

# 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 136      14 OCTOBER 2013      PAGES 14383 TO 14542



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<p style="text-align: right;">Page 14383</p> <p>1 [PROCEEDINGS ON 14 OCTOBER 2013]  2 [09:49] CHAIRPERSON: The Commission resumes.  3 Colonel Scott, you're still under oath.  4 DUNCAN GEORGE SCOTT: I understand.  5 CHAIRPERSON: I just remind you of that.  6 Mr Chaskalson?  7 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):  8 Thank you, Chairperson. Colonel, we've had a break of a  9 fortnight since last you testified, and you may remember  10 that when we ended on the 26th of September I had shown you  11 video clips of the Provincial Commissioner's press  12 conference at 9:30 on the 16th, which is AAA13.  13 COLONEL SCOTT: That's correct.  14 MR CHASKALSON SC: And her interview with  15 NCA after that press conference, which was JJJ92.  16 COLONEL SCOTT: Correct.  17 MR CHASKALSON SC: And I'd also shown you  18 an extract from the minutes of the SAPS National Management  19 Forum meeting on the night of the 15th of August.  20 COLONEL SCOTT: That's right.  21 MR CHASKALSON SC: JJJ187, and I pointed  22 out to you that the video footage of the Provincial  23 Commissioner made clear that by 9:30 in the morning she'd  24 taken a decision that absent a consensual departure from  25 the koppie by miners that day, there would be an</p>	<p style="text-align: right;">Page 14385</p> <p>1 that the National Management Forum of the SAPS had  2 taken a decision that the strikers had to be disarmed? Now  3 before you answer that, in fairness to you I want to show  4 you a warning statement that was signed in September 2012  5 by one of the commanders at your briefing at forward  6 holding area 1, Captain Ntlati of the Klerksdorp TRT, and  7 that will be JJJ179. JJJ179, if we can call up JJJ179.  8 CHAIRPERSON: How do you spell the name  9 of the person who made the statement?  10 MR CHASKALSON SC: It's N-T-L-A-T-I.  11 CHAIRPERSON: What was his rank?  12 MR CHASKALSON SC: Captain.  13 CHAIRPERSON: Captain. Thank you.  14 MR CHASKALSON SC: And the Captain's  15 warning statement has been called up. If we can go to page  16 2, paragraph 3. That's where paragraph 3 starts, at the  17 top of page 2. "We arrived at about 7h30 and stayed in the  18 vehicles to allow the negotiators to engage with the  19 leaders of the strikers who were at the koppie. The group  20 of strikers was about 3 000 and were armed with dangerous  21 weapons. At about 14:30," and this is the passage I would  22 emphasise, "I received a message from Brigadier Calitz that  23 all commanders must report at forward holding area 1. We  24 were briefed by Lieutenant-Colonel Scott in the presence of  25 Brigadier Pretorius. During the briefing we were informed</p>
<p style="text-align: right;">Page 14384</p> <p>1 implementation of phase 3, and you agreed with that but you  2 indicated that the statements of the Provincial  3 Commissioner were not brought to your attention on the 16th.  4 COLONEL SCOTT: That's correct.  5 MR CHASKALSON SC: And I also pointed out  6 to you that the decision of the Provincial Commissioner  7 appeared to flow from the decision of the SAPS National  8 Management Forum that was taken the night before and  9 minuted in JJJ177, and I finished my cross-examination by  10 asking you whether or not you were aware of any of this and  11 you indicated that you were not.  12 COLONEL SCOTT: Yes.  13 MR CHASKALSON SC: Now on reflection it  14 occurs to me that the question I asked you at the end of  15 the cross-examination was a little vague. It certainly  16 wasn't precise, and because of its vagueness your answer in  17 the negative could be open to misunderstanding. So I'd  18 like to pick up with a more precise formulation of the  19 question I intended to ask, and before I ask it to you, in  20 fairness to you I'm going to show you another document, but  21 let me first give you the precise formulation then I'll  22 give you the document, then you can answer the precisely  23 formulated question. So the more precise formulation of  24 the question is, was it conveyed to you on the 16th before  25 you briefed the commanders at forward holding area 1 at</p>	<p style="text-align: right;">Page 14386</p> <p>1 that the National Management instructed that the police  2 must act against the armed strikers, that they have to be  3 disarmed and dispersed. POP members were to disperse the  4 strikers. The TRT will encircle small groups and disarm  5 them." So Captain Ntlati reports in his statement that  6 during your briefing those present were informed the  7 National Management instructed that the police must act  8 against the armed strikers. Do you recall – or let's go  9 back to the question that I first asked you. Was it  10 conveyed to you on the 16th before you briefed the  11 commanders at forward holding area 1 at 2:30 that the  12 National Management Forum of the SAPS had taken a decision  13 that the strikers had to be disarmed? Do you recall any  14 mention of National Management, an instruction from  15 National Management of the SAPS that the police must act  16 against the armed strikers at the briefing at 14:30? It is  17 rather odd that there was this instruction from National  18 Management and Captain Ntlati in a warning statement in  19 September recalls that being conveyed at forward holding  20 area. You'll concede that much? Sorry, Colonel, can you  21 just -  22 COLONEL SCOTT: Sorry, you say concede  23 that it is strange –  24 MR CHASKALSON SC: A strange coincidence.  25 COLONEL SCOTT: Yes.</p>

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1 MR CHASKALSON SC: But you maintain that  
 2 you hadn't been informed of the National Management Forum  
 3 decision at any stage prior to 14:30?  
 4 COLONEL SCOTT: No, and I say that  
 5 because I wasn't even aware the National Management Forum  
 6 had sat the previous day. All the decisions were made, I  
 7 wasn't aware that there was a meeting of any sort on that  
 8 Wednesday.  
 9 MR CHASKALSON SC: Well, this is a matter  
 10 that we will have to take further with Captain Ntlati. Now  
 11 the Provincial Commissioner's briefing –  
 12 CHAIRPERSON: Are you leaving for the  
 13 moment the decision of the National Management Forum?  
 14 MR SEMENYA SC: Chair, I don't see forum  
 15 there. I don't know where we're getting it –  
 16 CHAIRPERSON: Perhaps "forum" is the  
 17 wrong word. Are you leaving for the moment the decision of  
 18 the National Management?  
 19 MR CHASKALSON SC: Well, yes, for the  
 20 moment.  
 21 CHAIRPERSON: If you're going to return  
 22 to it at some stage –  
 23 MR CHASKALSON SC: I may return to it at  
 24 some stage, but not in the foreseeable future.  
 25 CHAIRPERSON: I see. Why I just wanted

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1 to ask, did you at any stage until you were giving evidence  
 2 last time and the extract from the minutes was presented,  
 3 were you at any stage prior to that aware of the fact that  
 4 such a decision had been taken?  
 5 COLONEL SCOTT: Chairperson, yes. It was  
 6 months after Marikana where I'd heard in chatter amongst  
 7 the police ranks that there had been a National Management  
 8 Forum. I wasn't obviously privileged to the minutes  
 9 thereof, but I'd heard that there had been some form of a  
 10 National Management Forum. I didn't delve –  
 11 CHAIRPERSON: So "forum" is the right  
 12 word after all. I say "forum" is the right word after all,  
 13 it would appear. But the question is of the decision, if  
 14 the, you know, the decision which is minuted which we saw  
 15 when you were giving evidence last time, did you become  
 16 aware before you were giving evidence and that was shown to  
 17 you in your evidence, were you aware at some stage prior to  
 18 that that such a decision had been taken?  
 19 COLONEL SCOTT: Chairperson, about a  
 20 month before I started giving evidence I, at some stage I  
 21 think I saw the draft minutes, but again I'd only heard  
 22 what was sort of doing the rounds of that there were  
 23 informal meetings after the forum meeting, or that there  
 24 was a second meeting held, but I wasn't aware of the  
 25 contents specifically of the minutes, but I was aware that

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1 a decision was taken, yes.  
 2 CHAIRPERSON: Well, the minutes show a  
 3 decision.  
 4 COLONEL SCOTT: Yes.  
 5 CHAIRPERSON: So it's not an informal  
 6 discussion or anything of that sort. They show a decision.  
 7 COLONEL SCOTT: Yes.  
 8 CHAIRPERSON: So I take it that that was  
 9 not mentioned at all at Potchefstroom.  
 10 COLONEL SCOTT: No, I didn't recall – I  
 11 don't recall it, but I don't think it was mentioned there  
 12 either, no.  
 13 CHAIRPERSON: I take it if it had been  
 14 mentioned you would recall –  
 15 COLONEL SCOTT: I would have remembered  
 16 it, yes.  
 17 MR SEMENYA SC: Chair -  
 18 CHAIRPERSON: So it was not disclosed to  
 19 the people at Potchefstroom as far as you were concerned.  
 20 You were one of the people at Potchefstroom.  
 21 COLONEL SCOTT: Well yes, we were –  
 22 CHAIRPERSON: You were present at all the  
 23 plenaries, I take it.  
 24 COLONEL SCOTT: I wasn't present at all  
 25 the plenaries, but I was at a sort of little nodal point,

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1 myself and Colonel Visser working on the presentation where  
 2 the groups would go out and go away and discuss and then  
 3 come back, specifically reporting to Colonel Visser with  
 4 their feedback, and then that would be transferred back –  
 5 CHAIRPERSON: Anyway, you didn't hear  
 6 anything about it at Potchefstroom.  
 7 COLONEL SCOTT: No.  
 8 CHAIRPERSON: Sorry Mr Semenya, you  
 9 wanted to say something?  
 10 MR SEMENYA SC: Chair, just for the  
 11 correctness of the record, there was no decision taken by  
 12 the National Forum and the minute does not say so. What  
 13 the minute does say is that the proposal of the PC was  
 14 endorsed, and that proposal was that the people at the  
 15 mountain would be disarmed if they did not disarm  
 16 voluntarily. There was no such a decision, as the witness  
 17 now seeks to confirm.  
 18 CHAIRPERSON: - obviously a matter for  
 19 debate later, but I take it an endorsed of a decision made  
 20 by somebody else is still a decision.  
 21 MR SEMENYA SC: That's not a decision; it  
 22 was a proposal. That's what the minute tells us. That's  
 23 the point I'm trying to make, Chair.  
 24 CHAIRPERSON: I see. I'm sure that will  
 25 be the subject of further discussion later, but thank you

<p style="text-align: right;">Page 14391</p> <p>1 for making the point.</p> <p>2 COMMISSIONER HEMRAJ: Colonel, at the</p> <p>3 time you briefed the commanders, did you tell the</p> <p>4 commanders where the instructions you were conveying had</p> <p>5 emanated from?</p> <p>6 COLONEL SCOTT: Commissioner, not that I</p> <p>7 can recall. I can recall mentioning that we were</p> <p>8 instructed to go to a phase 3, which then became the stage</p> <p>9 3. I may have mentioned that the senior management at the</p> <p>10 operation had called for the moving on, progressing, or the</p> <p>11 re-strategising to move to a stage 3, but as I say, at that</p> <p>12 time I had no knowledge of a National decision, or a</p> <p>13 National proposal of any sort, no.</p> <p>14 MR CHASKALSON SC: If we can go back to</p> <p>15 the Provincial Commissioner's press briefing; a clip</p> <p>16 dealing with that press briefing is included in exhibit L</p> <p>17 at slide 155, and I wonder if we could play that clip,</p> <p>18 exhibit L, slide 155. Maybe to save time going forward, we</p> <p>19 will be referring to several slides in exhibit L in the</p> <p>20 course of today, so if we can just keep it up. There's</p> <p>21 apparently a problem with the computer hanging there. I</p> <p>22 wonder, Colonel, at this stage if I could just ask you to</p> <p>23 confirm that the clips that you used at slide 155 – we</p> <p>24 don't need to go there. Maybe we can try to solve this</p> <p>25 delay. Would you confirm that the clip that you used at</p>	<p style="text-align: right;">Page 14393</p> <p>1 MR CHASKALSON SC: Well, maybe we can</p> <p>2 proceed. You can have my assurance that the clip that you</p> <p>3 used doesn't include "Today we are ending this matter," if</p> <p>4 you want to check it in the tea adjournment just to ensure</p> <p>5 that I'm correct on that -</p> <p>6 COLONEL SCOTT: Okay.</p> <p>7 MR CHASKALSON SC: - feel free and come</p> <p>8 back if I'm not. Now you said that you'd struggled to find</p> <p>9 footage and you'd found one Australian clip. You ended up</p> <p>10 not using that.</p> <p>11 COLONEL SCOTT: No, the majority of the</p> <p>12 clip as far as I could recall actually dealt with the</p> <p>13 incident of scene 1 and with a small part where they just</p> <p>14 showed the Provincial Commissioner, if my memory serves me</p> <p>15 right, but there was no talking to that clip. It was the</p> <p>16 narrator of, or the anchor of the news that was just</p> <p>17 talking.</p> <p>18 MR CHASKALSON SC: Well, maybe we should</p> <p>19 play that Australian clip. It's JJJ – well, it was</p> <p>20 included in a draft of your presentation that you prepared</p> <p>21 on the 2nd of October, which was called "Marikana 16th</p> <p>22 version 1.pptx." It's JJJ157, and that clip, the</p> <p>23 Australian clip as opposed to a clip that made its way into</p> <p>24 slide 155 –</p> <p>25 CHAIRPERSON: JJJ157?</p>
<p style="text-align: right;">Page 14392</p> <p>1 slide 155 did not include any footage of the announcement</p> <p>2 of the Commissioner saying, and I quote, "Today we are</p> <p>3 ending this matter"?</p> <p>4 COLONEL SCOTT: I know we struggled for,</p> <p>5 to find footage. Obviously the events later in the day</p> <p>6 dominated the media headlines, and I think we found one</p> <p>7 Australian small clip and possibly one other, but I know</p> <p>8 that what you showed us before we broke two Thursdays back</p> <p>9 was definitely more than I had seen, because we put in what</p> <p>10 we could find at the time, and as you say, I'm not sure it</p> <p>11 was mentioned there.</p> <p>12 MR CHASKALSON SC: Well, maybe if you</p> <p>13 could look at it on your machine, if this one has hung,</p> <p>14 just to confirm that it wasn't mentioned there?</p> <p>15 CHAIRPERSON: Have you got it on your</p> <p>16 machine?</p> <p>17 COLONEL SCOTT: It just takes a while to</p> <p>18 open, Chairperson.</p> <p>19 CHAIRPERSON: I see, alright.</p> <p>20 MR CHASKALSON SC: Colonel, have you been</p> <p>21 able to pull it up?</p> <p>22 CHAIRPERSON: This takes some time. Is</p> <p>23 it possible for us to move on to something else in the</p> <p>24 meanwhile, or structurally is it necessary perhaps a point</p> <p>25 to be established before you proceed?</p>	<p style="text-align: right;">Page 14394</p> <p>1 MR CHASKALSON SC: It's JJJ157.</p> <p>2 CHAIRPERSON: I don't think that's been</p> <p>3 put in yet, has it?</p> <p>4 MR CHASKALSON SC: It hasn't been put</p> <p>5 it –</p> <p>6 CHAIRPERSON: So how do I describe it?</p> <p>7 JJJ157.</p> <p>8 MR CHASKALSON SC: It is a PowerPoint</p> <p>9 presentation entitled "Marikana 16th ver" – V-E-R – "1.pptx"</p> <p>10 –</p> <p>11 CHAIRPERSON: Sorry, you're going too</p> <p>12 fast for me. PowerPoint presentation entitled "Marikana" –</p> <p>13 MR CHASKALSON SC: 16th ver1.pptx.</p> <p>14 [10:09] CHAIRPERSON: PPTX?</p> <p>15 MR CHASKALSON SC: That's the PowerPoint</p> <p>16 –</p> <p>17 CHAIRPERSON: PPTX?</p> <p>18 MR CHASKALSON SC: Indeed, Chairperson,</p> <p>19 perhaps the suffix for a PowerPoint presentation.</p> <p>20 CHAIRPERSON: Well, one learns all the</p> <p>21 time, thank you very much for that information.</p> <p>22 MR CHASKALSON SC: And Colonel, if you</p> <p>23 can confirm that that file was saved on the 2nd of October</p> <p>24 from the file properties, and Chairperson, hardcopy of that</p> <p>25 presentation is at pages 1471 to 1563 of file 3.3.</p>

<p style="text-align: right;">Page 14395</p> <p>1 CHAIRPERSON: 1471?</p> <p>2 MR CHASKALSON SC: To 1563 of file 3.3,</p> <p>3 but the hardcopy won't show you the clip which is the slide</p> <p>4 with which we are concerned. Can we then call up JJJ157 or</p> <p>5 are we still having technical problems?</p> <p>6 CHAIRPERSON: While they're busy doing</p> <p>7 that can I ask the witness a question? The statement that</p> <p>8 the Provincial Commissioner made at the press conference</p> <p>9 was reported in the press.</p> <p>10 COLONEL SCOTT: Well, parts of the press</p> <p>11 conference were recorded, yes Chairperson.</p> <p>12 CHAIRPERSON: Ja, so even if you didn't</p> <p>13 have a clip you would in a press cutting, it reflects what</p> <p>14 you said, and we also had a note that Captain Adrio made as</p> <p>15 to what was said.</p> <p>16 COLONEL SCOTT: Yes, I'm trying to get</p> <p>17 back to understanding maybe why we took out the Australian</p> <p>18 version and put another in –</p> <p>19 CHAIRPERSON: Before we get involved in</p> <p>20 that, nowhere in the narrative of your presentation do</p> <p>21 those words, are we told exactly what she said, am I right?</p> <p>22 All we're told is slide 155 which is a clip we're hopefully</p> <p>23 going to look at in due course, but nowhere in the</p> <p>24 narrative that we have in L are we told what she said, is</p> <p>25 that correct?</p>	<p style="text-align: right;">Page 14397</p> <p>1 COLONEL SCOTT: I'm waiting for, it has</p> <p>2 just come open now. No, Chairperson.</p> <p>3 MR CHASKALSON SC: If we can now possibly</p> <p>4 play the Australian clip which has been found which was</p> <p>5 slide 23 of this draft at the presentation.</p> <p>6 [VIDEO SHOWN]</p> <p>7 So that was in the draft of your presentation on</p> <p>8 the 2nd of October, is there any reason why it was taken</p> <p>9 out?</p> <p>10 COLONEL SCOTT: I can't recall,</p> <p>11 Chairperson, but one must understand, although myself and</p> <p>12 Colonel Visser were responsible for in essence putting this</p> <p>13 together with the inputs of the other commanders and police</p> <p>14 officials, it went through numerous stages of approval, you</p> <p>15 know where groupings would sit of senior management and go</p> <p>16 through it as well. I can't specifically remember but I'm</p> <p>17 not sure if we found better footage, I don't quite recall</p> <p>18 what the other slides, - I've got it now open here, I don't</p> <p>19 know if I can play it on my computer just to have a look,</p> <p>20 but I'm not sure of the reason for taking that out other</p> <p>21 than, it was maybe mostly to do with everything other than</p> <p>22 what the Provincial Commissioner said which was literally,</p> <p>23 I think two or three seconds.</p> <p>24 CHAIRPERSON: Can you identify who would</p> <p>25 have been responsible for the decision not to include this</p>
<p style="text-align: right;">Page 14396</p> <p>1 COLONEL SCOTT: Chairperson, I can't</p> <p>2 speak to the narrative, I didn't have a part in setting</p> <p>3 that up and I haven't actually read through it either, so</p> <p>4 I'm not sure, if it is not there –</p> <p>5 MR CHASKALSON SC: Chairperson, in</p> <p>6 fairness to the witness slide 154 does convey some of what</p> <p>7 the Provincial Commissioner said. It doesn't convey the</p> <p>8 statement today, we are ending this matter, but it does</p> <p>9 convey some of what was said –</p> <p>10 CHAIRPERSON: The second bullet simply</p> <p>11 says on 154, "Should the commitment not be honoured,"</p> <p>12 that's the commitment to lay down their arms, "not be</p> <p>13 honoured, the police would need to act within their mandate</p> <p>14 to ensure that peace and stability were restored in the</p> <p>15 area." That's a rather generalised and vague summary of</p> <p>16 what was said, but I'm not asking you the question, Mr</p> <p>17 Chaskalson, I take it that the witness would agree with my</p> <p>18 comment.</p> <p>19 COLONEL SCOTT: Again, Chairperson, the</p> <p>20 slides which actually have most of the writing, the written</p> <p>21 words on them, were not put together by myself.</p> <p>22 CHAIRPERSON: No –</p> <p>23 COLONEL SCOTT: But –</p> <p>24 CHAIRPERSON: But 154 is the slide we're</p> <p>25 looking at, are you not the author of slide 154?</p>	<p style="text-align: right;">Page 14398</p> <p>1 clip in Exhibit L?</p> <p>2 COLONEL SCOTT: No, Chairperson.</p> <p>3 MR CHASKALSON SC: In fact it seems to us</p> <p>4 that it is even a bit more complicated or should I say</p> <p>5 deliberate than that?</p> <p>6 CHAIRPERSON: He says he has found the</p> <p>7 clip, it is actually 155 on his computer, so perhaps he</p> <p>8 can, we presumably can't see it but perhaps he can tell us,</p> <p>9 can you play it where we can hear it, I don't know how</p> <p>10 these things work from a technical point of view? 155 was</p> <p>11 going to be part of your cross-examination.</p> <p>12 MR CHASKALSON SC: Apparently our</p> <p>13 technical people have been able to get it going too now, so</p> <p>14 if we can now play 155?</p> <p>15 [VIDEO SHOWN]</p> <p>16 So that is what you chose to play as 155. Now we</p> <p>17 found the source file for that clip on the SAPS hard drive</p> <p>18 under the name PC Media Brief SABC only, PC Media Brief</p> <p>19 SABC only and that source file will be Exhibit JJJ87.</p> <p>20 CHAIRPERSON: Just give the reference</p> <p>21 again, JJJ?</p> <p>22 MR CHASKALSON SC: 87.</p> <p>23 CHAIRPERSON: JJJ87 and how do I describe</p> <p>24 it?</p> <p>25 MR CHASKALSON SC: A video file entitled</p>

<p style="text-align: right;">Page 14399</p> <p>1 PC Media Brief SABC only.</p> <p>2 CHAIRPERSON: SABC only?</p> <p>3 MR CHASKALSON SC: Only.</p> <p>4 CHAIRPERSON: Yes, is that the</p> <p>5 description?</p> <p>6 MR CHASKALSON SC: That's the</p> <p>7 description.</p> <p>8 CHAIRPERSON: Thank you.</p> <p>9 MR CHASKALSON SC: That's the title of</p> <p>10 the file.</p> <p>11 CHAIRPERSON: Is Exhibit JJJ87, is the</p> <p>12 video file entitled "PC Media Brief SABC only?"</p> <p>13 MR CHASKALSON SC: That's correct,</p> <p>14 Chairperson, and Colonel, will you confirm from your</p> <p>15 computer that the last modification to this file took place</p> <p>16 on 10 October 2012 at 1:32am?</p> <p>17 COLONEL SCOTT: Where is this, under –</p> <p>18 MR CHASKALSON SC: It is, on the Master</p> <p>19 you'll find it under reformatted videos. It is</p> <p>20 \videos\16\reformatted videos.</p> <p>21 COLONEL SCOTT: 2010.10, 1:31am.</p> <p>22 MR CHASKALSON SC: 10 October 2012, 1:30</p> <p>23 – I've got 1:32:23am, does yours say 1:31?</p> <p>24 CHAIRPERSON: I don't think anything</p> <p>25 turns on the eight minute difference, it was done, the</p>	<p style="text-align: right;">Page 14401</p> <p>1 they may have been both together originally, I'm not too</p> <p>2 sure.</p> <p>3 MR CHASKALSON SC: That's correct, PC</p> <p>4 Media Brief which was last saved on the 4th of October, can</p> <p>5 you confirm that?</p> <p>6 COLONEL SCOTT: That's correct.</p> <p>7 MR CHASKALSON SC: Had both of those</p> <p>8 clips in it and PC Media Brief SABC only had only the SABC</p> <p>9 clip. Now from looking at your reformatted directory it</p> <p>10 seems to us that this is a directory into which you put</p> <p>11 clips that were going to be included in the presentation,</p> <p>12 is that correct?</p> <p>13 COLONEL SCOTT: Yes, it seems so, yes.</p> <p>14 MR CHASKALSON SC: So if we look at the</p> <p>15 chronology we have a version of the presentation on 2</p> <p>16 October that had a clip from Australian Television which</p> <p>17 included the Provincial Commissioner's statement. Do you</p> <p>18 agree?</p> <p>19 COLONEL SCOTT: I acknowledge, yes.</p> <p>20 MR CHASKALSON SC: By 4 October you</p> <p>21 produced a composite video in the directory which would</p> <p>22 feed the presentation which included both that clip, which</p> <p>23 had the Provincial Commissioner's statement saying, "What I</p> <p>24 told you is, today we are ending this matter," and the SABC</p> <p>25 clip which didn't include that statement. By 10 October</p>
<p style="text-align: right;">Page 14400</p> <p>1 midnight oil was obviously being burnt and gone beyond</p> <p>2 midnight and he was still working it away.</p> <p>3 MR CHASKALSON SC: Yes, indeed, I just</p> <p>4 want to be clear that we have the same file.</p> <p>5 COLONEL SCOTT: Yes.</p> <p>6 MR CHASKALSON SC: Now PC Media Brief</p> <p>7 SABC only, appears to be a modified version of another file</p> <p>8 in the same directory which is simply called PC Media</p> <p>9 Brief.</p> <p>10 COLONEL SCOTT: I see that, yes.</p> <p>11 CHAIRPERSON: An exhibit as well?</p> <p>12 MR CHASKALSON SC: That is also an</p> <p>13 exhibit, Chairperson, and that is JJJ88.</p> <p>14 CHAIRPERSON: And how do I describe it?</p> <p>15 MR CHASKALSON SC: A video file entitled</p> <p>16 PC Media Brief.</p> <p>17 CHAIRPERSON: Just PC Media Brief?</p> <p>18 MR CHASKALSON SC: Indeed, as opposed to</p> <p>19 PC Media Brief SABC only.</p> <p>20 CHAIRPERSON: Alright, and you say that's</p> <p>21 modified, a modified clip, so JJJ88 is video file entitled</p> <p>22 "PC Media Brief."</p> <p>23 MR CHASKALSON SC: Now do you recall what</p> <p>24 the difference between the two videos was?</p> <p>25 COLONEL SCOTT: I'm not sure, I think</p>	<p style="text-align: right;">Page 14402</p> <p>1 you'd created a new file called SABC only, where there was</p> <p>2 now a clip which didn't include the Provincial</p> <p>3 Commissioner's words. It looks to us that there was a very</p> <p>4 deliberate decision to take out a clip that included the</p> <p>5 Provincial Commissioner's words. Do you have a comment on</p> <p>6 that?</p> <p>7 COLONEL SCOTT: I can't speak to that, I</p> <p>8 don't recall specifically any instructions or anything to</p> <p>9 that. As I say I don't, - I'm not saying they weren't</p> <p>10 given, I just can't recall any specific instructions been</p> <p>11 given, take this out –</p> <p>12 CHAIRPERSON: Were you working on the</p> <p>13 presentation at that stage?</p> <p>14 COLONEL SCOTT: Yes.</p> <p>15 CHAIRPERSON: So you were on an ongoing</p> <p>16 basis involved in what was going in and what was not going</p> <p>17 in?</p> <p>18 COLONEL SCOTT: Yes.</p> <p>19 CHAIRPERSON: Decisions about the other</p> <p>20 things?</p> <p>21 COLONEL SCOTT: Chairperson, yes, as I</p> <p>22 say sporadically we would present the presentation to the</p> <p>23 more senior SAPS officials and –</p> <p>24 CHAIRPERSON: To whom would you present</p> <p>25 it, who were the more senior SAPS officials to whom you</p>

<p style="text-align: right;">Page 14403</p> <p>1 presented it?</p> <p>2 COLONEL SCOTT: Mostly the core personnel</p> <p>3 that were at Marikana, so that we could try –</p> <p>4 CHAIRPERSON: And would you –</p> <p>5 COLONEL SCOTT: - to remain accurate –</p> <p>6 CHAIRPERSON: Will you care to name them</p> <p>7 for us?</p> <p>8 COLONEL SCOTT: General Annandale,</p> <p>9 General Mpmembe, I think the PC may have been present at</p> <p>10 times, I'm starting at the senior levels, Brigadier Calitz,</p> <p>11 some of the colonels. As I say, as we would be trying to</p> <p>12 get to a finalised version, so we would present it to just</p> <p>13 verify accuracy, whether there were any disputes concerning</p> <p>14 what was being said and if there was something to be</p> <p>15 changed we would make notes and go away and change it and</p> <p>16 so on and come back. Obviously when we would discover new</p> <p>17 material we would put it in and then present it again at a</p> <p>18 later time and the process would roll on like that.</p> <p>19 CHAIRPERSON: So you implemented the</p> <p>20 decisions that were made from time to time as to what would</p> <p>21 either be added or omitted, is that right?</p> <p>22 COLONEL SCOTT: Chairperson, yes, we also</p> <p>23 added, myself and Colonel –</p> <p>24 CHAIRPERSON: You implemented decision in</p> <p>25 relation to what was added and what was omitted?</p>	<p style="text-align: right;">Page 14405</p> <p>1 well, that if there is no disarmament there is going to be</p> <p>2 action taken.</p> <p>3 CHAIRPERSON: I said that's evidence the</p> <p>4 witness can't give, it is a point you can argue later, but</p> <p>5 anyway you put it on record and I'm sure it has been noted.</p> <p>6 Mr Chaskalson, will you care to proceed?</p> <p>7 MR CHASKALSON SC: Colonel, you said in</p> <p>8 your responses, at one stage you said there were numerous</p> <p>9 stages of approval. What were those stages of approval?</p> <p>10 COLONEL SCOTT: I can recall two</p> <p>11 specifically in Potchefstroom, the day before the National</p> <p>12 Commissioner arrived we showed the then presentation to all</p> <p>13 the commanders present who had given their inputs and they</p> <p>14 had the opportunity to give their inputs again and rectify</p> <p>15 if they felt otherwise, to what had been shown and after</p> <p>16 the National Commissioner had sat again, we did that, just</p> <p>17 in case there were any further inputs thereafter and then I</p> <p>18 recall Colonel Visser telling me as well and I do recall</p> <p>19 meetings in Rustenburg. There were at least two during the</p> <p>20 month of October where we presented the presentation to the</p> <p>21 more senior personnel at that time that were there.</p> <p>22 MR CHASKALSON SC: Now to start with</p> <p>23 Potch, Potch wouldn't have been relevant because the time</p> <p>24 span we're looking at here is between 2 and 10 October and</p> <p>25 Potch was finished by the first week of September. Do you</p>
<p style="text-align: right;">Page 14404</p> <p>1 COLONEL SCOTT: Yes.</p> <p>2 CHAIRPERSON: Now, I take it these words</p> <p>3 that Mr Chaskalson has referred to, today it will be an end</p> <p>4 of the matter, it is my poor summary of it, that didn't</p> <p>5 fall out by accident, did it?</p> <p>6 COLONEL SCOTT: Chairperson, as I say I</p> <p>7 don't recall and I'm not sure. As we would move along,</p> <p>8 that would just be the course of how we were going, we were</p> <p>9 trying to streamline the presentation as best as we could</p> <p>10 for the Commission and in saying that we could have built a</p> <p>11 presentation of 500 slides to include more aspects, but we</p> <p>12 were originally even way over the limit of what we had set</p> <p>13 for ourselves in the amount of slides which I think was</p> <p>14 around 170 initially and as we kept on gaining more</p> <p>15 information so we will keep on adding, present it for</p> <p>16 approval and move on. Towards the end however we were,</p> <p>17 there were certain things that were put in. At that stage</p> <p>18 there was no time left to run past senior management, an</p> <p>19 odd couple of slides towards the end of scene 2.</p> <p>20 MR SEMENYA SC: Chair, may we state for</p> <p>21 the record that in all these materials the ultimatum is</p> <p>22 there?</p> <p>23 CHAIRPERSON: Sorry?</p> <p>24 MR SEMENYA SC: In all these materials</p> <p>25 the ultimatum is there, it is expressed in the slides as</p>	<p style="text-align: right;">Page 14406</p> <p>1 recall when these meetings in Rustenburg took place?</p> <p>2 COLONEL SCOTT: I think one was around</p> <p>3 mid October and the other near the end, the latter part of</p> <p>4 October.</p> <p>5 MR CHASKALSON SC: And where were they</p> <p>6 held?</p> <p>7 COLONEL SCOTT: There was a conference</p> <p>8 room at a guesthouse that the police were making use of in</p> <p>9 Rustenburg.</p> <p>10 MR CHASKALSON SC: And do you recall what</p> <p>11 that guesthouse was?</p> <p>12 COLONEL SCOTT: Am I permitted to mention</p> <p>13 the names, it won't be –</p> <p>14 CHAIRPERSON: Is it one that the police</p> <p>15 use from time to time, and are there concerns that it</p> <p>16 should be known which guesthouse is used?</p> <p>17 COLONEL SCOTT: It is –</p> <p>18 CHAIRPERSON: Perhaps I should ask Mr</p> <p>19 Semenya whether he has any comment about the point?</p> <p>20 MR SEMENYA SC: I would not see any</p> <p>21 reason for confidentiality there, Chair.</p> <p>22 CHAIRPERSON: Thank you, Mr Semenya.</p> <p>23 COLONEL SCOTT: It is "Ons Dorpshuis."</p> <p>24 MR CHASKALSON SC: Now Colonel, you also</p> <p>25 said in response to a question from the chair that you</p>

<p style="text-align: right;">Page 14407</p> <p>1 implemented decisions as to what was to be added or, I  2 don't want to purport to be quoting you verbatim, but you  3 indicated that in amending the presentation either by  4 adding or subtracting you implemented decisions. Were you  5 referring to any decisions other than those that were taken  6 at Potch where the National Commissioner was present or on  7 these two occasions in October at the guesthouse in  8 Rustenburg?  9 [10:29] COLONEL SCOTT: There is nothing in  10 specific I can recall, but again one can go back through  11 deduction. If you look at the presentation after Potch, we  12 had a lot of deployment tables in there, so it was viewed  13 that to show the Commission that would simply have people  14 getting lost, not knowing what was going on and to bring it  15 more precisely to the actual events. For instance that was  16 something that we would then take out. But as I say, I  17 don't recall anything specific. As you go through the  18 slides obviously there would be comments which one would  19 write down on a piece of paper and then go and rectify  20 thereafter.  21 MR CHASKALSON SC: But where would you –  22 you say comments that you would receive on a – you'd write  23 down on a piece of paper, where would those comments be  24 made, in what context would you receive those comments?  25 COLONEL SCOTT: Verbally, as we would be</p>	<p style="text-align: right;">Page 14409</p> <p>1 effectively decided that if the miners did not leave  2 consensually there'd be a move to phase 3 at the end of the  3 day.  4 CHAIRPERSON: It's before the end of the  5 day.  6 MR CHASKALSON SC: Well before the end of  7 the day, so from her perspective issues of escalation were  8 irrelevant. We've been through this before.  9 COLONEL SCOTT: Yes.  10 MR CHASKALSON SC: And we now know from  11 exhibit JJJ177 that the night before the National  12 Management Forum had, to quote it verbatim so I don't get  13 into a dispute with my learned friend, the National  14 Management Forum had minuted that "after deliberations the  15 meeting endorsed the proposal to disarm the protesting  16 masses and further indicated that additional resources must  17 be made available upon need identification by the  18 Provincial Commissioner, North West." So it looks to us  19 the decision that absent a consensual departure by the  20 strikers there would be a move to phase 3 on the 16th had  21 already effectively been taken by the Provincial  22 Commissioner and her colleagues on the National Management  23 Forum the previous night and had been announced to the  24 world at 9:30. And it wasn't something that happened at  25 1:30 or shortly beforehand. That's what the evidence</p>
<p style="text-align: right;">Page 14408</p> <p>1 sitting as a group and we would be presenting there would  2 be comments made which would be jotted down on scrap paper  3 and thereafter we would go and make rectifications  4 accordingly.  5 MR CHASKALSON SC: And is there any paper  6 trail of the decisions that you implemented in relation to  7 what was taken and what was added and what was subtracted  8 and where those decisions came from?  9 COLONEL SCOTT: Not that I can recall,  10 no.  11 MR CHASKALSON SC: You see, Chairperson,  12 not Chairperson, Colonel -  13 CHAIRPERSON: [Inaudible, microphone  14 off].  15 MR CHASKALSON SC: Colonel, our concern  16 with the removal of the Australian clip from exhibit L is  17 that the case that SAPS has been advancing in this  18 commission partially through exhibit L and through its  19 witnesses, is that it was only as a result of an escalation  20 of the threat prior to the 1:30 JOCCOM that SAPS moved to  21 the tactical phase and implemented phase 3. That's been  22 the SAPS case in this Commission, it's been SAPS case in  23 exhibit L as well. And what that clip shows quite  24 conclusively is that and we've already agreed on this is  25 that by 9:30 the Provincial Commissioner had already</p>	<p style="text-align: right;">Page 14410</p> <p>1 suggests to us and in that context we find it very  2 concerning that a clip that has the Commissioner saying  3 today we will end this appears to have been deliberately  4 removed from drafts of the presentation.  5 MR SEMENYA SC: Chair, I object.  6 CHAIRPERSON: What is the basis of the  7 objection?  8 MR SEMENYA SC: The minute does not have  9 anything recorded saying there was a decision taken at the  10 Management Forum.  11 CHAIRPERSON: What it does say is that  12 there was deliberation and the proposal, which is a  13 proposal by the Provincial Commissioner, was endorsed. Now  14 what does that mean? How can you endorse something, even  15 endorse a cheque, without having decided that you do so?  16 MR SEMENYA SC: The decision and the  17 evidence will be that the PC took the decision to go to  18 stage 3, not at that management forum. So I don't  19 understand how we can say a proposal she's making amounts  20 to a decision when she takes the decision later?  21 CHAIRPERSON: But what is the meaning  22 then of the word endorsement after deliberation? Mr  23 Chaskalson, I think I can see there is a verbal basis for  24 what Mr Semenya is putting, so perhaps you can reformulate  25 your question which avoids his objection without blunting</p>



<p style="text-align: right;">Page 14411</p> <p>1 the question too much.</p> <p>2 MR CHASKALSON SC: Chair, can I just</p> <p>3 respond to the objection first because my learned friend</p> <p>4 says there is no decision? He doesn't read the end of the</p> <p>5 sentence which says and further indicated that additional</p> <p>6 resources must be made available upon need identification</p> <p>7 by the Provincial Commissioner, North West. Now one cannot</p> <p>8 take a decision – one cannot minute that part, those words</p> <p>9 "additional resources must be made available upon need</p> <p>10 identification by the Provincial Commissioner, North West"</p> <p>11 without some sort of decision having been taken.</p> <p>12 CHAIRPERSON: Mr Semenya will say that</p> <p>13 the key words are "need identification" by the</p> <p>14 Commissioner, in other words there had to be something</p> <p>15 further from the Commissioner, the Provincial Commissioner</p> <p>16 indicating that she needed further resources. Your point</p> <p>17 is the decision was taken to make them available if they</p> <p>18 were called for. So that's why I –</p> <p>19 MR SEMENYA SC: It must be made</p> <p>20 available.</p> <p>21 CHAIRPERSON: Yes, yes I thought it might</p> <p>22 be appropriate to re-word the question in a way which</p> <p>23 avoids Mr Semenya's objection because I can understand the</p> <p>24 thrust of his objection. One point, it may on analysis</p> <p>25 turn out to be a bad point but we can't decide that at this</p>	<p style="text-align: right;">Page 14413</p> <p>1 MR CHASKALSON SC: You have. It does say</p> <p>2 an extraordinary session but –</p> <p>3 CHAIRPERSON: No, no it doesn't say who</p> <p>4 was present. Mr Semenya says the minutes will tell us who</p> <p>5 was there. I didn't see that in –</p> <p>6 MR CHASKALSON SC: It is there,</p> <p>7 Chairperson, the National Commissioner, all provincial</p> <p>8 commissioners, the Divisional Commissioner, Operational</p> <p>9 Response Services, the Deputy National Commissioner,</p> <p>10 Operational Response Services and the Acting Divisional</p> <p>11 Commissioner, Crime Intelligence. I'm not sure if there</p> <p>12 are any other members of the National Management Forum</p> <p>13 apart from these members but that's not an issue to canvas</p> <p>14 with Colonel Scott. Colonel -</p> <p>15 CHAIRPERSON: I'm sorry, I'm sorry can I</p> <p>16 just – it says an extraordinary session, it doesn't exactly</p> <p>17 say of what and then it says who attended and there's an</p> <p>18 agenda item 7. Now the fact that there's an agenda item 7</p> <p>19 will indicate that there were other agenda items before.</p> <p>20 So it was some kind of body which had an agenda, this item</p> <p>21 came up as number 7, admittedly it had an extraordinary</p> <p>22 session and the names, or rather the descriptions of those</p> <p>23 people present is reflected. But we don't know from this</p> <p>24 document what exactly this body was but presumably that</p> <p>25 will be covered in the evidence later. Is that correct, Mr</p>
<p style="text-align: right;">Page 14412</p> <p>1 stage, Mr Semenya will argue very strongly that it's a good</p> <p>2 point and that's a matter for us to decide later. But</p> <p>3 perhaps without making any assumptions or predicting what</p> <p>4 rulings may be made, perhaps you can reformulate the</p> <p>5 question in a way which avoids a debate at this stage.</p> <p>6 MR CHASKALSON SC: Well, Colonel, I can't</p> <p>7 ask you to answer for the National Management Forum,</p> <p>8 decision or non-decision of the night before because you</p> <p>9 weren't party to it and your evidence is that you weren't</p> <p>10 aware of it at the time. And did I understand you</p> <p>11 correctly to say that you only – well let me ask the</p> <p>12 question directly, when did you first become aware of this</p> <p>13 meeting, minuted meeting of the National Management Forum</p> <p>14 that considered matters relating to Marikana, before or</p> <p>15 after you presented exhibit L?</p> <p>16 COLONEL SCOTT: I know I was in</p> <p>17 Rustenburg at the Commission so I'm not sure whether it</p> <p>18 would have been before or after.</p> <p>19 MR SEMENYA SC: Chair, again for the</p> <p>20 record, the minute will tell us at that time they were not</p> <p>21 sitting at the National Management Forum, they went into an</p> <p>22 extraordinary session and the people are listed who were</p> <p>23 there.</p> <p>24 CHAIRPERSON: We haven't seen that minute</p> <p>25 yet –</p>	<p style="text-align: right;">Page 14414</p> <p>1 Semenya?</p> <p>2 MR SEMENYA SC: Indeed, Chair.</p> <p>3 CHAIRPERSON: Thank you.</p> <p>4 MR CHASKALSON SC: What we can say is</p> <p>5 that we were informed by SAPS that this was a draft minute</p> <p>6 of the SAPS National Management Forum. That was how it was</p> <p>7 conveyed to us, that's how we put it on record at the time</p> <p>8 and that's what we asked for, but the evidence will speak</p> <p>9 for itself when it comes.</p> <p>10 CHAIRPERSON: The main point is this</p> <p>11 witness wasn't at the meeting and he says he only heard</p> <p>12 about it months later. It wasn't even mentioned, as I</p> <p>13 understand it, at Potch, at Potchefstroom according to his</p> <p>14 evidence and certainly not when he was there. So I don't</p> <p>15 know that he can throw much light on this particular</p> <p>16 aspect. That's something that will be dealt with in later</p> <p>17 evidence, presumably when the Provincial Commissioner gives</p> <p>18 evidence and if the National Commissioner is recalled she</p> <p>19 will be able to deal with it as well.</p> <p>20 MR CHASKALSON SC: Indeed, Chairperson,</p> <p>21 well let me leave the National Management Forum or let me</p> <p>22 leave the minute of the extraordinary session out of this</p> <p>23 question. It does appear to us that the removal of a clip</p> <p>24 which has the Provincial Commissioner saying today we are</p> <p>25 ending this matter is the removal of evidence from the</p>

<p style="text-align: right;">Page 14415</p> <p>1 presentation which would subvert the argument advanced in 2 the presentation. Namely, that it was only because of an 3 escalation of the threat in the course of the morning that 4 a decision was taken to move to phase 3. Do you have a 5 comment on that? 6 COLONEL SCOTT: In just listening to the 7 SABC clip, the anchor there is speaking as well, the same 8 as the slide to follow where it says that the Provincial 9 Commissioner is saying just that. So whether it's 10 mentioned in the Australian clip itself or whether it's 11 mentioned by the anchor and then in the actual narrative 12 thereafter I'm not too sure that the point is then valid. 13 CHAIRPERSON: What did the anchor exactly 14 say? 15 MR CHASKALSON SC: Maybe we should play 16 155 again so what the anchor says speaks for itself. The 17 anchor speaks of an ultimatum. 18 [VIDEO SHOWN] 19 COLONEL SCOTT: If it would assist I 20 could possibly play it on my computer and just put the 21 microphone there so that the anchor's voice could be heard. 22 CHAIRPERSON: If we can't get it the 23 other way, I think that's the best way forward. Let's not 24 waste any further time. So Mr Wesley is up there in the 25 far corner of the hall. Mr Wesley, did you hear what</p>	<p style="text-align: right;">Page 14417</p> <p>1 MR CHASKALSON SC: Chairperson, our 2 submission is that "today" is very, very relevant because 3 the key issue that this Commission has to answer is why a 4 decision was taken to move to phase 3 at 1:30 or maybe not 5 at 1:30. In circumstances where a detailed plan for phase 6 3 was first presented to the JOCCOM at 1:30 that afternoon 7 when there was another plan which might much more prudently 8 have been implemented at 6 o'clock the following morning 9 the "today" in that context becomes very, very important. 10 And the removal of a reference to today from the 11 presentation is, in our submission, a very serious matter. 12 CHAIRPERSON: Mr Semenya? 13 MR SEMENYA SC: Still this witness would 14 not help us on this debate, Chair. He did not remove the 15 clip he tells us, he's not aware of a decision to remove 16 the "today." So I don't where this is taking us but those 17 arguments we'll entertain them at the right stage. 18 CHAIRPERSON: Mr Chaskalson, I'll allow 19 you to proceed but please bear in mind the point made by Mr 20 Semenya, which is a valid one I think, that this is 21 witness's ability to help us on this issue may be limited 22 MR CHASKALSON SC: Well on that basis, 23 Colonel, can you give us any assistance as to why the clip 24 mentioning we will end this today was removed at some stage 25 between 2 October and 10 October last year?</p>
<p style="text-align: right;">Page 14416</p> <p>1 Colonel Scott suggested? He said if there's a difficulty 2 he's got it on his computer and it's the words that count, 3 not the image. So he's prepared to put the microphone 4 close to the computer and we can then hear it. That's 5 probably as sensible a way forward as one can think of. 6 [VIDEO SHOWN] 7 MR CHASKALSON SC: So the key difference 8 between the two clips is that in the one we hear the 9 Provincial Commissioner saying, "today we will end this." 10 In the other we hear a report that action will be taken if 11 they do not comply. Do you accept that? 12 COLONEL SCOTT: I accept that, yes. 13 MR CHASKALSON SC: The "today" strikes us 14 as being very important because the "today" is relevant to 15 why a decision was taken to move to phase 3. On the basis 16 of a plan that was presented to the JOCCOM in detail for 17 the first time at 1:30 in circumstances where it may have 18 been more prudent to wait until 6 o'clock on Friday 19 morning. 20 MR SEMENYA SC: Chair, maybe this matter 21 must just stay for argument because the anchors are using 22 whatever commentary they're using based on the utterances 23 of the - which includes today. Maybe it's not for this 24 type of cross-examination, it would be a matter for debate, 25 but I don't think that argument is accurate.</p>	<p style="text-align: right;">Page 14418</p> <p>1 CHAIRPERSON: No, Mr Chaskalson, I 2 thought he said already he didn't know the answer to that 3 one. Am I right? 4 COLONEL SCOTT: Yes, Chairperson. 5 CHAIRPERSON: I was trying to identify 6 who would have done it and he wasn't able to help us there 7 either as far as I could see. Am I right? 8 COLONEL SCOTT: Yes, Chairperson. 9 CHAIRPERSON: If there's someone who is 10 to be criticised for having removed that clip it's not you, 11 that's your first point and the second point, as I 12 understand it, is you can't tell us who it is, who it would 13 be or may be. 14 COLONEL SCOTT: No, as I say, we didn't 15 present to one person, we presented to a group so – 16 CHAIRPERSON: Are you telling us that it, 17 as far as you understand, in all probability it was or 18 would have been a group decision? 19 COLONEL SCOTT: No, somebody in a group 20 may have made the suggestion or given the instruction. 21 CHAIRPERSON: Made the suggestion to 22 whom? 23 COLONEL SCOTT: To myself and Colonel 24 Visser. 25 CHAIRPERSON: So you say you can't</p>

<p style="text-align: right;">Page 14419</p> <p>1 remember it?</p> <p>2 COLONEL SCOTT: Yes, I can't remember.</p> <p>3 CHAIRPERSON: Surely that was quite a</p> <p>4 relevant thing that was being taken out. I must tell you,</p> <p>5 obviously this is a prima facie view, I'm putting it you so</p> <p>6 you can deal with it. I would have expected you to</p> <p>7 remember that kind of thing. I know you've had a lot to</p> <p>8 remember but still I would have expected that.</p> <p>9 COLONEL SCOTT: Ja.</p> <p>10 CHAIRPERSON: Or is that being unfair?</p> <p>11 COLONEL SCOTT: Chairperson, I wouldn't</p> <p>12 be able to say realistically, I mean as we know there are</p> <p>13 many different versions of the presentation as it grew to</p> <p>14 become the final version. And there are numerous changes</p> <p>15 made throughout. We worked, even as we saw it, till late</p> <p>16 in the night on these presentations and so on. There isn't</p> <p>17 anything that comes to memory but I mean if there was</p> <p>18 something malicious I'm sure I would actually then recall</p> <p>19 that this is – well even if it felt malicious to me that we</p> <p>20 were taking something out because of speculation as the</p> <p>21 advocate is pointing out, I'm sure I would have recalled</p> <p>22 something to that point. But I don't specifically recall</p> <p>23 that, no.</p> <p>24 COMMISSIONER HEMRAJ: You don't remember</p> <p>25 being instructed to remove any video clip?</p>	<p style="text-align: right;">Page 14421</p> <p>1 Roots, put in, and then obviously in presentation to the</p> <p>2 senior police members and the commanders viewed and I'm</p> <p>3 sure it's not the only video possibly that was shortened or</p> <p>4 taken out or revised. As I said, and I know Adv Chaskalson</p> <p>5 actually mentioned it right in the beginning of the</p> <p>6 Commission that some of the videos were manipulated</p> <p>7 possibly, but what we were doing was we were trying to take</p> <p>8 segments of videos to just show for instance the rituals</p> <p>9 and not play a whole lengthy video just to get to a couple</p> <p>10 of seconds therein. We weren't thinking blatant evidence</p> <p>11 about don't, you know, cut parts of videos out or etcetera.</p> <p>12 CHAIRPERSON: If the Australian clip had</p> <p>13 been in the presentation at some stage, I take it when it</p> <p>14 was omitted somebody must have – I don't know how these</p> <p>15 things work, but somebody must have pressed some kind of</p> <p>16 delete button. Is that right?</p> <p>17 COLONEL SCOTT: One would have to go into</p> <p>18 the video, or just take the SAPC video for that matter.</p> <p>19 It's a process which gets done outside of the presentation</p> <p>20 and then placed back into the presentation.</p> <p>21 CHAIRPERSON: But somebody would have had</p> <p>22 to do the necessary handiwork, if I can call it that.</p> <p>23 COLONEL SCOTT: Yes, that would be</p> <p>24 myself.</p> <p>25 CHAIRPERSON: It would have been you?</p>
<p style="text-align: right;">Page 14420</p> <p>1 COLONEL SCOTT: No.</p> <p>2 COMMISSIONER HEMRAJ: Did you use your</p> <p>3 own discretion to remove any video clip at all?</p> <p>4 COLONEL SCOTT: Commissioner, I don't</p> <p>5 think so because as the advocate pointed out, I was trying</p> <p>6 to put in as much as I could. We were concerned about time</p> <p>7 and about the amount of slides and the decision could have</p> <p>8 been made on that. But I know normally I would build in</p> <p>9 more than I should, putting in as much as I could and then</p> <p>10 obviously it would be streamlined. So, no it wouldn't have</p> <p>11 been from my part. I would have probably put in the one</p> <p>12 that showed the Australian and the SABC footage on it.</p> <p>13 [10:49] COMMISSIONER HEMRAJ: And if you were</p> <p>14 instructed at any stage to amend the presentation, would</p> <p>15 there have been a discussion as to the reason for the</p> <p>16 amendment?</p> <p>17 COLONEL SCOTT: There would probably be</p> <p>18 mentioned at the time that this could be a reason. I'm</p> <p>19 trying to recall, but I think it did have more to do with</p> <p>20 just the time constraints of we are duplicating something</p> <p>21 now. Whether the one spoke better at the SABC than</p> <p>22 possibly the Australian one, I'm not sure, or whether the</p> <p>23 narration there under spoke better to both I'm also not</p> <p>24 sure, because I've looked at Roots; we didn't have this in</p> <p>25 either. So it was something that was discovered after</p>	<p style="text-align: right;">Page 14422</p> <p>1 COLONEL SCOTT: Yes.</p> <p>2 CHAIRPERSON: Only you?</p> <p>3 COLONEL SCOTT: I was working on the</p> <p>4 videos, so it would have been me, Chairperson, yes.</p> <p>5 CHAIRPERSON: So it was your finger, the</p> <p>6 finger that was – or your hand, the hand that must have</p> <p>7 been responsible for taking the Australian clip out?</p> <p>8 COLONEL SCOTT: For doing the actual</p> <p>9 presentation –</p> <p>10 CHAIRPERSON: Yes, physically.</p> <p>11 COLONEL SCOTT: Yes, yes.</p> <p>12 CHAIRPERSON: But you can't remember it?</p> <p>13 COLONEL SCOTT: No, I would have been the</p> <p>14 one who'd –</p> <p>15 CHAIRPERSON: No, but you can't actually</p> <p>16 remember doing it.</p> <p>17 COLONEL SCOTT: No.</p> <p>18 CHAIRPERSON: So if there's</p> <p>19 responsibility that flows from the omission of that clip,</p> <p>20 it's yours?</p> <p>21 COLONEL SCOTT: I didn't hear the last</p> <p>22 part?</p> <p>23 CHAIRPERSON: If there is responsibility</p> <p>24 to be attached to the removal or the deletion or the</p> <p>25 subtraction of that particular clip, that responsibility is</p>

<p style="text-align: right;">Page 14423</p> <p>1 yours?</p> <p>2 COLONEL SCOTT: I'm not sure if</p> <p>3 responsibility includes the decision making process to take</p> <p>4 it out.</p> <p>5 CHAIRPERSON: No, no, no, I understand</p> <p>6 that, but the physical act would have been done by you?</p> <p>7 COLONEL SCOTT: Ja, the physical act,</p> <p>8 yes.</p> <p>9 MR CHASKALSON SC: I mean in that</p> <p>10 context, Colonel, did you not keep any paper trail or</p> <p>11 record of who told you to do what in relation to the</p> <p>12 presentation?</p> <p>13 COLONEL SCOTT: No, what I can recall is</p> <p>14 when we would sit, we would sit with pieces of paper, and</p> <p>15 as we would go, you would just write down slide 155 and a</p> <p>16 short note on what to do, and once it's done there's no</p> <p>17 need to keep the notes.</p> <p>18 MR CHASKALSON SC: Those notes no longer</p> <p>19 exist?</p> <p>20 COLONEL SCOTT: I don't have. I'm not</p> <p>21 sure if Colonel Visser may still have, no.</p> <p>22 MR CHASKALSON SC: And there were no</p> <p>23 minuted meetings of these meetings on the presentation?</p> <p>24 COLONEL SCOTT: No.</p> <p>25 MR CHASKALSON SC: Colonel, I want to</p>	<p style="text-align: right;">Page 14425</p> <p>1 COLONEL SCOTT: I can find them. I only</p> <p>2 had the actual handwritten version and there were places</p> <p>3 where I actually struggled to interpret what was said</p> <p>4 there.</p> <p>5 MR CHASKALSON SC: Yes, we haven't been</p> <p>6 given a typed version yet, so the handwritten is all that</p> <p>7 we have. A copy is being brought to you. Colonel, do you</p> <p>8 have them in front of you now?</p> <p>9 COLONEL SCOTT: I do.</p> <p>10 MR CHASKALSON SC: Chairperson, I must</p> <p>11 receive guidance from you; it seems that we're having</p> <p>12 technical difficulties and we can't get the notes up on the</p> <p>13 screen yet – oh no, we can. On the front page of these</p> <p>14 notes it says "Notes made 16 August 2012 = 06h00." I</p> <p>15 understand that to be the handwriting of Brigadier</p> <p>16 Pretorius, but that will be confirmed at a later stage.</p> <p>17 The notes themselves begin at page 2 of this document,</p> <p>18 second page of this document, and these purport to be notes</p> <p>19 taken at 06:00, and if we go to the top of the notes it</p> <p>20 says, "Security deployment," and then there are a couple of</p> <p>21 comments about radio technical held mechanics not here to</p> <p>22 follow up, and then we get to the first piece –</p> <p>23 CHAIRPERSON: [Microphone off, inaudible]</p> <p>24 COLONEL SCOTT: Field.</p> <p>25 MR CHASKALSON SC: Field mechanics.</p>
<p style="text-align: right;">Page 14424</p> <p>1 move to a slightly different topic. In the middle of last</p> <p>2 month we were provided for the first time with original</p> <p>3 handwritten notes taken at the JOCCOM meeting of 6AM on the</p> <p>4 16th, and those handwritten notes are JJJ168, if I can just</p> <p>5 get a reference for them.</p> <p>6 CHAIRPERSON: Remind me, have they been</p> <p>7 inserted in the record yet? I think they're in the bundle,</p> <p>8 the files we were given, but I'm not sure they're an</p> <p>9 exhibit -</p> <p>10 MR CHASKALSON SC: No, this is the first</p> <p>11 time we are on the –</p> <p>12 CHAIRPERSON: Well JJJ168, how do I</p> <p>13 describe them?</p> <p>14 MR CHASKALSON SC: Handwritten notes</p> <p>15 taken at the JOC on the 16th of August 2012, and they are</p> <p>16 file 4, pages 23 to 86. I think page 86 has four pages to</p> <p>17 it, so it's 86(4).</p> <p>18 CHAIRPERSON: File pages?</p> <p>19 MR CHASKALSON SC: File 4, page 23 to 86.</p> <p>20 CHAIRPERSON: Alright, so we will receive</p> <p>21 then as an exhibit, exhibit JJJ168, which exhibit is</p> <p>22 described as follows; handwritten notes taken at JOC on 16th</p> <p>23 August 2012.</p> <p>24 MR CHASKALSON SC: Now Colonel, do you</p> <p>25 have those notes in front of you?</p>	<p style="text-align: right;">Page 14426</p> <p>1 "Field mechanics not here to follow up." So presumably</p> <p>2 field mechanics hadn't attended the JOCCOM at the 6. Do</p> <p>3 you recall that?</p> <p>4 COLONEL SCOTT: I recall very little from</p> <p>5 that JOCCOM, so no.</p> <p>6 MR CHASKALSON SC: Maybe you'll recall</p> <p>7 the next line which says, "D-day." Do you recall someone</p> <p>8 saying "D-day"?</p> <p>9 COLONEL SCOTT: No, and I've been –</p> <p>10 CHAIRPERSON: You were only aware of the</p> <p>11 fact later on in the day Captain Adriaio used that phrase in</p> <p>12 some kind of press briefing, I think, after the Provincial</p> <p>13 Commissioner had spoken. It's in one of the exhibits; I</p> <p>14 can't remember which one. Are you aware of that –</p> <p>15 COLONEL SCOTT: I'm aware that, yes, that</p> <p>16 Captain Adriaio had used that phrase, but –</p> <p>17 CHAIRPERSON: Can you recall how he used</p> <p>18 it? What it meant when he used it?</p> <p>19 COLONEL SCOTT: I can only think,</p> <p>20 Chairperson, if I go back, it had to have been after the</p> <p>21 Provincial Commissioner's media briefing because what I</p> <p>22 recall is General Annandale was called out of the JOCCOM at</p> <p>23 the end, very close to the end of the JOCCOM. I wasn't</p> <p>24 aware for what. I later learnt it was for the, to go and</p> <p>25 join the Provincial Commissioner with a media briefing.</p>

<p style="text-align: right;">Page 14427</p> <p>1 I'm not sure when I heard, but I did affiliate the word "D-day" to Captain Adriaio.</p> <p>2</p> <p>3 CHAIRPERSON: What did it mean? What did</p> <p>4 that phrase mean in his mouth when he used it?</p> <p>5 COLONEL SCOTT: I would presume to say</p> <p>6 that today is the day that decisive action must be taken.</p> <p>7 CHAIRPERSON: Thank you.</p> <p>8 MR SEMENYA SC: For the record, Chair,</p> <p>9 the handwriting is that of Colonel Moolman, not Brigadier</p> <p>10 Pretorius.</p> <p>11 CHAIRPERSON: Yes, thank you. Yes, no, I</p> <p>12 understood Mr Chaskalson to say that the previous sheet,</p> <p>13 which is page 23 of the file headed "Deployment commander's</p> <p>14 cell number, notes made 16 August 2012 6h00," that's the</p> <p>15 handwriting of Brigadier Pretorius, but I'm not sure that</p> <p>16 the document at page 25 of the file which we're now</p> <p>17 referring to is in the same handwriting, but –</p> <p>18 MR CHASKALSON SC: Chair, can I clarify</p> <p>19 what my submission is? The only handwriting that's in the</p> <p>20 hand of Brigadier Pretorius are the words "Notes made 16</p> <p>21 August 2012 06h00."</p> <p>22 CHAIRPERSON: Yes, my point, that's on</p> <p>23 the previous page.</p> <p>24 MR CHASKALSON SC: Yes, but the</p> <p>25 deployment commander's cell number is in fact Adv Moolman,</p>	<p style="text-align: right;">Page 14429</p> <p>1 MR CHASKALSON SC: It would be rather odd</p> <p>2 that something as dramatic as D-day would be stated at a</p> <p>3 meeting and you didn't recall it.</p> <p>4 COLONEL SCOTT: If they were stated. As</p> <p>5 I say, many times before the JOCCOM would sit, myself and</p> <p>6 General Annandale would quickly – because I hadn't yet had</p> <p>7 the opportunity to upgrade the presentations that I would</p> <p>8 be expected to give. Any amendments and so on, or</p> <p>9 strategies that I would have thought of after hours and so</p> <p>10 on, I would discuss with him. So many times when the</p> <p>11 JOCCOM would start and he would give his introduction and</p> <p>12 welcome all and do the roll call, I would be sitting trying</p> <p>13 to work on the presentation to some degree, not necessarily</p> <p>14 always giving full attention to what was being said.</p> <p>15 MR CHASKALSON SC: So it's possible that</p> <p>16 if this was said at the start of the meeting, you were</p> <p>17 working on a presentation that you would have to make later</p> <p>18 on in the meeting and not paying attention to what was</p> <p>19 being said by General Annandale in his introduction?</p> <p>20 COLONEL SCOTT: That's a possibility,</p> <p>21 yes.</p> <p>22 MR CHASKALSON SC: The next line of these</p> <p>23 notes, "Terms and conditions not to continue," do you</p> <p>24 recall anything along those lines being said?</p> <p>25 COLONEL SCOTT: No, as I say I've read</p>
<p style="text-align: right;">Page 14428</p> <p>1 as are the minutes –</p> <p>2 CHAIRPERSON: Oh, I see.</p> <p>3 MR CHASKALSON SC: - or the notes of the</p> <p>4 meeting that follow.</p> <p>5 CHAIRPERSON: So you agree then with what</p> <p>6 Mr Semanya is saying.</p> <p>7 MR CHASKALSON SC: I do. I'm not</p> <p>8 suggesting that –</p> <p>9 CHAIRPERSON: This document we're now</p> <p>10 looking at headed "Security deployment radio technical</p> <p>11 field mechanics" –</p> <p>12 MR CHASKALSON SC: Is Adv Moolman.</p> <p>13 CHAIRPERSON: - all that is in the</p> <p>14 handwriting of Advocate, a.k.a. Colonel Moolman.</p> <p>15 MR CHASKALSON SC: Indeed, Chairperson.</p> <p>16 And these have been presented to us by SAPS as notes taken</p> <p>17 contemporaneously at the JOCCOM at 6 o'clock, at the JOCCOM</p> <p>18 meeting of 6 o'clock, by Adv Moolman. Now you don't recall</p> <p>19 the words "D-day" being uttered at that JOCCOM of 6</p> <p>20 o'clock?</p> <p>21 COLONEL SCOTT: No.</p> <p>22 MR CHASKALSON SC: You see, Adv Moolman</p> <p>23 does recall that and states that they were uttered by</p> <p>24 General Annandale. Does that jog your memory in any way?</p> <p>25 COLONEL SCOTT: No, still not.</p>	<p style="text-align: right;">Page 14430</p> <p>1 through what I could make out, which is most of what's on</p> <p>2 the first page there, and it took me by surprise to read</p> <p>3 that. I was shocked to have read the word "D-day" because</p> <p>4 I can't recall that. I can through deduction try to place</p> <p>5 what is on screen in context possibly of realising that</p> <p>6 stage 2 still included dialogue with the protesters and</p> <p>7 that there had to be some form of dialogue possibly, or</p> <p>8 direction given by General Annandale to the negotiators to</p> <p>9 carry over to the strikers at that time. But as I say, I</p> <p>10 don't recall specific, the specifics of what's on screen</p> <p>11 now.</p> <p>12 MR CHASKALSON SC: Maybe if I can take</p> <p>13 you to another account of what happened at that meeting;</p> <p>14 it's JJJ185, the operational diary of Captain James of the</p> <p>15 Mthatha NIU –</p> <p>16 CHAIRPERSON: We haven't got [microphone</p> <p>17 off, inaudible] either.</p> <p>18 MR CHASKALSON SC: It has – no, no, this</p> <p>19 is a new exhibit.</p> <p>20 CHAIRPERSON: How do I describe JJJ185?</p> <p>21 MR CHASKALSON SC: Extract from the</p> <p>22 operational diary of Captain James, and the reference in</p> <p>23 your files, Commissioners, is file 3.6 from pages 2669 to</p> <p>24 2673.</p> <p>25 CHAIRPERSON: 2669 to?</p>

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1 MR CHASKALSON SC: 2669 to 2673.  
 2 CHAIRPERSON: Thank you, and that's file  
 3 3.6.  
 4 MR CHASKALSON SC: Indeed, and on 2669 we  
 5 see the front page of the operational diary, Bobby, I think  
 6 Weldon James, and his address, and then if we move forward  
 7 to 2671, unfortunately these pages are not numbered  
 8 sequentially, but the extract that I'm interested in is at  
 9 page 2671, which is his diary entries for 16 August. There  
 10 Captain James recorded against 06:00, "Office briefing by  
 11 Major-General Annandale. Today is the day to take back our  
 12 street and restore peace." Do you recall anything like  
 13 that being said at the 6 o'clock JOC?  
 14 COLONEL SCOTT: No.  
 15 MR CHASKALSON SC: But again it's  
 16 possible that it was said but that you were preparing your  
 17 presentation and weren't paying attention to what was being  
 18 said by Major-General Annandale?  
 19 COLONEL SCOTT: It could be, yes.  
 20 CHAIRPERSON: If the entry is correct, it  
 21 would seem as if the "D-day" expression and what follows  
 22 it, I take it had been said by Major-General Annandale. I  
 23 mean he was after all the chairperson of the JOCCOM, was he  
 24 not?  
 25 COLONEL SCOTT: If it was said, yes.

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1 MR CHASKALSON SC: Chairperson, I'm going  
 2 to be some time on these notes and I've just seen the time.  
 3 I wonder if this would be an appropriate time for the tea  
 4 adjournment?  
 5 CHAIRPERSON: We didn't start at half  
 6 past 9; we actually started a little bit later. I was  
 7 proposing to go on until quarter past 11, but if an  
 8 adjournment at this stage would be convenient for you for  
 9 various reasons, I'll grant it. But I'm in your hands.  
 10 MR CHASKALSON SC: Chairperson, I'm happy  
 11 to proceed.  
 12 MR BIZOS SC: Mr Chairman, before the  
 13 adjournment, we have been informed reliably by one of our  
 14 colleagues that attended court this morning, the  
 15 application for funding has succeeded and I thought I would  
 16 place that on record, which I hope will not make it  
 17 necessary to have long adjournments anymore.  
 18 CHAIRPERSON: Thank you for telling us  
 19 that, Mr Bizos. I take it that means that some of those  
 20 who are currently missing who previously participated in  
 21 our sessions, will be returning.  
 22 MR CHASKALSON SC: Colonel, if we go  
 23 lower down that page, we see the notes "Specific policing  
 24 act to take place, not limited to both hostels. Phase 2  
 25 today, further deployment whilst unions talk," and I think

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1 that's "less than 9 o'clock, before 9 o'clock, SAPS to  
 2 phase 2. Biggest presence POP and TRT front line, cordon  
 3 intensified and out to bigger areas. Any person with  
 4 weapon will be APPR," which I understand to mean  
 5 apprehended, "and accosted." Arrested. Arrested.  
 6 CHAIRPERSON: Accosting is normally  
 7 another kind of operation altogether.  
 8 MR CHASKALSON SC: Do you recall those  
 9 statements being said?  
 10 COLONEL SCOTT: If you could just direct  
 11 me to more or less the time in the margins where we're  
 12 reading?  
 13 MR CHASKALSON SC: I beg your pardon. If  
 14 we can go back to JJJ168, the notes of the 6 o'clock  
 15 JOCCOM. I'm sorry.  
 16 CHAIRPERSON: [Microphone off, inaudible]  
 17 on that page.  
 18 MR CHASKALSON SC: Nine lines below "D-  
 19 day" we see, "Specific policing act to take place."  
 20 CHAIRPERSON: Thank you.  
 21 MR CHASKALSON SC: "Not limited to both  
 22 hostels. Phase 2 today, further deployment whilst unions  
 23 talk," and I think that's a less than sign -  
 24 CHAIRPERSON: I think that's plus-minus,  
 25 I would think. Many years of reading police dockets

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1 encourages me to believe that's plus-minus.  
 2 MR CHASKALSON SC: "Plus-minus 9 o'clock,  
 3 SAPS to phase 2. Biggest presence POP and TRT front line,  
 4 cordon intensified and out to bigger areas. Any person  
 5 with weapon will be approached and arrested." Do you  
 6 recall those statements being made at the 6 o'clock JOCCOM?  
 7 [11:08] COLONEL SCOTT: I don't, but I'm sure  
 8 this is still General Annandale speaking and as I mentioned  
 9 in my statement, what I do recall from the 6am JOCCOM on  
 10 the 16th is that General Annandale gave most of the overview  
 11 on what was to happen and my task was pretty limited to the  
 12 showing of the actual positioning on the Google map,  
 13 etcetera.  
 14 MR CHASKALSON SC: So again General  
 15 Annandale may have made these statements but you may not  
 16 have been aware of them because you were preparing and  
 17 focussing elsewhere?  
 18 COLONEL SCOTT: Well, the precise wording  
 19 is what's difficult to recall, but I do recall General  
 20 Annandale giving an overview of what was to happen at stage  
 21 2. I think he also mentioned stage 3 as well, the revision  
 22 thereof and I say this because normally what he was moving  
 23 to doing was what I had done on the Wednesday and he was  
 24 covering most of this now on the Thursday, which left me to  
 25 speak very, - well, a lot less to the actual slides that I

<p style="text-align: right;">Page 14435</p> <p>1 had to give.</p> <p>2 CHAIRPERSON: Colonel, remind me,</p> <p>3 approaching people with weapons and arresting them today,</p> <p>4 that wasn't part of phase 2, was it?</p> <p>5 COLONEL SCOTT: No.</p> <p>6 CHAIRPERSON: That was part of phase 3?</p> <p>7 COLONEL SCOTT: That's part of phase 3,</p> <p>8 yes.</p> <p>9 CHAIRPERSON: Ja, so effectively he</p> <p>10 appears to have been saying that, we're moving on to phase</p> <p>11 3 today, if they don't hand over their weapons we're doing</p> <p>12 phase 3 today?</p> <p>13 COLONEL SCOTT: Well, if I read the D-day</p> <p>14 and if that's what he said, that is –</p> <p>15 CHAIRPERSON: Well, you see the reason we</p> <p>16 ask you is, you were there.</p> <p>17 COLONEL SCOTT: Yes.</p> <p>18 CHAIRPERSON: We can both read it, we can</p> <p>19 both work out what it probably means but you have the</p> <p>20 advantage over me that you were there.</p> <p>21 COLONEL SCOTT: I was there as I say, but</p> <p>22 I don't recall the specifics of the meeting of that time</p> <p>23 and as I said, even reading these minutes, it doesn't</p> <p>24 particularly ring a bell to me.</p> <p>25 CHAIRPERSON: Yes, you recall the minutes</p>	<p style="text-align: right;">Page 14437</p> <p>1 not retreating. Agreement, everything to be done on</p> <p>2 command, today things will be changed." Now the first</p> <p>3 question I have to ask you is, is that an account of your</p> <p>4 words at the meeting?</p> <p>5 COLONEL SCOTT: I don't think so, no, it</p> <p>6 looks to be somebody speaking to what I had obviously got</p> <p>7 up and shown on a presentation to the layout of the</p> <p>8 vehicles and where the different forces needed to be</p> <p>9 placed.</p> <p>10 MR CHASKALSON SC: So it is somebody else</p> <p>11 speaking. Do you recall anybody, do you recall these words</p> <p>12 or words along these lines being spoken at the meeting?</p> <p>13 COLONEL SCOTT: No.</p> <p>14 MR CHASKALSON SC: Whose role at the</p> <p>15 meeting would it have been to speak to what you had</p> <p>16 described in your briefing?</p> <p>17 COLONEL SCOTT: I could only think it</p> <p>18 would be General Annandale after I had got up and shown the</p> <p>19 presentation that he would then reinforce what I had said,</p> <p>20 positioning certain commanders, just ensuring that they</p> <p>21 knew who they were and what their roles were and I alluded</p> <p>22 to that because of the Wednesday morning meeting as well.</p> <p>23 CHAIRPERSON: Have you seen, - you've</p> <p>24 seen this document before, I take it?</p> <p>25 COLONEL SCOTT: Yes, I have.</p>
<p style="text-align: right;">Page 14436</p> <p>1 but if we read the actual minutes –</p> <p>2 COLONEL SCOTT: Or notes –</p> <p>3 CHAIRPERSON: - that were –</p> <p>4 COLONEL SCOTT: Ja –</p> <p>5 CHAIRPERSON: - ultimately produced at</p> <p>6 the inquiry, - no, when, they don't tell us any of that.</p> <p>7 COLONEL SCOTT: Ja, I understand –</p> <p>8 CHAIRPERSON: That's the problem that</p> <p>9 presumably will be dealt with later.</p> <p>10 MR CHASKALSON SC: At the bottom of this</p> <p>11 page, "We cannot entertain people with weapons," do you</p> <p>12 recall General Annandale saying that?</p> <p>13 COLONEL SCOTT: No.</p> <p>14 MR CHASKALSON SC: And again you concede</p> <p>15 that it is possible that he did say that but that you were</p> <p>16 occupied with something else.</p> <p>17 COLONEL SCOTT: That is so, or</p> <p>18 alternatively I just can't recall it, it is some time ago.</p> <p>19 MR CHASKALSON SC: Maybe if we can go</p> <p>20 through to the fifth page of the document, paginated page</p> <p>21 27. At this point whoever is speaking is, is speaking</p> <p>22 about your briefing, let's see what's recorded and then</p> <p>23 I'll ask you some questions. "Brigadier Scott's briefing,</p> <p>24 NB, to follow to the letter, NB, to start with the force</p> <p>25 continuum, they must see it is stopping here and now, SAPS</p>	<p style="text-align: right;">Page 14438</p> <p>1 CHAIRPERSON: Now Mr Chaskalson jumps to</p> <p>2 page, what's page 27 of his file, there are a couple of</p> <p>3 pages setting out various other statements, before his page</p> <p>4 27, you've read those?</p> <p>5 COLONEL SCOTT: I've been through them, I</p> <p>6 wouldn't be able to –</p> <p>7 CHAIRPERSON: Can you, does that reflect</p> <p>8 what you'd said, the previous pages? In other words the</p> <p>9 reason I'm asking you is, when we get to talk of page 27,</p> <p>10 does that reflect what was said after you'd spoken?</p> <p>11 COLONEL SCOTT: It would seem so,</p> <p>12 Chairperson. Something that I also picked up when I read</p> <p>13 these is that the pages aren't numbered. The numbers that</p> <p>14 have been placed on now were placed on after the facts, so</p> <p>15 it is possible that when they were handed over they're not</p> <p>16 in sequence and I would think so because we've got, I know</p> <p>17 that we started every day as is standard procedure with the</p> <p>18 roll call, because you wouldn't want to start briefing</p> <p>19 until you knew who was there and in doing the roll call you</p> <p>20 gave late comers the opportunity still to get there before</p> <p>21 you moved on to the briefings, but when it would start</p> <p>22 speaking to the specifics of stage 2 and possibly even</p> <p>23 stage or phase 2 and phase 3, that would be myself. I can</p> <p>24 see the coordinating instructions are even in here.</p> <p>25 CHAIRPERSON: Where are they?</p>

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1 COLONEL SCOTT: That's –  
 2 CHAIRPERSON: Give us the file, I know  
 3 this is a –  
 4 COLONEL SCOTT: 27 –  
 5 CHAIRPERSON: - a subsequent number, but  
 6 this –  
 7 COLONEL SCOTT: It is –  
 8 CHAIRPERSON: Yes, no, but I want to  
 9 follow it on my hardcopy. I know that the page numbers at  
 10 the top are recent, but to enable us to follow, –  
 11 COLONEL SCOTT: Yes –  
 12 CHAIRPERSON: - what page are you  
 13 referring to now?  
 14 COLONEL SCOTT: The page is page 27, the  
 15 one on the screen.  
 16 CHAIRPERSON: - the material on pages 25  
 17 to 26, when you read that through did you see recorded what  
 18 you had said or what someone else would have said, the  
 19 details of those sales that were to be available for  
 20 detention facilities and the trucks that were coming and  
 21 all the kind of stuff? Was that what you had said or  
 22 General Annandale had said or somebody else?  
 23 COLONEL SCOTT: Chairperson, this seems  
 24 to be page 25, it seems to be the roll call, the type of  
 25 roll call that was held. It is dealing with the amount of

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1 people, Gauteng, Pretoria, 28 plus 2, 3 Nyalas, 2 wire.  
 2 CHAIRPERSON: Ja, but at the top of the  
 3 pages, cluster 170 cells, individual detention facilities  
 4 spread over 5 stations, that doesn't sound like a roll  
 5 call?  
 6 COLONEL SCOTT: No, those would be the  
 7 type of things though that General Annandale would be  
 8 asking if he'd asked for –  
 9 CHAIRPERSON: I see, so that conveys to  
 10 you what's written here, that is a note of what General  
 11 Annandale had said.  
 12 COLONEL SCOTT: Yes.  
 13 CHAIRPERSON: Is that right? Mr  
 14 Chaskalson, when we reach a suitable stage for the  
 15 adjournment will you let me know?  
 16 MR CHASKALSON SC: Chairperson, now is as  
 17 good as any.  
 18 CHAIRPERSON: Very well, we'll adjourn  
 19 now for 15 minutes.  
 20 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 21 [11:42] CHAIRPERSON: The Commission resumes. I  
 22 want to announce that we will not be sitting on Friday,  
 23 which is in any event a half day, so we will endeavour to  
 24 make some other adjustments to the times to make up some of  
 25 the last time. But the fact we're not sitting doesn't mean

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1 that work will not be done, and so there's no fear that the  
 2 proceedings will be unduly extended because we're not  
 3 sitting on Friday, but I'm announcing that now so that  
 4 those who wish to make travel arrangements based on that  
 5 information can do so. Colonel, you're still under oath.  
 6 DUNCAN GEORGE SCOTT: s.u.o.  
 7 CHAIRPERSON: Mr Chaskalson, I take it  
 8 you have further questions for the witness.  
 9 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):  
 10 I do, Chairperson. Colonel, just before we broke you were  
 11 responding to questions from the Chairperson in relation to  
 12 the notes on page 25 of this document, and starting with  
 13 "Cluster 170 cells individual detention facilities spread  
 14 over five stations." Now I'm not sure if I understood your  
 15 answer correctly, but would I be correct in assuming that  
 16 this would be a response to a question that Major-General  
 17 Annandale would have directed to the representative of the  
 18 cluster, Rustenburg cluster, as to how many cells were  
 19 available?  
 20 COLONEL SCOTT: I understand it would be,  
 21 yes.  
 22 MR CHASKALSON SC: And so in advance of  
 23 the JOCCOM at 6 o'clock someone in the cluster had  
 24 established that there would be 170 cells and individual  
 25 detention facilities spread over five stations within the

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1 cluster.  
 2 COLONEL SCOTT: It seems that way, yes.  
 3 MR CHASKALSON SC: Would that have been  
 4 an indicator that SAPS were intending to make large-scale  
 5 arrests on that day?  
 6 COLONEL SCOTT: It could be seen that  
 7 way. I think one must understand that we throughout were  
 8 planning that a tactical option could be exercised at any  
 9 time of discretion, depending on threat levels or when the  
 10 police would decide to go to the tactical option. So I  
 11 think one must consider that point too.  
 12 MR CHASKALSON SC: If I can take you then  
 13 to page 28 – sorry, we're still on JJJ168, if we can get it  
 14 up. If we can go back; that doesn't seem to be, that's not  
 15 my one, not my 28. Oh, it would be page 6, page 6 of the  
 16 PDF file. On that page you'll see there's under the  
 17 heading "Commanders," there's a description of – well, let  
 18 me just read it. "OFS 1 platoon and 3 Nyalas. Colonel  
 19 MAKH," which I would imagine is Makhubela, "3 Nyalas and,"  
 20 I'm not sure what comes next, "TRT split into three. NIU  
 21 reserves split between rest of units. Colonel Makhubela  
 22 telephone number," and then "Colonel Gaffley forward  
 23 holding area 1." Then the note in which I'm interested,  
 24 "When order is given to withdraw come back to COM centre,"  
 25 I'd imagine that would be command centre, "for briefing on



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1 next phase." Do you recall an instruction being given at  
 2 the 6 o'clock JOCCOM that when the order is given to  
 3 withdraw, commanders must come back to the command centre  
 4 for briefing on the next phase?  
 5 COLONEL SCOTT: I'm not sure if it's  
 6 going to be through hindsight, but what I do recall is –  
 7 and I say this could have been after Marikana, just in the  
 8 building of the presentation, it was said that before the,  
 9 a tactical option would be exercised, that they would call  
 10 back the commanders to brief them so that they would know  
 11 what to do. So in that context, that's how I understood  
 12 it, but I see what you're saying here, that it's written in  
 13 a proactive sense and not in a timeless sense.  
 14 MR CHASKALSON SC: I'm not sure, we may  
 15 be at cross purposes here. Can you explain what you  
 16 understood me to have seen?  
 17 COLONEL SCOTT: Well, my understanding of  
 18 that comment and how I understood it was that before a  
 19 tactical option of any type would be called for, or would  
 20 be executed, the commanders would be called back to be  
 21 briefed on the tactical option before they would be  
 22 expected to carry it out.  
 23 MR CHASKALSON SC: You see, what struck  
 24 me about the note is it presupposes that there is going to  
 25 be a next phase that day. Do you recall anything of that

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1 nature at the JOCCOM?  
 2 COLONEL SCOTT: No, I'd, I think I've  
 3 stated before I've, throughout this JOCCOM and up until  
 4 approximately 1, 1:30, I was never of the opinion, or of  
 5 the knowledge that there was a definite phase 3 going to  
 6 take place that day. We were always of the understanding  
 7 that it could take place because we'd moved to stage 2 and  
 8 we, but that it was definitely going to before sundown take  
 9 place, that was not to my knowledge, no.  
 10 MR CHASKALSON SC: But there are a whole  
 11 lot of notes that we've addressed on these minutes that  
 12 suggest that that may in fact have been communicated, but  
 13 not come to your knowledge. Do you accept that?  
 14 COLONEL SCOTT: Yes.  
 15 COMMISSIONER HEMRAJ: Might this not  
 16 relate to the stage before the cordon and search of the  
 17 hostels?  
 18 MR CHASKALSON SC: Indeed, Commissioner  
 19 Hemraj; it strikes me that there was of course at 6 o'clock  
 20 still the possibility of a surrender, in which case,  
 21 according to your earlier evidence, the cordon and search  
 22 "phase 6" would be implemented without phases 4 and 5. So  
 23 what I would read that as reflecting is that one of two  
 24 things could happen; either there would be a surrender, or  
 25 a consensual departure from the mountain, in which case the

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1 cordon and search was planned. That you do recall.  
 2 COLONEL SCOTT: Yes.  
 3 MR CHASKALSON SC: Because you were sent  
 4 off to prepare the, to finalise the application for the  
 5 cordon and search.  
 6 COLONEL SCOTT: Yes.  
 7 MR CHASKALSON SC: But of course if there  
 8 wasn't a consensual departure from the mountain, there  
 9 might be a different next phase, which would have to be the  
 10 tactical phase.  
 11 COLONEL SCOTT: Well, I can't say that I  
 12 knew that that was going to be that result that day.  
 13 MR CHASKALSON SC: Yes.  
 14 COLONEL SCOTT: So but –  
 15 COMMISSIONER HEMRAJ: The reason I  
 16 pointed that out was that on page 27 it says under phase 6,  
 17 it looks like "Force reorganising at staging area." I  
 18 don't know if that might refer to a withdrawal of the  
 19 troops and coming back to the command centre. It just  
 20 occurred to me when I read it that that is what it might  
 21 refer to.  
 22 MR CHASKALSON SC: Maybe if we could ask  
 23 Colonel Scott to respond to your query, Commissioner.  
 24 COLONEL SCOTT: The, after stage 6 – I  
 25 read that –

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1 COMMISSIONER HEMRAJ: Phase 6.  
 2 COLONEL SCOTT: Phase 6.  
 3 COMMISSIONER HEMRAJ: [Microphone off,  
 4 inaudible]  
 5 CHAIRPERSON: It's about the middle of  
 6 the page of page 27, you see the middle – you see there's  
 7 a –  
 8 MR CHASKALSON SC: If we can just go back  
 9 up one page –  
 10 CHAIRPERSON: - entry beginning at phase  
 11 A1 and then all the way down to phase 6 in the middle of  
 12 the page, and then it says, "Cordon and search hostels."  
 13 And then below that there's the line of writing –  
 14 COLONEL SCOTT: Yes.  
 15 CHAIRPERSON: - to which Commissioner  
 16 Hemraj referred.  
 17 COLONEL SCOTT: Chairperson, on what's  
 18 reflecting to here is just the command and control, when an  
 19 operation's been concluded, to report back to a central  
 20 point again, in this where it is mentioned here on page 27.  
 21 MR CHASKALSON SC: So Colonel, that would  
 22 be a post-operation reorganisation, or return almost.  
 23 COLONEL SCOTT: Yes. Yes.  
 24 MR CHASKALSON SC: And the difference  
 25 with the note on page 28 is that anticipates a further

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1 phase, "When order is given to withdraw come back to COMM  
 2 centre for briefing on next phase." So it's not post-  
 3 operation, it's mid-operation, as it were.  
 4 COLONEL SCOTT: Yes.  
 5 MR CHASKALSON SC: Colonel, we've come  
 6 across further evidence that suggests very strongly that by  
 7 early morning of the 16th SAPS had decided that the 16th  
 8 would be the D-day, and if I can hand in five exhibits,  
 9 JJJ180 to 184. JJJ180 is an extract from the occurrence  
 10 book of the Phokeng Mortuary for the 16th of August 2012,  
 11 and JJJ181 to 184 are affidavits taken by IPID from public  
 12 servants employed at the Phokeng Mortuary. JJJ181 is the  
 13 affidavit of Simon Mmuka, M-M-U-K-A, Laaka. JJJ182 is the  
 14 affidavit of Tulane Ralph, and I think it is Tladinyane, T-  
 15 L-A-D-I-N-Y-A-N –  
 16 CHAIRPERSON: T-L?  
 17 MR CHASKALSON SC: A-D-I-N-Y-A-N-E.  
 18 CHAIRPERSON: JJJ184?  
 19 MR CHASKALSON SC: 183 is the affidavit  
 20 of Josephine Keetseng –  
 21 CHAIRPERSON: I'm sorry, that was 182  
 22 then?  
 23 MR CHASKALSON SC: Indeed.  
 24 CHAIRPERSON: 183, yes?  
 25 MR CHASKALSON SC: Josephine Keetseng, K-

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1 E-E-T-S-E-N-G Ngake, N-G-A-K-E.  
 2 CHAIRPERSON: K-E-E-T?  
 3 MR CHASKALSON SC: S-E-N-G, and her  
 4 surname is Ngake, N-G-A-K-E, and JJJ184 is Ernest Matthews  
 5 Thage, T-H-A-G-E, and it may be simplest to start with the  
 6 affidavit of Ms Ngake, JJJ183 –  
 7 CHAIRPERSON: Are there hardcopies in the  
 8 file?  
 9 MR CHASKALSON SC: That's right. There  
 10 are copies –  
 11 CHAIRPERSON: Are there hardcopies in the  
 12 file?  
 13 MR CHASKALSON SC: Commissioner, I  
 14 apologise, it's file 3.6, and they run from, these  
 15 annexures run sequentially from 2653 through to 2673, and  
 16 I'll give specific page references as we turn to specific  
 17 annexures. If we can start with the affidavit of Ngake at  
 18 page 2663, and if we can just scroll up a little from  
 19 what's on the screen. Come down; that's great. There Ms  
 20 Ngake says, "On Thursday 16 August 2012 in the morning I  
 21 was officially on duty at the district office when I  
 22 received a call from Colonel Claassen of Phokeng SAPS.  
 23 Colonel Claassen informed me that they are going to close  
 24 down the miners at the koppie in Marikana and he requested  
 25 four mortuary vehicles to be sent at Marikana for standby.

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1 I indicated that I can only send one vehicle and I further  
 2 requested Claassen to send me a letter of request. I then  
 3 received an email from Elmarie of Phokeng SAPS for the  
 4 request. I then contacted our standby cell phone and I  
 5 escalated the request to Tladinyane."  
 6 If we can then move to Mr Tladinyane, which is  
 7 JJJ182, at page 2660, and Mr Tladinyane says, "On Thursday  
 8 2012-08-16 I was on duty at Phokeng Forensic Office. I got  
 9 instruction from Ms Ngake that I must go to Marikana Police  
 10 Station. She told me that we will get further instructions  
 11 on our arrival. On my arrival at Marikana Police Station I  
 12 was escorted to Lonmin Mine. There were a lot of police  
 13 station. I was driving Forensic Pathology vehicle with  
 14 registration GDD478NW. Colonel Madoda showed us where to  
 15 park our vehicle. He informed me that we are called there  
 16 as role-players so that if there is death then we can  
 17 transport the deceased to the mortuary. It was around 9:50  
 18 in the morning. I stayed there until the following day."  
 19 Then if we can go to JJJ181, the affidavit of  
 20 Simon Mmuka Laaka at 2656, and I must immediately draw to  
 21 your attention that there is a discrepancy between the  
 22 affidavits of Mr Laaka and Mr Tladinyane in relation to  
 23 times. Mr Laaka says, "On Thursday 2012-08-16 at about  
 24 08:00 I was officially on duty at Phokeng Government  
 25 Mortuary, busy with a post mortem, when I received an

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1 information from my colleague, Mr Tladinyane, that we are  
 2 requested to go to Marikana for standby and that all  
 3 departments are requested. We continued with the post  
 4 mortem and indicated that we will go there after the post  
 5 mortem. We finished the post mortem at around 11 to 12;  
 6 I'm not sure about the exact time. We arrived at Marikana  
 7 Police Station at about 13:00. We were directed to the JOC  
 8 where many police were gathered. On arrival we found  
 9 Colonel Madoda of the police and informed us that we must  
 10 park there and wait for call-up if something has happened.  
 11 We parked there until about 16:00 when we were called to go  
 12 to Nkaneng."  
 13 And finally if we can go to the occurrence book  
 14 of the mortuary, JJJ180, which is at 2653, that illegible  
 15 front page reflects the fact that it is the Phokeng  
 16 Mortuary occurrence book. If we turn to the third page,  
 17 which is the entry for the 16th of August, we'll see under  
 18 entry number 200 at 08:30, "Report Colonel Claassen from  
 19 Phokeng SAPS informed us (Phokeng FPS)," which I think is  
 20 forensic pathology service, "that Colonel Madoda from  
 21 National office requested one backup mortuary vehicle to be  
 22 stationed at Marikana Police Station for any disaster that  
 23 can occur during the Marikana Lonmin strike. Ms Ngake then  
 24 requested Forensic Pathology officers Laaka and Tladinyane  
 25 to station at Marikana Police Station using motor vehicle

<p style="text-align: right;">Page 14451</p> <p>1 GDD478NW, and for Forensic Pathology officer Makoma to 2 return to the local," I think it's "wyk," but we don't need 3 to worry about it. 4 CHAIRPERSON: "Not to remain at, to 5 remain at the local," something. 6 MR CHASKALSON SC: "To remain at the 7 local, "wyk." Finally for completeness there's the 8 affidavit of Mr Thage, JJJ184, and that's 2666. "I hereby 9 declare that on Thursday the 16th August 2012 I was on duty 10 and received a call from district coordinator Ms Ngake, who 11 informed us that she received a call from Colonel Claassen 12 and Colonel Madoda. She informed me that Claassen and 13 Madoda requested one backup mortuary vehicle to be 14 stationed at Marikana Police Station for any disaster that 15 could occur during Marikana Lonmin strike. Ms Ngake 16 further requested that Forensic Pathology officers Laaka 17 and Tladinyane to station at Marikana SAPS using motor 18 vehicle number, and that Makoma must remain at the local," 19 again "wyk (area). I then conveyed the instructions to 20 Laaka and Tladinyane, who immediately went to Marikana. I 21 hereby state that motor vehicle with registration number 22 GDD478NW is a Nissan Hardbody that is utilised to transport 23 dead people (hearse)." 24 [12:02] So if we read the documents together it appears 25 that at some stage before 8:30 in the morning on the 16th</p>	<p style="text-align: right;">Page 14453</p> <p>1 two colonels apparently knew that SAPS was going to close 2 down the miners on the Koppie that day. They also 3 anticipated that there may be people killed in the process 4 and they wanted four mortuary vehicles. Do you know how 5 many bodies a mortuary vehicle can take? 6 COLONEL SCOTT: Sorry, I don't know. 7 MR CHASKALSON SC: Have you ever been 8 involved in operations that have resulted in multiple 9 deaths of suspects? 10 COLONEL SCOTT: Well, not to the extent 11 of Marikana, no, so – 12 MR CHASKALSON SC: No, no, well, no one 13 has since 1960 in this country, but say three, four people? 14 COLONEL SCOTT: Yes. 15 MR CHASKALSON SC: And do you know if 16 three or four people's bodies fit into one mortuary 17 vehicle, do you recall? 18 COLONEL SCOTT: I don't know, as I say 19 the unit I had to deploy with, once we've handed over the 20 scene back to the detectives we try to move away due to the 21 media issues. 22 MR CHASKALSON SC: So you were not there 23 when the mortuary vehicles were coming? 24 COLONEL SCOTT: No. 25 MR CHASKALSON SC: Well, we'll get the</p>
<p style="text-align: right;">Page 14452</p> <p>1 Colonel Claassen and Madoda of SAPS arranged that the 2 Phokeng Mortuary would be called to organise, or to request 3 four mortuary vehicles to come to Marikana because in the 4 words of Colonel Claassen as reported by Ms Ngake and I 5 quote, "They were going to close down the miners at the 6 koppie in Marikana and Ms Ngake could only spare one 7 vehicle, so that is the only vehicle that was sent. It 8 arrived there some time before any shootings had taken 9 place." Now the only Colonel Claassen of whom we are aware 10 that was involved in this operation is a colonel from the 11 Katlehong TRT. Are you aware of that Colonel Claassen? 12 COLONEL SCOTT: I am, yes. 13 MR CHASKALSON SC: Are you aware of any 14 other Colonel Claassen? 15 COLONEL SCOTT: No. 16 MR CHASKALSON SC: And Colonel Madoda is 17 the Cluster Detective Coordinator of the Rustenburg 18 Cluster, is that correct? 19 COLONEL SCOTT: I don't know, but I'll 20 take your word for that. 21 MR CHASKALSON SC: Are you aware of any 22 Colonel Madoda in the Rustenburg area? 23 COLONEL SCOTT: No. 24 MR CHASKALSON SC: Now according to these 25 affidavits in the occurrence book, by 8:30 on the 16th these</p>	<p style="text-align: right;">Page 14454</p> <p>1 relevant evidence through another witness. Was the issue 2 of mortuary vehicles discussed at the JOC? 3 COLONEL SCOTT: I don't recall it, no, I 4 don't, from my side I don't recall it being discussed, no, 5 I'm not sure if it was a side task been given, but I don't 6 recall it. 7 MR CHASKALSON SC: But from your answers 8 to previous questions about what was and wasn't discussed 9 at the JOC I imagine it would be possible that it was 10 discussed at the JOC but you would have been preoccupied 11 with your presentation and might not have heard it? 12 COLONEL SCOTT: Yes. 13 COMMISSIONER HEMRAJ: Can Mr Semenya 14 perhaps tell us if these two colonels were part of the 15 operations or was it someone sitting in the office issuing 16 instructions? 17 MR SEMENYA SC: I'll ascertain the facts 18 and come back to you, Commissioner. 19 CHAIRPERSON: Thank you, Mr Semenya. 20 COLONEL SCOTT: Chair, if I can, I know 21 that the Claassen we're speaking of is TRT, I'm just not 22 sure that coming from Katlehong which is on the East Rand 23 of Johannesburg, would have the immediate contact numbers 24 or know the people in person, or that he would be tasked to 25 actually do that type of tasking, so I'm sure there must</p>

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<p>1 have been another Claassen.</p> <p>2 MR CHASKALSON SC: Well, SAPS will inform</p> <p>3 us, but we can say with some confidence that Colonel Madoda</p> <p>4 is the Cluster Detective Coordinator at the Rustenburg</p> <p>5 Cluster and was involved in certain parts of this</p> <p>6 operation. While we're on possible –</p> <p>7 CHAIRPERSON: We've already looked at it,</p> <p>8 the note at 8:30 says, Colonel Claassen from Phokeng SAPS,</p> <p>9 so either that's where he comes from or the person who made</p> <p>10 the entry made a mistake, but Colonel Madoda in the same</p> <p>11 entry is referred to, as having come from the national</p> <p>12 office, I don't think we have any other information.</p> <p>13 MR CHASKALSON SC: Indeed, I think</p> <p>14 Colonel Madoda is from Phokeng SAPS and I suspect that what</p> <p>15 may have happened is then, there may have been some</p> <p>16 confusion but that's something that we will investigate.</p> <p>17 While we're on what look like preparatory logistical steps</p> <p>18 for a tactical operation on the 16th, I would like to show</p> <p>19 you an extract from the operational diary of Colonel Merafe</p> <p>20 for 16 August. That will be JJJ186, of Colonel Merafe.</p> <p>21 CHAIRPERSON: Sorry, where is it, which</p> <p>22 file?</p> <p>23 MR CHASKALSON SC: 3.6.</p> <p>24 CHAIRPERSON: Page?</p> <p>25 MR CHASKALSON SC: 2674.</p>	<p>1 CHAIRPERSON: It is described as,</p> <p>2 Marikana, sorry, Lieutenant Kwadi, is it?</p> <p>3 MR CHASKALSON SC: I think Kgwadibana.</p> <p>4 CHAIRPERSON: Kgwadibana sent 4,000</p> <p>5 rounds of R5 to Marikana for Lonmin conflict.</p> <p>6 MR CHASKALSON SC: Whose responsibility</p> <p>7 would it have been to arrange the delivery of R5 rounds to</p> <p>8 Marikana for the purposes of Operation Platinum?</p> <p>9 COLONEL SCOTT: If it would have been</p> <p>10 brought up it would have been dealt with under the</p> <p>11 logistical issues within the JOCCOM in the morning and it</p> <p>12 would normally have been brought up to be a shortage of</p> <p>13 ammunition for that matter of members, but I can't recall a</p> <p>14 request for ammunition being made.</p> <p>15 MR CHASKALSON SC: But again you would</p> <p>16 concede that it is possible that such a request was made</p> <p>17 but that you either didn't take notice of it or you just</p> <p>18 don't remember it?</p> <p>19 COLONEL SCOTT: Yes.</p> <p>20 MR CHASKALSON SC: Well, maybe let's</p> <p>21 separate those two. If a request for 4,000 rounds was made</p> <p>22 and you heard it –</p> <p>23 COLONEL SCOTT: I would –</p> <p>24 MR CHASKALSON SC: - I imagine you would</p> <p>25 have remembered it?</p>
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<p>1 CHAIRPERSON: I don't know if what I said</p> <p>2 about the descriptions of the exhibits was on record, so</p> <p>3 I'll just repeat it in case it isn't. JJJ186 is an extract</p> <p>4 from the operational diary from Colonel Merafe.</p> <p>5 MR CHASKALSON SC: If we go to page 2678,</p> <p>6 it is the extract for the 16th of August and if we go down</p> <p>7 to 3:30, 15:30, there Colonel Merafe has entered Lieutenant</p> <p>8 Kgwadibana sent 4,000 rounds of R5 to Marikana for Lonmin</p> <p>9 conflict at 15:30. In your capacity as chief planner on</p> <p>10 this operation did you ever make a request for 4,000 R5</p> <p>11 rounds to be delivered to Marikana?</p> <p>12 COLONEL SCOTT: No, I didn't.</p> <p>13 MR CHASKALSON SC: Did your plan</p> <p>14 contemplate the need for 4,000 R5 rounds?</p> <p>15 COLONEL SCOTT: No.</p> <p>16 MR CHASKALSON SC: Was the issue of R5</p> <p>17 rounds ever discussed at the JOC?</p> <p>18 COLONEL SCOTT: Not that I can recall, I</p> <p>19 could only think, maybe members had not yet replenished</p> <p>20 magazines after the Monday incident, if R5 was even used</p> <p>21 there, I'm not sure.</p> <p>22 MR CHASKALSON SC: And the ballistics</p> <p>23 reports do reflect that some R5 rounds were used on the</p> <p>24 13th, but nothing like 4,000.</p> <p>25 COLONEL SCOTT: Yes, no.</p>	<p>1 COLONEL SCOTT: Yes.</p> <p>2 MR CHASKALSON SC: So you concede that it</p> <p>3 is possible that such a request was made but that you</p> <p>4 didn't hear it?</p> <p>5 COLONEL SCOTT: Yes.</p> <p>6 COMMISSIONER HEMRAJ: Mr Chaskalson, am I</p> <p>7 right that Colonel Merafe was not at Marikana on the 16th?</p> <p>8 MR CHASKALSON SC: That's correct,</p> <p>9 Commissioner.</p> <p>10 CHAIRPERSON: I think in his diary he was</p> <p>11 –</p> <p>12 MR CHASKALSON SC: He was organising the</p> <p>13 funeral for, I think Warrant Officer Lepaaku.</p> <p>14 CHAIRPERSON: Well, that's what this page</p> <p>15 indicates at noon, departure to Klipgat for memorial</p> <p>16 service of the late Warrant Officer Lepaaku.</p> <p>17 COMMISSIONER HEMRAJ: In what context</p> <p>18 would this entry read, Mr Chaskalson, can you assist us?</p> <p>19 MR CHASKALSON SC: Commissioner, that's</p> <p>20 an issue which we will have to canvas with Colonel Merafe,</p> <p>21 I don't want to speculate at this stage, but there are a</p> <p>22 range of possibilities, I just wanted to clarify from</p> <p>23 Colonel Scott whether he could shed any light on it.</p> <p>24 Finally, Colonel, were you aware of the delivery of 4,000</p> <p>25 R5 rounds to Marikana on the 16th?</p>

<p style="text-align: right;">Page 14459</p> <p>1 COLONEL SCOTT: No.</p> <p>2 MR CHASKALSON SC: Colonel, if we can</p> <p>3 return briefly to those contemporaneous notes of the 16th,</p> <p>4 JJJ168, what is particularly disconcerting to us as</p> <p>5 evidence leaders in relation to the late emergence of these</p> <p>6 notes and they only emerged in September this year, is that</p> <p>7 all of the passages to which I've been referring you to,</p> <p>8 which suggests D-day on the 16th and related matters, that a</p> <p>9 decision to move to phase 3 had been taken at six o'clock,</p> <p>10 all of those passages were kept out of the official minutes</p> <p>11 of the meeting of the 6am JOCCOM on the 16th that was</p> <p>12 presented to this Commission as Exhibit TT4. So if one</p> <p>13 were to have read TT4 without seeing these notes one would</p> <p>14 have had no idea that the notes suggest strongly that a</p> <p>15 decision has been taken that if the mine workers did not</p> <p>16 leave voluntarily on the 16th SAPS would move to the</p> <p>17 tactical phase. Can you explain that in any way?</p> <p>18 COLONEL SCOTT: I can't give light to</p> <p>19 that, I wasn't part of the minutes, the setting up of</p> <p>20 minutes.</p> <p>21 MR CHASKALSON SC: When did you first see</p> <p>22 minutes of the 6am JOCCOM on the 16th?</p> <p>23 COLONEL SCOTT: Something that came back</p> <p>24 to memory this year was when I saw minutes of the 15th which</p> <p>25 were distributed, if I recall, at the Potchefstroom meeting</p>	<p style="text-align: right;">Page 14461</p> <p>1 definitely finalised by the 24th of August which is when</p> <p>2 they were made available to IPID, so they couldn't have</p> <p>3 been changed at or after Roots. Roots only started on the</p> <p>4 27th, I think it was. All of the other minutes appear to</p> <p>5 have been settled at Roots, so what we found on the SAPS</p> <p>6 master was the following, but first of all the 28th of</p> <p>7 September was the second day of Roots, you will agree with</p> <p>8 that?</p> <p>9 COLONEL SCOTT: Yes.</p> <p>10 MR CHASKALSON SC: Now on the 28th of</p> <p>11 September between 1:31pm and 1:33pm someone within SAPS</p> <p>12 created five empty files which will be JJJ121 to JJJ125 and</p> <p>13 because they're empty we can't show you anything out of</p> <p>14 them because they are literally empty, there is nothing in</p> <p>15 them. JJJ121 was called "Briefing minutes, 15 August</p> <p>16 2012." I beg your pardon, JJJ121 had a little bit of</p> <p>17 content, that was what was included on the 28th of September</p> <p>18 2012 under the heading, "Briefing minutes, 13 August 2012."</p> <p>19 JJJ122 which was given the name "Briefing minutes, 16</p> <p>20 August 2012," can we call that up, just to confirm that it</p> <p>21 is a blank file? No, this is not JJJ122, this is JJJ122.1,</p> <p>22 I think, or possibly .2. 122 is a completely empty file</p> <p>23 and to mark it in the exhibits we have just included its</p> <p>24 properties because that provides us with some content and</p> <p>25 the properties show that page 234 of File 4, the properties</p>
<p style="text-align: right;">Page 14460</p> <p>1 at Roots, because I saw on there my handwriting where I had</p> <p>2 crossed out certain words and made changes to them, but it</p> <p>3 is, I don't recall seeing anything other than that. I</p> <p>4 didn't even recall seeing the minutes of the 15th at Roots,</p> <p>5 I was pretty busy with the presentation most of the time</p> <p>6 while the others were even off, but I don't recall seeing</p> <p>7 minutes of the 16th or the special JOCCOM for that matter</p> <p>8 either.</p> <p>9 MR CHASKALSON SC: I think it is</p> <p>10 important to distinguish between the special JOCCOM and the</p> <p>11 minutes of the six o'clock JOCCOM because we know from SAPS</p> <p>12 that the minutes of the special JOCCOM are in a unique</p> <p>13 class, because they are minutes that were demanded by IPID</p> <p>14 in the immediate after map of the tragedy and they were</p> <p>15 provided to IPID on the 24th of August according to SAPS.</p> <p>16 So they are minutes that were finalised at least by the 24th</p> <p>17 of August which was before Roots and so they couldn't have</p> <p>18 been changed as a result of what took place. If we look at</p> <p>19 the other minutes it seems to us –</p> <p>20 CHAIRPERSON: I think your previous</p> <p>21 sentence wasn't recorded, I don't know whether it was</p> <p>22 worthy of being recorded, perhaps you want to repeat it?</p> <p>23 MR CHASKALSON SC: Well, the distinction</p> <p>24 from our perspective between the special JOCCOM minutes and</p> <p>25 the other minutes is that the special JOCCOM minutes were</p>	<p style="text-align: right;">Page 14462</p> <p>1 show that it was created on the 28th of August at 1:33 and</p> <p>2 that the total editing time was 1 minute and zero words.</p> <p>3 JJJ123 was given the name, "Briefing minutes, 17</p> <p>4 August 2012," if we can call that up? Again it was an</p> <p>5 empty file, the properties show it was created on the 28th</p> <p>6 of August at 1:33pm, the total editing time nought minutes,</p> <p>7 words nought.</p> <p>8 CHAIRPERSON: What page is that in File</p> <p>9 4?</p> <p>10 MR CHASKALSON SC: 235.</p> <p>11 CHAIRPERSON: Thank you.</p> <p>12 MR CHASKALSON SC: JJJ124 was debriefing</p> <p>13 minutes of 15 August at page 236 and that was also created</p> <p>14 on the 28th of August at 1:32, again it was a blank file,</p> <p>15 the properties show words nought, total editing time nought</p> <p>16 minutes.</p> <p>17 MR SEMENYA SC: Chair, not, - again for</p> <p>18 correctness, these are not debriefing minutes of anything,</p> <p>19 it is information about them.</p> <p>20 CHAIRPERSON: Well, is it more accurate</p> <p>21 to say that these are descriptions of the documents which</p> <p>22 contain no words and had a total editing time of no</p> <p>23 minutes?</p> <p>24 MR SEMENYA SC: Yes, but –</p> <p>25 CHAIRPERSON: Yes, I understand the</p>

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1 heading reads, information about JJJ124, that of course,  
 2 that may or may not be what the evidence leaders added but  
 3 then the words appear, "Debriefing minutes, 15 August," but  
 4 perhaps Mr Chaskalson can explain to us what's going on.  
 5 MR CHASKALSON SC: Chairperson, what the  
 6 Commissioners have in front of them in the exhibits is the  
 7 properties of each of these files printed out. The names  
 8 and the evidence leaders haven't changed anything that one  
 9 will get out of the file in this printout, we've just  
 10 called up the properties of the file and printed them out.  
 11 The names of the file that were given to them by someone  
 12 who had access to the SAPS hard drive were, JJJ121 was  
 13 called "Briefing minutes, 15 August 2012." JJJ122 was  
 14 called "Briefing minutes, 16 August 2012." JJJ123 was  
 15 called "Briefing minutes, 17 August 2012." JJJ124 was  
 16 called "Debriefing minutes, 15 August 2012." JJJ125 was  
 17 called "Debriefing minutes, 17 August 2012," and the  
 18 properties of that file are at page 237 and again that's  
 19 the file with no words and no editing time that was created  
 20 on the 28th of August at 1:33. So there are between 1:31  
 21 and 1:33, on the second day of Roots four empty files and  
 22 one practically empty file were created to house briefing  
 23 minutes of the 15th of August, briefing minutes of the 16th  
 24 of August, briefing minutes of the 17th of August,  
 25 debriefing minutes of the 15th of August and debriefing

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1 minutes of the 17th of August. Were you aware of this  
 2 process?  
 3 [12:21] COLONEL SCOTT: No, I wasn't.  
 4 MR CHASKALSON SC: Do you know who in  
 5 SAPS would have been responsible for this process?  
 6 COLONEL SCOTT: I think it may have been  
 7 Brigadier Pretorius, being the JOC Commander.  
 8 MR CHASKALSON SC: Okay. We've never  
 9 been shown debriefing minutes of the 15th, do you know if  
 10 any debriefing minutes exist?  
 11 COLONEL SCOTT: No, I haven't seen any  
 12 either.  
 13 MR CHASKALSON SC: So we have a file  
 14 created for debriefing minutes of the 15th on the 28th of  
 15 September but you've never seen any debriefing minutes of  
 16 the 15th?  
 17 COLONEL SCOTT: No.  
 18 MR CHASKALSON SC: What about debriefing  
 19 minutes of the 17th of August, are you aware of any  
 20 debriefing meeting that was held on the 17th of August?  
 21 COLONEL SCOTT: I was made aware probably  
 22 within the last month or two again of debriefing minutes  
 23 but what I understand them to be is a handing over process  
 24 where a commander would hand over to the new commander  
 25 coming in for the day shift after the night shift. If I'm

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1 not mistaken it's a Colonel Govender who set up a briefing  
 2 to brief the incoming Brigadier Pretorius the next morning  
 3 on the night shift, on what had occurred overnight.  
 4 MR CHASKALSON SC: That may assist us  
 5 because we may then be able to identify that document in  
 6 the JJJ series. If you bear with me for a minute – if one  
 7 goes to – sorry it's going to be the notes of the 17th of  
 8 August, it will be JJJ171 which start at page 87 of file 4  
 9 and if you have page 87 of JJJ171, I wonder if you could  
 10 look in the meantime at your document at page 87 which is  
 11 the first page of the PDF file of JJJ171. And if one runs  
 12 down to page 5 that appears to be notes of a JOCCOM meeting  
 13 which end with an attendance list. Is that the document  
 14 that you were referring to when you spoke about what you  
 15 understood to be the debriefing minutes of the 17th?  
 16 COLONEL SCOTT: Is it in Word format or  
 17 PDF?  
 18 MR CHASKALSON SC: No, PDF, JJJ171, notes  
 19 from the JOC 17 August 2012.  
 20 CHAIRPERSON: It's filed on which page?  
 21 MR CHASKALSON SC: It is page 87 of file  
 22 4.  
 23 COLONEL SCOTT: Ja, my exhibits are  
 24 stopping at JJJ167.  
 25 MR CHASKALSON SC: Thank you,

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1 Commissioner, my apologies, Colonel Scott.  
 2 COLONEL SCOTT: As mentioned, I think it  
 3 is from the night shift, they actually mention incidents  
 4 last night under point 2.  
 5 MR CHASKALSON SC: I'm not going to  
 6 question you on the contents of this document, I just  
 7 wanted to understand if this is the document to which you  
 8 were referring when you said earlier that you understood  
 9 that that was here. Now, alongside the five empty files or  
 10 practically empty files that were saved on the 28th of  
 11 September for the minutes of five meetings. A file that  
 12 wasn't empty was saved for the minutes of the special  
 13 JOCCOM meeting of the 16th. That will be a file which we'll  
 14 call JJJ126.  
 15 CHAIRPERSON: How do I describe JJJ126?  
 16 MR CHASKALSON SC: File of – electronic  
 17 copy of Minutes of Special JOCCOM meeting 2012-08-16. Now,  
 18 that file we can inform you matches the minutes that we  
 19 have seen as exhibit EE perfectly. So it was saved on the  
 20 28th of September, it matches EE but, of course, by the 28th  
 21 of September exhibit W had already been furnished to IPID.  
 22 So exhibit EE was created at least on or before the 24th of  
 23 September. There was an attempt at Potch to change exhibit  
 24 EE, at least one attempt or to edit it because on 1  
 25 September a new version was saved. That will be JJJ126.1

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1 which appears at 973 to 975 in file 3.2 and –  
 2 CHAIRPERSON: How do I describe that?  
 3 MR CHASKALSON SC: Chairperson, the  
 4 electronic files have the same name, it was a later saved  
 5 version of the same electronic file so possibly if we can  
 6 describe it as electronic file entitled Special JOCCOM  
 7 Meeting 2012-08-16.docx Saved on 1 September 2012 at 18:42.  
 8 We've compared –  
 9 MR SEMENYA SC: Sorry, Chair.  
 10 CHAIRPERSON: Yes, Mr Semenya.  
 11 MR SEMENYA SC: Sorry, Chair, through  
 12 you, we did not quite follow that exhibit EE was sought to  
 13 be changed what date? I did not follow.  
 14 CHAIRPERSON: I understood Mr Chaskalson  
 15 to say that it was saved, that it was changed, he didn't  
 16 say when, it was saved on the 1st of September 2012 at 18:42  
 17 I think he said.  
 18 MR CHASKALSON SC: That's correct,  
 19 Chairperson.  
 20 CHAIRPERSON: And anyway it's in file 3.2  
 21 at page 973. Mr Chaskalson, you owe it to us to tell us  
 22 what the –  
 23 MR CHASKALSON SC: The change is not a  
 24 significant change, well it's not a wholly insignificant  
 25 change, if I can just clarify for my learned friend, Mr

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1 Semenya because the file JJJ126.1 which contains the change  
 2 was saved on 1 September. The original file that matches  
 3 exhibit E perfectly was saved on 28 September and that's  
 4 JJJ126.  
 5 MR SEMENYA SC: Yes, the chronology  
 6 doesn't work for me, how can it be changed before it was  
 7 created.  
 8 MR CHASKALSON SC: 28 August, no sorry  
 9 let me just clarify this. I must just call up my files.  
 10 It's 28 August which is the second day of Roots it was my  
 11 mistake to refer to 28 September, it's 28 August which was  
 12 the second day of Roots. So JJJ126 was created on the 28th  
 13 of August. Now the only change the electronic comparison  
 14 of these two files shows is at the top of page 2 of the  
 15 document, page 74 of the file, if we can go down one page  
 16 on the screen, 974, 974 where it says "the presentation  
 17 included the following. Now EE says "the re-positioning of  
 18 the barbed wire for the protection of SAPS and especially  
 19 soft top vehicles" as does exhibit JJJ126, that was changed  
 20 from "repositioning" to "employment." For the rest it  
 21 stayed identical but the document that finally made its way  
 22 to the Commission is exhibit EE was the document without  
 23 that change. So exhibit EE reads "the repositioning of the  
 24 barbed wire for the protection of SAPS" that is what was  
 25 saved on the 28th of August after previously having been

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1 furnished to IPID on the 24th of August. It may well be  
 2 that once a version had been given to IPID it was thought  
 3 that it couldn't thereafter have been edited in anywhere.  
 4 On the 30th of August a blank attendance list was created  
 5 for the special JOCCOM meeting that had been held two weeks  
 6 earlier on 16 August. If I can call up JJJ165, that's an  
 7 attendance list for the special JOCCOM meeting 16 August  
 8 2012 that was saved two weeks after that meeting on the 30th  
 9 of August 2012. Do you know anything about this attendance  
 10 list?  
 11 COLONEL SCOTT: No.  
 12 MR CHASKALSON SC: Were you ever asked to  
 13 sign an attendance register for the special JOCCOM meeting  
 14 of the 16th of August?  
 15 COLONEL SCOTT: No.  
 16 MR CHASKALSON SC: Now over the three  
 17 days after the 28th of August the empty file for the minutes  
 18 of the 6 o'clock JOCCOM appears to have been filled. So a  
 19 draft of the 16th JOCCOM at 6 o'clock emerges on the SAPS  
 20 master hard drive at 6:42pm on 1 September and that is  
 21 JJJ122.1 file 3.2, page 966. This document is not  
 22 identical to TT4 which was the minute which was given to  
 23 this Commission so if we go to paragraph 2 of the document  
 24 it says "attendance list attached" which TT4 doesn't say.  
 25 Do you know anything about an attendance list for the 6am

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1 JOCCOM?  
 2 COLONEL SCOTT: No, I'm not aware of  
 3 attendance lists at any of the JOCCOMs that were sent  
 4 around.  
 5 MR CHASKALSON SC: So you were never  
 6 asked to sign an attendance list for the 6am JOCCOM before  
 7 or after that meeting?  
 8 COLONEL SCOTT: No.  
 9 MR CHASKALSON SC: If I might ask you to  
 10 take a copy of TT4 so that you can compare TT4 to this  
 11 document. Colonel, do you have TT4 in front of you?  
 12 COLONEL SCOTT: I do.  
 13 MR CHASKALSON SC: If we compare the two  
 14 documents –  
 15 CHAIRPERSON: We don't have it on the  
 16 screen.  
 17 MR CHASKALSON SC: I don't think we can  
 18 split our screen.  
 19 CHAIRPERSON: No, no I see they did  
 20 change the unfortunate heading of 3.2.  
 21 MR CHASKALSON SC: Maybe if we can look  
 22 at changes one by one. The first change is the change that  
 23 I identified already, that there's no reference to an  
 24 attendance list in JJJ122.1, sorry in TT4 whereas there was  
 25 one in JJJ122.1. The second change is the consequential

<p style="text-align: right;">Page 14471</p> <p>1 change to the numbering because paragraph 2 is now gone,  2 all of the numbers will be out by one in TT4. I'm having  3 my own technical difficulties at this point. Then as the  4 Chairperson has pointed out the amusing typo in 3.2 has  5 been corrected. 3.2 of 122.1 which becomes 2.2 of TT4.  6 [12:41] What we see in TT4 is the correct spelling of  7 "nightshift," as opposed to the unfortunate misspelling on  8 3.2 of JJJ122.1. If we go to the top of page 2 of TT4, we  9 see the words "He indicated that it is essential that the  10 briefing be followed to the letter and to start with the  11 force continuum. Everything to be done on command." Now  12 if we go back to 122.1, we don't see those words. So that  13 was added after 122.1, but that wording does in fact come  14 straight out of the handwritten notes, JJJ168. So if we go  15 to JJJ168 briefly, and we go to – which starts at page 23,  16 if I recall correctly, that wording appears at the top of  17 page 27. "Brigadier Scott's briefing important to follow  18 to the letter. Important to start with the force  19 continuum," and then what we don't see is, "They must see  20 it stopping here and now. SAPS not retreating." What we  21 do see is "Everything to be done on command." What we  22 don't see is "Today things will be changed." But it would  23 seem that the person who revised the draft in 122.1 may  24 well have had access to the notes because that wording is  25 almost verbatim taken from the notes.</p>	<p style="text-align: right;">Page 14473</p> <p>1 saved on 1 September at 18:42, and one minute later a draft  2 of what appears to have been designed as a chapter of the  3 presentation was saved, called, "8th Marikana Thursday  4 16th," and it pretty much reproduces these minutes. If we  5 can go to JJJ118, which is that draft of the presentation –  6 CHAIRPERSON: How do I describe it?  7 MR CHASKALSON SC: A PowerPoint  8 presentation entitled "8th Marikana Thursday 16th.pptx"  9 saved on 1 September 2012 at 18:43. Colonel, do you  10 recognise this document?  11 COLONEL SCOTT: It would be one of the  12 versions of the presentation as we were building it. Hang  13 on. I think we split the document at some stage because of  14 the bulkiness of the document.  15 CHAIRPERSON: You recognise this one.  16 Who did the saving for example? On whose computer would  17 this document have been and on whose compute would it have  18 been saved? Can you help us on that?  19 COLONEL SCOTT: Well, Chairperson, what I  20 know is that the narrative, if one would, which was built,  21 which actually inputs to much of what's going on in the  22 slides, the verbal, or the lettered writing, is the inputs  23 received by Colonel Visser, who was responsible for doing  24 those. Again myself did photographs, the encaptions on  25 photographs, videos, and the like. So the inputting of the</p>
<p style="text-align: right;">Page 14472</p> <p>1 The last significant change that we can find from  2 122.1 to TT4 is that some wording on page 2 of TT4 is not  3 in 122.1, and if we go to the top of TT4 where your  4 presentation is being reported, it reads, "His presentation  5 included the following; members will be deployed in the  6 following groups – dispersion/encirclement group, Brigadier  7 Calitz will be in charge of this group with Colonel  8 Makhubela to take command of the Nyalas with razor wire.  9 Dialogue with protesters will continue. In this group  10 there will be 5 POP Nyalas, 43 POP members, 2 negotiators.  11 They will be supported by eight TRT," and on it goes down  12 to "The police Squirrel will act as an aerial command post.  13 The SAP Oryx will be on standby with the reaction force at  14 the staging area if needed. This group will consist two  15 POPS with Nyalas with razor wire trailers."  16 Now if we go back to 122.1, the words that run  17 from that line, "Dialogue with protesters will continue,"  18 all the way down to "The SAP Oryx will be on standby with  19 the reaction force at the staging area if needed," don't  20 appear in this draft. They seem to have been added later.  21 Do you know anything about this draft, JJJ122.1 of the  22 minutes? Did you see it?  23 COLONEL SCOTT: No, not that I can  24 recall.  25 MR CHASKALSON SC: You see, JJJ122.1 was</p>	<p style="text-align: right;">Page 14474</p> <p>1 minutes into this, I can only presume that Colonel Visser  2 would have received the information and then put it into  3 the presentation.  4 MR CHASKALSON SC: Well Colonel, maybe I  5 can assist you in that regard. If we go to the properties  6 of this file, and I'm afraid I don't have the properties as  7 an exhibit; we will have them printed out, but you can call  8 up the properties. We see it's an Operation Rhino file  9 which was the base document that you used for your  10 presentations.  11 COLONEL SCOTT: That's correct.  12 MR CHASKALSON SC: But if we go down to  13 author and last modified, it appears that it may not have  14 been you who saved that. The author is SAPS656467.  15 COLONEL SCOTT: That was the computer  16 before the computer I had during Marikana where some –  17 MR CHASKALSON SC: Oh, so that would have  18 been there from your original Operation Rhino?  19 COLONEL SCOTT: That's right, yes.  20 MR CHASKALSON SC: But last modified,  21 user 1 –  22 COLONEL SCOTT: Ja, that's not, my  23 computer's name is Duncan Scott.  24 MR CHASKALSON SC: That's what we've  25 picked up, but who would be user 1?</p>



<p style="text-align: right;">Page 14475</p> <p>1 COLONEL SCOTT: I don't know. One would 2 have to look at the computers used to actually find that 3 name of that computer. 4 MR CHASKALSON SC: But you said earlier 5 in response to the Chair that the responsibility for 6 inputting the narrative information, if we call it that, 7 into the presentation was Colonel Visser's. 8 COLONEL SCOTT: Yes. 9 MR CHASKALSON SC: So we must pursue our 10 enquiries with Colonel Visser in relation to this matter. 11 COLONEL SCOTT: Yes, but just why I say 12 I'm not sure is there will be multiple computers with the 13 name user 1. It won't just be – 14 MR CHASKALSON SC: Yes. 15 COLONEL SCOTT: Ja. 16 CHAIRPERSON: If we have a look at who 17 was doing what at the time of preparation of the 18 presentation, we can narrow down the people concerned 19 fairly easily, it appears from what you've told us. Is 20 that right? 21 COLONEL SCOTT: That's right. 22 MR CHASKALSON SC: Colonel, what's 23 interesting about this draft of the presentation – there's 24 quite a lot that's interesting about this draft, but what 25 we'd like to point out at this stage is if one goes to</p>	<p style="text-align: right;">Page 14477</p> <p>1 also, or Colonel Visser was engaging with her to get 2 information, but he wouldn't have been in any way trying to 3 manipulate any inputs because he was not even present at 4 Marikana, for that matter. 5 CHAIRPERSON: She wasn't at the 6AM 6 meeting either, was she? 7 COLONEL SCOTT: No, she wasn't, 8 Chairperson. 9 MR CHASKALSON SC: Before we leave this 10 draft of the JJJ118, the presentation, if we can go down to 11 slide 22 where the ostensible decision to implement stage 3 12 is described, if we read through this slide, what's 13 significant to us is there's no hint in this draft of the 14 presentation that the move to phase 3 was triggered by any 15 escalation in the threat at the koppie. The only 16 suggestion in this slide of a reason for the move to phase 17 3 is the failure of Mr Mathunjwa to resolve the current 18 situation. Can you think of any reason why what SAPS now 19 says is the reason for the decision to move to phase 3 was 20 not reflected in this draft of the presentation? 21 COLONEL SCOTT: I can't, but in light of 22 – I think there's two decisions that are made, if I'm 23 seeing the evidence that you're leading. One is that the 24 SAPS takes a decision that a tactical option is required by 25 the end of Thursday. The other decision is the decision as</p>
<p style="text-align: right;">Page 14476</p> <p>1 slides 2 to 6, these slides purport to describe what 2 happened at the 6AM JOCCOM meeting, and if we compare these 3 slides to the minutes in 122.1, we see that most of the 4 content of these slides is lifted from 122.1, and the key 5 indicator in that regard is slide 4 because if we go to 6 slide 4 we see a verbatim repetition of the wording at the 7 top of page 2 of 122.1, and what's significant is that the 8 wording that ultimately makes its way into TT4 in the 9 middle of that section in 126.1, you'll recall those words, 10 "Dialogue with protesters will continue. In this group 11 there will be five POP Nyalas, 43 POP members, two 12 negotiators. They will be supported by eight TRT," that 13 whole section which is there in TT4 but not there in 122.1, 14 it's also missing from JJJ118. So this slide matches 15 exactly the passage in 122.1 that changed later before it 16 became TT4, and as I pointed out earlier, this file was 17 saved literally one minute after the file 122.1 was saved. 18 It appears, to us at any rate, that whoever was responsible 19 for putting together JJJ118 was probably also responsible 20 for putting together JJJ122.1. Do you have any sense of 21 who would have put together JJJ122.1, the minute in not 22 final form? 23 COLONEL SCOTT: I'm not sure. I think 24 it's possibly Brigadier Pretorius. I don't think that she 25 would have been working on her own. Obviously she was</p>	<p style="text-align: right;">Page 14478</p> <p>1 in to when this needs to occur, which would then play to 2 the role of the threat is intensifying, etcetera. I'm not 3 sure if – as I say, I wasn't involved in that decision 4 making process; I was a person receiving instruction, but I 5 think there are those two definite decisions that needed to 6 be taken, and as we know, as you're showing, one was 7 proposed on the Wednesday evening, but the actual when on 8 that day it needed to be taken still needed to be made. 9 MR CHASKALSON SC: But if we go to this 10 slide it suggests that the when decision was taken at 11 13:30, but there's no suggestion that the reason for the 12 when decision was that there was an escalation of the 13 threat. The only suggestion as to a reason is that, "Mr 14 Mathunjwa was supposed to indicate at 9 whether the 15 protesters on the koppie were prepared to lay down their 16 weapons. Mr Mathunjwa failed to provide feedback as 17 agreed." 18 COLONEL SCOTT: Yes, but I also just want 19 to raise the point that what we're dealing with are working 20 documents. So we're dealing with incomplete information 21 and as best possible by the time we got to the final 22 product, exhibit L, was the document which was approved. 23 It was the document which was laid forward with the 24 commanders having viewed it, etcetera. What we're dealing 25 with here is still a working document and I'm not sure, but</p>

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1 I think what's been placed here as well is also coming out  
 2 of some or other form of minutes.  
 3 MR CHASKALSON SC: You're correct there,  
 4 Colonel. What comes here is perfectly consistent with  
 5 exhibit EE, which is the minute of the special JOCCOM on  
 6 the 16th at 1:30. Maybe if we could call up EE, and if we  
 7 go down to item 3 of EE, purpose of the meeting, "The  
 8 Provincial Commissioner, Lieutenant-General Mbombo,  
 9 informed the meeting that she was involved in meetings with  
 10 the leadership of AMCU, namely Mr Joseph Mathunjwa, to  
 11 resolve the current situation, for the whole morning. Mr  
 12 Mathunjwa was supposed to indicate at 9 whether the  
 13 protesters on the koppie were prepared to lay down their  
 14 weapons. Mr Mathunjwa failed to provide the feedback as  
 15 agreed. The Provincial Commissioner instructed Major-  
 16 General Annandale to proceed with the implementation of  
 17 stage 3 of the operational plan." Now those are the  
 18 minutes that SAPS have given us of the 1:30 JOCCOM. They  
 19 are minutes which couldn't be changed at Potch because  
 20 they'd already been given to IPID, but what's significant  
 21 to us about these minutes is that they also say nothing  
 22 about an escalation of a threat, and it struck us as rather  
 23 strange that if so momentous a decision as to move to a  
 24 tactical intervention was taken for that reason, it  
 25 wouldn't have been minuted. Any comment on that?

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1 COLONEL SCOTT: I don't have, but just to  
 2 raise the point that the fact that the threats were made  
 3 towards the police is there, and the fact that they're not  
 4 mentioned in the minutes, is it not possible that this is  
 5 why we have working documents, draft documents, so that  
 6 when we present them to commanders they raise the issues  
 7 such as that to say but these are the reasons that we had  
 8 to move, as well as possibly a top management decision,  
 9 with the escalation of the threat towards the police, that  
 10 it was more motivated by that as well to have to employ the  
 11 tactical option that day.  
 12 MR CHASKALSON SC: Colonel, I've just  
 13 seen the time, that we've reached the lunch -  
 14 CHAIRPERSON: I was on the point of  
 15 saying to you that when you reach a suitable stage, will  
 16 you let me know so that we can take the adjournment?  
 17 MR CHASKALSON SC: If we could take the  
 18 adjournment now, Chairperson, because I will have a fair  
 19 amount to go on, on the slide -  
 20 CHAIRPERSON: Very well. We will now  
 21 take the adjournment until quarter to 2.  
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 23 [13:54] CHAIRPERSON: The Commission will resume.  
 24 Colonel Scott, you're still under oath.  
 25 DUNCAN GEORGE SCOTT: s.u.o.

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1 CHAIRPERSON: Mr Chaskalson.  
 2 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):  
 3 Colonel, when we broke you were mentioning that the  
 4 documents to which I was referring you to were working  
 5 documents and that when more information came in, they had  
 6 been amended to reflect the new information. You said that  
 7 threats were made on the morning of the 16th. We know that  
 8 threats were made on the morning of the 16th. Now the SAPS'  
 9 case is that it was as a result of these threats that the  
 10 decision to move to phase 3 was taken. We've searched all  
 11 of the contemporaneous documents we can find and we can  
 12 find only one contemporaneous record of a threat made on  
 13 the morning of the 16th prior to 13:30, which is when the  
 14 JOCCOM was held, special JOCCOM. That's what is reflected  
 15 in entry 998 of the occurrence book, FFF25, at 11:20. If  
 16 we can get FFF25 up, and if we can go to page 23 of that  
 17 document, and there under 998 you see the following,  
 18 "Situation report, Papa1 reported that the group are moving  
 19 towards the Nyala. The group leader asked the police  
 20 official to remove their wires and he said that he's not  
 21 going to ask them again as he's also aggressive. About 3  
 22 500 people gathered." Now that to the best of our  
 23 knowledge is the sum total of any contemporaneous record of  
 24 a threat being made before 1:30. Are you aware of any  
 25 other?

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1 COLONEL SCOTT: Not from contemporaneous  
 2 documents, but I do recall on that day Dennis Adriaio,  
 3 Captain Adriaio from our Media Liaison of the SAPS who  
 4 called through that, I'm not sure how I, I just heard it  
 5 the chatter in the JOC, that he had mentioned the media  
 6 were moving back and that they had expressed fear for their  
 7 safety due to the crowd's attitude changing. That's just  
 8 one other; I'm not sure on what day, it may have been at  
 9 the same time or earlier that day that he had mentioned the  
 10 media had also said to him about the firearm that was  
 11 rolled up in a blanket in their midst, and as I say,  
 12 contemporaneous documents, I don't know of any other. It  
 13 may be hindsight now, or it may have been mentioned on the  
 14 day in the JOC, but there were the threats which were  
 15 relayed from Papa1, or Brigadier Calitz, in his  
 16 deliberation with the leader of the strikers at that time.  
 17 They were particularly worried, it seemed, about the razor  
 18 wire, prepositioning of those razor wires, and seemed to  
 19 have made a couple of enquiries and then threats regarding  
 20 those.  
 21 MR CHASKALSON SC: The only one of those  
 22 that made it into the occurrence book is 998 at 11:20.  
 23 CHAIRPERSON: Mr Semenya?  
 24 MR SEMENYA SC: Chair, I am aware that  
 25 the evidence of General Mpmembe amongst others is that there

<p style="text-align: right;">Page 14483</p> <p>1 was an escalation in tension leading up to the phase, or  2 stage 3, but as far as SAPS' case is concerned, there was  3 going to be a stage 3 if the arms were not voluntarily  4 surrendered by 9 o'clock as promised. That's our case.  5 That there is evidence different is a different point.  6 MR CHASKALSON SC: Well, then we don't  7 need to pursue this line –  8 CHAIRPERSON: Alright, let's just round  9 it up though. The two incidents to which you refer before  10 Mr Semenya spoke, were what happened when the barbed wire  11 was uncoiled. The strikers didn't like that and one of  12 their leaders came up and spoke to Colonel Makhubela.  13 According to exhibit L, which I take it we can accept on  14 this point at least to be correct, that happened at about  15 15:40. That appears from slide 192, and the same slide  16 refers to something which is not in the occurrence book but  17 is recorded here, that at about 13:40, that will be after  18 the meeting was called, both of those incidents after the  19 meeting was called, the leader – I think it's probably Mr  20 Noki – approached the Nyala, said he could see the SAPS  21 were making ready for war and then remember there was  22 discussion about that. Now both those incidents took place  23 after 13:30. The earlier one to which you refer, which is  24 the one in the occurrence book, that is 11:20 I think.  25 That was after 9:30. So, and if the decision was taken at</p>	<p style="text-align: right;">Page 14485</p> <p>1 It's just that we haven't been confronted with evidence of  2 a changing version by SAPS, and we have in this debate, I  3 mean this cross-examination now we were told it's going to  4 illustrate that. I just wanted to place on record that  5 there may be evidence to the contrary, but our version is  6 as we articulated in exhibit L.  7 CHAIRPERSON: No, I think that's clear  8 and I think there's no room for misunderstanding the part  9 of the parties involved here.  10 MR CHASKALSON SC: Chairperson, maybe if  11 we can just round off this topic before we leave it, in  12 relation to Mr Adriaio. Colonel, you concede rightly that  13 there is no contemporaneous record of Mr Adriaio's report.  14 There is, however, a contemporaneous record of something  15 different to Mr Adriaio's report. Last month we were given  16 a document, which we will ask to be admitted as JJJ128.  17 It's a file called "Occurrence and notes for 16 August."  18 JJJ128.  19 CHAIRPERSON: Is it in the files we've  20 been given?  21 MR CHASKALSON SC: It is, Chairperson; it  22 is – I'm afraid we don't have a reference to it. We think  23 – well, let's find out what it is before we speculate as to  24 where you should look for it.  25 CHAIRPERSON: I thought I saw a document</p>
<p style="text-align: right;">Page 14484</p> <p>1 9:30, as announced by the Provincial Commissioner, nothing  2 prior to 9:30 is before us on the evidential table, if I  3 can call it that, indicating anything approximating the  4 escalation. I understand now Mr Semenya says it isn't the  5 case of the police; perhaps some people may say it's no  6 longer the case of the police, but we don't have to go  7 there now. That will be a matter for argument later, I  8 take it, but certainly nothing approximating to escalation  9 before 9:30, and in fact only the one incident took place  10 before 1:30 in the afternoon. That's correct, isn't it, as  11 far as you understand?  12 COLONEL SCOTT: That's correct,  13 Chairperson.  14 CHAIRPERSON: Mr Semenya, I endeavoured,  15 it's been put to me that perhaps what I intended to convey  16 didn't come across clearly. I said that what you said your  17 case is as you've explained to us. I said some may say  18 that the escalation component was no longer your case, but  19 I'm not – I want to make it clear; I'm keeping an open  20 mind. I understand we will hear your argument fully  21 presented at the end. Obviously we're going to hear other  22 arguments which will be of a slightly different nature, but  23 we will only make up our minds on which are to be accepted  24 when we've heard all the evidence and all the arguments.  25 MR SEMENYA SC: No, thank you, Chair.</p>	<p style="text-align: right;">Page 14486</p> <p>1 like this in one of our files and I was looking for it a  2 minute ago, but I couldn't find it, so I may have seen  3 something else. Anyway, let's carry on in the meanwhile  4 and your industrious juniors will, I'm sure, be able to  5 turn it up if we have it, before very much time has  6 elapsed.  7 MR CHASKALSON SC: Chairperson, we have  8 found it. It's 3.2 from page 1021. 3.2, 1021, and the  9 entry that concerns us is at page 1026. What this document  10 is, is it's a typed version of the occurrence book with  11 inserts in red at certain points, which are not included in  12 the original occurrence book or the typed transcript, typed  13 copy of the original occurrence book, and we have been  14 informed that the inserts in red were transcribed from  15 contemporaneous notes taken in the JOC. If one goes to  16 page 1026 one sees at 15:30 an entry, "Major-General  17 Annandale informed JOC to inform Brigadier Calitz that the  18 media are at own risk as it is a dangerous situation. They  19 must be given final notice to leave the area." So the  20 contemporaneous note that there is doesn't reflect a  21 communication from the media to the SAPS that they are  22 leaving because they are worried; rather it reflects an  23 instruction by the SAPS to the media that they must leave  24 because it will be a dangerous area. We think we found the  25 source note for that entry in JJJ168, which is the</p>

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1 handwritten notes of the JOC of the 16th.  
 2 CHAIRPERSON: Page?  
 3 MR CHASKALSON SC: It's page 26 of the  
 4 original document. It's 48 of the file, and there is a  
 5 handwritten note, if we can call it up, page 26 of the file  
 6 at JJJ168. It says, "15:30 16 August, Major-General  
 7 Annandale, media own risk, dangerous situation, formal  
 8 notice." So the contemporaneous note that there is  
 9 suggests that the media had to be told to go away.  
 10 COMMISSIONER HEMRAJ: Is there any  
 11 indication as to how that information came to be in the  
 12 possession of Major-General Annandale?  
 13 MR CHASKALSON SC: I beg your pardon,  
 14 Commissioner?  
 15 COMMISSIONER HEMRAJ: Is there any  
 16 indication as to how that information came to the knowledge  
 17 of Major-General Annandale, that the media were at risk, or  
 18 are we saying it was his own assessment of the situation?  
 19 MR CHASKALSON SC: It appears to us that  
 20 it was his own assessment of the situation when the  
 21 tactical phase was going to commence, that once the  
 22 tactical phase was going to commence, the media would be at  
 23 risk of being caught in the crossfire, so to speak.  
 24 COLONEL SCOTT: Chairperson, if I may  
 25 just – I'm not sure if it will bear relevance or not, but

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1 on exhibit L, slide 171 is an actual media report on the  
 2 situation prior to events unfolding on the 16th where they  
 3 have a reporter in field explaining the volatile situation  
 4 that's developing.  
 5 MR CHASKALSON SC: I think in fairness  
 6 to –  
 7 CHAIRPERSON: Sorry, that appears to be  
 8 just after half past 2; if you look at the slide 171, see  
 9 the bottom left-hand corner –  
 10 COLONEL SCOTT: It's correct,  
 11 Chairperson.  
 12 CHAIRPERSON: - "E-News channel, 14:34."  
 13 MR CHASKALSON SC: In fairness to the  
 14 Colonel, Chairperson, there is a report from I think Gia  
 15 Nicolaides of E-News who may in fact be reflecting on the  
 16 period before 1:30. So maybe what we should do is play  
 17 171.  
 18 CHAIRPERSON: [Microphone off, inaudible]  
 19 I say the reference to the change in the, what are called  
 20 the protesters' mood, it should have been the strikers'  
 21 mood, is at slide 189 and that is under the time 15:35.  
 22 That's the reference to the protester with the firearm with  
 23 the blanket, and so on. According to exhibit L that was at  
 24 around about 15:35.  
 25 [14:14] [VIDEO SHOWN]

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1 MR CHASKALSON SC: Colonel, I think both  
 2 you and I may have confused that clip for another one later  
 3 on, but maybe we can invite the commissioners to listen to  
 4 that clip at their leisure. The Geo Nicolaidis report is  
 5 212, I now see, was that the one to which you were  
 6 referring?  
 7 COLONEL SCOTT: I'd have to check it up  
 8 but it quite possibly is, yes.  
 9 MR CHASKALSON SC: Why don't you do that  
 10 overnight –  
 11 COLONEL SCOTT: Okay –  
 12 MR CHASKALSON SC: - and then come back  
 13 with a reference. Colonel, before it turned into something  
 14 of a long diversion, we were dealing with the apparent  
 15 creation at Roots of a series of documents that were, well,  
 16 styled as minutes of meetings that happened from 15 to 17  
 17 August, an attendance register. We saw on the SAPS master  
 18 that on the 28th of August which was also the second day of  
 19 Roots, a document called "Oath of secrecy" was created,  
 20 JJJ141. We are having some more technical difficulties.  
 21 Colonel, do you have your own JJJ141?  
 22 COLONEL SCOTT: Yes.  
 23 MR CHASKALSON SC: Can we get a page  
 24 reference for it?  
 25 CHAIRPERSON: It is page 2016 in File

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1 3.5.  
 2 MR CHASKALSON SC: Thank you,  
 3 Chairperson. Colonel, do you recognise that document?  
 4 COLONEL SCOTT: I filled out similar  
 5 documents before as standard procedure in the police and at  
 6 high level meetings, so yes, it is a standard document, I  
 7 think it may even have an SAP number which gives an  
 8 official police document number.  
 9 MR CHASKALSON SC: And do you recall  
 10 being asked to fill one of those documents out at Roots?  
 11 COLONEL SCOTT: I don't know if I did  
 12 fill one out, it is quite possible.  
 13 MR CHASKALSON SC: And a second oath of  
 14 secrecy that was created three days later on the 31st of  
 15 August, JJJ141.1, that's File 3.5, page 2016, which  
 16 contains the same oath on the, which is two pages, the  
 17 first page is the same oath as we saw in JJJ141 and the  
 18 second page has an added declaration of secrecy, have you  
 19 seen that document?  
 20 COLONEL SCOTT: I know they exist, if I  
 21 can put it that way.  
 22 MR CHASKALSON SC: Do you recognise it?  
 23 COLONEL SCOTT: Yes.  
 24 MR CHASKALSON SC: Do you recall whether  
 25 you were asked to sign this document at Roots?

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1 COLONEL SCOTT: Again I don't recall  
 2 filling it out, it is possible I did, I just don't recall  
 3 if I did do it or not.  
 4 MR CHASKALSON SC: Did you, were you ever  
 5 given a reason why you or SAPS members might have had to  
 6 sign oath of secrecy at Roots?  
 7 COLONEL SCOTT: No, not that I can  
 8 recall, no.  
 9 MR CHASKALSON SC: You say this is fairly  
 10 standard SAPS practice?  
 11 COLONEL SCOTT: When we are dealing with  
 12 sensitive operations at high levels, which are classified  
 13 operations we would fill out similar forms, which just  
 14 binds you to no give out the information that you're  
 15 dealing with, and obviously when you're dealing with  
 16 certain sensitive training materials, etcetera, or when you  
 17 have a certain classification within the system then you  
 18 would fill out certain forms like this when dealing with,  
 19 in those environments that you're classified to deal with.  
 20 MR CHASKALSON SC: Is there anything  
 21 relating to what was discussed at Roots that you would have  
 22 regarded as falling into the category of classified  
 23 information absent this oath of secrecy?  
 24 COLONEL SCOTT: I think at most, if I  
 25 speak for myself and where I'm originally allocated, there

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1 are certain training materials or tactics that we would not  
 2 want to divulge, but other than that, no.  
 3 MR CHASKALSON SC: But was there any  
 4 discussion of those training materials and tactics at  
 5 Roots?  
 6 COLONEL SCOTT: Well, from my level, no,  
 7 it would be done at the tactical level, so it would have  
 8 been strategies between commanders and their members on the  
 9 ground, specifically to deal with some of the arresting  
 10 procedures and so on. There are certain tactics involved  
 11 in that and I couldn't -  
 12 MR CHASKALSON SC: You see I can  
 13 understand what you're saying in relation to meetings about  
 14 ongoing operations and operations that will take place in  
 15 the future, but that's not what Roots was about, was it?  
 16 COLONEL SCOTT: No.  
 17 MR CHASKALSON SC: So Roots was about  
 18 something that had happened in the past?  
 19 COLONEL SCOTT: Yes.  
 20 MR CHASKALSON SC: In that context can  
 21 you offer as any explanation of why there might have had to  
 22 be oaths of secrecy signed by anyone?  
 23 COLONEL SCOTT: As I stated I'm not aware  
 24 why something would be signed, I'm only speaking for the  
 25 environment I come from and even in the typical questions

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1 that have arisen in the Commission so far as in, well, if  
 2 you were going to arrest how would you have arrested being  
 3 a Specialised Unit. If we divulge that to the public and  
 4 make it common knowledge they would simply work out  
 5 defences against that. So that type of thing for the what  
 6 if's or, but again I'm speaking now out of a speculative  
 7 type of environment.  
 8 MR SEMENYA SC: Chair -  
 9 COLONEL SCOTT: What I dealt with, I  
 10 didn't see anything that, other than possibly members  
 11 speaking out to the media without going through the proper  
 12 communication channel.  
 13 MR SEMENYA SC: Chair, the documents the  
 14 record will show, are call unauthorised disclosure of  
 15 information by a member of the South African Police  
 16 Service. An oath of secrecy, it is a term of art.  
 17 MR CHASKALSON SC: With respect to my  
 18 learned friend, it is a term of art that SAPS chose to use  
 19 when they named these files, Mr Chairperson. The SAPS'  
 20 name of this file is "Oath of Secrecy" and the name of the  
 21 other file is "Oath of Secrecy 1."  
 22 MR SEMENYA SC: The documents say what  
 23 they say, Chair.  
 24 CHAIRPERSON: This document we have at  
 25 the moment, the unauthorised disclosure of information

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1 document, simply draws the attention of the member of the  
 2 service to the provisions of Section 70 of the Act.  
 3 MR CHASKALSON SC: Indeed, Chairperson.  
 4 CHAIRPERSON: Which applied anyway and  
 5 continues to apply.  
 6 MR CHASKALSON SC: Yes.  
 7 CHAIRPERSON: So this document is really  
 8 just a form of bringing it to the attention of those who  
 9 might have forgotten what Section 70 said and sought an  
 10 acknowledgement that the members concerned understood the  
 11 seriousness and consequences of contravening the section,  
 12 well, the section - be in jail for two years and then para  
 13 2 says, understand the disclosure of information, not  
 14 limited to supplying your documentation, but disclosure of  
 15 facts by word of mouth, etcetera, which is simply a gloss  
 16 on a Section 70 statement, which I imagine it is correct  
 17 that the section would be contravened and not only by  
 18 disclosing documents, but also doing the other things  
 19 listed in para 2, that's right, isn't it?  
 20 MR CHASKALSON SC: That is correct,  
 21 Chairperson, but we struggle to see how Section 70 could  
 22 ever have applied to the sorts of procedures that were  
 23 taking place at Roots which is why I've been asking these  
 24 questions to Colonel Scott and to someone who isn't legally  
 25 trained, being asked to sign a document like this may not,

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1 they may not understand that it relates only to the narrow  
2 ambit of Section 70.

3 MR SEMENYA SC: No, I don't take my  
4 learned colleague as a basis for that.

5 CHAIRPERSON: It is a matter for argument  
6 I would imagine. It might conceivably act in terrorem in a  
7 certain way, but that's not something we can deal with on  
8 the evidence before us. It may well be a subject of  
9 argument if someone comes and says it had that affect on  
10 him.

11 MR SEMENYA SC: Well, if there is that  
12 evidence we must deal with it, Chair, I need to be prepared  
13 for that evidence if it is there. If it was in terrorem I  
14 want to know if it was, but –

15 CHAIRPERSON: No, what I'm trying to –

16 MR SEMENYA SC: - if there is no basis  
17 for it –

18 CHAIRPERSON: What I'm saying to you, if  
19 there is such evidence, I said it might have that affect  
20 but eventually if there is evidence that had that affect  
21 you can deal with. You know obviously you're right, if  
22 there is no evidence, well, then there is nothing to deal  
23 with. I was really on your side on that point, Mr Semenya,  
24 but if I didn't make it clear I apologise.

25 COMMISSIONER HEMRAJ: Mr Chaskalson, do

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1 we know whether anyone who attended the Roots conference  
2 did in fact sign a document like this?

3 MR CHASKALSON SC: We don't know. I dare  
4 say the SAPS do know thought.

5 CHAIRPERSON: Let's ask the witness, you  
6 say you don't remember signing a document like that?

7 COLONEL SCOTT: No, Chairperson.

8 CHAIRPERSON: Do you know whether any of  
9 your colleagues, from your own knowledge whether any of  
10 your colleagues who were at Roots signed such a document?

11 COLONEL SCOTT: No, I can't, I don't know  
12 on their behalf, as I say and I don't want to put myself in  
13 a position, but I don't recall signing it, I'm not saying I  
14 didn't sign it, but I can't recall signing a document and  
15 as I say I've signed these before on previous operations  
16 which are proactive, quite rightly so.

17 CHAIRPERSON: Mr Chaskalson, it might be  
18 appropriate to move on to another point.

19 MR CHASKALSON SC: I will, Chairperson.  
20 It is my last point in relation to the ex post facto  
21 creation of documents with the appearance of  
22 contemporaneous documents. Colonel, can I ask you to look  
23 at another document that we found on your copy of the SAPS  
24 hard drive? It is Exhibit JJJ153. It is pages 1108 to  
25 1123, file 3.3. If we can start at the –

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1 CHAIRPERSON: How do I describe it for  
2 the record?

3 MR CHASKALSON SC: Document purporting to  
4 be a draft of an operational plan compiled by Captain  
5 Mpmembe.

6 CHAIRPERSON: We will just call it draft  
7 of operational plan compiled by Captain Bembe.

8 MR CHASKALSON SC: Chairperson, it is  
9 purporting, because quite clearly it wasn't an operational  
10 plan.

11 CHAIRPERSON: Drafted document purporting  
12 to be, a drafted document purporting to be operational plan  
13 compiled by Captain Mpmembe dated 13 August 2012.

14 MR CHASKALSON SC: Colonel, are you  
15 familiar with this document?

16 COLONEL SCOTT: I have gone through it,  
17 yes.

18 MR CHASKALSON SC: To us what it appears  
19 to be, the document which describes some sort of version of  
20 the plan that you designed, do you agree with that?

21 COLONEL SCOTT: Yes.

22 MR CHASKALSON SC: And concludes with the  
23 place for signature of Brigadier Calitz, Major General  
24 Naidoo and General Mpmembe. Can you go down to the last  
25 line, the last page of this document? So there are

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1 signature lines for this document to be recommended or not  
2 recommended, first of all by Brigadier Calitz, then by  
3 Major General Naidoo and finally to be approved or not  
4 approved, if we go down to the bottom, by Major General  
5 Mpmembe who was the overall commander of Operation Platinum.  
6 When did you first see this document?

7 COLONEL SCOTT: I'm not sure when it was  
8 downloaded onto my hard drive but I first looked at it when  
9 you gave it over as an exhibit to us, and I actually went  
10 into it to go and see what it was.

11 MR CHASKALSON SC: And you hadn't seen it  
12 before?

13 COLONEL SCOTT: No.

14 MR CHASKALSON SC: But we did get it off  
15 your copy of the SAPS master hard drive, do you concede?

16 COLONEL SCOTT: Yes.

17 MR CHASKALSON SC: And would you agree  
18 with me that what it looks like is an attempt ex post facto  
19 to represent a written plan that complied with the  
20 requirements of the SAPS procedures and to pass it off as a  
21 contemporaneous document.

22 COLONEL SCOTT: I think that's something  
23 that may be –

24 MR SEMENYA SC: No, Chair, no, we need to  
25 be given a basis for these propositions being put to

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1 witnesses.

2 CHAIRPERSON: Have you answered it?

3 COLONEL SCOTT: No.

4 MR CHASKALSON SC: Chairperson, if a

5 document which has lines for signature of three people to

6 approve a plan that ostensibly was a plan for the 13th to

7 the 16th of August, it is a document whose properties show

8 that it was created on the 4th of October. We know from

9 Colonel Scott's own evidence that there was no written plan

10 of this nature that was ever put before commanders for

11 signature in the form required by standing order 262. I

12 would submit that in the circumstances there is a very

13 strong basis for the proposition that I put to Colonel

14 Scott.

15 MR SEMENYA SC: Chair, again the document

16 is described in the manner my learned colleague is saying,

17 wherein are we told that it was intended to create an

18 impression it was created contemporaneously, ex post facto,

19 -

20 MR CHASKALSON SC: So –

21 MR SEMENYA SC: - issues that we are

22 concerned with?

23 MR CHASKALSON SC: The document has a

24 date, 13 August 2013.

25 MR SEMENYA SC: But there could be

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1 equally explanations why it was created at the time it was

2 created, not with the purpose that is ascribed to it now.

3 CHAIRPERSON: Well, I understood Mr

4 Chaskalson to say it appears, - he didn't say it appears,

5 that's the appearance it has, it starts off with the

6 sentence in the future tense and it combined SAPS force

7 will restore stability to the Lonmin mine area in Marikana

8 from 14 August. So the story it tells by itself is that it

9 is written on the 13th, describing in the future what's

10 going to happen from the 14th, so –

11 COMMISSIONER HEMRAJ: Except on this

12 page, –

13 MR SEMENYA SC: Chair, with respect –

14 COMMISSIONER HEMRAJ: Mr Semenya, it

15 refers to 13 September 2012 to 16 August 2012.

16 [14:34] MR CHASKALSON SC: That seems to be a

17 particular sloppy typo, I would submit, Commissioner, but

18 let me, I can argue this point at a later –

19 CHAIRPERSON: Mr Semenya, anything else

20 you wish to say on the point?

21 MR SEMENYA SC: Chair, the document,

22 that's what it says, the implication ascribed to it is

23 without foundation.

24 CHAIRPERSON: Well, I'll allow the

25 question on the basis that it is put as, it appears to be a

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1 document as described, in other words that's not a

2 conclusive statement that's being made and that's the

3 ruling I give, I'll allow the question but the question was

4 prefaced by the words, it appears. So, on that basis I'll

5 allow the question to be put if Mr Chaskalson wants to

6 persist in it.

7 MR CHASKALSON SC: Well, Chair, I can

8 argue this point at a later stage, let me put some more

9 specific questions to Colonel Scott. Do you know Captain

10 Mpembe, Colonel?

11 COLONEL SCOTT: No.

12 MR CHASKALSON SC: Did he play any role

13 in the planning processes at Marikana between 13 and 16

14 August?

15 COLONEL SCOTT: No, not that I am aware

16 of. I'm aware that there were those two plans created

17 before I got there, I'm not sure if he was the author of

18 those, but from 13, when I started strategising it, no.

19 MR CHASKALSON SC: Yes, my question is

20 confined to 13 to 16 August when you were present.

21 COLONEL SCOTT: Yes, no.

22 CHAIRPERSON: Is it correct to say that

23 this document follows the format of those earlier plans

24 that you referred to?

25 COLONEL SCOTT: That's correct,

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1 Chairperson.

2 CHAIRPERSON: Which provided for the

3 signature by the operational commander, followed by a note,

4 recommended or not recommended, by the commander followed

5 by the provision for approved or not approved by the

6 overall commander? So it does follow that format.

7 COLONEL SCOTT: It does, Chairperson, and

8 just from previous experience in observing people's plans

9 in the past and it is something I actually tried to

10 recommend not to do, but it is the easiest way to do it, is

11 to take a previous plan and to work from it so that your

12 formatting is already in place and many times they would

13 type over previous information and so on, just to keep the

14 headings and it may be that those are, it comes from maybe

15 the 13th or the 10th, I'm not sure.

16 MR CHASKALSON SC: Colonel, let's follow

17 that up a little, if I just get my copy up and maybe just

18 as an aside, if we go to page 3 of this document, 1110,

19 just in response to Commissioner Hemraj's question earlier,

20 the compiler of this document recorded that Colonel Madoda

21 of the Detectives was one of the commanders who would be

22 participating in this plan, but my question relates to

23 paragraph 1 on page 4.

24 COLONEL SCOTT: If I can just add, adding

25 to the list of who is there and who is not there, I've

<p style="text-align: right;">Page 14503</p> <p>1 noticed that myself and General Annandale don't appear in 2 this document from what I can see at any place or time. 3 MR CHASKALSON SC: Can you offer any 4 explanation for that? 5 COLONEL SCOTT: No. 6 MR CHASKALSON SC: Would any plan for 7 Marikana not involve the participation of yourself and 8 General Annandale? 9 COLONEL SCOTT: No, this is why I say I 10 don't want to speculate, but it is a possibility it was a 11 plan set up afterwards to show what the ideal should have 12 been similar to what I was doing with the presentation. 13 MR CHASKALSON SC: But then the presence 14 of signatures at the end would be – 15 CHAIRPERSON: Provision 4? 16 MR CHASKALSON SC: The signatures at the 17 end would be hard to explain. 18 COLONEL SCOTT: It would be, unless I say 19 it was a copy and paste document that he was simply working 20 over something previous, but again, I don't want get into 21 the speculation, I wasn't part of the drafting of this or – 22 MR CHASKALSON SC: Can I just clarify in 23 paragraph 1, situation, do you recognise that phrase? 24 COLONEL SCOTT: It seems to be the 25 mission that I proposed.</p>	<p style="text-align: right;">Page 14505</p> <p>1 information and so on to the hard drive and download onto 2 it. 3 MR CHASKALSON SC: If this document was 4 created on the 4th of October it could have made its way on 5 to the hard driver at any stage thereafter. Who has had 6 custody of the hard drive since 4 October? 7 COLONEL SCOTT: Colonel Visser, but I 8 just want to say, is it on the SAPS hard drive because I 9 believe Colonel Visser looked for it after you handed it in 10 as a piece of evidence and I think they said they couldn't 11 find it on the SAPS hard drive. 12 MR CHASKALSON SC: Well, we can 13 investigate that with Colonel Visser, but if it isn't on 14 the SAPS hard drive you'll have to explain to us how it got 15 to be on your hard drive. 16 COLONEL SCOTT: Ja, I understand that, 17 Sir. 18 MR CHASKALSON SC: So maybe I should ask 19 you that question, how did it get to be on your hard drive? 20 COLONEL SCOTT: I don't know. 21 MR CHASKALSON SC: Can you think of any 22 way other than it being part of a bulk copying from the 23 SAPS master that it would had gotten onto your hard drive? 24 COLONEL SCOTT: Well, in speculation it 25 could have been given to me to peruse to see how accurate</p>
<p style="text-align: right;">Page 14504</p> <p>1 MR CHASKALSON SC: And when did you 2 propose that mission? 3 COLONEL SCOTT: I would have drafted that 4 on the evening of the 13th, the morning of the 14th, early 5 morning 14. 6 MR CHASKALSON SC: It is your 7 formulation? 8 COLONEL SCOTT: Mm – 9 MR CHASKALSON SC: The wording there is 10 wording that you composed, not wording that you copied from 11 somebody else? 12 COLONEL SCOTT: Yes. 13 MR CHASKALSON SC: Now this document made 14 its way onto the SAPS master hard drive. Do you have any 15 information about how that would have happened? 16 COLONEL SCOTT: No. 17 MR CHASKALSON SC: Who would have been in 18 charge of the copy of the SAPS master hard drive from which 19 you took your copy of this document? 20 COLONEL SCOTT: Well, the hard drive is 21 only, - well, I don't want to say it has only ever been, 22 but it is mostly being in the possession of Colonel Visser 23 and Brigadier Pretorius who was simply a custodian of it, 24 but never really worked on it, but I know that there has 25 been multiple times where people would just bring their</p>	<p style="text-align: right;">Page 14506</p> <p>1 it was, that's all, - if it is only on my hard drive that 2 could be one of the reasons it was given to me. 3 CHAIRPERSON: If I understand what's put 4 to you, is it on your copy of the police hard drive which 5 is on your hard drive, so did you download the police hard 6 drive in one instalment as it were, onto your hard drive or 7 did you do it in various instalments? 8 COLONEL SCOTT: Chairperson, I did it at 9 various times and various degrees of what I thought I 10 needed. I didn't take everything and I think everything 11 was close to 500 gigabytes and that's how I've got to 12 understand, if I've looked at the processes on my own hard 13 drive, I left the videos I had and the photos I had in 14 place, because to pull those over would have been, although 15 somewhere in November I know that I, it looked like I 16 pulled everything over just to make sure I was at square 17 with what the police had again, but as far as the documents 18 were concerned, they're all clustered into files and if I 19 saw a file name that made sense that I may need to further 20 the presentation at that time or for possible preparation 21 for me in the future for the Commission, I would just pull 22 the whole file over regardless of what the documents were 23 inside it. 24 CHAIRPERSON: You found it on the police 25 hard drive, you downloaded it together with a whole lot of</p>



<p style="text-align: right;">Page 14507</p> <p>1 other documents, I take it, without necessarily looking at 2 them or knowing what they were, but just almost for the 3 sake of completeness or near completeness. If what Colonel 4 Visser told you later is correct, that it is no longer on 5 the police hard drive it would mean that somebody at some 6 stage deleted it, not necessarily inappropriately because 7 they considered it of no value, would that be fair? 8 COLONEL SCOTT: It could be, Chairperson, 9 but as I say I don't want to, - but then it should have 10 come up in the, I think the forensic audits of the hard 11 drives possibly where they pull up the deleted documents, 12 unless it was written over by other files, I'm not sure how 13 the whole process works exactly. 14 MR CHASKALSON SC: Colonel, we can make 15 the investigation to see if it was ever on Brigadier 16 Pretorius' copies of the hard drive. Colonel Visser's copy 17 of the hard drive is a more tricky proposition because it 18 is being defragmented in a way that makes the recovery of 19 deleted materials extremely difficult, we're investigating 20 that as well. 21 COLONEL SCOTT: Okay. 22 MR CHASKALSON SC: But we can report the 23 outcome or the products of our investigation when they take 24 place, but for present purposes can I ask you, do you, - 25 you don't recall seeing it, this document until I drew your</p>	<p style="text-align: right;">Page 14509</p> <p>1 the document was sent to him to look at, so that is why I 2 understood the answer he gave later to be, on attentive 3 basis I don't remember it. 4 MR SEMENYA SC: No, Chair, the witness 5 said with respect, that the first time I got to realise 6 this document, it is when you brought it to my attention as 7 an exhibit. 8 CHAIRPERSON: Well, the witness, I 9 thought I heard him say it, Mr Semenya, but let's clarify 10 it by asking him. Colonel, do you say you definitely never 11 it before or is it possible that you saw it but you can't 12 remember - 13 COLONEL SCOTT: Yes, Chairperson, that's 14 why I'm cautious because I'm understanding that it is such 15 a long time back and to commit myself to just saying 16 something definite would be foolish, I think, similarly 17 with the oath of secrecy. I can't recall filling out an 18 oath of secrecy, but it may be proven that I did but I 19 don't recall doing it and the same with this document, I 20 don't recall seeing this document before the advocate 21 brought it up as an exhibit piece. 22 CHAIRPERSON: I think your objection now 23 falls away, Mr Semenya. What Mr Chaskalson wants to know 24 from you is, you say you can't remember it and accepting 25 that, the question is, if you had seen it, it is the sort</p>
<p style="text-align: right;">Page 14508</p> <p>1 attention to it, is that correct? 2 COLONEL SCOTT: That is correct. 3 MR CHASKALSON SC: So, - well, can I then 4 ask, if you had seen it would it not be something that 5 might have stuck in your memory because it - 6 COLONEL SCOTT: I'm not sure - 7 MR SEMENYA SC: No, Chair, that can't be 8 a question. 9 CHAIRPERSON: No, let - 10 MR SEMENYA SC: The witness says, I did 11 not see it and you can't put a proposition, had you seen 12 it? 13 CHAIRPERSON: No, no, no, no, I don't 14 think you understood the question, Mr Semenya. What Mr 15 Chaskalson said was, you say you didn't see it. If you had 16 seen it, it is the sort of thing that would have stuck in 17 your mind. I think there is surely nothing wrong with that 18 question. 19 MR SEMENYA SC: Chair, there must be 20 everything wrong, with respect, Chair, to direct evidence 21 that I did not see something, there can't follow up a 22 question, had you seen it? If he says, I may have, perhaps 23 that possibility can be explored. 24 CHAIRPERSON: Well, I thought I did hear 25 the witness a few minutes ago saying it was possible that</p>	<p style="text-align: right;">Page 14510</p> <p>1 of thing you would have remembered. 2 COLONEL SCOTT: Exactly, yes. 3 CHAIRPERSON: Ja, so therefore one can 4 now take it, accept it with a fair degree of accuracy, that 5 you hadn't seen it before. This sort of thing would have 6 stuck in your mind if you had seen it? 7 COLONEL SCOTT: Yes. 8 CHAIRPERSON: Ja, what would you have 9 done with it if you had seen it, and we know you didn't, on 10 what you tell us you didn't see it, I'm not trying to catch 11 you, if you had seen it what would you have done with it? 12 What would your attitude have been to it? 13 COLONEL SCOTT: Well, I read through it 14 when I was made aware of it. I always evaluate plans 15 against how I would obviously have done them and so, but I 16 don't want to get into either, but I thought that it could 17 be part of a process where the police did put together a 18 team to try to look at the policies, etcetera, with regard 19 to what we've done and whether this guy was not part of 20 that make-up to see, well, you didn't create a plan, you 21 should have created a plan, this is what it should have 22 looked like. I am not sure if it was part of that group of 23 people, but at best that, because as I say I have had no 24 dealings with him regarding the planning. 25 MR CHASKALSON SC: Are you aware that the</p>

<p style="text-align: right;">Page 14511</p> <p>1 police created a team to look at what was done and what 2 should have been done? 3 COLONEL SCOTT: When the president gave 4 the terms of reference for the commission they needed the 5 policies of the police to be brought together to be looked 6 at and then obviously the operation weighed up against the 7 policies. 8 MR CHASKALSON SC: And who was on that 9 team, do you know? 10 COLONEL SCOTT: Brigadier Mkhwanazi who 11 testified in the Commission, there was somebody, I think it 12 is a Mr Ali, there was a Brigadier Hunter from Durban, and 13 I think there was a Colonel Twala, I'm not sure if there 14 were more. 15 MR CHASKALSON SC: And do you know if 16 this team ever furnished a report? 17 COLONEL SCOTT: No. 18 MR CHASKALSON SC: Did it keep – 19 CHAIRPERSON: You don't know or they 20 didn't? 21 COLONEL SCOTT: No, I don't know if they 22 did. 23 MR CHASKALSON SC: Did the team speak to 24 you at all? 25 COLONEL SCOTT: I gave them a briefing at</p>	<p style="text-align: right;">Page 14513</p> <p>1 called to look into the policy and what had happened. 2 CHAIRPERSON: My recollection is slightly 3 different, my recollection is, he said he went to 4 Potchefstroom, he was asked to keep an eye on the things 5 there to make sure that everything was in accordance with 6 the policy, the way things were stated, the terminology, 7 but again I don't think we need to delay about the matter 8 now his evidence on the point can be checked and if your 9 recollection is better than mine, well, then that's it. I 10 would have thought that if he had been called upon to give 11 a report as to whether things were done according to 12 policies and so on, I would have expected a written report 13 from him, but possibly not, but again that's a matter that 14 could be investigated and obviously this witness can't help 15 us on it. 16 MR CHASKALSON SC: Maybe it is a matter 17 we need to take up with the SAPS legal team who will have 18 details of what this team did. Colonel, before we broke 19 for the adjournment there was some fairly lengthy cross- 20 examination on how the SAPS version shifted from its first 21 position that the stage 3 plan changed on Tuesday to its 22 current position that the stage 3 plan changed at the 23 Thursday morning JOCCOM. We've spent some time on that. 24 As the evidence leaders we have some further concerns in 25 relation to this topic and I want to put them to you and I</p>
<p style="text-align: right;">Page 14512</p> <p>1 one stage, it was during Roots, I came back to Pretoria to 2 provide at that stage what we had as the police 3 presentation, just to bring them up to speed about what we 4 had in place so far as to what had occurred over that 5 period. 6 MR CHASKALSON SC: And do you know if 7 this team kept any record of the activities that it 8 performed? 9 COLONEL SCOTT: No. 10 MR CHASKALSON SC: Do you know of any 11 other people who spoke to this team? 12 COLONEL SCOTT: No. 13 MR CHASKALSON SC: And you say it was 14 Brigadier Mkhwanazi, a Mr Ali, Brigadier Hunter and a 15 Colonel Twala? 16 COLONEL SCOTT: Yes, those – 17 MR CHASKALSON SC: Any other – 18 COLONEL SCOTT: - that I can remember, 19 I'm not sure if there was anybody else. 20 MR CHASKALSON SC: I'm sorry to persist 21 with these questions, Colonel, but we've never heard about 22 the existence of this team before, so I just would like to 23 get some clarity about what they did and when and how. 24 MR SEMENYA SC: Chair, the evidence of 25 Mkhwanazi was very clear, he referred to this team that was</p>	<p style="text-align: right;">Page 14514</p> <p>1 want to put to you what we think the true state of affairs 2 is and then I want to put to you the evidence that leads us 3 to this conclusion. 4 CHAIRPERSON: This is to give him an 5 opportunity to comment and reply? 6 MR CHASKALSON SC: Absolutely, 7 Chairperson, but Colonel, I want to, in fairness to you 8 there is a great deal of evidence and I want you to 9 understand the whole body of evidence that has led us to 10 this position before you commit yourself to particular 11 answers either way. So I would like to set out what we see 12 as the likely true state of affairs and then the evidence 13 that leads us to this conclusion and – 14 CHAIRPERSON: Mr Chaskalson, I suggest 15 you give your hypothesis, if we can call it that, to the 16 witness and then we'll take the tea adjournment and then 17 you can give the evidence that you rely on, unless the 18 hypothesis will be much shorter because I don't think there 19 is any point in interrupting the evidence, the summary of 20 the evidence which you will present to support the 21 hypothesis halfway through the tea adjournment, I mean 22 halfway through the evidence to take the tea adjournment, 23 so keep an eye on that and when you finish the hypothesis 24 we'll take the tea adjournment. 25 [14:53] MR CHASKALSON SC: It seems a very</p>

<p style="text-align: right;">Page 14515</p> <p>1 sensible course of action, Chairperson. So this is what we  2 see as the most likely state of, or likely facts of what  3 happened. To us it appears that as at the morning of the  4 16th of August the encirclement plan that had been created  5 first on Tuesday morning and then had become an option for  6 the tactical phase of the plan, was still the tactical plan  7 for phase 3 of the plan at the end of the 6 o'clock JOC,  8 and no decision was announced at the JOC of any switch to a  9 dispersal and disarmament plan. So when the JOC closed,  10 encirclement was still phase 3. Objectively the  11 encirclement plan was fraught with risk if it was  12 implemented with thousands of armed strikers already  13 present at the koppie. That's the debate we had at length  14 about it being a plan that you can do early in the morning,  15 but not in the middle of the day. You and some of the  16 commanders in the JOC realised this in the course of the  17 morning on the 16th. However, the repeated public  18 statements of the Provincial Commissioner at 9:30 had  19 placed SAPS in a position where they either had to  20 embarrass her, or clear the koppie by the end of the day,  21 whether or not that was reasonably possible under the  22 encirclement plan. So unless the commanders in the JOC  23 were willing to face down the Provincial Commissioner and  24 cause her some public embarrassment, it was not possible to  25 wait until Friday morning to implement the encirclement</p>	<p style="text-align: right;">Page 14517</p> <p>1 all with your own evidence; you've testified that for many  2 months, or at least until Roots, you had recalled  3 discussions in the JOC relating to the difficulties of the  4 encirclement plan taking place only on the Thursday, and of  5 course if the difficulties were only being discussed on the  6 Thursday, the move away from the encirclement plan couldn't  7 have taken place at 6AM on the Thursday; it would have to  8 have come later, and if I can give you the references, it's  9 page 1426 where you said, "Now I initially thought that  10 that happened on Thursday and for many months in fact I  11 thought that was part of the Thursday discussion. Then it  12 was only in this year around, later this year, a couple of  13 months back that, or more recently that I realised it had  14 to have been on the Wednesday because Brigadier Engelbrecht  15 wasn't present on the Thursday."  16 CHAIRPERSON: Forgive me interrupting, Mr  17 Chaskalson. You said 1426. Is that a page number of the  18 transcript?  19 MR CHASKALSON SC: Page number of the  20 transcript.  21 CHAIRPERSON: Were there only 1426  22 pages –  23 MR CHASKALSON SC: 14246, 246.  24 CHAIRPERSON: Ja, I thought so.  25 MR CHASKALSON SC: I'm sorry.</p>
<p style="text-align: right;">Page 14516</p> <p>1 plan. You had to come up with a new plan that could be  2 implemented that afternoon, and in those awkward  3 circumstances, having regard to the resources that you had  4 on the ground at the time, you came up with the plan that  5 was ultimately presented at the 1:30 JOCCOM meeting. That  6 plan was then adopted at the 1:30 JOCCOM meeting because  7 the Provincial Commissioner ordered a move to the tactical  8 phase, and no-one at that meeting had the authority to  9 countermand her order. So that's what we think happened.  10 We have a great deal of evidence that I'd want to put to  11 you to consider in relation to this before I ask you to  12 commit to an answer, and maybe at this point we should take  13 the tea adjournment.  14 CHAIRPERSON: Very well, we'll take the  15 tea adjournment and try to be back by quarter past 3.  16 [COMMISSION ADJOURNS COMMISSION RESUMES]  17 [15:26] CHAIRPERSON: The Commission resumes.  18 Colonel, you're still under oath.  19 DUNCAN GEORGE SCOTT: s.u.o.  20 CHAIRPERSON: Mr Chaskalson, you were now  21 going to, having given the hypothesis you were now going to  22 give the, what you suggest is the supporting evidence. Is  23 that correct?  24 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):  25 That's correct, Chairperson, and if I can start first of</p>	<p style="text-align: right;">Page 14518</p> <p>1 CHAIRPERSON: [Microphone off, inaudible]  2 the record is a bit shorter than I thought, but obviously  3 I'm wrong.  4 MR CHASKALSON SC: I just did away with  5 90% of it.  6 CHAIRPERSON: [Microphone off, inaudible]  7 can do it, but we won't know in advance till we've read it  8 which are the 90%.  9 MR CHASKALSON SC: Colonel, the next  10 passage was slightly more qualified. That was on pages  11 14250, line 25, to 14251, line 8, and there I asked you, I  12 said, "Colonel, if I heard you correctly, you said that  13 these discussions about the difficulties of the  14 encirclement tactical option, the cattle, the humanitarian  15 risk, the risk that protesters might just step outside the  16 encirclement zone, that discussion you thought for many  17 months had taken place on the Thursday. Is that what you  18 said?" and your response was, "Ja, it may have been until we  19 got to Roots or somewhere around there when it was, more  20 was put into context about what happened." But at any  21 rate, at least until Roots your testimony is you thought  22 that encirclement was on the table still on the Thursday,  23 and that the difficulties with encirclement were only being  24 discussed in the JOC after the JOCCOM meeting at 6 o'clock  25 on the Thursday, not on the Wednesday. So that's the first</p>

<p style="text-align: right;">Page 14519</p> <p>1 piece of evidence.</p> <p>2 The second piece of evidence is the notes of the</p> <p>3 6AM JOCCOM, and there are – that's JJJ168, and there are</p> <p>4 two aspects of these notes that are significant to us. The</p> <p>5 first is that there is no mention in the notes of any</p> <p>6 change of plan for the tactical option, none at all, and</p> <p>7 that strikes us as something highly anomalous, particularly</p> <p>8 in the context of notes that record that the Thursday was</p> <p>9 D-day and that there are other indicators in the notes that</p> <p>10 a tactical option was going to take place. In that context</p> <p>11 we'd have expected the notes to record very clearly that</p> <p>12 the tactical option that might have to take place was a new</p> <p>13 tactical option, but there's nothing like that, and in fact</p> <p>14 if we go to the notes, on page 27 of the notes where there</p> <p>15 is a description of the phases you'll see that what's</p> <p>16 recorded at the meeting as being phase 3 is still</p> <p>17 encirclement.</p> <p>18 CHAIRPERSON: Sorry to interrupt you, Mr</p> <p>19 Chaskalson; there's also on page 26, fourth line, which –</p> <p>20 MR CHASKALSON SC: Encirclement group.</p> <p>21 CHAIRPERSON: - the encirclement group,</p> <p>22 POPS with a Nyalas.</p> <p>23 MR CHASKALSON SC: Indeed, so the</p> <p>24 description to the POPS teams with barbed wire Nyalas was</p> <p>25 the encirclement group. Then our third piece of evidence</p>	<p style="text-align: right;">Page 14521</p> <p>1 call that file up, and this is a file you produced on the</p> <p>2 morning of the 17th of August, it's called "NASCOM media</p> <p>3 briefing." It subsequently changed quite dramatically, but</p> <p>4 it seems that at least to start off you worked on the basis</p> <p>5 that you may be describing some of the planning process at</p> <p>6 the media briefing, and that's what's reflected in this</p> <p>7 document. It was saved at 8:12 on the morning of the 17th</p> <p>8 and it's a slightly modified version of the Ops Platinum</p> <p>9 file that you'd produced the previous night, JJJ50, but all</p> <p>10 of those features that suggest the phase 3 plan was</p> <p>11 encirclement are still there. So in slide 8 of this</p> <p>12 document – if we can go down to slide 8 – the operational</p> <p>13 overview still has the diagram of the encirclement plan.</p> <p>14 Slide 10 – go back one up. My numbering is clearly out.</p> <p>15 Slide 9, the coordinating instructions still have phase 3</p> <p>16 deployment as encirclement, and then in slides 11 and 13</p> <p>17 we'll again get references to the encirclement group.</p> <p>18 Now the NASCOM media briefing file was one that</p> <p>19 still had those old Operation Rhino slides in it. In the</p> <p>20 copy that we printed out in hardcopy we haven't included</p> <p>21 them because they're irrelevant, but by the 19th of August</p> <p>22 you had actually removed those from the working running</p> <p>23 presentation and you've cleaned it up in other respects in</p> <p>24 a file called "Ops Platinum 16 August," which you saved in</p> <p>25 the afternoon of the 19th. That's JJJ43, which was saved at</p>
<p style="text-align: right;">Page 14520</p> <p>1 is that on the night of the 16th your testimony is you</p> <p>2 attempted to reverse engineer the planning process that had</p> <p>3 taken place over the three days in your file Operation</p> <p>4 Platinum. That's exhibit JJJ50, and if we can call up</p> <p>5 JJJ50, it's pages 2 to 59 of file 1, and if we go to slide</p> <p>6 9, can we go through to slide 9? You'll see there that the</p> <p>7 operational overview on slide 9 still describes the</p> <p>8 encirclement plan. That diagram is the diagram of the</p> <p>9 encirclement plan. If we go forward to slide 11 – if we</p> <p>10 can just go back a page; I think this has gone too – go</p> <p>11 back, there we go. Okay, next page, it must be slide 10,</p> <p>12 not slide 11. If you look at phase 3 deployment to be</p> <p>13 determined, it's described as encirclement. If we go</p> <p>14 forward to slide 13, next slide – actually, let's go back</p> <p>15 one page. Sorry, forward again. On this slide you'll see</p> <p>16 that in phase 2 you're still talking about the POP Nyalas</p> <p>17 with razor wire trailers as the encirclement group, with</p> <p>18 the TRT team to support a Nyala, and on the next slide your</p> <p>19 order of movement again is describing an encirclement</p> <p>20 group, both from forward holding area 1 and from forward</p> <p>21 holding area 2, so two separate encirclement groups at each</p> <p>22 forward holding area.</p> <p>23 If we move to the next document in the immediate</p> <p>24 aftermath of the tragedy, that is a file called "NASCOM</p> <p>25 media briefing.pptx." It's exhibit JJJ110, and if we can</p>	<p style="text-align: right;">Page 14522</p> <p>1 3:26PM on the 19th, and if we go to slide 7 of that</p> <p>2 document, the operational overview still has the</p> <p>3 encirclement plan. Slide 8, the coordinating instructions</p> <p>4 for 16 August still have encirclement as phase 3</p> <p>5 deployment. Slide 10, if we get to the operational</p> <p>6 overview we're still talking about the encirclement group</p> <p>7 with POP Nyalas with razor wire trailers, and the same in</p> <p>8 slide 11.</p> <p>9 Then slide 12, which is a significant slide;</p> <p>10 phase 3 deployment, encirclement. So this is a new slide</p> <p>11 that gets introduced into your presentation on the 19th of</p> <p>12 August, that's three days after the event, where you're</p> <p>13 describing phase 3 deployment as encirclement, and</p> <p>14 significantly in slide 13 you talk – go back to slide 13,</p> <p>15 ja – you talk about the plan being revised at 14:00 on 16</p> <p>16 August. So you start out with phase 3 deployment being</p> <p>17 encirclement on slide 12, and in slide 13 you say, "The</p> <p>18 plan was revised at 14:00 on 16 August to protect SAPS and</p> <p>19 the media by deploying the barbed wire between the</p> <p>20 protesters and the SAPS safe area. Proceed with the</p> <p>21 dispersion action," etcetera, etcetera.</p> <p>22 So, and if we go to the next plan, the next</p> <p>23 slide, which describes the new plan, or the dispersion</p> <p>24 plan, that talks about the plan being revised at 14:00 on</p> <p>25 16 August – suggests that the revision to the plan for this</p>

<p style="text-align: right;">Page 14523</p> <p>1 new dispersion plan took place on 14:00, 16 August.  2 CHAIRPERSON: It looks as if the  3 encirclement diagram, you know the two halves of the  4 circle, the one blue and the other one orange, that's now  5 removed.  6 MR CHASKALSON SC: Chairperson, yes, in  7 relation to all of the previous slides that we've looked at  8 that had the encirclement –  9 CHAIRPERSON: [Microphone off, inaudible]  10 I take it has the two halves of the circle, if one could  11 call it that.  12 MR CHASKALSON SC: That's correct.  13 CHAIRPERSON: Two halves of the  14 circumference.  15 MR CHASKALSON SC: That's correct,  16 Chairperson.  17 CHAIRPERSON: And now the word "revised"  18 comes in and we see they've gone.  19 MR CHASKALSON SC: Indeed, Chair, and if  20 we can go back to that previous one, there is another  21 marker of that first encirclement plan which is the pink  22 processing zone to the south-west of the koppie. So that  23 pink section to the south-west of the koppie is a feature  24 of all of the descriptions of the encirclement plan, and  25 whenever I'm referring to these slides as depicting the</p>	<p style="text-align: right;">Page 14525</p> <p>1 what? 13, or what slide number?  2 MR CHASKALSON SC: Which is properties of  3 file Marikana Master.  4 CHAIRPERSON: So it's properties of  5 JJJ101A?  6 MR CHASKALSON SC: Indeed, and then – can  7 we go back to JJJ101? 101A, because what's up now is 101B,  8 which is a later version of the document. That's 101A.1.  9 That's the properties of 101A. What we want is the  10 document 101A. Colonel, I'm afraid we've got logistical  11 difficulties here, but you should be able to recognise this  12 document, although it may be one of the deleted documents  13 that was recovered. Have you got a copy of Marikana Master  14 1 that was saved at 20 August?  15 COLONEL SCOTT: Saved 20 August, 8:03PM.  16 MR CHASKALSON SC: That's correct.  17 COLONEL SCOTT: Yes.  18 MR CHASKALSON SC: So at this stage you  19 understand; if I can take you through my concerns about  20 this document, and when we come to answer them, as it were,  21 or if there is an answer to them they'll be put up in  22 lights. That's likely to be tomorrow. Slide 13 of this  23 document, the operational overview is still the diagram of  24 the encirclement plan.  25 CHAIRPERSON: Is that the document we're</p>
<p style="text-align: right;">Page 14524</p> <p>1 encirclement plan, you will see also that pink processing  2 zone is there, and then of course if we go a few slides  3 down to the revised plan, the pink processing zone is no  4 longer there.  5 Then on the 20th of August at 20h03 you saved a  6 file called "Marikana master 1.pptx," which to us appears  7 to be the earliest version of the SAPS presentation that  8 we've been able to retrieve from any of the computers. If  9 we can hand that in as an exhibit, as JJJ101A, and the –  10 CHAIRPERSON: How do I describe that?  11 MR CHASKALSON SC: Presentation Marikana  12 Master 1.pptx, informed saved at 20 August 20h03, so it's –  13 CHAIRPERSON: So is it saved, or what did  14 you say before –  15 MR CHASKALSON SC: As saved at 20 August  16 2012 at 20h03, because there are two versions of this  17 document that I'll be referring to. Again if we go through  18 to slide 13 of this – these are the properties of the  19 document, if we can go to the document itself, which may be  20 JJJ101A.1 –  21 CHAIRPERSON: How do I describe that?  22 MR CHASKALSON SC: Chairperson, I've  23 given you – if you can describe –  24 CHAIRPERSON: I've described it, I've set  25 out the description of JJJ101A. Now JJJ101A.1 is slide,</p>	<p style="text-align: right;">Page 14526</p> <p>1 not going to see on the screen now?  2 MR CHASKALSON SC: We'll see it tomorrow  3 morning if there –  4 CHAIRPERSON: Yes, well that's something  5 to look forward to, I suppose.  6 COLONEL SCOTT: I can confirm it is so.  7 MR CHASKALSON SC: Slide 14, the  8 coordinating instructions for 16 August still speak to the  9 phase 3 deployment as being encirclement.  10 COLONEL SCOTT: That's correct.  11 MR CHASKALSON SC: Slide 16, the  12 operational overview still speaks of the encirclement  13 group, POP Nyalas with razor wire trailers. Slide 17, the  14 operational overview again speaking about the encirclement  15 group and different teams of Nyalas as part of the  16 encirclement group from forward holding area 1 and 2.  17 Slide 18, phase 3 deployment, again a specific reference to  18 phase 3 which comes after the coordinating instructions on  19 the 16th of August, that depicts the – sorry, phase 3  20 deployment is encirclement, and then again we see in slides  21 19 and 20 that the plan was revised at 14h00 on 16 August.  22 It's slides that we've seen before.  23 [15:46] On the 4th of November the evidence leaders asked  24 SAPS for all reports submitted by SAPS or any of its  25 members to the Minister of Police and all presentations</p>

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1 made by them to the Minister of Police after the incidents  
 2 on 16 August 2012, and in response to this request we were  
 3 given a document which was described by SAPS as  
 4 presentation made to Minister. That's JJJ41, if we can now  
 5 call up JJJ41? We'll just hold JJJ41, - no, maybe don't  
 6 hold JJJ41, call up JJJ41, page 342 to 378, 342 to 378 and  
 7 -  
 8 CHAIRPERSON: Tell me if we're done so  
 9 that we can see them the right way up and not sideways or  
 10 is that not possible?  
 11 MR CHASKALSON SC: It should be possible  
 12 because it is a PDF file, so if we go to that view menu,  
 13 can we just rotate the view of this file, up to view, okay,  
 14 and when you gave us access to the master SAPS hard drive  
 15 we found the PowerPoint source file for this presentation  
 16 and that source file is called President Zuma PPTX, and the  
 17 file property showed that it was last saved on 21 August  
 18 2012 at 11:46, and if we can, we printed out the properties  
 19 of that file as JJJ102BB1, properties of President  
 20 Zuma.PPTX, and 102B1, which is the last saved version of  
 21 President -  
 22 CHAIRPERSON: Sorry, how do I describe  
 23 it?  
 24 MR CHASKALSON SC: Properties of last  
 25 saved version of President Zuma, of PowerPoint

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1 presentation, President Zuma.PPTX, saved on 21 August 2012  
 2 at 11:46.  
 3 COLONEL SCOTT: 11:46?  
 4 MR CHASKALSON SC: 46. We found an  
 5 earlier identical version of the document which is also  
 6 identical to JJJ41 which you had saved on 20 August at  
 7 16:50 and that file will be Exhibit JJJ102A.  
 8 COLONEL SCOTT: Give me the description  
 9 of that again?  
 10 MR CHASKALSON SC: The version of  
 11 PowerPoint presentation, President Zuma.PPTX, saved on 20  
 12 August 2012 at 16:50. Now all of these files are  
 13 identical. If we go to slide 7, can we just quickly, -  
 14 sorry, can you just close this file because we'll go  
 15 further down, just close this file, close this file, there  
 16 are some very gruesome pictures in this file and we  
 17 shouldn't display them as they are run through, please shut  
 18 that file down. If we can go to slide 13, if we can jump  
 19 to slide 13, again the operational overview is the diagram  
 20 of the encirclement plan. The next page, slide 14, the  
 21 coordinating instructions on the 16th of August again speaks  
 22 to encirclement of the phrase 3 deployment. On slide 10  
 23 with the operational overview, we're speaking of the  
 24 encirclement group being POP Nyalas with razor wire  
 25 trailers, again on the following slide, slide, the order of

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1 movement speaks again to the encirclement group, two  
 2 different encirclement groups from forward holding area 1,  
 3 forward holding area 2. Slide 12, the next slide, phase 3  
 4 deployment is still an encirclement, and after phase 3  
 5 deployment being encirclement which is long after the  
 6 coordinating instructions for 16 August, we see on the next  
 7 slide again plan revised 14:00 on 16 August 2012, and  
 8 finally on slide 14, plan revised 14:00 on 16 August 2012,  
 9 again the suggestion is that the plan was revised at the  
 10 1:30 JOCCOM.  
 11 Later on the 21st you revised Marikana master  
 12 1.PPTX which we identified as the first draft for the  
 13 presentation that ultimately became Exhibit L. You saved a  
 14 copy at 14:19 on the 21st and if we can call up that exhibit  
 15 as JJJ101B, B for Barnard, PowerPoint presentation Marikana  
 16 master 1.PPTX saved on 21 August 2012 at 14:19, and all of  
 17 these slides are still there on the 21st of August, so we go  
 18 to slide 24. You can start at slide 24, again there are  
 19 going to be gruesome photographs that, we'll get to that,  
 20 it will be between sides 1 and 24, so if we can go straight  
 21 to slide 24. Speaking to the coordinating instructions for  
 22 16 August, phase 3 deployment is still encirclement. Three  
 23 slides down, the operational overview shows the  
 24 encirclement group as being the POPS Nyalas. Slide 28, the  
 25 next slide, again in the order of movement, we're talking

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1 about an encirclement group for the POPS Nyalas. Slide 29,  
 2 a description of the phase 3 deployment has been  
 3 encirclement. This has come long after the coordinating  
 4 instructions for 16 August in the sequence and is  
 5 immediately before plan revised at 14:00 on the 16th of  
 6 August and then the diagrammatic plan on the next slide  
 7 under the same heading, plan revised 14:00 on 16 August.  
 8 Now what's significant about this copy is, if you  
 9 compare this copy to the copy that you saved on the 20th  
 10 which was JJJ101A, you'll see that you did some substantive  
 11 editing to this document between the 20th and the 21st of  
 12 August, including deleting the diagram of the encirclement  
 13 plan that had been slide 13 of the first draft under the  
 14 heading operational overview before you got today's. So  
 15 you took out the initial diagram of the encirclement plan  
 16 as operational overview that wasn't linked to any specific  
 17 dates, but you kept in the diagram of the encirclement plan  
 18 that was described as phase 3 deployment encirclement, -  
 19 sorry, that was described as phase 3 deployment  
 20 encirclement after coordinating instructions 16 August. So  
 21 you kept in slide 28 of this document which comes after  
 22 slide 14 which, - slide 24 which speaks to the coordinating  
 23 instructions of 16 August and immediately before slide 30  
 24 which talks about the plan being revised at 14h00. So that  
 25 to us speaks to some application of mind to the issue and a

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1 decision of what to take out and what to leave in.  
 2 Moving on to a different topic altogether, there  
 3 is the curiosity about where the barbed wire Nyalas  
 4 actually deployed on the morning of the 16th. In your  
 5 statement you emphasised the importance of very precise  
 6 deployment to the barbed wire Nyalas, page 74, paragraph  
 7 9.4.1.3. You say, Nyalas with barbed wire trailers were  
 8 positioned between the police line and the strikers. The  
 9 wire would not be deployed only prepositioned. I had  
 10 specifically measured on the Google Earth satellite image  
 11 when I placed the icons for the razor wire. They needed to  
 12 deploy it as close to the landmarks on the map as they  
 13 could if the razor wire was long enough to cover the gaps.  
 14 If we go to Exhibit L, slide 152, can we just go there,  
 15 Exhibit L, slide 152. That's a photograph of where the  
 16 barbed wire Nyalas are actually deployed.  
 17 If we go back three slides to 149, that's the  
 18 diagram that you handed out to the commanders showing where  
 19 you wanted the barbed wire Nyalas to deploy, and what  
 20 we've done is, we have, I mean if you look at, if you  
 21 compare 149 with 152 you'll see very quickly that where the  
 22 barbed wire Nyalas are deployed there is little  
 23 relationship to where you wanted them to deploy, but we've  
 24 mapped them onto the same grid and we've produced a  
 25 document which we don't claim is precise, but it is a rough

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1 positioning of where the barbed wired Nyalas did deploy by  
 2 mapping 149 and 152 onto the same document and that  
 3 document is JJJ91 and I'm not sure that you have a copy of  
 4 this and we'll give it, we'll give it to you so that you  
 5 can consider it overnight, but if someone can just show  
 6 JJJ91.  
 7 CHAIRPERSON: How do I describe it, the  
 8 evidence leaders?  
 9 MR CHASKALSON SC: The evidence leaders  
 10 plotting of where the barbed wire Nyalas deployed on grid,  
 11 - the evidence leaders plotting of Nyala positions on slide  
 12 152 onto the grid map on slide 149. Now we then invite you  
 13 to do the same exercise overnight, but what struck us about  
 14 the actual deployment is it is not where they would have  
 15 deployed in accordance with the positions that you'd marked  
 16 on the grid map. It actually in relation to Nyalas 4, 5  
 17 and 6 was on the planned encirclement path which suggests  
 18 that they thought that they were prepositioning for  
 19 encirclement. Then there is a series of statements from  
 20 SAPS offices and members in the immediate aftermath of the  
 21 tragedy before Roots which showed that they thought that  
 22 they were still engaged in an encirclement operation.  
 23 Chairperson, it is four o'clock but I think in fairness to  
 24 Colonel Scott I would ask the indulgence of -  
 25 CHAIRPERSON: How long are you going to

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1 be? The other way to do it, if it is going to be long, if  
 2 you've got it all written out you could, and if the colonel  
 3 is prepared to stay behind for a few minutes, you could  
 4 photostat the pages on which it is written out and you can  
 5 give it to him and he can study them overnight, if he is  
 6 happy with that and if you think that your notes would be  
 7 sufficiently clear for him to follow, but if it will take  
 8 five or ten minutes maximum, I think we can sit a bit  
 9 longer.  
 10 MR CHASKALSON SC: Chairperson, I don't  
 11 think it will take more than ten minutes.  
 12 CHAIRPERSON: Well, let's carry on.  
 13 MR CHASKALSON SC: There are a series of  
 14 statements of SAPS officers and members in the immediate  
 15 aftermath of the tragedy which showed that they thought  
 16 they were still engaged in the encirclement operation. The  
 17 most striking and the most significant is Colonel Makubela  
 18 because he was in charge of the barbed wire Nyalas, and I  
 19 must immediately acknowledge that there is a subsequent  
 20 statement made some three months after the event, after  
 21 Roots, after the Commission had started where a different  
 22 version is put forward, but if we look at the statement  
 23 that he furnished on the 19th of August which is GGG9, he  
 24 states, during the said operation my, in paragraph 2.  
 25 "During the said operation my task was to surround the said

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1 employees with barbed wire at the place they'd gathered at  
 2 a small hill near Wonderkop Village," and then in paragraph  
 3 6, "I also state that the aim to use barbed wire was to can  
 4 manage, to control the said employees to be searched as  
 5 only one entrance or exit was to be made for the weapons  
 6 they are having."  
 7 Now that seems to be describing the encirclement  
 8 plan with that pink area as a processing zone and that's in  
 9 a statement three days after the event by the commander of  
 10 the barbed wire Nyalas. There are several other statements  
 11 I'd referred you to, I won't read them now but I'd ask you  
 12 to look at them overnight, Constable Thebetsile, JJJ62,  
 13 Constable Mooketsi, JJJ61, Constable Sexeweleya, JJJ164.  
 14 All three of these constables were part of the barbed wire  
 15 team and all three of them made statements in the immediate  
 16 aftermath of the event that they thought they were engaged  
 17 in the encirclement operation of the sort that had  
 18 originally been phrase 3.  
 19 Then there is the contemporaneous operational  
 20 diary of Captain Prinsloo who was the commander of Nyala 2,  
 21 that's JJJ114. That's a new one.  
 22 CHAIRPERSON: The operational diary of?  
 23 MR CHASKALSON SC: Captain Prinsloo.  
 24 CHAIRPERSON: Of Captain Prinsloo, thank  
 25 you.

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1 MR CHASKALSON SC: And, Chairperson, the  
 2 statements of Constables Thebetsile, JJJ62, Moketsi, JJJ61,  
 3 and Sexeweleya, JJJ164, are also new exhibits.  
 4 CHAIRPERSON: The references, what I'm  
 5 going to ask you to do is, if you could prepare for us, I'm  
 6 not sure my notes are being entirely accurate, if you could  
 7 prepare for us a list, of get one of your juniors to do so,  
 8 of all these JJJ exhibits that you've been referring to,  
 9 with the descriptions and we can just insert that in the  
 10 record as a correct, it will save a lot of time and be more  
 11 accurate than my notes, I think.  
 12 MR CHASKALSON SC: Thank you,  
 13 Chairperson, we'll gladly do that, and in the  
 14 contemporaneous operational diary of Captain Prinsloo who  
 15 was the commander of Nyala 2, JJJ114, she refers to her  
 16 specific instructions of operation/duties in the following  
 17 terms, to deploy wire on command of Lieutenant Colonel  
 18 Ntunkulu to encircle protestors for purposes to disarm  
 19 protestors from dangerous weapons. So she thought she was  
 20 deploying wire to encircle protestors. So, there are all  
 21 the references that we've already discussed in the plans  
 22 between, in the attempts or in the presentations between 19  
 23 and 21 August to the plan being revised at 14h00.  
 24 Then there is the extraordinarily haphazard  
 25 process by which the commanders in the field were briefed

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1 on the new plan. It is a matter which we discussed in some  
 2 detail on our last day before the break. I don't want to  
 3 revisit that detail at all today, but I do want to suggest  
 4 that the absence of any written briefing documents strikes  
 5 me as being most out of character with what I would expect  
 6 as your usual practice in briefing members, and is  
 7 particularly striking in the context of a tactical  
 8 operation which was to deal with a high risk situation  
 9 which SAPS maintains was of an unprecedented nature and  
 10 speaks to extraordinary haste that in our view would be  
 11 inexplicable if the plan had already been revised the  
 12 previous day.  
 13 [16:05] There's the statement of Captain Ntlati that I've  
 14 already put to you that says that when you briefed the  
 15 officers in the field at forward holding area 1, the  
 16 briefing conveyed that police National Management had  
 17 decided that the strikers had to be disarmed and dispersed.  
 18 That's JJJ179.  
 19 There is also the late OB entry 1015 that  
 20 Brigadier Pretorius made at 15:10, it's entry 1015 in  
 21 FFF25, and according to her statement JJJ187, paragraph 13,  
 22 was made at the express instruction of Major-General  
 23 Annandale when she returned from your briefing of the  
 24 commanders, and what Brigadier Pretorius recorded at the  
 25 instruction of Major-General Annandale was the following,

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1 "Report; Brigadier Pretorius JOC commander report that JOC  
 2 meeting was held and attended by Provincial Commissioner  
 3 Mbombo and Major-General Mpembe and Major-General  
 4 Annandale. Operational tactical briefing was given by  
 5 Lieutenant-Colonel Scott. Provincial Commissioner  
 6 instructed that the tactical intervention proceed. The  
 7 Provincial Commissioner also indicated that she did  
 8 communicate the situation with the National Commissioner,  
 9 who also indicated that she will in turn inform the  
 10 Minister. Proceed with tactical intervention," and she  
 11 actually signed that entry. It's the only entry in the  
 12 entire OB that we can find dealing with the JOCCOM meeting.  
 13 It was made at the instance of Major-General Annandale, and  
 14 it looks to us like an entry that was deliberately designed  
 15 to record who took the risky decision to implement the  
 16 tactical phase so that responsibility for this risky  
 17 decision could not subsequently be sloughed off onto SAPS  
 18 officers lower down the hierarchy.  
 19 And finally, Colonel, the plan as revised has a  
 20 flaw so obvious that I cannot believe that people as  
 21 intelligent as you and Major-General Annandale could have  
 22 failed to see it, unless you were operating under such  
 23 unreasonable time constraints that there was no time to  
 24 reflect on the plan before its implementation, and I'd like  
 25 to set this out in some detail. I'll give it to you in

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1 writing so that you can consider it as well, because it  
 2 does strike me as a flaw that is extremely obvious and not  
 3 something that would have been missed if there was any  
 4 reasonable time to consider the matter.  
 5 What the flaw was is that the plan was calculated  
 6 to shift the problem from koppies 1 and 2 to koppie 3,  
 7 which was terrain from which it would be more difficult to  
 8 dislodge the strikers, and in respect of which there was in  
 9 fact no plan whatsoever for dislodging them, and we know  
 10 now objectively that the terrain on koppie 3 is such that  
 11 it would be very difficult to clear if striking miners  
 12 entrenched themselves in it. Koppies 1 and koppies 2 are  
 13 in fact more exposed and easier to deal with than koppie 3.  
 14 You at the time knew about the terrain on koppie 3 because  
 15 you'd received a report on the difficulties of the terrain  
 16 from the STF observation team on the Tuesday. That's page  
 17 36, paragraph 7.6 of your statement. You also knew from  
 18 the same report that the strikers moved through koppie 3  
 19 and between koppies 1 and 3 – same reference, page 36,  
 20 paragraph 7.6.  
 21 Your dispersal [microphone off, inaudible] was  
 22 designed to drive the strikers off koppies 1 and 2 directly  
 23 towards koppie 3 in the west. It provided detailed  
 24 measures for how the tactical forces were going to be  
 25 deployed to ensure that strikers could not entrench



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1 themselves in koppies 1 and 2, so you had specific  
 2 instructions for the NIU, for the TRT, for the STF, but it  
 3 included no measures to cut off the access to koppie 3. On  
 4 the contrary, it ensured that once the strikers were driven  
 5 west off koppies 1 and 2, the SAPS forces would reorganise  
 6 in a line to the east of koppie 3, leaving the strikers  
 7 with free access to koppie 3. So it would be inevitable  
 8 that there would be fleeing strikers who'd be driven  
 9 straight towards koppie 3 and who would seek refuge in  
 10 koppie 3, and at that point the plan ran out entirely and  
 11 left matters solely to the discretion of the operational  
 12 commander.

13 So while, as I indicated earlier, you had very  
 14 detailed plans for how the tactical forces were to be  
 15 deployed at koppies 1 and 2 to prevent the strikers from  
 16 entrenching themselves, there were no details at all in  
 17 relation to koppie 3. It was all left over to Brigadier  
 18 Calitz, who would be dealing with a more fluid and less  
 19 predictable situation than was the case at the start of the  
 20 operation at koppies 1 and 2, who would have no way of  
 21 seeing the whole of koppie 3, and who would be constrained  
 22 by an inadequate radio communication system. So the  
 23 chaotic situation that took place at koppie 3 and that  
 24 resulted in the death of 18 strikers was something that was  
 25 wholly predictable in ordinary circumstances, and we

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1 suggest that if you'd not been operating under wholly  
 2 unreasonable constraints imposed by the Provincial  
 3 Commissioner's deadline that the matter had to be resolved  
 4 by the end of the day, and her order to implement the  
 5 tactical phase, you'd have anticipated it and revised the  
 6 plan appropriately to deal with it. But because you were  
 7 acting under unreasonable constraints you missed something  
 8 that in hindsight looks glaringly obvious and that led to  
 9 the deaths of 18 people.

10 Now that's my summary of the evidence. Before I  
 11 leave it at this point, I want you to understand our  
 12 concern, Colonel. 34 people were killed by SAPS on the 16th  
 13 of August. One of our responsibilities as evidence leaders  
 14 is to make submissions as to whether SAPS as an institution  
 15 should be held accountable for these deaths, and, if so,  
 16 whether any particular officers within SAPS should be held  
 17 accountable for those deaths. We don't want to make  
 18 submissions that the wrong people should be held  
 19 accountable, and in order to discharge our responsibility  
 20 appropriately we need to know when the encirclement plan  
 21 was replaced with the plan to disarm and disperse, who took  
 22 the decision to move to the tactical phase on the Thursday  
 23 afternoon, and why SAPS was not able to wait until Friday  
 24 morning to move to the tactical phase by using the original  
 25 encirclement plan, which strikes us as being far less risky

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1 than the plan that was ultimately implemented. So those  
 2 are the three questions I'm going to put to you when we  
 3 reconvene tomorrow. Depending on what your answers are we  
 4 may or may not have to go through each one of those  
 5 individual pieces of evidence.

6 MR SEMENYA SC: Chair, obviously we'll  
 7 listen with interest to all this that might prove one day  
 8 to be some argument to be advanced by the evidence leaders.  
 9 I worry though whether these are provisional thoughts they  
 10 have, because for instance the evidence of Mr X will tell  
 11 you koppie 3 was used by them as a point of refuge, and  
 12 that's where they assembled and where they did their  
 13 rituals. How the plan could have been designed to take  
 14 them there, I don't know, but we find all of this very  
 15 interesting as a summation by evidence leaders.

16 CHAIRPERSON: Well, as you say, it's  
 17 provisional – look, I would imagine it's provisional –

18 MR SEMENYA SC: I'm not saying it's  
 19 provisional, Chair. They did not offer it as provisional.

20 CHAIRPERSON: No, I would imagine it must  
 21 be provisional because the Commissioners have to keep open  
 22 minds on everything and only decide at the end. The  
 23 evidence leaders are here to help us, and I take it that  
 24 they are also being open-minded about matters; their  
 25 positions aren't set in concrete. If they are, I should be

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1 very disappointed.

2 MR CHASKALSON SC: Absolutely,  
 3 Chairperson. I've set these all out because I want to put  
 4 each one of these concerns that we have to Colonel Scott  
 5 for a response. If my view was cast in stone I wouldn't be  
 6 interested in Colonel Scott's response. But in fairness to  
 7 Colonel Scott, I need to set out what my view is and what  
 8 the view of my fellow evidence leaders is so he knows where  
 9 we are coming from, because it's of importance for him to  
 10 understand that when he answers these questions.

11 CHAIRPERSON: On that note we will take  
 12 the adjournment until 9 o'clock tomorrow morning.

13 [COMMISSION ADJOURNED]  
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