

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 144 7 NOVEMBER 2013 PAGES 15797 TO 15981



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<p>1 [PROCEEDINGS ON 7 NOVEMBER 2013] 2 [09:03] CHAIRPERSON: The Commission resumes. 3 Colonel, you're still under oath. 4 DUNCAN GEORGE SCOTT: s.u.o. 5 CHAIRPERSON: Are you now going to 6 commence your re-examination, Mr Semenya? 7 RE-EXAMINATION BY MR SEMENYA SC: Indeed, 8 Chair. Colonel, can I have us deal with various elements 9 of your evidence, and shall we start with the evidence 10 relating to the simultaneous unfurling of the barbed wire, 11 or the razor wire. You remember that piece of evidence? 12 COLONEL SCOTT: Yes. 13 MR SEMENYA SC: It was your evidence that 14 according to plan the unfurling of the barbed wire was to 15 occur simultaneously. 16 COLONEL SCOTT: That's correct. 17 MR SEMENYA SC: And the evidence was that 18 if done according to plan, that would have taken under two 19 minutes or thereabouts to have all of the barbed wire 20 unfurled. 21 COLONEL SCOTT: That's correct. 22 MR SEMENYA SC: And the proposition put 23 to you was that if that had been done, we would not have 24 had scene 1. You remember that evidence? 25 COLONEL SCOTT: I remember that, yes.</p>	<p>1 previously that Brigadier Calitz had the power, as it were, 2 to deviate. So I understood that to be his evidence 3 earlier. 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: But anyway – 6 COMMISSIONER HEMRAJ: Surely, Colonel, 7 the availability of time would affect whether one goes back 8 and forth with planners and other commanders? 9 COLONEL SCOTT: Time, Ma'am, and if it 10 was a really major change that something had happened on 11 ground which was going to make the plan deviate totally 12 from what had been briefed, then one would need to 13 obviously go and inform the JOCCOM that what's happening 14 currently is, this situation is changing, it's different 15 and I recommend we do the following. 16 MR SEMENYA SC: And something like moving 17 the line of Nyalas some metres this way or metres that way, 18 practically would that have to go back to JOCCOM? 19 COLONEL SCOTT: No. 20 MR SEMENYA SC: Now to that proposition 21 that says scene 1 would not have happened, can I ask you 22 this; from what you have seen, if the militant group did 23 not approach the police line, would scene 1 have happened? 24 COLONEL SCOTT: Yes. 25 MR SEMENYA SC: Perhaps you want to</p>
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<p>1 MR SEMENYA SC: Can I invite you to help 2 us here? If a JOCCOM approved plan was that the razor wire 3 was to be unfurled intertaneously, or simultaneously, and 4 there was a need to adjust that plan, some would say 5 deviate from the plan, what would be the procedure; do you 6 go back to JOCCOM? 7 COLONEL SCOTT: There is a certain amount 8 of discretion invested in the operational commander, being 9 the specialist in the environment that he is working in. 10 Normally you could consult with your overall commander with 11 regard to if you had any deviation plan, but the specialist 12 here was your Public Order Policing officer, which was 13 Brigadier Calitz and Colonel Makhubela. 14 MR SEMENYA SC: Let us go back to the 15 facts now. They are on site, they're supposed to unfurl 16 the barbed wire. For good or bad reason, the operational 17 commander decides it must be done intermittently. As a 18 matter of procedure, are they supposed to go back to JOCCOM 19 to go and do that adjustment, or what is called a 20 deviation? That's my question. 21 COLONEL SCOTT: No, there's, that is the 22 discretion of the operational commander and his decision to 23 make that call. 24 MR SEMENYA SC: Practically did – 25 CHAIRPERSON: I'd understood you to say</p>	<p>1 reflect on my question and make sure you understand – 2 CHAIRPERSON: I think you may have 3 misunderstood – I won't allow Mr Semenya to cross-examine 4 you, but I think that you may have misunderstood the 5 question. So perhaps he can repeat it; listen carefully. 6 MR SEMENYA SC: If the militant group 7 when the wire was unfurled had not approached the police 8 line, would scene 1 have happened? 9 COLONEL SCOTT: No. 10 MR SEMENYA SC: Is it correct as a matter 11 of proposition though, tell us, that the people were shot 12 because the barbed wire was unfurled? 13 COLONEL SCOTT: No. 14 MR SEMENYA SC: There is also one element 15 around this matter which I seek your clarification. There 16 is also a proposition that the plan was done and the 17 implementation of that plan happened under time 18 constraints. Do you remember that evidence? 19 COLONEL SCOTT: I remember that, yes. 20 MR SEMENYA SC: As part of the people who 21 were responsible for that plan, were you satisfied or not 22 satisfied that the plan could be implemented properly 23 within the time constraint that you had? 24 COLONEL SCOTT: I was satisfied that it 25 could be carried out.</p>

<p style="text-align: right;">Page 15801</p> <p>1 MR SEMENYA SC: If you are of the view 2 that it would be totally unsafe to implement the plan 3 within the constraints of time that existed, what would 4 have been your – 5 COLONEL SCOTT: I would have raised that 6 objection and given my reasons why. 7 MR SEMENYA SC: Around that matter are 8 also issues of whether or not there was adequacy of time 9 for briefing or not. You remember that evidence? 10 COLONEL SCOTT: I remember that, yes. 11 MR SEMENYA SC: Please explain to us if a 12 plan entails the work of the Public Order Police in 13 relation to a matter like dispersing a crowd, how extensive 14 a briefing is necessary for that operation? 15 COLONEL SCOTT: It's normally not an 16 extensive briefing. It's a standard operating procedure. 17 There are only minor details which need to be brought to 18 the attention or are actually done by the officer on scene 19 who normally would plan that. 20 MR SEMENYA SC: On the day did everybody 21 understand that the positive attraction point would be the 22 westerly side of the koppie, or not? 23 CHAIRPERSON: How can he tell us what 24 everybody understood? 25 MR SEMENYA SC: From the briefing, Chair.</p>	<p style="text-align: right;">Page 15803</p> <p>1 COMMISSIONER HEMRAJ: And you had gone 2 through the positioning of the various units and what their 3 roles were. 4 COLONEL SCOTT: That's correct. 5 COMMISSIONER HEMRAJ: When you briefed 6 the commanders in the field on the Thursday, how much of 7 that was different? What were the differences between the 8 first and the second plan? 9 COLONEL SCOTT: We're talking about the 10 phase 1 which was briefed on Wednesday morning – 11 COMMISSIONER HEMRAJ: Yes. 12 COLONEL SCOTT: - versus the phase 2 13 which was briefed on, or are we talking about the phase 3 14 which was briefed on the Thursday? 15 COMMISSIONER HEMRAJ: We're talking about 16 your evidence that says in the JOCCOM on Wednesday 17 afternoon there was a very full briefing, all the POPS 18 commanders were called back from the public sector 19 policing. 20 COLONEL SCOTT: Oh, on the Tuesday 21 afternoon? 22 COMMISSIONER HEMRAJ: No, the Wednesday. 23 CHAIRPERSON: No, I don't think they were 24 called back on the Wednesday. 25 COLONEL SCOTT: No, Chairperson –</p>
<p style="text-align: right;">Page 15802</p> <p>1 CHAIRPERSON: No, no, you give a 2 briefing, but how can he tell us – perhaps you should ask 3 him whether he can tell us whether after he'd given the 4 briefing, he was satisfied that everybody understood, and 5 if the answer to that one is yes, he can tell us why. 6 COLONEL SCOTT: Chairperson, I was 7 satisfied. I briefed them quite in detail about the left, 8 middle, and right flank, and to where the thrust of the 9 dispersion should go, which was to the west, with the 10 channelizing of the razor wire, assisting the dispersion 11 action to push it to the west. So I was satisfied that 12 they understood that. 13 CHAIRPERSON: You say so, but what was 14 your satisfaction based on? 15 COLONEL SCOTT: The fact that I know I 16 spoke to that in detail and there was no come-back on, or 17 no questions asked or issues raised concerning that. 18 COMMISSIONER HEMRAJ: While you're on the 19 question of the briefing, can you assist me with something, 20 Colonel? On the Wednesday, your testimony was that you did 21 a pretty full briefing with the POP commanders present at 22 the JOCCOM meeting. 23 COLONEL SCOTT: On the Wednesday morning. 24 COMMISSIONER HEMRAJ: Yes. 25 COLONEL SCOTT: Yes.</p>	<p style="text-align: right;">Page 15804</p> <p>1 CHAIRPERSON: They were called back on 2 the Tuesday – 3 COLONEL SCOTT: Tuesday. 4 CHAIRPERSON: - and I think the evidence 5 is that it's thought that Mr Twala was killed – 6 COLONEL SCOTT: Yes. 7 CHAIRPERSON: - while they were back – 8 COLONEL SCOTT: Yes. 9 CHAIRPERSON: - either the commanders 10 being briefed in the JOC, or perhaps while they were 11 briefing their own men in the field, but certainly at that 12 stage on the Tuesday – 13 COLONEL SCOTT: Yes. 14 CHAIRPERSON: - Mr Twala was killed, and 15 I don't recall the evidence being that on the Wednesday 16 they came back in the afternoon – 17 COLONEL SCOTT: No. 18 CHAIRPERSON: Am I correct? 19 COLONEL SCOTT: No. 20 CHAIRPERSON: The briefing they got on 21 the Wednesday morning, that related to what phases of the 22 operation? 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: What phase of the operation 25 did it relate to?</p>

<p style="text-align: right;">Page 15805</p> <p>1 COLONEL SCOTT: Yes, that was phase 1. 2 CHAIRPERSON: Phase 1. 3 COLONEL SCOTT: On Wednesday morning. 4 CHAIRPERSON: Wednesday. 5 COMMISSIONER HEMRAJ: How much had 6 changed with what you briefed them on, on the Thursday at 7 ? 8 COLONEL SCOTT: At 2:30 versus the 9 Tuesday briefing? 10 COMMISSIONER HEMRAJ: Yes. 11 COLONEL SCOTT: Significantly, Ma'am. 12 Tuesday briefing was just basically saying that our 13 tactical option would be an encirclement. It didn't go 14 into the detail of that. That was what I'd held in reserve 15 because I wanted them to concentrate on the phase 1. I 16 just made them aware of the difference stages thereafter, 17 or phases thereafter. Again if you say encirclement to a 18 Public Order policeman, they have a very good idea of what 19 you're talking to because it refers back to a standard 20 operating procedure. They just wouldn't have known where, 21 or exactly the strategy I had in mind around that. But the 22 Thursday briefing was obviously quite significantly 23 different to that. It was to deal with a D&D plan, 24 dispersal and disarm plan, which changed significantly from 25 the, what was said to them on Tuesday because it was –</p>	<p style="text-align: right;">Page 15807</p> <p>1 COLONEL SCOTT: No. 2 MR SEMENYA SC: Did you need to give more 3 detail in relation to how the barbed wire was to be 4 unfurled? 5 COLONEL SCOTT: No. 6 MR SEMENYA SC: Was there need to give 7 more detail about how POP members are to do that barricade 8 with barbed wire? 9 COLONEL SCOTT: No. 10 MR SEMENYA SC: Was there any detail 11 required to tell them how to do the dispersion? 12 COLONEL SCOTT: Other than just in what 13 directions and the flanking, but the physical dispersion, 14 no. 15 MR SEMENYA SC: About the position of the 16 TRT, was there anymore detail required to tell them where 17 they should be positioned? 18 COLONEL SCOTT: Other than what I 19 actually briefed them on, no. 20 MR SEMENYA SC: Was there anymore detail 21 required on how the sweeping must be done? 22 COLONEL SCOTT: No. 23 MR SEMENYA SC: How would they know how 24 to do the sweeping? 25 COLONEL SCOTT: It's dealt with in their</p>
<p style="text-align: right;">Page 15806</p> <p>1 COMMISSIONER HEMRAJ: Is there any – 2 COLONEL SCOTT: It was more in detail – 3 sorry - as well, which they didn't receive on the Tuesday 4 either. 5 COMMISSIONER HEMRAJ: There was no 6 difference as regards the resources available? 7 COLONEL SCOTT: I think the water cannons 8 had arrived in the interim. 9 COMMISSIONER HEMRAJ: Alright. 10 MR SEMENYA SC: Thank you. Now on 11 Thursday, that is now, in relation to where the barbed wire 12 Nyalas were to be lined, was the briefing in relation to 13 that matter adequate? 14 COLONEL SCOTT: We're at the 14:30, or at 15 the 6 o'clock – 16 MR SEMENYA SC: The briefing at 14:30 17 about the Nyalas. 18 COLONEL SCOTT: Yes, well the Nyalas were 19 already prepositioned, so it was, I don't think that I 20 would have gone into the detail of explaining to them why I 21 reasoned for the simultaneous, but I did mention 22 simultaneous deployment. 23 MR SEMENYA SC: Now did you need to give 24 more detail about where they should be positioned for 25 instance?</p>	<p style="text-align: right;">Page 15808</p> <p>1 training curriculum. 2 MR SEMENYA SC: The NIU? 3 COLONEL SCOTT: Similar. 4 MR SEMENYA SC: STF? 5 COLONEL SCOTT: The same. 6 MR SEMENYA SC: My difficulty is I'm 7 trying to establish in what manner and what information was 8 not available given the time constraints that are contended 9 for. Can you tell us? 10 COLONEL SCOTT: All I can speak to is the 11 briefing I gave and the briefing that I gave I felt to be 12 adequate for the operation to continue with. 13 MR SEMENYA SC: Okay, now shall we talk 14 about stage 3? That is the tactical option of the DDA as 15 you call it, dispersal, disarm and arrest. Firstly, do you 16 or don't you know who made the decision that the police 17 should go tactical? 18 COLONEL SCOTT: I don't know. 19 MR SEMENYA SC: Do you know when the 20 decision would have been made? 21 COLONEL SCOTT: I also didn't know that, 22 no. 23 MR SEMENYA SC: Alright. Now I want us 24 to go back to the encirclement plan. As we understand your 25 evidence, that is what you would have conceived as a</p>

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1 strategy the evening of Monday, following into the early
2 hours of Tuesday morning, correct?
3 COLONEL SCOTT: Yes.
4 MR SEMENYA SC: Can you again give us the
5 characteristics of that encirclement plan? What features
6 did it have for it to be implemented effectively?
7 COLONEL SCOTT: Well, it needed to have a
8 small group of people.
9 MR SEMENYA SC: How many more or less?
10 COLONEL SCOTT: Well, we estimated about
11 50.
12 MR SEMENYA SC: When was it supposed to
13 be implemented?
14 COLONEL SCOTT: It was supposed to be
15 implemented at first light as a matter of surprise.
16 MR SEMENYA SC: Were those the key
17 features of the encirclement plan?
18 COLONEL SCOTT: They were key features,
19 yes.
20 MR SEMENYA SC: Did the plan, or didn't
21 it, contemplate encirclement of the 3 000 so odd people?
22 COLONEL SCOTT: No.
23 MR SEMENYA SC: Did the encirclement plan
24 in character differ during that period of time, in
25 character?

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1 COLONEL SCOTT: No.
2 MR SEMENYA SC: Now let us look at that
3 plan. On Tuesday, you tell us the decision to implement
4 the encirclement plan, i.e. small group, first light,
5 surprise, was not implemented.
6 COLONEL SCOTT: No.
7 MR SEMENYA SC: And you have told us that
8 the reason was, amongst others, there were not enough
9 people there.
10 COLONEL SCOTT: That's correct.
11 MR SEMENYA SC: Let us look at that plan
12 in that formation. Came Wednesday morning, first light,
13 small group, surprise element, was it even contemplated to
14 be implemented on Wednesday?
15 COLONEL SCOTT: No.
16 MR SEMENYA SC: Why not?
17 COLONEL SCOTT: Because the negotiations
18 implemented in the phase 1 on Tuesday were deemed to be
19 successful, with an arrangement made with the strikers to
20 meet at 9 o'clock on the Wednesday morning to continue with
21 resolution through dialogue.
22 MR SEMENYA SC: What was the – I'm
23 talking Wednesday morning now.
24 COLONEL SCOTT: Yes.
25 MR SEMENYA SC: Why came Tuesday midnight

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1 did you not decide to do the encirclement plan the
2 following morning, Wednesday, at first light as a surprise
3 and encircling a group of 50?
4 COLONEL SCOTT: Because our option was to
5 resolve through dialogue as a first resort, not to go to a
6 tactical option –
7 CHAIRPERSON: I think you also said
8 earlier that you thought it would be a breach of faith if
9 you were negotiating with people, to ambush them, as it
10 were, while they still thought that you were negotiating
11 with them.
12 COLONEL SCOTT: That is correct,
13 Chairperson.
14 CHAIRPERSON: You did say that?
15 COLONEL SCOTT: Yes, we didn't want to
16 break the spirit of goodwill between the police and the
17 strikers.
18 MR SEMENYA SC: I just want to test the
19 correctness of the proposition that there was an
20 encirclement plan on Wednesday. Was there?
21 COLONEL SCOTT: No.
22 MR SEMENYA SC: Now on Thursday, the
23 encirclement plan we know is one of first light, surprise,
24 a group of small people. Was it on the cards on Thursday?
25 COLONEL SCOTT: No.

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1 MR SEMENYA SC: Alright. The question
2 was put to you when was the encirclement plan substituted
3 with the dispersal plan. You recall that?
4 COLONEL SCOTT: I recall, yes.
5 MR SEMENYA SC: What's your answer to
6 that?
7 COLONEL SCOTT: I believe it to be the
8 Thursday morning.
9 MR SEMENYA SC: Okay. Shall we then talk
10 about the radio channels. Your evidence is that there was
11 one channel and another for emergency.
12 COLONEL SCOTT: Yes, that's how I
13 understood it, yes.
14 [09:23] MR SEMENYA SC: Now, please explain to
15 us, here you have only one channel is it possible to
16 operationalise a plan such as the one that was conceived in
17 Marikana?
18 COLONEL SCOTT: Yes.
19 MR SEMENYA SC: Why do you say that?
20 COLONEL SCOTT: Because in essence once
21 the plan is operationalised you need your command structure
22 as well as your observers to be on the same channel so that
23 all commanders can hear the information being relayed. And
24 orders that are given can be heard by all commanders.
25 MR SEMENYA SC: As you understand the

<p style="text-align: right;">Page 15813</p> <p>1 evidence the difficulties that arose around communication 2 did they relate to whether or not there was one or multiple 3 channels? 4 COLONEL SCOTT: No. 5 MR SEMENYA SC: What did they relate to? 6 COLONEL SCOTT: I believe that what did 7 play a role is maybe the power output of hand radios 8 because I don't recall hearing people from scene 1 for that 9 matter speaking. And I recall Brigadier Calitz saying at 10 some stage when he was trying to work from a hand radio 11 that he couldn't get communication with the JOC. And this 12 is why they installed what we call a base set which is a 13 more powerful radio system into his vehicle to enable him 14 to speak. And similarly in the helicopter, it has the same 15 more powerful radio. So those would have been obviously 16 able to reach the repeater site more easily than somebody 17 with a hand radio on ground. 18 MR SEMENYA SC: There is also the 19 evidence of the radios being off for four odd minutes, do 20 you remember that evidence? 21 COLONEL SCOTT: Yes, I recall that. 22 MR SEMENYA SC: And the probe around that 23 point was whether or not one or the other should not have 24 used the emergency channel. 25 COLONEL SCOTT: I recall, yes.</p>	<p style="text-align: right;">Page 15815</p> <p>1 are the specific two that we would deal with. 2 MR SEMENYA SC: Going back to Marikana 3 was there a point during the operation where you held the 4 view that there were other third parties on the channel 5 requiring the use of an alternative channel? 6 COLONEL SCOTT: At the time of the 7 operation no. 8 MR SEMENYA SC: Was there a time during 9 the operation that you came to the conclusion that the 10 radio channel was dead? 11 COLONEL SCOTT: No. 12 MR SEMENYA SC: Now let us talk about the 13 – 14 CHAIRPERSON: Are you moving away from 15 the radio channels? 16 MR SEMENYA SC: Yes. 17 CHAIRPERSON: If I understand correctly 18 the problem was that there was too much traffic on the 19 channel you were using and mainly involving, I think it was 20 Brigadier Calitz and - is he a brigadier? 21 COLONEL SCOTT: Brigadier Calitz, yes. 22 CHAIRPERSON: Brigadier Calitz and 23 Vermaak, is he a brigadier too? 24 COLONEL SCOTT: No, he is a lieutenant- 25 colonel.</p>
<p style="text-align: right;">Page 15814</p> <p>1 MR SEMENYA SC: Do you remember that 2 evidence? 3 COLONEL SCOTT: Yes. 4 MR SEMENYA SC: As a matter of standard 5 procedure where you have one channel and another as an 6 emergency channel what would be the triggers to go from one 7 channel to the other? 8 COLONEL SCOTT: If you heard that 9 somebody was on your channel that you wouldn't want there, 10 if it was, I speak in general terms now, if it was a covert 11 operation of sort, if you suspected that your opponents may 12 be had picked up and were listening in or talking on your 13 channel and again I'm not speaking specifically to 14 Marikana, I'm speaking to an open array of operations now, 15 then there would be a code word given. And only the people 16 within the operation would know what the alternative 17 channel would be. So the code word would be given and then 18 the communication would be moved to another channel where 19 everybody would call in to show that they were on the new 20 channel. That's one occurrence, the other is if your radio 21 actually goes dead in the sense that the repeater channel 22 has gone down and that you would just have absolutely no 23 communication, it would be a dead sound. You would then 24 have a specific period and you'd go over to your new 25 channel. Well for that matter almost immediately. Those</p>	<p style="text-align: right;">Page 15816</p> <p>1 CHAIRPERSON: Lieutenant-Colonel, they 2 were using up much of the time for obvious reasons and so 3 there was, in effect, too much traffic on that channel. 4 Now if you moved to the alternate channel you still would 5 have had only one channel, is that right? 6 COLONEL SCOTT: That is correct, 7 Chairperson. 8 CHAIRPERSON: So the problem with too 9 much traffic would simply have been transferred to the 10 alternate channel. Is that correct? 11 COLONEL SCOTT: That is correct. 12 CHAIRPERSON: So moving to the alternate 13 channel wouldn't have been the answer to the problem. 14 COLONEL SCOTT: No. 15 CHAIRPERSON: Thank you. 16 MR SEMENYA SC: One of the puzzling 17 elements of course is why the - if the evidence is 18 ultimately accepted, why the operational commander, 19 Brigadier Calitz never got to know about scene 1. You 20 remember the evidence around that point? 21 COLONEL SCOTT: Yes, I do. 22 MR SEMENYA SC: And the puzzlement is 23 also because the JOC entries indicate some bodies lying 24 down. Do you remember that evidence? 25 COLONEL SCOTT: Yes, I do.</p>

<p style="text-align: right;">Page 15817</p> <p>1 MR SEMENYA SC: Tell us do you know if 2 JOC tried to get hold of, amongst others, the operational 3 commander, Brigadier Calitz? 4 COLONEL SCOTT: I don't know about others 5 in the JOC but I didn't, no. 6 MR SEMENYA SC: Did you have cause to 7 speak to Brigadier Calitz during that operation whilst you 8 were in the JOC? 9 COLONEL SCOTT: The only time I did call 10 was when I heard somebody other than Brigadier Calitz or 11 Lieutenant-Colonel Vermaak calling out that there is 12 somebody on top of the high rocks with a long rifle. And 13 as I say over some minutes I eventually broke in and just 14 put the message out. It was intended for Brigadier Calitz 15 but if any of the other commanders could hear it to remind 16 them of the STF sharp shooters. 17 MR SEMENYA SC: You'd remember the 18 enquiry around the point is that had Brigadier Calitz known 19 immediately after scene 1 the operation would have been 20 perhaps different. That's the limited window I'm trying to 21 explore with you. 22 COLONEL SCOTT: I remember. 23 MR SEMENYA SC: Now during that moment as 24 we know it now were you personally aware that scene 1 had 25 happened?</p>	<p style="text-align: right;">Page 15819</p> <p>1 wouldn't have happened or I think you said it wouldn't have 2 happened, what exactly were you referring to? What 3 component of scene 1 were you talking about? 4 COLONEL SCOTT: I'm talking about what I 5 know now of the scene at the kraal with the deaths. As you 6 rightfully have said, in my mind at that time I was 7 envisioning that the wire was out and that the POPs had 8 started the actual dispersion with Brigadier Calitz calling 9 the water canons and the public order policing call signs 10 and so on. So what I was envisioning was that it was 11 actually under way. And then when the dispersion had 12 finished and Colonel Vermaak had actually said that he was 13 counting I thought that was people that were around the 14 area of koppie 1 that had gone to lie down, etcetera. 15 Obviously at that stage I didn't know, I don't think 16 anybody in the JOC knew specifically that that had occurred 17 at the kraal. 18 CHAIRPERSON: When you heard Colonel 19 Vermaak say that, did you think, it may not be possible for 20 you to answer, so we'll understand if you say you can't, 21 but did you envisage at that stage that the wire was in 22 place and the operation, had commenced because remember 23 part of the message I think was that the strikers are 24 attacking the TRT. Now the TRT, of course, were going to 25 be behind the POP defending them if they came under attack</p>
<p style="text-align: right;">Page 15818</p> <p>1 COLONEL SCOTT: No. 2 MR SEMENYA SC: To your knowledge – 3 CHAIRPERSON: I'm sorry to interrupt, 4 what actually do you mean by that? You know scene 1 is two 5 words which actually mean a lot. Now you know one can 6 break that down into the various components. I mean the 7 plan had been, your plan had been disrupted because you'd 8 expected a complete roll out of the wire, the barrier in 9 place, the strikers safely confined, if that's the right 10 word, to the koppie side, I think the western side of the 11 barrier. And then encouraged to disperse towards the west. 12 COLONEL SCOTT: Yes, yes. 13 CHAIRPERSON: That is your plan. Now we 14 know that didn't happen. 15 COLONEL SCOTT: Yes. 16 CHAIRPERSON: But that was because before 17 the barrier could be in place the strikers were able to 18 move forward effectively into what was supposed to be the 19 neutral area. Am I putting that correctly? 20 COLONEL SCOTT: That's correct, 21 Chairperson. 22 CHAIRPERSON: And then various things 23 happened. 24 COLONEL SCOTT: Yes. 25 CHAIRPERSON: Now so when you say scene 1</p>	<p style="text-align: right;">Page 15820</p> <p>1 and so on. Did you think when you heard that message that 2 that was perhaps what was happening or can't you help with 3 that? 4 COLONEL SCOTT: I don't remember hearing 5 that, Chairperson, specifically that the TRT was under 6 attack. What I do recall is hearing the whole sort of 7 movement of forces by Brigadier Calitz calling it. I'm not 8 sure when that radio, the press to talk button was pushed 9 on a radio which kind of put a blanket cut out over the 10 radio system for what I thought was about four minutes. 11 But I think it was only after that that Colonel Vermaak 12 actually gives what he can count from the air, persons 13 lying on the ground. But at my time of thinking that that 14 is part of what's actually happened, but I don't recall it 15 being mentioned that the TRT line is under attack. I don't 16 remember that. 17 CHAIRPERSON: Thank you. 18 MR SEMENYA SC: Okay now of course you 19 know that Mr White, MBE, one of his criticisms is that 20 after scene 1 had happened i.e. the shooting and the 21 deaths that occurred there, what ought to have happened was 22 that the operational commander was supposed to call 23 everybody back, reassess the situation, establish if any of 24 the SAPS members got hurt, any of the strikers got hurt and 25 then reorganise the operation from there. Now from the JOC</p>

<p style="text-align: right;">Page 15821</p> <p>1 perspective where you were and immediately after scene 1 as 2 you describe it, were you aware that that had happened, 3 demanding a cessation of the operation until reassessments 4 are made? 5 COLONEL SCOTT: No, I wasn't. 6 MR SEMENYA SC: Are you aware that 7 General Annandale was aware? 8 COLONEL SCOTT: No, I wasn't. 9 MR SEMENYA SC: Anyone in the JOC that to 10 your knowledge was aware of it? 11 COLONEL SCOTT: No. I must I was pretty 12 much in my own little world, trying to create a visual 13 picture in my mind of what was happening with the radio 14 input. So I wasn't really concentrating on what others 15 were doing in the JOC. 16 MR SEMENYA SC: As we watch the visuals 17 we do see as in terms of the plan, the forces reorganising 18 at what you call a dry river bed. 19 COLONEL SCOTT: Yes. 20 MR SEMENYA SC: But they continue to 21 implement the plan as they understood it, without reference 22 to what had happened at the koppie, at the kraal. 23 COLONEL SCOTT: Yes. 24 MR SEMENYA SC: Okay can we now move - 25 CHAIRPERSON: Before we move on can I ask</p>	<p style="text-align: right;">Page 15823</p> <p>1 CHAIRPERSON: And then am I correct in 2 saying that it must have been apparent that something was 3 happening. 4 COLONEL SCOTT: It was apparent, 5 Chairperson - 6 CHAIRPERSON: And what was happening 7 presumably wasn't what was supposed to be happening. 8 COLONEL SCOTT: Yes. 9 CHAIRPERSON: So did sort of ask yourself 10 what is happening, what's gone - did you think something's 11 gone wrong or what exactly passed through your mind when 12 you heard things happening and it obviously wasn't the 13 warnings and the various things that was supposed to happen 14 in phase 3? 15 COLONEL SCOTT: Yes, I'm aware that there 16 should have been that time and obviously that Brigadier 17 Calitz with, you know, speaking to his forces is short. I 18 didn't consider that at the time I must time that the time 19 had not been - how can I put it, given or respected or you 20 know the verbal warning had to be heeded to - 21 CHAIRPERSON: But I take it there was no 22 reason to believe the warning hadn't been given or was it 23 possible the warning had been given and that you hadn't 24 heard it? 25 COLONEL SCOTT: No. Well that was the</p>
<p style="text-align: right;">Page 15822</p> <p>1 a question about this? I'm interested to know what you 2 thought was happening because it may be relevant in the 3 light of questions being asked, now what was supposed to 4 happen was the wire was supposed to be uncoiled. A barrier 5 created protecting the neutral area and then thereafter, as 6 I understand it, a warning was to be given - 7 COLONEL SCOTT: That's correct. 8 CHAIRPERSON: - to the strikers in what 9 we call the western area, the area to the west of the 10 barrier. 11 COLONEL SCOTT: That's correct. 12 CHAIRPERSON: And it was going to be in 13 various languages I think. 14 COLONEL SCOTT: Yes. 15 CHAIRPERSON: And it was going to be 16 repeated 17 COLONEL SCOTT: Yes. 18 CHAIRPERSON: They were going to be given 19 time. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: I think it was 20 minutes 22 or a quarter of an hour or something of that kind to heed 23 the warning and go. Now I take it that from what you could 24 hear that stage hadn't been reached yet. 25 COLONEL SCOTT: No.</p>	<p style="text-align: right;">Page 15824</p> <p>1 thing, I didn't know what was actually going on, on the 2 ground in that sense but I had assumed that the POPs action 3 had started. I agree in what you're saying is that there's 4 supposed to be a time period but sitting back at the radio 5 at that stage once it had started I didn't reflect then to 6 say but hang on, there should be a time break first before 7 this should be going on. I had assumed that the public 8 order policing operation had commenced. 9 MR SEMENYA SC: Well apropos the 10 questions now being asked by the Chair, would JOC have 11 known for instance that an instruction has gone out to say 12 unveil the razor wire? 13 COLONEL SCOTT: Unless it was given over 14 the radio, but I don't recall hearing it given over the 15 radio either, so no I don't - 16 MR SEMENYA SC: Would JOC necessarily 17 have known that this is the moment when the operation 18 commences as a matter of fact? 19 COLONEL SCOTT: No, well the JOC didn't 20 know. I didn't know, standing there. 21 MR SEMENYA SC: Would JOC have known this 22 is the amount of time given to the strikers to disperse 23 voluntarily? 24 COLONEL SCOTT: No. 25 MR SEMENYA SC: Would JOC have known that</p>

<p style="text-align: right;">Page 15825</p> <p>1 they did not at the moment it happened unless communicated 2 over the radio? 3 COLONEL SCOTT: No. 4 MR SEMENYA SC: If we do move to a 5 different point there is clearly some criticism about how 6 exhibit L was compiled. The criticism fall into two 7 categories as I assess them. The one is that there are 8 elements of exhibit L that are incorrect. Do you remember 9 that? 10 COLONEL SCOTT: Yes. 11 MR SEMENYA SC: For instance that the 12 ammunition standard in one is reflected as X, in other 13 documents as Y. Do you remember that evidence? 14 COLONEL SCOTT: Yes, I remember. 15 MR SEMENYA SC: Was there any intention 16 to include in exhibit L information that's incorrect? 17 COLONEL SCOTT: No. 18 MR SEMENYA SC: That information which is 19 incorrect would be a result of what? How would that have 20 happened? 21 COLONEL SCOTT: I think it would be as a 22 result of – I don't want to say miscommunication, but not 23 having access to the full picture and trying to build that 24 picture from the inputs given to us. 25 MR SEMENYA SC: The other side of the</p>	<p style="text-align: right;">Page 15827</p> <p>1 the koppie? 2 COLONEL SCOTT: Yes. 3 MR SEMENYA SC: Was the arrest 4 contemplating those arrests to happen how? 5 COLONEL SCOTT: Through the discretion of 6 the operational commander and the reorganising of his 7 forces and then sending those forces out to what he had 8 observed the strikers had done. 9 MR SEMENYA SC: Does one find koppie 3 10 west of koppie 1? 11 COLONEL SCOTT: Yes, west of koppie 2 12 more, but yes. 13 MR SEMENYA SC: Should or could or was 14 the plan supposed to state how the arrests must happen at 15 koppie 1, koppie 2, koppie 3 or wherever else west of the 16 koppie? 17 COLONEL SCOTT: No. 18 MR SEMENYA SC: Did the plan contemplate 19 that if people went to the west, including koppie 3, that 20 they would be dispersed, disarmed and arrested? 21 COLONEL SCOTT: That was the briefing to 22 the commanders, yes. 23 MR SEMENYA SC: Again about the 24 implementation of a tactical option, the criticism is that 25 it was done hurriedly. You remember that evidence?</p>
<p style="text-align: right;">Page 15826</p> <p>1 criticism about exhibit L is that it is misleading and in 2 particular focus was placed on certain elements of the 3 visuals that were included and not included. To refresh 4 your memory there is an utterance at the end of a 5 particular clip which is not in exhibit L and the probe 6 there is that it would have been done intentionally. Was 7 it? 8 COLONEL SCOTT: No. 9 MR SEMENYA SC: Was there, on your part, 10 any attempt at portraying a particular misleading 11 impression by withholding any information from the 12 Commission? 13 COLONEL SCOTT: No. 14 MR SEMENYA SC: From burying any 15 inculpatory elements of the operation from the Commission. 16 COLONEL SCOTT: No. 17 MR SEMENYA SC: Regarding another aspect 18 and this is now koppie 3. 19 [09:43] MR SEMENYA SC: Regarding another aspect 20 and this is now koppie 3. There is a lot of evidence 21 around whether koppie 3 was or was not contemplated in the 22 plan, you remember that? 23 COLONEL SCOTT: I remember, yes. 24 MR SEMENYA SC: Now, was the plan 25 anticipating arrests that would happen, if need be, west of</p>	<p style="text-align: right;">Page 15828</p> <p>1 COLONEL SCOTT: Yes. 2 MR SEMENYA SC: And at one level it was 3 suggested it was done because SAPS did not want to get the 4 PCI blushing. SAPS did not want to have the PCI blushing 5 with embarrassment that she has already told the world that 6 we are going to go tactical and now the operational people 7 thought differently, it would put her in a poor light. Do 8 you remember that? 9 COLONEL SCOTT: I recall that, yes. 10 MR SEMENYA SC: Okay. Now speaking for 11 yourself, did you feel that you were being under pressure 12 to implement the disarming of the strikers on the Thursday? 13 COLONEL SCOTT: I thought that the time 14 allocated to still do the operation was sufficient. 15 MR SEMENYA SC: The question is, did you 16 feel under pressure by the PC? 17 COLONEL SCOTT: No. 18 MR SEMENYA SC: Did you feel that if 19 prudence dictated differently, that you implement this 20 operation on a different date, that you wouldn't do it 21 because the PC would be embarrassed? 22 COLONEL SCOTT: No. 23 MR SEMENYA SC: Did it occur, to your 24 knowledge, around the senior generals that were there? 25 COLONEL SCOTT: No.</p>

<p style="text-align: right;">Page 15829</p> <p>1 MR SEMENYA SC: Did you hear any mention 2 being made about it? 3 COLONEL SCOTT: No. 4 MR SEMENYA SC: The other criticism 5 obviously around the decision to go tactical is that 6 there's no reason why the encirclement plan could not 7 happen on the Friday. Do you remember that evidence? 8 COLONEL SCOTT: I remember that, yes. 9 MR SEMENYA SC: If you give us the 10 benefit of your understanding of that environment, we now 11 have on Thursday the strikers saying that people are going 12 to die there, Mr Mathunjwa leaving, the Bishop leaving as 13 well, the employer willing to continue with any – to engage 14 in any negotiation with people whilst they were still armed 15 and in the koppie – 16 CHAIRPERSON: Did you say willing? I thought you 17 meant unwilling. 18 MR SEMENYA SC: Unwilling. 19 CHAIRPERSON: Yes, yes. I thought you said 20 willing. I think you mean, you meant unwilling. 21 MR SEMENYA SC: Unwilling, I should say. 22 Thank you, Chair. Unwilling to engage with strikers who 23 are armed and on the koppie. What, as a matter of 24 prospect, would there have been to do the surprise element 25 in the morning at first light at surrounding 50 people as</p>	<p style="text-align: right;">Page 15831</p> <p>1 crisis which is now, is no longer a labour dispute, it also 2 includes the demand for the release of those who are 3 arrested. 4 COLONEL SCOTT: Yes, I agree with you. 5 MR SEMENYA SC: The other area relates 6 to, do you or don't you announce to the strikers that you 7 are about to unfurl the barbed wire, you remember the 8 evidence around that? 9 COLONEL SCOTT: I remember that, yes. 10 MR SEMENYA SC: What is the standard 11 operating procedure relating to police defensive action? 12 COLONEL SCOTT: That it's not a 13 requirement, that you have to inform the opposition if 14 you're going to deploy a defensive measure which is aimed 15 at preventing some form of action from the protesters. 16 MR SEMENYA SC: Is the unfurling of 17 barbed wire offensive or defensive? 18 COLONEL SCOTT: Defensive. 19 MR SEMENYA SC: Past experience, does an 20 action like that provoke aggression on the part of the 21 people sought to be cordoned away? 22 COLONEL SCOTT: I've got very limited 23 experience in that but the occasions where I have been 24 where razor wire was utilised, which at times has been at 25 certain major events, it hasn't provoked aggression or a</p>
<p style="text-align: right;">Page 15830</p> <p>1 encirclement then contemplated on Friday? 2 COLONEL SCOTT: If it was put to me on 3 the Thursday that that was, we need to look at that option 4 for Friday morning, some of the issues I would have had 5 with that would have been I think we've lost the element of 6 surprise, specifically for the police. Secondly, we could 7 not at all be sure in the breakdown of the negotiations as 8 you've put it now, that they would even be at the koppie 9 still the next morning, that the situation was seemingly 10 volatile at that time due to that, so the amounts of 11 violence or destruction that would have occurred from that 12 period until Friday morning was also something to 13 anticipate. So it was not viable in my opinion and again, 14 even if there was a small grouping at the koppie that next 15 morning, we couldn't have been ensured that it would have 16 been the full size of the militant group for that matter 17 and if we planned to encircle 50 we would have still had 18 250, which we had now broken all the good faith with the 19 police and they would have possibly escalated even more 20 violence against the police and others. 21 MR SEMENYA SC: Of course there will be 22 evidence later that an arrest of a fraction of the 23 strikers, now you know you have 3 to 400 strikers there, 24 they are heavily armed, they are intent on whatever, an 25 arrest of a fraction of them would precipitate another</p>	<p style="text-align: right;">Page 15832</p> <p>1 response towards the police for that matter, or that key 2 point. 3 MR SEMENYA SC: The evidence again is 4 that early that morning of Thursday Mr Noki approaches 5 Brigadier Calitz and asks, "We don't want this barbed wire 6 here." 7 CHAIRPERSON: What do you mean by early that 8 morning, Mr Semenya? I think the evidence was something 9 like 11 o'clock but – I thought the evidence was something 10 like 11 o'clock but I may be wrong. 11 COLONEL SCOTT: That is correct. 12 CHAIRPERSON: It's your question, so you can 13 define what you mean by early in the morning. 14 MR SEMENYA SC: It is after 10 when Mr 15 Noki makes it plain that they, the Noki group, do not want 16 that barbed wire there. 17 COLONEL SCOTT: Yes, I've seen that in 18 the statements. 19 MR SEMENYA SC: And as the evidence of 20 Brigadier Calitz will tell, he was informed that that 21 barbed wire was to protect the police? 22 COLONEL SCOTT: Yes, that Brigadier 23 Calitz did inform Mr Noki and the group that were with him, 24 yes. 25 MR SEMENYA SC: Now I'm just trying to</p>

<p style="text-align: right;">Page 15833</p> <p>1 test whether, on the objective evidence, can the Noki group 2 say they were taken by surprise, one, that the barbed wire 3 is there? 4 COLONEL SCOTT: I don't believe so. I do 5 believe that they were informed of the intent of the razor 6 wire, so if it was being rolled out it would not have been 7 a surprise to them, the reason of it being rolled out. 8 MR SEMENYA SC: Given the formation of 9 the barbed wire Nyalas, objectively speaking, could any one 10 of the strikers have reasonably believed that it was going 11 to encircle the entire koppie where they were? 12 COLONEL SCOTT: No. 13 MR SEMENYA SC: Objectively speaking, was 14 it available for any of the strikers on the koppie to move 15 westwards? 16 COLONEL SCOTT: Yes. 17 MR SEMENYA SC: Objectively speaking, is 18 there a way in which a barbed wire could have been a hazard 19 to any of the strikers unless they approached it? 20 COLONEL SCOTT: No. 21 MR SEMENYA SC: The other element I want 22 us to address is the formation of the Nyalas and I'm trying 23 to tidy with you the suggestion that as early as Monday 24 morning to mid-morning maybe, there was still the 25 encirclement plan –</p>	<p style="text-align: right;">Page 15835</p> <p>1 COLONEL SCOTT: It's briefed at the 2 JOCCOM of the Thursday morning and they are prepositioned, 3 I think it's round about 10 o'clock that morning, maybe 4 just after 10 o'clock. 5 MR SEMENYA SC: Okay. Are they 6 prepositioned in a manner that could achieve an 7 encirclement of the small group? 8 COLONEL SCOTT: No. 9 MR SEMENYA SC: Are they prepositioned in 10 a manner that could catch those strikers by surprise? 11 COLONEL SCOTT: No. 12 MR SEMENYA SC: Are they prepositioned in 13 a manner that could encircle a few, group of 50? 14 COLONEL SCOTT: No. 15 MR SEMENYA SC: Why not? 16 COLONEL SCOTT: Because it was not the 17 plan. 18 CHAIRPERSON: [Microphone off, inaudible] not in 19 the plan – apart from the question of what the plan was, 20 what Mr Semanya wants, I think, is for you to tell us 21 whether from the position of the Nyalas one could say, 22 objectively speaking, that there was any prospect of their 23 being encircled and so forth? 24 COLONEL SCOTT: Yes. No, there wasn't. 25 CHAIRPERSON: The point is they couldn't, seeing</p>
<p style="text-align: right;">Page 15834</p> <p>1 CHAIRPERSON: No, the encirclement plan was – 2 COLONEL SCOTT: Tuesday. 3 MR SEMENYA SC: - was only devised on 4 Monday evening, early Tuesday morning. You're now talking 5 about early Monday morning, I think you're making a 6 mistake. 7 MR SEMENYA SC: Well – 8 CHAIRPERSON: You can correct the question because 9 – 10 MR SEMENYA SC: No, Chair. 11 CHAIRPERSON: - what you mean. 12 MR SEMENYA SC: I intend to deal with any 13 insinuation that says Thursday morning there was still an 14 encirclement plan. 15 CHAIRPERSON: I thought you said Monday morning. 16 MR SEMENYA SC: Thursday. 17 CHAIRPERSON: If you said Thursday morning – 18 MR SEMENYA SC: Thursday morning. 19 CHAIRPERSON: - my point falls away. I'm just 20 trying to help here. 21 MR SEMENYA SC: Thank you, thank you, 22 Chair. I am trying to understand or probe any suggestion 23 that there was still an encirclement plan for Thursday 24 morning. Now in relation to that, when do you preposition 25 the Nyalas in phase 2 on Thursday?</p>	<p style="text-align: right;">Page 15836</p> <p>1 where the Nyalas, in their positions in which they were, 2 the strikers couldn't have feared that any encirclement of 3 them was going to take place? 4 COLONEL SCOTT: It's very impossible – 5 CHAIRPERSON: Certainly not at 10 o'clock, I mean. 6 COLONEL SCOTT: No. 7 CHAIRPERSON: And in fact they would never have 8 seen them in the position where an encirclement was going 9 to take place because that never happened because there was 10 a plan. They didn't know the plan. If it had happened at 11 all, it would have happened early in the morning. 12 COLONEL SCOTT: Yes. 13 CHAIRPERSON: But that was never implemented. 14 COLONEL SCOTT: That's correct, 15 Chairperson. 16 CHAIRPERSON: So at no stage, unless they listened 17 in on the radio, at no stage – and even there, I'm not sure 18 it would have been said over the radio but at no stage did 19 they have any reason to think that they were going to be 20 encircled by Nyalas and barbed wire, is that right? 21 COLONEL SCOTT: That's correct, 22 Chairperson. 23 MR SEMENYA SC: Now Colonel, objectively 24 speaking again and given the formation of the Nyalas, where 25 they were, could it have been difficult or impossible, let</p>

<p style="text-align: right;">Page 15837</p> <p>1 us start there, could it have been impossible for any of 2 those strikers to go to Nkaneng? 3 COLONEL SCOTT: Are we talking in their 4 prepositioned, or when it's rolled out? 5 MR SEMENYA SC: When it was rolled out. 6 COLONEL SCOTT: Once rolled out, there 7 was a gap that I understand Brigadier Calitz would want to 8 leave at the kraal to bring out his forces but if we're 9 talking that route, but if they wanted to go to Nkaneng 10 they could have walked directly north, well, north, 11 slightly just off north but they could have moved, in 12 essence, in line or parallel to the razor wire and instead 13 of turning where the razor wire turned, just continued 14 straight north to enter Nkaneng in that area. 15 MR SEMENYA SC: Well, let's start by 16 answering the question relative to the 3 000 odd people, 17 would they have found it impossible to go to Nkaneng? 18 COLONEL SCOTT: No. 19 CHAIRPERSON: Is it fair to say they might have 20 had to follow a slightly longer route but it wouldn't have 21 been excessively so. If they were minded to go to Nkaneng 22 and were prepared to walk a little further, they could have 23 done so without a problem, is that right? 24 COLONEL SCOTT: That's correct, 25 Chairperson.</p>	<p style="text-align: right;">Page 15839</p> <p>1 little bit. The argument that suggests that a simultaneous 2 unfurling of that barbed wire, closing up to the kraal, 3 would have avoided scene 1, you remember that? 4 COLONEL SCOTT: Yes. 5 MR SEMENYA SC: As a matter of fact that 6 did happen, didn't it? 7 COLONEL SCOTT: The razor – 8 CHAIRPERSON: Simultaneously unfurling it – 9 MR SEMENYA SC: No – no. 10 CHAIRPERSON: No, the question must be 11 reformulated, you must make it clear what did happen. 12 MR SEMENYA SC: In fact, it did happen 13 that the path from the kraal to the power station was 14 closed. 15 COLONEL SCOTT: Yes. 16 MR SEMENYA SC: Which intention would 17 have been part of the plan of a simultaneous unfurling of 18 the barbed wire. 19 [10:02] COLONEL SCOTT: If what you're saying is 20 the end result is the same, yes, of having the wire 21 deployed in the position it was, to most, maybe with some 22 small deviation with, of Nyala 4, but the envisioned area 23 to be closed with razor wire was closed, yes. 24 MR SEMENYA SC: And that did not avoid 25 the unfortunate tragedy, did it?</p>
<p style="text-align: right;">Page 15838</p> <p>1 MR SEMENYA SC: Or stated differently, 2 was Nkaneng inaccessible by reason of the barbed wire that 3 was closing the kraal? 4 COLONEL SCOTT: No. 5 MR SEMENYA SC: Now, you have also been 6 cross-examined in relation to the intention of the strikers 7 to use the path that went past the kraal, do you remember 8 that evidence? 9 COLONEL SCOTT: I remember, yes. 10 MR SEMENYA SC: Around that matter we now 11 have the Nyala by Colonel Pitsi that closes the gap between 12 the kraal and the other Nyalas, remember that? 13 COLONEL SCOTT: And Nyala 4, yes. 14 MR SEMENYA SC: Yes. There is a 15 suggestion that we ought or the police ought to have also 16 closed the other gap on the other side of the kraal, you 17 remember that? I think there were a lot of questions asked 18 around that. 19 COLONEL SCOTT: I remember, yes. 20 MR SEMENYA SC: Would that have been 21 prudent? 22 COLONEL SCOTT: In which way? 23 MR SEMENYA SC: To close everything, the 24 police – you would recall that we now have the Colonel 25 Pitsi Nyala closing the entire gap, let's break it down a</p>	<p style="text-align: right;">Page 15840</p> <p>1 COLONEL SCOTT: No. 2 MR SEMENYA SC: I just wanted this point 3 to introduce a big subject, which we will have to break in 4 smaller pieces later. If the Commission were to find – and 5 let's speak for scene 1 for now – that the police acted in 6 self and private defence, in what way would that have 7 anything to do with whether or not the police plan was 8 flawed or not? 9 COLONEL SCOTT: I don't see it having an 10 impact. 11 CHAIRPERSON: It sounds as if this is 12 more a question for argument than for evidence from the 13 witness. Anyway, he's given the answer, but I say it 14 sounds more like – I know the question has been asked by 15 others of this nature, so I'm not going to stop you, but it 16 does sound more like the sort of thing that should be 17 addressed in argument rather than in extensive evidence. 18 But you've asked the question, you got the answer, so we 19 can carry on. 20 MR SEMENYA SC: Let's deal with some of 21 the criticisms obviously by Mr White. Mr White suggests 22 that instead of going tactical on Thursday, as the police 23 did, they could wait it out and go back to negotiations. 24 Do you remember that aspect of his criticism? Mr 25 Chaskalson took you up on it.</p>

<p style="text-align: right;">Page 15841</p> <p>1 COLONEL SCOTT: Not clearly, but I accept 2 what you're saying, yes. 3 MR SEMENYA SC: Now the suggestion there 4 is don't go tactical – this is Thursday now, Mr Mathunjwa 5 has left, the bishop has left. Lonmin is unwilling or 6 unable to engage in negotiations, and Mr White suggests the 7 one thing that you can do is to go back to negotiations. 8 Can you conceivably tell us how that would happen? 9 COLONEL SCOTT: Well, I can't, and as I 10 know even in Mr Nzuzza's statement he mentions that the 11 police asked them on that Thursday morning when they came 12 to enquire about the razor wire, saying to him and he 13 mentions that the police said we just, we want to maintain 14 the friendship, we want – so obviously they were trying to 15 regain dialogue at that stage already, and it was 16 unsuccessful. 17 MR SEMENYA SC: Were there objective 18 indicators that Lonmin is now, would be ready to enter into 19 some negotiation? 20 COLONEL SCOTT: Not that I was aware of. 21 MR SEMENYA SC: Were there objective 22 indicators that Mr Mathunjwa would be willing to come back 23 and negotiate? 24 COLONEL SCOTT: At that time I didn't 25 know, and I'm still not aware that it would have been the</p>	<p style="text-align: right;">Page 15843</p> <p>1 opposed to de-escalate the violence. You remember that 2 evidence? 3 COLONEL SCOTT: I remember, yes. 4 MR SEMENYA SC: But how long would that 5 impasse reasonable last to avoid a tactical option? 6 COLONEL SCOTT: Can you maybe just clear 7 the question again? 8 MR SEMENYA SC: For how long would an 9 impasse of people armed with all those dangerous weapons, 10 remain in the koppie without any tactical option being 11 taken so as to avoid escalating as opposed to de-escalating 12 the situation of violence? 13 COLONEL SCOTT: Well it's, again it's 14 maybe just my opinion, but I think that if it was left at 15 that stage where there was no further hope of any dialogue 16 or negotiation, that it would have escalated and for that 17 matter it may have just become very difficult for the 18 police to try to find that group if they'd split into 19 smaller, in essence guerrilla groups to go about causing 20 destruction and violence. So it was an easy option at that 21 time while they were still gathered at a point where they 22 couldn't exercise destruction of property, and for that 23 matter violence upon individuals who were not 24 participating, to carry out the tactical option of the 25 police in the very environment that they had grouped –</p>
<p style="text-align: right;">Page 15842</p> <p>1 case, no. 2 MR SEMENYA SC: Any objective indicators 3 that Mr Zokwana is now willing to further engage? 4 COLONEL SCOTT: Is that the bishop? 5 MR SEMENYA SC: No, Mr Zokwana, the 6 president of the National Union of Mineworkers. 7 COLONEL SCOTT: Okay, no. 8 MR SEMENYA SC: The other criticism which 9 Mr White launches at the conduct of the police is that even 10 you considered the koppie to be a preference point. You 11 remember that? 12 COLONEL SCOTT: Yes. 13 MR SEMENYA SC: And so the argument goes 14 they could be left there. They're of no hazard to anybody. 15 COLONEL SCOTT: I remember. 16 MR SEMENYA SC: Could that situation of 17 armed protesters be left like that indefinitely? 18 COLONEL SCOTT: No. 19 MR SEMENYA SC: And I raise this thing 20 because there is all the debate about 48 or 24 hours until 21 the tactical option was taken, there was no violence. 22 Remember that evidence? 23 COLONEL SCOTT: I remember, yes. 24 MR SEMENYA SC: That any tactical option 25 by the South African Police Service would be to escalate as</p>	<p style="text-align: right;">Page 15844</p> <p>1 MR SEMENYA SC: In fact, please give us 2 the benefit of your insight. If the decision to disarm and 3 arrest those who were on the koppie was made, which would 4 have offered the best place to do that? 5 COLONEL SCOTT: At the location they were 6 at. 7 MR SEMENYA SC: Of what risk would that 8 operation have been to the general members of the public? 9 COLONEL SCOTT: There wouldn't have been. 10 MR SEMENYA SC: Would it have been a 11 better option to do that arrest in Nkaneng? 12 COLONEL SCOTT: No, definitely not. 13 MR SEMENYA SC: Was there enough 14 intelligence to tell us that the search and seizure would 15 be more effective at that time? 16 COLONEL SCOTT: No. 17 MR SEMENYA SC: Was there intelligence to 18 tell us where the people who were the militant group were 19 resident at the time? 20 COLONEL SCOTT: No. 21 MR SEMENYA SC: Did the police know, as 22 we now do, that there were some of the group of members of 23 this belligerent group sleeping in koppie 3? 24 COLONEL SCOTT: At koppie 3? 25 MR SEMENYA SC: Yes.</p>

<p style="text-align: right;">Page 15845</p> <p>1 COLONEL SCOTT: No. The impression I had 2 is that those that remained behind were at koppie 1, or the 3 small piece of ground possibly between koppie 1 and koppie 4 2. 5 MR SEMENYA SC: Mr White also says as a 6 point of criticism – 7 CHAIRPERSON: Are you leaving this point? 8 One of the things that we don't know yet is what exactly 9 the strikers wanted. It does seem at least part of what 10 they wanted was for the unprotected strike to continue 11 until Lonmin surrendered, and every day's loss of 12 production would tighten the screw on Lonmin to make Lonmin 13 eventually surrender and pay what was demanded, and it does 14 seem – this is obviously a prima facie view that I'm 15 expressing, subject to revision in the light of evidence to 16 the contrary – it does look as if what was happening from, 17 I suppose from Friday, was that an attempt to enforce an 18 unprotected strike on those who weren't willing to 19 participate in the strike, things being otherwise. Now if 20 they'd succeeded to the extent that by Thursday there 21 weren't any rock drill operators drilling the rocks, so 22 therefore production was either stopped completely or 23 dramatically reduced, and if that's what they wanted to do, 24 then they might have sat it out until Lonmin surrendered or 25 something else happened. It doesn't follow that they would</p>	<p style="text-align: right;">Page 15847</p> <p>1 CHAIRPERSON: - but to which we don't 2 know the answers at this stage. 3 COLONEL SCOTT: Yes. 4 CHAIRPERSON: Maybe it will become 5 clearer later. 6 COLONEL SCOTT: Yes. 7 CHAIRPERSON: Would you agree with me? 8 COLONEL SCOTT: Yes. 9 MR SEMENYA SC: And Colonel, some of the 10 issues we clearly don't have an answer to, but you can tell 11 us, were there indications that if they sat it out, there 12 won't be continued intimidation of those who wanted to 13 work? 14 COLONEL SCOTT: No. 15 MR SEMENYA SC: Objectively speaking, if 16 they sat it out, was there any indication whatever tension 17 existed between the NUM, as they perceived it, and 18 themselves, have disappeared? 19 COLONEL SCOTT: No. 20 MR SEMENYA SC: If they had sat it out, 21 was there any indication that there was, the threats to 22 kill the police was just veiled? 23 COLONEL SCOTT: No. 24 MR SEMENYA SC: That they would now 25 abandon the threat that these police from the Eastern Cape</p>
<p style="text-align: right;">Page 15846</p> <p>1 necessarily have continued with the murder and mayhem that 2 had taken place up to, particularly in the earlier stages 3 before Tuesday, which appears to have been directed to 4 enforcing via intimidation and violence an unprotected 5 strike. So some of the answers you gave as to the fear as 6 to what might have happened if they be left there on the 7 Thursday, would you agree depended to some extent upon the 8 answer to the kind of questions I've raised, to which we 9 don't know the answer at this stage? Would you agree with 10 that? 11 COLONEL SCOTT: Chairperson, yes, and I'm 12 not knowledgeable if Lonmin has this strategy, but I know 13 that there are a number of mines that actually stockpile 14 the raw ore, the rocks coming up, for possible times when 15 there are go-slows or strikes or, so that production still 16 does continue, mentioning why maybe the smelter was still 17 able to maintain operations for that matter. But again, 18 with my knowledge being that a vast majority of the mine's 19 employees still wanted to work, and at some stage may have 20 decided to continue trying to go to work, that there could 21 have still been violence exercised upon them by that group 22 to try and bring the total mine to a stop. 23 CHAIRPERSON: What you are saying depends 24 upon an assumption, which may be correct – 25 COLONEL SCOTT: Yes.</p>	<p style="text-align: right;">Page 15848</p> <p>1 must go back, would that threat have disappeared? 2 COLONEL SCOTT: It would not seem so, no. 3 MR SEMENYA SC: And that there would be 4 killing on that day, would it have disappeared if they sat 5 it out? 6 COLONEL SCOTT: It would not seem so, no. 7 MR SEMENYA SC: The one aspect Mr White 8 raises as a point of criticism is that the very fact that 9 there were such threats to the police should have dissuaded 10 any tactical option. Can you make me understand that? How 11 are the police who are threatened with death supposed to be 12 behave? 13 COLONEL SCOTT: Well, it's actually 14 showing that lawlessness is increasing, that the threat of 15 violence is increasing, and I interpret that as the 16 strikers viewing the police now as becoming a barrier or a 17 stumbling block to their cause, having moved into the area, 18 restoring to some degree the law and order, or the movement 19 of that crowd towards possible targets that they may have 20 identified. So in essence the police has become a barrier 21 to them to proceed with further intimidation or violence or 22 destruction in order to enforce their demands, and in 23 saying that, with the violent threats increasing against 24 the police, I don't see that as something that would 25 unnecessarily have subsided, but again places the police in</p>

<p style="text-align: right;">Page 15849</p> <p>1 the very position of needing to know now that it's time to 2 deal with lawlessness before it does get out of hand, and 3 before further time, or - and the keyword here is "time" - 4 is given to those strikers then to formulate proper plans 5 on how to possibly deal with the police. 6 MR SEMENYA SC: Now I'm trying to 7 understand what should be the reasonable response of 8 police. You have 3, 400 people, armed to teeth, saying 9 that the police are going to be killed that day. What is 10 the responsible police service to do? Walk away? Go home? 11 COLONEL SCOTT: No. 12 MR SEMENYA SC: What should they do? 13 COLONEL SCOTT: Well, the police in that 14 essence, as you say, need to take action. 15 MR SEMENYA SC: By that you mean what? 16 COLONEL SCOTT: Well, and this goes into 17 what I was on that day aware that the threats that had been 18 made to the police, that the situation becoming more 19 volatile and the possibility of violence becoming more 20 viable, that the police needed to do something, well, 21 sooner than later, in order to prevent anything from going 22 in that direction. 23 CHAIRPERSON: Did they have to stage a 24 pre-emptive strike, or would it be enough if they'd stood 25 on guard as it were, ready to deal by way of reaction to</p>	<p style="text-align: right;">Page 15851</p> <p>1 CHAIRPERSON: - better than the other? 2 COLONEL SCOTT: Well, I believe because 3 then the police has the initiative and in essence dictates 4 the time, which means that to some degree you have an 5 element of surprise on your side, which means that the 6 opposition is not as organised as they would be should you 7 just stand guard and expect an attack coming from their 8 side. So you gain the advantage of being able to possibly 9 end it with no loss of life, with public order methods, 10 etcetera, instead of having to stand back and expect an 11 attack in your direction which may force you into the place 12 where you need to defend yourselves with, or defend life 13 with live ammunition for that matter. 14 CHAIRPERSON: It may be contended from 15 the other side that if you stood at the ready, ready to 16 react at the first sign of aggression, that that might have 17 deterred the opponents from taking the first step and there 18 wouldn't have been bloodshed, whereas a pre-emptive strike 19 brought with it the risk that some at least of the 20 opponents might have been killed. What would you say if 21 that argument was put up? 22 COLONEL SCOTT: Well, Chairperson, 23 firstly, how long do the police then stand guard and expect 24 an attack from the strikers, for that matter is the 25 question to be asked. And again, secondly, I still feel</p>
<p style="text-align: right;">Page 15850</p> <p>1 any attack that was launched at them? Was a pre-emptive 2 strike necessary? 3 COLONEL SCOTT: It's a very direct turn, 4 Chairperson, but a tactical option from the police - 5 CHAIRPERSON: It would have been, 6 wouldn't it? If you, the question is put on the basis - 7 COLONEL SCOTT: Yes. 8 CHAIRPERSON: - that the police are going 9 to be attacked. 10 COLONEL SCOTT: Yes. 11 CHAIRPERSON: So what do the police do 12 about it? I would imagine they've got two alternatives, 13 they've got three alternatives; the one, you abandon, one 14 you correctly I think say it was not acceptable - 15 COLONEL SCOTT: Yes. 16 CHAIRPERSON: - and that the police 17 should retreat. So we can ignore that one. So there are 18 two left, I imagine. The one is you strike first, pre- 19 emptive strike, or you stand guard, ready to react at the 20 slightest sign of an attack. Those are the two, aren't 21 they? 22 COLONEL SCOTT: Yes. 23 CHAIRPERSON: Now why is the pre-emptive 24 strike - 25 COLONEL SCOTT: A better option.</p>	<p style="text-align: right;">Page 15852</p> <p>1 that waiting for the strikers to attack you so that you can 2 retaliate is not the way to go because then you're having 3 to move to a level where your force continuum has to rise 4 significantly, where we, when we're in control, we can 5 start with a low force continuum and only then when 6 necessary escalate it. 7 CHAIRPERSON: The problem of course is 8 that a pre-emptive strike could be seen as something which 9 goes beyond the bounds of self and private defence. Self- 10 defence doesn't normally involve pre-emptive strikes. 11 COLONEL SCOTT: That's correct. 12 CHAIRPERSON: And there were arguments 13 about intervention in Iraq and so on, which we don't have 14 to debate here, but you understand where that kind of issue 15 arose. 16 COLONEL SCOTT: Yes. 17 CHAIRPERSON: And one of the other 18 questions - but perhaps I can ask you about it later if Mr 19 Semenya doesn't - is how effective the lower levels of the 20 force continuum would have been effective, regard being had 21 to the kind of customers you were dealing with. But that's 22 perhaps a wider question I can deal with later, unless Mr 23 Semenya deals with it. 24 COLONEL SCOTT: Okay. 25 COMMISSIONER HEMRAJ: Colonel, I expect</p>

<p style="text-align: right;">Page 15853</p> <p>1 that if you were waiting for the attack on the police, then 2 your front line would not necessarily have been POPS? 3 COLONEL SCOTT: Well, if – exactly. 4 That's the other thing, because if you're standing waiting 5 for what you're assuming is going to be an attack to take 6 life from the police in essence, then it would be of no 7 purpose, although we would have still tried, if watching 8 that attack coming for that matter, to deter it with Public 9 Order Policing methods, simply as part of a force 10 continuum, being within a democratic society and knowing 11 that you can't just go ahead and shoot people, for that 12 matter. So I'm pretty sure if that was a strategy we opted 13 for, we would have still placed some form, if not water 14 cannons or something to try to just keep the distance, and 15 of course this is in essence, the whole operation went 16 about a separation of ground, of effect distance between 17 police and strikers, the whole operation, from stage 1, or 18 phase 1, right through to even the stage 3 was a matter of 19 separating us so that there never had to be human on human 20 contact until really necessary, which was at the arrest 21 stage. 22 [10:22] CHAIRPERSON: Yes, if you'd removed the 23 non-lethal section away, then the first step would have 24 been the use of assault rifles and sharp ammunition and 25 obviously there would have been much greater risk of</p>	<p style="text-align: right;">Page 15855</p> <p>1 COLONEL SCOTT: Well, Chairperson, if you 2 take any dispersion action for that matter by POPS on the 3 ground, most times in spontaneous marches because you 4 obviously would necessarily plan a dispersion into 5 something that's been through the full Gatherings Act and 6 you've had your conveners and you've planned it well and 7 you've – you would have it as a reserve contingency plan 8 and the ability to do it, but to say we will do it at this 9 very point I think would be a bit naïve or show a pre- 10 emptive mindset. So when you do deal with the things like 11 dispersions of public order policing, it's normally 12 something which needs to happen and thus gets communicated 13 to the crowd so that they have the option of not being part 14 of that and walking away. So pre-emptive in the essence 15 is, well, us going ahead and doing something but it's not 16 without warning as in maybe in a militaristic point of 17 view. It is still giving the public, the citizens, the 18 option that the police are going to need to disperse you 19 because of certain belligerent behaviour, we are pre- 20 warning you of this action, please move away, we are asking 21 you to move away, we don't want a conflict but those that 22 do remain then, the rule of law needs to be re-established 23 and the dispersion action then continues. So it's not 24 something the police likes to do or wants to do, it's 25 something that unfortunately we get forced to do in order</p>
<p style="text-align: right;">Page 15854</p> <p>1 bloodshed that way. 2 COLONEL SCOTT: Yes. 3 CHAIRPERSON: But one of the questions which, as I 4 say, if necessary I'll talk to you about it later, is on 5 the probabilities how effective would that lot that you 6 were dealing with, the non-lethal methods would have been 7 but anyway, that's really a separate topic but obviously if 8 there was a reasonable chance that the non-lethal methods 9 would succeed then obviously you had to try that. 10 COLONEL SCOTT: Yes. 11 CHAIRPERSON: But you see the difficulty is that 12 the pre-emptive strike part, as I say that's a wider issue 13 but the pre-emptive strike part could be regarded and we 14 may well have the argument put up, so I put it to you so 15 that you can deal with – 16 COLONEL SCOTT: Yes. 17 CHAIRPERSON: - that that displays a militaristic 18 approach which could be contended is part and part of the 19 increased remilitarisation of the police which took place 20 after '94. I know that's a broad topic – 21 COLONEL SCOTT: Ja. 22 CHAIRPERSON: But the argument, if it's going to 23 be put up, is going to be based on that kind of contention, 24 so perhaps you might like to deal with that if you feel 25 able to do so.</p>	<p style="text-align: right;">Page 15856</p> <p>1 to maintain law and order. 2 COMMISSIONER HEMRAJ: And the phrase pre- 3 emptive strike to be understood to be to achieve a 4 dispersal rather than any retaliation in regard to the 5 threat to the police? 6 COLONEL SCOTT: In that – yes, if I 7 understand you correctly, Commissioner, pre-emptive in the 8 means, maybe that the Chairperson is asking as well, that 9 the police have taken the initiative now to go to a 10 tactical option instead of waiting to be attacked and then 11 retaliate with a tactical option. And again my point of 12 view on that is that we could have better control with us, 13 in essence, in inverted commas if I could say, doing the 14 pre-emptive option. Again, as I say, giving those options 15 because once we've moved to the level where we are 16 expecting the attack and then we retaliate to the attack, 17 immediately we're having to look at higher levels within 18 the force continuum. 19 MR SEMENYA SC: Colonel, just stay with 20 me. 21 COLONEL SCOTT: Sorry. 22 MR SEMENYA SC: Now of course if the 23 police, the one option as the Chair says is you take the 24 initiative and you disperse, disarm and arrest, that's the 25 one scenario. The second scenario is you wait until you</p>

<p style="text-align: right;">Page 15857</p> <p>1 see an aggression on your part. Now just help me pay out 2 this one through. If they came, as Mr Mpofu would have us, 3 with submissiveness as they did, here respect to you as 4 they did, five metres away from you, how would you respond 5 to that in a disperse, disarm and arrest? 6 COLONEL SCOTT: If it is, as Mr Mpofu put 7 it forward, one would expect firstly that it would not be 8 done with arms in hand – 9 MR SEMENYA SC: No – no, and play the 10 scenario as we know it. 11 COLONEL SCOTT: Okay. As we know it or 12 as you've just presented it? 13 MR SEMENYA SC: As we know it, they were 14 coming respectfully, with submissiveness, with the weapons, 15 in a crouched position or crouched, walking, and you are 16 taking the view, we will not do anything unless they show 17 aggression, what opportunity would be there to do the 18 disperse, disarm and arrest? 19 COLONEL SCOTT: I'm not sure I'm 20 understanding the question correctly. 21 CHAIRPERSON: Would there have been an 22 opportunity, assuming that they'd come forward – 23 COLONEL SCOTT: Would there be? 24 CHAIRPERSON: - crouching, and assuming that is to 25 be interpreted as a sign of respect and not something else,</p>	<p style="text-align: right;">Page 15859</p> <p>1 shooting at the police in the meantime whilst they are 2 being respectful. 3 COLONEL SCOTT: Okay, that's what I'm 4 trying to understand. 5 CHAIRPERSON: No, Mr Semenya, I think you would 6 take – there are two ways of dealing with this problem. 7 One must take that one out first because you're dealing at 8 the moment with Mr Mpofu's proposition and he doesn't 9 include shooting in the meantime. So let's deal with Mr 10 Mpofu's, because he is not here someone has got to ask the 11 question on his behalf and you may as well ask it for him. 12 So let's deal with Mr Mpofu's scenario first and then you 13 can add, just perhaps to add an element of realism to the 14 situation, firing as well. 15 MR SEMENYA SC: That will take it – 16 CHAIRPERSON: It's a double-barrelled question, 17 deal with the first barrel first and then the second. 18 MR SEMENYA SC: Let's take it this way, 19 Colonel. Go back to the visuals. We may play them, if we 20 should. There is a point at which the armed strikers, the 21 Noki group is almost five, ten metres away from the TRT 22 line. If the idea was to wait until they strike first, 23 would it have been possible to contain that situation in 24 the ordinary POP way of doing things? 25 COLONEL SCOTT: No.</p>
<p style="text-align: right;">Page 15858</p> <p>1 walked slowly forward, crouching but with their cutlasses 2 or pangas in their hands, some with firearms, assegais, but 3 they'd come slowly towards you in a crouching way, walking 4 in a crouched position, the question is would there have 5 been an opportunity for you to have disarmed them in those 6 circumstances? I think that's the question. 7 COLONEL SCOTT: But what I'm trying to 8 understand is, is the police mindset at this time then to 9 be that we understand them to be submissive and not 10 aggressive? 11 MR SEMENYA SC: No – 12 CHAIRPERSON: Yes, obviously. I mean if you 13 thought they were being aggressive and then even if they 14 weren't, you might be able to rely on the principles of 15 putative defence but I don't think Mr Semenya is going 16 there. I think Mr Semenya is asking the question on the 17 assumption, which may be a bold and unrealistic assumption 18 but never mind, on the assumption that by walking forward 19 in this fashion they are in fact being submissive and 20 polite but they were coming slowly in a crouched position 21 but they were hanging onto their pangas and their assegais 22 and so forth, what opportunities asks Mr Semenya, in those 23 circumstances, would the police have had to disarm them. 24 That's your question? 25 MR SEMENYA SC: Yes, we may add to that,</p>	<p style="text-align: right;">Page 15860</p> <p>1 CHAIRPERSON: Are you moving on to another topic? 2 MR SEMENYA SC: Yes, I am, Chair. 3 CHAIRPERSON: May I suggest we take tea at this 4 stage, is that convenient for you? 5 MR SEMENYA SC: It is convenient. 6 CHAIRPERSON: Or do you want to go on for a bit 7 longer? 8 MR SEMENYA SC: It is convenient for me, 9 Chair. 10 CHAIRPERSON: We'll take the tea adjournment at 11 this stage. 12 [COMMISSION ADJOURNS COMMISSION RESUMES] 13 [10:51] CHAIRPERSON: The Commission resumes. Colonel, 14 you're still under oath. Mr Semenya, have you any further 15 re-examination for the witness? 16 DUNCAN GEORGE SCOTT: s.u.o. 17 RE-EXAMINATION BY MR SEMENYA SC (CONTD.): 18 Ja, Chair, thank you. Colonel, the other criticism is that 19 the very idea of disarming, dispersing 3 000 people, 20 carried a lot of high risk, Mr White almost suggesting that 21 it shouldn't have been one of the options really. What's 22 your response to that? 23 COLONEL SCOTT: The fact that it would 24 start with a dispersion action, the POPS action, initially 25 was to minimise any risk, to take those away again that</p>

<p style="text-align: right;">Page 15861</p> <p>1 were not wanting confrontation. So just dealing with the 2 group of 3 000 people, I don't think that that's an 3 accurate reflection of what the police initially would have 4 needed to physically go forward to deal with, so the risk 5 already is significantly reduced just by that. 6 MR SEMENYA SC: And the other challenge 7 is that the very fact that the police would go tactical 8 carried with it the risk of harm to both the strikers and 9 the members. Do you remember that part of the criticism? 10 COLONEL SCOTT: I do remember that, yes. 11 MR SEMENYA SC: Now is there a way in 12 which, one, police can do law enforcement without ever 13 going tactical? 14 COLONEL SCOTT: Unfortunately not. 15 MR SEMENYA SC: In the event that the 16 police in specific environments go tactical, is or is the 17 issue not whether or not they have the necessary mitigating 18 strategies to deal with the consequence and/or the adequate 19 training to match up to that task? 20 COLONEL SCOTT: It's true what you're 21 saying, yes. 22 MR SEMENYA SC: Let us talk about what 23 mitigating circumstances were in the plan for going 24 tactical. Can we go through what the plan envisaged to be 25 mitigating factors to avoid any harm, both to the members</p>	<p style="text-align: right;">Page 15863</p> <p>1 MR SEMENYA SC: Why would that help keep 2 a distance between the police and the strikers? 3 COLONEL SCOTT: Well, besides being a 4 psychological barrier, seeing it is already a dissuasion of 5 in essence, any, I believe, rational person would see that 6 and understand that that is a barrier that I don't need to 7 approach. And secondly, if wanting to approach it, it 8 forms a physical barrier which also prohibits contact with 9 whatever structure or persons being on the opposite side. 10 MR SEMENYA SC: Let's measure whether 11 that mitigating measure did or did not work. Did it work 12 in relation to the 3 000-odd people? 13 COLONEL SCOTT: It worked in the sense 14 that where the razor wire was deployed nobody did gain 15 access, yes. 16 MR SEMENYA SC: What other mitigating 17 measure was in the plan to avoid injury to the strikers? 18 COLONEL SCOTT: The public order policing 19 option being the first line of the tactical option. 20 MR SEMENYA SC: And what type of vehicles 21 do they use? 22 COLONEL SCOTT: They are in armoured 23 vehicles. 24 MR SEMENYA SC: Why armoured vehicles? 25 COLONEL SCOTT: Because that, it's a safe</p>
<p style="text-align: right;">Page 15862</p> <p>1 and to the strikers. Let us start with the strikers, for 2 one. What mitigating measures were in place in the plan to 3 avoid harm to the strikers? 4 COLONEL SCOTT: Well, the strategy, which 5 is not out rightly mentioned, but of keeping a physical 6 space between police and strikers as an outset. 7 MR SEMENYA SC: What was that? 8 COLONEL SCOTT: And obviously when we 9 were in the negotiation phase or if we're talking directly 10 to the tactical phase, but from that already there was, the 11 actual distance that we chose to be away and to have 12 armoured vehicles and to have our members inside armoured 13 vehicles. 14 MR SEMENYA SC: Let us take them one at a 15 time. How was it contemplated to put distance between the 16 police and the strikers? 17 COLONEL SCOTT: By the actual positioning 18 of the armoured vehicles a fair distance away from them so 19 as not to provoke them if I'm talking about phase 1 and 20 phase 2. If we're talking to phase 3 – 21 MR SEMENYA SC: I'm talking about the 22 tactical option. 23 COLONEL SCOTT: Oh, the tactical option, 24 it was with the razor wire, is something that we wanted to 25 create a barrier with at the outset.</p>	<p style="text-align: right;">Page 15864</p> <p>1 haven. They're not easily, you cannot gain easy access to 2 them, whether by means of shooting at them or by forcibly 3 trying to open them. They are designed in that way. 4 MR SEMENYA SC: Yes, that was the second 5 element of mitigating measures you tell us. What else were 6 factored in to reduce any possibility of harm to the 7 strikers? 8 COLONEL SCOTT: Keeping the distance by 9 the public order policing option starting with water 10 cannons and the spraying of water toward them. 11 MR SEMENYA SC: What would water cannons 12 do to achieve that mitigation? 13 COLONEL SCOTT: Well, they spray strong 14 bursts of water. Initially at a distance the water is not 15 that strong. The closer the water cannon gets to you, you 16 don't have control of standing against the strength of the 17 spray which is coming at you. So it is in essence a way of 18 keeping the gap, again, between police members and 19 strikers. 20 MR SEMENYA SC: Other control measures of 21 mitigating the risk of harm? 22 COLONEL SCOTT: Well, moving through the 23 force continuum of the public order policing, after water 24 would be to initiate the teargas grenades that would be 25 fired and that would obviously be to – and by this stage,</p>

<p style="text-align: right;">Page 15865</p> <p>1 who doesn't want to be there would have moved away but this 2 is now to encourage people to continue to move away because 3 of discomfort to the actual people that have remained, by 4 the burning of the teargas, the burning sensation to the 5 skin and to the eyes.</p> <p>6 MR SEMENYA SC: Past police experience, 7 what does teargas do?</p> <p>8 COLONEL SCOTT: Well, teargas creates, in 9 essence it's difficult to maintain vision, for that matter, 10 if you choose to remain in it which inevitably then plays 11 in the advantage of the police, well it would come down to 12 the arresting, for that matter, of belligerent protesters. 13 It's an irritant to the eyes which makes it difficult for a 14 person to visually then to see what is going on and the 15 strategies that the police may be utilising in what we call 16 a takedown. So, but in essence the amount of discomfort 17 that teargas is causing you if you're remaining static and 18 it's in your environment becomes, you need a very high pain 19 threshold to sit it out, to maintain it. So it encourages 20 you to move.</p> <p>21 MR SEMENYA SC: Any other mitigating 22 measure in the plan to avoid harm to the strikers?</p> <p>23 COLONEL SCOTT: Well, the utilisation of 24 stun grenades which actually has a disorientating effect if 25 it goes off very close to you, so it has a dual purpose</p>	<p style="text-align: right;">Page 15867</p> <p>1 presence like that, again a rational person would 2 understand that that is a group of people that are serious 3 and that should not be aggressively approached for that 4 matter. So they were utilised as a deterrent, in essence, 5 the reason being for the STF with its armoured vehicles and 6 with the weaponry that they had mounted on that, which was 7 at no time to be utilised against human beings - we have it 8 for different purposes, for what we call anti-material 9 weapons – but those were deterrents to show the strikers 10 that it's not, there's no need to confront these people.</p> <p>11 MR SEMENYA SC: Past police experience, 12 what does a show of force do in such similar circumstances 13 ordinarily?</p> <p>14 COLONEL SCOTT: Well, in my past 15 experience many times when we have gone for a show of force 16 it causes a surrender. In this case we were expecting the 17 surrender to be in the form of a dispersion, that the 18 strikers move away and that reason would prevail and logic 19 would prevail and they would understand that the police 20 were serious about what they were wanting to do in the 21 dispersion action and they had the means of doing that with 22 the public order policing and with that logic in mind that 23 they would have moved off.</p> <p>24 MR SEMENYA SC: Okay, can we now deal 25 with another subject and also the criticism is also from Mr</p>
<p style="text-align: right;">Page 15866</p> <p>1 again but for the purpose of the dispersion, the loud noise 2 it makes does tend to instil fear and cause people again to 3 want to move away from whatever may be coming, as in the 4 public order police force which would be deploying 5 diversionary devices or stun grenade devices like that.</p> <p>6 MR SEMENYA SC: And apart from the stun 7 grenades, any other mitigating measure that was intended in 8 the plan to dissuade and/or mitigate any risk of harm to 9 the strikers?</p> <p>10 COLONEL SCOTT: Well, again if we've 11 moved through water which in essence is just a wetting 12 effect and can become a strong propulsion jet spray at you 13 which physically moves you without you voluntarily wanting 14 to move, in other words the breaking up of a very tight- 15 knit group once the water comes into close proximity, going 16 to teargas again which has caused discomfort to you and 17 pain, giving you the inspiration of or persuading you to 18 move away, stun grenades, as a last resort then is to 19 actually physically instil a degree of pain through rubber 20 bullets which need to be shot and which persuades, again, 21 people to move off.</p> <p>22 MR SEMENYA SC: Okay. The use of 23 presence of the TRT, NIU, STF, what, if anything, did it 24 have – their presence that is – as a mitigating measure?</p> <p>25 COLONEL SCOTT: Well, simply seeing a</p>	<p style="text-align: right;">Page 15868</p> <p>1 White that the plan was shambolic – I paraphrase – you 2 remember that?</p> <p>3 COLONEL SCOTT: I remember, yes.</p> <p>4 MR SEMENYA SC: That element, ja. Now 5 let us test with you the plan on its own terms because I 6 don't see the experts commenting on the plan on its terms. 7 Is there anything inherently wrong with a plan to disperse 8 a crowd of people who are gathered illegally with arms?</p> <p>9 COLONEL SCOTT: No. Once we've got to 10 the position we were at, no. Once you've been, you've 11 tried dialogue which is unsuccessful, et, then no, it's 12 not.</p> <p>13 MR SEMENYA SC: Yes, I don't think there 14 is criticism about phase 1 and phase 2. I want us to focus 15 on stage 3.</p> <p>16 COLONEL SCOTT: Alright.</p> <p>17 MR SEMENYA SC: Is there something 18 inherently wrong, from a policing perspective, with 19 encircling small groups which you intend to arrest and 20 disarm?</p> <p>21 COLONEL SCOTT: No, there's not.</p> <p>22 MR SEMENYA SC: Is there anything 23 inherently, from a policing perspective, wrong with using 24 water cannons to disperse a crowd of people?</p> <p>25 COLONEL SCOTT: No.</p>

<p style="text-align: right;">Page 15869</p> <p>1 MR SEMENYA SC: For that purpose?</p> <p>2 COLONEL SCOTT: No.</p> <p>3 MR SEMENYA SC: Inherently wrong to use –</p> <p>4 CHAIRPERSON: I don't think he answered the</p> <p>5 question. He shook his head but I didn't hear his answer.</p> <p>6 I take it you'd like his answer on record.</p> <p>7 COLONEL SCOTT: No, the answer was no,</p> <p>8 it's not inherently wrong.</p> <p>9 MR SEMENYA SC: Inherently or implicitly</p> <p>10 wrong with the use of teargas in dispersing a crowd?</p> <p>11 COLONEL SCOTT: No.</p> <p>12 MR SEMENYA SC: Using stun grenades?</p> <p>13 COLONEL SCOTT: No.</p> <p>14 MR SEMENYA SC: In appropriate</p> <p>15 circumstances, rubber bullets?</p> <p>16 COLONEL SCOTT: No.</p> <p>17 MR SEMENYA SC: The other criticism about</p> <p>18 the police operation is that, and the planning, is whether</p> <p>19 the implementation of that plan was flawed or not. Do you</p> <p>20 or are you able to tell us whether the positioning of a</p> <p>21 barbed wire by itself was wrong or right?</p> <p>22 COLONEL SCOTT: In the final, I believe</p> <p>23 it is –</p> <p>24 MR SEMENYA SC: In the final analysis are</p> <p>25 we able to come to the conclusion that the mere placing of</p>	<p style="text-align: right;">Page 15871</p> <p>1 COLONEL SCOTT: Yes, I think his evidence</p> <p>2 is that he saw Nyala 4 was, may not make it so he pushed</p> <p>3 his Nyala between the kraal and Nyala 4's nose initially.</p> <p>4 MR SEMENYA SC: Now we know that side is</p> <p>5 closed?</p> <p>6 COLONEL SCOTT: Yes.</p> <p>7 MR SEMENYA SC: And the suggestion is we</p> <p>8 should have closed even the other side where the gap exists</p> <p>9 between the kraal and the zinc house. I'm asking, in that</p> <p>10 scenario, how would the dispersal, disarming and arrest</p> <p>11 have happened?</p> <p>12 COLONEL SCOTT: It would not have been</p> <p>13 possible.</p> <p>14 MR SEMENYA SC: Now, can you help us with</p> <p>15 this theory that Mr Noki and the group were going home?</p> <p>16 You remember the evidence around that contention?</p> <p>17 COLONEL SCOTT: Yes.</p> <p>18 CHAIRPERSON: I thought the witness dealt with it.</p> <p>19 I thought that he gave a fairly lengthy answer when</p> <p>20 questioned, I think it was by Mr Mpofu but it may have been</p> <p>21 by somebody else, because he was dealing with the question</p> <p>22 as to whether the group approaching in this crouched</p> <p>23 position were on their way home to Nkaneng or in fact</p> <p>24 intent on attacking the police and he gave quite a lengthy</p> <p>25 answer explaining why he suggests that they were intending</p>
<p style="text-align: right;">Page 15870</p> <p>1 the barbed wire there was contra-indicated in policing?</p> <p>2 COLONEL SCOTT: No, it was fine.10-</p> <p>3 51/1508</p> <p>4 MR SEMENYA SC: Are there any prescripts</p> <p>5 that prohibit the use of multi-disciplinary forces?</p> <p>6 COLONEL SCOTT: Well, again in these</p> <p>7 circumstances, no.</p> <p>8 MR SEMENYA SC: You recall I mentioned</p> <p>9 with you earlier the gap between the kraal and the Rinkhals</p> <p>10 that we see on one of the vehicles?</p> <p>11 COLONEL SCOTT: I remember.</p> <p>12 MR SEMENYA SC: And there was a criticism</p> <p>13 relating to why that gap ought not, was not closed.</p> <p>14 COLONEL SCOTT: I remember, yes.</p> <p>15 MR SEMENYA SC: Let's examine the</p> <p>16 consequence of that. With Colonel Pitsi's Nyala having</p> <p>17 come to close the gap to the kraal, how would the dispersal</p> <p>18 have happened with the police on the other side of what was</p> <p>19 in the safe area for –</p> <p>20 MR CHASKALSON SC: Sorry, Chairperson,</p> <p>21 Colonel Pitsi's Nyala didn't have a barbed wire trailer on</p> <p>22 it and could never have closed that gap.</p> <p>23 MR SEMENYA SC: No, I know. I'm not</p> <p>24 saying it closed it with a barbed wire. We know he drove</p> <p>25 to close that gap where they were going.</p>	<p style="text-align: right;">Page 15872</p> <p>1 to attack the police and he gave various, mentioned various</p> <p>2 items of evidence. So that evidence is already on record,</p> <p>3 but if you want him to supplement that then obviously you</p> <p>4 must carry on but it's not necessary to get him to repeat</p> <p>5 that evidence unless there's something extra that he wants</p> <p>6 to add or you want him to say on the point.</p> <p>7 MR SEMENYA SC: No, I wanted to ask you,</p> <p>8 Colonel, as best as your information goes, was that intent</p> <p>9 communicated to the police?</p> <p>10 COLONEL SCOTT: No.</p> <p>11 MR SEMENYA SC: Was it objectively</p> <p>12 determinable?</p> <p>13 COLONEL SCOTT: I don't think so.</p> <p>14 MR SEMENYA SC: Because Mr Mpofu insists</p> <p>15 that there is an uncontested account by Noki saying they</p> <p>16 have done nothing wrong and they were going home. You</p> <p>17 remember that evidence?</p> <p>18 CHAIRPERSON: It was the uncontested, what he said</p> <p>19 was there was objective evidence by Mr Magidiwana that</p> <p>20 that's what Mr Noki said and I pointed out to him that it</p> <p>21 wasn't objective evidence, the best that could be said for</p> <p>22 it is it was not directly disputed, but that's the piece of</p> <p>23 evidence you're referring to.</p> <p>24 [11:11] The evidence – oh, we understand, it's in</p> <p>25 Magidiwana's statement, in his evidence that that's what</p>

<p style="text-align: right;">Page 15873</p> <p>1 Noki said, said, "We've done nothing wrong; there's no 2 reason why we shouldn't go to Nkaneng," presumably along 3 that route, through the police lines really. 4 MR SEMENYA SC: You recall that evidence? 5 COLONEL SCOTT: I do recall it, yes. 6 MR SEMENYA SC: Is that accurate, though? 7 They had done nothing wrong? 8 COLONEL SCOTT: Unless they didn't think 9 so, but not according to the law, no. 10 MR SEMENYA SC: What were they doing 11 wrong, according to the law, would you say? 12 COLONEL SCOTT: Well, the evident part 13 was the carrying of the weapons at the actual strike, and 14 then of course, but that's the one that's more difficult to 15 pinpoint, is the attacks that had been carried out on the 16 previous days. 17 CHAIRPERSON: I don't think I quite 18 understand the last part. I can understand the first part 19 of your answer. You are assuming, I think, that the group 20 who were approaching, led by Mr Noki, were the ones who 21 actually participated in the attacks on the previous days. 22 May be right, may be wrong, but, and there was certainly no 23 basis to arrest those people approaching in respect of 24 those killings or attacks or malicious injury, acts of 25 malicious injury of property that they committed. Is that</p>	<p style="text-align: right;">Page 15875</p> <p>1 happen, Chair. Colonel, we have on screen paragraph 13. 2 Mr Magidiwana says there, "When we got closer to one of the 3 Nyalas, it started moving alongside, dragging barbed wire. 4 The Nyala outpaced us and we were not able to access the 5 road to Nkaneng which runs just in front of the small 6 kraal." What incident would that be? 7 COLONEL SCOTT: Well, it would appear to 8 justify something in the line of incident 1. 9 MR SEMENYA SC: He continues to say in 10 paragraph 14, "At this stage there was shooting of teargas 11 and water from behind us. This was followed by gunshots 12 aimed in our direction." Looking at the visuals, what 13 scene are we talking? Of what incident are we talking? 14 COLONEL SCOTT: Well, incidents 2 and 3 15 both speak to the utilisation of teargas, water, so it 16 depends where he was in that greater grouping of – 17 MR SEMENYA SC: Just reflect on your 18 answer. You're saying that incident 3 as well includes use 19 of teargas? 20 COLONEL SCOTT: From my understanding 21 incident 3 is not yet the physical shooting, TRT shooting, 22 but is the actual applying of public order means from the 23 eastern side of the kraal, where incident 2 is happening on 24 the western side of the kraal. 25 MR SEMENYA SC: Mr Magidiwana then</p>
<p style="text-align: right;">Page 15874</p> <p>1 so? I can understand, this is why I can understand the 2 first part of your argument. 3 COLONEL SCOTT: Yes. 4 CHAIRPERSON: The difficulty is with the 5 second half. 6 COLONEL SCOTT: Yes. 7 MR SEMENYA SC: Of course I'm trying to 8 make sure that we do not deal with matters that are better 9 handled by those who were on the scene and who are better 10 able to interpret the visuals, as we see them. You recall 11 there is also a questioning, at the very least, of whether 12 or not incident 1 and incident 2 happened. You recall that 13 body of evidence? 14 COLONEL SCOTT: I remember, yes. 15 MR SEMENYA SC: And it was suggested to 16 you that the police version that scene 1 and scene 2 17 happened, incidents rather, 1 and 2 happened, is 18 questionable. 19 COLONEL SCOTT: I recall that, yes. 20 MR SEMENYA SC: Okay, can I ask you to 21 look at exhibit EEE1, which is the statement of Magidiwana, 22 in particular paragraphs 13, 14, and 15. 23 CHAIRPERSON: Are these going to be put 24 up on the screen for us to see? 25 MR SEMENYA SC: I would request that to</p>	<p style="text-align: right;">Page 15876</p> <p>1 continues to say, "When it became clear that the Nyala had 2 successfully blocked the way" - what could he be referring 3 to? 4 COLONEL SCOTT: That must be Nyala 4. 5 MR SEMENYA SC: - "we ran around and 6 behind the kraal to access the road from the other side of 7 the kraal. This was the only way or gap open to us." What 8 incident is he referring to? 9 COLONEL SCOTT: Well, if he's running 10 around the kraal, now he's coming through the western side 11 and then that should be incident 3. 12 MR SEMENYA SC: Well, in paragraph 15 he 13 then says, "As soon as we met on the other side of the 14 kraal, we were met with more rapid gunfire." So clearly 15 what you can tell us what he is talking about when he 16 refers to, in paragraph 14, "At this stage there was 17 shooting of teargas and water from behind us; this was 18 followed by gunshot aimed in our direction." What gunshots 19 are those? 20 COLONEL SCOTT: That would be, it would 21 need to be the rubber rounds. 22 MR SEMENYA SC: Correct, and in paragraph 23 16 he deals with the sharp ammunition - 24 COLONEL SCOTT: With the sharp 25 ammunition, yes.</p>

<p style="text-align: right;">Page 15877</p> <p>1 MR SEMENYA SC: - on the other side of 2 the kraal.</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 MR SEMENYA SC: Can we look at the 5 statement of Phatsha, that would be exhibit DDD1, 6 paragraphs 9, 10, 11, and 12. In paragraph 9, says Mr 7 Phatsha there, "Shortly after he left, I noticed that one 8 of the Nyalas as dragging barbed wire and attempting to 9 close us in." Continues in paragraph 10 to say, "Together 10 with many other workers we ran towards the path next to the 11 kraal with the intention of escaping into Nkaneng. There 12 was a number of people ahead of me, but I was generally 13 speaking part of the front group." 11, "After the two or 14 three Nyalas had successfully outpaced us and closed the 15 gap against the kraal, we ran behind the kraal to access 16 the road from the other side." What incident is he talking 17 about there?</p> <p>18 COLONEL SCOTT: Well, he's speaking, 19 "After the two or three Nyalas had successfully outpaced 20 us." I would think that's possibly Nyala 5 and then having 21 driven inside the line of Nyala 4, Nyala 4 possibly moving 22 towards the kraal thereafter.</p> <p>23 MR SEMENYA SC: The question is what 24 incident is he referring to?</p> <p>25 COLONEL SCOTT: That would be then</p>	<p style="text-align: right;">Page 15879</p> <p>1 approach the police is initially 10, 20 metres back of the 2 kraal, which means if you were positioned to the west or to 3 the east, for that matter, you would be able to see the 4 group and which would then justify why POPS members speak 5 of utilising measures on the western side of the kraal, and 6 of course we know of the video footage on the east, which 7 we see them also, which we thought was then incident 3.</p> <p>8 MR SEMENYA SC: Okay, shall we now look 9 at –</p> <p>10 CHAIRPERSON: Are you moving on to 11 another topic?</p> <p>12 MR SEMENYA SC: No, another statement 13 which –</p> <p>14 CHAIRPERSON: Are you moving on to 15 another topic or are you still busy with the question as to 16 whether the incidents, which was raised in cross- 17 examination, the incidents which are summarised in slide 18 195, the three incidents, the first three that are 19 summarised in 195 and which are depicted by the arrows on 20 slide 194, you're still busy with that?</p> <p>21 MR SEMENYA SC: I'm still busy with 22 those, Chair. Can I invite us to look at exhibit HHH21, 23 which would be the statement of Mr Nzuzza, and in particular 24 paragraphs 25 to 28. Paragraph 25 reads, "Then we noticed 25 that the four Nyala which had been towing trailers with</p>
<p style="text-align: right;">Page 15878</p> <p>1 possibly incident 1.</p> <p>2 MR SEMENYA SC: And 12 says he, "All this 3 time we were being fired on with teargas and the water 4 cannon spray." What incident is he referring to here?</p> <p>5 COLONEL SCOTT: If I'm just going forward 6 to 13, I see that 12 then must be speaking to incident 2.</p> <p>7 MR SEMENYA SC: Okay, because –</p> <p>8 COMMISSIONER HEMRAJ: But you say 12 is 9 incident 2?</p> <p>10 COLONEL SCOTT: Yes.</p> <p>11 MR SEMENYA SC: Because we were told the 12 seconds calculated by the evidence leaders between the 13 spraying of water and the sharp-point ammunition firing.</p> <p>14 COLONEL SCOTT: That's correct.</p> <p>15 MR SEMENYA SC: You recall that?</p> <p>16 COLONEL SCOTT: Yes, can I justify maybe 17 my rationale? Why I'm saying this is depending on where 18 the individual is placed within the group, but I do believe 19 these individuals to be quite close to the front, but it's 20 very possible that incidents 2 and 3, as we know it, Public 21 Order Policing is happening simultaneously and what's 22 happening is there's less-than-lethal public order measures 23 on both sides, east and west of the kraal, taking place, 24 trying to go past the kraal, because initially in the 25 Channel 4 footage we see the actual group that starts to</p>	<p style="text-align: right;">Page 15880</p> <p>1 barbed wire were deploying the barbed wire. It was clear 2 that there was an intention to entrap us and to prevent us 3 from going into the direction of Nkaneng squatter camp and 4 hostel, where the majority of the striking workers 5 resided." 26, "People started to run in different 6 directions. Those who were in front moved towards the 7 informal settlement and wanted to take advantage of the gap 8 which was still open, leading to the road to the 9 residential area. One of the Hippos drove fast," starts 10 27, "until the gap was closed against the kraal. At this 11 stage teargas and stun grenades were launched from the 12 police vehicles and helicopters. This was followed by 13 water sprayed from cannons. The protesters," starts 28, 14 "then decided to go around the kraal to take the only 15 remaining gap leading to the road to Nkaneng, i.e. between 16 the kraal and a nearby fenced yard. The gap is about 20 17 metres wide. Then the police shot them before they could 18 reach the road. I later learned that many died there and 19 others were severely injured. The Hippos were driving fast 20 among the panicking protesters." What incident, if at all, 21 does Mr Nzuzza seek to capture in those paragraphs as well?</p> <p>22 COLONEL SCOTT: What I do see in 23 paragraph 27 is he seems to be speaking to incident 2 24 happening on the western side of the kraal, because in 25 paragraph 28 he mentions the protesters then decided to go</p>

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1 around the kraal.

2 MR SEMENYA SC: Sorry, I did not hear

3 your answer. What incident do you say –

4 COLONEL SCOTT: He seems to be speaking

5 to incident 2 in paragraph 27.

6 MR SEMENYA SC: And that would be Mr

7 Mpofu's version, if his witnesses are to be believed,

8 correct?

9 COLONEL SCOTT: Yes.

10 MR SEMENYA SC: Mr Mpofu's clients'

11 version, rather, not his. Chair, I'm moving past this

12 point now.

13 CHAIRPERSON: I want to ask you a

14 question about that. As I understand the thrust of the

15 criticism advanced by, I think it's the Human Rights

16 Commission, in regard to these incidents which are depicted

17 on slide 194, the photograph, and are then described in

18 narrative form on slide 195, they deny that the incident

19 took place in that way and that there were movements as

20 depicted on 194. Well, that's what they suggested. They

21 have no direct knowledge; that's their argument from

22 various material. Now you remember you initially in one of

23 the earlier drafts I think of exhibit L had, I think it was

24 more or less slide 194 – if it wasn't that one, it was one

25 like that – where you also didn't have those three arrows,

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1 you know, the yellow arrow which goes straight, the curved

2 arrow which is orange, and then the red arrow which goes

3 around the kraal. You had a wavy –

4 COLONEL SCOTT: A dotted red line.

5 CHAIRPERSON: - what is described as a

6 wavy line.

7 COLONEL SCOTT: Yes.

8 CHAIRPERSON: Now what I want to ask you

9 is, the descriptions that we've had read to us on the

10 statements, can one say that what these people have

11 described is necessarily consistent with what we see on

12 slide 194, the orange, the yellow, orange, and red arrows,

13 or is it consistent with the line that you depicted on the

14 earlier version of that slide? I take it we must assume

15 that the red arrow is right. I mean quite clearly they

16 moved from, it would have been the – I'm not very good at

17 points of the compass, but presumably the western side of

18 the kraal, around the kraal to the eastern side of the

19 kraal.

20 COLONEL SCOTT: Yes.

21 CHAIRPERSON: That seems to be clear, but

22 I'm not sure whether these statements necessarily are

23 consistent with, only with the, what we see in, the yellow

24 arrow and the orange arrow which we see in 194, because

25 it's also possible, I assume, that the people who were

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1 running, were running more or less parallel with the barbed

2 wire in the hope of getting to the unfenced off part before

3 the Nyalas did. Would I be correct in that impression, or

4 is there something which you want to draw my attention to,

5 or our attention to, which indicates that these passages

6 are clearly consistent with the two, the yellow arrow and

7 the orange arrow on slide 194, and not consistent with

8 possibly your earlier wavy line that we talked about?

9 COLONEL SCOTT: Chairperson, I think the

10 whole of this incident 1, 2, and 3, needs to be seen in the

11 context of what CALS has done, and I think they're accurate

12 in what they've done with the limited scope that they had,

13 as well as in –

14 CHAIRPERSON: CALS, or the Institute – or

15 the Human Rights Commission? Anyway, whoever it is –

16 COLONEL SCOTT: I think it was CALS who

17 did the work –

18 CHAIRPERSON: It's the NGO that's

19 participating -

20 COLONEL SCOTT: Ja.

21 CHAIRPERSON: - and has presented this

22 particular set of photographs and analysis.

23 COLONEL SCOTT: Yes, and in saying this,

24 again I've tried to sort of go back to the human side of

25 this to see why in statements can it differ a little from

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1 what is shown in the analysis that was done on the

2 objective evidence, and I believe both to be correct. I

3 just, the human element again, having the human element of

4 mistake to it, being that I believe a scene, an incident 1

5 did occur and a 2 and a 3. I think that what happened was

6 they just become compartmentalised in essence in time where

7 it wasn't necessarily so, and we tend to also see the

8 militant group, or the Noki group as just a small little

9 group of people. In essence it was quite a long, possibly

10 even up to 50 metres of people coming along, so that the

11 people in the Nyala who had a window to look out of and

12 could hear people hitting against their vehicle, when we

13 speak to them, feeling they're being attacked, it's very

14 possible that it is part of the group, but it's people

15 further back in the group, because we know that the group

16 tended to widen the further back you got. So in essence I

17 believe that it possibly didn't happen where the yellow

18 arrow is depicting it, and that that is the evidence we had

19 at the time and we didn't have the analysis of going to

20 look at the different Nyala, is a mistake as such. But the

21 fact that it happened maybe when Nyala 4 was closer to the

22 kraal, maybe 30 metres away from the kraal, and there were

23 possibly the rear end of the militant group still following

24 the nose of it, that's a possibility that it happened

25 there. We see that group passing Nyala 5 and the members

<p style="text-align: right;">Page 15885</p> <p>1 of Nyala 5 also state to their Nyala being attacked. So 2 it's, there's two accounts of two Nyalas and some of these 3 members are even mentioning more, "two to three Nyalas 4 outpaced us." So Nyala 5 I think was first, started moving 5 alongside the actual protester group, or the striker group, 6 eventually cut to the inside. Nyala 4 came past. The 7 protester group had moved on and a rear section I think of 8 that group was now aligned with Nyala 4, and in saying 9 this, we do know that there's a time when it's possible 10 that the strikers did want to go through on the Western 11 side of the kraal. 12 [11:31] Nyala 4 cut them off and parts of the video that 13 we probably will see later, you actually see them looking 14 and then moving so – and they mention it as well in their 15 statements that they had to move around the kraal now to 16 get to this position and again the water cannons are only 17 firing - as objective evidence, I can't remember what the 18 time was, I think it's eight seconds before the shooting 19 and so on, but the fact is that public order means is being 20 used on both the western side and the eastern side of the 21 kraal, which is justifying incidents 2 and 3 for that 22 matter but it's occurring, I think, simultaneously at 23 different sections of the crowd. 24 CHAIRPERSON: Paragraph 26 read with 28 certainly 25 seems to indicate an attempt first to pass the kraal at the</p>	<p style="text-align: right;">Page 15887</p> <p>1 don't quarrel – Mr Chaskalson, is it the Human Rights 2 Commission or CALS? 3 MR CHASKALSON SC: CALS represents the 4 Human Rights Commission, so it's the same party. 5 CHAIRPERSON: Kop in een mus, ja. So the CALS 6 analysis, you don't quarrel with that? 7 COLONEL SCOTT: No. 8 CHAIRPERSON: But you say the difference between 9 the CALS analysis and what we see on slide 194 and the 10 narrative 195, the difference is not sinister in any way, 11 it's a result of the way the thing developed and was 12 analysed and investigated, is that fair? 13 COLONEL SCOTT: I think, Chairperson, 14 where I do differ now looking – as I said, I agree with 15 them in the limited scopes they had to work with, that that 16 was the accurate picture they could present but having a 17 look at the statements and realising that the objective 18 video footage or photos can't show it all, that there was 19 an incident 1. I just don't think it was depicted in the 20 correct area where we depicted it initially, which was an 21 unintentional mistake with the limited resources we had at 22 that time to actually show that, because we've listened to 23 our members stating that this had definitely happened and 24 when we saw that photograph we thought, well, that's 25 probably the incident that they're talking of. There is</p>
<p style="text-align: right;">Page 15886</p> <p>1 western end, side, and then going around the kraal, 2 attempting to get through or in fact getting through – 3 COLONEL SCOTT: Yes. 4 CHAIRPERSON: - on the eastern side, but I think 5 I'm right in saying that the Human Rights Commission is 6 more concerned about the direction of your arrows. I must 7 say looking at it fairly in abstract, it sounds to me to be 8 improbable that, unless there's another reason for it, that 9 arc then of the orange arrow doesn't seem to be likely – I 10 would have thought that if they want to get out of there, 11 they wouldn't have wasted time going an arc unless there 12 was teargas or water cannon that was driving them away. 13 COLONEL SCOTT: Ja. 14 CHAIRPERSON: I would have expected them to have 15 stayed as close as they could to the barrier. 16 COLONEL SCOTT: Yes. 17 CHAIRPERSON: Run along and hope to get beyond it 18 and through, which seems to me to be more likely but I just 19 put that to you so I get the benefit of your comment. 20 COLONEL SCOTT: Chairperson, I think 21 again at the time that the presentation was created, then 22 we were pretty limited to only having those photos and 23 looking at that, that was the interpretation we had made, 24 not having access to further – 25 CHAIRPERSON: What you say very fairly is you</p>	<p style="text-align: right;">Page 15888</p> <p>1 the pole, this was Nyala 4 pulling away from the pole 2 because we understood that the wire started getting 3 deployed at the pole and again it was just without malice, 4 we didn't go to the depths that counsel went to, to 5 actually analyse the situation and we didn't have much of 6 the father at that time either that they had to do a 7 thorough analysis either. 8 MR SEMENYA SC: Can I ask we look at 9 slide 205 of exhibit L? 10 CHAIRPERSON: Before we look at that, can I just 11 put to you what I understand you to be saying to make sure 12 I've got it right? What you're saying is it didn't 13 necessarily happen that the same group of strikers 14 approached the police line three times, one time after the 15 other. It may be that it was a 50 metre line of people, 16 one group of strikers may have approached it at the first 17 point, another at the second and the third at the third. 18 Am I understanding you correctly? 19 COLONEL SCOTT: I think that's a 20 possibility that must be considered, Chairperson, yes. If 21 I can maybe just clarify that? Just speaking, it's the 22 same group, it's just different portions of the group, ja. 23 CHAIRPERSON: No, you've got a 50 metre long 24 group. 25 COLONEL SCOTT: Ja.</p>

<p style="text-align: right;">Page 15889</p> <p>1 CHAIRPERSON: Obviously a number of people, I 2 don't know how many people you can get into a 50 metre 3 group, probably 100 or more, so clearly some members of the 4 group are going, are active at one spot, a second part of a 5 group is active at a second and the third at the third, is 6 that a possibility?</p> <p>7 COLONEL SCOTT: I think they were 8 following the lead of the lead group, it's just that they 9 happened to be in the vicinity of Nyala 4, being further 10 back as Nyala 4 was closing with them still very close to 11 Nyala 4 for that matter. And I think I mentioned it was 12 Nyala 5, the photo actually shows the lead group passing 13 Nyala 5 very closely as well.</p> <p>14 MR SEMENYA SC: Again can we come back to 15 what I'm asking here now?</p> <p>16 COLONEL SCOTT: Yes.</p> <p>17 MR SEMENYA SC: If we contextualise the 18 statements of Mr Magidiwana and that of Phatsha and Nzuzi 19 on slide 205 we see that the western side of the kraal is 20 not closed.</p> <p>21 COLONEL SCOTT: That's correct.</p> <p>22 MR SEMENYA SC: So that scene would have 23 happened.</p> <p>24 COLONEL SCOTT: That's correct.</p> <p>25 MR SEMENYA SC: And we see that the first</p>	<p style="text-align: right;">Page 15891</p> <p>1 it again? The group moved backwards and again regrouped on 2 the other side of the kraal, photo 1516, and attacked the 3 policemen again at about 15:35. It was clearly seen – I 4 think probably actually had been clearly seen – from the 5 air that the group was not going to surrender or yield. 6 Brigadier Calitz again gave the members the instruction to 7 launch an operation. It almost appears as if the members 8 did not hear. Because of the incident on the Monday the 9 13th of August where the two police members had been chopped 10 to death or hacked to death under the helicopter, I 11 realised that the members would have to act in order to 12 protect them.</p> <p>13 MR SEMENYA SC: Chair, for the purposes 14 of my question that would be adequate. I'm merely trying 15 to ask you, the description Colonel Vermaak is giving there 16 of the attack and the police action and the instruction of 17 Brigadier Calitz is clearly before the scene 3, incident 3.</p> <p>18 COLONEL SCOTT: Yes, the first line 19 speaks that the group moved back and regrouped on the – 20 yes.</p> <p>21 MR SEMENYA SC: Moving to a different 22 aspect of the evidence, Mr White seems to say that given 23 the – sorry, it's not Mr White. The evidence leaders 24 appear to say that given the difficult terrain of koppie 3, 25 the plan would have encountered difficulties in effecting</p>
<p style="text-align: right;">Page 15890</p> <p>1 incident is now happening and there's a fair body of people 2 who are pointed to go through the eastern side of the kraal 3 now.</p> <p>4 COLONEL SCOTT: That's correct.</p> <p>5 CHAIRPERSON: Sorry, I'm not sure I'm 6 understanding. Is the arrow we see, the curved arrow, 7 semi-circular arrow we see on this slide which is number 8 205, is that the red arrow we see on slide 194?</p> <p>9 MR SEMENYA SC: Still on the subject –</p> <p>10 CHAIRPERSON: You didn't answer my, he hasn't 11 answered my question yet, then you can –</p> <p>12 COLONEL SCOTT: Yes, that's correct, 13 Chairperson.</p> <p>14 CHAIRPERSON: There's nothing sinister in the 15 question, I just helps to understand. It does lead to a 16 bit of confusion if you change the colour but once we know 17 you have, then the problem appears to just disappear.</p> <p>18 MR SEMENYA SC: Can I invite us then to 19 look at exhibit GGG17, that's the statement of Colonel 20 Vermaak and in particular paragraph 7. Chair, can I abuse 21 your office and ask you to help us translate it?</p> <p>22 CHAIRPERSON: Which paragraph?</p> <p>23 MR SEMENYA SC: 7.</p> <p>24 CHAIRPERSON: 7. No, that's 6, there's 7. You 25 want – we've had this before, do you want me to translate</p>	<p style="text-align: right;">Page 15892</p> <p>1 the dispersion, disarming and arrest. Do you remember that 2 evidence?</p> <p>3 COLONEL SCOTT: I recall that, yes.</p> <p>4 MR SEMENYA SC: If things had gone 5 according to plan, what would have been difficult in 6 effecting the dispersal, the disarming and the arrest of 7 people who were in koppie 3?</p> <p>8 COLONEL SCOTT: Well, in essence, if I 9 can elaborate on that, the stop and reorganise line 10 obviously left everything to the west now. Now that is 11 where phase 3 initially had to deal with those that were to 12 the west of the reorganised line while part of phase 3 was 13 being dealt with by the tactical forces behind, but in 14 essence koppie 3 became a similar type of terrain to a 15 koppie 1 or 2 and the strategy should have been rolled out 16 as such.</p> <p>17 MR SEMENYA SC: What I'm trying to 18 establish is, the people, the police members who were on 19 site, including up to the STF. Was it above their 20 competence to achieve the strategic objection of 21 dispersing, disarming and arresting those if they were in 22 koppie 3?</p> <p>23 COLONEL SCOTT: No.</p> <p>24 MR SEMENYA SC: Obviously if done 25 according to plan.</p>

<p style="text-align: right;">Page 15893</p> <p>1 COLONEL SCOTT: If done according to plan 2 and their training and the SOPs that they follow, yes. 3 MR SEMENYA SC: Yes. 4 CHAIRPERSON: The STF apparently didn't fire any, 5 didn't expend any ammunition at all, is that right? 6 COLONEL SCOTT: That's correct, 7 Chairperson. 8 CHAIRPERSON: We've got a slide that sets out who 9 fired how many bullets and so on. 10 MR SEMENYA SC: And I'm just trying to 11 tidy up this element. If done according to plan, my 12 question is to you, the police members there, was it above 13 their competence to achieve the strategic objective or not? 14 COLONEL SCOTT: No. 15 MR SEMENYA SC: Why do you say that? 16 COLONEL SCOTT: Because as I said, they 17 had the ability, they are trained to deal with rural 18 environments that deal with rocks, ravines, trees, bushes 19 and how to walk through that and clear that. 20 MR SEMENYA SC: There is a fair body of 21 evidence on record and I'm trying to have you help us 22 understand it, where you say that the plan had no detail in 23 relation to koppie 3 and it repeatedly put to you and you 24 answered in the affirmative, that it was left to the 25 discretion of the operational commander and the other</p>	<p style="text-align: right;">Page 15895</p> <p>1 operational commander at that time, the operational 2 commander understands the forces he has under his control, 3 he understands the forces that are working in conjunction 4 with him and in relation to what's happened in the strategy 5 up to the reorganised line with regard to koppies 1, 2 and 6 the dispersion action, it's a matter of just continuing 7 with the same strategy now but the difference being that at 8 koppies 1 and 2 we knew where the strikers were and we 9 anticipated where they may move. Once getting to that so- 10 called dispersion, reorganised line, it was uncertain as to 11 where they may move but it would have been to the west so 12 that discretion as I say then, is the operational 13 commander's discretion to review what the strikers have 14 done and then to co-ordinate the forces to move forward 15 again to continue with the very strategy of, if necessary, 16 dispersing further if the groups are still too big, 17 alternatively moving to smaller groups, isolating them, 18 challenging them to disarm them and then arresting them. 19 MR SEMENYA SC: For instance, if there 20 were going to be dispersals, dispersal of people, of the 21 strikers say north of the koppie and their disarmament and 22 arrests, would I see that on the plan, on the written plan? 23 COLONEL SCOTT: No. 24 MR SEMENYA SC: If it was to happen at 25 koppie 3, would I necessarily see that on the plan?</p>
<p style="text-align: right;">Page 15894</p> <p>1 commanders there. Now, can I enquire into that evidence in 2 the following way. Did the plan conceive of any arrests or 3 disarming or dispersing westwards of the koppie? 4 COLONEL SCOTT: Yes. 5 MR SEMENYA SC: How was that to happen? 6 COLONEL SCOTT: That was to happen at the 7 discretion of the operational commander after viewing the 8 actions of the strikers, how they had responded and where 9 they had moved to after the dispersion action. 10 MR SEMENYA SC: Any arrests that were to 11 happen there – I'm just trying to locate this discretion 12 thing, I have a difficulty in understanding. Were the 13 arrests going to happen without discretion or others to 14 happen only with the discretion – I don't understand that. 15 Tidy it up for me. 16 COLONEL SCOTT: Well, if you task a 17 police officer and if I can speak in these terms, if you 18 task a tactical police officer to carry out a high risk 19 arrest, he understands his duty and the way he's been 20 trained, his procedures to do that. So again it just takes 21 an analysis of the situation at that time and then a co- 22 ordination of the forces, in essence, to direct the forces 23 to who needs to do what and then the forces continue with 24 what they understand their taskings to be. But the 25 discretion word you're talking about, the discretion of the</p>	<p style="text-align: right;">Page 15896</p> <p>1 COLONEL SCOTT: No. 2 MR SEMENYA SC: There was also an 3 exhibit, that is the statement of Ms Katherine Scott, about 4 shots that are heard fired after the ceasefire. 5 CHAIRPERSON: Going back to scene 1, ja. 6 MR SEMENYA SC: Do you know where those 7 shots were fired? 8 COLONEL SCOTT: I don't. 9 MR SEMENYA SC: By who? 10 COLONEL SCOTT: We're talking the shots 11 after the volley of fire? 12 MR SEMENYA SC: Yes. 13 COLONEL SCOTT: No, I don't. 14 MR SEMENYA SC: You won't know by who and 15 in which direction they were aimed? 16 COLONEL SCOTT: No. 17 MR SEMENYA SC: Chair, I now want to show 18 certain videos. I don't know whether – 19 CHAIRPERSON: I think I've received a request for 20 a comfort break, so we'll take a comfort break now for 10 21 minutes. 22 MR SEMENYA SC: Thank you, Chair. 23 [COMMISSION ADJOURNS COMMISSION RESUMES] 24 [12:00] CHAIRPERSON: The Commission resumes. 25 Colonel, you're still under oath.</p>

<p style="text-align: right;">Page 15897</p> <p>1 DUNCAN GEORGE SCOTT: s.u.o. 2 CHAIRPERSON: Mr Semenya? 3 MR SEMENYA SC: Chair, thank you. Chair, 4 I'm going – 5 CHAIRPERSON: I see the FBI are involved 6 in this case now. Why is that? If you look at the heading 7 of this video – 8 MR SEMENYA SC: Acronyms tend to have 9 multiple meanings to them, Chair. Chair, with the 10 assistance of Ms Pillay, there are a number of clips that 11 are some not exhibits yet, others are, and their 12 description, and I must apologise, I thought they had 13 created a set of hardcopies for the Commissioners. We will 14 at least secure that after the visuals are done, to secure 15 those and to give them to you, Chair, and the 16 Commissioners. 17 CHAIRPERSON: That omission will be 18 addressed in due course, but let's hand the exhibits in all 19 at once and with the assistance of Ms Pillay let us mark 20 them and so on, and then we can carry on. 21 MR SEMENYA SC: Okay, the first one would 22 be the one where we intend to depict - the Carte Blanche 23 one. 24 CHAIRPERSON: How do I describe it? Have 25 we seen this already? Ms Pillay?</p>	<p style="text-align: right;">Page 15899</p> <p>1 part of my presentation. 2 CHAIRPERSON: Alright, how do we describe 3 this short view? Do we just call it "Side view"? Is it 4 just called "Side view"? 5 MR CHASKALSON SC: The video is called 6 "Side view." 7 CHAIRPERSON: So it's Carte Blanche video 8 clip on scene 1, portion entitled side view. Would that be 9 an adequate description of it, or must I put in this, any 10 numbers to indicate the section of the clip we're looking 11 at? 12 MR CHASKALSON SC: But Chairperson, 13 unless something has been done to this video with 14 annotations or slowing it down, it's already an exhibit. 15 It can just be called CC36 [microphone off, inaudible] the 16 whole of it. 17 CHAIRPERSON: Sorry, I have to repeat 18 that. It wasn't on microphone. If we're seeing CC36, it's 19 already marked, we don't have to do anything further about 20 it, just note that we are looking at exhibit CC36. 21 MR SEMENYA SC: The second one, Chair, 22 is, I'm told the Channel 4 one, where the – 23 CHAIRPERSON: Is this already before us? 24 MR CHASKALSON SC: Chairperson, I think 25 we'll need to see the video to see whether it's already</p>
<p style="text-align: right;">Page 15898</p> <p>1 MS PILLAY: Chair, it depends on what – 2 the Carte Blanche video of scene 1 is CC36. 3 CHAIRPERSON: So it's CC – 4 MS PILLAY: 36. 5 CHAIRPERSON: 36, Carte Blanche video 6 clip on scene 1. 7 MS PILLAY: Yes, Chair. 8 CHAIRPERSON: Mr Chaskalson, was this 9 part of what you showed us last year? 10 MR CHASKALSON SC: No. 11 CHAIRPERSON: Is this new? 12 MR CHASKALSON SC: No, it wasn't part of 13 what I showed or in fact what Mr Budlender showed as the 14 original evidence leaders' video compilation. 15 CHAIRPERSON: I understand it has already 16 been shown, has it? Exhibit CC36, is that correct? 17 Alright, look, we don't have to spend time on it now. One 18 of my tasks here is to ensure that the record is in an 19 intelligible state for us when we look at it at the end and 20 when other people look at it later. If this hasn't been 21 shown, we have to give it an exhibit number and describe 22 it. If it has been shown, we simply give the description. 23 MR CHASKALSON SC: Sorry, Chairperson, if 24 this is the video called "Side view," which is a small clip 25 from the Carte Blanche programme, then it is, then CC36 was</p>	<p style="text-align: right;">Page 15900</p> <p>1 before us, but if it is what I think it is, it's not in 2 fact a Channel 4 video, it is an annotated version of one 3 of the recently, or the previously undisclosed videos, 4 which are not Channel 4 videos. 5 COMMISSIONER HEMRAJ: Mr Semenya, is this 6 the video that the Colonel referred to in his evidence as 7 having seen the previous evening? Because if it's that, 8 then we don't have it as an exhibit yet. 9 CHAIRPERSON: If this is going to happen 10 with all the videos we're going to see, might it not be 11 sensible for us to have a short adjournment so that this 12 can be sorted out? That's one possibility. Alternatively, 13 if Mr Semenya has a number of discreet topics he can go on 14 to another one and this lot could be sorted out during the 15 lunch adjournment. But I think we waste quite a lot of 16 Commission time if we debate back and forth relating to 17 particular videos. Those that are before us already we 18 simply describe as they're already described. Those that 19 are new we've got to give exhibit numbers to and 20 descriptions so people will know in future what exactly 21 we're talking about. Mr Semenya, I'm in your hands. 22 MR SEMENYA SC: Can I ask for a short 23 adjournment and tidy up this matter? 24 CHAIRPERSON: We'll take a short 25 reconnaissance adjournment.</p>

<p style="text-align: right;">Page 15901</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>2 [12:27] CHAIRPERSON: The Commission resumes. I</p> <p>3 take it the problem has been sorted out. Perhaps you can</p> <p>4 just mention the exhibit numbers if there any. Are there</p> <p>5 any video clips which were not previously exhibits?</p> <p>6 Perhaps you can just mention the numbers as you go along</p> <p>7 and perhaps after the lunch adjournment give us a document</p> <p>8 recording what they are so we save time. You're still</p> <p>9 under oath, Colonel.</p> <p>10 MR SEMENYA SC: Thank you, Chair.</p> <p>11 Chair., we'll be making reference to exhibit CC36. There</p> <p>12 will be a new exhibit JJJ205. There will be reference to</p> <p>13 an existing exhibit AAA9 and there will be reference to</p> <p>14 exhibit JJJ207.1 and 207.2.</p> <p>15 CHAIRPERSON: The new exhibit JJJ205 and</p> <p>16 then you moved onto JJJ207.1 and point 2. What happened to</p> <p>17 JJJ206, are we going – or what's happening?</p> <p>18 MR SEMENYA SC: I'm now corrected, it</p> <p>19 should be 206.1 and 206.2.</p> <p>20 CHAIRPERSON: Well I'm glad that I</p> <p>21 spotted that.</p> <p>22 MR SEMENYA SC: Chair, before we commence</p> <p>23 though –</p> <p>24 CHAIRPERSON: I see we've got two bits of</p> <p>25 paper being placed on our table. These I take it are from</p>	<p style="text-align: right;">Page 15903</p> <p>1 COMMISSIONER HEMRAJ: Emanating from?</p> <p>2 CHAIRPERSON: Emanating from?</p> <p>3 MR SEMENYA SC: Emanating from JJJ194.</p> <p>4 CHAIRPERSON: From JJJ194. So in other</p> <p>5 words it's part of JJJ194 but it's a different version</p> <p>6 because it's annotated now?</p> <p>7 MR SEMENYA SC: Correct.</p> <p>8 CHAIRPERSON: All right, in order to save</p> <p>9 time a bit later can you assure us that these are matters</p> <p>10 that are appropriate to raise in re-examination because I</p> <p>11 understand they weren't shown in examination in chief? I</p> <p>12 presume there's a reason but perhaps you could put it on</p> <p>13 the record. I see that the attorney for the survivors, the</p> <p>14 arrested and injured minors wishes to say something.</p> <p>15 MS MOKETSI: Ms P Moketsi, the attorney</p> <p>16 for the injured and arrested. I just want to note an</p> <p>17 objection, Mr Chair. The new videos that are being brought</p> <p>18 in were not dealt in during the chief examination. We have</p> <p>19 not even had an opportunity to look into them. I just</p> <p>20 wanted to place it on record, with respect. Thank you.</p> <p>21 CHAIRPERSON: If you raise an objection</p> <p>22 then I've got to decide on it. The CC36 an AAA9 are before</p> <p>23 us already as exhibits and if you are prejudiced by the</p> <p>24 fact that they are referred to in re-examination I'll give</p> <p>25 you the opportunity to deal with that. As far as JJJ205 is</p>
<p style="text-align: right;">Page 15902</p> <p>1 the new video clips are they?</p> <p>2 MR SEMENYA SC: No, those would be</p> <p>3 independent photographs to which you'll be –</p> <p>4 CHAIRPERSON: Are they going to be</p> <p>5 exhibits as well? So shall we mark them as well while</p> <p>6 we're about it?</p> <p>7 MR SEMENYA SC: Those are 206.1 and</p> <p>8 206.2.</p> <p>9 CHAIRPERSON: Oh I see. I see, so</p> <p>10 they're not video clips or are they, are they just</p> <p>11 photographs?</p> <p>12 MR SEMENYA SC: They're photographs.</p> <p>13 CHAIRPERSON: All right, so which is 1</p> <p>14 and which is 2.</p> <p>15 MR SEMENYA SC: The one that – that stone</p> <p>16 throwing one is point 1 and the weapons one is point 2.</p> <p>17 CHAIRPERSON: Thank you. So the position</p> <p>18 is we've got effectively one new video which will be</p> <p>19 JJJ205. Sorry it's just housekeeping. JJJ205 is a new</p> <p>20 video and these photographs are new as well. How do we</p> <p>21 describe 205, just shortly?</p> <p>22 MR SEMENYA SC: I'm told it's an</p> <p>23 annotated version of a previously undisclosed video.</p> <p>24 CHAIRPERSON: An annotated version of a</p> <p>25 previously undisclosed video clip.</p>	<p style="text-align: right;">Page 15904</p> <p>1 concerned we already have JJJ194 before us, it's merely an</p> <p>2 annotation of that. Who made the annotations may I ask?</p> <p>3 MR SEMENYA SC: At SERI.</p> <p>4 CHAIRPERSON: SERI, all right. So I</p> <p>5 suggest that – there's normally close co-operation between</p> <p>6 SERI and the attorneys for the injured and arrested miners,</p> <p>7 but if they have a difference on the matter I suggest that</p> <p>8 they resolve it outside. As far as JJJ206.1 and JJJ206.2</p> <p>9 are concerned from where – who took these photographs? Is</p> <p>10 there any –</p> <p>11 MR SEMENYA SC: They are photographs on</p> <p>12 the hard drive.</p> <p>13 CHAIRPERSON: Yes, I understand. They</p> <p>14 are photographs from the hard drive, so again you would</p> <p>15 have seen it, but you didn't have prior notice to the fact</p> <p>16 that it was going to be used in re-examination. And again</p> <p>17 your right to raise the matter, if you wish to ask further</p> <p>18 questions about it, are reserved. Whether you'll be given</p> <p>19 the right will depend on the circumstances, but your rights</p> <p>20 are reserved. So we can perhaps proceed. Is that all</p> <p>21 right?</p> <p>22 MS MOKETSI: Thank you, Mr Chair.</p> <p>23 CHAIRPERSON: It's pointed out to me that</p> <p>24 205 was mentioned in cross-examination, so in any event</p> <p>25 there would be a right to raise it in re-examination.</p>

<p style="text-align: right;">Page 15905</p> <p>1 Anyway we've dealt with the housekeeping, I hope we put 2 the objection to bed and you can now carry on. 3 MR SEMENYA SC: Perhaps another 4 housekeeping matter, Chair, some of the visuals require the 5 caution. 6 CHAIRPERSON: I am told that some of the 7 visuals we're going to see may well cause the stress to 8 family members and loved ones of some of those who were 9 killed on the 16th of August. So if anyone here in the 10 chamber today who falls into that category who feels that 11 stress and traumatic suffering may be occasioned by seeing 12 these videos, I will ask that they not be shown until a 13 minute has elapsed from the time I have finished speaking 14 so that anyone who wishes to leave have an opportunity to 15 do so. The minute has now elapsed, so you may proceed, Mr 16 Semenya. 17 MR SEMENYA SC: Thank you, Chair, perhaps 18 it might be useful to explain that all this material is 19 being used and we seek to rely on it in refutation of the 20 contention that Noki group was submissively, with respect, 21 going home. Can we start with exhibit CC36? 22 [VIDEO SHOWN] 23 MR SEMENYA SC: Can we now play that clip 24 in slow motion? 25 CHAIRPERSON: This is an extract from the</p>	<p style="text-align: right;">Page 15907</p> <p>1 between you and Mr Chaskalson on whether it's channel 4 or 2 not but I don't think it's necessary for us to resolve that 3 conflict. Let's just look at the video. 4 MR CHASKALSON SC: I'd like to withdraw 5 my emphatic denial now that I see the video because it 6 wasn't what I thought it was going to be. I'll reserve my 7 position until I've seen it. 8 CHAIRPERSON: You see one of the problems 9 – this is stuff that was previously not disclosed despite 10 the clear undertaking we received from the media houses we 11 get everything that was shown or not shown is we can't see 12 from this what time this particular video was taken. And 13 they may well be important, I don't know, but anyway it's a 14 most unsatisfactory situation which we intend addressing in 15 due course. 16 [VIDEO SHOWN] 17 CHAIRPERSON: I take it the red circles 18 with numbers are part of the so called annotation, is that 19 correct? 20 MR SEMENYA SC: Correct, Chair. 21 [VIDEO SHOWN] 22 MR SEMENYA SC: Can we stop here? Play it 23 shortly back and can we do it in slow motion? 24 [VIDEO SHOWN] 25 MR SEMENYA SC: All right, we can stop</p>
<p style="text-align: right;">Page 15906</p> <p>1 Carte Blanche program as you told us earlier. 2 MR SEMENYA SC: Colonel, what do we see 3 there or what you are able to tell is depicted by those 4 clips? 5 COLONEL SCOTT: From what I've seen it's 6 the line formed by TRT and some POPs members that are 7 retreating while firing their weapons. 8 MR SEMENYA SC: Shall we now play exhibit 9 JJJ205? 10 [VIDEO SHOWN] 11 CHAIRPERSON: Now this is an extract from 12 what was shown on channel 4, is that correct? 13 MR CHASKALSON SC: Chairperson, it wasn't 14 in fact channel 4, this footage definitely doesn't come 15 from channel 4. 16 CHAIRPERSON: I think this is footage 17 then that you referred to did you Colonel, that you had 18 seen. 19 COLONEL SCOTT: Correct, Chairperson, 20 yes. 21 CHAIRPERSON: Do you know where it comes 22 from? 23 COLONEL SCOTT: No, I thought it was in 24 fact the channel 4 footage – 25 CHAIRPERSON: There's a conflict of fact</p>	<p style="text-align: right;">Page 15908</p> <p>1 this one here. Colonel, what do we see with the group and 2 to their formation there? 3 COLONEL SCOTT: We see the group is, to 4 my estimation, possibly about roughly 20 metres to the 5 north side of the kraal. There is an individual there that 6 is crouched over and he's showing arm gestures to get 7 people aligned or to tell them to come forward – 8 MR SEMENYA SC: I see you have both of 9 your arms backward stretched and motioning forwards, is 10 that right? 11 COLONEL SCOTT: That's correct. 12 MR SEMENYA SC: Yes, continue. 13 CHAIRPERSON: I'm told that it's one 14 minute, how many seconds? 57 seconds into the video that 15 we see this been shown. 16 MR SEMENYA SC: Can we proceed? 17 [VIDEO SHOWN] 18 MR SEMENYA SC: Can we – this part play 19 it at normal speed and just play it in slow motion? 20 CHAIRPERSON: You want both normal speed 21 and in slow motion one after the other? 22 [VIDEO SHOWN] 23 MR SEMENYA SC: Okay you can go back and 24 then play in slow motion please. 25 [VIDEO SHOWN]</p>

<p style="text-align: right;">Page 15909</p> <p>1 COLONEL SCOTT: Do you want me to maybe 2 discuss it as I see it in slow motion what I see? Because 3 what is visual at the moment is there's a large group that 4 are static, that are sitting on koppie 2. We see now the 5 movement of the militant group as they are starting to walk 6 or mobilise and in the far background there are some small 7 figures which seem to be departing the koppie area already. 8 CHAIRPERSON: At the very beginning of 9 this we saw people moving in the opposite direction to the 10 direction in which people are moving that we can see now. 11 COLONEL SCOTT: Yes. 12 CHAIRPERSON: So they may well also have 13 been people who were leaving. 14 COLONEL SCOTT: That's correct. 15 CHAIRPERSON: Do we know at what time 16 this particular video was taken? 17 COLONEL SCOTT: Chairperson, to put it to 18 the precise time it would be difficult, but I would 19 estimate what time, Advocate, did the Nyalas start moving? 20 [12:46] CHAIRPERSON: You address the question to Adv 21 Chaskalson? 22 COLONEL SCOTT: Chaskalson, yes. 23 MR CHASKALSON SC: 15:42:35. 24 COLONEL SCOTT: So this is probably going 25 to be approximately 15:46, 47, I would estimate. I could</p>	<p style="text-align: right;">Page 15911</p> <p>1 pole now that Nyala 3 moves up to where Nyala 4 actually 2 starts the deployment of its wire from. So the strikers 3 are moving to the north of that pole obviously and it's 4 just difficult to tell how far from the pole they are but 5 they, if we consider – 6 CHAIRPERSON: Is this the pole we see on slide 7 198? 8 COLONEL SCOTT: Yes. 9 CHAIRPERSON: And the Nyala we see on 198? 10 COLONEL SCOTT: Yes, but considering that 11 they're moving around Nyala 5, they're probably about 20 12 metres to the north of that pole, between 20 to 30 metres 13 to the north of the pole. At this – 14 CHAIRPERSON: - vehicle is this that we see moving 15 across the scene? 16 COLONEL SCOTT: It's the special task 17 force Casspir that's reversing now. I'm not sure to where 18 they're going but they are reversing across. Play again? 19 We can see that the people that are on koppie 2 at this 20 time are still static. It's only what seems to be the 21 militant group in motion and – 22 CHAIRPERSON: Why do you say they're the militant 23 group? 24 COLONEL SCOTT: Well, they're armed, 25 Chairperson, and the behaviour that they were, they were</p>
<p style="text-align: right;">Page 15910</p> <p>1 be out by a couple of minutes but – 2 CHAIRPERSON: Which is before any shooting took 3 place. 4 COLONEL SCOTT: Yes. And what we see 5 behind the people who are moving is the koppie, I take it, 6 with the static group as you refer to them, on the koppie. 7 COLONEL SCOTT: That's correct. I think 8 my timing may be slightly out, probably closer to 16:50 or 9 16:49, 48, around there. 10 MR CHASKALSON SC: 15, presumably. 11 COLONEL SCOTT: 15 yes, sorry. We can 12 still see the group on koppie 2 is static and they seem to 13 be watching the militant group in motion now and in the 14 background of the video we can still see people are moving 15 off in the opposite direction towards the west. 16 CHAIRPERSON: Now these people, many of them seem 17 to have, is it white garments on them or white blankets 18 covering their clothes or isn't it possible to work out 19 what it is? 20 COLONEL SCOTT: From the photographs I'm 21 sure it is but what we have analysed through the 22 photographs and so on is that many of the militant group as 23 we see them there are in fact carrying blankets or some 24 form of a blanket in their possession. We can see in the 25 background still people that are moving off. We do see the</p>	<p style="text-align: right;">Page 15912</p> <p>1 moving as an organised group throughout the day and the 2 previous days together and armed, I'm speaking with 3 predominantly sharp-edged weapons compared to maybe some of 4 the others on the koppie coming with traditional type 5 weapons. This is, I think Adv Chaskalson showed this 6 previously, this is Nyala – I believe to be Nyala 5. We 7 just can't see the razor wire but that would be the group 8 moving around now, Noki group, I'll call them the Noki 9 group moving around Nyala 5. 10 CHAIRPERSON: You can see the Casspir again. 11 COLONEL SCOTT: The Casspir moving across 12 screen. At this stage if I see where the Casspir is going 13 and we're going to see the movement of public order 14 policing armoured vehicles, Brigadier Calitz has already 15 started obviously trying to organise some type of a barrier 16 or a riposting of what he deems to be an advance by the 17 Noki group. I think that's Nyala 5 still that we see 18 static and to the right of the person in screen we can 19 actually the protesters have become semi-static standing 20 there and they're looking towards the police members which 21 is where we would have anticipated incident 2 to be 22 occurring on the western side of the kraal. 23 CHAIRPERSON: What we can see in front of us is 24 the western side of the kraal, is that right? 25 COLONEL SCOTT: That's correct.</p>

<p style="text-align: right;">Page 15913</p> <p>1 CHAIRPERSON: Or an area to the west of the kraal.</p> <p>2 COLONEL SCOTT: That's correct.</p> <p>3 CHAIRPERSON: To put it more accurately.</p> <p>4 COLONEL SCOTT: The public order vehicles</p> <p>5 are responding now to that vicinity where, I think it's</p> <p>6 depicted in the photograph, where we showed incident 2</p> <p>7 where they tried to form up initially on the western side</p> <p>8 of the kraal. It's very possible that it was at this time</p> <p>9 that Brigadier Calitz was calling for the water cannons to</p> <p>10 get mobile and to move from their position that they were</p> <p>11 at. In the rear we can see the movement of the protesters,</p> <p>12 it seems to be some of the lead group. They're still to</p> <p>13 the west of the kraal, they're moving towards the east, in</p> <p>14 an easterly direction. What we do see is that those public</p> <p>15 order vehicles, in essence, even though Nyala 4 is not</p> <p>16 there, have blocked the path to proceed through in the</p> <p>17 absence of Nyala 4 being there. At least from the ground</p> <p>18 level there's a significant police presence to the western</p> <p>19 side of the kraal. If I have it correct now we're actually</p> <p>20 looking, that is, we saw the eastern side of the kraal</p> <p>21 where some of the Nyalas are now opting to move around the</p> <p>22 kraal and out. I'm not sure if the instructions –</p> <p>23 CHAIRPERSON: I see blue, just see blue sky.</p> <p>24 COLONEL SCOTT: Ja, it's blue sky. I</p> <p>25 think the cameraman is moving at the moment, running to try</p>	<p style="text-align: right;">Page 15915</p> <p>1 actual road. the camera has moved back to, facing to the</p> <p>2 north where we can actually see the POP members are moving</p> <p>3 out alongside the razor wire, if it is Nyala 6 with its</p> <p>4 razor wire, and they're starting to point. We can see the</p> <p>5 member at the rear pointing now to – he is obviously</p> <p>6 identifying the group's movements. More armoured vehicles</p> <p>7 are starting to peel out around the eastern side of the</p> <p>8 kraal, pushing through the TRT line to get out. The</p> <p>9 cameraman starts moving to follow the public order policing</p> <p>10 line at this time on the eastern side of the kraal.</p> <p>11 CHAIRPERSON: The cameraman isn't sticking to the</p> <p>12 safe area that was provided for the media.</p> <p>13 COLONEL SCOTT: And he –</p> <p>14 CHAIRPERSON: Is that right?</p> <p>15 COLONEL SCOTT: Yes, he's trying to stay</p> <p>16 more or less behind the safety of some of the vehicles, I</p> <p>17 think, that are out of picture to the left, but we see the</p> <p>18 Nyalas going, we can see some Nyalas that are positioned to</p> <p>19 the north of the kraal at this time already and others that</p> <p>20 are following suit. Some of the public order policemen are</p> <p>21 obviously walking to the inside to try and get a better</p> <p>22 view now of what's transpiring ahead of them. The police,</p> <p>23 public order Casspir at this time is static and starting to</p> <p>24 move. There's a number of Nyalas that have already passed</p> <p>25 the kraal and at this time the cameraman catches the</p>
<p style="text-align: right;">Page 15914</p> <p>1 and take up another position. And that was in line with</p> <p>2 what I understood from, I think, Brigadier Calitz and I</p> <p>3 think possibly Pitsi or Mere stating that they had, someone</p> <p>4 had given the instruction, they needed to go out and form a</p> <p>5 blockade on the outside to the northern side of the kraal</p> <p>6 with the vehicles. That is the kraal that we're seeing now</p> <p>7 with the vehicles moving around the kraal to the eastern</p> <p>8 side of the kraal to go out.</p> <p>9 CHAIRPERSON: Are we looking northwards? Is the</p> <p>10 camera pointing northwards?</p> <p>11 COLONEL SCOTT: We're looking northwards</p> <p>12 now, yes, and that vehicle we saw there is Nyala 6, if I</p> <p>13 have it correct, that starts proceeding out with the</p> <p>14 remainder of the vehicles. It's at this time that the</p> <p>15 cameraman turns his focus to the TRT line which is, they're</p> <p>16 not particularly running, I think they took a jog to get to</p> <p>17 that position, from other video camera footage we have seen</p> <p>18 and one of the team leaders or sub-commanders, lower level</p> <p>19 commanders, is calling for a line abreast which is for the</p> <p>20 members to form a line, with his arm motions. And at this</p> <p>21 time it's evident that not all these members have got</p> <p>22 assault rifles, some of them are relying only on pistols</p> <p>23 although every TRT member is in fact issued with an assault</p> <p>24 rifle as well.</p> <p>25 They're walking up to a position just before the</p>	<p style="text-align: right;">Page 15916</p> <p>1 glimpse of the Noki group and he starts zooming in on them</p> <p>2 and they are still a significant distance from the kraal.</p> <p>3 I'm estimating that to be possibly 20 metres, maybe 30</p> <p>4 metres from the north-east corner of the kraal and this is</p> <p>5 where it's difficult to identify the person in front</p> <p>6 because of the shadowing but we can see the crouch walk</p> <p>7 approach starting to be initiated and the leader starting</p> <p>8 to motion with his arms that the rest should now follow</p> <p>9 suit. We see there the actual kraal to the left hand side</p> <p>10 of the screen and the video was cut, we can now see the</p> <p>11 public order policemen firing rubber rounds and if you can</p> <p>12 maybe pause I'll explain what to look for, Chairperson, to</p> <p>13 understand that they are rubber.</p> <p>14 If pellets are fired, the recoil of the weapon</p> <p>15 pushes the weapon up into the air because there's</p> <p>16 significant recoil with a shotgun when you're firing</p> <p>17 pellets. When you're firing rubber, the charge is</p> <p>18 significantly reduced so that the weapon basically stays</p> <p>19 static and all you see is a puff of sort of blue smoke</p> <p>20 going out the front and that shows you rubber rounds being</p> <p>21 fired, there's no recoil on the weapon because of the much</p> <p>22 lower charge of gunpowder that are pushing the rounds out</p> <p>23 and if you watch the actual firearms of the public order</p> <p>24 policing members, they're all firing rubber at this time.</p> <p>25 The video is being slightly rewound just to pick it up</p>

<p style="text-align: right;">Page 15917</p> <p>1 again. The approach starting –</p> <p>2 CHAIRPERSON: Is there a soundtrack with this</p> <p>3 video?</p> <p>4 COLONEL SCOTT: Apparently not,</p> <p>5 Chairperson. That is, as I say, the kraal now in view.</p> <p>6 The clip seems to be cut here and it resumes again once</p> <p>7 they've approached but you can now see the shotguns that</p> <p>8 are firing and the protesters coming past through the</p> <p>9 rubber rounds which are being fired at them. This is where</p> <p>10 the protester fires live rounds on the police, the arrow is</p> <p>11 showing him at the moment. You'll see the puff of smoke</p> <p>12 there and the firearm which is depicted well in the actual</p> <p>13 Al Jazeera video where they highlight that. We'll see</p> <p>14 further footage of the public order policemen continuing</p> <p>15 with their attempt to get the crowd to turn around and</p> <p>16 retreat. You'll notice the shotguns that are being fired,</p> <p>17 again I say without any recoil. You can see there the</p> <p>18 firearm is being shot, there's just a puff of smoke with no</p> <p>19 recoil on the weapon and we see in the background the, it's</p> <p>20 no longer a walk, it's now become a dash forwards towards</p> <p>21 the police line with the Noki group behind the armoured</p> <p>22 vehicles and it's at this stage now that we see in the</p> <p>23 background the TRT line is retreating and this is where the</p> <p>24 second volley of fire takes place as the protesters come</p> <p>25 through. There's a significant amount of dust between the</p>	<p style="text-align: right;">Page 15919</p> <p>1 So I will ask that that not be shown until a minute has</p> <p>2 elapsed after I've finished speaking, and I think someone</p> <p>3 should actually be standing outside so as people come in</p> <p>4 who are not now in the chamber, who may well if they were</p> <p>5 informed what was happening, not wish to be in the chamber,</p> <p>6 so that they could be told as they come through. I'll</p> <p>7 start the minute now.</p> <p>8 While we're waiting for the minute to expire, is</p> <p>9 it possible, I don't know who can tell us, Mr Semanya or Mr</p> <p>10 Chaskalson, these photographs that we've been given, which</p> <p>11 will be exhibits JJJ206.1 and 206.2, they're on the hard</p> <p>12 drive but – you don't have to tell us now, but if we could</p> <p>13 be told where they are to be found on the hard drive, we'll</p> <p>14 appreciate it, but you don't have to tell us now, but you</p> <p>15 can tell us in due course.</p> <p>16 COLONEL SCOTT: Chairperson, they're on</p> <p>17 the "Photos 16th Captain De Bruyn."</p> <p>18 CHAIRPERSON: Thank you. The minute is</p> <p>19 now up. You can carry on with the video.</p> <p>20 MR CHASKALSON SC: Sorry, Chairperson,</p> <p>21 that's a directory that's not in the same directory on the</p> <p>22 SAPS hard drive that we have. I must see if I can, I'll</p> <p>23 see if I can find the corresponding directory name.</p> <p>24 CHAIRPERSON: Thank you. Adv Hemraj says</p> <p>25 she thinks she's looked at all the photographs on the</p>
<p style="text-align: right;">Page 15918</p> <p>1 TRT line and the protesters themselves or the strikers,</p> <p>2 which is actually showing the amount of fire that's</p> <p>3 directed into the ground as warning shots to try and get</p> <p>4 them to retreat and not to approach. We can see the</p> <p>5 teargas which is deployed at this time. I think that</p> <p>6 brings that video to an end. As far as I know the rest is</p> <p>7 just the blue screen that we saw that was placed up.</p> <p>8 MR SEMENYA SC: Chair, I'll be moving to</p> <p>9 the next video clip but I see it is past one o'clock.</p> <p>10 CHAIRPERSON: We'll take the lunch adjournment now</p> <p>11 and we'll resume as soon after quarter to two as we can.</p> <p>12 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>13 [13:51] CHAIRPERSON: The Commission resumes.</p> <p>14 Colonel, you're still under oath.</p> <p>15 DUNCAN GEORGE SCOTT: s.u.o.</p> <p>16 CHAIRPERSON: Mr Semanya?</p> <p>17 RE-EXAMINATION BY MR SEMENYA SC (CONTD.):</p> <p>18 Thank you, Chair. Shall we now play, with the caution</p> <p>19 stated as well, exhibit AAA9?</p> <p>20 CHAIRPERSON: Maybe people think that the</p> <p>21 caution is over. A lot of people aren't here yet, but I'm</p> <p>22 informed that we're going to see in the video that's going</p> <p>23 to be shown scenes which may cause distress and unhappiness</p> <p>24 and great sorrow to loved ones and family members of some</p> <p>25 of those who were shot on the 16th of August at Marikana.</p>	<p style="text-align: right;">Page 15920</p> <p>1 police hard drive and she hasn't seen these, but anyway,</p> <p>2 that's a matter we don't have to resolve here in the</p> <p>3 chambers this afternoon. Mr Semanya.</p> <p>4 MR SEMENYA SC: Thank you, Chair.</p> <p>5 Colonel, we are now going to show AAA9 and you may want to</p> <p>6 speak to it as it is played.</p> <p>7 CHAIRPERSON: [Microphone off, inaudible]</p> <p>8 some footage that was shown by eNCA at some stage.</p> <p>9 MS PILLAY: Chair, this is EEE3.4.</p> <p>10 CHAIRPERSON: This is AAA9? There's a</p> <p>11 bit of confusion in the ranks. Mr Chaskalson assures us</p> <p>12 it's the same footage, exactly the same footage. So we can</p> <p>13 carry on, and if it's not, we can correct it at some later</p> <p>14 stage. Let's move on, shall we? Anyway, it's an eNCA</p> <p>15 broadcast apparently we're looking at, and according to the</p> <p>16 initial credits it appears to be Reuters footage.</p> <p>17 COLONEL SCOTT: We're actually witnessing</p> <p>18 now the TRT line being formed. We can see that the members</p> <p>19 at this stage are starting to walk backwards.</p> <p>20 CHAIRPERSON: Sorry, I didn't hear.</p> <p>21 They're starting to?</p> <p>22 COLONEL SCOTT: They're starting to walk</p> <p>23 backwards.</p> <p>24 CHAIRPERSON: Walk backwards.</p> <p>25 COLONEL SCOTT: And this is –</p>

<p style="text-align: right;">Page 15921</p> <p>1 MR SEMENYA SC: What unit of the force is 2 this moving back? 3 COLONEL SCOTT: We can see it's TRT, TRT 4 line. 5 MR SEMENYA SC: And the helmet, do they 6 put those on? 7 COLONEL SCOTT: The, well the TRT wear 8 berets. They're also issued with helmets. The difference 9 between the National Intervention Unit and the TRT is the 10 National Intervention Unit will have a black cloth cover 11 covering their helmets, whereas the TRT would just, to my 12 knowledge just have a hard black helmet. 13 CHAIRPERSON: You said something about 14 berets? 15 COLONEL SCOTT: Berets. 16 CHAIRPERSON: Do they have red berets as 17 well? 18 COLONEL SCOTT: Blue berets. 19 CHAIRPERSON: Oh, blue berets. 20 COLONEL SCOTT: We can see now the 21 speedily, the hasty retreat of the line at the time that 22 the actual shooting is, has taken place. This is now – 23 CHAIRPERSON: We have no soundtrack to 24 this video. 25 COLONEL SCOTT: That is the shooting</p>	<p style="text-align: right;">Page 15923</p> <p>1 MR SEMENYA SC: Yes, for our purposes 2 this is enough, Colonel. 3 COMMISSIONER HEMRAJ: Is there any 4 significance whatever to attach to them walking backwards, 5 the policemen? 6 COLONEL SCOTT: Ma'am, they're trying to 7 put distance between themselves and the approach, and in 8 doing that, and that's why you see the significant amount 9 of dust between them and the strikers, which more than 10 likely came through their briefing as well, is to, the 11 warning shots, fire warning shots if something like this 12 was to happen. So that's all I can imagine. Obviously I'm 13 speaking now from my interpretation of the video. 14 CHAIRPERSON: Can we see from either this 15 video or any other video warning shots being fired prior to 16 the first, what we could describe as lethal shot? Is that 17 visible anywhere, either on this video or any other video? 18 If you can't answer it, maybe someone else can in due 19 course. 20 COLONEL SCOTT: I think the Carte Blanche 21 video that we saw first would, has got a clearer picture of 22 the retreat and with whatever we can see. 23 CHAIRPERSON: My impression was there's a 24 fair amount of dust flying, which you say is the result of 25 a warning shot being fired in the ground –</p>
<p style="text-align: right;">Page 15922</p> <p>1 taking place and – 2 MR SEMENYA SC: Sorry, can we play it 3 back? I want us to make the observation relative to people 4 going on the left of the picture before the shooting 5 commences. 6 COLONEL SCOTT: Okay, what we're seeing 7 in picture now is the crouched approach. The teargas has 8 been deployed towards them. What we, and to the left of 9 the picture now we can actually see again rubber bullets 10 being fired, no recoil, and we witness the Public Order 11 policemen starting to move back to their armoured vehicles 12 as their safe havens. They've noticed the approached of 13 the Noki group coming through. As the camera now moves 14 back onto the Noki group, and when it's in real time we 15 actually see the speed that it's gone from a slow-paced 16 crouched walk to a crouched dash, and what one is seeing 17 now, that even while sharp-point ammunition is being fired, 18 the advance, the movement forward still continues. The 19 amount of dust again is showing the amount of rounds which 20 is fired into the ground as warning shots to try to 21 obviously prevent the approach coming towards the line. 22 Camera position again is behind the TRT line. It's from, 23 this is a side view and again we can witness as the line 24 starts to move backwards. In the distance we do see the 25 Nyalas.</p>	<p style="text-align: right;">Page 15924</p> <p>1 COLONEL SCOTT: Yes – 2 CHAIRPERSON: And that did seem to be the 3 case before the first, what we can call fatal shots were 4 fired, but – 5 COLONEL SCOTT: No – 6 CHAIRPERSON: That's just my impression, 7 which may be erroneous. It would be helpful perhaps if we 8 could ascertain whether that is actually correct. 9 COLONEL SCOTT: Yes, agreed, Chairperson, 10 but again I think the, every individual is having a 11 different perception of the threat. So some may be firing 12 directly and others have chosen to fire the warning shots 13 as a deterrent. 14 COMMISSIONER HEMRAJ: And your comment 15 that you see them approaching, running, even though they 16 were firing directly towards them, what is the significance 17 of that? 18 COLONEL SCOTT: Ma'am, to me it shows 19 that they're aware that they're being fired upon now with 20 live ammunition, and even in that they are still not either 21 just stopping or retreating. You see some of them still 22 motioning forward in that line of fire. Whether that 23 speaks to the belief of the rituals and the muti, I'm not 24 sure again. But it is evident there that they're being 25 shot and yet they're still proceeding forward.</p>

<p style="text-align: right;">Page 15925</p> <p>1 MR SEMENYA SC: Yes, Colonel, can we look 2 now at exhibit JJJ206.1? Do you see the image? 3 COLONEL SCOTT: I see the image, yes. 4 MR SEMENYA SC: Can you help locate, is 5 this before or after the shooting? 6 COLONEL SCOTT: This would seem to be 7 before, viewing the man with the red blanket and the green 8 jacket, as well as the absence of significant amounts of 9 teargas at this time. 10 MR SEMENYA SC: Is this, to use the 11 evidence, on their way home? 12 COLONEL SCOTT: Well, yes, it's – and it 13 seems to be just north of the kraal, maybe 10 metres plus 14 north of the kraal. If I look to the background we see the 15 bigger kraal in that rear view, so this is a photo taken 16 between the two Nyalas. The kraal is obviously to the 17 left, or slightly to the south, and there are, there's a 18 striker there who would appear to be throwing some form of 19 an object, what I can presume would be at armoured 20 vehicles, not the ones in picture. 21 MR SEMENYA SC: And JJJ206.2 – 22 COMMISSIONER HEMRAJ: Sorry, before that, 23 where does this photograph come from? Is it something 24 that's taken out of a video clip, or is it a photograph 25 taken by –</p>	<p style="text-align: right;">Page 15927</p> <p>1 lot of them that I can see with either a long, almost 2 sword-type knife, or pangas, spears, and what would seem to 3 be almost type of axe, machetes in the, further in the 4 background. Others are carrying knobkieries. It seems 5 there are some sticks, and of course the majority of them 6 seem to have, or in picture that I can see, the person in 7 picture seems to have a blanket wrapped around his neck 8 with a long-sleeve type jacket or jersey. Mr Noki seems to 9 have his green blanket. The person in front of him with a 10 panga has got a blanket. So they tend to have blankets in 11 some or other way wrapped around their shoulders to their 12 waists or round necks, etcetera. 13 CHAIRPERSON: Do we know where this 14 picture was taken? Is it possible to identify the spot 15 more or less? 16 COLONEL SCOTT: Chairperson, they're 17 underneath the actual power lines, so I'm not sure even the 18 date thereof, but they're definitely underneath the power 19 lines and I can maybe just have a look. 20 MR SEMENYA SC: Sorry, I could not 21 follow, Colonel. Have you been able to tell what day this 22 is? 23 COLONEL SCOTT: No. 24 CHAIRPERSON: This is not necessarily 25 even taken on the 16th?</p>
<p style="text-align: right;">Page 15926</p> <p>1 COLONEL SCOTT: Ma'am, I'm not sure. I 2 think this comes from the internet. Captain De Bruyn, who, 3 the photographs in his folder, was not part of the 4 operation at all. So I think it was a Public Order 5 Policing member that just went on to the net to find photos 6 when we were trying to locate photos to assist us with the 7 presentation L, the police presentation, exhibit L. 8 CHAIRPERSON: So this is really a 9 photograph taken by an unknown photographer, but posted on 10 the internet. Is that what you're telling us? 11 COLONEL SCOTT: Yes. 12 CHAIRPERSON: Why must we look at this 13 photograph? What does it show us, apart from someone 14 throwing an object at, you say, a Public Order vehicle? 15 COLONEL SCOTT: I think the Advocate's 16 making the point that the submissive respectful behaviour 17 towards the police on the way home is probably contrary to 18 what we see in the photograph, Chairperson. 19 MR SEMENYA SC: Shall we now, Colonel, 20 look at JJJ206.2? Can you describe what you see there, 21 Colonel? 22 COLONEL SCOTT: The description of what 23 I'm seeing is what appears to be the Noki group, 24 identifying the individual in the front with the green 25 blanket, with the rest of his group, who are armed with, a</p>	<p style="text-align: right;">Page 15928</p> <p>1 COLONEL SCOTT: No, I don't know, 2 Chairperson. I haven't looked at the properties of the 3 photo. That's why I say it would be difficult to say that 4 this is the 16th, as it's, not saying it's not – 5 CHAIRPERSON: Is this another picture 6 just downloaded from the internet? 7 COLONEL SCOTT: Yes. 8 CHAIRPERSON: Taken by an anonymous 9 photographer? 10 COLONEL SCOTT: Yes. 11 MR CHASKALSON SC: Chairperson, we may be 12 of some assistance there. This is a photograph that is 13 taken, or that is on the website of Mr Marinovich as one of 14 his photographs. He wasn't there on the 16th. So it could 15 have been the 15th, which he was, which was a date on which 16 he was present at Marikana. 17 CHAIRPERSON: Perhaps he can be asked, 18 perhaps he can submit an affidavit and just tell us if it 19 is his photo – well, he doesn't have to if it isn't his 20 photograph. If it is his photograph, he can tell us when 21 it was taken and where and at what time. Alternatively, if 22 it's on his website and he didn't take it himself, he may 23 know who did, so we may be able to get the – 24 MR SEMENYA SC: Thank you. Colonel, the 25 other thing in the cross-examination by Mr Mpofu related to</p>

<p style="text-align: right;">Page 15929</p> <p>1 the Sowetan article, but now that we know the speech is 2 transcribed, it's FFF6, I think we will read for ourselves 3 whether or not those words "I'm not sorry" appear there. 4 Can I now move us to – 5 CHAIRPERSON: When she gave evidence, the 6 National Commissioner, I'm not sure that I can remember it 7 ever having been put to her by the cross-examiner that she 8 had said she wasn't sorry, and it does appear even if one 9 reads the main part of the report that those words are not 10 in quotation marks. Other passages from her speech, or 11 what purports to be her speech, are in quotation marks. 12 But anyway, as you say, we have the transcript now of what 13 she said. So the Colonel doesn't have to take those of us 14 who can read through it, we can see for ourselves. 15 MR SEMENYA SC: Indeed, Chair. Finally – 16 CHAIRPERSON: I'm told by Adv Hemraj that 17 I'm wrong, that it was put to her that she said she wasn't 18 sorry, but in any event, if the transcript is available we 19 can satisfy ourselves one way or the other as to what she 20 said. 21 COMMISSIONER HEMRAJ: In fact I think it 22 was the Commissioner who referred to the fact that there 23 are no quotation marks around those words, and that's why 24 they could not be attributed to her. 25 MR SEMENYA SC: Indeed, Commissioner.</p>	<p style="text-align: right;">Page 15931</p> <p>1 curriculum but it should be. It should be a common way. 2 What's just on screen, is when we deal with different 3 threat levels in different operations that we would 4 approach, this is how we classify this, and this is part of 5 a lecture in the Special Task Force. So the one that we 6 were dealing, which I would place the Tactical Response 7 Team members and the POP members in at that time, would 8 have been orange. I know it's appearing as purple for some 9 reason. That is the medium threat. The danger or threat 10 is anticipated and they are entering the vicinity of the 11 target. 12 CHAIRPERSON: You are going to read it 13 out to us, because it's not going, unless you want me to do 14 it. It's table 2.1, headed "threat levels." It's got four 15 columns. The first column is headed "danger/threat level," 16 the second is "colour codes/tactical conditions," the third 17 is "level of readiness," and the fourth is tactical 18 readiness displayed." You refer us to the third line of 19 material. In the first column under "danger/threat level," 20 it says "medium threats. Danger or threat is anticipated 21 entering the vicinity of the target," but colour code 22 tactical condition is supposed to be orange, but it was put 23 on the slide by someone who is colour blind. The third 24 column says "level of readiness," and what is said there is 25 "medium to high," and then the fourth column, "tactical</p>
<p style="text-align: right;">Page 15930</p> <p>1 Colonel, you have, and with the permission of the 2 Commission, a doctrine in the STF which deals with the 3 state of readiness in the use of firearms. You have also 4 indicated that that is material that is classified, but are 5 you able to show to us excerpts of that which informs how 6 the weapons are handled? 7 COLONEL SCOTT: Yes, I can. 8 CHAIRPERSON: Will this be an exhibit? 9 MR SEMENYA SC: Not in the sense we 10 contemplate of creating hardcopies – 11 CHAIRPERSON: Well, if this is material 12 before the Commission, then it's got to find its way into 13 the record in some way. Possibly he could read it out, the 14 relevant passages, and they could in that way find their 15 way into the transcript. That means we wouldn't have to 16 trouble Ms Pillay with another exhibit number. 17 MR SEMENYA SC: If you start at the first 18 page of the document and read out what does it say? 19 [14:11] COLONEL SCOTT: Chairperson, this is to 20 deal with the state of readiness of firearms. It is the 21 Special Task Force's doctrine, I understand that the TRT 22 was in the line. We are in the process of streamlining a 23 lot of techniques and tactics and procedures right through 24 from Special Task Force to NIU, to TRT. I can't 25 specifically speak to whether this is as yet in the</p>	<p style="text-align: right;">Page 15932</p> <p>1 readiness displayed," that reads "firearms drawn and 2 loaded, low ready position, vigilance, use of tactics and 3 cover." 4 COLONEL SCOTT: That is correct. 5 CHAIRPERSON: Is it necessary to read the 6 high threat section or just content with the section 7 dealing with medium threat is read out? 8 COLONEL SCOTT: I think it's in response 9 to allegations of TRT members walking forward and cocking 10 their firearms, Chairperson. But what is showing there 11 under "tactical readiness displayed," is that firearms are 12 already drawn, and are loaded, "loaded" being cocked with a 13 round in the chamber and on "safe." The low ready position 14 that you see mentioned there, means that the weapon is not 15 raised. It is at this stage at an angle of 45 degrees to 16 the ground, in essence, but the members again are vigilant 17 to the threat in the vicinity, and the use of – they start 18 to utilise tactics and cover which is in line with what 19 we've seen, the utilisation of tactics was the line 20 abreast. Unfortunately there was no cover on that open 21 ground, that they would be seeking to take for that matter, 22 but this is not built with Marikana in mind, this is a 23 lecture which is long running within the STF. If it's 24 shown more specifically to what should occur, then one 25 needs to maybe look at that slide, and these are some of</p>

<p style="text-align: right;">Page 15933</p> <p>1 the slides that are spoken to in the process of the 2 teaching, although it's under the heading at this stage of 3 the foot patrol, it's actually part of the target approach 4 lecture, and one can see there a final inspection is 5 carried out where weapon readiness is dealt with, and this 6 is where weapons are cocked, re-holstered for pistols and 7 then the long weapons are cocked and placed on "safe." 8 They are what we call "let them hang," they hang on their 9 slings, and then the radio communications are checked and 10 ensuring that your lights, etcetera work as well. When you 11 are getting your weapon ready, it includes the lights on 12 your weapon not just putting of a round into the chamber, 13 and placing the weapon on "safe." So this is the standard 14 procedure. My only explanation of seeing the TRT going 15 forward, is that they were possibly busy with something 16 like this, because we do see the straight line in some of 17 the aerial photographs of, I actually believe to be NIU 18 members and I've watched some of the videos, who may have 19 gone through a similar procedure before the operation. 20 MR SEMENYA SC: So what we have as SERI 21 annotations of weapons held, is that in or out of sync with 22 how police behave? You remember we have the SERI 23 photographs that are annotated and showing members - 24 circles. Is that in or out of sync with how things should 25 happen in terms of policing?</p>	<p style="text-align: right;">Page 15935</p> <p>1 operation to take place, the one you were helping with? 2 COLONEL SCOTT: Chairperson, I can 3 actually recall starting that process already on the 4 Wednesday, that we were asked on the Wednesday to start the 5 process. I think the documentation that I gave, I gave on 6 the Thursday, and I am not sure what the dates were that 7 were supposed to be allocated to it. 8 CHAIRPERSON: The documents I think are 9 available, so we can see that. 10 COLONEL SCOTT: Yes. But my 11 concentration just was on what we would have called the 12 targets to be cordoned and searched, not specifically on 13 the time frames. 14 CHAIRPERSON: The authorisation has to 15 indicate the area to which it would apply. 16 COLONEL SCOTT: Yes. 17 CHAIRPERSON: And I think the document 18 eventually signed by the Provincial Commissioner had a map 19 or a - I think maybe in the Google Earth photograph 20 attached to it, which was clearly marked the area to which 21 the authorisation related, is that correct? 22 COLONEL SCOTT: That is correct. 23 Chairperson, if you don't mind, I will bring it up and just 24 to clarify for us. I am not sure if I need - must I 25 display it on screen? I can.</p>
<p style="text-align: right;">Page 15934</p> <p>1 COLONEL SCOTT: Well, they, I can't speak 2 to the circumstances but what they were doing is they were 3 getting themselves into the position of anticipating an 4 orange level threat. So they were correcting what they 5 were doing. 6 MR SEMENYA SC: Those are the questions 7 we have for the witness, Chair. 8 CHAIRPERSON: Thank you. Adv Hemraj, do 9 you wish to ask some questions? Alright okay. I've got to 10 ask you a few questions, and Adv Hemraj wishes to do so 11 also. I am going to ask you a little bit about the two 12 plans. The encirclement plan, I should call plan A, and 13 the disperse and disarm plan I will call plan B. I firstly 14 want to ask you about two other questions about other 15 matters. You told us that on the Thursday you assisted in 16 drafting documentation in respect of an application to the 17 Provincial Commissioner for authorisation in terms of 18 section 13.7 I think, of the Police Service Act. That's 19 the, for authorisation to conduct search and seize 20 operations in a particular area over a period of 24 hours. 21 Now when was that, as far as you understood, when was that 22 search and - sorry, it's actually cordon and search. 23 COLONEL SCOTT: Cordon and search. 24 CHAIRPERSON: Is the official title of 25 this kind of authorisation, when was this cordon and search</p>	<p style="text-align: right;">Page 15936</p> <p>1 CHAIRPERSON: If it's possible, get it 2 displayed on the screen, it may help everyone in the 3 chamber to understand what you are saying. 4 COLONEL SCOTT: This is the actual 5 document. That is the background, again SAPS cordon and 6 search, date and time, from 15:17 to 22:16, 10 to 16, so I 7 do recall the process being started on the Wednesday. I am 8 not sure how far it got or whether - I think it was only 9 finished on the Thursday morning. 10 CHAIRPERSON: I seem to remember a 11 document that the Provincial Commissioner signed actually 12 had different times on it, but in fact, rather 13 embarrassingly for the official who drew it up, it covered 14 a period of 36 hours, which the Act doesn't provide for but 15 we don't have to go there now. The target areas were the 16 Lonmin Mine hostels and there was an attached satellite 17 picture and then the hostels being the Wonderkop hostel and 18 the adjacent squatter camps - 19 COLONEL SCOTT: Yes. 20 CHAIRPERSON: - and the Karee and 21 adjacent squatter camps, and then the greater squatter camp 22 that presumably is the - 23 COLONEL SCOTT: Nkaneng. 24 CHAIRPERSON: - Nkaneng, and there was an 25 attached satellite picture indicating that as well.</p>

<p style="text-align: right;">Page 15937</p> <p>1 COLONEL SCOTT: Yes.</p> <p>2 CHAIRPERSON: Those we can see now on the</p> <p>3 screen. The greater squatter camp Nkaneng, is the area</p> <p>4 marked in red. The Wonderkop Mine hostels, presumably part</p> <p>5 of the squatter camp near it, that was I suppose best</p> <p>6 described as orange, and then to the extreme left of the</p> <p>7 slide, is the Karee Mine hostel, that's marked in yellow.</p> <p>8 Is that right?</p> <p>9 COLONEL SCOTT: That's correct, and then</p> <p>10 the slides, we just go onto obviously always starting with</p> <p>11 an area view, moving on the more specifics of what –</p> <p>12 CHAIRPERSON: So your job was really to</p> <p>13 identify and assist in demarcating for the purposes of the</p> <p>14 authorisation to be signed by the Provincial Commissioner,</p> <p>15 the area to which the cordon and search authorisation was</p> <p>16 to apply. Is that correct?</p> <p>17 COLONEL SCOTT: That's correct,</p> <p>18 Chairperson.</p> <p>19 CHAIRPERSON: How long did that exercise</p> <p>20 take you, on the Thursday morning? We said you'd done some</p> <p>21 of it on the Wednesday, but as far as the Thursday was</p> <p>22 concerned.</p> <p>23 COLONEL SCOTT: Ja, the document is</p> <p>24 saved, I think the properties will show where it was saved,</p> <p>25 which means that I have to have been finished by that time</p>	<p style="text-align: right;">Page 15939</p> <p>1 there were in fact two authorisations, one drafted and</p> <p>2 never signed, for the Wednesday, and another for the</p> <p>3 Thursday, which is to say covered the 36 hour period. But</p> <p>4 what you were busy with, with assisting, in other words,</p> <p>5 this was the initial idea, was to get an authorisation</p> <p>6 covering the period from 17:00 to 20:00 on the 15th, that's</p> <p>7 the Wednesday, and then again, from ten in the morning to</p> <p>8 16h00 hours in the afternoon, on the 16th. Is that right?</p> <p>9 COLONEL SCOTT: Yes.</p> <p>10 CHAIRPERSON: Now, the question of the</p> <p>11 intelligence, whether there was enough intelligence am I</p> <p>12 correct in saying that there were two possible sources of</p> <p>13 information which, at least, one was, I take it you were</p> <p>14 aware of the fact that on the Wednesday evening General</p> <p>15 Mpmembe asked Mr Zokwana of NUM if the NUM members could be</p> <p>16 of assistance getting information as to who they knew was</p> <p>17 in possession of arms, either weapons, dangerous weapons,</p> <p>18 either in the squatter camps or in the hostels. Mr Zokwana</p> <p>19 undertook to endeavour to have that information obtained</p> <p>20 but on the clear understanding that any information given</p> <p>21 was to be received on an anonymous basis, clearly it was</p> <p>22 unreliable, for the informants to be identified. Were you</p> <p>23 aware that that request was addressed to Mr Zokwana?</p> <p>24 COLONEL SCOTT: I wasn't Chairperson, no.</p> <p>25 CHAIRPERSON: Alright.</p>
<p style="text-align: right;">Page 15938</p> <p>1 so at 08:54am.</p> <p>2 CHAIRPERSON: Finished by 08:54.</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 CHAIRPERSON: Thank you. Now was there</p> <p>5 enough intelligence at that stage, by that I mean</p> <p>6 information obtained by the criminal intelligence section</p> <p>7 of the Police. Was there enough intelligence for the</p> <p>8 cordon and search operation to be carried out at that</p> <p>9 stage?</p> <p>10 COLONEL SCOTT: Chairperson, there's –</p> <p>11 no, if I can answer "no." And maybe just the reason</p> <p>12 therefor was, the cordon and search we had envisioned here</p> <p>13 was the disarming of as many people as we could, because we</p> <p>14 – I also understand from faction fights in KwaZulu Natal,</p> <p>15 when you disarm one faction, in essence, you need to try to</p> <p>16 disarm the other, otherwise you are doing a major injustice</p> <p>17 because they are less vulnerable. So even if one perceived</p> <p>18 Karee Hostel to be the more problematic one, one would</p> <p>19 still need to effect the same cordon and search at the NUM</p> <p>20 hostel. So –</p> <p>21 CHAIRPERSON: Go back to the – sorry, if</p> <p>22 we could go back to the slide, which showed us the times,</p> <p>23 as I indicated to you, my understanding is the</p> <p>24 authorisation eventually signed was for different times, in</p> <p>25 fact there were, I think it's clear from the exhibits that</p>	<p style="text-align: right;">Page 15940</p> <p>1 COLONEL SCOTT: I heard it here in the</p> <p>2 Commission I think a week or two –</p> <p>3 CHAIRPERSON: If we say by aware, I mean</p> <p>4 now, I take it you weren't necessarily aware at the time.</p> <p>5 COLONEL SCOTT: Yes.</p> <p>6 CHAIRPERSON: Now of course, obviously Mr</p> <p>7 Zokwana, if such information was obtained, they weren't</p> <p>8 able to come back with it in time, I take it, because any</p> <p>9 cordon and search operation done on the strength of that</p> <p>10 information, could only have taken place on the Thursday</p> <p>11 night.</p> <p>12 COLONEL SCOTT: If that information had</p> <p>13 come back, yes.</p> <p>14 CHAIRPERSON: If it came back, ja.</p> <p>15 COLONEL SCOTT: Yes.</p> <p>16 CHAIRPERSON: So if one can call the idea</p> <p>17 of getting information that way about the presence of arms</p> <p>18 and the seizure thereof on say, the Thursday night, if one</p> <p>19 can call that the Mpmembe plan, that couldn't be implemented</p> <p>20 because of the decision to proceed on the Thursday. Is</p> <p>21 that not so?</p> <p>22 COLONEL SCOTT: Yes.</p> <p>23 CHAIRPERSON: Now the other source of</p> <p>24 information –</p> <p>25 COLONEL SCOTT: Chairperson, sorry, just</p>

<p style="text-align: right;">Page 15941</p> <p>1 in saying that, it's not that it couldn't be implemented, 2 if the plan that went ahead as did, it was still envisioned 3 in fact, I thought that it would be a flow, once we had 4 actually dealt with – 5 CHAIRPERSON: No, you are correct, it 6 could have been. 7 COLONEL SCOTT: Yes. 8 CHAIRPERSON: General Mpembe said to Mr 9 Zokwana that he was, it appears from what he said, that he 10 wasn't in favour of an attempt to disarm people on the 11 koppie, he thought that might lead to bloodshed, there's 12 much better way, and if that was his approach, don't disarm 13 on the – try to disarm on the koppie, there will be 14 bloodshed, rather do it this way, that of course was 15 frustrated by the decision to proceed on the Thursday but 16 that's just a matter of logic I take it. Now the other way 17 of getting information that appears to me must have been 18 available was, there was a lot of video footage and I 19 presume still photographs as well, of the people on the 20 koppie, and in particular of the militant group. 21 COLONEL SCOTT: Yes. 22 CHAIRPERSON: So if it was possible to 23 identify the people, particularly the members of the 24 militant group, who were seen brandishing cutlasses and 25 pangas and things of that kind, it was possible to identify</p>	<p style="text-align: right;">Page 15943</p> <p>1 overnight, but couldn't be done in a hurry, it would have 2 taken some time and I would assume that the probabilities 3 are that the necessary information would probably only have 4 been available for use in a cordon and search on the 5 Thursday night. 6 COLONEL SCOTT: Probably at minimum, but 7 one of the other drawbacks is that if you happen to 8 identify one or for that matter even five, if you go and do 9 what we call, of a high risk warrant of arrest or search 10 warrant, and those people are there or aren't there, for 11 that matter the whole spirit of trying to deal with 12 dialogue with the protesters at the koppie, would be 13 compromised again, and in saying that, because it's touchy 14 now unless you've got really good information on somebody 15 that is a real murder suspect. But you have just taken 16 footage of the militant group at the koppie, and you go to 17 arrest five people because they are part of a militant 18 group, and you don't have the information that they truly 19 are involved in the murder of the police official, other 20 mine employees or mine security, you are risking blowing 21 the whole operation at the koppie with regard to trying to 22 have the spirit of friendship and dialogue under way. 23 CHAIRPERSON: Yes, but I take it that 24 what General Mpembe had in mind was a cordon and search 25 operation which would effectively be launched once the</p>
<p style="text-align: right;">Page 15942</p> <p>1 them from the photographs. It should have been possible, I 2 would have thought for Lonmin to have then said, yes, 3 that's X, no, X is a wrong letter, that's Y, and he lives 4 in this particular shack in the informal settlement or he 5 lives in this hostel in this particular room. Is that 6 correct, isn't it? 7 COLONEL SCOTT: That's correct. 8 CHAIRPERSON: So do you know whether the 9 criminal intelligence people were busy with such an 10 exercise endeavouring to identify the people who were 11 clearly members of the militant group and who could be seen 12 on the photographs, with a view to planning information as 13 to their whereabouts at night? 14 COLONEL SCOTT: Chairperson, I believe 15 that was the strategy and that a team was brought in I 16 think on the Tuesday or the Wednesday from Gauteng to 17 assist with that very proposition, and for that matter, we 18 actually had a special task force team deployed there 19 overnight. We had the day team from Durban, and we had the 20 night team from Pretoria who were actually amongst others 21 on stand by for information that was going to be obtained 22 at any stage, and they would need to go out to effect 23 arrests and retrieve evidence. 24 CHAIRPERSON: Again, I take it, that was 25 a process which couldn't be done, I was tempted to say</p>	<p style="text-align: right;">Page 15944</p> <p>1 dialogue was over, once the, there was no longer any profit 2 to be derived from maintaining the dialogue, and the next 3 phase had now arrived. Would that be right? 4 COLONEL SCOTT: It sounds right, yes, 5 Chairperson. 6 CHAIRPERSON: And presumably will be a 7 subject for debate later as to whether it's less risky to 8 try to disarm this particular lot of people on the koppie, 9 or in front of the koppie, in the day time on Thursday, or 10 to proceed according to what may well be described as 11 General Mpembe's plan, but anyway we don't have to, you and 12 I don't have to discuss that. 13 COLONEL SCOTT: No, 14 CHAIRPERSON: Now, I want to ask you now 15 about Wednesday in the morning. You said there was a 16 discussion in the JOC and it was, I think it was after the 17 actual JOCCOM meeting, I think that's what you said, am I 18 right? 19 COLONEL SCOTT: Yes. 20 CHAIRPERSON: And this discussion you 21 said, this is as you remember it now, you remembered it 22 differently earlier but we won't go there either at the 23 moment. I am busy with what you told us, you now remember. 24 It was brought about by the realisation that plan A could 25 only work as Mr Semenya put to you this morning, if two</p>

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1 factors were present.

2 COLONEL SCOTT: Yes.

3 CHAIRPERSON: Namely early in the

4 morning, and a relatively small group of strikers.

5 COLONEL SCOTT: That is correct.

6 CHAIRPERSON: Later in the morning, a

7 bigger group of strikers that plan wouldn't work.

8 COLONEL SCOTT: That is correct.

9 CHAIRPERSON: And so that then you said,

10 gave rise to discussion, I think you said mainly between

11 General Annandale and yourself, but there were others

12 present who made some points, but you can't really remember

13 who they were, and what their points were but that was the

14 basis, that was the discussion.

15 COLONEL SCOTT: That is correct.

16 [14:31] CHAIRPERSON: And that discussion must

17 have covered a number of matters, I take it. The

18 difficulties of plan A especially in relation to the large

19 number of people later in the day, and then the need for an

20 alternative plan.

21 COLONEL SCOTT: Yes.

22 CHAIRPERSON: And then when you, now I

23 also understood you to say you never really on the

24 Wednesday worked out an alternative plan in detail, it was

25 more of a concept that you arrived at. Is that –

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1 COLONEL SCOTT: Yes.

2 CHAIRPERSON: That's correct. But there

3 were various factors, I take it, that had to be, or facets

4 that had to be considered in the attempt to formulate

5 really even the concept of an alternative plan that wasn't

6 risky and that would not almost certainly precipitate a

7 bloodbath. Is that right?

8 COLONEL SCOTT: It makes sense, yes,

9 Chairperson.

10 CHAIRPERSON: Ja, now these factors would

11 have involves the dispersal of the non-militant – or

12 perhaps we can call them the less militant strikers,

13 because that was an essential part of your idea that

14 there's no way you could deal with 3 000 people.

15 COLONEL SCOTT: Yes.

16 CHAIRPERSON: So you had to get the

17 majority of them away.

18 COLONEL SCOTT: Yes.

19 CHAIRPERSON: And the non-militant lot

20 you wanted to go and even the less militant people, if one

21 can call it that. Is that fair?

22 COLONEL SCOTT: Yes.

23 CHAIRPERSON: And you also then had to

24 consider what form the engagement would take with the

25 militant strikers. Is that right?

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1 COLONEL SCOTT: Yes.

2 CHAIRPERSON: Now did you consider the

3 risks of that, of an engagement with the militant strikers?

4 COLONEL SCOTT: Chairperson, yes.

5 CHAIRPERSON: Did you take into account

6 the fact that according to your information they had

7 undergone rituals and the indications were that they'd

8 received muti?

9 COLONEL SCOTT: I'd heard that I think on

10 the early hours of Tuesday morning and during the course of

11 the day on Tuesday, yes.

12 CHAIRPERSON: Now I think we've had some

13 evidence that there was a similar problem at Impala. There

14 had also been a, what one can call a muti factor. Is that

15 right?

16 COLONEL SCOTT: I wasn't aware – I was

17 aware there was violence and destruction at Impala. I

18 wasn't aware if there was muti or rituals –

19 CHAIRPERSON: I see. Well, maybe I

20 misunderstood. But anyway, the fact of the matter was that

21 the muti was quite a serious factor to be considered,

22 wasn't it?

23 COLONEL SCOTT: Yes.

24 CHAIRPERSON: Because you were telling us

25 this morning about ordinary Public Order Policing

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1 operations and how a crowd normally reacts and how

2 reasonable members of the crowd react in the face of things

3 like a show of force and warnings and that kind of thing.

4 But of course when you're dealing with people who've taken

5 muti, or your information was – I know it's a debate

6 whether they did, but your information was they had, and if

7 they were operating under the delusion that they were

8 invulnerable and invincible, that was a very important

9 factor to take into account in formulating a relatively

10 risk-free plan. Is that right?

11 COLONEL SCOTT: It was a factor to

12 consider, Chairperson, and obviously it deals with mindsets

13 in my opinion, not necessarily the truth of it having the

14 desired effect that they had wished, but in saying that

15 we –

16 CHAIRPERSON: Ja, I think we can assume

17 that it didn't have the desired effect.

18 COLONEL SCOTT: Ja.

19 CHAIRPERSON: There's a debate as to

20 whether they believed that, whether they took muti, you

21 know about that, but your information was that they had?

22 COLONEL SCOTT: Yes.

23 CHAIRPERSON: And that information

24 therefore would have included the realisation that this is

25 a particularly tricky situation. The way ordinary non-muti

<p style="text-align: right;">Page 15949</p> <p>1 receiving crowds behave isn't the way these people will 2 necessarily behave. Is that right? 3 COLONEL SCOTT: Yes, I considered that, 4 yes. 5 CHAIRPERSON: Now when you considered the 6 risks of your plan B, or the concept that you were busy 7 with, you obviously foresaw that there was a danger that 8 the POP people would be attacked. In other words that 9 despite the teargas and the water cannon and the rubber 10 bullets, there still would be an attack, the POP people 11 would still be in danger. 12 COLONEL SCOTT: I did anticipate that, 13 yes, Chairperson. 14 CHAIRPERSON: And that I take it was 15 based on a number of factors. One was what happened on the 16 Monday – 17 COLONEL SCOTT: Monday. 18 CHAIRPERSON: I know there wasn't water 19 cannon on the Monday – 20 COLONEL SCOTT: No. 21 CHAIRPERSON: But there were stun 22 grenades and teargas. 23 COLONEL SCOTT: And teargas, yes. 24 CHAIRPERSON: Did you have information at 25 that stage that these people were wearing blankets?</p>	<p style="text-align: right;">Page 15951</p> <p>1 COLONEL SCOTT: Yes. 2 CHAIRPERSON: Which you foresaw might 3 happen – 4 COLONEL SCOTT: Yes. 5 CHAIRPERSON: - from the militant 6 members. 7 COLONEL SCOTT: Yes. 8 CHAIRPERSON: But a further provision you 9 made was the provision of the TRT people armed with assault 10 rifles and sharp-point ammunition, which they would have to 11 use in self-defence or private defence against these 12 attackers. 13 COLONEL SCOTT: Yes. 14 CHAIRPERSON: And there was clearly a 15 risk that some of these people might be killed or seriously 16 injured in the process. 17 COLONEL SCOTT: There was – I tried to 18 mitigate that to the best that we could, Chairperson. 19 CHAIRPERSON: No, I'm sure you did, but 20 you couldn't eliminate that risk completely. 21 COLONEL SCOTT: No, not completely. 22 CHAIRPERSON: It was a foreseeable risk. 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: Now another factor I take 25 it that you took into account was the previous behaviour of</p>
<p style="text-align: right;">Page 15950</p> <p>1 COLONEL SCOTT: No. 2 CHAIRPERSON: I see. But anyway, I take 3 it you had enough information to realise, hence what you, 4 the risks that you foresaw, that the non-lethal methods 5 mightn't prevent an attack on the POP. 6 COLONEL SCOTT: Might prevent? 7 CHAIRPERSON: Might not prevent. 8 COLONEL SCOTT: Might not prevent? 9 CHAIRPERSON: Ja. 10 COLONEL SCOTT: I anticipate that – 11 CHAIRPERSON: I know you did, and you 12 foresaw that possibility and you made that contingency, and 13 you had a contingent plan to deal with it. 14 COLONEL SCOTT: Yes. 15 CHAIRPERSON: That was the TRT people 16 armed with assault rifles and firing sharp ammunition. 17 COLONEL SCOTT: Well, it was first to 18 have a safe haven in place for the – 19 CHAIRPERSON: Yes, yes, I know. I'm 20 sorry, yes, I'm cutting it short. Clearly you had to deal 21 with ways of ensuring that the POP people weren't hurt. 22 COLONEL SCOTT: Yes. 23 CHAIRPERSON: And that was having the 24 Nyalas nearby so that they could fairly quickly take refuge 25 if they came under attack.</p>	<p style="text-align: right;">Page 15952</p> <p>1 the militant group. I take it, it's a fair inference that 2 some of the murder and mayhem that had taken place from I 3 think the Friday or the Saturday, was the work of some of 4 the militant group. You couldn't say all of them, but some 5 of them on the overwhelming probabilities were involved. 6 COLONEL SCOTT: Yes, I – 7 CHAIRPERSON: Now by that time 10 people 8 had died. Let's leave out Mr Twala, he's a special case. 9 Three of the 10 were people who were killed at, near the 10 railway line, two of whom appear to have been strikers. 11 There's a question mark over the third. So we take them 12 away, we've got six left. Two policemen were killed and 13 one of course was seriously injured, and then there were 14 four others, the two security guards on the Sunday in the 15 daytime, and the two workers I think who were not complying 16 with the unprotected strike and who met their deaths 17 because of that on the Sunday evening. Is that right? 18 COLONEL SCOTT: That sounds correct. 19 CHAIRPERSON: And there were also 20 vehicles set alight and so on. So this was a, some at 21 least of the members of the militant group were dangerous 22 criminals. 23 COLONEL SCOTT: Yes, I anticipated – 24 CHAIRPERSON: Who had shown, they were 25 murderers in fact, and they were people who had shown what</p>

<p style="text-align: right;">Page 15953</p> <p>1 they were capable of doing. Is that right?</p> <p>2 COLONEL SCOTT: Yes.</p> <p>3 CHAIRPERSON: That also had to be</p> <p>4 factored into your plan. It had to be factored into your</p> <p>5 plan, the kind of people that, the customers you were</p> <p>6 dealing with. Is that right?</p> <p>7 COLONEL SCOTT: Yes, I did, Chairperson.</p> <p>8 CHAIRPERSON: And this indicated that, I</p> <p>9 would think, I'm putting prima facie views to you,</p> <p>10 obviously, that it was a very risky operation, regard being</p> <p>11 had to the fact that some of the people you were dealing</p> <p>12 with at least were people who, based on what I'd put to</p> <p>13 you, had shown what they were capable of in the past.</p> <p>14 COLONEL SCOTT: Yes.</p> <p>15 CHAIRPERSON: Now all these factors that</p> <p>16 I put to you, you took into account?</p> <p>17 COLONEL SCOTT: To varying degrees, yes,</p> <p>18 Chairperson, I did.</p> <p>19 CHAIRPERSON: So it does seem, I would</p> <p>20 suggest to you, as a probability, at least prima facie,</p> <p>21 that's why I'm putting it to you, so you can deal with it,</p> <p>22 that there was, regard being had to all those factors,</p> <p>23 there was a probability of some deaths when plan B was</p> <p>24 implemented.</p> <p>25 COLONEL SCOTT: As I said there was the</p>	<p style="text-align: right;">Page 15955</p> <p>1 the TRT to maybe a slightly lesser degree are quite well</p> <p>2 trained in how to come into environments where they are</p> <p>3 dealing with a violent belligerent individual, who's not</p> <p>4 always armed with a firearm but at times will also be armed</p> <p>5 with other types of weaponry.</p> <p>6 CHAIRPERSON: Yes, General Mpembe, I take</p> <p>7 it knows about these secret instructions that you were</p> <p>8 referring to, but his view was expressed in the terms I put</p> <p>9 to you and he certainly thought, and he conceded this when</p> <p>10 he gave evidence, that the risk of bloodshed was definitely</p> <p>11 there and couldn't be eliminated.</p> <p>12 COLONEL SCOTT: Chairperson, I –</p> <p>13 CHAIRPERSON: And I take it based on the</p> <p>14 kind of consideration I put to you.</p> <p>15 COLONEL SCOTT: Well, I don't know, I</p> <p>16 wouldn't know if he does know the tactics that we would</p> <p>17 know. I'm not aware that he's done a TRT, NIU, or STF</p> <p>18 training curriculum for that matter, so I wouldn't be able</p> <p>19 to say what he does know. I haven't actually asked him how</p> <p>20 much of the tactics that we would have utilised would he be</p> <p>21 able to be aware of.</p> <p>22 CHAIRPERSON: No, I understand, but I</p> <p>23 take it even you with your knowledge of those tactics can't</p> <p>24 put your hand on your heart and say there was no risk at</p> <p>25 all that anyone would be killed?</p>
<p style="text-align: right;">Page 15954</p> <p>1 hope and hope sort of diminishes as you go to the opposite</p> <p>2 direction of a worst case scenario, so to do a signature</p> <p>3 plan for the worst case scenario, expecting that wouldn't</p> <p>4 be correct, but again to say that you hope that it would</p> <p>5 only end in dialogue, which was the true hope, was also</p> <p>6 possibly not feasible. So I think the balance lies in the</p> <p>7 middle where the risk mitigation was where I had</p> <p>8 anticipated that this would actually have rolled out, that</p> <p>9 there would be some type of possible conflict. I was</p> <p>10 hoping that it wouldn't happen with the Public Order</p> <p>11 Policing members, that they would have managed to climb</p> <p>12 back into their vehicles and not at all have been</p> <p>13 targeted –</p> <p>14 CHAIRPERSON: Sorry to interrupt you. I</p> <p>15 would have thought there was a high probability that the</p> <p>16 precautions you'd taken to protect the POP people would</p> <p>17 succeed?</p> <p>18 COLONEL SCOTT: Yes, and that when it</p> <p>19 came down to the actual attempted high-risk arrests, that</p> <p>20 that is where I anticipated there could be conflict, and</p> <p>21 violent conflict for that matter, but in saying that, I</p> <p>22 know we haven't divulged all our tactics on how to actually</p> <p>23 deal with those situations, for the very reason that we</p> <p>24 can't because people would just find defence mechanisms for</p> <p>25 them. But the, specifically the NIU, the task force, and</p>	<p style="text-align: right;">Page 15956</p> <p>1 COLONEL SCOTT: No.</p> <p>2 CHAIRPERSON: No, alright. Now these</p> <p>3 discussions presumably covered quite a wide range of</p> <p>4 matters, this discussion rather, that took place on the</p> <p>5 Wednesday. How long did it take, would you say?</p> <p>6 COLONEL SCOTT: Chairperson, I can't</p> <p>7 really recall. The little bits that I did recall, as I</p> <p>8 stated, was just triggered by the mentioning of the cattle,</p> <p>9 which triggered something else to say well, so we first</p> <p>10 reviewed encirclement as it was, and actually looked at all</p> <p>11 the reasons why it couldn't happen, and they were all quite</p> <p>12 realistic and justifiable. What brought back, again</p> <p>13 through deduction, was one of the pictures, it's, where we</p> <p>14 saw the orange and the blue line of encirclement move so</p> <p>15 that it was lined up against the power station. That shows</p> <p>16 me that we actually must have, I must have or we as a group</p> <p>17 must have actually looked at whether we expand the razor</p> <p>18 wire to try to make it fit better would have still helped</p> <p>19 or not, and etcetera. So there was some form of –</p> <p>20 CHAIRPERSON: [Microphone off, inaudible]</p> <p>21 how long did the discussion take?</p> <p>22 COLONEL SCOTT: I can't –</p> <p>23 CHAIRPERSON: You know, was it several</p> <p>24 hours?</p> <p>25 COLONEL SCOTT: No, no, it wasn't hours.</p>

<p style="text-align: right;">Page 15957</p> <p>1 CHAIRPERSON: Half an hour? Hour?</p> <p>2 COLONEL SCOTT: I think it was probably</p> <p>3 more in the vicinity of about half an hour, 45 minutes.</p> <p>4 CHAIRPERSON: Half an hour. Now as far</p> <p>5 as I could see from your statement, your last statement, a</p> <p>6 good deal of the discussion appears to have taken place in</p> <p>7 the context of the realisation that plan A was in any event</p> <p>8 not going to work if it was not at first light and there</p> <p>9 were a lot of people. Is that right?</p> <p>10 COLONEL SCOTT: That's correct.</p> <p>11 CHAIRPERSON: And so that's a theme</p> <p>12 that's repeated over and over again in the relevant section</p> <p>13 of your statement, that what appears to have been at the</p> <p>14 forefront of your minds was that plan A is only a plan that</p> <p>15 could work at first light, small group of people, and if</p> <p>16 something has to be done in circumstances where there were</p> <p>17 a lot of people and where it's not, no longer first light,</p> <p>18 you'll have to have an alternative.</p> <p>19 COLONEL SCOTT: That's correct,</p> <p>20 Chairperson.</p> <p>21 CHAIRPERSON: Is that right? And I think</p> <p>22 you said at one stage in your evidence that it's possible</p> <p>23 that two plans existed side by side, one for -</p> <p>24 COLONEL SCOTT: Yes.</p> <p>25 CHAIRPERSON: - first light, small group.</p>	<p style="text-align: right;">Page 15959</p> <p>1 Friday, the plan could have been implemented?</p> <p>2 COLONEL SCOTT: It could have, yes. It</p> <p>3 could have been implemented.</p> <p>4 CHAIRPERSON: Yes, and you also knew that</p> <p>5 it was the habit of most of the strikers to go home at</p> <p>6 night, taking their arms with them, and not to stay on the</p> <p>7 cold mountain.</p> <p>8 COLONEL SCOTT: It was logical to me that</p> <p>9 yes, that that -</p> <p>10 CHAIRPERSON: That that was what was</p> <p>11 happening. That happened up until, well even by Wednesday</p> <p>12 they'd done that the previous night.</p> <p>13 COLONEL SCOTT: Yes.</p> <p>14 CHAIRPERSON: And of course on Thursday</p> <p>15 you also knew that that had been their habit up to then.</p> <p>16 COLONEL SCOTT: Yes.</p> <p>17 CHAIRPERSON: Now I want to turn to the</p> <p>18 Friday morning. Now what time did you get to the JOC on</p> <p>19 Friday morning?</p> <p>20 COLONEL SCOTT: We're talking the day</p> <p>21 after -</p> <p>22 CHAIRPERSON: I said Friday morning?</p> <p>23 COLONEL SCOTT: Yes -</p> <p>24 CHAIRPERSON: Sorry, did I say Friday</p> <p>25 morning?</p>
<p style="text-align: right;">Page 15958</p> <p>1 COLONEL SCOTT: Yes.</p> <p>2 CHAIRPERSON: The other one for the other</p> <p>3 situation.</p> <p>4 COLONEL SCOTT: Chairperson, as I say,</p> <p>5 the encirclement was accepted that it couldn't work on the</p> <p>6 later daytime larger group. Whether it was, if I can use</p> <p>7 the word "rubbished," taken away, or whether it was just</p> <p>8 shelved, I'm not sure, but at that stage the dispersal,</p> <p>9 disarm, and arrest plan took precedence for the daytime</p> <p>10 type of operation.</p> <p>11 CHAIRPERSON: No, I understand that, and</p> <p>12 the next point I want to ask you about is did you know</p> <p>13 whether the Provincial Commissioner had given the police up</p> <p>14 to any particular time to sort out the problem?</p> <p>15 COLONEL SCOTT: No, I wasn't aware of any</p> <p>16 timeframes that were given to us.</p> <p>17 CHAIRPERSON: Because in the transcript</p> <p>18 that's now been released, the discussion she had on the</p> <p>19 Tuesday with people of Lonmin, she says that she gave the</p> <p>20 police until the weekend to sort out the problem. You</p> <p>21 weren't aware of that?</p> <p>22 COLONEL SCOTT: No.</p> <p>23 CHAIRPERSON: Now I know there was the</p> <p>24 aspect of the cattle and so on, but if there were only a</p> <p>25 small group of people at the koppie at first light on</p>	<p style="text-align: right;">Page 15960</p> <p>1 COLONEL SCOTT: Yes.</p> <p>2 CHAIRPERSON: I mean [microphone off,</p> <p>3 inaudible]. Sorry, sorry, thank you for correcting me. I</p> <p>4 made a mistake. What time did you get to the JOC on</p> <p>5 Thursday morning?</p> <p>6 COLONEL SCOTT: Chairperson, it would</p> <p>7 have been between 20 to, quarter to 6, somewhere around</p> <p>8 there.</p> <p>9 CHAIRPERSON: So you got there before the</p> <p>10 JOCCOM meeting began?</p> <p>11 COLONEL SCOTT: Yes.</p> <p>12 CHAIRPERSON: Now we've seen some</p> <p>13 minutes, but they were apparently drafted, or redrafted at</p> <p>14 Roots, and so in the interest of looking at contemporaneous</p> <p>15 documents it's probably best to put them aside. Have you</p> <p>16 seen the notes that were kept by then Captain, now Colonel</p> <p>17 Moolman, contemporaneously at that meeting?</p> <p>18 COLONEL SCOTT: Yes, I have. I have been</p> <p>19 through them, yes.</p> <p>20 CHAIRPERSON: Now I take it that in the</p> <p>21 chair would have been General Annandale.</p> <p>22 COLONEL SCOTT: Yes.</p> <p>23 CHAIRPERSON: And he would have been the</p> <p>24 first speaker.</p> <p>25 COLONEL SCOTT: Well, yes.</p>

<p style="text-align: right;">Page 15961</p> <p>1 CHAIRPERSON: Now the first notes – I 2 don't know what the exhibit number is, but I take it, it is 3 an exhibit, so I wonder if you can find it. It's been 4 handed in as exhibit. I don't know the – can Mr Chaskalson 5 perhaps tell us what the exhibit number is? 6 MR CHASKALSON SC: JJJ168, Chairperson. 7 CHAIRPERSON: Does that enable you to 8 find it? 9 COLONEL SCOTT: I can bring it up 10 quickly. Hopefully I've got it on my - but I think I have 11 a copy. 12 CHAIRPERSON: Well, perhaps it could be 13 put on the screen, if that's possible. 14 COLONEL SCOTT: I'm sorry, I've got the 15 transcript of the Provincial Commissioner. 16 CHAIRPERSON: Has it been found? 17 COLONEL SCOTT: I think we need to just 18 swop out the, my computer's at the moment on screen, 19 Chairperson. 20 CHAIRPERSON: Alright. How long will 21 that take? Someone's coming to assist you. Alright, now I 22 see it begins with [microphone off, inaudible] 23 COLONEL SCOTT: Sir, you're microphone is 24 off. 25 CHAIRPERSON: Thank you. That's the</p>	<p style="text-align: right;">Page 15963</p> <p>1 CHAIRPERSON: Well, whoever spoke said 2 that. 3 COLONEL SCOTT: Yes. 4 CHAIRPERSON: And what the message 5 clearly conveyed is today is the day, there's no – this 6 matter is going to be sorted out today. Is that right? 7 COLONEL SCOTT: In the mentioning of D- 8 day? 9 CHAIRPERSON: Yes, well I mean, I've read 10 the whole passage, specific policing act to take place, and 11 then it goes on about any person whose weapon will be 12 apprehended and arrested, and so on. 13 COLONEL SCOTT: Yes. 14 CHAIRPERSON: That does convey quite 15 clearly, does it not, that that was the day when the matter 16 was going to be dealt with, was going to be sorted out. 17 COLONEL SCOTT: It looks that way, 18 Chairperson. 19 CHAIRPERSON: Ja, now you told us you got 20 there at about quarter to 6 – 21 COLONEL SCOTT: Yes. 22 CHAIRPERSON: So you must have been 23 present when that was said. 24 COLONEL SCOTT: Chairperson, I was just 25 mentioned yesterday, and it may help with this, at some</p>
<p style="text-align: right;">Page 15962</p> <p>1 front sheet. Could we have the second page, please? 2 [14:51] Now it starts off, "Security deployment: Radio 3 technical held mechanics not here to follow up," and then 4 there appears a paragraph, obviously someone speaking, and 5 I suspect it's General Annandale, and this is what it says. 6 "D-day, terms and conditions not to continue. 7 Constitutional rights, but boundaries. 10 killed, two SAPS 8 firearms missing. Given opportunity to lay down weapons. 9 Mine gave opportunity to work. Unions," I'm not quite sure 10 what the next word is, but it's probably "failed. Laid 11 down and return. Denounce violence. Would," I think that 12 is probably "re-attend today. Weapons to be left at 13 koppie. Reality, in position to act in case weapons not 14 left. Specific policing act to take place not limited to 15 both hostels. Phase 2 today, further deployment whilst 16 unions talk plus-minus 9 o'clock. SAPS 2," I take it 17 that's phase 2, "biggest presence POP and TRT front line, 18 cordon intensified and out to bigger areas. Any person 19 whose weapon will be apprehended and arrested. Info," I 20 think that means "must consistently," is it? Or 21 constantly, probably, "provide info," and then it looks 22 like "spotters." So it does look from that, does it not, 23 that General Annandale said today is D-day? 24 COLONEL SCOTT: If that was him speaking, 25 Chairperson, then yes.</p>	<p style="text-align: right;">Page 15964</p> <p>1 early stage here the helicopters somehow were brought to my 2 attention were not coming through, and whether I was trying 3 to deal with that very quickly, because the person that was 4 the, they call it – I just know their acronym, it's a 5 MAYOT, it's somebody that the air force would place on the 6 ground that will have a radio to speak to the helicopters 7 in the air and coordinate with the commanders on ground at 8 the JOCCOM, was, didn't come through that day. So whether 9 he actually phoned, and I don't know because I haven't got 10 the phone record, but at that stage - I can see later in 11 the JOCCOM before 7 o'clock that I'm sending SMS'es to the 12 pilot himself. I don't know what the SMS'es said though, 13 but I know it's to the pilot's number, it's just a 14 possibility of why I possibly missed something like that. 15 CHAIRPERSON: Are you saying that you 16 definitely missed that, or are you saying that you can't 17 remember? Because you've told us, and I understand what 18 you've explained to us, you had very little sleep in that 19 period and you have difficulty in remembering things. Is 20 it possible – sorry, do you say you didn't hear that, you 21 didn't know at 6 o'clock or shortly thereafter that "today 22 was D-day," or is it possible, but you can't remember it? 23 COLONEL SCOTT: Well, I can't remember 24 it. I'm trying to sort of figure out a reason why I don't 25 remember it, whether there was something, because I maybe</p>

<p style="text-align: right;">Page 15965</p> <p>1 wasn't in the JOC while it was being said, but I don't 2 recall it, no.</p> <p>3 CHAIRPERSON: Now if you don't remember 4 hearing it at 6 o'clock, we know from the evidence that the 5 Provincial Commissioner convened a press conference, a 6 media conference at 9:30 at which she said that, and we've 7 seen the video of what she said.</p> <p>8 COLONEL SCOTT: Yes.</p> <p>9 CHAIRPERSON: I don't think the evidence 10 is that you were at that conference.</p> <p>11 COLONEL SCOTT: No.</p> <p>12 CHAIRPERSON: But was it reported – but 13 General Annandale was.</p> <p>14 COLONEL SCOTT: Yes.</p> <p>15 CHAIRPERSON: And General Mpembe was. 16 Did either of them report to you afterwards that this is 17 what she said, "today is the day, this is D-day"?</p> <p>18 COLONEL SCOTT: No, Chairperson.</p> <p>19 CHAIRPERSON: So when did you learn for 20 the first time, as far as you can remember now, that 21 Thursday was going to be D-day?</p> <p>22 COLONEL SCOTT: Chairperson, at, just 23 prior to the 13:30, I remember, the part that I remember of 24 the 13:30 JOC, but I've checked my phone records again and 25 probably at 20, I think it was 20 past 1 I'd actually</p>	<p style="text-align: right;">Page 15967</p> <p>1 instance on the Wednesday that was one of the things we 2 looked at, because it's not like him to leave something. 3 So that's why we analysed the tactical option already on 4 the Wednesday, so –</p> <p>5 CHAIRPERSON: I know that, you've told us 6 that that's your second memory, but the point is that that 7 hadn't been even put before the JOC, there'd been no JOC 8 decision on the matter. So if on the Thursday the matter 9 was going to be dealt with finally, I would have expected 10 that to have been raised before the JOC, which he appears 11 to have done if one reads these notes correctly, but I 12 would also have expected you to have been told about it if 13 you weren't at the JOC at the moment it was said, because 14 wouldn't you have had to as the chief planner, to have 15 taken the concept further and started working on the 16 details and, because it was only a concept, wasn't it? And 17 if it was going to be implemented correctly, I take it this 18 is something you knew about, I don't, but I would have 19 thought quite a lot of work would have to be done of a 20 fairly detailed nature to make sure that everything went 21 right, went correctly.</p> <p>22 COLONEL SCOTT: Yes.</p> <p>23 CHAIRPERSON: Is that right? So I must 24 confess that I would have thought, I would have expected on 25 the probabilities that he would have told you that so that</p>
<p style="text-align: right;">Page 15966</p> <p>1 phoned the pilot to tell him to come through, and then I'd 2 – and it's also possibly why I missed the first part of the 3 JOCCOM meeting. What I was trying to do at that stage, 4 which I confirmed with people at my office, I was trying to 5 arrange cable ties – we use cable ties instead of handcuffs 6 when you need to cuff somebody, or secure their hands – for 7 the operation, and I was trying to arrange that to be 8 brought through with the helicopter on that day.</p> <p>9 CHAIRPERSON: Yes, yes, I understand. I 10 know that you have a problem with your memory, so I'm not 11 being critical, but I must tell you that I find it 12 difficult to believe that a responsible person like Major- 13 General Annandale wouldn't have communicated to you, who 14 was his chief planner, what had been decided, what had been 15 announced at the beginning of the JOC presumably by General 16 Annandale, and certainly what had been said by the 17 Provincial Commissioner at half past 9. It is unlikely, I 18 would suggest – but again this is just a prima facie view; 19 I've got to put my difficulties to you so you can help me 20 if I'm wrong – it's unlikely that you would have been kept 21 in the dark about that until 1 o'clock, I would have 22 thought, but if there is a reason why he would have done 23 that, then perhaps you can enlighten me.</p> <p>24 COLONEL SCOTT: Well, Chairperson, I 25 don't know that, but how I do know General Annandale is for</p>	<p style="text-align: right;">Page 15968</p> <p>1 you could get cracking and do something about it. Am I 2 wrong in thinking that?</p> <p>3 COLONEL SCOTT: Chairperson, that's why I 4 have the same kind of logical process that if he had told 5 me, I would have got cracking on it. That's the thing, and 6 I didn't. So that's why I had made the deduction, because 7 I can remember it at the 13:30 that there had been no 8 detail at that time given to the concept.</p> <p>9 CHAIRPERSON: Yes, that's something 10 that's been puzzling me for weeks, but I'll put that, my 11 puzzlement to you in a moment. But tell me, what exactly 12 did you do then on the Thursday morning? I know you worked 13 on the cordon and search, but you've told us you finished 14 that at about 8:54 or something like that.</p> <p>15 COLONEL SCOTT: Ja.</p> <p>16 CHAIRPERSON: What did you do for the 17 rest of the morning?</p> <p>18 COLONEL SCOTT: I can't, I don't 19 remember, Chairperson. For that matter, for the Wednesday 20 after that, we'd decided on that, I also don't remember. 21 But I mean, I would have gone at some stage, whether it was 22 Wednesday or Thursday, into thinking more in depth about 23 what to do on a dispersal plan, although it was not in the 24 context of having a group work session and so on –</p> <p>25 CHAIRPERSON: Yes, yes, I understand.</p>

<p style="text-align: right;">Page 15969</p> <p>1 You see, there's a hole in your memory, isn't there, for 2 the Thursday? Is that right? 3 COLONEL SCOTT: Ja. 4 CHAIRPERSON: Ja, and what we do know is 5 that by 1:30 you hadn't had a chance to work out the 6 details of the concept. You said that. 7 COLONEL SCOTT: Well, I think I would 8 have already pondered – 9 CHAIRPERSON: Yes, no, ja. 10 COLONEL SCOTT: But the JOC had not yet 11 been briefed on the – 12 CHAIRPERSON: Yes, no, I understand that. 13 But still you were the chief planner. 14 COLONEL SCOTT: Yes. 15 CHAIRPERSON: You were the one that they 16 would have looked to, I would have thought, to come up with 17 the details, because that was your speciality and you'd 18 shown in the past that you were able to do that work very 19 well. 20 COLONEL SCOTT: Yes. 21 CHAIRPERSON: And you can't remember what 22 you did that morning? 23 COLONEL SCOTT: No. 24 CHAIRPERSON: No. Now you see, that's 25 been puzzling me for weeks because I believe if people act</p>	<p style="text-align: right;">Page 15971</p> <p>1 weren't going to move, leave the koppie, they were going to 2 fight, right? 3 COLONEL SCOTT: Yes. 4 CHAIRPERSON: Now, again, you see, if you 5 had known as I think it appears probable you did, that 6 before 09:30 that Thursday was D day, you would also have 7 known that it's likely they'd lay down their arms, it's 8 likely they are going to keep their arms and fight, all he 9 more reason why I would have expected you to have start 10 working on a plan. 11 COLONEL SCOTT: That's correct. 12 CHAIRPERSON: But you didn't. 13 COLONEL SCOTT: No. 14 CHAIRPERSON: So I must tell you that, as 15 present advised, and as I say I am trying to be as open 16 minded about it as I can, I am inclined to the view that 17 the reason for the hole in your memory for the Thursday, is 18 that what you remembered originally as having happened on 19 the Thursday, did happen on the Thursday, and when you were 20 subsequently, I don't know, persuaded but moved, had to 21 change what you remembered, I am not suggesting that in a 22 nasty way but you know, you came to, you remembered it 23 differently. You suppressed, you moved what happened on 24 the Thursday, to the Wednesday and is now left with a 25 gaping hole on the Thursday morning, which is impossible to</p>
<p style="text-align: right;">Page 15970</p> <p>1 out of character and you follow it up, you can normally 2 find the truth, and it occurred to me that if the concept 3 had already been worked out on the Wednesday, and you'd 4 known early on the Thursday, as I thought on the 5 probabilities you must have done, that today was the day, I 6 would have expected you conscientious as you are, to have 7 started work. But in fact we know, and I would have 8 expected you to have had enough time to produce printouts 9 for the officers, for the commanders, and you didn't do 10 that either, we know that. 11 COLONEL SCOTT: Ja. 12 CHAIRPERSON: So hence my puzzlement, you 13 understand? Now something else I want to ask you about, as 14 of the early morning, there were two possibilities that the 15 team were – you say you didn't know about the second, but 16 the one possibility was that they would fact lay down their 17 arms, walk away quietly. The other possibility was they 18 wouldn't, and knowing what we now know, that meant it was D 19 day, and there had to be specific police action, phase 3 20 had to be implemented. Now we also know that you didn't 21 believe that they'd lay down their arms. 22 COLONEL SCOTT: Yes. 23 CHAIRPERSON: Criminal intelligence 24 didn't either, their information was, we know what it was, 25 that they weren't going to hand over their arms and they</p>	<p style="text-align: right;">Page 15972</p> <p>1 understand and you behaved in, if you knew that it was D 2 day, you behaved in an extraordinarily uncharacteristic 3 fashion for an officer of your competence and ability. Now 4 that's the way I see it prima facie, I could be wrong, but 5 it is my duty to put it to you so you can help me. Is 6 there something in what I suspect may be the truth? 7 COLONEL SCOTT: Well, Chairperson, I said 8 that at the outset, when I made my consolidated statement 9 was, I could remember these parts of information, I just 10 had trouble in placing them specifically and I initially 11 also thought that to be the case until, and I am not sure 12 what took me back to making it the Wednesday, maybe it was 13 the fact that Brigadier Engelbrecht, but it is possible 14 that Brigadier Engelbrecht's participation there was 15 looking at encirclement. I am speaking out of deduction, 16 not out of memory. 17 CHAIRPERSON: That's apparently what he 18 says. 19 COLONEL SCOTT: Yes, so it could be as 20 you are saying that that process did take place possibly on 21 the Thursday during that morning period. 22 CHAIRPERSON: - got to explain a number 23 of very improbable things, that you weren't told early in 24 the morning that you better get cracking and finalise the 25 plan, because it looks pretty clear that we are going to</p>

<p style="text-align: right;">Page 15973</p> <p>1 need it. You weren't told that, on your version, but I man 2 that's improbable. It's also improbable that if you had 3 been told that, that you wouldn't have acted in the way I 4 suggest, and the third improbability is you wouldn't have a 5 gaping hole in your memory of what happened on the 6 Thursday. So how you deal with those points? 7 COLONEL SCOTT: The only part that 8 bothers me a little still was, if I had received 9 instruction, I would most definitely have gone ahead with, 10 as you say, I would have had printouts ready, I would have 11 had a briefing for that matter ready on a PowerPoint, 12 etcetera, so I am not sure, unless I was waiting for an 13 approval of – 14 CHAIRPERSON: You were waiting for 15 approval, I mean you were the chief planner, time is of the 16 essence. 17 COLONEL SCOTT: Ja. 18 CHAIRPERSON: It wasn't likely that the 19 JOC people would put their hands up and say sorry, we don't 20 agree with this. I mean, the probabilities, I mean there 21 wasn't much else that could be done, could it? So I don't 22 see you could be, again, you understand I am doing it all 23 on the basis of prima facie view and keeping an open mind, 24 but I don't see how you could have been waiting for 25 approval.</p>	<p style="text-align: right;">Page 15975</p> <p>1 that I wanted to put to you, thank you very much. Adv 2 Hemraj? 3 COMMISSIONER HEMRAJ: Just apropos the 4 Chairman's last line of questioning, your evidence at some 5 stage was that you didn't do the printouts and all the 6 detailed planning, because if you hadn't gone ahead on the 7 Thursday, it would have been a waste of effort and time. 8 That is evidence that you've given already, isn't it? 9 COLONEL SCOTT: Before something is 10 approved yes, Commissioner, to receive approval first of 11 the concept and then thereafter you will develop the plan 12 on it, yes. 13 COMMISSIONER HEMRAJ: Can you just help 14 me with something, it has been raised that there were no 15 POPS commanders at the JOC when you did the briefing about 16 the tactical option. Have you since the incident, have you 17 had any discussions with POPS commanders who've commented 18 that perhaps the plan was not POPS friendly or did not take 19 certain points as their view into account? 20 COLONEL SCOTT: Chairperson, I've 21 actually, I have, I've never – I haven't on my own gone to 22 ask them, but I have, I know Brigadier Calitz has mentioned 23 to me on more than one occasion that he had full faith in 24 what I was delivering as strategy and he has mentioned that 25 on more than one occasion and as I say, we have a history,</p>
<p style="text-align: right;">Page 15974</p> <p>1 COLONEL SCOTT: I agree with you, but I 2 am also saying when we were going back to how I would 3 normally have done things, because even after Marikana 4 happened, there was the taking of these – the suspects at 5 that stage to court, which we can see there I've planned 6 things, I've planned, and all of it, I tend to run back to 7 PowerPoint presentations when I am under pressure, instead 8 of writing full draft plans, and what's still is a bit out 9 of place for me is the fact that if I knew about that on 10 the Thursday, I would have more than likely have done 11 something about it on the Thursday, and not waited for 12 13:30. 13 CHAIRPERSON: Of course, if the 14 discussion that you think took place on Wednesday, in fact 15 took place on Thursday, then that would explain it, 16 wouldn't it? You took some time hammering out the concept, 17 it was a tricky problem, we have discussed the risks that 18 were involved and you as a responsible policeman, were very 19 conscious of those risks, as you told us. So I would have 20 expected you to have taken quite a long time to work out the 21 concept. Now if of course the concept is worked out on the 22 Thursday, as you first remembered, that would explain the 23 facts I put to you, which have been puzzling me for weeks. 24 COLONEL SCOTT: Yes. 25 CHAIRPERSON: No, those are the points</p>	<p style="text-align: right;">Page 15976</p> <p>1 he's worked with me before. So it's possible that that is 2 part of his build up to his confidence in the planning 3 ability. 4 COMMISSIONER HEMRAJ: Now, we've had at 5 least two statements that have said that they thought that 6 the tactical option was an encirclement of the koppie. Now 7 can you help me with what in your briefing was capable of 8 being misunderstood when you did the briefing in the field, 9 what is capable of being so misunderstood like one or other 10 commander would think that what you were briefing was an 11 encirclement of the koppie as opposed to a dispersal as you 12 said. 13 COLONEL SCOTT: Commissioner, that's 14 actually difficult for me, because in my whole reasoning 15 and looking at the layout of those very Nyalas that 16 morning, I can't see how that was ever a consideration in 17 the mind of the actual encirclement physical action, 18 because it just didn't come anywhere close to it, so I've 19 kind of seen that as a possible, either the commander is 20 also, you know, many - here to travel for instance from 21 Johannesburg every day, he wasn't, I don't think he was 22 sleeping in, so their hours were long, they would finish 23 late at night, get back, go, come back the next morning, 24 whether it's a little bit of lack of sleep, he may also be 25 recalling possibly the briefing given at six o'clock that</p>

<p style="text-align: right;">Page 15977</p> <p>1 morning, and not recalling too much of the briefing given 2 at the 14:30 but it's either that or it's a measure of just 3 language issues that they were called the encirclement team 4 or the encirclement group and that's a possibility went 5 forward still thinking in that dimension, instead of 6 actually understanding, he was just to lay out razor wire, 7 because even he understands his function to be what it was 8 and not to encircle. So how he briefed it as encircle, I 9 am not sure. 10 [15:10] COMMISSIONER HEMRAJ: We've had evidence 11 that on the 13th, that's just prior to the incident, that 12 there were two persons arrested with licensed firearms, now 13 are you aware of any information or any intelligence about 14 the prevalence of firearms in the area licensed or 15 unlicensed, have you any information in that regard? 16 COLONEL SCOTT: No, I also wasn't aware 17 until actually later after the operation of the firearms 18 that you're speaking of now. And there was no intelligence 19 either at the time of how many firearms were in the area. 20 I actually knew of the mine security and the police 21 firearms which had been taken but at that stage had not 22 gone into the depth of considering licensed or possibly 23 illegal firearms in possession of the strikers. 24 COMMISSIONER HEMRAJ: Yes, thank you. 25 CHAIRPERSON: Right, okay.</p>	<p style="text-align: right;">Page 15979</p> <p>1 MR SEMENYA SC: Can I ask you this 2 though? When one looks at standing order 262 it is about 3 police operations in public order management events, 4 correct? 5 COLONEL SCOTT: Correct. 6 MR SEMENYA SC: It goes up to the point 7 of a rubber bullet and then says it does not address itself 8 to private or self defence. Do you recall that? 9 COLONEL SCOTT: I think it just mentions 10 that private or self defence is not excluded from – yes. 11 MR SEMENYA SC: Yes, so is it conceivable 12 that you can have a plan where you plan private defence, 13 that people now must shoot each other as part of the plan? 14 COLONEL SCOTT: No. 15 MR SEMENYA SC: I have no further 16 questions. 17 CHAIRPERSON: Well I take it there are no 18 further questions from anybody. We're adjourning earlier 19 today than usual. We recommence at 9 o'clock tomorrow 20 morning. I would like to see - the Commissioners, we'd 21 like to see the evidence leaders and Mr Semenya and such 22 other members of his team as he wishes to bring and we want 23 to discuss logistics and so forth. You know the conduct of 24 the Commission. I think I can now announce that we will be 25 sitting until Thursday, I think it's the 5th of December and</p>
<p style="text-align: right;">Page 15978</p> <p>1 MR SEMENYA SC: Chair. 2 CHAIRPERSON: Yes, Mr Semenya. 3 MR SEMENYA SC: Would there be an 4 opportunity for questions arising? 5 CHAIRPERSON: Of course, I can't see why 6 not. 7 MR SEMENYA SC: Colonel, of course, we 8 may have to obtain evidence of a psychologist, but if you 9 suffer memory loss does that not connote to that there are 10 things you don't remember? 11 COLONEL SCOTT: Yes. 12 CHAIRPERSON: Is that a leading question 13 or not? 14 MR SEMENYA SC: No, I'm going to ask 15 another question arising out of that platform. Is it 16 possible to tell whether because of the absence of that 17 memory you're acting in or out of character? Are you able 18 - the same mind that is disabled about memory to be able to 19 tell whether your conduct is in or out of character? 20 COLONEL SCOTT: I don't know how to 21 answer this because I think we're moving in areas now that 22 are not necessarily part of my – 23 MR SEMENYA SC: It's alright. 24 COLONEL SCOTT: - of expertise but it 25 may be psychologist or –</p>	<p style="text-align: right;">Page 15980</p> <p>1 we'll be taking a recess, but I must stress it's a working 2 recess from then until the 6th of January. There'll be a 3 lot of work to be done in the interim, particularly with 4 regard to such things, I would hope the counsel involved 5 would start preparing preliminary heads of argument on the 6 issues that are covered by the evidence that we – or 7 position heads rather on matters that have been covered and 8 the numerous witnesses we've been hearing since November 9 last year. But I mention that for the benefit of those who 10 wish to make arrangements and don't know what the policy 11 is. But we have to have a recess obviously, but it's also 12 necessary for the purposes I've mentioned so that those of 13 us who've been sitting here every day can read the record 14 and in some cases reread the record to refresh our 15 memories. And that provisional heads can be drafted on the 16 questions. I take it it's pretty clear to many of those 17 present what kinds of issues arise and what sort of matters 18 we will require argument on. So it would be appreciated if 19 the time – in other words it's not a holiday that I'm 20 suggesting we have, but a working session away from the 21 Commission. And also, of course, during that time we will 22 be endeavouring to get extra information which will be 23 relevant for phase 2. 9 o'clock tomorrow morning. Oh 24 Colonel, I owe you an apology. You're excused. You can 25 listen if you like and stay but it's not obligatory and you</p>

1 won't get any black marks or any criticism if you're not
2 here. Thank you very much, you've been very patient with
3 us. You've been here for a long time, you've been asked
4 all sorts of questions and we're grateful to you. You're
5 excused from further attendance unless, of course, the
6 usual caveat, if at some stage something becomes necessary
7 for you to come back, you promise you will come back
8 without our having to issue a subpoena. On that basis
9 you're excused, we'll adjourn till 9 o'clock.

10 COLONEL SCOTT: Thank you, Chairperson.
11 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
12 [COMMISSION ADJOURNED]

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