

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 139 24 OCTOBER 2013 PAGES 14925 TO 15042



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1 [PROCEEDINGS ON 24 OCTOBER 2013]
 2 [09:08] CHAIRPERSON: The Commission resumes.
 3 Colonel, you're still under oath.
 4 DUNCAN GEORGE SCOTT: s.u.o.
 5 CHAIRPERSON: Mr Chaskalson.
 6 MR CHASKALSON SC: Thank you,
 7 Chairperson.
 8 COMMISSIONER HEMRAJ: Mr Chaskalson, may
 9 I just get clarity about something from yesterday? The
 10 cell phone calls that Brigadier Pretorius refers to in her
 11 statement, do we have any information about those, the
 12 times of those missed calls that she says she made?
 13 MR CHASKALSON SC: Commissioner, I don't
 14 think we would have, because missed calls as opposed to
 15 calls that go on to voicemail would not be picked up on –
 16 COMMISSIONER HEMRAJ: I understand that,
 17 but is there anything forthcoming from her about the time
 18 period during which she says she made those calls to the
 19 brigadiers on the field?
 20 MR CHASKALSON SC: We don't have details
 21 from her yet.
 22 COMMISSIONER HEMRAJ: Not yet.
 23 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 24 Colonel, we are approaching the end of this session, which
 25 is a relief to me, but I'm afraid you're here for a bit

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1 longer. There were two broad sort of categories that we
 2 were going to address in, hopefully in a very short period
 3 this morning. The first was you were going to return with
 4 a response to the Chairperson's question about why you drew
 5 the dotted red line where you did on slide 15 of the NASCOM
 6 media presentation, and if there was anything clearly wrong
 7 in the annexures GW6(a) and (d) to the statement of Mr
 8 White, and I was going to come back with a few loose ends.
 9 Can we start with your responses and maybe the
 10 Chairperson's question, which was why did you draw that
 11 dotted red line where you did on slide 15 of the NASCOM
 12 media presentation, which is JJJ42?
 13 COLONEL SCOTT: Chairperson, I've looked
 14 at that and at the time obviously that's what I was
 15 thinking that the movement of the protesters was, and I've
 16 tried to also follow it on to see where it actually changed
 17 and it significantly does change at Roots. So up until
 18 that period I was also of the opinion, even I think the
 19 photograph depicting what we thought was Nyala 4 was also
 20 cleared at Roots as being Nyala 4. I don't think anybody
 21 took the time to go into the depth of the identification of
 22 the vehicles as we know it, but if I look at the
 23 presentations before then it was also not mentioned as
 24 Nyala 4, but just as it was more the strikers approaching
 25 the police line. So, and I found a presentation as well

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1 which was marked the 16th. It's also something that was
 2 dealt with at Roots.
 3 CHAIRPERSON: 16 August?
 4 COLONEL SCOTT: Yes, dealing – it was
 5 part of the main presentation, but it was, the day of the
 6 16th was taken out to be worked on and in there you can
 7 actually see the inputs that are being put in from, the
 8 input coming from the commanders on the ground, which
 9 starts to verify that things like an incident 1, 2, 3,
 10 which I think was, they themselves possibly there tried to
 11 figure out between themselves. Now if you're talking from
 12 Nyala 4, that surely is something different to what
 13 happened to the people at the kraal and etcetera. So
 14 that's to be best of how I can recollect that, how it
 15 progressed to where it is.
 16 CHAIRPERSON: Ja, it's not about
 17 progress. What I was interested in, the original markings
 18 you made which must have been based – I mean you wouldn't
 19 have just sucked them out of your thumb, would you?
 20 COLONEL SCOTT: Ja.
 21 CHAIRPERSON: Grab them out of the air.
 22 You must have based them on – because you weren't there,
 23 you were in the JOC.
 24 COLONEL SCOTT: Ja.
 25 CHAIRPERSON: So you must have based them

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1 on inputs or information you got from someone. So I was
 2 interested to know who that person or persons were.
 3 COLONEL SCOTT: I don't recall,
 4 Chairperson.
 5 CHAIRPERSON: It is clear, is it, that
 6 you must have got it from someone. You didn't invent it
 7 yourself.
 8 COLONEL SCOTT: Ja, I don't actually
 9 remember putting in that dotted red line, but it, I must
 10 have.
 11 CHAIRPERSON: You did, and my impression
 12 of you is that you're a careful, meticulous person when you
 13 can be, sometimes I think maybe in situations where you
 14 can't be, but that's a matter that may be explored later.
 15 But I wouldn't have expected you just to put a line in like
 16 that, grabbing it out of the air. So would I be right in
 17 saying you must have got that information from someone?
 18 COLONEL SCOTT: I must have, yes,
 19 Chairperson.
 20 CHAIRPERSON: Ja, thank you.
 21 MR CHASKALSON SC: Colonel, then GW6(a)
 22 and GW6(d), and let me clarify my question; I mean it may
 23 be that you have certain broad criticisms of the analysis
 24 and that's not what I'm interested in. That's a matter
 25 essentially for argument which you can convey to your legal

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1 team, we can have a debate in argument, but if you can
 2 identify very clear factual errors in either of those two
 3 documents we'd like to know because we don't want to, I
 4 mean if we've made a mistake in accepting what the Human
 5 Rights Commission has put forward, we'd like to know about
 6 that.

7 COLONEL SCOTT: I've been, I perused the
 8 documents last night and maybe just to put things in
 9 context, I can't challenge, I can't, I didn't have the time
 10 and I don't think it's my place to go into the depth of the
 11 investigation they've done. Quite to the contrary; I
 12 actually appreciate their investigation they've done
 13 because I feel it is objective evidence and I believe that
 14 that is the actual movements of the vehicles. I've worked
 15 through most of the, I think they're all demarcated as 6(a)
 16 to somewhere around (g), the annexures to Mr Gary White's
 17 statement, from 6(a) to roughly 6(g), and I agree with
 18 what, being an outsider from being on the ground in the
 19 same position that we find ourselves sitting here, what I
 20 have viewed is in my opinion accurate and correct.

21 MR CHASKALSON SC: Thank you, and then we
 22 don't need to take that further. We have a couple of loose
 23 ends that I should have canvassed with you earlier, and if
 24 we can just quickly run through them. My first question
 25 that I meant to ask was, who was in the JOC during the

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1 operation, that you can recall?

2 COLONEL SCOTT: If it's out of
 3 recollection –

4 MR CHASKALSON SC: I'm now talking about
 5 the operation on the 16th.

6 COLONEL SCOTT: Yes, I understand that.
 7 If it's from recollection, that's a bit difficult, as I
 8 say, but I can remember at a later stage in the operation
 9 speaking to the Provincial Commissioner. I recall General
 10 Annandale being in the JOC, Brigadier Pretorius, and now
 11 I'm actually also speaking possibly from default, but
 12 Captain Van Heerden –

13 MR CHASKALSON SC: We know she was there
 14 because she –

15 COLONEL SCOTT: Ja.

16 MR CHASKALSON SC: - took those notes.

17 COLONEL SCOTT: And then obviously the
 18 two ladies that were monitoring the radio next to me.
 19 There was Lonmin personnel.

20 MR CHASKALSON SC: Was that, Mr Botes has
 21 given us a statement that he was there. Was there
 22 someone –

23 COLONEL SCOTT: No, I think he had two –

24 MR CHASKALSON SC: - as well as Mr Botes?

25 COLONEL SCOTT: There were two people

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1 that monitored the CCTV screens almost continually. I
 2 don't particularly recall any other than that.

3 CHAIRPERSON: When was the National
 4 Commissioner there? We know she went off to hospital at
 5 some stage, but did she come back?

6 COLONEL SCOTT: She returned somewhere
 7 that Thursday evening, or early Friday morning,
 8 Chairperson.

9 CHAIRPERSON: Once she went off to the
 10 hospital, she didn't come back to the JOC?

11 COLONEL SCOTT: Are you talking about the
 12 Provincial Commissioner?

13 CHAIRPERSON: Yes. Sorry, did I say
 14 National Commissioner? I beg your pardon. No, I made a
 15 mistake; Provincial Commissioner. The Provincial
 16 Commissioner, I think was it before or after the 1:30
 17 meeting? After the 1:30 meeting I think she went off to
 18 the hospital, I think to see Lieutenant Baloyi, if I
 19 remember correctly. Is that correct?

20 COLONEL SCOTT: I understand it to be so.

21 CHAIRPERSON: Or you wouldn't know the
 22 reason, but anyway, she went off to hospital. Did she come
 23 back?

24 COLONEL SCOTT: I recall her being in the
 25 JOC, not – I was very concentrated on the radio at the time

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1 that everything was happening, but at least an hour
 2 afterwards when we started moving around again and trying
 3 to understand what went on and so on, I recall her being in
 4 the JOC at that time. Whether she was there before that, I
 5 don't particularly remember seeing her.

6 CHAIRPERSON: So you can't tell us
 7 whether she was there at sort of quarter to 4 onwards?

8 COLONEL SCOTT: No, I wouldn't be able to
 9 say that with – no.

10 CHAIRPERSON: Alright, thank you.

11 MR CHASKALSON SC: And Colonel, do you
 12 recall seeing Warrant-Officer Masinya and Warrant-Officer
 13 Ndlovu, the two POPs operators who had been called back
 14 from the field? Do you recall seeing them in the JOC
 15 during the operation?

16 COLONEL SCOTT: No. No.

17 MR CHASKALSON SC: Then a question about
 18 exhibit L; a week or so ago when you were questioned around
 19 the location of the slides dealing with the final plan in
 20 the Commission, where they were located in the section
 21 dealing with Tuesday the 14th, you said that you had, or
 22 that they'd been put in that point with all the plans
 23 together because you thought that would make things easier
 24 to explain. Whose idea was that? Do you recall?

25 COLONEL SCOTT: I've also tried to go

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1 back through the drafts of the presentation and it actually
 2 originates on one slide in a very early draft and that same
 3 slide continues all the way through, and then we initially
 4 when the Google Earth maps were created at Roots, we put
 5 those Google Earth maps onto each of the pages, the after
 6 re-engineered Google maps, only to – if I'm not mistaken,
 7 those were moved all the way back to Tuesday because of the
 8 initial planning. As I said, the presentation was
 9 initially not planned in a daily sequential event. It
 10 dealt with the history, and then it simply dealt with the
 11 police operation, until we started getting more structure.
 12 But in that process the whole plan was reflected on one
 13 slide at that time in the earlier versions of the – and the
 14 best that I, explanation that I can give you is that it
 15 just exploded from there to be a better explanation of the
 16 planning, but never got put onto its consecutive days. But
 17 I do recall also the rationale, or the discussion taking
 18 place that as early as we could in the presentation, once I
 19 had arrived, to depict the full plan because to have
 20 something on a Tuesday revert to, so that they would
 21 understand from that time already what would be happening
 22 throughout the process, and then with a better explanation
 23 of the, when the phase actually changed from a phase 1 to a
 24 phase 2, to explain that on the Thursday. That's why
 25 Wednesday doesn't have anything on it, because it was

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1 simply the phase 1 repeated, and then obviously the special
 2 JOCCOM and the tactical option which was employed.
 3 MR CHASKALSON SC: Do you recall who made
 4 these decisions about how the presentation should look – or
 5 that's the question, was there a specific decision to do it
 6 that way made by someone, or can you not recall that?
 7 COLONEL SCOTT: I can't recall that. As
 8 I say, it's simply where we sat around and there was times,
 9 there were very large groups of, especially at Roots there
 10 were possibly 40 more, so to recall who gave the inputs,
 11 but normally on an input like that maybe the suggestion
 12 could have come from myself or Colonel Visser, or from
 13 someone like a general, but it would be between us or the –
 14 CHAIRPERSON: You say "the general,"
 15 which general are you referring to?
 16 COLONEL SCOTT: A general.
 17 CHAIRPERSON: A general?
 18 COLONEL SCOTT: Ja.
 19 CHAIRPERSON: A general. Any general.
 20 COLONEL SCOTT: Because I don't think the
 21 others would have input into specifically the planning or
 22 how it was reflected. They were more to do with their
 23 roles and to try and actively depict what they were
 24 involved with.
 25 MR CHASKALSON SC: Now offhand I haven't

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1 gone back to track where this description of the plan
 2 changed. You say that you did that exercise. Can you
 3 identify where, in which version of exhibit L it first
 4 appears that under the Tuesday the final stage 3 plan is
 5 exhibited? I mean if you can't do it offhand, we can do
 6 the exercise ourselves. It's something that will speak for
 7 itself from the -
 8 COLONEL SCOTT: Ja, I was going to – I'm
 9 going to have to look through the various presentations
 10 because –
 11 MR CHASKALSON SC: No, don't waste your
 12 time now. We can do that later. You may recall when we –
 13 CHAIRPERSON: Are you moving on to
 14 another topic?
 15 MR CHASKALSON SC: No, not yet,
 16 Chairperson.
 17 CHAIRPERSON: Same topic.
 18 MR CHASKALSON SC: When we first dealt
 19 with this topic, you agreed that it was potentially
 20 misleading, with hindsight, to have that plan under a date
 21 saying Tuesday. Apart from that issue, is there anything
 22 else in the presentation in its final form, exhibit L,
 23 apart from things that we've discussed already, that to
 24 your knowledge creates a potentially misleading impression
 25 that you're aware of?

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1 COLONEL SCOTT: Apart from what we've
 2 discussed? Because obviously I agree with the Cal's(?)
 3 analysis of the movement of vehicles and crowds and so on,
 4 although I feel that the members should be given the
 5 opportunity just to give their versions, that were on
 6 ground, because there may be something we're not seeing,
 7 but –
 8 MR CHASKALSON SC: Apart from what we've
 9 discussed, anything that we haven't touched on?
 10 COLONEL SCOTT: Nothing comes to mind.
 11 MR CHASKALSON SC: And we've got agreed
 12 times on slides on the 16th, so if something is out of
 13 sequence it will appear from that agreement. Nothing that,
 14 is there anything else that we haven't discussed that to
 15 your knowledge is factually incorrect in the presentation?
 16 COLONEL SCOTT: Not offhand.
 17 CHAIRPERSON: You conceded last week that
 18 placing the final plan in the Tuesday context was
 19 inaccurate information, and when you were asked why it was
 20 done you said it was to make – as I understood it, to make
 21 it easier to understand, which I thought was a suggestion
 22 that the Commissioners would be dim-witted and wouldn't
 23 understand it unless this inaccurate information was
 24 provided. You did say it was done without malice. That
 25 was your evidence. Was there any other inaccurate

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1 information which was put in to assist the dim-witted
 2 Commissioners or others to follow the story more easily?
 3 COLONEL SCOTT: From where I had the
 4 inputs, Chairperson, which was mainly to do with, as I say
 5 photographs and video footage to complement obviously
 6 inputs from commanders, no. Obviously I can't comment on
 7 some of the slides what the content is because that's
 8 coming purely to me, or to Colonel Visser as a scribe. So
 9 whether that's inaccurate, but there's nothing that comes
 10 to mind that's in there now that people have told us that I
 11 know to be other than the truth.
 12 CHAIRPERSON: Did anybody at Roots say
 13 but look here, we – I'm talking about this inaccurate
 14 information that was put in for this reason that I've
 15 summarised. Did anybody at Roots put his hand up and say
 16 well, that shouldn't be there like that, it's not accurate;
 17 we must, we're trying to help the Commission to get the
 18 true facts and we're not going to help them to get the true
 19 facts by giving them information which is inaccurate. Did
 20 anybody at all at Roots raise that point to your knowledge?
 21 COLONEL SCOTT: No, there – the only,
 22 there was one or two issues raised at Roots. One of them
 23 was just an opinion that maybe the police shouldn't put the
 24 whole sangoma issue into the presentation, but it was
 25 something that was real and was there and was experienced.

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1 So it was kept. I don't particularly remember anything
 2 offhand other than minor wording changes and that type of
 3 thing, because most of what we put in anyway came from the
 4 very members that were sitting there, so it was just
 5 reflected back to them again.
 6 CHAIRPERSON: So all the participants at
 7 Roots were quite content that inaccurate information should
 8 be put before the Commission as to the date upon which the
 9 final plan was first on the table. Is that what you're
 10 saying?
 11 COLONEL SCOTT: Chairperson, I don't
 12 think anybody took the time to think that the importance of
 13 the full plan and its different variants, as we find in my
 14 consolidated statement, to be carried over in that much
 15 depth was necessary in the presentation. It was just to
 16 reflect what was actually carried out and not then –
 17 CHAIRPERSON: Everybody – sorry, sorry,
 18 forgive me.
 19 COLONEL SCOTT: And not the rationale or
 20 the things that didn't happen per se. As I say, we did
 21 initially limit ourselves, as it common practice, whether
 22 we present to parliament or to whoever, to say there needs
 23 to be a time limit on what we're doing, and you do that by
 24 numbering your slides, and obviously things have got to
 25 take importance and what's in, what's out, to keep it

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1 reasonable, and as I think I have testified, if I recall,
 2 our first target was to not go over 150 slides. When we
 3 did –
 4 CHAIRPERSON: A bit of accuracy will have
 5 to be sacrificed in the interest of brevity. Is that what
 6 you're suggesting?
 7 COLONEL SCOTT: Ja well, but I'm just
 8 saying I think that was the mindset of the police at the
 9 time, to try and just keep it concise, something that would
 10 lay a foundation in essence of what we knew.
 11 CHAIRPERSON: Did everybody at Roots know
 12 that the plan had changed and as far as what was on the
 13 table at the JOC was concerned, the change took place on
 14 Thursday?
 15 COLONEL SCOTT: From encirclement to
 16 dispersion?
 17 CHAIRPERSON: Ja, from encirclement to
 18 DED, disperse –
 19 [09:28] COLONEL SCOTT: It's difficult for me to
 20 speak on their behalf but even at that time these things
 21 were a little bit of a grey area for me, so –
 22 CHAIRPERSON: The DD plan was the final plan.
 23 COLONEL SCOTT: Yes.
 24 CHAIRPERSON: Disperse, encircle, disarm.
 25 COLONEL SCOTT: Disarm.

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1 CHAIRPERSON: The encirclement plan was the only
 2 one, you've told us already –
 3 COLONEL SCOTT: Yes.
 4 CHAIRPERSON: - was the only one on the table at
 5 the JOC until some stage on the Thursday.
 6 COLONEL SCOTT: Thursday, yes.
 7 CHAIRPERSON: Right. I take it everybody at Roots
 8 knew that. I mean there had been briefings, there had been
 9 – hard copy documents had been produced on the earlier
 10 days. No-one laboured under the misapprehension that the
 11 DD plan was the plan on Tuesday, even Tuesday afternoon, is
 12 that right?
 13 COLONEL SCOTT: Yes.
 14 CHAIRPERSON: Yet everybody at Roots apparently
 15 was quite happy that the Commission should be told, left
 16 with the impression that the DD plan was there on the table
 17 on Tuesday. That's your evidence, is it?
 18 MR CHASKALSON SC: Chairperson, I'm sorry
 19 to interrupt at this point but I've just gone back to look
 20 at the documents and in fairness to Colonel Scott and in
 21 relation to this question, the version of exhibit L that
 22 came out of Roots does not, does not have the slides
 23 arranged in the sequence in which they were finally
 24 arranged. So the version that came out of Roots which is,
 25 I think, exhibit JJJ40 – oh, I've now lost it, it's exhibit

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1 JJJ32. It doesn't have the final plan located under the
 2 Tuesday so it –
 3 CHAIRPERSON: Yes, alright. Sorry, I was on the
 4 wrong track but I'm pleased that I've been corrected and
 5 you nearly agreed with what I said which would have been
 6 unfortunate because it was obviously inaccurate. So what
 7 you're telling me now, telling us now, is that this change
 8 which we've described actually took place after Roots, is
 9 that right?
 10 COLONEL SCOTT: It did and, Chairperson –
 11 CHAIRPERSON: Who was responsible for it? Sorry,
 12 you were saying something before I interrupted you.
 13 COLONEL SCOTT: Yes and I know and I
 14 think it may be, I'm not sure if it's on the slides the
 15 advocate is speaking about but I can recall initially
 16 having both tactical options under phase 3. I had
 17 encirclement and then I also had dispersion, they were both
 18 mentioned. At what time the decision was taken and by who,
 19 to only reflect the actual one that was utilised on the
 20 day, I don't recall when that was made to take that out or
 21 just to reflect that.
 22 CHAIRPERSON: Were you still one of the co-authors
 23 of the presentation at the time that change was made or was
 24 it done after you had stopped making inputs to the final
 25 presentation?

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1 COLONEL SCOTT: I was a co-author even
 2 whilst Colonel Visser was still presenting. As I say, I
 3 think I brought in one or two slides towards the end to do
 4 with scene 2 still at that stage, as we were learning about
 5 it but all, what I do know is that I concentrated heavily
 6 on scene 2 from the time I was brought back. I can't – as
 7 I say, that's why I'm not sure who took a decision to
 8 remove or to maybe streamline the presentation only to
 9 reflect what was done and to take out the encirclement
 10 because it never happened, which is a possibility because
 11 for instance stage 4, for that matter, I don't know if
 12 that's mentioned in depth either, 5 or 6, also because they
 13 didn't take place.
 14 CHAIRPERSON: Thank you.
 15 MR CHASKALSON SC: For what it's worth,
 16 Colonel, I think I've now managed to isolate the period in
 17 which the change took place. The first draft of the plan
 18 where I can identify stage 3 in its final form being
 19 located under a Tuesday is JJJ158 which is the first
 20 document that was called "Marikana final" and that was
 21 produced on the 15th of October. I can't find anything
 22 before that which had the arrangement that way. I don't
 23 know if that may assist you to remember when exactly the
 24 change was made and at whose instance.
 25 COLONEL SCOTT: It doesn't. I'm glad

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1 that we can see it at that stage but as I say it was during
 2 the month of October when we had meetings at our guesthouse
 3 in Rustenburg where it was specifically around the
 4 presentation, most of them were around scene 2, trying to
 5 understand what happened at scene 2 still. So it's in,
 6 obviously some of those consultations with commanders and
 7 senior members of the police that the change must have then
 8 been sanctioned.
 9 MR CHASKALSON SC: Chairperson, I'm
 10 planning to move to a different issue.
 11 CHAIRPERSON: I've asked the questions, the points
 12 I wanted to follow up. I'm glad this apprehension I had
 13 about what happened at Roots has been removed.
 14 MR CHASKALSON SC: Colonel, I then want
 15 to return to a point related to your failure to print out
 16 briefing dos for the commanders at the 2:30 briefing at
 17 forward holding area 1 on the 16th and you explained
 18 yesterday that by the end of the special JOCCOM there
 19 wasn't enough time left to take what you estimated would
 20 have been an extra 20 minutes to arrange the printing. My
 21 – well, the first question I want to put to you is, am I
 22 correct in understanding your statement, well,
 23 understanding from your statement that you knew that there
 24 was a possibility that there would be a move to stage 3 on
 25 the 16th from the time of the six o'clock JOCCOM and before?

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1 COLONEL SCOTT: I think I've testified I
 2 don't recall that being said in the JOC.
 3 MR CHASKALSON SC: I'm not asking whether
 4 it was said in the JOC but in your preparation, I
 5 understood your statement and testimony to suggest that you
 6 were anticipating that there may have to be a move to stage
 7 3 –
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: - so that you were
 10 thinking ahead to stage 3.
 11 COLONEL SCOTT: Yes.
 12 MR CHASKALSON SC: And did you, when
 13 we're talking about the possibility that there may have to
 14 be a move to stage 3, did you understand that to be a
 15 strong possibility?
 16 COLONEL SCOTT: If I reflect back, I was
 17 still hopeful that dialogue was going to win the day and
 18 that was a hope but I don't want to say it and say it with
 19 certainty but this is why I think I've mentioned it as
 20 well, by the end of that JOCCOM it's possibly because the
 21 generals were called out to go with the Provincial
 22 Commissioner to a media briefing but if there was a
 23 decisive decision made, I would most surely have been
 24 working on what was then envisioned as the new action to be
 25 taken, planning it out, preparing it, et cetera for a way

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1 forward. And just the fact that I didn't do that, to me,
 2 knowing myself and how I would've worked is what puts me a
 3 little bit back to say I'm not sure that – as I say, even
 4 on the Wednesday there was the possibility. We're looking
 5 at this in hindsight now but at that time when we went in
 6 on the Wednesday morning still with the phase 1, we didn't
 7 know whether that day we would need to possibly go to a
 8 stage 3 and whatever that would be. So you know, you
 9 didn't know if we'd get to the Thursday for that matter and
 10 that's how we were moving along.

11 MR CHASKALSON SC: But certainly at the
 12 time of the six o'clock JOCCOM you knew that there was a
 13 risk that you would have to go to stage 3 later that day.

14 COLONEL SCOTT: That there was a
 15 possibility, yes.

16 MR CHASKALSON SC: And presumably you
 17 would have known also that if there was going to be a move
 18 to stage 3, you would have to brief JOC on the tactical
 19 plan for stage 3 and you'd have to brief the commanders on
 20 the tactical plan for stage 3.

21 COLONEL SCOTT: That would have been the
 22 case but why I'm saying this is, why I say this is because
 23 we didn't have, as far as I can pick up, a clarification on
 24 what would it be, understanding that we had an encirclement
 25 plan which was an option and then of course we looked at

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1 that for a bigger crowd, which was not going to work. So
 2 that's the dispersion plan but there was no decisive
 3 decision taken that I was aware of to say listen, today it
 4 will be this if we go ahead because that – and again as I
 5 say, how General Annandale would actually work, he would
 6 put that to the JOC and to the commanders there, have me
 7 present something and then ask them is that acceptable.
 8 So, but I don't remember the results of that but as I
 9 mentioned, in explaining the phase 2 on that Thursday
 10 morning I would have alluded to the phase 3. Now whether
 11 that was the time period that was spoken to that the phase
 12 3 initially is encirclement but these are the reasons we're
 13 sure that's not going to work and this is the proposal for
 14 the new one, is quite possibly how it happened but then
 15 without a conclusive decision made on, is it acceptable,
 16 are we going ahead with it this way.

17 MR CHASKALSON SC: If there had been a
 18 clear decision taken that the phase 3, if it is to be
 19 implemented, is going to be the disperse and disarm plan,
 20 would you have prepared briefing documents in anticipation
 21 of a later briefing after the six o'clock JOCCOM?

22 COLONEL SCOTT: I'm not sure because I
 23 don't recall what I was busy with but I know I wasn't idle.
 24 It was not as though I was sitting in the JOC doing nothing
 25 but if I was kept busy with other taskings, it's possible

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1 that that kept me from it but I know there was a thought
 2 process and a rationale that I was running through my mind,
 3 but normally anyway before putting plans to paper you need
 4 the approval of, this is actually what we're going to do
 5 otherwise it becomes a fruitless exercise to go the whole
 6 way with that, only to be told it's not a viable option for
 7 the following reasons and you've wasted that resource and
 8 energy.

9 MR CHASKALSON SC: In relation to what
 10 you were doing I can assist you a little bit because the
 11 first tasking that you had following the JOC of course was
 12 to assist with the cordon and search plan or planning. Do
 13 you recall how long you were preoccupied with that?

14 COLONEL SCOTT: I don't have much of a
 15 recollection of most of that morning.

16 MR CHASKALSON SC: Alright, I don't think
 17 I can take this further at this stage.

18 COMMISSIONER HEMRAJ: I just need
 19 clarification from you. Colonel, this phase 3 option, the
 20 tactical option, when did you first conceive of it? Was it
 21 always the plan B or was it something that you thought of
 22 at the last minute?

23 COLONEL SCOTT: The one that was
 24 employed?

25 COMMISSIONER HEMRAJ: Yes.

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1 COLONEL SCOTT: Or just the concept of
 2 the tactical option being a phase 3?

3 COMMISSIONER HEMRAJ: The phase 3 as it
 4 was put in your plan to be rolled out on the 16th?

5 COLONEL SCOTT: Ma'am, I'm still
 6 convinced that we discussed that on the Wednesday, the
 7 option of – and then verifying that it was not going to
 8 work for a larger crowd but with it being carried over that
 9 it would be communicated at the JOC of the Thursday
 10 morning. I'm not too sure if I said Thursday or Wednesday
 11 previously. It was discussed on the Wednesday, possibly
 12 briefed on the Thursday morning or thrown open for inputs
 13 on the Thursday morning and then the detail of that I'm
 14 very sure of was only discussed at the 13:30 meeting.

15 COMMISSIONER HEMRAJ: And when you say
 16 Wednesday you refer to that informal discussion that you
 17 say you had with –

18 COLONEL SCOTT: General Annandale.

19 COMMISSIONER HEMRAJ: Major-General
 20 Annandale.

21 COLONEL SCOTT: Yes.

22 COMMISSIONER HEMRAJ: And the actual
 23 detail of how it would be rolled out, when was that
 24 conceived of? When was that actually planned, as opposed
 25 to the general idea of it?

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1 COLONEL SCOTT: I'd been pondering on
 2 that but it was only discussed, and I remember that quite
 3 well because as a more junior officer in the JOC I
 4 initially sat back when they were asked what is, how – we
 5 knew it was going to be dispersion, to go and disarm and
 6 arrest but the "how" initially I thought, you know, others
 7 would give the input on and after a time of nothing
 8 forthcoming I asked if I could make a recommendation where
 9 I was asked to show what I thought and when I showed it,
 10 that was put to everybody, it was accepted and then I was
 11 told to go and brief the people at the front.
 12 COMMISSIONER HEMRAJ: That's at the 1:30
 13 –
 14 COLONEL SCOTT: 1:30 meeting.
 15 COMMISSIONER HEMRAJ: That's at the 1:30.
 16 COLONEL SCOTT: Yes.
 17 COMMISSIONER HEMRAJ: Is that when the
 18 details were first spelt out?
 19 COLONEL SCOTT: Yes.
 20 COMMISSIONER HEMRAJ: The details as you
 21 had planned them.
 22 COLONEL SCOTT: Yes.
 23 CHAIRPERSON: You must have actually been working
 24 on, at least in your mind, not necessarily on your
 25 computer, in the time before the 1:30 meeting began and I

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1 think you say that in your statement that at the 1:30
 2 meeting eventually no detail was forthcoming from anybody
 3 else and eventually General Annandale asked you and you
 4 then made the suggestion which was accepted, is that –
 5 COLONEL SCOTT: That's how I under – I
 6 remember it.
 7 CHAIRPERSON: Yes. Going back to the question as
 8 to whether you discussed the basic idea or the concept at
 9 the earlier meeting, six o'clock meeting, apart from the
 10 minutes which appear to have been finalised at Roots and
 11 therefore I'm a bit reluctant to rely too heavily on them,
 12 we do have rough, we do have notes that were made at the
 13 meeting itself, the six o'clock meeting. Have you had an
 14 opportunity to go through those notes? They are exhibits,
 15 I think.
 16 COLONEL SCOTT: Yes, I've read as best as
 17 I could.
 18 CHAIRPERSON: Yes.
 19 COLONEL SCOTT: Some are not very
 20 legible.
 21 CHAIRPERSON: No, I had the same problem. Could
 22 you see any trace – if you don't know the answer don't
 23 hesitate to say so but could you note, did you see any
 24 trace in those notes of this idea, the concept of what we
 25 can call, perhaps it would be fairer to call it the

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1 disperse and disarm concept, the DD, did you see any signs
 2 of that having been discussed or mentioned at the six
 3 o'clock meeting in those rough notes?
 4 COLONEL SCOTT: Chairperson, I can't
 5 recall seeing any. What I did pick up, it looked like the
 6 minute taker was copying the slides that possibly were
 7 shown or came to me afterwards, not keeping up with the
 8 speed of what was being said and asked to view the slides
 9 to just write down what possibly was shown. That's what I
 10 can try to put together from those contemporaneous notes.
 11 CHAIRPERSON: Anyway, you can't remember it. I
 12 didn't see it but maybe there is something there which the
 13 persons who were at the meeting will recognise as being a
 14 summary of something that you've said in that regard. It
 15 sounds as if it's something that you can't help us with.
 16 Maybe the note taker or someone else will be able to help
 17 us. Thank you.
 18 MR CHASKALSON SC: And then, Colonel,
 19 finally you'll recall right at the start of this cross-
 20 examination we dealt with or I raised with your certain
 21 video files that we'd found in the recycle bin of the SAPS
 22 hard drive and those were the videos under JJJ65 which
 23 were, had names, picture – we call them the picture series
 24 because their numbers were preceded by the word "picture"
 25 and you testified that you had no knowledge of those video

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1 files and I then placed on record in the Commission that
 2 after we made enquiries with SAPS, SAPS had reported to us
 3 that these video files had originated with Lonmin. We took
 4 that up with Lonmin. Lonmin reverted to us and said they
 5 had done a thorough search of their hard drives and could
 6 find no trace of those files prior to the point at which
 7 they were circulated by the evidence leaders. We have now
 8 in fact found the source of the files. We found them on
 9 the hard drive of Brigadier Victor in a directory called
 10 "Marikana police video footage" and what I would like to do
 11 is just for completeness' sake to put in the original files
 12 as an exhibit together with the thumbnails and properties.
 13 Our JJJ58 number is currently unused, so if we can use that
 14 and I wonder if we can just show them up on the screen so
 15 that – and I must confess that I haven't given you advance
 16 notice of this. In fact it is something that I only
 17 identified yesterday and I'm not going to ask you specific
 18 questions but those are the originals of the picture series
 19 and if we go to the next page we'll see that they have
 20 original metadata as well. The next page is the file
 21 properties. JJJ58, 58A is the thumbnail, 58B is the first
 22 page of properties, 58C is the second page of properties.
 23 What I just, if we can go to the next page, 58C –
 24 maybe I went too quickly from the next page. We can, what
 25 we see on the first page is they start on the 13th and they

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1 run all the way down to that file 378 which is taken at
 2 1:24PM on the 16th. The numbers are not completely
 3 continuous, we'll see some gaps and we also don't know if
 4 the set is complete because we don't know if there's a 379,
 5 a 380. If you look up at the top you can see they come
 6 from Brigadier Manie Victor's laptop. I understand that
 7 Brigadier Victor is from crime intelligence, is that
 8 correct?
 9 COLONEL SCOTT: I understand that, yes.
 10 MR CHASKALSON SC: Now –
 11 CHAIRPERSON: I'm sorry to interrupt you, Mr
 12 Chaskalson, I see from the foot of JJJ58C there is a 378
 13 but we don't – 378, I see, sorry, bottom left hand corner.
 14 Forgive me, I withdraw that. It does appear to end because
 15 that row is thereafter empty. So it looks as if 378 is the
 16 last one.
 17 MR CHASKALSON SC: Yes, in the directory
 18 there is nothing more than 378 but –
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 MR CHASKALSON SC: Yes, all the files in
 21 that directory of Brigadier Victor's hard drive are in what
 22 we are showing at the moment but of course we don't know if
 23 the actual sequence of shots runs beyond that because it's
 24 possible that there's a 379, a 380. To do that we would
 25 have to go back to Brigadier Victor, find out where this

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1 set of files originates and try to identify or try to find
 2 file number 379 and if it's taken from a day after the 16th
 3 we know that the sequence ended on the 16th. But my
 4 question to you is, we know that Captain Nel from crime
 5 intelligence was present at Marikana and was taking videos
 6 but we've accounted for all of Captain Nel's videos and
 7 it's not this series. Are you aware from anybody else from
 8 crime intelligence who was present at Marikana and was
 9 taking videos between the 13th and the 16th?
 10 COLONEL SCOTT: No. The only one I was
 11 aware of when he brought me the videos was Captain Nel,
 12 obviously flying with Brigadier Fritz as well, so I wasn't
 13 aware of anybody else. It was only that camera and the two
 14 POPS cameras that I was aware of and then I think an
 15 original POPS camera that came from the 13th.
 16 MR CHASKALSON SC: Yes, the analogue POPS
 17 camera. It appears that there was a fourth SAPS camera at
 18 Marikana and that these files came from a fourth SAPS
 19 camera but that's a matter that we will have to canvass
 20 with Brigadier Victor and crime intelligence. Colonel,
 21 those are –
 22 COMMISSIONER HEMRAJ: I'm just a little
 23 bit lost. Have we seen these?
 24 MR CHASKALSON SC: The actual videos?
 25 COMMISSIONER HEMRAJ: Yes. Do we have

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1 them?
 2 MR CHASKALSON SC: The videos themselves
 3 would be exhibits as triple, we can call them JJJ58 and all
 4 of the video files will be put in as JJJ58, the actual
 5 video files. We haven't shown the, I don't think we've
 6 shown any of the video files yet in open Commission. What
 7 we have shown is the recycled copies, the thumbnails of the
 8 recycled copies of these videos which were under JJJ65 but
 9 I don't – I may be wrong but I don't think the videos have
 10 been played in open Commission yet.
 11 COMMISSIONER HEMRAJ: And is there
 12 anything of significance that you're drawing our attention
 13 to here at this point in time?
 14 MR CHASKALSON SC: In terms of the
 15 content that one can see from the videos, nothing specific
 16 that we are able to say that you must be aware of at this
 17 stage. We haven't analysed them in detail, in part because
 18 without knowing the times which we've only recently been
 19 given it's difficult to know what you're looking for on a
 20 video, but some of these videos are taken from within
 21 police Nyalas and that is something that we found
 22 significant because of course if someone was inside a
 23 police Nyala or able to film from inside a police Nyala,
 24 there's no reason why they shouldn't have been able to film
 25 during the operation but we will be analysing these videos

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1 now that we know what their precise times are and if there
 2 is content of significance we'll certainly highlight it in
 3 the Commission.
 4 CHAIRPERSON: Have we seen – you say we haven't
 5 seen these, because I notice there are some missing from
 6 JJJ58A if one checks through the numbers. There's a
 7 duplication between some of those listed on JJJ58B and
 8 JJJ58C, for example 348 that appears on both. Are these
 9 matters that we know anything about?
 10 MR CHASKALSON SC: Chairperson, if –
 11 CHAIRPERSON: Have we been told? I can't remember
 12 this. You're going to deal with it now? In which I'll
 13 give you –
 14 MR CHASKALSON SC: I can clarify one of
 15 your concerns. The overlap between 58B and 58C is just a
 16 function of what it was possible to take as a screenshot
 17 from the computer, so there is no actual overlap between
 18 58A and B.
 19 CHAIRPERSON: Okay.
 20 MR CHASKALSON SC: That just represents a
 21 picture of the screen on my computer. There are, we've
 22 identified that there are missing numbers in the sequence.
 23 We will be trying to pursue that but we've done no
 24 investigation flowing from these videos because we only
 25 discovered them a little more than, well, 24 hours ago. We

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1 will be investigating and we will revert to the Commission
 2 if anything of consequence emerges from our investigations.
 3 CHAIRPERSON: Thank you.
 4 COLONEL SCOTT: Chairperson, I'm just
 5 wondering if the one video camera I forgot to mention is
 6 Colonel Botha, LCRC. It doesn't fit his sequence?
 7 MR CHASKALSON SC: No, this doesn't fit
 8 Colonel Botha's camera but there is of course Colonel
 9 Botha's camera. Colonel, those are my questions for you,
 10 thank you for answering them.
 11 COLONEL SCOTT: Thank you.
 12 CHAIRPERSON: Mr Bizos, I believe you're going to
 13 be the next cross-examiner, is that correct?
 14 MR BIZOS SC: Thank you, Mr Chairman.
 15 MR SEMENYA SC: Chair -
 16 CHAIRPERSON: You did indicate to me in advance
 17 what issues you were proposing to cover and the time you
 18 expected and I indicated to you I would only be prepared to
 19 allow you to ask certain of the topics, others I felt had
 20 been dealt with but you'll adhere to that.
 21 MR BIZOS SC: Thank you, Mr Chairman,
 22 I'll try and confine myself to the two out of the four
 23 matters that I was going to deal with and try and be as
 24 brief as possible.
 25 CHAIRPERSON: Yes. Mr Semenya, you turned your

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1 microphone on?
 2 MR SEMENYA SC: Just in response to
 3 Commissioner Hemraj's enquiry at the opening of the session
 4 today, there is the statement of Brigadier Pretorius which
 5 is JJJ187A. At paragraph 28 she addresses those issues
 6 there and says, "The information to the JOC was limited.
 7 The only information received was from the radio. The CCTV
 8 cameras of the mine were of little help and the cameras
 9 were far from the koppie and the images could not be seen
 10 clearly." Here comes the part, "I tried several times to
 11 phone Brigadier Calitz, the operational commander, as well
 12 as Major-General Naidoo, but was not successful. Their
 13 phones rang without being answered."
 14 COMMISSIONER HEMRAJ: My question, Mr
 15 Semenya, related to – there was cross-examination yesterday
 16 about the time period during which there were no calls made
 17 and that's why I made the enquiry as to whether we knew
 18 what time these calls were made to Brigadier –
 19 MR SEMENYA SC: We'll track over that as
 20 well and the second thing, Chair, as I understand the rules
 21 we are to get, one, the motivation for extra cross-
 22 examination and secondly, the estimated duration.
 23 CHAIRPERSON: Sorry, were you not given that? I
 24 got a motivation for a number of topics and I disallowed
 25 some and allowed others. The time asked for, a day, I said

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1 I thought regard being had to the fact that certain topics
 2 I wasn't prepared to allow, that the time would be reduced.
 3 I'm sorry you weren't shown the motivation and I take it
 4 that in future that omission will not occur again.
 5 MR SEMENYA SC: Can we at least be
 6 favoured with it so that we understand the parameters of
 7 what is going to be explored?
 8 MR BUDLENDER SC: Mr Chairman, may I
 9 comment on that? It seems to me, with respect, a sensible
 10 thing that the party involved should know what's being
 11 explored and be able to prepare itself. I just want there
 12 to be clarity that the ruling issued by the Commission is
 13 that application is made to the Commission in chambers or
 14 informally, that the parties aren't entitled to advance
 15 notice of those applications or an opportunity to comment
 16 on them because otherwise that will just prolong things.
 17 As I understand what Mr Semenya is proposing is he wants to
 18 know what ruling you've made and it seems to me that's
 19 proper but we're not, I take it, going to have hearings
 20 about whether there will be hearings.
 21 CHAIRPERSON: Yes, yes, no, I wasn't proposing to
 22 have hearings. If I stated the position too generously, I
 23 withdraw it. I said, I agree with your approach but
 24 certainly the point you make is valid, Mr Budlender, that
 25 the topics that I allow cross-examination on should be

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1 conveyed to the party whose witness is being cross-
 2 examined.
 3 MR SEMENYA SC: We also don't read the
 4 ruling as an application in chambers.
 5 CHAIRPERSON: You can't very well have that sort
 6 of thing, an application in the open chamber here but
 7 anyway –
 8 MR SEMENYA SC: No, what I mean is –
 9 CHAIRPERSON: That's a matter we can discuss
 10 afterwards in chambers. We want to find an efficient way
 11 of working which will save time but also not be unfair. So
 12 I'm sure we can find a way of doing that.
 13 MR SEMENYA SC: Even if in chambers we
 14 would hope to be invited in that contact that happens and
 15 the motivations that are given for it.
 16 CHAIRPERSON: Let's discuss that in chambers
 17 later. The idea, as you know, is to be as fair as possible
 18 but also we have to have regard to questions of time and so
 19 on. Mr Bizos, are you ready?
 20 MR BIZOS SC: Thank you, Mr Chairman.
 21 CROSS-EXAMINATION BY MR BIZOS SC:
 22 Colonel, may I make an appeal to you to speak a little
 23 louder so that I can hear you well please?
 24 MR SEMENYA SC: Chair, can I request a
 25 two minute break and let me see where we're going with the

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1 questions, the parameters? I have nothing to work with.
 2 CHAIRPERSON: Let's take a five minute comfort
 3 break now.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [10:16] CHAIRPERSON: The Commission resumes.
 6 We've had a discussion in chambers with Mr Bizos and Mr
 7 Semenya and Mr Budlender, and I want to put on record that
 8 there was an application for leave to cross-examine Colonel
 9 Scott from Mr Bizos's clients, and that's essentially the
 10 attorneys for the Ledingwane family, and five topics were
 11 indicated in the application. I disallowed three. The two
 12 I allowed were to test the version of the police service
 13 against expert evidence, including that of Mr Hendrickx, Dr
 14 Perumal, and Dr Naidoo, and the second was to explore the
 15 appropriateness of the appointment and/or selection of
 16 Colonel Scott by certain of his colleagues to be
 17 responsible for developing the operational strategy of the
 18 SAPS during the Marikana operation. It was indicated that
 19 a period of one day would be required, but in the light of
 20 the fact that I disallowed three of the topics, Mr Bizos
 21 has assured me that the cross-examination should take a
 22 much shorter period than that.
 23 There was a list of documents which would be
 24 relied on, most of which have now fallen away in the light
 25 of the decision that was taken, but anyway the matter has

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1 been discussed with Mr Semenya, who indicated that he is
 2 satisfied with the procedure so far. In relation perhaps
 3 to other witnesses we must work out as a more formal
 4 procedure to combine and endeavour to use the time we have
 5 as efficiently as we can, on the other hand not to do so at
 6 the expense of unfairness to any of the parties.
 7 We have in the past said, and I want to reaffirm
 8 this, that when a witness is to be cross-examined we expect
 9 the witness to be informed in advance, or the party calling
 10 the witness to be informed in advance of statements and
 11 documents that will be relied on so that the witness has an
 12 opportunity to read them beforehand. It saves time and
 13 also promotes fairness. If there are new documents which
 14 were not previously before the Commission then obviously
 15 we'd require copies, but it's no good just saying it's a
 16 document that's before the Commission because that's in
 17 effect saying there's a needle somewhere in the haystack of
 18 the many thousands of pages that are before the Commission,
 19 and we're going to refer to that needle. Well, that's not
 20 fair to the witness either. But that is not a problem in
 21 relation to the cross-examination which the Colonel is now
 22 going to be subjected to. You're still under oath,
 23 Colonel.
 24 DUNCAN GEORGE SCOTT: s.u.o.
 25 CHAIRPERSON: Mr Bizos –

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1 MR CHASKALSON SC: Chairperson –
 2 CHAIRPERSON: Anything you want to add?
 3 Mr Chaskalson?
 4 MR CHASKALSON SC: Chairperson, sorry, I
 5 meant to put something on record at the end of the cross-
 6 examination and did not do so. Chairperson, you will have
 7 seen that we pre-numbered our exhibits in the JJJ-series
 8 and in the course of the cross-examination there were some
 9 exhibits that weren't put formally to Colonel Scott. We've
 10 spoken to our colleagues at SAPS and they have given their
 11 consent for a proposal which we would like to make, which
 12 is that all of those exhibits in the JJJ-series go in as
 13 exhibits, including the exhibits that weren't put to
 14 Colonel Scott. They'll go in under cover of a filing sheet
 15 which will describe the documents, and exhibits which
 16 haven't, or weren't put to Colonel Scott will have no
 17 greater status than a document that has been described by
 18 the evidence leaders in the terms of the cover sheet, but
 19 it will enable other parties to have access to these
 20 documents as exhibits and they can then be referred to
 21 later as, by the exhibit number that everyone will have
 22 recognised them by.
 23 CHAIRPERSON: Yes, thank you. While
 24 we're talking about documents, I would like to remind Mr
 25 Semenya that at one stage he told us that we would be

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1 receiving a document from the police setting out lessons
 2 that had been learned, aspects that are being considered
 3 for the future, defects and so on of which they're aware.
 4 He did indicate, he said that document was being prepared.
 5 I take it that as soon as it's ready it will be given to
 6 us.
 7 MR SEMENYA SC: Indeed, Chair, and the
 8 remarks made by Mr Chaskalson are with a caveat that we
 9 would have an opportunity to contest any of the evidentiary
 10 content of those exhibits where we deem appropriate.
 11 CHAIRPERSON: Yes, I'm sure he'll accept
 12 that –
 13 MR CHASKALSON SC: Absolutely. I should
 14 have mentioned that caveat. We have no problem with it and
 15 it was agreed.
 16 CHAIRPERSON: Ja, thank you. Mr Bizos,
 17 we've now reached the stage I think when you can start your
 18 cross-examination.
 19 CROSS-EXAMINATION BY MR BIZOS SC: Thank
 20 you, Mr Chairman. Colonel, do you consider yourself an
 21 expert on the management of gatherings?
 22 COLONEL SCOTT: No, Sir.
 23 MR BIZOS SC: No? You've had an
 24 opportunity of reading the statements of Mr Hendrickx and
 25 Mr White. Have you?

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1 COLONEL SCOTT: Some time back I read Mr
 2 Hendrickx's statement, Mr White's statement more recently,
 3 yes.
 4 MR BIZOS SC: Yes, you in fact
 5 supplemented, after having read those statements, certain
 6 aspects of your original statement. Is that correct?
 7 COLONEL SCOTT: I produced a consolidated
 8 statement. It's not in reflection of reading statements of
 9 Mr Hendrickx or Mr White. It was at the request of the
 10 evidence leaders to produce a statement which was more
 11 comprehensive to what my experience was at that time.
 12 MR BIZOS SC: Do you agree that the two
 13 persons, Mr Hendrickx and Mr White, are experts on the
 14 management of gatherings?
 15 COLONEL SCOTT: I'm not sure as to how
 16 one would classify, if there's a specific measurement tool
 17 of how you would classify an expert, but I do acknowledge
 18 they have got a lot of experience in those fields, yes.
 19 MR BIZOS SC: Well, you know that experts
 20 are people who have studied and have experience in relation
 21 to the matter in issue. Do you accept the statements of
 22 both Mr Hendrickx and Mr White that they have wide
 23 experience in the management of gatherings?
 24 COLONEL SCOTT: I accept that, within
 25 their areas of the world that they come from, yes.

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1 MR BIZOS SC: In the what?
 2 COLONEL SCOTT: Within their areas of
 3 responsibility in the countries that they originate from,
 4 yes.
 5 MR BIZOS SC: Well, I'll come to the
 6 question of the country in a moment, but do you agree that
 7 they are critical of your, of what you say in your
 8 statement about the management of the crowd at Marikana?
 9 Do you agree that they are critical?
 10 COLONEL SCOTT: They have delivered
 11 critique, yes, on the operational plan, yes.
 12 MR BIZOS SC: Not being an expert, you
 13 are not able to contradict their opinions placed before the
 14 Commission?
 15 COLONEL SCOTT: I think it's just that,
 16 their opinions are their opinions. I can only testify to
 17 what I experienced on ground, what I did at the time of
 18 Marikana.
 19 MR BIZOS SC: I don't know why you say
 20 their opinions are their opinions. The question is, are
 21 you able to contradict the opinions and conclusions that
 22 these two experts, that you acknowledge as experts, are
 23 wrong?
 24 MR SEMENYA SC: No, Chair, I think the
 25 question demands some specificity; which opinion, so that

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1 we know what we're talking about.
 2 CHAIRPERSON: I think the question is
 3 overbroad, as the constitutional lawyers would say.
 4 MR BIZOS SC: Mr Chairman, if I have to
 5 enumerate and go through the details of the matters on
 6 which they contradict the witness's statement, we'll be a
 7 long time. He has read them. He knows what is
 8 contradicted. Let me give an example; the obedience of the
 9 Standing Orders for instance.
 10 CHAIRPERSON: That's also rather wide
 11 because the Standing Orders cover a wide field, but I would
 12 imagine, if I may give you my reaction to it, the witness
 13 has conceded he's not an expert in Public Order Policing,
 14 so there may be a number of views expressed by experts in
 15 Public Order Policing about which he can say I can't deal
 16 with the matter because I'm not an expert in that field.
 17 But there may be matters covered by their reports in
 18 respect of which he can give evidence, not necessarily of
 19 an expert nature, but of a factual nature, that they raise
 20 this criticism and they may do it from the background of
 21 their expertise, but I can from my own experience tell you
 22 that this is why I did what I did and the criticism they
 23 make isn't justified in the light of my explanation. He
 24 can give, he can certainly deal with the point in that way.
 25 I understand the difficulty is, I mean if you call a heart

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1 surgeon and he gives expert evidence on matters of heart
 2 surgery, you can't expert an ordinary lay witness, even a
 3 lay witness who was perhaps assisting as a nurse in the
 4 operation, to deal with expert opinions expressed by the
 5 heart surgeon, but there are matters covered in the heart
 6 surgeon's evidence which a non-expert person participating
 7 in the operation can deal with. So I think that's a
 8 distinction we must bear in mind, isn't it?
 9 MR BIZOS SC: Well, let's take one
 10 example, that in their opinion the persons that you chose
 11 to put, to control – or not to control, control is your
 12 language – management with R4s and R5s is completely
 13 contrary to the principles of the management of crowds. Do
 14 you agree with that?
 15 COLONEL SCOTT: The operation was in
 16 essence dealt into two environments. There as a Public
 17 Order drive, which was an offensive Public Order movement
 18 of dispersion. That was done with less than lethal force.
 19 What was to follow that was the arresting of belligerent
 20 protesters, which was falling outside the ambit of the
 21 Public Order action, and that had to do with dangerous –
 22 MR BIZOS SC: Action to the point –
 23 CHAIRPERSON: I'm sorry, Mr Bizos, give
 24 him an opportunity to finish his answer before asking the
 25 follow-up question.

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1 COLONEL SCOTT: And the initial tasking
 2 of those that were to follow who were armed with sharp-
 3 point ammunition was to go ahead with their expert skills
 4 which they have in, through their training, to carry out
 5 high-risk arrests of belligerent and armed protesters, not
 6 necessarily always armed with firearms, but also armed with
 7 pangas and the like, as they would find in their day-to-day
 8 jobs when they do high-risk arrests on behalf of
 9 detectives, Crime Intelligence, etcetera, and that's the
 10 rationale behind using them, as well as obviously as a
 11 protection in the case of life-threatening circumstances
 12 for those who are only armed with less than lethal force,
 13 trying to come up against potentially lethal force in the
 14 manner of either firearms or pangas in close proximity, and
 15 spears.
 16 MR BIZOS SC: Their opinion is that the
 17 use of force by persons not trained in the operation of
 18 dealing with management of gathering, putting people
 19 trained to shoot to kill are not the appropriate people to
 20 engage. Do you agree with that?
 21 COLONEL SCOTT: No, as I've said the
 22 operation that I planned was split into two specific
 23 sectors of operation.
 24 MR BIZOS SC: Do you disagree with their
 25 conclusion that it is contrary to the principles of

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1 managing gatherings?
 2 COLONEL SCOTT: The gathering, the
 3 dispersion action to deal with the gathering was dealt with
 4 by Public Order Policing in the plan, as per SOP.
 5 MR BIZOS SC: You've qualified it having
 6 regard to the countries that they come from.
 7 CHAIRPERSON: Mr Bizos, before we carry
 8 on, there are specific passages in the statements of Mr
 9 Hendrickx and Mr White upon which you are basing these
 10 questions. I think it might be fair to the witness to
 11 indicate – you don't have to indicate all the paragraph
 12 numbers, but there are sections in the report where these
 13 topics are dealt with. The report of Mr White for example
 14 is divided up into a number of discreet topics, so it would
 15 be helpful I think if you referred him to that. But his
 16 answer, as I understand it, is I took two factors into
 17 account; they were the Public Order aspects in respect of
 18 which I had people who were going to use less than lethal
 19 force, but there were other problems that went beyond this
 20 Public Order Policing, dealing with dangerous people armed
 21 with dangerous weapons, and I dealt with those differently.
 22 That's his answer, and I think that's the distinction he's
 23 trying to draw. Whether it's a valid one may be a matter
 24 for argument, but that's the point he's trying to make, I
 25 think. Am I correct, Colonel?

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1 COLONEL SCOTT: That's correct,
 2 Chairperson.
 3 MR BIZOS SC: Well, we will put, if need
 4 be, in due course the specific passages that we are relying
 5 on which question the validity of your opinion and your
 6 organisation of this police activity, but you mention
 7 having regard to the countries that they come from. Do you
 8 think that an important factor?
 9 COLONEL SCOTT: Well, as I say, the way
 10 that South Africa is emerging from a past that it's had
 11 into a new thriving democracy, I don't know if we are, can
 12 be squared away initially with how Britain or for that
 13 matter Belgium would deal with riots in the same way. I'm
 14 not sure that their riots are always initially as violent
 15 as ours can be.
 16 CHAIRPERSON: I think as far as the
 17 witness is concerned, Mr White's experience was confined to
 18 Ulster in Northern Ireland where he dealt, or according to
 19 his statement, dealt over a number of years with problems
 20 involving the IRA and kind of civil disturbances they had
 21 in Northern Ireland. As far as Mr Hendrickx was concerned,
 22 he wasn't only talking from his Belgium experience, his
 23 experience as I understand him, elsewhere in the world,
 24 particular experience in South Africa where he worked for
 25 some years, according to his summary, with the SAPS. So

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1 it's not just, you know it's not just Britain and Belgium
 2 that we're busy with. But anyway, I'm interfering with Mr
 3 Bizos's cross-examination. I'm sorry.
 4 MR BIZOS SC: You've heard from the
 5 Chairperson of the background of these people and it's not
 6 necessary for me to put it to you again, but what I am
 7 concerned about is that you chose to say that their
 8 experience and the expression of their opinion doesn't
 9 apply, or ought not to be taken fully into consideration
 10 because they haven't got the South African experience. Is
 11 that what you meant?
 12 COLONEL SCOTT: That is to, that is my –
 13 MR BIZOS SC: That is true, and you still
 14 believe that?
 15 COLONEL SCOTT: That is my opinion, yes.
 16 MR BIZOS SC: You know, Colonel, are you
 17 aware of paragraph 1.1 of the Standing Orders issued in
 18 2004 –
 19 CHAIRPERSON: Which Standing Order?
 20 There are hundreds of Standing Orders. Which one are you
 21 referring to?
 22 MR BIZOS SC: SS2.
 23 COLONEL SCOTT: Standing Order 262,
 24 Chairperson.
 25 MR BIZOS SC: General, Standing Order

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1 General 262, which is SS2. Are you aware of the first
 2 paragraph of that?
 3 MR SEMENYA SC: Chair, if the witness
 4 does not have the document, may we ask that it be flighted,
 5 that specific paragraph?
 6 CHAIRPERSON: Your request has already
 7 been anticipated and it's on the screen.
 8 MR BIZOS SC: I will read it out. It's
 9 only two and a half lines, Mr Chairman. Listen, Colonel;
 10 "The purpose of this order is to regulate crowd management
 11 during gatherings and demonstrations in accordance with the
 12 democratic principles of the Constitution and acceptable
 13 international standards." Did you know that?
 14 COLONEL SCOTT: I see it there, and I
 15 agree with that. That's -
 16 MR BIZOS SC: You agree with it?
 17 COLONEL SCOTT: That -
 18 MR BIZOS SC: But you think that it
 19 doesn't apply to the South African Police?
 20 COLONEL SCOTT: No -
 21 CHAIRPERSON: I don't think he said that.
 22 But let's give him an opportunity to say what he does mean.
 23 MR BIZOS SC: I'm entitled to ask him, Mr
 24 Chairman.
 25 COLONEL SCOTT: Of course us as a South

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1 African Police Service are striving to be in line with
 2 other first-world police services. We also ascribe to
 3 human rights; we also try to police as best as possible in
 4 those ways.
 5 [10:36] The opinions that I was lifting again was that
 6 I'm not sure that the crowds dealt with at all times, for
 7 instance in Britain, may always be relevant to the crowds
 8 dealt with in South Africa, not to the principles that the
 9 South African Police would ascribe to.
 10 MR BIZOS SC: The democratic principles
 11 of the Constitution place very high value on the sanctity
 12 of human life.
 13 COLONEL SCOTT: I agree.
 14 MR BIZOS SC: In any plan that may be
 15 devised -
 16 COLONEL SCOTT: I agree, and that's taken
 17 into account.
 18 MR BIZOS SC: - that must not only be
 19 borne in mind, but must be obeyed.
 20 COLONEL SCOTT: It was part of - it was
 21 borne in mind when the plan was conceived.
 22 MR BIZOS SC: Well, was it borne in mind
 23 that led to the result of 34 dead and over 80 seriously
 24 wounded?
 25 COLONEL SCOTT: The result of what

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1 happened there that day is not necessarily the result of
 2 the plan that I put forward. It's individual actions that
 3 it takes to pull a trigger and that needs to be a question
 4 put to each individual who pulled a trigger, whether they
 5 were acting within the ambits of self-defence, private
 6 defence for that matter, because that was the briefing to
 7 them.
 8 MR BIZOS SC: Once you talk about self-
 9 defence, do you accept the fact that 34 people,
 10 demonstrators died, approximately eight were seriously
 11 wounded, and do you accept that self-defence must be
 12 proportionate?
 13 COLONEL SCOTT: Self-defence must always
 14 be proportionate, but as I say, we're not talking to the
 15 acts of the police members that acted versus the plan.
 16 It's not to say that the people that pulled the trigger are
 17 acting in accordance with what the plan was. That
 18 perception that they had at that time with their experience
 19 needs to be testified to, which I can't do, by every member
 20 that pulled his trigger, to justify the case of pulling the
 21 trigger in self-defence.
 22 MR BIZOS SC: Where is the
 23 proportionality when there was not a single policeman with
 24 a scratch, as against the 34 deaths and the approximately
 25 eight seriously wounded? Where is the proportionality,

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1 Colonel?
 2 COLONEL SCOTT: That needs to be weighed
 3 up by the evidence of the members that were in the line
 4 because the proportion -
 5 CHAIRPERSON: Colonel, before you answer
 6 the question, let me hear Mr Semenya.
 7 MR SEMENYA SC: The questions of
 8 proportionality, as the witness says, have to be testified
 9 to -
 10 MR BIZOS SC: I can't hear my learned
 11 friend.
 12 CHAIRPERSON: Raise your voice, because -
 13 MR SEMENYA SC: The question of
 14 proportionality, as the witness says, would have to be
 15 testified by those who pulled the trigger. It's not for
 16 the planner to testify on self-defence.
 17 MR BIZOS SC: My learned friend is wrong,
 18 with great respect. We have already handed in a short
 19 memorandum that I want to remind my learned friend of, that
 20 part of the function of the Commission is to report on the
 21 responsibility of the persons that were involved. I
 22 submit, with respect, that those who planned, those who
 23 adopted the plan, those who purported to execute it, we
 24 will submit are all responsible and we'll quote authority
 25 for that proposition in due course.

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1 CHAIRPERSON: Yes, Mr Bizos, I understand
 2 that submission you make, but you're not addressing the
 3 witness now in support of your argument, you're busy
 4 questioning him. The proposition you're putting to him
 5 deals with proportionality. It relates to the actions
 6 taken by individual members of the service who were
 7 physical responsible - whether they were legally
 8 responsible is a matter to be debated later - for the
 9 deaths of 34 people. He says he wasn't one of them. He
 10 had a plan. It depended upon each particular person who
 11 fired a shot, and not him personally. That's his answer.
 12 I don't know how much further you can take that, but that's
 13 his answer.

14 MR BIZOS SC: No, I can take it further,
 15 Mr Chairman. You are the one who selected the people that
 16 were trained to shoot to kill and put R4s and R5s with
 17 4 000 live bullets in their hands, and you were part of the
 18 planning of the action, and do you feel that you are
 19 responsible, or that you are completely blameless for this?

20 COLONEL SCOTT: I'm responsible for
 21 placing of police officials who have the tactics and the
 22 skills to be standing in a line and they have the legal
 23 training within the police to understand that they only
 24 utilise those firearms in order to save life. So again it
 25 comes down to the test of why they shot the shot, but my

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1 planning for them to be there was one of high-risk arrest
 2 and a police person only responds to a threat against
 3 himself or against another. He does not respond as a
 4 military person or as a soldier where he is tasked to go
 5 out to take life. He goes out in essence to save life, and
 6 if it's necessary to take a life to save a life, then that
 7 is part of the call of duty which he is expected to carry
 8 out.

9 MR BIZOS SC: Colonel, you prepared
 10 exhibit L -

11 CHAIRPERSON: He explained to us that he
 12 was the co-author of it, but there were a number of other -

13 MR BIZOS SC: Co-author, yes.

14 CHAIRPERSON: - people who had inputs and
 15 some of the changes that were made at a late stage he
 16 doesn't appear to be the author of -

17 MR BIZOS SC: We are not unmindful of all
 18 that, but you played an important part in putting exhibit L
 19 together, which is an exoneration of all the people that
 20 may have participated in the planning, in the execution, in
 21 the -

22 CHAIRPERSON: Mr Bizos, sorry to
 23 interrupt you. Is that a statement or a question? It
 24 sounds to me like a double question. The logical question
 25 first is do you agree that L is an exoneration. If he says

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1 yes, you take it further, but you can't rule the statement
 2 into the question and expect him to answer two things at
 3 once.

4 MR BIZOS SC: Yes, well you've heard the
 5 question, part of the question that I put, a bit limited,
 6 justifiably so, with respect, by the Chairman. Will you
 7 please answer the question?

8 COLONEL SCOTT: I don't believe exhibit L
 9 was put together to try to exonerate the police. From my
 10 understanding it was put together at that stage with the
 11 limited material we had, the inputs that we could get from
 12 the police members through their commanders, to provide a
 13 foundation for the, to kick-start the Commission.

14 MR BIZOS SC: Well, we will come to the
 15 exhibit L in due course. Now is Brigadier Mkhwanazi, that
 16 has given evidence in this case, an expert on the
 17 management of crowds?

18 COLONEL SCOTT: Again I'm not sure what
 19 the measuring staff is to accept whether one would be an
 20 expert.

21 MR BIZOS SC: Well, let me read to you
 22 his evidence. He was being cross-examined by Mr Motau -

23 CHAIRPERSON: Are you reading his
 24 evidence to him or dealing with his expertise? When you
 25 put to the witness that, or asked him whether he accepts

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1 that Brigadier Mkhwanazi is an expert, he said he doesn't
 2 know exactly what the basis for his being an expert or not
 3 is. That's not his words, it's mine. So if you're going
 4 to deal with that, fine, but don't just jump to the next
 5 question without having got an answer to the previous one,
 6 to whether he accepts the brigadier's expertise. As far as
 7 I remember he's involved in training people who are in
 8 involved with Public Order Policing. It sounds, and he had
 9 substantial training in that field himself, otherwise he
 10 wouldn't have been put in charge of the training. So it
 11 sounds as if he's an expert, but unless you have a question
 12 about it -

13 COLONEL SCOTT: To my knowledge,
 14 Chairperson, he was -

15 MR SEMENYA SC: Chair, Mr Mkhwanazi is a
 16 coordinator of the training.

17 COLONEL SCOTT: To my recollection, and
 18 obviously I stand to be corrected now, I know that he
 19 originated from a Public Order Policing unit as his junior
 20 years in the police, so he would have some experience on
 21 the ground, but I think that when he became an officer he
 22 moved into different environments. Specifically at one
 23 stage he was the skills development facilitator of our
 24 division, which is not a POPs - he simply facilitates all
 25 the skills that come in from the different environments and

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1 forwards them to our division, training for budgets and
 2 that, which he did for a number of years before he was
 3 transferred to the Northern Cape as the ORS representative
 4 on that side, and this is why I say where do we draw the
 5 line with regards to experience, training, etcetera, and he
 6 has a fair share of training knowledge in the operational
 7 commanders training, which I think he presented for some
 8 time as well, same course that I actually did as well.
 9 MR BIZOS SC: He was at the meeting where
 10 exhibit L was put together.
 11 COLONEL SCOTT: I remember seeing him
 12 there from time to time. I'm not sure if – he was not
 13 there the full time, no.
 14 MR BIZOS SC: He gave evidence before the
 15 Commission.
 16 COLONEL SCOTT: Yes, I understand so.
 17 MR BIZOS SC: He was called by counsel
 18 for the Commission.
 19 COLONEL SCOTT: I understand he was at
 20 the Commission.
 21 CHAIRPERSON: I thought he was called by
 22 counsel for the police.
 23 MR SEMENYA SC: That's correct, as a
 24 filler.
 25 MR BIZOS SC: Yes, let me come to the

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1 substance. He was asked, "Brigadier, let me return to the
 2 aspects that I intend to deal with you" –
 3 CHAIRPERSON: [Microphone off, inaudible]
 4 the page reference -
 5 MR BIZOS SC: Oh, I'm sorry, Chairman.
 6 CHAIRPERSON: - so that the others here
 7 can follow.
 8 MR BIZOS SC: Transcript page 3498.
 9 CHAIRPERSON: Thank you.
 10 MR BIZOS SC: "Brigadier, let me return
 11 to the aspects that I intend to deal with you. I'd like
 12 firstly to start with discussing certain aspects emanating
 13 from Standing Order 262, which is an annexure SS - sorry,
 14 ja, annexure SS2." Brigadier Mkhwanazi, "I've got it,
 15 Sir." Mr Motau SC, "I gathered from your evidence – and
 16 correct me if I am wrong – that the operation such as the
 17 one in Marikana is a kind of an operation to which the
 18 Standing Order was applicable. Am I correct?" Brigadier
 19 Mkhwanazi, "Correct." The Chairman, transcript on page
 20 3564, Chairperson, "Before Mr Ntsebeza asks the next
 21 question, can I ask you a question? You said that it
 22 relates to a point he's asked already. You said there
 23 should have been a POP operation." Brigadier Mkhwanazi,
 24 "Correct, Sir." Chairperson, "And there should have been a
 25 POP operation commander, as in fact there was, correct?"

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1 "It was." Chairperson, "Now the plan that was drawn up,
 2 should that have been drawn up by a POP person with POP
 3 expertise?" Brigadier Mkhwanazi, "That's correct." Do you
 4 agree with Brigadier Mkhwanazi in his answers to
 5 particularly put by the Chairman, or do you disagree?
 6 COLONEL SCOTT: There are a number of
 7 questions he was asked, and he was obviously answering in
 8 line with Standing Order 262, and the reply I've got to
 9 that is that there was a strategy in place which involved
 10 Public Order. It also involved other tactical units, and
 11 to have the Public Order member in essence planning for the
 12 tactical units would also be unprecedented. This is why
 13 there was a JOCCOM where all were represented. The plan
 14 that was, or the strategy that was devised was laid before
 15 the JOCCOM, which had the senior POPs members there, in
 16 order to give their POPs advice in relation to what they
 17 understood from their standard operating procedures. How
 18 the operation was managed is not obviously at my level when
 19 it comes with regards to overall commanders and the like,
 20 which you would find at Standing Order 262.
 21 MR BIZOS SC: Do you agree or disagree
 22 with the opinion expressed by Mr Mkhwanazi?
 23 COLONEL SCOTT: I think it's a limited
 24 opinion.
 25 MR BIZOS SC: I beg your pardon?

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1 COLONEL SCOTT: I believe it's limited.
 2 I don't believe that Brigadier Mkhwanazi necessarily had
 3 all the time to have all the materials in front of him that
 4 for instance Mr White or Mr Hendrickx has had.
 5 MR BIZOS SC: He was at Potch.
 6 COLONEL SCOTT: He, I had to fly to
 7 Pretoria –
 8 MR BIZOS SC: Was he called because of
 9 his experience as a police expert on the management of
 10 gatherings?
 11 COLONEL SCOTT: I can't testify as to who
 12 called him or why they called him, but the question that
 13 you asked, he was at Potch, he was sporadically at Potch.
 14 MR BIZOS SC: I can't resist the
 15 temptation of responding to your suggestion that there was
 16 somebody at the time that the deaths occurred three
 17 kilometres away and he was an expert, but we'll come to
 18 that.
 19 COLONEL SCOTT: What I maybe need to
 20 explain is that the strategy dealt with a Public Order
 21 Policing strategy. When we look at going into dialogue, in
 22 line with Standing Order 262; when we look at moving to a
 23 show of force, in line with Standing Order 262; when we
 24 look at the tactical option employed, it became a dual
 25 tactical option, one to deal with the crowds, one to deal

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1 with dangerous arrest situations. Moving to phase 4, that
 2 is not a Public Order responsibility to deal with crime
 3 scenes and to deal with evidence. Phase 5, also not a
 4 Public Order responsibility to go and do high-risk arrest
 5 inside of houses and retrieving of evidence. Phase 6,
 6 again moving to a Public Order planned operation under the
 7 cordon and search.
 8 MR BIZOS SC: Every time you give a long
 9 explanation, another question arises, Colonel. You say
 10 that the matter was different, at a different stage. The
 11 question though is that the properly trained person should
 12 have been there in order to manage, and when you say that
 13 the use of force, or rather the threat of force and the
 14 responses to the threat of force, the experts that have
 15 given evidence on paper say that a show of force may be
 16 counter-productive. Do you agree with them or do you
 17 disagree with them?
 18 COLONEL SCOTT: This is why the operation
 19 does not start with a show of force, and we would be –
 20 MR BIZOS SC: Do you agree with them –
 21 CHAIRPERSON: No, Mr Bizos, give him an
 22 opportunity to answer the question.
 23 COLONEL SCOTT: This is why the operation
 24 starts with a forward holding area where the reserve forces
 25 that are not necessary for the protection of a monitoring,

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1 which is a monitoring, in effect a protection for the
 2 negotiator group, is in the front line towards a sizeable
 3 crowd. So minimal, that we thought at the time, forces
 4 were pushed forward to where the crowd was, while the bulk
 5 of the forces were kept at the reserve holding area, which
 6 is actually the forward holding area. So that is phase 1,
 7 in other words not to go to that, and again if I say that a
 8 show of force is something that should not happen, then I'm
 9 in contradiction again with our own Standing Order, which
 10 advises that you need to move to a show of force to
 11 dissuade violent action from protesters.
 12 MR BIZOS SC: In principle do you
 13 disagree or agree with the two experts that at times the
 14 show of force is counter-productive?
 15 COLONEL SCOTT: They are correct that
 16 there are times when it –
 17 MR BIZOS SC: They are correct.
 18 COLONEL SCOTT: - when it is counter-
 19 productive, and there are times when it is necessary.
 20 [10:56] MR BIZOS SC: Was there a POPS commander
 21 at 13:30, at the 13:30 meeting when they dealt with the
 22 phase 3 intervention? Was there such a person?
 23 COLONEL SCOTT: Just say which commander?
 24 CHAIRPERSON: Repeat the question again, Mr Bizos,
 25 I'm afraid I didn't understand it properly but it's

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1 probably my fault. Repeat it again, please?
 2 MR BIZOS SC: Yes. Was there a POPS
 3 commander at the 13:30 meeting when it was decided to
 4 intervene in terms of phase 3?
 5 COLONEL SCOTT: No.
 6 MR BIZOS SC: No. So the vital question
 7 was also taken without the advice of a POPS trained
 8 management person.
 9 COLONEL SCOTT: That is the fact, but the
 10 fact is that General Mpembe was the overall commander. The
 11 operational commander at this time was in the field dealing
 12 with the very phase 2 which is part of the public order
 13 strategy.
 14 MR BIZOS SC: Where was he when phase 3
 15 was –
 16 COLONEL SCOTT: He was still in the field
 17 at his post.
 18 MR BIZOS SC: He?
 19 COLONEL SCOTT: He was still in the field
 20 at his post, that being Brigadier Calitz who was the
 21 operational commander. General Mpembe, being the overall
 22 commander, was present in the JOCCOM at that time.
 23 MR BIZOS SC: Now, you yourself chose in
 24 paragraph 6 of your statement GGG39 to say the following.
 25 It starts with "Neither the crowd management," Mr Chairman.

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1 CHAIRPERSON: Three lines from the foot of the
 2 page.
 3 MR BIZOS SC: Paragraph 6, Mr Chairman.
 4 CHAIRPERSON: The fifth line in case - the pages
 5 as we see them on the screen are not paginated, it's the
 6 fifth line in para 6.
 7 MR BIZOS SC: Yes. May I read it out, Mr
 8 Chairman?
 9 CHAIRPERSON: Yes, yes, we have it on the screen
 10 and in fact we see the pagination so we can see the third
 11 line from the foot, "Neither the crowd management" – yes,
 12 read it, Mr Bizos.
 13 MR BIZOS SC: "Neither the crowd
 14 management strategies for which standing order 262 provides
 15 nor the hostage management strategies were appropriate in
 16 isolation. I thus had to devise" – I thus had to devise –
 17 "what I considered at the time to be an appropriate plan
 18 for an unprecedented situation, being one which had to
 19 encompass the principles of standing order 262 but moving
 20 beyond the restrictions of the standing order to
 21 effectively plan for the disarming of the protesters while
 22 in the area when dealing with a belligerent - while
 23 considering the protection of the police officials and the
 24 community in the area dealing with a belligerent armed
 25 group numbering up to 3 000 people who were choosing to

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1 contest the request to disperse and/or disarm,
 2 demonstrating their clear defiance towards the law and the
 3 enforcers of the law with aggressive action should they be
 4 approached, as demonstrated on the 13th of August 2012.”
 5 Are those your words?
 6 COLONEL SCOTT: Yes, sir.
 7 CHAIRPERSON: Mr Bizos, when you reach an
 8 appropriate stage we'll take the tea adjournment but if you
 9 want to round this point off before we do that, please
 10 proceed.
 11 MR BIZOS SC: It's a convenient stage, Mr
 12 Chairman.
 13 CHAIRPERSON: We'll take the tea adjournment at
 14 this stage. I hope we'll all be back in quarter of an
 15 hour.
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]
 17 [11:28] CHAIRPERSON: The Commission resumes. Colonel,
 18 you're still under oath. Mr Bizos?
 19 DUNCAN GEORGE SCOTT: s.u.o.
 20 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 21 In the paragraph that I read to you, Colonel, you say “but
 22 moving beyond the restrictions of the standing order.”
 23 What were those restrictions?
 24 COLONEL SCOTT: The restrictions I
 25 understand to be that the standing order is based on public

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1 order operations and obviously we had to move beyond that
 2 because we had other strategies in our plan, namely the
 3 other phases I've mentioned, which excluded public order
 4 personnel, in dealing with those specific strategies. So
 5 public order again, for what it was worth, with, in line
 6 with the principles as far as we could manage within
 7 standing order 262 and when we would move to operations
 8 outside of public order domain, like going to execute high
 9 risk warrants of arrest or search warrants due to
 10 information we would have got which was essentially phase
 11 5, that again is outside the ambit of operation for a 262
 12 public order operation.
 13 MR BIZOS SC: What authority did you or
 14 anyone else have to ignore one or other of the standing
 15 orders? Where did you get that authority from?
 16 COLONEL SCOTT: The best way I can answer
 17 you is that we attempted not to ignore what –
 18 MR BIZOS SC: Pardon?
 19 COLONEL SCOTT: The best way that we can,
 20 that I can answer that is, it's not to ignore standing
 21 order 262, it was to apply the principles of 262 as far as
 22 public order policing matters would go but I think we maybe
 23 just need to clarify what in 262 because I know there are
 24 numerous, as you work through the document you can actually
 25 start applying principles across but 262 again is pitched

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1 at a very strategic level. It doesn't speak to the
 2 standard operating procedures of a POP operation
 3 necessarily with regard to the five defensive and five
 4 offensive measures that you can apply. So sometimes it's a
 5 little misleading when you're talking about what is applied
 6 in phase 3 in the dispersion action, there are principles
 7 involved in that, sure, but it doesn't speak specifically
 8 to the tactics involved in that.
 9 MR BIZOS SC: Your answer to the question
 10 what were the particular restrictions that you were
 11 referring to, which were the restrictions and what
 12 authority did you have to ignore them –
 13 CHAIRPERSON: One question at a time. Which were
 14 the restrictions that you say you had to move beyond?
 15 COLONEL SCOTT: Chairperson, the
 16 restriction I'm referring to is the fact that 262 is
 17 restricted to POPS and if you actually take the gist of the
 18 document, speaks to a well-organised convener – I think
 19 we've been through this before – coming from the community
 20 with the authorised person, et cetera, and there's a
 21 section 4 meeting taking place and essential you have time
 22 and you plan it and you do it all nicely and that's what
 23 262 is trying to advocate in line with the Regulation of
 24 Gatherings Act which is put in place. So when one takes
 25 262 essentially in what it's meant to deal with and what we

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1 were dealing with in moving now to a disarming, once the
 2 public order action has taken place, both the remnants that
 3 would remain behind which would be smaller pockets of
 4 people, as I'd envisioned it, or for that matter going to
 5 their residences thereafter as individuals. That aspect is
 6 now outside of 262, so the restriction of 262 is again
 7 ideally towards an ideal situation dealing with the POPS
 8 but part of the planning is falling outside of that ambit
 9 now, phase 4, phase 5 and parts of possibly even phase 6,
 10 which then could not be covered necessarily by what is
 11 found in essentially the use of non-lethal force to protect
 12 your life in situations when you're executing high risk
 13 warrants of arrest.
 14 CHAIRPERSON: Can I put to you the way I
 15 understand what you're saying but please don't just say yes
 16 because I put the question, because I maybe misunderstand
 17 you. Would it be correct to say that standing order 262 is
 18 more concerned with dispersing unlawful assemblies,
 19 dangerous assemblies, riotous assemblies to use the old
 20 language, but here was a further component. Here you had
 21 an assembly of people who were there over a period of time
 22 who were armed, which of course made it an illegal assembly
 23 under the Act. So you were concerned not just with
 24 dispersing them, which I take it is an area where 262 would
 25 apply very strongly, but also with disarming. I'm not sure

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1 whether 262 deals at all with disarmed, the disarming part
 2 or if it does, how fully it deals with it. So am I
 3 understanding you to say 262, disperse, that's the main
 4 thrust. The disarming is something extra and there you
 5 needed to use these other techniques. Am I understanding
 6 you correctly? If I'm wrong, please – yes, sorry, I'm
 7 reminded that my language was imprecise. 262 doesn't
 8 really deal – am I correct, and if I'm wrong please say so
 9 – doesn't really deal with "armed," that's the correct word
 10 really, armed assemblies because it presupposes really
 11 compliance with the Act which requires, which deals with
 12 the constitutionally entrenched right to freedom of
 13 assembly but puts the restriction on it that it's peaceful
 14 assembly, not armed people, is that correct?
 15 COLONEL SCOTT: The main thrust –
 16 CHAIRPERSON: When I said dangerous and riotous I
 17 was overstating the case. The real point is armed
 18 assemblies.
 19 COLONEL SCOTT: Yes, the main thrust of
 20 262 I also believe deals with, as you've stated now. It
 21 does make provision within, there are certain principles
 22 anticipating that a crowd can become unruly and needs to be
 23 brought back in line with the law but the situation that I
 24 felt we were facing at Marikana was unprecedented and I
 25 felt the deficiency of 262 specifically because you're

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1 looking at a crowd which is, in 262 and looking at the
 2 Regulation of Gatherings Act, responsible to be dealt with
 3 in that way, maybe if they step out of line how to deal
 4 with that, with utilising the POPS measures where there's
 5 no lethal force necessary. It's only, at maximum, the use
 6 of rubber rounds to bring the crowd back into the ambit of
 7 the law, but the mission that was accepted on the Tuesday
 8 and if I quote it, a combined SAPS force which goes beyond
 9 public order policing will restore stability to the Lonmin
 10 mine area in Marikana. In essence this was dealing with
 11 more than just with what was at the koppie, why we'd also
 12 planned then to go wider to hostels to go and disarm. In
 13 essence the idea that at least I got from the strategic
 14 management was that simply to disperse would just mean
 15 tomorrow we sit with the same problem and possibly with a
 16 big, violent confrontation because of the dispersal. We
 17 needed to, as best as possible, try to take away illegal
 18 arms from people as well and restore stability in that way
 19 to that area, not necessarily to the koppie but the
 20 environment as such, which took it way beyond just the
 21 public order policing but a combined operation which SAPS
 22 has done on many occasions through the years. Richmond,
 23 KwaZulu Natal, and the like, the Shoshobane/Port Shepstone
 24 area where POPS and other units like this have worked
 25 together in unison in their different roles to try to

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1 restore stability to an area, each within its own function.
 2 CHAIRPERSON: I took over your question, Mr Bizos,
 3 but I hope that that's opened the path for you to proceed
 4 further with the point you're busy with.
 5 MR BIZOS SC: Mr Chairman, thank you.
 6 You describe a belligerent armed group numbering up to
 7 3 000. Were you there to assess that it was a belligerent
 8 group of 3 000 or did you get information to that effect?
 9 COLONEL SCOTT: The information on the
 10 size of the group was obviously conveyed from members in
 11 the field and as public order policemen would do, is they
 12 would normally try to anticipate the size of the crowd.
 13 Obviously it's not a head count but you would anticipate
 14 and they get close to being accurate with that and I think
 15 that number was already put in place somewhere on the
 16 Tuesday or possibly even on the Monday, I'm not sure, and
 17 so it was carried through. Obviously - I don't want to go
 18 further than the question you've asked, sorry.
 19 MR BIZOS SC: But on the facts as you
 20 know the now, were the 3 000 people as a whole belligerent
 21 and armed or not?
 22 COLONEL SCOTT: No, and even at that time
 23 there was a distinct difference between a group who we had
 24 assessed had been going through some form of rituals to
 25 join some sort of a special group that would form up in

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1 front, who tended to show an attitude of a militaristic
 2 type. They seemed to be displaying arms more clearly.
 3 Again I wasn't out at the koppie to identify specifically
 4 but I would see the photographs that would be brought back
 5 and of course the feedback from the commanders, but in
 6 relation to what I'm saying here is, the day that we went
 7 out to do the dispersal action it was considered there were
 8 still up to 3 000 people, unknowing how many of those would
 9 assist the militant group in the front, thus a dispersal
 10 action which starts off with a verbal warning in
 11 anticipation to get as many to move away as we could and
 12 obviously through the force continuum then of public order
 13 policing as well, to give those that are not interested,
 14 and hopefully everybody, to have moved off out of own
 15 accord.
 16 MR BIZOS SC: Was the information
 17 available to you that there were 3 000 belligerent armed
 18 people or, this was the one version that was put in the
 19 opening address, or the smaller number of 300 which was a
 20 separate group? What information was available to you when
 21 you decided not to obey the standing orders?
 22 MR SEMENYA SC: No, the witness did not
 23 say so, Chair.
 24 CHAIRPERSON: Sorry, Mr Semanya, just speak up?
 25 MR SEMENYA SC: The witness did not say

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1 he chose not to obey standing order 262.
 2 CHAIRPERSON: Yes, I think that's a spin you put
 3 on his answer, which you could argue if you wish but I
 4 don't think you can put it to the witness as being what he
 5 said.
 6 MR BIZOS SC: To avoid the strict
 7 requirements of the –
 8 CHAIRPERSON: The phrase he used was "move beyond
 9 the restrictions." You can use his own language –
 10 MR BIZOS SC: Choose your own language,
 11 yes, yes.
 12 COLONEL SCOTT: Are we on the language
 13 issue or back to the 3 000?
 14 MR BIZOS SC: 3 000 or 300?
 15 COLONEL SCOTT: One has to anticipate,
 16 and I say this now because we were fully aware of the
 17 militant group and that was a concern to us. So that was
 18 an identification, it was a risk that we saw on its own.
 19 You don't know the intentions of the rest and I think it's
 20 also clear because, I'm not saying this is the case but it
 21 would seem from some of the photos that beyond only the
 22 militant group that we assumed to be about 300, it seems
 23 that others did follow suit behind them. So in
 24 anticipation of an operation you would always look towards
 25 anticipating a worse scenario than would need be. In other

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1 words, if we needed to go forwards to disperse 3 000
 2 people, that was what the POPS were going to go and do but
 3 there was a special cognizance taken that there was this
 4 group of 300, so both are correct. We knew there were
 5 3 000, we didn't understand their attitude fully but we
 6 knew the attitude of the 300 which was shown to be militant
 7 and also from the history of the Monday it seemed to be a
 8 dissimilar group.
 9 MR BIZOS SC: I don't want to debate it
 10 with you in detail. Were you aware of the provisions of
 11 the article 7, particularly 7(2) and (3)(C) and 9(1) and
 12 11(2) and the steps that have to be taken in terms of it
 13 and 11(5) and 12(2), all of which –
 14 CHAIRPERSON: Of the standing order 262, I take
 15 it, are you?
 16 MR BIZOS SC: Standing order numbers,
 17 yes.
 18 CHAIRPERSON: Yes.
 19 MR BIZOS SC: There are quite a number
 20 but they have something in common, that if you are to
 21 deviate from any action in relation to what is expected by
 22 the orders, proper warnings have got to be given. Will you
 23 accept that from me? I don't want to read all of them onto
 24 the record.
 25 COLONEL SCOTT: I think you've named a

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1 number of paragraphs which was too fast for me to actually
 2 try to work through as you were going, but I agree it is a
 3 principle within crowd management operations that before
 4 you're about to take any offensive action, you warn the
 5 crowd of your intention because you want to allow those
 6 that are not willing to be confronted by an offensive
 7 operation from public order policing, at own, to move away
 8 because anybody who chooses to stay then has accepted that
 9 the police are going to exercise what they've said they're
 10 going to do and is prepared to withstand that and thus
 11 needs to take the brunt of what's coming to them but it's
 12 in all fairness that before you do an offensive action you
 13 do need to warn the crowd, yes.
 14 MR BIZOS SC: Do you accept that no
 15 warnings were given about the shooting, that if you don't
 16 submit or dissociate yourself then there will be shooting
 17 to kill you? Was any such warning given?
 18 COLONEL SCOTT: There was no such –
 19 MR BIZOS SC: At any stage.
 20 COLONEL SCOTT: There was no such order
 21 that I'm aware of but what I'd like to say is that the
 22 closing off of the razor wire was a defensive action and
 23 there's no need to pre-warn a crowd of a defensive action.
 24 The warning of the offensive action which would have been
 25 the dispersion on the part of POPS would have been given

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1 once the POPS force was in place to do so. So that never
 2 materialised due to the fact that the police felt that they
 3 came under a threat and they responded immediately to the
 4 threat. Thus no warning could be issued necessarily to
 5 that crowd at that time because they were trying to repel
 6 the crowd from coming towards the police line itself.
 7 MR BIZOS SC: Doesn't it presuppose, on
 8 the version of the police which has been put in dispute and
 9 would appear to be not correct, the police version, having
 10 regard to the recent disclosures of footage?
 11 COLONEL SCOTT: I'm not sure which part
 12 is predisposed but we do know that the public order
 13 personnel and all other forces involved were going out to
 14 carry out the plan. In phase 1 of that plan it was
 15 disrupted due to the actions of the strikers, so they never
 16 got to the position where Brigadier Calitz would have
 17 addressed them and told them the intentions of the police.
 18 MR BIZOS SC: Well, where were you when
 19 the shooting took place?
 20 COLONEL SCOTT: Inside the JOC.
 21 MR BIZOS SC: How far away from the
 22 scene?
 23 COLONEL SCOTT: It was just two to three,
 24 three, four kilometres.
 25 MR BIZOS SC: Three or four kilometres.

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1 Would you give us a list of the people there?
 2 COLONEL SCOTT: You know I can't do that.
 3 MR BIZOS SC: Oh.
 4 COLONEL SCOTT: Obviously I can't recall
 5 every person that was there by –
 6 CHAIRPERSON: Mr Bizos, we've had that. I mean –
 7 MR BIZOS SC: Yes.
 8 CHAIRPERSON: - it was dealt with quite early –
 9 MR BIZOS SC: They are enumerated, there
 10 are nine of them.
 11 CHAIRPERSON: Ja, and we get them I think from the
 12 minutes of the meeting at 130.
 13 MR BIZOS SC: Yes, we don't have to cover
 14 –
 15 CHAIRPERSON: I don't think we have to cover that
 16 again.
 17 MR BIZOS SC: And is that where you were
 18 when you heard that there were eight –
 19 CHAIRPERSON: It's pointed out to me, of course it
 20 doesn't follow that all the people listed at the 1:30
 21 meeting were there later because the one for example, the
 22 Provincial Commissioner left and the witness doesn't know
 23 when she came back and Mpmembe left to go in a helicopter
 24 but I think we can work out quite easily in the light of
 25 the evidence we have already who were there. I don't know

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1 that we have to traverse that now unless there's some
 2 important, the presence of some particular person is
 3 important to the questions you're going to ask.
 4 [11:48] MR BIZOS SC: Thank you, Mr Chairman.
 5 The people that were there when you heard that 18 people
 6 were dead on the ground –
 7 MR SEMENYA SC: No, Chair, that's not the
 8 evidence. There was no communication in the JOC that 18
 9 people were dead.
 10 CHAIRPERSON: You see, part of the
 11 evidence is that they only heard at 20 past 4, that was
 12 traversed in the cross-examination of Mr Chaskalson, one of
 13 the matters we'd have to decide at the end of the day is at
 14 what time people, or some of the people in the JOC knew
 15 that people were, had been shot and were down, but that's
 16 been covered also already, you know. So unless there's
 17 some particular point that is relevant to your present
 18 line, I don't -
 19 MR BIZOS SC: Whoever may have been there
 20 and whether they were lying on the ground or that they had
 21 been shot and may have been seriously wounded, what was
 22 your reaction?
 23 COLONEL SCOTT: I continued to listen to
 24 the radio –
 25 MR BIZOS SC: What was your reaction to

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1 that statement?
 2 COLONEL SCOTT: If you're asking what my
 3 understanding was, my reaction was I continued to listen to
 4 the radio and my understanding was that, before that a
 5 message had come through from Colonel Vermaak. The radio
 6 conversation I can recall before that was Brigadier Calitz
 7 directing what you could hear was a Public Order operation
 8 because he was specifically talking to Papa call signs. He
 9 was speaking to water cannons, and he was continually
 10 giving the command "Engage." So it was a bit difficult to
 11 try and understand at the moment because it was though we
 12 just jumped straight into the operation and we thought he'd
 13 possibly gone ahead and started with the dispersal action,
 14 but –
 15 MR BIZOS SC: I would have expected you
 16 to say –
 17 CHAIRPERSON: I think he was going to say
 18 something else before you started to ask your question. Am
 19 I correct, Colonel?
 20 COLONEL SCOTT: Yes.
 21 CHAIRPERSON: You were going to add
 22 something?
 23 COLONEL SCOTT: But in response to
 24 Colonel Vermaak's report, and as I say I think I recall him
 25 actually counting, or getting to a number and then counting

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1 a little bit further as to what he could see and saying
 2 "bodies lying on the ground," and tying that back to
 3 hearing the, what we thought was a dispersal action being
 4 carried out by Brigadier Calitz, my response to that would
 5 have been well, that's part of the dispersal that's going
 6 on. There's no lethal force being applied there, and if
 7 there was one would have, as I've testified before,
 8 expected that somebody would have said over the radio this
 9 is what's happened, there's been a shooting, there's – but
 10 that was never relayed that I heard standing in the JOC.
 11 MR BIZOS SC: Did you say to the others
 12 at the JOC meeting, this is completely unacceptable and
 13 unexpected. Let us rush in order to avoid any further
 14 shooting or deaths?
 15 CHAIRPERSON: I'm sorry, Mr Bizos, the
 16 question is not clear to me. I don't know – there are two
 17 points that I think have to be clarified before the witness
 18 can answer. The first is, what do you mean by "this" and
 19 secondly, at what time you're talking about. Did he think
 20 this at 4 o'clock, did he think it at 20 past 4, half past
 21 4, and what is it that is the "this" that was unacceptable
 22 that's the point of your question. I think you must
 23 clarify those two points before you can expect him to
 24 answer.
 25 MR BIZOS SC: Was it acceptable to the

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1 people there present, whatever time it may have been, that
 2 there should be 18 bodies lying in the ground?
 3 COLONEL SCOTT: If you're talking about
 4 the report of the bodies lying on the ground, to my
 5 knowledge – I can't speak for the others in the JOC – that
 6 was not carried over to me or perceived by me as being
 7 people that were dead or wounded with sharp-point
 8 ammunition. So that the operation continued was also
 9 difficult to try to perceive because there was this
 10 sporadic talking of Brigadier Calitz and we know now in
 11 hindsight and through videos what was actually transpiring,
 12 but at that stage you're trying to form a mental picture of
 13 exactly what the words are meaning and trying to engage in
 14 your mind where they could be on the ground at this time,
 15 that they reorganise line, so with the operation continuing
 16 you're assuming that it's happening according to plan at
 17 this time.
 18 MR BIZOS SC: Was it part of the plan
 19 that there should be eight people lying on the ground?
 20 COLONEL SCOTT: I think it's –
 21 MR BIZOS SC: Was it foreseen?
 22 COLONEL SCOTT: I didn't foresee that,
 23 but as I just want to state that you will find in Public
 24 Order operations when rubber is used and so on, there are
 25 people that run and there are those that will go and lie

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1 down for instance, and they could have been placed under
 2 arrest for that matter at the same time, because when a
 3 policeman is going to arrest somebody, the safest place for
 4 someone is then to place them on the ground to lie flat
 5 because you have control of them in that way.
 6 MR BIZOS SC: When did you hear for the
 7 first time, at what time, if it's relevant, that at least
 8 18 people had been killed?
 9 COLONEL SCOTT: That was the latter part
 10 of, I think it was post 4:20, even – as I say I heard that
 11 in the JOC. I can't put a specific time to that. It's not
 12 something that I specifically looked at my watch and said –
 13 MR BIZOS SC: 4:20, you say.
 14 COLONEL SCOTT: Any time from then
 15 possibly on, because I was listening to the radio as far as
 16 I could go. One of the last reports I can remember hearing
 17 was Colonel Gaffley saying "Cease fire."
 18 MR BIZOS SC: When you did hear, did you
 19 realise that whatever your plan may have been, something
 20 very seriously wrong had taken place?
 21 COLONEL SCOTT: I can't say that I would
 22 consider something seriously wrong had taken place. In my
 23 mind's eye, according to how I'd planned, the only time
 24 that a policeman would use his firearm with live ammunition
 25 would be in defence of his life or that of another. I did

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1 expect that there would be some form of resistance from the
 2 militant group, and that struck me as possible a similar
 3 attack as what happened to the police on Monday had been
 4 tried again on the police on the Thursday, and that the
 5 police had defended themselves. So that was my
 6 understanding at the time once I did learn that there were
 7 casualties.
 8 MR BIZOS SC: You say that the crowd
 9 management strategies were inappropriate for the situation
 10 at Marikana. What did you mean by that?
 11 COLONEL SCOTT: To bring about the
 12 holistic mission, which was to restore stability in all
 13 aspects, crowd management in essence on its own was not
 14 going to deliver that result.
 15 MR BIZOS SC: Can you explain how the
 16 group of strikers at Marikana differed from other large
 17 crowds to which the precepts of Standing Order 262 do
 18 apply?
 19 COLONEL SCOTT: Again I can only speak
 20 for myself, but my understanding was my, the history that I
 21 was given from the Monday incident that, and what I was
 22 told was that the police had tried to take a tactical
 23 option of Public Order Policing measures against the crowd,
 24 who had turned and retaliated, and this is where it becomes
 25 unprecedented because previously crowds may throw rocks and

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1 move away, but never to the point where they actually go
 2 with intent to murder and to take the arms and the
 3 ammunition and the radios from the police officials that
 4 they have killed and move off with that. Even the taking
 5 of those weapons from the policemen shows that there was
 6 moving to a new level, not simply just a retaliation on a
 7 policeman, but the theft of the armament of that policeman,
 8 or those policemen, for that matter. So moving into the
 9 Marikana operation I was aware of that, that the strikers
 10 had seemed to have moved to a level which was not
 11 necessarily experienced in labour dispute. I know it has
 12 been possibly experienced before in political dispute, but
 13 not in labour dispute, and this was something that was
 14 causing a labour dispute to become unprecedented where
 15 strikers would go to those levels to actually turn on the
 16 authority of the State and consciously take life, steal
 17 weapons, and move off with that. We were in another
 18 environment of the level of violence that we were dealing
 19 with.
 20 MR BIZOS SC: The behaviour of the crowd
 21 on Tuesday and Wednesday was peaceful?
 22 COLONEL SCOTT: It was, and I attribute
 23 that to the fact that the police brought the hope of
 24 dialogue, that the protesters thought well, the police will
 25 surely then bring mine management out to speak to them,

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1 which was not going to be the case. The police was not
 2 there to get involved in a labour dispute. We were there
 3 to dialogue and negotiate the security of the area and to
 4 bring, and restore stability, in other words for them to
 5 leave peacefully and to return the arms, or leave them
 6 behind and move off without them.

7 MR BIZOS SC: And on a substantial body
 8 of evidence they continue behaving peacefully on Thursday
 9 morning.

10 COLONEL SCOTT: They, yes they did, but
 11 as we understand there was a pledge given, and I speak from
 12 hearsay, this was told to us in the JOC that they had
 13 stated they would disperse, disarm, etcetera. I admittedly
 14 found that a little farfetched, but I believe that even at
 15 that time Mr Mathunjwa had given them hope that there would
 16 still be some form of intervention from mine management
 17 side and they were prepared to still hold back from
 18 violence because of Mr Mathunjwa's proposition of hope to
 19 get them their R12 500.

20 MR BIZOS SC: Would you agree, as Mr
 21 Hendrickx says that flashpoints or disorder in a crowd can
 22 be triggered by sudden or over-dramatic police intervention
 23 which suggests overkill? I'll give you a reference, GGG2,
 24 paragraph 14.3. Do you agree with that?

25 COLONEL SCOTT: I agree that that is the

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1 case, that there are crowd control situations or crowd,
 2 public order gatherings where if the police does something
 3 which is unanticipated by the crowd, it can cause emotions
 4 to rise, etcetera, thus the communication before the police
 5 would make any radical move towards, an offensive movement
 6 towards the crowd. Again strategically, this is why
 7 defensive movements do not need to be communicated because
 8 they're in essence just that. It's a prevention measure
 9 being put in place against a crowd which is being
 10 anticipated to want to carry out some form of harm or
 11 moving to an area where they are not being permitted to
 12 move towards.

13 MR BIZOS SC: Mr Hendrickx also says
 14 that, "Psychological shock tactics to promote submission
 15 through a rapid and overwhelming presence of STF members in
 16 tactical gear, utilising indirect assertive verbal team
 17 commands, combined with a visual stimulation of
 18 professional tactically clad officers to dissuade any
 19 offensive action from the perpetrator" – I'm sorry, that is
 20 your statement and not Mr Hendrickx. Is that your belief?

21 COLONEL SCOTT: It is, and it's one of
 22 my, what I felt at the time would help dissuade any further
 23 violent action, or any further mobilising of the group or
 24 consideration of the group, and I think it's a logical
 25 process in the mind of a human being that if you're shown a

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1 show of force, that you would need to weigh up whether you
 2 are still going to contemplate carrying out an illegal
 3 action when there is a force of that magnitude that is
 4 within an area to help to prevent that illegal action from
 5 happening.

6 MR BIZOS SC: What Mr Hendrickx says, "If
 7 public order will be more disturbed by intervention than by
 8 doing nothing, then it is better to opt for another
 9 solution to the problem, including standing back and doing
 10 nothing, or postponing the operation, the principle of
 11 situational appropriateness." Do you agree with Mr
 12 Hendrickx or not?

13 COLONEL SCOTT: I do agree. There are
 14 times that that is applicable, and one would look to
 15 certain illegal, minor illegal activities that may occur
 16 during the march where if you would address the crowd or
 17 try to move in onto the crowd because of minor illegal
 18 activities, it could spark a more violent reaction, but
 19 that's not necessarily applicable now to a situation as we
 20 were facing at the Marikana at that time.

21 MR BIZOS SC: Mr Hendrickx also said
 22 that, "Before considering repressive offensive action, POP
 23 commanders should consider both the advantage they are
 24 counting on and the negative outcome for public order. If
 25 one is considering a repressive offensive action with the

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1 sole aim of making people obey the law and not with the
 2 protection of persons and property, it will only be
 3 possible to justify this intervention in exceptional
 4 circumstances, the principle of minimisation." This is to
 5 be found in Mr Hendrickx's statement at page 8 of his
 6 statement. Do you agree with that?

7 COLONEL SCOTT: I think that the key
 8 words there, "exceptional situation," to which he says
 9 that, and I think we can agree with our dispute that
 10 Marikana was an exceptional situation, looking at the
 11 preceding days' history, and what the South African Police
 12 as the authority of the State was needing to deal with
 13 there, this was not something that was simply going to die
 14 down and at some stage the police needed to act in order to
 15 restore the law and order to the area.

16 MR BIZOS SC: Your response in your
 17 statement on paragraph 6.24.3 –

18 CHAIRPERSON: Which of the exhibits are
 19 you referring to?

20 MR BIZOS SC: It's on exhibit HHH20, Mr
 21 Chairman.

22 CHAIRPERSON: Paragraph 620?

23 MR BIZOS SC: 6.24.3.

24 CHAIRPERSON: Page 26 of exhibit HHH20.

25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: Perhaps that can be put –
 2 MR BIZOS SC: There are two passages –
 3 CHAIRPERSON: Perhaps that can be put up
 4 so that -
 5 MR BIZOS SC: Yes. "As a last resort" –
 6 CHAIRPERSON: Well, shouldn't we wait
 7 till it's put on the screen?
 8 MR BIZOS SC: Ja.
 9 CHAIRPERSON: Page 26 of exhibit HHH20.
 10 You can see that is the statement which is on the screen,
 11 but it's the wrong paragraph. What we need is para 6.24.3.
 12 MR BIZOS SC: Yes, "As a last resort."
 13 Second line, "As a last resort" –
 14 CHAIRPERSON: No, no, we've got to go a
 15 little bit further. At the moment we've got 6.19. Let's
 16 just move on a little to 6.24.3. There we've got the last
 17 resort, yes. Yes, the second line of that paragraph, "As a
 18 last resort compliance with the law must be enforce through
 19 a force continuum, which needs to be proportionate" –
 20 MR BIZOS SC: - "which needs to be
 21 proportionate to the threat posed." Now do you agree with
 22 that?
 23 COLONEL SCOTT: It's my wording and we
 24 need to put it in context. What I'm speaking to here in
 25 essence are the principles of policing, that in any police

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1 confrontation, or where a police van is called out, there
 2 are steps that you would go through in principle to try to
 3 resolve a situation.
 4 MR BIZOS SC: Now it's a matter of
 5 concern that you believed that compliance with the law must
 6 be enforced. What law did you have in mind?
 7 COLONEL SCOTT: Again I'm speaking here,
 8 if you go back to paragraph 6.24 –
 9 MR BIZOS SC: The question is, what law
 10 did you have in mind?
 11 COLONEL SCOTT: I'm speaking to the
 12 principles in the statement I'm speaking to here, which are
 13 applied later to the fact that the demonstration, or the
 14 gathering that's happening at the koppie is illegal in fact
 15 because of it being represented by strikers who are armed,
 16 which is in contravention with what the Constitution is
 17 saying with their right to protest, to picket, etcetera,
 18 and notwithstanding –
 19 MR BIZOS SC: What law did they
 20 contravene?
 21 [12:08] COLONEL SCOTT: Being part of a gathering
 22 where they are armed. They needed to be dispersed from
 23 that and at the same time Crime Intelligence was also
 24 acting on, as best as they could, video footage, etcetera,
 25 to try to lift out perpetrators, possible perpetrators from

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1 the Monday issue, to also get to the point where the
 2 arrests through the detectives could be made with regard to
 3 the murders that had been made. So there were a number of
 4 aspects which had to be dealt with at the end of the day of
 5 laws which had been broken over the days preceding the 16th.
 6 MR BIZOS SC: Were you going to punish
 7 those who were there on the morning of the, or the
 8 afternoon of the 16th with what may have been done on the
 9 Monday and the previous week?
 10 COLONEL SCOTT: There's no strategy
 11 within the police to punish people. That is not within the
 12 jurisdiction of the police to act in that way.
 13 MR BIZOS SC: No, but you refer to what
 14 happened the previous week and what happened on Monday.
 15 COLONEL SCOTT: That arrests –
 16 MR BIZOS SC: The situation that you were
 17 confronting was on your own evidence and on the other
 18 evidence by other witnesses, this was a peaceful gathering.
 19 CHAIRPERSON: It was a peaceful gathering
 20 attended by a substantial number of people –
 21 MR BIZOS SC: Yes.
 22 CHAIRPERSON: - who had dangerous weapons
 23 and who were contravening the law – I said a substantial
 24 number, not all of them by any manner –
 25 MR BIZOS SC: Yes.

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1 CHAIRPERSON: A substantial number of
 2 them had dangerous weapons and were contravening other laws
 3 relating to possession of dangerous weapons and were not
 4 exercising their right of assembly in a peaceful fashion.
 5 That's the point, as I understand it.
 6 COLONEL SCOTT: That's right,
 7 Chairperson.
 8 MR BIZOS SC: Are you saying that a
 9 contravention of the Assemblies Act, even though some of
 10 them may be armed with traditional weapons, that that gives
 11 the police a right to kill 34 people?
 12 COLONEL SCOTT: There's no killing
 13 because of a contravention of a gathering, or with illegal
 14 arms. The contravention is response to what those police
 15 members felt was a threat on them at that time and at no
 16 time was that a planned action on behalf of the police to
 17 go to kill anybody. The planned action was simply to
 18 disperse, and understanding dispersal doesn't mean physical
 19 action, it means first verbal warning so that those that
 20 don't want to be there, and understand what is coming,
 21 because part of the warning is simply to also explain to
 22 the strikers what the tactical option of the use of force
 23 is going to be, and in that aspect there's no punishment;
 24 it is simply a tactical option which is agreed upon as part
 25 of a standard operating procedure within the Public Order

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1 domain as a method to get a crowd to comply, to bring them
 2 back within the legal instructions, or the legal
 3 expectations.
 4 MR BIZOS SC: You also state at 6.27,
 5 "The other alternative which could dictate police action
 6 would be if all other options to resolve the situation
 7 without force were exhausted and there was no other means
 8 to restore order to the area but to bring the strikers back
 9 in line with the legal requirement for lawful protests."
 10 Do you adhere to that?
 11 COLONEL SCOTT: Yes, I do. One must just
 12 put that use of force into perspective. It's the force
 13 continuum, when talking of strikers here, of the Public
 14 Order Policing domain.
 15 CHAIRPERSON: Can we perhaps take a
 16 comfort break at this point for five minutes, for those who
 17 are in need thereof, and you can proceed with the cross-
 18 examination thereafter.
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]
 20 [12:26] CHAIRPERSON: The Commission will resume.
 21 Sometimes these breaks are a bit longer, it takes a bit
 22 longer than we expect but if they're necessary they have to
 23 be taken. You're still under oath, Colonel. Mr Bizos?
 24 DUNCAN GEORGE SCOTT: s.u.o.
 25 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):

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1 Mr Chairman. Colonel, I want to read to you a passage in
 2 paragraph 52.16 of your statement HHH20.
 3 CHAIRPERSON: I didn't get the reference, Mr
 4 Bizos, forgive me. Could you repeat it?
 5 MR BIZOS SC: Yes.
 6 CHAIRPERSON: I know the statement, which
 7 paragraph?
 8 MR BIZOS SC: HHH20.
 9 CHAIRPERSON: 20, thank you.
 10 MR BIZOS SC: 52.16.
 11 CHAIRPERSON: Page 146 of the exhibit.
 12 MR BIZOS SC: No, 52.16. "I must add
 13 that the fact that the strikers had chosen the koppie as a
 14 congregation point was a positive. They would, on the
 15 koppie, not be a threat to life or property." Did you say
 16 that?
 17 COLONEL SCOTT: That is my opinion,
 18 that's while they were on that koppie, unless there was
 19 fighting which broke out amongst themselves. There was no
 20 property to be destroyed or people that opposed them, so
 21 that was a good place for them to be.
 22 MR BIZOS SC: There is a considerable
 23 body of evidence that the problem was viewed by some, the
 24 continuation of the strike, would you agree that if this
 25 evidence is accepted, wholly or in part, that that was no

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1 ground to use force or kill people in order to put an end
 2 to the strike?
 3 COLONEL SCOTT: I'm not too clear on the
 4 question in that.
 5 CHAIRPERSON: The question's a big vague but I
 6 think I understand what Mr Bizos is trying to say. There
 7 is a suggestion that one of the motives for the action
 8 taken was to break the strike. There's in fact been some
 9 evidence that one of the persons concerned actually said,
 10 "We're going to break the strike." Now we don't have to go
 11 into whether that perception is correct but that was a
 12 perception on the part of at least one of the actors that
 13 that's what, to some extent, is what the operation was all
 14 about. Now what Mr Bizos is putting to you is would you
 15 agree that that would be, as I understand him, that would
 16 be an incorrect perception, that the operation that you
 17 planned and the operation that it was intended to implement
 18 was not designed to break the strike but presumably to
 19 restore law and order and prevent the ongoing danger of the
 20 possibility of sharp weapons being used against people in
 21 illegal circumstances. That's my summary of the question,
 22 is that your question, Mr Bizos?
 23 MR BIZOS SC: That is the question.
 24 COLONEL SCOTT: From my understanding the
 25 police were there, nothing to do with the strike action

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1 itself. If the strike was a peaceful strike it would have
 2 continued, whether protected or unprotected. We are simply
 3 there, when the law and the order is threatened and our
 4 role there was to bring back those who were contravening
 5 the law, back within the law, utilising as best possible
 6 tolerance, dialogue, speaking, et cetera. The fact that it
 7 goes to a place where a tactical option is now necessary to
 8 be employed is a decision-making process for that matter
 9 which is above my authority. However, it's not necessary
 10 to say that I disagree on that day because the perceptions
 11 I had on that day again were that the threat level had been
 12 raise against what was going on, that dialogue had no
 13 longer any place because nobody was going to come to speak
 14 to the strikers and the police now needed to move to a
 15 position where they needed to break up the gathering which
 16 was illegal, not the strike.
 17 MR BIZOS SC: A contravention on the part
 18 of a strike is hardly a reason for killing people.
 19 CHAIRPERSON: I'm not sure that even being part of
 20 the strike is necessarily a contravention but anyway,
 21 that's not what the witness is saying but are you just
 22 getting him to confirm that what you're putting is correct?
 23 MR BIZOS SC: Yes. Well, will you – what
 24 is your response?
 25 COLONEL SCOTT: Again with regard to a

<p style="text-align: right;">Page 15021</p> <p>1 strike you've got the right to strike, protected or 2 unprotected, and there are certain labour laws that would 3 enable that through the unions, et cetera, and the way it 4 goes. The police are not there to deal with the labour 5 issues. We were there to deal with the safety and security 6 of the environment. 7 MR BIZOS SC: Yes. 8 COLONEL SCOTT: So the considerations 9 around the police action were based on that. 10 MR BIZOS SC: You correctly said that 11 there needs to be threat to life or property - 12 COLONEL SCOTT: That was one of the - 13 MR BIZOS SC: - for the police to 14 intervene. 15 COLONEL SCOTT: That was one of the 16 precepts that the police are, there's an onus on the police 17 force even according to the Constitution - 18 MR BIZOS SC: Yes. 19 COLONEL SCOTT: That we need to intervene 20 when there's a threat to life, for that matter, an illegal 21 threat to life or damage to property, the police are 22 expected to act but that was only one of the - at some 23 stage, because of the illegality of the gathering, because 24 it was armed, the police would have the onus to try to 25 exhaust all other measures and then come in as a last</p>	<p style="text-align: right;">Page 15023</p> <p>1 at a strategic level the dialogue with the union presidents 2 which General Mpembe was arranging, remained a hope. That 3 took us through to the Thursday again but after that had 4 failed, there was no longer any hope left and nobody else 5 wanted to speak, labour to the strikers per se and the 6 police could not allow this thing to run indefinitely 7 because at that stage we didn't know what the next reaction 8 of the striking group was going to be. 9 MR BIZOS SC: On the morning of the 16th 10 somebody wrote down D-day. Who did it? 11 COLONEL SCOTT: My understanding - 12 MR BIZOS SC: Whose handwriting is it on 13 the exhibit that has been produced, D-day? 14 COLONEL SCOTT: My understanding is that 15 it is an advocate, she's an advocate but she holds - 16 CHAIRPERSON: She's now - Captain then, now 17 Colonel Moolman. 18 COLONEL SCOTT: Moolman, yes. 19 CHAIRPERSON: Who is an admitted advocate. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: Police legal adviser or officer. 22 COLONEL SCOTT: Yes. 23 MR BIZOS SC: Do you agree that the 24 expression D-day is a military term? 25 COLONEL SCOTT: I know that it was a</p>
<p style="text-align: right;">Page 15022</p> <p>1 resort with a tactical option to try to disperse that and 2 take away those arms from the strikers and try to retrieve, 3 for that matter, the firearms that were stolen from the 4 deceased. So that had to be part of the planning process 5 and obviously because it's part of the planning process, 6 had to be part of the operation, should it be got to, but 7 when it gets got to is not necessarily something that I 8 could answer to. 9 MR BIZOS SC: Well, did you consider that 10 you didn't have to wait for the 3 000 to gather and that 11 you may disarm them before they got there in the morning? 12 COLONEL SCOTT: Yes, that was a 13 consideration as early as the Tuesday already. However, as 14 I say, Tuesday we weren't ready, we weren't in place yet. 15 Many of the police members from around the country and the 16 surrounding provinces that had been called in had not 17 arrived, they were not then thus adequately briefed on that 18 initial plan but it was a consideration, but once we 19 started with dialogue on the Tuesday and the dialogue took 20 us successfully into Wednesday with the protesters or the 21 strikers making the arrangement on the Tuesday afternoon to 22 meet the police there the next day to continue with the 23 dialogue. The police dialogue already came to an end on 24 the Wednesday, if I understand correctly from the 25 negotiator, but what kept the hopes alive was the fact that</p>	<p style="text-align: right;">Page 15024</p> <p>1 military term in the Second World War but 2 I know that it's become a common terminology to say that 3 today something could happen. I don't know why the - 4 MR BIZOS SC: Do you agree that it is a 5 military term? 6 COLONEL SCOTT: Amongst others it is a 7 military term but it is used in wider society as well. 8 MR BIZOS SC: How did you understand it 9 when she said it, as a military term? 10 COLONEL SCOTT: She took the notes but I 11 don't recall it being said. 12 MR BIZOS SC: I beg your pardon? 13 COLONEL SCOTT: She didn't say it, she 14 took the notes down but I don't recall it being said. 15 MR BIZOS SC: She took the note. Who 16 used the words? 17 CHAIRPERSON: He said he didn't hear the words 18 being used, so I don't know that he can answer the 19 question. You say you never heard those words being used? 20 COLONEL SCOTT: No, Chairperson. 21 CHAIRPERSON: They appear from the notes to have 22 occurred right at the beginning of the meeting. 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: Were you there at the very beginning 25 of the meeting?</p>

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1 COLONEL SCOTT: I should have been. I've
 2 checked my phone records, there were times where I was
 3 making SMSs with regard to the air force chopper so it may
 4 also contribute to parts of the meeting that I was not
 5 there because they'd made an arrangement not to come in
 6 that Thursday and I was making the arrangements with them,
 7 if not coming in then at least you need to be on X amount
 8 of standby and how long will it take you and -
 9 MR BIZOS SC: Similar words were used by,
 10 or words to that effect were used by the Deputy
 11 Commissioner.
 12 CHAIRPERSON: Do you mean the Provincial
 13 Commissioner? I think you mean the Provincial
 14 Commissioner.
 15 MR BIZOS SC: Captain Adriaio.
 16 CHAIRPERSON: I'm not sure the Provincial
 17 Commissioner used them. Captain Adriaio is quoted at some
 18 stage as having said that, after her media conference I
 19 think.
 20 MR BIZOS SC: Yes but the Deputy
 21 Commissioner -
 22 CHAIRPERSON: You mean the Provincial
 23 Commissioner? You mean General Mpembe.
 24 MR BIZOS SC: Yes.
 25 CHAIRPERSON: She is the Provincial Commissioner.

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1 MR BIZOS SC: The Provincial Commissioner
 2 used words of a similar meaning, that today we will finish
 3 this off. Isn't that what D-day means?
 4 COLONEL SCOTT: I think it's open for
 5 interpretation, what is the speaker of the words meaning
 6 but as I understand that the Provincial Commissioner didn't
 7 use that terminology. She did, as I've heard in the video
 8 that was shown in the Commission, say that today this must
 9 end, if I'm not mistaken. I'm not sure I'm speaking
 10 verbatim -
 11 MR BIZOS SC: Today we are ending this
 12 matter, I'm reminded what the precise words were.
 13 COLONEL SCOTT: Yes, that's quite
 14 possible -
 15 MR BIZOS SC: D-day means -
 16 COLONEL SCOTT: It's one of the
 17 expressions D-day obviously means, yes.
 18 MR BIZOS SC: So that the decision to put
 19 an end to the presence of the people in the opinion of the
 20 Provincial Commissioner and whoever may have used the
 21 expression D-day early in the morning of the 16th, was
 22 decided upon hours before the alleged behaviour of the
 23 crowd that made it necessary to use lethal force.
 24 MR SEMENYA SC: Chairperson -
 25 CHAIRPERSON: Mr Semenya, sorry?

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1 MR SEMENYA SC: We have been cautious not
 2 to be objecting. We are way outside the areas which, by
 3 agreement, were supposed to be dealt with by Mr Bizos.
 4 CHAIRPERSON: Mr Bizos, there is substance in that
 5 objection, is there not?
 6 MR BIZOS SC: I respect my learned
 7 friend's objection but I think that it's a vital question
 8 that I should be allowed to put to the witness, with your
 9 Chairmanship's leave.
 10 CHAIRPERSON: Any other questions after this?
 11 MR BIZOS SC: There are a few.
 12 CHAIRPERSON: On other matters? On matters
 13 covered by your application?
 14 MR BIZOS SC: Yes.
 15 CHAIRPERSON: Right. I'll allow the question.
 16 MR BIZOS SC: Thank you, Mr Chairman.
 17 Please give an answer because it's vital, isn't it? Isn't
 18 it a vital answer? It's consistent -
 19 CHAIRPERSON: I think he should give us the
 20 answer. Whether it's vital is a matter that can be argued
 21 later.
 22 COLONEL SCOTT: I think I've testified -
 23 I'm not sure what the question was again but if it's
 24 regarding the decision is taken earlier that day that it
 25 must end today, the Provincial Commissioner at that stage

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1 is also hoping that this is still going to be resolved
 2 through dialogue. It's a policing matter and I can't speak
 3 for her but as a police person you don't go forward with
 4 ideas of killing people as you've been putting forward.
 5 The idea is to deal with the situation as proportionately
 6 as possible with the lowest threat levels obviously as
 7 possible to your own forces who need to go forward to carry
 8 out a tactical option, if necessary, to disperse the crowd,
 9 to get them away, to break up this illegal gathering and
 10 thereafter obviously to make the necessary arrests, to try
 11 and retain weapons that were possibly used in the acts of
 12 murder and retrieve those that were stolen from deceased
 13 people. That was, in essence, where one was going with
 14 that, that I can understand that she would've wanted to
 15 move towards as well.
 16 CHAIRPERSON: I think this was covered extensively
 17 in Mr Chaskalson's cross-examination.
 18 MR BIZOS SC: Yes.
 19 CHAIRPERSON: So to some extent, to a substantial
 20 extent I think, you're repeating that cross-examination.
 21 MR BIZOS SC: Well -
 22 CHAIRPERSON: If there's some angle that -
 23 MR BIZOS SC: We will leave it -
 24 CHAIRPERSON: But the point has been made, isn't
 25 it really a matter for argument?

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1 MR BIZOS SC: Well, we'll leave it to
 2 argue, Mr Chairman. Colonel, why do you think you were
 3 chosen to plan this operation?
 4 COLONEL SCOTT: Obviously that question
 5 would be best answered by the person that called me which
 6 was General Annandale and I think he was asked that
 7 question, to which he did answer it within the transcript,
 8 but I wouldn't be able to express his views of why he
 9 called me specifically. I can give my opinion on that but
 10 it wouldn't reflect his view necessarily.
 11 MR BIZOS SC: You have said that you have
 12 been involved in operations, involved fatalities, involving
 13 fatalities.
 14 COLONEL SCOTT: Yes, in essence the
 15 special task force is the last bastion within the police
 16 when it comes to dealing with the most extreme high risk
 17 situations where there's precision policing necessary,
 18 tactics necessary to deal specifically with hostage release
 19 operations and then what we do consider high risk
 20 operations within the country where the police, normal
 21 policing would find themselves not capable of dealing with
 22 that effectively.
 23 MR BIZOS SC: Do you want to name them?
 24 COLONEL SCOTT: Are we talking the
 25 operations?

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1 MR BIZOS SC: The operations at which
 2 there were fatalities.
 3 COLONEL SCOTT: Well, you would ask me
 4 now to go back over many years of policing but –
 5 CHAIRPERSON: Just give us two or three of the
 6 most recent ones. That would surely be enough for the
 7 questioner.
 8 COLONEL SCOTT: There have been – and
 9 these are obviously where there have been fatalities but
 10 there have been numerous where there haven't been
 11 fatalities for that matter, where we've executed our task
 12 without any destruction to property or loss of life on
 13 either side but there is cash in transit robberies that
 14 I've been involved in when there have been casualties, more
 15 than one for that matter, where we normally arrive on scene
 16 when the shooting from the perpetrators' side, the robbers,
 17 is already underway on the cash vans and on the security
 18 guards within those cash vans and we move in, in essence
 19 the shooting turns directly towards us where we then need
 20 to defend ourselves and that has led to loss of life.
 21 MR BIZOS SC: Well, those skills or
 22 experience or expertise are not relevant to management
 23 control, are they?
 24 COLONEL SCOTT: I'm not understanding the
 25 question, Chairperson.

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1 CHAIRPERSON: I think you mean crowd control or
 2 crowd management.
 3 MR BIZOS SC: Crowd management.
 4 COLONEL SCOTT: I'm still not sure how to
 5 place fatalities –
 6 CHAIRPERSON: The question is, your expertise
 7 derived from these operations where there were fatalities,
 8 these high risk operations that you were involved in. That
 9 expertise and experience, Mr Bizos is suggesting to you,
 10 isn't an expertise that is necessary or appropriate to use
 11 in a crowd management context. Is that your question, Mr
 12 Bizos?
 13 COLONEL SCOTT: What I can state though –
 14 as you said, you've asked for operations where fatalities
 15 have been and the expertise that I have lies in trying not
 16 to have fatalities at all if possible, but that is normally
 17 because of an action towards us driven by the perpetrator
 18 which has caused a response from ourselves but in saying
 19 this, I have done possibly hundreds of operations where we
 20 do effecting of high risk warrants of arrest, going into
 21 the very premises of a very well-known criminal that the
 22 police could normally not go to and we would need to
 23 exercise the warrant of arrest on behalf of the detectives
 24 and we execute our duty because of the tactics we utilise
 25 and so on, that the actual utilisation of our firearms is

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1 minimal in those. And that experience ties in again,
 2 amongst others, with numerous other operations that we
 3 conduct in the open area environment with Marikana, with
 4 regard to the special task force, the national intervention
 5 unit and the tactical response teams on how we effect high
 6 risk arrests, in dealing with confrontation with hostile or
 7 belligerent persons that need to be arrested – whether that
 8 be inside a structure like a house or whether that be
 9 outside of a structure where many criminals tend to run to,
 10 in KwaZulu Natal into the hills and so on, where we need to
 11 track them down. So that confrontation there is also
 12 something that we involve tactics around, which is why I
 13 implied that those units at Marikana needed to be able to
 14 exercise those skills in the carrying out of the high risk
 15 arresting of belligerent or armed protesters.
 16 [12:46] MR BIZOS SC: You record that you got a
 17 certificate of commendation from the National Commissioner
 18 for the apprehension of cash in transit robbers in 2007.
 19 Which incident was that?
 20 COLONEL SCOTT: That was an incident near
 21 the Carousel, I think it's a casino area to the north of
 22 Pretoria where I think it was 12, well, 12 were arrested on
 23 scene. The group was larger than 12 but there were 12 that
 24 were confronted on scene, were attacking a cash in transit
 25 van and the special task force with the detectives

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1 responded.

2 MR SEMENYA SC: Chair, unless

3 particularly relevant –

4 CHAIRPERSON: I was wondering the same.

5 MR SEMENYA SC: Ja, I'm wondering about

6 the –

7 CHAIRPERSON: Are you taking this one any further,

8 Mr Bizos, or have you got the point you want?

9 MR BIZOS SC: Yes, there is a vital

10 question that I would like to ask, Mr Chairman.

11 CHAIRPERSON: Let's hear it.

12 MR BIZOS SC: How many were killed?

13 COLONEL SCOTT: Of the people that were

14 on scene, of the perpetrators that were on scene, 11 of the

15 12.

16 MR BIZOS SC: 11 out of the 12.

17 COLONEL SCOTT: Yes.

18 MR BIZOS SC: Isn't that a very

19 distinguishable situation?

20 COLONEL SCOTT: Well, it is but –

21 MR BIZOS SC: Or taken on face value.

22 COLONEL SCOTT: What makes it so –

23 MR BIZOS SC: The reason why I'm asking

24 you the question is, but I don't want to enter into the

25 details, that there were questions asked as to whether some

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1 of them had their hands up when they were killed.

2 COLONEL SCOTT: That's the first I hear

3 of that but again –

4 MR BIZOS SC: The first you hear of it?

5 COLONEL SCOTT: Yes, again that is, the

6 people that utilised –

7 MR BIZOS SC: But you will agree, will

8 you not, perhaps you have already done, that that sort of

9 situation is different to a situation such as this?

10 COLONEL SCOTT: It's obviously, it's a

11 different operation. It's a totally different type of

12 operation.

13 MR BIZOS SC: I want to go back to my

14 original question about our Constitution and ask you this.

15 I have called it political rhetoric in the past. The

16 decision, whether it was yours or the person in charge of

17 the police that actually did the shooting, were influenced

18 by the political rhetoric which seeks to reverse what was

19 decided in 1994 about the management of gatherings by

20 saying that the police must shoot to kill and the other

21 expressions by politicians, some members of the public and

22 others which amount to a negation of the constitutional

23 principles that the Constitutional Court and the police are

24 obliged to follow. Does that, in your opinion, may have

25 influenced the people that pulled the trigger?

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1 COLONEL SCOTT: Sir, obviously I can only

2 speak for myself but if I do reflect onto the police

3 officials involved, I don't think it did and I've often

4 been known to say that I serve the legal aspect of our

5 country. I am within the police and I serve the criminal

6 justice system and if comments are made, if that is what

7 you're referring to, by possibly previous National

8 Commissioners or Ministers or so on, that doesn't affect my

9 decision-making because I do understand that there is a law

10 that we abide by and that law is entrusted to me to be an

11 enforcer of it. So I can't be a contravener of the very

12 same law I'm expected to enforce and I've always walked my

13 path in that way, that I serve the legal justice system and

14 not necessarily a political party or a political viewpoint

15 of the day.

16 MR BIZOS SC: Mr Chairman, I don't know

17 whether it is covered or not but there is a question, and

18 my last question, that I want to ask about exhibit L.

19 CHAIRPERSON: Yes, it's not covered but if it's

20 your last question I'll let you ask it.

21 MR BIZOS SC: Thank you. Colonel, I want

22 to quote a very prominent pathologist, Dr Jonathan Gluckman

23 who, during the apartheid years, gave evidence in numerous

24 inquests. He said that a dead body may be a better witness

25 than those that may be alive. Prompted by that statement

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1 of his in a court case, in an inquest, what I want to ask

2 you is this, that when you put together exhibit L did you

3 have regard to the medical and ballistics evidence that has

4 been placed by the Legal Resources Centre before the

5 Commission?

6 COLONEL SCOTT: I don't recall seeing

7 any. If you're talking post-mortem –

8 MR BIZOS SC: State pathologists, the

9 state pathologists in particular. Was it available to you,

10 post-mortems?

11 COLONEL SCOTT: I know that we got from

12 Colonel Botha, we would have got post-mortems. Obviously

13 we reflect some of them with regard to the 13th, the

14 killings of the 13th are reflected in the presentation

15 exhibit L. I'm not sure at what stage the remainder were

16 made available with regard to the deaths on the 16th.

17 MR BIZOS SC: I'm not concerned with the

18 13th, I'm concerned with the question on the 16th.

19 COLONEL SCOTT: I don't know –

20 MR BIZOS SC: Were those post-mortems –

21 CHAIRPERSON: Give him a chance –

22 MR BIZOS SC: - put before you, before

23 you finalised exhibit L?

24 COLONEL SCOTT: If I looked at any post-

25 mortem issues, I would have only been looking at the

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1 photograph evidence thereof and I can't recall doing that
 2 because I didn't need that for the presentation as far as I
 3 could recall. There were photographs taken of deceased on
 4 scene which were the ones we reflected. The only reason
 5 that there were photographs placed on the Monday the 13th
 6 was because we didn't have photographs of specifically some
 7 of those members on scene.
 8 MR BIZOS SC: If they had been put before
 9 you, might they have been influenced, the composition of
 10 exhibit L?
 11 COLONEL SCOTT: No, I don't think they
 12 would have. You're talking now from the pathology report?
 13 MR BIZOS SC: Well, exhibit L is on the
 14 premise that the shooting was in self-defence.
 15 COLONEL SCOTT: That's my understanding
 16 from the people that have spoken to me, yes.
 17 MR BIZOS SC: But the findings of the
 18 pathologists, I'm going to put to you, negate that
 19 allegation because most of the people were shot either in
 20 the back or on the side.
 21 MR SEMENYA SC: Chair, there's no way a
 22 finding of a pathologist can negate anything.
 23 CHAIRPERSON: I think the question is put too
 24 strongly. I agree with Mr Semenya, subject to what you may
 25 say, that negate is too strong a word. The fact that a

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1 number of the deceased were shot in the back would be a
 2 factor in deciding whether they indeed were shot in
 3 circumstances of self-defence or private defence. Now, was
 4 that material available to you indicating – I think IPID
 5 had the post-mortem reports –
 6 COMMISSIONER HEMRAJ: I think before
 7 that, sorry to interrupt you Mr Chairman, before that
 8 question, Mr Bizos you've put this question before land
 9 when we looked at the reports that you had handed in there
 10 were I think six or seven only of the deceased that were
 11 shot on the back and the side. The question can't be that
 12 most of the deceased were shot in the back.
 13 CHAIRPERSON: What can be asked, I suppose, is if
 14 you would know that some of the deceased at least,
 15 according to the post-mortem reports done by the state
 16 pathologist, had been shot in the back or in the side, that
 17 was a factor which might or might not throw light on the
 18 question whether they were killed in circumstances of self-
 19 defence or private defence. Firstly, did that material
 20 come before you when exhibit L was being compiled?
 21 COLONEL SCOTT: I'm just trying to think
 22 when it was but I think it was after exhibit L was compiled
 23 that we got to see some form of who had been shot where,
 24 but I think that was later in November, if I'm not
 25 mistaken.

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1 CHAIRPERSON: The next question I think Mr Bizos
 2 is asking you is if it had come, it's a hypothetical
 3 question, some witnesses don't answer hypothetical
 4 questions but if it had come before you at the time of the
 5 Roots exercise, these post-mortem reports which revealed
 6 that some at least of the deceased had been shot in the
 7 back, would that have been included in exhibit L? Are you
 8 able to answer that?
 9 COLONEL SCOTT: Chairperson, and I think
 10 it's common knowledge that there are bodies which cannot be
 11 claimed per se at scene 2 and the perception is, and I
 12 think it's even mentioned possibly by some of the persons
 13 that said they shot towards the bushes, that one would
 14 expect that possibly some of the rounds they fired, if it
 15 is – but this is where there obviously needs to be
 16 objective proof to that – could have hit people in the side
 17 or possibly in the back. And I am aware of one incident
 18 where the two police members didn't even know, where a
 19 certain member was standing on top of the rocks coming over
 20 the top and he saw an armed striker move out towards one of
 21 the canine members who were in the bush and he actually
 22 shouted out and as far as we know they both shot him. So
 23 one was firing in private defence, the other in self-
 24 defence. Some rounds would have been coming from the back
 25 and some from the front, for that matter, so – and these

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1 two statements actually got linked when we were trying to
 2 put scene 2 together.
 3 CHAIRPERSON: You haven't answered the question,
 4 you see. The question Mr Bizos wants to know, I think, is
 5 if you'd had that material, would it have been put into
 6 exhibit L as far as you know? That was the question, Mr
 7 Bizos?
 8 MR BIZOS SC: Yes.
 9 COLONEL SCOTT: No, I wouldn't have
 10 because I've seen that for instance the person that was
 11 shot with pellets, where those pellets came from I can't
 12 say but I saw that. I've seen photos of that on scene but
 13 no-one speaks to that. The only reports that were given to
 14 us were of self or private defence so that's what I
 15 reflected because nobody has come to say, so we only
 16 reflected what we were told.
 17 MR BIZOS SC: Mr Chairman, I'm assured by
 18 the people sitting to the left and the right of me that the
 19 figures that I gave were substantially correct but we will
 20 call the pathologists and it will, the number will be
 21 determined.
 22 CHAIRPERSON: Well, it's a matter for argument. I
 23 think the exhibits are before the Commission anyway.
 24 MR BIZOS SC: Yes. The last –
 25 CHAIRPERSON: The witness dealt with it on the

1 basis that some at least were shot in the back and he gave
2 an answer.

3 MR BIZOS SC: The other is that the
4 people who, that the majority of the people that were shot
5 but survived were shot in the back or the side. Was that
6 information before you, before putting exhibit L together?

7 COLONEL SCOTT: I got at some stage, and
8 I'm not sure if this was also around the time of the post-
9 mortems that we got to review most of this, but again I
10 can't say whether it was there when we were doing exhibit
11 L. We are aware that there were a lot of wounded and I
12 can't again recall exactly at what time but I think what
13 was conveyed to us, that many of the injuries were in the
14 feet, the upper legs, et cetera. And my perception of
15 that, and it will be shown in exhibit L where I drew the
16 actual lines of where the TRT were standing, was to show
17 that obviously when you're firing at what you think is the
18 threat in front of you, bullets that miss the front people
19 are continuing with their line of flight. Thus you would
20 find that there were some people shot on the opposite side
21 of the kraal, possibly from the fire going through the
22 kraal and those then respectively behind them would also
23 have received or been part of the collateral damage because
24 of the threat posed that the police were responding to in
25 front of them.

1 MR BIZOS SC: You were supposed to have a
2 debriefing in terms of the standing orders.

3 CHAIRPERSON: Mr Bizos, (a) you've asked your last
4 question. (b) The debriefing, the non-holding of the
5 debriefing, the decision taken not to have a debriefing,
6 it's all been covered in evidence before and this witness
7 in any event, as I recall, was not a party to the decision
8 not to have a debriefing in terms of standing orders. So I
9 don't know, with respect, that asking him the question is
10 going to help us at all.

11 MR BIZOS SC: Thank you for the
12 opportunity, Mr Chairman. I have no further questions.

13 CHAIRPERSON: Thank you. It's now just after one
14 o'clock. We had intended carrying on this afternoon and
15 tomorrow but for reasons that I don't have to state, it's
16 not possible for us to do that and we will now adjourn
17 until nine o'clock on Monday morning.

18 [COMMISSION ADJOURNED]

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