

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 140 30 OCTOBER 2013 PAGES 15043 TO 15249



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1 [PROCEEDINGS ON 30 OCTOBER 2013]
 2 [09:07] CHAIRPERSON: The Commission resumes.
 3 Colonel, you're still under oath.
 4 DUNCAN GEORGE SCOTT: s.u.o.
 5 CHAIRPERSON: Ms Le Roux, are you going
 6 to start cross-examining now?
 7 MS LE ROUX: Yes, Chair.
 8 CHAIRPERSON: Please do so.
 9 CROSS-EXAMINATION BY MS LE ROUX: Good
 10 morning, Colonel Scott.
 11 COLONEL SCOTT: Good morning.
 12 MS LE ROUX: For the record, the South
 13 African Human Rights Commission has been allocated the
 14 responsibility to cross-examine you on the evidence
 15 submitted by its two experts, Katherine Scott and Gary
 16 White. Have you had the opportunity to review their
 17 statements and their annexures?
 18 COLONEL SCOTT: I've – yes, some of the
 19 annexures maybe not. I saw that was more correspondence
 20 between the police and the Human Rights Commission and so
 21 on, but specifically the annexure 6 which goes from A to G,
 22 I had a look at those.
 23 MS LE ROUX: Thank you.
 24 COLONEL SCOTT: And of course – sorry,
 25 and Katherine White's –

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1 MS LE ROUX: Katherine Scott.
 2 COLONEL SCOTT: Katherine Scott's, the
 3 movie footage that she has and so on as well, yes.
 4 MS LE ROUX: Yes, thank you. And I plan
 5 to begin with the evidence of Katherine Scott and we should
 6 be able to move through that fairly quickly, and then I'll
 7 proceed to the statement of Gary White. I should make
 8 clear that we are not going to repeat every aspect of Mr
 9 White's statement with you in cross-examination. We've
 10 selected certain topics that we want to cover with you. Of
 11 course if there are other issues you'd want to address, I
 12 assume your counsel will invite you to do that in re-
 13 examination, and of course your confirmation the last time
 14 you were here that the annexure 6, GW6.A to F appeared
 15 accurate to you has also enabled us to shorten our cross-
 16 examination. So thank you for that confirmation.
 17 Chair, I'd like to start though with a
 18 housekeeping matter, which is footage that was broadcast on
 19 Channel 4 in the United Kingdom, which we believe had not
 20 previously been provided to the Commission, formed part
 21 of –
 22 CHAIRPERSON: Yes, I must say I'm very
 23 distressed about that, distressed not only about that
 24 footage, but other footage that was also shown here last
 25 time. Before we started hearing evidence we had a meeting

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1 with the editors and the media houses and there was an
 2 undertaking that all footage which was shown or not shown
 3 would be made available to us because we explained that
 4 things that may have no news value that may not be
 5 considered necessary to broadcast, may well assist us in
 6 our work and we were given an undertaking that all such
 7 footage would be made available to us. That's a matter
 8 that will have to be taken up with the media houses in due
 9 course. Which is the media house who provided the portions
 10 to which you are now referring?
 11 MS LE ROUX: Chair, these were broadcast
 12 by Channel 4 in –
 13 CHAIRPERSON: Where did they get it from?
 14 Who took the footage?
 15 MS LE ROUX: Chair, I'm not sure. I can
 16 obtain an instruction on that. I think they had freelance
 17 photographer, videographers, cameramen at the scene, but I
 18 can, I'll establish – if there's a different media house
 19 that was the source of what they used in the documentary I
 20 can establish that.
 21 CHAIRPERSON: The footage we saw last
 22 time was a copy of the original from which it's not clear,
 23 in fact it's not there at all, what time the particular
 24 footage was taken, which is the reason why we wanted to see
 25 the original, if we can get it, as we should be able to.

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1 The footage you're now going to show us, can you tell us at
 2 what time it was taken?
 3 MS LE ROUX: Yes, Chair, let me just put
 4 this in context. This is the only aspect that we've been
 5 able to identify of the footage that is used in this
 6 Channel 4 documentary that has not previously been provided
 7 to the Commission. It lasts about 15 seconds in total.
 8 Five seconds of that is relevant to Gary White's statement
 9 because it formed part of the basis of annexure GW6.A,
 10 which is the analysis of the route taken by the protesters.
 11 So –
 12 CHAIRPERSON: I'm sorry, but the question
 13 I asked you was can you tell us – if you don't know, you
 14 don't know, but can you tell us at what time that
 15 particular footage which you're now going to show us was
 16 taken?
 17 MS LE ROUX: Yes, Chair, it's, the
 18 relevant portion that we need for the annexure is eTV time
 19 to 15:52:13. This is when Nyala 4 arrives at the
 20 kraal, which we put at 15:52:03 eTV time. So it's a few
 21 seconds after Nyala 4 has arrived at the kraal, and when
 22 incident 2 is alleged to have taken place. Now this –
 23 CHAIRPERSON: It's going to be an
 24 exhibit, is it?
 25 MS LE ROUX: Yes, Chair, we can –

<p style="text-align: right;">Page 15047</p> <p>1 CHAIRPERSON: Perhaps we can be told by 2 Ms Pillay or Mr Chaskalson what the appropriate exhibit 3 number will be. 4 MS PILLAY: Chair, it will be JJJ197. 5 CHAIRPERSON: Thank you. How do I 6 describe it? Portion of video clip from? 7 MS LE ROUX: From Channel 4. 8 CHAIRPERSON: From Channel 4 broadcast. 9 MS LE ROUX: That's correct, Chair. 10 CHAIRPERSON: Thank you. Are you able to 11 tell us from what you've ascertained who took this and 12 whether – I take it, it's part of a longer video. You say 13 a good deal of what was shown on the Channel 4 broadcast 14 has already been seen by the Commission. Now this is that 15 little extract, but is this an extract from a longer video 16 which we've already seen, and do you know who took it? 17 You'll understand that the context of the extract is 18 sometimes very important and I'm not suggesting that any 19 attempt is being made to mislead us, but it's nevertheless 20 relevant for us to be able to assess the importance, if 21 any, of this clip, as to know where exactly it fits in and 22 what the context is. 23 MS LE ROUX: Chair, I'm instructed that 24 we don't know where they obtained this clip, but this 15 25 seconds is the only part of – it was a dispatcher's</p>	<p style="text-align: right;">Page 15049</p> <p>1 before us as an exhibit, or is it not possible to do that? 2 MR CHASKALSON SC: No, it's not – to the 3 best of our knowledge it's not footage that is part of any 4 of the video footage that we have already seen, although – 5 CHAIRPERSON: Yes, so it's unlikely 6 therefore that this 15 seconds is all the videographer 7 took, so there must be other material, on the 8 probabilities, available, which should be before us. 9 MR CHASKALSON SC: Yes, save for the 10 possibility that this clip is taken by one of the media 11 houses that used all of its other footage in public 12 broadcast material that we have seen. So it could be that 13 this is an off-cut, it's possible that this is the only 14 off-cut that we haven't seen from that video house, from 15 that media house. 16 CHAIRPERSON: I see, alright. Thank you 17 very much. Yes, please proceed, Ms Le Roux. 18 MS LE ROUX: Chair, just to clarify, we 19 intend to show 15 seconds, but there's only about five 20 seconds of that that has not previously been shown. So 21 we've made it a 15-second clip to place it in the context 22 of the documentary programme, but there's only about the 23 five seconds, which is eTV time again 15:52:08 to 13, which 24 has not previously been before the Commission, so if we 25 could play that clip now.</p>
<p style="text-align: right;">Page 15048</p> <p>1 documentary programme on Channel 4. This is the only 2 aspect of that documentary that has not previously been 3 provided to the Commission, so for completeness sake that's 4 why we wanted to just start with playing it this morning. 5 CHAIRPERSON: Before you proceed, perhaps 6 we can ask Mr Chaskalson, who's gone to a lot of trouble to 7 familiarise himself with all the relevant and irrelevant 8 videos, if he has any comment to make about this particular 9 video clip we're now going to see. 10 MR CHASKALSON SC: I don't have anything 11 specific to say in relation to this clip, beyond that I 12 broadly agree with the Human Rights Commission's analysis 13 of where it fits in, in terms of the chronology. We don't 14 know who the original photographer was. We haven't an 15 original timestamp for the video, but from what it 16 describes and a number of – 17 CHAIRPERSON: But what – 18 MR CHASKALSON SC: What it depicts – 19 CHAIRPERSON: What it depicts. 20 MR CHASKALSON SC: - we can locate it and 21 we agree with the analysis of the South African Human 22 Rights Commission as to where it is to be located. 23 CHAIRPERSON: It's not possible to fit it 24 into other footage we've already seen? In other words say 25 that this must be an extract from a clip which is already</p>	<p style="text-align: right;">Page 15050</p> <p>1 CHAIRPERSON: I'm not sure that I 2 understand that, but don't delay over that. Just please 3 proceed. 4 [VIDEO SHOWN] 5 MS LE ROUX: That's it, Chair. If I can 6 now – 7 CHAIRPERSON: Sorry, I think you'd better 8 go back and start again because it went past so fast I 9 couldn't see the relevant bit, but please could we see 10 perhaps from the time when the Provincial Commissioner 11 stops speaking? 12 [VIDEO SHOWN] 13 MS LE ROUX: Thank you, Chair. Colonel 14 Scott, if I could now commence your cross-examination, and 15 I'd like to do that by looking at how exhibit L, one 16 particular aspect of how exhibit L explains a critical part 17 of scene 1, which is the subject of Katherine Scott's 18 expert evidence. If we could start in exhibit L at slide 19 188, and Colonel, slide 188 is a video and photo summary of 20 incidents, and if we could queue it up to just before the 21 eight-minute mark in that slide, it proceeds for just under 22 half an hour, that whole part of exhibit L, but 23 specifically the aspect I want to focus on with you is at 24 the eight-minute mark, if we could go there, please. 25 Chair, we seem to be having some difficulty, if I should</p>

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1 just describe what appears there.
 2 CHAIRPERSON: Yes, well let's ask those
 3 who are assisting us from the technical side whether the
 4 difficulty is insoluble, or whether it's likely to be
 5 solved in the next minute or two. Can you tell us whether
 6 we're likely to see the clip, or the section of the clip
 7 which – we won't be able to. I'm afraid you will have to
 8 describe it for us.
 9 MS LE ROUX: That's fine, Chair. As
 10 you'll recall, this video and photo summary, it's
 11 photographs and video clips, and it's interspersed with
 12 black slides with white writing where the SAPS narrative
 13 unfolds. At the eight-minute mark is one of those slides
 14 which states in part, and this is the only relevant part,
 15 but that slide states, "The shooting lasts eight seconds
 16 until the cease fire is called by members who can see the
 17 threat no longer exists." This is a slide that appears
 18 just before the Reuters footage is shown. So again,
 19 Colonel Scott, the slide says "The shooting lasts eight
 20 seconds until the cease fire is called by members who can
 21 see the threat no longer exists," and I'd like to focus
 22 on –
 23 CHAIRPERSON: I see you nod your head.
 24 You remember that passage in the slide?
 25 COLONEL SCOTT: I do, Chair.

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1 CHAIRPERSON: Did you write it yourself?
 2 COLONEL SCOTT: Yes.
 3 MS LE ROUX: And Colonel Scott, of course
 4 there's three pieces of information there. The first is
 5 the statement the shooting lasts eight seconds. The second
 6 is that the shooting lasts until cease fire was called, and
 7 then thirdly that it ceases because members could see the
 8 threat no longer existed, and this claim that the shooting
 9 only lasted eight seconds has been repeated many times both
 10 within the Commission and outside of it, but the only place
 11 where we see that statement that the shooting lasts eight
 12 seconds is in exhibit L. Who provided that information to
 13 you when you were preparing that portion of exhibit L, that
 14 the shooting lasted eight seconds?
 15 COLONEL SCOTT: That was my own analysis
 16 from watching the video footage from, I think it was
 17 Reuters, understanding the speaking about the actual scene
 18 1, and with regard to the live fire aspect of it, not the
 19 rubber rounds that were being shot. So it was aimed to be
 20 at that line of mixture of TRT and POP members that
 21 initially engaged for that amount of time. That's what it
 22 was talking to.
 23 MS LE ROUX: And Colonel Scott, are you
 24 aware that when Mr Magidiwana gave evidence, there was some
 25 uncertainty as to whether there was other live fire, other

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1 live ammunition used after the volley of fire at scene 1?
 2 Are you aware that there was that issue that arose in his
 3 evidence?
 4 COLONEL SCOTT: I'm aware that was raised
 5 with regard to him, yes, specifically who was part of the
 6 group right at the front, so as far as that is concerned,
 7 yes.
 8 MS LE ROUX: And Chair, on the basis of
 9 both that slide in exhibit L, as well as the uncertainty
 10 that had arisen from Mr Magidiwana's evidence, the Human
 11 Rights Commission instructed Katherine Scott, who is, to
 12 put it colloquially, she's a sound expert, to analyse the
 13 Reuters footage –
 14 CHAIRPERSON: Expert on sound?
 15 MS LE ROUX: Correct, and a sound expert
 16 as well, Chair. So we instructed Ms Scott to analyse the
 17 Reuters footage to determine whether she could analyse and
 18 distinguish between the different sounds that you hear in
 19 that footage to try to identify the different weapons that
 20 are being used, and the video which is attached to her
 21 statement as KS1 is the one manifestation of that analysis,
 22 but I'd like to start with the Reuters footage because our
 23 submission will be that, and you've just testified that you
 24 came to the conclusion that the shooting lasted only eight
 25 seconds having heard the Reuters footage, and the Human

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1 Rights Commission's submission and the finding by Ms Scott
 2 is that in fact the shooting lasts much longer than just
 3 the eight-second volley, that beyond that time there was
 4 other sharp-pointed ammunition used, which is evidence from
 5 the Reuters clip.
 6 Now the other thing I should flag for you in the
 7 Reuters clip is that obviously there's an edit which
 8 appears at about 36 seconds into the clip. So what I'd
 9 like to do is if we could watch the Reuters clip, which is
 10 exhibit UU3, up until that edit point, and if we could
 11 pause then.
 12 [VIDEO SHOWN]
 13 MR CHASKALSON SC: Chairperson, it just
 14 occurs to me that we are going to be watching very
 15 distressing footage on a repeated basis, if I understand
 16 the route in which this cross-examination is like to
 17 proceed and I think an announcement to that effect should
 18 be made.
 19 CHAIRPERSON: Thank you for bringing that
 20 to my attention. You will have heard what Adv Chaskalson
 21 said. From now on we're going to see video footage which
 22 will include pictures of the bodies of people who were
 23 killed at that time, and seeing these pictures will cause
 24 great distress to their family and loved ones.
 25 [09:26] So those people in the auditorium today who feel

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1 that they do not wish to see this footage because they do
 2 not wish to undergo the pain and distress that seeing this
 3 footage will cause them, they will be given an opportunity
 4 to leave and the showing of the footage will only start in
 5 two minutes' time. Those who wish to leave may do so
 6 within the next two minutes. When the footage is over, we
 7 will send a message outside so that those who wish to
 8 return then will be able to do so. About a minute and a
 9 half have gone since I made the announcement I did. No-one
 10 else seems to be wishing to go at this stage. A number of
 11 people have left, so perhaps despite the fact that two
 12 minutes have not elapsed, we can proceed.

13 MS LE ROUX: Thank you, Chair. Colonel
 14 Scott, we paused at a point in the Reuters footage where
 15 there's an edit, and annexure KS3 to the Katherine Scott
 16 statement sets out the analysis undertaken by the Human
 17 Rights Commission team, comparing Reuters footage with
 18 water cannon footage and CCTV footage, and through that
 19 comparison and analysis we have concluded that the edit
 20 lasts for 35 seconds. Have you had the opportunity to
 21 consider that analysis, and do you have any comment on it?

22 COLONEL SCOTT: The judgment I've made
 23 for myself is somebody like a Katherine Scott or the people
 24 that have done the objective evidence on the photos and the
 25 movies are reputable and, you know, I would go with what

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1 they say because I'm not an expert in that environment to
 2 actually go and duplicate their work, or to challenge their
 3 work. So unless it's proven otherwise, I have no reason to
 4 doubt what they are saying.

5 CHAIRPERSON: You accept, subject to that
 6 caveat that you've expressed, if someone else proves the
 7 contrary that doesn't matter, but you are prepared to
 8 accept that that 35-second assessment of the length of the
 9 pause is correct?

10 COLONEL SCOTT: Yes, Chairperson.

11 MS LE ROUX: Thank you, Colonel Scott.
 12 Chair, if we could now watch the remainder of the Reuters
 13 clip after its edit, and Colonel Scott, if you could
 14 specifically listen out for the sound of shots that we'll
 15 then get to in the Katherine Scott analysis.

16 [VIDEO SHOWN]

17 Colonel Scott, if I could now ask you to turn to
 18 page 10 of Katherine Scott's affidavit, this is a table
 19 that has been prepared by Ms Scott.

20 COLONEL SCOTT: Are you mentioning her
 21 first one, not the final obviously?

22 MS LE ROUX: Correct, attached to her
 23 first affidavit, page 10 of that affidavit, and Chair, for
 24 housekeeping purposes if we could mark the Katherine Scott
 25 affidavit and its annexures as an exhibit, so it would be

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1 JJJ198, and Colonel Scott, just to summarise, because I'd
 2 like you to keep this table up when we look at the video
 3 footage, what this table does is it summarises Ms Scott's
 4 analysis and findings and the first column lists under the
 5 title "shot number" the 41 shots that she manages to
 6 identify, having enhanced and analysed the audio of the
 7 Reuters clip. The second column sets out the time in that
 8 footage where that shot can be heard, and then the third
 9 column sets out the type of shot that she understands it to
 10 be. Within that she has managed to identify rifle shots
 11 specifically, and those are listed. She's managed to
 12 identify, when she says "gunshot, not a rifle," that means
 13 it could be a pistol or a shotgun discharging rubber
 14 rounds. Shots 5 and 6 are amended in her second statement.
 15 They're listed as "rifle with echo, two noises audible,"
 16 but those in fact she now believes are stun grenades that
 17 make the double bang, and then she's identified other
 18 aspects on the audio, such as the calls for cease fire. So
 19 for example if we go down the table, we see that there are
 20 18 shots that she identifies before the volley of fire.
 21 She then concludes that the volley of fire lasts eight
 22 seconds, and then the first call for cease fire on the
 23 Reuters footage is at 22 seconds, second one a second
 24 later, and then she identifies further shots all the way up
 25 to shot number 29, which is where the edit appears.

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1 So if we could now watch KS1 up until the point
 2 of that edit, and Chair, for the members, the family
 3 members and others in the room, what the video footage does
 4 is it's the Reuters footage and then there's a count at the
 5 bottom of the screen which counts up the number of shots
 6 that she's identifying and correlates those to this table.
 7 She also then circles things and highlights things on the
 8 video clip, such as for example teargas and stun grenades.
 9 So you'll see those on the video aspects in the footage,
 10 and then at the top of the screen are when there are things
 11 like a cease fire call or sort of the verbal commands that
 12 are given that are audible on the Reuters footage, those
 13 appear in script at the top of the screen. So if we could
 14 now watch annexure KS1 up to the point of the edit.

15 [VIDEO SHOWN]

16 And if we could pause there. So Colonel Scott,
 17 what Ms Scott manages to analyse when she enhances and
 18 analyses what they call the gunshot layer of the audio is
 19 that up until the point of the edit there were 29 distinct
 20 shots heard. 18 of those are rifle shots, and then of
 21 course there's the volley lasting eight seconds. But
 22 critically what we are now able to see, if we play the rest
 23 of KS1, is that Ms Scott has identified at least four rifle
 24 shots that follow the edit, and because we know the edit is
 25 35 seconds long, we know that these rifle shots come 55

<p style="text-align: right;">Page 15059</p> <p>1 seconds after the first call for cease fire. So if we can 2 watch the end, the rest of KS1. 3 [VIDEO SHOWN] 4 So Chair, that's the first of the rifle shots. 5 [VIDEO SHOWN] 6 That's the second. 7 [VIDEO SHOWN] 8 That's the third rifle shot. 9 [VIDEO SHOWN] 10 And that's the fourth. 11 [VIDEO SHOWN] 12 Colonel Scott, just to summarise, and this is – 13 I'm going to read to you what's set out in Katherine 14 Scott's first affidavit, which is at paragraph 35. So this 15 follows the edit. "There are a further four rifle shots 16 audible at timestamp 42:16, 44:18, 50:04, and 53:10, as 17 well as additional gunshots at 46:10, 54:03, 58:00, and 18 01:01:16." Her analysis concludes that, "The first of 19 these is not from a rifle, but is more likely to be from a 20 pistol or a shotgun firing non-lethal rubber rounds. 21 However, the remaining three discharges could potentially 22 be from a rifle at distance and therefore I've labelled 23 these as gunshot in the appendix as I'm unable to rule out 24 that these originated from rifles. If they are not rifle 25 discharges they are likely to be from pistols or shotguns</p>	<p style="text-align: right;">Page 15061</p> <p>1 you're putting to him, because he wasn't there. So at best 2 for you, you're asking him about the information he 3 received when he was in the process with his colleague 4 Colonel Visser of compiling the presentation. 5 MS LE ROUX: That's correct, Chair. 6 MR SEMENYA SC: No, Chair, are we asking 7 the witness to give us some hearsay even for that matter? 8 How accurate can that be? 9 CHAIRPERSON: Well, in a commission 10 hearsay is receivable. Strict rules of evidence don't 11 apply. It's a question of cogency and relevancy, and 12 inasmuch as this witness was charged with receiving 13 information from various people for the purpose of 14 compiling the presentation, it's not as remote and 15 irrelevant as would otherwise be, but let's hear, is there 16 anything further you want to say? I mean she's just asking 17 – well, let's get her question precisely now in the light 18 of your objection and let's see whether, how we deal with 19 it then. 20 MR SEMENYA SC: What possible threat 21 could there have been at time, is the question. How can 22 this witness ever be able to answer that question? 23 CHAIRPERSON: The question so phrased 24 clearly goes too far, doesn't it? 25 MS LE ROUX: Well, Chair, let me rephrase</p>
<p style="text-align: right;">Page 15060</p> <p>1 firing non-lethal rubber rounds." So despite Ms Scott's 2 best efforts there is at least some ambiguity and there may 3 potentially be a further three rifle shots, but she cannot 4 conclude that. 5 What she can conclude though is summarised in 6 paragraph 36, as amended by her second affidavit, which 7 states in summary, "Audible in the footage provided, 8 following the initial call for cease fire, are at least 9 eight apparent rifle discharges and seven other gunshots. 10 The eight discharges follow the edit, starting at 42:16, 11 and come approximately 55 seconds after the first audible 12 call for cease fire, which is at 22:09, and include at 13 least four rifle discharges." 14 Now Colonel Scott, in light of Ms Scott's 15 analysis that there are still rifles being used 55 seconds 16 after the first call for cease fire, and certainly after 17 the volley which, as you put in exhibit L, only lasts eight 18 seconds, are you aware of any information of what possibly 19 threat was still being perceived by your members at scene 1 20 at that time? 21 MR SEMENYA SC: No, Chair, surely this 22 witness cannot testify to that. 23 CHAIRPERSON: Yes, I take it you're 24 asking him for information he received. I mean he can't be 25 aware from his own knowledge of any of the things that</p>	<p style="text-align: right;">Page 15062</p> <p>1 it then. Colonel Scott, are you aware of any information 2 of a threat existing after the eight-second volley that 3 would justify the use of rifles? 4 COLONEL SCOTT: No, I'm not aware of 5 any – 6 CHAIRPERSON: I take it you're talking 7 about scene 1. 8 MS LE ROUX: Correct, Chair. 9 CHAIRPERSON: Before we carry on, 10 Colonel, do you know what the time interval was between the 11 incident at scene 1 and the incident at scene 2? 12 COLONEL SCOTT: Chairperson, just doing 13 the math, it was approximately 15 minutes or thereabout, I 14 would think. 15 CHAIRPERSON: So any sounds that sound 16 like rifle shots or gunshots that are in this little 17 section that we're dealing with could not have come from 18 scene 2. 19 COLONEL SCOTT: No, but may well have 20 originated from around the back of the kraal with members 21 still, we knew there were policemen still around that area 22 in armoured vehicles – 23 MR SEMENYA SC: This is the conjecture, 24 Chair, which I object to. 25 MS LE ROUX: Colonel Scott, to take you</p>

<p style="text-align: right;">Page 15063</p> <p>1 back to where we started with this, in exhibit L, and in 2 slide 188 at the eight-minute mark, the SAPS narrative says 3 the shooting lasts eight seconds – 4 CHAIRPERSON: Starts, I think you mean 5 eight seconds. 6 MS LE ROUX: No, eight-minute, in that 7 slide. The SAPS narrative states, “The shooting lasts 8 eight seconds until cease fire is called by members who can 9 see the threat no longer exists.” Katherine Scott has 10 analysed that Reuters footage and concluded that there are 11 rifle shots at least 55 seconds after cease fire is called, 12 and what I’m trying to establish from you in terms of when 13 that SAPS narrative was introduced into exhibit L, did you 14 have any information that there was a threat that justified 15 the use of rifles beyond the eight-second volley? 16 CHAIRPERSON: I’ll allow the question 17 framed in that fashion. 18 COLONEL SCOTT: No, I didn’t. 19 MS LE ROUX: Colonel Scott, I’d now like 20 to move on to scene 2 and you testified earlier that 21 working out what happened at scene 2 became your baby. 22 Those were the words you used, and you said that it had 23 been a vague area for SAPS and that you tried to build up a 24 picture of what happened through October last year. Do you 25 recall that testimony?</p>	<p style="text-align: right;">Page 15065</p> <p>1 who was there assisting you, was it you and Colonel Visser? 2 COLONEL SCOTT: Colonel Visser wasn't 3 there, he was working on the remainder of the presentation 4 still. I think it was predominantly myself, I'm not sure 5 which other police officers were there and then the SAPS 6 legal team. 7 MS LE ROUX: Okay and then to clarify, 8 people were called in one by one - 9 CHAIRPERSON: The SAPS legal team, I take 10 it you mean like Captain Moolman or – 11 COLONEL SCOTT: No, the – 12 CHAIRPERSON: Oh. 13 MS LE ROUX: And, Colonel Scott, the 14 members you said were called in one by one, who were they, 15 was that everybody who was at scene 2 or only certain 16 people? Who was actually called in? 17 COLONEL SCOTT: I can't testify that 18 everybody that was there was there, I didn't do the call 19 up, but they were grouped into their different groupings. 20 So Captain Kidd's group and the people that were with him, 21 but I'm aware that it was quite a large group that he had, 22 but I'm pretty sure that whole group wasn't there. And 23 similar with the K9, I think the NIU was represented as 24 well, but again not all the members. I think that some of 25 the groupings only had some of their commanders or one or</p>
<p style="text-align: right;">Page 15064</p> <p>1 COLONEL SCOTT: Yes, I do. Just to 2 clarify, though, IPID obviously would be investigating it 3 further, but for the purposes of the presentation that's 4 what I was referring to with becoming my baby, to try to 5 reflect it as best as I could. 6 [09:46] MS LE ROUX: Thank you for that 7 clarification, that is the ambit of my question for the 8 purposes of your understanding of what happened. How did 9 you go about establishing what happened at scene 2? 10 COLONEL SCOTT: At Roots I think there 11 may have been a grouping that would have come to Colonel 12 Visser with what information they had. I think it would 13 have started there already and then somewhere around the 14 first week of October, I think it's around the first week 15 of October, we were still not clear at all. So we called 16 together the groupings of people that were at scene 2 to a 17 conference room where we allowed them to come in one by 18 one. This was the time period that I'd taken the 19 photographs that I had around scene 2 and tried to time 20 sequence them and I actually displayed them on a wall in 21 time sequence so that the members could actually go and 22 identify where they were, from the air now. And then sit 23 and tell us how they arrived, what they were doing there 24 etcetera to try and give us a better idea. 25 MS LE ROUX: And just so I understand,</p>	<p style="text-align: right;">Page 15066</p> <p>1 two others with them because they come from extensive areas 2 around the country to bring them all in. So I think it was 3 a slightly smaller group than was actually present at scene 4 2, but people representing the groups and then as many a 5 could be brought in were brought in. 6 MS LE ROUX: And did you arrange that 7 call up? 8 COLONEL SCOTT: No. 9 MS LE ROUX: Did you identify who you 10 wanted to be called up? 11 COLONEL SCOTT: No. It wasn't done by 12 me. I'm not sure who did the actual call up, but I also 13 didn't identify the persons specifically that were called 14 up. I was part of a group just to listen and to try and 15 reconstruct what they were saying. 16 MS LE ROUX: Okay and when the members 17 came in one by one, first of all did any of them bring you 18 anything that enabled you to establish what had happened at 19 scene 2? Did you bring you cell phone footage, did they 20 bring you photographs, did they bring you notes or diaries 21 or anything? 22 COLONEL SCOTT: Not notes and diaries, 23 I'm just trying to think when Captain Ryland gave me his 24 footage. It may have been there or it may have been 25 earlier, but I think – if I think of Sergeant Mohlatsi with</p>

<p style="text-align: right;">Page 15067</p> <p>1 his iPhone he was made aware to me there that he had 2 footage. I remember there was difficulty in downloading 3 his footage and how it got to me I'm not too sure. He may 4 have emailed it or downloaded it, but I don't think we 5 could open it at the time, but we viewed it on his phone 6 for that matter -</p> <p>7 MS LE ROUX: And other than Captain 8 Ryland and Sergeant Mohlatsi did -</p> <p>9 CHAIRPERSON: I think he was saying 10 something else before you started your question. Do you 11 want to add something before the next question is put?</p> <p>12 COLONEL SCOTT: No I was just saying I 13 viewed it, it wasn't in front of the whole meeting.</p> <p>14 MS LE ROUX: Other than Captain Ryland 15 and Sergeant Mohlatsi did you receive any other cell phone 16 footage or video footage, photograph footage from anyone?</p> <p>17 COLONEL SCOTT: Not that I can recall.</p> <p>18 CHAIRPERSON: Are you referring to from 19 the people involved in scene 2 because there was a lot of 20 other footage he got obviously?</p> <p>21 MS LE ROUX: Yes, Captain Scott, my 22 questions are on this day when members were coming in one 23 by one, that's what I'm asking you.</p> <p>24 COLONEL SCOTT: I don't recall receiving 25 anything other than those and I think it was actually maybe</p>	<p style="text-align: right;">Page 15069</p> <p>1 the photographs and as you can see the photographs would 2 actually show the positioning of the people. So in 3 listening to what they were saying - I don't recall 4 specifically back to that, but I tried to as accurately, as 5 best then reflect thereafter in exhibit L what I had been 6 told, knowing where the dog unit was, etcetera.</p> <p>7 MS LE ROUX: And approximately how long 8 was each member or each group with you if you had 40 to 50 9 in a day?</p> <p>10 COLONEL SCOTT: Well it varied. So it 11 varied between the amount of members and you know whether 12 somebody in the group as a commander got up and represented 13 because they were given the opportunity first to go and 14 view the photographs to orientate themselves to see where 15 they were. I'm just trying to recall, but I think at times 16 there may have been a commander that spoke to his group and 17 then reflected and at other times there were also 18 individuals that would come out just to explain their role 19 and where they were. But anything from a half an hour, 20 it's difficult to say. Some groups may have been a half an 21 hour, others may have been an hour.</p> <p>22 MS LE ROUX: And did those groups refer 23 to any notes when they were addressing you?</p> <p>24 COLONEL SCOTT: No. I don't recall them 25 having notes. We would put up the photograph of the scene</p>
<p style="text-align: right;">Page 15068</p> <p>1 just Sergeant Mohlatsi. I think Ryland may have given his 2 footage earlier, but I don't recall receiving any other 3 than that, no.</p> <p>4 MS LE ROUX: And could you hear audio on 5 the footage when you watched it on the cell phone?</p> <p>6 COLONEL SCOTT: I don't recall either. I 7 think that was one of the issues we had was that we could 8 eventually view it, but not hear it. Something to that 9 effect, I'm just trying to remember as you're bringing it 10 up.</p> <p>11 MS LE ROUX: Through the course of the 12 day how many members do you think came in that you 13 interviewed?</p> <p>14 COLONEL SCOTT: Well as I say, they came 15 in, in groups, so it would be a whole group, but I would 16 probably estimate between 40 to 50.</p> <p>17 MS LE ROUX: Okay and did you take notes 18 of what was being said or was it recorded in any way?</p> <p>19 COLONEL SCOTT: I didn't take notes, I'm 20 not sure if there was a record taker there, but I didn't 21 no.</p> <p>22 MS LE ROUX: How did you take the 23 information they gave you that day and put it into exhibit 24 L?</p> <p>25 COLONEL SCOTT: Well I was working with</p>	<p style="text-align: right;">Page 15070</p> <p>1 as such with all the vehicles and they would come and point 2 themselves out and basically tell us where they were.</p> <p>3 MS LE ROUX: And then how did you record 4 what they were telling you?</p> <p>5 COLONEL SCOTT: I don't recall now, but - 6 or I may have been working on the slide show while they 7 were actually there in trying to summarise what they were 8 saying and then saying well that must have been an incident 9 1, trying to work out. I think by then - I'm not sure if I 10 had the Protea Coin footage already but I tried to analyse 11 that quite in depth, to watch the movement of the vehicles. 12 And to see who was where, so it was just a matter of 13 understanding what went on, on the ground. The broader 14 knowledge of understanding who came from what direction 15 that I already knew and I think I showed that already at 16 Roots where we could see arrows. But it was trying to 17 figure beyond that now, who and why and we were aware we 18 had to try and account for everybody as far as we could. 19 So it was trying to understand who faced what threat where, 20 who could maybe say this specific person I shot because at 21 Roots we were dealing with commanders. And that becomes 22 possibly even up to third hand hearsay knowledge because 23 you've got commander represents there. He speaks to 24 possibly a team leader back at the unit who's interviewed 25 his individuals and he gets the report and reports to Roots</p>

<p style="text-align: right;">Page 15071</p> <p>1 now with information that he has. And I thought that was 2 maybe why it was so vague around scene 2 and that maybe 3 talking to a broader group or to the individuals that were 4 on ground may help.</p> <p>5 COMMISSIONER HEMRAJ: Colonel, did you 6 compile any narrative as a result of these interviews?</p> <p>7 COLONEL SCOTT: No, Ma'am. I don't 8 recall how I actually – but I worked a lot from memory, I 9 normally do. But I don't recall taking notes at Roots, not 10 at Roots, at the Rustenburg venue.</p> <p>11 CHAIRPERSON: The people whom you were 12 interviewing had they already made statements to IPID?</p> <p>13 COLONEL SCOTT: As far as I knew yes, 14 Chairperson, and I'm not sure if the strategy was to call 15 up those that had said that they had fired their firearms. 16 So I'm not too sure about that, but anyone that had said 17 they had fired, had provided warning statements, I think 18 within a day or two after the actual incident and they may 19 have been identified in that way.</p> <p>20 CHAIRPERSON: What I was leading up to 21 was when you performed the exercise you're describing now 22 did you have copies of the statements that these people had 23 made beforehand?</p> <p>24 COLONEL SCOTT: No.</p> <p>25 CHAIRPERSON: So you didn't use any</p>	<p style="text-align: right;">Page 15073</p> <p>1 he could understand what the shooting was about.</p> <p>2 MS LE ROUX: Colonel Scott, could you go 3 to exhibit SSS7 which is a statement from Warrant Officer 4 Myburgh? Are you familiar with that statement?</p> <p>5 COLONEL SCOTT: I haven't read it, no.</p> <p>6 MS LE ROUX: If we could display – yes 7 and specifically paragraph 3 please.</p> <p>8 CHAIRPERSON: Have you read the statement 9 –</p> <p>10 COLONEL SCOTT: I haven't, Chairperson, 11 but I'll follow on the screen.</p> <p>12 CHAIRPERSON: Do you wish to read it for 13 a short while before you answer questions on it?</p> <p>14 COLONEL SCOTT: I'm happy to continue, 15 but I'm not sure if that's legally wise, I don't know.</p> <p>16 CHAIRPERSON: Miss Le Roux, is it 17 necessary for you to ask these questions at this point in 18 the cross-examination or could it stand over until after 19 tea with the witness being given an opportunity to read the 20 statement during the tea adjournment?</p> <p>21 MS LE ROUX: Chair, he could read it 22 during tea, but very briefly, I mean, Colonel Scott, you 23 haven't read this statement before?</p> <p>24 COLONEL SCOTT: No.</p> <p>25 MS LE ROUX: Of Warrant Officer Myburgh,</p>
<p style="text-align: right;">Page 15072</p> <p>1 statements that had been taken in that way for the purposes 2 of your work?</p> <p>3 COLONEL SCOTT: No.</p> <p>4 CHAIRPERSON: Thank you.</p> <p>5 MS LE ROUX: Colonel Scott, other than 6 this one day when 40 to 50 members came in to point things 7 out on photographs did you do anything else to establish 8 what happened at scene 2?</p> <p>9 COLONEL SCOTT: Just for the record it 10 was two days, not for exhibit L that I can recall, no. I 11 did thereafter help Mr De Rover when he came out to become 12 the police's expert witness and he need to be orientated. 13 I then went with him to scene 2 as well, but not for the 14 purposes of exhibit L, no.</p> <p>15 MS LE ROUX: When you say you oriented Mr 16 De Rover at scene 2, was that taking him there or what do 17 you?</p> <p>18 COLONEL SCOTT: It was a reconstruction 19 of sort, but it's not a reconstruction as we would know it 20 in an expert or professional sense. It was again just 21 bringing in the different groups of people that on these 22 spread sheets had fired, I think, it was more than five 23 rounds. For them to explain to us where they were, what 24 they were looking at, etcetera. But again we kind of split 25 up around the environment, it was more for his purposes, so</p>	<p style="text-align: right;">Page 15074</p> <p>1 you're not familiar at all? Then that curtails my cross- 2 examination on that in any event, Chair.</p> <p>3 CHAIRPERSON: Yes, I understand that, but 4 I don't want to stop you unnecessarily and unfairly. But 5 on the other hand I've got to be fair to the witness as 6 well. So if it's – I don't know how sequentially prepared 7 your cross-examination is, if you can return to this topic 8 after tea, after he's had an opportunity to read the 9 statement then I think the witness would be better able to 10 answer your questions.</p> <p>11 MS LE ROUX: Chair, that's fine. Colonel 12 Scott, let me ask you another way. Are you aware of the 13 allegation that a constable in the NIU unit shot a 14 protester at close range using his service pistol? Are you 15 aware of that allegation?</p> <p>16 COLONEL SCOTT: Yes.</p> <p>17 MS LE ROUX: When did you become aware of 18 it?</p> <p>19 COLONEL SCOTT: At that same meeting at 20 Rustenburg.</p> <p>21 MS LE ROUX: And who made you aware of 22 it?</p> <p>23 COLONEL SCOTT: I'm not sure of his rank, 24 but Myburgh himself actually spoke to that.</p> <p>25 MS LE ROUX: When was this meeting?</p>

<p style="text-align: right;">Page 15075</p> <p>1 COLONEL SCOTT: I think, I think it's the 2 first week of October. 3 MS LE ROUX: And this is the meeting 4 you've already testified about when members were coming in 5 to explain – 6 COLONEL SCOTT: Yes. 7 MS LE ROUX: - scene 2 to you. And this 8 is before you finished preparing exhibit L? 9 COLONEL SCOTT: It is, yes. 10 MS LE ROUX: Okay, when Warrant Officer 11 Myburgh made you aware of this allegation did you do 12 anything to investigate it further? 13 COLONEL SCOTT: No, I didn't, but it was 14 passed on to, I'm not sure who, it was passed on I know to 15 some of the generals who I believe – I don't know the route 16 it took from there, but I think it went to IPID for further 17 investigation. 18 MS LE ROUX: And surely this was 19 important information, why didn't you include it in exhibit 20 L? 21 COLONEL SCOTT: Because there's not much 22 that I've actually said there about any individual 23 shootings and at that stage it was – well it was an 24 allegation. It was information, but to put it into a 25 presentation and it's still unfounded as to whether it's</p>	<p style="text-align: right;">Page 15077</p> <p>1 the record that at page 121, paragraph 7.6.13 of Mr White's 2 final statement he identifies and categorises various 3 statements received from members at scene 2, it's not 4 relevant for Colonel Scott now because he hasn't seen 5 those, but just for the record that's where they're 6 appearing – 7 CHAIRPERSON: It makes it easier for us 8 when we read the record to cross-reference, thank you. 9 MS LE ROUX: Thank you Colonel Scott, 10 if I could ask you to turn to Mr White's final statement 11 and page 118 of that statement please. 12 CHAIRPERSON: Remind me, what is the 13 exhibit number of the final statement? 14 MS LE ROUX: JJJ178. 15 CHAIRPERSON: Thank you. Did I 16 understand you to say you're referring to paragraph 118? 17 MS LE ROUX: Page 118. 18 CHAIRPERSON: Page 118, paragraph? 19 MS LE ROUX: 7.6.7. Chair, I'm in your 20 hands in this regard. What I'd like Colonel Scott to do is 21 read through to page 120 paragraph 7.6.11 to confirm the 22 factual basis of Mr White's statement. I'm not sure if you 23 would like me to read all of it into the record or – 24 CHAIRPERSON: I think that might be an 25 exercise which would take up a lot of time without much</p>
<p style="text-align: right;">Page 15076</p> <p>1 proven or not. 2 MS LE ROUX: But, Colonel Scott, surely 3 at that point in time everything was unfounded. Everything 4 was based on what members told you they saw. 5 COLONEL SCOTT: Well that is case, but 6 still to put something in like that which could become 7 damaging to a specific person and it's as I say unfounded 8 at that stage. But again what's reflected there is the 9 macro pictures specifically. 10 MS LE ROUX: And are you aware of any 11 follow up that's being made on this allegation by IPID or 12 by anyone else? 13 COLONEL SCOTT: No, I'm not. 14 MS LE ROUX: Colonel Scott, with respect 15 to the statements of members at scene 2, did you consider 16 all of them when you were preparing exhibit L? 17 COLONEL SCOTT: Did you say the 18 statements? 19 MS LE ROUX: Yes. 20 COLONEL SCOTT: I haven't read the 21 members' statements that were on the ground. 22 MS LE ROUX: Okay, have you ever read 23 them? 24 COLONEL SCOTT: No. 25 MS LE ROUX: Chair, just to highlight for</p>	<p style="text-align: right;">Page 15078</p> <p>1 corresponding value to us, but the document already before 2 us is an exhibit and we've made arrangements for most of 3 the exhibits except those that will cause distress to 4 people and one where the identity of the deponent is 5 confidential. We've made arrangements for all the exhibits 6 to be put onto the website so people who are following the 7 proceedings will be able to have reference to the exhibits, 8 so it's not necessary to read it out. Specifically the 9 expert, the final statement of Mr White will be on the 10 website for all those who wish to read it to be able to do 11 so. 12 MS LE ROUX: Thank you, Chair, but 13 Colonel Scott, if I could just ask you to read through to 14 paragraph 7.6.11 on page 120 and if you could tell me if 15 any of the factual statements made there are incorrect to 16 the best of your knowledge. 17 [10:06] CHAIRPERSON: But that will also take a 18 bit of time. Isn't that something that could also be done 19 at teatime? Unless this will interfere with your cross- 20 examination unfairly. 21 MS LE ROUX: No, Chair, that's fine. 22 Colonel Scott, if I could ask you to do that – 23 CHAIRPERSON: You understand time is a 24 very valuable commodity here. 25 MS LE ROUX: Yes, Chair. Colonel Scott,</p>

<p style="text-align: right;">Page 15079</p> <p>1 if you could do that in the tea adjournment. If I could 2 ask you then to focus on page 120, paragraph 7.6.11, and if 3 we could display that paragraph, and Colonel Scott, if I 4 could direct your attention to the final two sentences of 5 that where Mr White notes that prior to the – that Mr De 6 Rover believes that at least nine people shot at scene 2 7 were shot by what he calls incidental fire. Mr White notes 8 he doesn't know how Mr De Rover reached that conclusion. 9 Do you know how Mr De Rover reached that conclusion? 10 MR SEMENYA SC: No, Chair, surely that 11 can't be a question. 12 MS LE ROUX: Chair, let me rephrase. 13 Colonel Scott, do you know the factual basis for Mr De 14 Rover – what Mr De Rover considered factually in reaching 15 the conclusion that nine people died through incidental 16 fire at scene 2? 17 COLONEL SCOTT: I can only reflect back 18 to the layman reconstruction of scene 2 where the officers 19 were asked to go and stand where they had originally come 20 from, or for that matter to then move to where they shot, 21 and Mr De Rover would interview them specifically where 22 they were, what they were looking at, what they were 23 seeing, but again I wasn't present for all of those, so I 24 don't want to elaborate on what he heard or what he asked. 25 I can't do that, but I know that he spoke to individuals to</p>	<p style="text-align: right;">Page 15081</p> <p>1 COLONEL SCOTT: Alright. 2 CHAIRPERSON: The paragraphs referred to 3 include what appear to be eight specific criticisms of the 4 SAPS actions at scene 2, and as I understand it, Ms Le Roux 5 wants you to tell us whether as far as you can see the 6 factual bases for the criticism are correct. I think 7 that's what you want, is it? 8 MS LE ROUX: That's correct, thank you, 9 Chair. 10 CHAIRPERSON: But there are eight 11 specific points of criticism which he will presumably 12 elaborate on, and I take it she wants to know whether the 13 factual basis is in issue. 14 MS LE ROUX: Colonel Scott, if I could 15 direct you to the third bullet point there, which states, 16 "Lieutenant-Colonel Gaffley started instructing armed 17 protesters who were moving around" – oh, sorry, the fourth 18 bullet point. "Shots were fired from an undetermined 19 direction and Lieutenant-Colonel Gaffley determined that to 20 sweep and clear at that time would be dangerous for the STF 21 members as gunfire was heard all around the perimeters of 22 the koppie." Did you interview Lieutenant-Colonel Gaffley 23 to prepare this part of exhibit L? 24 COLONEL SCOTT: Again I, he was, I think 25 he was at the Rustenburg group as well, so he would have</p>
<p style="text-align: right;">Page 15080</p> <p>1 try and ascertain – 2 CHAIRPERSON: Wouldn't it be better to 3 ask these questions of Mr De Rover? I mean again an 4 enormous amount of time will be spent if one gets multiple 5 hearsay about matters upon which Mr De Rover relied, and 6 that could prolong the proceedings for a very long time 7 without corresponding value, I wouldn't have thought, but 8 perhaps these are questions that you should ask Mr De 9 Rover, not this witness. 10 MS LE ROUX: Chair, I will do that. I 11 just needed to establish from Colonel Scott whether you 12 provided any information to Mr De Rover about scene 2 13 specifically on this question of nine people being killed 14 through incidental fire. 15 COLONEL SCOTT: No. 16 MS LE ROUX: Then if we could display 17 slide 239 of exhibit L, please. 18 COLONEL SCOTT: Can I just ask, if that 19 is the, where we're going and this was the final paragraph, 20 is it still necessary to go through the previous 21 paragraphs? Are you still – 22 MS LE ROUX: Colonel Scott, if you could 23 just go through them to establish the factual accuracy of 24 what's contained in there. They cover different topics to 25 this paragraph.</p>	<p style="text-align: right;">Page 15082</p> <p>1 been there reflecting what he experienced. 2 MS LE ROUX: Do you recall him reflecting 3 what he experienced? Do you? 4 COLONEL SCOTT: No. But I mean, as I 5 say, there were so many people there giving their views on 6 what was going on, so, and I mean Colonel Gaffley and 7 myself did speak at the time and probably on occasions 8 thereafter, being in the same unit. So he would have 9 reflected at some stage his view to me. 10 MS LE ROUX: And when you say you spoke 11 at the time, do you mean in Marikana on the 16th, or do you 12 mean at Rustenburg at this debriefing meeting? 13 COLONEL SCOTT: As far as I can remember 14 we did speak on the 16th. I'm not sure whether it would 15 have included what is said there now, but we, I remember 16 speaking to him on the 16th afterwards, yes. 17 MS LE ROUX: To the best of your 18 recollection what did Lieutenant-Colonel Gaffley tell you 19 about scene 2? 20 COLONEL SCOTT: Again as to the best of 21 my recollection, and it may be contrary to what he may say 22 in his statement, so that they had moved close to the 23 actual tree line. He had taken the task force members out 24 of the vehicle. He could see the strikers inside the 25 bushes moving backwards and forwards, and he had lined the</p>

<p style="text-align: right;">Page 15083</p> <p>1 members up, initially the task force members to start with 2 a sweeping action, but in doing so he started first 3 verbally speaking to the strikers, asking them to come out. 4 They were refusing to do that and he said that, I'm not 5 sure when the shooting started, but he determined that it 6 was too dangerous to send his members in to the actual 7 environment because he didn't know where the shooting was 8 coming from at that stage, and it, I think at some stage, 9 I'm not sure it was then or later that he determined that 10 it was police units that were shooting from different 11 sides.</p> <p>12 MS LE ROUX: Did he identify which 13 specific police units he ultimately established had been 14 shooting?</p> <p>15 COLONEL SCOTT: No, I know that he knew 16 that the dog unit, which was to his rear, 30, 40 metres 17 back, were shooting past them. So it was also one of the 18 reasons I think he could his members back into a safe 19 position.</p> <p>20 MS LE ROUX: Did Lieutenant –</p> <p>21 CHAIRPERSON: These matters were dealt 22 with in his statement, which is an exhibit. It deals with 23 these matters in detail. Now if there is something 24 specific that this witness can help us on, then obviously 25 you can ask the question, but I don't see any point in just</p>	<p style="text-align: right;">Page 15085</p> <p>1 MS LE ROUX: And then if you turn the 2 page, at paragraph 5.9.2 we see three months' experience in 3 Public Order Policing based at Unit 2, Diepkloof, and that 4 indicates a 2002/2003 date. Is that a typographical error, 5 or were there two instances when you were in that –</p> <p>6 COLONEL SCOTT: No, it's the same time. 7 I'm trying to recall, it was from October, possibly 8 October, November of 2002, around to February. My records 9 will reflect that I've been in the unit longer, but in the 10 month of February I moved into the Special Task Force 11 selection process, which runs for over half a year, and 12 only after that half a year is completed do you physically 13 get transferred. So my police record would show longer, 14 but my actual time at that time was between three, three 15 months, maybe a bit more.</p> <p>16 MS LE ROUX: Okay, so it does appear to 17 be a typographical error. You were only in Unit 2 18 Diepkloof POP in 1992/93.</p> <p>19 COLONEL SCOTT: Oh, sorry, I see the 20 2000 – yes, yes, that should be 1992/93.</p> <p>21 MS LE ROUX: Okay, so your total POP 22 experience in a POP unit is three to four months in 23 1992/93.</p> <p>24 COLONEL SCOTT: Yes.</p> <p>25 MS LE ROUX: Okay, and then with respect</p>
<p style="text-align: right;">Page 15084</p> <p>1 re-traversing what he says in his statement, what Colonel 2 Gaffley says in his statement, because that evidence is 3 already before us in the form of his statement. But if 4 there is something specific that this witness can help us 5 on which we won't learn from rereading the statement, you 6 can ask about it, but –</p> <p>7 MS LE ROUX: Thank you, Chair, I was 8 planning to move on. Colonel Scott, did you provide any 9 assistance to the SAPS legal team when they were preparing 10 their opening statement? Because that seems to go further 11 than what you've just testified Lieutenant-Colonel Gaffley 12 reported to you. Did you assist in any way with the 13 opening statement of SAPS regarding incidental fire at 14 scene 2?</p> <p>15 COLONEL SCOTT: No.</p> <p>16 MS LE ROUX: Colonel Scott, I'd now like 17 to turn to your consolidated statement, HHH20. Do you have 18 that in front of you? And Colonel Scott, I'd like to start 19 with the question of your POP experience because in your 20 statement, if we turn to page 5, paragraph 5.7.3, this 21 indicates that in your SAPS career path 1992 you 22 transferred to the Public Order Police Unit 2 in Diepkloof. 23 How long were you in that unit?</p> <p>24 COLONEL SCOTT: Between three to four 25 months.</p>	<p style="text-align: right;">Page 15086</p> <p>1 to your training in POP, at page 12 of your statement is 2 the only place we can find training in that. This is 3 paragraph 5.13.2, the second bullet point refers to 4 internal stability course 1992, a six-week POP training.</p> <p>5 CHAIRPERSON: He amplified that when he 6 gave evidence. He said it's a six-week course, two weeks 7 of which were POP, according to my note.</p> <p>8 COLONEL SCOTT: That's correct, 9 Chairperson.</p> <p>10 MS LE ROUX: And then, Colonel Scott, if 11 we go down to the bullet fourth from the bottom, in your 12 operational commanders training in 2002, that covered POP 13 as well, correct?</p> <p>14 COLONEL SCOTT: That covered POP. 15 Something that is not mentioned here because it wasn't a 16 certified course, when you come to the Public Order unit 17 itself, I had to do a one-week sort of bridging course, 18 which then you are permitted to start operating with the 19 Public Order Policing members at that time.</p> <p>20 MS LE ROUX: Now Colonel Scott, this 21 commanders course, that was following the findings of the 22 Goldstone Commission, correct?</p> <p>23 COLONEL SCOTT: From my understanding 24 that's, that was one of the results that the police 25 initiated an operational commanders training, yes.</p>

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1 MS LE ROUX: Okay, and in that training
 2 course that you undertook in 2002, did you review or
 3 consider the recommendations that came out of the Goldstone
 4 Commission, specifically relating to Public Order issues?
 5 COLONEL SCOTT: I don't think we did, but
 6 I know we would have dealt with the Regulation of
 7 Gatherings Act, which I think is a result of the Goldstone
 8 Commission, and then of course the, probably the POPs
 9 policy at that time as well as the tactical options, which
 10 comes down to the standard operating procedures utilised by
 11 POPs, which to date hasn't changed much.
 12 CHAIRPERSON: If you refer to the book
 13 that was published by the Goldstone Commission, or
 14 published on behalf of the Goldstone Commission, of which
 15 extracts have been put before the Commission, and I think
 16 the act then in draft bill form is part of the book. Did
 17 you refer to that book? It's got –
 18 COLONEL SCOTT: No.
 19 CHAIRPERSON: You didn't?
 20 COLONEL SCOTT: No, I don't recall there
 21 being a type of study, prescribed book on the course.
 22 CHAIRPERSON: There would have been
 23 course material, I take it, that you got at the course?
 24 COLONEL SCOTT: Yes, there would, there
 25 was.

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1 CHAIRPERSON: Which perhaps included
 2 extracts, but you wouldn't know?
 3 COLONEL SCOTT: Yes, if they may have
 4 included extracts out of the book.
 5 MS LE ROUX: Chair, I'd like to go to
 6 that publication that you're referring to. It's exhibit
 7 TT1. Colonel Scott, what I'd like to do is identify two
 8 excerpts in that for you, and if you could tell me whether
 9 these were covered by that commanders course that you
 10 undertook. The first, if I could start at the bottom of
 11 page 36 in exhibit TT1 where it states, "The likelihood of
 12 the police making a fatal mistake once confronted by the
 13 situation by reacting with lethal force either too quickly
 14 or too slowly, is the basis for our most important
 15 recommendation" –
 16 CHAIRPERSON: I would appreciate it if
 17 that particular page were enlarged on the screen because
 18 I'm afraid I have difficulty in following it on the screen,
 19 but perhaps others with sharper eyesight than mine can see
 20 it. Ah, that's better.
 21 MS LE ROUX: "Every effort should be made
 22 to plan, equip, and train police so that a dangerous
 23 situation does not occur. Explicit advance discussion with
 24 the organisers, the use of physical barriers, the movement
 25 of reinforcements, the availability of sub-lethal

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1 equipment, the development of sophisticated tactical
 2 contingency plans, all these and more must be directed to
 3 avoiding the situation we have described for once it
 4 occurs, there is no satisfactory solution." The situation
 5 that's being described is having police confront a hostile
 6 crowd of demonstrators. So, Colonel Scott, do you agree
 7 then that a key aspect of avoiding confrontation between a
 8 crowd and police would be good planning, and particularly
 9 contingency planning?
 10 COLONEL SCOTT: I've actually read the
 11 extracts which have been put before us and I think it's,
 12 they're looking at it in a little bit more of a broader
 13 sense than where you're going. They're actually taking it
 14 to the point where the crowd has at this stage looked like
 15 they may encircle, or are going to get to the place where
 16 they're going to force the use of legal force to protect
 17 lives for that matter, and, but in saying that, from what
 18 I'm reading here as well and from what you've just
 19 mentioned and read is that this is where you had the
 20 opportunity to have a section 4 meeting in line with the
 21 Regulation of Gatherings Act.
 22 There was sufficient time to go ahead and to plan
 23 the full protest or march, and in that time period of
 24 course that would be something to be considered, and I have
 25 built similar plans in the past which actually deal with

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1 Public Order incidents where the Special Task Force and the
 2 NIU are also involved specifically in roles, from what I've
 3 read in here, without the knowledge of what I've read here,
 4 I've identified as well, and if necessary those can be made
 5 available to the Commission to review. So the fact that
 6 it's not taken into consideration, it is taken into
 7 consideration.
 8 The limiting factors however become the fluidity
 9 of the operation, the not knowing of what's going on, no
 10 hindsight like we have now, and of course at that time the
 11 Standing Order 262 as we would know it with an operational
 12 commander, with his overall commander and so on, is almost
 13 on a smaller type operation because if you look at what we
 14 were dealing with, we had formed a JOCCOM where we had a
 15 much larger inputting circle into what was actually going
 16 on.
 17 So the role of the planner, so to say, is very at
 18 liberty of the people within the JOCCOM. Yes, the strategy
 19 is presented to the JOCCOM, and then the JOCCOM makes the
 20 comments back on the strategy or whether or not, but at
 21 that level then it becomes operationalised by the
 22 operational commander and the specific operational
 23 commanders that are underneath him in their different
 24 ambits of the different units.
 25 So as I say, moving to where we're going here, I

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1 don't think this is always applicable, and I agree with
 2 that they're saying in the good world of placing this type
 3 of stuff and having the ideal situation to work towards,
 4 but I think it has to be applied in the context of what we
 5 were facing and experiencing at Marikana, the uncertainty
 6 of day-to-day, hour-to-hour, what would be going on, not
 7 knowing the exact amount of forces that we would be
 8 receiving every morning to go ahead and to make certain
 9 contingency plans.

10 And maybe just lastly to add is that I do
 11 understand that the Commission is very restricted when it
 12 comes to viewing presentations and so on, but a
 13 presentation is just that; it's something that's presented
 14 and then is spoken to. So, and it's difficult for me to
 15 recall everything said now, but my rationale of how I would
 16 have spoken to that is reflected very much in my statement,
 17 the consolidated statement. So to view the contingencies
 18 within that planning period as simply what's reflected on
 19 screen is not always accurate because it's not the verbal
 20 of what was being said, considering that these meetings
 21 lasted up to two and a half hours in the morning, is not
 22 reflected per se in contemporaneous documents.

23 MS LE ROUX: Colonel Scott, I'd also like
 24 to direct your attention to what starts at the bottom of
 25 page 37 under the heading "Command and control of police,"

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1 where it states from the second sentence and then
 2 continuing on to page 38, "It is of the utmost importance
 3 that the policing of Public Order operations is
 4 characterised by thorough planning and preparation. Senior
 5 officers must consider and make contingency plans for
 6 various scenarios, from those thought to be highly probably
 7 through to those considered possible, however unlikely.
 8 Through these means the police will avoid being surprised
 9 by unexpected events and thus retain maximum control over
 10 their own officers and the events themselves."

11 So having done your operational commanders course
 12 in 2002, you were made aware of that recommendation,
 13 correct, that contingency plans for a range of scenarios,
 14 from the highly probable to the possible, however unlikely,
 15 that that was a requirement in planning. You were aware of
 16 that, correct?

17 COLONEL SCOTT: Not as it's being
 18 stipulated here, but we do have a part of the planning
 19 process where we look at contingencies. There's a common
 20 thread running throughout. Obviously when you analyse the
 21 situation that you would be going towards, as is taught on
 22 the operational commanders training, and at my time that I
 23 was there all the plans we had to build were for
 24 forthcoming events, never for spontaneous events.
 25 [10:26] So you had the time and the luxury and the

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1 information given to you on what to do, but in that, after
 2 you'd put down your ideal plan, you would do a risk
 3 analysis and in order to identify risks you would obviously
 4 go through a process of seeing a history of what maybe the
 5 crowd was capable of doing, what were the inherent risks
 6 around the environment, key points and things like that.
 7 But if you did the risk you needed to have a mitigating
 8 action in order to lower that risk or to try to deal with
 9 that risk should it occur, and so that is always part of it
 10 and that's always part of any planning that I still do
 11 today, is go through those specific – because that then
 12 will speak to what you've put forward as an operational
 13 concept and then inside your operational concept you would
 14 have the ideal of how you'd want it to go, but you would
 15 have your contingency plans that would run alongside that
 16 to say should that risk manifest, this is what I need to do
 17 to try and deal with that risk as best as I can in order to
 18 minimise the risk and bring it back to normality again as
 19 far as possible.

20 COMMISSIONER HEMRAJ: Ms Le Roux, does
 21 this publication deal at all with scenarios where the
 22 marches, the protest marches are not planned?

23 MS LE ROUX: Sorry, where the marches
 24 are?

25 COMMISSIONER HEMRAJ: Not planned. If

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1 they do, could you perhaps direct me to that? Because I
 2 seem to recall that this publication deals with all those
 3 that are planned and where there is time for a meeting and
 4 proper planning, and that the comments are in relation to
 5 those. If it does in fact refer to unplanned marches,
 6 could you perhaps refer me to them?

7 MS LE ROUX: Commissioner Hemraj, I'll
 8 certainly check. My recollection aligns with yours that it
 9 deals predominantly with planned gatherings, but of course
 10 the submission would be that similar principles would apply
 11 whenever encountering a gathering. But I will check that
 12 the, I will just confirm that in the adjournment.

13 COLONEL SCOTT: Maybe if I can just add
 14 to that, Commissioners and Ms Le Roux, that was – and again
 15 I keep on referring to having the hindsight now of knowing
 16 what happened and where everybody was, but when you don't
 17 per se have the convenor of that gathering speaking to you
 18 and informing you beforehand, or even during of what the
 19 intentions are, you're forever playing what we call an Ooda
 20 loop. You observe, you orientate yourself, you make
 21 decisions, and you act, and continually you're doing that
 22 and that is a process on foot that happens when policing
 23 operations unfold where you don't have control or don't
 24 have the knowledge of where you're going. You're
 25 continually observing, orientating yourself to it, deciding

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1 on what to do, and acting on that, and that's a common
 2 strategy used in operations in the task force right down to
 3 the most basic of police operations as well.
 4 MS LE ROUX: Colonel Scott, in your
 5 experience, whether the gathering is planned or unplanned,
 6 does it change the principles that apply in policing it?
 7 COLONEL SCOTT: Well, when it's planned
 8 you have certain advantages because as we say, you've got
 9 the convenor that would come to you and explain to you what
 10 it's about. You would have your representative from your
 11 local government or your municipalities and they would
 12 assist you as well with the environment that you'd be
 13 moving through, what the restrictions are, what the bylaws
 14 are, etcetera. So in essence when that meeting dissolves
 15 there's an understanding to the convenor of what the
 16 restrictions are and hopefully consensus on where the march
 17 can take place, what's the safest routes for everybody, and
 18 it's amicable for all, and the police know what is expected
 19 of them. The police will then go away after that and start
 20 doing the risk analysis to say well, should it become
 21 rowdy, should it, maybe alcohol start becoming involved and
 22 they start breaching the rules, what can we expect, and
 23 then you would police it on that. So all of that gives you
 24 that time and that's why an operation, operational
 25 commander can go and build his plan, brief his lower-level

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1 commanders, explain to them where he expects them to be on
 2 route, and then actually have the reserves set out so that
 3 the contingency plans can be built for instance by the
 4 reserve. The plans, the tactical plans can again be built
 5 by the lower-level commanders, and this is all before any
 6 of this happens. They will come back, brief the
 7 operational commander. If he's not happy, he'll send them
 8 away again to make changes. They'll come back, and when
 9 everybody is satisfied there's a full briefing that will
 10 happen. The time is there. In fact there are times, and
 11 we've done this in operations before with POPs where you'll
 12 actually have a rehearsal possibly even the day before so
 13 that people can go to the mission area, orientate
 14 themselves, know where they are, see where the danger
 15 points are, walk the plan, so that by the time this major
 16 march happens, everybody is quite familiar of what should
 17 go on, and then it's a matter of observing and starting to
 18 catch the early signs of any of the risk issues that were
 19 mentioned so that you can start catching them at an early
 20 time, negotiate it again with obviously the convenors of
 21 that gathering or march as to we've decided that this can't
 22 happen, speak to your people, and obviously if that doesn't
 23 happen then we start moving into what decisions need to be
 24 taken after that, if there's defensive measures, if there's
 25 necessity for offensive measures, and these are decisions

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1 then taken on the ground. But for instance I'm not aware
 2 of any operational commander's plan that would already
 3 include a dispersion. You don't plan to disperse. That's
 4 brought about by the actions of the gatherers. Thus
 5 there's a standard operating procedure that all commanders
 6 understand that when we disperse, these are the principles
 7 that apply and we are told we need to disperse the crowd
 8 because they've violated certain laws, whatever the case
 9 may be, and then it's carried out, and the principles again
 10 are brought in obviously of the, what is a positive
 11 attraction point, the negatives towards the key points,
 12 etcetera, etcetera, and the force continuums and the
 13 negotiations and dialogue with the crowd. But that's not
 14 built into an operational commander's plan. That's a
 15 given. It's a training standard operating procedure that
 16 all those POPs members will understand so that when they're
 17 told it needs to happen it will be on the spur of a moment.
 18 You can't have an in-depth briefing. They just need to
 19 know where do I need to be, where do you want the
 20 dispersion action towards, and the commander will take
 21 charge and actually execute it according to standard
 22 operating procedures.
 23 So there are principles that apply even in
 24 spontaneous gatherings, if I could put it that way, and we
 25 try to apply them. We try to go into bringing a police

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1 presence, not a major police presence, just what we felt
 2 was sufficient at Marikana to protect the lives of those
 3 policemen going forward because we didn't know what the
 4 possible threat of the strikers were after Monday's
 5 interaction. Thus we put the Nyalas forward. Thus I had
 6 actually explained in the strategic guidelines, don't
 7 enter, exit the vehicles at all to make yourself a visible
 8 possible target, in case they had an intention of
 9 retaliation possibly for them feeling that some of their
 10 colleagues had been killed by the police. We wanted to
 11 limit that as best as we could. There was the TRT line to
 12 the back of that, because I knew that they had been
 13 torching vehicles and I knew that the possibilities there
 14 that if they did surround a Public Order vehicle and he
 15 couldn't move due to possibly driving over people, that
 16 they could start burning the vehicle, which would force the
 17 policemen out, and we see this in cash in transit robberies
 18 how they get the security guards to exit those vehicles.
 19 So there was contingency planning built into everything
 20 that I had done. It's not necessarily reflected well in
 21 the presentation, but as I say, the reasoning is there.
 22 The briefing, I can't recall word for word what I briefed,
 23 but I would pretty much have explained the reason why I'm
 24 placing people where I did. I think I'll stop there, but
 25 that's just going as far as the phase 1 for instance.

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1 CHAIRPERSON: Ms Le Roux, when you reach
 2 a suitable stage for us to take the adjournment, would you
 3 let me know so that we can take it soon?
 4 MS LE ROUX: Chair, we can take it now.
 5 It's fine –
 6 CHAIRPERSON: I'm in your hands.
 7 MS LE ROUX: No, we can –
 8 CHAIRPERSON: I mean if you want to take
 9 this point further before we adjourn, you're free to do so.
 10 MS LE ROUX: No, we can take the
 11 adjournment now.
 12 CHAIRPERSON: We'll take the tea
 13 adjournment at this stage.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [11:02] CHAIRPERSON: The Commission resumes,
 16 Colonel, you are still under oath. Ms Le Roux?
 17 MS LE ROUX: Thank you, Chair. Colonel
 18 Scott, could I ask you to turn to page 21 of your
 19 consolidated statement, HHH20, and paragraph 6.12 Chair,
 20 for the record, I don't intend to go there, but this is
 21 dealt with in Gary White, page 51, paragraph 5.3.1.
 22 Colonel Scott, in your statement here, you refer to the
 23 briefing given to the National Commissioner by the
 24 commanders involved in the conflictive incident earlier in
 25 the day, which had tragic results. This is the incident at

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1 the railway line on the 13th. In that briefing that you
 2 present for, was it made clear that there was at least one
 3 teargas canister and at least two stun grenades that had
 4 been fired at the protesters before they attacked the
 5 police?
 6 COLONEL SCOTT: I can't say with
 7 certainty. I know that the reflection was given of what
 8 happened, and it was my understanding then that the police
 9 had tried to just divert them. They probably did mention
 10 with tear gas and stun grenades to which the attack
 11 happened. But I don't remember obviously word for word or
 12 what was said.
 13 MS LE ROUX: But specifically on the
 14 point that teargas and stun grenades were used before the
 15 protesters turned and attacked the police, was that briefed
 16 to the National Commissioner?
 17 COLONEL SCOTT: Again, I think – you are
 18 asking me to recall specifics and it's a bit difficult, I
 19 wouldn't be able to put 100% to say yes, and I would have
 20 to rely on, you know deduction again, just to say, but
 21 obviously there is a situation was described of what
 22 occurred there, what they intended to do and then obviously
 23 that it turned into a confrontation with the strikers but I
 24 don't remember the specific sequencings and so on. I don't
 25 remember the detail of it.

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1 MS LE ROUX: Were you ever made aware of
 2 the sequencing, that teargas and stun grenades were used
 3 before the attack on the police?
 4 COLONEL SCOTT: Yes, I – well, "ever"
 5 means thereafter as well, yes.
 6 MS LE ROUX: When did you come to
 7 understand that sequencing?
 8 COLONEL SCOTT: I don't know, it could
 9 have been when I watched the videos, but you know, I mean,
 10 logical deduction also tells me that if the police said
 11 they tried to divert or to disburse or to move them, and
 12 there were teargas and stun grenades used, I am sure it
 13 would have been mentioned there. I just don't recall it
 14 specifically but it was probably, was said.
 15 MS LE ROUX: And when you watched the
 16 videos of the 13th, that was only after the 16th had
 17 occurred, correct?
 18 COLONEL SCOTT: Yes.
 19 MS LE ROUX: Okay, in the briefing to the
 20 National Commissioner that you were present for was it made
 21 clear that the tear gas and stun grenades were used without
 22 command being issued to use them?
 23 COLONEL SCOTT: No, I don't recall them
 24 mentioning anything about instructional command or –
 25 MS LE ROUX: Okay. And do you recall

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1 whether it was briefed to the National Commissioner that
 2 the teargas and stun grenades were used without any warning
 3 to the protesters?
 4 COLONEL SCOTT: No, also not. What I do
 5 recall from that was just, I think it was Colonel Merafe
 6 actually gave his experience of what he saw but a lot of it
 7 had to do with the after effect that he had to carry his
 8 member away, so it was not a nice, it was pretty emotional.
 9 I don't know if they were themselves struggling to come to
 10 terms with exactly what had gone on as well, that's why I
 11 am not too sure that the detail on the exact sequencing of
 12 everything was given.
 13 MS LE ROUX: Alright. In that briefing
 14 to the National Commissioner, was it made clear that the
 15 members on the ground wanted to kill Major-General Mpenbe
 16 because they thought he was responsible for the deaths of
 17 members?
 18 COLONEL SCOTT: I don't, no, I don't
 19 remember that being said. I am not sure, I did hear that,
 20 I don't think it was said in that meeting, no. But I did
 21 pick that up somewhere, that evening still.
 22 MS LE ROUX: But you don't recall where
 23 you heard of those death threats?
 24 COLONEL SCOTT: No. I know this, because
 25 General Mpenbe initially remained behind and where I went

<p style="text-align: right;">Page 15103</p> <p>1 to sleep that night, he went to sleep in the same – it's 2 not a bungalow, it's a big mine sort of training hall with 3 a lot of beds, so I just didn't know if he didn't want to 4 go home, or whether he was just feeling a bit unsafe, and 5 wanted to remain behind, or sleep where, somewhere where 6 close to where I was.</p> <p>7 MS LE ROUX: And did you take any steps 8 to investigate the incident further, once you'd heard that 9 there had been death threats against Major-General Mpmembe?</p> <p>10 COLONEL SCOTT: No.</p> <p>11 MS LE ROUX: Colonel Scott, if I could 12 then ask you to turn to page 39 of your statement in 13 paragraph 7.14 in particular. Here you set out what you 14 call a synopsis of the strategic guidelines and 15 expectations that you'd appreciated the previous evening in 16 the meetings with police senior officers. So these derived 17 from the JOCCOM meeting held the previous evening, the 18 evening of the 13th. Correct?</p> <p>19 COLONEL SCOTT: Yes, just – the JOCCOM 20 was formalised on the Tuesday. This was more an 21 informative meeting for the National Commissioner, the 22 initial one, and then when she came back from mine 23 management, she just wanted to know where to, what do we 24 do? What's the way forward? So it was, I think at that 25 stage, it was not a JOCCOM meeting, it was more a meeting,</p>	<p style="text-align: right;">Page 15105</p> <p>1 the key points of the mine and innocent individuals maybe 2 trying to go to work, protecting that in case the mass of 3 the group mobilised. And then the last one was something 4 that was a deduction given from what happened on Monday, 5 that we didn't know the intentions and as I said at that 6 stage, the impression I had and I think it was possibly the 7 same with the other officers was, this had gone to a level 8 which was unprecedented with regard to labour disputes, the 9 murdering of police officials and not only that, because it 10 could be to a lesser degree, I don't even think justified, 11 but if it was just a killing, because they felt they were 12 trying to defend themselves but to rob the police officials 13 of his weapons and armament etcetera, thereafter showed a 14 different intent. So it was to protect the SAPS officials 15 thereafter, so that we wouldn't have a repeat and in saying 16 that, it goes deeper than that, by protecting the police 17 officials in essence it was also to prevent confrontation 18 because inevitably any confrontation then would have 19 resulted in probably casualties on both sides.</p> <p>20 MS LE ROUX: And then, Colonel Scott, if 21 I could ask you to turn up page 67 of your statement, 22 paragraph 8.25. You state there, that the strategic 23 guidelines spoke to disarming the strikers, but of course, 24 the three strategic guidelines listed on page 39 don't 25 mention disarming strikers. So where did the disarming</p>
<p style="text-align: right;">Page 15104</p> <p>1 and informative meeting, but yes.</p> <p>2 MS LE ROUX: Alright. And then three 3 strategic guidelines you said here, that SAPS will enter 4 dialogue, they'll protect life and property and they'll 5 exercise caution to protect members against any aggression. 6 Who set those strategic guidelines? Who owns them?</p> <p>7 COLONEL SCOTT: Well, they came from my 8 understanding at the end of that meeting. Nothing was said 9 in specific wording like that. I did understand after 10 making the suggestion of the negotiations to the National 11 Commissioner, she initially didn't answer to that, she 12 moved on, and maybe some time thereafter, came back to 13 actually saying what this member said, I think we need to 14 follow, we need to go into dialogue with the protesters and 15 try to negotiate a peaceful resolution to this. So that 16 comes from that. The protection of life and property, I 17 don't quite recall but that to me would for instance 18 emanate from our constitutional obligation as well, and my 19 mindset to that was the fact of, we didn't know the next 20 day what was going to happen, whether they would go to that 21 koppie or not, and whether that was a meeting point for 22 them to move elsewhere to continue with what had been going 23 on over that weekend for that matter and for that matter on 24 the Monday, where they mobilised towards something, so it 25 was to look at some measure that we would need to consider</p>	<p style="text-align: right;">Page 15106</p> <p>1 strikers as a strategic guideline come from?</p> <p>2 COLONEL SCOTT: From the OB, that, the OB 3 entry made by the Provincial Commissioner and I think we've 4 been through that, I am not sure at what stage I was made 5 aware of that, but at some stage around the planning it was 6 mentioned to me.</p> <p>7 MS LE ROUX: Colonel Scott, I just want 8 to get the chronology correct, because I understand the 9 meeting with the National Commissioner comes after the 10 Provincial Commissioner makes the entry you are referring 11 to in the occurrence book, and for the record, it's entry 12 37 in exhibit FFF25.</p> <p>13 COLONEL SCOTT: That is correct.</p> <p>14 MS LE ROUX: So surely the guidelines set 15 at the meeting by the National Commissioner trump what 16 comes first from the Provincial Commissioner.</p> <p>17 COLONEL SCOTT: I don't think -</p> <p>18 MR SEMENYA SC: Chair, I am not aware of 19 any guidelines said by the National Commissioner.</p> <p>20 COLONEL SCOTT: As I've tried to depict 21 here, there's no specific, this is what's going to happen, 22 this is what's going to happen given by the national 23 command. What in essence they do is, they give in the 24 deliberation of that meeting, certain strategies are 25 accepted like, let's go into the dialogue and negotiation,</p>

<p style="text-align: right;">Page 15107</p> <p>1 but the National Commissioner for one obviously doesn't 2 know the tactical options open to POPS, should have to be 3 moving in that direction. So she would just give that 4 strategic insight into listening to her commanders, like 5 she did, and acknowledging what was being said, and then 6 saying, I think we to follow this route. So – but I must 7 say that that night, I don't recall any strategy with 8 regard to a way forward tactically being offered. It was 9 more you know, a case of, this is where we are, what do we 10 do? And all I do recall in detail was that we will enter 11 into dialogue but knowing then obviously at the operational 12 levels you need to create the options thereafter, if 13 dialogue evidently doesn't work out.</p> <p>14 MS LE ROUX: Colonel Scott, I'd now like 15 to move on to the topic of intelligence and intelligence 16 gathering. This is dealt with for the record in Gary 17 White, page 59, section 6.2, where in essence Mr White 18 criticises the adequacy of the intelligence obtained and 19 how that factored into your planning, you deal with this as 20 far as I can tell in your consolidated statement commencing 21 at page 22, paragraph 6.15 and 6.16.</p> <p>22 CHAIRPERSON: Sorry, will you give that 23 reference again.</p> <p>24 MS LE ROUX: Page 22, paragraph 6.15 and 25 6.16. Paragraph 6.15 commences, "the second point in an</p>	<p style="text-align: right;">Page 15109</p> <p>1 and demonstrators, isn't quite accurate for what was going 2 on here, is it? If one uses the word "strikers" then I 3 take that it's more accurate, but –</p> <p>4 MS LE ROUX: Chair, my understanding had 5 been that some of the people on the koppie were not 6 employees on strike, but I can certainly use the language 7 of strikers or the group sympathetic to the strikers, the 8 people on the koppie.</p> <p>9 CHAIRPERSON: The use of the expression 10 "demonstrators" and "protesters" is also inaccurate, 11 because more inaccurate than talking about strikers 12 covering all of them. It's just a question of language but 13 sometimes if one uses the wrong language one gets the wrong 14 idea.</p> <p>15 MS LE ROUX: Colonel Scott, returning to 16 the incident on the 13th, did you have any information that 17 could help you analyse who was responsible for the police 18 deaths on the 13th of the group of strikers that were 19 present on the koppie? Did you have any information that 20 identified people on the koppie and linked them to the 13th?</p> <p>21 COLONEL SCOTT: I was, I am not sure at 22 what stage I became aware that there was video footage, and 23 I understand the process then, it would be handed over to 24 either the crime intelligence or to detectives, to start a 25 process of trying to identify the individual, and then</p>
<p style="text-align: right;">Page 15108</p> <p>1 appreciation is to analyse the opponent." Now who did you 2 view as your opponent?</p> <p>3 COLONEL SCOTT: It's just to put that 4 into perspective, the opponent here would have been the 5 strikers on the koppie.</p> <p>6 MS LE ROUX: So was that everybody who 7 was protesting on the koppie, or –</p> <p>8 COLONEL SCOTT: At that time –</p> <p>9 MS LE ROUX: - only a group of them?</p> <p>10 COLONEL SCOTT: No, it was at that time, 11 remember I think we are speaking here still to, prior to 12 Tuesday, or maybe into the early hours of Tuesday morning. 13 At that stage it's just known as that group of people 14 striking there. I wasn't aware yet that there was a 15 smaller more militant grouping of them.</p> <p>16 CHAIRPERSON: Ms Le Roux, you use the 17 expression "people protesting on the koppie." I have tried 18 to, repeatedly too adhere to the nomenclature as "the 19 strikers." People talk about protesters but I am not quite 20 sure what they were protesting about. Also, the people, 21 demonstrators. I am not sure what they were demonstrating 22 about either. I suppose there was the peripheral protest 23 about the fact that their remuneration was less than 24 R12 500 a month. To some extent there was a demonstration 25 about that, but really, to use the language of protesters</p>	<p style="text-align: right;">Page 15110</p> <p>1 obviously trying to identify his place of residence which 2 would be a starting point to seek to arrest but I think at 3 some stage possibly, Mr Sinclair did mention that the 4 issues regarding the unions obviously with his reflections 5 to the incidents on the Sunday with their intention to go 6 to the NUM office so –</p> <p>7 CHAIRPERSON: That is the Saturday. 8 Well, there were two, yes.</p> <p>9 COLONEL SCOTT: Ja.</p> <p>10 CHAIRPERSON: They went on the Saturday, 11 and again they went on the Sunday.</p> <p>12 COLONEL SCOTT: Yes.</p> <p>13 CHAIRPERSON: When they were going on the 14 Sunday, the two securities were killed.</p> <p>15 COLONEL SCOTT: That is right. So, but I 16 am just trying to recall whether maybe in those discussions 17 or when he was filling me in on the background, that he 18 mentioned that it's possible that these people were 19 specifically AMCU related. I don't recall specifically but 20 I recall something in the line of that, the Karee Hostel 21 possibly had something to play with it, because I know I 22 was initially of the impression that the group coming to 23 the koppie that had the confrontation on the Monday I 24 thought were coming from the Karee Hostel to the koppie. I 25 didn't know they had moved away from the koppie and somehow</p>

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1 were intercepted on the way, and were trying to return to
 2 the koppie. So that was my understanding at that stage
 3 that it was an AMCU grouping and that that group
 4 specifically that had gone away, was possibly just trying
 5 to join the other, the rest of the major group at the
 6 koppie, to form a, or the bigger grouping of people that
 7 were there striking.

8 MS LE ROUX: Okay, we will come back to
 9 the people from the Karee Hostel shortly, but just to
 10 answer my question then, you didn't have any intelligence
 11 that linked particular people present at the incident on
 12 the 13th, to being on the koppie on the 14th, 15th or 16th.

13 COLONEL SCOTT: Not that I can recall.

14 MS LE ROUX: Thank you. Then you
 15 mentioned your belief that some of the people who had
 16 clashed with the police on the Monday came from the Karee
 17 Hostel and that's in your statement page 66, paragraph
 18 8.24.4 where you say that "not all of them, not all of the
 19 strikers who would need to be dispersed resided in Nkaneng,
 20 some of them came from the open direction to the west, from
 21 the Karee Hostel and the surrounding areas. I understood
 22 many of these to be from a militant group that had clashed
 23 with police on the Monday, and were still possibly part of
 24 that group." What was the basis for that information?

25 COLONEL SCOTT: Again, I was led to

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1 believe with the inter-union rivalry that the – and I can't
 2 quite remember who spoke to me about this, it may have been
 3 one of the mine security that a union would for instance, a
 4 hostel area would start becoming unionised in a sense, so
 5 that that group of people at that hostel specifically would
 6 start all affiliating to a certain union or that those were
 7 affiliated to a union would be dominantly to a specific
 8 union and this being part of the clash of what happened on
 9 the Saturday, to my understanding was that the majority
 10 from the Karee hostel, being AMCU, had tried to move
 11 through the Wonderkop hostel on the Saturday, and the
 12 Wonderkop hostel, being predominantly NUM hostel, had tried
 13 to prevent the movement towards the NUM office and thus
 14 that clash happened. So this was the information that I
 15 had received at that time and what my mindset was with
 16 regard to what I knew.

17 [11:22] MS LE ROUX: Colonel Scott, at page 29,
 18 paragraph 6.34 you repeat along the same lines of what
 19 you've just testified that based on the information that
 20 the strikers who had killed the police members came from
 21 the Karee hostel area to the west. And I don't want you to
 22 repeat the testimony you've just given about you understood
 23 the union rivalry and predominance in a particular hostel
 24 but what was the source of that information, who had told
 25 you that?

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1 COLONEL SCOTT: I can't say with
 2 certainty. I was chatting obviously with as many people as
 3 I could around, but predominantly I would speak to Mr
 4 Graham Sinclair, but I can't say for certainty it was him.
 5 I received most of my information from him, I don't think
 6 Mr Dirk Botes was part of the scene at that stage. It
 7 could have been from the police official that had gained
 8 information as well from other sources at Lonmin mine. I
 9 don't specifically recall.

10 MS LE ROUX: Did you specifically request
 11 anyone to verify whether the strikers who had clashed with
 12 the police on the Monday came from the Karee hostel?

13 COLONEL SCOTT: I don't recall doing
 14 that.

15 CHAIRPERSON: Was it information, direct
 16 information that the strikers who killed the police, came
 17 from the Karee hostel as you put it here in Para 6.34? Or
 18 was it an inference that was drawn from the fact that this
 19 group of people when they were met near the railway line
 20 were coming from the direction of Karee and the Karee
 21 hostel?

22 COLONEL SCOTT: Chairperson, I think that
 23 somebody had mentioned to me that they are from Karee that
 24 I'd made the deduction that they were coming from Karee.
 25 It was that deduction, but it was – sorry that it was –

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1 that's how I made the deduction they must have been coming
 2 from the hostel then.

3 MS LE ROUX: Colonel Scott, do you know
 4 whether that information is correct, do you know whether
 5 these people came from Karee hostel?

6 CHAIRPERSON: How can he know whether
 7 information is correct? Well he's actually been asked the
 8 question, but I don't see how he can answer it. Do you
 9 know whether that information was correct?

10 COLONEL SCOTT: Chairperson, at a later
 11 stage I think it was in November, possibly early December,
 12 I undertook a small exercise just to have a look at those
 13 that were wounded or deceased, I had to try and work out
 14 according to the mine records where they had come from.
 15 And I'm not sure where that is now, but I almost formed a -
 16 from the Marikana koppie on a Google Earth map I think I
 17 tried to look at the directions that people came from. And
 18 a broad synopsis of that was they came from 360 degrees,
 19 they came from far away, close. About half of them came
 20 from the Nkaneng environment if I recall, probably about a
 21 third or more came from that side, Karee hostel or the
 22 smaller settlements around karee hostel. But it's only at
 23 that stage that I sat down and actually started to try and
 24 track specifically where these people that were involved in
 25 the actual conflict with the police came from.

<p style="text-align: right;">Page 15115</p> <p>1 MS LE ROUX: So, Colonel Scott, to return 2 to the intelligence that you had available at the time, it 3 was very limited, you really didn't know for sure whether 4 the people who had clashed with the police on the Monday 5 were present at the koppie or where they had come from. Is 6 that correct? 7 COLONEL SCOTT: Sorry I think I was just 8 – 9 MS LE ROUX: Sure. Returning to the 10 question of the intelligence that you had at the time, it 11 was very limited, you didn't know whether the strikers who 12 had clashed with police on the Monday were present at the 13 koppie. And you didn't know for sure that they came from 14 the Karee hostel as opposed to Nkaneng or somewhere else. 15 Correct? 16 COLONEL SCOTT: Are we talking about on 17 the Tuesday now? 18 MS LE ROUX: Yes. 19 COLONEL SCOTT: Well I was aware that 20 after the group that had clashed with the police on the 21 Monday had continued still to move towards the koppie. So 22 again the deduction because what we're dealing with and 23 this is why the information forthcoming at Marikana at the 24 time was so sketchy because in order to become intelligence 25 you need to verify that information first. And this is</p>	<p style="text-align: right;">Page 15117</p> <p>1 the first time then? 2 COLONEL SCOTT: I suspect he was there at 3 the meeting with the – no, he was there at the meeting 4 because I remember the National Commissioner pertinently 5 saying how can we run an operation when we don't have 6 intelligence. I know that was a big issue for her that she 7 brought up on the Monday night. So that would have been 8 dealing with the intelligence issues and the lack thereof 9 at that time wanting to know who are these people, what's 10 the modus operandi. So that was brought up on the Monday 11 night and as I say, it's quite possible that that the lapa 12 we were in is not very well lit and obviously everybody's 13 sitting around the table, so whether he was sitting in a 14 position and I couldn't see him. But I do recall him being 15 there on the Tuesday morning very early, around about 6 16 o'clock because he was one of the few that were there that 17 I thought were ready for the meeting. 18 MS LE ROUX: Colonel Scott, given that 19 the National Commissioner, as you've just testified, 20 highlighted the lack of intelligence as a problem do you 21 know of any steps that were taken to improve intelligence 22 following that meeting on the 13th? 23 COLONEL SCOTT: From what I can remember 24 at that meeting, I'm not sure if it was the acting 25 Divisional Commissioner of Crime Intelligence or possibly</p>
<p style="text-align: right;">Page 15116</p> <p>1 where we were struggling. The intelligence services could 2 not infiltrate or get informers properly within that 3 grouping of people. So a lot was down to deduction. 4 Having information but deducting from that information 5 because it couldn't be verified to make it intelligence per 6 se. But my deduction was that after the conflict on the 7 Monday that these people had still continued to move in 8 that direction. As we know that they'd moved to the koppie 9 and had actually joined the rest of the group on the 10 koppie. 11 CHAIRPERSON: This statement you make 12 here paragraph 6.34, page 29, is that a statement of your 13 understanding of the situation on the Monday night? 14 COLONEL SCOTT: Yes. 15 CHAIRPERSON: Now at that stage had you 16 had conversations or heard what was said by someone like – 17 I think Brigadier Engelbrecht was in charge of intelligence 18 wasn't he? 19 COLONEL SCOTT: He was, yes. 20 CHAIRPERSON: Had you spoken to him at 21 that stage? 22 COLONEL SCOTT: I hadn't spoken to him 23 directly, no, Chairperson. 24 CHAIRPERSON: And when did you see, I 25 know this is what he told you, but when did you see him for</p>	<p style="text-align: right;">Page 15118</p> <p>1 the Provincial Commissioner at the time of Gauteng who were 2 both there, but the decision I think was made to have 3 Gauteng assist to bring in people to help with the 4 analysing part of the operation. 5 MS LE ROUX: And do you know what 6 particular tasks those people undertook? 7 COLONEL SCOTT: In hindsight I do. I 8 didn't know at the time, but I know that part of their job 9 was to receive as much footage as they could and they were 10 doing the process of trying to identify individuals. I 11 would assume that they would then go to the mine with the 12 photographs of the individuals and ask whether this tied up 13 with employees at the mine. And where they would then 14 reside in order that what I'd envisioned as a phase 5 going 15 out to targeted venues to try and retrieve possible stolen 16 or robbed items as well as make arrests would occur – 17 MS LE ROUX: And when was this process 18 undertaken, the identifying people from footage? 19 COLONEL SCOTT: Again I think it would 20 have been possibly maybe on the Tuesday it could have 21 started. Or possibly from the Wednesday, but they sat in a 22 different – they were not sitting with us in the JOC. They 23 sat in a different office at the mine buildings, so I 24 didn't particular go there. 25 MS LE ROUX: So when you were sitting</p>

<p style="text-align: right;">Page 15119</p> <p>1 planning they weren't feeding in any information to you 2 that you could incorporate into your planning. 3 COLONEL SCOTT: No, we needed – Brigadier 4 Engelbrecht was the representative of the Crime 5 Intelligence at the JOC and his role as the rest of the 6 JOCCOM members was to be present as much as possible and 7 anything forthcoming would come in through him as far as 8 intelligence was concerned. There's other ways of getting 9 information and that's why I'd placed out observation posts 10 because observation posts is another way of giving you the 11 real time, ground picture of what's going on as best as 12 they could. Ideally they should have been placed closer to 13 the action environment because they did struggle with 14 definity, pick up what weapons etcetera were in the crowd I 15 would think from being over a kilometre away. But that was 16 one of the mechanisms put in place to try and get real time 17 information on movements as well as the helicopters in the 18 air. But the intelligence side of actually finding out 19 more the in depth as you're alluding to with the unions 20 possibly and the locations of members and so on. That's 21 left to the Crime Intelligence obviously we couldn't speak 22 to that from the tactical intelligence gathering. 23 CHAIRPERSON: Yes, Mr Semenya. 24 MR SEMENYA SC: Chair, I say this with a 25 little bit of trepidation because the one moment I</p>	<p style="text-align: right;">Page 15121</p> <p>1 you describe as your normal method of planning, to carry 2 out an appreciation by consulting witnesses, police 3 personnel, any other source available, record documentation 4 and open source media. You said that that's normally what 5 you do. Is that what you did in this case to establish 6 intelligence? 7 COLONEL SCOTT: I wouldn't have been able 8 to cover all of those bases obviously. I don't think I had 9 access to as yet open source media or even the police's 10 video footage. But it is a matter of trying to speak to 11 who I could. And in saying that it was difficult that 12 night to get hold of some of the officers because if they 13 left the JOC room I was not even sure where they would go. 14 I didn't really know where I was myself. You're arriving 15 in the dark, you had a specific room, you don't know where 16 they're going, so when they were called to come to the 17 JOCCOM meeting, not JOCCOM, but the meeting of the National 18 Commissioner I would sit and listen to what everybody was 19 saying. But still difficult to understand at that stage 20 who was actually who and who was in command and many of 21 these members it was the first time I was actually seeing 22 them. I had worked with General Mpembe before in the 23 soccer World Cup but the rest and Brigadier Calitz of 24 course, but the rest not so. It was only when Colonel 25 Merafe was told to come to me that I could talk to him for</p>
<p style="text-align: right;">Page 15120</p> <p>1 discussed with my learned colleague, Ms Le Roux, was that 2 she was going to be talking on two issues, the statement of 3 Mr White and that of Scott. So we're going all over the 4 show, I don't know whether it's still within those tram 5 lines or not. 6 CHAIRPERSON: I thought that one of Mr 7 White's criticisms was that the police didn't have adequate 8 intelligence and I take it that's what she's busy 9 exploring. Am I right? 10 MS LE ROUX: That's correct, Chair, for 11 my learned friend it's section 6.2 of Mr White's statement 12 that covers the inadequacy of intelligence. 13 CHAIRPERSON: A lot of this of course has 14 been traversed before. So I think Mr Semenya is afraid 15 that you are ranging far and wide over the field, so 16 perhaps this point can be presented in a more focused way. 17 But I understand this is Mr White's criticism and I 18 understand it's got to be covered with police witnesses. 19 So I'm not stopping you but I am concerned that we may be 20 going a bit more widely over the area at this point than 21 is necessary to make the point you want to make. But 22 anyway please carry on but bearing mind Mr Semenya's 23 comment. 24 MS LE ROUX: Thank you, Chair. Colonel 25 Scott, on page 22 at paragraph 6.15 you set out there what</p>	<p style="text-align: right;">Page 15122</p> <p>1 the first time. Other than that, as I say, it was only 2 General Annandale that I think out of the way the operation 3 would go normally when I arrived, brought me up to speed 4 with what he knew, gave me over to Mr Graham Sinclair to 5 continue with what he knew which was a wider range spanning 6 more the weekend and so on as well. And obviously all of 7 this is what I'm trying to take in at that time before I 8 went to sit down for a National Commissioner's briefing and 9 listen to what gets said there again and so on. So that 10 whole process and thereafter and it's not just about the 11 intelligence gathering around what we deemed to be the 12 opposing party but it's also about the environment. 13 Because I needed to know foundationally where am I. What's 14 going on, what are targets, what did the environment look 15 like which was all unknown to me at that time, that 16 evening. And these are all the aspects I had to try and 17 figure out at that course of time. 18 MS LE ROUX: On that evening of the 13th 19 did you ask whether there was any video footage of the 20 incident that day? 21 COLONEL SCOTT: I didn't ask, no, but I 22 think – I don't know how but if I recall they passed 23 photographs around of the scene or of the deceased persons. 24 I don't recall asking if there was video footage, no. 25 MS LE ROUX: And later in your statement,</p>

<p style="text-align: right;">Page 15123</p> <p>1 for the record it's page 98, paragraph 26.3, you say that 2 the first time you saw the CCTV footage of the incident on 3 the 13th is only on the night of the 16th. But you hadn't 4 previously seen any video footage? 5 COLONEL SCOTT: I don't know if it was 6 the night of the 16th, if I did mention it I may have been 7 wrong, but I recall when we were putting the National 8 Commissioner's presentation together that there footage was 9 made available. And at that page I didn't yet know how to 10 cut and manipulate it into a presentable format for the 11 presentation and that's where IT personnel from Lonmin 12 actually came in to assist with that process. So I 13 continued working on the photographs within the 14 presentation and General Mpembe with the IT specialist 15 worked on the actual video footage to put that together so 16 that he could speak to that when it was presented to the 17 media. 18 MS LE ROUX: And just so I'm clear, the 19 video footage you're referring to is the CCTV footage, not 20 the – 21 COLONEL SCOTT: I don't remember seeing 22 the police video either until that day. 23 MS LE ROUX: Okay, if I could ask you to 24 then turn to page 38 of your statement. In paragraph 7.9.3 25 and 7.9.4 you say that police patrols were tasked to gather</p>	<p style="text-align: right;">Page 15125</p> <p>1 sector, so four groups in essence were sent out to get 2 intelligence. 3 COLONEL SCOTT: Four groups, yes. 4 MS LE ROUX: Okay and what information 5 came back? 6 COLONEL SCOTT: They didn't – 7 MS LE ROUX: If we take these in turn 8 what information came back to you about the approach route 9 and area roads? 10 COLONEL SCOTT: I think that was the only 11 information that I did receive and that was that the route 12 I'd envisioned initially they said was difficult. I don't 13 know why, but I think there was a little bit of mud or some 14 gridlock in the road system that would make it difficult 15 for the Nyalas to move through. That's the only one that I 16 do recall and that came back from somebody that was driving 17 around in the actual settlement area. 18 MS LE ROUX: So you didn't get any 19 information back about the atmosphere around the area or 20 the attitude of local people towards the police? 21 COLONEL SCOTT: No. 22 MS LE ROUX: Did you ask anyone to follow 23 up and – 24 COLONEL SCOTT: No. I'd asked for that 25 information and obviously maybe it was difficult for the</p>
<p style="text-align: right;">Page 15124</p> <p>1 intelligence and specifically regarding area roads and 2 specifically the approach route to the neutral area, the 3 atmosphere around the area and information on the attitude 4 of local people towards the police. How many teams were 5 deployed? 6 COLONEL SCOTT: Again at that stage it's 7 difficult to say, but I do remember saying that the 8 armoured vehicles, the Nyalas should stay as a group of a 9 minimum of three. And that the other members from either – 10 or that were driving the soft skin vehicles needed to 11 accompany the Nyalas for that matter and they shouldn't 12 break up. I was worried about previous knowledge of 13 experiences in previous situations in townships where 14 Nyalas can be isolated and burnt etcetera, etcetera. So I 15 know that obviously I had the four sectors. How many were 16 in each of those sectors I'm not too sure because at that 17 stage there wasn't an in depth planning. It was more just 18 a planning of I need the police force to get out, to go and 19 patrol and to bring back information and then the forces 20 would have been dealt with or spread out pretty evenly 21 between those sectors. But I'm aware there was enough at 22 that stage to put a least three, I'm sure there must have 23 been enough to put at least three Nyalas and probably three 24 soft skin vehicles per sector if not more. 25 MS LE ROUX: So that would be one per</p>	<p style="text-align: right;">Page 15126</p> <p>1 members to get too close to the strikers at that stage 2 without considering that they may find themselves in a 3 position that they don't want to be in. Not having a 4 structured strategy on going forward to have to be close to 5 the strikers. But I don't recall receiving any other 6 information other than on the actual environment of the 7 roads. 8 MS LE ROUX: And other than this first 9 deployment of the four teams to get intelligence did you 10 repeat that exercise at all? 11 COLONEL SCOTT: Repeat which exercise? 12 MS LE ROUX: Did you send people out 13 again to try to establish the atmosphere around the area or 14 – 15 COLONEL SCOTT: Yes. 16 MS LE ROUX: - the attitude of local 17 people to the police? 18 COLONEL SCOTT: Well I'd sent out the 19 special task force team to go and try an establish an OP 20 post, an observation post on what I thought at the time was 21 a higher koppie which was – that now we know as koppie 3. 22 I don't think they actually got to the koppie 3 itself, 23 they observed it from a distance and came to the conclusion 24 that it's way too low. It's not going to give them the 25 height they need, they could see that obviously there was</p>

<p style="text-align: right;">Page 15127</p> <p>1 bushes and rocks that there was a lot of, well I don't know 2 about a lot, but there was movement of human movement 3 backwards and forwards between koppie 1 and koppie 3. 4 MS LE ROUX: Colonel Scott, you'll agree 5 with me that when you're planning a tactical option and we 6 leave aside for now whether it's encirclement or the 7 dispersion plan, but was ultimately adopted, that 8 intelligence is essential to planning that tactical phase, 9 correct? 10 COLONEL SCOTT: Well obviously 11 intelligence is essential. We would want to tick the boxes 12 of when we do an appreciation, what we would like to know 13 and then obviously if you don't you need to start making 14 deductions and deductions lead to risk analysis which leads 15 to risk mitigation again and takes you in the full circle. 16 So it's what you observe again which orientates you, which 17 makes you have a decision on which you want to act on going 18 back to the Ooda loop. 19 MS LE ROUX: And, Colonel Scott, I want 20 to ask you whether you agree with your colleague, Major- 21 General Annandale who at day 79 page 8504 to 05 said that 22 he thought that the intelligence gathered, he described it 23 as limited and that he would have liked more intelligence 24 before launching the operation. Do you agree with those 25 statements by Major-General Annandale?</p>	<p style="text-align: right;">Page 15129</p> <p>1 COLONEL SCOTT: Yes. 2 CHAIRPERSON: Did you need any more? 3 COLONEL SCOTT: Well, Chairperson, if you 4 wanted to move to a situation where you looked again to 5 residences to arrest and so on you would need that 6 information forthcoming about who are we looking at, who 7 are the targeted individuals that we want to go to in the 8 hostel, in their place of residence and so to start putting 9 a plan of that magnitude in place that's what you would 10 want to do. The alternative of that is just going to do 11 the hostel cordon and search which is hopefully everybody 12 that's there then would be searched and if you identify the 13 people inside the hostel then by photograph to face you can 14 make the arrest. But it's a long shot. Not really 15 knowing. 16 CHAIRPERSON: Did you know that, Major 17 General Mpembe had asked Mr Sekwane, the President of NUM 18 on the Wednesday evening if NUM could provide information, 19 obviously on an anonymous basis as to where arms were in 20 the hostels and in the informal settlements. As I 21 understood the evidence Mr Sekwane indicated that attempts 22 would be made to comply with that request. Did you know 23 that? 24 COLONEL SCOTT: No, I didn't, 25 Chairperson.</p>
<p style="text-align: right;">Page 15128</p> <p>1 [11:42] COLONEL SCOTT: Well it depends what you 2 want to do with that intelligence. I do agree that the 3 intelligence was limited. Previous operations again, when 4 we talk about an intelligence brief we talk about something 5 pretty in depth and I think we can see from the 6 presentation or, you know what was actually said on those 7 morning meetings is extremely limited and vague, very wide. 8 So you would want more specific information and that 9 determines, if General Annandale was saying that, he 10 possibly also had a strategy in mind maybe other than the 11 one we employed. I'm not sure, I can't speak on his 12 behalf. But obviously, you know one can again go back to 13 what is described in books as the ideal. But you've got to 14 apply what you've got to the scenario that you're in or to 15 the operation that you're in and with what we had is what 16 we had and when we were instructed that we needed to do the 17 tactical movement that's all we had and we had to make best 18 use of it as we could. 19 CHAIRPERSON: What you had was they 20 didn't want to move, leave the koppie, they didn't want to 21 hand over their arms and if someone tried to prevent them 22 from doing what they wanted to do, either chase away from 23 the koppie or take their arms away they were going to 24 fight. It wasn't, that was the information you got wasn't 25 it?</p>	<p style="text-align: right;">Page 15130</p> <p>1 CHAIRPERSON: Because by the time you 2 moved over to action it was too early for any feedback in 3 that respect, wasn't it? 4 COLONEL SCOTT: Well I don't know, if 5 you're saying that was the Wednesday evening. 6 CHAIRPERSON: Wednesday evening, ja. 7 COLONEL SCOTT: Ja, but we went into 8 action obviously the Thursday but I wasn't aware – 9 CHAIRPERSON: The time for feedback was a 10 very limited? 11 COLONEL SCOTT: Ja, it hadn't come in 12 yet, yes. 13 CHAIRPERSON: It might have been wiser to 14 have waited but there were other considerations, weren't 15 there? 16 COLONEL SCOTT: Yes, I also think there 17 were other considerations involved. 18 COMMISSIONER HEMRAJ: Colonel, who 19 commanded the sector policing patrols to gather 20 intelligence, were they reporting to you directly? The 21 sector policing patrols. 22 COLONEL SCOTT: Yes. 23 COMMISSIONER HEMRAJ: To gather 24 intelligence. 25 COLONEL SCOTT: Yes.</p>

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1 COMMISSIONER HEMRAJ: Under whose command
 2 were they? Were they reporting all the intelligence
 3 obtained directly to you or to someone else?
 4 COLONEL SCOTT: By that time Brigadier
 5 Calitz had arrived. So he was already operational
 6 commander and briefing that plan, its, as I say it wasn't
 7 even a structured JOCCOM at that stage. It was just about
 8 get the commanders that are available in here, let's
 9 present it to you, go out, do it, so Brigadier Calitz would
 10 have gone out, formed them into their different groups and
 11 sent them off on their way.
 12 MS LE ROUX: Colonel Scott, I'd now like
 13 to move onto a topic that's for the record covered in Gary
 14 White, page, commencing at page 39, section 4.3. This is
 15 where Mr White criticises the lack of an audit trail of the
 16 decision making through the course of the events at
 17 Marikana and I don't intend to address each and every point
 18 made in that section but I've got five specific issues that
 19 I want to cover with you that arise from that. The first
 20 is if you could go to page 42 of Mr White and specifically
 21 to paragraph 4.3.2. which continues onto page –
 22 CHAIRPERSON: Before we get there. Ms Le
 23 Roux, and am I correct in thinking that what is said in
 24 4.3.1 particularly sub para A is to some extent over, it
 25 has in some extent been overtaken by the contemporaneous

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1 notes taken at some of the meetings which have subsequently
 2 been provided? Was it, can you tell us whether Mr White
 3 was aware of those documents?
 4 MS LE ROUX: Chair, my instructions are
 5 that these specific meetings identified on page 40 we still
 6 don't have any contemporaneous documentation. So they have
 7 not been overtaken by the production of the handwritten
 8 notes.
 9 CHAIRPERSON: Were handwritten notes
 10 taken at the various JOCCOM meetings which have now been
 11 provided by the police.
 12 MS LE ROUX: Yes, Chair, but to the best
 13 of our knowledge these, the four meetings that are
 14 identified there we still don't have documentation.
 15 CHAIRPERSON: That may be covered in the
 16 evidence. I'm not sure –
 17 MS LE ROUX: - point.
 18 CHAIRPERSON: No, we're not talking about
 19 minutes taken at the meeting. We're talking about notes
 20 that were made obviously with the view to being obviously
 21 with the view to being incorporated in minutes of the
 22 subsequent stage by some or other scribe who was there. I
 23 think there's notes by Captain Moolman for example taken at
 24 the various meeting, at the meeting, in particular the
 25 meeting at 6 o'clock on the morning of the 16th. So there

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1 are those notes available.
 2 MS LE ROUX: Chair, our understanding is
 3 that with respect to them, I mean if we just go through
 4 them, the JOC meeting at 11 pm on the 13th, JOCCOM at 2
 5 o'clock on the 14th. JOCCOM on the evening of the 14th and
 6 then the JOC debrief on the 15th we still don't have any
 7 handwritten notes, nothing on those specific –
 8 CHAIRPERSON: You may be correct on that.
 9 I was focusing on the ones we've got. But it's not
 10 directly relevant to your cross-examination, I thought I
 11 would make the point while it occurred to me.
 12 MS LE ROUX: No, so with respect to that
 13 point which is made at A4.3.1 that for these identified JOC
 14 and JOCCOM meetings there are no notes or minutes or
 15 anything that point as far as I understand it remains
 16 correct. Colonel, to return you to page 42 paragraph 4.3.2
 17 Mr White sets out there essentially that an audit trail
 18 should be kept of the decision making in a police operation
 19 for two reasons. The first is to allow a reconstruction
 20 after the event if that's necessary and the second is
 21 because the very requirement to document decisions and
 22 their rationale helps ensure that the rationale is
 23 correctly and carefully thought through. Do you agree with
 24 those propositions?
 25 COLONEL SCOTT: Yes, I do.

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1 MS LE ROUX: Secondly, do you agree with
 2 Mr White that the need to maintain a clear audit trail is
 3 heightened, it's all the more so in operations where higher
 4 level of force is already been used by police and there's a
 5 distinct possibility that it may need to be used again.
 6 COLONEL SCOTT: I agree, any audit trail
 7 is actually pertinent to the operation towards the end as
 8 well. It helps with the debrief, it helps with
 9 environments that we find ourselves in now as well.
 10 MS LE ROUX: And then do you also agree
 11 that because the police should be prepared to justify any
 12 use of force and it's reasonably foreseeable that where
 13 higher level of force may well have to be used by the
 14 police the operation will be subjected to some form of ex
 15 post facto scrutiny and so it's all the more important to
 16 have a proper audit trail.
 17 COLONEL SCOTT: I agree but I just want
 18 to say that when we're talking about as the members have
 19 claimed that it's a private or self defence issue that was
 20 not something that was in essence planned into the
 21 operation. It's a given in any operation that at any stage
 22 one may need to use self defence or private defence but to
 23 have that in some form of an audit trail, we wouldn't have
 24 per se put that in there because I think that's just part
 25 of the task of being a police officer. You understand that

<p style="text-align: right;">Page 15135</p> <p>1 part that's what you are trained in and hopefully never 2 have to get to.</p> <p>3 MS LE ROUX: And given what we've already 4 covered. Did you also agree that where there's, that 5 there's a distinct lack of a documentary audit trail for 6 the decisions taken at Marikana from the 14th to the 16th?</p> <p>7 COLONEL SCOTT: Yes, there is a lack and 8 again I know that you'll possibly find in speaking to even 9 other first world countries when operations start going to 10 the extent that they were going at Marikana one of the 11 first parts that starts to take a knock is your audit trail 12 or your record keeping but in saying that this a lesson 13 learnt. That we need to and it would have been wonderful 14 if we had, all the briefings I gave for instance, 15 videotaped and I would have been quite happy to have that 16 done, I think it would have saved a lot of time and efforts 17 even in this commission. But is something that I've 18 personally learnt to employ to the future if we see that 19 the minute taking or the documenting and the audit trail is 20 starting to suffer because of the rapidness or quick 21 decision making taken from senior managers, etcetera that 22 at least we need to record it via video or at least with an 23 auditory device.</p> <p>24 MS LE ROUX: Right.</p> <p>25 CHAIRPERSON: But in this case we had at</p>	<p style="text-align: right;">Page 15137</p> <p>1 MS LE ROUX: Colonel Scott, my last 2 question on this is whether you agree with Mr White if you 3 turn to page 41 of his statement, it continues at the top 4 of 42, paragraph 4.3.1F 1 to 5. He lists five particular 5 decisions that he would have liked to have seen a 6 contemporaneous record of reasoning for the following 7 decisions and they are listed at the top of page 42, if we 8 can go to that part of the statement. It's the decision to 9 continue with the stage 1 deployment on the morning of the 10 15th, the decision to abandon the proposed stage 3 11 encirclement option, the decision to deploy the stage 2 12 strategy on the morning of 16 August, the decision 13 apparently around midday to withdraw Nyala 6 and reposition 14 it near the kraal and finally the decision to proceed to 15 stage 3 tactical option prior to the 1:30 JOC on the 16th of 16 August. Do you agree that the rationale for those 17 particular decisions should have been documented?</p> <p>18 COLONEL SCOTT: If I can just highlight 19 though that there wasn't per se a decision taken on the 20 Wednesday the 15th, the decision was held on Wednesday the 21 15th to abandon that initial, in light of the bigger crowd 22 and going towards the D&D plan as an option for phase 3. 23 But that decision would have been taken thus at the end of 24 the JOCCOM on the, sorry that evening or that –</p> <p>25 CHAIRPERSON: Let's just go through them</p>
<p style="text-align: right;">Page 15136</p> <p>1 the 6 o'clock meeting, I think it was on the Thursday, we 2 had Captain, Colonel Moolman who was a legally trained 3 person, an admitted advocate in fact, he was taking notes 4 and on other occasions Brigadier Pretorius was taking 5 notes, she was the minute taker, she's an officer of a high 6 rank, she's a Brigadier.</p> <p>7 COLONEL SCOTT: Yes.</p> <p>8 CHAIRPERSON: So the argument is not a 9 first world country doesn't cut much ice in this context 10 where the minute taking is being done by an admitted 11 advocate who was then a Captain in the one case and a high 12 ranking officer in the form of a Brigadier in the other, 13 isn't that so?</p> <p>14 COLONEL SCOTT: Chairperson, I agree. I 15 think one must just look at the circumstance thought and I 16 think it's evident even in the commission that this is 17 recorded for transcript and it would be wise and that's 18 maybe what I'm trying to say because anybody taking minutes 19 can, unless they're superhuman keep to the speed of 20 whoever's speaking and the different talking that's going 21 on. So there's possibly keywords being jotted and then 22 they move on and, but in a far more accurate version which 23 is what I would ascribe to would be just to video record it 24 in the future or to take it down on a Dictaphone and then 25 have a transcript made thereof.</p>	<p style="text-align: right;">Page 15138</p> <p>1 one by one. F1 isn't recorded but in fact the reason's 2 obvious because they were still negotiations that would 3 have been regarded as a breach of good faith.</p> <p>4 COLONEL SCOTT: Yes.</p> <p>5 CHAIRPERSON: Two, he says apparently at 6 some stage on 15 August, I think it's now clear from the 7 evidence you gave being cross-examined by Mr Chaskalson, 8 that the encirclement option was still formally on the 9 table on the Thursday morning.</p> <p>10 COLONEL SCOTT: That's right.</p> <p>11 CHAIRPERSON: And was only abandoned 12 officially at some stage on the 16th?</p> <p>13 COLONEL SCOTT: Yes.</p> <p>14 CHAIRPERSON: The limited one, there's a 15 whole lot of issues –</p> <p>16 COLONEL SCOTT: Yes.</p> <p>17 CHAIRPERSON: That were debated between 18 you and Mr Chaskalson, but that was on Thursday. So when 19 Mr White talks about apparently at some stage on the 15th of 20 August he obviously wrote that in ignorance of the 21 concessions he would make being cross-examined by Mr 22 Chaskalson, is that correct?</p> <p>23 COLONEL SCOTT: Yes, yes.</p> <p>24 CHAIRPERSON: Alright. F3 is to some 25 extent a criticism of the minutes as we have them now of</p>

<p style="text-align: right;">Page 15139</p> <p>1 the meeting at 6 o'clock, the JOCCOM meeting at 6 o'clock. 2 That was, those were minutes that were subject to 3 substantial revisions from time to time at Roots, is that 4 correct? I think you've conceded that as well? 5 COLONEL SCOTT: Ja. 6 CHAIRPERSON: But we have the original 7 notes that were made by Captain Moolman. 8 COLONEL SCOTT: Yes. 9 CHAIRPERSON: Contemporaneously at the 10 meeting. 11 COLONEL SCOTT: Yes. 12 CHAIRPERSON: Which tell us something 13 anyway and then far as F4 is concerned that's, that looks 14 like a good point, we've got no detailed reasoning for that 15 at all. No reason at all in fact. Am I right, recorded I 16 mean? 17 COLONEL SCOTT: Ja, not in the JOC, I'm 18 not sure if the operational diary of that vehicle, the 19 person inside or whether there was an OB entry made to that 20 effect. But, because that was a decision taken, as far as 21 I know there was no JOCCOM sitting to take that decision. 22 CHAIRPERSON: The evidence is Major 23 General Annandale took the decision. 24 COLONEL SCOTT: Yes. 25 CHAIRPERSON: And there, as far as we</p>	<p style="text-align: right;">Page 15141</p> <p>1 White, what he's actually speaking to and I know it would 2 be done in very formalised meetings is you actually record 3 decisions after they've been discussed and a decision is 4 taken and you record the decision which makes sense because 5 that would have assisted obviously in environments as we 6 find ourselves again in a commission of inquiry. But it 7 also then assists, just to give a, throw a lot more light 8 on what was actually the discussion and this is the 9 pertinent decision taken. So I do understand where he's 10 coming from. 11 CHAIRPERSON: He's coming from somewhere 12 else to. He says you must record the decision. 13 COLONEL SCOTT: Ja. 14 CHAIRPERSON: And you must give the 15 reasons, you don't have to obviously have the – 16 COLONEL SCOTT: Yes, yes. 17 CHAIRPERSON: A long essay but – 18 COLONEL SCOTT: Yes, ja that's what I 19 mean. You need to obviously show the rationale and then 20 when the rationale's thrown open record the decision taken, 21 obviously recording the rationale that was put out as well. 22 MS LE ROUX: Yes, thanks, Chair. Colonel 23 Scott, Mr White's point is precisely that. That not only 24 must you record the decision but you must record the 25 reasoning for it. The rationale for it.</p>
<p style="text-align: right;">Page 15140</p> <p>1 know he made no note at the time as to why he did it. 2 COLONEL SCOTT: Yes. 3 CHAIRPERSON: It certainly, we 4 understand, complications later as you explain. 5 COLONEL SCOTT: Yes. 6 CHAIRPERSON: - the final one at 5, that 7 point is correct, isn't it? 8 COLONEL SCOTT: Yes. 9 CHAIRPERSON: Decision to proceed to 10 stage 3 tactical option prior to the 13:30 JOCCOM on the 11 16th. 12 COLONEL SCOTT: Yes. 13 CHAIRPERSON: But there is the 14 significant note and I think it is 15:20 which Brigadier 15 Pretorius said she made on the specific instance of Major 16 General Annandale – 17 COLONEL SCOTT: Yes. 18 CHAIRPERSON: That he wanted it recorded 19 – 20 COLONEL SCOTT: In the OB, yes. 21 CHAIRPERSON: That instruction came from 22 the provincial commissioner? 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: Ja. 25 COLONEL SCOTT: Chair, I'm not sure if Mr</p>	<p style="text-align: right;">Page 15142</p> <p>1 COLONEL SCOTT: Yes. 2 MS LE ROUX: And for each of these five 3 decisions and as you've seen from Mr White's statement 4 they're pivotal to the operation, for each one of these the 5 recording of the reasoning as to why the decision was taken 6 is – 7 COLONEL SCOTT: Yes. 8 MS LE ROUX: Is what's missing. 9 COLONEL SCOTT: But just in saying that I 10 just want to allude to the other side that it's not to say 11 that that process didn't occur. I don't know if it was 12 captured in the way that it did occur for that matter. As 13 I say most of the time that we would go through our JOCCOMs 14 we would be speaking as we're speaking now, with somebody 15 trying to jot down notes on what we were saying and I don't 16 know if it was always feasible for that person to keep up 17 as fast as they could with where and what we were saying 18 and I'm not sure if that was one of the reasons why, again 19 I'm speculating that the minutes, made at Roots were made 20 of memory and contemporaneous because of the lack of 21 certain inputs that were found not to be in the 22 contemporaneous notes. 23 CHAIRPERSON: Ms Le Roux, when you've 24 reached a convenient stage in cross-examination would you 25 let me know because I, it is probably desirable to take a</p>

<p style="text-align: right;">Page 15143</p> <p>1 comfort back in the near future but when the appropriate 2 stage arises you'll let me know. 3 MS LE ROUX: Chair, now is actually 4 convenient. I was moving onto another topic. 5 CHAIRPERSON: We'll take a break for 10 6 minutes. 7 [COMMISSION ADJOURNS COMMISSION RESUMES] 8 [12:18] CHAIRPERSON: The Commission resumes, you 9 are still under oath, Colonel. Ms Le Roux. 10 MS LE ROUX: Thank you, Chair. Chair, 11 during the adjournment we just confirmed and it still 12 remains the case that the four meetings listed at page 40, 13 we still do not have contemporaneous documents. They are 14 not in the more recent production and then similarly, we 15 checked again with respect to the five decisions that were 16 identified at page 42, and we do not have anything in the 17 new evidence that contradicts the point why it makes that 18 there was no documentation of the rationale for those – 19 CHAIRPERSON: The witness has made 20 substantial concessions on that point. Are you going to go 21 back to the point that stood over before tea, or are you 22 going to do that later? Remember there were some points 23 that you put to the witness, you gave him some reading to 24 do during the tea adjournment. I don't know whether he has 25 had an opportunity to do that. Have you, Colonel?</p>	<p style="text-align: right;">Page 15145</p> <p>1 considered there was bound to be conflict again should the 2 police use force to diffuse the situation with the 3 protesters that armed as they were and with their emotions 4 running as high as they did at the time." If I could then 5 take you to page 24, paragraph 6.2.1 of your statement 6 where you say there, in relevant part, "my assessment of 7 the situation," – 8 CHAIRPERSON: 6.2.1, it's 6.21. 9 MS LE ROUX: Sorry, 6.21, thank you, 10 Chair. 6.21 which commences, "my assessment of the 11 situation was that the POPS members would be in danger if 12 they needed to confront the strikers with a tactical 13 option." And then lastly, if you could turn to page 27, 14 paragraph 6.26, and it's the last sentence of that 15 paragraph, which says, "I was however mindful that any 16 tactical option by POP could be met with the same responses 17 as was experienced earlier that day on Monday, 13th, being 18 that the advancement of POP to carry out a tactical option 19 towards the strikers could be met by some of the strikers 20 closing the ground on the POP members to disrupt the police 21 action with violent action." So in light of those three 22 sections in your statement, I'd like to put to you that you 23 knew that a tactical option would carry a high risk of 24 violence, and that you should have taken it into account 25 when you were planning and that you did so, because you</p>
<p style="text-align: right;">Page 15144</p> <p>1 COLONEL SCOTT: No, Chairperson, I 2 confess I didn't, no. 3 CHAIRPERSON: Alright, well obviously 4 you'd better leave that point until after lunch, those 5 points until after lunch. 6 MS LE ROUX: That's fine Chair. Colonel 7 Scott, where I would like to go next is to the question – 8 to the issue relating to the tactical option being a last 9 resort, and your evidence thus far and regarding how you 10 contemplated it in your planning, is that the tactical 11 option was to be the last resort, correct? 12 COLONEL SCOTT: That's correct. 13 MS LE ROUX: And what I'd like to do is 14 take you to three passages in your consolidated statement 15 and then I'll ask a question, for the record, but we don't 16 need to go there, this is covered in Gary White commencing 17 at page 85, paragraph 6.5.2.1, so if we can start in your 18 statement at page 20, paragraph 6.10, and specifically the 19 last sentence of that paragraph – well, let me read the 20 whole paragraph. "I suggested during the meeting that the 21 emotions on both sides were high due to the loss of life 22 and that should the police move into disperse the crowd the 23 next morning, that the intervention could possibly be 24 interpreted by the media and the public as retaliation 25 instead of enforcement of the law. I said this, because I</p>	<p style="text-align: right;">Page 15146</p> <p>1 held it over as the last resort. 2 CHAIRPERSON: Three questions in one, do 3 you think you can handle all three of them at once? Or do 4 you want the question broken up? Sorry, Mr Semanya? 5 MR SEMENYA SC: Chair, these events 6 related to the 13th, before even the witness got to 7 Marikana. 8 CHAIRPERSON: No, I don't think that's 9 correct, the passages put, I think relate to what he, what 10 his thinking was on the evening of the 13th, after he got 11 there, but if I am wrong on that, I will be corrected. 12 MR SEMENYA SC: 6.26 is about the Monday, 13 Chair. 14 CHAIRPERSON: Look at the second 15 sentence, "I was however mindful that any tactical option 16 by POP could be met with the same response as was 17 experienced earlier that day on Monday 13th. In other 18 words, what he's talking about is his thought processes, 19 what he was aware of that evening, Monday evening, based 20 upon what has happened earlier that day. So I think that's 21 correct. I think you better carry on, Ms Le Roux, unless 22 Mr Semanya wants to take the objection to another angle. 23 MS LE ROUX: Thank you, Chair. Colonel 24 Scott, let me break my question down. So in light of those 25 three references, am I correct that you knew that the</p>

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1 tactical option carried a higher risk of violence in these
 2 circumstances.
 3 CHAIRPERSON: No, I take it, the question
 4 now relates to what he knew on the 16th, does it? I think
 5 that's just –
 6 MS LE ROUX: No Chair, it's during his
 7 planning, from the time he arrived in Marikana, became
 8 aware of what had happened on the 13th.
 9 COLONEL SCOTT: If I can maybe answer
 10 that, it may suffice as well that on that evening of the
 11 13th, going into the morning of the 14th, while planning
 12 then, I was very aware that emotions would be high on the
 13 Tuesday, so I was aware of any tactical option on that
 14 Tuesday morning, I was, of my opinion, would cause
 15 conflict. This doesn't distract from the fact that even in
 16 planning which went through to the 16th, again, as I have
 17 mentioned earlier I was hopeful that it would be resolved
 18 in the easiest way, and even saying that in the tactical
 19 option in the easiest way that through verbal warning on
 20 the actual dispersion pan that the majority would move
 21 away, I was wary of the militant group, and as I've
 22 mentioned I had to anticipate that that group may make a
 23 stand and may make a stand against the police action, and
 24 so I was aware of that at that time as well that if there
 25 was a possibility, but I was hoping that by that stage

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1 through dialogue and through the energy that the police had
 2 been putting in to try and resolve this through dialogue
 3 and showing the strikers that they were not just there to
 4 be a strong arm of the law, and exercise something against
 5 them as in a tactical option at the outset on the Tuesday,
 6 that somehow there would have been some form of an
 7 acceptance that the police would be just doing their job.
 8 But again, that was the hopeful side but planning for
 9 contingencies again and understanding that there was a risk
 10 against the very policemen that would need to go and do
 11 that, I needed to put something in place as a contingency
 12 for their safety as I had mentioned in the strategic
 13 guidelines as well.
 14 MS LE ROUX: Thank you. And Colonel
 15 Scott, your testimony that you've just given seems to
 16 indicate that on the night of the 13th, you thought emotions
 17 were running high, going tactical would elicit a violent
 18 response. Is that an accurate restatement of your
 19 evidence?
 20 COLONEL SCOTT: Yes.
 21 MS LE ROUX: Did that view change over
 22 the course of the 14th and 15th and into the 16th? Or did
 23 you continue to believe over that week, that given what had
 24 happened, a tactical response was likely to elicit a
 25 violent response?

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1 COLONEL SCOTT: Well, I think, like I
 2 said, and on the Tuesday, when we did get down to dialogue
 3 and I had heard that the dialogue was in essence
 4 succeeding, because they'd made arrangements to meet the
 5 Wednesday morning, I was to be pretty relieved, I was
 6 hoping it was going to go that way, because as I say, on
 7 that day, that Tuesday, I suspected that could be a
 8 watershed, that should the police have gone tactical there,
 9 that it would have really gone bad. Thus, the suggestion
 10 of that dialogue and so on but – and as it went on in
 11 dialogue, so it – I was more hopeful. I became aware later
 12 after Marikana, of, what I mentioned I think last Thursday,
 13 which was you know, how the police's dialogue actually came
 14 to more or less an end, sort of midday Wednesday, after the
 15 strikers had heard that they are not there to discuss
 16 labour issues with them, but again, the hope was instilled
 17 with, still the police going to the unions and bringing the
 18 union presidents in, so I think the strikers looked at that
 19 as a possible outcome. So we even went into Thursday
 20 hoping that dialogue would win the day. But I think as
 21 I've just stated, as a strategist, I had to keep in mind
 22 that if we needed to go tactical, which is a decision that
 23 would have then been taken, the police going forward
 24 couldn't just be thrown into harm's way to go and execute a
 25 tactical option, and as I say, that's maybe something

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1 that's not within my decision making powers, but still if
 2 the police does need to go forward as a planning officer,
 3 you need to plan for the safety of your police at that
 4 stage, so that they're at least taken care of and if they
 5 are taken care of, hopefully they don't need to exercise
 6 lethal force then against the threat that is posed towards
 7 them.
 8 MS LE ROUX: So Colonel Scott, if I can
 9 just summarise and confirm my understanding of what you've
 10 just said. You were hopeful when you saw how the situation
 11 was essentially stable on the Tuesday and the Wednesday
 12 into Thursday, so you became increasingly hopeful around
 13 the stability of the situation but you nevertheless
 14 anticipated that when the police went, if the police and
 15 when they went tactical, it may elicit a violent response
 16 from the strikers?
 17 COLONEL SCOTT: I was mindful of that. I
 18 think it would have been naïve of me not to have been
 19 mindful of that, but in saying what I say, and this even
 20 relates back to unarmed combat training, and it results
 21 there and this is why we have negotiators within the
 22 police, as you always need to give the opponent the
 23 opportunity to move away without conflict and to try and to
 24 some degree save their dignity in doing so, and that was
 25 the mind set I was coming from. That's why when dialogue

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1 was actually ongoing, I was extremely hopeful that this
 2 strategy had actually succeeded and that we wouldn't need
 3 to go any further than that. But like you are saying
 4 rightfully, by Thursday the fact that a tactical option
 5 then became necessary, I had to consider the fact that
 6 there would be a certain grouping that I assumed would
 7 withstand the police in some form, but that doesn't
 8 distract from the matter at that stage that we were said,
 9 exercise the tactical option and you know, one can't just
 10 send the police then into a blatant death trap for
 11 themselves if one would want to say that.

12 MS LE ROUX: And because of this risk of
 13 violence, with a tactical option, that's why you kept it as
 14 the last resort, correct?

15 COLONEL SCOTT: Yes. I think with any –
 16 sorry, but any tactical option, not just at Marikana, if we
 17 talk any policing action, the tactical option is always the
 18 last resort.

19 MS LE ROUX: Right. And then of course,
 20 keeping the tactical option only as a last resort, it is
 21 consistent with standing order 262 which requires that the
 22 use of force be minimised and that the police must always
 23 seek to de-escalate matters. I don't need to take you
 24 there, for the record it's at page 8, section 11, which is
 25 titled "execution," and it's paragraph 3(a) of standing

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1 order 262. But essentially because the goal is to minimise
 2 the use of force, and attempt to de-escalate matters a
 3 tactical option is the last resort.

4 COLONEL SCOTT: Yes, I agreed, and as I
 5 say I think that reflects the absolute principle of
 6 policing, the spirit of tolerance in essence, but when
 7 necessary, to still enforce the law and unfortunately then
 8 having to go towards a tactical option is to carry it out
 9 in the very way you have mentioned now.

10 MS LE ROUX: Right

11 COLONEL SCOTT: With the minimum force
 12 necessary to re or de-escalate back to a place of
 13 acceptability.

14 MS LE ROUX: Right. Colonel Scott, in
 15 your statement at page 27, paragraph 6.27, you set out your
 16 two conditions for when the police should move to the
 17 offensive POP tactical option. The first is if the
 18 strikers escalated the threat of violence and destruction
 19 by mobilising as a group to move to a predetermined target,
 20 possibly Lonmin Mine property or towards employees who were
 21 refusing to participate in the striker, and secondly, the
 22 other alternative which could dictate police action would
 23 be if all other options resolve the situation without
 24 force, were exhausted, and there was no other means to
 25 restore order to the area, but to bring the strikers back

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1 in line with the legal requirements of lawful protest. For
 2 the record, this is covered in Mr White's statement page
 3 76, section 6.5.5 but what I'd like to do is explore with
 4 you whether you think the two conditions that you set were
 5 met, to move to the tactical option.

6 So in your statement, at page 79, paragraph 12.1
 7 you were recounting the 13:30 JOCOM meeting and you say
 8 there, "Major-General Annandale chaired the meeting and
 9 said the decision had been taken for the police to move to
 10 a phase 3 deployment. The reasons given were that the
 11 threat had escalated and the situation was volatile and
 12 needed to be resolved with the phase 3 strategy," and then
 13 if I could ask you to turn over to page 81, paragraph 13.2,
 14 in the second sentence you say, "I recall starting by
 15 explaining that a special JOCOM meeting was held and that
 16 we had been told to move to phase 3." So those two
 17 references seem to indicate, I think you have testified
 18 about this, you were simply informed that you had to move
 19 to phase 3, you were told that this needed to happen. At
 20 any stage, were you asked whether you thought your
 21 conditions that you had set for the move to phase 3 had
 22 been met?

23 COLONEL SCOTT: No, I wasn't asked. But
 24 I am also not sure that I had mentioned those, obviously
 25 being a lower rank, to a senior officer, that this is what

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1 I feel, please you know, comply with them, before you make
 2 your decision. I wouldn't have done that either, out of
 3 respect for the senior decision-makers, but no, I wasn't
 4 asked.

5 MS LE ROUX: But did you consider when
 6 you were sitting at the 13:30 JOCOM on the 16th of August,
 7 did you think that there had been escalation in the threat
 8 of violence and destruction and that the group was moving
 9 to a predetermined target? Did you think that was
 10 happening?

11 COLONEL SCOTT: No, they weren't mobile,
 12 that we know, and that I was also aware of them. I had
 13 picked up through the day whether it be by – it's difficult
 14 to put my finger on it now but maybe through the radio
 15 that's continually, you know the operational members are
 16 talking over the radio but it did sound like the atmosphere
 17 or the attitude was volatile. Just the fact that they
 18 hadn't, they'd chosen not to lay down arms, or for that
 19 matter and to come back to the koppie that day, was already
 20 a problem for the police, so – but I am just trying to go
 21 on, on what I can recall or the gut feeling I had at the
 22 time was that things were escalating, so I kind of, when
 23 they said it's time to go to phase 3, the threat is
 24 escalating, that made sense to me, when they said so, and I
 25 could also foresee that if dialogue had ended, we didn't

<p style="text-align: right;">Page 15155</p> <p>1 know what would happen that night, whether there would be a 2 similar reaction to what has happened in Impala Platinum or 3 whether mine property would have been destroyed that night 4 and innocent individuals attacked and so on, so I wasn't 5 aware fully of the decision-making process as to why the 6 decision was taken go to the tactical option but as I say 7 in my intuition if one would, as a policeman, it made sense 8 to me at the time that something needed to happen because 9 we'd left it, we didn't know and anticipate, and by the 10 next morning we could have had a real situation of anarchy 11 on hand that we would have been trying to deal with and not 12 necessarily with everybody back at the koppie, but split in 13 different directions causing violence and destruction 14 around the mine.</p> <p>15 MS LE ROUX: Colonel Scott, I don't – 16 this has been traversed by the evidence leaders, so I don't 17 want to spend too much longer on it, but just to return to 18 my question, the first condition you set which was that the 19 group begins to mobilise to a predetermined target 20 escalating the threat for violence and destruction, that 21 had not occurred, correct?</p> <p>22 COLONEL SCOTT: It had not occurred, yes.</p> <p>23 MS LE ROUX: Turning then to your –</p> <p>24 CHAIRPERSON: The other point you make at 25 the same sentence, is the possibility of the strikers</p>	<p style="text-align: right;">Page 15157</p> <p>1 I – if I recall at the time, I did, somebody had mentioned 2 that, I think it was about 27 000 employees were on 3 Lonmin's personnel strength, and obviously the deduction 4 that only about 3 000 of those were positioned at the 5 koppie, meant that there were probably 20 000 plus still 6 trying to keep the mine afloat or running.</p> <p>7 [12:38] CHAIRPERSON: They were RDOs, you see. 8 And unless you had rock drill operators drilling the rocks, 9 you didn't have any ore being produced. So obviously ore 10 that had been drilled from the rocks before the strike 11 started could be dealt with. But if rock drill operators – 12 that's my understanding, if it's wrong I'll be corrected 13 but if the rock drill operators are on strike then there's 14 not much else that can go on, on an onward basis. That's 15 why the mine was losing so much money every day because 16 there was no production.</p> <p>17 COLONEL SCOTT: Ja.</p> <p>18 CHAIRPERSON: So anyway the question, the 19 issue that interests me, but if you can't help me I'll have 20 to ask someone else who can, is to whether from a practical 21 point of view the intention of the strikers to enforce 22 their unprotected strike was not in fact being achieved 23 through a combination of circumstances.</p> <p>24 COLONEL SCOTT: I can't answer that, 25 Chairperson, I don't actually know, but I thought that</p>
<p style="text-align: right;">Page 15156</p> <p>1 mobilising towards employees who were refusing to 2 participate in the strike. Now as far as you knew, was the 3 mine operating at the time?</p> <p>4 COLONEL SCOTT: As far as I knew, they 5 were, Chairperson, specifically the BMR smelter and that's 6 also one of the reasons that I positioned the police as 7 forward holding area 1 there, was because of the knowledge 8 that I think that was still ongoing and that would be a key 9 point actually, and possibly the strikers knew that to be 10 one of the key points on the mine which still caused the 11 mine to –</p> <p>12 CHAIRPERSON: There was some evidence 13 that there was no smoke coming from the smelter because 14 there was no ore being mined. I won't go into that with 15 you now, the shafts were closed, weren't they? Or don't 16 you know?</p> <p>17 COLONEL SCOTT: I don't know that 18 Chairperson. And insofar as the activities of the strikers 19 or some of them, appear to have been directed to enforcing 20 the unprotected strike by violence if necessary, 21 intimidation and violence. If large sections of the mine 22 were not operational, then effectively the unprotected 23 strike was in place. That's my impression, I don't know 24 how accurate that is, but are you able to comment at all?</p> <p>25 COLONEL SCOTT: Chairperson, I think what</p>	<p style="text-align: right;">Page 15158</p> <p>1 there were still maybe further away shafts linked to the 2 mine that were still running.</p> <p>3 CHAIRPERSON: You may be right but I 4 think if there weren't any rock drill operators working 5 then there wasn't much being done in the shaft. Anyway 6 that's a matter which presumably will become clear when the 7 Lonmin witnesses testify.</p> <p>8 MS LE ROUX: Colonel Scott, turning to 9 your second condition that you record in paragraph 6.27, 10 did you believe that all other options to resolve the 11 situation without force had been exhausted?</p> <p>12 COLONEL SCOTT: Well I mean there's 13 always other tactical options as we know, but that dialogue 14 had come to an end that I knew of. It had seemed that 15 there was no longer dialogue and as I say I wasn't aware of 16 I think Bishop Sekota or any of that happening. I was just 17 aware that the –</p> <p>18 CHAIRPERSON: Bishop Seoka, Sekota is 19 somebody else, so it's Bishop Seoka.</p> <p>20 COLONEL SCOTT: - but I was just aware of 21 the police dialogue and then the dialogue with the unions 22 which had all, to my understanding fallen short or fallen 23 apart.</p> <p>24 MS LE ROUX: Were you aware that Mr 25 Mathunjwa was still to report back on his attempts to end</p>

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1 the occupation of the koppie?
 2 COLONEL SCOTT: No.
 3 MS LE ROUX: Why was it not an option to
 4 just maintain the stage 2 deployment, in your view?
 5 COLONEL SCOTT: Well as I stated earlier,
 6 when we were told that this needs to go to a tactical
 7 option I had taken it in good faith as well that
 8 discussions had been taken at a high level and these
 9 reasonings had been done which I'm sure they were. And
 10 it's considering the remainder of the people around
 11 Marikana and as I mentioned now to the Chairperson 27 odd
 12 thousand people there and only a minority of that actually
 13 participating in a strike what would happen to the
 14 remainder? I thought that they were actually still working
 15 to some degree. And I was aware that there were
 16 individuals that were being targeted and my perception that
 17 if we'd allowed it to continue overnight is that by the
 18 next morning we would have had a relatively serious
 19 situation of destruction and violence if not death going on
 20 in order to force the mine's hand. As again, as I say
 21 which is apparently what happened at Impala Platinum to
 22 concede to the demands of the strikers.
 23 MS LE ROUX: Colonel Scott, there had
 24 been some discussion of an early morning tactical option.
 25 COLONEL SCOTT: Yes.

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1 MS LE ROUX: And given that people had
 2 left the koppie the night of the 14th, left it on the night
 3 of the 15th was there any reason for you to think that they
 4 wouldn't leave on the night of the 16th and why couldn't you
 5 have done a tactical option the morning of the 17th?
 6 CHAIRPERSON: Two questions in one. I
 7 suggest you break the question down. Double questions are
 8 never helpful.
 9 MS LE ROUX: Thank you, Chair. Colonel
 10 Scott, did you have any knowledge or understanding as to
 11 why the night of the 16th would be different to the night of
 12 the 14th or the 15th where people left the koppie?
 13 COLONEL SCOTT: Well on the night of the
 14 13th for that matter as I say , on the morning of the 14th
 15 we were aware that there were people there which is what
 16 initiated that strategy. It wasn't followed up on to do
 17 the reconnaissance thereof due to the dialogue being in
 18 place by the morning of the – the Wednesday morning, the
 19 15th. And again and I'm not sure if there was some issue
 20 with the helicopter flights either, but I know that the
 21 police choppers refused to fly until it was light. Whereas
 22 initially the Lonmin chopper was flying for us in the very
 23 first light of the day which was beneficial to us because
 24 that is a time that we would want to have started moving
 25 into an operation like that. The longer you leave it the

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1 more people arrive. So I don't recall us having the
 2 ability at that time to do the early morning
 3 reconnaissance, however, we do know that the crowds started
 4 approaching according to our helicopters I think which flew
 5 in at about half past seven, quarter to eight. They would
 6 fly over the reconnaissance flight first and then take some
 7 photos, come to the JOC show us what size the crowd was and
 8 so on. But it was never a consideration for the Wednesday
 9 and the Thursday morning due to the fact that, that's the
 10 15th and 16th now, due to the dialogue, wanting to, in the
 11 spirit and dialogue and negotiation, not wanting to break
 12 that trust that the police had hopefully built. But for
 13 the morning of the 17th, as I say there are personal reasons
 14 that I thought that maybe we had got to the place where
 15 this was supposed to be a surprise strategy. That our
 16 surprise was no longer really going to be that effective
 17 because surely the longer we go on the more the striking
 18 employees are going to understand that if they continue at
 19 some stage the police has to intervene. And that to then
 20 move in they had time to possibly witness our razor wire
 21 cart at forward holding area 1 already etcetera. So to me
 22 the strategy became less feasible as we actually moved
 23 further down into the operation. I'm not saying that it
 24 couldn't happen but it may have been something that when we
 25 decided on it or spoke about it in the JOC which we didn't,

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1 but if we did these are the type of points that would have
 2 come up. And it would have – but I can't say to why it
 3 never happened the 17th. As I say the decisions were taken
 4 on the 16th to go tactical and for that matter I didn't know
 5 who was at that stage staying on the koppie on the night of
 6 the 16th. But it was mentioned on the night of the 15th
 7 that the police should please leave the people at the
 8 koppie alone. They wanted to deliberate on their way
 9 forward for the next day and we should not bother them that
 10 night. So to me that still meant that there was someone on
 11 the koppie that night or in that environment of the koppie.
 12 MS LE ROUX: Colonel Scott, just to
 13 return to the question. It's not possible to say that your
 14 second condition was not met, sorry let me rephrase that so
 15 that it's clear. At the 1:30 JOCCOM there was no
 16 information that indicated that your second condition to
 17 move to tactical had been met. There was potential, other
 18 contingencies that could have played in, correct?
 19 COLONEL SCOTT: There are, but I think,
 20 as I was saying it and that time as well that feeling of it
 21 becoming volatile and something needs to happen, the police
 22 need to intervene is the feeling I got, what was being
 23 portrayed. So because of that I didn't particularly
 24 question, it was simply a matter of accepting that the
 25 decision have been made and let's go ahead as best as we

<p style="text-align: right;">Page 15163</p> <p>1 can to disperse the crowd.</p> <p>2 MS LE ROUX: Colonel Scott, I'd now like</p> <p>3 to move onto your planning process. And let me start at</p> <p>4 page 67 in Mr White's final statement. Paragraph 6.4.4.</p> <p>5 Colonel Scott, I'm actually going to add this to your</p> <p>6 homework for the lunch adjournment if I can because what</p> <p>7 I'd like you to do is read Mr White from 6.4.4 through to</p> <p>8 6.4.6 on page 69.</p> <p>9 CHAIRPERSON: How long do you want the</p> <p>10 lunch adjournment to be for?</p> <p>11 MS LE ROUX: It's only three pages,</p> <p>12 Chair. And again the question is whether there's anything</p> <p>13 factually inaccurate in these sections.</p> <p>14 COLONEL SCOTT: Just 6.4.4 till?</p> <p>15 MS LE ROUX: To 6.4.6 which ends at the</p> <p>16 top of page 70. So page 67 to page 70 and I'll return to</p> <p>17 that after the lunch break. If I could ask you to then</p> <p>18 turn to page 71 of Mr White, paragraph 6.4.10 in</p> <p>19 particular. This is where Mr White deals with the problem</p> <p>20 that arises from not having a written operational plan and</p> <p>21 the first aspect of Mr White's criticisms that I'd like to</p> <p>22 address with you are what he describes as the challenge</p> <p>23 process. Now is it factually correct that at the 1:30 JOC</p> <p>24 you were told that phase 3 was being implemented. It</p> <p>25 lasted for 30 minutes and in that 30 minutes there was no</p>	<p style="text-align: right;">Page 15165</p> <p>1 CHAIRPERSON: The criticism by Mr White</p> <p>2 you see, at page 72 sub PARA 2 or Roman 2, was there was no</p> <p>3 written plan for the implementation of stage 3. You showed</p> <p>4 them a Google slide, you then gave oral explanation, but</p> <p>5 there was no written plan. That's correct isn't it?</p> <p>6 COLONEL SCOTT: That is correct,</p> <p>7 Chairperson.</p> <p>8 MS LE ROUX: Thank you, Chair. And then</p> <p>9 thirdly Mr White states the JOCCOM meeting took only 30</p> <p>10 minutes from beginning to end which was hardly enough time</p> <p>11 for Lieutenant-Colonel Scott to brief on the plan, let</p> <p>12 alone allow other commanders to challenge it. Do you agree</p> <p>13 with that that 30 minutes was to short a period of time for</p> <p>14 you to brief on it, let alone be challenged on it.</p> <p>15 COLONEL SCOTT: Well the 1:30 JOCCOM took</p> <p>16 its pace. If it had needed to go on longer it would have</p> <p>17 gone on longer, but I'm not sure. It was only half an</p> <p>18 hour, but if it was half an hour, 40 minutes that's when it</p> <p>19 ended. We were not restricted at that JOCCOM for time, but</p> <p>20 in essence maybe what's been put forward is that we had a</p> <p>21 half an hour, do everything quickly, hurry he needs to go.</p> <p>22 I think the decision was only taken at the JOCCOM after the</p> <p>23 briefing on the phase 3. Okay well in that case we want to</p> <p>24 start at half past three, 15:30 that afternoon. So what</p> <p>25 I'm trying to say it was kind of an open ended session, it</p>
<p style="text-align: right;">Page 15164</p> <p>1 real challenge to the plan that you provided in the JOC</p> <p>2 because it took essentially the whole JOC for you – the</p> <p>3 entirety of that meeting for you to explain your plan. Was</p> <p>4 there challenge to your plan?</p> <p>5 COLONEL SCOTT: None that I can recall,</p> <p>6 no.</p> <p>7 MS LE ROUX: So then you'll agree with Mr</p> <p>8 White's three points which appear at the top of page 72 of</p> <p>9 his statement, the first of which is that those present at</p> <p>10 the JOCCOM were not asked whether to implement stage 3,</p> <p>11 they were only asked how to do it. We've covered that</p> <p>12 already today. Secondly that they were briefed using the</p> <p>13 stage 2 plan because at that stage there wasn't yet a stage</p> <p>14 3 written plan of any description, is that correct?</p> <p>15 COLONEL SCOTT: At what stage of the day?</p> <p>16 MS LE ROUX: This is your 1:30 JOCCOM.</p> <p>17 COLONEL SCOTT: No, no, they were shown</p> <p>18 on Google map and it's the same Google map, Google Earth</p> <p>19 map now, that was handed out to the commanders earlier.</p> <p>20 But in showing that I simply went and showed them and</p> <p>21 depicted where the forces would go, where they would line</p> <p>22 up, what the strategy would be to sweep through and</p> <p>23 disperse and so on. So it wasn't on a stage 2 plan, it was</p> <p>24 just the map utilised as a visual aid and then the stage 3</p> <p>25 explained to them on –</p>	<p style="text-align: right;">Page 15166</p> <p>1 just came to that point where it had ended by that time.</p> <p>2 So to say that the senior officers had no time, I don't</p> <p>3 know if that's accurate. They would have been analysing</p> <p>4 what I was saying as I was saying it and going through it,</p> <p>5 so obviously they could have made notes if there was a</p> <p>6 discrepancy and then brought that up.</p> <p>7 MS LE ROUX: Colonel Scott, if I could</p> <p>8 ask you to go to page 64 of Mr White's statement, paragraph</p> <p>9 6.3.8. It continues on page 65. Chair this is where Mr</p> <p>10 White sets out the challenge process that he's familiar</p> <p>11 with when he presents operational plans where the use of</p> <p>12 higher levels of force are likely. 6.3.8 commencing on</p> <p>13 page 64. Mr White states "In my experience a plan for a</p> <p>14 major operation with the use of higher levels of force was</p> <p>15 likely would have been subject to the most rigorous levels</p> <p>16 of scrutiny. Planning would begin with the overall</p> <p>17 commander referred to in the UK as the Gold Commander</p> <p>18 setting the strategy for the event. The purpose of the</p> <p>19 strategy is to establish a set of strategic objectives</p> <p>20 relevant to the knowledge of the situation and an analysis</p> <p>21 of the threats and risks involved. The Gold Commander owns</p> <p>22 the strategy and is therefore accountable for its</p> <p>23 objectives and any action taken in response to the specific</p> <p>24 threat." So, Colonel Scott, to map the cross you would be</p> <p>25 the Gold Commander.</p>

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1 CHAIRPERSON: I think you're looking at
 2 silver.
 3 MS LE ROUX: I'm incorrect.
 4 CHAIRPERSON: I think you're looking at
 5 silver at the moment.
 6 MS LE ROUX: Yes, I'm incorrect. "So the
 7 strategy is then to indentifying anticipated outcomes which
 8 are preferred acceptable or unacceptable and it should
 9 identify contingencies to resolve unacceptable outcomes
 10 that might arise. The tactical commander, the Silver
 11 Commander is required to develop and present the plan to
 12 the strategic commander and members of the strategic
 13 planning group. For an event of this nature the group
 14 would have been likely to include the force lawyer. The
 15 plan would have been required to contain a number of
 16 scenarios each of which would have been explained in detail
 17 and challenged on issues of necessity and proportionality
 18 regarding the use of force. The tactical plan would have
 19 been developed by a planning group which have included
 20 technical advisors who could provide specialist input.
 21 When I presented plans in these circumstances the plan has
 22 been subject to extensive examination and challenge to
 23 ensure that as far as possible all eventualities have been
 24 considered."
 25 CHAIRPERSON: Can I interpose by saying I

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1 was wrong when I said that you were the silver, in fact the
 2 silver was Calitz who wasn't even there. Am I right?
 3 COLONEL SCOTT: That's correct. If I can
 4 just put that into perspective, that's why I say it was
 5 kind of a strange setting having an overall commander and
 6 the operational commander and then a JOCCOM and a
 7 strategist and so it didn't quite – it was in unprecedented
 8 situation which in the essence brought together a strategy
 9 of planning that wasn't the norm. But in saying this we
 10 were dealing with a spontaneous and fluid event and I know
 11 that Mr White is actually very correct in what he's saying,
 12 but you need the time to do what he's saying which was not
 13 our luxury at –
 14 MS LE ROUX: And, Colonel Scott, the
 15 force of Mr White's point is not "did you follow this
 16 precise procedure?" Of course, you know it doesn't
 17 translate into South African – into South African policing
 18 structures, but are you familiar with any similar type of
 19 challenge process in planning where a plan is presented to
 20 a group and there's a specific part of the process where it
 21 must be challenged, pulled apart, examined, analysed?
 22 COLONEL SCOTT: Well yes and we normally
 23 call it, well the proverbial term again, the devil's
 24 advocate. We would have somebody, but I'm talking again
 25 maybe just within my own environment, being 20 years in

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1 that environment where we do produce plans. The members in
 2 essence would sit that you are briefing initially whether
 3 it be the command group first before we brief it to the
 4 members below and they would play devil's advocate on that.
 5 Because many a time if I set up the operational plan I will
 6 brief my operational officers and they would need to bring
 7 their tactical plans. But in briefing them on what my
 8 operational strategy was they would highlight it and issues
 9 and so on before they went away to go and build their
 10 tactical plans now to compliment what I've asked them
 11 operationally. And again, as I say, it's a process I would
 12 follow in certain other types of operations. It wasn't one
 13 that was necessarily followed here. This is why the JOCCOM
 14 took that role of me presenting a strategy to them with
 15 them having the ability to in that JOCCOM, in that briefing
 16 to say but hang on you haven't considered this. Or you
 17 should do that, or I feel this is a problem or –
 18 MS LE ROUX: And in your experience where
 19 you had the devil's advocate approach was someone
 20 specifically tasked with being devil's advocate or was it
 21 just in the course of that briefing people would
 22 spontaneously raise concerns with the plan?
 23 COLONEL SCOTT: Well I must admit if I am
 24 normally sitting in a planning briefing I automatically
 25 assume that role. I'm normally the planner's worst

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1 nightmare, but in other plans that I present and it's just
 2 customary in the unit I represent that the members take up
 3 that role anyway, specifically the more experienced and
 4 seasoned members. They're not appointed as such, no,
 5 unless I actually do that role and there are times that I
 6 do, do that, when I'm planning for bigger operations which
 7 are further in advance where I would actually ask somebody
 8 after a planning to take my plan specifically and to go
 9 through it to tell me – in effect it's called the Red Team
 10 Role. I actually allow them to become the terrorist or the
 11 opponent and they need to see how I've planned and how they
 12 would challenge that plan from an opponent's point of view.
 13 And then I would see whether I countered their strategy to
 14 disrupt my plan effectively enough with my contingency
 15 plans.
 16 [12:58] But as I say that's in a process where I would be
 17 planning a major event or a major operation, where I have
 18 the time and the luxury to do that. But in essence,
 19 otherwise it's an accepted norm again, within the circles
 20 that I am in that this gets done and challenged as you
 21 brief the more senior and experienced members. I accept
 22 that.
 23 MS LE ROUX: Okay, just so I am clear,
 24 the devil's advocate role would happen during the course of
 25 the planning but then also at briefings, it would happen

<p style="text-align: right;">Page 15171</p> <p>1 spontaneously.</p> <p>2 COLONEL SCOTT: Well, if I present an</p> <p>3 operational concept initially for an approval, that would</p> <p>4 normally go upwards. You would find that senior officers</p> <p>5 automatically would do that. They would look at your</p> <p>6 operational concept because you would try to provide an</p> <p>7 operational concept before you go into the detail of any</p> <p>8 plan. And it is customary in the courses that you do that</p> <p>9 you will provide more than one operational concept. So</p> <p>10 immediately they have got more than one option to look at</p> <p>11 and to possibly tell you to combine elements of all three,</p> <p>12 or to choose one of the three which you will then go into</p> <p>13 the detail planning of. And then of course the devil's</p> <p>14 advocate role happens at the lower level because at</p> <p>15 strategic level they are looking at your operational</p> <p>16 concept, whereas at the tactical level your members want to</p> <p>17 know that what you have planned for them is ensuring their</p> <p>18 safety as well, and that you covered all bases for the</p> <p>19 safety of those that they need to go out to save, protect,</p> <p>20 whatever the case may be.</p> <p>21 MS LE ROUX: But at the 1:30 JOCCOM no</p> <p>22 one played a devil's advocate role?</p> <p>23 COLONEL SCOTT: Well, I would expect that</p> <p>24 the senior officer sitting there were being briefed on the</p> <p>25 plan. And as I say the opportunity was there for them, but</p>	<p style="text-align: right;">Page 15173</p> <p>1 CHAIRPERSON: If you need longer please</p> <p>2 tell me, because obviously your questioning on these</p> <p>3 matters you have been asked to read is important, and so I</p> <p>4 don't want to put you at a disadvantage or deal with you in</p> <p>5 anyway that is unfair.</p> <p>6 COLONEL SCOTT: No, Chair, I think 45</p> <p>7 minutes is fine.</p> <p>8 CHAIRPERSON: Well, we will take the</p> <p>9 adjournment to quarter to 2, if for some reason you are not</p> <p>10 ready please let me know.</p> <p>11 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>12 [13:49] CHAIRPERSON: The Commission resumes.</p> <p>13 Colonel, you're still under oath.</p> <p>14 DUNCAN GEORGE SCOTT: s.u.o.</p> <p>15 CHAIRPERSON: Before Ms Le Roux asks her</p> <p>16 next question, I want to ask you this; would you say,</p> <p>17 looking at the matter with hindsight, that it would have</p> <p>18 been better if you'd been able to get Brigadier Calitz and</p> <p>19 some of the other commanders from the field into the JOC</p> <p>20 when the plan that you outlined was duly put before the</p> <p>21 JOC?</p> <p>22 COLONEL SCOTT: I'm presuming the 13:30</p> <p>23 meeting?</p> <p>24 CHAIRPERSON: I'm talking about the 13:30</p> <p>25 meeting.</p>
<p style="text-align: right;">Page 15172</p> <p>1 there were no inputs forthcoming, as I have mentioned.</p> <p>2 CHAIRPERSON: Ms Le Roux, when it's</p> <p>3 convenient for you, can we take the lunch adjournment?</p> <p>4 MS LE ROUX: Yes, sure, I just have one</p> <p>5 more question on this.</p> <p>6 CHAIRPERSON: Alright, you can have two.</p> <p>7 MS LE ROUX: Colonel Scott, do you think</p> <p>8 that the introduction of a formal challenge process would</p> <p>9 improve operational planning? Even in the fluid situation</p> <p>10 your describe. That a requirement to have a challenge</p> <p>11 would improve the planning?</p> <p>12 COLONEL SCOTT: Again, it makes total</p> <p>13 sense that something like that would improve any plan,</p> <p>14 because as a planner you are not necessarily considering</p> <p>15 something and I think with wise counsel around you to maybe</p> <p>16 bring up experiences that they have had or knowledge that</p> <p>17 they may have that you are not aware of, that is why</p> <p>18 something like what you are suggesting now is pertinent and</p> <p>19 should be done in planning procedures, yes.</p> <p>20 MS LE ROUX: Thank you, Chair, we can –</p> <p>21 CHAIRPERSON: Lunch adjournment, I think</p> <p>22 until quarter to two, will that give you long enough to a,</p> <p>23 have lunch, and b, do the homework you have been asked to</p> <p>24 do?</p> <p>25 COLONEL SCOTT: Yes.</p>	<p style="text-align: right;">Page 15174</p> <p>1 COLONEL SCOTT: Yes, it would obviously,</p> <p>2 having the part of the plan being Public Order Policing</p> <p>3 orientated to have them there if there would be an input</p> <p>4 for that, it makes sense, Chairperson.</p> <p>5 CHAIRPERSON: Was there a reason why they</p> <p>6 weren't invited back? Was there a lack of time, or what</p> <p>7 was the problem? Or was it just not thought of?</p> <p>8 COLONEL SCOTT: Chair, I actually don't</p> <p>9 know. As I say, I've tried to recount that as well and I</p> <p>10 know when I was told to come in for that meeting it was</p> <p>11 probably 10 minutes or so before the meeting, because I can</p> <p>12 see via my SMS'es I started contacting the helicopter.</p> <p>13 Obviously General Annandale had said to me, listen, we've</p> <p>14 got to go to stage 3, or phase 3, we're going to go</p> <p>15 tactical, and knowing that I knew that we needed the</p> <p>16 helicopter. So I tried to do that, but it's – there was no</p> <p>17 pre-warning to it. So I've got a feeling that they decided</p> <p>18 listen, we need to meet now, we need to quickly thrash this</p> <p>19 out so that we can get going.</p> <p>20 CHAIRPERSON: You can't tell us the</p> <p>21 reason, if there was one?</p> <p>22 COLONEL SCOTT: No.</p> <p>23 CHAIRPERSON: Ja. Now another point that</p> <p>24 was raised was the question of there were no objections</p> <p>25 raised by those present. There was no-one playing the role</p>

<p style="text-align: right;">Page 15175</p> <p>1 of devil's advocate. Again looking at it with hindsight, 2 was there anything – I know you're the wrong person to ask, 3 but I'll ask you all the same. Was there anything that a 4 devil's advocate really could have raised, regard being had 5 to the fact that we understand that the operation had to 6 take place that afternoon, so there wasn't much room for 7 manoeuvre. I can understand arguments about the timing and 8 it should have been the next day and various other things, 9 but none of those points were available to be raised, as I 10 see it, prima facie. So given the fact that you were 11 ordered to move to the tactical option that afternoon, and 12 you were giving sort of the broad outline of the plan, the 13 detailed briefing part you in fact only gave to the 14 commanders in the field with the aid of your laptop, but as 15 far as the broad outline that you gave, could anyone had 16 done any better, regard being had to the circumstances in 17 which you found yourself?</p> <p>18 COLONEL SCOTT: Chairperson, no. I've 19 also obviously gone back and had a look at what I maybe 20 would have done differently, and the only thing I would 21 have thought now looking in hindsight is to have taken 22 Brigadier Calitz and placed him into a chopper as well so 23 that he would have had a better view of what was going on. 24 But what I'd proposed there at that 1:30 meeting, 25 considering the fact that we must go now, we must do</p>	<p style="text-align: right;">Page 15177</p> <p>1 arises in the context of an order from above that you had 2 to go to the tactical phase that afternoon? 3 COLONEL SCOTT: Yes. 4 CHAIRPERSON: Yes, thank you. 5 COLONEL SCOTT: And then with respect to 6 also Adv Chaskalson's view, it is so that with more time I 7 think as well that one would have had more time to go into 8 the depth of the risk analysis and analyse the terrain a 9 bit better, understanding that there, you know, koppie 3 10 could become an issue, but there just wasn't that amount of 11 time available to go that deep into it. And as I say, my 12 time then was, the rationale was that I didn't know what 13 the strikers were going to do per se and I needed that 14 police line to stop, to reorganise themselves, to 15 reconsider now what the action would be thereafter before 16 going forward then with their disarming and arresting 17 action. So in essence I left that part of the operation up 18 to those ground commanders to do, which I think they're 19 quite capable of doing. 20 CHAIRPERSON: Thank you. There may have 21 been better proposals, but I'm just asking you whether you 22 can think of any at the moment, anything a devil's advocate 23 could have provided, and you've given the answer. Thank 24 you. Yes, Ms Le Roux? 25 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):</p>
<p style="text-align: right;">Page 15176</p> <p>1 something now, I still can't think that I would have done 2 something else because the question can be raised, why not 3 just disperse them into Nkaneng, and simply the reasons are 4 there that I've mentioned in my statement and that we've 5 gone over, but I still, as I say, foresaw that any approach 6 to that militant group was not going to result in them 7 dispersing per se. They were going to take a stand or go 8 to the koppies or, I was hoping, disperse into the open 9 field simply to regroup, with the water cannon spraying 10 them, you know, violently with water so that they couldn't 11 stay in a tight group. But I can't see any rationale 12 behind that, considering that we needed to disarm and not 13 simply disperse and cause possible rioting and destruction 14 into the Nkaneng village, as I was saying. So with regard 15 to the, what I'd presented then, I would probably still 16 suggest the same thing now. In fact I have -</p> <p>17 CHAIRPERSON: Given that, those 18 situation – 19 COLONEL SCOTT: Given the same 20 situation – 21 CHAIRPERSON: Given the situation that 22 you had to act that afternoon. 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: Ja. There are other 25 possibilities that could be debated, but none of those</p>	<p style="text-align: right;">Page 15178</p> <p>1 Thank you, Chair. Chair, for the record, Colonel Scott, I 2 don't think I've given you this to read, so we can always 3 come back to it, but Mr White at paragraph 6.5.12, which 4 commences on page 79 all the way through to 6.5.32, sets 5 out the various things that he thinks a devil's advocate 6 could have raised even under the circumstances in play on 7 the 16th. But we don't need to do that exercise now. What 8 I'd like to do though is ask you to turn – well, let me 9 first check on your homework through the lunch break. If 10 we could start with, from page 67, paragraph 6.4.4, to page 11 69, 6.4.6, was there anything there that you wanted to 12 correct or change from a factual perspective? 13 COLONEL SCOTT: Only on page 69, which is 14 6.4.6(e) – 15 MS LE ROUX: Yes. 16 COLONEL SCOTT: And that was just to say 17 that that briefing in the sentence which begins with 18 "Lieutenant-Colonel Scott briefed the JOCCOM on how to 19 implement the option using stage 2 plan conducted that 20 morning," that just needs to be clarified as I briefed the 21 JOCCOM on the Google Earth stage 2. It, there was no 22 writing involved on that. It was essentially the handout 23 I'd given to the officers when they left to go into the 24 field that morning. 25 MS LE ROUX: Right.</p>

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1 COLONEL SCOTT: Otherwise I find that all
 2 in order.
 3 MS LE ROUX: And then the second section
 4 you were looking at started at page 118, paragraph 7.6.7
 5 through to 120, 7.6.11. Was there anything in that section
 6 that you wanted to correct?
 7 COLONEL SCOTT: Just a concern here or
 8 there that I don't know if I can be the person to agree in
 9 essence. If you take 7.6.7, just the last sentence says
 10 "Further, the number of live rounds fired appears
 11 disproportionate to the threat encountered" –
 12 MS LE ROUX: Right, Colonel, stop.
 13 That's obviously Mr White's conclusion.
 14 COLONEL SCOTT: Yes.
 15 MS LE ROUX: Your review is just for the
 16 factual accuracy of what's in those sections.
 17 COLONEL SCOTT: Okay, and then 7.6.8,
 18 "General Mpmembe has confirmed that there was no-one
 19 coordinating the actions at the various units at scene 2,"
 20 it may have been a very, or considered to be a poor
 21 attempt, but I know Colonel Vermaak was trying to
 22 coordinate the forces that took place, took part in the
 23 dispersion action further at scene 2. He was driving the
 24 two water cannons to the north and southern side and
 25 certain armoured vehicles to go with them and so on. I'm

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1 sure he wasn't aware of the forces that were arriving from
 2 the west and from the south, so, but he was making an
 3 attempt. So just to say that no-one was coordinating I
 4 don't think is purely accurate. There was an attempt made
 5 to –
 6 MS LE ROUX: Any other factual
 7 corrections through to paragraph 7.6.11?
 8 COLONEL SCOTT: I think I've testified to
 9 this before on page 119, B2, if we see, it's Mr White's
 10 input with regard – if I would read, "I would have expected
 11 that such a report of live fire in an operation would have
 12 immediately been followed asking," so obviously that's the
 13 way that they would deal with it in Britain. As I've
 14 testified, and in the environment that I do work in, in the
 15 task force, we would allow the shooters, if they were
 16 shooting, to give the feedback initially so that the radio
 17 channel not get clogged. In other words radio silence
 18 would be initiated on that shooting. Alternatively, if
 19 they could identify the shooter, they would be the one also
 20 – and if nothing is forthcoming within five or so seconds,
 21 then the operational commander or team leader would fill
 22 that space and ask for a situation report, and I agree with
 23 the rest of what he's saying. Is somebody able to see the
 24 gunman, because obviously then what you would want to do is
 25 direct your more specialised forces to that environment of

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1 where there is a possibly lethal threat to the rest of the
 2 police officers, so that your more professional forces will
 3 be able to deal with that. And then I think there's just a
 4 couple of, 7.6.11, with regard to around the koppie, he is
 5 mentioning that, you know, and maybe 7.6.10, there's a lot
 6 of communication but not much going on. This is again, I
 7 think as the Commission and myself being apart from those
 8 members that were on ground, we were not sure of what
 9 verbal commanding was going on between commanders on
 10 ground. I would assume that Colonel Gaffley for instance
 11 didn't know of Captain Kidd, so I would assume that but I
 12 would also then realise then I think he did speak to some
 13 of the National Intervention Unit members coming through,
 14 so to some degree there is communication and coordinating
 15 taking place in the smaller pockets of forces around the
 16 koppie, but not necessarily from a global perspective where
 17 somebody is watching it all and coordinating it all.
 18 MS LE ROUX: So Colonel Scott, taking you
 19 back to the first section I asked you to read commencing on
 20 page 67, which addresses the contemporaneous planning
 21 documentation, you would then agree with Mr White on page
 22 68 at paragraph 6.4.5 where he says that, "The
 23 contemporaneous planning documents do not contain anything
 24 that could be described as a comprehensive written
 25 operational plan for the stage 3 disperse, encircle, and

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1 disarm operation, as required by Standing Order 262." You
 2 would agree with that?
 3 COLONEL SCOTT: I would agree, but if I
 4 can just maybe elaborate, I think I mentioned this
 5 yesterday as well, this is a planned tactical option and if
 6 there was time there should have been a more detailed plan
 7 written out, gone through a devil's advocate procedure, or
 8 a challenge procedure, and briefed well with the time
 9 available. Tactical forces on ground should have presented
 10 their own plans, as we know, but in essence when we do get
 11 to spontaneous operations, there is not always time to
 12 brief a force, and when you tell them I need you to
 13 disperse, the dispersal standard operating procedure is
 14 understood. They simply need the strategic guidelines on
 15 where to, what time, that type of thing, to continue with
 16 that operation. So it's maybe a little bit of a balance,
 17 but it is so that there was no detailed operational plan
 18 for phase 3 itself.
 19 MS LE ROUX: Thank you, Colonel Scott.
 20 I'm now going to turn to highlight just certain aspects of
 21 Mr White's criticism of the final stage 3 plan. For the
 22 record, section 6.5 commencing at page 73 of his statement
 23 sets out a number of criticisms, but I'd like you to focus
 24 from page 80, paragraph 6.5.14, and it runs through to
 25 paragraph 6.5.32. But we'll take them in stages, so we'll

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1 just keep it focussed on particular points of criticism,
 2 but essentially Mr White in those sections highlights three
 3 criticisms of the final plan that I'd like to spend some
 4 time on with you now.
 5 The first of these relates to the issue of
 6 positive attraction points, and the consequences of the
 7 movement of Nyala 6 in your plan. Now I understand that
 8 there's a disagreement between yourself and Mr White about
 9 what a positive attraction point, what that term means.
 10 You seem to use it differently, but that doesn't actually
 11 matter. The terminology is not important for now. What
 12 I'm interested in is am I correct that when you deployed
 13 your resources in the plan, the barbed wire in particular,
 14 you did so in a way that that deployment would discourage
 15 movement towards Nkaneng, and you hoped to encourage
 16 movement towards the open veld to the west. Is that
 17 correct?
 18 COLONEL SCOTT: That's correct.
 19 MS LE ROUX: Okay, and in your view – and
 20 I'm getting this from page 83 of your statement,
 21 specifically at paragraph 13.5.1 where you state, this is
 22 when you're briefing your commanders and you said, it's at
 23 the top of page 83, you say, "I explained that the razor
 24 wire would secondly assist the police" – this is the top of
 25 83 – "I explained that the razor wire would secondly assist

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1 the police to channelize the dispersion towards the west
 2 and away from the east, where some of the police support
 3 assets and media were waiting." Now Mr White from page 82
 4 to 84 looks at this change, looks at the deployment of the
 5 razor wire in the plan, and I'd just like to go through his
 6 factual assumptions with you, if you can just confirm those
 7 for me. So firstly Mr White is correct that the plan
 8 anticipated a period after the first phase of stage 3 where
 9 the razor wire would dog-leg towards the east, correct?
 10 COLONEL SCOTT: Yes.
 11 MS LE ROUX: And at that time the POP,
 12 NIU, STF, and TRT units would not yet be deployed to the
 13 north-west of the kraal. Is that correct?
 14 COLONEL SCOTT: That is correct.
 15 MS LE ROUX: If we could display page 84
 16 of Mr White's statement, it should assist those in the
 17 auditorium. That's the diagram indicating phase 1 of stage
 18 3. So the razor wire is deployed in the orange dog-leg,
 19 but as yet the other units have not been deployed to the
 20 north-west of the kraal. So given that there's a period of
 21 time where the razor wire will be deployed but no other
 22 forces will be shielding Nkaneng, do you agree with his
 23 conclusion that during that period of time the deployment
 24 of the razor wire would not channelize protesters to the
 25 west?

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1 COLONEL SCOTT: The channelizing it's
 2 actually talking of is once the dispersion action starts,
 3 so that the option if – or let's put it this way. If there
 4 wasn't razor wire placed out and the police had in essence
 5 still lined up from the north coming down to the south to
 6 try to disperse to the side, you would simply find that the
 7 protesters would have probably gone in both directions,
 8 east and west. So that was used as a, as the name depicts,
 9 a channelizing measure, that once the dispersion had
 10 started that they saw, because of the natural barrier, or
 11 the police-made barrier now that the only option was to
 12 move off to the open fields, that was what I was hoping was
 13 going to happen and anticipated to happen with the razor
 14 wire placed out.
 15 MS LE ROUX: But Colonel Scott, in the
 16 period of time where just the razor wire is deployed,
 17 you've just testified that the protesters are still, if
 18 they're moving off the koppie, they could well still try to
 19 come around to the east. The presence of the razor wire at
 20 that stage of the plan would not channelize them to the
 21 west.
 22 COLONEL SCOTT: No, the channelizing is
 23 to, is part of the dispersion. The phase 1, which is the
 24 drawing out of the razor wire, was simply to enhance that
 25 channelizing, but also now to put up a protective barrier

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1 so that violent actions may not come against the police,
 2 and in essence again not have to have the police retaliate
 3 against the protesters because of a natural barrier between
 4 them – a razor wire barrier, not a natural barrier.
 5 [14:09] COMMISSIONER HEMRAJ: Colonel, how much
 6 time did you estimate it would take for the units to move
 7 to the north, in your planning what you –
 8 COLONEL SCOTT: I thought that would
 9 happen quite rapidly, Commissioner. You know, once the
 10 razor wire was out and the vehicles were confirmed in
 11 position it was a matter of immediately go out. There
 12 wasn't supposed to be some long period of wait, it was a
 13 flowing operation so when you call in phase 1 is completed,
 14 it's immediately okay, initiate phase 2 and that's when the
 15 vehicles went, have driven around. So it's almost close to
 16 immediate.
 17 MS LE ROUX: But Colonel Scott, I'm
 18 correct that you – the original plan was that the razor
 19 wire would be deployed, then a warning would be given to
 20 the crowd to disperse and only once some time had been
 21 given for people to leave, would a dispersal plan be put
 22 into place. So it's not immediately upon deployment of the
 23 razor wire, there would have been a period of time after
 24 the warning for people to leave before further steps would
 25 be taken to disperse them.

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1 COLONEL SCOTT: The warning, as I stated,
 2 that was left to the operational commander at his
 3 discretion, so I can't go into when he would have taken
 4 that but I would have done that after forming up, making
 5 sure that we were placed and ready and then I would have
 6 given the warnings and given the intentions of what we
 7 wanted to do, obviously and then given the time periods and
 8 as it flows in the dispersion. So initially there will be
 9 two warnings. It was left to Brigadier Calitz to decide
 10 when he was going to and I think maybe he'll testify as to
 11 when he was going to and I was cautious not to dictate to
 12 the public order commanders because I knew that this is
 13 what they do, this is their speciality and I didn't want to
 14 tell him what to do in that essence but as I say, how I'd
 15 envisioned it was to be, was to go out, form up, warn them,
 16 wait 15 to 20 minutes, re-warn them again that the action
 17 is about to commence and then commence.
 18 MS LE ROUX: Right. Colonel Scott, could
 19 I ask you to turn to page 110 of Mr White's final statement
 20 and paragraph 7.5.6 in particular? This is where Mr White
 21 says that, "The choreography of the implementation of stage
 22 3 of the plan was shambolic" and he's dealing with the fact
 23 that the barbed wire was rolled out consecutively rather
 24 than simultaneously and that it took 9 minutes and 30
 25 seconds for the barbed wire to be rolled out and then he

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1 says, "In my experience of crowd behaviour, an action by
 2 police provoked a reaction by the crowd. It's entirely
 3 unsurprising that the crowd moved off the koppie during the
 4 9 and a half minutes but it appears that SAPS did not
 5 anticipate their move." Do you agree with that statement
 6 by Mr White?
 7 COLONEL SCOTT: Well, I planned it to
 8 happen simultaneously so – and this is why I think when the
 9 Chairperson asked earlier in the Commission, you know, the
 10 anticipation now that they were going to approach the
 11 police line, I hadn't done because I expected the razor
 12 wire to be rolled out simultaneously, not giving the
 13 protesters that much time to come towards the police. And
 14 in essence part of the contingency plan for that was to
 15 have had the public order line that was stationary as the
 16 monitoring line in support of those rolling out the razor
 17 wire as well as backup TRT teams in case it got to the
 18 place where it became violent, to life saving
 19 circumstances. So those contingencies were built in there
 20 but in my ideal of the operation it was going to happen
 21 simultaneously and happen quickly and then obviously the
 22 move out, but you're right in saying that if they had taken
 23 the option to disperse on the verbal warning of disperse,
 24 my point of view was they were to be left and I think the
 25 commanders understood that too, they were to be left. Then

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1 it would've simply been not us having to create a volatile
 2 situation or raise emotions which would've conflicted in
 3 the townships or had the fruits thereof shown there, but
 4 that would've then given us the opportunity to go over to
 5 the cordon and search operations later that night at the
 6 hostels, but the fact was that the police then were showing
 7 that we now need to end this. So it was never one of those
 8 where we were going to force the situation into ripeness,
 9 if I could put it that way. If they had dispersed on
 10 verbal, then they dispersed on verbal. That was what, how
 11 I envisioned it happening.
 12 MS LE ROUX: Colonel Scott, to go back to
 13 the start of my question, do you accept Mr White's premise
 14 that an action by police provoked a reaction by the crowd?
 15 COLONEL SCOTT: I do and again, you know,
 16 it's taking it into the classic crowd control situation.
 17 So crowds differ, as we know, but again the defensive
 18 measure which was done here was something that, in our
 19 standard operating procedures, doesn't need to be
 20 communicated for the very reason that you don't want them
 21 to understand that you're about to either isolate a key
 22 point, draw a barrier between you and them for a very
 23 strategic reason and if it did invite response, the
 24 responsible citizen should have had the response of moving
 25 away, not moving toward, which –

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1 CHAIRPERSON: You didn't have any belief that you
 2 had a congregation of responsible citizens in front of you,
 3 did you?
 4 COLONEL SCOTT: No, but I didn't
 5 anticipate necessarily – the anticipation was there but it
 6 wasn't high on my scale of probability, if I can put it
 7 that way, that they were going to come to the razor wire.
 8 I did anticipate that it could happen at points, thus the
 9 contingency plans for those Nyalas and their members.
 10 CHAIRPERSON: But to be fair to you, there were
 11 two things that you hadn't planned for, for which you can't
 12 be held responsible. The one was that the barbed wire was
 13 uncoiled sequentially and not simultaneously and you
 14 realised that if it was done sequentially – you've dealt
 15 with this with Mr Chaskalson – there would be problems that
 16 you were intending to prevent by having it done
 17 simultaneously.
 18 COLONEL SCOTT: Yes.
 19 CHAIRPERSON: And the second thing is you didn't
 20 know that the Nyala, is it Nyala 6, had been moved.
 21 COLONEL SCOTT: I was aware, I saw a
 22 photograph, Chairperson. I didn't take the decision but I
 23 was aware that it had been moved because I'd seen a
 24 photograph of the deployment on ground.
 25 CHAIRPERSON: That's before –

<p style="text-align: right;">Page 15191</p> <p>1 COLONEL SCOTT: Before the 13:30 JOCCOM. 2 CHAIRPERSON: But did you apply your mind to the 3 possible consequences of that move? 4 COLONEL SCOTT: I didn't. I didn't 5 expect the crowd as such, as a group, to stand up and move 6 in the direction it did. I did anticipate that possibly 7 happening once the physical dispersion occurred, that there 8 may be a closing of the ground on which the POP members - 9 but I never anticipated that happening at that time of the 10 operation. 11 MS LE ROUX: Chair, if we could go back 12 to page 84 of Mr White's statement in the display, which is 13 the picture of phase 1 of stage 3 of the plan. So Colonel 14 Scott, would you accept, do you agree that the razor wire 15 as it rolled out and the way that it rolled out channelled 16 the protesters towards Nkaneng and towards, around the 17 kraal rather than that they should move to the west, that 18 the act of where the razor wire was deployed could still 19 have served to canalise, to channel them towards Nkaneng 20 rather than force them to move west. 21 COMMISSIONER HEMRAJ: Ms Le Roux, hasn't 22 the witness repeatedly said that channelising was part of 23 the dispersal action? Is that question fair in the light 24 of that answer? 25 MS LE ROUX: Commissioner Hemraj, I'll -</p>	<p style="text-align: right;">Page 15193</p> <p>1 MS LE ROUX: Colonel Scott, do you agree 2 with me that the unintended consequence of the deployment 3 of razor wire was to channel people towards Nkaneng? 4 COMMISSIONER HEMRAJ: I'm afraid I still 5 have a difficulty with that question in the light of his 6 previous answers. I think you need to rephrase it. I'm 7 sorry, were you going to say something, Mr Semenya? 8 MR SEMENYA SC: Exactly. 9 CHAIRPERSON: Mr Semenya, please proceed. 10 MR SEMENYA SC: No, I was just going to 11 raise the same point, Chair. We see what we see. I don't 12 know what the opinion of this witness will even add to what 13 we see. 14 MS LE ROUX: Chair, I'm not sure I 15 understand the difficulty because as I understand where we 16 are, the proposition put by Mr White is that the deployment 17 of the razor wire in fact channelled people towards 18 Nkaneng. If they were leaving the koppie they were likely 19 to return home, the razor wire would then channel them to 20 that part, to Nkaneng. The unintended, the fact that it 21 may have been an unintended consequence of Colonel Scott's 22 plan then begs the next question, which you, Chair, have 23 already put which is, did you anticipate this consequence 24 and the answer was he didn't. So Mr White's point is not 25 that it was an unintended consequence but that it, the very</p>
<p style="text-align: right;">Page 15192</p> <p>1 CHAIRPERSON: You see there's a distinction, I 2 think, between channelling as a transitive verb, if you 3 know what I mean, and channelling in the passive sense of 4 being channelled, not because it was intended that that 5 should happen but it was a result of what had happened and 6 the question as phrased I think is ambiguous. Perhaps you 7 - and he's made it quite clear that he never intended to 8 channel them or canalise or whatever the correct word is, 9 towards Nkaneng, on the contrary but the question you ask 10 seems to ignore that point that he's made. So perhaps you 11 could rephrase it in a way that it's fair. 12 COMMISSIONER HEMRAJ: Perhaps the 13 appropriate question would be that it left an approach 14 towards Nkaneng wide open or something to that effect. 15 MS LE ROUX: Chair and Commissioner 16 Hemraj, the point I'm trying to get comment on from Colonel 17 Scott is, I hear him saying that it was an unintended 18 consequence that it would channel protesters towards 19 Nkaneng but the point I - 20 CHAIRPERSON: - a problem with what you want to 21 put to him, our difficult is the way it's being phrased, 22 which raises difficulties which I don't think you even want 23 to encounter. So perhaps you could rephrase the question 24 in a way which addresses the points put to you, then we can 25 carry on.</p>	<p style="text-align: right;">Page 15194</p> <p>1 result of the way the razor wire was deployed once Nyala 6 2 had been moved back was to channel people towards Nkaneng. 3 If they saw the police roll out barbed wire and they wanted 4 to get home, it would channel them into that area around 5 the kraal. 6 CHAIRPERSON: Mr Semenya? 7 MR SEMENYA SC: Chair, obviously with the 8 appreciation that these witnesses like Mr White have not 9 testified and even the conclusions they draw have not been 10 challenged, I think we should do this with a little bit of 11 caution, with respect, and particularly I don't see where 12 Mr White is saying the razor wire was channelling them 13 towards Nkaneng. 14 MS LE ROUX: Chair, perhaps we can frame 15 this in terms of Mr White's own statement. Page 84 at the 16 bottom of the page he says, "Because the POP, TRT, NIU and 17 STF are not yet deployed to the north of the koppie, the L- 18 shape of the razor wire invites or channels protesters to 19 move towards the informal settlement until such time as the 20 members move into position to the north-west of the kraal." 21 So I'm asking Colonel Scott whether, in his plan, when 22 Nyala 6 has moved back and the shape of the razor wire 23 changes and the members are not deployed, does he accept Mr 24 White's conclusion that it in fact channelled people. 25 CHAIRPERSON: You see the problem is he uses the</p>

<p style="text-align: right;">Page 15195</p> <p>1 word "channels" in quotation marks, so he's not using it in 2 its ordinary sense and that I think gives rise to some of 3 the difficulty. Perhaps we can try and invite – you see 4 what Mr White says, that he says because you, the POP, TRT, 5 NIU and STF hadn't yet been deployed to the north of the 6 koppie, the L-shape of the wire "invited" as he suggests, 7 in quotation marks, the protesters whom I would prefer to 8 call the strikers, to move towards the informal settlement 9 until such time as the members into position to the north- 10 west of the kraal which would, of course, have prevented 11 them from going there. That's his point. The question is 12 do you agree with it or don't you and if you don't agree, 13 the next question will be why don't you? 14 COLONEL SCOTT: Chairperson, and maybe 15 it's me playing devil's advocate again, but we know what we 16 know now and we see what we see from aerial photography. 17 The perception that existed in the strikers' minds at that 18 time is maybe what's the question because Nyala 5 where it 19 was positioned could still have driven straight. We know 20 that Nyala 6 was moved because it had, the militant group 21 moved to it and it was thus brought back to safety. So in 22 essence for the strikers to have known that the police were 23 now planning to isolate themselves, in essence, I'm not 24 sure whether that was known, specifically sitting at ground 25 level and seeing the line in front of you with Nyala 6</p>	<p style="text-align: right;">Page 15197</p> <p>1 which might also have strengthened that inference but it's 2 a question to which I don't know the answer and you 3 obviously don't know the answer either, but the present 4 question presupposes that they were moving towards Nkaneng 5 to get there and not that they were moving towards the 6 police to attack them. But having made that point, the 7 question still is there whether, assuming they were moving 8 towards Nkaneng, was it not made more possible for them – 9 we'll use different language – by the configuration of the 10 wire? And I suppose the answer to that, in retrospect, 11 with hindsight it must be yes but other things flow from 12 that – 13 COLONEL SCOTT: Yes. 14 CHAIRPERSON: - which presumably may be explored. 15 MR SEMENYA SC: Chair, with respect, 16 these are the difficulties we have. As a matter of fact, 17 Chair, we know 3 000 people moved westwards, so why were 18 they not invited to Nkaneng by the barbed wire? All of 19 these things are legitimate questions we must still engage 20 Mr White about. 21 CHAIRPERSON: What I'm seeking to do is to get 22 this witness's comment on what Mr White says. In due 23 course Mr White will come, you will question him about it 24 but in the meanwhile, inasmuch as we have the person 25 responsible for the plan giving evidence, it seems</p>
<p style="text-align: right;">Page 15196</p> <p>1 which was obviously approached and was moved away. So 2 that's just one question and the second question again, 3 moving off in a so-called militant group like we see, even 4 in the recent footage which has come to light, when that 5 group turns to face the police they take up the same stance 6 and before they even leave, they're leaving with the same 7 militant stance of tapping weapons together, et cetera, as 8 was experienced on Monday. So the question is, if it was 9 merely a matter of going home or wanting to disperse on 10 their own, why the same action as was displayed which was 11 militant towards the police and then to approach the police 12 in the same manner? So these are questions on the opposite 13 side of the coin which also still need to then be put 14 forward. 15 CHAIRPERSON: That raises a question which I've 16 been puzzling about for a long time and I hope that by the 17 end of the Commission we may have found the answer, is were 18 the militant group advancing towards the police because 19 they were on their way to Nkaneng or were they advancing to 20 the police because they wanted to attack them and drive 21 them away so that they could be left undisturbed? There 22 were threats that were made by them before that, whether 23 those were just empty threats or they intended to be 24 implemented, we don't know. There's a suggestion that they 25 may have thought they were invincible and invulnerable,</p>	<p style="text-align: right;">Page 15198</p> <p>1 appropriate to put what Mr White says so that he can deal 2 with it. No further – 3 MS LE ROUX: Chair, if I can just clarify 4 before Colonel Scott answers, Mr White isn't saying 5 anything about the intention of the strikers. He's not 6 saying are they going home, they're coming to attack, he 7 says nothing about intention. He's merely commenting on 8 the change in the plan and the way the razor wire is 9 deployed and he says in his opinion it channels them 10 towards Nkaneng and that's what you're being asked to 11 comment on. 12 CHAIRPERSON: I think it should be made clear 13 that, if this is in fact correct, that there's no 14 suggestion that there was any conscious – am I correct – no 15 suggestion there was any conscious intention on the part of 16 the police to get the people or the militant group or 17 whatever it is, to move towards Nkaneng. You are only 18 dealing, as it were, with the benefit of hindsight, with 19 the objective consequences of what was done, is that 20 correct? 21 MS LE ROUX: Yes, Chair. Where all this 22 is going is on the next page of Mr White's statement where 23 he says, "It does not appear that the consequences of the 24 movement of Nyala 6 were properly considered by the overall 25 commander or by Colonel Scott." So it's all relating to –</p>

<p style="text-align: right;">Page 15199</p> <p>1 CHAIRPERSON: I understand that.</p> <p>2 MS LE ROUX: - the effects on the plan.</p> <p>3 CHAIRPERSON: But surely, you know when you talk</p> <p>4 about a consequence and whether consequences were</p> <p>5 effectively considered, the first question I whether the</p> <p>6 consequence was foreseen at all. Or the first question is</p> <p>7 really, was it, objectively viewed, a result, i.e. a</p> <p>8 consequence? If the answer to that is yes, the next</p> <p>9 question is, was it foreseen? If it wasn't foreseen and</p> <p>10 it's merely a consequence which is, objectively seen with</p> <p>11 the benefit of hindsight, that's one thing but of course if</p> <p>12 there's a suggestion that it was considered in some way or,</p> <p>13 considered in some way, that's a different matter. So the</p> <p>14 question at the moment I'm afraid, there's a number of</p> <p>15 uncertainties about it. I think it would be helpful to us</p> <p>16 all if that uncertainty could be removed and the question</p> <p>17 could be put clearly to the witness so he and the rest of</p> <p>18 us can understand what precisely is being put.</p> <p>19 [14:29] MS LE ROUX: Colonel Scott, let me try</p> <p>20 again. What I'd like your comment on is Mr White's</p> <p>21 conclusion that because POP, TRT, NIU and STF were not yet</p> <p>22 deployed to the north and the razor wire is deployed in the</p> <p>23 L-shape, that this in fact would channel protesters to the</p> <p>24 particular point where scene 1 occurred. That's what I'm</p> <p>25 asking for your comment on. He says nothing about the</p>	<p style="text-align: right;">Page 15201</p> <p>1 north and not tried to come into the police action, even</p> <p>2 after Nyala 4's closed off. So, and I don't want to go to</p> <p>3 the point of trying to prove intention but I can agree that</p> <p>4 they could've moved directly north but still have pushed</p> <p>5 the point to try to come through where the police were</p> <p>6 visibly closing off, it's difficult for me to say that</p> <p>7 there wasn't intent then on the miners' part or on the</p> <p>8 strikers' part to confront the police.</p> <p>9 MS LE ROUX: Colonel Scott, and I know</p> <p>10 that we inserted the words "objectively and considered with</p> <p>11 hindsight," but Mr White's point is precisely the opposite,</p> <p>12 that it should have been seen, with foresight, that it</p> <p>13 should have been taken into account in the plan that this</p> <p>14 change to deploy the razor wire in an L-shape, where you'd</p> <p>15 asked people to disperse and leave, that there would be a</p> <p>16 sizeable contingent that would then be channelled towards,</p> <p>17 towards Nkaneng. Does that change your answer at all?</p> <p>18 COLONEL SCOTT: Well, if you're saying</p> <p>19 when you've asked them to leave – they hadn't been asked to</p> <p>20 leave, which was part of the problem and the other part of</p> <p>21 the problem was being that they had chosen to leave still</p> <p>22 grouped well together within that militant group with the</p> <p>23 attitude and actions displayed. So again to expect the</p> <p>24 police then not to try to form some form of a barrier and</p> <p>25 what they're seeing on ground level becomes difficult to</p>
<p style="text-align: right;">Page 15200</p> <p>1 intention of the strikers or whether this was considered,</p> <p>2 because it appears not to have been considered, but just</p> <p>3 that it had that effect.</p> <p>4 COLONEL SCOTT: The best way I –</p> <p>5 CHAIRPERSON: If we insert the words "objectively</p> <p>6 viewed with hindsight" into the question –</p> <p>7 COLONEL SCOTT: Yes. And objectively</p> <p>8 viewed with hindsight and my reply, objectively viewed with</p> <p>9 hindsight, my reply is that again if the strikers had seen</p> <p>10 the opportunity to move directly north to continue moving</p> <p>11 north, which we knew they could have, that I can accept,</p> <p>12 even if the razor wires were being pulled out because at</p> <p>13 the stage where Nyala 4 did close in on the kraal, we can</p> <p>14 see from the recently presented footage that they still</p> <p>15 make a determined effort at that stage to come around the</p> <p>16 kraal in a militant fashion and confront the police, where</p> <p>17 the first reaction from the police is to try and rush the</p> <p>18 armoured vehicles out to form a stop line, that not</p> <p>19 proceeding they start – or succeeding, they start with the</p> <p>20 sub-lethal force as it's mentioned in overseas terms, but</p> <p>21 they still push through this. Now that's the difficulty I</p> <p>22 have. Sure, with Nyala 6 being pulled back it opened a</p> <p>23 direct route to the north but any person not seeking</p> <p>24 confrontation or wanting to in any way get involved with</p> <p>25 the police action, would have moved away from that directly</p>	<p style="text-align: right;">Page 15202</p> <p>1 explain, at least from somebody that wasn't there. So</p> <p>2 again it's just not human nature, unless you're seeking</p> <p>3 confrontation with the police, to move towards the police</p> <p>4 when you can see the police are visibly preparing to carry</p> <p>5 out a tactical option on you.</p> <p>6 COMMISSIONER HEMRAJ: Colonel Scott, it</p> <p>7 was not part of your plan that the razor wire be deployed</p> <p>8 in that L-shape.</p> <p>9 COLONEL SCOTT: It wasn't part of the</p> <p>10 initial plan, no ma'am.</p> <p>11 COMMISSIONER HEMRAJ: Yes.</p> <p>12 COLONEL SCOTT: It was as a result that I</p> <p>13 had to work around that now.</p> <p>14 MS LE ROUX: Yes, and Commissioner</p> <p>15 Hemraj, to build on that point, Colonel Scott I think a lot</p> <p>16 of this back and forth is coming because we seem to be</p> <p>17 talking about two different points. Mr White's point is</p> <p>18 that it should have been anticipated in the plan that the</p> <p>19 way the razor wire was being deployed would channel people</p> <p>20 towards Nkaneng. Your testimony seems to concentrate on</p> <p>21 how it was actually done on the day and the execution on</p> <p>22 the day, which is a different point. Mr White has other</p> <p>23 things to say about that and I'll ask it one more time and</p> <p>24 then I'll move on. With respect to Mr White's point that</p> <p>25 in your plan, once the Nyala 6 has pulled back, the razor</p>

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1 wire is being deployed in an L-shape and before the other
 2 members are deployed to the north, that deployment of razor
 3 wire invites the protesters around the kraal to where they
 4 confronted the police.
 5 COLONEL SCOTT: I can understand and what
 6 he does say, that sometimes police action precipitates an
 7 action in response from the crowd and if it was a bona fide
 8 action to simply disperse on their own, I could understand
 9 that they would want to disperse and disperse away and that
 10 means even walking north parallel to the wire. That's
 11 understandable but I can't concede or even admit to why
 12 they would want to come to the point. I don't think it's
 13 channelising them to that point of the kraal, no. I think
 14 that's a decision taken by them to move that way,
 15 irrespective of what the police are trying to do.
 16 MS LE ROUX: Colonel Scott, I'm moving on
 17 to Mr White's next criticism of the plan, which is – let me
 18 just state for the record, this commences in Mr White's
 19 statement at page 85 paragraph 6.5.21. This is where Mr
 20 White deals with the fact that in his view your plan
 21 carried a high risk of the need to use live ammunition and
 22 if we can start in your second statement which was GGG39
 23 and in particular at page 4 of that statement, paragraph 8,
 24 this states, "During of the offensive tactical option of
 25 dispersing, isolating smaller groups or individuals,

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1 disarming and then arresting, a strategy to deploy a
 2 defensive line to protect the lives of the POP members and
 3 to confront belligerent armed protesters who needed to be
 4 disarmed and who refused to respond to the public order
 5 policing measures, was to deploy the TRT, NIU and STF to
 6 approach the armed protesters who could, if necessary,
 7 protect themselves and the POP members with sharp
 8 ammunition against life-threatening attacks." So Colonel
 9 Scott, what I want to put to you is that there was in fact
 10 an element of your plan which anticipated the need to use
 11 sharp ammunition.
 12 COLONEL SCOTT: That is so and I admit to
 13 that, not anticipate it but as a contingency. Looking at
 14 the threat against the police, I had to put something in
 15 place to prevent policemen being killed unnecessarily by
 16 unlawful actions and attacks on the police because the
 17 police action was not unlawful but any attack coming
 18 towards the policemen carrying out their duty was going to
 19 be unlawful and surely the right to life is applicable to
 20 all and specifically to those policemen who were standing
 21 with less than lethal force capability and then the
 22 proportionate side of this is absolutely unproportionate
 23 toward them, where they would have shotguns with rubber at
 24 maximum, trying to defend themselves against people with
 25 pangas, spears and possibly live ammunition firearms. So

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1 something had to be put in as a measure to help protect
 2 that POP line and then the way I saw it as well, after
 3 Monday's incident if you wanted the POPS to carry out their
 4 duty effectively and keep the mind focused on the non-
 5 lethal side, you needed to give them the assurance that
 6 somebody was there to protect them in case they got
 7 isolated, in case something happened which put them in
 8 harm's way. So it was never the intention to go out in any
 9 way to use live ammunition to shoot any protester but as I
 10 say, it's part of your policing duty, you need to save life
 11 and sometimes in order to save life you need to take a life
 12 or wound somebody for that matter.
 13 MS LE ROUX: Colonel Scott, I understand
 14 in that paragraph where you say, "TRT, NIU and STF would
 15 use sharp ammunition against attacks on POP members." But
 16 you also say that you would deploy the defensive line to
 17 confront belligerent armed protesters who needed to be
 18 disarmed and who refused to respond to the public order
 19 policing measures. And you contemplated that being done by
 20 the TRT, NIU and STF who only had sharp ammunition,
 21 correct?
 22 COLONEL SCOTT: That is correct but
 23 understanding as well that with water cannons, and maybe
 24 it's not putting context there properly, but that militant
 25 group with water cannons and the rest of the less than

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1 lethal force being applied to them, would have found it
 2 very, very difficult to have remained in a static position
 3 and grouped together as they were, so – and as I said, my
 4 perception was going to be that they, worst case, would
 5 have approached the POPS, next scenario was that they would
 6 have taken up hiding on higher ground where POPS members
 7 could not get to them and that would have anyway broken
 8 that group up because they would not have been able to keep
 9 their formations. They would have, in essence, gone into
 10 smaller groups, if not individuals, and the sweep through
 11 of those tactical units was thus to go forward and then to
 12 challenge those who were then standing as individuals or
 13 hiding or in small pockets with their own force continuum,
 14 to disarm and arrests then to be carried out. That was the
 15 envisioned plan of it.
 16 MS LE ROUX: But those particular
 17 tactical units, TRT, NIU, STF, they didn't have anything
 18 but sharp ammunition, correct?
 19 COLONEL SCOTT: You would have found some
 20 Taser weapons within the STF but again, I think you're
 21 jumping to the far side of the force continuum. Again
 22 those officers, if they didn't need to close the gap onto
 23 that specific person or persons, they wouldn't have done
 24 that. There are other measures which we didn't want to get
 25 into the Commission in speaking about because it can just

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1 make our opponents in the future wiser to the tactics we'd
 2 use but that is at the far extreme. There were other
 3 measures available which I know of that could have been
 4 implemented as such to actually disarm, with less than
 5 lethal force, those very protesters that were presenting
 6 that threat, but what you can't do is dictate the action of
 7 the striker and if he decided in close quarter at a 10
 8 metre distance or so that he was now going to attack the
 9 police, they had no other option than obviously to defend
 10 themselves but the idea was not that the police were going
 11 to go up to him with his panga and eventually shoot him out
 12 of measure because you don't want to put it down. There
 13 were other measures in place to deal with that.

14 MS LE ROUX: Colonel Scott, on the crisp
 15 point that you anticipated that confrontation, you
 16 anticipated the possibility that your tactical units would
 17 have to engage with sharp ammunition, I'm correct in that
 18 regard?

19 COLONEL SCOTT: Like I say, in self-
 20 defence. I anticipated that scenarios could arise where
 21 the police came under illegal attack from protesters or
 22 from strikers where they would need to defend themselves,
 23 yes.

24 MS LE ROUX: And then in your
 25 consolidated statement if we go to page 84 paragraph 13.9,

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1 there you say, "I did, however, not expect that the smaller
 2 militant group would submit to the request to disperse but
 3 considered three options when planning, that they may
 4 choose to follow, which I covered in the briefing." The
 5 first of those that you say you covered was where they
 6 closed the ground on the POP line to confront them with
 7 their sharp-edged weapons. So as I understand your
 8 evidence from the statement and your testimony today, you
 9 foresaw the risk of an attack on the police and your plan
 10 for how to respond to such an attack was to have your
 11 tactical units respond with everything up to and including
 12 sharp ammunition.

13 COLONEL SCOTT: The response initially
 14 for the POPS, who would be obviously positioned in front of
 15 any tactical line, was to go straight back to their
 16 armoured vehicles, but I'm also wise to the fact that it's
 17 possible that, as I've mentioned, doors can be closed while
 18 members are still outside, it is possible that POPS members
 19 can be isolated and again not forgetting that the police
 20 are not carrying out an illegal action. Any attack upon
 21 the police is the illegal action and thus the
 22 proportionality to that is to save the life of that POPS
 23 member by going forward and, if necessary, if they are
 24 hacking him with pangas as what happened on Monday, is then
 25 to defend his life and if it means that you need to fire

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1 sharp ammunition to defend his life then that becomes a
 2 legal on behalf of the police in self-defence or private
 3 defence in that matter.

4 MS LE ROUX: Colonel Scott, given that
 5 you had made, an aspect of your plan made provision for the
 6 use of sharp ammunition to respond to an attack, do you
 7 think that this was the right plan?

8 COLONEL SCOTT: Well, considering that a
 9 dispersion had to take place because we said a tactical
 10 option had to take place, taking the POPS members, as I've
 11 stated, who are not able to defend themselves against what
 12 they were going to face due to the lack of the ability to
 13 defend themselves proportionately, to in essence take the
 14 life of a striker should their life be in danger, unless
 15 going for a pistol which we know is not always the case,
 16 something needs to be put in place. And as I've stated
 17 before, the essence of how I planned it, I would still plan
 18 it today because the police never went forward with
 19 malicious intent at all and any policeman who has been
 20 through the Police College as these have, are all trained
 21 to understand what private defence and self-defence are and
 22 there's very little circumstances outside of that, that one
 23 may even use your firearm other than section 49(2) which
 24 has got a lot of criteria stuck to it as well. So these
 25 members are quite aware and are only going to utilise those

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1 firearms at times when their lives, they feel, are
 2 endangered. If they move outside of those boundaries that
 3 is something that they would then need to attest to and
 4 explain, but as far as the planning is concerned, as I say,
 5 it would be naive of me to say that I didn't anticipate any
 6 attack on the police, I did. I tried to put contingencies
 7 in place first in order to not have to use live ammunition
 8 but if there was an imminent attack on a police official
 9 and there was no other way other than using live
 10 ammunition, then that is what needed to have occurred.

11 MS LE ROUX: And am I correct that you
 12 thought this risk of the need to use sharp ammunition to,
 13 on your testimony, to protect your members, was so
 14 significant that you needed almost 200 officers that were
 15 armed with rifles?

16 COLONEL SCOTT: Well, the amount of
 17 officers who were there wasn't necessarily my doing or
 18 saying, the amount, but – and that's why I had simply
 19 chosen the smaller koppie, koppie 2 for the lesser trained
 20 TRT to deal with, anticipating that koppie 1 was larger and
 21 would be more difficult to have to clear or to sweep over
 22 and clear. So the amount of members, in essence, I'm not
 23 sure is – if one can even work that into proportionality
 24 for that matter because it still comes down to whether
 25 there were 10 or 50, the same task at hand needed to be

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1 dealt with.

2 MS LE ROUX: Colonel Scott, returning to

3 your background and in your first statement GGG39 – just

4 for the record, we don't need to go there, page 3 paragraph

5 6 – you said that “The plan or strategy I prepared or

6 proposed was the first of its kind.” And then in paragraph

7 6 of your second statement you said that you weren't aware

8 of this plan that disperses into small groups, encircle and

9 disarm, ever being used by the SAPS but on that, have you

10 ever deployed a tactic, in your experience, where the POP

11 would go forward to confront an armed, aggressive crowd and

12 TRT and NIU follow with live ammunition as a backup to the

13 POPS? Have you ever done that aspect of the plan?

14 COLONEL SCOTT: I've not done that in

15 person but I'm aware of operations where public violence is

16 at a large level, where the NIU get called in to assist the

17 public order policing in townships and so on. Exactly how

18 they go about it, I'm not sure but I would imagine it would

19 be something similar, that the National Intervention Unit

20 members would only be employed again where life was

21 threatened in xenophobia-type attacks, et cetera but I

22 can't speak to those, I haven't been involved in planning

23 any of those in –

24 MS LE ROUX: And Colonel Scott, following

25 up, are you aware of any circumstance where the SAPS have

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1 used this plan to disperse into small groups, encircle and

2 disarm?

3 COLONEL SCOTT: I'm not personally, but

4 then again as we've shown, my public order policing

5 experience is limited, so whether it's been done before,

6 I'm not sure.

7 CHAIRPERSON: What that means is you didn't base

8 the plan on anything that you knew had happened

9 successfully in the past.

10 COLONEL SCOTT: That's correct,

11 Chairperson.

12 CHAIRPERSON: So as far as you were concerned it

13 was an original idea.

14 COLONEL SCOTT: It's – yes, not using

15 “original” in a proud way but -

16 CHAIRPERSON: No, no.

17 [14:49] MS LE ROUX: Colonel Scott, I'd like to

18 turn now to the last of Mr White's three criticisms that

19 we're highlighting around the planning and this relates to

20 the lack of contingency planning. We've touched on it a

21 little bit earlier today, but you stated, and I'm correct,

22 I think, that you adopted a fluid approach to the planning

23 between 14 to 16 August because the situation was changing,

24 correct?

25 COLONEL SCOTT: Well, we couldn't

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1 anticipate how it would change, so yes, we didn't know what

2 would be happening from day to day or hour to hour.

3 MS LE ROUX: Right, and then we don't

4 need to go there, but for the record, Mr White in his final

5 statement, page 66, paragraph 6.4.3, says, “As a basic

6 principle if one chooses to adopt a fluid approach to

7 planning, it's important to pay particular attention to

8 risk analysis and contingency planning.” Do you agree with

9 him?

10 COLONEL SCOTT: Yes, I do.

11 MS LE ROUX: In respect of risk analysis,

12 the only risk analysis that we can find in your

13 contemporaneous plans is contained in exhibit JJJ50, five

14 zero, slide 7, if we could display slide 7 of exhibit

15 JJJ50. This is a slide headed “Risk Assessment.” It

16 consists of two bullet points, the first, “AMCU possibly

17 defiant, feeling the clash with SAPS resulted in their

18 victory with killing of police officials and seizing police

19 radios and weapons.” The second point, “Witch doctor

20 providing muti to AMCU group, creating mindset of

21 invincibility.” So Colonel Scott, as a matter of fact

22 these are the only two dimensions to a risk analysis that

23 we can find in your contemporaneous planning. Is that

24 correct?

25 COLONEL SCOTT: That's what you can find.

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1 That was set up on the Monday evening, early hours of

2 Tuesday morning, as I have mentioned, and that presentation

3 ran into the Tuesday and it's all that we knew at that

4 stage. So as the operation drew on and the JOCCOM started

5 sitting, so I didn't deal anymore with intelligence, and

6 for that matter when the intelligence was delivered you

7 would initially look at the risk inherent with that

8 intelligence given. So I'd been moved straight on to just

9 dealing with the strategy, or briefing the strategy to the

10 commanders in the JOCCOM. But when it does come down to

11 contingency planning, as I state, we can take each phase

12 and I can explain the phase with the contingencies that

13 were built into it, both on behalf of the strikers as well

14 as on behalf of the police, but – and I've mentioned that

15 that being a presentation, it's not all that was done or

16 said. There was speaking to this, which obviously is far

17 more comprehensive than what you would see in the

18 presentation, dealing with amongst others the rationales,

19 the mindsets, the contingencies that go with the

20 positioning of different forces in different areas.

21 MS LE ROUX: Right, Colonel Scott, I

22 understand that broader context and where it fits into your

23 planning process, but just to go back –

24 CHAIRPERSON: Can we perhaps take the tea

25 adjournment at this stage, unless you want to make this –

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1 ask the question first? I'm in your hands.
 2 MS LE ROUX: No, that's fine, Chair.
 3 CHAIRPERSON: Alright, we'll take the tea
 4 adjournment at this point.
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [15:13] CHAIRPERSON: Colonel, you're still under
 7 oath.
 8 DUNCAN GEORGE SCOTT: s.u.o.
 9 CHAIRPERSON: Adv Le Roux.
 10 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
 11 Thank you, Chair. Colonel Scott, just to round out the
 12 point that we were on before the tea adjournment, I'm
 13 correct that other than slide 7 of exhibit JJJ50 with its
 14 two bullet points, we have no other written risk assessment
 15 in your contemporaneous documents?
 16 COLONEL SCOTT: That's correct.
 17 MS LE ROUX: Turning then to the question
 18 of contingency planning, could you confirm what Major-
 19 General Annandale has already testified about, which is
 20 that similarly there were no written contemporaneous
 21 contingency plans at all?
 22 COLONEL SCOTT: One has to look at the
 23 actual deployment itself. When you look at a phase 2
 24 deployment, the pre-placement of razor wire in itself is an
 25 anticipation of a risk and it's a risk mitigating point in

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1 order to close off that police line as quickly as possible,
 2 so it's not that there's no written plan as you would find
 3 in an operational commander's planning format, but it's
 4 drafted to within the plan. As I've said, that's why if
 5 you need to understand the planning process and everything
 6 that I'd gone through and rationale, then we can follow
 7 process and I can explain it in more detail exactly why
 8 people were positioned where they were, why razor wire was
 9 placed where it was, why forward holding areas were created
 10 with contingency forces there, as well, or reserve, as well
 11 as medical assets, fire brigades, and so on, which are all
 12 calculating towards any contingencies that may occur.
 13 MS LE ROUX: Colonel Scott, I'd like to
 14 turn to one specific contingency that does not appear to
 15 have been planned for, and for the record, this is in Mr
 16 White's statement, page 89, paragraph 6.5.31, and this is
 17 the use of firearms by the strikers against the police, but
 18 away from the koppie. So I'm correct that there were STF
 19 sharpshooters deployed on top of the Nyalas that were in
 20 the barbed wire line, correct?
 21 COLONEL SCOTT: That's correct.
 22 MS LE ROUX: But there appears to be
 23 nothing in the plan for how to deal with the use of
 24 firearms by strikers other than an officer acting in self
 25 or private defence. There was no part of the plan that

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1 considered how to respond to the use of firearms by the
 2 strikers away from the koppie, was there?
 3 COLONEL SCOTT: Well, this is an essence
 4 why an officer carries his weapons, otherwise you know,
 5 we'd move without that in essence. So the mere fact that
 6 you have tactical units such as TRT, NIU, and STF, which
 7 are position behind the Public Order Policing is in essence
 8 what he's saying, I understand, is that in the context
 9 where he's worked he would place dedicated officers in the
 10 Public Order Policing line, which would then be given the
 11 instruction to engage, if necessary, a deathly threat
 12 against the police. We know that in the Public Order
 13 Policing, or I was aware at the time that every eighth
 14 person in the section was issued with an R5 rifle, which is
 15 similar to what Mr White is attesting to. So, and we see
 16 that the, I think it's Warrant-Officer Kuhn at scene 1 who
 17 initiated the shooting, is actually in fact the Public
 18 Order Policing member. The Public Order Policing member
 19 who's still firing shots after the cease fire, or the
 20 members doing that is Public Order Policing member, both
 21 issued with R5 weapons, and these are personnel that are
 22 deployed upfront in this condition with the Public Order
 23 Policing less than lethal force in order to assist to
 24 protect, but I didn't see that as adequate to protect the
 25 Public Order Policing members against the magnitude of what

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1 they may be facing if the crowd of 300 plus decided to
 2 engage in one go against them.
 3 MS LE ROUX: Colonel Scott, I just want
 4 to understand your testimony that you've just given. So
 5 you're saying that the Public Order Policing members, you
 6 said every eighth in the line that's issued with an R5
 7 rifle, you contemplated them having particular
 8 responsibility to protect their fellow POP members against
 9 any attack?
 10 COLONEL SCOTT: Well that, this was part
 11 of the grouping that I'd inherited and that I was led to
 12 understand that one person in the section of eight had an
 13 R5 rifle.
 14 MS LE ROUX: And that one person's
 15 responsibility was what, with respect to that rifle?
 16 COLONEL SCOTT: I would assume to protect
 17 fellow POPs members against lethal attack.
 18 MS LE ROUX: And the STF sharpshooters
 19 that you deployed on top of the Nyalas that formed the
 20 barbed wire line, am I correct that their responsibility
 21 was to respond to an attack from the protesters, so if shot
 22 at, they would shoot?
 23 COLONEL SCOTT: I think we need to
 24 understand the training of a sharpshooter first. He
 25 anticipates that rounds pass through people and that any

<p style="text-align: right;">Page 15219</p> <p>1 round he may fire may pass through the subject he is aiming 2 at and into somebody else. So they're extremely cautious 3 when that occurs, and they were actually placed on my 4 discretion because I anticipated that any shooting that 5 would come specifically from a weapon like an R5, which is 6 amongst the protesters, because we'd heard the media 7 mention that they had seen long weapons rolled in, or a 8 long weapon rolled in a blanket, and again part of my, the 9 way I planned and the way I do things is I tend to try and 10 think like my opponent in order to counter that action and 11 I would think that somebody with a weapon like that would 12 try to go for higher ground so that they could fire over 13 their own members in essence, and the sharpshooters were 14 thus placed so that somebody who had gone to a higher 15 ground to isolate themselves to fire upon the police who 16 were probably approaching, would then, we would have 17 sharpshooters that would be able to identify that and to 18 actually deal with that threat, if it so required.</p> <p>19 MS LE ROUX: But those STF sharpshooters 20 wouldn't have provided any protection once the crowd was 21 dispersed to the west, would they?</p> <p>22 COLONEL SCOTT: Again if there was a lone 23 person with an R5 that had taken a stand against police 24 officials, those sharpshooters are trained to shoot pretty 25 extensive distances.</p>	<p style="text-align: right;">Page 15221</p> <p>1 MS LE ROUX: Colonel Scott, I'd now like 2 to move on to the next topic covered by Mr White, 3 commencing at page 91, section 6.6, which is briefing, and 4 specifically in that section Mr White criticises the 5 circumstances of the briefing of the unit commanders in the 6 Marikana operation, and he highlights some of the evidence 7 of misunderstood briefing. So I have some questions around 8 this issue of briefing. The first is the unit commanders 9 had no detailed knowledge of the plan prior to 2:30, did 10 they, on the 16th?</p> <p>11 COLONEL SCOTT: No. No, they would have 12 maybe just been made aware of the strategy, but not have 13 gone into the detail. But I think I must just emphasise 14 again that – and I've said this on numerous occasions – 15 when you tell a POPs officer from a commander to a POPs 16 trained member that he's going to disperse, you won't 17 explain to him the actual action of dispersing. They 18 understand that. So when we're talking about was there 19 sufficient briefing, I think that remains questionable 20 because again, with respect to Mr White and to colleagues 21 from outside of South Africa, we're sitting with 11 22 official languages here of which many receiving a briefing 23 for instance would not have that as a first language, and 24 so there would be obviously communication issues in 25 understanding and so on. Whether they raise it again,</p>
<p style="text-align: right;">Page 15220</p> <p>1 MS LE ROUX: So would you agree with Mr 2 White – and this is set out at paragraph 6.5.31(a) where he 3 says that, "In a crowd situation where gunmen may be 4 surrounded by other individuals who may not pose an 5 imminent risk to life, leaving the response to officer 6 discretion acting in self-defence is not sufficient."</p> <p>7 COLONEL SCOTT: I'm just failing to see 8 how that's necessarily in the context at Marikana, because 9 I'm assuming what he's saying is that having a gunman 10 amongst other protesters who have not got violent intent or 11 the intent to take life does pose a problem for the 12 policing environment. There again I'm not even sure that 13 in South Africa we would find that you would have somebody 14 allocated to take a shot. I don't know of that being 15 trained in our Public Order Policing, but again the Public 16 Order Policeman is taught that he must act in self or 17 private defence if so necessary, but obviously considering 18 collateral damage. But in saying this, this is why I say, 19 in context with what Mr White's saying, whether you're 20 confronted with a man with a firearm or a man wanting to 21 take your life with a panga or a spear, it's simply the 22 matter of the distance between you which matters. Both 23 want to take your life. So putting it back into the 24 context possibly of scene 1, I believe that was what the 25 members were considering when they opened fire there.</p>	<p style="text-align: right;">Page 15222</p> <p>1 sometimes there's a cultural issue involved in that where 2 people don't want to ask questions because of – and I 3 understand this from training, and training people of 4 different cultures in my classrooms where they want to 5 understand but they won't ask the question either. So we 6 normally need to probe for that, time permitting again.</p> <p>7 MS LE ROUX: And Colonel Scott, the unit 8 commanders were briefed just an hour before they were 9 expected to execute the operation, correct, at 3:30?</p> <p>10 COLONEL SCOTT: That's right.</p> <p>11 MS LE ROUX: And so in those 12 circumstances, and adding in the language difficulty and 13 cultural translation questions that you've just 14 highlighted, you'd agree with Mr White that it's vital that 15 briefing is clear and detailed and leaves no room for 16 doubt, because there won't be another opportunity to get 17 clarification, or have the briefing repeated? Do you agree 18 with that?</p> <p>19 COLONEL SCOTT: What he's saying is so, 20 and obviously you know the test would be obviously what the 21 members did. So there could have been, as Adv Chaskalson 22 has pointed out, some misunderstanding on behalf of some of 23 the commanders as to what they were supposed to do. 24 Whether they understood that, I'm not sure. Whether they 25 chose to do it differently, I'm not sure. But it wasn't</p>

<p style="text-align: right;">Page 15223</p> <p>1 necessarily carried out how I'd requested.</p> <p>2 MS LE ROUX: Colonel Scott, turning to</p> <p>3 the circumstances of your briefing, this is described in</p> <p>4 your statement, page 81, paragraph 13.1, and you say, if we</p> <p>5 could display that part of your statement, 13.1, page 81,</p> <p>6 in relevant parts there you say, "I took my computer and</p> <p>7 sat inside a Mercedes Benz Vito with the sliding door open</p> <p>8 to brief the commanders, who stood mainly in front of the</p> <p>9 door. There were about 20 persons at the briefing. I</p> <p>10 displayed the Google Earth satellite photo, which I had</p> <p>11 adjusted to show the deployment positions. No slideshow</p> <p>12 presentation was given." Now is that the laptop computer</p> <p>13 that you used at that briefing?</p> <p>14 COLONEL SCOTT: Yes.</p> <p>15 MS LE ROUX: And how big is that laptop</p> <p>16 screen?</p> <p>17 COLONEL SCOTT: I don't know how to</p> <p>18 measure that. Maybe if someone could assist.</p> <p>19 MS LE ROUX: If you know, 13 inches, 15</p> <p>20 inches? Do you know?</p> <p>21 COLONEL SCOTT: No, I don't know. It's a</p> <p>22 standard –</p> <p>23 MS LE ROUX: I'm instructed it looks like</p> <p>24 a 15-inch, but surely it was quite difficult for 20 people</p> <p>25 to see such a small screen through the open door of a van</p>	<p style="text-align: right;">Page 15225</p> <p>1 your screen?</p> <p>2 COLONEL SCOTT: No, the – I think that</p> <p>3 the commanders were asked to bring with them their, because</p> <p>4 it would be in their possession anyway, but to bring their</p> <p>5 handouts from that morning, which would have been the stage</p> <p>6 2 photographs, and I believe that Brigadier Calitz when he</p> <p>7 re-briefed all his commanders, utilised those again,</p> <p>8 showing the ground picture and explaining what needed to</p> <p>9 occur off that.</p> <p>10 MS LE ROUX: And the 10 to 20 commanders</p> <p>11 that you briefed from the van, do you remember them having</p> <p>12 those handouts with them, any of them?</p> <p>13 COLONEL SCOTT: I didn't specifically</p> <p>14 take note of that, no.</p> <p>15 MS LE ROUX: Did you notice anyone</p> <p>16 recording your briefing, whether by taking notes or filming</p> <p>17 it or any way of recording your briefing?</p> <p>18 COLONEL SCOTT: No, I don't recall</p> <p>19 anything either, no.</p> <p>20 MS LE ROUX: And did you receive any</p> <p>21 questions? Did anybody ask any questions during your</p> <p>22 briefing?</p> <p>23 COLONEL SCOTT: I don't recall any, no.</p> <p>24 MS LE ROUX: Did you notice members that</p> <p>25 were closer to the van repeating things to those that were</p>
<p style="text-align: right;">Page 15224</p> <p>1 on a sunny day?</p> <p>2 COLONEL SCOTT: It, well, I can't speak</p> <p>3 for them, but if we actually have to count how many of the</p> <p>4 commanders that were supposed to be there, I estimate about</p> <p>5 20 because obviously more people from around forward</p> <p>6 holding area 1 were coming to see what was going on, but if</p> <p>7 you do actually count the amount of commanders that needed</p> <p>8 to receive that briefing, I don't know, I'm just</p> <p>9 brainstorming now, but you'd probably come down to about 10</p> <p>10 or so. But even so, whether they could see the screen</p> <p>11 clearly or hear the briefing clearly, I can't obviously</p> <p>12 testify on their behalf on that.</p> <p>13 MS LE ROUX: And you didn't pass your</p> <p>14 laptop around then, or they didn't come up in turn to look</p> <p>15 at your screen, did they?</p> <p>16 COLONEL SCOTT: Not that I can remember.</p> <p>17 I didn't pass the laptop around, but the clarification of</p> <p>18 what was being shown, I don't particularly recall people</p> <p>19 shuffling around, no.</p> <p>20 MS LE ROUX: And exhibit JJJ46, your</p> <p>21 Google Earth map, that's the only thing that you showed</p> <p>22 them, correct?</p> <p>23 COLONEL SCOTT: Yes.</p> <p>24 MS LE ROUX: You didn't hand out any</p> <p>25 documentation to anyone who may not have been able to see</p>	<p style="text-align: right;">Page 15226</p> <p>1 further away?</p> <p>2 COLONEL SCOTT: No, again it was a</p> <p>3 commanders' briefing, so once I'd finished briefing, as far</p> <p>4 as I know Brigadier Calitz called his people, I think he</p> <p>5 spoke to the group initially first and then the commanders</p> <p>6 that were at the immediate reaction areas and forward</p> <p>7 holding area 2 moved off, and speaking from now what I've</p> <p>8 picked up in building the presentation and talking to the</p> <p>9 colleagues, he went back to the neutral police area, called</p> <p>10 the commanders there together, and I think the drivers of</p> <p>11 the vehicles as well, if I have it correct, and explain to</p> <p>12 them again what was expected before actually then sending</p> <p>13 everybody away.</p> <p>14 MS LE ROUX: But he didn't have a copy of</p> <p>15 your, what is exhibit JJJ46, did he?</p> <p>16 COLONEL SCOTT: No, he had the stage 2</p> <p>17 briefing handouts from that morning.</p> <p>18 MS LE ROUX: From that morning.</p> <p>19 COMMISSIONER HEMRAJ: Did anyone of the</p> <p>20 commanders ask for clarification of anything to do with</p> <p>21 your plan when you presented it?</p> <p>22 COLONEL SCOTT: Ma'am, not that I can</p> <p>23 remember, no. I'm sure I would have remembers if there was</p> <p>24 something, but I don't recall anything. I don't think</p> <p>25 anything was asked.</p>

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1 MS LE ROUX: And Colonel Scott, even
 2 after the briefing, did you receive any further
 3 clarification once the commanders had deployed to their
 4 members? Did anyone try to get hold of you on the radio or
 5 on your cell phone for further questions around your plan?
 6 COLONEL SCOTT: No. I have checked my
 7 cell phone records and obviously we know I phoned Captain
 8 Adriaio. I also phoned Brigadier Calitz twice, I think, but
 9 I suspect that was to check for the operational readiness
 10 and, or possibly why the delay, not starting at 15:30.
 11 MS LE ROUX: And Colonel Scott, the
 12 briefing that you gave you set out at section 13 of your
 13 statement, and it runs for nine pages, am I correct that
 14 that reflects the briefing you gave to the members then?
 15 COLONEL SCOTT: To the best of my
 16 recollection. Again I, there are certain principles which
 17 I would do things by and I would use a smear concept when,
 18 if trying to brief, just to stay structured. That's
 19 dealing with the situation, just explaining them the
 20 situation, and I know in this context I didn't need to go
 21 through the whole of it because it was not applicable to
 22 the operational option that needed to go down. But then
 23 explaining to each of them according to the map and on the
 24 map showing that there's a phase 1, 2, and 3 now, and then
 25 telling them their positions and what was expected of

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1 everybody in the different phases before moving – well,
 2 dealing with the two forward holding area groupings.
 3 MS LE ROUX: And I've asked you whether
 4 anyone asked any questions to seek clarity about your
 5 briefing. Did anyone challenge your plan? Did anyone play
 6 the devil's advocate role?
 7 COLONEL SCOTT: No.
 8 MS LE ROUX: Now the statements from
 9 members that the Human Rights Commission has reviewed
 10 reveal that the briefing was misunderstood. I don't intend
 11 to canvass those with you. Mr White, as he's indicated, is
 12 working on a document that analyses those statements, which
 13 will be produced once all of the statements from SAPS have
 14 been submitted. But I want to focus on two aspects of
 15 briefing. The first relates to the use of water cannon in
 16 your force continuum. So the water cannon, as I understand
 17 it, was a key part of your force continuum, correct?
 18 COLONEL SCOTT: Yes.
 19 MS LE ROUX: And as we now know, the two
 20 water cannons were wholly unprepared for the rollout of the
 21 barbed wire, and seemingly also for the approach of the
 22 protesters to the kraal. So no water is sprayed towards
 23 the lead group of protesters, who were shot by the TRT at
 24 scene 1. You're aware of all of those facts?
 25 COLONEL SCOTT: Well, the – we know that

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1 the water cannon according to that evidence I think starts
 2 spraying about seven seconds before the shooting starts.
 3 To where and why they positioned where they did, I think
 4 that they anticipated what we thought was – or I think that
 5 those commanders are still of the opinion, is incident 2.
 6 That's why they moved in there, because the Nyalas
 7 initially formed up there to face the crowd. But the fact
 8 that they did try to spray, they did, obviously before that
 9 shooting occurred, so – and I know you know that, maybe it
 10 just wasn't mentioned.
 11 MS LE ROUX: But Colonel Scott, water
 12 cannons were not used. They did not spray at the lead
 13 protester group. You're aware of that?
 14 COLONEL SCOTT: I haven't looked at that
 15 specifically. I know they sprayed over the kraal. At what
 16 they were spraying at then I'm not too sure.
 17 [15:33] MS LE ROUX: Okay. Chair, for the
 18 record, in the annexure to Mr White's statement, GW6(d),
 19 commencing at page 31 is an analysis which establishes in
 20 our submission that there was no water cannon sprayed at
 21 the lead group of protesters and that any water cannon
 22 spray comes only seven seconds before the volley of TRT
 23 fire. Colonel Scott, what briefing did you give in respect
 24 of the water cannons? When did you want them deployed and
 25 where did you want them deployed? What did you brief on?

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1 COLONEL SCOTT: I had initially, I was
 2 only aware of one when I briefed the JOCOM at 13:30 and
 3 that water cannon I had anticipated going to the middle of
 4 the dispersion line once the razor wire was closed and it
 5 would move down the centre flank, if I could put it that
 6 way, to confront what I assumed would be the militant group
 7 which would be situated on the piece of ground that they
 8 were occupying. The second water cannon, as far as I know,
 9 arrived somewhere probably around, while I was, or just
 10 before or sometime during that briefing, but I was made
 11 aware of it and so just instinctively I placed, I asked
 12 that to be placed on the police's side of the razor wire
 13 which is not necessarily reflected in the actual Google
 14 plans or anything, but it was something that I'd spoken to
 15 then, because my idea was that if we had one confronting
 16 the protesters from the direct north, the second would help
 17 to defend the razor wire line because I was aware that it
 18 has got weaknesses, as I say there are gaps between the
 19 actual vehicle and the beginning of the trailer that people
 20 can come through. People can come underneath the Nyalas
 21 for that matter as well so to try and keep any protesters
 22 that looked like they were trying to approach that razor
 23 wire line, to use the water cannon to try and spray them,
 24 to go back, and in the same way, if the water cannon was
 25 able to reach, to assist the first water cannon which was

<p style="text-align: right;">Page 15231</p> <p>1 planned into the operation, from a different angle, to get 2 the people moving towards the west, with a spray of the 3 water. 4 MS LE ROUX: And which commanders were 5 present at your briefing that had responsibility for the 6 water cannon deployment? 7 COLONEL SCOTT: The water cannon as far 8 as I know, fell directly under Brigadier Calitz. I am not 9 sure that they were worked specifically into a grouping. 10 To my knowledge they only arrived, both of them if I am not 11 mistaken, on that Thursday. 12 MS LE ROUX: And do you know why neither 13 water cannon was prepared to move while the barbed wire was 14 being rolled out? Do you know why they didn't move? 15 COLONEL SCOTT: I can only anticipate 16 that they were waiting for the call to actually go out and 17 form up on the outside, because for that matter none of the 18 Nyalas actually inside did move while the razor wire was 19 being deployed until they saw the crowd approaching, and 20 that's when Brigadier Calitz started directing and calling. 21 MS LE ROUX: Beyond what you've already 22 testified to with respect of how you wanted to use the two 23 water cannons, had you anticipated using them during the 24 dispersion plan to the west, or specifically with respect 25 to koppie 3.</p>	<p style="text-align: right;">Page 15233</p> <p>1 before the attacking strikers reached them. And within 2 this, you've included stun grenades. Are you aware that 3 the TRT didn't use any stun grenades at either scene 1 or 4 scene 2? 5 COLONEL SCOTT: No, I am not, but I don't 6 know at scene 2 what the reason would be for that, but I 7 know at scene 1 I think that they were caught unawares. 8 So, but I can't speak for their, obviously it's a decision 9 process that they need to go through. But in general, and 10 this is why, if you do look at the positioning of these 11 forces all the way, the idea of having a gap was so that 12 you can have that ability and we teach this in similar 13 tactics even inside when we do the searching of houses, 14 there are certain callers we will turn but we will go wide 15 because we don't – we want to give the opportunity for 16 decision-making processes instead of just having somebody 17 jump out and on you which is similar tactics to what would 18 have been used inside the bushes, etcetera, so that there's 19 not impromptu decisions made but you have the ability to 20 rationalise to do the Ooda loop, observe, orientate and 21 then decide and act. 22 MS LE ROUX: And do you know whether the 23 TRT members carried stun grenades on that day? 24 COLONEL SCOTT: I don't know. They are 25 supposed to be issued with them, as are the NIU and the</p>
<p style="text-align: right;">Page 15232</p> <p>1 COLONEL SCOTT: No, I had not anticipated 2 using the koppie 3. It was one of the considerations that 3 they would have been also – that's moving into tactics that 4 we don't want to divulge, but in essence, they were there 5 to break up the more grouped together people, with the hard 6 spray of water. And as I know, you would find even in a 7 standing order 262, that they would speak to maybe the 8 water cannon coming later in the use of force continuum, 9 but my rationale for using them first was, I needed to keep 10 the space between the protesters or the strikers and the 11 actual police line so as not to first go ahead with shields 12 and Tonfas to try and confront somebody with spears and 13 pangas but rather keep that gap and have the water spray 14 first and then move to tear gas. As you get closer so you 15 start utilising that which becomes into effective range. 16 MS LE ROUX: If I can move then to the 17 second aspect of briefing, that I wanted to concentrate on 18 which is, if we can go to page 124 of your statement, and 19 paragraph 42.18.3 and there you describe the fourth 20 continuum for the TRT, if they were required to back up the 21 POP once they'd retreated their Nyalas, it says "Should the 22 POP have safely entered their Nyalas and the attack was 23 then directed towards the TRT line there would be 100 24 metres of distance for the fourth continuum to be applied, 25 being verbal warning, stun grenades and warning shots</p>	<p style="text-align: right;">Page 15234</p> <p>1 STF. 2 MS LE ROUX: Okay. Because we haven't 3 yet been able to establish whether they just weren't 4 carrying them or if they just didn't use them. But let me 5 move on. Colonel Scott, I'd like to move to a topic which 6 is covered in Mr White's statement commencing page 98 7 paragraph 7.3.4 and runs to page 101 paragraph 7.3.9 and 8 this relates to the role of Major-General Mpembe. What I'd 9 like to do is, go through several references to – in your 10 different statements and then pose the question to you, if 11 you could bear with me. So in your first statement, you 12 don't mention Major-General Mpembe at all, and similarly in 13 your second statement, there's no mention of Major-General 14 Mpembe. In your third statement, you do refer to him and I 15 can give you the list of paragraphs where you referred to 16 him, but it's never as the overall commander or the CJOC, 17 and it's clear from the paragraphs that I will give you 18 that most of your interaction in respect of planning is 19 with Major-General Annandale, and that he chairs the 20 briefings and meetings that you are present at. So for the 21 record, the long list of references in your statement that 22 I've just referred to you, are paragraphs 7.19, 7.27, 7.37, 23 8.3, 8.4, 8.6, 8.8, 8.12, 9.1, 9.3, 9.4.1.5, 9.4.3, 9.5, 24 12.1, 12.3, 12.5, 12.6, 26.1, 29.1 and 32.2. So all of 25 those paragraphs suggest to us that it was Major-General</p>

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1 Annandale who was actually in charge rather than Major-
 2 General Mpmembe. What is your response to that?
 3 COLONEL SCOTT: I know it's – it wasn't
 4 at the outset said, and I don't recall it being said
 5 necessarily, I think it was on the Thursday, there may have
 6 been some clarification given to that, I initially did
 7 think when General Annandale came in that he had taken
 8 overall commander position and my rationale was based on
 9 maybe the events of the previous day that General Mpmembe
 10 maybe had experienced a bit of a traumatic situation, but
 11 this is my assumption and my opinion at the time, that I am
 12 speaking to now. It was clarified on one of the days
 13 inside the JOC, I am not sure where General Annandale
 14 actually told the people, Major-General Mpmembe is the
 15 overall commander, although he's just taking the JOCOMs
 16 etcetera because Major-General Mpmembe has been occupied
 17 very much with management, with union presidents and was a
 18 lot out of the JOC so there may have been a misconception
 19 in the beginning but it was rectified. I am not sure if I
 20 need to answer –
 21 MS LE ROUX: And Colonel Scott, standing
 22 order 262 exhibit SS2, we don't need to go there but it's
 23 page 6, section 9 pre-planning of operations step 1,
 24 allocates to the overall commander the responsibility for
 25 ensuring the development of a comprehensive written

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1 operational plan and then you were obviously designated to
 2 do that. But am I corrected that Major-General Mpmembe gave
 3 no – was not a source of direction to you in your planning,
 4 it was only Major-General Annandale that you engaged with.
 5 And Major General Annandale didn't report to you that
 6 Major-General Mpmembe had asked him to give you a direction.
 7 COLONEL SCOTT: I think you are correct
 8 in saying so, yes. I just understood it to be my line of
 9 command being that I was outside now of Brigadier Fritz's
 10 command as an STF and was reporting to General Annandale
 11 who had requested me to come in. So I kept that command
 12 channel.
 13 MS LE ROUX: And Colonel Scott, in line
 14 with that, in your contemporaneous planning documentation,
 15 we can find no reference to the overall commander until a
 16 document entitled "Ops Platinum 14 to 16 August 2012,"
 17 which is saved on the 23rd of August, and Chair, this has
 18 not yet been exhibited, but in that document at –
 19 CHAIRPERSON: It will be an exhibit, it
 20 will have to be I suppose if you are referring to it.
 21 MS LE ROUX: Yes.
 22 CHAIRPERSON: The next exhibit if I've
 23 kept the score correctly, is JJJ198, is that correct, Ms
 24 Pillay?
 25 MS PILLAY: Chair, JJJ199.

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1 CHAIRPERSON: 199, what's 198?
 2 MS PILLAY: It's the affidavit of
 3 Catherine Scott.
 4 CHAIRPERSON: Oh. I missed that, well,
 5 thank you. I didn't put that in my book. Affidavit of
 6 Catherine Scott is JJJ198, and the - and exhibit JJJ199,
 7 how do I describe that?
 8 MS LE ROUX: Chair, it's the document Ops
 9 Platinum 14 to 16 August 2012" saved on the 23rd of August
 10 2012.
 11 COLONEL SCOTT: I think it has been, it
 12 was given JJJ151, if I look in the evidence list that I've
 13 got from –
 14 CHAIRPERSON: Yes, Adv Hemraj says she's
 15 got a copy, so it must an exhibit. Well, let's
 16 provisionally mark it exhibit JJJ199. When was it last
 17 saved you say?
 18 MS LE ROUX: Sorry, Chair?
 19 CHAIRPERSON: When was it last saved
 20 MS LE ROUX: 23rd of August.
 21 CHAIRPERSON: 23rd of August. And if it –
 22 Mr Chaskalson, do you know?
 23 MR CHASKALSON: I do, Chair, it is in
 24 fact JJJ151.
 25 CHAIRPERSON: Well, then I will delete it

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1 –
 2 MS PILLAY: My apologies, Chair.
 3 CHAIRPERSON: - delete any reference to
 4 JJJ199 and from now on –
 5 MS PILLAY: My apologies, Chair.
 6 CHAIRPERSON: - it will be JJJ151 as it
 7 has always been since it first appeared.
 8 MS LE ROUX: Thank you Chair. Colonel
 9 Scott, if we can go to slide 39 of that document. This is
 10 the first reference we can find to the overall commander of
 11 the operation but there it states, Overall commanders,
 12 plural, PC and Major Generals, exercise control from the
 13 JOC relieving each other as other commitments are dealt
 14 with. So from what we see in your contemporaneous
 15 documentation as well as your own experience as reflected
 16 in the statement, Major-General Mpmembe may have been the
 17 CJOC and overall commander in name, but he doesn't appear
 18 to have been in actual charge of the operation from your
 19 experience, would you agree with that?
 20 COLONEL SCOTT: I think they would
 21 dispute that. Obviously, I can only speak to the role I
 22 had and who I reported to, but there were obviously
 23 meetings which the generals had amongst each other that I
 24 was not privileged to, so General Annandale's role in
 25 dealing with taking JOCOMs and so on in the absence of

<p style="text-align: right;">Page 15239</p> <p>1 General Mpmembe possibly for other reasons or not knowing 2 that he would be there trying to do negotiations, so I 3 don't know if I'd be able to say, but I did understand in 4 the beginning times and I think up until about the Thursday 5 I thought General Annandale was in charge. 6 CHAIRPERSON: I want to ask you about 7 paragraph 9.4.1.5 of you final statement, page 75, where 8 you said, "I cleared with Major-General Annandale on the 9 Wednesday the deployment of the STF and NIU from FHA1 to a 10 newly created area, namely Immediate Reaction Areas, IRA, 11 to the south. General I was at a site behind the power 12 station, and the remainder of the NIU to the far north of 13 the koppie, sufficiently away as not to be a target for the 14 strikers if they were in soft skinned vehicles." Then you 15 go on about that. So that's something you cleared not with 16 Major-General Mpmembe, but with Major-General Annandale 17 which is quite an important change in the plan, because it 18 involved the deployment of the STF and NIU from the forward 19 holding area, number 1. Now, I take it there were other 20 matters that you had to clear, changes and adjustments to 21 the plan, is that right? 22 COLONEL SCOTT: There were from time to 23 time, Chairperson, but just in saying that, as I understood 24 it and I think correctly so, I didn't just speak to the 25 overall commander in the absence of possibly then General</p>	<p style="text-align: right;">Page 15241</p> <p>1 commander, your immediate command was still Major-General 2 Annandale? 3 COLONEL SCOTT: Yes. 4 MS LE ROUX: And wasn't Major-General 5 Mpmembe or – present when you did one or other presentation 6 in the JOCCOM? 7 COLONEL SCOTT: One or other, Chairperson 8 – 9 MS LE ROUX: One of your presentations in 10 the JOCCOM. 11 COLONEL SCOTT: Yes, yes, he was there in 12 the JOCCOMs in the morning as far as I could remember, he 13 was present, at least on the Wednesday and on the Thursday, 14 I think he was present as well. 15 CHAIRPERSON: I think the important point 16 is when you made, that your impression for what it was 17 worth, was that Major-General Annandale was in charge, 18 whether that impression was correct or incorrect, is 19 obviously something you can't tell us about. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: But that was your 22 impression. 23 COLONEL SCOTT: Yes. Because when I set 24 this slide up and speaking to the PC and the Major 25 Generals, I think if we go back to earlier versions, I was</p>
<p style="text-align: right;">Page 15240</p> <p>1 Annandale, being there, if I needed to speak, I would need 2 to inform up my chain of command, it would be similar to 3 somebody on the ground, a captain, speaking directly to the 4 overall command and skipping everybody else in between. So 5 you would try to stay in your chain of command so that 6 whoever was talking, would speak to the commanders. 7 CHAIRPERSON: Okay, I understand that. 8 Did you clear anything with Major-General Mpmembe, or did 9 you clear everything that you did clear with Major-General 10 Annandale? 11 COLONEL SCOTT: The only time I cleared 12 something that I can recall with General Mpmembe was on the 13 Tuesday, and that was the sector policing plan. But that 14 was in the absence of General Annandale. 15 CHAIRPERSON: And when you cleared 16 matters with General Annandale, did you get an immediate 17 response or did he say to you, I'll talk to the overall 18 commander and come back to you? 19 COLONEL SCOTT: Chairperson, I think it 20 was more an immediate response but also in the line of yes, 21 we will show it at the JOCCOM for their approval in that 22 vein. 23 CHAIRPERSON: Thank you 24 MS LE ROUX: So whether you knew at the 25 outset or not, that Major-General Mpmembe was the overall</p>	<p style="text-align: right;">Page 15242</p> <p>1 a bit unsure about who was actually in charge whether it 2 was the Provincial Commissioner or General Mpmembe, and that 3 would have been earlier on the Tuesday, but when General 4 Annandale arrived and started taking the JOCCOMs and so on, 5 I assumed, well, he must have been given the role, until it 6 was later clarified in the operation that in fact General 7 Mpmembe was still the overall commander and General 8 Annandale was just his aid in essence. 9 MS LE ROUX: Colonel Scott, I'd like to 10 move on to my next topic which appears in Mr White's 11 statement for the record, commencing page 45 section 4.4, 12 and that's to ask you the following, so am I correct that a 13 fundamental part of your plan was to make arrests and 14 presumably those arrests were intended to then lead to 15 prosecutions. Correct? 16 COLONEL SCOTT: The arrests were 17 obviously, is a means of then to secure the presence of 18 that person in court and as we know, but also to interview 19 the individuals to see whether, it is necessary to lay 20 charges then go to court. So in essence that was the idea 21 was to try to give those that are responsible and until 22 you, obviously you arrest persons, interview, if no need to 23 be charged, released, so that you can move to the place 24 where you can actually start getting the information and 25 narrowing it down to who was actually there, the</p>

<p style="text-align: right;">Page 15243</p> <p>1 perpetrators.</p> <p>2 MS LE ROUX: And part of that process</p> <p>3 would be ensuring that sufficient evidence was gathered to</p> <p>4 ensuring assist those prosecutions, so what planning did</p> <p>5 you make about the collection of evidence? Where do we</p> <p>6 find that in your plan?</p> <p>7 COLONEL SCOTT: The collection of</p> <p>8 evidence was to be part of the phase 4, and that was after</p> <p>9 any tactical option had happened for that matter, or they</p> <p>10 had laid down their weapons on the koppie and moved off on</p> <p>11 their own, as was envisioned possibly with the early</p> <p>12 morning plan, or with, if they had adhered to what was said</p> <p>13 for the Thursday morning at nine o'clock than to have the</p> <p>14 forensic services actually move forward. There were two</p> <p>15 aspects to the phase 4. One was the actual dealing with</p> <p>16 human beings, the arrested human beings and that was to be</p> <p>17 dealt with by detectives, and then there was the aspect of</p> <p>18 the evidence that would be found in their possession and</p> <p>19 that would be dealt with forensics to ensure the evidence</p> <p>20 chain again.</p> <p>21 MS LE ROUX: But with respect to phase 3,</p> <p>22 the disarm aspect of the plan, did you anticipate needing</p> <p>23 to arrest people and secure evidence at that stage of the</p> <p>24 plan?</p> <p>25 [15:53] COLONEL SCOTT: Well, it would have been</p>	<p style="text-align: right;">Page 15245</p> <p>1 just clarify that point, that I do understand that, I mean</p> <p>2 the police official has the right to arrest when a crime is</p> <p>3 committed in his presence and these weapons that are being</p> <p>4 carried then obviously are in the process of breaking the</p> <p>5 law, thus –</p> <p>6 CHAIRPERSON: I understand exactly what</p> <p>7 you say, particularly in relation to physical evidence.</p> <p>8 COLONEL SCOTT: Yes.</p> <p>9 CHAIRPERSON: Okay.</p> <p>10 MS LE ROUX: Now, Colonel Scott, as we</p> <p>11 know approximately 270 people were arrested during the</p> <p>12 dispersal phase of the plan, yet we've only seen very few</p> <p>13 statements by those who did the arrests. Have you seen</p> <p>14 statements from every officer who affected an arrest –</p> <p>15 COLONEL SCOTT: No –</p> <p>16 MS LE ROUX: - on the 16th?</p> <p>17 COLONEL SCOTT: I've actually in essence</p> <p>18 had very little to do with the statements and I only</p> <p>19 familiarised myself with the more senior officers, but not</p> <p>20 with any of the members on the ground.</p> <p>21 MS LE ROUX: And follow, - when you were</p> <p>22 still deployed, following the 16th, were you aware whether</p> <p>23 members were being followed up with to make those</p> <p>24 statements around the circumstances of the arrests they had</p> <p>25 affected?</p>
<p style="text-align: right;">Page 15244</p> <p>1 a follow-on from phase 3, any arrests initially that are</p> <p>2 made, bringing into submission to the polices, the role of</p> <p>3 the tactical units and any tactical officer that's carrying</p> <p>4 out an arrest would need to inform the person that he is</p> <p>5 being arrested, you are under arrest and these are the</p> <p>6 reasons for doing so, but then the detectives then come in,</p> <p>7 they would need to obviously take an arresting statement</p> <p>8 from the tactical officer and then they would deal further</p> <p>9 with the interviewing of the arrested individuals to see</p> <p>10 the applicability thereof.</p> <p>11 CHAIRPERSON: And do you normally</p> <p>12 collect, well, I know you're not a detective but don't</p> <p>13 detectives normally collect evidence first before they make</p> <p>14 arrests, and isn't difficult to collect the evidence some</p> <p>15 time after the arrest is made?</p> <p>16 COLONEL SCOTT: Ja, I'm talking about</p> <p>17 physical evidence, the actual weapons in hand, etcetera.</p> <p>18 CHAIRPERSON: Ja, okay. Now this point</p> <p>19 raises another point with me, but if Advocate Le Roux is</p> <p>20 going to ask it I won't. Are you going to ask him</p> <p>21 questions about the videographers in this context?</p> <p>22 MS LE ROUX: Yes, Chair, but –</p> <p>23 CHAIRPERSON: Alright, well, then, no, it</p> <p>24 is your cross-examination, you ask the questions.</p> <p>25 COLONEL SCOTT: But, Chair, maybe I can</p>	<p style="text-align: right;">Page 15246</p> <p>1 COLONEL SCOTT: No, I can't, I don't</p> <p>2 know.</p> <p>3 CHAIRPERSON: It wasn't your job, was it?</p> <p>4 COLONEL SCOTT: No.</p> <p>5 MS LE ROUX: That's why I asked if he was</p> <p>6 aware of anyone doing it. Colonel Scott, do you know</p> <p>7 whether there are and where they are, any photographs or</p> <p>8 videos taken by the police on the day that identify</p> <p>9 specific protestors engaged in illegal acts for which they</p> <p>10 should be prosecuted?</p> <p>11 COLONEL SCOTT: I'm aware the Crime</p> <p>12 Intelligence was dealing with that, and they have</p> <p>13 mechanisms to take photographs out of video footage so that</p> <p>14 they can actually identify the faces of people and so on.</p> <p>15 The progress of that I don't know, I've also not been privy</p> <p>16 to where that's gone or to what investigation that's gone</p> <p>17 into.</p> <p>18 MS LE ROUX: And in your statement, for</p> <p>19 the record we don't need to go there, at page 127,</p> <p>20 paragraph 45, you described the process where you came into</p> <p>21 possession of video and photo evidence for the purposes of</p> <p>22 this Commission of Inquiry. Had that evidence already been</p> <p>23 reviewed in order to support prosecutions of people that</p> <p>24 have been arrested? Are you aware of that?</p> <p>25 COLONEL SCOTT: The evidence –</p>

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1 MS LE ROUX: Whether it had been
 2 reviewed?
 3 COLONEL SCOTT: The evidence that was
 4 given to me?
 5 MS LE ROUX: Yes.
 6 COLONEL SCOTT: I'm not aware if it was
 7 but I've actually tried to reason why some of the footage
 8 was only brought to me later and that's the reasoning or
 9 rational, what I could come up with was that Crime
 10 Intelligence, or detectives were still looking at the
 11 footage to get the faces of possible perpetrators and so
 12 on, to have the matter followed up on.
 13 MS LE ROUX: So am I correct that there
 14 was no coherent plan to capture, deal with and retain the
 15 best evidence that would be available to assist prosecution
 16 of those who were arrested?
 17 COLONEL SCOTT: I think the –
 18 MS LE ROUX: On the 16th?
 19 COLONEL SCOTT: What you're saying is, a
 20 coherent plan again comes down to standing orders that
 21 regulate the actual actions of those two different
 22 disciplines, the detectives and the Forensic Services. I
 23 wouldn't explain to a detective what he needs to do in the
 24 processing of a person, similarly I wouldn't need to have
 25 to explain to a police official what they need to provide

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1 when arresting a person, because they know they would need
 2 to provide an arresting statement for that matter, and
 3 similarly with the evidence chain again, with physical
 4 evidence, those are crime scene experts. So for me to
 5 dictate to them their actions is also out of place.
 6 MS LE ROUX: Thank you, Chair, we'll
 7 follow up through the evidence leaders but if the SAPS
 8 could confirm whether there are any such arresting
 9 statements or –
 10 CHAIRPERSON: Yes, yes –
 11 MS LE ROUX: - video evidence beyond the
 12 –
 13 CHAIRPERSON: Mr Semenya and the rest –
 14 MS LE ROUX: - that have been provided.
 15 CHAIRPERSON: Sorry, Mr Semenya and the
 16 rest of the team have heard you and I'm sure they will
 17 respond. I would just like to ask one question before we
 18 adjourn and that is, were you aware of the fact, before any
 19 instructions were given in respect of implementation of
 20 stage 3, were you aware that the official police
 21 videographers had left the vicinity of the koppie and come
 22 back to the JOC?
 23 COLONEL SCOTT: I wasn't aware at all,
 24 Chairperson.
 25 CHAIRPERSON: If you had been, I take it

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1 you would have sent them out again –
 2 COLONEL SCOTT: Yes –
 3 CHAIRPERSON: - when stage 3 was going to
 4 be implemented?
 5 COLONEL SCOTT: Yes.
 6 CHAIRPERSON: And they could have safely
 7 taken whatever videos they had to take from the protection
 8 in the neutral area, is that right?
 9 COLONEL SCOTT: Yes.
 10 CHAIRPERSON: I see, thank you. On this
 11 point, at this stage we'll adjourn until nine o'clock
 12 tomorrow morning.
 13 [INQUIRY ADJOURNED]
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