

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

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<p style="text-align: right;">Page 15250</p> <p>1 [PROCEEDINGS ON 31 OCTOBER 2013] 2 [09:11] CHAIRPERSON: The Commission resumes. 3 Colonel, you're still under oath. 4 DUNCAN GEORGE SCOTT: s.u.o. 5 CHAIRPERSON: Ms Le Roux, do you have 6 anymore questions for the witness? 7 MS LE ROUX: Just a few, Chair, and given 8 that today is the final day of the Commission, I'll be 9 quick. 10 CHAIRPERSON: Many a word said in jest 11 can be unfortunately interpreted. We are in the process of 12 ascertaining what is likely to happen by the end of today 13 and what is to happen tomorrow. So don't be too 14 precipitate in making doomsday predictions of that kind. 15 MS LE ROUX: Thank you, Chair. Chair, 16 just if I could start with a housekeeping matter, which is 17 we marked the Katherine Scott affidavit with its annexures 18 as JJJ198 yesterday and in referring to it I referenced the 19 second statement that was filed by her, which makes two 20 small amendments to the first. Just for the sake of 21 clarity, for the record, we would like that second 22 statement to be included in that exhibit. So it's all 23 Katherine Scott – 24 CHAIRPERSON: Yes, the whole package, as 25 it were –</p>	<p style="text-align: right;">Page 15252</p> <p>1 essentially the eight-second volley? 2 COLONEL SCOTT: Yes. 3 MS LE ROUX: That he's the first to fire 4 there? 5 COLONEL SCOTT: Yes. 6 MS LE ROUX: So you are aware that from 7 the statements there appear to be at least two POP members 8 who use live ammunition possibly before that. Obviously 9 it's a question we'll have to take up with other witnesses, 10 but are you aware of that evidence by other POP members? 11 COLONEL SCOTT: No, I wasn't, no. 12 MS LE ROUX: Okay. 13 CHAIRPERSON: Is there any suggestion 14 that shots were fired from the police side before the 15 eight-second volley began? I take it, I'm not saying it's 16 not so, but I'm asking, because I take it the POP people 17 would have, if they didn't go into the Nyalas, some of them 18 had pistols, I think, or all of them had pistols. So shots 19 may have been fired after, either during the eight seconds 20 or thereafter. It doesn't follow it was necessary before. 21 Is there evidence on that? 22 MS LE ROUX: Chair, without going into 23 the detail now, there are two statements. It is Warrant- 24 Officer Mokoena and Lieutenant-Colonel Mtimkulu who fire 25 9mm rounds, and from their statements as well as the</p>
<p style="text-align: right;">Page 15251</p> <p>1 MS LE ROUX: Yes. 2 CHAIRPERSON: The whole thing is JJJ198. 3 MS LE ROUX: Yes, thank you, Chair. 4 CHAIRPERSON: Yes, I must confess I 5 understood it that way, but if I was precipitate also in 6 that respect, the matter has now been fixed up. 7 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 8 Thank you, Chair. Colonel Scott, before I get to my final 9 topic, I have two clarificatory questions arising from 10 yesterday. The first was when we were talking about the 11 incident at scene 1 you said Warrant-Officer Kuhn initiated 12 the shooting. That was the wording you used, "initiated" 13 the shooting. What did you mean by that? 14 COLONEL SCOTT: I am aware that possibly 15 with Ms Katherine White's analysis there was shotgun fire 16 happening before that and there was possibly the two rounds 17 which we know was fired by protesters which Al Jazeera 18 caught, but the actual volley of fire that came from the 19 police line, one can see in the video clip that, I'm not 20 sure which of the Nyalas it is, but drives in front of 21 Warrant-Officer Kuhn and as it goes past, he's confronted 22 with the group, which is pretty close to him, and he's the 23 guy that walks backwards, stumbling, but if I'm correct in 24 seeing, he's the first one to fire. 25 MS LE ROUX: Okay, so you're referring to</p>	<p style="text-align: right;">Page 15253</p> <p>1 statement of Colonel Makhubela, who references Lieutenant- 2 Colonel Mtimkulu, it appears that POP members may have 3 fired 9mm rounds before the volley, but obviously this is 4 something for Brigadier Calitz and others, but we seem to 5 read their statements that way. 6 CHAIRPERSON: You were tabling it as a 7 possibility to be investigated? 8 MS LE ROUX: Yes. 9 CHAIRPERSON: I understand. 10 MS LE ROUX: So Lieutenant-Colonel Scott, 11 to my final topic of cross-examination, which is the 12 lessons learnt, and specifically if I could direct you in 13 Mr White's final statement, page 37, paragraph 4.2.22, 14 running through to page 39, paragraph 4.2.24, this is where 15 Mr White reflects on the, what he perceives to be the lack 16 of accountability by the SAPS and a reluctance to accept 17 responsibility for what occurred. If I could start at the 18 end, page 39, paragraph 4.2.24, where Mr White notes that 19 in May 2013 during the evidence of Major-General Annandale 20 he undertook, or the SAPS undertook to provide the 21 Commission with a statement of lessons learnt about the 22 operation – for the record, the transcript reference is day 23 92, page 9815, lines 3 to 7. Are you aware of that 24 document being prepared? Do you have any insight into its 25 status?</p>

<p style="text-align: right;">Page 15254</p> <p>1 COLONEL SCOTT: I'm not aware of it. 2 I've also had obviously no insight into it. No-one's 3 approached me for any opinions or insight. 4 MS LE ROUX: Okay, then we'll – 5 CHAIRPERSON: [Microphone off, inaudible] 6 undertaking given by Mr Semenya and I take it that at the 7 appropriate stage when it's ready he will make it available 8 to us. The fact that we haven't got it yet is to me an 9 indication it's not ready yet. Is that correct, Mr 10 Semenya? 11 MR SEMENYA SC: Correct, Chair. 12 CHAIRPERSON: I hope that we will get it 13 at some stage in the near future while the Commission is 14 still functioning, which I take it will not mean by the end 15 of today but at some future date. 16 MR SEMENYA SC: Indeed, Chair. 17 COMMISSIONER HEMRAJ: Can I just clarify 18 something? When you say Warrant-Officer Kuhn was the first 19 to fire, is that your deduction from just watching the 20 video? There's no other information that you have? 21 COLONEL SCOTT: That's correct, 22 Commissioner. 23 MS LE ROUX: Colonel Scott, if I could 24 now ask you to turn to page 38, paragraph 4.2.23, and here 25 Mr White summarises his understanding of the evidence as</p>	<p style="text-align: right;">Page 15256</p> <p>1 it's been ongoing since before Marikana, there is research 2 and development into less-than-lethal means, other means to 3 be implemented in public order incidents where there is 4 violence. So I agree with that point that the police need 5 to look to the First World countries, which they've been 6 doing, and start to acquire the arsenal required, which 7 bridges that gap, or closes the gap between the requirement 8 for having to defend your life and being able to maybe stop 9 a potentially lethal attack on the police through other 10 means than that. But as I say, that's in a broader 11 perspective of Public Order Policing, and again, and this 12 is not just to try to support the SAPS' case, but I don't 13 think that was always going to be the case at Marikana even 14 having that type of munitions available, but what was 15 utilised on the day, SAPS on the day basically exhausted 16 the less-than-lethal means to them, from what I can see and 17 what I've picked up, before the actual moving to that 18 lethal force option when they found themselves confronted 19 on that front line that – or not that front line, it was 20 actually a second line. 21 Just one of the issues Mr White mentions that, in 22 his statement that the police placed the first line as the 23 TRT, and that was not so. It was the Public Order line 24 that was first engaging, and the TRT line actually moved up 25 behind them. They were a second line that moved in. We do</p>
<p style="text-align: right;">Page 15255</p> <p>1 well as the written evidence by Mr De Rover, that "The SAPS 2 have currently identified six main errors in the operation 3 of 16 August 2012," and he lists those. "Inadequate 4 radios, insufficient camera technology, the use of high- 5 velocity 5.56 calibre ammunition rather than lower-velocity 6 ammunition, the absence of teargas masks at scene 1, and 7 the need for more less-than-lethal options, and finally, 8 ineffective command and control," and he notes there that 9 while he doesn't dissent from any of those, it's notable 10 that five of the six errors identified relate to the 11 equipment available rather than the decisions made by SAPS 12 on the day, and he says that he does not accept that the 13 Marikana tragedy occurred because SAPS were not issued with 14 the correct equipment. 15 Now given that you were the chief planner of the 16 operation, as well as your central role to the preparation 17 of exhibit L, you've obviously examined the operation in a 18 lot of detail, so we're interested in your view. Starting 19 with the lessons learnt that are listed there around the 20 need for better and more equipment, what is your view on 21 that aspect of what lessons can be learned from Marikana? 22 COLONEL SCOTT: I think in the broader 23 objective with regards to the police and Public Order 24 Policing operations that – and I know it is, it's ongoing, 25 I'm not sure how long it's been ongoing for, but I think</p>	<p style="text-align: right;">Page 15257</p> <p>1 know that the NIU had formed a third line further back of 2 the TRT line, which I think is about 40 metres odd back. 3 MS LE ROUX: Colonel Scott, I don't think 4 Mr White says that – I mean I think he takes account of the 5 role of the POP as the first line, but we don't need to 6 debate that now. When you're referring to the availability 7 of other less-than-lethal options, what do you have in mind 8 that the SAPS should reflect on Marikana and obtain? 9 COLONEL SCOTT: Well, there's similar 10 options, and I obviously have a very limited view on that, 11 but I know that there are similar options which may be, 12 which maybe factor a lower velocity in a sense, but with a 13 higher mass, and in the sense of beanbags and the like, 14 where a human being hit with that is not penetrated by the 15 projectile, but is definitely decommissioned, is put down 16 due to the thump, as one would, to the body. So these are 17 options which can be looked at. 18 CHAIRPERSON: Are you aware whether 19 there's a section in head office of the SAPS which is, 20 whose job it is to keep track of the latest developments in 21 this field internationally, so that when new products of 22 that kind come on the market or are released or publicised, 23 you people are aware of it as soon as possible and can take 24 the necessary steps, or is there no such section in head 25 office that exists to achieve that, fulfil that purpose?</p>

<p style="text-align: right;">Page 15258</p> <p>1 COLONEL SCOTT: Chairperson, being 2 limited to the Special Task Force environment that I can 3 speak from, we, and it's possible because we are a 4 specialised unit, we do our own research and we do this in 5 terms of staying in contact with our sister units around 6 the world, watching the research processes they go through, 7 and then we've actually go our own research and development 8 post as a coordinator that would pull together project 9 teams when we identify a gap, or new equipment that may be 10 better than what we are currently using. I'm not sure if 11 that is duplicated, however, through the other sections, 12 but I do know that the police's supply chain management at 13 a national level also has the capability that is busy with 14 research. To what degree, I'm not sure. I'm not sure if 15 they're going into the public order lines because I 16 wouldn't think that those members are specialists within 17 that environment, but – and I would think they need to be 18 tasked with a project to continue with something like that 19 where again they would coordinate the project and pull in 20 the Public Order Policing. But in saying this, 21 Chairperson, I am aware that there was a small grouping of 22 people within the division ORS already over a year, a year 23 and a half ago, that was looking at the different – when 24 the rubber rounds were initially taken away, that was 25 looking at what are the options in the international market</p>	<p style="text-align: right;">Page 15260</p> <p>1 personally – 2 COLONEL SCOTT: Yes. 3 CHAIRPERSON: - but whether the SAPS as 4 such subscribes to them. But anyway, if you don't know I'm 5 sure Mr Semenya will be able to provide that information to 6 us in due course. 7 COLONEL SCOTT: Yes. 8 CHAIRPERSON: Thank you. 9 MS LE ROUX: Colonel Scott, to return to 10 Mr White's statement, paragraph 4.2.23, he says that he 11 doesn't accept the Marikana tragedy occurred because the 12 SAPS were not issued with the correct equipment, and he 13 goes on to say, "Instead, I believe that it occurred 14 because of poor planning, poor briefing, and most 15 importantly, poor decision making." Now I asked you to 16 look overnight at Mr White's section 7 of his statement 17 which commences at page 96, where he deals with command and 18 control of the operation and its execution on the day on 19 the 16th. Is there anything in that section that you 20 strongly disagree with, or that is factually inaccurate? 21 COLONEL SCOTT: Factually inaccuracies, 22 as I say I think I got three or four points. The majority 23 of what Mr White is dealing with, he's weighing up 24 obviously the information and the evidence that he has, so 25 he has to make a decisive opinion about that obviously for</p>
<p style="text-align: right;">Page 15259</p> <p>1 that we can bring in. I think there was an understanding 2 that something has to be there – 3 CHAIRPERSON: Ja, I'm concerned with the 4 question as to whether the SAPS go out of their way to keep 5 up with world best practice, and there's a further thing 6 that's linked to that. I take it there must be 7 international journals of police science and that kind of 8 thing which are published. Do you know whether there's a 9 library at head office where those journals are available? 10 Do you know whether they're subscribed to? 11 COLONEL SCOTT: I don't know, 12 Chairperson. If there is, and I don't want to say there 13 isn't, that's why I say – but I'm not aware of it. 14 CHAIRPERSON: I would have thought 15 someone in the STF should also endeavour to keep in touch 16 with developments in that field. 17 COLONEL SCOTT: Yes, and as I say, we do, 18 but we seem to do it out of our own – 19 CHAIRPERSON: But I mean if there were 20 journals, you subscribe to journals, international journals 21 in the field? 22 COLONEL SCOTT: Yes, and I have been a 23 subscriber to the – I forget the name, it's – 24 CHAIRPERSON: I don't mean you 25 personally; I mean it's very commendable if you are</p>	<p style="text-align: right;">Page 15261</p> <p>1 the Commission, and I credit that to him and I think he's 2 done a commendable job with what he knows. However, I 3 don't think that he's had the opportunity obviously of 4 sitting with the very people that he is critiquing to 5 actually understand it in the full context because he, I 6 think even their statements to some degree are limited. So 7 obviously I would debate many of the opinions that he has 8 and in some he is quite correct, but there are others which 9 I feel he may just not have the liberty of knowing what I 10 know at this time. 11 But if I can then just refer to some of the areas 12 where just the factual issues are concerned, he just makes 13 reference to – 14 CHAIRPERSON: Sorry, you're referring to 15 page? 16 COLONEL SCOTT: I can quickly get there, 17 Chairperson. It's page 98 of his statement, paragraph 18 7.3.2. 19 CHAIRPERSON: [Microphone off, inaudible] 20 page 98, I take it. 21 COLONEL SCOTT: 98, yes, where he's 22 mentioning the, in my provisional statement I made the 23 point that the Provincial Commissioner was in overall 24 command of the operations, stated that having given the 25 direction of the JOC, etcetera, etcetera. Just to clarify</p>

<p style="text-align: right;">Page 15262</p> <p>1 that, that the Provincial Commissioner was at no time the 2 overall commander. Due to her positioning and designation 3 obviously she would come around and see what the overall 4 commander and the operation was doing, for that matter. 5 CHAIRPERSON: No, but Colonel, you've 6 overlooked the footnote 283 where Mr White explains what he 7 means by saying that was in overall command. He doesn't 8 say, doesn't suggest that she was "the overall commander," 9 but he does give – 10 COLONEL SCOTT: Oh, in overall command – 11 CHAIRPERSON: - explain what he says, and 12 do you disagree with that? 13 COLONEL SCOTT: Sir, if we're moving in 14 those circles, ultimately where do you draw the line? 15 Because you've got the Provincial Commissioner, the 16 National Commissioner, and so it travels. 17 CHAIRPERSON: That's not a good point, 18 Colonel, because he makes the point that she gave two 19 decisive orders. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: Whilst the National 22 Commissioner didn't give any, as far as we know. We don't 23 know what happened on the Wednesday night – 24 COLONEL SCOTT: Yes. 25 CHAIRPERSON: - but as far as we know,</p>	<p style="text-align: right;">Page 15264</p> <p>1 paragraph 7.4.4 on page 107, and again I know it's maybe 2 just an opinion, the second sentence, "For now it is 3 sufficient to note that at no stage does anyone in command 4 at the JOC," and specifically the JOC is the one I have 5 issue with, "or the overall commander or the operational 6 commander appear to recognise that there is a congestion on 7 the radio." And I can only speak again for myself being at 8 the JOC, but I was very aware that there was congestion on 9 the radio. As I've mentioned earlier in testimony that my 10 frustration was that the conversations were supposed to be 11 short and concise and to the point, as in not to stay, 12 keeping the radio keyed because if others need to break in 13 they can't break in. So when you are giving small gaps in 14 the radio speech procedures, you're allowing others that 15 need to call for a break because they've got an urgent 16 message, to break in, and some of the conversations were 17 just too long and lengthy. 18 CHAIRPERSON: [Microphone off, inaudible] 19 agree with him, then he goes on to say what he would have 20 done. He says he would have made a transmission, as he 21 puts it, along the following lines, Crimson 1, they go in 22 colours obviously – 23 [09:31] COLONEL SCOTT: Yes. 24 CHAIRPERSON: "Crimson 1 to all call 25 signs, wait out, unless your transmission is absolutely</p>
<p style="text-align: right;">Page 15263</p> <p>1 she didn't give any orders at all, but the Provincial 2 Commissioner we do know on the 13th gave an order which was, 3 in fact she wrote out in the occurrence book, and she also 4 gave the order to proceed to stage 3, which is also in the 5 occurrence book in the note which Major-General Annandale 6 specifically requested Brigadier Pretorius to make, stood 7 over her while she made it. So those, you'll agree with 8 me, I think, those were two very important orders. 9 COLONEL SCOTT: Yes, they are. 10 CHAIRPERSON: And they were given by the 11 Provincial Commissioner. 12 COLONEL SCOTT: Yes. 13 CHAIRPERSON: So in that respect I would 14 think – again, it's my job to keep an open mind obviously, 15 but I would think from what I know at the moment that to 16 say that she was in "overall command," is not an inaccurate 17 statement once we understand what Mr White means by that. 18 Would you agree with that? 19 COLONEL SCOTT: I agree with that, and I 20 apologise that I was actually more mentioning that the term 21 as in Standing Order 262, overall command, I didn't read 22 the footnote. The statement – just let me get to it – 23 obviously I said there are points as well that I agree with 24 him on, but it's going to take some time to go through the 25 full section 7. It's somewhat of a lot of. There's</p>	<p style="text-align: right;">Page 15265</p> <p>1 urgent, wait out," and he says nothing along these lines 2 can be heard in the audio available. I take it that's an 3 opinion that you agree with? 4 COLONEL SCOTT: Yes, and I say this too 5 because there was a time that I was trying to break in onto 6 the air and it took me a couple of minutes just to get in, 7 and I think I've mentioned it before as well, even when you 8 do think that you've broken in, you're pretty unsure 9 whether you're actually being heard because somebody could 10 have just beat you to the button and you finish talking, 11 only to hear that the conversation is ongoing again and you 12 have to stand and wait for an opportunity to try and break 13 in again. I think the 7.5.5 – 14 CHAIRPERSON: Sorry, before you get to 15 7.5.5, we may forget the point if we don't raise it now – 16 I'm talking about myself now. You said you tried to break 17 in at one stage. It took a long time to do so. What 18 exactly did you want to say and to whom? 19 COLONEL SCOTT: Chairperson, I can recall 20 somebody coming in onto the air to say that there's, one of 21 the strikers is on a high point on the rocks and he's got a 22 long rifle, and because of that I was wondering whether the 23 operational commander remembered that I'd placed the 24 sharpshooter teams out on the Nyalas for that very reason. 25 So I was trying to break in to call to remind them, listen,</p>

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1 you've got the task force sharpshooters in position for
 2 that very purpose, let them have a look and analyse what's
 3 going on. They've got telescopes, so they'll be able to
 4 see better and if he is obviously a threat to the police by
 5 firing upon them, then they would take the necessary
 6 private defence steps to neutralise that threat.

7 CHAIRPERSON: Do you know whether that
 8 was followed up and what happened about it?

9 COLONEL SCOTT: No, I'm not even sure if
 10 my message got through, as I say.

11 CHAIRPERSON: But when you were talking
 12 to the people later did you not ask them, say I sent out a
 13 very important message, did anybody hear me and what
 14 happened? Didn't you ask that question?

15 COLONEL SCOTT: No, Chairperson.

16 CHAIRPERSON: Shouldn't you have?

17 COLONEL SCOTT: I don't recall asking –

18 CHAIRPERSON: In retrospect, I know it's
 19 easy to be critical after the event.

20 COLONEL SCOTT: Ja.

21 CHAIRPERSON: You know, armchair critics
 22 aren't always fair, but it is a point that occurs to me.
 23 I'm surprised, if I may say so, that you didn't follow it
 24 up, but –

25 COLONEL SCOTT: Ja well, in saying that,

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1 you know, if there's was somebody on a rock who had a long
 2 rifle and was shooting at the police members, there would
 3 have been some form of action taken, and I didn't hear of
 4 anything after that, or what I'm aware of anyway.

5 CHAIRPERSON: So to enable us to follow
 6 up the point, who is the person who would have been
 7 responsible for following up your suggestion if it had been
 8 heard?

9 COLONEL SCOTT: Well, I was trying to
 10 call through to the operational commander for that purpose,
 11 knowing that – and for that matter then any other commander
 12 that would have been hearing the conversation, because if
 13 he didn't, somebody else may have heard it and then relayed
 14 to the task force.

15 CHAIRPERSON: The first port of call in
 16 our enquiries would be with Brigadier Calitz?

17 COLONEL SCOTT: Yes.

18 CHAIRPERSON: He may be able to give us
 19 the information. Yes, thank you.

20 COMMISSIONER HEMRAJ: Surely the
 21 sharpshooters that you had placed in their position would
 22 have been vigilant enough to have picked this up and act of
 23 their own accord?

24 COLONEL SCOTT: That is so, Chairperson –
 25 sorry, Commissioner. I just don't know, at that stage I

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1 thought it was koppie 1. I don't know if the reference was
 2 actually made to koppie 3 for that matter, and then whether
 3 the snipe, or the sharpshooters would have had an actual
 4 line of sight to that, being on the Nyala roofs that they
 5 were. They may have had koppie 2 in the way. I don't
 6 know, but that's why I did place out two teams so that they
 7 would have had at least a hundred metre stretch between
 8 them so that there would be different angles to look at
 9 different positions.

10 CHAIRPERSON: You see, that's quite
 11 important because I think one of the points Mr White makes
 12 is he doesn't like the idea of having a whole row of people
 13 all with R5s shooting, because it – to use an unfortunate
 14 expression – it leads to overkill. He envisaged you should
 15 rather have specialist snipers at the edges –

16 COLONEL SCOTT: Yes.

17 CHAIRPERSON: - who could deal decisively
 18 with problems of that kind. Now that's an idea that to
 19 some extent at least you did incorporate in your plan –

20 COLONEL SCOTT: Yes.

21 CHAIRPERSON: - as you've explained, and
 22 so it will be important for us to ascertain whether it
 23 worked in the circumstances, and if not, why not, but
 24 anyway, that's not something you can help us with.

25 COLONEL SCOTT: Yes.

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1 CHAIRPERSON: But it's a line of enquiry
 2 that can be followed up.

3 COLONEL SCOTT: Ja, and obviously their
 4 placement was in anticipation that the dispersion was going
 5 to literally happen to their front. So they were kind of
 6 across koppie 2 and koppie 1, looking in those directions.

7 CHAIRPERSON: I understand your point.
 8 They may not have been well placed to perform what you
 9 wanted them, to do what you wanted them to do because you
 10 didn't envisage what in fact took place, and I understand
 11 that.

12 COLONEL SCOTT: Ja.

13 CHAIRPERSON: Nevertheless, that's
 14 something we've got to look at, I would think.

15 COLONEL SCOTT: Okay. Point 7.5.5, it
 16 starts on page 109, but it's on page 110. The sentence,
 17 first sentence that's actually starting as a full sentence
 18 there, "The failure to give a warning to the crowd before
 19 rolling out the razor wire, and the failure to explain the
 20 purpose of the razor fire," I'm aware that on more than one
 21 occasion firstly with the approach of Nyala 6, which I
 22 believe that the strikers actually spoke to the members in
 23 Nyala 6 and then later came to the actual negotiation Nyala
 24 again to enquire about the razor wire, the transmission was
 25 made over the intercom system that the purpose for the

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1 razor wire was for the protection of the police and the
 2 protection of the strikers at the same time. So, and I
 3 think Brigadier Calitz has mentioned to me that this was
 4 done over the PA system. So they were very aware of why
 5 those razor wire vehicles had been placed there and what
 6 their purpose was going to be if there was a threat.
 7 MS LE ROUX: Colonel Scott, again that's
 8 a finding by Mr White which is clarified in footnote 320
 9 where he accepts that he understands from the statements
 10 that Mr Noki had it explained to him twice, but his point,
 11 as he says there, is that it was not directly explained to
 12 the crowd as a whole or immediately prior to the rollout.
 13 COLONEL SCOTT: Okay, but that –
 14 CHAIRPERSON: Before you answer that,
 15 just to take the point a little bit further so you can give
 16 us a comprehensive answer. That's dealt with to some
 17 extent in slide 192 of exhibit L where we are told the
 18 following, and I'll read it, "Brigadier Calitz gave a
 19 command to Colonel Makhubela to start with the deployment
 20 of the barbed wire." So this he said was at 15:40. "When
 21 the first Nyala started to deploy the barbed wire, one of
 22 the representatives came to the front window of the
 23 negotiation Nyala and stated, "These Hippos" – referring
 24 to the Nyalas – "would not leave this place and you will
 25 all die today and he would not be returning again." Now I

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1 think indications are that was Mr Noki who said that.
 2 COLONEL SCOTT: Yes.
 3 CHAIRPERSON: But the point is that there
 4 was obviously, perhaps to put it gently, a failure to
 5 understand what the purpose of the wire was on the part of
 6 the strikers, or the members of the militant group, I take
 7 it. It doesn't appear as if it was then explained to them,
 8 you don't have to worry about this wire, it's not to do you
 9 any harm, on the contrary, it's to protect you and us, you
 10 know, some kind of explanation of that kind might – I don't
 11 know if it would have, but might have helped to lower the
 12 temperature a bit. Do you have any comment on that?
 13 COLONEL SCOTT: Chairperson, my
 14 understanding was that very conversation happened earlier
 15 in the day when the razor wires were placed –
 16 CHAIRPERSON: Not the wires were placed,
 17 you mean when trailers were put into –
 18 COLONEL SCOTT: Trailers were placed out,
 19 yes.
 20 CHAIRPERSON: I see. Well, that's
 21 something we've got to investigate as well.
 22 COLONEL SCOTT: Yes, again as I say
 23 that's just information coming forth from Brigadier Calitz,
 24 but he did mention that it was explained over the PA system
 25 as well at that time, so that the crowds could hear it as

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1 well.
 2 MS LE ROUX: Colonel Scott, if I could
 3 just keep you on paragraph 7.5.5, do you agree with the
 4 final two sentences there by Mr White where he says, "The
 5 suggestion that a warning was not required because the
 6 razor wire was a defensive action is illogical. By failing
 7 to communicate the purpose of the action the police left it
 8 for the crowd to interpret." Do you agree with that?
 9 COLONEL SCOTT: In light of what
 10 Brigadier Calitz has told me, obviously no, because as I
 11 say what he has informed me about is that he actually, they
 12 informed the crowd over the PA system earlier in the day
 13 when they could see there was a bit of agitation with
 14 regard to these vehicles being placed out between them and
 15 the crowd.
 16 COMMISSIONER HEMRAJ: Could I just get
 17 some clarity; you were told by Brigadier Calitz that this
 18 was announced over the PA system to the crowd at large, or
 19 was this just communicated to Mr Noki?
 20 COLONEL SCOTT: It was done both, Ma'am,
 21 to Mr Noki and then over the PA system to the crowd at
 22 large.
 23 COMMISSIONER HEMRAJ: Thank you.
 24 MS LE ROUX: Chair, for the record, if I
 25 could just read the footnote in full, because it clarifies

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1 things. "So Brigadier Calitz claimed that the purpose of
 2 the wire was explained by loudspeaker to one of the leaders
 3 of the protest group, Mr Noki, around 10AM, and then again
 4 around 1:30. It does not appear, however, that it was
 5 directly explained to the crowd as a whole or immediately
 6 prior to the rollout." So Colonel Scott, with respect to
 7 the final two sentences that I just asked you about, you
 8 accept that Brigadier Calitz's statement saying that it was
 9 explained to the crowd, that's at 1:30, two hours before
 10 the actual rollout is going to occur, and it was not done
 11 at that point?
 12 COLONEL SCOTT: Yes.
 13 MS LE ROUX: Okay.
 14 CHAIRPERSON: That was when the crowd, or
 15 the militant group, I take it, showed concern or perhaps
 16 even hostility to the uncoiling of the wire at, that will
 17 be about – according to what I read you from slide 192, it
 18 is when Brigadier Calitz gave the order to Colonel
 19 Makhubela to start with the deployment of the barbed wire,
 20 and then it goes on, "When the first Nyala started to
 21 deploy the barbed wire," I prefer to use the word "uncoil"
 22 because "deploy" has other meanings, but the point is that
 23 when the actual uncoiling began it's obvious that it wasn't
 24 well received on the part of the strikers, and it looks as
 25 if it was Noki who then came and said, or allegedly said

<p style="text-align: right;">Page 15274</p> <p>1 what's reported here. What is clear, I take it, at that 2 stage no explanation was given to either Noki or the crowd. 3 What you are relying on are two statements by Brigadier 4 Calitz to the effect that he'd explained earlier, he'd 5 explained firstly at about 10 o'clock when the trailers 6 came, and he explained again later, round about 13:30, 7 where it is said, it's the second bullet actually on slide 8 192, refers to what happened at 13:40, round about that 9 time, perhaps either immediately prior to it or about that 10 time, there was a further exchange between him and Noki. 11 But certainly nothing happened by way of explanation either 12 directly to Noki or the public – I mean not the public, the 13 group at large, at 15:40 at the time the wire was beginning 14 to be uncoiled. That's now common cause, I take it. 15 COLONEL SCOTT: Yes, I accept that, yes. 16 MS LE ROUX: Colonel Scott, were there 17 any other sections in section 7 that you wanted to correct? 18 CHAIRPERSON: Before you move on, now Mr 19 White seems to think that that wasn't a smart idea, that 20 there should have been a communication at 15:40 when the 21 uncoiling started. Now with the benefit of hindsight, 22 would you agree with that? 23 COLONEL SCOTT: That there should have 24 been a – 25 CHAIRPERSON: You see, you've got people</p>	<p style="text-align: right;">Page 15276</p> <p>1 COLONEL SCOTT: Yes. 2 CHAIRPERSON: Which meant that it would 3 take some time. 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: And the question is whether 6 once that started with the first Nyala and the crowd 7 appeared to resent it, would it not have been sensible to 8 have repeated the warning in the hope that thereby – the 9 explanation, not just the warning – 10 COLONEL SCOTT: Yes. 11 CHAIRPERSON: - more an explanation, in 12 the hope that thereby the temperate could be brought down? 13 COLONEL SCOTT: Well, Chairperson, yes, 14 obviously in the spirit of tolerance and truth – truth - 15 and peace, wanting this to have a peaceful resolution, I 16 would agree with informing the crowd for that matter and 17 explaining to them what is happening so that they don't get 18 excited or emotional and seeing something happening, which 19 is so, but as I say, the conditions on the ground that day, 20 it's possible that Brigadier Calitz was considering the 21 safety of the police and wanting this to happen without a 22 warning because if his mindset was that they may try to 23 attack us should we try to carry out this, pulling the 24 defensive line closed, then I want to do it with the 25 element of surprise, not telling them. However, he could</p>
<p style="text-align: right;">Page 15275</p> <p>1 who obviously appear not to be understanding – 2 COLONEL SCOTT: Ja. 3 CHAIRPERSON: - who don't like what's 4 happening, and wouldn't it be insensible to have repeated 5 what had been said earlier, the explanation, in the hope 6 that thereby the temperature could be reduced a bit and the 7 situation a bit defused? I mean that sounds sensible to 8 me, but I mean I'm not an expert in this field, you are. 9 How do you respond to it? 10 COLONEL SCOTT: Chairperson, if I was on 11 the ground I would have weighed it up from what we were 12 experiencing in the sense of is there a threat, because 13 again I would have called for the deployment of those wires 14 as rapidly as possible in order to have it immediately 15 accepted, this is a barrier, this is a boundary. 16 CHAIRPERSON: Yes, I'm sorry for 17 interrupting you. Of course there's an unspoken premise 18 about what you're now busy with. Your plan was that all 19 the wire must go out at once. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: But once – and I know 22 that's your stance, but now we have to go to where the 23 police were on the ground at the time. They had decided, 24 for reasons that we're going to have to go into, to do it 25 differently, to do it sequentially.</p>	<p style="text-align: right;">Page 15277</p> <p>1 then still have done it when it had started, explain to the 2 crowd once the rollout was ongoing. 3 CHAIRPERSON: It sounds as if these are 4 matters we can explore with him. 5 COLONEL SCOTT: Yes. 6 CHAIRPERSON: I've been handed a copy of 7 Brigadier Calitz's first statement. I can't remember what 8 the exhibit number is, but – GGG13. In paragraph 13 he's 9 talking now, I think at about, what, 13:40, yes, Brigadier 10 Calitz says this, "Lieutenant-Colonel McIntosh again tried 11 to negotiate with the men. The person with the green 12 blanket and another man of the five-men group who talked to 13 us then came towards us. The person with the green 14 blanket" – this is obviously Noki – "was very aggressive 15 and wanted to know why we had the barbed wire. Lieutenant- 16 Colonel McIntosh explained to him the purpose of the barbed 17 wire was for safety purposes of the police and the media. 18 He told us that today we will die and our vehicles will be 19 burned," and then he goes on further about that. He says, 20 "The conversation was interpreted by a person in our 21 vehicle who speaks fluent Fanagalo." So that's what 22 happened at 13:40, and it doesn't appear from that, but 23 again it's something we must explore with him fully, 24 whether this was an explanation solely to Noki, which I 25 must say it appears to have been, but was in fact wider</p>

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1 than that, an explanation to the group as a whole. But
 2 again you can't really help us on that, can you?
 3 COLONEL SCOTT: No, Chairperson.
 4 CHAIRPERSON: You're just being asked to
 5 respond to Mr White's criticism in this regard –
 6 COLONEL SCOTT: Yes.
 7 CHAIRPERSON: And I think you've done the
 8 best you can in the circumstances.
 9 COLONEL SCOTT: Yes.
 10 MS LE ROUX: Chair, I should just note
 11 for the record, and it's obviously something we will cover
 12 with Brigadier Calitz, the interpretation of, the
 13 translation of the words is potentially an issue as well,
 14 but it's an issue we'll take up with Brigadier Calitz.
 15 Colonel Scott, to return to the exercise you're
 16 undertaking, which is anything else in section 7 of Mr
 17 White that you would like to correct factually?
 18 COLONEL SCOTT: If we, page 115, 7.5.12,
 19 if I read that, "This is stark contrast to an operation
 20 that was planned so that the large crowd of people would
 21 very likely be confronted by not one, but two consecutive
 22 lines of police officers, with the front line made up of,"
 23 I would assume the C stands for the count "of 60 members" -
 24 CHAIRPERSON: [Microphone off, inaudible]
 25 in Latin, circa, meaning about.

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1 COLONEL SCOTT: Okay, "armed with lethal
 2 weapons, each of who had the discretion to fire live
 3 ammunition whenever an imminent threat was perceived."
 4 That was just –
 5 CHAIRPERSON: So you've made the point
 6 already –
 7 COLONEL SCOTT: Yes.
 8 CHAIRPERSON: - that that's a mistake,
 9 that it was the second line, may even be where Mr White
 10 comes, that was a misprint, but certainly if it wasn't a
 11 misprint, it's a mistake, because you made it quite clear
 12 your plan was, in fact the way it was going to work –
 13 COLONEL SCOTT: Yes.
 14 CHAIRPERSON: - was the front line were
 15 the POP people –
 16 COLONEL SCOTT: Yes.
 17 CHAIRPERSON: - with less-than-lethal
 18 force, except one or two of them may have had rifles, but
 19 basically they were intended to use less-than-lethal force.
 20 COLONEL SCOTT: Yes.
 21 CHAIRPERSON: It was only if they came
 22 under attack and had to retreat –
 23 COLONEL SCOTT: Yes.
 24 CHAIRPERSON: - that the second line
 25 would come into action. That's your evidence throughout,

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1 isn't it? Sorry, I'm interrupting you, but I hope I'm not
 2 hurting.
 3 COLONEL SCOTT: That's correct,
 4 Chairperson.
 5 MS LE ROUX: Colonel Scott, if I can just
 6 clarify, Mr White is not deciding, you know, first and
 7 second lines. He's just saying that your plan had two
 8 lines –
 9 CHAIRPERSON: No, come on. He uses the
 10 word "front" line, two lines, the front line. The front
 11 line he says was the POP. The second line was the people
 12 with lethal force, but I'm not sure that much turns on the
 13 point as corrected, but I think the witness sounds to me as
 14 if he's right when he says it wasn't the front line. But
 15 once we've got that out of the way, we can carry on.
 16 MS LE ROUX: Sorry, Colonel Scott, I
 17 interrupted you.
 18 COLONEL SCOTT: No, no – well, I'm not
 19 sure if that point, you –
 20 MS LE ROUX: It's fine, we don't need to
 21 debate this issue any further. Were there any other
 22 corrections you wanted to make?
 23 COLONEL SCOTT: Well, again it may just
 24 be a matter of the terminology used there, but he could be
 25 referring to that there was a line of TRT and a line of

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1 NIU.
 2 [09:50] But then not mentioning that there was a line of
 3 POPS in front of those two lines. I'm not sure if Mr White
 4 is maybe eluding to something else in page 116.762 and what
 5 he's maybe looking at there is if I go to the sentence
 6 which is beginning with 16 – it's one, two, three – the
 7 fifth line down, with 16 protestors dead and others
 8 perceived to be a threat, dispersed to the open land to the
 9 west, the operation should have been immediately paused.
 10 There should've been a regrouping of the SAPS units and a
 11 process to rethink and re-plan before taking any further
 12 action. He's possibly speaking here to the actual of what
 13 happened but in the planning of what was to happen this
 14 event was anticipated. Thus there was a re-organised line
 15 which was a stop line for the police beyond koppie 1 and 2
 16 put into play, understanding that the thrust of the
 17 dispersion and the follow-up of the high risk arrests by
 18 the tactical units there was possibly going to be some form
 19 of arrests or confrontation taking place there and that was
 20 where there were supposed to be exactly what he's stating
 21 here. As I say, I understand he could be speaking to the
 22 actual and Brigadier Calitz may testify differently to that
 23 because I know that he did stop his line in front of koppie
 24 2 for, I think it's 7, 8 minutes which to him – he was
 25 reorganising. So I think that's open to debate of

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1 Brigadier Calitz side.

2 CHAIRPERSON: He seems to be making two

3 points. The major – the first point relates to the

4 decision, that's the actuals as you say. The decision made

5 to proceed with stage 3, I take it he means the – there was

6 a situation at Koppie 3. I take it part of stage 3 had

7 already commenced before the firing actually. So that's

8 the first thing he deals with. And then he says, in the

9 planning of this there should've been a contingency plan in

10 place to deal with this situation of where the plan had

11 gone wrong and people are being killed. And he says as far

12 as he can see that contingency wasn't planned for. Is that

13 – would you agree with that criticism.

14 COLONEL SCOTT: Chairperson, if we go –

15 if you –

16 CHAIRPERSON: Would you agree with that

17 factual statement?

18 COLONEL SCOTT: Well no because this is

19 exactly why there were paramedics, etcetera in forward

20 holding area 1 because as I say, if something happens on

21 ground, whether it's a police member or a protestor that is

22 hurt, immediately it's seen as a medical condition. It's a

23 human being that's in need of medical assistance and the

24 contingency planning on that is then to bring in medical

25 assistance to that, under secure conditions. So you would

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1 need to secure the environment to deal with that. And that

2 was part of the planning for General Naidoo's grouping to

3 be brought forward and to deal with that. So that is to do

4 with the actual saving of life which in itself is its own

5 plan, its own contingency. To deal with an issue such as

6 scene 1, I'm not sure what other type of contingency there

7 was other than to say if that happened, which we really

8 didn't expect to happen, cease the operation, re-evaluate

9 what's gone on. In this essence not cease the operation,

10 pause the operation because we don't know what the

11 remainder of the protestors would be doing for that matter.

12 CHAIRPERSON: No. He's clearly talking

13 about what happens at the end of scene 1 because he starts

14 off – the decision to proceed with stage 3 of the plan

15 after the shooting dead of 16 people was incomprehensible

16 and negligent. So this is the actual of course, but he's

17 talking about what happened at the end of scene 1 i.e. on

18 the way to and at scene 2 and he says, as I read it and Ms

19 Le Roux will help us on this if I'm wrong, that he feels

20 that there should've been a stop-it of the operation at

21 that stage – a halt and a reassessment and I – the

22 impression I get is that General Mpembe agrees with that.

23 He says if he'd known it was going on he would've ordered

24 that.

25 COLONEL SCOTT: Yes.

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1 CHAIRPERSON: And I think Mr De Rover

2 seems to take the same view. So but I don't know whether

3 you want to cross swords with either of them upon that

4 point.

5 COLONEL SCOTT: No, I agree with that but

6 if Mr White is referring to the plan, he's saying there's

7 an absence of a contingency plan. Now then you can't take

8 it to what the actual event happened, because it didn't

9 happen according to –

10 CHAIRPERSON: No, I'm sorry, I didn't

11 express it so clearly. Obviously he's talking about in the

12 second part of the paragraph, the plan, but he's talking

13 about what should've been in the plan to deal with the

14 situation if there was a scene 1. Some of the people were

15 killed and the action, as it were, spilled over or

16 proceeded to a second scene. There should've been a plan

17 for that. That seems to be his criticism. If I'm wrong,

18 Ms le Roux will correct me.

19 MS LE ROUX: No, that's correct, Chair.

20 CHAIRPERSON: And the question – now at

21 the moment she's not asking whether you necessarily agree

22 with this criticism, but whether you agree with the factual

23 statements he makes and the factual statement he makes is

24 you didn't plan for the contingency of something going

25 wrong. A number of the group being shot at one spot, one

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1 scene, other than proceeding to another scene where further

2 hostilities, if I can use that word, were likely to take

3 place. You didn't plan for that. You planned for people

4 being injured, you ranged from paramedics and ambulances

5 and some people would even say mortuary vans to be present,

6 although that wasn't part of your plan, but you didn't

7 plan, he says, for the spilling over and the continuation

8 of the hostilities somewhere else at another scene. Now

9 the question is, is that correct – that statement that you

10 didn't plan for that?

11 COLONEL SCOTT: Well, Chairperson, that's

12 why I say if we take it back to my or how I had actually

13 planned and understood it to roll out – once the dispersion

14 action happens and POPS pushes through and there's a line

15 following up on that, I expected that there would be some

16 form of conflict there. Whether it would be injuries or

17 wounded or deceased people, I had to anticipate that,

18 that's why there are paramedics, but that action when it

19 happens, needs to be stopped and that stop was actually the

20 re-organise and stop line. That's why the police needed to

21 stop there because it's not only a reflection to the front

22 to see what the remainder of the protestors have done, it's

23 also to see what's going on behind me to make a call

24 whether all my POPS members have caught up, are they here,

25 is there something going on, do I stop the operation

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1 temporarily or do I need to stop it permanently for that
 2 matter? So it's – to say that that was unforeseen or not
 3 planned for I did foresee that something was going to
 4 possibly occur behind that POPS line that needed to be
 5 considered. Otherwise the POPS would've just kept on
 6 pushing on and pushing on until they dispersed these people
 7 into far wider groups and the operation would've been so
 8 stretched out, what was going on behind would've been left
 9 behind. People wouldn't have been knowing what's going on.

10 CHAIRPERSON: If I understand you
 11 correctly, is what you planned for was the following. That
 12 there would be an initial dispersal action. Thereafter
 13 there was this dry riverbed. At that point there was going
 14 to be a stop to the operation and the operation commander
 15 would then have to decide –

16 COLONEL SCOTT: Reassess.
 17 CHAIRPERSON: - reassess and decide what
 18 to do.
 19 COLONEL SCOTT: Yes.
 20 CHAIRPERSON: So your point being that
 21 the situation would be very fluid, it's impossible to plan
 22 that in advance –
 23 COLONEL SCOTT: Yes.
 24 CHAIRPERSON: - in a micromanaged way.
 25 COLONEL SCOTT: Yes.

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1 CHAIRPERSON: So you had to allow for a
 2 discretion on the part of the operation commander at that
 3 stage.
 4 COLONEL SCOTT: Yes.
 5 CHAIRPERSON: Is that effectively your
 6 answer to the criticism?
 7 COLONEL SCOTT: It is and just with the
 8 knowledge that once the police had moved their front line
 9 up to that dry riverbed we needed to now secure what was
 10 behind that and dominate the ground we had before moving on
 11 to new ground. So once you've dominated and made your
 12 arrests and if necessary brought in paramedics to deal with
 13 whatever is behind you. But in essence we've now taken
 14 over this piece of ground and we need to deal with what's
 15 happened on it and sort it out. At the same time look to
 16 the front and determine now where we're going – carry out
 17 the arrests if necessary to the front of anybody that's
 18 reforming, re-gathering. So that's generally how the
 19 operation works. Once the ground behind you is now
 20 secured, contingencies are in roll where paramedics are
 21 required or a fire brigade is brought in because grass is
 22 burning or whatever the issue may be or vehicles may be
 23 burning for that matter. You deal with that and then you
 24 start moving on once you've got control, you've regained
 25 control, you're satisfied, you've reorganised your forces

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1 and you move out again and you start, if necessary, with a
 2 new wave of taking new ground. Same principle of going
 3 forward to – if they've re-gathered, dispersed again and
 4 try and get them to smaller groups.
 5 CHAIRPERSON: So to summarise it, there
 6 wasn't really a contingency plan as to use Mr White's
 7 expression in the second and third line of this paragraph.
 8 There wasn't a contingency plan in place to deal with that
 9 contingency, but what you – your plan involved this that if
 10 that contingency arose the discretion rested in the
 11 operation commander to decide on the spot in the
 12 circumstances what had to be done.
 13 COLONEL SCOTT: Yes.
 14 CHAIRPERSON: Is that fair?
 15 COLONEL SCOTT: Yes.
 16 CHAIRPERSON: No contingency plan but
 17 your plan was discretion on the part of the operation
 18 commander to do what was right and necessary –
 19 COLONEL SCOTT: Yes.
 20 CHAIRPERSON: - at that stage.
 21 COLONEL SCOTT: Initially it was built
 22 in, Chairperson.
 23 MS LE ROUX: Colonel Scott, just to round
 24 out this point, Mr White's criticism here, obviously also
 25 relates to his criticism of the fact that there's no

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1 written plan. So we don't –
 2 COLONEL SCOTT: Yes.
 3 MS LE ROUX: - have any objective
 4 evidence of this moment of pause and the understanding,
 5 given what we covered yesterday, that you had anticipated a
 6 confrontation occurring. We don't see anything in a
 7 written plan because there isn't one of how to deal with
 8 that and then similarly in your briefing we don't know and
 9 there's obviously evidence of confusion in the statements
 10 and an absence of people recounting your briefing and
 11 saying there's this moment to pause or this contingency has
 12 been factored in. So the difficulty for all of us and for
 13 Mr White is that there's no actual evidence of this aspect
 14 of your plan being properly briefed to members and then
 15 having a clear understanding –
 16 COLONEL SCOTT: Ja.
 17 MS LE ROUX: - what should happen in the
 18 event that there's been a confrontation. Do you have a
 19 comment to that?
 20 COLONEL SCOTT: Ja, that's – and that's
 21 why I said at the outset and I respect the inputs of Mr
 22 White and the assessments he's made. As I was saying I
 23 respect the inputs that Mr White has made but I also – and
 24 one couldn't expect him to have known everything that I
 25 know specifically as the strategist or the planner. He

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1 hasn't had the opportunity of sitting with me obviously to
 2 get the more in-depth rationale of what I was doing or for
 3 that matter to interview any of the commanders on the
 4 ground other than read their statements. So with the
 5 limited information that he does have, I think he's done a
 6 commendable job. I'm just trying to maybe fill in some of
 7 the gaps of things that he didn't have that may even change
 8 his opinion to some degree should he know more than what he
 9 does know at present.

10 MS LE ROUX: And, Colonel Scott,
 11 obviously when more of the commanders come we'll be able to
 12 fill in those gaps as well. Was there anything else in
 13 Section 7 that you wanted to correct?

14 COLONEL SCOTT: No, as I say it's just
 15 there's a lot of points of debate that, you know, but I
 16 think we covered some of them yesterday as well and –

17 MS LE ROUX: So then, Colonel Scott, let
 18 me end with what I could call a point of fairness. So
 19 you've read Mr White's statement and he makes criticism
 20 relating to planning, briefing, leadership and the actual
 21 implementation or execution of the operation. You've seen
 22 that he does focus quite extensively on what he says to be
 23 haphazard, rushed, negligent, inadequate planning and in
 24 due course the Human Rights Commission will make submission
 25 to the commission that, you know, you should be held

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1 responsible for those failures, but with respect to the
 2 other aspects that Mr White criticises, particularly
 3 command and control, what is your view of how this
 4 operation was commanded and controlled? Do you think it
 5 was effectively commanded and controlled?

6 COLONEL SCOTT: Well if I can go back
 7 maybe to how Mr White is making his judgements, one would
 8 expect him to have an ideal which you would need to measure
 9 it against and if similarly, if I was asked to measure any
 10 operation within my field of expertise, I would simply, as
 11 well, also go to the ideal. But once you have done that
 12 and you can maybe lift out the areas of concern you've got
 13 to take into consideration that the ideal is normally based
 14 on having the sufficient time, the sufficient intelligence,
 15 everything is there for you to build a plan or to control a
 16 group of people that are all adherent, understanding that
 17 he's also got the mindset that he would be dealing with
 18 people that are speaking English and he's speaking English.
 19 Not understanding about the communication issues within
 20 South Africa for that matter. But in saying this, you've
 21 got to start taking the mitigating circumstances such as
 22 the lack of time. A fluid operation that we look now back
 23 on in hindsight and know what did happen, not knowing at
 24 that stage what's going to happen etcetera and points like
 25 that. So again weighing it up against the ideal, of course

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1 there are issues but I think that the people that need to
 2 speak to why it's not at the ideal are the people that have
 3 to then answer to their own. So to answer to the command
 4 and control issue, I could obviously not speak to Brigadier
 5 Calitz. I could speak to what I would've done differently
 6 or how I would've run it, but then again he doesn't have
 7 the experience I have in certain other areas which may deal
 8 with events such as maybe a scene 2. But he may have far
 9 more experience in other areas or for that matter even have
 10 better experience than I do to deal with an event like
 11 scene 2, but just wasn't aware of it. So these are matters
 12 that I can't really critique him on and I've mentioned it
 13 before in front of the commission, I don't think it's my
 14 place to critique my colleagues against what I would've
 15 done having a different background, different training and
 16 having the hindsight I have now to lift out their faults.

17 MS LE ROUX: Colonel Scott, focusing in
 18 particular on scene 2 and your – you've obviously – it was
 19 your baby. You tried to understand what happened there.
 20 What's your view of command and control at scene 2
 21 specifically?

22 COLONEL SCOTT: Well obviously we have to
 23 take Brigadier Calitz out of the equation because if I
 24 understand what he's saying, he wasn't fully aware –

25 CHAIRPERSON: He took himself out of the

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1 equation too, didn't he? I mean, rightly or wrongly he
 2 took himself out of the equation as far as scene 2 was
 3 concerned and to some extent –

4 COLONEL SCOTT: Well he wasn't there,
 5 Chairperson.

6 CHAIRPERSON: That's what I mean yes. So
 7 you're dealing with the others, the subordinate commanders
 8 who were there it seems to me.

9 COLONEL SCOTT: Ja and I think even the
 10 subordinate commanders were understanding that they were
 11 still under an operational commander. But obviously I feel
 12 it should've been coordinated. There were forces that
 13 moved in on scene 2 that were not part of the initial
 14 thrust into scene 2 which was the water canons which were
 15 trying to push the strikers out the opposite end of scene 2
 16 into more open ground so that it was safer for the police
 17 members to approach them. But considering that they had
 18 stayed in scene 2, I agree with the approach that the whole
 19 operation should've been slowed down. Police officials
 20 should've backed away to a safe distance and negotiations
 21 should've been reignited or reinitiated, trying to speak to
 22 them and giving the opportunity and simultaneously with
 23 that negotiation happening, there would've been a full
 24 reorganisation of what would've had to be a sweep through,
 25 in that case, should it have been necessary. And there are

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1 certain tactics which I would've used for that which
 2 would've minimised the need necessarily for force to be
 3 simply sharp point ammunition, but again, as I say, this is
 4 now considering Brigadier Calitz was occupied elsewhere,
 5 I'm also possibly speaking that I now know scene 2 because
 6 I've dealt with it to the extent I haven't seen it from the
 7 air so many times in the aerial photographs. So but
 8 knowing how I would've operated, I would've still gone for
 9 something like that because again we train that, even when
 10 we deal with major buildings. If we get to an issue where
 11 we feel that there's a bit of a stalemate, we slow down, we
 12 try to speak to our opposition, give them the opportunity,
 13 allow them to know that they can't go anywhere. This is
 14 the situation. So you give them that opportunity and if it
 15 does get to that point where they are really not going to
 16 submit, you in the meantime are reorganising, replanning
 17 your forces to a new strategy. So that's just a very brief
 18 overview of something I would've done, but again it's – I
 19 don't want to say that this is what anybody else should've
 20 done. I wasn't on ground that day. I wasn't knowing what
 21 they were knowing, experiencing what they were experiencing
 22 and I'm pretty sure Brigadier Calitz couldn't see
 23 everything from where he was either.

24 CHAIRPERSON: I'm going to say it because
 25 I feel what I said may be open to this interpretation. I

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1 didn't intend to suggest and if I did I want to remove the
 2 impression immediately, that he deliberately withdrew
 3 himself from the situation. As you point out, he had other
 4 things to deal with, he will get an opportunity to explain
 5 what he did and why he did it and what the problems were as
 6 he saw them. But I don't want anyone to think that I'm
 7 suggesting he deliberately withdrew himself from the
 8 situation because that's not what I intended.

9 COLONEL SCOTT: Chair –

10 COMMISSIONER HEMRAJ: Colonel, you say
 11 all this because it's your training and your background in
 12 special task force, but at the second scene there were many
 13 other units there that were not – that do not have your
 14 training and your background at Special Task Force and
 15 that's probably why their approach would've been different
 16 to what you might've suggested had you been on the scene.

17 COLONEL SCOTT: Yes. Chair –
 18 Commissioner, that's what I was about to actually say –

19 COMMISSIONER HEMRAJ: Yes.

20 COLONEL SCOTT: - is that maybe in that
 21 shortened period of how we're trying to do things and
 22 considering the fluidness of the operation and so on that's
 23 taking place, obviously my mindset is what I know and the
 24 way I plan is obviously, if I was a commander how I would
 25 be doing it and we take into consideration something like

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1 the gridded maps that I had given out. I know Mr White is
 2 critical about the air to ground communication for instance
 3 and ground to air communication and the coordination
 4 thereof, saying it was very vague and people couldn't
 5 really understand who was being spoken to and so on. This
 6 is why we put huge numbers on the top of the Nyalas' roofs
 7 so that the helicopters could see – we painted them at
 8 Marikana and large, really large, possibly a metre or more
 9 size so that the helicopters could actually identify those
 10 vehicles.

11 [10:10] There was gridded maps so that if you needed to
 12 speak to a specific vehicle and tell him to go to a
 13 specific position, you would direct him on that gridded
 14 map. In other words you should have a war board in front
 15 of you. You're watching the vehicles and you're watching
 16 your map and you start directing as it should go. But
 17 again I've perfected that to some degree in other
 18 operations I've been involved in and it's not necessary
 19 that the people that I was tasking to do that knew that.
 20 So it may have been an assumption on my part, but again I
 21 did brief it in the JOCCOMS that when those handouts were
 22 given out this is how to use them. This is how they should
 23 be implemented in their role as part of the operation.

24 COMMISSIONER HEMRAJ: But to ask you to
 25 comment then on what happened at scene 2 when they were not

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1 special task forces, it's not actually accurate. Your
 2 approaches would be vastly different from those units.
 3 COLONEL SCOTT: I feel that too, yes.
 4 And again because we deal – I know there's been criticisms
 5 about it being from – our mandate is hostage release but in
 6 doing that we've got a high degree of tolerance with who
 7 we're dealing with because we understand that perpetrators
 8 can hurt hostages. So we're extremely careful in how we
 9 deal with situations and we always try to give the option
 10 of a way out instead of having to turn to a violent option.
 11 Thus the approach to go back to negotiations, etcetera and
 12 dialogue before having to move in those ways.

13 MS LE ROUX: Colonel Scott, I've
 14 obviously heard what Commissioner asked you and if I can
 15 just redirect my question again. I was asking you about
 16 the command and control of the operation overall with all
 17 these specialised units. And I don't believe that the
 18 particular specialist training of each of those units is
 19 necessarily – that's not an explanation for why there was
 20 an absence of and a failure of command and control,
 21 particularly at scene 2. So leaving aside the different
 22 training that the different units had there you accept that
 23 there was a failure and an absence of command and control
 24 at scene 2?

25 COLONEL SCOTT: Well the evidence and I

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1 agree with that. There was a lack of coordination at scene
 2 2. The reasons for that, as I say the members would need
 3 to come that are in those positions to explain possibly why
 4 and they may have very reasonable explanations, so for me
 5 to judge them on that I don't think is fair. But I do
 6 agree that the coordination there it seemed uncoordinated
 7 for that matter, yes.

8 MS LE ROUX: And you testified about the
 9 numbers being painted on the top of all the vehicles and
 10 your handing out of the gridded maps but you accept that
 11 there is no evidence of either of those devices being used
 12 in the command and control of the operation, they didn't
 13 use them.

14 COLONEL SCOTT: Well I know that
 15 Brigadier Calitz refers to it often, calling the different
 16 Papa vehicles by and the whiskey for the water canon
 17 etcetera. I can't – I know that the critique is towards
 18 Colonel Vermaak in the helicopter not specifically using
 19 the call signs or using for that matter strategies – if you
 20 do get to a scene and you need to – we've got a clock
 21 method, if you come onto a scene that is a surprise scene
 22 too that you haven't been able to plan before and you would
 23 allocate most times in a situation like that. North would
 24 be 12 o'clock and then if you start speaking on the clock
 25 method informing everybody that the direction north is 12

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1 o'clock and centre of the koppie is the centre of the clock
 2 you can start directing people in that way. But again the
 3 specialist training that I had that's what I would do. I'm
 4 not sure that others in POPs units or Colonel Vermaak in
 5 the air wing coming from a POPs unit would have been
 6 exposed to that type of training, to know to have done
 7 that.

8 MS LE ROUX: Colonel Scott, in response
 9 to that wouldn't you agree though it doesn't take special
 10 STF training to – if you're in the helicopter use the call
 11 signs, use compass points, use the gridded map that was
 12 given to you. You don't necessarily have to do the clock
 13 system. You know you gave them the tools, they were not
 14 used.

15 COLONEL SCOTT: I think you're asking me
 16 to, in a way, critique Colonel Vermaak which is again
 17 difficult because I agree his speech was vague and
 18 sometimes in the heat of that operation maybe he thought
 19 that they would understand what he meant, but I don't think
 20 I can answer specifically his part with regard to that.
 21 Why he wasn't using the call signs, I'm pretty sure he was
 22 aware they were there because he could see them. And I'm
 23 not sure if he does, at any time, mention them but I'm sure
 24 at some stage he must.

25 MS LE ROUX: Thank you, Colonel Scott, I

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1 have no further questions.

2 CHAIRPERSON: May I ask a question
 3 flowing the question you've just been asked. You were
 4 asked effectively for your critique of certain aspects to
 5 the operation and you were very careful to say that many of
 6 the people must explain for themselves and you don't have
 7 the full facts and so on. You did tell us earlier that a
 8 task team was appointed, I think after the Potchefstroom
 9 exercise you mentioned the members of the task team to
 10 evaluate the operation as I understood you. Did they
 11 interview you?

12 COLONEL SCOTT: No, Chairperson. During
 13 Roots and that's where I was made aware of their existence.
 14 I actually was brought back to Pretoria just to show them
 15 what we had in presentation format so far so that they
 16 could actually understand the Marikana incident. And then
 17 I left again after a couple of hours.

18 CHAIRPERSON: You didn't give them the
 19 benefit of your views as you've given them to us today.

20 COLONEL SCOTT: No.

21 CHAIRPERSON: No. Thank you. In view of
 22 the fact that – sorry Mr Semenya.

23 MR SEMENYA SC: Chair, just at the end of
 24 this cross-examination we wish to place on record that
 25 where my learned colleague, Ms Le Roux refers to Makhubela,

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1 Mokoena and Mtimkulu to advance a proposition that there
 2 were two POP members who fired before the volley. Those
 3 statements according to our reading doesn't bear that out.

4 CHAIRPERSON: Yes, I am afraid that was
 5 my impression too.

6 COMMISSIONER HEMRAJ: Perhaps Ms Le Roux
 7 can tell us where that – because I was also at a bit of a
 8 loss because I don't recall having read it. Perhaps you
 9 can direct to where in those statements it appears at some
 10 stage later on Ms Le Roux, yes.

11 MS LE ROUX: I can do that, Commissioner.

12 CHAIRPERSON: Well perhaps it's
 13 appropriate for us to take the adjournment at this stage.
 14 I'm not sure who's going to cross-examine next, one of two
 15 persons. But that person can be identified to me during
 16 the tea break and we will resume after we've had tea.

17 [COMMISSION ADJOURNS COMMISSION RESUMES]

18 [11:08] CHAIRPERSON: The Commission resumes a
 19 little bit later than usual, but the reason, I think I can
 20 disclose, it's the 64th birthday of Adv Ntsebeza and we were
 21 very kindly invited to attend the birthday celebration.
 22 Colonel, I'm sorry you weren't invited, but there were
 23 reasons obviously. I'm sure nothing sinister about the
 24 fact that you weren't invited. You're still under oath.

25 DUNCAN GEORGE SCOTT: s.u.o.

<p style="text-align: right;">Page 15302</p> <p>1 CHAIRPERSON: Ms Barnes, I understand 2 you're going to cross-examine. 3 MS BARNES: Yes, Chair, before I do – 4 CHAIRPERSON: On behalf of? 5 MS BARNES: On behalf of AMCU. 6 CHAIRPERSON: Thank you. 7 MS BARNES: Chair, before I do, I 8 understand that there's something Ms Le Roux would like to 9 address the Commission on very briefly. 10 MS LE ROUX: Yes, thank you, Chair, just 11 to respond to Mr Semenya before the break with respect to 12 the statements, if I could just put on the record a bit 13 more detail about our reading of those. So again this is 14 on the issue of the use of live fire by POP members prior 15 to the TRT volley, and let me say upfront, of course the 16 statements are not conclusive on this and will have to be 17 the subject of further investigation and examination. But 18 for the record, we read Lieutenant-Colonel Mtimkulu's 19 statement, his original statement, paragraph 3 of that 20 describes him shooting three rounds which appear to precede 21 the TRT volley, because if you read the chronology in his 22 statement. 23 The second statement is that of Warrant-Officer 24 Mokoena, and it's his additional statement. In paragraph 3 25 as well of that statement he recounts how he had his pistol</p>	<p style="text-align: right;">Page 15304</p> <p>1 deal with them and if he challenges them, he will be better 2 equipped now to do so than he would otherwise have been. 3 Is that so, Mr Semenya? 4 MR SEMENYA SC: Indeed, Chair. 5 CHAIRPERSON: It's not of course 6 categorically stated; it's an inference you draw and you 7 will argue later in support of the inference. Yes, before 8 Ms Barnes begins her cross-examination on behalf of AMCU, I 9 want to place on record that I've been informed this 10 morning from the President's office that the relevant 11 extending proclamation will be signed today, so we will be 12 able to proceed tomorrow. Ms Barnes. 13 CROSS-EXAMINATION BY MS BARNES: Thank 14 you, Chair. Good morning, Colonel. You will have heard 15 that I represent AMCU in this inquiry. I have a few 16 questions for you. Colonel, if we can start with your 17 consolidated statement, which is exhibit HHH20, if you 18 could go to page 38 of that statement, paragraph 7.9.4, 19 could the statement perhaps be put up on screen? 20 CHAIRPERSON: Well, I suppose if you gave 21 good warning in advance it will be. 7.9.4? 22 MS BARNES: Yes, there it is, thank you. 23 Now Colonel, just to orientate you, you are at this point 24 in your statement talking about the events of Tuesday the 25 14th of August. If you page back to page 33 you will see</p>
<p style="text-align: right;">Page 15303</p> <p>1 out and was firing until members were back inside the 2 vehicle for safety. He does not mention the volley at all 3 in that statement, but the Al Jazeera footage shows Papa9, 4 which is the vehicle he's in, with no members outside of it 5 at the time of the TRT volley. So if he's shooting before 6 the members get inside the vehicle for safety and by the 7 time of the volley we see no-one outside, that's why we did 8 use that it precedes the volley. That footage obviously 9 also deals with the issue of in the attack on Papa9 we say 10 it shows no such attack, and then to tie it all together, 11 if one looks at the slide which is at page 55 of the 12 annexure to Mr White's statement, GW6(b), and if you look 13 in that, you see the placement of Nyala 6, which is where 14 Lieutenant-Colonel Mtimkulu is, as well as that of Papa9, 15 at the time of the volley they are ahead of the TRT line, 16 if I can put it that way. So once we ascertain where they 17 are, read their statements with respect to when they say 18 there was the use of live ammunition, we tie all that 19 together and say that it seems likely that it preceded the 20 TRT volley. 21 CHAIRPERSON: Well, these are all matters 22 that can be dealt with in argument later and possibly even 23 to some extent in evidence, either oral evidence or 24 evidence on affidavit. Mr Semenya now knows in advance, as 25 it were, the contentions you advance and he will be able to</p>	<p style="text-align: right;">Page 15305</p> <p>1 that. Are you with me? 2 COLONEL SCOTT: Yes. 3 MS BARNES: Now in this paragraph you say 4 the following – 5 CHAIRPERSON: It appears from 7.10 that 6 you're correct, that it was Tuesday that was being dealt 7 with. 8 MS BARNES: Yes, it does. Thank you, 9 Chair. In paragraph 7.9.4 you say the following, "I also 10 requested information on the atmosphere around the area and 11 the attitude of the local population towards the police 12 presence. This was necessary because as at the time, the 13 best source of information available was from the Lonmin 14 Mine security official, Mr Graham Sinclair." You see that? 15 COLONEL SCOTT: Yes. 16 MS BARNES: So what you're recording here 17 is that at least up until that stage SAPS was really 18 dependent on Lonmin, and particularly on Mr Sinclair, for 19 information relating to the unrest at the mine. Is that 20 correct? 21 COLONEL SCOTT: Speaking on behalf of 22 SAPS. I'm speaking on behalf of myself there. There may 23 have been other officers at higher levels that were 24 obviously engaging with other members of mine management, 25 but my direct line of link is, as mentioned here, the</p>

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1 source that I had which was most beneficial was Mr Sinclair
2 at that time, yes.

3 MS BARNES: And that is why when you
4 arrived at the mine on Monday the 13th of August, you were
5 briefed by Mr Sinclair in relation to the incidents that
6 had happened over the weekend. Is that correct?

7 COLONEL SCOTT: To the best of my
8 recollection, yes.

9 MS BARNES: So if we go to page 18 of
10 your statement, paragraph 6.5, in that paragraph you
11 describe arriving at the Lonmin Mine on Monday and halfway
12 through that paragraph you say, "Major-General Annandale
13 introduced me to Mr Graham Sinclair from Lonmin Mine
14 security, who further briefed me on the incidents from the
15 weekend and orientated me on a map as to where the strikers
16 were positioned and where the incidents of violence had
17 been taking place." Correct?

18 COLONEL SCOTT: That is correct, yes.

19 MS BARNES: Now who was present in that
20 briefing? Was it just yourself and Mr Sinclair, or were
21 others present?

22 COLONEL SCOTT: It was a one-on-one
23 briefing where he was helping to orientate me for the
24 arrival of the National Commissioner where I needed to put
25 some form, and I was using a Google map, so he was showing

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1 me on the Google map where we were, where the strikers were
2 at the koppie, and where the incidents had taken place of
3 the security deaths and the police deaths, so that I could
4 pinpoint those in order to orientate the National
5 Commissioner when she came in.

6 MS BARNES: He would have taken you
7 through the various incidents that had happened over the
8 weekend, on Friday, Saturday, and Sunday, in that briefing.
9 Is that correct?

10 COLONEL SCOTT: Well, I spent some time
11 with him on the Monday evening, some time with him on the
12 Tuesday morning, so in that process a lot of that
13 information would have been forthcoming, yes.

14 MS BARNES: He would have covered the
15 incidents over the weekend, though. I just want to clarify
16 that that's correct. That's what you seem to be saying –

17 COLONEL SCOTT: Yes.

18 MS BARNES: - in paragraph 6.5.

19 COLONEL SCOTT: Yes.

20 MS BARNES: If I can take you now to
21 exhibit L, to slide number 6, the first item on that slide
22 refers to an incident that happened on Friday the 10th of
23 August, and that says, "Protesters wounded two persons
24 during a clash of rival unions." You see that?

25 COLONEL SCOTT: I see that.

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1 MS BARNES: So presumably you would have
2 got this information from Mr Sinclair during one of your
3 briefings, correct?

4 COLONEL SCOTT: No. What's depicted in
5 this slide was gained by Colonel Visser and I can't be
6 certain where he got his information, but to my
7 understanding it was from the OB of the Lonmin Mine, from
8 the records of the criminal CAS system of the police,
9 etcetera. So where he sourced this specifically, I'm not
10 sure, but I was obviously spoken to in less detail because
11 I can recall that there was a clash on the Saturday, and I
12 think I was told that there were two people wounded there,
13 and then there was the incident on the Sunday where the
14 mine security got information about the NUM offices being
15 targeted, and they responded and obviously there was
16 conflict there which resulted in their deaths, and then the
17 Monday evening where the K4 Shaft was the target of
18 destruction and the violence against the –

19 MS BARNES: Yes, I've really focussed on
20 this –

21 CHAIRPERSON: Sorry to interrupt you.
22 Did you say the Monday evening? It was the Sunday evening.

23 COLONEL SCOTT: Sunday evening.

24 CHAIRPERSON: It was the Sunday evening.

25 COLONEL SCOTT: Ja. So those, that's the

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1 extent of what I knew then. The detail that we're finding
2 in the presentation is obviously being researched deeper by
3 Colonel Visser and placed in.

4 CHAIRPERSON: I think the problem relates
5 to the phrase "clash of rival unions." It certainly was the
6 understanding, it appears from all the documents and the
7 occurrence book of Lonmin and so on, and even your earlier
8 documents, that your understanding was, police
9 understanding generally was that the people I prefer to
10 call the strikers were AMCU people and that there was
11 trouble between AMCU and NUM.

12 COLONEL SCOTT: Yes.

13 CHAIRPERSON: We've heard since that half
14 the people on the koppie actually were members of NUM, and
15 the documentation prepared, presented by Lonmin, statements
16 of witnesses they will be calling, seem to suggest that the
17 rock drill operators from Karee for example, and even those
18 later from elsewhere, were not necessarily wearing their
19 union hats, whatever union they belonged to, but appeared
20 to be acting on their own, seeking an increase for rock
21 drill operators only, and when Mr Mathunjwa gave his
22 evidence it was never suggested to him by counsel for
23 Lonmin or NUM, as far as I can recall, that AMCU was
24 actually responsible for what was happening. But I can
25 understand that at the time the presentation was prepared

<p style="text-align: right;">Page 15310</p> <p>1 and even when you arrived there before the shootings on the 2 16th, that the information that was given to you was that it 3 was a clash between AMCU and NUM. Is that a correct 4 understanding? 5 COLONEL SCOTT: That is correct, 6 Chairperson. 7 CHAIRPERSON: You didn't draft this; 8 Visser drafted this, but this is I suppose reflective of 9 the police understanding at the time. Is that correct? 10 COLONEL SCOTT: That's correct, 11 Chairperson, yes. 12 MS BARNES: And that understanding, 13 Colonel, to the effect that the cause of the unrest was 14 really as a result of the clash between these two unions, 15 was that conveyed to you by Mr Sinclair? 16 COLONEL SCOTT: No, we were – well, we 17 were aware that there was a wage dispute and that was 18 something that obviously the police undertook not to get 19 involved in, but the underlying currents of that was that 20 the feeling was that possibly – and I'm speaking of my own 21 opinion now, that NUM had not come to the party to assist 22 and that these people, because the rationale behind that is 23 the targeting of the NUM office and the moving through an 24 environment which was predominantly NUM strong, being the 25 Wonderkop Hostel area, thus the clash on the Saturday</p>	<p style="text-align: right;">Page 15312</p> <p>1 CHAIRPERSON: Isn't it double S? 2 MS BARNES: Sorry, it's SS3. I 3 apologise. 4 CHAIRPERSON: We haven't got to triple S. 5 Time will tell whether we will ever do so. 6 MS BARNES: It's SS3. Is it possible to 7 get that on the screen? If we could go on to the slideshow 8 entitled Operation Platinum, the 14th of August 2012, which 9 is – unfortunately I've never been able to work out the 10 pagination on this document. 11 CHAIRPERSON: You're not the only one. 12 MS BARNES: Yes, so that's the beginning 13 of the slideshow and this is your slideshow, Colonel. Is 14 that correct? 15 COLONEL SCOTT: Yes. 16 MS BARNES: You produced these slides? 17 COLONEL SCOTT: Yes. 18 MS BARNES: If we could go on then to the 19 slide entitled "Background." I think it's the third slide 20 from now on. Okay, if we could stop, if we could go back 21 up and stop at "Background." Okay, now there we see again 22 "Rival mineworker unions NUM and AMCU," and then I'd like 23 you to focus specifically on the first bullet under "Recent 24 aggressive history. Saturday, the 11th of August 2012, 25 unions clash and two dead." Now presumably you would have</p>
<p style="text-align: right;">Page 15311</p> <p>1 morning, so with all these deductions, and I don't recall 2 but it could have been said by Mr Sinclair as well that the 3 opposing group is AMCU strong. 4 MS BARNES: So Mr Sinclair may have told 5 you that the violence was as a result of the clash between 6 AMCU and NUM? 7 COLONEL SCOTT: Well, yes. I'd like to 8 say I don't recall specific words. 9 MS BARNES: So in relation to slide 6 on 10 exhibit L we would need to ask Colonel Visser about the 11 first item that appears there? 12 COLONEL SCOTT: Yes. 13 MS BARNES: Did you personally hear that 14 as a result of a clash between rival unions, protesters had 15 wounded two persons on Friday evening? 16 COLONEL SCOTT: No. 17 MS BARNES: Colonel, if I could take you 18 then to exhibit SS3, and I apologise, this wasn't in fact 19 on the list of exhibits that we referred to in our 20 application, but it is the slideshow prepared I believe by 21 yourself in relation to the 14th of August, so I would 22 imagine that it wouldn't be too difficult for you to answer 23 questions in relation to it. So it's SSS3 and it's 24 specifically Operation Platinum, the slideshow entitled 25 Operation Platinum that starts on the 14th of August.</p>	<p style="text-align: right;">Page 15313</p> <p>1 got this information from Mr Sinclair? 2 COLONEL SCOTT: Yes. He mentioned the 3 union clash. I'm not sure if he mentioned the two dead. 4 That could have been something that was brought in there 5 after by somebody that was following up on hospital records 6 or what had actually happened, or case numbers for that 7 matter, that would have been registered. 8 CHAIRPERSON: We now understand that in 9 fact the two didn't die – 10 COLONEL SCOTT: Yes. 11 CHAIRPERSON: - as far as I understand. 12 It was a story that was spread around that the two had 13 died, but it's now accepted on all sides the two people 14 were wounded, injured and taken to the hospital, but the 15 two hadn't died. But the unions, the only two unions that 16 were relevant would be AMCU and NUM, so clearly that refers 17 to those two. 18 COLONEL SCOTT: Yes. 19 CHAIRPERSON: And you say you got that 20 information from Mr Sinclair? 21 COLONEL SCOTT: Yes. 22 CHAIRPERSON: Presumably the references 23 to the following two days, AMCU and security clash, 24 statement in respect of Sunday, and AMCU and SAPS clash, in 25 relation to Monday, where do you get that from?</p>

<p style="text-align: right;">Page 15314</p> <p>1 COLONEL SCOTT: Well, the security clash, 2 also Mr Sinclair, and I think that was also common 3 knowledge with the police members, so it would have been 4 coming from either him or from somebody that I was speaking 5 to in the police, and then obviously the Monday clash was 6 common knowledge when I arrived there, the briefings we 7 received that night from the commanders on ground on the 8 13th. 9 CHAIRPERSON: Again there's reference to 10 three AMCU dead. The assumption was that the strikers were 11 AMCU people. 12 COLONEL SCOTT: Yes. 13 CHAIRPERSON: And inasmuch as the clash 14 was between SAPS members and strikers, some strikers, the 15 assumption then led to the conclusion that it was a clash 16 between AMCU and SAPS. Is that right? 17 COLONEL SCOTT: Yes. Yes, Chairperson. 18 MS BARNES: If we can go then, Colonel, 19 to your consolidated statement again, HHH20, to page 29 of 20 that statement, paragraph 6.34, and that paragraph 6.34 21 states as follows, "Based on the information that the 22 strikers who had killed the police members came from the 23 Karee Hostel area to the west, I reasoned," and you then go 24 on to say what you reasoned. Now could you tell us please 25 where that information came from? Did that also come from</p>	<p style="text-align: right;">Page 15316</p> <p>1 CHAIRPERSON: Because you're not stating 2 what the facts are, you're stating what your information 3 was at the time. 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: And it sounds as if it was 6 partly your information and partly your inference. Is that 7 correct? 8 COLONEL SCOTT: Yes. 9 [11:28] MS BARNES: Yes, of course, Colonel, this 10 statement this consolidated statement you signed in early 11 July, is that correct, this year? 12 COLONEL SCOTT: Yes. 13 MS BARNES: And the information that you 14 have here in relation to the movement of the strikers is 15 not contained in your earlier statements, it appears in 16 this statement for the first time. Is that correct? 17 COLONEL SCOTT: I assume so. You've 18 probably looked, I don't recall it being in other 19 statements, but yes. 20 MS BARNES: I have looked at your earlier 21 statements, it doesn't appear there. So you would have 22 recalled, presumably in early July when you produced the 23 statement where this information about the movement of the 24 strikers and the Karee hostel in particular had come from. 25 Isn't that correct?</p>
<p style="text-align: right;">Page 15315</p> <p>1 Mr Sinclair? 2 COLONEL SCOTT: I don't quite recall. At 3 a later stage, but this is after the operation only I was 4 made aware that actually they had moved from the koppie 5 away and gone back. But Mr Sinclair was mentioning Karee 6 Hostel and that that was a dominant area for AMCU, and then 7 the deduction for me was obviously that, and at that time I 8 thought they were actually moving to the koppie from the 9 Karee Hostel. 10 MS BARNES: Sorry, if you could just 11 repeat the last part of your answer – 12 CHAIRPERSON: I'm sorry to interrupt you. 13 Was that your assumption? The evidence is that people had 14 already gathered on the koppie, that on the Monday a sort 15 of flying patrol was sent out from the koppie, or went out 16 from the koppie towards Karee to see whether the 17 unprotected strike was being complied with. They had some 18 conversation, some communication with the people at the 19 Karee Shaft and they then turned around on their way back 20 to the koppie. That's the evidence as I understand it. So 21 they hadn't actually come from the Karee Hostel, though in 22 fact some of them may actually have been from the hostel 23 originally, but they'd come from the koppie. Now I take it 24 you didn't know that at the time – 25 COLONEL SCOTT: No.</p>	<p style="text-align: right;">Page 15317</p> <p>1 COLONEL SCOTT: That's why I'm saying my 2 understanding was that Karee was dominantly an AMCU hostel. 3 They were a new union coming into the mine and that started 4 at a point. And at that time of the operation, as I say, I 5 thought this was a group that was simply moving to the 6 koppie that had possibly been there on the Sunday or been 7 part of the Saturday and Sunday activities and now was 8 coming back to the koppie for the next day's activities 9 again. As a group moving from Karee to the koppie itself. 10 MS BARNES: And if you look at paragraph 11 6.32 of your statement, that's on page 28, you're referring 12 there to a meeting that took place on Tuesday the 14th and 13 you say Mr Sinclair was also present for part of the 14 meeting and provided input with regards to the strikers' 15 movements. Do you see that? 16 COLONEL SCOTT: Yes. 17 MS BARNES: So that information would 18 have come from him, correct? 19 COLONEL SCOTT: Well I know you're making 20 a deduction and if I could honestly remember it pertinently 21 I would admit to it, but I don't want to put Mr Sinclair in 22 a position that I'm saying he said that when he didn't. 23 But I was definitely under that impression at that time. 24 If it did come from him then it did, but I can't 25 specifically recall it being said.</p>

<p style="text-align: right;">Page 15318</p> <p>1 MS BARNES: If you could go to page 32 of 2 your statement, paragraph 6.36.7, this paragraph reads as 3 follows, "The forward holding area close to the koppie 4 would be identified to stage the personnel who would deal 5 with the processing of the arrested suspects and the 6 handling of any evidence. Also the medical emergency 7 response services offered by Mr Sinclair and some of the 8 other police assets which were not as yet verified as they 9 had not arrived." And then it continues. Now just again 10 to orientate you, you are here talking about the events of 11 Monday the 13th, do you agree with me? 12 COLONEL SCOTT: We were you talking about 13 the planning of where to place forces on the Tuesday. 14 MS BARNES: Yes, but this meeting is 15 taking place on Monday, correct? 16 COLONEL SCOTT: This meeting is the early 17 hours of Tuesday morning. 18 MS BARNES: Okay, before first light on 19 Tuesday? 20 COLONEL SCOTT: Yes, ja. 21 MS BARNES: Now what I'd like to ask you 22 is about the medical emergency response services that are 23 referred to in this paragraph that had been offered to SAPS 24 by Mr Sinclair. If you would tell us what precisely was 25 offered and why.</p>	<p style="text-align: right;">Page 15320</p> <p>1 assets that we would need. And as I say, him being there 2 as part of the mine, I'm not sure if it's a search and 3 rescue or it's just a medical rescue section, they had 4 access to that. So he was offering the assistance of the 5 medical assets that were possibly under his control for the 6 police to utilise if necessary. 7 MS BARNES: Would those have been 8 ambulances? 9 COLONEL SCOTT: Well I don't know about 10 ambulances but the paramedics would come obviously with 11 their own vehicles. 12 MS BARNES: And in what numbers was he 13 offering paramedics and ambulances? 14 COLONEL SCOTT: I don't recall 15 specifically, it could have even changed from day to day, 16 but from my knowledge one is better than none. So whether 17 we had one or four it just made sense for me to have 18 paramedics there. I don't recall numbers being part of the 19 actual equation at that stage. 20 MS BARNES: Again, Colonel, you've 21 referred to this for the first time in this later statement 22 done in early July, there's no reference to this in your 23 earlier statement. So presumably you would have had a 24 clear recollection of these medical emergency services that 25 had been offered by Mr Sinclair when you deposed to the</p>
<p style="text-align: right;">Page 15319</p> <p>1 COLONEL SCOTT: Well part of my planning 2 procedures anyway is to always look at that as part of a 3 contingency that should there be injuries and so on that we 4 need to have medical backup close at hand. And with Mr 5 Sinclair being – I think he's part of the security/safety 6 rescue unit of the mine and to my knowledge they actually 7 contract in certain paramedics from private companies on 8 the outside. And we know that the SAPS has a limited 9 medical capability and some it's members being trained to 10 lower levels but not to the level of paramedics. And I'm 11 quite aware because in our unit we even have a reservist as 12 a paramedic for that matter to help us. And we're 13 endeavouring to get more because we're aware that the 14 medical expertise doesn't exist within SAPS when you're 15 then starting to deal with trauma like was experienced on 16 the Monday with people that have been stabbed, hacked and 17 possibly shot. So it's obviously always a necessity then 18 to get the highest level of medical qualification to deal 19 with trauma like that on ground and the best of that is the 20 paramedics which Mr Sinclair had access to. 21 MS BARNES: So what precisely was Mr 22 Sinclair offering in this meeting? 23 COLONEL SCOTT: Well he may have heard 24 during the planning session obviously as I would have gone 25 through the problem solving that there would be certain</p>	<p style="text-align: right;">Page 15321</p> <p>1 statement in July. 2 COLONEL SCOTT: That's correct. 3 MS BARNES: You can give us no further 4 detail now? 5 MS SCOTT: Well not on numbers, as I've 6 stated, no. 7 CHAIRPERSON: Is it necessary to follow 8 up this point? I'm sure when the Lonmin witnesses give 9 evidence they will be able to provide the information and 10 it may well be that even a query addressed to them at this 11 stage will elicit the information you seem to be seeking. 12 MS BARNES: If you can go now, Colonel, 13 to page 107 of your statement. It's paragraph 34.6 and 14 this reads as follows, "This is one of the areas I had to 15 consider on Wednesday evening after the debriefing and 16 briefing that the strikers would lay down their weapons," 17 it then goes on. And the next line reads as follows, "In 18 looking back to a conversation I had on Wednesday the 15th 19 with a security official who was present at the Impala 20 Platinum unrest earlier in 2012 who had mentioned that the 21 strikers would possibly follow through and escalate the 22 violence if their demands were not met, I started 23 evaluating the then said 2 and 3 deployments should they be 24 called for." So is it correct then that this 25 conversation that you refer to in this paragraph impacted</p>

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1 on your consideration of the risk that the strikers would
 2 possibly escalate the violence?
 3 COLONEL SCOTT: It did.
 4 MS BARNES: Can you tell us who the
 5 security was that you refer to in this paragraph?
 6 COLONEL SCOTT: It's a senior member from
 7 Protea Coin. I'm not sure it's fine to mention his name.
 8 CHAIRPERSON: I don't know if you need
 9 his name for the purposes of the point you're making. His
 10 position and employer has been identified.
 11 MS BARNES: Yes, an employee of Protea
 12 Coin contracted to Lonmin.
 13 COLONEL SCOTT: That's correct.
 14 MS BARNES: Would that be correct? Do
 15 you know what his precise position was?
 16 COLONEL SCOTT: I don't know the precise
 17 position, no. He's not a member that obviously – he's a
 18 high up official, so he would come out in problematic times
 19 but was not deployed on a permanent basis at the Lonmin
 20 mine.
 21 CHAIRPERSON: Ms Barnes, if it's
 22 important for you to ascertain the identity of the person,
 23 I'm sure arrangements can be made for the witness to
 24 provide a name in writing to the evidence leaders. We
 25 could show that to you. If something then follows there

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1 from you can take it further but we understand, regard
 2 being had to some of the things that happened there are
 3 aspects that are sensitive that we –
 4 MS BARNES: Indeed, Chair, that would be
 5 perfectly in order. And then, Colonel, I'd like to take
 6 you to another exhibit, JJJ192 and again I apologise, this
 7 wasn't on my list of exhibits provided to you. The
 8 transcript of the conversation that took place between
 9 General Mbombo and various employees of Lonmin and it's
 10 really just a simple question that I'm sure you'll have no
 11 difficulty in answering notwithstanding not having looked
 12 at this very recently.
 13 CHAIRPERSON: He looked at it recently
 14 but I take it not that recently anyway he's now looking at
 15 it because it's on the screen. What passage do you
 16 specifically refer him to?
 17 MS BARNES: It's on page 13 of the
 18 document and there's a reference there to Graham speaking
 19 which would be Mr Sinclair. If you could go further down
 20 the page please. Right, under the heading A Side
 21 Conversation Follows, Mr Mokoena speaks and then below that
 22 Graham which is a reference to Mr Sinclair speaks and about
 23 halfway through that paragraph he says "we have deployed
 24 140 people across the" and then it's inaudible SAB, "SAP"
 25 rather "to go and interact with our security as the

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1 operations" and then it's inaudible again. Do you see
 2 that?
 3 COLONEL SCOTT: Yes.
 4 MS BARNES: And then on the next page,
 5 page 14 if you could further down the page please there's a
 6 reference to Graham again and he says "yes we deployed
 7 110." Now, Colonel, did you discuss the detail of SAPS
 8 deployments in terms of the units that would be deployed
 9 and the numbers with Mr Sinclair?
 10 COLONEL SCOTT: No. The only times those
 11 were discussed in detail was at the JOCCOM meetings and I
 12 don't know if he was there. I think Mr Dirk Botes was
 13 representing Lonmin. It's possible that Mr Sinclair did
 14 sit it, I can't say for sure. But the only meeting that I
 15 had with him with regard to planning and so on was he was
 16 present while I was talking to Colonel Makhubela, Merafe,
 17 sorry and the two members that were with him. Other than
 18 that Mr Sinclair wasn't part of – that was part of that
 19 Tuesday morning early also establishing the forward holding
 20 area where he actually was part of recommending somewhere
 21 because the area we chose he actually had a security detail
 22 standing there as well at that crossroad.
 23 MS BARNES: So do you know then where Mr
 24 Sinclair would have got these figures from?
 25 COLONEL SCOTT: Well he's talking about

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1 his own deployments I would assume, not the police
 2 deployments because if he says yes we deployed 110 –
 3 CHAIRPERSON: I think it might be helpful
 4 if we saw the passage immediately before this because the
 5 context isn't entirely clear and I'm inclined to think
 6 you're right. He's talking about deployment by Lonmin of
 7 people, but perhaps it will become clearer if we look at
 8 the passage immediately above it because he also talks
 9 about we're going to deploy the horses and those I take it
 10 were Lonmin horses.
 11 COLONEL SCOTT: I'm not sure if Lonmin
 12 has horses, but in that case you may be speaking about the
 13 police. But it's strange that he's speaking to the very
 14 police commissioner –
 15 CHAIRPERSON: I think if we look at the
 16 passage immediately – I haven't got a copy of this document
 17 with me, but if we could just look up – look at the passage
 18 immediately before what's on the screen it may help us.
 19 MS BARNES: Yes, it's the Provincial
 20 Commissioner speaking and she said "we already deployed
 21 them before this because now they have to call them back
 22 for the operation, redeploy them to the key areas."
 23 CHAIRPERSON: No I mean immediately above
 24 that. Have you got it?
 25 MS BARNES: Page 14. It seems clear to

<p style="text-align: right;">Page 15326</p> <p>1 us, with respect, Colonel, that Mr Sinclair is in fact 2 referring to police deployment. We will take this up 3 further with the other witnesses, but I just wanted to 4 check with you that you would not have given those kinds of 5 details to – and numbers in particular to Mr Sinclair. 6 COLONEL SCOTT: No, there would have been 7 no need for me to, but like I say, this is Tuesday and if I 8 can pick up the time of when this possibly was happening, 9 if the Provincial Commissioner is saying we're about to 10 call back, she's talking about the sector policing 11 patrolling that is ongoing. And it's the possible calling 12 back of the commanders or maybe the briefing's already 13 happened to the commanders and they're about to call back 14 the members to be briefed by those commanders. If it's the 15 case it's possible Mr Sinclair was sitting in the JOC at 16 the time that the briefing was given to the commanders and 17 would maybe have heard what the briefing was to go to the 18 phase 1 deployment. 19 MS BARNES: Further down on the same page 20 Mr Sinclair says "Calitz" but I think it must be a 21 reference to Calitz and it's spelt incorrectly, "Calitz is 22 on top of that with me, Ma'am." Do you see that? 23 COLONEL SCOTT: Yes. 24 MS BARNES: You don't know what Mr 25 Sinclair could have meant by that?</p>	<p style="text-align: right;">Page 15328</p> <p>1 of what is transcribed. 2 CHAIRPERSON: Yes, no, I understand that. 3 MR CHASKALSON SC: Chairperson, for the 4 record as would have been clear from some of the questions 5 that I put to Colonel Scott, we had one or two differences 6 or difficulties with the transcript as well. In particular 7 there is - a transcript refers to the verb "settle" in 8 circumstances where we're satisfied from the original tape 9 that it's "encircle." The word spoken was encircle. 10 CHAIRPERSON: Indicate that at the cross- 11 examination, but the point I'm making, referring to is the 12 point and I think it's directly relevant to what Mr Semenya 13 says. Where you have a speaker indicated and some speech 14 transcribed and the words inaudible and then the assumption 15 is that the continuation is the same speaker and that may 16 well be but it may also be that in fact it's another 17 speaker and that's something that has to be clarified as 18 well. 19 MR CHASKALSON SC: Yes, all of this 20 confirms your earlier suggestion, Chairperson, that the 21 parties need to get together and agree a correct or as 22 correct as possible a transcript of that tape. 23 CHAIRPERSON: Yes, no, thank you. So 24 you've now finished your cross-examination, Ms Barnes? 25 MS BARNES: Yes, Chair.</p>
<p style="text-align: right;">Page 15327</p> <p>1 COLONEL SCOTT: No. 2 MS BARNES: It's something we can ask 3 Brigadier Calitz about. Thank you, Colonel. Chair, those 4 are our questions. 5 MR SEMENYA SC: Chair, may we, for the 6 record, state that exhibit JJJ192 which is the transcript, 7 we haven't been able to verify it's correctness and I 8 didn't seem to see it being certified to be correct. We 9 tried to listen to the audio, it's indecipherable for an 10 untrained ear like mine. 11 CHAIRPERSON: Yes, one of the points that 12 occurred to me was, and I think it's happening in some of 13 the previous transcripts we've had that after the word 14 inaudible it sometimes happens, or may happen that the 15 words that are transcribed thereafter may not have been 16 spoken by the speaker initially identified as having said 17 the bit before the word inaudible. So it's not entirely 18 clear necessarily that was put was said by Mr Sinclair. It 19 might have been said by someone else, but that's something 20 that presumably doesn't have to be clarified here in the 21 chamber. Attempts have to be made to agree a transcript 22 indicating correctly who said what insofar as what is said 23 is audible. Is that correct, Mr Semenya? 24 MR SEMENYA SC: We're merely stating that 25 we should not be assumed to have accepted the correctness</p>	<p style="text-align: right;">Page 15329</p> <p>1 CHAIRPERSON: I think Mr Ntsebeza is now 2 going to take over. Cross-examining on behalf of the 3 families. 4 CROSS-EXAMINATION BY MR NTSEBEZA: Yes, 5 Mr Chair. Good day, Colonel. Yes, you have heard the 6 Chairman indicating that I represent the families and you 7 understand, I see you nod. 8 COLONEL SCOTT: Yes. 9 MR NTSEBEZA: Yes and you appreciate that 10 they are here, those who are able to be here because they 11 want to know as far as it can be established what happened. 12 COLONEL SCOTT: Yes, I understand that. 13 MR NTSEBEZA: You, yourself, in your 14 career have had occasion to testify in trials, criminal 15 trials, civil trials I take it. 16 COLONEL SCOTT: Very limited exposure, 17 but I think two or three at most, yes. 18 MR NTSEBEZA: Yes, you have had that 19 experience and in those instances you had been called as a 20 witness for a particular party. 21 COLONEL SCOTT: Yes, on behalf of SAPS, 22 yes. 23 MR NTSEBEZA: Yes. Here I would assume 24 that you understand that your role not so much to represent 25 a particular party or do you understand the difference?</p>

<p style="text-align: right;">Page 15330</p> <p>1 COLONEL SCOTT: No, I understand my role 2 is to assist the Commission with providing information 3 which would – 4 MR NTSEBEZA: Do you understand your role 5 as a person who even though you may be a member of the 6 South African Police Service, you are nonetheless coming to 7 assist the Commission to answer those questions that is 8 expected in terms of reference to answer. 9 COLONEL SCOTT: Yes, I understand that. 10 MR NTSEBEZA: Now I'm putting this to you 11 because I put it to your colleagues, so you must be 12 familiar now about what I put to your colleagues. 13 [11:47] I just want also for you to put it to you, you 14 appreciate that for that purpose and especially that you 15 have sworn to speak the truth, the whole truth and nothing 16 else but the truth, you will do your best endeavour to 17 speak the truth as your conscience allows you to do so. 18 COLONEL SCOTT: Well, Sir, the oath is 19 something I endeavour to live by, not just because of a 20 commission. It's a lifestyle and it's the way I try to 21 live my daily life, according to those principles. It's 22 not just an oath that is taken at leisure. 23 MR NTSEBEZA SC: If you could just speak 24 up, Colonel. 25 COLONEL SCOTT: I'm saying that an oath</p>	<p style="text-align: right;">Page 15332</p> <p>1 COLONEL SCOTT: Yes. 2 MR NTSEBEZA SC: And then endeavour 3 really will be to seek to establish from you if it is so 4 that you are saying things that are mutually exclusive, you 5 and your colleagues, to establish who to put it at its 6 mildest, has not been forthcoming with the truth. 7 COLONEL SCOTT: I understand. 8 MR NTSEBEZA SC: Now and at the end of my 9 cross-examination, I will put to you, for your comments, 10 what the families view is about the involvement of the SAPS 11 in the killing of those who were dear to them. 12 COLONEL SCOTT: Okay. 13 MR NTSEBEZA SC: And would you kindly 14 then give us your comment because these are things that 15 they have put out, particularly in their opening statement. 16 COLONEL SCOTT: I will do so. 17 MR NTSEBEZA SC: Now but for now I just 18 want to explore quickly how you, yourself, got involved and 19 an area that has been traversed, so we'll be very quick in 20 going through that. It seems to me to be common cause that 21 you came because, as he himself testified, Major-General 22 Annandale called for you to be called through Brigadier 23 Fritz. Is that correct? 24 COLONEL SCOTT: That's correct, yes. 25 MR NTSEBEZA SC: Yes. And it seems to me</p>
<p style="text-align: right;">Page 15331</p> <p>1 is not just something for a commission. The principles 2 that I live by and I ascribe to that same oath on a daily 3 basis. 4 MR NTSEBEZA SC: Yes. 5 CHAIRPERSON: Mr Ntsebeza, I find if you 6 turn your microphone off when the witness answers, you will 7 find you can hear more clearly. I've been here longer than 8 you have, I picked it up. I give the information for what 9 it's worth. 10 MR NTSEBEZA SC: No, thank you, Mr 11 Chairman, which would mean that I must on and off, ja. I 12 didn't get your last question – your last answer, Mr – 13 COLONEL SCOTT: No, I'm just stating that 14 I understand that the commission has an oath but it's not 15 just because of an oath that I endeavour to tell the truth 16 and that's a principle for me, that's a lifestyle value 17 that I live by. 18 MR NTSEBEZA SC: Okay. So you would do 19 your best to give as truthful an answer as you can? 20 COLONEL SCOTT: Yes. 21 MR NTSEBEZA SC: Very well. Now I'm 22 asking because there are instances which I want to test 23 with you, relevant to both what you said and what your 24 colleagues have said, those who have testified. You 25 appreciate that?</p>	<p style="text-align: right;">Page 15333</p> <p>1 that it was because you were asked to be mobilised because 2 you were a member of the STF. 3 COLONEL SCOTT: I don't know if that's 4 the rationale that General Annandale was utilising. I know 5 that he's aware that I've planned major events and other 6 operations which include multi-disciplines from within SAPS 7 and external from SAPS. An STF operation on its own is 8 something where we would maybe work as a priority 9 operational member with others asking for or support, but 10 I've – as I say, stepped out on many occasions as the role 11 of an STF member to plan major operations which I mentioned 12 in my statement and of course there are others and I think 13 it's because of that reasoning that he understood he needed 14 somebody that understood from the highest tactical level 15 being the task force and could coordinate some form of a 16 strategy to put forward at Marikana, the event. 17 MR NTSEBEZA SC: In fact in his own 18 evidence and this can be found at T8205, he stated that he 19 particularly wanted you because you are, to quote him, "one 20 of the few who is capable of doing inter-disciplinary 21 planning." You are familiar with STF, NIU, TRT. He was a 22 member of POP prior to joining STF. Was he describing you 23 correctly? 24 COLONEL SCOTT: Yes. 25 MR NTSEBEZA SC: He also indicated that</p>

<p style="text-align: right;">Page 15334</p> <p>1 you did the OCTs training in 2002, crowd management and you 2 were the best performer in your class. He was also one of 3 the planners for the 2010 world cup, COP17, various 4 deployments in Africa. That's how he described you. Do 5 you – would you agree with that? 6 COLONEL SCOTT: Yes. 7 MR NTSEBEZA SC: Yes. So I don't think 8 it is contested as to why he thought of you. And one other 9 thing that seems to be or at least up to the point that 10 Major-General Annandale testified, that did not seem to be 11 in dispute was that it was what eventually evolved as a 12 plan to deal with the situation that had arisen, the so 13 called Scott Plan was your plan. Something of your 14 brainchild. 15 COLONEL SCOTT: Ja. I tend to refer to 16 it more as a strategy and I understand what a detailed plan 17 is and as I say it was more strategy carried over. 18 MR NTSEBEZA SC: Well we may quibble 19 about whether it should be – 20 COLONEL SCOTT: Ja. 21 MR NTSEBEZA SC: - plan or strategy, but 22 it is something that should not have raised any issue if we 23 said this was Scott's plans, Scott's strategy because you 24 were the one who actually planned it, in your own affidavit 25 you said so.</p>	<p style="text-align: right;">Page 15336</p> <p>1 acceptance of that plan into operationalising it is no 2 longer a Scott issue. It's now a police plan as such. 3 MR NTSEBEZA SC: I appreciate that and 4 I'm sure you – it has been put to you, particularly by Mr 5 Chaskalson, in fair amount of detail as to whether or not 6 it is properly sought to say it was your plan or it was a 7 collective plan. I assume to – I take the view that it is 8 accepted that you know when once it was adopted by the 9 entire team then everybody began to own it. 10 COLONEL SCOTT: Yes. 11 MR NTSEBEZA SC: Ja. But there's no 12 doubt about the fact that there shouldn't be a quibble 13 about who it originated from. You were called specifically 14 because you were found to be the best man. 15 COLONEL SCOTT: Yes. 16 MR NTSEBEZA SC: Now I'm asking you 17 because there was a view that was expressed by Brigadier 18 Mkhwanazi in so many words that in fact this is a plan that 19 should've been drawn by somebody from Public Order 20 Policing. Have you heard of that evidence by him? 21 COLONEL SCOTT: I haven't but I accept 22 it. 23 MR NTSEBEZA SC: You, yourself, having 24 been in POP whatever time that you were being called you 25 were being called to as an STF person.</p>
<p style="text-align: right;">Page 15335</p> <p>1 CHAIRPERSON: I'm sorry, Mr Ntsebeza, 2 someone's got a cell phone that's on and it's making noise, 3 I will be grateful if it is turned off and if someone 4 else's cell phone goes off from now on, I'll ask that 5 person to leave the room unless it's you, Mr Ntsebeza. 6 MR NTSEBEZA SC: Thank you, Mr Chairman. 7 So we are pretty much clear that we are talk – when we talk 8 about Scott's Plan or Scott's strategy, it's something that 9 would – should easily be common cause. 10 COLONEL SCOTT: I would agree with you, 11 yes. 12 MR NTSEBEZA SC: And you wouldn't 13 understand therefore why – 14 COLONEL SCOTT: If I can just clarify 15 that – 16 MR NTSEBEZA SC: Yes. 17 COLONEL SCOTT: - I think we just need to 18 be clear on the origins of the strategy or the, as you call 19 it, the Scott Strategy, Scott Plan, but as General 20 Annandale also mentioned once I delivered that to a full 21 JOCCOM of senior police officers, respectfully in each of 22 their own disciplines, and it's accepted as such it does 23 become an accepted police plan and not a Scott Plan and I 24 don't dispute that the rationale, the plan itself, the in- 25 depth thinking into it originated from myself, but the</p>	<p style="text-align: right;">Page 15337</p> <p>1 COLONEL SCOTT: - at the STF but not 2 within my STF role, yes. 3 MR NTSEBEZA SC: Was it the view that the 4 matter was no longer now a crowd management matter at the 5 time that you were called? When you got there on the 15th 6 did you get the sense that the matter was no longer a crowd 7 management matter but something that called for even the 8 plan to emanate from somebody from STF? I'm just asking. 9 COLONEL SCOTT: I understood that, as I 10 said, this had been taken to a new level. After I heard 11 the briefings and I heard what the commanders had said had 12 happened on the Monday, and I've – I don't want to keep on 13 repeating the testimony but – 14 MR NTSEBEZA SC: Yes. 15 COLONEL SCOTT: - specifically the taking 16 of the arms and of the murdered policemen and so on, that 17 struck me as being at a different level. That a lesser 18 trained POP member having to specifically deal with 19 belligerent armed with sharp edged weapons, all the 20 firearms had made a – was then taking them out of their 21 depth as a Public Order Policing entity and in saying this, 22 if there was one or three people that were involved in this 23 or even up to ten people involved in what happened at 24 Marikana, it would not now be considered a public order 25 policing issue. But simply because of the mass or the size</p>

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1 of the crowd, it automatically now has to involve some form
 2 of a public order policing issue because as we understand,
 3 not everybody is involved necessarily with the killings.
 4 So it had to have some form of a dual strategy and this is
 5 my opinion and I don't think I'm wrong on that but we
 6 needed to thin out or to move away those who would adhere
 7 to the rule of law, would move when a dispersion action
 8 happened, but those that would not and that would remain
 9 behind, I thought that the public order policing members to
 10 try to deal with that would simply result again in
 11 something that would've happened on the Monday. So there
 12 needed to be some form of a more tactical and specialised
 13 grouping of people that had more experience in dealing with
 14 those type of situations when they do high risk arrests to
 15 deal with that entity specifically.

16 MR NTSEBEZA SC: Yes. Well I don't want
 17 to revisit the evidence but –

18 COLONEL SCOTT: Ja.

19 MR NTSEBEZA SC: - I just want for you to
 20 know that we will, amongst other things, rely on Brigadier
 21 Mkhwanazi's view that this is a plan that should really
 22 have been made by a person from POP, that this was a
 23 question where management control should've been by POP.

24 COLONEL SCOTT: But if one explores that
 25 further and a POP member made that plan, where would they

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1 have drawn their line in that plan? They would've
 2 dispersed, they would've struggled to figure out
 3 contingency plans for when their members were attacked
 4 during the dispersion action and they would've had no
 5 ability to figure out the safety of the members because
 6 they in general don't plan for the tactical forces. So in
 7 essence what I'm saying, again, in the theory as Brigadier
 8 Mkhwanazi is saying, if you don't have a public order
 9 policing member plan that, if you're going to plan up to
 10 the level of his knowledge and expertise which stops him at
 11 the public order policing side of it, and this is where the
 12 hybridness of the plan comes in because somebody needed to
 13 be there to plan it further and if you consider the plan
 14 that I had offered or put in place, it's still in line with
 15 the public order policing prescripts of their standard
 16 operating procedures and many of the principles of their –
 17 in standing order 262. So the fact that we've got the
 18 public order policing and very senior public order policing
 19 members present, were there to say whether the police in
 20 essence was out of line or not in the JOCCOM. And without
 21 a dispute to what was going to occur or what we were
 22 proposing with going into negotiations with a show a force,
 23 it was all acceptable. I do understand that they were not
 24 there when the dispersion action was briefed, but I'm
 25 pretty sure that they were told of it that morning at the –

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1 the Thursday morning JOCCOM. And if there was a dispute at
 2 that stage that somebody would've raised a concern. And
 3 I've mentioned it on many times before that if you tell a
 4 public order policing member disperse, he would simply –
 5 you don't tell him how to, you would simply tell him where,
 6 when. So they understood when they were told that a
 7 dispersion would happen. They were just not, obviously,
 8 given the full detail as at that stage. It wasn't made
 9 known yet or I myself, possibly hadn't even pondered
 10 through the full detail at that stage yet, ja.

11 MR NTSEBEZA SC: Now as I indicated,
 12 Colonel Scott, I wouldn't like this to detain us really
 13 because –

14 COLONEL SCOTT: Okay.

15 MR NTSEBEZA SC: - it will be a question
 16 of evaluating and all the relevant evidence, but I'm keen
 17 to know why was this situation characterised on the 13th as
 18 one that was no longer a crowd management issue? Why was
 19 it characterised as one that needs assent to a tactical
 20 phase?

21 COLONEL SCOTT: Well in essence, again,
 22 if public order policing is requested to deal with a crowd
 23 and you can go into Standing Order 262 for that matter,
 24 there are three levels within 262 which actually deal now
 25 with crowds. And only at the third level does the public

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1 order policing actually get involved and although it is
 2 only my opinion, I think that it's maybe it's capping it
 3 too early. Because we know that telling your public order
 4 policing that you're to work with less than lethal options
 5 only and then expecting them to apply those less than
 6 lethal options and those that are available to them only,
 7 against a crowd as they had experienced – those strikers on
 8 the Monday – to repeat that again later in the operation is
 9 almost sending your own police officials into a suicide
 10 mission. So I needed to do something, as I say, to take it
 11 beyond that, to consider the safety of those police
 12 officials, but also and part of that safety is not only
 13 protecting of their lives while they're executing their
 14 public order policing and tactical option, it's not having
 15 to have them confront belligerent armed protestors close-up
 16 where their lives would be endangered and they may not be
 17 able to defend themselves.

18 MR SEMENYA: Chair, just for the record,
 19 it is not the SAPS which have characterised the matter as a
 20 non-crowd management issue.

21 CHAIRPERSON: I think we remember that
 22 General Annandale used the word hybrid which was also used
 23 by your colleague, Mr Mpofu, who I understand is on his way
 24 here and he will be with us shortly. So I think Mr Semanya
 25 is right in making that comment.

<p style="text-align: right;">Page 15342</p> <p>1 MR NTSEBEZA SC: Well the witness's 2 responses are on record. The witness didn't feel that it 3 was an improper question to put on that basis. 4 CHAIRPERSON: No, I didn't disallow the 5 question. 6 MR NTSEBEZA SC: No, I understand, Mr 7 Chairman, I'm just reacting to the placing on record of 8 something that the witness felt he was competent to react 9 to. Now just to round off that you arrived there on the 10 13th and I believe you went on – was it on the 13th that you 11 went to recognisance the koppie? 12 COLONEL SCOTT: It was the early hours of 13 the morning on the – I didn't go to the koppie, I just went 14 as far as forward holding area 1, the forward holding area, 15 the cross roads at the smelter, the BMR Smelter. 16 CHAIRPERSON: The early hours of the 17 morning of the 14th the Tuesday? 18 COLONEL SCOTT: Of the 14th, yes. 19 MR NTSEBEZA SC: And was it your evidence 20 that there were about 15 or 20 people there? 21 COLONEL SCOTT: It was the next morning, 22 when the recognisance helicopter flights took place, yes. 23 MR NTSEBEZA SC: Yes. That's the one 24 that I was referring you to, the recognisance. 25 COLONEL SCOTT: About 06:30 and that's</p>	<p style="text-align: right;">Page 15344</p> <p>1 surprise element, and I'll put it to you later on, the 2 surprise element of getting them when they are in their 3 areas of abode would have been the best place to make sure 4 that they are disarmed rather than - well, you don't 5 disagree that that would have been the best time to disarm 6 the people who used to assemble at the koppie? 7 COLONEL SCOTT: Yes, if you're talking 8 "abode" being the koppie, I felt that a first light 9 approach – 10 MR NTSEBEZA SC: No, I'm talking about 11 where they live and sleep. If there were only 15 to 20 12 people on the koppie – 13 COLONEL SCOTT: Ja? 14 MR NTSEBEZA SC: Then the remainder may 15 obviously have been in the township. 16 COLONEL SCOTT: Yes. 17 MR NTSEBEZA SC: In fact in September 18 last year there was an exercise that was carried out and – 19 COLONEL SCOTT: Yes. 20 MR NTSEBEZA SC: - various assorted arms 21 were retrieved. I just want to put that to get your – 22 you're the person who had engineered the plan, you saw on 23 that very day that it seems that these people are not 24 always at that place where they were going to be confronted 25 and be encircled for purposes of disarming them.</p>
<p style="text-align: right;">Page 15343</p> <p>1 what they could pick up visually, but I think that the – it 2 was first light, so light would've been, but I don't expect 3 there would've been far more than 20. I think the – 4 MR NTSEBEZA SC: Surely you are not 5 suggesting there were 3 000 at – 6 COLONEL SCOTT: No, no. That's why I'm 7 saying it's – but there could've been 30, there could've 8 been – 9 MR NTSEBEZA SC: 13, ja. 10 COLONEL SCOTT: Ja, but I'm just saying 11 it was approximately 20 from the count. 12 MR NTSEBEZA SC: And I'm sure this has 13 been put to you or to other witnesses that – 14 COLONEL SCOTT: And that's at Koppie 1 15 now – 16 MR NTSEBEZA SC: Yes. 17 COLONEL SCOTT: - where – ja. 18 [12:07] MR NTSEBEZA SC: So it does appear, and 19 I'm sure Mr Mpofo will put this to you as he has put it to 20 other witnesses that there were times when the koppie was 21 virtually empty of people because people had gone back to 22 the townships to – 23 COLONEL SCOTT: Yes. 24 MR NTSEBEZA SC: Ja, and it is accepted 25 that for disarming people with those kinds of weapons, the</p>	<p style="text-align: right;">Page 15345</p> <p>1 COLONEL SCOTT: Yes. 2 MR NTSEBEZA SC: There seemed to have 3 been some alternatives. Now when you got there – 4 CHAIRPERSON: Are you now moving on to 5 another point? 6 MR NTSEBEZA SC: I'm just – 7 CHAIRPERSON: I've been asked to take a 8 comfort break at some stage soon, but when it's convenient, 9 please let me know. 10 MR NTSEBEZA SC: We can take it now, Mr 11 Chairman. 12 CHAIRPERSON: Alright, we'll take a 13 comfort break for five minutes. 14 [COMMISSION ADJOURNS COMMISSION RESUMES] 15 [12:15] CHAIRPERSON: The commission resumes. 16 Colonel, you're still under oath. Mr Ntsebeza, do you have 17 anymore questions for the witness? 18 MR NTSEBEZA SC: Sir, thank you. Thank 19 you, Mr Chairman. Commissioner, I have a couple of 20 questions. Now, Colonel, when you arrived at – let me 21 assume that we are all ad idem that at some stage you got 22 to the JOC when you got there on the 13th. 23 COLONEL SCOTT: Yes. 24 MR NTSEBEZA SC: Yes. And this was at a 25 time when it was a slide 6 of Exhibit L says two policemen</p>

<p style="text-align: right;">Page 15346</p> <p>1 had been killed and one had been seriously injured.</p> <p>2 COLONEL SCOTT: Yes and obviously the</p> <p>3 three protestors they were deceased and a couple wounded,</p> <p>4 yes.</p> <p>5 MR NTSEBEZA SC: What was the mood like</p> <p>6 among those whom you met in the SAPS?</p> <p>7 COLONEL SCOTT: On arrival many of the</p> <p>8 ground commanders, I didn't – I don't recall seeing for</p> <p>9 that matter maybe he was there but Colonel Merafe was only</p> <p>10 introduced to me later, that I got to see who he was for</p> <p>11 the planning. I recognised him though from when he gave</p> <p>12 his briefing to the national commissioner because he was</p> <p>13 pretty emotional and explaining, obviously having to carry</p> <p>14 I think Lieutenant Baloyi but who was in the JOC at that</p> <p>15 time I can remember General Annandale, General Mpembe, I</p> <p>16 think Brigadier Calitz and then Mr Sinclair.</p> <p>17 MR NTSEBEZA SC: Okay, but as you were</p> <p>18 proceeding with your plan and I'll ask you this once and</p> <p>19 then we'll move on, was it your sense that there was</p> <p>20 residual anger among the members of the SAPS on the basis</p> <p>21 that two of their members had been killed by the miners?</p> <p>22 COLONEL SCOTT: I can understand and</p> <p>23 appreciate your question. I don't remember picking that</p> <p>24 up. I do, as I say I recall colonel Merafe being quite</p> <p>25 emotional at that meeting with the national commissioner.</p>	<p style="text-align: right;">Page 15348</p> <p>1 operation weighed up against the policies. Do you remember</p> <p>2 giving that testimony?</p> <p>3 COLONEL SCOTT: Yes, and obviously I</p> <p>4 think we must separate the president from that. It's just</p> <p>5 the president gave –</p> <p>6 MR NTSEBEZA SC: Yes.</p> <p>7 COLONEL SCOTT: - the president gave the</p> <p>8 terms of reference which included that the police needed to</p> <p>9 be, obviously, weighed against their own. So – and I think</p> <p>10 as I testified there, I was requested whilst at Roots in</p> <p>11 Potchefstroom to go and group – brief a group of policemen</p> <p>12 at – in Pretoria.</p> <p>13 MR NTSEBEZA SC: When exactly did this</p> <p>14 take place? Now I'm talking between the 16th of August and</p> <p>15 before this commission started.</p> <p>16 COLONEL SCOTT: Are you talking about my</p> <p>17 briefing –</p> <p>18 MR NTSEBEZA SC: Yes. This -</p> <p>19 COLONEL SCOTT: It would've been – I</p> <p>20 think it was in the first week of Roots, late in – I think</p> <p>21 somewhere in the late in the first week of Roots, possibly</p> <p>22 around the Thursday of the first week. I'm not sure what</p> <p>23 that date would've been.</p> <p>24 MR NTSEBEZA SC: Yes. And what would you</p> <p>25 have been wanting to determine in terms of the policies?</p>
<p style="text-align: right;">Page 15347</p> <p>1 I think what I picked up more was almost a sense of awe, of</p> <p>2 shock at what had happened that day, that this was</p> <p>3 something the police were struggling to come to terms with.</p> <p>4 That this had actually happened, that their members had</p> <p>5 been killed and robbed. But I don't remember anything</p> <p>6 other than that. It was just the atmosphere I could feel,</p> <p>7 that I can remember, was just one of sort of awe and shock</p> <p>8 and how do we get on with now dealing with the situation</p> <p>9 that we're sitting with.</p> <p>10 MR NTSEBEZA SC: And do you know if the</p> <p>11 pictures of the dead police were disseminated amongst the</p> <p>12 police?</p> <p>13 COLONEL SCOTT: Yes, I believe they were.</p> <p>14 I first couldn't recall that and something in the recent</p> <p>15 passed, I'm not sure what it was, brought that back to</p> <p>16 memory, but I think I actually I did see pictures of that,</p> <p>17 that evening.</p> <p>18 MR NTSEBEZA SC: Yes. Now I want to take</p> <p>19 you to what I believe has been the essence of your evidence</p> <p>20 from what those we have researched from you from the time</p> <p>21 that I was not here, have indicated. It appears that at</p> <p>22 page 14511 lines 10 to 14 of the record, your testimony was</p> <p>23 that the president in giving the terms of reference – I</p> <p>24 don't know who they are – needed the policies of the police</p> <p>25 to be brought together to be looked at and obviously their</p>	<p style="text-align: right;">Page 15349</p> <p>1 Was it to establish whether the policies that were in place</p> <p>2 were sufficient or what was the whole purpose of that?</p> <p>3 COLONEL SCOTT: I'm not sure what their</p> <p>4 briefing was. I can only speculate it was one of two and</p> <p>5 that was either that they needed to get the relevant</p> <p>6 policies together. I'm not sure whether they were tasked.</p> <p>7 I can't say whether they were because I wasn't part of that</p> <p>8 group to actually take what the police new and then judge</p> <p>9 it according to our own policies and procedures. Again, I</p> <p>10 can only help with that – I wasn't actually part of their</p> <p>11 briefing or what their mandate was.</p> <p>12 MR NTSEBEZA SC: Now would it have been</p> <p>13 part of this, shall we call it a review, to determine</p> <p>14 whether the conduct of the SAPS over the requisite period</p> <p>15 had met the standards that had been set in those policies?</p> <p>16 COLONEL SCOTT: Did you ask would I have</p> <p>17 been part of this?</p> <p>18 MR NTSEBEZA SC: No, I'm asking whether</p> <p>19 the whole purpose of this review was to establish whether</p> <p>20 the policies had been what they should be in dealing with</p> <p>21 this kind of situation.</p> <p>22 COLONEL SCOTT: Again, Sir, I'm not sure.</p> <p>23 But – well one would think that it's either got to do with</p> <p>24 judging the police actions against the policies or seeing</p> <p>25 whether the policies themselves are sufficient to cover the</p>

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1 type of operation that we faced at Marikana.
 2 MR NTSEBEZA SC: Now you were not in the
 3 meeting yourself?
 4 COLONEL SCOTT: No.
 5 MR NTSEBEZA SC: But you briefed the
 6 people who were going to go into the meeting?
 7 COLONEL SCOTT: Well I – look I don't
 8 know if – they were a group of people. I'm not sure they
 9 had a specific meeting or if they stayed together, because
 10 I think that Brigadier – I can remember Brigadier – I was
 11 just reflecting because somebody asked the question the
 12 other day about inputs at Roods and I can remember
 13 Brigadier Mkhwanazi was commenting there. He specifically
 14 was talking to positive and negative attraction points and
 15 there was one other Colonel Twala which I remember being
 16 there as well but I don't remember his input. So I don't
 17 think there was one specific meeting per se but I wouldn't
 18 be able to say what their goal was or what they were
 19 striving to achieve.
 20 MR NTSEBEZA SC: Yes. I don't want to be
 21 unfair to you, but your testimony on those two aspects is
 22 the following. Insofar as what it was going to be for, you
 23 said when the president gave the terms of reference for the
 24 commission they needed and by they I mean I take it to mean
 25 members of the SAPS.

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1 COLONEL SCOTT: Yes.
 2 MR NTSEBEZA SC: They needed the policies
 3 of the police to be brought together to be looked at, then
 4 obviously the operation weighed up against those policies.
 5 COLONEL SCOTT: Yes.
 6 MR NTSEBEZA SC: You understand that.
 7 But then we further go on to say in lines 10 to 14,
 8 "Brigadier Mkhwanazi who had testified at the commission,
 9 there was somebody, I think it is Mr Diale there was a
 10 Brigadier Hunter from Durban and I think there is a Colonel
 11 Twala, I'm not sure – I'm not sure if there were more." So
 12 we are quite clear here there was a meeting which involved
 13 people from as far afield as Durban and they met because
 14 they were looking into the policies.
 15 COLONEL SCOTT: As I say that I just need
 16 to say that that is my understanding and I don't retract
 17 that, but they may have a specific brief given to them on
 18 letterhead which states differently to what I've actually
 19 said but it's my understanding of what they were to do.
 20 MR NTSEBEZA SC: Yes. You see why I'm
 21 asking this and you should appreciate is that I have put
 22 the same question to Major-General Annandale, Brigadier
 23 Mkhwanazi, I even put it to Commissioner Phiyega and my
 24 question was because I would've assumed that after such an
 25 event, never mind the standing orders, after an event like

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1 that, the killing of police people on the 13th and
 2 especially now, after the 16th there would've had been a
 3 meeting of senior people to review what had taken place.
 4 Do you agree with that?
 5 COLONEL SCOTT: Well I don't know what
 6 you've put to them, but just what I can recollect over the
 7 time periods, I know there was a lot said about a
 8 debriefing and that's definitely not a debriefing. A
 9 debriefing involves the people involved.
 10 MR NTSEBEZA SC: Yes.
 11 COLONEL SCOTT: Because only they would
 12 truly know where the weak points, the strongest point is,
 13 opportunities and threats would lie. So I'm not – as I say
 14 I'm – I think that committee had a higher level type of
 15 mandate to what we would consider a normal debriefing or in
 16 the process of the full fault finding as should be done and
 17 then taken through the channels and back into training as
 18 we know and so on.
 19 MR NTSEBEZA SC: In fact we made – we
 20 drew a distinction between a debriefing process and a
 21 review.
 22 COLONEL SCOTT: Okay, I'm not –
 23 MR NTSEBEZA SC: And I think you seem to
 24 be making that distinction.
 25 COLONEL SCOTT: Yes.

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1 MR NTSEBEZA SC: Now when the questions
 2 were put to them, there was no doubt that what was being
 3 put to them was something that emanates from standing
 4 orders and I will give you the reference of the standing
 5 order, that there is – there must actually be a review.
 6 And the review takes place in circumstances where senior
 7 people above a particular rank, above the rank of captain,
 8 meet and those members must be members who were not
 9 involved in the incident in relation to which there is a
 10 review. Now from your nodding I believe I am describing
 11 what the review is properly.
 12 COLONEL SCOTT: Yes, I understand now,
 13 yes.
 14 MR NTSEBEZA SC: Yes. Now I understand
 15 from the people whom you described, when you testified as
 16 you did, that none of those who met in your testimony to
 17 look at the operations and weigh the operations against the
 18 policies. Now none of them, as I understand it, had been
 19 involved in the operations on the 16th?
 20 COLONEL SCOTT: That's correct.
 21 MR NTSEBEZA SC: And on that basis, it
 22 would befit what is contemplated in the standing order
 23 dealing with a review.
 24 COLONEL SCOTT: On face value I agree
 25 with you. I think it's just maybe necessary to determine

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1 the mandate that was given to them because I'm pretty sure
 2 that if you're saying that there's a review process that a
 3 review will have a specific set of guidelines that they
 4 would have to adhere to. Whether that committee was
 5 mandated with the same purpose, I don't know. So it's just
 6 something I want to just put –

7 MR NTSEBEZA SC: No, I understand. You
 8 are not on the cross, you are not being – you are not on
 9 trial. We're just trying to do that which you said you
 10 have pledged to do. In fact you were not, as I under – you
 11 see when you testified that you were not part of that group
 12 of senior people, it's precisely because you were involved.
 13 Isn't it? Involved in the operations, you were the master
 14 planner etcetera, etcetera.

15 COLONEL SCOTT: Yes.

16 MR NTSEBEZA SC: Yes. So this is exactly
 17 what we put to Brigadier Mkhwanazi, Brigadier – Major-
 18 General Annandale. Now and we can give you the references
 19 as we go on. Now who is Brigadier Hunter?

20 COLONEL SCOTT: He's the operational
 21 response service head of KwaZulu Natal.

22 MR NTSEBEZA SC: Yes. So that's his
 23 position within the SAPS?

24 COLONEL SCOTT: Yes.

25 MR NTSEBEZA SC: And Colonel Twala?

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1 COLONEL SCOTT: I'm not sure of his
 2 specific designation. He is under Major-General Annandale.
 3 Under his component. I think it may be mobile operations
 4 but I speak under correction that he is section head of
 5 that.

6 MR NTSEBEZA SC: And Mr Ali?

7 COLONEL SCOTT: Mr Ali, to my knowledge
 8 is an ex SAPS member who has been seconded, that's why I
 9 say he's an ex, I think to the ministry for a time period.
 10 He came from division ORS at the time when it was still the
 11 original ORS before it was part of Visible Policing back to
 12 ORS but he was still of the original there and then moved
 13 over to Division HRD.

14 MR NTSEBEZA SC: I see.

15 COLONEL SCOTT: Training.

16 MR NTSEBEZA SC: No, as I said and you
 17 have agreed, they obviously were people of rank above
 18 captain.

19 COLONEL SCOTT: Yes.

20 MR NTSEBEZA SC: But you wouldn't be a
 21 brigadier if you have not been captain.

22 COLONEL SCOTT: No, I'm just trying to
 23 recall all of the ranks, but they are, obviously Mr Ali
 24 being –

25 MR NTSEBEZA SC: Brigadier Mkhwanazi – in

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1 your own testimony, Brigadier Mkhwanazi, Brigadier Hunter,
 2 Colonel Twala.

3 COLONEL SCOTT: Yes. I'm just stating
 4 that I think – I don't know if Mr Ali maintains his rank or
 5 – but at the moment he's a mister.

6 MR NTSEBEZA SC: Yes, but do you know
 7 what his rank was before he –

8 COLONEL SCOTT: He was colonel.

9 MR NTSEBEZA SC: So we have to agree that
 10 on the face of it, now if we could show Exhibit S that I
 11 can read it for you, Exhibit S was a directive from the
 12 national commissioner which had been sent to all heads of
 13 the police establishment two weeks before – almost. Almost
 14 two weeks, on the 20th of July 2013 and at the relevant
 15 place, it says that every time minimum force is used, a
 16 review of the action must always be taken by an officer
 17 holding the rank of captain and above, who was not part of
 18 the action and also was not on the scene. You are aware of
 19 that?

20 [12:35] COLONEL SCOTT: Are you referring to the
 21 letter which reinstates the use of rubber rounds in Public
 22 Order Policing?

23 MR NTSEBEZA SC: It's 2012 actually. I'm
 24 not going to attribute this to old age, but it's something
 25 that's written here – it's 2012. Now I'm just trying to

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1 round up –

2 CHAIRPERSON: You didn't answer his
 3 question. He asked you is that the directive which
 4 reinstated rubber rounds, I think that was the question he
 5 asked, and I know witnesses aren't supposed to ask
 6 questions –

7 MR NTSEBEZA SC: Yes, that's the one.

8 CHAIRPERSON: - counsel do, but in this
 9 case I'll allow him to ask the question. Would you answer
 10 it, please?

11 MR NTSEBEZA SC: No, I'll answer, Mr
 12 Chairman. Yes, that's the one.

13 COLONEL SCOTT: Okay.

14 MR NTSEBEZA SC: That's the circular that
 15 went to everybody. Indeed what, as you correctly locate
 16 that exhibit S, would it be fair to say that that meeting
 17 of those officers would be to review this force that had
 18 been used? Is it fair to suggest that? That it was to
 19 review the use of force?

20 COLONEL SCOTT: I think it's fair to
 21 suggest that. I don't think I can pertinently confirm it.

22 MR NTSEBEZA SC: Yes.

23 COLONEL SCOTT: As I say, I don't know
 24 what their mandate was given to them.

25 MR NTSEBEZA SC: Yes, now I'm going to

<p style="text-align: right;">Page 15358</p> <p>1 suggest to you later on that policies, especially Public 2 Order Policing policies, are geared towards the 3 determination of when and whether to use force, when to use 4 lethal force, what circumstances to use lethal force or 5 non-lethal force. 6 COLONEL SCOTT: I think, I know that 7 policies, as you say, if we may be more accurate to say 8 national instructions or standing orders, refer to the use 9 of lethal force at times, but obviously we know that 10 doesn't override the given law of the country. So with 11 regard to the use of lethal force at any time we still 12 prescribe to the laws of the country, which, as I've 13 mentioned before, simply takes us back to self-defence, 14 private defence, hopefully never necessity, but then 15 obviously with section 49(2) of the Criminal Procedure Act. 16 MR NTSEBEZA SC: But the point I'm making 17 here is it will be fair to suggest that in the light of 18 exhibit S, when you describe the meeting of the people whom 19 we have now analysed, they had not been in attendance, they 20 had not been involved in the operations, they are of ranks 21 higher than that of captain, it would be fair to suggest 22 that this is the kind of review process that is 23 contemplated in exhibit S? 24 COLONEL SCOTT: I agree with you, the 25 criteria is met –</p>	<p style="text-align: right;">Page 15360</p> <p>1 in Pretoria, which I did. It didn't have a title, the 2 group didn't have a title or anything. It was just the, a 3 group of police officers that I needed to brief them on the 4 actual presentation I had at that stage. 5 MR NTSEBEZA SC: And these are the people 6 who you made this presentation to? 7 COLONEL SCOTT: Yes. 8 MR NTSEBEZA SC: So it's incorrect to say 9 there was no meeting. There was a meeting at least where 10 you briefed them. 11 COLONEL SCOTT: Yes. 12 MR NTSEBEZA SC: And after you had 13 briefed them, I assume they remained behind to examine what 14 you had briefed them about. 15 COLONEL SCOTT: You know, I don't want to 16 be technical about it, but I can only assume so because I, 17 after the briefing I did leave. I needed to get back to 18 Potchefstroom. 19 MR NTSEBEZA SC: Now who had this meeting 20 been arranged by? Major-General Annandale? 21 COLONEL SCOTT: I don't think it would 22 have been him. He was obviously at Roots, so I don't know 23 either. I don't want to speculate because obviously I 24 would be calling names, but I can't say for sure. 25 MR NTSEBEZA SC: I am coaxing you to try</p>
<p style="text-align: right;">Page 15359</p> <p>1 MR NTSEBEZA SC: Yes. 2 COLONEL SCOTT: But again I think it just 3 needs that clarification of the convening of that team to 4 clarify. 5 MR NTSEBEZA SC: Yes, indeed, except that 6 if we assume I had put the questions to Brigadier 7 Mkhwanazi, and you can go to the reference and I can assure 8 you it was on that basis, that if I had put the questions 9 to Brigadier Mkhwanazi on the basis that led you to 10 understand that I'm now talking about the review, I'm not 11 just talking about a debriefing session, you would have 12 expected him to have understood that I'm talking about a 13 review and not a debriefing? 14 MR SEMENYA SC: I don't follow the 15 question, that double negatives in it. 16 MR NTSEBEZA SC: Let me simply it. 17 CHAIRPERSON: Could you perhaps rephrase 18 the question so that Mr Semanya and I can understand it? 19 MR NTSEBEZA SC: Yes. Now maybe let me 20 ask the first question. How did you come to know about 21 this meeting, you yourself? 22 COLONEL SCOTT: Whilst at Roots I was 23 asked, I think it was by General Annandale, to take the 24 presentation that we had at the time and go to Pretoria to 25 brief a group of people that would be at a conference room</p>	<p style="text-align: right;">Page 15361</p> <p>1 and remember. You will appreciate this was an important 2 meeting. You said it took place in Pretoria. 3 COLONEL SCOTT: Yes. But if I 4 understand, you're asking who sanctioned that team, who put 5 it together. I can't - 6 MR NTSEBEZA SC: No, when you got to 7 brief senior people, it's either you took it upon yourself 8 to do so, or there was a clear request to you to do so. 9 COLONEL SCOTT: There was a clear request 10 and I know that General Annandale arranged for the trip to 11 – so that's why I'm assuming too that it was him that would 12 have obviously said to me, "You need to go." 13 MR NTSEBEZA SC: Now I didn't think that 14 we would take some time on this, but I don't want to. When 15 you want to brief senior people, who as it happens fit what 16 is contemplated in exhibit S? That kind of a thing, I want 17 to suggest to you, would not just have happened. Do you 18 want time to think about how it happened, or are you ready 19 with an answer? 20 COLONEL SCOTT: No, as I think I've 21 explained it, we were busy working at Roots. General 22 Annandale, well he arranged the transport, so I'm just 23 trying to – he would obviously have said to me as well, 24 "Listen, you need to go to Pretoria to brief this group of 25 people that are there."</p>

<p style="text-align: right;">Page 15362</p> <p>1 MR NTSEBEZA SC: Can you be more specific 2 or certain? 3 COLONEL SCOTT: On what specific part? 4 CHAIRPERSON: No, I think the problem – 5 MR NTSEBEZA SC: You say – 6 CHAIRPERSON: Sorry to interrupt. I 7 think the problem is just to say that would you go to 8 Pretoria to brief this group of people who were there, is a 9 bit vague, and I think what Mr Ntsebeza is suggesting, I 10 know it's sometimes difficult to remember these things, but 11 the suggestion I think to which he's moving forward is that 12 you were probably told, given a little bit more detail than 13 you have told us. Whether you can't remember something 14 else is another matter, but it would appear the probability 15 is that General Annandale wouldn't have said to you, "Go to 16 Pretoria to brief this group of people who are there." He 17 would have said something about them, obviously told you 18 where to go, probably have told you what exercise they were 19 busy with, as to why it was necessary for you to go and 20 brief them. I think that's where Mr Ntsebeza is moving to. 21 Can you perhaps answer those questions? 22 COLONEL SCOTT: I'm already starting to, 23 you know if I say I don't recall it sounds like I'm trying 24 to cover, which is not the case. But – 25 MR NTSEBEZA SC: It's your answer,</p>	<p style="text-align: right;">Page 15364</p> <p>1 of what they were about and their terms of reference and so 2 on. It's like he told you a little bit more than you've 3 told us. Maybe you can't remember anymore, but I would 4 have thought that if you think about it, it might well come 5 to mind. 6 COLONEL SCOTT: It doesn't at this stage, 7 but I'll try to recall. I'll even follow up on the 8 question and get back to the Commission, if it will help. 9 CHAIRPERSON: I take it that's Mr 10 Ntsebeza's question. If I'm wrong then he will immediately 11 correct me. 12 MR NTSEBEZA SC: Thank you, Mr Chairman. 13 Perhaps – 14 MR SEMENYA SC: Chair, if it was, Mr 15 Ntsebeza would have said what is the basis of the 16 likelihood he's pointing to, that there was additional 17 information. 18 CHAIRPERSON: Maybe that's a topic you 19 can deal with in re-examination. Yes, Mr Ntsebeza, carry 20 on. 21 MR NTSEBEZA SC: Thank you, Mr Chairman, 22 Commissioners. Colonel, perhaps let's take it step by 23 step. There's one thing that you remember and you remember 24 because you have repeated it now three times, and that is 25 transport was arranged for you by Major-General Annandale.</p>
<p style="text-align: right;">Page 15363</p> <p>1 Colonel. 2 COLONEL SCOTT: And obviously you're 3 implying that that may be so, but it's not the case, but 4 what I'm trying to say is I know General Annandale arranged 5 the transport there. I was, and I say this because I had 6 to fly, because it was a matter of urgency, so I was flown 7 to the air wing, I was taken from the air wing to the 8 building. I went up into the conference room which I was 9 told to report to. These were the people that were there. 10 My assumption is that looking at them and knowing their 11 backgrounds, which is strong in the Public Order Policing 12 environment, that their role was for me to brief them and 13 then considering what the President had said about all our 14 policies and procedures and that it was their role to now 15 weight up what we were doing against the policies and 16 procedures. They needed to review our policies and 17 procedures. So as I say, I'm not too sure outside of that 18 what more you are asking for, because there wasn't a 19 thorough briefing on this is their mandate, this is who 20 they are as a team. I don't recall that being said to me. 21 CHAIRPERSON: I think the suggestion is, 22 it was a little bit more specific than would you go to 23 Pretoria to speak to this group of people at that place, 24 full stop. The likelihood is that he would have given you 25 a bit more detail, not necessarily a full detailed account</p>	<p style="text-align: right;">Page 15365</p> <p>1 COLONEL SCOTT: Yes. 2 MR NTSEBEZA SC: Transport from where? 3 COLONEL SCOTT: From Potchefstroom. 4 MR NTSEBEZA SC: From Potchefstroom. 5 Potchefstroom is the one where SAPS were meeting for 6 purposes of looking at the evidence and how they were going 7 to deal with it in the event of a commission of inquiry. 8 COLONEL SCOTT: They were putting to 9 reconstructing the story – 10 MR NTSEBEZA SC: Reconstructing the 11 story. Reconstructing the story. Now anyway, that was 12 Potchefstroom. So you were there. Now can you remember 13 how Major-General Annandale communicated the trip to you 14 that you had to undertake? 15 COLONEL SCOTT: Well, I'm assuming that – 16 and I know that the reason I had to fly was because I was 17 playing a pivotal role in helping to put together the 18 presentation. So whether he was worried that in my absence 19 that would start slowing down, because obviously we needed 20 to get as far as we could to brief the National 21 Commissioner by the next week, so that's why I say it was 22 quick in and out, and I can recall something in the line of 23 there was an amount of hours given that I was supposed to 24 go and return by, and it actually took a little bit longer 25 than I had expected, for that matter as well, and that's</p>

<p style="text-align: right;">Page 15366</p> <p>1 the reason for the flight, is because to get there quickly, 2 do the actual presentation, immediately return to the air 3 wing and get back to Roots to continue with the role I was 4 playing in building the presentation. 5 MR NTSEBEZA SC: On the phone he would 6 have told you, listen, we want you there – he would have 7 told you there are people to whom you must go and make a 8 presentation. He would have told you that in the phone? 9 COLONEL SCOTT: Well, he – 10 MR NTSEBEZA SC: Especially because you 11 were busy in Potchefstroom, were you not? 12 COLONEL SCOTT: Yes. 13 MR NTSEBEZA SC: Yes, he takes you out of 14 there and says, listen, you have to go, and he would have 15 said to you in these operations between these two dates 16 have to be weighed against the policies. Wouldn't he have 17 said that? 18 COLONEL SCOTT: He may have. 19 MR NTSEBEZA SC: Does that not ring a 20 bell? 21 COLONEL SCOTT: Look, I know what you're 22 expecting, but all I'm trying to say, one has to be 23 realistic. We're talking about over a year ago and you're 24 asking me to recall a conversation which wasn't of much 25 importance to me to have to possibly remember the direct</p>	<p style="text-align: right;">Page 15368</p> <p>1 jogging your memory. But did he tell you who would meet 2 you at the airport? You were going to fly to OR Tambo. 3 Who would meet you there? 4 COLONEL SCOTT: No, no, it's – it wasn't 5 a commercial flight. 6 CHAIRPERSON: You said the air wing took 7 you. 8 COLONEL SCOTT: Yes. So that's not OR 9 Tambo. The police has got a heliport inside the police 10 college. 11 CHAIRPERSON: So you actually flew, were 12 taken in a police helicopter – 13 COLONEL SCOTT: Yes, one of the – 14 CHAIRPERSON: - from Potchefstroom to 15 Pretoria, the special heliport of the police. 16 COLONEL SCOTT: Yes. 17 CHAIRPERSON: At the police headquarters, 18 is it? 19 COLONEL SCOTT: And one of the members, I 20 think it may have been one of the task force members that 21 I'd arranged to come from the unit, which is a matter of 22 400 metres away, drove me to the ORS division, HQ. 23 CHAIRPERSON: So you actually were told, 24 I take it, to go to the ORS headquarters and you were told 25 you were to go to the airport in Potchefstroom and you will</p>
<p style="text-align: right;">Page 15367</p> <p>1 facts of at that time. So, and I've got no issue with 2 saying to you what I know and if I recall it I'll say to 3 you I just, nothing like that actually rings a bell. It 4 makes logical sense what you're saying. 5 MR NTSEBEZA SC: You see I'm asking, 6 Colonel, because on your evidence now you are busy in 7 Potchefstroom. It's a very important task that you are 8 performing. You are central. You came to Marikana on the 9 13th and you were in the JOC for most of the time and you 10 are the person in fact who had been called specifically 11 because of your specialist skills, and you were now at 12 Marikana to reconstruct, in your own evidence, what had 13 happened. Now there must be a reason to persuade you to – 14 and it cannot just be because the other person who's asking 15 you to do so is a Major-General. 16 COLONEL SCOTT: Well, it's an instruction 17 from him. 18 MR NTSEBEZA SC: Yes. 19 COLONEL SCOTT: I need to obey. 20 MR NTSEBEZA SC: Yes. 21 COLONEL SCOTT: Now he would have got 22 some form of request for that. So, but I can't obviously 23 know what that is or who gave it to him or – 24 MR NTSEBEZA SC: Maybe let's resort to 25 what was suggested, that you probably have something</p>	<p style="text-align: right;">Page 15369</p> <p>1 be taken in a police helicopter to the heliport and you'll 2 then be taken from there to the ORS headquarters, and you 3 went to a conference room and you spoke to the people 4 there. Is that what it amounts to? 5 COLONEL SCOTT: Yes. 6 CHAIRPERSON: Alright, and Mr Ntsebeza 7 will forgive me if I anticipate perhaps a question he's 8 going to ask; you may have difficulty remembering what 9 precisely you were asked to do, but perhaps, I'm sure you 10 can remember what you did and we can infer from that that 11 what you did was what you'd been asked to do. So what 12 exactly did you do when you met these gentlemen in the ORS 13 headquarters? 14 COLONEL SCOTT: I just presented the 15 presentation, and I know there was difficulty with the 16 video and, or the sound. I can remember we had a 17 difficulty with speakers there, so I'm not sure how we 18 overcame that, but we were running around. 19 [12:55] That's probably one of the reasons that I 20 actually returned later than I should have because it was 21 critical to actually have the sound for the movie clips 22 which were put into the presentation. 23 CHAIRPERSON: By the presentation I take 24 it you mean an earlier version of exhibit L. 25 COLONEL SCOTT: Yes.</p>

<p style="text-align: right;">Page 15370</p> <p>1 CHAIRPERSON: Exhibit L was in the course 2 of preparation at that stage. 3 COLONEL SCOTT: That's right, ja. 4 CHAIRPERSON: You told us it was only 5 finalised even after Roots. 6 COLONEL SCOTT: Yes. 7 CHAIRPERSON: And it was – the 8 preparation was under say. 9 COLONEL SCOTT: Yes. 10 CHAIRPERSON: So you took it in embryo 11 almost as it was at the time – 12 COLONEL SCOTT: Yes. 13 CHAIRPERSON: - with you and you 14 presented it to this panel of people. 15 COLONEL SCOTT: Yes. 16 CHAIRPERSON: And did they question you 17 about it? 18 COLONEL SCOTT: The only response I can 19 remember getting was from Brigadier Hunter who is from 20 KwaZulu Natal, who's a seasoned POPs member most of his 21 career. And his actual words were "this is not a POP 22 operation." 23 CHAIRPERSON: Did he mean by that it's 24 not part of the things that POPs is supposed to do or did 25 he mean by that it's not a POPs operation as it should be?</p>	<p style="text-align: right;">Page 15372</p> <p>1 limited time. Was that conveyed to the panel? 2 COLONEL SCOTT: No. I think only after 3 some time as well when I actually got to grips with going 4 back and reflecting properly and going through 5 contemporaneous documents that I had and looking at 6 timeframes and so on in my documents on my computer that I 7 actually started really putting together what came to me as 8 the consolidated statements here. I know there are times 9 at Roots where somebody obviously said to me listen but 10 this is where we were and changed my mind then with regard 11 to the plan because it's reflected then in the plan. And 12 obviously I went into Roots thinking something and I came 13 out thinking another thing. But as I say, it may sound 14 difficult to understand here, but that time at Roots is and 15 for many colleagues that I've spoken afterwards that were 16 specifically involved in the long hours and so on becomes 17 vague. You understand what you're dealing with at the time 18 you're dealing with it, but when you move on it's though 19 you move on and to recollect the detail of where you were 20 and what you were doing starts becoming something of a loss 21 of a memory. 22 CHAIRPERSON: I can understand that, I'm 23 not concerned with detail, but what does interest me is 24 you've said repeatedly to us now and I understand entirely 25 what you're saying, that the plan as it was ultimately</p>
<p style="text-align: right;">Page 15371</p> <p>1 Or was it ambiguous or how do you understand him? 2 COLONEL SCOTT: What I understood was 3 he'd said that this level of violence from the crowd was 4 not for POPs to deal with. But in that, he said this was 5 not a POP operation and not meant to have been dealt with 6 by POPs. 7 CHAIRPERSON: It was a comment by him, 8 but I was interested to know whether anyone asked you any 9 questions. 10 COLONEL SCOTT: No. 11 CHAIRPERSON: For clarity or anything of 12 that sort. 13 COLONEL SCOTT: No. That's the only 14 comment I can recall because that did stick with me, but I 15 don't recall other comments or questions being made. 16 CHAIRPERSON: Did you tell him that the 17 plan that was implemented on the Thursday had been in 18 preparation since the Tuesday, you remember that's been 19 covered before in your evidence and I know you had memory 20 problems and so on. But when you spoke to this panel of 21 people at the ORS headquarters did you present that version 22 of the presentation to them? That this plan wasn't 23 something that was knocked together in a hurry, if I can 24 use that expression on the Thursday in the face of a 25 command that action had to be taken that day and there was</p>	<p style="text-align: right;">Page 15373</p> <p>1 devised, if that's right word, was put together in a hurry, 2 under pressure because you were told it's got to be done 3 today. 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: So detail I don't expect 6 you to remember, but I must confess this is a prima facie 7 view obviously I must keep an open mind on this matter, but 8 I would have expected you to have remembered at least that 9 you'd operated under time and pressure. 10 COLONEL SCOTT: Well I'm aware of that, 11 Chairperson, and that's why I've stated that the detail of 12 that plan for the 13:30 was not discussed before that. 13 CHAIRPERSON: All I wanted to know is was 14 that fact or series of facts communicated to this panel of 15 people, officers to whom you were taken by helicopter from 16 Roots to whom you presented the presentation as then 17 existed on the particular day that we're talking about. 18 COLONEL SCOTT: Whatever the presentation 19 was I was showing I would have obviously spoken to that and 20 my understanding at that time – I can't recall obviously 21 what I told them. It would have been the whole 22 presentation and speaking to each slide again I could have 23 said to them that you know the 13:30 came and it was time 24 to put the plan forward. But again I'm speculating now. 25 CHAIRPERSON: Do you remember the dates</p>

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1 on which this presentation was made?

2 COLONEL SCOTT: No, that's why I say I

3 think it's late in the first week.

4 CHAIRPERSON: Late in the first week, so

5 we could more or less – I know it's 1 o'clock so we must

6 stop soon, but I take it, it might be possible for us or

7 for you to identify with reference to the various slides

8 that were found in your computer, at what stage of the

9 presentation this took place and what precisely these

10 people were told. But it does sound as if a less – a time

11 pressure point was contained in the presentation as it then

12 existed is not something that would have been conveyed to

13 the panel. Is that correct?

14 COLONEL SCOTT: Yes, that makes sense.

15 CHAIRPERSON: Ja, okay. Is it convenient

16 Mr Ntsebeza if we take the lunch adjournment now?

17 MR NTSEBEZA: Yes, Chair.

18 CHAIRPERSON: But before we do that my

19 colleague, Advocate Hemraj wants to say something.

20 COMMISSIONER HEMRAJ: Mr Semenya, is it

21 not possible to get some clear details about the meeting

22 alluded to instead of this speculation?

23 MR SEMENYA SC: Yes, we also made the

24 observation we might need to find more information on that

25 meeting.

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1 CHAIRPERSON: Mr Ntsebeza with your

2 permission may I take the lunch adjournment now?

3 MR NTSEBEZA: Yes, you may –

4 CHAIRPERSON: Thank you, Mr Ntsebeza,

5 we'll take the lunch adjournment. We'll try to resume at

6 quarter to two.

7 MR NTSEBEZA: How long is the lunch

8 adjournment, Mr Chairman?

9 [COMMISSION ADJOURNS COMMISSION RESUMES]

10 [13:52] CHAIRPERSON: The Commission resumes.

11 Colonel, you're still under oath.

12 DUNCAN GEORGE SCOTT: s.u.o.

13 CHAIRPERSON: Mr Ntsebeza, do you have

14 some more questions for the witness?

15 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):

16 Yes, Mr Chairman, thank you very much. Now Colonel, it

17 would appear that we are closer to identifying this meeting

18 in Pretoria to which you were flown from Potchefstroom.

19 Now the evidence leaders have just made available to me

20 hardcopies of what they consider is the presentation which

21 you made. Now have you –

22 CHAIRPERSON: Has it been handed in as an

23 exhibit, or are you going to hand it in as an exhibit, if

24 it hasn't been?

25 MR NTSEBEZA SC: I was proposing to do

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1 so, Mr Chairman. There are three copies here.

2 CHAIRPERSON: Alright, Ms Pillay with her

3 customary efficiency will tell us what the next number is.

4 MS PILLAY: Chair, it's JJJ199.

5 CHAIRPERSON: 199, and how do I describe

6 it? Presentation, SAPS presentation as at, and then the

7 date.

8 COLONEL SCOTT: Chair, the presentation's

9 name is Marikana Master HQ, for head office –

10 CHAIRPERSON: Hang on. SAPS

11 presentation, "Marikana since 10 August 2012." That's is,

12 is it? HQ. I see, thank you. You haven't got it?

13 MR SEMENYA SC: I don't have it.

14 CHAIRPERSON: This is an extraordinary

15 situation; the SAPS counsel haven't got a copy of their own

16 presentation. Well, perhaps they'd like to borrow mine in

17 the meanwhile and then I will just listen quietly, as I

18 always do.

19 MR NTSEBEZA SC: Mr Chairman, perhaps we

20 could proceed to something else whilst we sort out the –

21 because I believe, challenged as I am in things electronic,

22 but I'm told hard drive, memory sticks, something is being

23 done, such that we could all understand together with the

24 witness.

25 CHAIRPERSON: Yes, you and I are

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1 challenged in this respect, aren't we? But there are a lot

2 of clever people here who aren't, so I'm sure they'll solve

3 the problem for us.

4 MR NTSEBEZA SC: Yes, thank you, Mr

5 Chairman. Now has it been indicated to you that it seems

6 that what might be put up actually is the meeting in

7 Pretoria that you talked about, during lunch?

8 COLONEL SCOTT: We're speaking about the

9 presentation that I presented –

10 MR NTSEBEZA SC: The presentation, yes.

11 COLONEL SCOTT: Yes.

12 MR NTSEBEZA SC: Now I don't know whether

13 now that you have seen it –

14 CHAIRPERSON: Someone has got a phone

15 that's going off. Sorry to interrupt you, Mr Ntsebeza.

16 Whoever has got the phone must please turn it off. It's

17 not me, but I'm turning mine off at the same time, and if

18 anyone's phone, apart from Mr Ntsebeza and the colonel,

19 goes off in the next few minutes, I'll ask that person to

20 leave the room.

21 MR NTSEBEZA SC: Now Colonel, would you

22 probably remember when about this presentation was made by

23 you in Pretoria?

24 COLONEL SCOTT: I just want to go back to

25 the properties because I would have saved it on the day.

<p style="text-align: right;">Page 15378</p> <p>1 It seems to be the 29th of August.</p> <p>2 MR NTSEBEZA SC: 29th of August.</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 MR NTSEBEZA SC: Now who were you</p> <p>5 received by there, now that at least there's a context?</p> <p>6 COLONEL SCOTT: I was flown into the air</p> <p>7 wing where a Special Task Force member took me to the</p> <p>8 Operational Response Services, that's in HQ where I'm</p> <p>9 actually based. So there wasn't anybody specific to</p> <p>10 receive me; I just reported to the conference room that –</p> <p>11 MR NTSEBEZA SC: Yes, so that we can all</p> <p>12 have a picture, so you reported to the conference room and</p> <p>13 who did you find?</p> <p>14 COLONEL SCOTT: The people that I've</p> <p>15 mentioned to you. There could be more. That's what I</p> <p>16 remember. There is one other, I just don't know his name,</p> <p>17 but he had the rank of colonel. It's not somebody known to</p> <p>18 me.</p> <p>19 MR NTSEBEZA SC: And I thought you could</p> <p>20 then give a sense to the Commission of what happened. You</p> <p>21 are here now; brigadier said you must – I mean General</p> <p>22 Annandale said you are. Who appeared to be in charge? Who</p> <p>23 appeared to be chairing this meeting? Was there an agenda?</p> <p>24 COLONEL SCOTT: No. I just recall them</p> <p>25 sitting around a small table, similar to the one we see in</p>	<p style="text-align: right;">Page 15380</p> <p>1 meeting, it would have been mentioned in that.</p> <p>2 MR NTSEBEZA SC: I know you're saying</p> <p>3 that that is what you thought, but do you have a basis for</p> <p>4 having thought that this was the purpose of the exercise?</p> <p>5 COLONEL SCOTT: Do I have a basis for?</p> <p>6 MR NTSEBEZA SC: For having testified</p> <p>7 that your understanding was that they, those people whom</p> <p>8 you were making a presentation to, needed the policies of</p> <p>9 the police to be brought together to be looked at, and then</p> <p>10 obviously the operation to be weighed up as against those</p> <p>11 policies?</p> <p>12 COLONEL SCOTT: Well the –</p> <p>13 MR NTSEBEZA SC: That's your testimony.</p> <p>14 COLONEL SCOTT: Yes, I hear you.</p> <p>15 MR NTSEBEZA SC: Yes.</p> <p>16 COLONEL SCOTT: But like I'm saying, I</p> <p>17 know most of the people I've mentioned, their backgrounds,</p> <p>18 which is strong in the POPs environment. So I couldn't</p> <p>19 think of any other reason therefore that they would be</p> <p>20 brought together, and for me to have to brief them, other</p> <p>21 than that would be their role. As I say two, I can</p> <p>22 remember two of them - there may have been more - that were</p> <p>23 at the briefing at Roots when the National Commissioner was</p> <p>24 briefed. They gave input, so it's my rationale, as I'm</p> <p>25 saying, and my deduction that that's what they were there</p>
<p style="text-align: right;">Page 15379</p> <p>1 front of me here, and I proceeded to connect my computer up</p> <p>2 and obviously those that I knew and with etiquette and</p> <p>3 protocol I would greet, but I connected the computer, but I</p> <p>4 do remember there being an issue with speakers, because it</p> <p>5 was a smart screen that I was trying to run it through and</p> <p>6 there was no sound. So we, someone arranged from somewhere</p> <p>7 in the building speakers, but we waited some time for that.</p> <p>8 MR NTSEBEZA SC: So now you're saying</p> <p>9 there were no introductory remarks like thank you for</p> <p>10 making the time, your busy schedule, this, that?</p> <p>11 COLONEL SCOTT: No, it was very informal.</p> <p>12 MR NTSEBEZA SC: Very informal?</p> <p>13 COLONEL SCOTT: Yes.</p> <p>14 MR NTSEBEZA SC: Now when you testified</p> <p>15 that they needed the policy, the policies of the police to</p> <p>16 be brought together to be looked at, then obviously the</p> <p>17 operation weighed up against the policies, now –</p> <p>18 COLONEL SCOTT: As I say, that's my</p> <p>19 understanding. What they may have been instructed may be</p> <p>20 different, but that was my understanding, putting together</p> <p>21 that the President had given that in his directive for the</p> <p>22 terms of reference for this Commission, and I was coming to</p> <p>23 bring them the presentation to show them, so, but I'm sure</p> <p>24 that can be clarified. As I say, if there's some document</p> <p>25 that would have sanctioned that group of people, or that</p>	<p style="text-align: right;">Page 15381</p> <p>1 to do.</p> <p>2 CHAIRPERSON: That was after this –</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 CHAIRPERSON: - gathering you're telling</p> <p>5 us about now.</p> <p>6 COLONEL SCOTT: Ja.</p> <p>7 CHAIRPERSON: This was near the end of</p> <p>8 Roots, was it?</p> <p>9 COLONEL SCOTT: Yes, it was probably the</p> <p>10 second-last day.</p> <p>11 CHAIRPERSON: Second-last.</p> <p>12 COLONEL SCOTT: Somewhere there.</p> <p>13 CHAIRPERSON: And did you at that stage</p> <p>14 present to the National Commissioner exhibit L as it then</p> <p>15 existed?</p> <p>16 COLONEL SCOTT: Yes.</p> <p>17 CHAIRPERSON: Or the presentation as it</p> <p>18 then existed.</p> <p>19 COLONEL SCOTT: Yes.</p> <p>20 CHAIRPERSON: And two of the people to</p> <p>21 whom you'd presented it earlier, in an earlier edition, I</p> <p>22 take it, or were there any changes between your going to</p> <p>23 Pretoria and the presentation to the National Commissioner?</p> <p>24 COLONEL SCOTT: Yes, from what I can see</p> <p>25 in the one marked as HQ there are changes to the one that</p>

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1 the National Commissioner –

2 CHAIRPERSON: Yes.

3 COLONEL SCOTT: Yes.

4 CHAIRPERSON: And then two of the people

5 to whom you'd made your presentation earlier then spoke as

6 well?

7 COLONEL SCOTT: Yes.

8 CHAIRPERSON: Effectively spoke to the

9 National Commissioner and those present?

10 COLONEL SCOTT: Well, there was a huge

11 amount of people, about 40-odd people sitting around a huge

12 U-shaped type setup, and as I say, I recall what, some of

13 what Brigadier Mkhwanazi said. He was alluding to positive

14 and negative attractions. Colonel Twala I also remember

15 speaking. I just, I can't remember what he said, but I do

16 remember him speaking as well.

17 MR NTSEBEZA SC: Now let me understand

18 this. Was there a time when the presentation was made to

19 the National Commissioner?

20 COLONEL SCOTT: At, near the end of

21 Roots, yes.

22 MR NTSEBEZA SC: Yes, I asked the

23 question whether there was a time when the National

24 Commissioner was, there was a presentation to her.

25 COLONEL SCOTT: Yes, I've mentioned that.

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1 MR NTSEBEZA SC: And that is on an

2 occasion other than this one?

3 COLONEL SCOTT: I know there was the one

4 at Roots, she was there for the final presentation at

5 Roots, and she had interests at one stage, because at Roots

6 we still didn't know in essence what had gone on at scene 2

7 in detail, so we tried to hold a meeting more with people

8 in the first week of October and somewhere after that the

9 National Commissioner came in again to have a look at scene

10 2, and had all the commanders that were present at scene 2

11 sit down so she could also understand what happened at

12 scene 2, and that was somewhere in October as well. It

13 wasn't the full presentation.

14 MR NTSEBEZA SC: Yes, but I'm just

15 seeking to isolate this one incident.

16 COLONEL SCOTT: The Roots incident?

17 MR NTSEBEZA SC: Is that the August

18 incident, the August 29th incident? I just want to – you

19 remember before lunch we were talking about what I

20 characterise as a review.

21 COLONEL SCOTT: Yes.

22 MR NTSEBEZA SC: That is the meeting to

23 which you came and made a presentation.

24 COLONEL SCOTT: Yes.

25 MR NTSEBEZA SC: And you made that

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1 presentation to Brigadier Mkhwanazi, Brigadier Hunter, and

2 others.

3 COLONEL SCOTT: Yes.

4 MR NTSEBEZA SC: Now at that meeting

5 which you have indicated there were four people, that is

6 those you can recall?

7 COLONEL SCOTT: Yes.

8 MR NTSEBEZA SC: Was it at any stage

9 larger than that, or were those the four people, or were

10 those the only people that you recall?

11 COLONEL SCOTT: And I do recall another

12 colonel being there. I just don't know who he is. It's

13 possible there were more, but I'm working again on –

14 MR NTSEBEZA SC: What is the maximum

15 number of people, just trying to throw your mind back, who

16 would have been there at that meeting?

17 COLONEL SCOTT: Well, I know it was a

18 small group.

19 MR NTSEBEZA SC: Small group?

20 COLONEL SCOTT: Ja.

21 CHAIRPERSON: I'm sorry to interrupt.

22 You say what was the concern with the second meeting, the

23 smaller group with the National Commissioner, was what had

24 happened at scene 2 because that had not been clear at

25 Roots. Is that right?

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1 COLONEL SCOTT: Yes.

2 CHAIRPERSON: So did she see the whole

3 presentation again, or did she see the presentation from,

4 as we have it in exhibit L, from slide 213, which as far as

5 I can see is where the section on scene 2 and so forth –

6 COLONEL SCOTT: We only dealt with scene

7 2 there, Chairperson.

8 CHAIRPERSON: Thank you.

9 MR NTSEBEZA SC: Yes, and I now

10 understand, this – is it Roots, or it means Potchefstroom?

11 COLONEL SCOTT: Potchefstroom.

12 MR NTSEBEZA SC: Yes, now at

13 Potchefstroom, what was happening would be what really

14 amounts to a debriefing?

15 COLONEL SCOTT: A reconstruction –

16 MR NTSEBEZA SC: A reconstruction.

17 COLONEL SCOTT: - because nobody had the

18 full picture of what went on.

19 MR NTSEBEZA SC: Yes.

20 COLONEL SCOTT: Everybody had pieces of

21 it, so we tried to put it together to understand it.

22 MR NTSEBEZA SC: Yes, and all manner of

23 people were there; officers who had been involved in it,

24 who could explain what happened, why it happened the way it

25 did, and all of that, they were all involved in that?

<p style="text-align: right;">Page 15386</p> <p>1 COLONEL SCOTT: Only the commanders. 2 MR NTSEBEZA SC: Only the commanders. 3 COLONEL SCOTT: Ja. 4 MR NTSEBEZA SC: Yes, and that meeting 5 would not in terms of exhibit S be characterise as having 6 been a review? 7 COLONEL SCOTT: Well, you've stipulated 8 the criteria – 9 MR NTSEBEZA SC: Yes. 10 COLONEL SCOTT: - and obviously those 11 members were involved in the operation, so yes. 12 MR NTSEBEZA SC: Ja, I just want for the 13 moment for us to disabuse our minds of that meeting, the 14 later meeting. But there's something that you mention, and 15 that is – and correct me if I'm wrong – two of the officers 16 to whom you made a presentation in Pretoria were also 17 present at the presentation to the National Commissioner. 18 Did I get you correct? 19 COLONEL SCOTT: That's correct. 20 MR NTSEBEZA SC: And those would be? 21 COLONEL SCOTT: Brigadier Mkhwanazi and 22 Colonel Twala. As I say, there could have been more, I'm 23 not sure, but those are the two I remember. 24 MR NTSEBEZA SC: Yes, so that on that 25 basis, if it was put, as I'll take you to the references,</p>	<p style="text-align: right;">Page 15388</p> <p>1 shown this passage in the transcript, or are you going to 2 read it to us? What is happening? 3 MR NTSEBEZA SC: Mr Chairman, I don't 4 know which would be easier. 5 CHAIRPERSON: It will be easier to show 6 it because that would obviously be the best thing to do. 7 MR NTSEBEZA SC: Yes. 8 CHAIRPERSON: Or the better thing to do, 9 but if that can't be done, then the only other thing that 10 can be done is for you to read it. So these clever 11 electronic people can help us perhaps by showing it on the 12 screen. The operator is shaking his head and not nodding 13 his head, so that means no. So you'd better read it to us, 14 Mr Ntsebeza. 15 [14:12] MR NTSEBEZA SC: The questioning and the 16 debate between me and Brigadier Mkhwanazi was as follows, 17 "But you do know and you accept, and this is where the 18 Chairman's reference to 3.5 may be apposite for me to put 19 to you. Now 3.5 is exhibit S. You will see in exhibit 5, 20 I mean in exhibit S 3.5 that you see there every time 21 minimum force and here we are not even talking, I suppose 22 maximum force/minimum force but every time minimum force is 23 used, a review of the action taken must always be done by 24 an officer holding the rank of captain and above who was 25 not part of the action and was also not on the scene and</p>
<p style="text-align: right;">Page 15387</p> <p>1 if it was put to Brigadier Mkhwanazi that there would have 2 been a meeting at which he might or might not have been 3 present, and this meeting was the one contemplated in 4 exhibit S, Brigadier Mkhwanazi would not confuse it with 5 the meeting in Potchefstroom, would he? 6 COLONEL SCOTT: Ja, I don't know – 7 CHAIRPERSON: I'm not sure that the 8 witness can answer that. That's a question that Brigadier 9 Mkhwanazi should have been asked, but I'm not sure one can 10 ask the witness to conjecture what Brigadier Mkhwanazi 11 would or would not have understood. 12 COLONEL SCOTT: I agree, Chairperson. 13 CHAIRPERSON: And whatever he says by way 14 of conjecture would, with great respect to him, not be 15 worth very much. 16 MR NTSEBEZA SC: Maybe let's go to the 17 reference where Brigadier Mkhwanazi was testifying, and the 18 reference would be day 33, p3534, line 7 to 3535, line 7. 19 The reference, Chairman, that I've been given is day 33 – 20 CHAIRPERSON: Just give us the page. 21 MR NTSEBEZA SC: 33, 3534, line 7 – 22 CHAIRPERSON: 3534? 23 MR NTSEBEZA SC: And it runs through to 24 line 3535, line 7. 25 CHAIRPERSON: Is the idea that we be</p>	<p style="text-align: right;">Page 15389</p> <p>1 that would be a person like you particularly. "But you 2 agree, counsellor," that's what Brigadier Mkhwanazi says, 3 "it is like that. Procedurally we have to do that way, I 4 agree with you. However I was explaining the purpose of my 5 invitation in Potchefstroom." And then I say, "Okay, let's 6 leave Potchefstroom aside. Now let's focus on the 7 requirement in 3.5. Do you know, as a commissioned officer 8 in your rank, quite clearly one above the rank of captain, 9 whether as a consequence of this injunction, exhibit S, 10 which came to you by way of a circular on the 20th of July 11 2012, whether any officer reviewed the action that had been 12 taken, particularly on the two days where violence resulted 13 in the death of the police, the 13th and of course – and of 14 course three miners – and on the 16th the death of those 15 people." Do you follow? 16 COLONEL SCOTT: Yes. 17 MR NTSEBEZA SC: Now Brigadier Mkhwanazi 18 replied, "Not in my knowledge, counsel." Do you follow 19 that? 20 COLONEL SCOTT: Yes. 21 MR NTSEBEZA SC: Then I did what I had 22 done before I put this question to him and I said, "Now of 23 course I always work or want to remind you that you are 24 under oath and because it's something that you must 25 remember, I want you to think very carefully about this.</p>

<p style="text-align: right;">Page 15390</p> <p>1 Are you saying that as head of training for POPS that 2 neither you nor anyone of a rank above that of captain 3 complied with that regulation or injunction which is 4 expressed in peremptory terms? I must remind you, no 5 exceptions as to what must be done and no exceptions as to 6 how frequently it must be done, it must always be done. 7 Whether there is a Commission or no Commission appointed 8 yet, that is a compliance issue. Are you saying under oath 9 before your God that you want to stick with your answer?" 10 Follow? 11 COLONEL SCOTT: Yes. 12 MR NTSEBEZA SC: And he says, 13 "Counsellor, as I said" – 14 CHAIRPERSON: We are now being shown the relevant 15 page on the screen but the passage which you are now 16 reading is below the passage which is now on the screen and 17 then the answer Brigadier Mkhwanazi gives to the question 18 that you've just read out, Mr Ntsebeza, now appears at 19 lines 21 and following. 20 MR NTSEBEZA SC: Now it seems to me and I 21 would invite your comment, that Brigadier Mkhwanazi here 22 denies that the SAPS had conducted any such review. 23 CHAIRPERSON: He says to his knowledge. 24 MR SEMENYA SC: To his knowledge. 25 CHAIRPERSON: To his knowledge, he says.</p>	<p style="text-align: right;">Page 15392</p> <p>1 time then, Mr Chairman. 2 CHAIRPERSON: Read it quietly and when you've 3 finished reading it let us know and then Mr Ntsebeza will 4 ask you a question. 5 COLONEL SCOTT: Are we moving to a new 6 page? 7 CHAIRPERSON: Do you want to see a bit more of 8 3536? No, I think you need a bit, you need to read the 9 bottom of 3536 first, don't you, and then 3537 is below it 10 and then 3538 is top right hand corner. 11 COLONEL SCOTT: If I'm correct I am 12 reading from 3538 going down. 13 CHAIRPERSON: Alright. 14 COLONEL SCOTT: At least to 3540. 15 CHAIRPERSON: Sorry yes, I had it wrong. 3538 to 16 3539 and then 3540. Okay, when you've read it all, I think 17 raise your right hand and we can carry on. 18 COLONEL SCOTT: We can go to 3539. 19 MR NTSEBEZA SC: And may I ask you to 20 read on page 3540 up to line 22 for the question that I 21 will put? 22 COLONEL SCOTT: We can go to, if we can 23 just move it up a little, 3540, the sign is just a bit in 24 the way. Can we raise it just a little more to the bottom 25 of – I've read to the bottom of 3540.</p>
<p style="text-align: right;">Page 15391</p> <p>1 MR NTSEBEZA SC: Yes, to his knowledge. 2 Now, he does more than that. In line, P3538 line 1 – 3 CHAIRPERSON: Sorry, that's page 3538. We're at 4 the moment looking at 3535 so we have to move three pages 5 on, is that correct? 6 MR NTSEBEZA SC: Yes, line 1 to the long, 7 to – but the reference is P3538, Mr Chairman and 8 Commission, line 1 to – 9 CHAIRPERSON: Sorry, we now see page 3538 on the 10 screen and what we see at the moment are lines 1 to 11. 11 Your question ends on line 8 and the Brigadier's reply 12 starts at line 9. 13 MR NTSEBEZA SC: Now if you read that up 14 to page 3540 line 1, let me give you an opportunity to read 15 that, Colonel. Would it be fair to say that he does deny 16 of having been – 17 CHAIRPERSON: If you want to give him an 18 opportunity to read it, I suggest you give him an 19 opportunity to read it and then you can ask him the 20 question, unless he is one of these clever people who can 21 read and listen to someone at the same time. Are you such 22 a person, Colonel? 23 COLONEL SCOTT: It's said that women can 24 multi-task, Chairperson – 25 MR NTSEBEZA SC: Indeed, just take your</p>	<p style="text-align: right;">Page 15393</p> <p>1 MR NTSEBEZA SC: Yes. Now I want to 2 suggest, and this is what I would argue – 3 CHAIRPERSON: The witness has now – you've read 4 all, you've read the section you were asked to read? 5 COLONEL SCOTT: Yes. 6 CHAIRPERSON: So you're able to answer such 7 questions as you may be asked about that material? 8 COLONEL SCOTT: I hope so. 9 MR NTSEBEZA SC: Now it seems to me and I 10 suggest this and I would call for your comment, this 11 meeting in Pretoria which unfortunately all of us hear 12 about today for the first time, as I suggested to you, 13 seems to be the kind of meeting that is envisaged in 3.5, 14 exhibit S. Are we able to agree about that? 15 COLONEL SCOTT: You see after I've read 16 what Brigadier Mkhwanazi is also saying, I'm not sure 17 whether he understood that the coming together of those 18 people was to form a review committee but I think it best 19 for somebody from that committee or the convener of that 20 committee to actually give that input. For myself, I 21 wouldn't know and what the committee did before as well as 22 after the presentation I'm also not aware of. As I say, I 23 was in there to present and out there, I had no inputs in 24 discussions if there were any and the next time I saw them 25 was when they reported to Roots at the time of the National</p>

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1 Commissioner's presentation.
 2 MR NTSEBEZA SC: Yes. No, I certainly
 3 will not wrestle with you on this point and that's why I'm
 4 putting it no higher than to say if you were to be
 5 confronted with the content of exhibit S 3.5 and in the
 6 context of that you were told about the meeting which you
 7 went to brief, you would be forgiven if you characterised
 8 that meeting as having been a review –
 9 MR SEMENYA SC: No, Chair.
 10 MR NTSEBEZA SC: - as contemplated.
 11 MR SEMENYA SC: That's objectionable,
 12 Chair. There is no basis of saying once people are of a
 13 particular rank, they constitute a review committee in
 14 terms of 3.5.
 15 CHAIRPERSON: What do you say to that objection,
 16 Mr Ntsebeza?
 17 MR NTSEBEZA SC: Mr Chairman, as I
 18 understood the witness earlier on, maybe it's meaning*14-
 19 12/1353 to find a point of anything that gets you into the
 20 problem. As I understood him earlier on, when I
 21 characterised this kind of meeting as having a review
 22 meeting, people were not involved of the rank of Colonel, I
 23 mean above Captain, et cetera, he didn't seem to have a
 24 problem with that. In fact he agreed that that is what a
 25 review is as contemplated in exhibit S. Now, the only

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1 question I seek to put to this witness, and I'm not putting
 2 it any higher on the basis that somebody has testified that
 3 it was, if on the basis of what he understands what a
 4 review is, is he able to say – and I'm calling only for his
 5 comment – that when Brigadier Mkhwanazi says *14-12/1515
 6 that he knows of no other meeting, whether of the 3.5
 7 character or not, what are his views about that.
 8 CHAIRPERSON: I don't know that his views, with
 9 respect, are relevant. That's a matter for argument. You
 10 may well criticise the Brigadier's evidence, you may say
 11 the answer is lacking in candour, you may say it's in
 12 conflict with the evidence we have now received. Whether
 13 those arguments would be good or bad is another matter, but
 14 you can certainly argue those points at the end but with
 15 respect, I don't think whatever this witness may say is
 16 going to help us very much further. He will only give his
 17 opinion which will be based on conjecture and it won't take
 18 the matter any further, so I would uphold the objection.
 19 MR NTSEBEZA SC: As the Chairman pleases.
 20 Brigadier – Colonel, I don't have the power to – I don't
 21 want to suggest to you that perhaps this might be an
 22 occasion to recall Brigadier Mkhwanazi but I want to make
 23 this proposition –
 24 CHAIRPERSON: Who is going to recall Brigadier
 25 Mkhwanazi, the Colonel? I mean if you want to get him back

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1 then you can apply to the Commission -
 2 MR NTSEBEZA SC: No –
 3 CHAIRPERSON: - we can consider it, but I mean,
 4 but even if the Colonel thinks it's a good idea I don't
 5 know that we would be bound by his views on the matter.
 6 MR NTSEBEZA SC: Colonel, perhaps you
 7 will appreciate my difficulties, that's why I'm treading
 8 with caution. It's the kind of meeting you would expect to
 9 have been mentioned by Brigadier Mkhwanazi, seeing that he
 10 participated in it.
 11 CHAIRPERSON: Mr Ntsebeza, I'm sorry, it seems to
 12 me that you are repeating the question from another angle
 13 but it's the same question, the same objection I think will
 14 be raised and I will have to uphold it again. You've made,
 15 let me put it this way, I think you've put the factual
 16 basis before the Commission which will enable you to argue
 17 the contentions that you wish to raise in respect of these
 18 answers. I don't think you need go further and I don't
 19 think you can go further.
 20 MR NTSEBEZA SC: Yes.
 21 CHAIRPERSON: I think, I suggest you move on to
 22 another point.
 23 MR NTSEBEZA SC: Thank you, thank you.
 24 Now, there is now a presentation which I believe is the one
 25 that you presented at this meeting. Mr Chairman, may I

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1 indicate that I saw it only this afternoon. I don't know
 2 if I'm able to proceed on that basis now but I've got some
 3 other questions that I may put, I simply –
 4 CHAIRPERSON: I suggest you ask the other
 5 questions then.
 6 MR NTSEBEZA SC: Yes, indeed. Now, about
 7 that meeting, let me just ask if you know whether there was
 8 any, whether there were any minutes and/or whether there
 9 was a report that was generated as a consequence of that
 10 meeting.
 11 COLONEL SCOTT: No, as I've testified it
 12 was informal. When I walked in there were no agendas,
 13 there was no minute-taker, there were only those officers.
 14 MR NTSEBEZA SC: Now assuming, as I will
 15 argue, that it was – or let me put it this way, are you
 16 aware of any report of a review, if there was one, that is
 17 in existence somewhere?
 18 COLONEL SCOTT: No, I'm not.
 19 [14:32] CHAIRPERSON: May I suggest that if you
 20 want to get your hands on any report that was produced in
 21 consequence of this meeting, you should ask the
 22 representatives of the police and I'm sure if they are
 23 aware of such a document they will make it available. Mr
 24 Semanya, can you comment on that? I'm trying to abbreviate
 25 the proceedings a bit, can you help us?

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1 MR SEMENYA SC: We've received their
2 request already, Chair. We have received the request
3 already.
4 CHAIRPERSON: You've already received the
5 request –
6 MR SEMENYA SC: From the evidence
7 leaders.
8 CHAIRPERSON: Yes, I thought so. I
9 thought you were going to receive a request from the
10 evidence leaders. And will you be complying with it in due
11 course?
12 MR SEMENYA SC: Without doubt.
13 CHAIRPERSON: Sorry?
14 MR SEMENYA SC: Without doubt.
15 CHAIRPERSON: Without doubt. Mr
16 Chaskalson, you want to say something?
17 MR CHASKALSON SC: No, Chairperson. I
18 was merely going to put on record that we had made that
19 request and we expect a response shortly.
20 CHAIRPERSON: Of course it may be that –
21 I'm not sure of course whether this witness will be the
22 appropriate witness to ask questions about it, but it may
23 well be that when the document comes Mr Ntsebeza may wish
24 to ask questions, but as long as he addresses them to the
25 appropriate witness I think it will be in order.

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1 MR NTSEBEZA SC: If the document comes,
2 Chair, not when.
3 CHAIRPERSON: If the document comes, yes.
4 There will be two points, won't there? Was there ever a
5 document and if there was and it's no longer available, why
6 is it no longer available and what inferences can be drawn
7 from that. Alternatively if it does come, we will see it
8 and we can proceed.
9 MR SEMENYA SC: Or there may have been no
10 document at all.
11 CHAIRPERSON: Yes, so either there was no
12 document ever, if there was a document but it's no longer
13 available, if so, why and the third question will be here's
14 the document what does it say? But we can't deal with any
15 of those points at this stage.
16 MR CHASKALSON SC: Chairperson, there is
17 in fact a fourth possibility because our request was for a
18 range of different documents. So the –
19 CHAIRPERSON: Where –
20 MR CHASKALSON SC: - but we can't deal
21 with that now either.
22 CHAIRPERSON: We'll cross those bridges
23 when we get there.
24 MR NTSEBEZA SC: Yes, now mister – I mean
25 Colonel, when you presented Exhibit L as the presentation

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1 you obviously were aware of this meeting in Pretoria.
2 COLONEL SCOTT: I think that's a given.
3 Yes.
4 MR NTSEBEZA SC: And I've looked at
5 Exhibit L, you don't refer to it. I'm not saying you
6 should have but you don't refer to a meeting to which you
7 were asked by Major-General Annandale to go and make a
8 presentation of the nature that we talk of.
9 COLONEL SCOTT: If my memory serves me
10 correct, Exhibit L runs from a Monday to a Thursday
11 explaining what happened at the time of Marikana. I'm not
12 expressing thereafter and then simply includes the
13 legislation which is applicable as Annexure slides to the
14 Exhibit itself. So in other words no mention made of
15 Roots, of meetings and –
16 MR NTSEBEZA SC: Now since you are giving
17 a rationalisation of why it is not there, was it a
18 conscious decision to exclude it as part of the
19 presentation?
20 COLONEL SCOTT: As we've said, the
21 presentation was to enlighten the commission to what the
22 police knew at the time, to help to speed up the procedure
23 and bring more light. We did that as objectively as we
24 could with what we had at the time, but it was not to – I
25 mean it got to do with the Marikana event. The issues that

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1 you're speaking about now fall outside of the event. And I
2 don't deem that then necessary to have been put in to the
3 presentation for that matter.
4 MR NTSEBEZA SC: What did you understand
5 then the reason for Major-General Annandale asking you to
6 go and make this presentation to this group of people? I
7 know you said you don't recall but now with the benefit of
8 hindsight, what do you think was the purpose?
9 COLONEL SCOTT: As I said, I can make
10 deductions and that is that these members are strong in the
11 POPS line as I've testified and that they were brought in
12 obviously for one of two reasons. Either they needed to
13 review our policies to see whether they were meeting the
14 actual operations which the POPS members were facing and
15 were not deficient or alternatively it could've been that
16 they needed to review the operation against the policies.
17 But those are the only two deductions I can make. If there
18 was something else I'm not sure. But like I say I think
19 much of the line of questioning can be cleared up simply in
20 the documentation which I think the evidence leaders have
21 requested because any committee that's convened will have
22 some form of an instruction to do so or the explanation of
23 why it needed to do so.
24 MR NTSEBEZA SC: Now there is just one,
25 Mr Chairman, I'm moving to something else. There's just

<p style="text-align: right;">Page 15402</p> <p>1 one aspect which I want to clarify for myself and that is 2 in relation to who was at the JOC from the time that you 3 came there until the events of the 16th? 4 CHAIRPERSON: Are you – do you want him 5 to cover the whole period – 6 MR NTSEBEZA SC: No – 7 CHAIRPERSON: - from the 13th to the 16th 8 or are you only asking questions about – 9 MR NTSEBEZA SC: No, I'm – there's a 10 specific – I'm going to refer him to a particular exhibit. 11 I'm told it's GGG40. It's pictures inside the JOC. Now I 12 don't know whether it's possible to blow those up. Now 13 from your recollection of the people whose names appear 14 there, and I think there are three of these photos. Now 15 are you able to know on what dates those people were are 16 there or is that exhibit reflective of who was at the JOC 17 during the period? 18 COLONEL SCOTT: I think it may have been 19 during the period, but I should be able to identify, with 20 hindsight as well knowing certain people who were there and 21 who weren't there, who – 22 CHAIRPERSON: May I say – sorry to 23 interrupt you. May I say that the photograph be raised 24 slightly because there are names at the bottom which we 25 can't see. Yes, that's better, thank you. Sorry for</p>	<p style="text-align: right;">Page 15404</p> <p>1 aware that there are other personnel who for instance are 2 not there who were also part of the JOC. I think of the 3 intelligence people, Brigadier Engelbrecht. There were 4 some of the public order policing commanders from Gauteng 5 that were there on the Wednesday who are not depicted here 6 at this time. So I'm not sure if that's just from the 16th 7 possibly. 8 MR NTSEBEZA SC: And as you testified 9 about, for instance, the provincial commissioner, she 10 would've been one of those people who would not be 11 reflected in these exhibits even though she was at one time 12 or another at the JOC. 13 COLONEL SCOTT: Yes, and I think that's 14 possibly due to – she did not have a pertinent role to 15 play. She was more oversight and therefore she didn't have 16 a call sign or radio or was involved in any such way. 17 MR NTSEBEZA SC: I see, ja. And I 18 understood your evidence to be that you don't recall 19 exactly what times she was at the JOC. Do you? 20 COLONEL SCOTT: No. As I say she was in 21 and out – 22 MR NTSEBEZA SC: Ja. 23 COLONEL SCOTT: - a bit difficult. At 24 the 13th – I mean there are certain times that I can recall 25 her being there but not throughout the three day process</p>
<p style="text-align: right;">Page 15403</p> <p>1 interrupting you. 2 MR NTSEBEZA SC: That's okay, Mr 3 Chairperson. 4 COLONEL SCOTT: But the people that I see 5 there, although I think possibly the names on the top of 6 the sheets may be a bit misleading because JOC control 7 would normally be those that are then seated in the JOC at 8 all times and we know that General Naidoo was not, nor was 9 Calitz, nor was Pitsi, nor was Gafri, nor was Madiba, 10 Tsiloane was and General – Major General Mpembe in essence 11 was when he wasn't negotiating or putting together high 12 level negotiations. So and of course we can see some of 13 them are duplicated across on both pages too, but the 14 people that we do see there I do remember either being part 15 of the operation or being part of the JOC. 16 MR NTSEBEZA SC: Now what I want to know 17 whether everyone who, at one stage or the other during the 18 requisite period, had been in the JOC whether their names 19 would be put up there? 20 COLONEL SCOTT: If they were allocated a 21 command position, in other words normally the head of a 22 grouping, then they would've received a call sign which you 23 would see as the C and that would, for instance, if we take 24 one of them, C2, General Naidoo, he would've been known as 25 Charlie 2 on the air. He's allocated call sign. But I am</p>	<p style="text-align: right;">Page 15405</p> <p>1 with any specifically accurate reference. 2 MR NTSEBEZA SC: Are you able to remember 3 – I don't want to tax you if you don't, are you able to 4 remember if she was there on the 16th? 5 COLONEL SCOTT: She was there on the 16th. 6 MR NTSEBEZA SC: And – 7 CHAIRPERSON: I'm sorry, Mr Ntsebeza, may 8 I interrupt just to – in the hope of making things a bit 9 clearer. If one turns to slide 67 and 68 of Exhibit L, now 10 this reflects the position as it was on Tuesday but I'm not 11 sure it only confined to Tuesday. Slide 67 deals with 12 what's described as the command cell and slide 68 deals 13 with the JOCCOM representatives. Now as I say that was the 14 position as of Tuesday but was that only Tuesday or did it 15 continue into Wednesday and into Thursday. 16 COLONEL SCOTT: It's a continuation, 17 Chairperson. 18 CHAIRPERSON: Now in order to work out 19 who was in the JOCCOM and who was supposed to be in the 20 JOCCOM, do we look at slide 68? 21 COLONEL SCOTT: It's a combination of 68 22 and 67 as well. 23 CHAIRPERSON: Alright. Perhaps you can – 24 ground having been cleared a little bit for you, Mr 25 Ntsebeza, perhaps you can now proceed.</p>

<p style="text-align: right;">Page 15406</p> <p>1 MR NTSEBEZA SC: Thank you, Mr Chairman. 2 So there wouldn't be anywhere really where the presence of 3 the provincial commissioner at the JOC would be reflected? 4 COLONEL SCOTT: Other than possibly in 5 minutes, no. 6 MR NTSEBEZA SC: Now you know of course 7 that there is a critical moment about which you have 8 testified and I'm not going to go over that and that would 9 be between something to 4 until the end of the operations 10 when we now know that during that period people died, 11 people got injured and all of that. Now I know you say she 12 was there on the 16th. You wouldn't know even if you tried 13 very hard to think whether she was there at the time that 14 the shootings took place. 15 COLONEL SCOTT: I don't recall her being 16 there at that time, but again I was positioned next to the 17 radio and listening quite carefully as well as I could to 18 try to picture what was going on in that scenario that was 19 unfolding. So but I do remember talking to her later that 20 afternoon and I would think it was probably around the five 21 o'clock area, but again I'm not saying she wasn't there 22 earlier. I just remember speaking to her at that stage 23 because the reports were coming in then about the amount of 24 deceased or wounded which at first were highly exaggerated 25 and then obviously I was talking to her specifically about</p>	<p style="text-align: right;">Page 15408</p> <p>1 really are protocols and I mean she is level in Lieutenant 2 General and Annandale is Major-General so whilst I don't 3 deny that you were reporting to Major-General Annandale she 4 is the type of person in her position who when she entered 5 the place and you were there you would – whatever you were 6 doing you would stand and salute and all that kind of 7 thing, is it not? It that not it? 8 COLONEL SCOTT: I don't think in the 9 context of what was happening there that – I mean the 10 general is in and out. When you've greeted her at the 11 beginning of the day you don't continue to greet her every 12 time and then she moves freely within the environment. So 13 once you've done your protocol greetings of saluting or 14 showing her the necessary respect, and she's within your 15 environment, it's not a continual thing that you'll do each 16 time she will enter a room for instance. So, no, and not 17 within the context of the operation that was going on. As 18 I say I think people are very concentrated on what's going 19 on. 20 MR NTSEBEZA SC: Maybe I don't 21 understand. How big is this place called the JOC? Is it a 22 room? Is it the size of this auditorium for instance? 23 COLONEL SCOTT: I would estimate it at 24 being probably 10 metres long by about 5 to 8 metres wide. 25 MR NTSEBEZA SC: And that would</p>
<p style="text-align: right;">Page 15407</p> <p>1 that. 2 MR NTSEBEZA SC: If I could press you a 3 little bit there, I mean she was a police commissioner, she 4 was the head of the police in the North West. You are all 5 there. If, at the time that there were reports of bodies 6 down, this, that and the next thing, coming through to the 7 JOC, deficiencies in radio communication notwithstanding, 8 if the whole head of the provincial SAPS was there, it's 9 not one of those things you would forget. 10 COLONEL SCOTT: Well again I think it 11 depends what you're concentrating on at that time and I 12 know until there was a lull in the operation which was 13 probably until about 16:20 my focus was on trying to 14 understand what was going on outside. But in saying that, 15 again, she's not somebody that I would report to. If I was 16 reporting on anything there, I would've normally gone to 17 General Annandale to discuss an issue if I had a concern or 18 – I know I've spoken to – speaking to the provincial 19 commissioner later but that was now regarding – I remember 20 her pacing up and down inside the actual JOC at some stage 21 later in the operation when numbers were coming through on 22 the amount of deceased and so on, like I say which were 23 highly exaggerated at first to be more than double of what 24 we know now. 25 MR NTSEBEZA SC: I mean just the, there</p>	<p style="text-align: right;">Page 15409</p> <p>1 accommodate a fair number of people but it's not the kind 2 of place where if somebody was present you would not be 3 able to notice however busy you were. May I suggest. 4 COLONEL SCOTT: Well, again, how many 5 people were in the JOC that day? I can only estimate maybe 6 15, 20 or more. So – 7 MR NTSEBEZA SC: You would pick a Major- 8 General – a Lieutenant General – a female Lieutenant 9 General. You would pick her up if she was there, you 10 would. 11 COLONEL SCOTT: As I'm telling you, the 12 time that I remember seeing her was the time I actually 13 went up to her and I noticed her pacing up and down inside 14 and that's when I went and spoke to her. But I don't 15 recall seeing her before that. 16 MR NTSEBEZA SC: And when was that by the 17 way? 18 COLONEL SCOTT: That was about, again I'm 19 speculating, but it's around about the 5 o'clock time. 20 MR NTSEBEZA SC: So there was a time when 21 she was there. When was this that you recall for certain 22 that she was there? 23 COLONEL SCOTT: She was there at the 24 13:30 meeting, the JOC – a special JOCCOM meeting – 25 MR NTSEBEZA SC: Yes.</p>

<p style="text-align: right;">Page 15410</p> <p>1 COLONEL SCOTT: - at the briefing. 2 MR NTSEBEZA SC: Were you aware of her 3 departure? 4 COLONEL SCOTT: No. But I had also 5 departed. 6 MR NTSEBEZA SC: Yes. 7 COLONEL SCOTT: I was at the front so and 8 on returning I don't recall seeing her. But again I was 9 obviously tasked as I had picked up from my telephone 10 records. I was tasked with media issues and finding out 11 certain things from Brigadier Calitz and then we went 12 straight into the actual operation and the radio was abuzz. 13 So – 14 MR NTSEBEZA SC: And I mean if she was 15 there during the time of the shootings because you're under 16 oath and it's your lifestyle you wouldn't conceal that from 17 the commission. 18 COLONEL SCOTT: No. And that's why I'm 19 saying, I'm saying I didn't actually note or see her. It's 20 not to say that she wasn't there. 21 MR NTSEBEZA SC: Now when you see her 22 later on, what was her reaction to the deaths? 23 COLONEL SCOTT: Well she was concerned. 24 MR NTSEBEZA SC: Tell us. 25 COLONEL SCOTT: Say again?</p>	<p style="text-align: right;">Page 15412</p> <p>1 that's going to help us to make our findings in respect of 2 the issues that we have to make findings on? And in any 3 event, is it covered by your request which was filed by 4 SERI on behalf of your clients, to cross-examine on this 5 matter? I don't think so. 6 MR NTSEBEZA SC: Chairman, let me answer 7 the first question, Chairman, and the first question is 8 whether it would assist the Commission. We've got answers. 9 I'm trying to probe whether the Commissioner of Police, 10 Provincial Commissioner, who's recorded earlier as having 11 said "This thing is going to end today," whether when she 12 comes into the JOC she says – and I hope not – "I told you 13 this thing is going to end today." So I just want to 14 explore that because – 15 CHAIRPERSON: And what about the second 16 question? Is that covered by the request to cross-examine? 17 I don't think so. And anyway, how does it help us? At the 18 end of the day we will find, I hope, with your assistance 19 and the assistance of your colleagues, what happened, what 20 went wrong, and insofar as we can, why. But the reaction 21 of the Provincial Commissioner when she came back into the 22 JOC or some time later when the witness saw her, is that 23 going to help us? I don't think so. 24 MR NTSEBEZA SC: Mr Chairman, I will 25 leave it at that.</p>
<p style="text-align: right;">Page 15411</p> <p>1 MR NTSEBEZA SC: Tell the commission. 2 [14:51] COLONEL SCOTT: I said she was concerned. 3 MR NTSEBEZA SC: Yes. 4 COLONEL SCOTT: So, and this is why I 5 say, because the initial amounts that were reported into 6 the JOC were bloated. There was, I think they were 7 talking, I think they may have combined the wounded with 8 the deceased when somebody gave the numbers through, 9 instead of separating them, but they were initially given 10 through as deceased and somebody mentioned something around 11 76, and then it was clarified and I remember speaking to 12 her at that stage. 13 MR NTSEBEZA SC: She's been widely 14 reported as having said this thing is going to end today. 15 COLONEL SCOTT: Yes – 16 MR NTSEBEZA SC: I'm paraphrasing her. 17 COLONEL SCOTT: Yes. No, I understand, 18 that was shown in the eTV footage. 19 MR NTSEBEZA SC: Yes. Did she then – 20 MR SEMENYA SC: Chair, all of this is 21 interesting, but it is way outside the lines indicated for 22 cross-examination by SERI. 23 CHAIRPERSON: That sounds correct, Mr 24 Ntsebeza. What do you about it? The reaction of the 25 Provincial Commissioner to the figures, is that something</p>	<p style="text-align: right;">Page 15413</p> <p>1 CHAIRPERSON: You'll leave it at that, 2 alright – 3 MR NTSEBEZA SC: If I'm being – I – 4 CHAIRPERSON: If you're going to leave it 5 at that, leave it at that. Let's move on, shall we? I 6 would like to take the tea adjournment at 3 o'clock, which 7 gives you four minutes before tea, if you want to use it. 8 MR NTSEBEZA SC: On this point? 9 CHAIRPERSON: No, no, not on this point, 10 on another point. 11 MR NTSEBEZA SC: Mr Chairman, can we take 12 the tea adjournment so that I can readjust my thinking? 13 CHAIRPERSON: Very well. We'll take the 14 tea adjournment now. 15 [COMMISSION ADJOURNS COMMISSION RESUMES] 16 [15:21] CHAIRPERSON: The Commission resumes. 17 Colonel, you're still under oath. 18 DUNCAN GEORGE SCOTT: s.u.o. 19 CHAIRPERSON: Mr Ntsebeza, you're still 20 cross-examining. 21 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 22 Thank you, Mr Chairman. I've been assured there, and I've 23 looked that the area I'm going to traverse has been 24 indicated in a request to the Chairman and the Commission. 25 Now Colonel, there is an affidavit by one Monique Marks,</p>

<p style="text-align: right;">Page 15414</p> <p>1 which I believe you have seen. Is that correct?</p> <p>2 COLONEL SCOTT: That's correct.</p> <p>3 MR NTSEBEZA SC: And Mr Chairman, I'm</p> <p>4 told it has no exhibit number and I wondered if we could –</p> <p>5 CHAIRPERSON: That sounds like an</p> <p>6 omission that we can rectify with Ms Pillay's help. Now</p> <p>7 the last exhibit was JJJ199, so it's probably appropriate</p> <p>8 on your birthday that we should reach JJJ200. Is that</p> <p>9 correct? How do I describe JJJ200, Mr Ntsebeza? Affidavit</p> <p>10 by?</p> <p>11 MR NTSEBEZA SC: Monique Marks.</p> <p>12 CHAIRPERSON: Now I did see, although I</p> <p>13 can't remember, is it K-S, or X?</p> <p>14 MR NTSEBEZA SC: It's K-S, Mr Chairman.</p> <p>15 CHAIRPERSON: Thank you. So the</p> <p>16 affidavit by Monique Marks will be received as exhibit</p> <p>17 JJJ200.</p> <p>18 MR NTSEBEZA SC: Now this is obviously</p> <p>19 going to be a very contested area, but you will have read</p> <p>20 in her affidavit that she claims that she has done, and</p> <p>21 certainly in the years that she mentions, 1988, 1998, and</p> <p>22 1999, she says in paragraph 3 that she followed POPs on a</p> <p>23 number of their Public Order Policing operations, and as</p> <p>24 part of her research which she was conducting, and she use</p> <p>25 is very interested into the transformation of Public Order</p>	<p style="text-align: right;">Page 15416</p> <p>1 been the pre-election –</p> <p>2 COLONEL SCOTT: Yes.</p> <p>3 MR NTSEBEZA SC: - sort of violence, but</p> <p>4 you wouldn't necessarily, you are not contesting the</p> <p>5 veracity of these facts? You say you don't know about</p> <p>6 them?</p> <p>7 COLONEL SCOTT: I just, obviously I don't</p> <p>8 know about them, yes.</p> <p>9 MR NTSEBEZA SC: Now there is something</p> <p>10 here where she, I would like to get your comment on, and</p> <p>11 that is in paragraph 7 of her statement, she says during</p> <p>12 the period of her investigation there had been 50 murders</p> <p>13 that had been committed in the hostel, you know, as in sort</p> <p>14 of this tit for tat violence. In other words there had</p> <p>15 been, as I understand the argument, there had been a cause</p> <p>16 for concern about the level of violence in the place. It</p> <p>17 had resulted into 50 murders. Did you see that?</p> <p>18 COLONEL SCOTT: I see that, yes, over a</p> <p>19 period of two years.</p> <p>20 MR NTSEBEZA SC: Yes, and then she says</p> <p>21 approximately 40 POP members were stationed at the hostel.</p> <p>22 I'll come to that when I summarise what I think are the</p> <p>23 points that she makes, and she says they were full-time on</p> <p>24 a 24-hour basis. Now in your experience in POPs, do you</p> <p>25 know that this sometimes is the practice where in volatile</p>
<p style="text-align: right;">Page 15415</p> <p>1 Policing in South Africa. You've seen that, have you?</p> <p>2 COLONEL SCOTT: Yes.</p> <p>3 MR NTSEBEZA SC: Yes, and she mentioned</p> <p>4 who had given her that permission, and then she says the</p> <p>5 book that – I mean her research culminated in a book,</p> <p>6 Transforming the Robocops : Changing Police in South</p> <p>7 Africa, which was published by the UKZN press in 2005. Are</p> <p>8 you aware of the book?</p> <p>9 COLONEL SCOTT: No.</p> <p>10 MR NTSEBEZA SC: You're not aware of the</p> <p>11 book. But she does say, particularly in paragraph 6, and I</p> <p>12 will ask questions with regard thereto, she says during</p> <p>13 this period there were approximately 15 000 residents in</p> <p>14 the Glebe lands Hostel, majority of who were unarmed. In</p> <p>15 your own experience of that part of the world, I mean as a</p> <p>16 police officer, are you aware of those phenomena, of armed</p> <p>17 members of the ANC and members of the IFP staying at Glebe</p> <p>18 lands Hostel?</p> <p>19 COLONEL SCOTT: My experience with regard</p> <p>20 to that is the 1993 situation which unfortunately took</p> <p>21 place in the Tokoza Vosloorus area where I was deployed for</p> <p>22 three months, similarly where the ANC and the IFP were in</p> <p>23 contesting with each other, unfortunately with violence,</p> <p>24 while –</p> <p>25 MR NTSEBEZA SC: Yes, that would have</p>	<p style="text-align: right;">Page 15417</p> <p>1 areas you have POP members stationed on a 24-hour basis?</p> <p>2 COLONEL SCOTT: Well, the POP in essence</p> <p>3 as the unit is stationed on a 24-hour basis. The members</p> <p>4 would obviously be working shifts in that environment.</p> <p>5 MR NTSEBEZA SC: Yes.</p> <p>6 COLONEL SCOTT: Whether they're static,</p> <p>7 or for that matter whether they're a roaming patrol in a</p> <p>8 troubled area, same type of scenario.</p> <p>9 MR NTSEBEZA SC: Now what I find</p> <p>10 interesting in the context of what you are about, as I say</p> <p>11 I mean this is a sworn statement and I would like to get</p> <p>12 your views about it whether in terms of your own experience</p> <p>13 it's something that you're aware of. Paragraph 8 she says,</p> <p>14 "At the time of the Glebe lands operations, POP members did</p> <p>15 not carry automatic rifles in operations, although these</p> <p>16 were stored in locked safes within the armoured vehicles,</p> <p>17 ready for use in an emergency situation. Members did</p> <p>18 however carry side-arms issued to every member to be used</p> <p>19 in self-defence. Hostel dwellers did shoot live ammunition</p> <p>20 at POP members, but POP members never retaliated with live</p> <p>21 ammunition. The POP response would be to stand their</p> <p>22 ground, advance on the hostel dwellers, and saturate with</p> <p>23 stun grenades, rubber bullets, and teargas." Now what</p> <p>24 would be your reaction and comment on that?</p> <p>25 COLONEL SCOTT: I think that the scenario</p>

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1 that's being sketched here is pretty vague, because it's
 2 not saying from where the attack emanates. It could be
 3 from inside a hostel through a window, shooting at the POPs
 4 members down below, because I cannot think that there would
 5 be a policeman that would stand and have somebody metres in
 6 front of him fire at him and not retaliate even with his
 7 pistol, because his life would be in imminent danger. So I
 8 don't dispute that live rounds were fired, because you
 9 would hear the sounds of live rounds being fired for that
 10 matter, but I also do not see the death of any policeman
 11 mentioned here either, which I means that I don't think the
 12 threat is made out to be equivalent of the threat that the
 13 members at Marikana were facing.

14 MR NTSEBEZA SC: Do I understand from
 15 that last remark that POP members do react in a different
 16 way, especially if a police officer has been killed?

17 COLONEL SCOTT: No, what I'm saying is
 18 that if a POP member's life is in imminent danger and he
 19 can identify the threat, that he's legally, he's gained the
 20 legal ground in order to defend himself.

21 MR NTSEBEZA SC: You see for instance
 22 here it talks about that situation. 15 000 people staying
 23 there, and they are known to be that number, and a decision
 24 taken to contain the violence which is known to the police
 25 to be responsible for 50 murders, and I know comparisons

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1 are odious. Here up to and until the 16th of August we were
 2 talking of how many? Six deaths, 10 deaths at the most.

3 COLONEL SCOTT: Yes.

4 MR NTSEBEZA SC: And it seems to me that
 5 if we take what Monique Marks says, the fact that there
 6 were 50 murders that had been committed did not call for
 7 the kind of reaction that we now know in terms of your plan
 8 was the reaction.

9 COLONEL SCOTT: I think one of the –

10 MR SEMENYA SC: No, Chair, the question
 11 is objectionable. There is nothing to suggest that the
 12 police action on the 16th was in reaction to the deaths that
 13 occurred the Monday.

14 CHAIRPERSON: What's your answer to that
 15 objection, Mr Ntsebeza?

16 MR NTSEBEZA SC: Now, Mr Chairman, I was
 17 not suggesting that this was so. The question was premised
 18 on a reaction from the witness who apparently in an
 19 analogous fashion had said one doesn't know the context of
 20 what the witness is saying, I mean of what the deponent to
 21 the affidavit is saying about the levels of violence there.
 22 For instance, no policeman had been killed. Now I'm
 23 seeking to put to Colonel Scott, and he seems to understand
 24 where I'm getting at, that here in this affidavit we have
 25 been given a picture of 50 murders that had taken place,

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1 15 000 people, hostel dwellers, but where she makes the
 2 case that the reaction was not to bring people with armed
 3 rifles, the reaction all the time was rifles may be there,
 4 locked away in cabinets, but POP people to contain whatever
 5 violence may have led to 50 deaths, they didn't use
 6 firearms for their self-defence. I'm simply saying –

7 CHAIRPERSON: What specific question do
 8 you want to ask based upon those facts which are set out,
 9 or allegations which are set out in the affidavit?

10 MR NTSEBEZA SC: The question is whether,
 11 and may I put the question to the Colonel, wasn't in these
 12 circumstances an overreaction on the part of SAPS or of
 13 your plan to deal with that situation, as it was up to that
 14 date, when it appears there are other methods that would
 15 have been applied to achieve the same result?

16 CHAIRPERSON: How do you respond to
 17 that point that's put to you –

18 COLONEL SCOTT: Chair, I think in some
 19 ways the analogy is being made between this two-year period
 20 that Ms Marks observed, versus the Marikana period, or
 21 incident, and how they dealt with it there and how we dealt
 22 with it at Marikana, and in some ways, if I understand, to
 23 say that Marikana is not unprecedented, but in saying this,
 24 when you have 50 murders that have occurred over a two-year
 25 period, and let's even be graceful and say maybe it could

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1 have been over a year period, if she's saying from '98 to
 2 '99, the intensity that we were dealing with at Marikana in
 3 essence, if we're going to talk statistics on murders,
 4 we're looking at an average of two a day before the 16th.
 5 So when we bring that into the math, over the same period
 6 of only a year we would be talking 730 murders, not 50
 7 murders.

8 CHAIRPERSON: I'm not quite sure I follow
 9 the arithmetic. There were 10 people who died, who were
 10 murdered, or certainly met their death through violence.
 11 Two of them were policemen, and the other eight were
 12 civilians, and that's over a period from the Saturday, is
 13 it?

14 COLONEL SCOTT: From the Saturday to the
 15 Tuesday –

16 CHAIRPERSON: From the Saturday to the
 17 Tuesday.

18 COLONEL SCOTT: Yes.

19 CHAIRPERSON: That is four days.

20 COLONEL SCOTT: Yes, 10 –

21 CHAIRPERSON: So it's two a day, ja, two
 22 and a half per day.

23 COLONEL SCOTT: Yes.

24 CHAIRPERSON: Two and a half per day, ja.

25 COLONEL SCOTT: Yes, and as I say –

<p style="text-align: right;">Page 15422</p> <p>1 CHAIRPERSON: Although in fact it's a 2 little bit more complicated, but basic thrust is the number 3 is, the rate, the death rate is significantly higher – 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: - than appears to have been 6 the case in the one that she gave – 7 COLONEL SCOTT: Yes, and what I'm just 8 trying to say is the intensity of what's going on is far 9 different to the period of over a year where there are 50 10 murders, which is – you know, so in essence, and what I was 11 just trying to say is that the vagueness of the statement 12 of Ms Marks is not stating a specific incident in detail, 13 like we have obviously on the 16th at Marikana. To say 14 there are 15 000 people dwelling there is not to say that 15 15 000 people were at loggerheads with each other and 16 aggressive either, so there's too much, it's too ambiguous 17 in a sense to try to relate, to say, because I can go 18 deeper into statistics for that matter in the same way. We 19 can start bringing up other issues of intent that the 20 police perceived, the muti, etcetera, which is not 21 mentioned again in the statement by Ms Marks. So if she 22 says that the police says they were fired upon, was that 23 incidentally because they heard something once? Did it 24 happen on numerous occasions? How did the police respond 25 to that? Because as I know police members to go charging</p>	<p style="text-align: right;">Page 15424</p> <p>1 the point we were seeking there. Let's be generous and say 2 over a period of say eight months, that would be an average 3 of six murders per month, just the kind of murders that had 4 taken place up to the 13th in the context – 5 CHAIRPERSON: It's not quite right. Six 6 a month is just over one a week. The point the witness was 7 making, that we had even if you leave the police ones out, 8 you've got a matter of eight over four days, which is a 9 significantly higher rate than the number you've suggested 10 now. It's a question of degree, of course, isn't it? 11 [15:41] MR NTSEBEZA SC: Yes. No, it's just, Mr 12 Chairman, what I was indicating is that two years should 13 not really be the period that he says is incomparable, and 14 so it's in that context that he says the operation is 15 there, you see. Before the operation began, just like 16 here, 50 murders had taken place. That's what she says in 17 paragraph 7, and yet according to her when the operation 18 began, notwithstanding that there had been that – and she 19 said the murders took place because there were these 20 violent clashes, ANC on the one hand, IFP on the other, and 21 it happened in the hostel. It's not just murders that were 22 taking place all over Glebe lands or – it was in the hostel 23 where they would confront each other in the square. You 24 read that. 25 COLONEL SCOTT: Yes.</p>
<p style="text-align: right;">Page 15423</p> <p>1 forward with only shields and batons, or with stun grenades 2 and you're being fired upon with live fire, it just doesn't 3 make sense either. 4 MR NTSEBEZA SC: Yes, thanks, Colonel. 5 Perhaps it's because one was not seeking to read line by 6 line. It's incorrect to say this was, these 50 murders 7 took place over a period of two years. She says in so many 8 words in paragraph 7, it was over a six-month period. 9 Between November 1997 and July 1998 there were 10 approximately 50 murders committed in the hostel. So it's 11 50 murders in six months. 12 CHAIRPERSON: I'm sorry, Mr Ntsebeza, 13 November to July sounds to me like nine months. 14 MR NTSEBEZA SC: Nine? 15 CHAIRPERSON: Ja, November to July, and 16 even if you start at the very end of July and you take it 17 to the beginning – sorry, the end of November, beginning 18 December, and you take it to the end of June, beginning of 19 July, it's then seven months. 20 MR NTSEBEZA SC: Yes. 21 CHAIRPERSON: Whether it's seven or, 22 seven to nine, it's not six, unless of course you knock off 23 the Christmas period because everyone was on holiday. 24 MR NTSEBEZA SC: Well, on that arithmetic 25 calculation, it's certainly not two years. I think that's</p>	<p style="text-align: right;">Page 15425</p> <p>1 MR NTSEBEZA SC: In a very combative way. 2 So these were warring entities. It was factional fighting. 3 Now I think the point she's making here is that the 4 situation was volatile, but the reaction by law and order 5 instruments, or institutions, was not to send people with 6 R1 and R5 rifles. Do you see that as a fair assessment? 7 Whether she's right or not, but would that be a fair 8 assessment of what she says? 9 COLONEL SCOTT: What she's speaking to, 10 and you've noticed that there would be a group of a hundred 11 or more POP members on immediate standby that could 12 respond. Now I was based in the Durban Special Task Force, 13 which coincidentally was located at the Public Order 14 Policing unit in Durban at that time, and they had at that 15 time what is known as a reaction unit, and the reaction 16 unit responded with the same armament that the Special Task 17 Force has when they go out to work. So it's very likely 18 that the response to any major incident when the Public 19 Order Policing members were coming under some form of life 20 threatening danger was going to be the reaction unit, 21 because that's who got deployed at that time. So this is 22 why I say it would be interest to understand more fully 23 what Ms Marks is saying. I just feel her statements may be 24 a bit short and vague, and not as to the point, because one 25 would need to speak to specific operations, and in saying</p>

<p style="text-align: right;">Page 15426</p> <p>1 what I'm saying, and I understand that the Commission hears 2 that the Public Order policemen were shot at with live 3 ammunition at times and didn't retaliate; when I was in 4 Katlehong, Vosloorus, over the period of 1993, I was a 5 young new task force member, and at that stage had limited 6 exposure to confrontational situations both in the short 7 time I was at POPs, as well as on the station. So it's 8 something to hear someone shooting at you and you come away 9 and nothing's happened, and you actually count that, you 10 actually start counting it as in that's happened the third 11 time, fourth time. Within two, three weeks there, I'd 12 stopped counting, it had happened so many times, and that 13 is something that I remember quite clearly, and not once 14 that I retaliated to being shot at either because it's a 15 matter of being shot at, you hear it happening, you don't 16 know where it's coming from, and there's nothing you can do 17 about it. You're just glad that you're still there and 18 you're still alive and nobody else is hurt either, and I 19 feel the context they're speaking to here is very much the 20 same. I don't see deceased policemen. I don't see 21 policemen retaliating to gunfire, because they obviously 22 didn't particularly know where it was coming from either, 23 and that would be the best that I could explain what is 24 happening here. 25 MR NTSEBEZA SC: Now I did indicate to</p>	<p style="text-align: right;">Page 15428</p> <p>1 no-one was killed by the police. I don't understand what 2 the phrase "succeeded in containing the violence during 3 this period" means, unless it means only kept the numbers 4 down to 50. It's a pity we haven't got her book. Possibly 5 you could get a copy and present it to the STF so they can 6 put it in their library and the Colonel can read it, and 7 perhaps also to the local POP people as well. 8 MR NTSEBEZA SC: Yes. 9 CHAIRPERSON: And maybe the book contains 10 more detail which will explain the problem that I have 11 raised, but at the moment in the absence of clarity as to 12 what that phrase means, I'm not quite sure what value is to 13 be attached to this affidavit, except for one point which 14 seems to be the important point she makes, and which is in 15 line with Standing Order 262 to which you referred, and 16 namely that "Always the overall commander of the operation 17 was a member of POP, and at no point did other SAPS units 18 operate independently of the command of POP." That's 19 obviously an important point which is relevant here, but 20 the other point that I've got difficulty with – I'm sorry 21 to put it to you in this way, but in order for me to follow 22 the cross-examination I'd like to know what that phrase 23 means. 24 MR NTSEBEZA SC: Thank you, Mr Chairman – 25 COMMISSIONER HEMRAJ: Sorry, can I</p>
<p style="text-align: right;">Page 15427</p> <p>1 you that this would be a hotly contested area, but really 2 it's just to get, you know, some comments or reaction from 3 you. She seems to be suggesting, and I'll put it no higher 4 than that, if I summarise, she seems to suggest that there 5 was a successful containment by SAPS of that kind of 6 violence involving 15 000 people in the context of 50 7 murders having taken place, by using the following methods, 8 and she mentions a number. She says for instance SAPS were 9 able to successfully contain violence by using less-than- 10 lethal equipment. They used to carry side-arms, but no 11 rifles. I've already – and then she says they use a 12 variety of "saturation and surprising tactics, in 13 particular surprise search and seizure operations to find 14 and seize weapons." Perhaps let me state there – 15 CHAIRPERSON: Sorry, Mr Ntsebeza, I've 16 got a problem with this affidavit. I don't understand the 17 key sentence you rely on, and that is the last sentence, I 18 think, paragraph 12, "POP succeeded in containing the 19 violence during this period and not a single person was 20 killed by the police." Well, they contained the violence 21 to the extent that they only limited the number of killings 22 to 50, and the hostel was known as the "Hostel of Death" 23 during that period. She does go on to say, of course, that 24 not a single person was killed by the police, that the 25 police contained the violence to the extent mentioned, and</p>	<p style="text-align: right;">Page 15429</p> <p>1 interrupt you? Can I just mention one other point? She 2 does make the point in her affidavit that it was not only 3 POPs that were attending to those various incidents. There 4 were a number of other units. We have no idea how, what 5 arms they possessed, how they approached the situation at 6 all. 7 MR NTSEBEZA SC: Thank you, Mr Chairman. 8 The way I read her affidavit is that – just in answer to 9 the Chairman, is that the operation itself was as a 10 consequence of the murders. It's not something that they 11 did to contain the killings. The death and the murders, if 12 one reads paragraph 7, took place before, that's the six- 13 month period that I'm talking about, it seems to me, 14 because in paragraph 7 she says, "Between November 1997 and 15 July 1998 there were approximately 50 murders committed in 16 the hostel. By July the Glebe lands Hostel came to be 17 known as the Hostel of Death. Sections of the Durban POP 18 unit were deployed to the hostel and stationed there on a 19 full-time basis in order to contain the violence and to 20 prevent further murders." So it seems to me that 21 deployment of these numbers of police was in reaction to 22 this quite unacceptable high level of murders that, of 23 deaths that were as a consequence of the conflict. 24 CHAIRPERSON: It would seem that they 25 succeeded in bringing the death toll down significantly, or</p>

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1 either entirely perhaps after July by doing what's
 2 summarised in the affidavit, but it is a big vague. But
 3 perhaps we could get the book, if it's still in print and
 4 hasn't been sold out, and it may be an exhibit, firstly,
 5 and secondly as I say, the POP people and STF people could
 6 possibly study it with profit.

7 MR NTSEBEZA SC: I think that's a
 8 sensible suggestion, Mr Chairman, and Mr Chairman, may I
 9 just indicate therefore that that was the, as indicated in
 10 the request for cross-examination, that was the –

11 CHAIRPERSON: That was the point, you see
 12 –

13 MR NTSEBEZA SC: Yes.

14 CHAIRPERSON: And you've got the answer
 15 that you – well, you got the answer. I don't know if it's
 16 the answer you expected, but you got the answer from the
 17 witness, but that's where it lies at the moment. The
 18 question I want to ask you is this; this document that I
 19 donated to the SAPS because they didn't have their own
 20 copy, exhibit JJJ199, it's the HQ document, I assume that
 21 you're not in a position to cross-examine on it now, are
 22 you? Am I right?

23 MR NTSEBEZA SC: I was going to be making
 24 that request, that let me just do it over, mull overnight
 25 and –

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1 CHAIRPERSON: Well, I was going to say –
 2 MR NTSEBEZA SC: - if there is any
 3 questions that arise –

4 CHAIRPERSON: Yes, I was going to say to
 5 you the sensible thing probably at this stage is for us to
 6 adjourn at this point - there's no point in inserting
 7 another cross-examiner in at this point of your cross-
 8 examination - stand down till tomorrow morning and you can
 9 then study the document overnight and then decide whether
 10 you will ask any questions about it.

11 MR NTSEBEZA SC: I accept that –

12 CHAIRPERSON: You understand it's not
 13 compulsory that you should ask questions.

14 MR NTSEBEZA SC: No, indeed it is. I may
 15 or may not ask any questions emanating from the document.

16 CHAIRPERSON: And don't be under any
 17 pressure of any kind to do so. Very well then, Mr Mpofo,
 18 you I gather are ready, or will be ready by tomorrow.
 19 You've given a list which we got in the course of the
 20 afternoon, a little bit out of time, but the lateness will
 21 be condoned in the circumstances. The witness will have
 22 the opportunity to read the documents to which you refer.
 23 Most of them I see are exhibits. Two of them will be new
 24 exhibits, so the witness will have to be given copies of
 25 those. I don't know if he has been yet. Has the witness

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1 got a list yet, or are we the only ones who got them?
 2 MR MPOFU: Yes, Chairperson –

3 CHAIRPERSON: In accordance with the
 4 usual practice we're lending our copy to the police to
 5 assist them. But, Colonel, you will see there are a number
 6 of documents there which are already exhibits and he refers
 7 firstly to documents that have already been referred to in
 8 the course of your cross-examination by others, so clearly
 9 he doesn't have to give notice of those again. He's added
 10 new ones, which most of them, with the exception of the
 11 last two, are already exhibits. So I presume copies can be
 12 easily given to you by the attorney acting for the police.
 13 We have two more documents which are new, and presumably
 14 you'll be given copies of those before close of business
 15 this evening.

16 MR MPOFU: Thank you, that's what I was
 17 going to say.

18 MR SEMENYA SC: Chair, and the ruling
 19 relating to the application?

20 CHAIRPERSON: That's the other point I
 21 was going to deal with. You gave us a rather comprehensive
 22 and ambitious list of topics you want to cover. Many of
 23 them have been covered already and I understood that Mr
 24 Chaskalson was going to discuss them with you. Possibly we
 25 can discuss them when we adjourn. I'm not sure that all of

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1 them should be allowed, because many of them have been
 2 covered in extent already, but that's a matter we don't
 3 have to debate in the chamber.

4 MR MPOFU: Yes, Chairperson, I can assure
 5 you, I've had a discussion with Mr Chaskalson. Those that
 6 have ostensibly been covered I'll be covering from a
 7 completely different angle, and a narrow one at that. So
 8 it's not – I've gone through Mr Chaskalson's cross-
 9 examination in detail, and I can assure you I won't be –

10 CHAIRPERSON: Is this an ostensible
 11 cross-examination or an actual cross-examination.

12 MR MPOFU: We'll see that tomorrow,
 13 Chairperson.

14 CHAIRPERSON: Now I know it's an
 15 embarrassing question to ask and difficult sometimes to
 16 answer, but can you give us a sort of an indication as to
 17 how long you think you're likely to be? I know it depends
 18 on the length of the answers and all sorts of things –

19 MR MPOFU: And so on, yes.

20 CHAIRPERSON: But subject to that, and
 21 it's not allowing for injury time; just the normal playing
 22 time you require.

23 MR MPOFU: Normal playing time,
 24 Chairperson, if I get to start, in the unlikely event that
 25 Mr Ntsebeza doesn't find anything to ask, then I should

1 finish by Monday, Chairperson.
 2 CHAIRPERSON: Well, Monday you know is a
 3 dies non. We're not sitting on Monday because it's the
 4 first Monday –
 5 MR MPOFU: Oh, I thought it was
 6 Wednesday.
 7 CHAIRPERSON: No, no, we don't sit the –
 8 MR MPOFU: And Wednesday?
 9 CHAIRPERSON: The chamber is not
 10 available on the first Monday and the first Wednesday.
 11 MR MPOFU: Correct.
 12 CHAIRPERSON: And the third Wednesday of
 13 the month. We're going to approach the authorities here,
 14 the local municipal ones, to see whether they really need
 15 this room on Wednesday, because it will be useful if we
 16 could use it, but we're certainly not sitting on Monday,
 17 and we are sitting tomorrow, and when you say you'll be
 18 finished by Monday, you mean finished by some time on
 19 Tuesday?
 20 MR MPOFU: Tuesday, yes, Chairperson.
 21 CHAIRPERSON: What, how – I mean –
 22 MR MPOFU: End of the day.
 23 CHAIRPERSON: So you're really thinking
 24 about something approximating to a day and a half?
 25 MR MPOFU: A day and a bit.

1 CHAIRPERSON: A day and a bit. Whatever
 2 bit is left to you from tomorrow through the generosity of
 3 Mr Ntsebeza.
 4 MR MPOFU: That's correct, Chairperson.
 5 CHAIRPERSON: Alright. Okay, so on that
 6 optimistic note we'll adjourn until 9 o'clock tomorrow
 7 morning.
 8 MR MPOFU: Thank you.
 9 [COMMISSION ADJOURNED]

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