

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 130

9 SEPTEMBER 2013

PAGES 13672 TO 13857



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<p style="text-align: right;">Page 13672</p> <p>1 [PROCEEDINGS ON 9 SEPTEMBER 2013] 2 [09:45] CHAIRPERSON: The Commission resumes. On 3 Friday the legal representative of the injured and arrested 4 miners and the families of most of the miners who were 5 killed at Marikana during the period 13 to 16 August last 6 year applied for the postponement of the sittings of the 7 Commission until the outcome of the High Court application 8 brought by the injured and arrested miners against the 9 President, the Minister of Justice, and Legal Aid South 10 Africa is known. In this High Court application they are 11 seeking an order that they be given legal aid at State 12 expense to enable them to instruct their present legal team 13 to continue representing them before the Commission. 14 The Department of Justice sought leave to 15 intervene in these proceedings to oppose the application 16 for a postponement. The applicants opposed the application 17 for leave to intervene, but the Commission granted it 18 because it was satisfied that the department has a 19 sufficient interest in the matter as the costs of the 20 Commission, which will be increased if the application for 21 the postponement were granted, are paid from funds voted by 22 parliament to the department. 23 The legal representatives of the applicants 24 submitted that if the postponement they sought was not 25 granted, the injured and arrested miners would be</p>	<p style="text-align: right;">Page 13674</p> <p>1 is realised, the result will be the same; the legal 2 representatives will return to the Commission. They will 3 be able to see from the daily transcripts of the evidence 4 led before the Commission whether there are questions which 5 they would have asked the witnesses in cross-examination 6 had they been here. They will be able to apply to the 7 Commission for the witnesses in question to be recalled for 8 further cross-examination, and if the questions they wish 9 to ask are relevant, the witnesses will be recalled. If 10 this happens, there can be no question of prejudice to the 11 miners concerned. The mere fact that their cross- 12 examination will take place later than it would have done 13 if they had been here all the time, can scarcely cause 14 prejudice. This point was forcibly made by Mr Budlender, 15 the senior evidence leader who opposed the application for 16 a postponement, and neither of the legal representatives 17 for the applicants dealt with the point in reply. 18 If the third possibility is realised and the 19 legal representatives do not return to the Commission, 20 there can also be no prejudice to the miners based on the 21 fact that the evidence was led in their absence because 22 that would have happened in any event once the outcome of 23 the application was known. 24 We're of the view that the same considerations 25 apply in the suggestion that the proceedings will be unfair</p>
<p style="text-align: right;">Page 13673</p> <p>1 prejudiced as evidence would be led from witnesses whom 2 they would in the absence of their legal representatives be 3 unable to cross-examine. It was also contended that if the 4 Commission were to proceed to hear evidence in their 5 absence and that of their legal representatives, the 6 proceedings will be unfair, and this unfairness could only 7 be prevented if the postponement they sought were granted. 8 We are satisfied that neither of these 9 submissions is correct. As far as the alleged prejudice is 10 concerned, it is to be noted, as Mr Mpofu, who appeared for 11 the injured and arrested miners, pointed out, that the 12 postponement sought is only until the outcome of the High 13 Court application is known. The situation thereafter is 14 not relevant in this application. 15 Looking ahead, one can say that there are three 16 possibilities, in none of which will the injured and 17 arrested miners be prejudiced if the postponement is 18 refused. These possibilities are, (1), that the injured 19 and arrested miners receive funding from some private 20 source before the High Court decides on their application; 21 (2), that the High Court decides in their favour and orders 22 the State to give them the funding they require to enable 23 their lawyers to return to the Commission; and (3), that 24 their application is dismissed by the High Court. 25 Whichever of the first and second possibilities</p>	<p style="text-align: right;">Page 13675</p> <p>1 if the postponement is refused. Once it is realised that 2 the refusal of the postponement cannot prejudice the miners 3 concerned, and their rights to ask all relevant questions 4 that have not otherwise been asked and to lead evidence are 5 preserved should they obtain the necessary funding and 6 return to the Commission, it is clear that no question of 7 unfairness can arise. For these reasons the application 8 for the postponement is refused. 9 Colonel Scott, I see you are here at the witness 10 table in anticipation of a satisfactory outcome for the 11 police service, of the application. I remind you, you're 12 still under oath. 13 DUNCAN GEORGE SCOTT: s.u.o. 14 CHAIRPERSON: Mr Semenya? 15 EXAMINATION BY MR SEMENYA SC (CONTD.): 16 Thank you, Chair. Colonel, can I invite you to look at 17 page 107 of your statement? Do you have it? 18 COLONEL SCOTT: I'm there. 19 MR SEMENYA SC: There you take us through 20 how you went about planning the very Monday of your 21 arrival, that is the 13th of August 2012. Correct? 22 COLONEL SCOTT: That's correct. 23 MR SEMENYA SC: And you tell us that you 24 started doing the appreciate, but most importantly you 25 contemplate two types of appreciations. The first you talk</p>

<p style="text-align: right;">Page 13676</p> <p>1 about an appreciation of an ongoing scenario. Correct?</p> <p>2 COLONEL SCOTT: That's correct.</p> <p>3 MR SEMENYA SC: What do you convey by</p> <p>4 that? What type of appreciation is that?</p> <p>5 COLONEL SCOTT: When one has the time,</p> <p>6 when one is planning for a major event, or even an event</p> <p>7 possibly from a section 4 meeting with the Regulation of</p> <p>8 Gatherings Act, you would have more time in order to carry</p> <p>9 out a decent appreciation to gather information, to analyse</p> <p>10 that, etcetera, that is needed. In arriving at Marikana,</p> <p>11 which is an ongoing incident, the time is far less. So</p> <p>12 it's a scuttling to get as much information as quickly as</p> <p>13 possibly to understand the situation in order to start</p> <p>14 categorising that information, verifying it, and then</p> <p>15 analysing possible solutions to it.</p> <p>16 MR SEMENYA SC: Yes, and how much time</p> <p>17 was available for you to do the appreciation in Marikana?</p> <p>18 COLONEL SCOTT: Well, on my arrival,</p> <p>19 which was at about between 7, 8 o'clock at night, I was of</p> <p>20 the impression I had to have a strategic plan in place by</p> <p>21 the next morning 6 o'clock, so that gave me the evening and</p> <p>22 of course there were the meetings where I was gleaning</p> <p>23 information from those as well at that time, and wherever</p> <p>24 else I could get information from.</p> <p>25 MR SEMENYA SC: And how much of the</p>	<p style="text-align: right;">Page 13678</p> <p>1 COLONEL SCOTT: That's correct.</p> <p>2 MR SEMENYA SC: You also deal with the</p> <p>3 milieu, which is what environment are you dealing with.</p> <p>4 COLONEL SCOTT: That's correct.</p> <p>5 MR SEMENYA SC: And with the means,</p> <p>6 meaning the resources that were available to the police to</p> <p>7 deal with the anticipated threat.</p> <p>8 COLONEL SCOTT: That's correct.</p> <p>9 MR SEMENYA SC: And the constraints of</p> <p>10 time to which you have now made reference to.</p> <p>11 COLONEL SCOTT: Yes.</p> <p>12 MR SEMENYA SC: And you say once the</p> <p>13 mission statement was formulated, you then had that</p> <p>14 approved.</p> <p>15 COLONEL SCOTT: Just repeat –</p> <p>16 MR SEMENYA SC: You had that approved,</p> <p>17 the mission statement.</p> <p>18 COLONEL SCOTT: I had?</p> <p>19 MR SEMENYA SC: You had the mission</p> <p>20 statement approved for that plan.</p> <p>21 COLONEL SCOTT: No, not at that time;</p> <p>22 only at the JOCCOM the next morning when I presented it.</p> <p>23 MR SEMENYA SC: Yes, when you presented</p> <p>24 it at the JOCCOM, it was approved?</p> <p>25 COLONEL SCOTT: Yes.</p>
<p style="text-align: right;">Page 13677</p> <p>1 environment in Marikana did you have personal knowledge</p> <p>2 of –</p> <p>3 COLONEL SCOTT: None.</p> <p>4 MR SEMENYA SC: - by the time you</p> <p>5 arrived?</p> <p>6 COLONEL SCOTT: None. I've never been</p> <p>7 there before. General Annandale had to even give me the</p> <p>8 directions to get to the location they were at.</p> <p>9 MR SEMENYA SC: What intelligence was</p> <p>10 available to you in formulating your appreciation?</p> <p>11 COLONEL SCOTT: At that time there was</p> <p>12 none. It was only what I could start gathering from the</p> <p>13 history of the event.</p> <p>14 MR SEMENYA SC: And to say that your aim</p> <p>15 was to gain as much historic information available on the</p> <p>16 situation and the intelligence, this you got from the</p> <p>17 Lonmin Security, did you not?</p> <p>18 COLONEL SCOTT: Mostly from Mr Graham</p> <p>19 Sinclair, who was probably the biggest help with regard to</p> <p>20 information on that first night.</p> <p>21 MR SEMENYA SC: At the bottom of page 108</p> <p>22 you also deal with the four M's, as you call them, four M's</p> <p>23 and a T. That is the drafting of the mission, the</p> <p>24 understanding of the menace, i.e. what were the opponents</p> <p>25 in the events that needed police action.</p>	<p style="text-align: right;">Page 13679</p> <p>1 MR SEMENYA SC: Okay.</p> <p>2 MR SEMENYA SC: And as you tell us, the</p> <p>3 mission statement becomes the core to guide decisions</p> <p>4 outside of the planned tasks as to what has to be achieved.</p> <p>5 COLONEL SCOTT: Amongst other things.</p> <p>6 It's a strategic guiding statement, so it gives a strategic</p> <p>7 level. It's vague in nature in a sense, although it does</p> <p>8 deal with the how – not the how, but the who, the what, the</p> <p>9 when, the why. The how is more covered in your operational</p> <p>10 concept, but it's strategic, it's vague so that the concept</p> <p>11 falls, or compliments the mission, which is at a strategic</p> <p>12 level.</p> <p>13 MR SEMENYA SC: And in this instance it</p> <p>14 was to achieve the police mandate, as you explained to us</p> <p>15 at page 110.</p> <p>16 COLONEL SCOTT: Yes, that's correct.</p> <p>17 MR SEMENYA SC: Is to prevent, combat,</p> <p>18 and investigate crime, which is the core function,</p> <p>19 constitutional responsibility of the police.</p> <p>20 COLONEL SCOTT: Yes, one of the four.</p> <p>21 MR SEMENYA SC: And to maintain public</p> <p>22 order, you tell us.</p> <p>23 COLONEL SCOTT: Yes.</p> <p>24 MR SEMENYA SC: To protect and secure the</p> <p>25 inhabitants of the Republic –</p>

<p style="text-align: right;">Page 13680</p> <p>1 COLONEL SCOTT: Ja.</p> <p>2 MR SEMENYA SC: - and their property.</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 MR SEMENYA SC: To uphold and enforce the</p> <p>5 law.</p> <p>6 COLONEL SCOTT: Yes.</p> <p>7 MR SEMENYA SC: Now you say that, at the</p> <p>8 bottom of page 110, that the Provincial Commissioner,</p> <p>9 Lieutenant-General Mbombo, stated the mission to be the one</p> <p>10 quoted on that page. Can I read it out to you?</p> <p>11 COLONEL SCOTT: This is how, what I</p> <p>12 perceived to be the strategic guidelines given by</p> <p>13 Lieutenant-General Mbombo, obviously reflecting strategic</p> <p>14 management, envisioned states to go forward with.</p> <p>15 MR SEMENYA SC: And as quoted there, "JOC</p> <p>16 visit and has shown the different points of gathering."</p> <p>17 This is now book entry 37. "The planning has been adjusted</p> <p>18 to disperse the gatherings. All police officials on duty</p> <p>19 to conduct searches and confiscate all dangerous weapons.</p> <p>20 All those that can be identified on the footage should be</p> <p>21 picked up and deployment to key strategic areas should be</p> <p>22 enhanced. In terms of our policing on crowd management,</p> <p>23 all members to conduct themselves within the limits of this</p> <p>24 policy, unless the situation dictates otherwise. Ensure</p> <p>25 that peace prevails." Those were the parameters within</p>	<p style="text-align: right;">Page 13682</p> <p>1 MR SEMENYA SC: Under paragraphs 37 you</p> <p>2 deal with your understanding of the foundation for</p> <p>3 utilising a trained police official, which translates</p> <p>4 across all fields. What do you want to tell us there?</p> <p>5 COLONEL SCOTT: That in general all</p> <p>6 police officials, functional police officials, are trained</p> <p>7 as police officials. So the core and the mandate which we</p> <p>8 have is based in the Constitution. We do, however,</p> <p>9 thereafter, once qualified as a policed official, go out</p> <p>10 and follow different career paths which will take you to</p> <p>11 different environments. You can get detectives, forensics,</p> <p>12 and obviously the tactical field which has a Public Order</p> <p>13 Policing, TRT, NIU, and STF. Now in essence all police</p> <p>14 members still remain police members, functional police</p> <p>15 members, and it's only the environments where the specific</p> <p>16 skills are embedded that becomes an enclosed environment to</p> <p>17 that specific unit or trained personnel. So if I speak on</p> <p>18 behalf of the Special Task Force here, when it comes to the</p> <p>19 releasing of hostages in the difficult environments which</p> <p>20 we do it in, then we would be responsible solely for that.</p> <p>21 However, in the same operation there would be other police</p> <p>22 members involved. Now it's commonly known in South Africa</p> <p>23 that only the Special Task Force deals with hostage</p> <p>24 situations internally, but we have NIU in support. We even</p> <p>25 have TRT in support in their different roles, and of course</p>
<p style="text-align: right;">Page 13681</p> <p>1 which the police would work.</p> <p>2 COLONEL SCOTT: That's correct. In</p> <p>3 essence we had to operationalise that statement.</p> <p>4 MR SEMENYA SC: Yes, and in paragraph 36</p> <p>5 you deal with your command and control of operations, your</p> <p>6 previous experience. Is that right?</p> <p>7 COLONEL SCOTT: That's correct.</p> <p>8 MR SEMENYA SC: And as you had already</p> <p>9 told us, you come from the STF environment. Is that right?</p> <p>10 COLONEL SCOTT: That's right.</p> <p>11 MR SEMENYA SC: But you also say you have</p> <p>12 been part of operations where the POP was in command, with</p> <p>13 tactical units, including the STF, in support roles. Is</p> <p>14 that right?</p> <p>15 COLONEL SCOTT: That's correct.</p> <p>16 MR SEMENYA SC: And with specific</p> <p>17 reference you tell us about your involvement in COP17</p> <p>18 Summit.</p> <p>19 COLONEL SCOTT: That's right.</p> <p>20 MR SEMENYA SC: Where various units were</p> <p>21 used in relation to that operation.</p> <p>22 COLONEL SCOTT: Yes.</p> <p>23 MR SEMENYA SC: And you managed to</p> <p>24 contain the situation without any violence.</p> <p>25 COLONEL SCOTT: That's correct.</p>	<p style="text-align: right;">Page 13683</p> <p>1 we even have POPs in support. That's just within the</p> <p>2 policing environment. Naturally we've got our emergency</p> <p>3 services, local government services, which are also</p> <p>4 inclined to be on a scene, but when the Special Task Force</p> <p>5 does get to a hostage scene, be it mandated that we are the</p> <p>6 custodians of that ambit, we are only in charge</p> <p>7 operationally. The scene is still managed by a senior</p> <p>8 police officer, who would be an overall commander.</p> <p>9 MR SEMENYA SC: Yes, and when it is a POP</p> <p>10 dominated environment, what happens there?</p> <p>11 COLONEL SCOTT: Similarly you would find</p> <p>12 that the POP would be in control, would be in command, but</p> <p>13 there could be other units in support and the Special Task</p> <p>14 Force can be deployed, as well as the NIU and TRT in</p> <p>15 environments where other skills are lacking on behalf of</p> <p>16 say a POPs unit, though not in command, but they're in</p> <p>17 control of their different units. So they submit to the</p> <p>18 command of the POPs commander, but the POPs commander does</p> <p>19 not control those specific tactical units. They know their</p> <p>20 SOPs – standard operating procedures – and they execute</p> <p>21 their duties accordingly.</p> <p>22 MR SEMENYA SC: Alright, and you allude</p> <p>23 to your experience you had during the operations at</p> <p>24 Ratanda. That you deal with under paragraph 38.</p> <p>25 COLONEL SCOTT: That's correct.</p>

<p style="text-align: right;">Page 13684</p> <p>1 MR SEMENYA SC: In short, what was your 2 experience there?</p> <p>3 COLONEL SCOTT: Well, we know that 4 Ratanda had what one would term public violence. I think 5 it was public service delivery issues, etcetera, and it did 6 draw the interest of high levels of government. I was 7 requested to come in to assist to establish a JOC there, 8 and put in place some form of a basic strategy for the 9 longer term. Initially POPs was dealing with the situation 10 according to their standard operating procedures, but they 11 needed something more solid and I assisted in creating that 12 JOC, putting a proper plan in place that they could 13 thereafter deploy on, which was in essence a sector 14 patrolling plan with certain contingencies built into it, 15 so that the POPs could respond to any public unrest that 16 would sporadically burst out in the environment over the 17 days to come.</p> <p>18 MR SEMENYA SC: Yes, and in paragraph 39 19 you deal with the use of negotiators. What is their 20 primary relevance in Public Order Policing?</p> <p>21 COLONEL SCOTT: Well, I know there had 22 been views expressed that you get people trained to 23 negotiate in crowd control situations, and I respect that. 24 The negotiator course presented by the police is a three- 25 week course at this time, and if I'm not mistaken, there's</p>	<p style="text-align: right;">Page 13686</p> <p>1 situation without needing to apply a tactical option, and 2 your question in such, negotiators have been used 3 successfully throughout South Africa since the early 1990s.</p> <p>4 MR SEMENYA SC: Yes, and then you deal 5 with the rationale for including the razor wire. You deal 6 with that in paragraph 40. You point to the fact that one 7 of the advantages of using razor wire is really to prohibit 8 physical confrontation between the police and the 9 protesters.</p> <p>10 COLONEL SCOTT: Yes, that was probably 11 one of the main reasons for the placement of it.</p> <p>12 MR SEMENYA SC: Second you say it was for 13 the use to show force and show the protesters that their 14 conduct, if it goes outside line, the police would have to 15 react to it.</p> <p>16 [10:05] COLONEL SCOTT: Well ja, the razor wire 17 was there and it was deployed in the phase 2, or stage 2, 18 as we later known it, for that reason; sensitise the 19 strikers to the fact that it was available and it was there 20 to be used. So that it wasn't something that would may 21 heighten – an immediate heighten of emotion amongst the 22 strikers if the police pulls into position immediately to 23 be utilised.</p> <p>24 MR SEMENYA SC: And you also point out 25 the fact that that also would help put away a need for use</p>
<p style="text-align: right;">Page 13685</p> <p>1 a basic and an advanced course, and it's to deal with 2 conflict resolution through dialogue, and in, as I said 3 before, in an nutshell that's what it covers. So the 4 scenarios after which the training has taken place exposes 5 the negotiator basically to inter-human conflict and how to 6 lower emotion and to restore rationale and thereby lead the 7 perpetrator, if one can say, or a suspect, back into the 8 direction of adherence to law, and that's pretty much what 9 it's about. It's to try and avert tactical option, to 10 allow a situation to restore itself through dialogue.</p> <p>11 MR SEMENYA SC: And through experience, 12 how effective is this tool of negotiating an unrest 13 situation down?</p> <p>14 COLONEL SCOTT: Well, to my knowledge 15 it's been used even within the Public Order Policing 16 throughout the years, and I think the numbers of cases that 17 you can see in the Public Order Policing which were 18 resolved peacefully attest to this, and many times it's not 19 even per se a qualified negotiator or someone trained in 20 the POPs resolution methods that will go forward, but the 21 senior person would try – as I've stated before, one of the 22 first steps that a police official will take, whether he be 23 a policeman on a patrol vehicle, or a Public Order Policing 24 policeman, or even through the tactical ranks, would always 25 be to engage in dialogue first to try to resolve any</p>	<p style="text-align: right;">Page 13687</p> <p>1 of firearms.</p> <p>2 COLONEL SCOTT: Well for that matter 3 hopefully the use of non-lethal methods of force as well 4 because with a physical barrier there, as we know, it 5 creates a psychological barrier as well. So once it's 6 deployed one would expect the strikers not to approach it, 7 however, if they did and tried to come through the smaller 8 weakened gaps between the Nyalas and the trailers that's 9 where non-lethal from public order policing could be 10 utilised to repost their advances. But it, in essence, 11 would allow for smaller areas of infiltration into the 12 police's neutral or safe area for that matter and not just 13 a wide open space that the police would need to defend.</p> <p>14 MR SEMENYA SC: But also you tell us that 15 this was also intended to negative the impact of the sharp 16 point, not sharp point, sharp edged metal weapons that the 17 protesters are using.</p> <p>18 COLONEL SCOTT: Well yes, in essence if 19 we could put up a physical barrier, being razor wire it 20 would keep a separation between strikers and police. And 21 in that sense police would not need to utilise, hopefully 22 any force to keep the protesters away. Without that 23 barrier there should the strikers approach the police one 24 would have to have some way of the police defending 25 themselves.</p>

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1 MR SEMENYA SC: And under paragraph you
 2 deal with why you considered Nkaneng Settlement to be a
 3 negative attraction point.
 4 COLONEL SCOTT: Yes.
 5 MR SEMENYA SC: What do you say, why was
 6 that the case?
 7 COLONEL SCOTT: Well on numerous factors,
 8 we were concerned obviously for the residents in Nkaneng as
 9 well as the settlement south west of Koppie 1. Previous
 10 experience has shown that if there is a police dispersion
 11 that strikers for this matter could move into those
 12 environments and start venting their anger or their
 13 emotions because of the police action on innocent
 14 bystanders, possibly those that they deemed were not
 15 participating in the strike or that left for that matter on
 16 the day. Foreign nationals, xenophobia attacks and then of
 17 course for the police to still carry out their mission
 18 which was still to disarm those with dangerous weapons and
 19 for the police to move between houses the strikers could
 20 adopt gorilla tactics, break into smaller groups making it
 21 very difficult for the police to track them down. And of
 22 course they could use the collateral of innocent bystanders
 23 between themselves and the police as well.
 24 MR SEMENYA SC: We have dealt at length
 25 with the role of POP in that type of environment, what it

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1 is that they do or can do to defuse an unrest situation,
 2 right?
 3 COLONEL SCOTT: Yes.
 4 MR SEMENYA SC: Because in paragraph 42
 5 you then deal with the various disciplines that were to be
 6 used in this operation. You've also explained, as you do,
 7 on the top of page 119 the role of STF. Is that correct?
 8 COLONEL SCOTT: That's correct.
 9 MR SEMENYA SC: And to tell us that STF
 10 is employed only when negotiations fail and their role is
 11 to neutralise the threat, to restore order and affect an
 12 arrest through a forced continuum.
 13 COLONEL SCOTT: Yes, the context I'm
 14 speaking in here again is reflecting on an STF in the STF
 15 role where they would be at say a hostage situation and
 16 that they would never be employed tactically without first
 17 negotiations taking place and the chief negotiator or the
 18 negotiating co-ordinator would submit to the scene
 19 commander or overall commander that this was not going to
 20 be resolved in that manner. And now the hostages in this
 21 case their lives are so endangered that a tactical option
 22 is recommended in order to save them.
 23 MR SEMENYA SC: Okay and then you deal
 24 with the role of the STF which we have explained but more
 25 importantly you deal under paragraph 42.7 at page 121 with

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1 the role of the NIU and the TRT.
 2 COLONEL SCOTT: That's correct.
 3 MR SEMENYA SC: What do you tell us
 4 there?
 5 COLONEL SCOTT: Are you referring
 6 specifically to paragraph 42.7?
 7 MR SEMENYA SC: Yes that the NIU and the
 8 TRT are trained to utilise the same force continuum –
 9 COLONEL SCOTT: Yes.
 10 MR SEMENYA SC: - other than possibly
 11 having the availability of Taser.
 12 COLONEL SCOTT: In the previous pages in
 13 dealing with the Special Task Force in the context of their
 14 operations what I was saying there in essence was there is
 15 always a force continuum, even if the Special Task Force is
 16 tasked to go tactical into a situation, even they have a
 17 force continuum. And it always starts as well with
 18 physical presence and verbal command. Obviously if life is
 19 immediately endangered one would respond in self defence or
 20 in private defence of a colleague or of a hostage for that
 21 matter but there is always a force continuum applied by the
 22 Special Task Force. And this was also so for the TRT and
 23 the NIU who would follow a similar force continuum of first
 24 utilising verbal command and the shock presence of – the
 25 shock factor of their presence, of a tactically cleared

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1 officer before, of course, moving to unarm combat
 2 techniques, depending on what they have with them, the
 3 utilisation of pyro-techniques, stun grenades. Special
 4 Task Force again has Kaiser weapons which literally
 5 neutralises the threat through a shocking feeling, not
 6 dangerous to them as we've been taught. And there are
 7 methods that we would use during all of these again to
 8 approach suspects for that matter without having to utilise
 9 sharp point ammunition.
 10 MR SEMENYA SC: Yes well we know in
 11 Marikana at least the STF was there but didn't play much of
 12 a significant role, can we now focus on what you say was
 13 the relevance of the TRT and that of the NIU? Against
 14 paragraph 42.13, you say these units are trained
 15 specifically, that is the STF, the NIU and the TRT –
 16 COLONEL SCOTT: That's correct.
 17 MR SEMENYA SC: - are trained
 18 specifically to advance through this type of difficult
 19 rural terrains in small teams ranging from buddy pairs to
 20 larger sections and are more skilled at clearing crevices
 21 and bush terrain. Was that the role you had planned for
 22 these units in the Marikana operation?
 23 COLONEL SCOTT: Well that was the role I
 24 actually planned. I foresaw that obviously there were
 25 three options that could occur when the POPs dispersion

<p style="text-align: right;">Page 13692</p> <p>1 took place from the physical site. And as I say, one, that 2 the POPs members may be confronted as in the gap closed 3 onto the POPs members when they started the dispersion, 4 understanding that POPs themselves would be moving forward. 5 Two, that the strikers may move up onto the high rocks and 6 that I anticipated would actually be their option, that 7 they may go up onto the high rocks to evade the water canon 8 and the POPs members. And in that case this is where the 9 TRT, the NIU and the STF would be applied because they have 10 specific training to deal with close encounter in these 11 type of environments. We really refer to them in the 12 training as jungle ants where they can work in either buddy 13 pairs or as teams. And they go in again using the force 14 continuum to approach dangerous suspects and execute 15 arrests. The POPs members, however, are not trained 16 specifically in that but in the ten tactical actions of the 17 POPs member which doesn't deal with this type of high risk 18 arrest.</p> <p>19 MR SEMENYA SC: And to the extent of the 20 limitations on POP's training what was the envisaged role 21 of your NIU, TRT particularly in effecting this so-called 22 high risk arrests?</p> <p>23 COLONEL SCOTT: Obviously when the public 24 order policing dispersion line sweeps through, past koppie 25 2, past koppie 1 and this was the envisioned plan, it's not</p>	<p style="text-align: right;">Page 13694</p> <p>1 COLONEL SCOTT: They were to be behind 2 the public order policing line but as I stated, at least 3 100 metres back so that they had time and space to affect 4 their force continuum.</p> <p>5 MR SEMENYA SC: And that would give them, 6 as you tell us, an opportunity to give a verbal warning, to 7 use the stun grenades and warning shots to dissuade the 8 strikers from attacking them?</p> <p>9 COLONEL SCOTT: That's correct.</p> <p>10 MR SEMENYA SC: Under paragraph 43 you 11 deal with the background and your consideration in applying 12 lesser trained technical units with live ammunition in 13 protection role throughout the Operation Platinum, do you 14 see that?</p> <p>15 COLONEL SCOTT: Yes.</p> <p>16 MR SEMENYA SC: And to tell us what you 17 told the commander, what did you say to him?</p> <p>18 COLONEL SCOTT: Just through my analysis 19 or what I suspected happened possibly on the Monday was 20 that the POPs or TRT members didn't hold the line. As I 21 say again, this is simply my analysis, I was not there, I 22 can't speak on behalf of what truly happened but when 23 individual police officers are hacked to death without 24 colleagues nearby then something has gone wrong with 25 regarding the lines that should be in place, or the</p>
<p style="text-align: right;">Page 13693</p> <p>1 what occurred, but once they sweep through and they come to 2 the re-organise or stop line that the TRT first would be 3 behind them. They would sweep through Koppie 2 to search 4 and arrest any belligerent protesters that were maybe 5 hiding there with weapons and the STF and NIU would go to 6 the larger koppie 1. And they would do a similar action 7 there where they would sweep over that koppie as well. And 8 this in essence is also to protect the public order 9 policing and any follow up action which was supposed to be 10 the phase 3 thereafter because to have belligerent 11 protesters at your back whilst you're still going forward 12 is dangerous again for POPs once they've swept through.</p> <p>13 MR SEMENYA SC: And so the plan 14 contemplated what would happen in the event if a POP line 15 comes under attack?</p> <p>16 COLONEL SCOTT: It did and the POP were 17 instructed that should they be attacked or should they be 18 advanced upon and they felt that they were threatened to 19 that point, obviously the operational commander would have 20 been giving certain commands, possibly rubber, firing of 21 rubber. But if these dissuade an approach and the approach 22 still came at them they were to withdraw into their 23 armoured vehicles, their Nyalas.</p> <p>24 MR SEMENYA SC: And where would the TRT 25 unit be placed in relation to that?</p>	<p style="text-align: right;">Page 13695</p> <p>1 teamwork. So in saying this, on more than one occasion 2 where I had the opportunity, after the JOCCOMs, etcetera 3 spoke to some of the team leaders and said to them they 4 need to keep the line. POPs as well as TRT, whoever needs 5 to hold the line because the moment they run or they move 6 away and they leave personnel isolated we're going to have 7 situations where the teams are broken up. The SOPs for 8 that matter won't work necessarily and we're leaving police 9 members exposed again to situations as was experienced on 10 Monday. The other aspect that I also warned them on was 11 one has to consider that in the tenseness of the moment of 12 being confronted by a potential threat that there's a 13 decision making process going on. And in pre-making that 14 decision you can – and obviously we teach this in our 15 hostage rescue courses as well, you assist them into pre- 16 making that decision because there is a syndrome called 17 contingency fire – sorry I'll get to the word later. But 18 it's where police officers are standing and are on the 19 break point of whether or not to shoot or not knowing when 20 to shoot. If somebody fires you'll find that others may 21 fire as well, unless they've made a pre-decision that 22 they're firing ad a verified threat.</p> <p>23 MR SEMENYA SC: Yes, under paragraph 44 24 you deal with the plan contemplated being the cordon, 25 search and seizure. Do you see that at page 126?</p>

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1 COLONEL SCOTT: I'm sorry, are you
 2 talking about –
 3 MR SEMENYA SC: Phase 5.
 4 COLONEL SCOTT: Phase 5, yes.
 5 MR SEMENYA SC: That happened in Marikana
 6 much later, did it not?
 7 COLONEL SCOTT: Yes, it did.
 8 MR SEMENYA SC: Okay
 9 COLONEL SCOTT: Well it's - what I'm
 10 referring to here, I know in Marikana later phase 6 took
 11 place, or stage 6 which was the cordon and search of the
 12 hostels which provided fruitful as well. What I'm
 13 referring to here is the actual utilising of the Special
 14 Task Force, the NIU and even up to the TRT to go and do
 15 the intelligence driven high risk arrests based on previous
 16 experience.
 17 MR SEMENYA SC: There are various
 18 questions which were raised by the evidence leaders seeking
 19 clarification. You deal with that in section 5F of your
 20 statement in page 127.
 21 COLONEL SCOTT: Yes.
 22 MR SEMENYA SC: And this related, amongst
 23 others, to how you received the video and photo material
 24 from police witnesses, how did this happen?
 25 COLONEL SCOTT: On the evening of the 16th

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1 of August, that Thursday in the de-briefing Major Annandale
 2 gave an instruction there to all the commanders present
 3 that they need to – any video or photo footage needs to be
 4 brought in and he appointed me at that time as the nodal
 5 point. So, as from the next morning I started receiving
 6 some of the first photos. I think Colonel Vermaak was
 7 already giving me photos possibly that night. He had been,
 8 in the course of the week, coming back and giving me
 9 certain photographs but they came in sporadically. Some of
 10 them were given on memory sticks, members gave them to
 11 their commanders on memory sticks. Some of them were given
 12 to other senior officers in the JOC who loaded them onto
 13 their computers then I got them from those commanders and
 14 sporadically it was given over to us or to myself.
 15 MR SEMENYA SC: Okay. And that of
 16 Lieutenant-Colonel Botha, the video?
 17 COLONEL SCOTT: Lieutenant-Colonel
 18 Botha's video I received about, I think it's two to three
 19 weeks afterwards. It was the introduction to the SAPS
 20 legal team when I was in Potchefstroom. The Captain, I
 21 don't recall his name, I think it may be McClarky –
 22 MR SEMENYA SC: McClarky, yes.
 23 COLONEL SCOTT: Yes, he came to actually
 24 see – well he came to – I'm not sure for what reason but we
 25 got to speaking about scene 2 which at Roots we couldn't

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1 get finalisation on and he mentioned that he had lat-longed
 2 or pinpointed each piece of evidence at which I asked him
 3 whether I could assist him because we also wanted to
 4 understand exactly who was where, where evidence was and
 5 try and piece the picture together. He later faxed me
 6 those documentations but he did come through the next day,
 7 if I'm not mistaken with Colonel Botha's video footage on a
 8 CD or DVD which he gave over to me.
 9 MR SEMENYA SC: And you also deal with
 10 the photos from Lieutenant-Colonel Mere, from Captain Nel
 11 including a video from Captain Nel, photos from Captain
 12 Barnard, videos from Sergeant Mohlatsi and those you deal
 13 with on page 130 of your statement.
 14 COLONEL SCOTT: Yes, to the best of my
 15 knowledge. As I say to pinpoint a specific day is
 16 difficult but it's to the best of my knowledge.
 17 MR SEMENYA SC: Yes. And there were
 18 different PowerPoint formats, planned presentations that
 19 you made. What necessitated that? You deal with it under
 20 paragraph 46.
 21 COLONEL SCOTT: Obviously there was the
 22 PowerPoint that was the presentation of which the officers
 23 were briefed throughout the operation in Marikana. After
 24 that, and I realised after Marikana that I needed to clean
 25 that up if I could say. As I've mentioned before, on the

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1 Tuesday I presented the full presentation, the Wednesday
 2 there were other role players in the JOCCOM and it wasn't
 3 necessary to deal with much of what was under situation and
 4 I got to speak to the operational strategy. And on the
 5 Thursday, again I more just used a Google map to orientate
 6 the people and speak to them again, reflecting on one or
 7 two other slides. So the presentation as such and I have
 8 to say we didn't have the hindsight we have now, we were
 9 not preparing for a Commission of Inquiry. We were not
 10 preparing that people were supposed to have died, so it was
 11 supposed to be an operation that simply, day after day,
 12 Tuesday was gone, Wednesday was gone, Thursday was gone and
 13 after what happened on Thursday we started realising but we
 14 need to just fix this, or I need to fix this because surely
 15 I'm going to need to show this at some stage to somebody.
 16 So I tried to reflect as best possible and I think that
 17 would probably cover the presentation which was made or I
 18 started making on the Thursday evening. But I got called
 19 away from that to work on the document which was to be sent
 20 to the Ministry and obviously to the President to inform
 21 him of the event. And then thereafter on the various
 22 beginnings of the presentation which was starting as the
 23 first, so to say version was that for the National
 24 Commissioner with the press conference and moving on to
 25 brief the President and the Inter-ministerial Committee,

<p style="text-align: right;">Page 13700</p> <p>1 the Provincial Portfolio Committee, etcetera. So there 2 was little time really, I mean through all those 3 presentations each time realising that it's a presentation 4 it in my view was not to be deemed as evidence. I was 5 simply trying to portray what was given over to the 6 officers, understanding as well that it was from day to day 7 that I was requested to present this. I was never to be a 8 standard presenter of the presentation and that whoever may 9 take the presentation from me is going to need to present 10 it accurately as well. Thus the building of the 11 presentation, of the planning to try to better reflect it 12 so that whoever presented that presentation would more 13 accurately show it. 14 [10:25] MR SEMENYA SC: Against paragraph 46.2.10 15 you tell us that you had to start reverse engineer, as it 16 were, the presentations. 17 COLONEL SCOTT: Yes, that was in 18 December; one of the police witnesses was testifying and I 19 received a request or an instruction that the legal team 20 needed a plan for each of the days, to which I responded 21 that I didn't have one, but at best I could reverse 22 engineer it. I was unsure for what its purpose was. I 23 knew it had to be shown in the Commission, something to do 24 with the current police witness in order for him to 25 possibly comment, and over a very short period - I had an</p>	<p style="text-align: right;">Page 13702</p> <p>1 that were compiled at Roots. 2 COLONEL SCOTT: Yes. 3 MR SEMENYA SC: Okay, you deal with those 4 under paragraph 46, and on paragraph 47 you deal with the 5 original version of the briefing. 6 COLONEL SCOTT: Yes, that's what I've 7 discussed. 8 MR SEMENYA SC: What do you say there? 9 COLONEL SCOTT: As I mentioned a couple 10 of minutes ago, it was, the original presentation was built 11 already on the Tuesday. It was amended on the Wednesday, 12 for instance in the coordinating instructions, to reflect 13 the coordinating instructions of Wednesday; not so for 14 Thursday, however, because I didn't use that same slide 15 again, but in essence the presentation thereafter, I can't 16 recall specifically which of these versions after all the 17 presentations that were built for the different entities, 18 or different dignitaries that I had to brief, was the 19 original one. I again wasn't putting this aside as 20 evidence per se, and there may even be that on some of the 21 hard drives or so on there are reflections of the 22 originals, which I would be open to even view because it 23 would be – as I say, this started confusing me at some 24 stage as to which was now still the original and which 25 wasn't, but I was just trying to accurately portray what</p>
<p style="text-align: right;">Page 13701</p> <p>1 afternoon and the next morning – I quickly tried to reverse 2 engineer the plan, because as I stated, in the Marikana 3 operation itself I would build on top of the plan as we 4 would go. So if there was a small change, I would simply 5 amend the plan as it was. I didn't save it daily and pack 6 it away, save it daily and pack it away. So the plan would 7 be changing as I would be going, to reflect more clearly 8 what was shown on that day, which was roughly to the 9 Wednesday. 10 MR SEMENYA SC: Alright, and you cover 11 how it is that you compiled and added on to the 12 presentations from there onto the other. 13 COLONEL SCOTT: Yes, the planning 14 presentations? 15 MR SEMENYA SC: Yes. At paragraph 46.3 16 on page 136 you say, "This all gave rise to many versions 17 of the presentation." 18 COLONEL SCOTT: Paragraph? 19 MR SEMENYA SC: 46.3, page 136. 20 COLONEL SCOTT: Yes. 21 MR SEMENYA SC: With the first being the 22 one you anticipated there, arrival of the National 23 Commissioner. Correct? 24 COLONEL SCOTT: Yes. 25 MR SEMENYA SC: Culminating with those</p>	<p style="text-align: right;">Page 13703</p> <p>1 was shown at the different days in the operation by 2 building the other versions of the planning presentations. 3 MR SEMENYA SC: Okay. Not that it was 4 ever suggested, but what was your best endeavour in 5 attempting to put as correct a picture as you could 6 relating to how this plan developed? 7 COLONEL SCOTT: In April, in reflecting 8 back on all the different PowerPoint presentations which 9 deal with Ops Platinum, I went back, I started going 10 through my own documentation, looking at some of my own 11 Google Earth saved formats and so on, and I went back to 12 build my own version of what happened, or the presentations 13 that, as accurately as I could recall them, were presented 14 on that Tuesday, Wednesday, and Thursday. 15 MR SEMENYA SC: Of course you say that 16 against paragraph 51, page 141, you say there you believe 17 that your intentions of wanting to assist in portraying the 18 full picture of what happened is reflected in your 19 submitting everything in your possession to the Commission, 20 regardless of the humiliation it may cause you, not being 21 as complete and professional in the presentation as it 22 could be. 23 COLONEL SCOTT: That's correct. When we 24 were working at Roots, somewhere in the course of Roots the 25 police purchase a hard drive, which became the master hard</p>

<p style="text-align: right;">Page 13704</p> <p>1 drive, and I literally dumped everything that I had that 2 I'd made on Marikana into that, which was then under the 3 control, as we know, of Colonel Visser.</p> <p>4 MR SEMENYA SC: Alright. Under paragraph 5 G, section 6, you deal with various concerns that have been 6 raised in the hearings, one of which was the so-called 7 Scott's plan. You see that at paragraph 52.1? 8 COLONEL SCOTT: Yes. 9 MR SEMENYA SC: What have you got to say 10 there? 11 COLONEL SCOTT: The Scott plan, as it's 12 referred to, is a plan which ultimately gets approved at a 13 JOCCOM. It was given the opportunity to all that were 14 present, which goes beyond the JOCCOM representatives, to 15 the commanders that were present when they were briefed to 16 give opportunity to give input, to reject what they heard 17 or saw or was proposed, and as I say, at the end of the day 18 when this plan was accepted by the JOCCOM and by General 19 Mpmembe and General Annandale, it was then a police plan. 20 It was not a Scott plan. Scott may have been the architect 21 of a strategy, but ultimately the plan itself and the 22 rollout of that plan, understanding that there are certain 23 standard operating procedures which need to be carried out, 24 etcetera, are done within the ambits of the police, the 25 guidelines of the Standing Order, standard operating</p>	<p style="text-align: right;">Page 13706</p> <p>1 time to go to stage 6? 2 COLONEL SCOTT: Not necessarily, although 3 it was not my call, but there was vague intelligence that a 4 lot of the militant group came from the environment of the 5 Karee Hostel, that being one, although both hostels would 6 have been the targets of the cordon and search, being Karee 7 Hostel as well as Wonderkop Hostel, and then of course we 8 even looked at the Nkaneng settlement as a whole, which 9 would have meant a far larger operation with a lot of 10 different technique in order to sweep through there to 11 search for weapons. So it was a huge operation. Possibly 12 better would have been targeted searches, and that would 13 have been intelligence-driven, specifically looking at 14 having the intelligence of where these armed strikers would 15 be at night-time before going there to apprehend them. But 16 again I say that the moment you do that, you break the 17 trust of the dialogue and one wants a peaceful resolution 18 through dialogue, and you can't go into a peaceful 19 resolution with dialogue when at night-time you're going 20 behind the scenes and searching houses, cordoning off 21 areas. It would be a two-faced approach to the 22 negotiation. 23 MR SEMENYA SC: The plan is also 24 criticised in making Nkaneng settlement a negative 25 attraction point, the argument being that most of the</p>
<p style="text-align: right;">Page 13705</p> <p>1 procedures of the tactical options of POP, etcetera. 2 MR SEMENYA SC: Part of the other 3 criticism is that the police plan ought to have gone to 4 stage 6 first before implementing the stage 3. You will 5 see the criticism appears, and you deal with it against 6 paragraph 52.17 on page 146. 7 COLONEL SCOTT: Again the cordon and 8 search of hostels is no quick operation. It's something 9 which requires intelligence. Again it, you go through the 10 whole planning procedure, and to have the information in 11 place in order to do that, you would also want to know 12 where the strikers, the armed strikers are at that time. 13 So amongst other things to simply go to a hostel, cordon it 14 off and search it, you may be missing the point. But I 15 think one of the greater reasons for not carrying out a 16 stage 6, a cordon and search, was it would break the spirit 17 of negotiations and up until Thursday morning the police 18 were still hopeful that dialogue was going to prevail. So 19 by Thursday when it was evidence dialogue was not going to 20 prevail, obviously at strategic level the decisions were 21 made and we moved to a stage 3, or a phase 3. 22 MR SEMENYA SC: And was there enough 23 intelligence though to do a cordon, search, and seizure, 24 about where the strikers were living, who were they, where 25 the arms were? Did you have enough intelligence at that</p>	<p style="text-align: right;">Page 13707</p> <p>1 strikers would come from that neighbourhood and a dispersal 2 process was supposed to facilitate the ability to get to 3 their homes. 4 COLONEL SCOTT: Ja, again the dispersion 5 wasn't, the mission given to the police was not simply one 6 of disperse the crowd; it was disperse and disarm, if we 7 see in the OB-entry. There were different aspects spoken 8 to there. So it was about taking away weapons, and it was 9 about retrieving any possible firearms that were in their 10 possession which were taken from the deceased Lonmin 11 Security employees and the deceased police members. So it 12 was not simply just about dispersing, but it was about 13 disarming. That's the first fact. 14 The second was if I look at the situation, my 15 analysis at the time as well was that if we should have to 16 close, as I said the three things that I saw could occur 17 when approaching the militant group, was not that they were 18 simply going to disperse; was that they would either 19 approach the police in a counter-action, either go up onto 20 the high ground of the koppies and sit there in order there 21 deem the dispersal action ineffective on them, or if they 22 were, we would want them for our positive attraction to 23 move to the open ground where there would just be field and 24 we would be able to move further, to disperse them into 25 further smaller groups in order to disarm those groups. Of</p>

<p style="text-align: right;">Page 13708</p> <p>1 course we were looking at the forensic side as well; we 2 wanted to see for weapons that would have had traces of 3 blood, which would have been swabbed for DNA, etcetera, and 4 sent away.</p> <p>5 MR SEMENYA SC: The other criticism to 6 the plan is that you ought to have occupied the koppie in 7 the morning so that the strikers would not come and gather 8 there, as they used to do the days before.</p> <p>9 COLONEL SCOTT: Yes, and to me that would 10 have not been an option. At the koppie it was an 11 environment that the strikers felt safe. They felt that 12 that was – they took ownership of it and we were happy with 13 that because they were in essence in an environment where 14 they couldn't destroy mine property. We could see them 15 clearly. They could see us clearly. If we had taken that 16 option to dominate the koppie before they arrived, they 17 would simply have moved elsewhere and we didn't want them 18 mobile. We wanted them to be static because dialogue was 19 ongoing and we knew that if they got mobile, the chance 20 existed that they would go to mine property and then the 21 police would simply be playing a follow-the-leader action 22 where we'd be trying to anticipate where they were going, 23 cordoning off. It would have put us on manoeuvres, which 24 is not what we wanted.</p> <p>25 MR SEMENYA SC: Okay, concerning the</p>	<p style="text-align: right;">Page 13710</p> <p>1 totally separate from the high-risk arrests which were then 2 to follow, which is a separate action, which is a common 3 policing action but better suited to tactical units who are 4 trained to carry out high-risk arrests.</p> <p>5 MR SEMENYA SC: Okay, your confirmatory 6 affidavit deals with this aspect of exhibit L, to which you 7 had direct input. We won't go through each one of them, 8 but that's what your confirmatory affidavit seeks to do.</p> <p>9 Am I correct?</p> <p>10 COLONEL SCOTT: That's correct.</p> <p>11 MR SEMENYA SC: Chair, those are the 12 questions we have for Colonel Scott.</p> <p>13 CHAIRPERSON: Thank you. Now we can 14 either call upon Mr Chaskalson to commence cross-examining 15 now, or we could take the tea adjournment now to enable you 16 to take any final instructions you wish before you formally 17 conclude the evidence and cross-examination starts, because 18 once he's under cross-examination, then certain 19 consequences follow. So what do you want me to do?</p> <p>20 MR SEMENYA SC: That would be preferable 21 if we took the tea adjournment now, Chair.</p> <p>22 CHAIRPERSON: Good. We'll take the tea 23 adjournment now, and we'll resume at quarter past 11.</p> <p>24 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>25 [11:22] CHAIRPERSON: The Commission resumes. Mr</p>
<p style="text-align: right;">Page 13709</p> <p>1 allegations of evidence tampering, you deal with that in 2 paragraph 52.19.</p> <p>3 COLONEL SCOTT: This is just informing 4 how the, how this aspect came to light, and we were sitting 5 in the smaller auditorium at the Rustenburg Commission, 6 working on the exhibit L, the police presentation, when I 7 was going through different photographs and I realised that 8 in the same deceased body in some had weapons and in the 9 other didn't have weapons, and obviously this to me was 10 alarming. As I say, I called Colonel Visser over. He 11 acknowledged what I was seeing and a decision was taken to 12 go to the police management and we informed them. They 13 chose to inform the legal team to inform the Commission of 14 the findings, to open it up to say this is what we have 15 found and it's being investigated.</p> <p>16 MR SEMENYA SC: Now finally about the 17 plan, was there anything in the plan which made provision 18 for the use of sharp-point ammunition?</p> <p>19 COLONEL SCOTT: No, the plan is planned, 20 as I said, to disperse and to arrest, or to disarm and to 21 arrest.</p> <p>22 MR SEMENYA SC: Was that to be achieved 23 with the use of sharp-point ammunition?</p> <p>24 COLONEL SCOTT: No. There's a separate 25 POPs action, which is the dispersal action, which is</p>	<p style="text-align: right;">Page 13711</p> <p>1 Semenya, are there any further questions you wish to ask 2 the witness?</p> <p>3 MR SEMENYA SC: No Chair, thank you.</p> <p>4 CHAIRPERSON: Colonel, you're still under 5 oath. Mr Chaskalson?</p> <p>6 DUNCAN GEORGE SCOTT: s.u.o.</p> <p>7 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD):</p> <p>8 Thank you, Mr Chairperson. Colonel, I'm going to start my 9 cross-examination by dealing with the photographic and 10 video evidence that came to you and there are really four 11 broad objectives of this section of the cross-examination. 12 I want to tell you at the outset what they are so you have 13 a sense of where I'm going. The first is a very formal and 14 technical objective. It's to use your testimony as a way 15 of formally introducing the Commission all the photographs 16 and videos of the 16th of August that you and I and the 17 parties have seen, but have not yet been introduced as 18 exhibits. So I'll be putting to you a series of 19 photographs, asking you to confirm the source and asking 20 you to confirm that as far as you're aware there aren't any 21 further photographs of the 16th or videos of the 16th from 22 that source.</p> <p>23 The second is to ask you to confirm the 24 correctness of a spreadsheet that you have given to us with 25 details of the source files for all of the photos and</p>

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1 videos in exhibit L. That's to enable the Commissioners to
 2 know which photographs and videos have proven sources as
 3 evidence, which ones don't and then to decide what weight
 4 to give to the photographs and videos in exhibit L on that
 5 basis.
 6 The third is to try to get rid of red herrings
 7 and if I can explain that, over a period of many months the
 8 evidence leaders have been liaising with yourself and, to a
 9 lesser degree, Colonel Visser, in relation to the video
 10 evidence and in the process a great deal of our concerns
 11 have been addressed but the parties and the Commissioners
 12 haven't been in on our discussions and so they may still
 13 have many suspicions. Where we're satisfied that there's
 14 no reasonable basis for any suspicion to show why we're
 15 satisfied that there's no reasonable basis for suspicion
 16 and if I can sort of give you an indicator in that regard,
 17 the very first specific topic I'll be addressing with you
 18 in that regard is the withdrawal of the two POPS video
 19 operators, Warrant Officer Masinya and Ndlovu, on the 16th
 20 at around about 1:30. There is some suspicion that there
 21 may be secret footage of scene 1 or scene 2 that those
 22 video operators took which hasn't been disclosed to the
 23 Commission. We've investigated it through exchanges with
 24 yourself, we're satisfied there is no such secret footage.
 25 We'd like through your evidence to try to persuade

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1 everybody else in this room of that fact.
 2 Now those are the three easy parts of the video
 3 and photograph cross-examination or co-operative parts.
 4 Unfortunately there is a fourth purpose and that's where we
 5 still have concerns and there we want to put those concerns
 6 to you and give you an opportunity to persuade us and the
 7 Commissioners that our concerns are not well-founded.
 8 So if I can start with the first formal topic,
 9 which is really just proving videos of the 16th and, Mr
 10 Chairperson, to try to speed this process up what we have
 11 provisionally done is we have assigned a series of exhibit
 12 numbers to a succession of – well, screen shots of
 13 photographs and electronic files of photographs and videos
 14 and how we would propose to perform this exercise is to put
 15 the screen shots before Colonel Scott as an identification
 16 method and then to ask that the screen shots and the
 17 electronic files that represent the photographs that are
 18 described on the screen shots be entered into the evidence
 19 as exhibits.
 20 CHAIRPERSON: Have you prepared a list of the
 21 proposed exhibits and the proposed exhibit designations?
 22 MR CHASKALSON SC: We don't have a
 23 discreet list, I'm afraid, at this stage. We've got our
 24 own rough list. We can prepare a consolidated list over
 25 lunchtime and circulate it.

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1 CHAIRPERSON: That's fine. So after lunch we can
 2 do the housekeeping in relation to the marking or
 3 designating of the exhibits but in the meanwhile you can
 4 proceed.
 5 MR CHASKALSON SC: Thank you,
 6 Chairperson. If I can ask your guidance on one further
 7 topic which is for convenience sake we would propose that
 8 each set of photographs gets its own exhibit number where
 9 the screen shot will be, I mean to take – we would begin
 10 with Captain Loest simply in alphabetical order. We
 11 propose that the screen shot of his photographs be JJJ5
 12 which is the next sequential exhibit number but the
 13 photographs themselves, because the electronic files are
 14 already numbered, would then be JJJ5.030 to .062 which are
 15 the existing numbers.
 16 CHAIRPERSON: That sounds a sensible way
 17 of proceeding.
 18 MR CHASKALSON SC: Now Colonel, I don't
 19 know if you have ready access to the screen shot of Captain
 20 Loest's photographs in front of you. We can give you a
 21 hard copy if you don't.
 22 COLONEL SCOTT: No, I have.
 23 MR CHASKALSON SC: Then can I ask you to
 24 confirm that these are photographs of the 16th of August
 25 that were provided to you by Captain Loest? Commissioners,

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1 I beg your pardon. You too have screen shots of those,
 2 they have just been posted above you and they are at page
 3 636 of the files that we have given to you, file 3.2, but
 4 again Chairperson –
 5 CHAIRPERSON: 636 you said? Thank you.
 6 MR CHASKALSON SC: 636. Colonel, can I
 7 ask you to confirm that these are photos of the 16th that
 8 were provided to you by Captain Loest?
 9 COLONEL SCOTT: To the best of my
 10 recollection, yes. When I received photos I would create a
 11 file with the file name of the person. If something has
 12 been added or taken out, I wouldn't be sure but as I say
 13 that's to the best of my recollection, yes.
 14 MR CHASKALSON SC: And you have, to a
 15 certain extent, answered my second question which is, are
 16 you aware of any other photos of the 16th that were taken by
 17 Captain Loest?
 18 COLONEL SCOTT: No.
 19 MR CHASKALSON SC: And Chairperson, if we
 20 can then make these, the screen shot JJ5 and the existing
 21 photographs which are in the electronic files JJ5.030 to
 22 JJ5.062. Sorry, JJJ5 in each case.
 23 CHAIRPERSON: Yes. Yes, I think I've
 24 agreed now to that mode of proceeding so you don't have to
 25 ask me every time. If I have a problem I'll raise it.

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1 MR CHASKALSON SC: Right. Moving next to
 2 Captain Nel's photos of the 16th which will be JJJ6 and
 3 which the Commissioners will find at pages 667 to 668 of
 4 their bundles, Colonel Scott can I ask you again to confirm
 5 that those, what we see up in front of us, that those
 6 photographs are photographs of the 16th that were provided
 7 to you by Captain Nel?
 8 COLONEL SCOTT: That's correct.
 9 MR CHASKALSON SC: And to the best of
 10 your knowledge, you're not aware of any other photographs
 11 of the 16th taken by Captain Nel.
 12 COLONEL SCOTT: No.
 13 MR CHASKALSON SC: And Chair, because
 14 there are two pages of screen shots we've called the screen
 15 shots 6.1 and 6.2. The next set of photographs are Captain
 16 Van Heerden's photographs of the JOC which will be JJJ7.
 17 They are on page 683 of the Commissioners' bundle.
 18 Colonel, have you got those screen shots?
 19 CHAIRPERSON: Appear at what page?
 20 MR CHASKALSON SC: 683.
 21 CHAIRPERSON: That's Captain [microphone
 22 off, inaudible].
 23 COLONEL SCOTT: Van Heerden.
 24 CHAIRPERSON: Van Heerden.
 25 MR CHASKALSON SC: And Colonel, can you

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1 confirm that the photos that we see in these screen shots
 2 are photos of the 16th that were provided to you by Captain
 3 Van Heerden?
 4 COLONEL SCOTT: I'm not sure they were
 5 all taken by her but they were provided by her. I think
 6 she appears in one of them, if I'm not mistaken.
 7 MR CHASKALSON SC: Okay, well, we may
 8 have to clarify from her who took them but –
 9 CHAIRPERSON: They may have been taken on
 10 her camera perhaps if she got someone to take a picture of
 11 her with her camera but we'll sort that out when she gives
 12 evidence, I take it, unless it can be done by agreement.
 13 MR CHASKALSON SC: I'm sure a statement
 14 may suffice for this purpose but to the best of your
 15 knowledge you're not aware of other photographs taken on
 16 the camera of Captain Van Heerden on the 16th?
 17 COLONEL SCOTT: No, no.
 18 MR CHASKALSON SC: The next bundle are
 19 photographs taken on Colonel Mere's camera. The screen
 20 shots are from pages 639 to 642, 639 to 642. The exhibit
 21 number will be JJ8.1 to .4 and before I ask you questions
 22 about these, I might explain that as has been agreed
 23 between the parties in terms of how to reconcile times
 24 between cameras, Colonel Mere's camera was – I forget the
 25 exact amount but about 11 hours or 14 hours out. So the

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1 dates on some of these cameras, the dates on some of these
 2 photographs are reflected as dates on the 15th because the
 3 camera clock was so far out of time but after we've
 4 recalibrated the dates to match Etv time, we have
 5 determined that these are the only photographs of Colonel
 6 Mere's that were taken on the 16th and, Colonel Scott, can I
 7 ask you then to confirm that these are photographs of the
 8 16th that were provided to you from Colonel Mere's camera?
 9 COLONEL SCOTT: That is correct.
 10 MR CHASKALSON SC: And to the best of
 11 your knowledge there are no other photographs of the 16th
 12 taken on Colonel Mere's camera.
 13 COLONEL SCOTT: That's correct.
 14 MR CHASKALSON SC: For what it's worth,
 15 Commissioners, we have been informed that some of these
 16 photographs were actually taken by Warrant Officer Nong who
 17 was in Colonel Mere's Nyala but nothing turns on that at
 18 this stage.
 19 CHAIRPERSON: But taken on Colonel Mere's
 20 camera?
 21 MR CHASKALSON SC: That's correct, all of
 22 them came off Colonel Mere's camera.
 23 CHAIRPERSON: My microphone wasn't on.
 24 They were taken with Colonel Mere's camera by – is it
 25 Warrant Officer?

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1 MR CHASKALSON SC: Warrant Officer Nong.
 2 Then the next set is photographs taken on Colonel Vermaak's
 3 Pentax camera and the screen shots are at page 688. This
 4 will be JJJ10 and, Colonel, can you confirm that these are
 5 photographs of the 16th that were provided to you by Colonel
 6 Vermaak from his Pentax camera?
 7 COLONEL SCOTT: Yes.
 8 MR CHASKALSON SC: And to the best of
 9 your knowledge you're not aware of any other photographs of
 10 the 16th taken by Colonel Vermaak on his Pentax. There will
 11 be some on his Blackberry but we're talking now about his
 12 Pentax.
 13 COLONEL SCOTT: Yes.
 14 MR CHASKALSON SC: Chairperson, due to a
 15 glitch in our numbering system JJJ9 has been reserved for
 16 another set of exhibits that we'll get to in due course.
 17 CHAIRPERSON: I was going to ask you
 18 about that. My curiosity will be satisfied in due course,
 19 you say.
 20 MR CHASKALSON SC: Indeed, Chairperson.
 21 Then we get to Colonel Vermaak's Blackberry photographs
 22 which is the next series, JJJ11, and again Colonel if you
 23 can – that's page 687 of the bundles, for the Commissioners
 24 – Colonel, if you can confirm that these are photographs of
 25 the 16th provided to you by Colonel Vermaak from his

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1 Blackberry?

2 COLONEL SCOTT: That's correct.

3 MR CHASKALSON SC: And to the best of

4 your knowledge there are no other photographs of the 16th

5 that were taken by Colonel Vermaak on his Blackberry.

6 COLONEL SCOTT: That's correct.

7 MR CHASKALSON SC: Now the numbers really

8 start jumping around because we get to Warrant Officer

9 Barnard. I'm afraid our exhibits list was done in

10 alphabetical order and we've just moved from C, Colonel, to

11 W, Warrant Officer. These will be exhibit 27, Warrant

12 Officer Barnard.

13 CHAIRPERSON: Page?

14 MR CHASKALSON SC: And the page for

15 Warrant Officer Barnard - I'm told, Chairperson, that these

16 were omitted from the paginated bundles that were given to

17 yourself and the Commissioners. We have copies, if we

18 might hand them up and, Colonel Scott, do you have a copy

19 of Warrant Officer Barnard's screen shots?

20 COLONEL SCOTT: I'm looking myself.

21 CHAIRPERSON: Where shall we insert them?

22 I take it for example they'll follow after - 781 is the

23 last page, we can either make them 781 and following or we

24 could make them say 686A, B, et cetera.

25 MR CHASKALSON SC: I think, Chairperson,

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1 if we could just put them at the end of the bundle.

2 CHAIRPERSON: So it'll be 781 and

3 following.

4 MR CHASKALSON SC: 781 and following.

5 CHAIRPERSON: Have they been punched?

6 Have they got -

7 MR CHASKALSON SC: We can have them

8 punched before they are handed up to you.

9 CHAIRPERSON: To insert them in our

10 files, thank you. So this will be 781. Just 781 or -

11 MR CHASKALSON SC: And 782.

12 CHAIRPERSON: 782, thank you. And sorry,

13 I didn't hear, has the Colonel got copies of this?

14 COLONEL SCOTT: I have a copy,

15 Chairperson.

16 MR CHASKALSON SC: And it's JJJ27, 27.1

17 and 27.2. Chairperson, can I continue?

18 CHAIRPERSON: Yes, you may proceed.

19 MR CHASKALSON SC: So Colonel, will you

20 confirm that these are photographs of the 16th that were

21 provided to you by Warrant Officer Barnard?

22 COLONEL SCOTT: Confirmed, yes.

23 MR CHASKALSON SC: And to the best of

24 your knowledge there are no other photographs of the 16th

25 that were taken by Warrant Officer Barnard.

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1 COLONEL SCOTT: Yes.

2 MR CHASKALSON SC: Colonel, the next set

3 that we are coming to is a more complicated set. These are

4 videos that were recovered from the recycle bin of the SAPS

5 hard drive and again, Commissioners, we're going to have to

6 hand up a screen shot for yourselves because the screen

7 shot was erroneously omitted from your files. We'll mark

8 it 783.

9 CHAIRPERSON: JJJ what?

10 MR CHASKALSON SC: And this will be JJJ,

11 it will be JJJ26 but I must apologise, I've skipped over

12 Warrant Officer Ramanala who is now up on screen. So if we

13 can quickly deal with Warrant Officer Ramanala who is at

14 page 680 of the Commissioners' bundle, who will be JJJ29.1

15 to 29.3 and, Colonel, can you confirm that these are

16 photographs of the 16th that were provided to by Warrant

17 Officer Ramanala?

18 COLONEL SCOTT: Yes, I confirm they are.

19 MR CHASKALSON SC: And to the best of

20 your knowledge there aren't any other photographs of the

21 16th taken by Warrant Officer Ramanala.

22 COLONEL SCOTT: Yes.

23 MR CHASKALSON SC: Those are JJJ29.1 to

24 29.3. To get then to the deleted videos recovered from the

25 recycle bin, which will be JJJ26, now Colonel, these videos

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1 were on the SAPS hard drive that was provided to the

2 parties but they weren't visible on that hard drive because

3 they'd been deleted from the hard drive before that hard

4 drive was circulated. They were then recovered by our

5 technical expert from the hard drive, although they hadn't

6 originally been visible. Now you've explained to us that

7 there were files which SAPS had obtained from Lonmin by

8 means of a section 205 subpoena. Can you confirm that?

9 COLONEL SCOTT: This is Colonel Visser

10 that relayed that information, not myself.

11 MR CHASKALSON SC: Yes, it was in your

12 presence though.

13 COLONEL SCOTT: Yes, yes, I was there,

14 yes.

15 CHAIRPERSON: Are you not able to support

16 it yourself?

17 COLONEL SCOTT: Chairperson, as I say,

18 the files with regard to the recycle bin and those that

19 were got from the section 205 from Lonmin, Colonel Visser

20 obtained through the channels of the 205 and the deleting

21 or the recycled bin as well are also with him sorting

22 through the hard drive -

23 CHAIRPERSON: Something of which - sorry

24 to interrupt you, something of which you yourself have no

25 personal knowledge -

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1 COLONEL SCOTT: No.

2 [11:42] CHAIRPERSON: Is that what you're saying?

3 MR CHASKALSON SC: But these files were

4 on your hard drive at a certain point?

5 COLONEL SCOTT: On the police hard drive,

6 yes.

7 MR CHASKALSON SC: Well, when we

8 recovered them they had names that were recovered as DG14

9 through to DG54. Now we surmise that DG would stand for

10 Duncan George, which are your first names. Our technical

11 expert tells us that the DG-nomination of a file in the

12 recycle bin is taken from the name of the computer where

13 that recycle bin is stored.

14 CHAIRPERSON: Anybody else who had

15 anything to do with the videos whose initials are DG, apart

16 from you?

17 COLONEL SCOTT: Well Chairperson, as I

18 say, I wasn't involved in the receiving of evidence from

19 the 205, section 205 from Lonmin. That Colonel Visser did.

20 However, when they became the nodal point, the photographs

21 would still be given over to myself to peruse to see what

22 was good for utilising in exhibit L, but Colonel Visser

23 himself states that he went through these and deleted them,

24 because I have no recollection of deleting them.

25 CHAIRPERSON: They passed through your

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1 hands before they were deleted. Is that right?

2 COLONEL SCOTT: Well, there's many of

3 them –

4 CHAIRPERSON: Well, you said you saw

5 them. I'm not asking you whether you deleted them, but did

6 they pass through your hands before they were deleted?

7 COLONEL SCOTT: I can't testify to that,

8 Chairperson. As I say, I would need to see them in person,

9 but I don't recollect from what I've seen there. I've

10 worked extensively with the other files which do happen to

11 appear in all the daily versions, but not necessarily

12 these.

13 CHAIRPERSON: Are any of your other files

14 marked DG with a number?

15 COLONEL SCOTT: No, not that I recall

16 either. I'm sure there should be some way of checking

17 whether my computer does that or not.

18 MR CHASKALSON SC: There may be an easier

19 way of doing this, which is to open up some of the other DG

20 folders. All of these DG folders are recycled folders.

21 They're from a recycle bin on one – well, they're from the

22 recycle bin that was on the SAPS hard drive, but their name

23 suggests that the hard drive was attached to a particular

24 computer at the time that these files were deleted. I

25 wonder if we could –

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1 COLONEL SCOTT: Chairperson, if I may, I

2 recall Colonel Visser also stating that even amongst those

3 files are files of his personal police work, and it would

4 be impossible for me to have his day-to-day police work in

5 my possession, for that matter.

6 MR CHASKALSON SC: Amongst which files?

7 COLONEL SCOTT: Some of those that were

8 in the recycle bin. I'm not sure of which he's speaking,

9 but this was in that same consultation we're speaking of he

10 mentioned that some of his day-to-day police work was also

11 in that recycle bin.

12 CHAIRPERSON: His first name is Victor?

13 MR CHASKALSON SC: That's right,

14 Chairperson.

15 CHAIRPERSON: His first name is Victor.

16 COLONEL SCOTT: Yes.

17 CHAIRPERSON: So if his initials were

18 used they wouldn't have been DG.

19 COLONEL SCOTT: No.

20 COMMISSIONER HEMRAJ: When you received

21 all these photographs from different sources, did they go

22 into a particular folder, or were they just stored on your

23 computer, or –

24 COLONEL SCOTT: Chairperson, that's why

25 I'm saying I know that Colonel Visser went through, being

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1 in the province of North West, dealing with the detectives

2 in the North West, which I didn't have access to, through

3 the 205 got Lonmin's footage, etcetera, and I don't recall

4 that even being at Roots. So it's possible that some files

5 there come from Roots, but he testifies himself in his

6 statement to saying that he cleaned up the hard drive and

7 things that he thought were not applicable or necessary, he

8 deleted, which puts them automatically into a recycle bin.

9 So – but possibly one could check to see if, as he said, if

10 there are documents in this that pertain to his day-to-day

11 work, then it would be impossible that they come from my

12 computer.

13 MR CHASKALSON SC: Maybe there's a – we

14 can get to that, and it may be that that file DG60 would

15 help in that regard, but before we get to that, let's

16 possibly show the files in the form that we were informed

17 that they existed prior to their deletion, which was as a

18 series that had names called "Picture," "Picture01,

19 Picture02," and so on. I wonder if we could call –

20 Commissioners, that description is at pages 126 to 128 of

21 your files.

22 CHAIRPERSON: 126?

23 MR CHASKALSON SC: 126 to 128, and we've

24 given it the exhibit number JJJ65.1 to 65.3. I wonder if

25 we can call the picture series up onto screen? JJJ65.1 to

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1 65.3.

2 CHAIRPERSON: Is this in our file 1?

3 MR CHASKALSON SC: The file 1, yes

4 Chairperson.

5 COMMISSIONER HEMRAJ: We have a file 3.1.

6 MR CHASKALSON SC: I think it was the

7 original, the file 1, the very first file.

8 COMMISSIONER HEMRAJ: What is the page

9 number of the –

10 MR CHASKALSON SC: 126 to 128. The

11 screen shots are on 128, what we see on screen at the

12 moment, and 126 and 127 are the file properties.

13 CHAIRPERSON: What is the JJJ-number

14 again? 65.1 –

15 MR CHASKALSON SC: 65.

16 CHAIRPERSON: - to 65.3?

17 MR CHASKALSON SC: 65.3. I wonder if we

18 could go to page, to the thumbnails of those files so that

19 Colonel Scott can see the thumbnails? Colonel, do you

20 recall seeing these files at any stage before the SAPS hard

21 drive was handed over to the parties?

22 COLONEL SCOTT: There's a, there are

23 pictures towards the bottom side where looking through the

24 Nyala, which look familiar, but as I say there, you'll

25 probably find similar photos or videos taken through the

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1 Nyala at the same time as well.

2 MR CHASKALSON SC: Colonel, you've had

3 copies of these videos now for – gosh, I would imagine six

4 weeks since we first raised it, this issue with you. Have

5 you worked through these videos?

6 COLONEL SCOTT: No, I haven't personally

7 opened them and worked through them, no. I've looked at

8 them in thumbnail, like you're showing now.

9 MR CHASKALSON SC: And we raised them

10 with a very specific concern that these had been deleted

11 and we wanted to know where they came from and, but you

12 haven't worked through them?

13 COLONEL SCOTT: No.

14 MR CHASKALSON SC: Who has worked through

15 them from SAPS?

16 COLONEL SCOTT: I believe Brigadier

17 Pretorius did that. She worked through them and actually

18 placed them back to where they originally came from, if I'm

19 not mistaken.

20 MR CHASKALSON SC: Because after someone

21 at SAPS worked through them, we were then informed that the

22 picture series that we see up there was the source of those

23 deleted SAPS files.

24 COLONEL SCOTT: Yes –

25 CHAIRPERSON: The picture series that we

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1 see up there is picture series 130822. Is that correct?

2 MR CHASKALSON SC: No, it's the exhibit

3 JJJ65.3, the files depicted on JJJ65.3.

4 CHAIRPERSON: In the tramlines at the top

5 of what we now see appears the following; "Picture series

6 130822." So when you talk about the picture series, are

7 you talking about that?

8 MR CHASKALSON SC: No, the 130822 just

9 reflects the date on which SAPS gave us a copy of those

10 videos, Chairperson. For record purposes it would probably

11 be simplest to refer to them as JJJ65, the videos depicted,

12 the screenshots depicted on JJJ65.3. Sorry Colonel, to

13 come back, can you confirm that SAPS conveyed to us that

14 these are the videos that were the source of the deleted

15 videos that we exhibited in JJJ26?

16 COLONEL SCOTT: What I do know is, as I

17 say, when the requests for clarification, etcetera, come in

18 from the evidence leaders, initially they are sent through

19 the legal team to Brigadier Pretorius sitting at the police

20 office. She deals with much of what she can. It's what

21 she's doing, and she has in speaking to me and working

22 through these, that's one of the reasons I didn't, is

23 saying that she put them back into more or less sequence

24 that she could, but I'm speaking on hearsay from her side

25 now.

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1 MR CHASKALSON SC: Well, were you present

2 at a meeting where that explanation was given to the

3 evidence leaders?

4 COLONEL SCOTT: By Brigadier Pretorius?

5 MR CHASKALSON SC: In fact if I recall

6 correctly, by Colonel Visser.

7 COLONEL SCOTT: I may have been. I'm

8 not, I don't really recall, but – or I know I was at the

9 meeting, but I'm not, I can't recall what, everything that

10 was said there.

11 MR CHASKALSON SC: So if we want to

12 enquire further in relation to the origin of these files,

13 who should we be speaking to? To whom should we be

14 speaking?

15 COLONEL SCOTT: Brigadier Pretorius and

16 Colonel Visser would be good starting points.

17 MR CHASKALSON SC: And your evidence is

18 there's nothing that you can add at this stage?

19 COLONEL SCOTT: No.

20 MR CHASKALSON SC: When did you first see

21 these files?

22 COLONEL SCOTT: When Brigadier Pretorius

23 mentioned that there was a request for clarification, she

24 sent out an email, but as again she, I never got to working

25 on these. As I say, what I'm seeing now and what I have

<p style="text-align: right;">Page 13732</p> <p>1 printed out for me in that format, but I've not gone into 2 that and opened any of these to review them personally, 3 look at the actual video footage personally. 4 MR CHASKALSON SC: Why not? 5 COLONEL SCOTT: I didn't deem it 6 necessary. The exhibit L was completed and that was my 7 task, was to utilise video footage to build exhibit L. So 8 I haven't per se since then had much to do with any video 9 footage or photographs thereafter, unless requested 10 specifically to do something, to look for something, or so, 11 which wasn't the case here. 12 MR CHASKALSON SC: Colonel, when did the 13 water cannon video footage come in? 14 COLONEL SCOTT: I think that was in early 15 November somewhere. 16 MR CHASKALSON SC: Before or after 17 exhibit L was presented to the Commission? 18 COLONEL SCOTT: I think it was after. 19 I'm not sure. I'm not sure. 20 MR CHASKALSON SC: It was certainly 21 conveyed to the evidence leaders that that was after. Did 22 you have anything to do with the water cannon footage? 23 COLONEL SCOTT: Other than going – I live 24 in Pretoria; the Commission was at the time in Rustenburg. 25 Other than going on a weekend to fetch the footage and take</p>	<p style="text-align: right;">Page 13734</p> <p>1 in.” 2 COLONEL SCOTT: Yes, but remember when 3 this was handed over, the explanation given was from 4 Colonel Visser that these were videos and files that he 5 deemed unnecessary, that he'd been through, that he said it 6 was either short, were blurred, had no significance. So 7 taking his word for that, I didn't feel any need to pursue 8 them further. 9 CHAIRPERSON: Do I understand that, we 10 will obviously have to ask Colonel Visser about it when he 11 comes, but do I understand that Colonel Visser looked at 12 these before the selection was made of the videos that were 13 used for exhibit L, and he decided that they weren't 14 necessary and effectively discarded them? 15 COLONEL SCOTT: To my understanding, yes, 16 Chair. 17 CHAIRPERSON: So that the work of 18 choosing what went into L was presumably divided between 19 you and Colonel Visser. Is that right? 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: And this was his area of 22 responsibility as opposed to yours? 23 COLONEL SCOTT: Yes. Oh well, like I 24 say, if it's got to do with the section 205, the Lonmin 25 footage, etcetera, then that was brought in via him,</p>
<p style="text-align: right;">Page 13733</p> <p>1 it back to the police nodal point in Rustenburg, that's 2 all. 3 MR CHASKALSON SC: You didn't view it? 4 COLONEL SCOTT: Well, at the – no, I 5 viewed it obviously when the police started viewing it, but 6 it's not my place to have taken that and to have viewed it 7 myself, and so I was tasked to hand it over, which I did. 8 MR CHASKALSON SC: But you then 9 thereafter did view it? 10 COLONEL SCOTT: I have viewed it, yes, 11 thereafter. 12 MR CHASKALSON SC: Why would you be 13 interested in viewing that, but not viewing these videos? 14 COLONEL SCOTT: Well, that was of 15 interest to see if the water cannons actually found 16 something, because we were unsure ourselves at that time, 17 we didn't know it existed. 18 MR CHASKALSON SC: And you weren't 19 interested whether this video footage found anything? 20 COLONEL SCOTT: No, this was made aware 21 to me somewhere now in August this year. At that time the 22 police were still presenting their case to some degree. 23 MR CHASKALSON SC: But I don't understand 24 that answer, Colonel, “the police were still presenting 25 their case at the time that the water cannon footage came</p>	<p style="text-align: right;">Page 13735</p> <p>1 through his initiative by going to the detectives to get 2 that evidence. I had no dealing with that. 3 MR CHASKALSON SC: Colonel, what was the 4 division of labour between yourself and Colonel Visser in 5 relation to exhibit L? 6 COLONEL SCOTT: At that time he was 7 coordinating the inputs that were given to him. He was 8 perusing the statements, or any relevant documentation that 9 he could build history on, and I was tasked to look at 10 photographs and video footage and to compile as much as 11 that as I could, and then to also consider thereafter more 12 what happened at scene 2. 13 MR CHASKALSON SC: Sorry, if I may – just 14 your answer in relation to video footage, I must apologise, 15 can you repeat it? 16 COLONEL SCOTT: We were to put together a 17 picture, or paint a picture for the Commission that best as 18 possible represented the happenings of the day of the 16th 19 and, well, before that, and my role specifically, because I 20 was dealing with video and photograph footage from as early 21 as the media presentation for the National Commissioner, 22 continued with that role, dealing with photos and video 23 footage. 24 MR CHASKALSON SC: And when was the 25 Lonmin section 205 subpoena issued?</p>

<p style="text-align: right;">Page 13736</p> <p>1 COLONEL SCOTT: I don't know.</p> <p>2 MR CHASKALSON SC: Were you not aware</p> <p>3 that materials had been provided by Lonmin before the</p> <p>4 finalisation of the presentation, etcetera?</p> <p>5 COLONEL SCOTT: The only footage I was</p> <p>6 made aware of, was footage that was shown to us while still</p> <p>7 at Lonmin when we put the briefing together for the</p> <p>8 National Commissioner, which General Mpembe spoke to, where</p> <p>9 there was certain video footage there made available from</p> <p>10 Lonmin. But the 205 and that video footage, it's possible</p> <p>11 Colonel Visser showed some parts of it that he may have</p> <p>12 thought relevant at some stage, but there were also breaks</p> <p>13 when we were building exhibit L, or the presentation of the</p> <p>14 police. We didn't work on it fulltime from after the</p> <p>15 Commission up until time it was presented. There were</p> <p>16 certain weeks where I was returned to my unit, where</p> <p>17 Colonel Visser himself would continue with exhibit L, and I</p> <p>18 recall this because he came through to my office at one</p> <p>19 stage to assist him in putting together scene 2, of what</p> <p>20 happened at scene 2.</p> <p>21 MR CHASKALSON SC: Colonel, I want to</p> <p>22 take you to the passage in your statement where you</p> <p>23 describe what seems to be a division of labour between</p> <p>24 yourself and Colonel Visser, if I can just find my</p> <p>25 reference. If you can go to page 102 –</p>	<p style="text-align: right;">Page 13738</p> <p>1 we call them back up on screen? We've been through these</p> <p>2 videos, they contain footage shot inter alia on the 16th.</p> <p>3 Now it would seem to me that video footage of the 16th was</p> <p>4 something that fell squarely within your side of the</p> <p>5 division of labour.</p> <p>6 COLONEL SCOTT: When it came to the</p> <p>7 inputting of that video footage and the photographs into</p> <p>8 the presentation, keeping the structure of the presentation</p> <p>9 running, yes, but there were times where we had – oh,</p> <p>10 three, up to three people perusing through photographs,</p> <p>11 going through video footage. There were enormous amounts.</p> <p>12 The amount that we received from the media through our</p> <p>13 media liaison officers, it was impossible for me to have</p> <p>14 screened everything on my own. So there were times when</p> <p>15 people would find clips, et cetera, give them to me, show</p> <p>16 the relevance and ask me to input them, as was the case</p> <p>17 with the strikers with the shotguns of the miners on the</p> <p>18 12th where Colonel Visser specifically showed that footage</p> <p>19 and asked that we make video grabs and put them in.</p> <p>20 MR CHASKALSON SC: Yes, but in terms of</p> <p>21 the chronological division of the presentation, if I</p> <p>22 understood your evidence correctly, what happened before</p> <p>23 the 15th was Colonel Visser's responsibility, what happened</p> <p>24 on the 16th and afterwards was yours.</p> <p>25 COLONEL SCOTT: Yes, but – it is so, as I</p>
<p style="text-align: right;">Page 13737</p> <p>1 CHAIRPERSON: You're referring to exhibit</p> <p>2 HHH20?</p> <p>3 MR CHASKALSON SC: HHH20, indeed,</p> <p>4 Chairperson. There you say, "Colonel Visser and I worked</p> <p>5 in unison on the police presentation. He assisted me in</p> <p>6 gathering much of the historic information and</p> <p>7 consolidating the information from the breakaway groups for</p> <p>8 input into the presentation. I became mostly responsible</p> <p>9 for the sequencing and the video and photograph visual</p> <p>10 inputs in the presentation, and the information in the</p> <p>11 presentation from the 16th onwards." Is that a correct</p> <p>12 reflection of your division of labour?</p> <p>13 COLONEL SCOTT: Yes, but I can say</p> <p>14 already that there was a part of the presentation that</p> <p>15 Colonel Visser brought in at a late stage and that had to</p> <p>16 do with videographs of, I think it's the 12th, which showed</p> <p>17 the strikers with the shotgun of the deceased miners.</p> <p>18 [12:01] MR CHASKALSON SC: And apart from that</p> <p>19 section of the presentation in terms of video and</p> <p>20 photographic input and information from the 16th onwards,</p> <p>21 that was your responsibility.</p> <p>22 COLONEL SCOTT: Mostly from what I can</p> <p>23 recall, yes.</p> <p>24 MR CHASKALSON SC: Now if we can go back</p> <p>25 then to JJJ65, the thumbnails of the deleted videos and can</p>	<p style="text-align: right;">Page 13739</p> <p>1 say, the general responsibility but it's not to say that I</p> <p>2 had no further input into what happened before that. When</p> <p>3 we worked through that presentation we would work through</p> <p>4 together. However, as I say, he put together most of what</p> <p>5 happened up until the end of the 15th and from the 16th,</p> <p>6 while he was still doing those I was starting to work on</p> <p>7 the 16th and beyond, but it's not to say that it is solely</p> <p>8 all my input that is from the 16th onwards.</p> <p>9 MR CHASKALSON SC: I'm not sure if I</p> <p>10 understood that answer correctly. I understood you to say</p> <p>11 that you had some input on what came before the 16th. Are</p> <p>12 you suggesting that there were other people who had input</p> <p>13 on what came on the 16th as well?</p> <p>14 COLONEL SCOTT: Well, of course. We had</p> <p>15 to get our information from certain areas, from certain</p> <p>16 people. So in fact we structured the presentation, we ran</p> <p>17 it as far as, as best as we could according to the</p> <p>18 chronological sequence of events as we were told at Roots</p> <p>19 and in consultation there afterwards and in effect put in</p> <p>20 what we were told, as best as we could.</p> <p>21 MR CHASKALSON SC: But if I was a SAPS</p> <p>22 member and I had video footage of the 16th, to whom would I</p> <p>23 be instructed to provide that video footage?</p> <p>24 COLONEL SCOTT: Well, after the</p> <p>25 instruction specifically at Lonmin when we were still, on</p>

<p style="text-align: right;">Page 13740</p> <p>1 the evening on the 16th, many of them still brought it to me 2 individually.</p> <p>3 MR CHASKALSON SC: Yes, Colonel 4 Annandale, Major-General Annandale at the outset had 5 identified you as the nodal point to which video material 6 should be brought.</p> <p>7 COLONEL SCOTT: At that time that we were 8 at Lonmin. That changed when once we got to Roots and, as 9 I say, the police hard drive was bought. I gave everything 10 I had at that time over onto the police hard drive. I was 11 no longer the nodal point but what would still occur is 12 that police officers would still bring me their footage if 13 we were sitting at places for consultation.</p> <p>14 MR CHASKALSON SC: Can I just clarify the 15 chronology a bit more precisely? You've testified this 16 morning that the hard drive was purchased around the time 17 of Roots. Your statement, I think, suggests something 18 slightly different and I just want to clarify that. If you 19 go to page 128 of your statement HHH20, your consolidated 20 statement, there at the top – or maybe start at 127, 21 paragraph 45.2, "On the evening of the 16th in the JOCCOM 22 meeting, Major-General Annandale gave instruction that all 23 footage, video or photo, was to be brought to myself as a 24 nodal point. He repeated this instruction on numerous 25 meetings in the days following. My laptop computer became</p>	<p style="text-align: right;">Page 13742</p> <p>1 from our ISM or given to us by Lonmin for the purposes of 2 starting to collate everything, which I still have in my 3 computer bag as we're sitting here, but a separate SAPS 4 hard drive was bought at Roots, the smaller black ones 5 which are utilised thereafter.</p> <p>6 MR CHASKALSON SC: So you still have that 7 separate original one terabyte hard drive?</p> <p>8 COLONEL SCOTT: Yes.</p> <p>9 MR CHASKALSON SC: And have you deleted 10 any material off that or is it in the form that it was when 11 you eventually copied it over to the SAPS hard drive?</p> <p>12 COLONEL SCOTT: That's why I'm saying at 13 Roots I dumped everything that was on there and that was on 14 my computer into the police, the new police master hard 15 drive and since then I have upgraded the hard drive I use 16 off the police's hard drive. Obviously their hard drive 17 became more extensively used, so I would reload back onto 18 mine.</p> <p>19 MR CHASKALSON SC: Okay Colonel, but we 20 need to distinguish between hard drives here. You have an 21 internal hard drive in your laptop.</p> <p>22 COLONEL SCOTT: Yes.</p> <p>23 MR CHASKALSON SC: Is the answer that 24 you've just given an answer that refers to the internal 25 hard drive?</p>
<p style="text-align: right;">Page 13741</p> <p>1 the nodal point for the footage until about two days later 2 when a one terabyte external hard drive was made available 3 as the nodal point. I was responsible for this nodal point 4 until after Roots when the responsibility was transferred 5 to Brigadier Pretorius." So can I clarify a few issues 6 flowing from what you say there. First of all you state 7 that Major-General Annandale gave the instruction on the 8 evening of the 16th that all footage, video or photo, was to 9 be brought to you as the nodal point.</p> <p>10 COLONEL SCOTT: Yes.</p> <p>11 MR CHASKALSON SC: That's correct. Then 12 you say he repeated this instruction on numerous meetings 13 in the days following. That's correct?</p> <p>14 COLONEL SCOTT: While still at Lonmin, 15 yes. We -</p> <p>16 MR CHASKALSON SC: While everyone was 17 still based in Marikana.</p> <p>18 COLONEL SCOTT: Yes.</p> <p>19 MR CHASKALSON SC: Then you say the nodal 20 point was originally your computer, your laptop, until 21 about two days later. That would be the 18th or the 19th 22 when the external hard drive was made available, so -</p> <p>23 COLONEL SCOTT: No, there's - that is, a 24 one terabyte external hard drive I think was, I'm not sure 25 where it got its origins, I think it may have either come</p>	<p style="text-align: right;">Page 13743</p> <p>1 COLONEL SCOTT: No, my laptop has an 2 internal hard drive. At Roots, two days after the incident 3 I was given a one terabyte just to transfer everything over 4 because it was becoming quite bulky.</p> <p>5 MR CHASKALSON SC: Sorry, if I might stop 6 you - at Lonmin?</p> <p>7 COLONEL SCOTT: At Lonmin, yes. At Roots 8 the police bought an external hard drive which I took my 9 internal hard drive and the external hard drive I had been 10 working on and dumped everything over onto their hard drive 11 and they became the nodal point.</p> <p>12 MR CHASKALSON SC: That I understand but 13 my question was a slightly different one. Two days after 14 the incident, while you're still at Lonmin in Marikana, the 15 police produce, purchase a one terabyte external hard drive 16 and then you copy your materials onto that one terabyte 17 external hard drive which becomes the nodal point. You 18 still have that one terabyte -</p> <p>19 COLONEL SCOTT: Yes.</p> <p>20 MR CHASKALSON SC: - external hard drive 21 in your possession. Have you deleted any material off it 22 since then?</p> <p>23 COLONEL SCOTT: Not that I - not that I'm 24 aware of, no.</p> <p>25 MR CHASKALSON SC: Well, could I ask that</p>

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1 that hard drive be made available to the evidence leaders
 2 so that we can see what material was on it because that
 3 would tell us what material SAPS had in its possession, in
 4 its possession at the start of Roots, if I understand
 5 correctly.
 6 COLONEL SCOTT: Yes, well, it's
 7 available. As I say, that I'm unsure if there has been
 8 deleting done or not but what's on there at the moment is
 9 on there.
 10 MR CHASKALSON SC: Well, let's just go
 11 back a step. Has it been in your custody since it was
 12 purchased on the 18th or 19th of August?
 13 COLONEL SCOTT: Yes.
 14 MR CHASKALSON SC: And so if there are
 15 deletions that have taken place, it would have been
 16 deletions that you have effected.
 17 COLONEL SCOTT: Yes.
 18 MR CHASKALSON SC: You can't recall that
 19 you deleted anything specifically.
 20 COLONEL SCOTT: No, not that I can
 21 recall, no.
 22 MR CHASKALSON SC: Okay. Well, can I ask
 23 that that hard drive be made available to the evidence
 24 leaders so that we can inspect it and see what material is
 25 on it and whether there have been any deletions.

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1 MR CHASKALSON SC: I think I'm going to
 2 leave the topic of the deleted videos until after that
 3 exercise and possibly it's something that we must take
 4 further with Colonel Visser.
 5 COMMISSIONER HEMRAJ: May I just ask a
 6 question if you're moving away, Mr Chaskalson? At Roots
 7 when you and Colonel Visser were working on the compilation
 8 of these photographs and videos, were just the two of you
 9 working on it or was there a team and, if so, who was on
 10 the team?
 11 COLONEL SCOTT: Ma'am, it was – if I
 12 recall it was the two of us. I think it was just the two
 13 of us, that we had our computers next to each other. I'm
 14 not sure at what stage the police's hard drive was
 15 purchased but I think it was possibly within the first week
 16 or possibly the second week, early the second week because
 17 that I do pertinently remember was, loading everything I
 18 had over onto the police, the new police master hard drive.
 19 MR CHASKALSON SC: And just before I
 20 leave this topic, can you give us a more precise date on
 21 when custody of the police archive, as it were, passed from
 22 you to Brigadiers, Brigadier Pretorius and Colonel Visser?
 23 COLONEL SCOTT: I think at the outset of
 24 Roots already Brigadier Visser was introduced and it was
 25 envisioned from that time that he should taken over the

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1 nodal point and this is why I'm say I'm unsure as to when
 2 that other hard drive was procured but I'm sure that can be
 3 tracked down or it should be able to.
 4 MR CHASKALSON SC: Sorry, which other
 5 hard drive are you referring to at this stage?
 6 COLONEL SCOTT: The hard drive that was
 7 produced at Roots for the SAPS to become the SAPS master
 8 hard drive.
 9 MR CHASKALSON SC: And you're not sure
 10 when it was procured or whether it was procured?
 11 COLONEL SCOTT: No, when. It was not in
 12 my possession so I can't say whoever got it, when they got
 13 it.
 14 MR CHASKALSON SC: And once the archive
 15 was out of your custody and in the – and now under the
 16 control of either Brigadier Pretorius or Colonel Visser
 17 with the new hard drive, how did you keep up to date with
 18 materials that were coming in?
 19 COLONEL SCOTT: I would from time to time
 20 ask or request of them to update my, the one terabyte I
 21 had, off theirs. So in essence I know there were times
 22 that I tried to peruse through and see what I didn't have
 23 and download only that which I didn't have. I think there
 24 may even have been times where I tried to dump the whole
 25 lot down, which is why I say it could've been that in that

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1 case in bringing everything back over, I may have deleted
 2 what I had.
 3 MR CHASKALSON SC: Sorry, can you clarify
 4 that answer? Are you suggesting that when you brought
 5 everything else over, files that were on your directory
 6 would have been overwritten by what came in or that you
 7 consciously deleted files before everything else was
 8 brought back?
 9 COLONEL SCOTT: Well, that's what I'm
 10 trying to maybe establish now at the same time because the
 11 hard drive was so large, to start bringing it over was
 12 huge. So I started looking inside the hard drive to what I
 13 didn't have but at some stage – this is why I say I'm
 14 unsure about whether I did delete or not because I think I
 15 actually pulled the whole hard drive over to make sure I
 16 had everything and deleted what I had, knowing that
 17 everything that I had, had gone to that hard drive and
 18 should still be on it anyway. I understand that you can do
 19 the same thing about bring it over and it has got the issue
 20 of skip and all that type of thing, but I'm not sure, I
 21 can't recall how I've done it.
 22 MR CHASKALSON SC: So you're saying it's
 23 possible that you did consciously delete material from your
 24 original hard drive before copying –
 25 COLONEL SCOTT: It could be possible,

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1 yes.

2 MR CHASKALSON SC: Before you did that

3 exercise, presumably you would've checked that what you

4 were bringing back contained everything that you had on

5 your hard drive because you wouldn't want to lose material

6 in the process.

7 COLONEL SCOTT: Well, you check the

8 folders, the name of the folders. So to go through every

9 single photo, go through every single video is a mammoth

10 task.

11 MR CHASKALSON SC: Well, maybe then I can

12 ask a different question. Sometime in July this year you

13 provided the evidence leaders with a directory printout of

14 two folders on your laptop hard drive. They were called

15 photos and videos. Possibly if we can all those exhibits

16 up, if I can just find that exhibit number and a reference

17 for it. They are exhibits JJJ3.1 and 3.2 and they – I beg

18 your pardon, it's JJJ12 and JJJ13. JJJ12, JJJ13, if we can

19 call those up and they start at page 20A of file 3.1 is

20 where the photos directory printout comes and page 167 of

21 file 31 is where the videos directory printout comes. Now

22 again we've given you copies of these directory printouts

23 sometime ago. To begin with can you confirm that they

24 accurately describe the contents of the directories on your

25 laptop directories\photos and \videos respectively?

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1 COLONEL SCOTT: I'm not sure where the –

2 look, I have a file on my computer which obviously keeps

3 photos and videos in it because I'm obviously asked every

4 now and then to reference or go and look at something, but

5 the photos and videos that I gave over, are we talking the

6 meeting in early August this year?

7 MR CHASKALSON SC: It was in fact in July

8 this year, if I recall correctly, when you made available

9 to the evidence leaders your laptop for copying over the

10 photos directories and videos directories on that laptop.

11 And there were directories called \photos with a series of

12 sub-directories underneath them and some directories called

13 \videos with a series of sub-directories underneath them.

14 COLONEL SCOTT: Maybe it would be best if

15 I actually, what was there then is there now, so we can

16 maybe look.

17 MR CHASKALSON SC: Well, this is a

18 directory printout of what was there then and it's about,

19 this is the \photos directory and it runs for many, many

20 pages. But I was hoping that this would be a relatively

21 simply exercise because these documents were made available

22 to you some time ago and I was hoping that you'd have been

23 able to do this exercise so that you could say yes or no,

24 because if we're going to do it in the Commission now it

25 may take several hours. So maybe if we can short-circuit

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1 this process. If you take these two exhibits, which are

2 directory printouts of those two directories that were

3 given to us, can you go through them overnight and confirm

4 that they accurately describe what is on the \photos

5 directory on your laptop and on the \videos directory on

6 your laptop?

7 COLONEL SCOTT: I can do that but just

8 maybe for the record as well, what's on my laptop again has

9 been pulled in off the one terabyte hard drive of the SAPS

10 master hard drive.

11 MR CHASKALSON SC: Again Colonel, bear in

12 mind that we need to have clarity between which two

13 terabyte hard drives we're talking, we're discussing

14 because there was one that came in two days after the

15 event, that was in your custody, which is still apparently

16 in your briefcase and which we will receive shortly. There

17 is another that was purchased at Roots and was then in the

18 custody of Brigadier Pretorius and Colonel Visser. So

19 which of the two are you describing?

20 COLONEL SCOTT: Well, I think I can more

21 accurately say that what's on my one terabyte now reflects

22 what's on the SAPS' one terabyte master, having updated it

23 off that one. What's on my computer is videos taken off

24 that, because it's a bulky thing to have to – you need a

25 power supply every time you want to plug it in, for

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1 instance that external hard drive, it's not one that just

2 works off the computer itself, thus to just put the

3 photographs and the videos back onto my computer for

4 reference when I need them. So those exist on my computer

5 but they're more than likely a reflection of what comes off

6 the police's hard drive of what I've been updating at the

7 time.

8 [12:21] MR CHASKALSON SC: Okay but – so you're

9 saying that what's on your hard drive today, that which we

10 copied, is really a reflection of what was put onto the

11 ongoing 1-terabyte hard drive that currently resides in

12 the custody of Brigadier Pretorius and Colonel Visser.

13 COLONEL SCOTT: As far as my knowledge,

14 yes.

15 MR CHASKALSON SC: And when you would

16 update material from – maybe for descriptive purposes,

17 let's call it the Brigadier Pretorius hard drive; the

18 Brigadier Pretorius hard drive will be the current SAPS

19 master; the Colonel Scott hard drive will be that 1-

20 terabyte hard drive that you were given on the 18th or

21 19th, and your laptop hard drive will be the internal hard

22 drive in your laptop. So when you would update your laptop

23 hard drive from the Brigadier Pretorius hard drive, how

24 would you do that? Would you dump the contents of the

25 Brigadier Pretorius hard drive onto your laptop, or would

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1 you pick off individual directories that you were missing
 2 and add them to your laptop hard drive?
 3 COLONEL SCOTT: Initially when I got the
 4 1-terabyte I took everything off my computer. Everything
 5 went from my computer, eventually from the 1-terabyte to
 6 the SAPS master.
 7 MR CHASKALSON SC: Colonel, sorry to
 8 interrupt you there. Our language needs to be quite
 9 precise here because there's serious scope for
 10 misunderstanding one another. You say you took everything
 11 off your laptop onto the 1-terabyte.
 12 COLONEL SCOTT: Yes.
 13 MR CHASKALSON SC: Do I understand you to
 14 say that you copied what was on your laptop onto the 1-
 15 terabyte, or that you copied it onto the 1-terabyte and
 16 thereafter deleted it from your laptop?
 17 COLONEL SCOTT: Deleted it from my laptop
 18 for the reason of space on my computer's hard drive, and
 19 then from there it went to the police hard drive. From the
 20 police hard drive it's come full circle back, because
 21 there's been times where I've needed to obviously look at
 22 it again.
 23 MR CHASKALSON SC: Again, but again we
 24 need some precision here. I'm interested in the root by
 25 which it returns. When I was asking you about the Colonel

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1 Scott hard drive, the 1-terabyte that you received on the
 2 18th or 19th, your answer was you may have deleted some
 3 materials on that to make space – I'm not suggesting this
 4 is verbatim what your answer was, but what you communicated
 5 to me is first of all you couldn't recall whether you had
 6 deleted materials from it, but it was possible that you had
 7 deleted materials from that external hard drive to make
 8 space for the Brigadier Pretorius hard drive materials that
 9 were going to be copied back onto it. Is that correct?
 10 COLONEL SCOTT: Well, I'm trying to get
 11 to the logic of, and explain why it has gone the way it
 12 has. If you take the whole of the SAPS hard drive now and
 13 you transfer it over, it's going to take anything from four
 14 to six hours to transfer. Now to sit there and each time
 15 it stops itself and it tells you there's a file already
 16 existing of that name; do you want to skip it or do you
 17 want to replace it or – so sometimes, as I was saying, it's
 18 easier to just remove everything and to re-download the lot
 19 and you leave the computer running whilst you're busy with
 20 other things, whilst we're sitting here, and it carries on,
 21 on its own. So I can't absolutely say – I mean I haven't
 22 pertinently taken notes or made a conscious reminder to
 23 myself about when these, when I did my updatings or
 24 specifically how I did them, but my logic would tell me
 25 that that's the process I would follow.

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1 MR CHASKALSON SC: Okay, but Colonel,
 2 that explanation worries me for two reasons. The first is
 3 that when that pop-up box appears on your computer it gives
 4 you an option; it says do you want to overwrite the
 5 existing file, do you want to skip the copying, or do you
 6 want to, some option that you can keep both. But it also
 7 says do you want to repeat this for every one of the next
 8 10 000 conflicts. So if your concern is wasting time and
 9 not having to return to your computer screen every 10
 10 seconds over a six-hour period, you tick the box that says
 11 "repeat this for each one of the 10 000 conflicts." Are
 12 you familiar with that process?
 13 COLONEL SCOTT: I am.
 14 MR CHASKALSON SC: Okay, so time is not
 15 really an explanation for wanting to delete the existing
 16 contents of the SAPS hard drive. My second concern with
 17 your explanation is the reason that pop-up box comes up is
 18 precisely to protect you from losing material on your
 19 existing hard drive that you would want to lose, and
 20 particularly in a situation like this one where you'd want
 21 to preserve everything. It seems to me quite a rash step
 22 to take to wipe out the entire contents of what may be the
 23 only archive of certain materials, in the hope that what
 24 you replace it with will copy what was once there. What's
 25 your response to that?

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1 COLONEL SCOTT: Firstly, I was always to
 2 be the lesser, so whatever I was gaining back, there was
 3 always supposed to be more coming my way. I should not
 4 have been deleting anything. If something was deleted, it
 5 would have been deleted off the police hard drive. So in
 6 essence if I had nine files, there should be 10 coming back
 7 my way, not eight, and I was updating mine with more
 8 information, not updating it with less. That's the first,
 9 and the second is, as I say, I'm speaking from a lot of
 10 speculation, trying to recall where you're going on what
 11 you're saying, because I didn't take conscious notes of
 12 who, what, and how, and all I'm saying is I did update my
 13 hard drive, the one that I have with me now, according to
 14 the SAPS hard drive because I understood that over a period
 15 of months they had gained a lot more information than what
 16 I had. Whether I've deleted that information, I can't be
 17 sure, but as I'm saying, and I said to you as well I'm
 18 trying to recall, I'm trying to be logical about how I
 19 would have done it.
 20 MR CHASKALSON SC: Because I have some
 21 difficulties with this explanation. You were the only
 22 nodal point for the SAPS video and photographic archive
 23 until the 27th of August at the earliest.
 24 COLONEL SCOTT: That's correct.
 25 MR CHASKALSON SC: So for a period of

<p style="text-align: right;">Page 13756</p> <p>1 more than 10 days after the event, when most of the video 2 and photographic material would have been gathered, you 3 were the only nodal point for SAPS.</p> <p>4 COLONEL SCOTT: Most of the photographic 5 material, most of the POPs video material, but as far as 6 other video materials, we were relying on open source 7 media. There wasn't much else. We didn't have water 8 cannon, we didn't have Lonmin helicopter, we didn't have 9 Colonel Botha. I didn't have - the video footage I think 10 came in during Roots from Captain Nel. In effect we had 11 what came in through - and Mhlot(?), sorry, I'm not sure of 12 the - Ryland, those things only came in at Roots, not 13 before the time.</p> <p>14 MR CHASKALSON SC: But from your 15 perspective, you weren't to know that on the 27th there was 16 a whole lot of other video material floating around there 17 that you hadn't received?</p> <p>18 COLONEL SCOTT: I wasn't. I wasn't aware 19 of it. I knew that the police had video operators and -</p> <p>20 MR CHASKALSON SC: But who were the 21 police video operators whose existence you knew about?</p> <p>22 COLONEL SCOTT: I'm relying on the POPs 23 video operators.</p> <p>24 MR CHASKALSON SC: And those video 25 operators, you had downloaded material from those video</p>	<p style="text-align: right;">Page 13758</p> <p>1 footage, because what I can recall is having to find a file 2 that had the biggest amount of data in it to recognise it 3 as being the video footage.</p> <p>4 MR CHASKALSON SC: And how did you 5 download it?</p> <p>6 COLONEL SCOTT: I've got a little card 7 reader on my computer that you put the card into.</p> <p>8 MR CHASKALSON SC: And you say you then 9 had to search on that card to find the video footage?</p> <p>10 COLONEL SCOTT: From what I can recall, 11 yes.</p> <p>12 MR CHASKALSON SC: Colonel, those cards 13 fit inside video cameras. Apart from the files of the 14 camera manufacturer, the only files on those cards are 15 video files.</p> <p>16 COLONEL SCOTT: There was - well, it was 17 either that, or it's another camera that I had to, there 18 were numerous files there that one had to go into to 19 actually see what was being shown. Or it could have been 20 for that matter, we are talking some time ago, it could 21 have been some of the Lonmin mine CCTV camera footage that 22 was brought, or I'm not sure, but it was some file that had 23 a whole lot of sub-directories that were difficult to open.</p> <p>24 MR CHASKALSON SC: Okay, that's possibly 25 the Lonmin CCTV footage, which is much more complicated to</p>
<p style="text-align: right;">Page 13757</p> <p>1 operators?</p> <p>2 COLONEL SCOTT: I'd downloaded their 3 material in the days after the 16th. I recall because they 4 brought me their memory cards and when they gave it to me, 5 it was, there were a lot of different files and I didn't 6 really know which file the footage was in. I think we 7 still had to download a certain program to try and open 8 their footage. That's why I recall specifically the two 9 Public Order Policing video cameras were brought to me, 10 which in effect I think were the Lonmin cameras borrowed to 11 SAPS.</p> <p>12 MR CHASKALSON SC: Are you saying that 13 you had to download a program to show the POP video footage 14 of Warrant-Officers Masinya and Ndlovu?</p> <p>15 COLONEL SCOTT: From what I can recall I 16 was either that or we had to update some of the programs to 17 a VCL player, or something to that effect, to be able to 18 watch them.</p> <p>19 MR CHASKALSON SC: But Colonel Scott, I 20 have to put to you that those files are readable on Windows 21 Media Player, which comes standard issue with any version 22 of Windows.</p> <p>23 COLONEL SCOTT: As I say, there were many 24 files in there and when I downloaded those, it was actually 25 a little bit of a search to actually find the video</p>	<p style="text-align: right;">Page 13759</p> <p>1 open. Colonel, let's go back to where this line of 2 questioning started. For 10 days you were the sole 3 repository of the SAPS archives of photo and video 4 material.</p> <p>5 COLONEL SCOTT: Yes.</p> <p>6 MR CHASKALSON SC: The first 10 days 7 after the event. You knew there was going to be a 8 commission of inquiry.</p> <p>9 COLONEL SCOTT: I did, yes.</p> <p>10 MR CHASKALSON SC: That had been publicly 11 announced, and it must have been obvious to you that photo 12 and video material taken by SAPS operators would be of 13 particular value to that commission of inquiry.</p> <p>14 COLONEL SCOTT: It makes sense, yes.</p> <p>15 MR CHASKALSON SC: So you had an archive 16 of material that was going to be particularly valuable to 17 this Commission, and you're saying to us that after you 18 surrendered responsibility for the archive at some stage 19 late August/early September, you may have deleted parts of 20 that archive because you thought that it would have been 21 kept elsewhere as well?</p> <p>22 COLONEL SCOTT: Yes, not intentional 23 deleting. As I say, if I did, and I'm saying if I did, it 24 would have been through the upgrading to gain back 25 everything that was on the SAPS master hard drive. There</p>

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1 was no intentional deleting of video footage or photos or
 2 anything by myself.
 3 MR CHASKALSON SC: No, Colonel, again I
 4 want some precision here. I can understand the process
 5 where one copies back the archive on Brigadier Pretorius'
 6 hard drive onto your hard drive, and in the process files
 7 with the same names get overwritten. That clearly is not
 8 intentional deletion. But if you consciously delete files
 9 on your hard drive before that copying process takes place,
 10 that seems to me to be intentional deletion. Is that what
 11 you say may have happened?
 12 COLONEL SCOTT: I wouldn't have deleted
 13 any files unless everything was already on the police
 14 master hard drive, but to my recollection, as I say, I
 15 don't recall deleting pertinently any files that had to do,
 16 that I alone would be sitting with, and I don't know how
 17 else to make this clear, but the only way that I would
 18 have, that something won't be on this hard drive, is if
 19 I've transported the whole of the police hard drive back
 20 onto mine as an update and deleted what I had, knowing that
 21 what I'd be getting back was the full package again, not
 22 having the full package.
 23 COMMISSIONER HEMRAJ: Whether you got
 24 back exactly what you sent out, would depend on whether
 25 there were any deletions done by, any deleting done by

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1 Colonel Visser?
 2 COLONEL SCOTT: Yes, and because I know
 3 Colonel Visser was also arranging the hard drive according
 4 to days to make it more, or better to find evidence on
 5 certain days with regard to videos and etcetera. So there
 6 was a sorting of video and photograph footage into the
 7 relative days, 13, 14, 15, 16. So it was a shortcut for me
 8 to have that all done already to bring it back. I know
 9 that it wasn't done with all the files. I think some of
 10 the files were kept as whole as well, but that's why as
 11 well, because it was comfortable for me to be able to take
 12 these things back that way as well, because it assisted me
 13 when it came down to having to – and at that stage we were
 14 still working on exhibit L, to be able to go through these
 15 things, reference them better, see what was where.
 16 MR CHASKALSON SC: Colonel, I don't
 17 recall the exact words of your answer to me, but the
 18 meaning that I understood you to convey was that you, if
 19 you deleted material from your hard drive, you did that in
 20 the understanding, or in the expectation that what you were
 21 then going to copy back from the Brigadier Pretorius hard
 22 drive would duplicate that material, or replace it. Is
 23 that a correct understanding of what you were conveying?
 24 COLONEL SCOTT: It would replace it with
 25 a more up-to-date version, that whatever I didn't have

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1 would now be included in the full package as I would bring
 2 it over.
 3 MR CHASKALSON SC: No, again I'm talking
 4 about individual files. There is no such thing as a more
 5 up-to-date version of an individual file, but what I
 6 understood you to be conveying was that if you deleted
 7 certain individual files from your hard drive, those
 8 individual files would then be replaced, or recopied when
 9 you copied over the SAPS hard drive that was now in the
 10 custody of Brigadier Pretorius and Colonel Visser. You
 11 didn't anticipate that any of them would be lost forever.
 12 COLONEL SCOTT: No. Well, the integrity
 13 of Colonel Visser as well, I must state, we've had no
 14 misleading issues or – I mean there's, we've tried to
 15 provide the videos, the footage, the, everything we've
 16 received. Those members of the SAPS that even brought us
 17 footage to show us on cell phones, those were the guys we
 18 said well look, you have to give it to us, we're going to
 19 put it into the evidence bundle, in their confidence as
 20 well. We haven't tried to hide anything and in so saying,
 21 when Colonel Visser tried to sort his videos - and I think
 22 I even had a hand in that at Roots itself because we first
 23 started at Roots, trying to depict the history, and then go
 24 to the operation, and then found that it will be better to
 25 possibly show the audience something that happened in a

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1 sequential way, which was on days, and in doing that we
 2 created folders for per day, so that when we started
 3 referencing and looking at photos and videos, we knew where
 4 they were. So it may even be possible that certain photos
 5 taken on the same camera from another day ends up in a
 6 separate folder, but there was a sorting process done in
 7 that way. But to my knowledge there was no videos that
 8 were deleted. There were videos and photos brought to us
 9 that were missing photos or videos, and that we later found
 10 out through yourselves that they were missing, because we
 11 didn't think to look at the sequential numbers of what was
 12 given to us, and when speaking to these members they said
 13 but they didn't mean anything, they were blurred, it was a
 14 – whatever the situation was. So we didn't see any ill-
 15 intent from their side either in not providing those, and
 16 to my knowledge most of those have been provided since.
 17 But to my, as I say, there's been nothing that I have
 18 deleted personally that I've done so with malicious intent,
 19 to try and hide something, not in any way.
 20 CHAIRPERSON: That's not exactly a
 21 complete answer to the question you were asked. As I
 22 understand the question, you were asked about the deletions
 23 that you did, and what I understood the question to be was,
 24 is it correct to say that you only deleted something if you
 25 thought that what you were deleting was on the police hard

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1 drive and that you'd get it back, as it were, later?

2 COLONEL SCOTT: Yes.

3 CHAIRPERSON: Is that the question? And

4 the answer to that is yes, is it?

5 COLONEL SCOTT: And Chairperson, I must

6 state, the hard drive is here and I think we need to view

7 it or have a look, because as I say, I don't recall

8 deleting anything. I'm saying that if I did –

9 CHAIRPERSON: It's a conditional answer,

10 or a hypothetical answer.

11 COLONEL SCOTT: Ja.

12 CHAIRPERSON: If I did, I would only have

13 done it – you in the first person, supposed to be you

14 speaking –

15 COLONEL SCOTT: Yes.

16 CHAIRPERSON: - I would only have done it

17 if I thought, or was satisfied that what was being deleted

18 on my computer was still in existence on the police hard

19 drive and that I would get it back later?

20 COLONEL SCOTT: This is so, yes.

21 CHAIRPERSON: Yes, okay.

22 MR CHASKALSON SC: Thank you,

23 Chairperson. So Colonel, if that was your intention, did

24 you take any steps to compare the contents of the Brigadier

25 Pretorius hard drive that you were going to copy onto your

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1 hard drive, with the contents of your hard drive that you

2 were going to delete to make space to accommodate that

3 Brigadier Pretorius hard drive?

4 COLONEL SCOTT: No, not that I can – but

5 as I say, I think one must maybe just check what is on the

6 hard drive before we, because I'm speaking about

7 possibilities that may not even exist.

8 MR CHASKALSON SC: Okay, well maybe we

9 can return to this line of cross-examination when we have

10 looked at that hard drive. But one last question, because

11 I just want to clarify in my own mind what we need to be

12 looking at; you spoke about Colonel Visser realising that

13 it would be more helpful to group materials according to

14 date, for instance, and chronology. When you were the

15 archive of the SAPS video and photo store, how did you

16 group your materials?

17 COLONEL SCOTT: I was doing it like that

18 already.

19 MR CHASKALSON SC: So you were already

20 organising materials by date.

21 [12:41] COLONEL SCOTT: From what I can recall, I

22 was – I think I would have started with just by name,

23 whoever was giving me materials and then realising that

24 there's going to be different days of material, starting to

25 put it into days already as well.

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1 MR CHASKALSON SC: So what Brigadier

2 Pretorius, Colonel Visser would have been doing was really

3 continuing a method that you had –

4 COLONEL SCOTT: Yes.

5 MR CHASKALSON SC: - initially started.

6 COLONEL SCOTT: Yes.

7 MR CHASKALSON SC: And your hard drive in

8 the sense of your external hard drive would then have

9 reflected the materials produced by SAPS, by SAPS members

10 and the materials obtained from Lonmin because you spoke

11 also about the difficulties of viewing the Lonmin CCTV

12 footage, as they had been – or all of those materials that

13 had been delivered to SAPS by the, say 27th of August at the

14 earliest. Is that correct?

15 COLONEL SCOTT: The materials that I'd

16 received, yes, I would have had in my possession till at

17 least at Roots.

18 MR CHASKALSON SC: And they included the

19 Lonmin CCTV footage that you had difficulty viewing.

20 COLONEL SCOTT: I say I know that

21 Lonmin's CCTV footage was difficult to open but I can

22 definitely recall a file that somebody was giving me that

23 was difficult to open. If it is that file, yes, then they

24 did give me that already at Marikana.

25 MR CHASKALSON SC: Look, I don't want to

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1 put words in terms of your mouth but had you seen the

2 Lonmin CCTV footage by Roots?

3 COLONEL SCOTT: I saw it on the 17th, the

4 Friday morning when an IT expert from Lonmin showed the

5 footage because it was relevant to General Mpembe's

6 situation with regard to the 13th and that same IT expert

7 from Lonmin helped General Mpembe put together a

8 compilation of that footage for the media briefing on the

9 17th. That's where I got to see it.

10 MR CHASKALSON SC: And did you copy that

11 footage over onto your hard drive when it was the nodal

12 point before Roots?

13 COLONEL SCOTT: Yes.

14 MR CHASKALSON SC: And when I say that

15 footage, maybe I should be more precise. Did you copy only

16 the footage that the Lonmin expert had shown you or did you

17 receive all of the Lonmin CCTV footage that we now see on

18 our SAPS hard drives?

19 COLONEL SCOTT: No, I recall it, I think

20 it was just from the 13th, if I recall.

21 MR CHASKALSON SC: And did you not ask

22 for Lonmin's CCTV footage of the 16th?

23 COLONEL SCOTT: Well, it wasn't my place

24 to specifically do that. As I say, I was there as a nodal

25 point. I'm not sure what I was able to ask for from

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1 Lonmin's side. That morning of the 17th, and I think that's
 2 when I actually got the other footage as well, is when it
 3 was shown and it was deemed necessary for the media
 4 briefing but to ask entities outside of SAPS, I think I
 5 would have been out stepping my boundaries by doing so.
 6 MR CHASKALSON SC: You knew the material
 7 existed though?
 8 COLONEL SCOTT: Well, I saw, I saw the
 9 CCTV footage on the 16th in the JOC briefly when I was
 10 standing next to the radio sender because it was so poorly
 11 to be seen with the sun shining and right into the lenses
 12 and so on, so I didn't take much notice of it.
 13 MR CHASKALSON SC: But you did know of
 14 its existence?
 15 COLONEL SCOTT: Yes.
 16 MR CHASKALSON SC: Did you know of the
 17 subpoena issued to Lonmin under section 205?
 18 COLONEL SCOTT: I didn't know about that,
 19 no.
 20 MR CHASKALSON SC: When was that first
 21 brought to your attention?
 22 COLONEL SCOTT: This is when Colonel
 23 Visser showed me the Lonmin footage of the 12th when the
 24 miners had the shotguns. That's the first time that he
 25 made me aware that that had come through a section 205,

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1 that he had obtained that footage.
 2 MR CHASKALSON SC: And when did that take
 3 place?
 4 COLONEL SCOTT: That was probably late
 5 October that he showed me that, it was in the Rustenburg
 6 conference centre.
 7 MR CHASKALSON SC: So that was long after
 8 Roots?
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: It was when the
 11 Commission was already running. Alright Colonel, we'll
 12 return to this issue when we've looked at the hard drive
 13 and seen what it shows but for now if I can go back to that
 14 initial road map that I gave you and you'll recall that the
 15 second topic that I was going to address with you before
 16 that diversion was the sources of videos in exhibit L and
 17 can you go to the spreadsheet that you furnished to the
 18 evidence leaders, which will be exhibit JJJ63 and it is –
 19 CHAIRPERSON: JJJ63?
 20 MR CHASKALSON SC: And that is at pages 1
 21 to 8 of file 3.1.
 22 CHAIRPERSON: 1 to 8.
 23 MR CHASKALSON SC: Of file 3.1.
 24 CHAIRPERSON: 1 to, t-o, 8?
 25 MR CHASKALSON SC: 1 t-o 8.

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1 CHAIRPERSON: File?
 2 MR CHASKALSON SC: 3.1.
 3 CHAIRPERSON: 3.1 and you describe it as
 4 a spreadsheet of?
 5 MR CHASKALSON SC: It is a spreadsheet
 6 that I understand Colonel Scott to have produced in
 7 response to a request from the evidence leaders for a list
 8 of the sources of the video and photographic files in
 9 exhibit L. And Colonel, I've just described that
 10 spreadsheet in terms which really should come from you
 11 rather than from me but can you confirm that this is a
 12 spreadsheet that you prepared in response to a request from
 13 the evidence leaders that SAPS provide us with details of
 14 the source files for each of the photographic and video
 15 slides in exhibit L?
 16 COLONEL SCOTT: I confirm it's a
 17 spreadsheet I made, yes.
 18 CHAIRPERSON: So it provides extra
 19 material in relation to the source of the slides in exhibit
 20 L which supplements what appears in paragraphs 8 and
 21 following of Colonel Visser's affidavit, is that correct?
 22 MR CHASKALSON SC: That is correct. In
 23 fact it pre-
 24 CHAIRPERSON: - his affidavit, I'm not
 25 sure it's got an exhibit yet but – yes, it has, it's

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1 JJJ3.1.
 2 MR CHASKALSON SC: Chronologically, as I
 3 understand it, it pre-dates Colonel Visser's affidavit but
 4 as an exhibit it obviously enters the Commission after
 5 Colonel Visser's affidavit.
 6 CHAIRPERSON: And it supplements that
 7 material.
 8 MR CHASKALSON SC: It does. Colonel, can
 9 you briefly guide the Commissioners through the
 10 spreadsheet? The first column is self-explanatory, it's
 11 the number of the slide in exhibit L. The second column
 12 provides a brief description of what one sees on the video
 13 or the photograph. Sorry Colonel, I see you nodding your
 14 head. Can you, for the record can you just say yes if you
 15 agree with it.
 16 COLONEL SCOTT: Yes, yes.
 17 MR CHASKALSON SC: Possibly you can
 18 explain what you had in mind with the third column which
 19 you call type.
 20 COLONEL SCOTT: With type I was referring
 21 to is it a photograph that you find in exhibit L, is it a
 22 video? What you see with the first row, which is slide
 23 number 9, it shows an interview which is obtained through
 24 the open source media, so it would have come from the
 25 internet.

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1 MR CHASKALSON SC: Then the third column
 2 describes the origin of the file, where, from whom SAPS
 3 received that file –
 4 COLONEL SCOTT: No -
 5 MR CHASKALSON SC: - or not necessarily
 6 from whom SAPS received the file. Maybe you can describe
 7 what the –
 8 COLONEL SCOTT: The origin is speaking to
 9 where on the SAPS master hard drive that origin is found.
 10 So you would find 702 Eye Witness News, there was – I think
 11 it's in the open source media or if I mentioned it like
 12 that I may not have specifically been able to find it but
 13 where you do see the letter F, that's simply standing for
 14 the port on the computer to which the hard drive was
 15 plugged into. Then you see Marikana master, that's the
 16 SAPS master hard drive, photos, photos 12th, et cetera. And
 17 the 15th, row no. 2, 15 striker march Friday video, it's a
 18 compilation of videos again and you see the reference which
 19 speaks to the actual name of the file that was used in the
 20 video footage.
 21 MR CHASKALSON SC: If I can just take you
 22 back to origin, if for instance we go to item 3, that will
 23 give you the directory on the police master hard drive that
 24 there file in the column's reference, that's where that
 25 file resides on the police master.

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1 COLONEL SCOTT: Yes.
 2 MR CHASKALSON SC: Now, as I look at it
 3 now I suddenly realise that there is a slight omission that
 4 I would've wanted to have addressed in this spreadsheet
 5 because on its face the spreadsheet doesn't tell us whether
 6 the file that we see is a file that was taken by a SAPS
 7 member or possibly a Lonmin person whom we can identify or
 8 if it was pulled off the internet from open source media.
 9 I wonder if I can ask you, it shouldn't be a difficult
 10 exercise, you and I can do that very quickly, if we can
 11 overnight prepare a further folder which identifies which –
 12 which really just has two categories, or three, SAPS,
 13 Lonmin, open source media. So the Commissioners know in
 14 relation to a particular file whether it's a file the
 15 origin of which we can identify precisely through SAPS or
 16 Lonmin or whether it's a file that has been pulled off the
 17 internet.
 18 CHAIRPERSON: You don't reply but I take
 19 it the answer is yes?
 20 COLONEL SCOTT: Well, I presume there's
 21 no option in there, Commissioner, so –
 22 CHAIRPERSON: No, well, you're quite –
 23 COLONEL SCOTT: - do that.
 24 CHAIRPERSON: - say you can't do it, but
 25 I would've thought it's possible so I would be surprised if

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1 you said no, so –
 2 COLONEL SCOTT: Ja.
 3 CHAIRPERSON: Can I put the word "yes"
 4 into your mouth and can we carry on?
 5 COLONEL SCOTT: Yes.
 6 MR CHASKALSON SC: Thank you, Colonel,
 7 and Colonel if we can then go to the next spreadsheet which
 8 is a spreadsheet that the evidence leaders amended or a
 9 version of your spreadsheet that the evidence leaders
 10 amended, that is exhibit JJJ64 and that starts at page 9 of
 11 the same file that the Commissioners have. Colonel, what
 12 the evidence leaders did in respect of this file and we did
 13 it only in relation to the 16th because it was the 16th with
 14 which we were particularly concerned, is we added two
 15 columns, the last two columns on the right hand side which
 16 say "Time on camera" and "Etv time" and for the purposes of
 17 explaining the Etv time column, I should ask you also to
 18 look at that table of time differences that the evidence
 19 leaders prepared which is JJJ37 and is the first two pages
 20 of file 1 for the Commissioners. Maybe if I can start with
 21 that table which still has the heading that was on that
 22 PowerPoint presentation that we presented. This table
 23 reflects the evidence leaders' reconciliation of 20
 24 different sources of film and video footage of the 16th and
 25 it has been accepted by the parties and if you look at the

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1 column on screen, the last row in that table which really
 2 straddles two slide – can we just quickly flip the second
 3 slide up and then go back to the first slide? So what this
 4 should look like is pages 1 and 2 should sit next to each
 5 other on the left and right hand side of the page but we
 6 couldn't fit them all onto one page but the last row
 7 reflects what we have called Etv time which is the time on
 8 the live Etv clock that was displayed by Etv news as they
 9 were filming on the day and each entry on that table tells
 10 you, if one runs along the Etv line, how far ahead or
 11 behind of Etv that particular camera was. So if we – I'm
 12 just trying to remember. Entries in red, if I recall
 13 correctly, are entries that were behind. So if we go down
 14 the first column, Nel video is three hours and 59 minutes
 15 behind. If one goes down the Lonmin chopper column, the
 16 Lonmin chopper which starts at nought, that Lonmin chopper
 17 video is 15 hours and 57 minutes and 30 seconds behind Etv
 18 time. So nought, so 000 on the Lonmin chopper is actually
 19 15:57:13 Etv time. Colonel Rylands in the second column is
 20 actually 24 seconds behind Etv time, so the time on Colonel
 21 Rylands' cell phone would translate to a time that is 24
 22 seconds behind Etv. And entries that are not in red are
 23 entries that are ahead of, so the Vermaak Pentax is one
 24 minute and 42 seconds ahead of Etv time.
 25 What the evidence leaders have done in relation

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1 to our spreadsheet entries for the 16th is, where those
 2 entries relate to files of SAPS or Lonmin footage or
 3 photographs in respect of which we have camera times, they
 4 have entered on the first column the camera time and the
 5 second column the conversion of that camera time into Etv
 6 time. So that in respect of each entry on your spreadsheet
 7 in the final column we can have an Etv time for that slide.
 8 Now, we made a copy of this spreadsheet available to you –
 9 gosh, I would imagine six weeks ago. We asked you to work
 10 through it and see if you have any difficulties with the
 11 entries that we have made on this and can I ask you, do you
 12 have any difficulties or do you accept that the camera
 13 times that we have put in, in column F are the correct
 14 camera times and the conversions to Etv time in column G
 15 are correct?
 16 COLONEL SCOTT: I accept that they are.
 17 MR CHASKALSON SC: Thank you, Colonel.
 18 That concludes the second topic that I'm dealing with in
 19 videos –
 20 CHAIRPERSON: Is it convenient for us to
 21 take the adjournment at this stage?
 22 MR CHASKALSON SC: It would be a
 23 convenient time, Mr Chairperson.
 24 CHAIRPERSON: We'll adjourn until quarter
 25 to two.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]
 2 [13:52] CHAIRPERSON: The Commission resumes.
 3 Colonel, you're still under oath.
 4 DUNCAN GEORGE SCOTT: s.u.o.
 5 CHAIRPERSON: Mr Chaskalson –
 6 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 7 Mr Chairperson, there was a brief discussion between the
 8 evidence leaders and the SAPS legal team at lunchtime and
 9 it appears that we've been under something of a
 10 misapprehension as to the status of some of the files that
 11 have been given to us, and I just want to clarify that with
 12 Colonel Scott before we move on. Can I ask that exhibit
 13 JJJ12, or to begin with, JJJ12 is put up on the screen?
 14 Now Colonel, when I put this exhibit to you, I put it to
 15 you on the basis that it was a printout of a directory of
 16 the photos and videos directories of your laptop hard
 17 drive. It's been explained to us that it is in fact that
 18 what was copied over was not from your laptop, but was from
 19 an external hard drive attached to your laptop, which was
 20 in the nomenclature that I used earlier, the Brigadier
 21 Pretorius external hard drive. So what this would reflect
 22 then is the, in this case the photos directory on the
 23 Brigadier Pretorius hard drive.
 24 COLONEL SCOTT: That's correct, which is
 25 actually the, if I have it right, it's the police master

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1 hard drive, ja.
 2 MR CHASKALSON SC: So this is the
 3 current, or that was I think 23 July that it was copied
 4 over; that was the master SAPS hard drive in the state in
 5 which it existed on the 23rd of July of this year?
 6 COLONEL SCOTT: To my knowledge, yes.
 7 MR CHASKALSON SC: And then if we can
 8 look at JJJ13, that would then be the videos directory on
 9 the SAPS master hard drive, what I'd been describing as the
 10 Brigadier Pretorius hard drive, as at 23 July this year?
 11 COLONEL SCOTT: That's correct.
 12 MR CHASKALSON SC: Now over lunch you
 13 provided us with the external hard drive that is what I had
 14 been calling the Colonel Scott hard drive, and we will look
 15 at that external hard drive overnight and if needs be,
 16 return to the line of questioning that we were pursuing
 17 before lunch. But because we've now got the status of what
 18 we thought were the files from your notebook and were in
 19 fact the files from Brigadier Pretorius' hard drive, I need
 20 to just clarify a number of other issues, and can I
 21 recollect – tell me if my recollection is incorrect – as I
 22 understood your testimony, you testified that while the,
 23 well, to begin with your notebook hard drive was the
 24 archive for a couple of days or so. Is that correct?
 25 COLONEL SCOTT: Correct.

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1 MR CHASKALSON SC: Then the Colonel Scott
 2 hard drive was purchased and you copied onto the Colonel
 3 Scott hard drive all of the video and photographic files
 4 that had been part of your archive on your notebook, and to
 5 make space on your notebook hard drive, you deleted them
 6 where they had previously existed on your notebook.
 7 COLONEL SCOTT: If we're talking video
 8 and – sorry.
 9 MR SEMENYA SC: Sorry, I understood the
 10 evidence "may have deleted them," is still put it at the
 11 hypothetical level.
 12 CHAIRPERSON: That's correct, I think, Mr
 13 Chaskalson.
 14 MR CHASKALSON SC: Mr Chairperson, I just
 15 want to clarify this because bear in mind, there have been
 16 two separate processes and I want to understand the first
 17 process, because I did understand in the first process your
 18 testimony was you copied from the internal hard drive of
 19 your laptop onto the external hard drive everything, and
 20 then to make space on your laptop internal hard drive, you
 21 deleted what you had copied. Is that correct, or have I
 22 got it wrong?
 23 COLONEL SCOTT: The majority of the
 24 documents. I did maintain one or two presentations,
 25 etcetera, that we were working on, on my laptop obviously,

<p style="text-align: right;">Page 13780</p> <p>1 but I later came to see that the external hard drive which 2 I've given you, is a cumbersome one that needs electricity 3 to run it. So I transferred back videos and photographs. 4 Now whether that's from that hard drive or the SAPS master 5 hard drive, I'm not sure at this time, but I did bring 6 photos and evidence back. 7 MR CHASKALSON SC: For present – 8 CHAIRPERSON: It does sound though from 9 what you say as if at some stage you did some deletions to 10 make space. Whether you almost undid those deletions, as 11 it were, by transferring stuff back later is another 12 matter, but it is correct, is it – 13 COLONEL SCOTT: Yes – 14 CHAIRPERSON: - that you did delete stuff 15 from your notebook to make space because you transferred 16 the material that you'd deleted onto this external hard 17 drive. Whether it was the Scott hard drive or the 18 Pretorius hard drive I'm not sure about at the moment, but 19 there was a deletion, but as far as you're concerned, you 20 either undid it, you undid it either in whole or in part 21 subsequently by retransferring material back. Is that 22 correct? 23 COLONEL SCOTT: That's correct, 24 Chairperson. The, as I say it was becoming heavy on the 25 computer with, I know there was a heck of a lot of gigabyte</p>	<p style="text-align: right;">Page 13782</p> <p>1 line of not deleting, but it was more, you can either copy 2 over or you can cut and paste over, and it was cut and 3 paste over. I know this because the current file on my 4 laptop as it stands now is just named "Docs." It's not 5 even named "Marikana" because it was just documents that I 6 would be working from in the police presentation L and so 7 on, so the whole Marikana file, which was originally named 8 "Marikana," or "Ops Platinum," one of the two, was cut and 9 paste over to the Scott hard drive, the 1-terabyte, after 10 the second day. 11 MR CHASKALSON SC: Right, and the effect 12 of cut and paste is that on your laptop internal hard drive 13 those files no longer remained? 14 COLONEL SCOTT: Ja, it would be – ja, it 15 would be literally, I suppose that's what cut and paste is 16 about, is to remove and to place them elsewhere. 17 CHAIRPERSON: For a while they weren't in 18 your own computer. Some of them, you say, or all of them, 19 we don't know yet, came back later. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: But there was a period of 22 time when they weren't there in your laptop any longer. 23 COLONEL SCOTT: Yes, yes there was. 24 There was. 25 MR CHASKALSON SC: But as long as you</p>
<p style="text-align: right;">Page 13781</p> <p>1 which was given just to photos and video footage and thus 2 transferring the majority of that over, or if not all of it 3 over actually at that time to the external hard drive, but 4 – and I say again, it was difficult to always find the 5 ability to plug that one in. It's a two-pin plug, 6 etcetera, and I know at some stage it was just more 7 convenient to bring back some of the footage back to the 8 computer, specifically in the designing and working on 9 exhibit L, the police presentation. 10 MR CHASKALSON SC: The purpose of my 11 question is slightly different, because we thought 12 (erroneously) that we had a directory printout of your 13 photos and videos directories on your laptop hard drive. 14 It turns out what we have is a directory printout of 15 Brigadier Pretorius' hard drive. Now I just want to 16 clarify what's currently on your laptop hard drive, to find 17 out whether there's any utility in our asking to see the 18 directory contents of your photos and videos hard drives 19 there. So with that in mind I need to ask you again to 20 possibly in more detail, when you copied from your laptop 21 hard drive to the external hard drive, the first external 22 hard drive, did I understand you correctly to say that 23 after you had done that, to make space on your laptop you 24 pretty much deleted everything? You may have – 25 COLONEL SCOTT: I think it's more in the</p>	<p style="text-align: right;">Page 13783</p> <p>1 held custody of the external hard drive, which was at that 2 stage the Scott external hard drive, you would still have 3 had all of those files because they'd been cut from your – 4 COLONEL SCOTT: Yes. 5 MR CHASKALSON SC: - internal hard drive 6 and pasted onto your external hard drive. 7 COLONEL SCOTT: Yes. 8 MR CHASKALSON SC: Then if I understand 9 the process correctly, at Roots – and can you clarify, was 10 it at the beginning of Roots, at the end of Roots, when 11 custody was shifted to Brigadier Pretorius and Colonel 12 Visser? 13 COLONEL SCOTT: I think, to the best of 14 my remembrance probably, it was in, I think it was in the 15 first week, probably late in the first week, or mid-first 16 week when a hard drive was produced. 17 MR CHASKALSON SC: So I don't want to pin 18 you down to an exact date, but approximately in the middle 19 of the first week at Roots an external, another external 20 hard drive was purchased. This was kept in the custody of 21 – or was it Brigadier Pretorius or Colonel Visser? Do you 22 know? 23 COLONEL SCOTT: I think it was initially 24 Colonel Visser until the police office was created at the 25 Rustenburg Commission, and then Colonel Visser continued to</p>

<p style="text-align: right;">Page 13784</p> <p>1 work on that hard drive there, but it was between him and 2 Brigadier Pretorius, that was in their possession. 3 MR CHASKALSON SC: Okay, let's take it 4 one step at a time. At Roots that hard drive was given 5 into the custody of Colonel Visser? 6 COLONEL SCOTT: Yes. 7 MR CHASKALSON SC: And at some stage 8 thereafter, shortly thereafter, I would imagine, you copied 9 all of the contents from the, what we call the Scott 10 external hard drive, onto the, what at that stage was the 11 Colonel Visser external hard drive, and you may or may not 12 have deleted what was on the Colonel Scott external hard 13 drive? 14 COLONEL SCOTT: I think that sums it up, 15 yes. 16 MR CHASKALSON SC: And then once the 17 office was set up in Rustenburg – and do we have an 18 approximate date for that? 19 COLONEL SCOTT: Somewhere in October. 20 MR CHASKALSON SC: Presumably it was 21 after the Commission had started sitting, or not? 22 COLONEL SCOTT: I think maybe a day or 23 two before – 24 CHAIRPERSON: We started sitting, as far 25 as I remember, on about the 1st of October. We just had an</p>	<p style="text-align: right;">Page 13786</p> <p>1 printout, or would you want one of us to assist you in that 2 regard? 3 COLONEL SCOTT: We could either do that, 4 or if we have the liberty of showing it, we can show it 5 now, if you'd like. 6 MR CHASKALSON SC: I don't want to waste 7 the Commission's time, because it will require quite a lot 8 of study to compare, you know, thousands of files that will 9 be on your hard drive with thousands of files that are on 10 somebody else's hard drive. 11 CHAIRPERSON: I would have thought this 12 is something that could be done outside the Commission and 13 the results can be reported to us. 14 COLONEL SCOTT: Okay. 15 CHAIRPERSON: It might, as Mr Chaskalson 16 says, take a fair amount of time, which we could ill 17 afford, really. 18 COMMISSIONER HEMRAJ: May I just enquire 19 when last you would have uploaded, or transferred items 20 from the master hard drive, the SAPS master hard drive onto 21 your hard drive? Do you have a date perhaps? 22 COLONEL SCOTT: The computer, this 23 computer's hard drive? 24 COMMISSIONER HEMRAJ: Well, your external 25 hard drive.</p>
<p style="text-align: right;">Page 13785</p> <p>1 inspection in loco for two days and then we adjourned until 2 either the end of October or early November, and so when 3 was this office set up? 4 COLONEL SCOTT: Chairperson, I'm not 5 sure, but I can – it wouldn't be difficult to get a date. 6 MR CHASKALSON SC: And at that point the 7 hard drive was then kept at the SAPS office, which was 8 under the control of Brigadier Pretorius, and while Colonel 9 Visser may have worked on it, it was formerly under the 10 control of Brigadier Pretorius? 11 COLONEL SCOTT: I don't think I can 12 answer that accurately because whether Colonel Visser took 13 it with him overnight or it remained in Brigadier 14 Pretorius' possession, I can't particularly say, but it 15 was, it was between the two of them. I know that. 16 MR CHASKALSON SC: Okay, well that we can 17 canvass with Colonel Visser and Brigadier Pretorius. 18 Colonel, what I'm going to ask is, I don't want to take 19 files off your hard drive that may be irrelevant. What I'm 20 going to ask is if we can get a directory printout of your 21 hard drive, which will just give us the file names on your 22 hard drive, so that we can compare that printout with the 23 printout of the Brigadier Pretorius hard drive, and if 24 needs be we can revert to you, asking for specific files to 25 be made available. Are you able to do a directory</p>	<p style="text-align: right;">Page 13787</p> <p>1 COLONEL SCOTT: That would, some time 2 ago, Commissioner. No, it would have, it wouldn't have, it 3 wasn't in the recent past. 4 MR CHASKALSON SC: Thanks, Colonel. 5 Maybe we could chat for five minutes after the hearing 6 today and just arrange for a file to be printed, which we 7 can then consider, possibly with the SAPS legal 8 representatives. 9 COLONEL SCOTT: Just a point, if I may, 10 if I can just clarify something that was mentioned earlier 11 with the expert from the evidence leaders on the computer, 12 with the DG for Duncan George, I've checked my computer in 13 the lunch break; it's not DG, it's DS, it's for Duncan 14 Scott. The middle name is not mentioned there. 15 MR CHASKALSON SC: Thanks, Colonel. 16 You'll recall that the third topic that I wanted to 17 traverse with you was what I called dealing with red 18 herrings, and in particular the POP video operators, and if 19 we can turn to that topic now, and by way of introduction 20 if I can say the two biggest concerns that have been 21 expressed to evidence leaders about the absence of video 22 footage concern the absence of helicopter FLIR coverage of 23 the 16th, and the suspicion that those two POPs video 24 operators, Warrant-Officer Masinya and Warrant-Officer 25 Ndlovu weren't really withdrawn at 1:30 and there may be</p>

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1 some hidden video footage out there that's been kept from
 2 the Commission. Now we've investigated both of these
 3 concerns extensively, and we're satisfied that there's no
 4 foundation for those suspicions. You don't have personal
 5 knowledge of the facts in relation to the helicopter FLIR
 6 coverage, and because it's such an important issue, I don't
 7 want to canvass it with you; we'll canvass it with Colonel
 8 Vermaak, who does have that personal knowledge.
 9 But you do have the personal knowledge to put to
 10 bed suspicions in relation to the footage of Warrant-
 11 Officer Ndlovu and Warrant-Officer Masinya, and that's what
 12 I'd like to address now, and the starting point is probably
 13 paragraph 45.3 of your statement where you confirm that on
 14 the 17th of August – 45.3, let me get you a page reference;
 15 128. 128, 45.3, there you confirm that on the 17th you
 16 downloaded the files from the cards of both POPs cameras
 17 onto your hard drive on the afternoon of the 17th, and what
 18 I would like us to be able to show is that what you
 19 downloaded on the 17th was a complete set of POPs videos
 20 from the 16th and that there aren't other POPs videos from
 21 the 16th lurking out there that you didn't download, or that
 22 someone else may have downloaded and then hidden, and the
 23 easiest way to do that is to go to the Lonmin hard drive
 24 where there is a full set of the original POPs videos held
 25 by a party that isn't SAPS, and I've printed out a

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1 thumbnail view of the Lonmin hard drive directory for the
 2 POPs videos of 16 August, and a screenshot of the file
 3 properties of those files, and I wonder if we can call
 4 those up on the screen. The exhibit number will be JJJ17.
 5 It's pages 121 to 123 of the evidence leaders' bundle in
 6 file 1, 121 to 123, and there we have thumbnails of videos
 7 that were taken off the cameras of POPs video operators,
 8 Warrant-Officers Masinya and Ndlovu, and there are two
 9 sequences; the one runs from O42MTS to O48MTS, and the
 10 second runs from 102MTS to 103MTS. There are two sequences
 11 because there were two cameras with two different cards.
 12 Can you confirm first of all that on the 16th – sorry, on
 13 the 17th when you downloaded the videos from the cards of
 14 Warrant-Officers Masinya and Ndlovu, these were the files
 15 that you downloaded?
 16 COLONEL SCOTT: Yes, what I can confirm,
 17 and I'm cautious to put myself directly onto a date, but to
 18 the best of my recollection it was the 17th that I
 19 downloaded this from them. They were, obviously received
 20 the instruction to hand in their video footage, but yes,
 21 this is to my knowledge all that they gave me, or it is in
 22 fact all that they provided.
 23 [14:11] MR CHASKALSON SC: Can you confirm
 24 further that the videos numbered O42MTS to O48MTS were what
 25 you downloaded from one card and 102MTS to 123MTS are what

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1 you downloaded from a second card, from the second card.
 2 COLONEL SCOTT: I recall there are more
 3 than what's been shown here. There were two different
 4 POPs video files. Each video having its own SD card, so
 5 there were more than what's on screen now but they only did
 6 go up until the meetings that I can see there with Mr Noki
 7 and the fellow strikers.
 8 MR CHASKALSON SC: Well let me put my
 9 question differently. You are correct, there were indeed
 10 more but can I ask you whether there were any videos other
 11 than the ones we see of the 16th, of events on the 16th?
 12 COLONEL SCOTT: Okay no, I hear what
 13 you're saying, on the 16th no, not to my knowledge, no.
 14 MR CHASKALSON SC: And then can I come
 15 back to my anterior question which was O42 to O48 was one
 16 card and 109 to 123 was another card?
 17 COLONEL SCOTT: That's correct.
 18 CHAIRPERSON: Now you say 109, not 102?
 19 MR CHASKALSON SC: I beg your pardon,
 20 Chairperson, 102 to 123. 102 123. Now if we can go to the
 21 file properties print out of these files and that would be
 22 the next page in the bundle. If we look at the what I'll
 23 call the 40 series because it's got files in the 40s we can
 24 see that the dates are reflected as dates in September, not
 25 as dates in August. They all have 16 September, not 16

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1 August. We've investigated that discrepancy and we are
 2 certain that it's the product of someone who set his camera
 3 clock incorrectly and got the month out by one month and
 4 that the events that we see depicted or filmed in these
 5 videos are in fact events of the 16th. And if we go back to
 6 the evidence leader's reconciliation of times you'll see
 7 that that is reflected there. I have lost my exhibit
 8 number, if you'll bear with me for a moment. If we can
 9 just call up JJJ37 and if one looks at the bottom of that
 10 list one will see the 40 MTS series, three from the bottom
 11 and the 100 MTS series and we've reconciled the times for
 12 present purposes it's the 40 that are relevant with all of
 13 the other cameras. And we can show that 40 MTS series is
 14 depicting events on the 16th and the time difference between
 15 that clock and the clocks of other cameras is what one sees
 16 in the row described as 40 MTS. And all of the parties
 17 have accepted that as well. So you're satisfied that
 18 although it says 16 September it was in fact 16 August.
 19 COLONEL SCOTT: Yes.
 20 MR CHASKALSON SC: Now the easiest of
 21 showing that there were no missing videos is to look at
 22 where each one of these sequences picks up on the Lonmin
 23 hard drive on later dates. And to show that those later
 24 videos, videos taken on the 17th continue sequentially where
 25 this sequence left off because if there other videos taken

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1 on the 16th there would have to be a gap in the sequence
 2 where those videos had been deleted or hidden. So if we
 3 can go then to what will become JJJ18 which is page 121 of
 4 the bundle, 121 to 123, JJJ18 which is the directory of the
 5 Lonmin hard drive holding of POP's video recordings for the
 6 17th of August. We see that 100 sequence for the 17th of
 7 August picks up immediately there. It ended on the 16th at
 8 123.MTS and it picks here at 124.MTS, there's an unbroken
 9 sequence that runs from where the POP's videos on the 16th
 10 ended to where they started on the 17th. Do you recognise
 11 the files that we see up there from the Lonmin hard drive
 12 as files that you copied from one the POP's video camera
 13 cards?
 14 COLONEL SCOTT: I'm not sure if I have or
 15 I don't recall actually looking at these, they could be on
 16 the police hard drive. I'm not saying that they're not. I
 17 think because they possibly were at a later date I didn't
 18 go into them to see what they were showing.
 19 CHAIRPERSON: Can we read what's written
 20 on the placard on 134? Does that not perhaps help us to
 21 get the date? What does it say, I can't read it from here
 22 but –
 23 MR CHASKALSON SC: Chairperson, we can
 24 play one of those videos but we can also just look at the
 25 file properties which will record the times of the videos,

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1 so maybe if we can go to the next page.
 2 COLONEL SCOTT: I think, Chairperson, I'm
 3 not disputing it, I'm just saying I haven't personally gone
 4 in and watched all of those being of less interest being
 5 after the 16th but I do believe they are from the 17th,
 6 yes.
 7 MR CHASKALSON SC: So if we go to the
 8 file properties we'll see that they have file properties
 9 from the 17th of August in the 100 series and they flow from
 10 the end of the 100 series on the 16th. The 100 series on
 11 the 16th ended at 123 MTS, this one picks up at 124 MTS.
 12 And these are videos that were furnished by Lonmin from
 13 videos in their possession. Can you possibly explain to
 14 the Commission why Lonmin would have a full set of POP's
 15 videos?
 16 COLONEL SCOTT: It would be my opinion
 17 but I would guess that the video cameras belonged to Lonmin
 18 and when they were handed back to Lonmin the SD cards
 19 inside those video cameras were obviously handed back with
 20 the video camera. Thus Lonmin would have received the
 21 camera and the card with the video footage on it back and
 22 thus been able to have a look at what was on the camera.
 23 MR CHASKALSON SC: I accept that that's
 24 your opinion, we may have to get a statement from Warrant
 25 Officer Masinya and Warrant Ndlovu to elevate it to

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1 something beyond your opinion because I understand that
 2 their - that what they say is something slightly different
 3 but nothing with profound turns on it. This deals with the
 4 100 series and shows an unbroken sequence on the 100
 5 series, let's just finish the 40 series. And for that if
 6 we can turn to exhibit JJJ19 which is at pages 117 and 118
 7 and there we see the Lonmin videos for the 18th of August.
 8 If we can see the file properties and we'll see again
 9 because this is the camera that was out by a month, that it
 10 says the 18th of September and not the 18th of August. But
 11 we again investigated these videos and are satisfied that
 12 what they describe took place on the 18th and if we look at
 13 that list of files we'll see that they start at 049MTS
 14 which picks where that series ended on the 16th which was
 15 048MTS. Can I ask you to look at these videos? Can we
 16 just go back to the thumbnails view? Do you recognise any
 17 of those videos? Can you confirm that they are videos that
 18 were taken on POP's cameras on the 18th?
 19 COLONEL SCOTT: Yes, I do recognise them.
 20 Again I haven't watched them but I've seen the thumbnails
 21 in the files I've dealt with. I specifically know that
 22 because the one with the Brigadier with the loudhailer
 23 addressing the parade.
 24 MR CHASKALSON SC: Would that be 050 MTS?
 25 COLONEL SCOTT: Ja, 50 yes.

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1 MR CHASKALSON SC: And the Brigadier
 2 addressing the parade there is Brigadier Calitz?
 3 COLONEL SCOTT: That's correct.
 4 MR CHASKALSON SC: And if I'm not
 5 mistaken that is a file already in exhibit before this
 6 Commission, I can get a precise exhibit number. Are you
 7 aware from having watched that file that what it depicts,
 8 that what it films is an event that took place on the 18th?
 9 COLONEL SCOTT: I know it's on the
 10 parade, I can see that in the thumbnail but I haven't
 11 watched these videos specifically. As I say I concentrated
 12 on what I was doing on the incident itself on the 16th and
 13 before.
 14 MR CHASKALSON SC: That particular video
 15 was a video that was included in a directory of the SAPS
 16 hard drive that was called post event, is that a directory
 17 that you created?
 18 COLONEL SCOTT: No, not that I can
 19 remember. I can remember creating the dates which would
 20 have gone up to the 16th but a post event one, I don't
 21 recall creating a file like that.
 22 MR CHASKALSON SC: Well it is a video
 23 that's on the post event directory. It's an exhibit before
 24 the Commission as GGG30 but if needs be, if any of the
 25 parties are concerned that these may not be videos from the

<p style="text-align: right;">Page 13796</p> <p>1 18th we can take the matter further with them.</p> <p>2 CHAIRPERSON: You say that you didn't</p> <p>3 create the directory post event, so who would have created</p> <p>4 it then? Who did create it as far as you know?</p> <p>5 COLONEL SCOTT: Chairperson, I can only</p> <p>6 guess again but I know that Colonel Visser mentioned that</p> <p>7 he sorted what he could on the videos so I'm presuming that</p> <p>8 he would have created that folder.</p> <p>9 MR CHASKALSON SC: Maybe I can ask a</p> <p>10 different question. Do you know who had authority within</p> <p>11 SAPS to add or to delete to what was on the master hard</p> <p>12 drive?</p> <p>13 COLONEL SCOTT: No, no authority was ever</p> <p>14 spoken out to that degree, so – well no permission was</p> <p>15 given but as I say to delete anything – what was received</p> <p>16 was simply put there, I'm not sure you know that if a</p> <p>17 decision taken to delete something were possibly a personal</p> <p>18 one.</p> <p>19 MR CHASKALSON SC: But presumably</p> <p>20 somebody – there was limited or there was control over who</p> <p>21 could change the contents of that master.</p> <p>22 COLONEL SCOTT: It was taken out of my</p> <p>23 possession. As I say I don't have experience previously</p> <p>24 with Commissions or how the evidence would work and so on.</p> <p>25 And I think maybe those of us that were working with it</p>	<p style="text-align: right;">Page 13798</p> <p>1 would imagine with the size of an SD card?</p> <p>2 COLONEL SCOTT: Well you get different</p> <p>3 sizes so ranging from a few gigabytes to many gigabytes.</p> <p>4 MR CHASKALSON SC: But you will exhaust</p> <p>5 an SD card fairly quickly with video footage which is</p> <p>6 fairly bulky footage.</p> <p>7 COLONEL SCOTT: Again I personally don't</p> <p>8 possess a video camera so I'm not aware of how that's all –</p> <p>9 how long it would take or – it's not in my field.</p> <p>10 MR CHASKALSON SC: So you're saying you</p> <p>11 weren't aware of where the material would be kept on SD</p> <p>12 cards or how long material would be kept on SD cards but</p> <p>13 you assumed that you could play around with material that</p> <p>14 you took off SD cards because the SD cards would serve as</p> <p>15 the ultimate archive of those videos. Is that broadly what</p> <p>16 you're saying?</p> <p>17 COLONEL SCOTT: Well ultimately, as I</p> <p>18 say, I haven't deleted any video material. So what was</p> <p>19 downloaded was downloaded to me and nothing was taken away</p> <p>20 from that.</p> <p>21 MR CHASKALSON SC: Okay, well let's go</p> <p>22 back to the – these are videos of the 17th and 18th. Now</p> <p>23 that's a period where you would have been the holder of the</p> <p>24 archive, at least for another more than ten days. So we</p> <p>25 can presume I would imagine that these are videos that</p>
<p style="text-align: right;">Page 13797</p> <p>1 were a bit naive because even splitting videos out of</p> <p>2 original files into dates with hindsight now I see</p> <p>3 obviously is an issue. So –</p> <p>4 but this is also considering that these videos as</p> <p>5 source documents are supposed to have continued in their</p> <p>6 existence not have been wiped off or cleaned, etcetera.</p> <p>7 MR CHASKALSON SC: Well where would they</p> <p>8 have continued in existence as source documents?</p> <p>9 COLONEL SCOTT: Well on those SD cards</p> <p>10 themselves where they were actually recorded, the initial</p> <p>11 recording.</p> <p>12 MR CHASKALSON SC: You see what the SAPS</p> <p>13 video operatives reported to us and what makes total sense</p> <p>14 to us is that you fill up an SD card very quickly with</p> <p>15 videos. And so the protocol within SAPS is that you</p> <p>16 download your videos to an external source with a chain of</p> <p>17 evidence recorded. And then you wipe them off the SD card</p> <p>18 because you're going to have to use the SD card in the near</p> <p>19 future and there's very limited space on the SD cards.</p> <p>20 Were you not aware of that practise?</p> <p>21 COLONEL SCOTT: No. I'm not trained as a</p> <p>22 video operator with POPs. How they actually go about</p> <p>23 dealing with evidence etcetera I've never followed nor read</p> <p>24 their protocols.</p> <p>25 MR CHASKALSON SC: You are familiar I</p>	<p style="text-align: right;">Page 13799</p> <p>1 would have been downloaded onto your, either your laptop if</p> <p>2 they came before the Scott hard drive was procured or the</p> <p>3 Scott hard drive in the period between 18 August and 27</p> <p>4 August or a bit later.</p> <p>5 COLONEL SCOTT: What I was given from</p> <p>6 POPs, I was given, as I said and to the best of my</p> <p>7 recollection these were given to me on the 17th. Now we</p> <p>8 know that some of these videos are taken on the 17th and</p> <p>9 18th, thus what was given to me possibly wouldn't have</p> <p>10 included the videos that we're looking at now as the second</p> <p>11 lot. As you say they continue after the 16th.</p> <p>12 MR CHASKALSON SC: And if they currently</p> <p>13 reside on your hard drive how would they have got there?</p> <p>14 COLONEL SCOTT: They would possibly have</p> <p>15 been brought over when I updated the hard drive from the</p> <p>16 master hard drive which ultimately received all of the</p> <p>17 video footage over time.</p> <p>18 MR CHASKALSON SC: So files of the 17th</p> <p>19 and 18th you're suggesting by POP's operators who were</p> <p>20 operating in Marikana may only have reached the police</p> <p>21 archive after the 27th of August?</p> <p>22 COLONEL SCOTT: Well you're asking</p> <p>23 questions now that is difficult for me to recall. These</p> <p>24 are questions which obviously at the time I was not taking</p> <p>25 notes and writing down exactly who was giving me what when.</p>

<p style="text-align: right;">Page 13800</p> <p>1 So I can put myself in a position to discredit myself if 2 I'm saying yes I did or no I didn't. I basically can't 3 remember but I'm trying to be as accurate as I possibly can 4 with when I received the video footage. 5 MR CHASKALSON SC: No, I'll accept that, 6 so would it be correct to say that you may have received 7 these on your original laptop or even on your original 8 Scott hard drive, you may only have received them at a 9 later stage when they had first been made available to 10 whoever was keeping the Brigadier Pretorius hard drive and 11 they were then copied back to you? 12 COLONEL SCOTT: Yes. 13 CHASKALSON SC: Let's then move to a 14 slightly different topic because the exercise we've just 15 been performing I would hope satisfies parties in the 16 Commission that there aren't missing videos from Warrant 17 Officer Masinya and Warrant Officer Ndlovu of the 16th. 18 That's the purpose of this exercise. But that does leave 19 certain other questions unanswered because it does beg the 20 question of why Warrant Officer Masinya and Warrant Officer 21 Ndlovu didn't take footage on the 16th. And in that regard 22 I want to put to you that the explanation that – well the 23 explanation that's been furnished to us is that their 24 identity as under cover police operatives was exposed at 25 some stage, either in the morning or just after midday. It</p>	<p style="text-align: right;">Page 13802</p> <p>1 video operators would never have had access to the 2 operation by masquerading as press photographers because no 3 press photographers were going to have access to the 4 operation. Is that correct? 5 COLONEL SCOTT: I do accept that, yes. 6 MR CHASKALSON SC: And if we go a step 7 further the operation was always going to be a mobile 8 operation. You accept that? 9 COLONEL SCOTT: That's correct. 10 MR CHASKALSON SC: And so a SAPS operator 11 who was going to have to cover it would've had to be mobile 12 too. 13 COLONEL SCOTT: That's correct. 14 MR CHASKALSON SC: It's not something you 15 could do on foot. 16 COLONEL SCOTT: That's correct. Or he 17 would've been placed obviously – there were two of them I 18 would think. Maybe one in a vehicle and one behind the 19 razor wire line in a static position. But that's, as I 20 say, that's not something I could've called. That would've 21 been either the operational commander or the video 22 operators themselves who are trained to know where to 23 position themselves obviously when this type of thing is 24 about to occur. 25 MR CHASKALSON SC: So you're suggesting</p>
<p style="text-align: right;">Page 13801</p> <p>1 was reported eventually to Captain Adriaio who in turn 2 reported it to higher authorities who instructed their 3 withdrawal. But I want to put to you that that isn't a 4 satisfactory explanation because the operation that took 5 place on the afternoon was always one that was going to 6 have a risk of violent confrontation between militant 7 strikers and the SAPS. Would you accept that? 8 [14:31] COLONEL SCOTT: We went forward hoping 9 not to, that it would simply if there was – and at that 10 time when the operatives withdrew there was no mention yet 11 that the police was going tactical. 12 MR CHASKALSON SC: Yes, but let's forget 13 about that for a moment but let's look to a point later in 14 the afternoon where the police have now decided to go 15 tactical. Police didn't want violence to eventuate, but 16 there was a real risk that violence would eventuate. Will 17 you accept that much? 18 COLONEL SCOTT: Yes, I accept that, yes. 19 MR CHASKALSON SC: And as a result the 20 press were never going to be allowed into the operational 21 zone because you wouldn't want press getting in your way or 22 one being at risk and two getting in your way when there's 23 a risk of violent confrontation. Is that correct? 24 COLONEL SCOTT: That's correct. 25 MR CHASKALSON SC: So undercover SAPS</p>	<p style="text-align: right;">Page 13803</p> <p>1 one could've been put in a vehicle and one could've been 2 put behind the razor wire line in a safe position, but that 3 would then have had to be, to deal with the safe position, 4 that would've had to be a position where, broadly where the 5 press were. Is that not correct? 6 COLONEL SCOTT: Well, to my knowledge the 7 press were further back. There was an area that Captain 8 Adriaio had demarcated for the press if I'm correct, but 9 obviously the police video camera operator is not limited 10 to their area. He's still a police official. He can move 11 within the ranks of – as I say these members are trained. 12 They know how to execute their function. 13 MR CHASKALSON SC: But if there'd been a 14 concern to preserve the identity or the secrecy of the 15 identity of the police photographers one wouldn't have 16 wanted them moving around in a place to which the press 17 didn't have access. Is that not correct? 18 COLONEL SCOTT: I don't think that was 19 the issue. I think the issue was that they wanted to go 20 closer to try and gain intelligence and thus posed as media 21 representatives, because video filming from afar you can't 22 get the audio that is being spoken, so for them as I say 23 they don't need to masquerade as media. They were doing 24 that obviously which I know is operating outside the 25 confines of standing order 262, but simply to try and gain</p>

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1 information or intelligence for the police at that time.
 2 MR CHASKALSON SC: My question was
 3 pointed slightly differently. It was if you wanted to
 4 protect the identity of the police video photographers
 5 which I presume would've been a concern – would you accept
 6 it would've been a concern?
 7 COLONEL SCOTT: Well, it would've been a
 8 concern if they were close to the crowd. If they had been
 9 identified as policemen, they were as good as standing at
 10 the police line. There's no need to push them as far back
 11 as the media for that matter.
 12 MR CHASKALSON SC: So on the 16th at the
 13 time, leave aside what happened at 1 o'clock, but assume
 14 that their identity hadn't been exposed. Would there still
 15 have been a need to protect their identity when the
 16 operation started?
 17 COLONEL SCOTT: No, I think they would've
 18 taken up the role alongside their colleagues as they are
 19 trained to do in any POP operation.
 20 MR CHASKALSON SC: The bulk of the
 21 operation was to happen to the west of the barbed wire line
 22 a long distance from the safe zone. Is that correct?
 23 COLONEL SCOTT: Once the dispersion, yes,
 24 had completed there would be certain strikers that had
 25 moved off into the open fields, but obviously we had the

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1 high risk arrest teams waiting to go into the rocky areas
 2 at koppie 1 and 2, so it's possible that in both areas,
 3 both environments there would've still been activity on-
 4 going.
 5 MR CHASKALSON SC: And you would've
 6 wanted your video operators to cover the dispersion
 7 operation.
 8 COLONEL SCOTT: Well, I'm speaking now on
 9 behalf of the operational commander which – and obviously
 10 putting myself into his shoes which I'm not sure is the
 11 right thing to do at this time, but if it were me I would
 12 be expecting to have at least one possibly with me and
 13 another that would be filming something, maybe going on
 14 with the teams behind.
 15 MR CHASKALSON SC: And we're aware from
 16 video footage that's been shown in this commission that
 17 there were a range of videos taken from within armoured
 18 vehicles on the 14th and the 15th. If I can ask you to look
 19 at say slide 98 of Exhibit L if we can call up slide 98 of
 20 Exhibit L, and if we can just start playing that video for
 21 illustrative purposes – have we got a problem with the
 22 video on 98? Well, we don't need to show it. Will you
 23 accept, I mean, you've assembled this exhibit. Will you
 24 accept that this is a video slide and the video is a video
 25 taken from within a Nyala and what it shows is the first

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1 engagement with the strikers on the 14th?
 2 COLONEL SCOTT: Yes, I accept that.
 3 MR CHASKALSON SC: And the video taken
 4 from within the Nyala. If we – again, I don't want to
 5 waste commission time by showing the video, but you'll
 6 recall that there is video footage taken from within a
 7 Nyala of the NUM and AMCU attempts to engage the strikers
 8 on the evening of the 15th.
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: For the record those
 11 are exhibits BB5 and BB6. And we can see from your exhibit
 12 63 that the relevant slides on the 14th and 15th are sourced
 13 in a directory which is called
 14 \videos\15thPOP&CI\WarrantOfficerNongPOP and we can – are
 15 you aware that Warrant Officer Nong was the operator who
 16 was filming that footage from within a Nyala on the 14th and
 17 the 15th?
 18 COLONEL SCOTT: Yes, again in listening
 19 to consultation with Warrant Officer Nong he admitted to
 20 having the video camera in his Nyala. I'm not sure if it
 21 was him filming on the 14th, but it was in the Nyala. He
 22 was driving. On the 15th he says that he took the video
 23 footage but did not – he was not in possession of that
 24 camera on the 16th.
 25 MR CHASKALSON SC: Okay, and the point

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1 that you've made in the process there is Warrant Officer
 2 Nong was actually the driver of the driver. He was the
 3 driver of Papa1 so we can understand why he would've have
 4 been videoing the operation on the 16th. He had other
 5 functions. But it would've been possible for another POPS
 6 video operator to video from within a Nyala on the 16th,
 7 would it not?
 8 COLONEL SCOTT: It would've been, yes.
 9 MR CHASKALSON SC: And have you made any
 10 enquiries as to why this did not take place?
 11 COLONEL SCOTT: I've relied on what I've
 12 been told and that is the misunderstanding of those two
 13 video operators themselves who said when they were told to
 14 retreat they understood it mean to retreat away from the
 15 operation as a whole. I haven't gone further into detail
 16 into examining why or what they've done. I in fact haven't
 17 consulted with them. I haven't seen that as part of my
 18 purpose or job.
 19 MR CHASKALSON SC: Okay, so that is the
 20 limit of the explanation that you can provide as to why
 21 there wasn't video footage from within the Nyalas on the
 22 16th, but we can take that further with, possibly with the
 23 video operators themselves and possibly also with Brigadier
 24 Calitz who was ultimately in charge of them during the
 25 operation. On this score I want to go back to the deleted

<p style="text-align: right;">Page 13808</p> <p>1 files briefly. Those are the JJJ26 files. 2 MR SEMENYA SC: Chair, may I request some 3 direction? Clearly the position of the evidence leaders 4 not being parties, necessarily. I just wish to understand 5 when they say they are not convinced that those are the 6 reasons for the withdrawal of the operators am I to take it 7 that's going to be their position, they are going to give 8 us evidence in relation to that matter, or they are just 9 probing? 10 CHAIRPERSON: What's the answer to that, 11 Mr Chaskalson? 12 MR CHASKALSON SC: Sorry, I didn't 13 understand myself to say I'm not convinced that the reason 14 offered was the reason for the withdrawal of the operators. 15 MR SEMENYA SC: - it's not a satisfactory 16 explanation. 17 CHAIRPERSON: You see, the point being if 18 you're suggesting that there are certain things that you're 19 not convinced about Mr Semenya wants to know does that mean 20 that there's - countervailing evidence is going to be put 21 before the commission upon which the lack of conviction 22 will be based. 23 MR CHASKALSON SC: Well, maybe I should 24 clarify what I intended to convey which is not that it's - 25 it's not a satisfactory explanation for the absence of</p>	<p style="text-align: right;">Page 13810</p> <p>1 put to you our concerns about the video materials and I'm 2 going to ask you to try to satisfy our concerns and to 3 satisfy the commission and the parties that there's no 4 basis for our concerns. If you were to estimate the total 5 time you spent studying the videos and photos how much time 6 do you think you've spent doing that? 7 COLONEL SCOTT: I think the majority of 8 that was done in the month of October, somewhat at Roots in 9 September, but very limited with regard to the SAPS footage 10 in September. We didn't have all of it and some of the 11 more critical footage which we've included in exhibit L at 12 that time, but there was significant time. I wouldn't want 13 to put it into hours or days or so on. And as I said I had 14 help. I had Captain Adriaio helping me. I had others 15 helping me that were also sifting through videos to find 16 parts in specifically the open source media because we had 17 many, many DVDs that were collected on behalf of that to go 18 through. So I don't think it's as substantial as the 19 amount of time that the evidence leaders have had obviously 20 having up until now to review that. We had up until the 21 beginning, first week of November to do as best job as we 22 could before we actually submitted, so - 23 MR CHASKALSON SC: Can I ask you to give 24 me an estimate though? Are we talking hours, days, weeks? 25 COLONEL SCOTT: Well, no, if you put it</p>
<p style="text-align: right;">Page 13809</p> <p>1 video footage on the 16th because at best it explains why 2 the video operators weren't there on foot as it were. 3 CHAIRPERSON: Yes, I can understand your 4 attitude may be that you will contend in due course that 5 the explanation given isn't a satisfactory one. Then Mr 6 Semenya knows that all he has to deal with is a contention 7 at the end of the day. Alternatively if what you said is 8 capable of meaning that there will be countervailing 9 evidence then he's entitled to know at some stage what the 10 countervailing evidence is so he can deal with it. I think 11 that's his point. Am I correct, Mr Semenya? 12 MR SEMENYA SC: Indeed the case, Chair. 13 MR CHASKALSON SC: It's essentially a 14 point about argument. I'm not suggesting that the, that we 15 have evidence that the evidence leaders disappeared for a 16 different reason - that the video operators disappeared for 17 a different reason. 18 CHAIRPERSON: Ja, I think that clarifies 19 the point Mr Semenya raised. 20 MR CHASKALSON SC: Ja, Chairperson, I was 21 going to go to the deleted videos but let me return to that 22 at a later stage when we've done the investigation that we 23 need to do in relation to the hard drive that's been made 24 available to us. If I can move to a slightly different 25 topic, and I'm now getting to the topic where I'm going to</p>	<p style="text-align: right;">Page 13811</p> <p>1 together it would be days, days on end, probably a week of 2 days. 3 MR CHASKALSON SC: So 40 hours? 4 COLONEL SCOTT: No, no, I'm talking full 5 days. 6 MR CHASKALSON SC: 24 hours? 7 COLONEL SCOTT: Ja, no, we sat for - 8 MR CHASKALSON SC: Police work 9 differently to us. So you're looking at close to 100 10 hours. 11 COLONEL SCOTT: Well, ja. What would you 12 want to estimate 100/150 hours, possibly more. 13 MR CHASKALSON SC: Okay. 14 CHAIRPERSON: It sounds like two or three 15 or four weeks of work. 16 COLONEL SCOTT: Chairperson, I know even 17 at Roots and this is why a lot of this is difficult to 18 recollect because I was sitting even after others had gone 19 till late hours in the evening. I know when working in 20 Rustenburg to put together exhibit L there were some nights 21 that we went right through in trying to just photo sequence 22 on times and trying to watch. This is why we got extra 23 help with people just to look at some of the videos so that 24 they could assist us because we would get long videos of - 25 from SABC for instance where it would be an hour of footage</p>

<p style="text-align: right;">Page 13812</p> <p>1 and you had to find inside of that where the new broadcasts 2 were to find the actual footage which was dealing with the 3 situation. So there were many, many hours which probably 4 escalate into days upon days of doing that, but once we got 5 the main focus and the track it assisted to know this is 6 where we are going, but I can even say to date I don't 7 think we've been through it all still. That which we've 8 seen from the police we've gone through each of those 9 videos individually but open source footage from media, 10 etcetera, there wasn't enough time for all of that.</p> <p>11 MR CHASKALSON SC: But would it be fair 12 to say that as a result of the time you've spent studying 13 the photos and the videos you have an eye for detail on the 14 photos and videos that makes you better than almost anybody 15 else at picking out what's relevant and what's not 16 relevant?</p> <p>17 COLONEL SCOTT: I think it goes, and just 18 to say, beyond that. I do have an eye for detail 19 regardless of the amount of time spent on it so I picked up 20 things which, you know, not necessarily through studying 21 but just through glancing and that just to say that because 22 small things matter.</p> <p>23 MR CHASKALSON SC: I appreciate that, 24 Colonel. That's become clear in the course of this 25 commission, but my question is a slightly different one.</p>	<p style="text-align: right;">Page 13814</p> <p>1 selective on providing photographs and video footage which 2 they thought were well taken or contributed to explaining 3 the event, but had to later be requested to provide 4 everything regardless if the material was poor or if they 5 thought it was of no use."</p> <p>6 COLONEL SCOTT: That was the case, yes. 7 MR CHASKALSON SC: Now, it presumably 8 would've been important for you to get everything because 9 the commission was going to have to be given everything. 10 It wasn't going to have to be left to the discretion of 11 individual SAPS operators as to what was or wasn't going to 12 go before the commission. Is that correct?</p> <p>13 COLONEL SCOTT: Well, it is correct, but 14 I assume everything, when a member gives me what he's got I 15 have to state that I learnt from the evidence leaders about 16 the properties on the documents. I didn't go to actually 17 look at the names of the videos to find that there were 18 gaps in the sequence of numbering. What I was given, I 19 took it as being the footage which was delivered to me.</p> <p>20 [14:51] MR CHASKALSON SC: We'll get to that in 21 due course, Colonel. I mean you are anticipating a place 22 where I will reach, but I would like you to answer the 23 questions first before we get there, and the first question 24 is, it would have been important for you to get everything 25 because the Commission was going to have everything. Is</p>
<p style="text-align: right;">Page 13813</p> <p>1 Because you were given a task initially to be the nodal 2 point for all of the videos and subsequently, and photos, 3 and subsequently to work on the photos and videos with a 4 view to the presentation you were studying them in a way 5 which would have alerted you to detail in relation to new 6 material which might have escaped the – the significance of 7 which might have escaped another person. Would that be 8 fair to say?</p> <p>9 COLONEL SCOTT: I think it would be fair 10 and obviously there were times where I would study material 11 because of certain allegations being made and so on and 12 that was while the commission was in sitting and I would go 13 and search through those materials to counter that, so when 14 I had a goal to look for something obviously I was more 15 detailed in what I was looking for, but outside of that, 16 yes, I was still being detailed and looking mostly to some 17 degree at what I was seeing to ensure that it was accurate, 18 as accurate as I could portray the picture for the 19 commission in exhibit L.</p> <p>20 MR CHASKALSON SC: Now, Colonel, you say 21 at page 128, paragraph 45.4 of your statement, you say the 22 following. "The footage was sporadically brought in 23 through memory sticks and camera cards over the next few 24 days after the 16th of August, but it continued to be 25 discovered for months thereafter. Persons at first seemed</p>	<p style="text-align: right;">Page 13815</p> <p>1 that correct?</p> <p>2 COLONEL SCOTT: Yes, it would be. 3 MR CHASKALSON SC: And I want to put it 4 to you that there was another reason why it would be 5 important for you to get everything, and that is because 6 within SAPS you were probably going to be the best judge of 7 what was and wasn't relevant because you had the greatest 8 knowledge of what the other videos and photos showed, and a 9 video and photograph which in isolation may have seemed 10 completely irrelevant, may have had meaning to you, which 11 an individual operator wouldn't have picked up. Would that 12 be correct?</p> <p>13 COLONEL SCOTT: I think that is true, 14 yes.</p> <p>15 MR CHASKALSON SC: Now we've been through 16 an exercise on Warrant-Officer Masinya and Warrant-Officer 17 Ndlovu to show how one checks to see that a set of videos 18 is correct. One looks at the numerical sequence of the 19 video files and one looks to see if there are any gaps in 20 that sequence. Presumably this is something that you would 21 have known about at the time.</p> <p>22 COLONEL SCOTT: Realistically I didn't – 23 well, this is what I learned from the evidence leaders, as 24 I stated, when it was made known to me that, specifically 25 talking about the crime intelligence videos, that there</p>

<p style="text-align: right;">Page 13816</p> <p>1 were some missing. I'd never thought to actually go and 2 check the sequence numbering at the bottom, again 3 understanding that some of the members may have deleted 4 issues or things because of poor video footage, or whatever 5 the case was. I accepted what they gave to me as, at face 6 value. 7 MR CHASKALSON SC: Now that wasn't my 8 question really, Colonel. You've given me an explanation 9 for why you say you didn't check that the sequences were 10 correct, but were you in a position at the time to know 11 that a video sequence comes with files that are numerically 12 sequenced and that if one goes 102, 103, 104, 110, 111, 13 112, there are probably some videos missing between 105 and 14 110? 15 COLONEL SCOTT: Well, it makes sense to 16 me, but at the time I didn't think to check it in that way. 17 MR CHASKALSON SC: Again that's not my 18 question, not that you didn't think to – I'm not asking 19 whether you thought to check it; I'm asking at this stage 20 whether you knew that it could be checked that way. 21 COLONEL SCOTT: Well, if I can answer you 22 this way; if I did know and if I was, if it made sense to 23 me then, I would have actually pursued the fact that there 24 were missing - so no, it didn't make sense to me to check 25 then.</p>	<p style="text-align: right;">Page 13818</p> <p>1 "There was no malicious intent from my side to hide 2 anything from the Commission, only that I did not think to 3 check the properties of the material to ensure the complete 4 set of photographs or video clips were present. I relied 5 on the person's discretion who was giving me material for 6 collation." So it seems to me you're offering two reasons 7 in that explanation. The first is that you didn't think to 8 check the properties of the material, and the second is 9 that you were comfortable in relying on the person's 10 discretion who was giving you the material for collation. 11 Let's take them one at a time. You see, Colonel - well, do 12 you know about file properties? 13 COLONEL SCOTT: I do now - 14 MR CHASKALSON SC: Did you know then? 15 COLONEL SCOTT: - more thoroughly. No, 16 not particularly. I know that they exist. I've never had 17 any reason to go into them or to figure out how they work 18 or why they work or – 19 MR CHASKALSON SC: Well, Colonel, I must 20 put to you that I'm not – I don't find that explanation a 21 satisfactory explanation because I want to put to you a 22 document that you furnished to us on the 31st of October. 23 It's going to be exhibit JJJ30. I wonder if we can call it 24 up. It's a document that is on page 202 of the 25 Commissioner's files. Do you recognise this document?</p>
<p style="text-align: right;">Page 13817</p> <p>1 MR CHASKALSON SC: You weren't aware of 2 the fact that when a sequence of files comes to you off a 3 camera card or off a video card, it should be numerically 4 sequenced? 5 COLONEL SCOTT: No, as I'm saying, it 6 makes logical sense what you're saying, and I'm pretty sure 7 it made logical sense back then, but I didn't think to 8 check it in that way. Most of these people when they 9 downloaded their videos or their photographs, downloaded 10 many of them. So to have sat and checked every single one 11 on its numerical sequence, I didn't do that. 12 MR CHASKALSON SC: Well Colonel, let's go 13 back to what you say in paragraph 45.4. "Persons at first 14 seemed selective on providing photographs and video footage 15 which they thought were well-taken or contributing to 16 explaining to the event, but had to later be requested to 17 provide everything, regardless if the material was poor or 18 if they thought it was of no use." 19 COLONEL SCOTT: And I say that in, with 20 the, in writing the statement, knowing that it was 21 yourselves that requested me to get the crime intelligence 22 specifically - and others – back so that they could fill in 23 the gaps. 24 MR CHASKALSON SC: Let's see what you say 25 in your statement where you provide an explanation in 45.5.</p>	<p style="text-align: right;">Page 13819</p> <p>1 COLONEL SCOTT: Yes, it's – 2 MR CHASKALSON SC: 202. 3 CHAIRPERSON: [Microphone off, inaudible] 4 MR CHASKALSON SC: File 3.1. Will you 5 describe to the Commissioners what this document is? 6 COLONEL SCOTT: This is a document that 7 somewhere in the month of October that I set up to try to 8 formulate a timeline of the different cameras and videos, 9 and by doing that I actually utilised the times on the 10 camera at the time, looked at my watch's time and got the 11 difference, similar to what's been done with the ETV 12 timing, and then from that I was able to go back to the 13 photographs to look at the time that the photograph was 14 taken, which I must admit I still had difficulty in doing 15 because I didn't know whether between 'created' and 16 'modified' which was the correct one. But in saying that, 17 this document was also created after the video materials 18 and the photographs were already given to me. They were 19 not given to me after this document. 20 MR CHASKALSON SC: I'll get to that issue 21 later, but can I first just clarify, to do this exercise 22 you have to look into the file properties of a video or 23 photograph file? 24 COLONEL SCOTT: Ja, I know that you can 25 go in the computer to details where the files are and you</p>

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1 click the details button and next to that it gives you the
 2 name of the photo and it gives you, I think it's modified,
 3 and that is generally the creation date.
 4 MR CHASKALSON SC: And as you say there,
 5 you were using the time found in the properties of the
 6 photographs from the specific cameras. That's how you
 7 prepared this exercise.
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: So you wanted to put
 10 together as complete an integrated timeline of video and
 11 photographic evidence as you could, and in order to, if I
 12 might say, mesh the different sources of photographic and
 13 video material onto one timeline, you had to look into the
 14 properties of individual cameras to see at what time
 15 particular photographs were taken. Would that be correct?
 16 COLONEL SCOTT: Properties of the photos
 17 themselves.
 18 MR CHASKALSON SC: Of the photographic
 19 files themselves. Now I want to put to you that if you are
 20 sufficiently concerned to perform this exercise, it's very
 21 difficult to accept that you wouldn't be looking at a
 22 sequence of photographs which has file names that are
 23 obviously discontinuous, and you wouldn't be picking up
 24 that there are missing photographs. What's your response
 25 to that?

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1 COLONEL SCOTT: I think it's said in
 2 paragraph 45.5, "I relied on the person's discretion,"
 3 etcetera. If somebody said to me, as they did, that it was
 4 simply a blurred photograph, it was not of any benefit, I
 5 accepted it on their word that that was the case.
 6 MR CHASKALSON SC: But Colonel, someone
 7 can only say to you this is a blurred photograph, or it's
 8 not relevant, if you first ask them why isn't photograph
 9 number 127 here.
 10 COLONEL SCOTT: Well, that was the case
 11 when you requested that some of these members come back to
 12 furnish the gaps, and when I had to interview them in the
 13 Commission at the police's office at Rustenburg, those were
 14 the answers I was getting. That's why I've related it in
 15 the statement.
 16 MR CHASKALSON SC: Yes, Colonel, but
 17 that's not an answer to my earlier question, which was why
 18 were you not concerned about identifying missing photos at
 19 a time when you were sufficiently concerned about preparing
 20 an integrated timeline, that you were delving into file
 21 properties for harmonising the time on one camera card with
 22 the time on another.
 23 COLONEL SCOTT: But it's – I'm not sure
 24 what you'd like to hear, but as I'm telling you that what
 25 was given to me, was given to me, and when I figured out

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1 that I needed to time sequence it, specifically what the
 2 names of the photos were, was not that important to me.
 3 What was important to me was then in the details, the
 4 modified, to find the times that they were taken so that I
 5 could make sure that the timeline was running effectively.
 6 Be it an oversight on my part, but it wasn't something that
 7 perturbed me that there may be missing photos or video
 8 files.
 9 MR CHASKALSON SC: Colonel, let me give
 10 you an example; let's take –
 11 CHAIRPERSON: Is this perhaps a suitable
 12 – I don't want to break at an inconvenient stage for you.
 13 Is this a convenient stage to take the tea adjournment, or
 14 would you wish to round this point off first before we take
 15 the tea adjournment? I'm in your hands.
 16 MR CHASKALSON SC: Mr Chairperson, this
 17 point has some weight around it, so I think we should take
 18 the tea adjournment.
 19 CHAIRPERSON: We'll take the tea
 20 adjournment.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [15:20] CHAIRPERSON: The Commission resumes.
 23 Colonel, you're still under oath.
 24 DUNCAN GEORGE SCOTT: s.u.o.
 25 CHAIRPERSON: Mr Chaskalson.

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1 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 2 Colonel, I want to illustrate the problem that we have by
 3 looking at the photographs of Warrant-Officer Ramanala that
 4 were provided to us on the SAPS hard drive, and that will
 5 be JJJ66, a screenshot of the directory is at page 116 of
 6 the –
 7 CHAIRPERSON: Page?
 8 MR CHASKALSON SC: 116, JJJ66. If we can
 9 call up JJJ66?
 10 CHAIRPERSON: [Microphone off, inaudible]
 11 MR CHASKALSON SC: 116.
 12 CHAIRPERSON: [Microphone off, inaudible]
 13 MR CHASKALSON SC: File 1. File 1. Now
 14 Colonel, this is a screenshot taken from the directory of
 15 the SAPS hard drive, the sub-directory "Photographs," and
 16 the further sub-directory "Thursday, the 16th." It's the
 17 sub-directory in which photographs of the 16th were
 18 originally contained within the SAPS hard drive, and will
 19 you confirm that what we see here is what you would see
 20 when you open your computer, in a directory you'll see
 21 these little thumbnails when you look at them in a
 22 directory in the computer?
 23 COLONEL SCOTT: I can confirm it's one of
 24 the views that you get. It depends on your computer, how
 25 its settings are set, to how it should open. It can open

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1 in just normal text as well, but pretty what you see.
 2 MR CHASKALSON SC: Well, that's good
 3 enough for me. I accept it's not the only view that you
 4 get, but it is one of them that one does get. Look at this
 5 set of photographs; it jumps from 67 to 70, then it goes
 6 neatly in sequence from 70 to 78, so we have a 70, a 71, a
 7 72, a 73, a 74, a 75, a 76, a 77, a 78, then it jumps again
 8 to 105, and then it continues neatly in sequence from 105,
 9 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117,
 10 118, 119, 120, 121, 122. So when you look at it like that,
 11 would you accept that it does leap out to you that the set
 12 is not complete, that in particular it's missing what's
 13 between 78 and 105? Would you accept that?
 14 COLONEL SCOTT: I'd say if that's what
 15 you're looking for, yes.
 16 MR CHASKALSON SC: And when we received
 17 it, it leapt out to us and we asked for files 79 to 104
 18 from SAPS and we were duly provided 79 to 104. You're
 19 aware of that?
 20 COLONEL SCOTT: It was not done through
 21 myself obviously; it was done through the chain, but it –
 22 I'm presuming it was done as you requested it.
 23 MR CHASKALSON SC: And you're suggesting
 24 that when you looked at videos and photographic directories
 25 that were given to you, it didn't leap out to you for

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1 instance that the photographs of Warrant-Officer Ramanala
 2 in this directory have from 79 to 104 missing?
 3 COLONEL SCOTT: No. I'm not even sure
 4 what the photographs from 78 and backwards are, if they are
 5 of Marikana or not.
 6 MR CHASKALSON SC: I want to come back to
 7 your explanation of that, because you broadly provided two
 8 reasons; the one was you were happy to leave it to the
 9 discretion of the individuals who were presenting the
 10 material, and the other was that you didn't think to look
 11 at properties. I've addressed the question of properties,
 12 and I don't want to go back to that, but let's look at this
 13 explanation about discretion. You presumably didn't, you
 14 wanted everything from people; you didn't want their
 15 selection. Is that correct?
 16 COLONEL SCOTT: Ideally, yes.
 17 MR CHASKALSON SC: And you acknowledged
 18 earlier that it was important for you to have everything
 19 because the Commission would need to have everything.
 20 COLONEL SCOTT: Well, to be honest with
 21 you, I was thinking about I needed to have everything
 22 because I needed to see what was going to go into exhibit
 23 L, remembering that the nodal point became the nodal point
 24 of Roots and from there on, as far as the discretion of the
 25 materials, what was there, what wasn't there, was

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1 logistically not my concern. I was looking for important
 2 photographs or video footage which would be applicable to
 3 the presentation.
 4 MR CHASKALSON SC: Yes, and when we
 5 traversed this ground earlier, you conceded, or you
 6 accepted that because you had spent so much time looking at
 7 the videos, you would have an eye for detail and relevance
 8 which the average SAPS operative might not have.
 9 COLONEL SCOTT: We need to clarify that;
 10 we're talking about the detail in the photograph. That is
 11 what I was referring to.
 12 MR CHASKALSON SC: Yes, that's what I was
 13 referring to also, but the corollary of that is that if
 14 there is detail in the photograph that you will pick up but
 15 a SAPS video operative may not, it's very important for you
 16 to see the full set and not to leave it to the discretion
 17 of the individual operative to give you what he or she
 18 thinks is relevant. Is that not so?
 19 COLONEL SCOTT: It is so, but again I say
 20 it was, it could be an, it was an oversight on my part to
 21 have looked at every file name to make sure that they were
 22 all running in sequence.
 23 MR CHASKALSON SC: Well, I can't take it
 24 further at this stage, Colonel, but I –
 25 CHAIRPERSON: May I ask a question about

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1 that? If you look at paragraph 45.4 of your statement
 2 HHH20 – have you got that in front of you? Third and
 3 fourth line, "Persons at first seemed selective on
 4 providing photographs," etcetera. Now from the fact that
 5 you used the words "Persons at first seemed selective," it
 6 indicates that at first, i.e. when they gave you the
 7 photographs, they were selective, or they appeared to you
 8 to be selective. In other words, you were aware of the
 9 fact that they were being selective, that is to say they
 10 were leaving things out, but you gave the answer which we
 11 find in the last sentence of 45.5, that that wasn't a
 12 matter of concern to you because you relied on their
 13 discretion to give you material for – you relied on the
 14 discretion of the people. So these two paragraphs seem to
 15 me to indicate that you were aware that they were being
 16 selective when they gave you the photographs, in other
 17 words you were aware that there were gaps, but it didn't
 18 worry you because you relied on their discretion. Isn't
 19 that a fair interpretation of what you said?
 20 COLONEL SCOTT: It is, Commission, and at
 21 Marikana when they initially started building the
 22 presentations for the media and so on, there were only
 23 selected photographs given through, thinking it was for
 24 that case, and then afterwards people were requested to
 25 give everything, that they needed to give everything

<p style="text-align: right;">Page 13828</p> <p>1 through. But I didn't think to go and check then when 2 members were now producing 'this is my everything,' that it 3 truly was the lot. So initially when people were giving 4 photos through, it was mentioned that we needed to build a 5 presentation for the media, and people were obviously being 6 selective in what they were providing because they thought 7 this would help, that would help, until it was clarified 8 with them.</p> <p>9 COMMISSIONER HEMRAJ: Sorry, I don't 10 understand. When you say in that statement that "Persons 11 at first seemed selective," are you saying that at the time 12 that you were first given possession of the photographs, 13 you knew that there were some missing? Is that what you're 14 saying?</p> <p>15 COLONEL SCOTT: I'm speaking about the 16 time at Marikana, specifically of one person that was in 17 the helicopter that provided not all - and I knew it was 18 not all - of the photographs at that time. Subsequently, 19 because they thought, and because they showed the 20 photographs on the phone, but they only downloaded what was 21 necessary at that time for the presentation, being 22 selective in that manner. There were the others that were 23 being selective, which I found out later, after the 24 evidence leaders identified the gaps, when I had them at 25 the Commission in Rustenburg where they actually said, "But</p>	<p style="text-align: right;">Page 13830</p> <p>1 the first request you assumed that they'd given everything? 2 COLONEL SCOTT: After the first request? 3 CHAIRPERSON: You told us there were two 4 requests. 5 COLONEL SCOTT: Well, there were numerous 6 requests - 7 CHAIRPERSON: No, but you talked 8 specifically about two. When I asked you what was meant by 9 that passage I read you about they had later to be 10 requested to provide everything, I asked you when the 11 request to provide everything was made - 12 COLONEL SCOTT: That was the - 13 CHAIRPERSON: You said there was, it was 14 twice; once at Rustenburg, you said, and then later on as 15 well. So the question is when the first request was made 16 and they brought you material, did you assume at that stage 17 that you've got everything? 18 COLONEL SCOTT: No, and I'm speaking 19 specifically to the photographs of Colonel Vermaak, and I 20 understand that at that stage he as well as I, he was 21 looking at the presentation as well for the media and we 22 were trying to see what to put in, and I know I didn't have 23 everything. Subsequently later he was requested to provide 24 everything, but the other persons that we're speaking 25 about, specifically the crime intelligence or others that</p>
<p style="text-align: right;">Page 13829</p> <p>1 this doesn't say anything or show anything," or etcetera, 2 those were the explanations I was getting, that they were 3 being selective in the sense that it's not going to assist 4 in any way, not understanding, as I was myself at that 5 time, before that time, not understanding that every single 6 one needs to be there in order to show that we are not 7 hiding something, because that was not on our minds, that 8 there was something to be hidden.</p> <p>9 CHAIRPERSON: In the last sentence of 10 45.4 you talk about these persons who seemed selective, and 11 you say, "But they had to later be requested to provide 12 everything," and when was that later request to provide 13 everything made?</p> <p>14 COLONEL SCOTT: Again, Commissioner, on 15 two occasions. One was at the Commission - at the 16 Marikana, after we started building the presentations and 17 so on, and realising that not all the footage there had 18 been given through, and the other time was once the 19 evidence leaders had recognised it and also said we need 20 these gaps filled, and there was actually an email which 21 was sent out, which was addressed, and the members came in, 22 gave their footage, and those that had issues or had 23 deleted it, gave statements to that regard, which we 24 believed was acceptable.</p> <p>25 CHAIRPERSON: Are you saying that after</p>	<p style="text-align: right;">Page 13831</p> <p>1 were identified by the evidence leaders, that's a separate 2 case. Those ones I was also not aware of. I was, however, 3 aware of Colonel Vermaak's on his BlackBerry specifically, 4 because those were important to us for the presentation. 5 We wanted to know, because initially we just - I think we 6 got the two or three which showed the movement of the crowd 7 and we knew there were more.</p> <p>8 CHAIRPERSON: When I asked you about 9 these requests and you said there were two requests, may I 10 asked you, the first request then that you referred to, was 11 that solely directed to Colonel Vermaak, not to anybody 12 else?</p> <p>13 COLONEL SCOTT: Chairperson, from what I 14 can remember, I don't think it was solely directed to him. 15 As I say, General Annandale on that night made a request. 16 The photos were slow in coming in, and I can understand 17 that, and so the request was repeated. My reference is 18 specifically to Colonel Vermaak's photographs with, 19 regarding the presentation, but I did know that there were 20 more than what I had received, but people at that stage, as 21 I say, and maybe the Commission hadn't been announced yet, 22 but people at that stage were giving what they thought was 23 necessary in order to provide the picture, and not just 24 everything. And again, then there was the second occasion 25 where the gaps were officially identified through the</p>

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1 properties.

2 CHAIRPERSON: I don't know if I

3 understand your answer. I'm not suggesting it's

4 necessarily your fault. After the first request – you say

5 it wasn't only to Colonel Vermaak, others as well and you

6 were then provided with material. Did you then assume that

7 you'd been given everything, or were you aware of the fact

8 that you were not being given everything and did you only

9 then make the second request after the evidence leaders had

10 raised the matter with you, as you say in first sentence of

11 paragraph 45.5?

12 COLONEL SCOTT: It is like that,

13 Commissioner. The, after the, that first request when we

14 received - the official request was when we actually

15 realised that there were gaps, so it was on that basis

16 that, on their discretion, the members bringing their

17 stuff, I on face value took it that they were giving us

18 everything that they had.

19 CHAIRPERSON: If you'd looked – the point

20 being put to you is if you'd looked at what they gave you

21 and had a look at the properties and the numbers and so on,

22 it would have jumped out at you that there were things that

23 you were not given. Now that's the point being put. I'm

24 not sure that I understand your answer to it.

25 COLONEL SCOTT: Chairperson, as I've

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1 mentioned, I wasn't specifically looking at numbers on

2 photographs in sequence and so on, and again, oversight

3 from my side, if there was a number not there, which I

4 don't recall looking for anyway, it wasn't something that I

5 focussed, that I had a look and said well, we're missing a

6 photo, we're missing a photo, and where's this one, and so

7 on. I took it on face value that what they gave me was

8 what they had, and that if something was deleted, it was

9 deleted on good intention that it was simply a blurred

10 photo or a, something insignificant. And I mean, to just

11 maybe elaborate on that, when we were made fully aware of

12 this, we went to lengths to get all these people in to ask

13 them and to tell them, and that's why when I was also made

14 aware of it properly in Rustenburg at the Commission, and

15 this, the individuals would come in, that's where I got

16 some of the explanations about "Oh, it's blurred," and it's

17 not this and it's, that's where we said to them, "But we

18 need them all."

19 CHAIRPERSON: What do you mean by saying

20 you were made aware of it 'properly'? Does that imply that

21 you were made aware of it, but somehow it was something

22 that you didn't focus on? I mean I don't understand the

23 use of the word 'properly' in this context.

24 COLONEL SCOTT: I think maybe I've used

25 that word improperly, with respect, Commissioner, but the

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1 technical side of it, when we were made aware of "Look

2 here, it must go in sequence; we're missing two photos

3 here," etcetera, etcetera, because – and maybe it's in

4 hindsight now, but when I look back, some of the members'

5 cameras were utilised on other operations and I think some

6 of them even on personal photographs, so when you come in

7 with that and it suddenly starts here instead of back

8 there, you know, those were the type of understandings –

9 CHAIRPERSON: Ja, but if the first set of

10 pictures relate to what happened on the afternoon of the

11 16th of August and there's a gap and then the later pictures

12 are also the afternoon of the 16th of August, it's not

13 likely that any private pictures of them taken in between,

14 is it?

15 MR SEMENYA SC: Chair –

16 CHAIRPERSON: That's not a suggestion

17 that will stand up, will it?

18 COLONEL SCOTT: No, I agree with you

19 there.

20 MR SEMENYA SC: Chair –

21 COLONEL SCOTT: I agree with you there.

22 MR SEMENYA SC: At least the photos that

23 we're looking at, the witness said he's not even aware if

24 the first set of them related to the events of Marikana.

25 At least the one that was shown on screen.

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1 CHAIRPERSON: Well, he made the comment.

2 I don't know what the value of it is, but we'll think about

3 that in due course. Carry on, Mr Chaskalson.

4 MR CHASKALSON SC: Well, maybe we can

5 move to some of the missing videos, and let's start with

6 Captain Nel's videos. Now they were taken in a helicopter

7 that was commanded by Brigadier Fritz. You're aware of

8 that?

9 COLONEL SCOTT: I'm aware of that, yes.

10 MR CHASKALSON SC: And Brigadier Fritz is

11 your immediate superior officer within the STF, as I

12 understand it.

13 COLONEL SCOTT: That's correct; was.

14 MR CHASKALSON SC: Was at the time?

15 COLONEL SCOTT: Yes.

16 MR CHASKALSON SC: And he was the one who

17 tasked you to go to Marikana.

18 COLONEL SCOTT: Yes.

19 MR CHASKALSON SC: I presume – well, do

20 you have a close relationship with Brigadier Fritz? Did

21 you have a close relationship with Brigadier Fritz?

22 COLONEL SCOTT: We're colleagues. We're

23 not house friends or we don't associate after work hours,

24 no.

25 MR CHASKALSON SC: Have you worked

<p style="text-align: right;">Page 13836</p> <p>1 together with him on –</p> <p>2 COLONEL SCOTT: Yes.</p> <p>3 MR CHASKALSON SC: - many operations?</p> <p>4 And I presume in the nature of the work that the STF does,</p> <p>5 you have to depend on one another more than colleagues in</p> <p>6 other lines of work. Would that be a fair presumption?</p> <p>7 COLONEL SCOTT: Well, I think it's, that</p> <p>8 would be wrong to say because the NIU would cry fowl, as</p> <p>9 would the TRT. I think any grouping of men that have to</p> <p>10 stand together in difficult circumstances would say the</p> <p>11 same. But yes, it is that way.</p> <p>12 MR CHASKALSON SC: Put it this way; in</p> <p>13 the line of work that you do, the stakes are often</p> <p>14 frequently higher than in the line of work that I do, and</p> <p>15 you would expect your STF colleagues to look after you,</p> <p>16 would you not?</p> <p>17 COLONEL SCOTT: Yes.</p> <p>18 MR CHASKALSON SC: And you would be</p> <p>19 expected to look after them similarly.</p> <p>20 COLONEL SCOTT: Yes.</p> <p>21 MR CHASKALSON SC: Particularly your</p> <p>22 senior officers.</p> <p>23 COLONEL SCOTT: Well, it makes no</p> <p>24 difference whether he's a senior officer or a junior. He's</p> <p>25 a colleague and if his life is in danger, that's what we</p>	<p style="text-align: right;">Page 13838</p> <p>1 Gathering Surveillance Unit, Pretoria, with telephone</p> <p>2 082 492," etcetera.</p> <p>3 [15:40] "On 16 August 2012 I downloaded photos from my</p> <p>4 camera for Brigadier Victor of the Operational War Room,</p> <p>5 Gauteng. Photos were aerial photos that I took of</p> <p>6 suspected persons and vehicles at the Lonmin Mine Marikana</p> <p>7 unrest situation." Paragraph 3, "On the downloading of the</p> <p>8 photos, Brigadier Victor asked me why photo number 1260 was</p> <p>9 not there. I then replied that the photo could have been</p> <p>10 deleted due to it was blurred or a duplicate of a previous</p> <p>11 photo. The photos and videos were then handed over to</p> <p>12 Brigadier Victor."</p> <p>13 So it appears from that, that Brigadier Victor</p> <p>14 did the exercise of checking that there was a complete</p> <p>15 numerical sequence in what Captain Nel was furnishing to</p> <p>16 him. You'll accept that?</p> <p>17 COLONEL SCOTT: Yes.</p> <p>18 MR CHASKALSON SC: And Captain Nel</p> <p>19 presumably from his statement was aware of that fact. Now</p> <p>20 when Captain Nel gave you his videos on the 6th of</p> <p>21 September, did he give you a full set or not?</p> <p>22 COLONEL SCOTT: On – no, obviously not</p> <p>23 because I remember him having to come back while we were</p> <p>24 seated at Rustenburg to furnish a full set, and that's</p> <p>25 when, I think it's Warrant-Officer Barnard, joined him with</p>
<p style="text-align: right;">Page 13837</p> <p>1 do.</p> <p>2 MR CHASKALSON SC: If we go to your</p> <p>3 statement at paragraph 47.5 and 47.6, you describe the</p> <p>4 circumstances in which –</p> <p>5 CHAIRPERSON: I think there's something</p> <p>6 wrong with your numbers because my copy has only got 47.1 –</p> <p>7 MR CHASKALSON SC: It's a moment of</p> <p>8 dyslexia from me, Chair. It's 45.7.5 and 45.7.6. So I beg</p> <p>9 your pardon, and it's page 129.</p> <p>10 CHAIRPERSON: Thank you.</p> <p>11 MR CHASKALSON SC: There you state that</p> <p>12 you received both Captain Nel's photographs and his videos</p> <p>13 on the 6th of September 2012 at Roots. Is that correct?</p> <p>14 COLONEL SCOTT: Yes.</p> <p>15 MR CHASKALSON SC: Now Captain Nel has</p> <p>16 made an affidavit regarding the downloading of his</p> <p>17 photographs and videos. That's going to be exhibit JJJ59,</p> <p>18 at pages 616 to 617 of file 2. Can we call that up?</p> <p>19 CHAIRPERSON: Sorry, exhibit JJJ what?</p> <p>20 MR CHASKALSON SC: JJJ59.</p> <p>21 CHAIRPERSON: Thank you.</p> <p>22 MR CHASKALSON SC: And if I can just take</p> <p>23 you through it, "I'm a captain in the South African Police</p> <p>24 Service with service number," etcetera, "and thus in the</p> <p>25 service of the State, attached to Crime Intelligence</p>	<p style="text-align: right;">Page 13839</p> <p>1 photographs that he had that I was unaware of.</p> <p>2 MR CHASKALSON SC: So you're saying that</p> <p>3 the first set that you received – I'm talking about videos,</p> <p>4 not photographs – from Captain Nel was not complete?</p> <p>5 COLONEL SCOTT: Yes.</p> <p>6 MR CHASKALSON SC: I'd like to show you a</p> <p>7 screenshot of the first set of Captain Nel's videos that we</p> <p>8 received from SAPS. That's at pages 114 to 115 of file 1,</p> <p>9 and it will be exhibit 67, JJJ67. JJJ67. Now there are</p> <p>10 the thumbnails of the videos we received from Captain Nel,</p> <p>11 and they run 223 – or first will you confirm that that was</p> <p>12 the first, was that the set that was initially provided to</p> <p>13 you by Captain Nel?</p> <p>14 COLONEL SCOTT: It, I believe so. It</p> <p>15 looks like it, yes.</p> <p>16 MR CHASKALSON SC: And was that the set</p> <p>17 that you in turn provided to the evidence leaders?</p> <p>18 COLONEL SCOTT: Well, it's the set that I</p> <p>19 downloaded onto the police's hard drive. It wasn't me who</p> <p>20 provided it over to the attorney group or to yourselves,</p> <p>21 no.</p> <p>22 MR CHASKALSON SC: So it runs 223, 224,</p> <p>23 225, 226, 227, 228, 231. Did you view these videos when</p> <p>24 they were given to you by Captain Nel on the 6th of</p> <p>25 September?</p>

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1 COLONEL SCOTT: I believe I would have.
 2 MR CHASKALSON SC: And if we look at them
 3 now, it seems fairly obvious that at the very least 229 and
 4 230 are missing from that set. Will you accept that?
 5 COLONEL SCOTT: Yes, I do.
 6 MR CHASKALSON SC: Did you subsequently
 7 obtain a full set from Captain Nel?
 8 COLONEL SCOTT: We did at – well, at that
 9 stage I wasn't in charge of the police's hard drive any
 10 longer, so, but I do believe he would have brought them
 11 into the police office, downloaded the full set, and from
 12 there it would have been given to the evidence leaders as a
 13 full set.
 14 MR CHASKALSON SC: Have you seen the full
 15 set of Captain Nel's videos?
 16 COLONEL SCOTT: Yes, when he brought them
 17 in. I was actually there in the room when he was
 18 downloading.
 19 MR CHASKALSON SC: I see. Can I show you
 20 another screenshot; it will be exhibit JJJ68, pages 112 to
 21 113 of that file. JJJ68.
 22 CHAIRPERSON: Also Captain Nel?
 23 MR CHASKALSON SC: This is the full set,
 24 or what has been presented to the evidence leaders as the
 25 full set of Captain Nel's videos, and here we see two

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1 interesting features. The first is that there was indeed a
 2 gap in Captain Nel's videos between 228 and 231; there were
 3 videos 229 and 230, but there was also another video
 4 sequenced and ended 231, it actually ended at 232. Would
 5 that be correct?
 6 COLONEL SCOTT: Yes, I see so.
 7 MR CHASKALSON SC: Now when Captain Nel
 8 gave you the videos on the 6th of September, did you notice
 9 that it wasn't a full set?
 10 COLONEL SCOTT: No, I didn't.
 11 MR CHASKALSON SC: Did you view the
 12 videos at the time?
 13 COLONEL SCOTT: I went through them. I
 14 would think I did, because I would have gone through them
 15 to see if there's anything applicable for the presentation.
 16 MR CHASKALSON SC: Well, can I show you a
 17 screenshot from video 231, which was the last of that
 18 sequence. Chair, this will be JJJ69, and it's at page 111
 19 of the file, and this is at 2 seconds of Captain Nel's
 20 video 231. Would you accept that this shows footage of,
 21 well, what is actually a North West water cannon firing
 22 water at scene 2?
 23 COLONEL SCOTT: I just want to clarify if
 24 it has to be the one which was shooting blue water, from
 25 the recollections I've done, probably run out of dye, but

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1 shooting white water now, coming around the north side.
 2 MR CHASKALSON SC: Well, it doesn't have
 3 to be, I mean it is in fact the North West water cannon
 4 shooting from the northern side, firing water, not blue
 5 dye.
 6 COLONEL SCOTT: Okay.
 7 MR CHASKALSON SC: But when you look at
 8 the screen shot, do you recognise it as a water cannon –
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: - shooting water at
 11 scene 2?
 12 COLONEL SCOTT: Yes.
 13 MR CHASKALSON SC: Would you agree with
 14 me that footage of scene 2 is particularly rare?
 15 COLONEL SCOTT: I would, yes.
 16 MR CHASKALSON SC: And after seeing this
 17 video when you first received it on the 6th of September,
 18 were you not interested in looking at the preceding clip in
 19 the sequence to see if it may throw some light on scene 2?
 20 COLONEL SCOTT: No.
 21 MR CHASKALSON SC: So although you now
 22 had some footage that showed that there was a camera above
 23 scene 2, you didn't think to look, well, is there more
 24 footage around scene 2 on this video?
 25 COLONEL SCOTT: No, because as I say, we

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1 had so much that we were trying to go through in
 2 photographs, in open-source video of media and so on, and
 3 ourselves at the time when this was given to me at Roots,
 4 scene 2 was not in particular dealt with. There had to be
 5 consultations thereafter, and I think it may even be shown
 6 in the first presentation which was given at the end of
 7 Roots, that there's not much with regard to scene 2. We
 8 just didn't have much and we were sequentially trying to
 9 build the presentation as we were going. So it was to get
 10 scene 1 and to slowly move on with the whole presentation.
 11 MR CHASKALSON SC: Precisely because
 12 there wasn't much on scene 2, weren't you particularly
 13 interested in what this video footage might show about
 14 scene 2?
 15 COLONEL SCOTT: Well, you're asking me a
 16 question that I can't particularly even remember watching
 17 it. I would have watched it. I don't particularly even
 18 recall what's in that video.
 19 MR CHASKALSON SC: When did you do the
 20 scene 2 exercise for the purposes of the presentation?
 21 COLONEL SCOTT: We got together in
 22 Rustenburg, I think it was late September, it could even
 23 have been in October, where we actually identified but we
 24 ourselves need to have better clarity of what happened, and
 25 the different groupings were called up and had to give

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1 their versions, not just commanders, but members that were
 2 participating had to give their versions of what actually
 3 happened so we could have a better idea to input into the
 4 exhibit L.
 5 MR CHASKALSON SC: And at that stage did
 6 you not go back to see what video footage you did have of
 7 scene 2?
 8 COLONEL SCOTT: No.
 9 MR CHASKALSON SC: Why not?
 10 COLONEL SCOTT: Because what I had viewed
 11 at the time at Roots and what I was viewing all the way
 12 through, if at that stage what I saw and I thought was
 13 maybe important, I would take out and I would work and put
 14 into the presentation. As I say, I know were isolating a
 15 sequence of videos now, but there was a lot of media
 16 footage, etcetera. I know scene 2 was rare –
 17 CHAIRPERSON: There wasn't any media
 18 footage on scene 2, was there?
 19 COLONEL SCOTT: No, that's why I'm
 20 saying –
 21 CHAIRPERSON: So that's an irrelevancy,
 22 surely.
 23 COLONEL SCOTT: Ja-no, I'm saying there
 24 was much in media footage when we were at Roots that we
 25 were trying to work through and I know that scene 2 was

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1 rare. As I say again, I know what you're in essence
 2 asking; why didn't I go back to see where there were other
 3 – it's, I didn't. It never crossed my mind to either.
 4 MR CHASKALSON SC: When did you first
 5 realise that the sequence of videos from Captain Nel was
 6 incomplete?
 7 COLONEL SCOTT: When we were made aware
 8 by the evidence leaders.
 9 MR CHASKALSON SC: And do you recall when
 10 that was?
 11 COLONEL SCOTT: No, not particularly.
 12 MR CHASKALSON SC: Maybe I can help you
 13 on that score; if I can hand in as exhibit JJJ36 an email
 14 from the SAPS attorneys on the 8th of November. It's at
 15 pages 189 to 190 of that file. It will be JJJ36, if we can
 16 call that email up. Now we have a difficulty with the
 17 screen. Colonel, do you have a copy of that email to hand?
 18 COLONEL SCOTT: I, yes.
 19 MR CHASKALSON SC: And Commissioners, do
 20 you have a copy accessible? It's file 3.1, pages 189 to
 21 190. Okay, apparently our technology in the corner does
 22 not extend to opening emails, only video files. If I can
 23 then read it out for the benefit of anyone who doesn't have
 24 it in front of them, it's dated 8 November 2012. It's in
 25 fact addressed to me, "Dear Matthew, we refer to the

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1 meeting that was held on 2012-11-07 at 14:00 between
 2 Brigadier Pretorius, Lieutenant-Colonel Scott, Colonel
 3 Victor, Adv Wesley, and yourself per video phone." If I
 4 might just interject there, Colonel, I've never owned a
 5 video phone, but will you confirm that what actually
 6 happened was I was called on a cell phone from time to time
 7 during the course of that meeting?
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: "All alleged
 10 outstanding issues as mentioned in mail were addressed.
 11 Captain Nel; all outstanding photos and videos were
 12 submitted, except for one photo that could not be found as
 13 it was deleted. Captain Nel submitted a statement to that
 14 regard attached to this email, copy of statement given to
 15 Adv Wesley," and in fact the statement that was attached
 16 was the statement, the affidavit of Captain Nel that we
 17 have just handed in as JJJ59. Will you confirm that?
 18 COLONEL SCOTT: Yes.
 19 MR CHASKALSON SC: We'll get to the
 20 balance of the email later when we deal with other sources
 21 of video, but for present purposes, on the 8th of November
 22 all outstanding photos and videos were submitted to the -
 23 at a meeting on the 7th of November all outstanding photos
 24 and videos were submitted to the evidence leaders. How
 25 soon before that would the outstanding Captain Nel videos

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1 have reached the SAPS, well, reached yourself and SAPS from
 2 Captain Nel?
 3 COLONEL SCOTT: Well, I think you're
 4 asking me for a date now and that's –
 5 MR CHASKALSON SC: Well, an estimate.
 6 Are we talking days, weeks?
 7 COLONEL SCOTT: It could have been the
 8 same day. It could have been the day before.
 9 MR CHASKALSON SC: So it's around that
 10 time.
 11 COLONEL SCOTT: Ja. It would have been
 12 made obviously on your request, which I don't see a date
 13 to.
 14 MR CHASKALSON SC: Would you accept that
 15 the request was in fact 31 October –
 16 COLONEL SCOTT: Okay.
 17 MR CHASKALSON SC: - which is what our
 18 records reflect?
 19 COLONEL SCOTT: Ja, so working from that
 20 we would have had to have contacted these members, had them
 21 come in, but I wouldn't be able to give an exact date of
 22 when that was occurring.
 23 MR CHASKALSON SC: So it's between the
 24 31st of October and the 7th of November. It's in that week.
 25 COLONEL SCOTT: Ja.

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1 MR CHASKALSON SC: And you say that is
 2 the first time that you became aware of the fact that
 3 Captain Nel's videos, that the sequence provided to you was
 4 incomplete?
 5 COLONEL SCOTT: Yes.
 6 MR CHASKALSON SC: Maybe we should now
 7 see what the missing videos show, and if I can ask that
 8 video 229 be played? It's exhibit CC32. CC32. It's an
 9 existing exhibit.
 10 CHAIRPERSON: How long will this video
 11 take? The reason I say that is it's now 5 to 4. If it's
 12 going to take five minutes, it's fine. If it's going to
 13 take longer –
 14 MR CHASKALSON SC: It's a short video,
 15 Chair. Can we play CC32?
 16 [VIDEO RECORDING PLAYED]
 17 If you can just pause the video. Would you
 18 agree, Colonel, that the person opening the door of the
 19 helicopter is in fact Sergeant Venter, the flight
 20 assistant, the air assistant officer on that helicopter?
 21 COLONEL SCOTT: We can't see it, but I
 22 believe it to be, yes.
 23 MR CHASKALSON SC: And what is she doing?
 24 What is she about to do on this video?
 25 COLONEL SCOTT: Well, I've been made to

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1 understand in talking to the colleagues that were there
 2 that she was about to throw a stun grenade.
 3 MR CHASKALSON SC: I see. Well, let's
 4 play and we'll see that the video does in fact show that.
 5 [VIDEO RECORDING PLAYED]
 6 If you can just pause there. Can you see two
 7 stun grenades on her seat there, on in her right hand?
 8 COLONEL SCOTT: Yes, I do.
 9 MR CHASKALSON SC: If we can continue.
 10 [VIDEO RECORDING PLAYED]
 11 Okay, if we can pause there. Are you able to
 12 identify the position of the helicopter from the landmarks
 13 in the background?
 14 COLONEL SCOTT: Well, from what I can see
 15 it's to the west, probably slightly, not even northwest,
 16 more directly west and distance-wise I'm not sure, probably
 17 a kilometre from – that's probably koppie 3.
 18 MR CHASKALSON SC: I wonder if we can for
 19 the benefit of the record describe, when you say "that's
 20 koppie 3," we're referring to the bushes –
 21 COLONEL SCOTT: The bushes, yes.
 22 MR CHASKALSON SC: - that are visible
 23 just below the top of the video image to the right of the
 24 edge of the window on the right-hand side. I'm not sure if
 25 that's a useful description. Chair, are you able to –

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1 CHAIRPERSON: The left edge of the right
 2 – the right or the left?
 3 MR CHASKALSON SC: The edge of the right-
 4 hand window, the left edge of the right-hand window.
 5 CHAIRPERSON: Yes, I think we must also
 6 record the point in the video where it's been stopped
 7 because we – Ms Pillay is normally very good at that, or is
 8 Mr Wesley –
 9 MR CHASKALSON SC: Can I ask Mr Wesley to
 10 tell us the exact point of the video at which we have
 11 stopped?
 12 CHAIRPERSON: 54:06, and –
 13 MR CHASKALSON SC: So it's 54.06 seconds
 14 into the video.
 15 CHAIRPERSON: Yes.
 16 MR CHASKALSON SC: And the bushes to
 17 which you refer are visible in the right, close to the left
 18 edge of the right window that we see. I wonder if you can
 19 just – or I suppose you can't. Perhaps Mr Wesley can put a
 20 point on those bushes.
 21 COLONEL SCOTT: Ja-no, I see them. I'm
 22 just wondering, it's probably the rear, it's the right-hand
 23 side rear passenger window, the front frame thereof.
 24 MR CHASKALSON SC: And you estimate that
 25 that's approximately, that the shot is taken approximately

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1 one kilometre to the west of that koppie?
 2 COLONEL SCOTT: Ja, it's difficult to
 3 estimate on this, but I would, it looks about that, if I
 4 look at the ground coverage and I look at the size of what
 5 is to be koppie 3 in the background.
 6 MR CHASKALSON SC: Well, maybe we don't
 7 need at this point to show the rest of the video, which
 8 speaks for itself, but maybe if I can take you to your – it
 9 wasn't evidence, but your statement when you were
 10 presenting the police presentation on day 12, which is at
 11 page 1327 to 8 of the record. 1327,8, where the
 12 Chairperson asked you, "There was evidence that stun
 13 grenades were also thrown from a helicopter. I'm not sure
 14 if that was over scene 2 or scene 1. Are you able to help
 15 us on that?" and your response was, "I'll help you,
 16 Chairperson, just to rectify that – 33 should read 34 less
 17 than lethal in the sub-total, and regarding the stun
 18 grenades used here, this is at scene 2, the koppie 3. The
 19 stun grenades were thrown out of the helicopter are
 20 allegedly on wayward areas, not at scene 2." Would you
 21 stand by that description?
 22 [16:00] COLONEL SCOTT: Yes.
 23 MR CHASKALSON SC: If we can then go to
 24 what Sergeant Venter had to say about her throwing stun
 25 grenades, and that is exhibit JJJ55, pages 78 to 79.

<p style="text-align: right;">Page 13852</p> <p>1 CHAIRPERSON: I didn't get the full 2 reference; JJJ55, at page? 3 MR CHASKALSON SC: JJJ55, pages 78 to 79. 4 CHAIRPERSON: This is file 3.1? 5 MR CHASKALSON SC: File 1. 6 CHAIRPERSON: Thank you. 7 MR CHASKALSON SC: And if we can call up 8 the second of those pages – I beg your pardon, Chairperson, 9 I'm told that I mentioned, I said 'statement.' It is in 10 fact a pocketbook, not a statement. If we can call up the 11 following page, and at the bottom left-hand side of that 12 pocketbook entry, Sergeant Venter recorded, "Gooi drie 13 'stun grenades' om stakers met pangas en knopkieries 14 uitmekaar te jaag om te verhoed dat SAP lede verder 15 aangeval word, asook om te help dat SAP lede persone met 16 wapens kan arresteer," and that has to be read in the 17 context of the previous entry, which is, "Tydens lug steun 18 sien Sersant Venter hoe stakers op die SAP lede afstorm met 19 pangas, knopkieries. Het ook gesien dat sommige lede van 20 die stakers handwapens het." So the entry that follows, 21 "Verleen help aan SAPD. Gooi drie 'stun grenades' om 22 stakers met pangas en knopkieries uitmekaar te jaag om te 23 verhoed dat SAP lede verder aangeval word, asook om te help 24 dat SAP lede persone met wapens kan arresteer." Would you 25 accept that that bears very little resemblance to what we</p>	<p style="text-align: right;">Page 13854</p> <p>1 CHAIRPERSON: The question that I asked 2 you which was read from the record, obviously was designed, 3 I take it, to elicit hearsay information from you because 4 you didn't profess to have direct information. 5 COLONEL SCOTT: That's correct, 6 Chairperson. 7 CHAIRPERSON: So the question, I take it, 8 relates to the answer that you gave me, which is admittedly 9 based on hearsay. So provided it's clear that you're being 10 asked to give hearsay information, I suppose the question 11 can continue. 12 MR CHASKALSON SC: Yes, I'm not 13 suggesting that Colonel Scott has direct personal 14 knowledge, but I am asking if he has any hearsay knowledge 15 of an event where strikers armed with knobkieries and 16 pangas and hand weapons charged the SAPS one kilometre to 17 the west of koppie 3. 18 COLONEL SCOTT: No, I don't. 19 CHAIRPERSON: It does look as if that 20 clip we saw has relevance, doesn't it? 21 COLONEL SCOTT: In which way, 22 Chairperson? 23 CHAIRPERSON: Well, it depicts an 24 incident that took place which was important, the throwing 25 of a stun grenade from a helicopter, presumably with the</p>
<p style="text-align: right;">Page 13853</p> <p>1 see on video 229? 2 COLONEL SCOTT: Well, what I would say is 3 this is what she's saying. We can't see what she's seeing 4 from that video footage. So I think it would be wrong of 5 me to think on her behalf or to put words on her behalf in 6 the Commission. Obviously she would need to testify on 7 exactly what she was seeing and why she threw those stun 8 grenades. 9 MR CHASKALSON SC: Are you aware of any 10 incident on the 16th of August where strikers approximately 11 a kilometre west of scene 2 stormed members of the SAPS 12 with pangas, knobkieries, and were armed with guns, 13 handguns? 14 MR SEMENYA SC: Chair, at this point the 15 witness was in the JOC. 16 CHAIRPERSON: The question is based upon 17 hearsay knowledge of the witness, but will his answer in 18 the light of that have much weight? 19 MR CHASKALSON SC: Well Chairperson, this 20 is the witness who acted as the repository for all of the 21 SAPS information in relation to what happened, or who's 22 primarily responsible for collecting SAPS information in 23 relation to what happened on the 16th. I would imagine that 24 if there is any evidence out there it would have been 25 brought to his attention.</p>	<p style="text-align: right;">Page 13855</p> <p>1 intention of doing something. Would you agree with that? 2 COLONEL SCOTT: Yes, I do. 3 CHAIRPERSON: So did you ask Captain Nel 4 why this clip, which appears prima facie to have relevance, 5 was not given to you? 6 COLONEL SCOTT: Again Chairperson, I've, 7 obviously keeping ears on the ground and listening to 8 what's being said, but it would feel unfair, you know, that 9 those colleagues still have to come and testify themselves, 10 but part of the reason for the throwing of stun grenades, 11 from what I've heard, was to, when somebody starts running, 12 there were, they had groups of strikers moving off and 13 their concern was what lay to the west – 14 CHAIRPERSON: No, I understand that. I'm 15 not concerned with that. 16 COLONEL SCOTT: Ja. 17 CHAIRPERSON: What I'm concerned with was 18 obviously the throwing of a stun grenade was relevant, and 19 therefore I find it extraordinary, if you'll forgive me for 20 saying it, that we saw lots of clips of things that didn't 21 take the case very much further, but here is an incident 22 which does and for some reason we find that that was 23 originally not given to you, and certainly not given to the 24 evidence leaders. It appears to be an omission which calls 25 for some kind of explanation. It may be that you can't</p>

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1 give the explanation, but I would have expected you to have
2 asked Captain Nel for an explanation, and what is his
3 explanation, or did he not give you one?

4 COLONEL SCOTT: No –

5 CHAIRPERSON: Not ask him?

6 COLONEL SCOTT: Ja sorry, I didn't ask
7 him, or –

8 CHAIRPERSON: Mr Chaskalson, when it's
9 convenient please tell me so we can take the adjournment.
10 I don't want to stop you if you want to go on to something
11 at this stage, but when it's convenient tell me, we'll take
12 the adjournment.

13 MR CHASKALSON SC: Mr Chairperson, I do
14 want to take this point a little further, but it may, I
15 imagine another five minutes, if that's in order?

16 CHAIRPERSON: Yes, of course. No, all I
17 indicated to you is that I want to take the adjournment in
18 the near future, but I don't want to interfere with your
19 cross-examination, and the definition of 'near future' is
20 to be narrowly -

21 COLONEL SCOTT: Chairperson, if I, as I
22 was saying, the hearsay and what I have picked up from
23 colleagues is that the strikers that were moving off were,
24 they had moved a distance and had started walking and they
25 were in groups again, and the explanation I was given was

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1 that the stun grenade was to break up the group and
2 hopefully to get some of them to start running, because
3 it's more difficult to conceal weapons when running than it
4 is when just walking with weapons stowed away.

5 CHAIRPERSON: That's an explanation as to
6 why the stun grenade was thrown, or may well have been
7 thrown. It's not an explanation as to why that clip was
8 originally not made available. But anyway –

9 COLONEL SCOTT: Okay, I –

10 CHAIRPERSON: Mr Chaskalson is going to
11 ask you further, I gather.

12 MR CHASKALSON SC: Mr Chairperson, at
13 this stage I think if I might ask for an adjournment now,
14 because I fear I'm not going to be able to confine myself
15 to the five minutes I've promised, and if I can just pick
16 up on this topic tomorrow morning. It –

17 CHAIRPERSON: [Microphone off, inaudible]
18 counsel who are candid about the amount of time that they
19 will take with some of the points they're going to deal
20 with. We'll adjourn now until 9 o'clock tomorrow morning.

21 [COMMISSION ADJOURNED]

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23 .
24 .
25 .

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