't see
 24 that communication on this video, and quite possibly more
 25 than 14 minutes. Would that be sufficient time for control

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1 to have been exercised from the JOC to take stock and pause
 2 the operation if they were aware of the shootings at scene
 3 1?
 4 COLONEL SCOTT: I just want to get the
 5 line of your question, so if the JOC was aware there's 10
 6 minutes odd for them to have made some or other decision
 7 before the commencement of the forces towards scene 2 where
 8 the, I take it the first two people are, again, mentioned
 9 on the radio as being down?
 10 MR CHASKALSON SC: Well, the first – if
 11 we take it to the point where the first two people are
 12 mentioned as being down is actually 12 minutes.
 13 COLONEL SCOTT: Okay.
 14 MR CHASKALSON SC: I'm saying it's, we
 15 can say with certainty that nobody had been killed by 10
 16 minutes. We don't know how long it took for Lieutenant-
 17 Colonel Vermaak to report that two bodies were down but
 18 that report came at 12 minutes.
 19 COLONEL SCOTT: I'm just trying to
 20 understand your question you're asking. So in that time
 21 period if JOC knew that bodies were down, that would've
 22 been –
 23 MR CHASKALSON SC: No, if JOC knew that
 24 there had been killings at scene 1 –
 25 COLONEL SCOTT: Right.

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1 MR CHASKALSON SC: And there was a need
 2 to take stock of where this operation was going –
 3 COLONEL SCOTT: Okay.
 4 MR CHASKALSON SC: Would 10 minutes have
 5 given the JOC sufficient time to take a decision whether to
 6 pause the operation and take stock or not?
 7 COLONEL SCOTT: I can only try to maybe
 8 run through a procedure of what may happen. Confirmation
 9 would need to be sought and if it was confirmed obviously
 10 what had happened at scene 1 and this was the situation, a
 11 decision making process would've needed to have happened
 12 with senior JOC members and obviously on the advice and
 13 speaking to the operational commander on the ground who is
 14 still experiencing what's going on because with the JOC so
 15 to say flying blind, only having radio communication and a
 16 very limited ability to look on the CCTV, you would still
 17 need to consult with your commanders on ground because to
 18 simply tell them there, stop, pause, freeze exactly where
 19 you are and police lives or other lives for that matter
 20 were endangered, would be naïve of the JOC to simply say
 21 stop. So there would be a consultation process but I think
 22 that within 12-odd minutes something to that degree would
 23 be possible.
 24 CHAIRPERSON: It's possible, would it be adequate,
 25 the time period for consultation?

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1 COLONEL SCOTT: It should be adequate,
 2 Chairperson. That's considering as well that obviously
 3 you've got the ability to speak to the people you need to
 4 speak to, both in the field as well as the people that
 5 should be represented in the JOCCOM.
 6 MR CHASKALSON SC: Well, let's look at
 7 the facilities. The one problem was this radio silence.
 8 COLONEL SCOTT: Correct.
 9 MR CHASKALSON SC: The radio silence
 10 wouldn't have affected the 10 minute period or the 12
 11 minute period because it happened beforehand but let's look
 12 at it anyway. Can we go to JJJ107 which is Brigadier
 13 Calitz's consolidated statement, paragraph 43. There
 14 Brigadier Calitz is reporting something that was
 15 communicated to him on the 14th. "At around 13:20 the JOC
 16 received a report that there was a civilian who was
 17 communicating on a SAPS handset radio. According to the
 18 report it was clear from the language used by the person on
 19 the radio that the person was not a police member." And
 20 indeed if we go to FFF25 we see that JOC occurrence book
 21 entry on the 14th at 13:20. We don't need to call it up,
 22 I'll just read it to you, it's entry 106. "13:20 I,
 23 Constable Maluleke, report that there might be a civilian
 24 who is communicating on the SAPS handset radio and he is
 25 using channel 13 for Marikana. Identified that the person

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1 is not a police member because of communication language
 2 that he used on the radio. Lieutenant Merafi informed
 3 about the information." Signed Constable Maluleke. So
 4 from the 14th you were aware that a radio had been stolen or
 5 the SAPS were aware that a radio had possibly been stolen.
 6 COLONEL SCOTT: Yes.
 7 MR CHASKALSON SC: Were you, in your
 8 capacity as one of the planners of the operation, aware of
 9 this risk or of this possibility?
 10 COLONEL SCOTT: I don't recall but I'm
 11 sure I would have been made aware.
 12 MR CHASKALSON SC: Now, once a radio has
 13 been stolen there's a risk of interception or interference
 14 with communications which is foreseeable, would you accept
 15 that?
 16 COLONEL SCOTT: Yes.
 17 MR CHASKALSON SC: So was anything done
 18 to set up a protocol for shifting to a backup channel if
 19 there was interference?
 20 COLONEL SCOTT: There was a backup
 21 channel. I'm not sure if it's mentioned but I think we had
 22 two channels. I don't recall – but in essence as well, it
 23 wasn't briefed that I can recall that we were expecting an
 24 interception of that kind but as far as I know there was a
 25 backup channel that was supposed to be utilised if one

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1 channel went down.
 2 MR CHASKALSON SC: Well, one channel
 3 apparently did go down for four to five minutes, so why
 4 wasn't the backup channel utilised?
 5 COLONEL SCOTT: Well, speaking to – as I
 6 say, I don't think it was briefed to the people. I'm not
 7 sure if it's, I can't recall it being actually pertinently
 8 briefed in that way. I don't think we expected that they
 9 would utilise the police radio to actually jam the
 10 frequency.
 11 MR CHASKALSON SC: But you say there was
 12 a backup channel.
 13 COLONEL SCOTT: Yes.
 14 MR CHASKALSON SC: And whatever the
 15 reason why the primary channel went down, whether it was
 16 deliberate interference, accidental error on the part of
 17 some police officer who switched his transmission button on
 18 by mistake or any other reason, when that happens one is
 19 expected to move to the backup channel, is that not so?
 20 COLONEL SCOTT: You would normally put
 21 some form of a plan in place when you start dealing with
 22 the possibility of jamming or radio channels and there
 23 would be a certain period possibly of time but one must
 24 understand as well, we know now it was four minutes, at the
 25 time it could've been any one of the policemen doing the

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1 same thing by mistake. It happens in operations that
 2 somebody may key his radio for 10 seconds. So you're
 3 sitting at that time expecting the radio to come back on at
 4 any time and it happened to just go on for four minutes
 5 odd, but in saying that, the people on the ground – I'm not
 6 sure, they were obviously busy with what they were doing.
 7 The commanders all had handsets on that same channel,
 8 others were working, as far as I know, with their members,
 9 utilising their own radios from the environments they'd
 10 come from, from around the country. So it obviously wasn't
 11 exercised.
 12 MR CHASKALSON SC: Sorry, you mentioned
 13 that others were using their own radios with the – did you
 14 say handsets that they'd brought from around the country?
 15 COLONEL SCOTT: Yes.
 16 MR CHASKALSON SC: So there were parallel
 17 radio communication systems in place on the day?
 18 COLONEL SCOTT: From what I understand
 19 you've got what we would call a simplex or a direct channel
 20 where it doesn't have to work through a repeater system and
 21 you need to remain in line of sight. So where we needed a
 22 repeater system to speak back to the JOC and the command,
 23 that was in place and we were limited there but if
 24 elements, for instance the special task force which came
 25 from Durban, they would've brought their radio system from

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1 Durban and as long as they then remained on a simplex
 2 channel, being able to speak line of sight to each other,
 3 they could speak to each other on that but they would not
 4 be able to communicate onto the command channel for that
 5 matter. It was simply an in-house, we call that inter,
 6 "intra" team where they could speak to each other.
 7 MR CHASKALSON SC: Two questions. You
 8 say you need line of sight for those sorts of
 9 communications.
 10 COLONEL SCOTT: Well, the radio channel
 11 would flow as a line of sight, yes. If there were
 12 buildings, big buildings or natural mountains or koppies or
 13 the like in the way, it could hamper that communication,
 14 yes.
 15 MR CHASKALSON SC: So would it have been
 16 possible for those communication systems to have
 17 communicated with the JOC?
 18 COLONEL SCOTT: No, no, I think that
 19 would have – it's also limited on distance obviously that
 20 you've got, so it's not infinite.
 21 MR CHASKALSON SC: But of course those
 22 are team communication systems which are not a substitute
 23 for the overall communication channel. They're to operate
 24 in parallel with the overall communication channel.
 25 COLONEL SCOTT: Yes and again that's

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1 possibly why the communication from the JOC to the first
 2 line of command in the field is structured on the radio
 3 system that we booked out to commanders and to vehicles,
 4 but within each, possibly the national intervention unit,
 5 the special task force, units like that, every member has
 6 his own hand radio and they know when they're working
 7 within the close environment of each other that, regardless
 8 of the other radio communications, they can still speak to
 9 each other and it also doesn't clog the main command
 10 channel at the same time.
 11 MR CHASKALSON SC: But if we go back then
 12 to the command channel, how can that command channel go
 13 down for four to five minutes without anybody switching to
 14 a backup channel?
 15 COLONEL SCOTT: Well, as I say, I don't
 16 think it was briefed to the commanders in depth what the
 17 contingency plan would be should something like that occur.
 18 MR CHASKALSON SC: It doesn't require
 19 much of a briefing. All it requires is knowledge of what
 20 the backup channel is, what number channel one has to
 21 switch to.
 22 COLONEL SCOTT: Yes.
 23 MR CHASKALSON SC: You accept that. And
 24 did the commanders know that there was a backup channel?
 25 COLONEL SCOTT: I don't really recall.

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1 It may have been mentioned in the bigger JOCCOM briefings
 2 to the commanders at that stage. I didn't bring it up in
 3 the tactical briefings to them, no.
 4 CHAIRPERSON: What's the point of having a backup
 5 channel if you can't be certain that the people concerned
 6 would know what the backup channel is? You might as well
 7 not have one, isn't that right?
 8 COLONEL SCOTT: I hear you, Chairperson.
 9 CHAIRPERSON: What's the answer?
 10 COLONEL SCOTT: Yes, it's – as I say, on
 11 the Tuesday already, that is where I as person would have
 12 looked at the full spectrum. From the Wednesday we already
 13 had radio technical experts coming in with radios and so on
 14 and it became another's responsibility.
 15 COMMISSIONER HEMRAJ: Colonel, whose
 16 responsibility would it have been to brief everyone about
 17 the alternative channel or the backup channel?
 18 COLONEL SCOTT: Ma'am, that's why I say
 19 I'm sure at some stage in the JOCCOM it was mentioned that
 20 there is an alternative channel if something should happen
 21 to – and I think what one was expecting is that if a
 22 repeater gets faulty for instance, then normally you would
 23 phone the commanders and say listen, we have a problem with
 24 the repeater, go to your alternative channel which is the
 25 following so - because a number of things, as I say, can

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1 happen to cause a channel to be blocked, jammed,
 2 temporarily out of service. I'm not a radio technical
 3 expert but just somebody keying the radio or sometimes they
 4 may sit on a radio without knowing that they're doing it,
 5 being on their belt, and that pushes a key. So there are
 6 occasions like that but it normally doesn't warrant
 7 scrapping the whole channel and going over and as I say, if
 8 there is a problem it would be that you would get onto your
 9 cell phone and start communicating to everybody and those
 10 around that can speak to each other then verbally because
 11 obviously that channel would be out of service, but at this
 12 stage and only in a really in-depth planne operation where
 13 you start looking into the finer detail and the tactics,
 14 would you actually come up with the contingencies now
 15 speaking to, alright, after 30 seconds no communication and
 16 we're aware that somebody is jamming us, automatically
 17 everybody report to the next channel. I don't recall that
 18 being said or done there.
 19 MR CHASKALSON SC: But of course the
 20 purpose of a backup channel is to deal with any eventuality
 21 when the main channel goes down. One doesn't have to
 22 anticipate deliberate interference or obstruction, one just
 23 has to anticipate a possibility that the main channel might
 24 go down.
 25 COLONEL SCOTT: I'm not sure what answer

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1 you want to hear and as I'm telling you, at the time on the
 2 day you're sitting experiencing that, you don't know how
 3 long it's going to be and after that time period everybody
 4 was back on the air again so the operation continued, but
 5 it is true that there was that period of time that there
 6 was no ability to communicate.
 7 MR CHASKALSON SC: Well, ordinarily how
 8 long can one – in an operation where time is of the
 9 essence, how long does it take for the operational
 10 commander and the commanders to shift to a backup channel
 11 when the main goes down?
 12 COLONEL SCOTT: I can't speak on behalf
 13 of other units and this is why I say with the special task
 14 force we normally tend to plan in depth when we go into
 15 planning of whatever operations we were involved in, so we
 16 would normally assign some form of – it could be immediate,
 17 it could be commander initiated if they thought that
 18 somebody was listening in on the radio or there would be a
 19 time frame put where, if you heard somebody was jamming
 20 you, as I say, that we would automatically move to our
 21 alternative. Special task force for that matter utilises
 22 four different methods of communication should – we
 23 normally plan for four methods of communication but –
 24 CHAIRPERSON: You haven't answered the question.
 25 The question was, in the normal course, what sort of time

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1 lapse, period of radio silence or obstruction or non-
 2 functioning would be required before you would go over to
 3 the alternative backup channel?
 4 COLONEL SCOTT: Chairperson, as I say, I
 5 can only speak for our unit –
 6 CHAIRPERSON: I understand, in your unit.
 7 COLONEL SCOTT: And we would decide that
 8 when doing the planning but again it depends what's
 9 happening. If you can just hear somebody is keying the
 10 radio, it could be one of your own so you may give that an
 11 extended, a little bit more time. If a radio has
 12 absolutely just gone dead it means your repeater possibly
 13 has gone down or nobody can talk, we would then say
 14 immediately within 30 seconds no communication, start
 15 moving over.
 16 MR CHASKALSON SC: Would you accept that
 17 four to five minutes is quite a long time to wait without
 18 radio communications before shifting to a backup channel?
 19 COLONEL SCOTT: It is. And again maybe
 20 we must just put it out there that this is my estimation.
 21 You are sitting in an operation anticipating to hear
 22 something, so it's not exactly timed on a stopwatch. It
 23 may have felt longer than it actually was, I'm not sure.
 24 MR CHASKALSON SC: Let's go on to the
 25 other difficulty that you mention about the radio system,

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1 which is the difficulty of getting on because the radio
 2 system was occupied. At page 93 paragraph 19.4 you say
 3 that when you – sorry, of your statement – you say when you
 4 heard about a person with a rifle on a high rock you got
 5 onto the radio to advise that the STF snipers should be
 6 used to locate that threat.
 7 COLONEL SCOTT: That's correct.
 8 MR CHASKALSON SC: Now I presume you got
 9 onto the common radio, the command radio system for that,
 10 not an STF parallel radio system?
 11 COLONEL SCOTT: Correct, yes.
 12 MR CHASKALSON SC: So you were able to
 13 get onto the radio at that point?
 14 [10:40] COLONEL SCOTT: Yes, but I do also quite
 15 clearly remember I had to wait some time before being able
 16 to actually break in.
 17 CHAIRPERSON: There's someone with a cell phone.
 18 Would they please turn the cell phone off and if - they
 19 whose cell phone is that? Whose cell phone is it? We
 20 can't have these interruptions. Whose cell phone is it?
 21 If it goes off again I'll ask for that person to be removed
 22 from the chamber.
 23 MR CHASKALSON SC: So you were able to
 24 get on but not immediately?
 25 COLONEL SCOTT: Yes.

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1 MR CHASKALSON SC: Now, one of the things
 2 that I've always found difficult to understand is why, if a
 3 commander in the JOC wanted to get onto the radio to find
 4 out what had happened after there were reports of bodies
 5 down at scene 1, why it wouldn't have been possible for
 6 them to do so. Can you answer that for me?
 7 COLONEL SCOTT: No.
 8 MR CHASKALSON SC: Now you see, we heard
 9 lots and lots of radio communications, certainly on the
 10 exhibit CC22, most of them are from Brigadier Calitz or
 11 Colonel Vermaak and there's a period of, as I say, 10
 12 minutes on that video where there are regular
 13 communications and that's before anyone is, before the
 14 police line reaches scene 2. Now, Colonel Vermaak and
 15 Brigadier Calitz didn't have special radios that gave them
 16 precedence to get onto the system, did they?
 17 COLONEL SCOTT: No.
 18 MR CHASKALSON SC: So they had exactly
 19 the same ability to get onto the system as
 20 someone calling from the JOC?
 21 COLONEL SCOTT: Yes.
 22 MR CHASKALSON SC: And they managed to
 23 communicate extensively on that system, get onto the system
 24 over a period of 10 minutes before anyone was killed at
 25 scene 2 but no-one from the JOC got onto the system. Can

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1 you explain that?
 2 COLONEL SCOTT: No.
 3 MR CHASKALSON SC: Did anyone at the JOC
 4 try to get onto the system, to your knowledge?
 5 COLONEL SCOTT: Not that I'm aware of,
 6 no.
 7 MR CHASKALSON SC: Let's move away from
 8 radios to cell phones and can we go back to JJJ188 and
 9 there you'll see that the third line of this extract
 10 reflects a call that you made to Brigadier Calitz at
 11 15:41:53 on Vodacom time, I must emphasise, that lasted for
 12 one minute and 26 seconds. Do you recall that call at all?
 13 COLONEL SCOTT: I've been through the
 14 list. I don't actually recall any of those but I've tried
 15 to rationale them. It may be speculation. I've also
 16 contacted some of the people to ask if they knew what we
 17 spoke about, none of them recall either but I don't know if
 18 the Commission would permit me to maybe give my
 19 understanding of what they would've been about.
 20 MR CHASKALSON SC: I may be able to job
 21 your memory in respect of those calls to Captain Adriano but
 22 let's get to them later, let's talk first about Brigadier
 23 Calitz, what you imagine that call was about.
 24 COLONEL SCOTT: I can only think that it
 25 was possibly to ask for a situation report, that the

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1 operation was supposed to have started at 15:30 and that it
 2 had not as yet started, just to find out maybe what was the
 3 holdup, something to that effect.
 4 MR CHASKALSON SC: So you speculate that
 5 it would've been before the operation commenced.
 6 COLONEL SCOTT: Possibly.
 7 MR CHASKALSON SC: Possibly.
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: But Brigadier Calitz's
 10 Nyala would have had its engine running because, as I
 11 understand it, they have to keep their engines running at
 12 all times.
 13 COLONEL SCOTT: Yes, it's possibly – I'm
 14 not sure if he was outside the Nyala, I don't know. I
 15 can't, I don't remember the call so I don't remember if
 16 there was engine noise or –
 17 MR CHASKALSON SC: Now, you say you don't
 18 remember if there was engine noise. Are you generally able
 19 to contact people inside Nyalas when there is engine noise?
 20 COLONEL SCOTT: Well, I can maybe relate
 21 it to a helicopter in the same way. You would put your
 22 telephone on vibrate in your pocket, so if it goes off you
 23 would simply try speaking into your hand, at the same time
 24 listening what the person was saying, as best as possible
 25 communicate that way.

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1 MR CHASKALSON SC: But the point that I
 2 think you're conveying is that there is a, shall we call it
 3 a protocol or a practice?
 4 COLONEL SCOTT: Well, that's the way I
 5 would normally do it.
 6 MR CHASKALSON SC: Yes.
 7 COLONEL SCOTT: I'm not saying it's the
 8 way Brigadier Calitz – obviously I can't testify for how he
 9 had his phone or –
 10 MR CHASKALSON SC: If you couldn't hear
 11 what he was saying because of the noise in the Nyala, you
 12 could've asked him to get out of the Nyala and move some
 13 distance away, couldn't you, so that you could communicate
 14 meaningfully with him, is that correct?
 15 COLONEL SCOTT: Well, presumably
 16 Chairperson, as I say I don't remember the call but if it
 17 was the case that he was trying to talk and I couldn't hear
 18 anything, I don't think the call would have lasted one
 19 minute 26 seconds, so –
 20 MR CHASKALSON SC: But the point that I
 21 was more interested in, Colonel, is that even if someone is
 22 inside a Nyala which is noisy because the engine is
 23 running, there are ways of dealing with that situation so
 24 that you are still contactable.
 25 COLONEL SCOTT: It's possible. I think

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1 we must also just clarify, though, that there's quite a
 2 significant difference in engine noise when you are idling
 3 to when the Nyala is actually in operation, in momentum, in
 4 moving and using the engine while it's labouring.
 5 MR CHASKALSON SC: But your earlier
 6 answer about how people can put their cell phones onto
 7 vibrate in their pockets so that they will register that
 8 someone is trying to contact them, would at least enable
 9 someone like Brigadier Calitz in a moving Nyala to know
 10 that someone was trying to contact them, if someone was
 11 trying to contact them.
 12 COLONEL SCOTT: As I say, I can only
 13 speak for myself. My telephone is permanently on vibrate
 14 as well as ring, so.
 15 MR CHASKALSON SC: Well, it's not on
 16 JJJ188, which is my oversight, but you can accept from me
 17 that Major-General Naidoo tried to contact Brigadier Calitz
 18 at 15:53:31, 15:53:31, and there was a 12 second call which
 19 may – which may be voicemail but apart from that, there is
 20 no record of any voice or SMS call being made to Brigadier
 21 Calitz or Colonel Vermaak until you called Brigadier Calitz
 22 at 17:12:51, 17:12:51. So it appears that no-one in the
 23 JOC tried to contact either Brigadier Calitz or Colonel
 24 Vermaak by cell phone to find out what had happened after
 25 there was this report of bodies down at scene 1.

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1 COLONEL SCOTT: It would seem so. If I
 2 can just – 15:53, you mentioned the time?
 3 MR CHASKALSON SC: That's the time of
 4 Major-General Naidoo's attempt to contact Brigadier Calitz,
 5 15:53:31.
 6 COLONEL SCOTT: Would that not possibly
 7 be because he'd heard the shooting?
 8 MR CHASKALSON SC: It may well, it may
 9 well.
 10 COLONEL SCOTT: Because I think it ties
 11 up more or less with your time line.
 12 MR CHASKALSON SC: My point was that
 13 apart from Major-General Naidoo with that one brief call,
 14 nobody tried to contact Brigadier Calitz or Colonel Vermaak
 15 until you did at 17:12:51.
 16 COLONEL SCOTT: Yes.
 17 CHAIRPERSON: Did I hear you correctly, you're
 18 talking ETV time now? 17:12:51?
 19 MR CHASKALSON SC: These are Vodacom
 20 times.
 21 CHAIRPERSON: Vodacom times, Vodacom times. Which
 22 I presume, one assumes, are more or less the same as ETV
 23 times.
 24 MR CHASKALSON SC: Yes Chairperson, I
 25 think the Colonel was referring to Major-General Naidoo's

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1 call which was at 15:53, 15:53.
 2 CHAIRPERSON: The later call you refer to, did I
 3 hear you say 17:12?
 4 MR CHASKALSON SC: 17:12.
 5 CHAIRPERSON: 12 minutes past five in the
 6 afternoon?
 7 MR CHASKALSON SC: That was the first
 8 call made by one of the commanders or one of the people in
 9 the JOC to Brigadier Calitz or Colonel Vermaak.
 10 CHAIRPERSON: I see, thank you.
 11 MR CHASKALSON SC: Per cell phone call.
 12 CHAIRPERSON: Yes.
 13 MR CHASKALSON SC: Now, according to
 14 Brigadier Fritz's first statement which is GGG8 – can we
 15 call up GGG8? Chairperson, I've been informed by the SAPS
 16 team that on the accounts that we've been given it's not
 17 possible to see a missed call but of course if somebody
 18 waited until the call went onto voicemail it would be
 19 recorded. So let me put my proposition slightly
 20 differently. Nobody, there's no evidence of anyone calling
 21 Brigadier Calitz or Colonel Vermaak and waiting long enough
 22 to check that the phone isn't answered but goes onto
 23 voicemail.
 24 CHAIRPERSON: What paragraph do you want us to
 25 look at in Brigadier Fritz's statement?

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1 MR CHASKALSON SC: If we can just scroll
 2 down, I'm going to have to look at it live myself. Further
 3 down, further down. If we can go back up to paragraph 4.
 4 4, just show 4. "While I was at the JOC General Annandale
 5 informed me that a shooting had taken place at the koppie.
 6 I was instructed by General Annandale to climb into a
 7 chopper and fly to the area and give a situational report."
 8 So according to Brigadier Fritz, General Annandale
 9 instructed him to get into a helicopter to fly to the area
 10 to give a sitrep after the scene 1 shootings, after a
 11 shooting report from scene 1, but we have no evidence of an
 12 attempt from within the JOC to make radio communication or
 13 cell phone communication with people on the ground to get a
 14 sitrep.
 15 CHAIRPERSON: He does deal, I see, in paragraph 5
 16 six lines down, to attempts that he made or he says "we
 17 made" to make radio contact with people on the ground and
 18 the JOC. So he does deal with that.
 19 MR CHASKALSON SC: He deals with the
 20 attempts that he made. We can, I'll get to those attempts
 21 in a minute but for now it strikes me as rather odd that
 22 one would send someone up in a helicopter to get a sitrep
 23 over the radio from the air without attempting to make
 24 radio contact with people on the ground who are already
 25 there who could give you a sitrep already, or cell phone

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1 contact. Can you offer an explanation for that?
 2 COLONEL SCOTT: No.
 3 MR CHASKALSON SC: Now Brigadier Fritz
 4 says that he couldn't get onto the radio system because
 5 Lieutenant-Colonel Vermaak and Brigadier Calitz were busy
 6 giving instructions from their radios. Now we've already
 7 discussed the fact that Brigadier Fritz was in no weaker
 8 position to get onto the radio system than Lieutenant-
 9 Colonel Vermaak and Brigadier Calitz. He was in exactly
 10 the same situation as they were in terms of getting access
 11 to make reports.
 12 COLONEL SCOTT: This is so. Part of
 13 radio speech procedures is to keep messages short and
 14 concise but I remember there were, because obviously what
 15 was going on, there were quite lengthy periods where – and
 16 if you're holding your radio's talk button in, nobody else
 17 can communicate. So it's almost as though you're sitting
 18 in line waiting for that immediate moment just to quickly
 19 break in and sometimes you do, you think you're talking and
 20 when you release you hear somebody else beat you to it and
 21 is continuing with the conversation at the same time.
 22 MR CHASKALSON SC: My point is simply
 23 that if Brigadier Calitz and Lieutenant-Colonel Vermaak
 24 could get onto the radio system, so too could Brigadier
 25 Fritz. He was in no better or worse situation than them to

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1 get onto the radio system to make his sitrep.
 2 COLONEL SCOTT: Yes but – and not to try
 3 to defend him but I believe that there may have been or
 4 that there was a fault with what he was, his PTT in the
 5 rear of the chopper, which enables him to actually speak on
 6 the radio. So at best he would've been trying to speak to
 7 the ALEO, the air liaison enforcement officer, to have her
 8 relay messages on his behalf because I don't think he could
 9 communicate directly out because of a faulty –
 10 MR CHASKALSON SC: Well, we may hear from
 11 Brigadier Fritz in due course in that regard but of course
 12 then the ALEO would have been in the same position as
 13 Brigadier Calitz and Colonel Vermaak. If she was
 14 instructed it's urgent that you get onto the radio now and
 15 report to the JOC, she would've been able to do so with the
 16 same ease or difficulty that Lieutenant-Colonel Vermaak or
 17 Brigadier Calitz could.
 18 COLONEL SCOTT: Yes.
 19 CHAIRPERSON: I take it that that may be the
 20 explanation for this first person plural we have in
 21 paragraph 5, "We tried to make radio contact but we could
 22 not." The fact that he talks about "we" and not himself
 23 may tend to support what you suggest, that he was trying to
 24 get the ALEO to help him to make the communication.
 25 COLONEL SCOTT: Yes, Chairperson.

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1 MR CHASKALSON SC: Chairperson, I'm about
 2 to move to a different set of calls.
 3 CHAIRPERSON: Do you want me to take, would you
 4 like us to take the adjournment at this stage?
 5 MR CHASKALSON SC: If we could,
 6 Chairperson.
 7 CHAIRPERSON: It is just before 11 o'clock. Very
 8 well, we'll adjourn for tea. We hope to resume at 11:15.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [11:15] CHAIRPERSON: The Commission resumes.
 11 We're reminded to do something to try to retrieve some of
 12 the lost time, so we're reminded to take only half an hour
 13 for lunch. I don't see any objections from anybody, so
 14 fine we will take half an hour for lunch from now on until
 15 further notice and those who don't like the local
 16 comestibles must make alternative arrangements. You're
 17 still under oath, Colonel. Mr Chaskalson.
 18 MR CHASKALSON SC: Colonel, if we can go
 19 back to JJJ188 and some of the other calls that you made or
 20 received, can we start with the first two, Captain Adriaio.
 21 You made two calls to Captain Adriaio, at 15:33 and at
 22 15:35. Do you recall where Captain Adriaio was at the at
 23 the time?
 24 COLONEL SCOTT: He wasn't obviously at
 25 the JOC, my positioning of him would have been obviously

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1 with the media because he was most of the time trying to be
 2 where the media were because I think he was allocated that
 3 task earlier on in the operation. Possibly days earlier
 4 because of concerns also for safety of the media. So I
 5 would presume he was positioned somewhere around wherever
 6 the media and I think it was on the Wednesday he was
 7 instructed to try to create an area where the media could
 8 have their own staging area within the police's safe area.
 9 MR CHASKALSON SC: And you say he
 10 wouldn't have been at the JOC, from that can I assume that
 11 you were at the JOC continuously over this period?
 12 COLONEL SCOTT: Yes.
 13 MR CHASKALSON SC: When did you get to –
 14 well you returned from your briefing, I think it was around
 15 about quarter to three.
 16 COLONEL SCOTT: About ten past three.
 17 MR CHASKALSON SC: Ten past three.
 18 COLONEL SCOTT: I checked my vehicle
 19 records.
 20 MR CHASKALSON SC: Of course the briefing
 21 only started at half past two. So you got at ten past
 22 three and were you then in JOC continuously until after the
 23 operation?
 24 COLONEL SCOTT: To the best of my memory,
 25 yes.

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1 MR CHASKALSON SC: So you speculate, well
 2 you speculate now, can you recollect anything about these
 3 calls to Captain Adriano?
 4 COLONEL SCOTT: Recollection, no but
 5 speculation I think I may have been tasked to just ensure
 6 that the media was safe and not necessarily in a position
 7 where they could be caught in the dispersion action that
 8 the police was going to exercise. Or if the razor wire was
 9 going to be pulled closed that they were not caught on the
 10 unsafe side so to say, where the dispersion action would be
 11 taking place.
 12 MR CHASKALSON SC: Well that speculation,
 13 let's call it inference rather than speculation, ties in
 14 with information that we've received this week because
 15 earlier this week the SERI team made available to us what
 16 they believe to be the raw footage taken by Al Jazeera on
 17 the 16th and there are in fact 71 clips that Al Jazeera took
 18 on the 16th.
 19 CHAIRPERSON: May I inquire was it Al
 20 Jazeera or did Al Jazeera get it from somebody else? I
 21 know it's regarded or described as the Al Jazeera footage
 22 but I'm not sure, was it an Al Jazeera cameraman who took
 23 it or did somebody else take it on behalf of Al Jazeera?
 24 MR CHASKALSON SC: That I'm afraid we
 25 don't know. What we do know is that it's footage that

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1 matches the footage, that certain clips of which match the
 2 footage that was broadcast by Al Jazeera. Chairperson,
 3 we'd like to introduce those clips as an exhibit, we don't
 4 propose to play them all, there are 71 of them. If they
 5 could be exhibit JJJ194 and 194.1 to 194.71 because there
 6 are 71 clips.
 7 CHAIRPERSON: Point 1 to 194.71.
 8 MR CHASKALSON SC: That's correct,
 9 Chairperson.
 10 CHAIRPERSON: And how do I describe them?
 11 MR CHASKALSON SC: Raw footage apparently
 12 taken by Al Jazeera on the 16th.
 13 COMMISSIONER HEMRAJ: None of which we've
 14 seen as yet.
 15 MR CHASKALSON SC: Some of which we have
 16 seen because some of it has been broadcast.
 17 CHAIRPERSON: It was apparently taken for
 18 because I've got an idea that I had meetings with the
 19 editors in the media houses before we started hearing
 20 evidence and I've got an idea, I may be wrong, but the Al
 21 Jazeera material was taken on their behalf by somebody
 22 else, so we'll call it raw footage apparently taken for Al
 23 Jazeera. Or shall we call it raw footage obtained from Al
 24 Jazeera? I think that's –
 25 MR CHASKALSON SC: We haven't obtained it

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1 from Al Jazeera, we've obtained it from SERI who's obtained
 2 it from another person who may or may not have obtained it
 3 from Al Jazeera.
 4 CHAIRPERSON: All right. Hence the
 5 apparently. Raw footage apparently taken for Al Jazeera on
 6 16-08-2013.
 7 MR CHASKALSON SC: And –
 8 CHAIRPERSON: Sorry, 16-08-2012, yes.
 9 MR CHASKALSON SC: And clip number 5 of
 10 this series, JJJ194.5 is a clip of Captain Adriano's address
 11 to the media near scene 1 just before the operation starts.
 12 And I wonder if we could play that clip, clip 5, JJJ194.5.
 13 [VIDEO SHOWN]
 14 CHAIRPERSON: Sorry, can we go back to
 15 the beginning of that clip, can we go to the beginning of
 16 the clip and turn up the volume because I'm not an expert
 17 lip reader but he was saying things that I couldn't
 18 understand at the beginning.
 19 [VIDEO SHOWN]
 20 COMMISSIONER HEMRAJ: Mr Chaskalson, what
 21 are the time frames for this video?
 22 MR CHASKALSON SC: Unfortunately,
 23 Commissioner, we don't have original clips, so we can't –
 24 we can estimate but at this stage I wouldn't want to give
 25 an estimate. The clips that we have are second generation

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1 clips. Having said I don't want to estimate, Colonel, what
 2 I can say is that we would estimate that the address that
 3 we've just seen is a roughly around the time of your two
 4 calls to Captain Adriaio. And that would tie in with what I
 5 understood your evidence to be, that you were checking that
 6 he had conveyed to the media that they needed to withdraw
 7 as it were be in a safe zone.

8 COLONEL SCOTT: I think just to point out
 9 that you're probably quite accurate there because this was
 10 the National Intervention Unit members. And they wouldn't
 11 have been at the police safe area right up until just
 12 before the operation because they were still back at
 13 immediate reaction area 1 where their commander briefed
 14 them before bringing them into the safe area of the police.

15 CHAIRPERSON: What is your estimate as to
 16 the time of the – when the clip we've just seen was taken?

17 COLONEL SCOTT: Chairperson, we could
 18 probably, maybe look closely at photographs because you can
 19 actually see the vehicles that drive in. But I would think
 20 this was around the half past three time period.

21 CHAIRPERSON: Thank you.

22 MR CHASKALSON SC: Now, Colonel, this is
 23 ultimately I imagine something for Captain Adriaio to answer
 24 and not you, but we discussed last week the reported
 25 threats and the issue of the media withdrawing from the

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1 vicinity of the protesters for their own safety. What
 2 strikes us about Captain Adriaio's address to the media is
 3 firstly there's no mention of any threats at all. Secondly
 4 one of the journalists and I don't know if you heard that
 5 towards the end of the clip, says to Captain Adriaio and he
 6 has to repeat it "would you agree that this is a peaceful
 7 protest?" And then Captain Adriaio says "well not if they
 8 have weapons" or something along those lines. But there's
 9 no response from Captain Adriaio to speak about imminent
 10 threats or threats to the media or media having conveyed
 11 threats to him, which we would have expected in the
 12 circumstances. If you want to make any comment in response
 13 to that you're free. It's something that we should put to
 14 Captain Adriaio, I don't expect you to answer it.

15 COLONEL SCOTT: Maybe just to broaden the
 16 perspective a little, I think that it wouldn't have been a
 17 global communiqué coming from the media with all of them
 18 agreeing that that was the case. It could have been one,
 19 two or five of the journalists maybe expressing their
 20 concern, just to widen that aspect.

21 MR CHASKALSON SC: Well we'll canvas it,
 22 or we may canvas it with Captain Adriaio if it's necessary
 23 to do so. If we can go back to JJJ188 and the last call I
 24 want to raise with you is a call made from Brigadier Fritz
 25 to you at 15:46:48. So if we can – I suppose we don't need

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1 to go to JJJ188, oh we have now. At 15:46:48 Brigadier
 2 Fritz called you and you had a one minute, eight second
 3 conversation. Do you have any recollection of that call?

4 COLONEL SCOTT: I don't, I have contacted
 5 him, he also doesn't recall it but it's not a definite
 6 recalling but there's just sort of something that was
 7 coming to mind when I was looking at that. And it's
 8 possible and I say this out of a very vague memory that I
 9 think he was looking for one of the people that were
 10 supposed to be flying with him which I think was Colonel
 11 Botha. Possibly that he was phoning to see whether he
 12 wasn't still in the JOC or around the JOC area.

13 MR CHASKALSON SC: So when Brigadier
 14 Fritz made this call he wouldn't have been in the JOC
 15 because you would have been in the JOC.

16 COLONEL SCOTT: Yes.

17 CHAIRPERSON: Mr Chaskalson, can you
 18 remind us what time did Lieutenant-Colonel Botha say the
 19 helicopter in which he was took off? I seem to remember
 20 something like 15:50 but my recollection may be faulty. If
 21 we know the answer to that that would help.

22 MR CHASKALSON SC: We can give an exact,
 23 from Captain Nel's video which shows the take-off we can
 24 time it to 15:54:37.

25 CHAIRPERSON: So that would be in line

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1 with what the witness has just told us.

2 MR CHASKALSON SC: Ja, I don't think we
 3 need to take that one further. Colonel, moving to a
 4 completely different topic, we see from your statement that
 5 you speak about preparing the briefing for the President on
 6 the night of the 16th, that's FFF4 –

7 COLONEL SCOTT: The word document not the
 8 presentation.

9 MR CHASKALSON SC: That's correct. The
 10 report to the President, the word document. You don't
 11 mention anything about the media statement that was issued
 12 by the National Commissioner on the 17th. Did you play any
 13 role in that?

14 COLONEL SCOTT: No. To my knowledge I
 15 think that was set up – we were almost a small group, I
 16 know Brigadier Pretorius, Captain Adriaio, a lot of
 17 collation of information to try and get it. I was sort of
 18 the typist, wording, putting it together, but I wasn't
 19 involved with the National Commissioner's media report, no.
 20 The building of her presentation, yes.

21 MR CHASKALSON SC: Sorry, I just wanted
 22 to clarify your answer because I didn't quite understand.
 23 When you spoke about what you were involved in was that the
 24 report to the President, where information was collated
 25 inter-alia by Brigadier Pretorius and Captain Adriaio.

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1 COLONEL SCOTT: Yes.
 2 MR CHASKALSON SC: But you weren't
 3 involved in the media statement that was issued by the
 4 National Commissioner.
 5 COLONEL SCOTT: No.
 6 CHAIRPERSON: Do you know who was?
 7 COLONEL SCOTT: I would think it was
 8 Captain Adriano, Chairperson, they would normally assist in
 9 drafting up or getting the information together as well.
 10 CHAIRPERSON: Yes, thank you.
 11 MR CHASKALSON SC: Then moving to a new
 12 different topic, I'd like to hand in as exhibit JJJ192 a
 13 transcript of a meeting between the Provincial Commissioner
 14 and representatives of Lonmin late in the afternoon of
 15 Tuesday the 14th, JJJ192.
 16 CHAIRPERSON: How do I describe this?
 17 JJJ192 transcript of?
 18 MR CHASKALSON SC: Of a Meeting between
 19 the Provincial Commissioner –
 20 CHAIRPERSON: Well we just call it
 21 Lieutenant-General Mbombo.
 22 MR CHASKALSON SC: Indeed and
 23 representatives of Lonmin on the afternoon of Tuesday the
 24 14th of August.
 25 CHAIRPERSON: So I'll describe it as

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1 transcript of a meeting between Lieutenant-General Mbombo
 2 and representatives of Lonmin on the afternoon of 14th
 3 August 2012.
 4 MR CHASKALSON SC: Colonel, this is a
 5 document that was recently made available to us by Lonmin,
 6 we won't call it up for now because it's quite a lengthy
 7 document and I'm only going to refer to specific pages.
 8 Were you aware of this document or the audio recording from
 9 which it was transcribed before we indicated that we were
 10 going to use it in cross-examination?
 11 COLONEL SCOTT: No, I only received it
 12 yesterday.
 13 MR CHASKALSON SC: Have you had an
 14 opportunity to read it?
 15 COLONEL SCOTT: I did, last night, yes.
 16 MR CHASKALSON SC: And would you agree
 17 that it contains information about the relationship between
 18 SAPS and Lonmin, the relationship between SAPS leaders and
 19 the ANC and the attitude of SAPS leaders to NUM and AMCU?
 20 COLONEL SCOTT: To various degrees, yes.
 21 MR CHASKALSON SC: Would you agree that
 22 it's a document that would be very important for the
 23 Commission to see in terms of the Commission's terms of
 24 reference?
 25 COLONEL SCOTT: Well I'm not sure where

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1 you are moving at –
 2 CHAIRPERSON: - He's moving, just answer
 3 the question.
 4 COLONEL SCOTT: No, no, I'm talking about
 5 for the – on behalf of because I'm not dealing with the
 6 phase 2 which I think this may impact into. I'm not
 7 understanding what the phase 2 particularly is going to be
 8 about but if I talk to the tactical side of it there's
 9 minimal information given regarding what the police were
 10 intending to do, but it is mentioned in the document.
 11 [11:35] MR CHASKALSON SC: Is it a document that
 12 you think should've been brought to the attention of the
 13 Commission or that you would've brought to the attention of
 14 the Commission if you were aware of it?
 15 COLONEL SCOTT: Well, yes.
 16 MR CHASKALSON SC: Now, Lonmin tell us
 17 that this document is a transcript from an audio file which
 18 was one of the files that they furnished to SAPS under a
 19 section 205 subpoena. The 205 subpoena process was in
 20 September 2012, is that not correct?
 21 COLONEL SCOTT: I believe it was, yes.
 22 MR CHASKALSON SC: And that was well
 23 before the SAPS hard drive was furnished to the evidence
 24 leaders.
 25 COLONEL SCOTT: Yes. I'm not sure of the

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1 date you received it but I think it was late September.
 2 MR CHASKALSON SC: And neither the audio
 3 tape nor the transcript was on the SAPS hard drive. You
 4 are prepared to accept that?
 5 COLONEL SCOTT: Well, I accept that. I
 6 haven't, as I say I haven't seen it before last night.
 7 MR CHASKALSON SC: We would've expected
 8 that if SAPS was in possession of the document or the tape,
 9 they'd have made it available to the Commission so we
 10 didn't know what to make of the Lonmin claim that it had
 11 been given to SAPS under section 205. So we looked at the
 12 directory for the Lonmin 205 on the SAPS master hard drive
 13 to see if we could substantiate that claim. Now, can we
 14 call up – we've got the first page of the document. If you
 15 see just in the top left hand corner there's a reference,
 16 it says "Rec DS550087A."
 17 COLONEL SCOTT: Yes.
 18 MR CHASKALSON SC: We found the audio
 19 file with that name on the master hard drive, in fact on
 20 your copy of the master hard drive in a directory called
 21 \Lonmin205\Lonminstrike\voicerecordings. So the audio file
 22 was in SAPS's possession. Do you know how it got there?
 23 COLONEL SCOTT: Well, I would imagine it
 24 was given over as part of the section 205, to the SAPS
 25 master hard drive and obviously if it's on my external hard

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1 drive which is a mirror, mirror image copy, I would've
 2 downloaded the folders which contained that file in it at
 3 some stage.
 4 CHAIRPERSON: Mr Mpofu is, I think he wants –
 5 MR MPOFU: Sorry, Chairperson, to
 6 interrupt but to the previous question as to whether the
 7 document was in the SAPS hard drive the witness simply
 8 nodded and so the recording – yes.
 9 CHAIRPERSON: I didn't note that. I think we must
 10 make, it must be clear what hard drive we're talking about.
 11 There was a hard drive that SAPS gave the evidence leaders
 12 and which also copies of that were given to the
 13 Commissioners as well.
 14 COLONEL SCOTT: Yes.
 15 CHAIRPERSON: But there was an earlier hard drive
 16 which – is that correctly described as a police archive?
 17 Is that the archive which you downloaded and which you had
 18 on your computer or is that something different? I just
 19 want to make sure we're describing documents accurately in
 20 a way that we can understand references to them when we
 21 read them later.
 22 COLONEL SCOTT: Relating to the section
 23 205, that would've been not put onto my hard drive. That
 24 would've been, the initial hand over would have been to the
 25 SAPS master hard drive and I would have got it from there

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1 in a –
 2 CHAIRPERSON: I think that's the point. You
 3 downloaded onto your computer later.
 4 COLONEL SCOTT: Yes.
 5 CHAIRPERSON: Is that right?
 6 COLONEL SCOTT: Yes.
 7 CHAIRPERSON: How does one describe what you
 8 downloaded? I've referred to it in my discussion with my
 9 Commissioners, fellow Commissioners, as the police archive
 10 but is that not a correct description of it?
 11 COLONEL SCOTT: Well, it is a police
 12 archive. It's a police master hard drive. It's an archive
 13 of all related Marikana documentation.
 14 CHAIRPERSON: Thank you.
 15 MR CHASKALSON SC: Just for consistency
 16 in the way we've been describing it, I seem to remember
 17 when we were talking about videos several weeks ago, that
 18 would be the hard drive that I would've talked about as the
 19 Brigadier Pretorius/Colonel Visser master hard drive. Do
 20 you recall that?
 21 COLONEL SCOTT: Yes.
 22 MR CHASKALSON SC: Because we spoke about
 23 a process where you were initially the holder of the
 24 archive.
 25 COLONEL SCOTT: Yes.

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1 MR CHASKALSON SC: At Roots or around
 2 Roots the archive got transferred into the custody of
 3 Brigadier Pretorius or Colonel Visser.
 4 COLONEL SCOTT: That's correct.
 5 MR CHASKALSON SC: And thereafter the
 6 SAPS master was kept by one or two of them.
 7 COLONEL SCOTT: Yes.
 8 MR CHASKALSON SC: And from time to time
 9 you would upgrade, you would copy what was on the SAPS
 10 master back onto either an external hard drive or sometimes
 11 even your internal hard drive.
 12 COLONEL SCOTT: That's correct.
 13 MR CHASKALSON SC: And what we're talking
 14 about now is that the master that was kept as a running
 15 master, I don't want to suggest that anyone in particular
 16 was responsible for it because I don't know but it's after
 17 you surrendered custody of the running SAPS archive.
 18 COLONEL SCOTT: I'm just trying to figure
 19 that one out. Are you - my copied over version?
 20 MR CHASKALSON SC: No, there is a master
 21 that is kept up to date, I imagine, and running by someone
 22 within SAPS, which is SAPS's master archive of all
 23 materials relating to Lonmin and from time to time
 24 different people in SAPS like yourself, like possibly
 25 members of the legal team, take copies of that master to

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1 bring their own copies up to date.
 2 COLONEL SCOTT: Yes.
 3 MR CHASKALSON SC: But where this file
 4 would have been saved, where this file would have reached
 5 is that master and you're saying that how it came onto your
 6 hard drive is you copied that master back onto your hard
 7 drive, as you have done from time to time.
 8 COLONEL SCOTT: That's right.
 9 MR CHASKALSON SC: But you've said
 10 earlier you were never aware of this file.
 11 COLONEL SCOTT: No.
 12 MR CHASKALSON SC: So although it was on
 13 a hard drive that was yours or your copy of the SAPS master
 14 that you kept, you weren't aware of it.
 15 COLONEL SCOTT: That's right, sir, that's
 16 correct.
 17 MR CHASKALSON SC: Who should have been
 18 aware of this file within SAPS?
 19 COLONEL SCOTT: I can only speculate that
 20 somebody that may have gone through the section 205
 21 materials that were handed over from Lonmin.
 22 MR CHASKALSON SC: And who was
 23 responsible for the section 205 subpoena to Lonmin? Who,
 24 which department within SAPS or division within SAPS
 25 executed that subpoena and gathered the information?

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1 COLONEL SCOTT: I would imagine possibly
 2 the detectives.
 3 MR CHASKALSON SC: And when the total
 4 output of the Lonmin 205 subpoena was handed over to the,
 5 shall I call it the Marikana team, was anyone given
 6 responsibility to work through it?
 7 COLONEL SCOTT: Not that I'm aware.
 8 MR CHASKALSON SC: So there may be highly
 9 relevant materials obtained from Lonmin under that section
 10 205 subpoena that no-one in the SAPS Marikana team has
 11 perused yet?
 12 COLONEL SCOTT: It is a possibility. As
 13 I say, I wasn't involved at all with the 205. If there
 14 were inputs that were given to me it was given to me by
 15 Colonel Visser who I think got the copy from the detectives
 16 of the section 205 materials.
 17 MR CHASKALSON SC: Did he have any
 18 responsibilities in relation to the 205 materials when he
 19 received them?
 20 COLONEL SCOTT: Not that I'm aware. I
 21 think he would have just been trying to, again, find as
 22 much information as he could to assist with the building of
 23 exhibit L.
 24 MR CHASKALSON SC: You see it does seem a
 25 rather strange process to me. SAPS gathers information, it

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1 then says that no-one is given responsibility for perusing
 2 that information. One would have thought that if one is
 3 going to infringe people's privacy rights by demanding
 4 information in their possession, the least one can do is
 5 read the information or look at the information when one
 6 receives it.
 7 COLONEL SCOTT: I hear what you're saying
 8 but I don't think I can answer for those that received the
 9 section 205.
 10 CHAIRPERSON: My understanding is, I'm not sure
 11 that the answer is no-one was given responsibility. All
 12 the witness says, he can't comment on that. It's not
 13 something he knows about. Am I understanding your evidence
 14 correctly, Colonel?
 15 COLONEL SCOTT: That's correct,
 16 Chairperson.
 17 CHAIRPERSON: Because I would like to know but
 18 maybe you can't tell us either, who was responsible –
 19 obviously the police hard drive that the evidence leaders
 20 were given is a selection of the documents in the custody
 21 of the police. Now who was responsible for making that
 22 selection and for deciding what would not be given to the
 23 evidence leaders? Can you help us on that?
 24 COLONEL SCOTT: Chairperson, I can't.
 25 I'm not sure. There was a time after Roots where, for

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1 about three odd weeks, that we all went back to our units
 2 until we were called up for the Commission and it's in that
 3 time period where I was not – I was back at unit for that
 4 time.
 5 MR CHASKALSON SC: Well, Colonel, I can't
 6 take it further with you but we'll address enquiries to
 7 SAP. I mean we want to know who was responsible for this
 8 information and why it wasn't made available to us. Now,
 9 most of this document is in fact for the Provincial
 10 Commissioner and Lonmin to deal with, not you, but there
 11 are two topics that I would like to deal with, with you.
 12 The first starts at the bottom of page 1, so if we can go
 13 up to page 1? Can we just scroll up the page to page 1?
 14 CHAIRPERSON: We're on page 2 at the moment so we
 15 don't have to go, we haven't got very far to go. There we
 16 are, page 1.
 17 MR CHASKALSON SC: And we go all the way
 18 down to line 28. Let's start at line 26 where it says,
 19 "Interruption by telephone call. SAPS Commissioner" and
 20 this is the Provincial Commissioner speaking and she says,
 21 "General, yes General, I'm still well, General. I was just
 22 going to call you and give a rundown feedback but can I,
 23 can you give me an hour, General, because we are moving in
 24 and maybe after an hour I can give you a feedback in terms
 25 of what would have transpired. No, it's still quiet but we

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1 just got information just now" – and we turn the page –
 2 "that they are once again mobilising in another side whilst
 3 in that mountain." The "there" is a "they." "I was there,
 4 there are about 800 to 1 000 that are there. So we were
 5 thinking that whilst they at that number we can maybe" and
 6 the transcriber said "settle," we've listened to the tape
 7 and it is in fact "circle" – "we can maybe circle them
 8 around but they are once again mobilising on the other side
 9 they say, the western side, so we just want to observe but
 10 I'll come back to you in an hour's time." And then if you
 11 can go forward to line 5, page 5 and again the Commissioner
 12 at the bottom of what you can see on screen about line 13,
 13 "Because look, there is – what we may be creating here goes
 14 from [inaudible] our side in creating a situation where
 15 these people feel that we are in control. The employer
 16 does not tell us anything, they do not worry that we're not
 17 at work, they do not call us even to come to work, the
 18 police are not also arresting us." And the passage I'd
 19 emphasise, "You understand, whilst you know now what we
 20 have just decided, because when I went up I wanted to view
 21 and see what's going on. So when I was on there I told
 22 these guys, I said look, these people there are less than
 23 1 000. With the number of police officers that we have,
 24 let us again circle these people. Let us not do anything,
 25 let us circle them, let us talk to them and say listen,

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1 bring your firearms and you will leave here one by one and
 2 we give you enough time to do that." Were you notified in
 3 the JOC at any stage on Tuesday afternoon that the
 4 Provincial Commissioner was contemplating an operation to
 5 encircle the strikers?
 6 COLONEL SCOTT: I wasn't. I would think
 7 from what she is mentioning here that she would have been
 8 briefed by, possibly, General Mpmembe or General Annandale
 9 on the – because that Tuesday afternoon is when the phases
 10 1 to 6 were the first time briefed in full to all the
 11 commanders at the JOCCOM, because I think what she's
 12 speaking about on page 1 is the calling and I think she
 13 alludes to it further, it's the calling back of all the
 14 forces from the field, they're about to go out onto the
 15 phase 1 deployment, is what she's alluding to there. And
 16 there encirclement I think that she's alluding to here is
 17 possibly the phase 3 that is still in the plan from the
 18 initial plan from earlier that morning, knowing again that
 19 there are few people – what she's saying 1 000 at this
 20 time. She's maybe brainstorming or just thinking out loud
 21 but I wasn't aware that that was part of her consideration
 22 for that afternoon.
 23 CHAIRPERSON: She seems to think that any number
 24 less than 1 000 will be alright for the implementation of
 25 the encirclement plan. I'm not sure, in the light of what

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1 you've told us, that that's a realistic figure that she has
 2 got in her head.
 3 COLONEL SCOTT: Chairperson, I don't
 4 think she had the detail. I didn't discuss the detail on
 5 that Tuesday. So I think maybe just a concept was there,
 6 without looking at all the finer detail and the
 7 obstructions to what may be with a lot more people
 8 involved, trying to encircle them.
 9 MR CHASKALSON SC: But this was never
 10 brought to your attention although you had designed the
 11 encirclement plan.
 12 COLONEL SCOTT: That's correct.
 13 MR CHASKALSON SC: If we can then go to
 14 another passage on page 15 and lines, from line 10 where
 15 the Commissioner says, "That is what I was saying, you
 16 know. The other key challenge is that all of these members
 17 that are here, I have to pay them so how much am I going to
 18 cough out for all these days? I mean I have to, I've given
 19 them now up until the weekend if we cannot sort this thing
 20 but my hope is that by tomorrow the latest -." Was it ever
 21 communicated to you that the operation had a deadline of
 22 the weekend?
 23 COLONEL SCOTT: No.
 24 MR CHASKALSON SC: And it wasn't ever
 25 communicated to you that the operation could run until the

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1 weekend?
 2 COLONEL SCOTT: No.
 3 CHAIRPERSON: Were you given a deadline at all?
 4 COLONEL SCOTT: No, Chairperson, but
 5 again I'm not – I wasn't privileged to the discussions
 6 obviously that the Provincial Commissioner would have with
 7 her generals.
 8 MR CHASKALSON SC: Colonel, for the rest,
 9 I mean there's a lot of information in this document that
 10 will need to be put to people but it's not information for
 11 you to speak to. It's information for other people.
 12 Before I get to my last topic which will be dealing with
 13 the presentation, the SAPS presentation, I'd just like to
 14 touch on two small matters that we've already touched on.
 15 The first relates to the handouts that you would give to
 16 commanders during the week leading up to the 16th of August
 17 and as I understand it from your statement, when you needed
 18 to print handouts for the commanders you used Lonmin
 19 printing facilities.
 20 COLONEL SCOTT: That's correct.
 21 MR CHASKALSON SC: Now where were these
 22 printing facilities situated?
 23 COLONEL SCOTT: About 30, 40 metres from
 24 the JOC that we were housed in, the JOCCOM area.
 25 MR CHASKALSON SC: So when you were in

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1 the JOC it was very simple to access those printing
 2 facilities.
 3 COLONEL SCOTT: It was, as long as the
 4 office was open.
 5 MR CHASKALSON SC: Now when you gave your
 6 briefing on the 16th at 2:30 you didn't have any printed
 7 documents?
 8 COLONEL SCOTT: No.
 9 MR CHASKALSON SC: That was out of
 10 character with your practice in the rest of the week.
 11 COLONEL SCOTT: That's correct. It took
 12 some time. The printer that printed, obviously it would
 13 take some time to print enough for everybody so the time
 14 frame that we had there, we wouldn't have been able to
 15 print those documents and still get out to brief the
 16 commanders effectively as well.
 17 MR CHASKALSON SC: So if you had had more
 18 time on your hands you would have printed briefing
 19 documents for the commanders who you briefed at forward
 20 holding area 1.
 21 COLONEL SCOTT: I probably would have,
 22 yes.
 23 MR CHASKALSON SC: But you say in the
 24 circumstances there just wasn't time to print.
 25 COLONEL SCOTT: That's correct.

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1 CHAIRPERSON: How long did it take to print?
 2 COLONEL SCOTT: Chairperson, I don't
 3 remember but what I can recall is there were times when, I
 4 think it happened on one occasion where we already had to
 5 send the members out to deploy and I only got to have their
 6 maps delivered to them while they were in the field. It's
 7 an A3, they were printed out in A3 size each time we did
 8 print them for the members, so it took some time.
 9 CHAIRPERSON: Some time is a vague expression.
 10 COLONEL SCOTT: Probably 20 minutes.
 11 CHAIRPERSON: Would 20 minutes be a fair -
 12 COLONEL SCOTT: Round about that -
 13 CHAIRPERSON: - estimate of the time that you
 14 would've required.
 15 COLONEL SCOTT: Yes.
 16 CHAIRPERSON: Thank you.
 17 [12:15] MR CHASKALSON SC: The other topic that
 18 we've already touched on is the mortuary vehicles. Since
 19 last week we have - you'll recall that Ms Ngake who is the
 20 chief forensic officer at the Phokeng mortuary referred to
 21 an e-mail that was sent to her by, from the Marikana police
 22 station - actually maybe not from, I must be very careful
 23 about this. I forget how she referred to it but an e-mail
 24 that was sent to her from SAPS confirming the request for a
 25 mortuary vehicle. We found that e-mail and if I can hand

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1 it in as JJJ193 -
 2 CHAIRPERSON: Someone has got a cell phone that's
 3 going off. Would they please turn the cell phone off or,
 4 if it carries on, I'll ask for that person to be removed
 5 from the chamber. I don't want any more interruptions of
 6 this kind from cell phones. People who have got cell
 7 phones with them must please turn them off. How do I
 8 describe this e-mail, Mr Chaskalson? JJJ193 e-mail?
 9 MR CHASKALSON SC: From Ms Josephine
 10 Ngake.
 11 CHAIRPERSON: How do you spell Ngake?
 12 MR CHASKALSON SC: N-G-A-K-E.
 13 CHAIRPERSON: N-G-A-K-E, yes. Oh I see, it's in
 14 front of me now on the screen, yes. E-mail from Ms Ngake
 15 to?
 16 MR CHASKALSON SC: Phokeng Detectives
 17 Administration.
 18 CHAIRPERSON: To Phokeng Detectives
 19 Administration, thank you.
 20 MR CHASKALSON SC: 16 August 2012.
 21 CHAIRPERSON: Yes, so the full description is e-
 22 mail from Ms Ngake to Phokeng Detectives Administration, 16
 23 August 2012.
 24 MR CHASKALSON SC: And Colonel -
 25 CHAIRPERSON: Headed "Urgent" with four

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1 exclamation marks thereafter.
 2 MR CHASKALSON SC: And Colonel, you'll
 3 see that below the heading of this e-mail is the e-mail to
 4 which it responds, which comes from Phokeng Detectives
 5 Administration at 9:30AM on the 16th of August. It's that
 6 part of the document to which I'd refer you and I'd refer
 7 you to it because there are three aspects that seem to me
 8 to be important. I want to identify them. I don't expect
 9 you to respond to two of them but I'd like them to be on
 10 record so that any misleading suggestion that may have been
 11 created by our exchange last week is not left in the public
 12 domain. The first aspect that I would emphasise is that
 13 the Colonel Claassens who made the request from Phokeng
 14 SAPS -
 15 CHAIRPERSON: Sorry, we must see the last line, I
 16 think, of that e-mail before we can know who sent it.
 17 Lieutenant-Colonel PWJA Claassens, Commander Phokeng
 18 Detective Services, he is the sender of the response.
 19 MR CHASKALSON SC: The sender of the
 20 request. Was Lieutenant-Colonel Claassens who signed
 21 himself -
 22 CHAIRPERSON: I see, the sender of the request,
 23 yes. Thank you.
 24 MR CHASKALSON SC: He signed himself as
 25 the commander, Phokeng Detective Services. Now if that's

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1 so, he's not the Colonel Claassens from TRT Katilehong to
 2 whom we referred last week. So in fairness to that Colonel
 3 Claassen I just want to set the record straight as quickly
 4 as possible. So it's not Colonel Claassen TRT Katilehong,
 5 it's Lieutenant-Colonel PWJA Claassens, Phokeng Detective
 6 Services. The second is that the e-mail request refers to
 7 a vehicle being needed in anticipation of a cordon and
 8 search operation and -
 9 CHAIRPERSON: - that day.
 10 COLONEL SCOTT: I see that, Chairperson,
 11 yes.
 12 MR CHASKALSON SC: And it seemed to me
 13 that that was an important fact that should be put on
 14 record publicly as well. And the final aspect of the e-
 15 mail that I would refer to and here I would like a response
 16 from you, is in paragraph 2 Lieutenant-Colonel Claassens
 17 says, "This request comes from national head office." Now
 18 who, if anyone, would have been the representative of
 19 national head office at Marikana during Operation Platinum?
 20 COLONEL SCOTT: It would've been General
 21 Annandale and the officers from his environment, coming
 22 from the division ORS who is seen as a national entity, not
 23 being at provincial level.
 24 CHAIRPERSON: You would've been one of them.
 25 COLONEL SCOTT: I would also have - well,

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1 I'm considered an officer within the special task force and
 2 we are seen as a national unit.
 3 CHAIRPERSON: Yes. Who are the others, you say,
 4 General Annandale and then you refer to other persons but
 5 you didn't mention their names. You were one but can you
 6 mention the others?
 7 COLONEL SCOTT: Well, Brigadier Fritz is
 8 one, Brigadier Tsiloane. I'm not sure if the others who
 9 were out on the ground would have had anything to do with
 10 something like this. I don't particularly recall or I
 11 can't think of any other than those.
 12 CHAIRPERSON: Thank you.
 13 MR CHASKALSON SC: And within those four
 14 people, who was given responsibility for a cordon and
 15 search operation by 9:30AM on Thursday the 16th?
 16 COLONEL SCOTT: I don't know, I can't
 17 answer that, I don't know that but I know that on the
 18 Wednesday the two brigadiers I've mentioned were asked to
 19 start planning the cordon and search operation.
 20 MR CHASKALSON SC: So that's Brigadier
 21 Fritz and Brigadier Tsiloane?
 22 COLONEL SCOTT: Yes. As I say, I
 23 assisted them with the slides, building of the slide show
 24 of the hostels and the like, which I think is part of the
 25 exhibit list.

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1 MR CHASKALSON SC: And did either of them
 2 mention the need to provide for mortuary vehicles?
 3 COLONEL SCOTT: No, no.
 4 MR CHASKALSON SC: Not to you?
 5 COLONEL SCOTT: Not to me, no.
 6 CHAIRPERSON: I take it a forensic vehicle is
 7 otherwise known as a mortuary vehicle, is that correct,
 8 because this document talks about a forensic vehicle. This
 9 e-mail I mean, sorry.
 10 COLONEL SCOTT: Chairperson no, I know a
 11 mortuary vehicle as a mortuary vehicle. A forensics
 12 vehicle I would see as somebody coming to deal with the
 13 actual crime scene and deal with the evidence on the crime
 14 scene.
 15 MR CHASKALSON SC: Well, to take that
 16 further we'll have to speak to Ms Ngake who has already
 17 given us an affidavit as to what the request was to her,
 18 how she understood the request and how it was conveyed to
 19 her but we can do that without -. She certainly understood
 20 the request to be for mortuary vehicles.
 21 COMMISSIONER HEMRAJ: Was there some
 22 previous document which you showed us perhaps that referred
 23 to a mortuary vehicle? I seem to recall something.
 24 MR CHASKALSON SC: Yes, there were the
 25 statements, there were the statements from the various

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1 mortuary employees and then there was also the occurrence
 2 book from the mortuary.
 3 CHAIRPERSON: I think the occurrence book, which
 4 is an exhibit, spoke about a mortuary vehicle as far as I
 5 remember.
 6 MR CHASKALSON SC: It's JJJ180, the
 7 occurrence book. Maybe we can call up JJJ180 and if we can
 8 just go down through to the 16th at 8:30, there the report,
 9 the request is recorded, "Colonel Claassen from Phokeng
 10 SAPS informed us (Phokeng Forensic Pathology Services) that
 11 Colonel Madoda from national office requested one backup
 12 mortuary vehicle to be stationed at Marikana police station
 13 for any disaster that can occur during the Marikana Lonmin
 14 strike." So the understanding was that what was being
 15 requested was a mortuary vehicle and if we go to the
 16 earlier statement of, the affidavit of Ms Ngake JJJ183,
 17 there she records that the original request was for four
 18 mortuary vehicles and she said, "I can only spare one."
 19 CHAIRPERSON: I think you've asked this question
 20 last week but Colonel, the person who is described in the
 21 occurrence book as being the person from the national
 22 office who made the request is Colonel Madoda. Do you know
 23 a Colonel Madoda?
 24 COLONEL SCOTT: I don't, Chairperson, but
 25 I see that and I think maybe that clears up or hopefully

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1 clears up, that I don't think it would've been one of the
 2 two brigadiers that I've mentioned. I know -
 3 CHAIRPERSON: He might, in turn, have been passing
 4 on a request from the national office without necessarily
 5 being a national office person himself but that's something
 6 that can only be cleared up with him, I take it.
 7 COLONEL SCOTT: Yes. It should be
 8 something that one could check quite easily or - either by
 9 verification of where he is based or, for that matter, the
 10 writer of that occurrence book entry, how they understood
 11 him to have been from national office.
 12 COMMISSIONER HEMRAJ: Mr Chaskalson, does
 13 this entry relate to any disaster that can occur during the
 14 Marikana mine strike and the e-mail refers to, is with
 15 reference to a cordon and search operation?
 16 MR CHASKALSON SC: That's correct,
 17 Commissioner.
 18 COLONEL SCOTT: Maybe I can give clarity
 19 on that. I think we're talking about two separate requests
 20 because the forensic vehicle makes sense, that there's an
 21 expected seizing of weapons and forensics, as it was
 22 discussed earlier in the operation, would do the swabbing
 23 of the blades of the weapons for any blood, traces of
 24 blood. So I think there is a definite separation between
 25 the two requests. It's possible that it would be the same

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1 nodal person dealing with it because it falls within the
 2 after the fact, whether there's a crime scene, fatalities
 3 possibly or evidence to be dealt with in that evidence
 4 chain.
 5 MR CHASKALSON SC: It's a matter that
 6 we're going to have to take forward with the people who are
 7 party to the request. I think at this stage it would just
 8 be speculation to canvass possibilities with Colonel Scott.
 9 Colonel, if we can then move to what you and I will both be
 10 relieved to hear is my last topic, which is the
 11 presentation. From your statement you indicate that
 12 exhibit L, which is the SAPS presentation as we know today,
 13 grew out of briefing documents that you prepared in the
 14 immediate aftermath of the 16th and the passages in your
 15 statement to which I'd refer you start at page 97 paragraph
 16 26, which you've headed "NATCOM media presentation, the
 17 genesis of the final product to the Commission" which sort
 18 of suggests that the starting point of what we have as
 19 exhibit L today was the NATCOM media presentation on the
 20 17th and you discuss that in some more detail all the way
 21 through to page – gosh, 102 paragraph 32.5. We've
 22 identified a series of drafts of the presentation and the
 23 accompanying memorandum to the presentation from your very
 24 first presentation to the National Commissioner and the
 25 media on the 17th of August through to the final document

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1 that was presented in Commission in early November and
 2 we've listed them in exhibit 189 and if we can just call up
 3 exhibit 189?
 4 CHAIRPERSON: Has this been put in already?
 5 MR CHASKALSON SC: No, it's a new
 6 document which we want to exhibit now.
 7 CHAIRPERSON: JJJ189, how do I describe it?
 8 Sorry, how do I describe it?
 9 MR CHASKALSON SC: Sequential drafts of
 10 the, or drafts which preceded the SAPS presentation and
 11 narrative. A list of drafts which preceded the SAPS
 12 presentation –
 13 CHAIRPERSON: Drafts which preceded the SAPS
 14 presentation and narrative?
 15 MR CHASKALSON SC: Yes Chairperson, I see
 16 now that on the exhibit I've actually given it a different
 17 name. I've called it "Drafts that developed into the SAPS"
 18 –
 19 CHAIRPERSON: Let's keep what the heading is so
 20 there won't be confusion later. So it's "Drafts that
 21 developed into the SAPS presentation." Simply "Drafts that
 22 developed into the SAPS presentation" and that's JJJ189.
 23 MR CHASKALSON SC: And Chairperson, it's
 24 in the paginated file 3.6 at page 2742. Colonel, you've
 25 had this table at least for 24 hours, I hope. Can you

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1 confirm that we have the dates and times of these documents
 2 correctly entered in the column on the right hand side of –
 3 well, in the third column of this document?
 4 COLONEL SCOTT: I went through it. There
 5 was one or two that I had the same name of, you've also got
 6 the same name, which just reflect slightly different dates
 7 but it's a fair reflection of what you've got there. The
 8 ones that you've shown there are, I can find as well.
 9 MR CHASKALSON SC: And you don't have any
 10 problems with the date and time that we've given to any
 11 document?
 12 COLONEL SCOTT: No, not necessarily,
 13 unless I find – not with what you've got there, unless I
 14 find something more over and above but at this stage that's
 15 quite accurate.
 16 MR CHASKALSON SC: Well, that takes me to
 17 my second question. I was going to ask you to confirm to
 18 the best of your knowledge that this list does not omit any
 19 important drafts of the presentation or narrative but it
 20 sounds like it may have –
 21 COLONEL SCOTT: Well, like I say, I've
 22 just got one or two that are saved with the same name that
 23 have a slightly different saved date but it's the same
 24 name, so I think that would be pretty in depth to go and
 25 check the amount of slides per document and things like

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1 that, which I haven't necessarily done.
 2 MR CHASKALSON SC: But maybe if you could
 3 then just identify the ones that you have that are saved on
 4 the same date, under the same name but on different dates.
 5 COLONEL SCOTT: I'm just wondering
 6 whether this is going to be a lengthy process that might
 7 waste some of your time –
 8 CHAIRPERSON: Before you express further your
 9 wonderment on the point, the reference we got a minute ago
 10 was incorrect. JJJ189 is indeed file 3.6 but it's page
 11 2742. Would it help if we take a short adjournment and I
 12 give you an opportunity to work on it or is it something
 13 that can't be done in a short adjournment?
 14 MR CHASKALSON SC: It's not of crucial
 15 importance for my cross-examination. I wonder, Colonel, if
 16 you could do that during the lunch break, if possible.
 17 COLONEL SCOTT: I think –
 18 MR CHASKALSON SC: Or even after the
 19 cross-examination. The purpose of this list is really to
 20 identify for the Commission what the sequential drafts of
 21 the presentation were. If there are one or two that we
 22 have missed then we just want them to be included in this
 23 list.
 24 COLONEL SCOTT: I understand that,
 25 Chairperson, as well and like I say, there are so many

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1 duplicates. If I bring them up, there's four to five of
 2 the same file so that's why I say it'll be a lengthy
 3 process. So maybe I agree with you, I'll have a look maybe
 4 in free time but I've been through what is here and –
 5 CHAIRPERSON: And then you can let us know if
 6 there are any changes or in corrections.
 7 COLONEL SCOTT: Yes.
 8 CHAIRPERSON: I don't know, it may not be
 9 necessary for you even to come back to deal with them but
 10 let's see what the result of the exercise is before we
 11 decide about that.
 12 COMMISSIONER HEMRAJ: Will there be
 13 cross-examination on the content of those that are not part
 14 of the list?
 15 MR CHASKALSON SC: I don't anticipate
 16 that there will, Commissioner Hemraj, because Colonel Scott
 17 is saying what he's identified is files saved under the
 18 same name at slightly different times and he's not
 19 suggesting that there are dramatic material differences.
 20 CHAIRPERSON: In any event your cross-examination,
 21 I take it, is prepared on the basis of the list that you've
 22 prepared, which is the exhibit before us, JJJ189.
 23 MR CHASKALSON SC: That's correct,
 24 Chairperson. Colonel, was there any structured review
 25 process for the presentation as it was refined through

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1 these drafts?
 2 COLONEL SCOTT: Yes, while we were –
 3 well, if we go back to how the actual, how it started being
 4 formed, we would sit and look and look at photographs – and
 5 I say “we,” I'm going back to the National Commissioner's
 6 presentation which was first built – myself, General
 7 Annandale, that I can remember and I think possibly at some
 8 stage the National Commissioner was looking at some
 9 photographs but in essence I put them together into a
 10 presentation format and tried to just, as best possible,
 11 put them in the right sequence to which she then spoke, I
 12 believe, off her media briefing. Or no, sorry, I presented
 13 the presentation. I think she had a separate media
 14 briefing at the media conference.
 15 [12:15] So it was sort of that inform process in the
 16 beginning. Throughout the time period for the remainder of
 17 the next week at Marikana I was just in the process of
 18 gathering as much as I could and trying to make sense of as
 19 much as I could, based upon the inputs that I could get
 20 from some of the commanders that were still around at the
 21 JOC at that time. And when we got to Roots it went to a
 22 more, almost formalised process where the groupings that
 23 were at different areas, a forward holding area 1 group or
 24 a 2 or the special task force members together, they had
 25 time where the commanders would go away, sit and try to get

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1 a picture that they would bring back to Colonel Visser so
 2 that we could see where, how accurately we were moving with
 3 the presentation and obviously what needed to still be put
 4 in.
 5 At Roots I think we showed the presentation two,
 6 possibly three times to all the commanders as a full group
 7 sitting, so that the inputs could be seen then. I think
 8 the last one was shown to the National Commissioner, again
 9 with the ability to give inputs –
 10 MR CHASKALSON SC: This is – sorry
 11 Colonel, just for clarification. The last one, the last
 12 one at Roots?
 13 COLONEL SCOTT: At Roots. After Roots we
 14 knew that we weren't finished, there were still so many
 15 rough edges and there was some information which was deemed
 16 to be too much and I think that you can see from the
 17 building of the presentation that things like the amount of
 18 members deployed each day, the spreadsheets that were put
 19 in were taken out so that we were initially – I don't
 20 remember but I think we were initially limited. We were
 21 supposed to have stopped at about 150 slides. I think it
 22 grew to about 175 and I believe we ended up on somewhere at
 23 230-odd because of trying to keep it as concise and
 24 informative as possible, considering time as well.
 25 After Roots, if I remember correctly, I came back

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1 to present it to the newly appointed SAPS legal team in
 2 Potchefstroom and then Colonel Visser came to my office in
 3 that period that we were back at our units to – because we
 4 still were, there was a lot of uncertainty regarding scene
 5 1, koppie 3, which became eventually my baby to try and
 6 figure out what happened at koppie 2 to the best of –
 7 koppie 3, sorry, to the best of my ability. I think we
 8 were called back together somewhere around the first week
 9 of October where we held a meeting to try and figure out
 10 what happened at koppie 3 where the commanders that were
 11 involved at koppie 3 came in and explained to us and it's
 12 around that time I tried to sequence the photographs to
 13 help the commanders just to identify where their units were
 14 at what time, seeing it from the air for the first time
 15 because many of them had only experienced this from the
 16 ground and didn't quite know their positioning and so on.
 17 And this is when the Commission started. I know myself and
 18 Colonel Visser sat for most of October in the guesthouse or
 19 at the Commission's buildings where we continued to build
 20 the presentation. My concentration again was very much on
 21 the koppie 3 scene 2 and thereafter and I speak from
 22 correction now, but there were two, possibly three
 23 occasions in that October month where we presented the
 24 presentation again to senior members of the police before
 25 it got to the – and I think you can see numerous times it

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1 says final, final 1, final 2, as we kept on moving on. The
 2 very last slides, I don't recall but I think I may have
 3 just run them past General Annandale because at that stage
 4 we were expecting at any stage to start presenting the
 5 presentation. Those had to do with incidents around koppie
 6 2, koppie 3 sorry, scene 2, that were inputted at that
 7 time.
 8 MR CHASKALSON SC: And was there any
 9 formal review committee to which you would report in this
 10 process on a regular basis?
 11 COLONEL SCOTT: No, nothing that I would
 12 call formal.
 13 MR CHASKALSON SC: And if we take the,
 14 look at some of the senior SAPS officers and the senior
 15 officers involved in the operation, can you try to give us
 16 an indication of when the presentation was shown to them
 17 and let's take them one by one starting with the National
 18 Commissioner. Do you have a sense of at what stage the
 19 National Commissioner saw the presentation?
 20 COLONEL SCOTT: From what I can recall,
 21 only on two occasions, the one being at Roots which is on
 22 one of the final days. I think it may have been the
 23 afternoon of the 5th and the second time when the police
 24 were trying to sort out what was going on at scene 2 and
 25 that was somewhere in October. I'm not sure that she was

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1 shown the whole presentation but when we would get together
 2 as a group to try to piece together and find out exactly
 3 who was doing what, I would run through the slides of the
 4 presentation to try and refresh memories, allow commanders
 5 to see where they were, see whether we were accurate in
 6 what we were saying and that was, I recall that it was in
 7 Rustenburg so it must have been in the month of October.
 8 MR CHASKALSON SC: And the Provincial
 9 Commissioner?
 10 COLONEL SCOTT: The Provincial
 11 Commissioner was pretty much present when the National
 12 Commissioner was present. I think there was one other time
 13 in the month of October as well that she may have been
 14 present when the National Commissioner was not there.
 15 MR CHASKALSON SC: Major-General Mpmembe?
 16 COLONEL SCOTT: I speak under correction
 17 now but most times that we would sit when there was a
 18 general review of the presentation he would be there, as
 19 would General Annandale, Brigadier Calitz. I can't recall
 20 with certainty which of the colonels, but mostly the senior
 21 JOCCOM command to some degree. Brigadier Fritz and
 22 Tsiloane, they were not really involved after Marikana
 23 itself. I don't even think they were involved at Roots for
 24 that matter and they never really had input, too much input
 25 further from that time on but I think some of the ground

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1 commanders who were involved in the operation itself on the
 2 ground that day, they were continually consulted with in
 3 these sessions when we would actually go through the
 4 presentation to look for accuracy.
 5 MR CHASKALSON SC: And you haven't
 6 mentioned Major-General Naidoo, was he part of regular
 7 group?
 8 COLONEL SCOTT: He wasn't as – I don't
 9 recall specifically but I don't think he was there are
 10 regularly as General Mpmembe and Annandale.
 11 MR CHASKALSON SC: Sorry, just getting
 12 back to the Provincial Commissioner, you mentioned that she
 13 was present when the National Commissioner, when the
 14 document was shown to the National Commissioner, also
 15 present on one occasion in October. Was she present at any
 16 stage during Roots apart from the time when – well, was she
 17 present to see a draft of the presentation at any stage
 18 during Roots, apart from the time when it was shown to the
 19 National Commissioner?
 20 COLONEL SCOTT: I can't, I can't answer
 21 that with certainty. It's possible that she may have been
 22 there when we briefed the commanders but I don't recall.
 23 MR CHASKALSON SC: Colonel, I'd like to
 24 show you a document which will be JJJ116. You can call up
 25 JJJ116.

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1 CHAIRPERSON: How do I describe it?
 2 MR CHASKALSON SC: Spreadsheet with a
 3 control list for the distribution of presentation and if we
 4 can just centre that document –
 5 CHAIRPERSON: JJJ116 will be spreadsheet with a
 6 control list for distribution of presentation.
 7 MR CHASKALSON SC: Colonel, do you
 8 recognise that document?
 9 COLONEL SCOTT: It's something I started
 10 the week at Marikana because I was starting to build the
 11 presentation and there were people starting to come to me
 12 to ask for copies and it was still a draft document so we
 13 were hesitant initially in just giving it out incomplete.
 14 I think if one can check the properties, that was last
 15 probably – still maybe the week after Marikana but it
 16 stopped being used after, I don't even think –
 17 MR CHASKALSON SC: What the properties
 18 shows, that you saved it on the 27th of August 2012 at
 19 18:23.
 20 COLONEL SCOTT: For the last time.
 21 MR CHASKALSON SC: That's the last time
 22 this document was saved.
 23 COLONEL SCOTT: Ja.
 24 MR CHASKALSON SC: That time,
 25 incidentally, is the exact time when JJJ34 was saved on the

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1 first evening of Roots and JJJ34 you'll see is the version
 2 of the presentation that you saved on the evening of 27th of
 3 August.
 4 COLONEL SCOTT: Okay.
 5 MR CHASKALSON SC: Now if we go back to
 6 this control list, Major-General Johnson, as we understand
 7 it, is head of the detective services division, is that
 8 correct?
 9 COLONEL SCOTT: That's correct.
 10 MR CHASKALSON SC: And he is the officer
 11 who prepared the report into tampering with evidence on the
 12 crime scene at scene 2.
 13 COLONEL SCOTT: As far as I know, yes.
 14 MR CHASKALSON SC: Did anyone tell you to
 15 give him a copy of the presentation?
 16 COLONEL SCOTT: No, I didn't give out
 17 copies unless people came and asked me and I was actually
 18 hesitant too and that list was created because I went to
 19 General Annandale to say look, I don't know if there should
 20 be a procedure that we work through, to which he said,
 21 well, he would give me the authority but I just needed to
 22 keep a control list of who it went to.
 23 MR CHASKALSON SC: And what authority
 24 were you given, to distribute the –
 25 COLONEL SCOTT: Presentation at that

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1 time.
 2 MR CHASKALSON SC: To whom?
 3 COLONEL SCOTT: Well, to whoever had
 4 gained permission from General Annandale.
 5 MR CHASKALSON SC: So General Annandale
 6 controlled who you could and couldn't give a copy of the
 7 presentation to?
 8 COLONEL SCOTT: Initially up until, as I
 9 say, maybe the first day of Roots because from then myself
 10 and Colonel Visser were working on it. We had copies, it
 11 started moving around out of my control.
 12 MR CHASKALSON SC: Major-General Johnson
 13 wasn't involved at Marikana at all.
 14 COLONEL SCOTT: No.
 15 MR CHASKALSON SC: What role, if any, did
 16 he play in relation to the presentation?
 17 COLONEL SCOTT: I don't know. I don't
 18 know if he gave inputs. As you say, I don't – he wasn't
 19 involved there so I wouldn't think he could have given
 20 inputs, so I don't know.
 21 MR CHASKALSON SC: And you don't know why
 22 he wanted a copy of your presentation.
 23 COLONEL SCOTT: No, but I do know that
 24 with regard to the evidence, so-called evidence tampering,
 25 that was only discovered I think somewhere in late October

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1 because I actually made that discovery.
 2 MR CHASKALSON SC: And that was long
 3 after –
 4 COLONEL SCOTT: That was long after –
 5 MR CHASKALSON SC: - this copy of the
 6 presentation was given Major-General Johnson.
 7 COLONEL SCOTT: That's right.
 8 MR CHASKALSON SC: What about Major-
 9 General Dladla, who is he?
 10 COLONEL SCOTT: I'm not sure. The only
 11 General Dladla I know works in a totally different division
 12 and would have had nothing to do with anything going on
 13 here. I don't know if that's somebody maybe in the
 14 province itself, I'm not sure.
 15 MR CHASKALSON SC: But you'd have been
 16 authorised by Major-General Annandale to give a copy of the
 17 presentation to this Major-General Dladla, whoever he may
 18 be.
 19 COLONEL SCOTT: Well, as I say, that's
 20 what I can recall. I was, I didn't want to just give
 21 things out so I approached the General who made that
 22 decision that they would need to request it of him and I
 23 think part of the issue I had was, it's difficult for me to
 24 say no to a general approaching me. So the permission
 25 would be given by a fellow general and then I would do it.

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1 MR CHASKALSON SC: Did Major-General
 2 Dladla play any role in relation to the presentation of
 3 which you're aware?
 4 COLONEL SCOTT: No. Like I say, I'm not
 5 sure I have – maybe it's also a wrong name but I don't want
 6 to speculate unless maybe that is a general that is within
 7 the province possibly or maybe working with Major-General
 8 Johnson.
 9 MR CHASKALSON SC: Now Colonel, the
 10 difference between – sorry, that column B says "PowerPoint
 11 PDF."
 12 COLONEL SCOTT: Yes.
 13 MR CHASKALSON SC: Now the difference
 14 between PDF copies and PowerPoint copies is that PDF copies
 15 can't be edited but PowerPoint copies can, would you accept
 16 that?
 17 COLONEL SCOTT: That's also true and I
 18 don't know if the PDF can be presented as in, as a slide
 19 show. In other words the movies that are inside or
 20 anything that needs to be multi-media based in a PDF is a
 21 straight document, whereas the PowerPoint enables you to
 22 start showing video if there's video to be shown and so on.
 23 MR CHASKALSON SC: Yes, so what you get
 24 with a PDF is like the hard copy, the screen version of the
 25 hard copy that the Commissioners have, for instance.

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1 COLONEL SCOTT: Yes.

2 MR CHASKALSON SC: Whereas the PowerPoint

3 version enables you to play audio, do fancy tricks with

4 slides moving into one another.

5 COLONEL SCOTT: That's correct.

6 MR CHASKALSON SC: I see that Major-

7 General Johnson and Major-General Dladla got PowerPoint

8 copies but Brigadier Calitz and Colonel Visser only got PDF

9 copies. Did you expect Major-General Johnson or Major-

10 General Dladla to want to edit the document?

11 COLONEL SCOTT: No. I think also because

12 it may have been that I think it's also running in – I'm

13 not too sure but I know obviously Calitz was there. Visser

14 I'm not sure who Colonel Visser was either but they would

15 obviously have been there. The other two it seems weren't

16 there and would have needed to have seen the attached

17 videos that were put into the presentation as well.

18 MR CHASKALSON SC: And are you aware of

19 any other control sheets that you kept at various stages of

20 the process?

21 COLONEL SCOTT: Only this one that I know

22 of.

23 MR CHASKALSON SC: If we can then move

24 broadly through the stages of the presentation, the

25 starting point that you've confirmed in your statement –

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1 CHAIRPERSON: Mr Chaskalson, I'd like to take a

2 five minute adjournment at this stage. Come back as soon

3 as you can.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [12:35] CHAIRPERSON: The Commission resumes. Colonel,

6 you're still under oath. Mr Chaskalson?

7 DUNCAN GEORGE SCOTT: s.u.o.

8 EXAMINATION BY MR CHASKALSON SC (CONTD.):

9 Chairperson, the identity of Major-General Dladla has now

10 been cleared up. He is a Major-General from the Western

11 Cape who is in legal services in SAPS apparently. Will you

12 confirm that, Colonel Scott?

13 COLONEL SCOTT: That's affirmative.

14 CHAIRPERSON: Does that mean that the internal

15 SAPS legal division, if one can call them that, were also

16 involved in the run-up to the presentation that we

17 received? Did they hold some kind of watching brief over

18 the matter or what exactly happened? I remember we were

19 told that someone from legal services was at Roots. The

20 present legal team weren't involved at all, I think they

21 only came in later, I take it, but I take it there's a

22 police legal division.

23 COLONEL SCOTT: That's correct,

24 Chairperson.

25 CHAIRPERSON: And Major-General Dladla sounds like

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1 a very senior member of that division.

2 COLONEL SCOTT: That's correct,

3 Chairperson.

4 CHAIRPERSON: So was his section or his division

5 or whatever the correct nomenclature is, keeping a watchful

6 eye over the presentation?

7 COLONEL SCOTT: Over the proceedings,

8 Chairperson, yes.

9 MR CHASKALSON SC: Colonel, if we can

10 then start moving through the stages of the presentation,

11 what I will describe as the stages of the presentation. If

12 we start with the first stage, you've indicated in your

13 statement that the genesis of the presentation can be

14 traced all the way back to that NATCOM media briefing on

15 the 17th.

16 COLONEL SCOTT: That's correct.

17 MR CHASKALSON SC: And there are two

18 documents, one file one document which we'd refer you to in

19 this regard. The first is the NATCOM media briefing file

20 itself, JJJ42, which was saved at ten to two on the – last

21 saved at ten to two on the 17th of August 2012 and the

22 second is a video file called LON.MPG, JJJ39, which was

23 last saved at 11:37 on the 17th and we have looked at both

24 of them and as far as we can work out is that the only

25 difference between the two of them is that the video file,

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1 that's JJJ39, incorporates all of the PowerPoint slides in

2 the NATCOM media briefing into a video file that runs

3 itself and that also includes extracts from the POPS

4 analogue video footage up to the 13th. Is that a fair

5 description of those two documents?

6 COLONEL SCOTT: I think it is, yes.

7 MR CHASKALSON SC: Now, do you recall who

8 you spoke to on the night of the 16th and the morning of the

9 17th before you put together the NATCOM media briefing?

10 COLONEL SCOTT: I don't recall

11 specifically but the chain of command I was under was

12 directly under General Annandale.

13 MR CHASKALSON SC: Well, my question is

14 slightly different. It's how, who gave you information to

15 incorporate in these documents because there is, there are

16 some photographs, there are some videos, there's some

17 narrative as well?

18 COLONEL SCOTT: To the best that I can

19 remember, I remember working with Captain Adriaio, Brigadier

20 Pretorius, because there were a couple of times that we

21 went and laid forward the presidential brief, or I did but

22 they were assisting with the information collation into

23 that but I don't recall too much of that evening with

24 regard to us sitting and who was giving the information.

25 That's a bit difficult.

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1 MR CHASKALSON SC: Now at page 97
 2 paragraphs 26.1 and 2 of your statement, you indicate that
 3 before the NASCOM media briefing was shown to the press you
 4 showed it to the National Commissioner on the morning of
 5 the 17th.
 6 COLONEL SCOTT: That's correct.
 7 MR CHASKALSON SC: And do you recall who
 8 was present at the showing to the National Commissioner?
 9 COLONEL SCOTT: I think the PC was there,
 10 General Mpembe, I remember this because an IT specialist
 11 from the Lonmin Mine was actually asked to build the first
 12 video. I had not yet at that stage acquired those skills
 13 or the programme to do it and then I put the photographs
 14 together. I know before it was shown to the National
 15 Commissioner for that first – and General Annandale was
 16 also present, I remember that and I remember that morning
 17 getting some photographs from Colonel Vermaak. That's
 18 about the best I can do.
 19 MR CHASKALSON SC: Did you receive any
 20 information from people who had actually been in the field?
 21 COLONEL SCOTT: Well, I was part of the
 22 ongoing meetings that had sort of, as people were coming
 23 back from the field on the Thursday night, although I
 24 haven't got much of a recollection of that but I know I
 25 would have been present in those and then the morning of

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1 the Friday there was a JOCCOM meeting held as well. I
 2 don't recall much of that but I think it had a lot to do
 3 with just co-ordinating now after the fact, what are the
 4 members going to do, where, the after action type of
 5 managerial aspects, administrative and so on that needed to
 6 occur.
 7 CHAIRPERSON: Major-General Mpembe told us that he
 8 debriefed some of the commanders as they came from the
 9 field, as you put it. Were you present when that happened?
 10 COLONEL SCOTT: I don't remember it,
 11 Chairperson, but as I know I would've been sitting there
 12 working. I don't recall it, though, but I mean I was
 13 getting information but I know that my chief sources of
 14 information, I was relying a lot on Captain Adriaio because
 15 he was monitoring the media and Brigadier Pretorius was, I
 16 think, collating a lot of what was being said afterwards
 17 and bringing that to me as well and I would be typing it
 18 in.
 19 MR CHASKALSON SC: Did you speak to
 20 Brigadier Calitz as the operational commander to get any
 21 information from him?
 22 COLONEL SCOTT: I don't remember talking
 23 to him, no.
 24 MR CHASKALSON SC: Now, when you had the
 25 preview showing of the presentation to the National

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1 Commissioner on the 17th, do you recall whether any changes
 2 were suggested to the document?
 3 COLONEL SCOTT: I don't recall that there
 4 were changes once we showed the National Commissioner. It
 5 was just the inclusion of the 13th. I think I had maybe
 6 concentrated on the events of the 16th and it was felt that
 7 there needed to be some form of a history but the video of
 8 General Mpembe, as I say, was then brought into the media
 9 briefing strategy as well.
 10 MR CHASKALSON SC: It seems to us that
 11 the next important stage of the presentation would be the
 12 draft that you prepared on the first evening of Roots, the
 13 27th of August, JJJ34 and we've identified on JJJ189, we've
 14 identified a PDF document and a PowerPoint document that
 15 are both potential source documents for JJJ34 and all three
 16 documents are saved 27th of August, either at 18:23 or
 17 18:22. We spoke about JJJ34 last week and you've confirmed
 18 that in relation to slide 31 of that presentation you'd
 19 spoken to Brigadier Calitz before preparing this draft of
 20 the presentation. Is it possible to recall who else you
 21 had spoken to in relation to this presentation?
 22 COLONEL SCOTT: I know that I would have
 23 been – I can't recall anybody but I know I would have been
 24 trying to get as much information as I could have. I'm not
 25 discounting that some of it may have been second-hand,

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1 having been spoken to somebody else who is now giving it
 2 over to me.
 3 MR CHASKALSON SC: But you can't recall
 4 any sort of structured briefing sessions that you –
 5 COLONEL SCOTT: No.
 6 MR CHASKALSON SC: - held for
 7 information. Then the next important stage for us seems to
 8 be the draft that emerged from that and the first post-
 9 Roots version that we have is JJJ32. That was saved on the
 10 10th of September which was the first working day after
 11 Roots and I presume that this draft incorporated all the
 12 input that you and Colonel Visser had received at Roots.
 13 It was saved on the Monday after the Friday on which Roots
 14 ended.
 15 COLONEL SCOTT: That would be correct, it
 16 should be correct.
 17 MR CHASKALSON SC: And you described
 18 briefly the process that had taken place at Roots. You
 19 spoke to a process where commanders and their members would
 20 go into breakaway groups, as it were, to workshop a
 21 narrative of what they had been involved in and that would
 22 then be – sorry, that's correct, is it? Can you just
 23 confirm rather than nodding your head?
 24 COLONEL SCOTT: Can I just clarify
 25 members, the actual ground members I don't remember, were

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1 not present. I mean that would have been a call-up of 600-
 2 odd people. They had just called the commanders to my
 3 recollection, but that may have included sub-commanders,
 4 for instance Mere, Pitsi, there may have be another
 5 lieutenant-colonel, I'm not sure but there were small
 6 groupings but they were mainly officers that were there
 7 that were collated together.

8 MR CHASKALSON SC: And so officers from a
 9 particular, officers who had been at forward holding area 1
 10 for instance would break away and prepare a narrative of
 11 what had happened in relation to the forward holding area 1
 12 group. Officers who had been part of the POPS group would
 13 break away and prepare a narrative on what had happened to
 14 the POPS group and so on.

15 COLONEL SCOTT: That's how I understand
 16 it. I think it may have happened that way. Possibly also
 17 where just the actual unit itself would speak to its own,
 18 where special task force would speak to special task force,
 19 what they did, having that commander speaking to his own
 20 members in his unit before he arrived at Potchefstroom.

21 MR CHASKALSON SC: Well, maybe, it may be
 22 a useful time at this point to move to exhibit JJJ190 which
 23 is a list we've tried to generate of documents that were
 24 prepared at Potch and if we can call up JJJ190 and,
 25 Chairperson, if we can call this exhibit "Notes or files

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1 produced at Potchefstroom.

2 CHAIRPERSON: Very well. Exhibit JJJ190 will be
 3 "Notes or files produced at Potchefstroom."

4 MR CHASKALSON SC: And Colonel, what
 5 we've excluded from exhibit JJJ190 is drafts of the
 6 presentation itself and drafts of reverse engineered
 7 versions of the plans because we've dealt with them
 8 elsewhere, but if we look at those documents would you
 9 confirm first of all that the documents and files that we
 10 see there are documents that were in fact prepared at
 11 Potchefstroom during the Roots breakaway between 27 August
 12 and 7 September.

13 COLONEL SCOTT: What I did was I did go
 14 into the hard drive to check. I don't think I've read most
 15 of this as in opening the file or the document itself to
 16 read it, so – but my understanding is that most of what
 17 we've dealt with, because I think some of these are the
 18 minutes and debriefing files that you brought up earlier in
 19 cross-examination –

20 MR CHASKALSON SC: That's correct.

21 COLONEL SCOTT: And I see the others
 22 there, I also saw at some stage during our time of cross-
 23 examination in some file which is also mentioned to being
 24 made at Roots. The ones now specifically speaking to the
 25 POP/STF, I think that was the collation of their version of

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1 events or the narrative, as you put it. I haven't read
 2 them, I just saw the file names.

3 MR CHASKALSON SC: Are you able to
 4 identify any documents on this list that weren't produced
 5 at Potch?

6 COLONEL SCOTT: I wouldn't be able to say
 7 with certainty but I mean I'm quite sure you've probably
 8 checked the properties and so it has to be accurate.

9 MR CHASKALSON SC: Certainly unless we've
 10 slipped up, the properties place all of these documents
 11 within that two week period. Are you aware of any other
 12 documents that were prepared at Potch, other than drafts of
 13 the presentation and reverse engineered drafts of the plans
 14 that are of sufficient importance that the Commission
 15 should see them?

16 COLONEL SCOTT: No. Those would have
 17 been the only two I would have been working with.

18 MR CHASKALSON SC: If we can go down this
 19 list and let's leave JJJ119 out for the time being because
 20 that was a list of members but JJJ120 and 120.1 and 120.2
 21 appear to be various drafts of a narrative from the
 22 negotiations team. Have you looked at these documents?

23 COLONEL SCOTT: No, I haven't read them.
 24 I was only handed the list yesterday.

25 MR CHASKALSON SC: Fair enough. Well,

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1 let me give a description of them and if at a later stage
 2 you or your legal team want to contest them, please do.
 3 JJJ121 through to 128.3 are either documents or files or
 4 minutes or the occurrence book with notes incorporated into
 5 them. We've dealt with most of them already. JJJ129 is a
 6 narrative that describes the JOC structure and appears to
 7 have been incorporated in broad form into exhibit L.
 8 JJJ130 looks like the narrative that was produced by the
 9 Canine team. JJJ131, the narrative that was produced by
 10 the detectives' team, the LCRC team. JJJ132, the narrative
 11 by the ground forces dealing with the medics. JJJ133, the
 12 mounted units ground forces narrative. JJJ134, the NIU's
 13 narrative. JJJ136, the POP ground forces narrative.
 14 JJJ138 and 138.1, two versions of the STF ground forces
 15 narrative. Then JJJ193 all the way to 193.2, various
 16 versions of the TRT narrative.

17 COLONEL SCOTT: 139.

18 MR CHASKALSON SC: 139 indeed, to 139.3.
 19 JJJ140 is the narrative by members or officers who were
 20 present on Monday the 13th. JJJ – I forget, I'll come back
 21 to JJJ142. JJJ143, a narrative by the detective ground
 22 forces. JJJ144 is a narrative from forward holding area 1.
 23 JJJ145 is a narrative from the water cannon teams. Now, if
 24 I understand your description of the process as at Potch
 25 read with my reading of these documents, is that these are

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1 the documents that would have been prepared out of the
 2 breakaway groups that you describe at Potch. I know you
 3 haven't read all of these documents but are you able to
 4 respond to that proposition?
 5 COLONEL SCOTT: Well, to the best of my
 6 knowledge that's how I understand it as well and obviously
 7 once they had come together they would bring it back to
 8 Colonel Visser. At times they would also draw on a white
 9 board for him or a flip chart, just to explain what they
 10 were saying in their documents and then he would transfer
 11 it into exhibit L or into the building of exhibit L.
 12 MR CHASKALSON SC: And presumably by
 13 JJJ32 which was 10 September, the Monday after Roots
 14 finished on the Friday, these inputs would have been
 15 incorporated into that draft of the presentation.
 16 COLONEL SCOTT: Yes, up until then
 17 because I think just the area which was still not cleared
 18 up too well was scene 2, koppie 3, due to commanders not
 19 being able to place themselves very clearly on ground or
 20 knowing where they were at the time and so on.
 21 [12:56] MR CHASKALSON SC: But what we will find
 22 in JJJ3 should really be a product of those narrative
 23 breakaway sessions.
 24 COLONEL SCOTT: I would expect so, yes.
 25 I think there's – if I can just say maybe as well, prior to

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1 Roots starting I was also, as we know, at Marikana trying
 2 to build the presentation as we were going along. So there
 3 may be some inputs that I would have made in that time in
 4 either second-hand knowledge or getting it first-hand from
 5 some of the commanders at that stage, that I would have put
 6 in before we got to Roots but the rest of it should either
 7 have complemented that or made it more accurate possibly.
 8 MR CHASKALSON SC: Yes but the inputs
 9 that you received from commanders ought really to have been
 10 incorporated by the time that JJJ34 was produced on 27
 11 August –
 12 COLONEL SCOTT: That's right.
 13 MR CHASKALSON SC: - which was the first
 14 day of Roots.
 15 COLONEL SCOTT: That's right.
 16 MR CHASKALSON SC: And then the next
 17 broad stage of the presentation that we can identify is the
 18 final stage and like you say, there are several drafts that
 19 were called final. The first draft to be called final was
 20 JJJ158 which was saved on the 15th of October and do you
 21 recall if there was any process that this draft went
 22 through before it was given the label "final" – did it have
 23 to be signed off by any people of higher rank than
 24 yourself?
 25 COLONEL SCOTT: I think at that stage it

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1 would have had to have gone through one of those sessions
 2 that I mentioned in October where it was shown and accepted
 3 as such.
 4 MR CHASKALSON SC: And would those have
 5 been the sessions that you described involving the National
 6 and Provincial Commissioner?
 7 COLONEL SCOTT: I don't think the
 8 National Commissioner was, she was not necessarily part of
 9 that grouping that gave the final, that this is an
 10 acceptable product. She was more concerned about most of
 11 us not knowing pertinently what was actually happening at
 12 scene 2, because I think the session that we had with her
 13 was where she actually made the commanders come and sit
 14 with her and explain and with me going through the slide
 15 show with them, exactly where, what and how and have
 16 commanders explain their roles, where they were, et cetera,
 17 so that we could better populate scene 2, if I could say
 18 that. But I don't think, I mean she's obviously a very
 19 busy person. She was not part of the – and I want -
 20 informal grouping of senior officers that would sit and go
 21 through the presentation at times where, you know, we would
 22 try to reach finalisation.
 23 MR CHASKALSON SC: You mentioned that the
 24 Provincial Commissioner had also been present at one of
 25 these sessions in October apart from the ones when the

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1 National Commissioner was present. Would she have, as it
 2 were, signed off on the final draft that was prepared on
 3 the 15th of October?
 4 COLONEL SCOTT: That's also difficult to
 5 say. I think she was also – although as I say, some of
 6 these sessions there were work sessions but there were
 7 times that we would obviously go through the presentation
 8 in that work session as well as others when we would want
 9 to try and gain finalisation. So I just – there wasn't a
 10 record kept. I couldn't put my finger on exactly which was
 11 which but I'm just a little bit, I don't want to put the
 12 Provincial Commissioner in a spot just through my giving
 13 testimony but I'm not sure if she was part of that
 14 committee either who was making the decisions on this is
 15 the final product.
 16 CHAIRPERSON: Who would you say were the
 17 approvers, the persons who approved the final, final, final
 18 version?
 19 COLONEL SCOTT: Chairperson, I think it
 20 was more the generals that were involved in the operation –
 21 CHAIRPERSON: No, don't give me more than, I want
 22 to know who the people were.
 23 COLONEL SCOTT: General Annandale,
 24 General Mpembe and then the commanders that I've mentioned
 25 because it was a sort of, they needed to, not even a

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1 general would be able to say whether Brigadier Calitz had
 2 done –
 3 CHAIRPERSON: Yes, I understand that.
 4 COLONEL SCOTT: So we had, in essence had
 5 to show it for accuracy and after the accuracy was – if
 6 there were changes we needed to make, we made them, et
 7 cetera, and so we would move on. So it was mostly the
 8 commanders or those role players who were involved with the
 9 operation would sit and watch it and then say to us, okay,
 10 it's accurate, you've represented what we've said well.
 11 CHAIRPERSON: Mr Chaskalson, when we reach a
 12 convenient stage will you let me know so we can take the
 13 adjournment?
 14 MR CHASKALSON SC: Chairperson, now is a
 15 convenient time.
 16 CHAIRPERSON: We'll take the adjournment. As I
 17 indicated, we'll try to limit it to half an hour to try to
 18 make up some of the lost time. We'll take the lunch
 19 adjournment.
 20 [COMMISSION ADJOURNS COMMISSION RESUMES]
 21 [13:37] CHAIRPERSON: The Commission resumes.
 22 Please observe the warning, switch off your cell phones
 23 before we can proceed. Colonel, you're still under oath.
 24 DUNCAN GEORGE SCOTT: s.u.o.
 25 CHAIRPERSON: Mr Chaskalson -

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1 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 2 Thank you, Chairperson. Colonel, before we move on, I
 3 undertook to revert to you about JJJ142, which was the
 4 document "Report Mere." It is in fact a list of POPs
 5 personnel deployed under the command of Lieutenant-Colonel
 6 Mere, with a narrative report from Lieutenant-Colonel Mere.
 7 If we can then move on –
 8 CHAIRPERSON: Are you moving to another
 9 topic?
 10 MR CHASKALSON SC: No, no, I'm still
 11 dealing with the presentation and its genesis.
 12 CHAIRPERSON: Yes, yes, I see.
 13 MR CHASKALSON SC: And I want to touch on
 14 Potchefstroom because it seems to me that Potchefstroom is
 15 crucial to an understanding of the presentation and how it
 16 turned out. It ran for two full working weeks from the 27th
 17 of August to the 7th of September. Do you know who decided
 18 to hold the Potchefstroom conference?
 19 COLONEL SCOTT: I'm not sure how it came
 20 about, no.
 21 MR CHASKALSON SC: And when you were
 22 called up to the Potchefstroom conference, what were you
 23 told about the purpose of the Potchefstroom conference?
 24 COLONEL SCOTT: It was, to my
 25 understanding it was to continue with what I had been

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1 trying to do. I think the police undertook to try put
 2 their version, or their experience of the Marikana
 3 situation into a presentation to assist the Commission,
 4 with the understanding – this is my understanding, but at
 5 that time that the time period in order to, the Commission
 6 had to deal with the Marikana issue, was pretty short, and
 7 it was seen as a sort of helping aid. So, and I think it's
 8 – again I don't want to speculate for others; I'll speak
 9 for myself, that by the end of the week of Marikana we
 10 ourselves had not yet got to a full picture and were still
 11 striving too to understand as the police what had actually
 12 happened.
 13 MR CHASKALSON SC: Now the week of
 14 Marikana, and in particular the events of the 16th were a
 15 major tragedy in the history of this country, and we can
 16 assume that SAPS would have wanted to help the Commission
 17 to get to the truth and to make recommendations that would
 18 assist to prevent any repetition of those events.
 19 COLONEL SCOTT: I agree with you, and
 20 that's how I've always approached this, was to provide from
 21 the SAPS experience the truth of what happened there. I'm
 22 not sure that it was utilised, not to my knowledge anyway
 23 that it was utilised to try to understand what should we
 24 have done differently or so on. It was more about just
 25 saying what actually happened and not to in essence debrief

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1 it to the point where we get to must changes and so on.
 2 That wasn't done in my presence, if it was done at all.
 3 MR CHASKALSON SC: Well, I want to pick
 4 up on that, because I mean when SAPS came to Marikana they
 5 didn't plan to kill 34 people. I think you can confirm
 6 that.
 7 COLONEL SCOTT: I confirm that, yes.
 8 MR CHASKALSON SC: And I would imagine
 9 that they didn't even foresee that 34 people may be killed.
 10 COLONEL SCOTT: I agree with that, yes.
 11 MR CHASKALSON SC: So something must have
 12 gone wrong at Marikana.
 13 COLONEL SCOTT: Some – I think the
 14 keyword is the "something."
 15 MR CHASKALSON SC: Ja.
 16 COLONEL SCOTT: Because there seems to be
 17 the perception that it's always on the police's side that
 18 the something went wrong.
 19 MR CHASKALSON SC: Well, was there any
 20 discussion at Roots about what it was that did go wrong,
 21 whether it was on the police side or on another side or on
 22 both sides?
 23 CHAIRPERSON: Not necessarily both sides,
 24 because the terms of reference indicate that we have to
 25 consider the role of a number of the parties.

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1 COLONEL SCOTT: As I say, from my
 2 understanding back then and pretty much till now is that
 3 the police's actions were very much a response to the
 4 actions of the strikers at the time. What the members on
 5 the ground – I can't explain what they were thinking or
 6 feeling, but that is how I saw it then is that the police
 7 were trying to carry out a plan which I had carried over to
 8 them, which was not meant to turn out with the result that
 9 it had, but that something had provoked the action of the
 10 police to bring about the result that did come about, and
 11 at that stage that was my understanding was that the police
 12 line came under attack - that's what I understood from the
 13 commanders - and that they needed to defend themselves.
 14 MR CHASKALSON SC: Well, was there any
 15 attempt at Potch to reflect on the operation and to engage
 16 in an exercise of honest self-criticism about what happened
 17 on the 16th?
 18 COLONEL SCOTT: I can't say there was,
 19 and I say this because I think the drive, the emphasis was
 20 on simply just trying to get to all the fact about what
 21 happened and I think you can maybe only deal with
 22 introspection thereafter once you actually know what
 23 happened, and as we know that even after the two weeks at
 24 Roots we still were not totally clear. I think we had to
 25 some degree cleared up what we thought happened at scene 1,

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1 but scene 2 was still somewhat of a vague area for us which
 2 we tried to then clarify throughout the month of October
 3 still. So again like I'm saying, not where I was, there
 4 wasn't any introspection or looking at what we'd done
 5 wrong. Again I was tasked with building the presentation
 6 to, as best as we could, so –
 7 MR CHASKALSON SC: Well, that does beg
 8 the question a little bit, because it begs the question of
 9 what you understood your role to be in building the
 10 presentation. Did it involve any honest critique of what
 11 the police had done on the 16th?
 12 COLONEL SCOTT: No. It only had to do
 13 with providing what we thought were the facts to lay it
 14 forward to the Commission.
 15 MR CHASKALSON SC: What about the 13th?
 16 The death of two SAPS members and three members of the
 17 public in an operation is also a very serious matter. Was
 18 there any discussion at Potchefstroom about what went wrong
 19 on the 13th?
 20 COLONEL SCOTT: Well, from the documents
 21 that I've seen I believe there was, and obviously there
 22 must have been because it was inputted into the
 23 presentation itself.
 24 MR CHASKALSON SC: And any attempt to
 25 reflect critically on how the police had dealt with the

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1 operation on the 13th?
 2 COLONEL SCOTT: No, not – in a formalised
 3 way, no. I know that there was unhappiness amongst some of
 4 the commanders, which I think is common knowledge even from
 5 the day of the 13th, but I wasn't too up to speed with what
 6 their precise grievances were with regard to what happened
 7 there.
 8 MR CHASKALSON SC: And by the time you
 9 came to present exhibit L to the Commission, were you
 10 satisfied at that stage that you had reached a point where
 11 you could put forward the facts of what had happened on the
 12 13th and the 16th?
 13 COLONEL SCOTT: I think by that stage –
 14 well, I mean if we had been given another month we probably
 15 would have still made amendments as we went along. I'm
 16 just saying that as - but by the time we went to actually
 17 the Commission to present, I think that was the best
 18 product we could present by that time with the inputs we'd
 19 received and the ability to go through the media footage to
 20 the degree that we could on the photos.
 21 MR CHASKALSON SC: And were you aware of
 22 any facts by that stage which reflected, let me say poorly
 23 on certain aspects of how SAPS had conducted the operation?
 24 COLONEL SCOTT: Facts that reflected
 25 poorly on how SAPS had conducted the operation?

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1 MR CHASKALSON SC: Either on the 13th or
 2 on the 16th.
 3 COLONEL SCOTT: I think it was possibly a
 4 general knowledge thing that radio communications were not
 5 sufficient, but again I didn't go into the building of the
 6 presentation with a judgmental attitude towards the SAPS
 7 actions. It was merely a fact-finding issue for me, so I
 8 didn't take the time to specifically look. There were the
 9 small issues, like I think you've mentioned already that,
 10 you know, but which have got to do with the two different
 11 groupings of people approaching scene 2, as well as the
 12 issue of the simultaneous rolling out of the razor wire,
 13 but those are issues which I left for those commanders to
 14 deal with when they need to come and testify because
 15 whether they've got good reasons or not, I think they are
 16 deserving of the opportunity to defend themselves for the
 17 decisions they took.
 18 MR CHASKALSON SC: Well, let's leave
 19 those last two examples that you mentioned. Let's just
 20 talk about radio communications, because it seems to me
 21 that the failure of radio communications on the 16th was
 22 quite an important fact for this Commission to know about.
 23 Would you accept that?
 24 COLONEL SCOTT: Well, I think it's a
 25 broader thing than just can we talk on the radio, because

1 if you consider that sitting in the JOC we could, obviously
 2 we could hear Brigadier Calitz well, we could hear
 3 Lieutenant-Colonel Vermaak well, but if you do consider
 4 that Brigadier Calitz had an amplified radio system placed
 5 into his Nyala and Colonel Vermaak was in a helicopter,
 6 which would also be transmitting a stronger signal, so
 7 people that would have been on the ground only with hand
 8 radios for that matter may have been, whether they were
 9 trying to communicate with JOC or not, whether they could
 10 get a break in the communications may have been difficult
 11 for them because that's what Brigadier Calitz was
 12 experiencing there for the previous days. He could hear
 13 the JOC, but he couldn't necessarily speak back. So there
 14 were these type of issues that, you know – but again it was
 15 a matter of now, as I've said before, what was at the time
 16 was what was at the time, and how I've approached the
 17 Commission is what was is what was, and what needs to be
 18 laid down and spoken about and educated to the
 19 Commissioners.

20 MR CHASKALSON SC: You see, as this
 21 Commission has gone forward there have been a series of – I
 22 don't want to call them concessions by SAPS, but SAPS has
 23 accepted that some things didn't go as well as they should
 24 have gone. I can think for instance of the radio system in
 25 particular. Getting more serious, the SAPS expert had in

1 relation to scene 2, effectively, well states that of the –
 2 he says 14, but he's ignored four people, so it's actually
 3 18 – of the 18 people who were killed arising out of what
 4 happened at scene 2, he concedes that only five of them can
 5 be said to have been killed in self-defence. Now that's 13
 6 deaths in circumstances that the SAPS expert isn't willing
 7 to say are legitimately justified deaths. The opening
 8 statement of SAPS says that, concedes that some of the
 9 killings may have been unjustifiable, but what strikes us
 10 as unfortunate about exhibit L is that there is not a hint
 11 of any of this in exhibit L. I mean when one reads exhibit
 12 L one doesn't get a picture of an operation in respect of
 13 which anything went wrong on the 16th. Is there a reason
 14 for that?

15 COLONEL SCOTT: As I say the explanation
 16 that I can give you is that it was a, it was meant to be a
 17 presentation on what happened, not something to go and
 18 judge on, but simply an informative presentation for the
 19 Commission to say what happened from the police's point of
 20 view. Now moving beyond that again, for interest sake if I
 21 had mentioned I don't believe Commander X did right and I
 22 bring that up in a commission, I don't think that's fair to
 23 have judged a fellow colleague. Therefore it was just a
 24 factual, it was supposed to be just a factual presentation.

25 MR CHASKALSON SC: But there are quite a

1 few judgments in exhibit L about what people other than the
 2 police did wrong. Would you accept that?

3 COLONEL SCOTT: Again I'm not sure which
 4 ones you're referring to, but I'm not necessarily sure I
 5 would have had input on those.

6 CHAIRPERSON: Can I ask a question
 7 flowing from something you were dealing with a moment ago
 8 before you moved on to this point? Surely the fact that
 9 the radio communication didn't function properly and there
 10 was a communication problem was a fact. It didn't require
 11 a judgment; it was fact. Isn't that right?

12 COLONEL SCOTT: Chairperson, it was a
 13 fact that there was a system in play there. It was not the
 14 best system that we could afford in [inaudible] –

15 CHAIRPERSON: And as result of that there
 16 was not proper communication, or adequate communication
 17 between the people in the JOC for example and the people on
 18 the ground. Is that right? That's a fact, isn't it?

19 COLONEL SCOTT: Chairperson –

20 CHAIRPERSON: It's not a judgment, it's a
 21 fact.

22 COLONEL SCOTT: No, I can only speak for
 23 being in the JOC, and what I heard in the JOC I could hear
 24 those people. Whether others were trying to speak, I don't
 25 know. Whether those on the ground heard all the

1 communications is something they would need to speak to,
 2 but I can't really think that there was a problem with the
 3 audible hearing of what –

4 CHAIRPERSON: No, it's not the audible
 5 hearing. It was also the channels and all that kind of
 6 thing.

7 COLONEL SCOTT: There should possibly
 8 have been more channels spread out to deal with –

9 CHAIRPERSON: Because that was a fact,
 10 wasn't it? That there were inadequate channels and that
 11 there were therefore difficulties with communication
 12 experienced was a fact, wasn't it?

13 COLONEL SCOTT: Yes.

14 CHAIRPERSON: Shouldn't it have been in
 15 exhibit L? What's your answer?

16 COLONEL SCOTT: I don't know if I can
 17 answer that.

18 CHAIRPERSON: Sorry?

19 COLONEL SCOTT: It's not there,
 20 Chairperson, so I'm not sure how to answer that question.

21 CHAIRPERSON: Thank you.

22 MR CHASKALSON SC: Well, let's take
 23 another one. I mean the version that you've advanced and
 24 the version that we understand to be the SAPS version,
 25 notwithstanding the evidence that we covered this morning,

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1 is that the commanders of the operation in the JOC and the
 2 operational commander in the field and the overall
 3 commander in the Coin helicopter all claim to have been
 4 unaware that people had been killed at scene 1 for a period
 5 of up to half an hour after that had happened. Now there's
 6 no hint of that in exhibit L. Isn't that a fact that, if
 7 it is true, should have been put into exhibit L?
 8 COLONEL SCOTT: Where do we draw the
 9 line? Because you would like the facts that you would want
 10 in there. As I said, this presentation could have been how
 11 long, so –
 12 CHAIRPERSON: No, relevant facts.
 13 Relevant facts. Were these two facts that have been put
 14 relevant -
 15 COLONEL SCOTT: Well, Chairperson –
 16 CHAIRPERSON: - to what happened?
 17 COLONEL SCOTT: I'm not sure it was
 18 foreseen that somebody saying that the operation should
 19 have stopped, that Brigadier Calitz possibly should have
 20 known and stopped the operation at that time when –
 21 CHAIRPERSON: No, no, no. No, we're not
 22 talking about that now. What we're talking about at the
 23 moment is effectively the inadequacy of the radio, and
 24 secondly the fact – this was Mr Chaskalson's question -
 25 that the people in the JOC didn't know, or certainly claim

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1 they didn't know that people had been killed at scene 1
 2 until something like 20 minutes or half an hour afterwards.
 3 Weren't those facts that were relevant? Obviously you've
 4 got to draw a line somewhere, but if you've got facts that
 5 are relevant or very relevant, then surely they should be
 6 in, shouldn't they?
 7 COLONEL SCOTT: You know, there's
 8 probably an old saying, don't shoot the messenger, and
 9 something that Colonel Visser and myself, we were simply
 10 people who were being given the facts from the people, we
 11 had to put into the actual, we had –
 12 CHAIRPERSON: People who want to have
 13 conversations must please go outside. We can't have people
 14 sitting in the chamber having conversations among
 15 themselves. It makes it difficult for us to hear the
 16 evidence and the cross-examination.
 17 COLONEL SCOTT: As I was saying, it's a
 18 matter of what we are sitting with commanders who are
 19 explaining to us their views and their, what they
 20 experienced, that's taken and it's put into a presentation.
 21 If something is omitted, I'm not sure where that fault
 22 lies, or, but it was not something I considered that, from
 23 my position anyway, that not knowing, or that these
 24 commanders didn't know until what time at scene 1 that
 25 people had been deceased, I never saw the actual impact of

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1 that, or what it would be in the Commission anyway. I
 2 never thought of asking. As I say, I didn't particularly
 3 have much to do with the actual capturing of the inputs
 4 from commanders. Mine was more to do with the photographs
 5 and the video footage.
 6 CHAIRPERSON: But as far as the JOC was
 7 concerned, you were one of the people in the JOC. You say
 8 you didn't know.
 9 COLONEL SCOTT: Yes.
 10 CHAIRPERSON: And I understood you to say
 11 that everything that come through on the radio you heard,
 12 and presumably anything important that Brigadier Pretorius
 13 reported to General Annandale you would have heard. So you
 14 also were aware of the fact that you and your colleagues in
 15 the JOC, if this is true, didn't know until something like
 16 20 past 4 that people had been killed at scene 1. So you
 17 can't say you don't know what the commanders didn't know.
 18 You yourself didn't know.
 19 COLONEL SCOTT: I didn't know, yes. But
 20 that's why –
 21 CHAIRPERSON: That's not going to work.
 22 You'd better have – so what is your answer to the question?
 23 COLONEL SCOTT: Well, I mean I can't
 24 explain what - I didn't know that Brigadier Pretorius had
 25 been informed. I never saw her for that matter walk to

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1 General Annandale, if she did, to inform him.
 2 [13:56] My concentration was on a radio set and what was
 3 going on. So to expect that I would have watched her, seen
 4 her speak to General Annandale, understand what they were
 5 talking about, known what they were saying, I don't think
 6 is realistic.
 7 CHAIRPERSON: No, no, that's not the
 8 thrust of the question. The question is precisely the
 9 other way around. It's as far as you were concerned you
 10 didn't know and you had no reason to think that anybody
 11 else in the JOC knew that there had been deaths at scene 1
 12 until something like 20 past 4.
 13 COLONEL SCOTT: Yes.
 14 CHAIRPERSON: That's right, isn't it?
 15 COLONEL SCOTT: That's right, ja.
 16 MR CHASKALSON SC: You see, Colonel, when
 17 we read exhibit L, what strikes us about it is that it
 18 doesn't on its own terms describe anything that might
 19 appear to reflect poorly on SAPS. Would you accept that
 20 that's a fair assessment of reading of exhibit L?
 21 COLONEL SCOTT: Well, you know, again I
 22 can't speculate on what officers did, but it's left open to
 23 the interpretation of the Commissioners and of obviously
 24 the attorneys that were viewing exhibit L, and for me to go
 25 and highlight certain aspects that I thought specifically

<p style="text-align: right;">Page 14867</p> <p>1 may not have been dealt with correctly. I think it's quite 2 open to be seen in exhibit L for that matter. That's why 3 my approach was just to be truthful and open and honest in 4 placing down in paper there, or for instance I may not have 5 put in certain of those slides dealing with scene 2. What 6 has been placed in there when dealing with the incident is 7 the inputs we get back from the commanders, but I went to 8 large degrees to actually show the positioning of the 9 police members, who was where, but again it's not up to me 10 to judge those police officials because I was not there, 11 and I say that again because it's difficult to have to 12 judge a person when they're on the ground, they're making 13 decisions in the heat of the moment and we don't understand 14 what is the decision-making process of what they're 15 experiencing or feeling at that time. So I steered away 16 from specifically doing that.</p> <p>17 MR CHASKALSON SC: I don't propose to 18 take this issue much further. Maybe we can move to some 19 specific issues flowing from the presentation, and before 20 we get there, let me set out how I understand your 21 knowledge of matters in the presentation. Your personal 22 knowledge of matters in the presentation is confined to 23 what the plans were, what you witnessed at the JOC, and 24 what briefings you gave on the 14th, 15th, and 16th. Would 25 that broadly be correct?</p>	<p style="text-align: right;">Page 14869</p> <p>1 you've said both in your statement and in fact a few 2 minutes ago, most of the statements about what happened 3 elsewhere were actually made to Colonel Visser rather than 4 to you.</p> <p>5 COLONEL SCOTT: At Roots, yes.</p> <p>6 MR CHASKALSON SC: So I'm not proposing 7 to cross-examine you on all the remaining material in the 8 presentation, which is material of which you don't have 9 personal knowledge. I want to make that clear; I'm not 10 purporting to deal exhaustively with the presentation with 11 you because you don't have personal knowledge of it and at 12 best you can say to us well, this seems to have come in by 13 virtue of that statement that was made to Colonel Visser, 14 which was then conveyed to me. But there are some topics 15 that I do want to traverse with you nonetheless, and if we 16 can start with the ballistics reports in slides 211 and 17 257, and we're going to be referring to exhibit L regularly 18 through this process. So can we just have it on standby on 19 the computer.</p> <p>20 If we can go to 211 and 257, and let's start at 21 211, which is munitions expended at scene 1, and in 22 relation to the sharp-point ammunition you've distinguished 23 between shots which are characterised as warning shots and 24 shots which are characterised as shots fired towards the 25 protesters. Can you explain to us what the source was for</p>
<p style="text-align: right;">Page 14868</p> <p>1 COLONEL SCOTT: Yes, and to the best as I 2 could recall them, yes.</p> <p>3 MR CHASKALSON SC: And we've already 4 dealt with all of those topics in cross-examination. We 5 don't need to revisit them now in relation to the 6 presentation. Now it seems to me that everything else in 7 the presentation is either based on photographic and video 8 evidence that we see in the presentation, or on statements 9 from others that were made either to you or to Colonel 10 Visser, and we touched on many – sorry, is that broadly 11 correct?</p> <p>12 COLONEL SCOTT: That's broadly correct, 13 yes. Obviously we would find after we'd been told things 14 we would see a photographs which complemented what the 15 person had said and by that understand it and put it into 16 the presentation for instance.</p> <p>17 MR CHASKALSON SC: Now we touched on some 18 of the topics that are covered in the presentation of this 19 nature, issues of which you don't have personal knowledge 20 but which we've traversed in the cross-examination. I 21 don't want to revisit any of them. In particular I'm not 22 going to revisit what did or didn't happen at scene 2. 23 We've spent some time on that in the cross-examination. I 24 don't think much is to be gained on that front, given that 25 you don't have personal knowledge of any of it. From what</p>	<p style="text-align: right;">Page 14870</p> <p>1 this distinction?</p> <p>2 COLONEL SCOTT: To the best of my memory 3 this was something that Brigadier Pretorius was working on. 4 I think that she had gone through the members' statements, 5 if I'm not incorrect, to try and source the amount of 6 ammunition expended, and whether they said they were firing 7 at somebody specifically or just firing warning shots.</p> <p>8 MR CHASKALSON SC: So insofar as that 9 distinction of warning and towards is concerned, we're 10 ultimately dependent on the say-so of the shooters 11 themselves as appears from their statements?</p> <p>12 COLONEL SCOTT: As far as I know, yes.</p> <p>13 MR CHASKALSON SC: And many of those 14 statements would be warning statement. Would that not be 15 correct?</p> <p>16 COLONEL SCOTT: I presume so.</p> <p>17 MR CHASKALSON SC: Where the shooters may 18 be inclined not to reveal everything that they know.</p> <p>19 COLONEL SCOTT: I don't know. I haven't 20 read all of those statements. I'm not too sure. I know 21 warning statements were taken. I'm not sure if they made 22 statements thereafter which she worked off, or if she did 23 work off the warning statement.</p> <p>24 CHAIRPERSON: It sounds as if this is a 25 topic to be raised with Brigadier Pretorius if she comes,</p>

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1 or alternatively perhaps if she produces an affidavit on it
 2 if it's not necessary for her to give oral evidence.
 3 MR CHASKALSON SC: There is another,
 4 there are some issues flowing from this that I do want to
 5 raise with Colonel Scott though. We now have official SAPS
 6 ballistics reports for scenes 1 and 2, which are FFF8 and
 7 FFF35, and I've assumed from the structure of FFF8 and
 8 FFF35 that the official ballistic reports are compiled by
 9 reconciling the number of rounds that were issued to a
 10 member at the start of the day, with the number of rounds
 11 that they returned at the end of the operation. Would you
 12 be able to confirm that?
 13 COLONEL SCOTT: Well, the way it's
 14 supposed to work, you're supposed to record the amount of
 15 rounds when you go on duty. Should you end your shift and
 16 you have had a shooting in the duration of that shift
 17 you're obviously supposed to make a statement as to why you
 18 shot, mention how many rounds you shot. There would
 19 normally be a document, an SAP39, which is the expending of
 20 ammunition, or a similar document, which would then entitle
 21 you to receive more ammunition to refill your magazines for
 22 that matter. That's the administrative process. I'm not
 23 sure that that would have worked at Marikana with most
 24 people not coming from the environment and it not being
 25 necessarily happening within the normal police jurisdiction

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1 of how that was supposed to have happened, and this is why
 2 I speculate that the ammunition requested on the Thursday
 3 may have been something to do with magazines that had been,
 4 well, rounds that had been shot out on the Monday that
 5 hadn't yet been replenished. But I'm not sure where, or
 6 how they got to the actual ballistic reports. If it was
 7 forensic services for that matter it wouldn't be, because
 8 the only person that could give you the, how much
 9 ammunition was required to refill the magazines would have
 10 been the commanders of their members.
 11 MR CHASKALSON SC: So you can't speak to
 12 the process by which FFF8 and FFF35 were put together?
 13 COLONEL SCOTT: If we can maybe see the
 14 documents, I'll –
 15 MR CHASKALSON SC: Let's call up FFF8,
 16 which is the – or actually let's call up FFF35 because
 17 that's the ballistics report for scene 1, which we can then
 18 compare to this slide. And then maybe if we can rotate it;
 19 it's not a particularly good copy, and possibly enlarge as
 20 well so that the columns, the details in the columns are
 21 legible. It's a poor copy that you see, Colonel, but how
 22 the columns work is column A is just a numerical column.
 23 Column B is the persal number. Column C is the rank.
 24 Column D is initials. Column E is the name. Column G –
 25 there is no column F – records the R5 rounds issued, column

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1 H the – sorry, the R5 weapon, if it was issued, column H an
 2 R1 weapon, if it was issued, column I is I think a shotgun,
 3 if it was issued. Then column J reflects the rounds fired,
 4 9mm rounds fired. Column K, R5 rounds fired. Column L, R1
 5 rounds fired. Column M, stun grenades used – sorry,
 6 shotguns fired, and column N, stun grenades fired, and then
 7 there are other columns with which we're not concerned at
 8 the moment.
 9 My concern is if we compare FFF35, if we go down
 10 that document, let's go to the bottom of that document, and
 11 we're going to have to turn it around again when we get to
 12 the last page in this document because there are totals at
 13 the bottom.
 14 COLONEL SCOTT: I stand to correction,
 15 but I don't know if this is an official police document
 16 we're showing now. I think it may be the collated document
 17 of Brigadier Pretorius in an Excel spreadsheet.
 18 MR CHASKALSON SC: This was given to the
 19 Commission by SAPS as a record of rounds fired at scene 1
 20 and scene 2. It may not be in the standard form of the
 21 official SAPS document, but that's how it was presented to
 22 us.
 23 COLONEL SCOTT: Ja. I understand that
 24 too. That's why I'm just looking on my computer and I
 25 think the actual working document of that – or no, I may

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1 have a different one. No, okay, sorry, I'm on scene 1.
 2 MR CHASKALSON SC: It's a document which
 3 is called "Discharge 16th August, copy," I think.
 4 COLONEL SCOTT: That's right. Ja, as I
 5 say, I believe this was the work, this was the work I was
 6 speaking about where Brigadier Pretorius read through
 7 statements. I think she initially then took the ballistic,
 8 or the forensic scene reports to see which of the cartridge
 9 shells tied up with, if a member said he shot five rounds,
 10 they may have found three of his cartridge shells on scene,
 11 to try and just create a spreadsheet which spoke to all in
 12 one.
 13 MR CHASKALSON SC: You see, my concern is
 14 that there are very serious discrepancies between the
 15 numbers that we see in this document and the numbers that
 16 we see in exhibit L. So if I can take you to a comparison
 17 of this document, FFF35, on the total, versus slide 211, if
 18 we look at the total sharp point ammunition, we add up
 19 those three numbers, 72, 57, and 1, we get to 328. That's
 20 what Brigadier Pretorius's spreadsheet, which we've been
 21 told is a record of ballistics used at scene 1 is, we
 22 compare that to slide 211 and we get a total not of 328 but
 23 284. That's a very serious discrepancy.
 24 COLONEL SCOTT: Yes, I agree.
 25 MR CHASKALSON SC: And then if we go

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1 within, again on slide 211 you have 211 R5 rounds recorded
 2 as opposed to 257 R5 rounds recorded in FFF35. That's 46
 3 rounds, R5 rounds missing. Again a serious discrepancy. I
 4 mean our concern is we need some comfort that the figures
 5 that we received from SAPS are accurate, and in the face of
 6 these sorts of discrepancies we don't have that comfort.
 7 CHAIRPERSON: I don't know if the witness
 8 can help us very much, Mr Chaskalson, can he? He didn't
 9 draw the spreadsheet and he just appears to have taken over
 10 what he was given to incorporate it in exhibit L, unless he
 11 can throw some light on this point?
 12 COLONEL SCOTT: I can't specifically,
 13 Chairperson, but I know even before we put exhibit L in,
 14 even in the last couple of days we were rectifying the
 15 numbers. I'm not sure if that's just due to – and I'm not
 16 sure that all members had put in statements by that – I
 17 don't know.
 18 MR CHASKALSON SC: When you were
 19 rectifying numbers, on what basis were you rectifying these
 20 numbers?
 21 COLONEL SCOTT: I would upgrade it from
 22 Brigadier Pretorius's accounting.
 23 MR CHASKALSON SC: This is an issue that
 24 we need to raise with Brigadier Pretorius, the
 25 discrepancies?

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1 COLONEL SCOTT: Well, she'll probably be
 2 able to shed more light. However, I think again she was
 3 just somebody that was working through the documents and
 4 filtering in the information as she was seeing it in the
 5 statements, or finding it through ballistic reports and so
 6 on.
 7 CHAIRPERSON: Sorry, can I just ask you
 8 this question? If when we come to write our report we have
 9 to deal with the amount of munitions expended at scene 1.
 10 It seems from what you now tell us that we would not be
 11 well advised to simply accept slide 211 as being accurate
 12 facts. There may have been –
 13 COLONEL SCOTT: No, Chairperson –
 14 CHAIRPERSON: It may have been the best
 15 effort that could have been done in the circumstances, but
 16 that's something different.
 17 COLONEL SCOTT: Yes. At the time that
 18 this was, went to print and came to the Commission, that's
 19 what we knew of. I don't know how or why more were
 20 discovered thereafter, but maybe Brigadier Pretorius will
 21 be able to explain that.
 22 COMMISSIONER HEMRAJ: Mr Chaskalson, do
 23 we know the date on which this document was compiled, the
 24 FFF35?
 25 MR CHASKALSON SC: Commissioner, if you

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1 bear with me for a moment, I can find the date of the
 2 document that was given to us. The document that we
 3 received was saved on the 19th of March 2013. 19th of
 4 March. There is another issue that I do want to raise with
 5 you. I mean if you can't shed any light on it we'll have
 6 to raise it with somebody else, but if we look at exhibit
 7 L, slides 211 and 257, which are the, those munitions
 8 tables, they don't reflect any shotgun pellets being fired.
 9 Now am I correct that rubber bullets and shotgun pellets
 10 can be fired out of the same gun?
 11 COLONEL SCOTT: Yes, you are.
 12 MR CHASKALSON SC: Can I ask you to go to
 13 the post mortem of Mr Yona in exhibit A, Yona? The IPID
 14 file number is A591 and the death register number is 580.
 15 Or maybe you don't need to go there because you can – let
 16 me put to you –
 17 COLONEL SCOTT: I've probably seen the
 18 photographs you're talking about.
 19 MR CHASKALSON SC: Because what the
 20 pathologist records at page 376 of exhibit A is that the
 21 cause of death to Mr Yona was shotgun wounds of the neck
 22 and chest, and we've seen several other scene 1 victims who
 23 presented with shotgun wounds, although it was only in the
 24 case of Mr Yona that this was actually a cause of death.
 25 [14:16] So it seems that somebody was firing shotgun

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1 pellets at scene 1. Now if we compare FFF35 with slide
 2 211, if we start on slide 211 and we look under rubber, we
 3 have 522 rubber bullets allegedly fired by SAPS at scene 1,
 4 and that, as I understand it, would have been a number put
 5 together from what people have said in their statements.
 6 COLONEL SCOTT: From what I understand as
 7 well, yes.
 8 MR CHASKALSON SC: Because if we go to
 9 FFF35, which is the number recorded in March of 2013, that
 10 number has now dropped to 477. Now I can understand the
 11 number increasing, but dropping is quite difficult to
 12 account for. So that 477 that we see there is the total of
 13 rubber bullets allegedly fired at scene 1.
 14 COLONEL SCOTT: I know at one stage I did
 15 hear that some people had reported their firing and when
 16 they were consulted with specifically they had included
 17 their shooting from the Monday and the Thursday into one
 18 when they were asked how many rounds fired, or I'm not sure
 19 why, but I have heard of that actually being explained back
 20 at the police office.
 21 MR CHASKALSON SC: We'll take this
 22 further with Brigadier Pretorius, but for now I want to ask
 23 you, were you aware of the fact that Mr Yona was killed by
 24 shotgun fire at scene 1?
 25 COLONEL SCOTT: I'd seen pictures of what

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1 is evident to me to be pellets, and I think the person that
 2 I'm referring to looks sort of here from the rear shoulder
 3 area –
 4 MR CHASKALSON SC: That is, those are the
 5 post mortem photographs of Mr Yona. Those were his wounds.
 6 COLONEL SCOTT: Yes.
 7 MR CHASKALSON SC: Back of the neck and –
 8 COLONEL SCOTT: Down the back of his –
 9 MR CHASKALSON SC: - shoulder and down
 10 the arm a bit.
 11 COLONEL SCOTT: Ja.
 12 MR CHASKALSON SC: Have you made any
 13 investigation into how this could have happened?
 14 COLONEL SCOTT: I have asked, but I've
 15 been assured that there was only rubber, that all other
 16 types of ammunition has not been within the POPs members
 17 arsenal for some time for operational purposes. So I also
 18 raised the same concern, looking at that and, but of course
 19 there are possible other explanations too, such as some of
 20 the shotguns which were taken off mine security. I think
 21 the police firearms, or ballistics expert that also
 22 testified mentioned about homemade weapons that you can
 23 also fire, because to my knowledge there hasn't been a
 24 cartridge, empty cartridge case picked up on scene for that
 25 matter which actually shows that it would be anything other

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1 than rubber that was fired, which means that if it was
 2 possibly fired from a homemade weapon, and shotgun
 3 cartridges are one of the favourite ones to be utilised in
 4 those, that it would expend the cartridge case for that
 5 matter.
 6 MR CHASKALSON SC: We've seen a great
 7 deal of film footage of the events around scene 1. Have
 8 you seen any evidence of shotgun fire from a homemade
 9 weapon, or of a protesters firing a shotgun at scene 1?
 10 COLONEL SCOTT: No. But in the same
 11 breath the evidence that I have seen have been police
 12 members firing their shotguns and it's quite evidence from
 13 those shotguns shooting there that that's not pellets that
 14 they're firing, because there would be a significant
 15 difference in the amount of recoil with the, a pellet round
 16 than there would be from simple rubber rounds.
 17 MR CHASKALSON SC: But people also
 18 discharged shotguns from inside Nyalas. Is that not true?
 19 COLONEL SCOTT: I haven't read the
 20 statements. I'm not sure if they have, but I wouldn't be
 21 able to speak to that.
 22 MR CHASKALSON SC: Your only suggestion
 23 as to how Mr Yona may have been killed is the possibility
 24 that he may have been killed with shotgun ammunition fired
 25 by a striker who managed to escape being covered by any of

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1 the cameras?
 2 COLONEL SCOTT: Well, as I say, what
 3 happened on the day, happened on the day. If it was a
 4 police member that shot him, then that is actually the
 5 case, but I don't have that evidence and the logical
 6 explanations that I can only give are to the opposite,
 7 because according to police records none of those POPs
 8 members had pelleted rounds and were not issued with
 9 pelleted rounds but only rubber rounds.
 10 MR CHASKALSON SC: Alright, well we'll
 11 take this further with whoever the appropriate witness is.
 12 If we can move now to slide 47, now that's describing
 13 events which precipitated the conflict between the
 14 protesters and SAPS on the 13th, and in your second
 15 paragraph you say, "To prevent them (the strikers) from
 16 entering the village, the police used teargas and stun
 17 grenades, grenades that produce two large explosive sounds,
 18 to disperse the protesters, discouraging them from their
 19 intended path." Now in slide 47 no-one is identified as
 20 giving any order to use teargas or stun grenades. I want
 21 to take you back now to the version of the presentation
 22 that came out of Potchefstroom. That's JJJ32, and if we
 23 can go to JJJ32, slide 32. Can we just hold that slide,
 24 because I may have the wrong reference. It's 30, not 32.
 25 I'm sorry. It's 30, so go two up. Now there the identity

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1 of the person giving the order is stated. There you say,
 2 "To prevent them from entering the village the police
 3 utilised teargas and stun grenades to disperse the
 4 protesters, discouraging them from their intended path.
 5 Major-General Mpmembe issued a command for stun and teargas,
 6 after which Warrant-Officer Kuhn fired a shotgun CS rifle
 7 grenade." And if we can then go to the narrative of 12
 8 September, which was last saved on 21 September, JJJ40,
 9 page 29 –
 10 COLONEL SCOTT: I'm just not sure I'm
 11 going to be able to help you with this because if it's
 12 narrative or the inputs that the commanders have given, it
 13 would have come in through Colonel Visser, unless you just
 14 want me to comment on –
 15 MR CHASKALSON SC: No, you may be able to
 16 help because as I understand it, Major-General Mpmembe would
 17 have seen this document before it left Potchefstroom.
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: And he would have seen
 20 it in your presence, I would imagine, at one of these
 21 presentations where the document was considered.
 22 COLONEL SCOTT: That's correct. It was
 23 shown twice, at least twice there in the last week.
 24 MR CHASKALSON SC: Now what was Major-
 25 General Mpmembe's response to being described in the

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1 document as the person who gave the command for stun
 2 grenades and teargas to be used?
 3 COLONEL SCOTT: I mean I can't recall.
 4 MR CHASKALSON SC: Can I put it this way;
 5 would the document have left Potchefstroom in the form that
 6 it did if Major-General Mpembe had said, 'Hang on a minute,
 7 this is wrong, I did not give that command'?
 8 COLONEL SCOTT: I can't say either, but
 9 I'm not sure whether Colonel Visser for instance would have
 10 been taking notes in order to go and upgrade thereafter.
 11 I'm not sure what the document looks like that was saved
 12 maybe just after the weekend. That may have been a version
 13 saved by him after making the amendments necessarily. I
 14 don't know. I'm just speaking from speculation because –
 15 MR CHASKALSON SC: So you can only say
 16 that this document would have been shown to Major-General
 17 Mpembe at Potchefstroom, or that a document attributing to
 18 him the order to fire stun grenades and teargas would have
 19 been shown in his presence at Potchefstroom, and that this
 20 was the document that was last saved on the Monday after
 21 Potchefstroom?
 22 COLONEL SCOTT: Is this the one that was
 23 saved on the Monday after Potch?
 24 MR CHASKALSON SC: Well, the first one
 25 was the one that was saved on the Monday after Potch. This

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1 was actually saved quite a lot later on the 21st of
 2 September.
 3 COLONEL SCOTT: And the one saved after
 4 Potch is saying that General Mpembe made the –
 5 MR CHASKALSON SC: Well, both of them are
 6 saying that General Mpembe issued the order.
 7 COLONEL SCOTT: Both.
 8 MR CHASKALSON SC: Both on the 10th of
 9 September and on the 21st of September. At page 29 of this
 10 document the narrative reads, "To prevent them from
 11 entering the settlement, the police utilised teargas and
 12 stun grenades to disperse, discourage them from their
 13 intended path. Major-General Mpembe issued a command for
 14 stun and teargas, after which Warrant-Officer Kuhn" –
 15 COLONEL SCOTT: I think it will be fair
 16 to work on the presentations, because the narrative I don't
 17 think was seen by pretty much anybody other than Colonel
 18 Visser. So, but if it was shown at Potchefstroom, I would
 19 think General Mpembe should have been there when it was
 20 shown.
 21 MR CHASKALSON SC: Alright, well maybe we
 22 can take this further with Colonel Visser.
 23 COMMISSIONER HEMRAJ: Before you go on,
 24 when you showed the presentation at Potch to all the
 25 commanders, you would show the narrative and the video?

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1 COLONEL SCOTT: No, Ma'am, just the
 2 presentation.
 3 COMMISSIONER HEMRAJ: Just the videos and
 4 the pictures –
 5 COLONEL SCOTT: Yes, I think the
 6 presentation, the narrative to some degree was Colonel
 7 Visser's way - I think he was going to be the one to
 8 present the full presentation to the Commission and it was
 9 his way of obviously just having the background information
 10 that he would keep a narrative that would run next to the
 11 presentation, so if he needed to speak to slides he would
 12 have more information on actually what was going on.
 13 CHAIRPERSON: Do you know who was
 14 responsible for removing the allegation in the earlier
 15 drafts that General Mpembe issued this command? Who was
 16 responsible for removing that from the final version which
 17 we have?
 18 COLONEL SCOTT: I don't.
 19 CHAIRPERSON: You weren't responsible?
 20 COLONEL SCOTT: No. No, I wasn't.
 21 CHAIRPERSON: Because General Mpembe
 22 himself denied most emphatically that he'd given any
 23 command and, but you can't help us on that?
 24 COLONEL SCOTT: No. What –
 25 CHAIRPERSON: In fact he said – are you

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1 aware of his evidence? – he says that the matter was
 2 discussed at Potchefstroom. He says he said what he told
 3 us, produced his diary in which he had recorded certain
 4 things. He said that then there was a discussion as to who
 5 gave the command. Kuhn claimed to have heard a command.
 6 No-one who was in a position to give such a command –
 7 subject to a point I'll put to you in a moment – no-one who
 8 was in a position to give such a command admitted having
 9 given the command, and it appeared that in fact according
 10 to the Standing Order the only person who was authorised to
 11 give the command was in fact General Mpembe himself. So
 12 there was a lot of evidence on that point, which of course
 13 is very different from what was in this draft, but you
 14 can't throw any light on who was responsible for changing
 15 it?
 16 COLONEL SCOTT: No, I don't know who
 17 changed it, but as I say, I think it would have –
 18 CHAIRPERSON: Sorry, my colleague reminds
 19 me that, seeing as I'm telling you what Major-General
 20 Mpembe said, he said at Potchefstroom one of the people
 21 there alleged that he, Mpembe, had given the command, or it
 22 was said it was not quite clear whether it was direct
 23 evidence or hearsay, but he repeated his denial. Anyway,
 24 this is something that you can throw no further light on.
 25 The man for us to ask is Colonel Visser?

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1 COLONEL SCOTT: It would be. But,
 2 Chairperson, I think what is going to happen is anyway the
 3 grouping, I'm not sure how much time General Mpembe maybe
 4 spent with that group, but it's possible if there's
 5 somebody that says he gave the command, it was probably
 6 conveyed that way to Colonel Visser, who put it into the
 7 presentation that way. But as I say, if it was shown and
 8 General Mpembe was there, he would have needed to dispute
 9 it, or if he only realised that at a later stage and
 10 disputed it –
 11 CHAIRPERSON: He says he disputed it then
 12 and there. There was quite a heated discussion, as I
 13 understand. But anyway, that's not a matter that you can
 14 help us on.
 15 COLONEL SCOTT: Yes.
 16 MR CHASKALSON SC: Colonel, moving on to
 17 slides 50 and 90, these are the composite, or two of the
 18 composite videos that we've had the energy to try and
 19 disentangle. We've prepared in exhibit JJJ191 a document
 20 which attempts to reconstruct the source videos for slides
 21 50 and 90.
 22 CHAIRPERSON: Sorry, I see my machine is
 23 still on. JJJ191, how do I describe the document?
 24 MR CHASKALSON SC: Evidence leaders'
 25 reconstruction of the source videos for slides 50 and 90.

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1 CHAIRPERSON: So fifty and ninety?
 2 MR CHASKALSON SC: That's correct,
 3 Chairperson.
 4 CHAIRPERSON: Very well. Exhibit JJJ191
 5 is the evidence leaders' reconstruction of the source
 6 videos for slides 50 and 90.
 7 MR CHASKALSON SC: Now Colonel, this is
 8 our reconstruction. We only gave it to you yesterday. I'm
 9 not sure if you have had the opportunity to check that it's
 10 correct. It was quite an exhausting exercise preparing it
 11 in the first place.
 12 COLONEL SCOTT: I'm prepared to accept
 13 that you have done your homework on this.
 14 MR CHASKALSON SC: Look, if you find any
 15 errors in it, feel free to point them out at any later
 16 stage, but unless you do so, and if this document is
 17 accepted, then we've identified 12 cuts in slide 50 which
 18 are enumerated there under paragraph 1, and how slide 50
 19 jumps around in time from the various component parts that
 20 go into it, and in slide 90 there are just three cuts for
 21 components parts, but what's presented as 1 minute 9
 22 seconds of footage in the presentation is in the first
 23 instance not continuous. It's not organised sequentially
 24 in terms of time sequence, and it spans a period of
 25 approximately 27 minutes. If we go then to slide 188 where

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1 there's a video photo summary of events, tucked into that
 2 video photo summary of events, which is played as a video
 3 almost, at 24 minutes and 31 seconds is a slide which we've
 4 taken out as a screenshot, it's JJJ98. So can we show
 5 JJJ98?
 6 CHAIRPERSON: Is that an exhibit already?
 7 MR CHASKALSON SC: It will be a new
 8 exhibit, Chairperson, but we will give the Commission a
 9 full list of the exhibits –
 10 CHAIRPERSON: So I don't have to –
 11 MR CHASKALSON SC: You don't need to keep
 12 track of them as they go along. And there you'll see it's
 13 at 24:31 of slide 188 where you say, "By 17:51 stage 4 of
 14 the operation has been implemented; processing of the
 15 arrested protesters and handle the crime scene. Dedicated
 16 medical personnel were on scene 2 from as early as 16:29,
 17 dealing with the wounded while SAPS medical personnel
 18 attended to the wounded at scene 2 at 16:20." Now you
 19 mention scene 2. You say nothing about scene 1. Why is
 20 that the case?
 21 COLONEL SCOTT: This was the, there's
 22 photographic evidence to that where we, the actual – I
 23 think it's the Lonmin chopper, when it drops off General
 24 Mpembe, picks up two paramedics and comes back to scene 2
 25 and drops those paramedics at scene 2, and the police

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1 person dealing with, who we knew as Rasda, was the
 2 negotiator who's a qualified paramedic.
 3 [14:36] So I had evidence as to those two. If I had
 4 evidence, or photographic evidence for that matter of when
 5 they first arrived at scene 1, I'm sure I would have
 6 probably placed it in as well.
 7 MR CHASKALSON SC: Do you know how long
 8 it took to get medical personnel to scene 1?
 9 COLONEL SCOTT: No.
 10 MR CHASKALSON SC: You see, we've looked
 11 at the CCTV footage and the aerial shots and we can say
 12 that there's no evidence of medical personnel getting
 13 across the police line at scene 1 until 59 minutes after
 14 the shooting, 59 minutes. That you will see from, the
 15 first evidence of medical personnel getting across the
 16 police line is from FLIR camera at 16:58:36, which
 17 translates to eTV time 16:53:14, and the shootings were at
 18 15:53:50. So it's 59 minutes and 24 seconds to get medical
 19 personnel to scene 1. Did you know that this was an issue
 20 that had been raised with SAPS before?
 21 COLONEL SCOTT: I think I'd heard it
 22 raised in the Commission, or through open media at some
 23 stage when the Commission had started, that somebody had
 24 made mention it took so much time to get paramedics onto
 25 scene, or to get medical personnel onto scene.

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1 MR CHASKALSON SC: When you presented the
 2 NASCOM media briefing to the press conference on the 17th,
 3 did you stay for the rest of the press conference, or did
 4 you leave thereafter?
 5 COLONEL SCOTT: I think I was there for
 6 the full conference.
 7 MR CHASKALSON SC: We've got eTV footage
 8 of that full conference, which is JJJ92. I wonder if we
 9 can play JJJ92 from 4 minutes into that video? Because
 10 you'll see at that press conference a reporter from Al
 11 Jazeera raised the delay in getting medical attention to
 12 scene 1, and in fact said it took two hours before
 13 ambulances left scene 1, but the delay was certainly
 14 something that should have been present to SAPS. Can we
 15 get to JJJ92? And if we go to 4 minutes into that?
 16 [VIDEO SHOWN]
 17 That's all we need from that. So it was raised
 18 at the press conference, and you say in your presence, the
 19 day after the event. Do you not think it was something
 20 that was worth mentioning in exhibit L, particularly if you
 21 were going to draw attention to the much shorter time that
 22 it took to get to the victims who were injured later at
 23 scene 2?
 24 COLONEL SCOTT: Well, it's not mentioned
 25 in exhibit L. I don't have an explanation for it.

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1 MR CHASKALSON SC: If we can go to slides
 2 194 to 202, which are incidents 1 and 2, and starting with
 3 slide 194, you describe, or you report what you describe as
 4 three separate organised attempts where protesters
 5 approached the police line, and the first attempt, which is
 6 that short vertical, well short straight arrow, is what
 7 will become incident 1 where you say the protesters
 8 attempted to enter the police enclosure at the mast, before
 9 they were cut off by Nyala 4. The second involves a sort
 10 of semi-circular movement by the protesters before they
 11 attempted to enter again to the west of the kraal, and then
 12 the third is the semi-circular movement described in red,
 13 which took the protesters to the east of the kraal and
 14 immediately preceded the shootings. If we go forward to
 15 197 where you describe incident 1 pictorially, we see a
 16 description of the group of protesters essentially
 17 advancing straight in the direction of the police enclosure
 18 at the mast, and earlier in slide 196 you've stated that
 19 the protesters were aggressive, tapping their weapons
 20 against each other, and went into an attack formation, and
 21 then in slide 198, if we can shift to 198, you provide a
 22 photograph of the alleged incident 1 under a caption that
 23 says "Protesters approaching formation towards Nyala 4, who
 24 started deploying the barbed wire." So that's incident 1.
 25 If we jump forward to incident 2, it starts at slides 199.

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1 Maybe we can start with the diagram, or the photograph at
 2 slide 200, and there you describe this ostensible semi-
 3 circular movement of the protesters to regroup before
 4 attempting to break into the police enclosure to the west
 5 of the kraal, and then if we go back to slide 199, you
 6 describe this alleged attack and you state that at the
 7 bottom of the page, "In this incident various shots were
 8 fired from the protesters at the police Nyala," and in the
 9 previous bullet point you state that the attack was
 10 repelled, or at any rate an attempt was made to repel this
 11 attack with water cannon, teargas and stun grenades. Then
 12 if we go forward to slide 201 through to 202, and maybe we
 13 should play 202, in these two slides you show the damage
 14 allegedly caused to the Nyala by the shooting incident,
 15 which is described as having taken place at incident 2.
 16 We're struggling to play it, but do you recall this slide
 17 where there's a close-up on certain -
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: - damage to this
 20 Nyala, which is Papa5, as we understand it. Would you
 21 accept that?
 22 COLONEL SCOTT: Yes.
 23 MR CHASKALSON SC: Now I'm going to put
 24 to you that neither of these two alleged incidents ever
 25 took place, and if we can start with incident 1, as far as

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1 I can work out, the only evidence for incident 1 in the
 2 presentation is the photo in slide 198 of strikers
 3 allegedly approaching Nyala 4 in formation. So if we can
 4 go back to 198. Now the first thing I have to put to you
 5 is that is not Nyala 4.
 6 COLONEL SCOTT: Nyala -
 7 MR CHASKALSON SC: Do you accept that?
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: It's Nyala 5.
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: You accept that, okay.
 12 So that changes the, or it changes the geography quite
 13 significantly of what you are describing in, if we go back
 14 to slide 198, can we go back to slide 198?
 15 CHAIRPERSON: We've got slide -
 16 MR CHASKALSON SC: 197, 197. I'm sorry.
 17 Now if it's Nyala 5, what we see as a sort of straight
 18 movement from that lead group of protesters in at the mast
 19 to break into the police enclosure, that can't have
 20 happened where you say it happened.
 21 COLONEL SCOTT: Well, I agree with you.
 22 That's Nyala 5 in the photo and the protesters are what
 23 seems to be circumnavigating Nyala 5, but we worked off the
 24 eyewitness accounts and the statements of the POPs members
 25 that were on ground, who actually gave the testimony to

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1 that, and one must also just state that that's a photo
 2 taken in a moment of time. We don't know what happened 20
 3 seconds prior to that photo.
 4 MR SEMENYA SC: Sorry, Chair –
 5 CHAIRPERSON: Yes, Mr Semenya?
 6 MR SEMENYA SC: I take it my learned
 7 colleague would want to extrapolate evidence out of the
 8 pictures, but we can assure him that the driver of Nyala 4
 9 will testify to the crowd being at Nyala 4. It is correct
 10 that that picture is depicting Nyala 5, which is described
 11 as Nyala 4, but there is evidence which would countermand
 12 the extrapolation which my learned colleague wants to make.
 13 MR CHASKALSON SC: Well, there's now
 14 evidence in the form of Al Jazeera clips which will show
 15 that the driver couldn't be describing what's depicted as
 16 Nyala 1 – sorry, as incident 1. Can I go to that evidence?
 17 CHAIRPERSON: Sorry, before you go on
 18 with it, am I correct in saying that if one looks at this
 19 slide 197, is Nyala 5 the one we see on the left-hand side
 20 of the yellow arrow? The yellow arrow more or less points
 21 to the pole, and then one moves down, diagonally down
 22 towards the left and there's a Nyala with a wire trailer
 23 behind it. That's Nyala 5, is it?
 24 COLONEL SCOTT: That's Nyala 5,
 25 Chairperson.

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1 CHAIRPERSON: And that was still
 2 stationary at that stage because they didn't follow your
 3 instructions and uncoil the wire simultaneously. That was
 4 at its starting point. Is that correct?
 5 COLONEL SCOTT: That's at it's, where it
 6 was supposed to have – yes.
 7 CHAIRPERSON: So any photograph which
 8 showed that Nyala and the pole is as if the one has been
 9 close to the other, is seriously misleading?
 10 COLONEL SCOTT: It would be, Chairperson.
 11 CHAIRPERSON: Well, not necessarily
 12 deliberately so, but –
 13 COLONEL SCOTT: Yes, it –
 14 CHAIRPERSON: It has that effect.
 15 COLONEL SCOTT: Yes.
 16 CHAIRPERSON: So 198 has got to be
 17 treated with great caution, slide 198.
 18 COLONEL SCOTT: Yes.
 19 CHAIRPERSON: Thank you.
 20 MR CHASKALSON SC: Well, let's look at
 21 the Al Jazeera clips and what they show now, and if we can
 22 go to clips 11 to 14, it's JJJ194.11, which is where we
 23 start, and what we will see in JJJ194.11 is the protesters,
 24 including the lead group of protesters, moving off the
 25 koppie, going past the mast where the incident 1 is

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1 supposed, alleged to have taken place, with Nyala 3 and
 2 Nyala 4 nowhere in sight. So let's run clip 11.
 3 [VIDEO SHOWN]
 4 And if you can just pause. Okay, keep running.
 5 Keep running. We will see Mr Noki moving into view with
 6 the protesters behind him at this point. Can we keep
 7 moving, because the mast will in due course come into view.
 8 [VIDEO SHOWN]
 9 So the protesters are moving past the mast and
 10 Nyala 3 and Nyala 4 are still nowhere in sight. And if we
 11 can just play to the end of that clip. Is that the end of
 12 the clip? If we move to clip 12, we see the procession of
 13 the protesters continuing with their slow movement on the
 14 outside of the mast, and Nyala 3 and 4 will still not be in
 15 sight, and I'd emphasise the slow movement.
 16 [VIDEO SHOWN]
 17 If we then showed clip 13, we see the processing
 18 continuing, and we see –
 19 CHAIRPERSON: Sorry, Mr Chaskalson, is it
 20 the same mast? Do we know that?
 21 MR CHASKALSON SC: There is only one
 22 mast, Chairperson. It is the same mast, and what we will
 23 see in 13, and before we run 13, if I can describe it, we
 24 will now see Nyala 5 in position, which is the Nyala that's
 25 depicted on slide 198, and Nyala 5 has now moved back from

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1 its starting position to its final position, which is
 2 visible in slide 194. So we can see that Nyala 5 moves
 3 back from its starting position that's visible, its
 4 starting position one sees on slide 197. So maybe we can
 5 do that exercise after we've shown the clip, because
 6 getting the clip back up could be tricky. But what we see
 7 here is Nyala 5 and we see the protesters slowly moving
 8 past Nyala 5. Can we run the clip now? And again Nyalas 3
 9 and 4 are nowhere in sight. The protesters are moving in
 10 the direction of the western edge of the kraal.
 11 MR SEMENYA SC: Chair –
 12 CHAIRPERSON: Yes, Mr Semenya?
 13 MR SEMENYA SC: Chair, my worry is it's
 14 beyond the picture. This is a very critical element of the
 15 hearing and the evidence leaders want to draw very serious
 16 conclusions from these pictorials. We just have the wrong
 17 witness in the witness box now. We should wait for the
 18 people who were observing those things and they can give us
 19 intelligible answers.
 20 CHAIRPERSON: I don't want conversation,
 21 please. People who want to have conversations or protest
 22 about submissions, they must go outside. The people have
 23 behaved very well up to now. I expect them to continue
 24 that way. Mr Semenya is entitled to make his comments. Mr
 25 Chaskalson will answer. It does sound prima facie as if

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1 there is something in what Mr Semanya says.
 2 MR CHASKALSON SC: My answer, Chair, is I
 3 can only put my answer properly after we've seen this slide
 4 and slide 14, because what we see in slide 14 is Nyala 4
 5 finally emerging on the far left-hand side of the screen
 6 and Colonel Scott will be able to identify that Nyala as
 7 Nyala 4, and that is the crucial piece of evidence that I
 8 would want from Colonel Scott.
 9 CHAIRPERSON: I think carry on, but
 10 subject to the strong reservation that you've already
 11 recorded, and clearly this is a matter which will be taken
 12 further. Well, let's see what the point is before we
 13 decide [inaudible]. Carry on, Mr Chaskalson. But I've
 14 noted the point you've made, Mr Semanya. We certainly
 15 won't ignore it.
 16 MR CHASKALSON SC: Well, Colonel, can I
 17 ask you, would you identify that Nyala that we see in
 18 picture here as Nyala 5? That's the only piece of
 19 information that I need from you.
 20 COLONEL SCOTT: That we see prior to
 21 where it's standing now where it does have razor wire
 22 behind it? I'm not sure.
 23 MR CHASKALSON SC: We can identify it
 24 from its bulbar, from the blue band and the absence of
 25 other beading. I can't recall whether we actually see the

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1 razor wire; we may well. Let's run the clip and you can
 2 either say you can or you can't after you've seen the clip.
 3 [VIDEO SHOWN]
 4 CHAIRPERSON: You can probably go on a
 5 bit more, we may see some wire at the end, but we can't see
 6 at the moment.
 7 [14:56] MR CHASKALSON SC: That may be the end of
 8 the clip. Is it the end of the clip? I'm sorry, we'll
 9 have to produce – if it's disputed that that's Nyala 5, at
 10 a later stage we'll have to produce other evidence that
 11 will show that it is Nyala 5 from the [inaudible] –
 12 CHAIRPERSON: It does seem that the
 13 witness can't confirm that this is – am I right?
 14 COLONEL SCOTT: I can speculate that it
 15 is –
 16 CHAIRPERSON: You can't confirm. It may
 17 be, but it may not be.
 18 COLONEL SCOTT: Ja.
 19 CHAIRPERSON: Is that right? So your
 20 evidence with respect on this point will be valueless.
 21 Shall we proceed?
 22 MR CHASKALSON SC: Then if we move to the
 23 next slide, which is 14, and we must pause it almost
 24 immediately as it starts because Nyala 4 is only visible on
 25 the far left-hand side of the screen for a short while. If

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1 we can run it maybe for less, for a second or less. A bit
 2 longer.
 3 [VIDEO SHOWN]
 4 If we can go back to the start and just roll that
 5 armoured vehicle so that the Nyala behind it is visible.
 6 You've got to run it back, because there's a distinctive
 7 mark - stop, now a little bit further back so we can see
 8 the passenger door on that Nyala on the left-hand side of
 9 the screen. Zoom into that Nyala on the left-hand side of
 10 the screen behind the armoured vehicle. We're going to
 11 have to do this at another stage as well. We will show you
 12 that what we –
 13 CHAIRPERSON: It's zooming now.
 14 MR CHASKALSON SC: Oh, we are doing some
 15 zooming. Move a little, we've zoomed out of picture on the
 16 left, so we need to go to the left because what we want to
 17 see is on the left. It may be that we have to, we're not
 18 going to –
 19 CHAIRPERSON: Mr Chaskalson, I see it's 3
 20 o'clock, or just before 3. It seems a very convenient
 21 stage to take the tea adjournment, and this matter can be
 22 looked at by those who're not going to be drinking tea and
 23 we'll resume at quarter past 3.
 24 MR CHASKALSON SC: Thank you,
 25 Chairperson.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]
 2 [15:19] CHAIRPERSON: When the people here in the
 3 chamber leave at the end of the day, I've been asked to ask
 4 you please to take the headphones and the receivers and
 5 hand them in outside. If you take them way then you won't
 6 be able to hear what's happening tomorrow, and besides
 7 which there will be serious consequences. So please
 8 remember that the headphones – we haven't got an
 9 interpreter. Can you interpret, Mr Tokota? Mr Mpfu, what
 10 is a receiver in Xhosa? It seems as if Mr Mpfu doesn't
 11 know either. Colonel, I take it you're not a Xhosa
 12 linguist, so you can't help us. Right, so I can then
 13 safely put you back under oath and remind you, you're under
 14 oath.
 15 DUNCAN GEORGE SCOTT: s.u.o.
 16 CHAIRPERSON: Mr Chaskalson.
 17 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 18 Colonel, there may be a simpler way of doing this, and I
 19 think the starting point is with a screen shot that we've
 20 produced from slide 157, which will be JJJ96.1. So if we
 21 can show JJJ96.1 from slide 157. Colonel, if you can maybe
 22 call up slide 157 on your machine just to check that you're
 23 satisfied that when I identify this Nyala as Nyala 4 from
 24 that clip, I'm doing it correctly. And it's at 1:54:45
 25 into the clip.

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1 COMMISSIONER HEMRAJ: It's slide 157 of
 2 which document?
 3 MR CHASKALSON SC: Of exhibit L.
 4 COMMISSIONER HEMRAJ: No.
 5 MR CHASKALSON SC: Which is a video
 6 slide.
 7 COMMISSIONER HEMRAJ: So it's not
 8 necessarily the picture we have in exhibit L?
 9 MR CHASKALSON SC: No, no, it won't be
 10 the picture that you have on the exhibit.
 11 CHAIRPERSON: 157, the slide is
 12 presumably the opening photograph, whatever it is. Maybe
 13 it's from that video clip, is it?
 14 MR CHASKALSON SC: That's correct,
 15 Chairperson.
 16 CHAIRPERSON: And that video clip goes on
 17 and at some stage it has this picture of the, this view of
 18 the Nyala.
 19 MR CHASKALSON SC: That's correct,
 20 Chairperson. Chairperson, this slide has in fact been
 21 printed out in the bundle at page 703 of file 3.2.
 22 Colonel, are you satisfied that what we have in the slide
 23 is Nyala 4?
 24 COLONEL SCOTT: I appreciate the work
 25 that's been done and I accept because of that high bulbar

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1 that it is Nyala 4. I haven't looked specifically, but I
 2 can just quickly have a look at – yes, it would be where it
 3 is positioned as well in the photograph on 193, if I look
 4 at the angle of the photograph taken with the koppie behind
 5 it, it should be Nyala 4 that –
 6 MR CHASKALSON SC: We've identified,
 7 apart from the high bulbar which distinguishes Nyala 4 from
 8 Nyala 5, there are three distinctive marks on Nyala 4 which
 9 distinguishes Nyala 4 from any other Nyala when these three
 10 marks are in conjunction. The one is the sort of
 11 charcoalie burn mark above the passenger window, if I can
 12 call it that – not passenger window, the second window on
 13 the right-hand side. Do you see the smudgy –
 14 COLONEL SCOTT: Yes.
 15 MR CHASKALSON SC: - indications above
 16 that window? The second is the stencilled SAPS badge in
 17 black between the driver's window and that window. You see
 18 that?
 19 COLONEL SCOTT: I see the badge. I don't
 20 think it's stencilled though, it's just a faded, the normal
 21 stick-on police badge.
 22 MR CHASKALSON SC: Well, prepared to
 23 accept that, but it's –
 24 COLONEL SCOTT: Yes, it's –
 25 MR CHASKALSON SC: It doesn't have

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1 colour. And the third is the yellow beading strip that's
 2 on the driver's door inside the blue band that runs round
 3 the Nyala as a whole, but is present only on the driver's
 4 door.
 5 COLONEL SCOTT: Yes.
 6 MR CHASKALSON SC: Now if we go to what
 7 will be JJJ196, we printed out a screenshot at the start of
 8 Al Jazeera clip 14, at 0:0 on Al Jazeera clip 14, and if we
 9 can call that up. Sorry, it will be JJJ197, because we've
 10 already created a JJJ196 for the Protea Coin helicopter.
 11 CHAIRPERSON: Do I need to write this
 12 down, or is this going to be part of the list you'll give
 13 us later?
 14 MR CHASKALSON SC: It will be part of the
 15 list, Chairperson. I'm sorry to do this again; it's
 16 actually 196. The Protea Coin screenshot is 195. Can we
 17 call up that file? It's the one that was just taken on
 18 memory stick a few minutes ago. And if we can now zoom
 19 into the Nyala that's visible on the left-hand side behind
 20 the armoured vehicle. Go left and zoom right in as far as
 21 you can onto that Nyala, because you'll see those three
 22 distinctive features, and go as far left as you can, if
 23 it's possible to go further left. Can you see the smudge
 24 above the window, the faded badge, and the yellow band
 25 running through the driver's door?

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1 COLONEL SCOTT: Yes.
 2 MR CHASKALSON SC: That's Nyala 4. Will
 3 you accept that?
 4 COLONEL SCOTT: Yes.
 5 MR CHASKALSON SC: If we can then run
 6 clip 14 to see where the protesters are relative to Nyala
 7 4. Clip 14 is 194.14. Nyala 4 will start off on the far
 8 left-hand side of this shot as it starts.
 9 [VIDEO SHOWN]
 10 And we see the protesters moving eastward with
 11 Nyala 4, they've gone past Nyala 5. We can have a debate
 12 later about how we can identify that Nyala in the picture
 13 as Nyala 5, but the protesters have gone a long way east of
 14 Nyala 5 and Nyala 4 is still not in the shot. Now I want
 15 to put it to you that these clips are actually inconsistent
 16 with what is alleged in relation to incident 1. It's not
 17 possible to reconcile the version in incident 1 with what
 18 we see in these clips. At best it's possible to have a
 19 version of incident 2 where at some stage after these clips
 20 Nyala 4 will drive past Nyala 5 and will approach the kraal
 21 and will put itself between these protesters and the kraal.
 22 MR SEMENYA SC: It still remains the
 23 wrong witness, Chair, to make meaningful commentary on
 24 this –
 25 CHAIRPERSON: Mr Chaskalson, that's the

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1 point Mr Semenya raised before –

2 MR CHASKALSON SC: I don't want –

3 CHAIRPERSON: No well, let's deal with it

4 quickly. Colonel, are you able to comment on this, or is

5 this something you prefer to have dealt with by somebody

6 who knows more about it than you do?

7 COLONEL SCOTT: Chairperson, obviously I

8 could speculate, but I think that the people who have

9 provided their statements would be in a better place to

10 actually speak to this.

11 MR MPOFU: Chairperson –

12 CHAIRPERSON: Yes, Mr Mpofo?

13 MR MPOFU: Yes, thank you. I'm afraid

14 the, I think the issue about this questioning, at least our

15 interest in it is that this witness compiled the

16 presentation and that presentation presents a particular

17 version of this, which is in conflict with for example Mr

18 Magidiwana's evidence of what happened at these stages. So

19 whatever the ruling is, as long as it doesn't preclude us

20 from understanding why this witness put that particular

21 version –

22 CHAIRPERSON: I'm sure when you – I

23 understand you wish to cross-examine the Colonel as well.

24 MR MPOFU: Yes.

25 CHAIRPERSON: And I would expect you to

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1 give us an application setting out the issues which you

2 want to cover.

3 MR MPOFU: Yes.

4 CHAIRPERSON: But if this is one of the

5 issues you want to cover, you can ask him. I don't know

6 what answer he'll give; we'll have to wait and see, but you

7 won't be prejudiced –

8 MR MPOFU: Thank you.

9 CHAIRPERSON: - bottom line. Mr

10 Chaskalson, it sounds as if perhaps you should keep your

11 powder and shot dry on this issue for some other witness.

12 MR CHASKALSON SC: Certainly for incident

13 1 I don't want to take it any further, but for incident 2 I

14 think we can put facts which Colonel Scott can accept or

15 deny.

16 COLONEL SCOTT: Chairperson, maybe just

17 for the clarification of when building the presentation,

18 obviously we relied on the inputs of the commanders and the

19 members that had informed their commanders, and one can see

20 obviously what the video footage is showing, but the

21 extended tail of the group that's walking there at this

22 stage, if I'm not wrong, is going to be somewhere around

23 where Nyala 4 is, and I'm just saying it's a possibility

24 that the experience of the members in Nyala 4 do have

25 strikers next to them. It's maybe not the front of the

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1 group, and maybe those, because obviously we didn't have

2 this footage at the time of creating –

3 CHAIRPERSON: It sounds as if we must

4 wait for –

5 COLONEL SCOTT: Ja.

6 CHAIRPERSON: - that evidence. It's

7 unfortunate this footage has only emerged now, and there is

8 something I'll be saying about that later on, but I'll also

9 keep my powder dry for the moment.

10 MR CHASKALSON SC: If we go to incident

11 2, the first point that I want to engage with in the

12 description of incident 2 is that the SAPS POPs members

13 attempted to repel incident 2 by water cannon, stun

14 grenades, and teargas. Now I want to put to you that in

15 relation to water cannon that's definitely wrong because if

16 we go to slide 200 - can we call up slide 200? – which is

17 describing the alleged incident 2, there are only 7 seconds

18 between this photograph, which is taken on Colonel

19 Vermaak's BlackBerry, photograph 1515 at eTV time 15:51:47,

20 and the point on the Rowland headgear camera at camera time

21 16:14:23, which translates to eTV time 15:51:54, 7 seconds

22 between this photograph and the point at which Nyala 4

23 reaches the kraal, which we see at 16:14:23 Rowland

24 headgear camera.

25 CHAIRPERSON: What is the distance

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1 between the Nyala and the kraal as seen on this particular

2 picture, which is slide 200?

3 MR CHASKALSON SC: I can't say that I've

4 measured it with any degree of precision. We can go and do

5 that on Google map –

6 CHAIRPERSON: Well, what I was interested

7 in was what would the approximate speed have been if it was

8 7 seconds, it took 7 seconds to cover that distance.

9 MR CHASKALSON SC: I would put that

10 distance at certainly no more than 40 metres. It may be

11 less. Colonel, would you accept that?

12 COLONEL SCOTT: Yes.

13 MR CHASKALSON SC: And in fact if we look

14 at the North West water cannon camera, we can show that the

15 water cannons only – sorry, well let me take a step back.

16 Firstly there's no water cannon visible in this shot. The

17 water cannons are not even in the shot 7 seconds before

18 Nyala 4 reaches the kraal, which is allegedly after

19 incident 2. Do you accept that?

20 COLONEL SCOTT: I haven't studied the

21 photograph for that.

22 MR CHASKALSON SC: Can I suggest that if

23 you think that I may be putting something incorrect to you,

24 you can zoom in on the photograph at any stage later and if

25 you want to come back and say well actually this is a water

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1 cannon, please feel free to do so.
 2 COLONEL SCOTT: Ja, I just know it's
 3 difficult, specifically with the BlackBerry photos, because
 4 they're pixelated and pretty much what you see is the best
 5 picture you get. The moment you start zooming in it gets
 6 to blur and pixelates.
 7 MR CHASKALSON SC: Well, let me put it to
 8 you in a different way. We can see from the North West
 9 water cannon camera itself that the two water cannons only
 10 started moving from their position way at the back at a
 11 North West water cannon time of 16:14:56, which translates
 12 to an eTV time of 15:52:35, which is 41 seconds after Nyala
 13 4 reached the kraal. So Nyala 4 had been at the kraal for
 14 41 seconds before the water cannons even started moving,
 15 and it took them a fair time to reach the front. In fact,
 16 the first evidence of any water being shot from a water
 17 cannon is at FLIR 15:59:04, which translates to eTV
 18 15:53:42, which is almost 2 minutes after Nyala 4 reached
 19 the kraal and less than 10 seconds before the shootings.
 20 Now I put it to you also that this incident
 21 couldn't have been repelled by stun grenades or teargas
 22 either because as is pointed out in annexure GW6(d),
 23 GW6(d), to the statement of Gary White, which was JJJ178,
 24 and there is a detailed analysis of the CCTV footage in
 25 that annexure, no teargas canisters were used more than 20

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1 seconds prior to the shootings, which would have been well
 2 over a minute after Nyala 4 reached the kraal, and no stun
 3 grenades were used more than 20 seconds prior to the
 4 shootings, which would be well over a minute after Nyala 4
 5 reached the kraal.
 6 Now I don't know if you've studied the analysis
 7 in annexure GW6(d). We have and we're satisfied that it's
 8 correct. If you want to come back with a complaint or at a
 9 later stage to identify teargas or stun grenades that are
 10 visible on any of the footage more than 20 seconds before
 11 the shootings, we would invite you to do so.
 12 Then there's the allegation that in incident 2
 13 the Nyala in slides 201 and 202, which is Papa5, was shot
 14 and damaged by bullets by the strikers. Now you've got
 15 photographic and video evidence of this damage that you
 16 show in slides 201 and 202, and yet when you go to 201 and
 17 202 you use the words "alleged" and "allegedly" and we
 18 looked at the transcript when you presented it on 9
 19 November at page 1300, lines 9 to 23, and you stated,
 20 "Allegedly in this incident various shots were fired from
 21 the protesters at the police Nyala of Colonel Pitsi," line
 22 10 – sorry, line 9, and then at line 17 slide 201 is
 23 showing us the "alleged" damage from sharp-point
 24 ammunition. If we move to slide 202 it's the same Nyala,
 25 it was video footage taken after scene 2 and the video's

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1 shown. I think it's a bit difficult to see the alleged
 2 damage on the smaller screens; it's more visual on larger
 3 screens.
 4 [15:39] Now we went through the entire presentation and
 5 the words "alleged" or "allegedly" are used only in
 6 relation to three incidents involving SAPS; this case of
 7 the damage allegedly inflicted on Papa5 in incident 2; then
 8 in slide 240 in relation to claims by the K9 members and
 9 NIU members that they fired at miners who were shooting at
 10 them; and then in slides 243 and 244 in relation to an NIU
 11 member claiming to return fire at a protester allegedly
 12 shooting from the south-west. Now I can understand why you
 13 used "alleged" in the latter two cases. There are claims
 14 by members of the NIU and K9, but there's no real evidence
 15 in the form of evidence, objective evidence to corroborate
 16 those claims. But slides 200 and 201 are different because
 17 the damage is there for all to see and it's presumably
 18 simple enough for SAPS to identify it as sharp-point
 19 ammunition damage. So why did you qualify what you said in
 20 200 and 201 by referred to "alleged" damage from sharp-
 21 point ammunition and the Nyala "allegedly" damaged by
 22 bullets?
 23 COLONEL SCOTT: The Nyala had not yet
 24 been – and I still don't know if the results, I haven't
 25 heard of the results, that the forensics have actually

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1 proven that those were sharp, or marks, markings made from
 2 sharp-point ammunition. So it was the word of the witness
 3 until such time as proven to be from forensics that it was
 4 truly made from sharp-point ammunition, because it is
 5 tempered armour-plated steel which when you would take a
 6 weapon such as a 9mm pistol, it would have just marks, it
 7 wouldn't indent it in any way. So I was expecting that
 8 there would be some form of proof to say that this truly
 9 was or was not.
 10 MR CHASKALSON SC: Well, we don't know
 11 whether it was or was not sharp-point ammunition damage,
 12 but we can show you that it wasn't inflicted on the 16th.
 13 We'd taken a screenshot from slide 202 which shows the
 14 registration number of this Nyala was BHL093B, and can we
 15 just call up JJJ94, the first slide? JJJ94, and can we
 16 just zoom in on that licence plate? Is it possible to zoom
 17 in any further?
 18 COLONEL SCOTT: 093 Bravo.
 19 MR CHASKALSON SC: Move up so we see the
 20 BHL as well. You accept it's BHL?
 21 COLONEL SCOTT: It looks like it, yes.
 22 MR CHASKALSON SC: Now on slide 201, if
 23 we can go to slide 201 of exhibit L, you identify the
 24 sharp-point damage, and may - ja, let's go to slide 201. I
 25 think there's no alternative but to do this slowly. Can

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1 you just keep this presentation to hand, because we're
 2 going to jump between exhibit L and this document.
 3 Colonel, I wonder if you can call up slide 201 yourself?
 4 That may speed things up a bit.
 5 COLONEL SCOTT: I've got it in front of
 6 me.
 7 MR CHASKALSON SC: On exhibit L?
 8 COLONEL SCOTT: Ja.
 9 MR CHASKALSON SC: And Chairperson and
 10 Commissioners, I don't know if you have hardcopies of
 11 exhibit L in front of you, if we can address you, speak to
 12 those. There are, on 201 we see damage at the bottom of
 13 the slide on the front, circled on the front right of the
 14 Nyala, and then there's another shot on the top of the
 15 slide, and we think that that circle is in the wrong
 16 position because it seems to be circling nothing, and if we
 17 go back to – well, let's go to the next slide in this
 18 presentation that you see, if you can just stop zooming it
 19 so that we can see a full slide, because we've circled all
 20 of the points that we think you might have been referring
 21 to as the damage, on slide 201, and in yellow. So if we
 22 see there is a yellow circle, on the top right there are
 23 two marks on the windscreen which we've circled as possible
 24 damage on the Nyala. There are the three red rings on the
 25 bottom, which we accept are possible damage, and we've also

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1 ringed a fourth possible site of damage ourselves. It's
 2 that red ring on the top that we think is misplaced, and
 3 can you confirm that the red ring is not where you intended
 4 it to be? And maybe to assist you, we can take you to
 5 slide 124 of the draft of 10 September, which actually
 6 identified the damage on the top in the place where the
 7 lower yellow ring is on the top slide. I can -
 8 COLONEL SCOTT: I accept that.
 9 MR CHASKALSON SC: Do you accept that?
 10 COLONEL SCOTT: Ja, I accept that.
 11 MR CHASKALSON SC: So it's just a
 12 PowerPoint, a problem with moving –
 13 COLONEL SCOTT: Ja.
 14 MR CHASKALSON SC: - PowerPoint markers.
 15 Then if we go to slide 202, there's the video footage of
 16 the alleged damage – well, not the alleged damage, the
 17 damage, and we've printed out four screenshots from slide
 18 202 which seem to show damage and we've circled the damage
 19 that we can see. So if we can just scroll one down to our
 20 pages 3 and 4 of JJJ92, and here are the screenshots that
 21 we've identified from slide 202, and we've circled the
 22 places where there may be damage. Now was there any other
 23 damage that you intended to refer to on either of those two
 24 slides?
 25 COLONEL SCOTT: These photographs that

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1 were given to me were taken obviously by either the Public
 2 Order members with their camera, thinking that that would
 3 have been the damage, and the video operator at the bottom,
 4 which was probably from the forensic services. So they
 5 would have been making those deductions to think that
 6 that's possibly where the damage was. I can't think that
 7 why –
 8 MR CHASKALSON SC: These circles are
 9 mine, not theirs, the circles that you see.
 10 COLONEL SCOTT: But I mean they're
 11 reflected on the other –
 12 MR CHASKALSON SC: Well, some of them are
 13 reflected. I've actually circled more as well just in case
 14 we'd missed some damage.
 15 COLONEL SCOTT: But my point is, is that
 16 if you're inside a Nyala and you get shot at, you generally
 17 don't know where those rounds have hit. You would have to
 18 climb out and do a full inspection to see. You can only
 19 hear them; they make a very "ping" sound. I've been in a
 20 Nyala when it's been shot. So I don't know if they would
 21 necessarily have known, other than the windscreen possibly
 22 if he saw the actual glass chipping, I don't know how he
 23 would have known that, unless they did the inspection and
 24 said to the person this is where we were shot.
 25 MR CHASKALSON SC: Well, let's continue.

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1 Sorry, this is just one page of possible damage. If we go
 2 to the next page, there are other marks that are
 3 highlighted. Can we go back down? Sorry, back up. Go
 4 back up, ja. It's those as well. Those are other possible
 5 sites of damage that are focussed on by the video. But
 6 when you put together slide 201 and slide 202 to identify
 7 damage that was allegedly caused on the day, you ringed
 8 certain damage. At whose instance did you ring that
 9 damage?
 10 COLONEL SCOTT: At whose instance?
 11 MR CHASKALSON SC: Who identified this
 12 damage to you as the damage that was suffered?
 13 COLONEL SCOTT: I don't specifically
 14 recall, but it may have been in consultation with, I think
 15 it's – is it Colonel Pitsi?
 16 MR CHASKALSON SC: I think Colonel Pitsi
 17 was in this Nyala.
 18 COLONEL SCOTT: Ja, I know it was him
 19 that was emphasising that they were shot at, and as I say,
 20 I'm not too sure of who took the photographs, but I think
 21 it would have been him that came back to say this is where
 22 we possibly were shot.
 23 MR CHASKALSON SC: Well, if we go down
 24 the slide, one more slide, we'll take you to exhibit
 25 JJJ16.30.mts. This is a video of the same Nyala in a group

1 of Nyalas that were driving in Marikana on the 15th, the day
 2 before the event. It was taken by the SAPS POPs operators,
 3 and its source on the SAPS hard drive is given there; it's
 4 on the 15th, it's the videos directory of the 15th, 30.mts,
 5 and we've printed out a screenshot at 48 seconds into that
 6 video and if we can first zoom in on that screenshot to the
 7 number plate, just to check that we're dealing with the
 8 same Nyala, and we see again it's BHL093B, and we then
 9 zoomed in onto the section that – if we can just zoom back
 10 from this shot so that we see the full picture on the
 11 slide, what you're seeing in the yellow square, we will
 12 zoom into on the next slide. Can we go down a slide?
 13 That's just the properties of the document. Now if you
 14 look at this slide, all of the Nyala damage that one sees
 15 in slides 200 and 201 – sorry, 201 and 202, was there on
 16 the vehicle when it was driving in Marikana on the 15th, a
 17 day before incident 2 allegedly took place, and you can see
 18 the marks on the windscreen that we've circled in red, the
 19 marks on the front right-hand side of the Nyala that we've
 20 circled in red, and if we zoom in again onto the front
 21 left-hand side, we will see the same configuration of marks
 22 – sorry, go to the next slide where the zooming is done on
 23 the slide itself, and if you look at that slide and you
 24 compare it with the pictures on slide, on the bottom of
 25 slide 201, you'll see that the marks on slide 201 are

1 visible in the same positions on the same Nyala a date
 2 before incident 2 took place, or allegedly took place.
 3 COLONEL SCOTT: I can agree with you on
 4 most of them, but I have a trouble in seeing the middle red
 5 circle. I can see the dark spot there, but to the right of
 6 that is where the white spot should be, as well as on the
 7 blue line, as we're stating, which is quite prominent,
 8 which doesn't seem to come up very prominently on that blue
 9 line either.
 10 MR CHASKALSON SC: Well, that may be a
 11 product of the resolution that we have here, but I'd invite
 12 you to go and look at that point itself, which is 48
 13 seconds into the video 30.mts on the SAPS hard drive,
 14 videos directory 2012-08-15, and you will see all of that
 15 damage there, and if you want to see it corroborated you
 16 can pick up the damage from another video of the same
 17 vehicle on the same day, the 15th, which you'll find on the
 18 Lonmin hard drive, because this video was taken by a Lonmin
 19 operator, not by SAPS, at \video recordings\PW
 20 Botha\035.mts, at 1 minute and 14 seconds into that video,
 21 and again you'll see exactly the same damage reflected
 22 there.
 23 Now I would have expected that sharp-point
 24 ammunition on a Nyala – sorry, sharp-point ammunition
 25 damage on a Nyala would have been recorded in the SAPS132

1 register for a vehicle. Are you aware of any practice in
 2 that regard?
 3 COLONEL SCOTT: The SAP132 reflects that
 4 month, so if for instance that that we're seeing now was
 5 sharp-point damage from a rifle or a pistol or some type of
 6 weapon that occurred six months prior, it wouldn't have
 7 been carried over on the SAP132B. It would have been
 8 registered on that month, whenever it occurred. Decisions
 9 would have been taken whether it was necessary to have
 10 repairs made, and if not, which I don't think is necessary
 11 in instances like this, it is such noted and the vehicle
 12 remains roadworthy to be used. But it doesn't get carried
 13 over onto the SAP132B afterward.
 14 MR CHASKALSON SC: I understand that a
 15 docket was opened for malicious damage to property in
 16 relation to this damage allegedly caused to the Nyala. Are
 17 you aware of that?
 18 COLONEL SCOTT: I'm not, but it would
 19 make sense that if you make the allegation that you were
 20 fired upon, you would need to – it's obviously a criminal
 21 offence, you would need to justify that by opening some
 22 form of docket so that the investigation could take place.
 23 MR CHASKALSON SC: And presumably in the
 24 context of that sort of an investigation, one of the
 25 investigations that would have to take place is into the

1 historical 132Bs of the vehicle.
 2 COLONEL SCOTT: I would presume so as
 3 well, yes.
 4 MR CHASKALSON SC: And quite aside from
 5 records, if damaged State property is put into an officer's
 6 care, one would expect the officer to note the damage so
 7 that he or she is not subsequently held responsible for
 8 that damage under the PFMA.
 9 COLONEL SCOTT: It is so, but the damage
 10 would then need to be significant because what we're seeing
 11 in essence are scratches. Because it is armoured steel, a
 12 9mm bullet for instance, if it was shot from one of the two
 13 pistols that were found at scene 1, would simply make a
 14 scratch mark, which is the removal of paint in a very small
 15 area. Similar damage can happen from thorn bushes, trees,
 16 so –
 17 MR CHASKALSON SC: It was sufficiently
 18 material damage for SAPS to contemplate prosecuting someone
 19 for malicious damage to property.
 20 COLONEL SCOTT: I think that's on the
 21 basis that the statement was made by for instance Colonel
 22 Pitsi and it's the action that he perceives was taken
 23 against him, or the illegal action that was allegedly taken
 24 against him that he would then need to follow, or have
 25 followed up.

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1 MR CHASKALSON SC: And you say you used
 2 the words "allegedly" because you were awaiting a report
 3 into whether this damage was caused by sharp-point
 4 ammunition or by other ammunition?
 5 COLONEL SCOTT: Yes, it's – well, I'm not
 6 sure if possibly in the period that we were actually
 7 presenting this as well to the, amongst others the generals
 8 and so on, whether it was my decision to put the word
 9 "allegedly" in or possibly from their side, but it was my
 10 opinion as well that there – as I say, I can see other
 11 damage on the Nyala too. I didn't get the personal chance
 12 to inspect the whole Nyala obviously, so I had to rely on
 13 what the person in question had actually said, produced in
 14 his statement and spoken to us about being shot at.
 15 MR CHASKALSON SC: Well, Colonel, we're
 16 reaching the end of the day and I would like to finish this
 17 topic by the end of the day. You recall that this section
 18 started with my saying that I was going to put to you that
 19 incidents 1 and 2 did not take place. Just in conclusion
 20 on that regard, I want to refer you to another annexure to
 21 the statement of Gary White, JJJ178. It's GW6(a), annexure
 22 GW6(a), and in that annexure there is a detailed analysis
 23 of all the available electronic evidence other than the Al
 24 Jazeera clips which weren't available at the time.
 25 CHAIRPERSON: They were; they just

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1 weren't made available to us.
 2 MR CHASKALSON SC: Indeed. Well, not
 3 available to the –
 4 CHAIRPERSON: To us, I mean the evidence
 5 leaders.
 6 [15:58] MR CHASKALSON SC: Certainly not
 7 available to the people who, from the South African Human
 8 Rights Commission who drew up GW6(a). Now I've considered
 9 that annexure, all of the available electronic evidence,
 10 including the Al Jazeera footage which now has become
 11 available, and I must put it to you that I've been unable
 12 to find any evidence to support your theory of incidents 1
 13 and 2, and on the contrary, all of the available evidence
 14 supports what was the original version that you advanced on
 15 the morning of 17 August in your NASCOM media presentation.
 16 If I can take you to slide 15 of JJJ42, slide 15, and there
 17 you'll see that on the morning of the 17th when you came to
 18 describe the movement of the protesters, you did so with a
 19 dotted red line that broadly corresponds to the evidence of
 20 Mr Magidiwana, and says nothing about, or makes no movement
 21 in the direction of what would or wouldn't have happened in
 22 relation to incidents 1 and 2. Now I want to put to you
 23 that the version that you advanced on the 17th is, as far as
 24 we are concerned, as close to the truth as we can see from
 25 the electronic evidence. We've reached the end of the day,

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1 Colonel, and maybe what we should do before I sign off, is
 2 I'd like to invite you to look at GW6(a) and to look also
 3 at the earlier annexure GW6(d) to which I referred you, and
 4 to do that overnight and maybe to come back and if there
 5 are any errors in the reasoning of those annexures on their
 6 own terms that you can point to, I'd welcome it if you
 7 could identify that for me tomorrow morning, and what I
 8 will do overnight is just take stock to see if there are
 9 any loose ends that need to be addressed, but I am hoping
 10 that there won't be.
 11 CHAIRPERSON: While you're doing that
 12 homework for Mr Chaskalson, you can also consider how it
 13 was that you depicted the movement of the strikers by that
 14 dotted red line, which differs from what we see on the
 15 slides which are in exhibit L. That's something you could
 16 also tell us about on the morrow. We will adjourn until 9
 17 o'clock tomorrow morning.
 18 [COMMISSION ADJOURNED]
 19 .
 20 .
 21 .
 22 .
 23 .
 24 .
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