

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 131

10 SEPTEMBER 2013

PAGES 13858 TO 14048



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1 [PROCEEDINGS ON 10 SEPTEMBER 2013]
 2 [09:16] CHAIRPERSON: The Commission resumes.
 3 We've received some correspondence from the Human Rights
 4 Commission dealing with certain matters, particularly in
 5 relation to information outstanding from the police. I've
 6 spoken to the attorney who represents the police and asked
 7 him to attend to the matter, and he says it has been; I'm
 8 not sure whether it is entirely so, but he did say he
 9 thought it appropriate that there should be a meeting
 10 between his side, as it were, and the representatives of
 11 the Human Rights Commission. I'm pleased to see Mr
 12 Fischer, barrister-at-law, with us today. May I suggest
 13 that during the tea adjournment or during the lunchtime he
 14 and Mr Pretorius could get together and see whether a way
 15 could be found to deal with at least some of the problems
 16 that have been raised. Did I barrister-at-law? Mr
 17 Fischer, counsel, sorry.
 18 MR FISCHER: Thank you, Chair. Ms Hardy,
 19 instructing attorney, will be here at lunchtime, so perhaps
 20 she can join in that meeting.
 21 CHAIRPERSON: No, I think – look, it's
 22 important that we get as much cooperation from the various
 23 parties as we can because, and that the genuine concerns
 24 that have been raised from various sides are addressed. So
 25 perhaps a meeting over the lunch hour would help to achieve

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1 that result, and possibly will be helpful also if one or
 2 other of the evidence leaders were present as well. Thank
 3 you. Colonel, you're still under oath.
 4 DUNCAN GEORGE SCOTT: s.u.o.
 5 CHAIRPERSON: Mr Chaskalson.
 6 MR CHASKALSON SC: Mr Chairperson, we
 7 asked Colonel Scott yesterday to produce a supplemented
 8 version of exhibit JJJ63, which would identify the source
 9 of the various photographs and videos, and we're grateful
 10 to the Colonel for having done so. The document has just
 11 been handed up to the Commissioners. I wonder if we can
 12 mark it exhibit JJJ63A?
 13 CHAIRPERSON: JJJ63 –
 14 MR CHASKALSON SC: Capital A.
 15 CHAIRPERSON: JJJ63A. Do you have any
 16 objection to that, Mr Semenya?
 17 MR SEMENYA SC: No objection, Chair.
 18 CHAIRPERSON: The exhibit is so marked.
 19 Thank you, Colonel. I'm sorry, I always feel sorry for
 20 witnesses when they're given homework assignments to do
 21 overnight, but you accepted the assignment very gracefully
 22 and we're very grateful to you for what you've done. There
 23 was a counter-assignment voluntarily undertaken by the
 24 evidence leaders. I hope they've responded as promptly as
 25 you have.

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1 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):
 2 We're still working on the hard drive, Chairperson. It
 3 does contain several thousand documents. But Colonel,
 4 before we move off from your homework, I just skimmed this
 5 document and I'm grateful to you for having produced it.
 6 It seems to me that there may have been three omissions on
 7 it, which we can quickly cure now. If you go to slide 98
 8 on the second page of the document, the source there I
 9 would – because it's a Warrant-Officer Nong(?) video, would
 10 be SAPS, would it not?
 11 CHAIRPERSON: Sorry, you went too fast
 12 for me. Which number is this?
 13 MR CHASKALSON SC: Slide 98.
 14 CHAIRPERSON: What must we write in that?
 15 MR CHASKALSON SC: I would just ask the
 16 Colonel to confirm that on slide 98 against 052.MTS the
 17 source would have been SAPS.
 18 COLONEL SCOTT: That's correct.
 19 MR CHASKALSON SC: And then on slide 192
 20 Mr Green.jpg, I'll need guidance from the Colonel, my
 21 instinct would be that the source would be media, but the
 22 Colonel may be able to confirm that.
 23 COLONEL SCOTT: Yes, I was also under
 24 that impression that it was media.
 25 CHAIRPERSON: Sorry, 192?

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1 MR CHASKALSON SC: 192.
 2 CHAIRPERSON: I see.
 3 MR CHASKALSON SC: And 201 is –
 4 COLONEL SCOTT: SAPS.
 5 MR CHASKALSON SC: - is SAPS, is
 6 photographs taken by SAPS. And that seems to account for
 7 everything.
 8 CHAIRPERSON: Mr Chaskalson, Adv Hemraj
 9 asked me a question which I don't know the answer, but I'm
 10 sure you do. Which file must this exhibit JJJ63A be
 11 inserted in once it's been duly punched? I supposed it's
 12 to go after 63. JJJ63 is in which file?
 13 MR CHASKALSON SC: Well, the man who can
 14 give me an answer to that I'm afraid has just left the
 15 room, but can we come back to you on that?
 16 CHAIRPERSON: Well, once he comes back in
 17 the room, let him come back to me.
 18 MR CHASKALSON SC: Colonel, if we can
 19 then pick up from where we were in yesterday's testimony,
 20 and just to recap, you were shown footage of the missing
 21 Nel video 229 and you'd agreed that it showed footage of
 22 Sergeant Venter throwing a stun grenade from the helicopter
 23 that was commanded by Brigadier Fritz in a position which
 24 was approximately a kilometre to the west of koppie 3.
 25 COLONEL SCOTT: Yes.

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1 MR CHASKALSON SC: And I'd read to you
 2 Sergeant Venter's explanation in her pocketbook for her use
 3 of stun grenades, and just to remind you, the entry is at
 4 in her pocketbook, which is exhibit JJJ55, and I'll
 5 read it again. "Tydens lug steun sien Sersant Venter hoe
 6 stakers op die SAPD lede afstorm met pangas, knopkieries.
 7 Het ook gesien dat sommige lede van die stakers handwapens
 8 het. Verleen hulp aan SAPD, gooi drie 'stun grenades' om
 9 stakers met pangas en knopkieries uitmekaar te jaag om te
 10 verhoed dat SAPD lede verder aangeval word, asook om te
 11 help dat SAP lede persone met wapens kan arresteer." And
 12 you had conceded that you were unaware of any incidents one
 13 kilometre to the west of koppie 3 where members of SAPS had
 14 been charged at by a group of strikers armed with pangas,
 15 knobkieries, or handguns.

16 COLONEL SCOTT: Yes, I wasn't aware of
 17 anything that happened that far out.

18 CHAIRPERSON: That of course was hearsay,
 19 but as I understood your evidence, you had made it your
 20 business to endeavour to obtain information, as much
 21 information as you could –

22 COLONEL SCOTT: Yes.

23 CHAIRPERSON: - about what happened
 24 there. So if that had happened, one would have expected
 25 that incident to have been reported to you. Is that

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1 correct?

2 COLONEL SCOTT: Yes. Chairperson, in the
 3 defence of Warrant-Officer Venter as well, it's a
 4 pocketbook entry which is made after the fact and I think
 5 it would be more accurate should she deliver a statement on
 6 the issue, because a pocketbook is something once again
 7 done in hindsight where she would simply be trying to
 8 capture the events of the day, as a police officer would,
 9 and not necessarily in the accuracy that I think a
 10 statement from her side would provide. Because I think,
 11 with all respect, she is referring to incidents that
 12 happened possibly at scene 1 or scene 2 and not where, you
 13 know, that distance from the – because I'm not aware of
 14 anything that happened that far from scene 2.

15 CHAIRPERSON: To be fair, if something of
 16 that kind had happened –

17 COLONEL SCOTT: I would know about it.

18 CHAIRPERSON: - I take it one would have
 19 expected that to have been reported to you when you sought
 20 to obtain as much information as you could about what
 21 happened. Is that right?

22 COLONEL SCOTT: Exactly.

23 CHAIRPERSON: I think that's a very fair
 24 answer, thank you.

25 MR CHASKALSON SC: We will ask for a

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1 statement from Sergeant Venter in due course. For present
 2 purposes I would merely point out to the Commission that it
 3 would be highly unlikely that she was referring to anything
 4 that happened at scene 1 because she only got into the –

5 CHAIRPERSON: Ja well, that's an argument
 6 to – I suppose theoretically it's possible, but let's hear
 7 what she has to say. If necessary, she can be cross-
 8 examined.

9 MR CHASKALSON SC: Now the second missing
 10 video from Captain Nel's series was video 230. We don't
 11 need to play it, unless you'd like to play it, but if I can
 12 just show you a screenshot from .24 seconds into that video
 13 – it will be JJJ71, and the screenshot is at 24 seconds of
 14 the video. We've printed out a copy for the Commissioners;
 15 it's at page 183 of file 1. 183 of file 1.

16 CHAIRPERSON: Has the witness got a copy,
 17 or must I lend him my file 1?

18 MR CHASKALSON SC: It is on the screen
 19 behind you, Chairperson.

20 COLONEL SCOTT: I'm happy with that,
 21 Chair.

22 CHAIRPERSON: I understand you haven't
 23 been favoured with a set of files because you were given
 24 the references, of course, but if you ever feel the need to
 25 look at the file, just let me know and I'll lend you mine.

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1 COLONEL SCOTT: Okay.

2 MR CHASKALSON SC: And Colonel, would you
 3 agree that what we see in this screenshot appears to be a
 4 stun grenade in the right hand of Sergeant Venter?

5 COLONEL SCOTT: Warrant-Officer, Sergeant
 6 Venter, yes. I agree.

7 MR CHASKALSON SC: Thank you. I'd now
 8 like to refer you to the evidence of Colonel Botha in
 9 relation to the stun grenades, and for that we need to turn
 10 to page 427 of the transcript, and I wonder if page 427 of
 11 the transcript can be put up on the screen so that you can
 12 see it in front of you? I must apologise for this;
 13 apparently it cannot be put up. Can I read the evidence of
 14 Colonel Botha at page 427, and if you would like the
 15 hardcopy, we'll get a hardcopy made available for you. At
 16 427 Colonel Botha was being questioned by Mr Mpofu, and
 17 from line 10 the testimony proceeds as follows. Mr Mpofu
 18 says, "Your evidence earlier was that part of the
 19 activities of the people in your helicopter was to throw a
 20 stun grenade, two stun grenades, if I am correct. Is that
 21 right?" Lieutenant-Colonel Botha, "That is correct, Mr
 22 Chair." Mr Mpofu, "At whom or at what? What was the
 23 target?" Lieutenant-Colonel Botha, "Sir, it was an
 24 operation proceeding taken by Brigadier Fritz. He just
 25 gave the instruction." And that's the passage I would

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1 emphasise, "Sir, it was an operation proceeding taken by
2 Brigadier Fritz. He just gave the instruction."
3 Then later in the evidence of Colonel Botha he
4 was questioned by Mr Burger for Lonmin –
5 CHAIRPERSON: Page?
6 MR CHASKALSON SC: 579 at the foot of the
7 page, line 24 to over the page 580, and Mr Burger asked
8 him, "Who gave the order for stun grenades to be fired?"
9 and the answer at the top of page 580, Lieutenant-Colonel
10 Botha, "Brigadier Fritz," and then later on at page 586 Mr
11 Burger continued, "On the third possible function, namely
12 that of crowd control, we do not have enough facts yet to
13 make a submission, so may I ask you why was it necessary to
14 fire stun grenades at the crowd when it was done?" and the
15 answer of Lieutenant-Colonel Botha was, "Sir, that's an
16 operational call that was made by Brigadier Fritz. I don't
17 know. You'll have to ask him." So the repeated evidence
18 of Colonel Botha was that the instruction to throw stun
19 grenades came from your commanding officer in the STF,
20 Brigadier Fritz.
21 COLONEL SCOTT: I hear so, yes.
22 MR CHASKALSON SC: And you're happy to
23 accept that on the reading of the transcript that I've
24 given to you? You don't need to read the transcript
25 yourself?

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1 COLONEL SCOTT: Yes, yes.
2 MR CHASKALSON SC: Now when Colonel Botha
3 testified on the 30th of October, my learned friend for
4 SAPS, Mr Semenya SC, did seek to correct some issues of
5 Colonel Botha's testimony at pages 572 to 574 of the
6 record, but he didn't place in issue Colonel Botha's
7 evidence that the instruction to throw the stun grenades
8 came from Brigadier Fritz. You're happy to accept that?
9 COLONEL SCOTT: Yes.
10 MR CHASKALSON SC: Thereafter Brigadier
11 Fritz furnished his first statement. That's exhibit GGG8,
12 which on its face was signed on 5 November, and I wonder if
13 we can call that up. And if we can go down to paragraph 7,
14 which is the relevant paragraph of the statement, "During
15 the flight the ALEO then threw a stun grenade close to the
16 running crowd, about 30 metres away from them. She then
17 moments later threw another stun grenade some 30 metres
18 from another crowd. The chopper was between 20 and 30
19 metres from the ground. She had not been instructed to do
20 so. She had sought permission to do so from me, and I
21 allowed her. The stun grenade incidents were more than a
22 kilometre away from the koppie to the west thereof in the
23 direction of the Karee Mine."
24 Now for reasons which weren't altogether clear to
25 the evidence leaders in this statement of 5 November 2012,

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1 Brigadier Fritz did not provide any explanation for the
2 throwing of the stun grenades. He only asserted that he
3 hadn't given an order for them to be thrown; he had
4 permitted them to be thrown. So in advance of, well, in
5 the expectation of the testimony of Brigadier Fritz before
6 this Commission, the evidence leaders sent Brigadier Fritz
7 a list of questions which we wanted him to address in his
8 supplementary statement, and one of those concerned the
9 purpose Brigadier Fritz sought to achieve in authorising
10 the throwing of the stun grenades, and then about a week
11 ago we received Brigadier Fritz's supplementary statement,
12 which is dated 4 August 2013 - I suspect it should be 4
13 September 2013 because, but nothing turns on that – and
14 we'd like to introduce that statement as exhibit JJJ72, and
15 it is at page 864 of file 3.2 at –
16 CHAIRPERSON: File?
17 MR CHASKALSON SC: Of file 3.2, and if we
18 can call up JJJ72, and if we can go to paragraph 7. It's
19 again paragraph 7 in which the issue of the stun grenades
20 is addressed, and there Brigadier Fritz says the following
21 under the heading 'Stun Grenades,' "I did not know at the
22 time what the name of the person was who threw the stun
23 grenades from the chopper. I now know that it was the air
24 law enforcement officer, Sergeant Venter. I did not
25 instruct that stun grenades be thrown from the chopper; I

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1 permitted it when the ALEO told me that her unit had used
2 this method of dispersal of crowds very successfully in the
3 past. Since I am not a crowd management or public order
4 person, I was in no position to disagree with her. None of
5 the other three people in the chopper disagreed with her on
6 this issue. The ALEO said that the purpose of throwing the
7 stun grenade was to disperse the crowds. The size of the
8 groups where the stun grenades were thrown was about 30
9 people. When two stun grenades were thrown, the chopper
10 flew at a height of about 20 to 30 metres above the ground.
11 As regards the precise position where the stun grenade was
12 thrown, I shall provide a map and indicate the approximate
13 vicinity at which it was thrown. I shall not be able to
14 give the precise place, but it was at an open space next to
15 a footpath approximately one kilometre from the koppies.
16 The purpose for permitting the throwing of the stun
17 grenades was to disperse the crowds of who were having
18 blankets around them, in order for the police to identify
19 who among the crowds had firearms."
20 So if I can give you what I understand Brigadier
21 Fritz to be saying, he says first of all that he
22 effectively deferred to Sergeant Venter on the wisdom of
23 throwing the stun grenades. You accept that?
24 COLONEL SCOTT: Yes.
25 MR CHASKALSON SC: But the reason he

<p style="text-align: right;">Page 13870</p> <p>1 gives for allowing the stun grenades to be thrown is not 2 wholly consistent with the reason that Sergeant Venter 3 recorded in her pocketbook as her reason for throwing them. 4 Sergeant Venter spoke about wanting to support SAPS members 5 in the field by dispersing armed strikers who'd been 6 charging at the SAPS with pangas and knobkieries, and thus 7 preventing further attacks on SAPS and helping SAPS to 8 arrest the armed strikers. Brigadier Fritz on the other 9 hand says nothing about strikers attacking the police; he 10 says the purpose was to disperse crowds who had blankets 11 around them so that the police could identify who among the 12 crowd had firearms. Would you accept that? 13 [09:36] COLONEL SCOTT: Again I think it's 14 necessary to raise that it's a pocketbook entry. It's not 15 a statement from Sergeant Venter, and that I don't think 16 she would be giving in that confined space of a pocket book 17 the full story, I think she's reflecting more onto the 18 event of Marikana when she's speaking about what she is 19 alluding to. 20 MR CHASKALSON SC: I see, well look we 21 will in due course have to take this up with Brigadier 22 Fritz and Sergeant Venter but for present purposes I'd want 23 to ask you that in terms of the deployments that you had 24 arranged in terms of your plan for the day, while scene 2 25 was taking place what SAPS members would have been in a</p>	<p style="text-align: right;">Page 13872</p> <p>1 you if you would like me to, or are you willing to accept 2 it on my say so? 3 COLONEL SCOTT: Are these the two stun 4 grenades that we watched yesterday? 5 MR CHASKALSON SC: Well there are two – 6 maybe we should go to two minutes, 15 seconds of the video 7 229 which was CC – 8 COLONEL SCOTT: If it's the video we 9 watched yesterday I'm – 10 MR CHASKALSON SC: It is, I'm not sure, I 11 think I stopped the display of the video before we reached 12 that point because I only took it – I was wanting to save 13 time, I took it to the first stun grenade. There's a 14 second stun grenade that gets thrown later and I don't want 15 you to think that what you saw yesterday is what I'm 16 describing now. So let's roll it to 2:15 of video 229. 17 Sorry, can you just confirm the point in the video at which 18 we are – I'll stop at this point. We should be watching 19 CC32. We've stopped at 2 minutes 15 and Sergeant Venter is 20 out of the – has opened the door of the helicopter again. 21 If we just roll. 22 [VIDEO SHOWN] 23 MR CHASKALSON SC: And would you accept 24 that what we appear to have seen there was Sergeant Venter 25 throwing a stun grenade?</p>
<p style="text-align: right;">Page 13871</p> <p>1 position where they would have been able to identify 2 firearms under blankets on strikers fleeing the scene 3 approximately a kilometre to the west of koppie 3? What 4 SAPS members would have been in a position to – 5 COLONEL SCOTT: Well in hindsight, 6 knowing how the SAPS members moved, not that scene 2 was 7 part of the planning process, that stopped at the re- 8 organise line for decisions to be made and thereafter what 9 to do. But from my hindsight on knowing who moved where 10 the people fleeing towards the west, the police members on 11 ground in that direction were the forward holding area 2 12 members being under Captain Kidd's command. And that was a 13 grouping of public order policemen, TRT members and I think 14 there was the odd dog handler who did not have their dogs 15 with them at that time. 16 MR CHASKALSON SC: That's what we thought 17 too but then we looked at the times of videos 229 and 230 18 and what occurred to us was that at that stage Captain 19 Kidd's team and the reserves from forward holding area 2 20 under his command had long since left forward holding area 21 2 and were at this stage already at the koppie. If I can 22 explain that timing to you, if we go to Captain Nel's video 23 229 at two minutes 15 seconds to two minutes, 25 seconds 24 into that video we see sergeant Venter edging out of the 25 helicopter to throw a stun grenade out. I can show that to</p>	<p style="text-align: right;">Page 13873</p> <p>1 COLONEL SCOTT: Yes. 2 MR CHASKALSON SC: Now, if we go back to 3 our reconciliation of times, we see that the point at 2:15 4 of Captain Nel's video 229 translates to an ETV time of 5 16:08:40, 16:08:40, now that is more than a minute after 6 what has become something of a signature shot in this 7 Commission which is the blue dye, white water shot at scene 8 2 that was taken by Colonel Vermaak in his Pentax in file 9 JJJ10 457. So can we call up JJJ10 4547? And if we can 10 call up 4547? Do we have the photograph file 4547 11 accessible to call up? We seem only to have the 12 screenshot, I wonder if I can ask Mr Wesley just to make a 13 copy, quickly to make a copy of that onto a memory stick 14 because he'll have it on his hard drive under the 16th of 15 August directory? And to copy it over, it will take only a 16 minute but it is quite an important file to show. 17 COMMISSIONER HEMRAJ: Mr Chaskalson, 18 while that's happening, I don't know if the witness has 19 read Brigadier Fritz's before but I just want to enquire, 20 paragraph 6.4 and 6.5, is that perhaps not germane to the 21 discussion and might not the witness be referred to that as 22 well? 23 MR CHASKALSON SC: Colonel, do you have 24 the supplementary statement of Brigadier Fritz to hand? 25 COLONEL SCOTT: No, not his – but I'd be</p>

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1 happy if you read it.

2 MR CHASKALSON SC: I think you should

3 have it in front of you because the Commissioner's

4 concerned about a particular passage and I will want to,

5 depending on your response, I may want to take it further

6 with you.

7 CHAIRPERSON: While he's looking may I

8 ask was the witness given notice of the fact that he would

9 be questioned on this supplementary statement of Brigadier

10 Fritz?

11 MR CHASKALSON SC: Yes, Chairperson, it

12 was quite short notice because the supplementary statement

13 only came in a few days ago but he was given notice.

14 CHAIRPERSON: He was given notice –

15 MR CHASKALSON SC: Colonel, Commissioner

16 Hemraj was referring to paragraph 6.4 where Brigadier Fritz

17 states "we then flew back to Wonderkop and turned left just

18 north to the scene and flew back towards to the Karee Mine.

19 From there we flew to the power station and around the

20 scene back to the north-western side of the scene focusing

21 on the people running to the Karee Mine's area. We then

22 hovered close to some of the members at holding area 2

23 indicating to them not to run to the koppie area but more

24 to the north to prevent the armed strikers to go to the

25 Karee Mine. For a while we focused on the area north-west

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1 of the scene, that is where ALEO Sergeant Venter threw the

2 stun grenades." The area north-west –

3 CHAIRPERSON: That is "when."

4 MR CHASKALSON SC: That is when – I beg

5 your pardon, Chairperson, "that is when Sergeant Venter

6 threw the stun grenade." Is there anything that you would

7 want to say in response to my earlier question to you on

8 the basis of 6.4?

9 COLONEL SCOTT: If you can refresh my

10 memory on the question on 6.4?

11 MR CHASKALSON SC: It is a while. Let's

12 look at the 4547 –

13 CHAIRPERSON: Before you carry on can I

14 ask a question? In paragraph 7.4 he says he'll provide a

15 map indicating the approximate vicinity in which the stun

16 grenade was thrown. Has he provided that map? Because if

17 he provided the map then a lot of the points that are now

18 being debated may well either fall away or they could be

19 dealt with, with more precision.

20 MR CHASKALSON SC: We haven't received

21 that map but we can locate the position of the helicopter

22 in rough terms from the visuals that we see coming out of

23 the helicopter's window as we did with Colonel Scott

24 yesterday where Colonel Scott identified koppie 3 and

25 estimated that we were a kilometre to the west of koppie 3.

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1 COLONEL SCOTT: Chairperson, I assisted

2 him with that map, it's actually on my computer. He

3 actually showed me where and I just put two icons on Google

4 Earth for him and then –

5 CHAIRPERSON: Well if you can give us

6 that information now then that might shorten proceedings a

7 bit. You say you've got it on your computer, have you got

8 your computer with you?

9 COLONEL SCOTT: Yes.

10 CHAIRPERSON: Can you print it out? Or

11 perhaps – I'll tell you what to do, would it be convenient

12 for us to revert to the map part after tea so the Colonel

13 has an opportunity during tea to print that thing? Or is

14 there something that could be done while you're still

15 giving evidence, if you can find it on your computer and –

16 COLONEL SCOTT: I think it was sent to

17 Brigadier Pretorius's computer for printing purposes, so if

18 he can be contacted.

19 CHAIRPERSON: Oh I see, well let's ask

20 the SAPS representative, Mr Semenya can you or your

21 attorney help us with this map at the moment? It may

22 shorten the proceedings a bit if we have the precise

23 position.

24 MR SEMENYA SC: Yes, we will –

25 CHAIRPERSON: Alternatively it can be

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1 obtained I take it reasonably quickly?

2 MR SEMENYA SC: We certainly will, Chair.

3 CHAIRPERSON: It is required, thank you.

4 MR CHASKALSON SC: To come back to this

5 photograph, if we zoom in on the dry dam to the south-west

6 of Koppie 2 –

7 CHAIRPERSON: I think you should give us

8 the reference to what we're now seeing so that when we read

9 the record later and when historians and others in the

10 future read it they'll know what exactly is happening.

11 MR CHASKALSON SC: Chairperson, it's

12 JJJ10.4547 and I'd asked Mr Wesley to assist our video

13 operator to zoom into the dry dam but actually to zoom the

14 picture in so that we can see what the picture shows when

15 we zoom it in. And move a little bit to the right and stop

16 there and zoom in a bit further if possible. Now Colonel,

17 would you agree that the men that we see there, entering

18 the dam and moving up to the – alongside the western side

19 of the dam are Captain Kidd's TRT line or Captain Kidd's

20 reserve forces from forward holding area 2.

21 COLONEL SCOTT: That's correct.

22 MR CHASKALSON SC: Now the time of this

23 photograph in ETV time is 16:10:30, 16:10:30. I beg your

24 pardon 16:07:24, 16:07:24, 16:10:30 is another moment to

25 which I will move now. 16:07:24.

<p style="text-align: right;">Page 13878</p> <p>1 COLONEL SCOTT: I accept that.</p> <p>2 MR CHASKALSON SC: And if we go back to</p> <p>3 the screenshot of Sergeant Venter holding a stun grenade at</p> <p>4 24 seconds of video 2:30 that would translate into an ETV</p> <p>5 time of 16:10:30, that's what 16:10:30 is .</p> <p>6 COLONEL SCOTT: Okay.</p> <p>7 MR CHASKALSON SC: So if we can recap</p> <p>8 everything now. 229 and 230 show footage from the chopper</p> <p>9 of Brigadier Fritz of Sergeant Venter holding and throwing</p> <p>10 stun grenades. Colonel Botha says Brigadier Fritz</p> <p>11 instructed her to throw stun grenades but Brigadier Fritz</p> <p>12 he didn't. Brigadier Fritz he deferred to Sergeant</p> <p>13 Venter's reasons for throwing stun grenades but the reason</p> <p>14 he gives don't match the reasons she records in her pocket</p> <p>15 book. You're nodding your head through each one of these</p> <p>16 propositions I'm putting to you. Can I take it that -</p> <p>17 CHAIRPERSON: Colonel Botha gives a</p> <p>18 different account. He says he doesn't know what the reason</p> <p>19 was, it was an operational order given by Brigadier Fritz.</p> <p>20 Brigadier Fritz says that he got the reason from Sergeant</p> <p>21 Venter. All the people in the helicopter heard it, no one</p> <p>22 disagreed with her and therefore he gave her authority</p> <p>23 which means that Lieutenant-Colonel Botha would have heard</p> <p>24 what Sergeant Venter had said, if that was true and known</p> <p>25 what the reason was and wouldn't have said it was</p>	<p style="text-align: right;">Page 13880</p> <p>1 reasoning with you on what you're showing but just a couple</p> <p>2 of factors. Approximately two minutes after the photo</p> <p>3 we're seeing the stun grenades are thrown and I know that</p> <p>4 there is other photographs which show a lot of strikers</p> <p>5 just to the north of koppie 2 which evidently Brigadier</p> <p>6 Calitz and his teams went to intercept, as well as TRT</p> <p>7 members which are shown in that photograph with their</p> <p>8 berets on which assisting with that arresting and</p> <p>9 intercepting to the north. Now, for protesters to be at</p> <p>10 least one kilometre from scene 2, if they ran it they could</p> <p>11 have run it between four to six minutes. If they walked it</p> <p>12 they would have walked it in anything from eight to twelve</p> <p>13 minutes. So the fact that the TRT members are at scene 2,</p> <p>14 sweeping through, preventing anybody coming through with</p> <p>15 firearms or weapons for that matter means that they would</p> <p>16 need to have been there 10 minutes earlier to have</p> <p>17 prevented the initial groups that had walked away which</p> <p>18 Brigadier Fritz then could be referring to which are at</p> <p>19 least a kilometre now already from scene 2.</p> <p>20 MR CHASKALSON SC: Yes, but at the point</p> <p>21 at which the stun grenades were thrown which is -</p> <p>22 COLONEL SCOTT: Two minutes after this</p> <p>23 photograph.</p> <p>24 MR CHASKALSON SC: Two minutes after this</p> <p>25 photo. Approximately, where was Colonel Kidd's team?</p>
<p style="text-align: right;">Page 13879</p> <p>1 operational order given by Brigadier Fritz. So there's a</p> <p>2 third version which is different from the other two.</p> <p>3 MR CHASKALSON SC: Thank you, Chair,</p> <p>4 Colonel Scott, would you accept what the Chair has just put</p> <p>5 to me as a further inconsistency?</p> <p>6 COLONEL SCOTT: Yes, and maybe just to</p> <p>7 add that my logic would tell me that whoever brought the</p> <p>8 stun grenades with had an intention. You don't take a stun</p> <p>9 grenade in a helicopter. If it was Brigadier Fritz that</p> <p>10 had brought the stun grenades he would have given them to</p> <p>11 someone to throw, maybe sitting in the middle seat. If it</p> <p>12 was somebody that brought the stun grenades they had the</p> <p>13 pre-intention of doing what they were going to do. That</p> <p>14 could prove Brigadier Fritz's version as being correct.</p> <p>15 MR CHASKALSON SC: Now if we get to</p> <p>16 Brigadier Fritz's version he says that the purpose was to</p> <p>17 disperse crowds who had blankets around them so that the</p> <p>18 police could identify who among the crowd had the firearms.</p> <p>19 But when these stun grenades were being thrown the police</p> <p>20 unit that might otherwise have been able to intercept these</p> <p>21 people had already moved up to koppie 2 and was no longer</p> <p>22 at forward holding area 2, sorry to scene 2, koppie 3. So</p> <p>23 were there any policemen to the west who would have been</p> <p>24 able to intercept that crowd at that point?</p> <p>25 COLONEL SCOTT: Again I'm speaking from</p>	<p style="text-align: right;">Page 13881</p> <p>1 COLONEL SCOTT: Two minutes after -</p> <p>2 MR CHASKALSON SC: Captain Kidd's -</p> <p>3 COLONEL SCOTT: Captain Kidd's team was,</p> <p>4 I'm presuming that they would have been at that stage lying</p> <p>5 down if I can remember the sequence of photographs, I think</p> <p>6 they'd had their first encounter by that time with the</p> <p>7 strikers.</p> <p>8 MR CHASKALSON SC: It was roughly at the</p> <p>9 time of their first encounter of the strikers and they</p> <p>10 would have been taking cover around the rocks that we see</p> <p>11 here.</p> <p>12 COLONEL SCOTT: Yes.</p> <p>13 MR CHASKALSON SC: Would that be correct?</p> <p>14 So they wouldn't have been in a position to intercept</p> <p>15 people running way one kilometre to the West, would they?</p> <p>16 [9:56</p> <p>17 COLONEL SCOTT: No, they wouldn't have</p> <p>18 been, but it's not to say that was the only group moving to</p> <p>19 the west. Again I'm not playing the advocate for Brigadier</p> <p>20 Fritz in the chopper, but if you consider, I don't think</p> <p>21 there was only one group moving; there were probably more</p> <p>22 than one because Brigadier Calitz's group even intercepted</p> <p>23 people at this time, which means there was a flow of people</p> <p>24 moving to the west.</p> <p>25 MR CHASKALSON SC: Yes, but the question</p>

<p style="text-align: right;">Page 13882</p> <p>1 that I, or the issue that I'm putting to you is that there 2 wasn't a police unit in a position to intercept people who 3 were already one kilometre to the west. 4 COLONEL SCOTT: No. 5 MR CHASKALSON SC: Thank you – 6 CHAIRPERSON: I take it you mean yes, you 7 agree with the proposition? 8 COLONEL SCOTT: Yes, I agree within; no, 9 there wasn't a unit that far out, yes. 10 MR CHASKALSON SC: If we can now move to 11 exhibit L, slide 146. Now this is a slide in which you set 12 out the functions that were to be performed by Brigadier 13 Fritz in terms of your plan. Is that correct? 14 COLONEL SCOTT: The slides that you're 15 showing now, which depict the tables, were – 16 CHAIRPERSON: Yes, no, but if you start 17 at slide 135, you explain that these tables were compiled 18 afterwards. 19 COLONEL SCOTT: Yes. 20 CHAIRPERSON: But you explain why that 21 was, but you then set out what the briefing was and what 22 these various – 23 COLONEL SCOTT: Yes. 24 CHAIRPERSON: - groups were supposed to 25 be doing.</p>	<p style="text-align: right;">Page 13884</p> <p>1 confirm that this would have been essentially the function 2 to be performed by Brigadier Fritz after you had moved to 3 phase 3, stage 3? 4 COLONEL SCOTT: Yes, what he was – what 5 was expected of him with his chopper was to look at the 6 tactical forces and their part of the operation, as well as 7 anything wayward, because there was an Oryx helicopter with 8 a team of tactical forces that could be deployed to wayward 9 incidents should they be required. So he had a dual 10 purpose; amongst others also with his role of conveying 11 information if he could, or raising whatever issues he 12 thought necessary, but what he was expected to do was look 13 at the tactical forces and what they were doing, and to, as 14 I say, look at whatever was happening away from the main 15 POPs dispersion area, if there were any incidents occurring 16 wayward that he would need to deal with, with the backup 17 force coming via Oryx helicopter, if necessary. 18 MR CHASKALSON SC: I'm interested in the 19 aerial command function because it seems to me that once 20 you move from stage 2 to stage 3, aerial command of the 21 tactical forces becomes even more important. Would you 22 accept that? 23 COLONEL SCOTT: It would, but it's not 24 taking away the function of POPs with the ground commander, 25 with an operational commander on the ground with his</p>
<p style="text-align: right;">Page 13883</p> <p>1 COLONEL SCOTT: Yes. 2 CHAIRPERSON: And you set out in tabular 3 form for us to make it easier to follow, and 146 is the one 4 which you compiled later, admittedly, but effectively 5 reflecting – 6 COLONEL SCOTT: Yes, yes. 7 CHAIRPERSON: - I take it, what the 8 briefing was that the people in that helicopter were 9 given – 10 COLONEL SCOTT: Yes. 11 CHAIRPERSON: - before they set out. Is 12 that correct? 13 COLONEL SCOTT: It's correct, 14 Chairperson. I just wanted to point out that this is 15 reflecting stage 2. The difference for stage 3 was not 16 much different, but there are going to be issues mentioned 17 there under 'comments' for instance which the deploying of 18 the forces from immediate reaction area for instance is not 19 part of phase 3, or stage 3. Those forces were already 20 deployed. So just in case discrepancies like that would 21 come up, but the, what he was to do remains pretty much the 22 same. But this briefing that you're seeing here was the 6 23 o'clock the morning, the deployment for a stage 2 briefing, 24 or a phase 2. 25 MR CHASKALSON SC: But Colonel, you do</p>	<p style="text-align: right;">Page 13885</p> <p>1 forces, and I know that – I don't want to pre-empt any 2 questions, so I'll – 3 MR CHASKALSON SC: But if we can just 4 explore this a little further. Once you move to phase 3, 5 to stage 3 – excuse my interchange of phase and stage, at 6 this stage I'm just referring to stage 3, so if I say 7 phase, it's stage. I'll try not to. Once the operation 8 has moved to stage 3, you have specific functions assigned 9 to the tactical forces to deal with high-risk arrests. 10 COLONEL SCOTT: Yes. 11 MR CHASKALSON SC: And those functions 12 may have to be executed in terrain that is difficult. 13 COLONEL SCOTT: Yes. 14 MR CHASKALSON SC: And terrain that is 15 not easy to observe in its totality from the ground. 16 COLONEL SCOTT: Yes, I would believe so, 17 yes. 18 MR CHASKALSON SC: So the aerial command 19 of the tactical forces becomes particularly important. 20 COLONEL SCOTT: Well, you can't defer the 21 fact that the groups on the ground have their own team 22 leaders and ground command with them as well. 23 MR CHASKALSON SC: But the command of the 24 tactical forces in relation to effecting high-risk arrests 25 is going to be a function that is going to be performed at</p>

<p style="text-align: right;">Page 13886</p> <p>1 least in tandem with the aerial command STF heli – well, 2 the aerial command post in the helicopter. Is that not 3 correct? 4 COLONEL SCOTT: Again from the air 5 Brigadier Fritz would not be giving tactical command to 6 ground forces. He may, the idea was that he would be the 7 eye in the sky in a sense, and from, as being the eye in 8 the sky and due to his rank designation, being the overall 9 commander of those forces, if he needed to make a 10 contingency call on their behalf then he would be able to 11 do so. If he needed to pull TRT away from koppie 2 because 12 he saw that the STF and NIU were encountering major 13 trouble, he would be able to do and make that executive 14 decision based on those tactical forces. 15 MR CHASKALSON SC: And that I presume is 16 what you're trying to capture in that first bullet point, 17 direct the counteraction should the tactical forces from 18 immediate reaction areas be deployed as part of the 19 solution to an action by protesters, considering the POPs 20 members have relinquished control and withdrawn due to 21 threats surpassing POPs' capability. 22 COLONEL SCOTT: And that's what it's 23 saying there, and that's applicable for a phase 2 and a 24 phase 2, if this was necessary, meant that the police were 25 under attack and that they would have needed to have closed</p>	<p style="text-align: right;">Page 13888</p> <p>1 yes. 2 MR CHASKALSON SC: Now if we can cut back 3 then to the photograph of JJJ10, 4547, and maybe if at this 4 point we can zoom back so that we can see the full 5 photograph and the full scene that it depicts, would you 6 agree that at this point when the operation has moved to 7 koppie 3 there are no POPs members outside of their Nyalas? 8 COLONEL SCOTT: No. I'd agree with you; 9 no, there are none that I can see outside their Nyalas, 10 yes. 11 MR CHASKALSON SC: And in terms of 12 previous slide that we saw, the bullet point on slide 146, 13 which we don't need to call up again, at this stage the 14 tactical forces from the immediate reaction areas have been 15 deployed? 16 COLONEL SCOTT: Yes, they were called in 17 already prior to the then stage 3 beginning. 18 MR CHASKALSON SC: Yes, and we have a 19 situation here where what is going to unfold is that 20 mineworkers are going to entrench themselves into koppie 3 21 and there's going to be a need to get them out of there. 22 Is that not correct? 23 COLONEL SCOTT: Well, that's – yes, I 24 hear what you say. I don't – 25 MR CHASKALSON SC: Would you accept that</p>
<p style="text-align: right;">Page 13887</p> <p>1 off their razor wire, and if the tactical forces were 2 requested to intervene, it means that the POPs have 3 withdrawn into their Nyalas in this instance, or have 4 withdrawn because their capability, their force continuum 5 was not sufficient to deal with the threat that was posed 6 to them. 7 MR CHASKALSON SC: Now Colonel, you're 8 confusing me with phase and stage. Are you referring to 9 stage 2, or phase 2 of stage 3? 10 COLONEL SCOTT: No, I'm talking to the 11 phases now. As I say, only after 13:30, or after I briefed 12 them at 14:30 did we get to stages. So I'm trying to stick 13 to phases because it's all pre-14:30 time. 14 MR CHASKALSON SC: Then I must apologise 15 to you. So you're describing phase 2 of the operation, the 16 plan for phase 2 of the operation? 17 COLONEL SCOTT: Yes, the Thursday morning 18 deployment. 19 MR CHASKALSON SC: But a fortiori, once 20 we have shifted over to phase 3 and once the tactical 21 forces have been deployed in phase 3, that command, aerial 22 command function that you have in the first bullet point 23 would become an important function to be exercised by 24 Brigadier Fritz. Is that not correct? 25 COLONEL SCOTT: It would be, as I said,</p>	<p style="text-align: right;">Page 13889</p> <p>1 it's a broadly accurate description – 2 COLONEL SCOTT: Yes. 3 MR CHASKALSON SC: - of what is going to 4 unfold? 5 COLONEL SCOTT: Yes, yes. 6 MR CHASKALSON SC: And in that context it 7 would be important to have tactical forces to execute the 8 high-risk arrests that may need to be executed? 9 COLONEL SCOTT: Well, again I don't want 10 to – we're going to move in the direction that I give my 11 opinions on what happened there and again I want to just 12 state for the record, it's unfair of me to sit with the 13 hindsight that I have and to make these calls on commanders 14 that were on ground with the limited knowledge they had, 15 the limited visibility they had, and we're looking at an 16 aerial picture, to give the ideal situation, or how an 17 ideal commander should have run it at that time. So it's 18 difficult for me to do that, to judge my peers, knowing 19 what I know now, compared to what they knew at that time. 20 MR CHASKALSON SC: You see, Colonel, 21 that's getting to the point I want to make, which is to be 22 able to have this aerial picture and to be able to exercise 23 command with the aid of this aerial picture, one really 24 needs one's aerial command post to be in a position close 25 to or above the koppie to be able to direct the tactical</p>

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1 forces. Would you accept that's correct?

2 COLONEL SCOTT: Yes, I accept that, and

3 again it's hearsay, but what I have heard spoken from

4 Brigadier Fritz is that he instructed his helicopter to fly

5 a lot outside of the area - I know that they did come in,

6 and again I'm just reflecting his words - because of the

7 fear of the power lines and I think there were up to four

8 helicopters in the air, all around scene 1 and scene 2,

9 thus telling his helicopter to start moving more towards

10 the outer areas.

11 MR CHASKALSON SC: These are all issues,

12 the details of which we will canvass with Brigadier Fritz,

13 but for present purposes where this all started was with

14 two videos which weren't disclosed to the evidence leaders.

15 You'll recall that.

16 COLONEL SCOTT: Yes.

17 MR CHASKALSON SC: And will you accept

18 that the exchanges that we've just had reflect that what we

19 see in Nel videos 229 and 230, and in particular the

20 throwing of stun grenades in an area where it seems there

21 were no policemen to hand to intercept the strikers, which

22 is a fact which is odd to square with, is difficult to

23 square with the explanation put forward by Brigadier Fritz,

24 and secondly the fact that while those stun grenades were

25 being thrown one kilometre west of koppie 3, a scene was

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1 unfolding at koppie 3 where the aerial command post would

2 have been greatly appreciated. Those two factors call for

3 something of an explanation from Brigadier Fritz.

4 COLONEL SCOTT: Well, I don't know if I

5 must comment on my point of view -

6 MR CHASKALSON SC: I'm not asking for

7 your explanation, but would you accept that Brigadier Fritz

8 has to provide an explanation for those two facts?

9 COLONEL SCOTT: He would need to, yes.

10 MR CHASKALSON SC: And it's at least

11 potentially awkward for him to have to deal with those two

12 facts. He may have an explanation; he may not. We don't

13 know at this stage. We'll have to wait and see, but it is

14 at least potentially awkward.

15 COLONEL SCOTT: Well, I have a logical

16 explanation, but I don't want to put it out now. I mean

17 it's him that needs to explain the issues, yes.

18 MR CHASKALSON SC: Can I ask you this;

19 have you been through all of the Nel videos?

20 COLONEL SCOTT: I - yes, I would say yes.

21 I can't remember them all pertinently, but I would have

22 gone through them to see what they contained.

23 MR CHASKALSON SC: Well, other than the

24 two that we've been discussing, 229 and 230, can you think

25 of any video from Captain Nel that shows content that

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1 really calls for an explanation from the SAPS?

2 COLONEL SCOTT: Well, if I think, like

3 the attorneys on the evidence leaders or the opposing

4 attorneys, then obviously the others don't show anything

5 that you would consider to be controversial. Obviously

6 you're bringing up the point that those two videos with the

7 throwing of stun grenades are controversial and he would

8 need to give explanation to that to satisfy you.

9 MR CHASKALSON SC: Well, that's broadly

10 what our view is as well. We've been through all of these

11 videos of Captain Nel and apart from videos 229 and 230 we

12 can't see any content in these videos that cries out for an

13 explanation from SAPS. So the only material in the Nel

14 videos that from our perspective calls for an explanation,

15 calls for an explanation from your commanding officer, and

16 just happens to appear in two videos that weren't disclosed

17 to us in the first instance. Will you accept that?

18 COLONEL SCOTT: Yes.

19 MR CHASKALSON SC: So if we can just go

20 back to the sequence in which these videos came to you and

21 to us, you say you received an initially incomplete

22 sequence from Captain Nel.

23 COLONEL SCOTT: That's correct.

24 MR CHASKALSON SC: And you didn't notice

25 at the time that it was incomplete, even though it jumped

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1 from 228 to 231 in terms of numerical files?

2 COLONEL SCOTT: No.

3 MR CHASKALSON SC: And we've seen from

4 the affidavit of Captain Nel that when he gave you this

5 footage, he must have known about the need for complete

6 numerical sequences and files because he'd several weeks

7 earlier been questioned by Brigadier Engelbrecht on

8 precisely that issue.

9 COLONEL SCOTT: Yes, I've seen that in

10 his statement, yes.

11 MR CHASKALSON SC: And you agreed with

12 the Chairperson yesterday that the missing footage in 229

13 contains material that's relevant material for this

14 Commission, and indeed in response to a question from the

15 Chairperson is considerably more relevant than much of the

16 other video material that we've seen.

17 COLONEL SCOTT: Yes.

18 MR CHASKALSON SC: And you've just agreed

19 with me that if one looks at the whole set of Captain Nel's

20 videos, apart from these two missing videos there are no

21 videos that have content that calls out for an explanation

22 from SAPS.

23 COLONEL SCOTT: From your perspective,

24 yes I agree.

25 MR CHASKALSON SC: And when you received

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1 these missing files from Captain Nel and you saw the
2 relevant footage that they disclosed, you told the
3 Chairperson yesterday that you didn't ask Captain Nel for
4 an explanation as to why he had withheld them from you in
5 the first place.

6 COLONEL SCOTT: Not that I can recall,
7 because he wasn't the only person that was called in.
8 There was a group of three, four, five that were called in,
9 all to deliver their footage. On, I believe it's within
10 two days or even on the same day of each other.

11 MR CHASKALSON SC: Yes, but at a certain
12 point you saw, you considered the footage which had been
13 brought in and you saw that there was now relevant material
14 that had been brought in that was previously not brought
15 in, and you didn't see fit to raise with Captain Nel why he
16 hadn't brought it in, in the first place?

17 COLONEL SCOTT: Well, I know it was in
18 Rustenburg in the office there. As I recall, he came in
19 with Warrant-Officer Barnard. He downloaded his videos,
20 Warrant-Officer Barnard downloaded his photos. I did
21 observe the videos. I did see that they had what was stun
22 grenades in them and so on. Initially I was under the
23 impression that they'd just been deleted. I can't recall
24 though that he, I did ask him for an explanation. I
25 thought that these were part of the discretionary issues

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1 removed.

2 MR CHASKALSON SC: At what point did it
3 occur to you that these videos may have been deleted?

4 COLONEL SCOTT: When you sent it through
5 to us.

6 MR CHASKALSON SC: When we sent what
7 through to you?

8 COLONEL SCOTT: The fact that there were
9 videos missing from – again this was one person of about
10 four to five different people that you'd actually sent
11 through to us and said that there are files missing, and
12 people that are bringing their stuff in, I'm aware that
13 some of them had private photographs on their cameras,
14 etcetera.

15 [10:15] So my assumption is that it was just simply
16 deleted, or things were deleted. I didn't take the time to
17 scrutinise what Captain Nel, or what his reasons were, but
18 when he brought his footage in and it was shown to us, so I
19 obviously knew then that it, either he had saved a copy
20 elsewhere, but it was not part of what he had given me on
21 an earlier occasion.

22 CHAIRPERSON: I don't quite understand.
23 I can understand from what you told us yesterday that you
24 thought stuff had been not given to you. Whether it was
25 deleted or just not given to you is irrelevant for the

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1 that I mentioned in my statement that people thought to
2 withhold themselves.

3 MR CHASKALSON SC: Sorry Colonel, can I
4 just take you back to something that you just said. You
5 said initially you thought they had just been deleted.
6 What did you mean by that?

7 COLONEL SCOTT: When you, when the
8 evidence leaders brought it up that they were missing, when
9 Captain Nel brought them in and gave them to us, obviously
10 then I could see and I was made aware then that the
11 sequence wasn't complete from what you guys had requested
12 as well. And I've watched them and I can understand that
13 possibly they were withheld because somebody thought that
14 they were going to be detrimental to the police.

15 MR CHASKALSON SC: So you say you thought
16 that they had been deleted after we asked for them, not
17 before.

18 CHAIRPERSON: I think that question is
19 ambiguous.

20 MR SEMENYA SC: Yes.

21 CHAIRPERSON: I think – were you going to
22 complain about the ambiguity of the question too, Mr
23 Semanya? I think you've got to rephrase it because it's
24 not clear what exactly you mean by "after you'd been
25 alerted." So rephrase the question so the ambiguity is

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1 purposes of what I'm asking you. They did that either
2 because it was personal material that wasn't relevant, or
3 because it was something that had happened that took the
4 case no further; it was irrelevant in that sense, or I
5 think you said it wasn't clear. Those are the three
6 factors that operated in your mind, I think. Now when the
7 evidence leaders now called for this material and it was
8 brought in and you saw it, it must have been apparent to
9 you, (1), it wasn't private material; (2), it wasn't
10 material that was irrelevant in the sense that it took the
11 investigation no further; and it wasn't unclear. In fact I
12 think you've now said it was material that might have been
13 regarded as prejudicial to the police. So I must confess I
14 would have expected you to have been irritated that he
15 treated you in that fashion and not complied with your
16 request, and withheld material from you which potentially
17 could put you in an embarrassing position, and criticism
18 could be directed against you which you didn't deserve. So
19 I would have expected you frankly to have been irritated.
20 Were you?

21 COLONEL SCOTT: Commissioner, to be
22 honest, I –

23 CHAIRPERSON: [Microphone off, inaudible]
24 honest all the time.

25 COLONEL SCOTT: Sorry, yes. It's a case

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1 of seeing the member's possible loyalty to the police in
 2 that sense. I didn't question particularly why. The fact
 3 that he had brought the videos in, they were there now, he
 4 gave the explanation of what was on them. So I didn't ask
 5 him for an explanation of why not before, and the
 6 explanation to me was maybe – as I say I'm assuming now,
 7 but that he was simply trying to protect the police in that
 8 matter.

9 CHAIRPERSON: So did you think that he
 10 was being guilty of what one could describe as mistaken
 11 loyalty to the police?

12 MR SEMENYA SC: Chair, that also calls
 13 for speculation, with respect. The witness said –

14 CHAIRPERSON: No, no, no, with respect,
 15 I'm asking him what he thought at the time. I'm not asking
 16 him to speculate now. That's a matter for us to decide.
 17 I'm asking him what he thought at the time. I don't think
 18 there's anything wrong with that.

19 MR SEMENYA SC: Chair, I was pointing to
 20 the following; once a witness says 'I don't know why they
 21 were deleted,' asking for possible explanations is asking
 22 for conjecture. Secondly he says 'I did not ask them
 23 specifically,' so he cannot even have say-so of those who
 24 deleted it, and that is the basis of my objection.

25 CHAIRPERSON: That wasn't the basis of my

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1 question. The question was what this witness thought at
 2 the time when these videos were brought to him and had
 3 previously not been given, and he then saw it. So I don't
 4 think there's any substance in your objection, so I will
 5 repeat my question. It's really, it's what – I understand
 6 the point, Mr Semenya is quite right that it's not
 7 appropriate for me to ask you what you think now. The
 8 question is - that's for us to decide at the end of the
 9 day. The question is what you thought at the time when he
 10 came, brought these videos which had been asked for, you
 11 saw what they were, and what's your answer to that?

12 COLONEL SCOTT: Those were my thoughts.
 13 I assumed that he was trying to protect the police from
 14 something that may be derogatory or, toward them.

15 MR SEMENYA SC: Even that, for the
 16 record, Chair, that answer is prejudicial and has no
 17 foundation, guessing what might have been the reason for
 18 it.

19 CHAIRPERSON: Of course certain questions
 20 may flow from that, but whether it's prejudicial or not is
 21 a matter you can argue at the end of the day. You've put
 22 it on record now. You've flagged the point, as it were, so
 23 it won't be overlooked.

24 MR CHASKALSON SC: Colonel, if I can pick
 25 up on that issue; there's an issue of a misguided sense of

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1 protecting the police, which is one thing, but the police
 2 operator through individuals, and the individual in charge
 3 of that helicopter was Brigadier Fritz. You'll accept
 4 that?

5 COLONEL SCOTT: Yes.

6 MR CHASKALSON SC: So there's a separate
 7 issue of a misguided wish to protect Brigadier Fritz from
 8 something prejudicial, is there not?

9 MR SEMENYA SC: No, Chair, that's
 10 objectionable.

11 CHAIRPERSON: Commissioner Hemraj points
 12 out that you haven't laid the factual foundation for that
 13 question.

14 MR CHASKALSON SC: The factual foundation
 15 for a –

16 CHAIRPERSON: He says what passed in his
 17 mind was this was mistaken loyalty to the police. Your
 18 point is that the police service operates through
 19 individuals and the individuals who would have been
 20 protected if that was the case, would have been the
 21 individuals in the helicopter, or the person in charge of
 22 the helicopter. I take it that's basically –

23 MR CHASKALSON SC: That is my point,
 24 indeed, and if we're looking at a mistaken, at the
 25 possibility of a mistaken desire to protect not just the

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1 SAPS, but the commander of that helicopter, Brigadier
 2 Fritz, given the respective relationships with Brigadier
 3 Fritz of yourself and Captain Nel, who would have been more
 4 likely to want to protect Brigadier Fritz from any
 5 embarrassment that flows from this footage?

6 MR SEMENYA SC: You see, Chair, this
 7 cannot be correct.

8 CHAIRPERSON: I think that's a question
 9 for argument. I don't think it's a question you can ask
 10 him, frankly. It's –

11 MR CHASKALSON SC: I do –

12 CHAIRPERSON: You know, the inference can
 13 be drawn, but –

14 MR CHASKALSON SC: I do want to give this
 15 witness an opportunity, because let me put it this way,
 16 Colonel; in due course we'll have to hear from Captain Nel
 17 about whether he says he initially withheld videos 229 and
 18 230 from you and, if so, why, and his evidence will have to
 19 be heard by the Commission. But I do have to put it to you
 20 now that the position of the evidence leaders is that if
 21 Captain Nel does not corroborate your testimony in respect
 22 to how these videos came initially to be withheld from the
 23 Commission, the evidence leaders will have to submit that
 24 your testimony in this regard should be rejected by the
 25 Commission –

<p style="text-align: right;">Page 13902</p> <p>1 CHAIRPERSON: No, but just, that's a 2 hypothetical situation. I can understand what you're 3 saying, that if Captain Nel comes and tells a different 4 story, the criticism may then rebound from him onto this 5 witness, but it's very hypothetical at the moment. I would 6 have thought that if that's what Captain Nel says, because 7 he may not, if Captain Nel comes and takes it on the chin 8 and confirms what this witness says, well then that's where 9 the matter will end. If of course he tells a different 10 tale, then it may be necessary for the Colonel to get an 11 opportunity to answer criticism that may arise, but I don't 12 think it's necessary for him to answer criticism in 13 anticipando, as it were, when the criticism may never 14 eventuate.</p> <p>15 MR CHASKALSON SC: I don't need to take 16 it further, Chairperson.</p> <p>17 COMMISSIONER HEMRAJ: Is there perhaps a 18 statement from Captain Nel with an explanation as to why 19 the videos weren't provided, Mr Chaskalson?</p> <p>20 MR CHASKALSON SC: There isn't as yet.</p> <p>21 COMMISSIONER HEMRAJ: Has it been asked 22 for?</p> <p>23 MR CHASKALSON SC: It hasn't been asked 24 for. We will ask for it.</p> <p>25 CHAIRPERSON: [Microphone off, inaudible]</p>	<p style="text-align: right;">Page 13904</p> <p>1 COMMISSIONER HEMRAJ: Mr Chaskalson, file 2 1, page 189, are actually photographs. Might there be 3 another file for that?</p> <p>4 MR CHASKALSON SC: It must be file 3. I 5 apologise. In the meantime can I ask that JJJ36 be called 6 up onto the screen?</p> <p>7 CHAIRPERSON: It is page 189 of file 3.1. 8 Have you got it in front of you, Colonel?</p> <p>9 COLONEL SCOTT: I have, Chairperson.</p> <p>10 MR CHASKALSON SC: I wonder if we could 11 try to get it up on the screen? But if we can start on the 12 second page of the email, which in fact reflects what the 13 request of the evidence leaders was in relation to the 14 videos, and there are photographs sort of on the first 15 three lines of that page, and then come the video requests, 16 full set of Captain Nel's videos, those have been dealt 17 with. Full set of POPs videos M2-series, 13 to 16 August; 18 full set of POPs picture series 13 to 16 August. These, 19 Colonel, you'll recall, turned out to be copies of the 20 deleted files that we discussed yesterday. You say you've 21 never viewed them. For present purposes we're not going to 22 take that further until we've looked at the hard drive that 23 you gave us yesterday.</p> <p>24 The fourth set is a full set of POPs numbered 25 MTS-series 13 to 16 August, and the fourth set is cell</p>
<p style="text-align: right;">Page 13903</p> <p>1 it seems to me this witness is likely to be at the witness 2 table, I would think probably till the end of the week. I 3 think that's a realistic assumption. If you were to send a 4 query today, you should get the answer by tomorrow and you 5 can then deal with it, if it's an answer which calls for an 6 answer from this witness, before he even leaves the witness 7 table, in which case it won't be necessary for him to be 8 recalled.</p> <p>9 MR CHASKALSON SC: We will pursue that 10 line, Chairperson.</p> <p>11 COLONEL SCOTT: That's a –</p> <p>12 MR CHASKALSON SC: If I can then move 13 away from the Captain Nel videos and on to some other 14 videos, and possibly the best starting point for this part 15 of the cross-examination is that email of the 8th of 16 November, JJJ36, which sets out the queries of the evidence 17 leaders and the response of the SAPS team. It's page 189 18 of the Commissioners' bundle, and it's JJJ36.</p> <p>19 CHAIRPERSON: Just remind me the file? 20 File 1, is it?</p> <p>21 MR CHASKALSON SC: It's file 1.</p> <p>22 CHAIRPERSON: Thank you.</p> <p>23 MR CHASKALSON SC: And Colonel, if I can 24 ask you to start not on the front page, but on the second 25 page where –</p>	<p style="text-align: right;">Page 13905</p> <p>1 phone video of Captain Mahlatsi – it should have been 2 Mahlatsi – 350 to 365, and the response that we see on the 3 first page of the email from the SAPS attorneys on 8 4 November says, "We refer to the meeting that was held on 7 5 November at 2 between Brigadier Pretorius, Lieutenant- 6 Colonel Scott, Colonel Fikter, Adv Wesley, and yourself, 7 per video phone," we've dealt with the video phone and we 8 don't need to go there. Let's start with the POPs videos, 9 which are the last item on that list. "Full set of POPs 10 videos M2-series and MTS-series were loaded down on 11 computer of Adv Wesley." Now can I ask that we call up 12 first the M2-series that was given to Adv Wesley on the 7th 13 of November, that's JJJ21. JJJ21, and screenshots are on 14 pages 105 to 107.</p> <p>15 CHAIRPERSON: I didn't get the number. 16 JJJ what?</p> <p>17 MR CHASKALSON SC: JJJ21.</p> <p>18 CHAIRPERSON: Thank you.</p> <p>19 MR CHASKALSON SC: Pages 105 to 107.</p> <p>20 COMMISSIONER HEMRAJ: Of which file?</p> <p>21 CHAIRPERSON: Which file?</p> <p>22 MR CHASKALSON SC: File 1.</p> <p>23 CHAIRPERSON: Thank you.</p> <p>24 MR CHASKALSON SC: JJJ21, and there are 25 the thumb nails on this page and then two pages of</p>

<p style="text-align: right;">Page 13906</p> <p>1 directory properties, so it will be JJJ21.1 to JJJ21.3. 2 COMMISSIONER HEMRAJ: Page 105 and 106 3 are directory entries of file 1. 4 MR CHASKALSON SC: What we have up then 5 is 107, so 105 would be the directory entries of file 6 properties, view of that directory; this would be the 7 thumbnails. Colonel, will you confirm that those are the 8 files that were given to the evidence leaders on the 7th of 9 August as the POPs videos M2-series? 10 COLONEL SCOTT: I'll have to rely on your 11 accuracy. I mean we've handed over many times to yourself. 12 To say it's those exact ones, but I'll rely on your 13 accuracy to say so, yes. 14 MR CHASKALSON SC: Well, we do say so, 15 but there's nothing in those files that you say no, no, 16 we'd never given you these as the M2-series. 17 COLONEL SCOTT: You're correct, yes. 18 MR CHASKALSON SC: And then if we can go 19 to the MTS-series, which will be JJJ20 and which are at 20 pages 108 to 110. 21 CHAIRPERSON: What series is that? 22 MR CHASKALSON SC: The MTS-series, MTS- 23 series, and again, Colonel, would you confirm that in 24 respect of the MTS, that these are the files that you 25 handed to the evidence leaders on the 7th of November as the</p>	<p style="text-align: right;">Page 13908</p> <p>1 350 was missing. So if you go back to that email JJJ36, 2 you'll see that the request that was made there was for 3 Captain Mhlatsi videos 350 to 365, and the existence of 350 4 was something to which we'd been alerted by you. It didn't 5 emerge ex facie the incomplete set. 6 COLONEL SCOTT: If I can just maybe also 7 place for the record, this request, if one would – is sent 8 through a nodal point to the police. It's not to say that 9 because it deals with video and photo footage and that 10 which is missing, that it gets directed directly to me. 11 Most of these requests initially tried to get dealt with by 12 Brigadier Pretorius, and at that time Colonel Visser who 13 was sitting there. I'd already way back at Roots handed 14 over the duties of being the nodal point with all these 15 videos and photos, etcetera. There were odd occasions when 16 they were still brought to me, but immediately I would 17 download them to look at them and give them over to the 18 SAPS master hard drive. But specifically if there are 19 things mentioned in the email, it's not an email I for 20 instance typed. So to reflect it towards myself that, 21 because I'm trying as hard as I can to recall things that 22 have been said, but in the email itself it's – I didn't 23 type that mail. Somebody else obviously wrote that there, 24 because I'm struggling to recall the 350 and missing 25 videos, as you're putting them there. I was not involved</p>
<p style="text-align: right;">Page 13907</p> <p>1 outstanding files from the MTS-series? 2 COLONEL SCOTT: Are you referring to all 3 of them being outstanding, or is it just to complete the – 4 MR CHASKALSON SC: Or a complete set of 5 the MTS-series. 6 COLONEL SCOTT: I, again I'll take your 7 word for it is what we handed over to you, yes. 8 MR CHASKALSON SC: And if they can be 9 JJJ20. Then the last item that we haven't addressed on 10 that email is Captain Mhlatsi's cell phone videos, and this 11 is a bit more complicated because they came in, in dribs 12 and drabs. So if I can put up on the screen the original 13 set of videos that was provided to the evidence leaders in 14 relation to the cell phone footage from Captain Mhlatsi, 15 that will be JJJ25.1, JJJ25.1 at page 104 of that file, and 16 Colonel, do you recognise that set of videos from Captain 17 Mhlatsi as the original incomplete set of videos that was 18 furnished to the evidence leaders? 19 COLONEL SCOTT: Yes. 20 MR CHASKALSON SC: Now if one looks at 21 that sequence, we immediately picked up that 353 was 22 missing from the sequence. 351, 352, 353 isn't there, and 23 then it goes 354, 355, 356, 357, 358, 359, all the way 24 through to 365. So we had asked for a full set, but you 25 had also explained to us that not only was 353 missing, but</p>	<p style="text-align: right;">Page 13909</p> <p>1 in getting the statements from these members that are also 2 attached to these emails. 3 MR CHASKALSON SC: Colonel, it's slightly 4 embarrassing for me to concede this, to admit this, but if 5 you roll down, I was the one who actually wrote that, but – 6 COLONEL SCOTT: Oh, I see. 7 MR CHASKALSON SC: My name appears at the 8 bottom, but - the 330 to 365, but – 9 [10:35] CHAIRPERSON: The point he's making is 10 that if you look at that, the exhibits to which we referred 11 one sees that 353 is missing but he says that the reason he 12 asked, he didn't just ask for 353 or the series from 351 to 13 365 but the series from 350 to 365 because you actually 14 said to him – there's actually another missing as well, not 15 only 53 but also 50. So he's as it were complimenting you 16 on drawing his attention to a missing thing that he didn't 17 know about. 18 COLONEL SCOTT: I'm just struggling to 19 recall that, Chairperson. 20 CHAIRPERSON: Sorry? 21 COLONEL SCOTT: I'm struggling to recall 22 that, if it was a conversation or, I don't know. 23 MR CHASKALSON SC: Well maybe we can go a 24 little further because it- 25 CHAIRPERSON: Well -</p>

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1 MR CHASKALSON SC: Nothing is going to
 2 turn on this, I merely wanted to point out – we didn't
 3 divine that 350 was missing, we were generously informed of
 4 this fact by SAPS. So if we go forward and maybe if we go
 5 back up to the email, to the first page of that email which
 6 describes the second sequence of this chain. So there the
 7 SAPS legal team says in respect of Captain Mohlatsi "all
 8 footage were provided to Advocate Wesley, the only one
 9 outstanding was video clip number 50." That should be 350
 10 would you accept?
 11 COLONEL SCOTT: Yes.
 12 MR CHASKALSON SC: "Which was taken on
 13 cell phone and could not open. Arrangements were made that
 14 the member would be called on 8 November 2012 to download
 15 the image again directly on the computer of Advocate
 16 Chaskalson." And in fact what we received on the 7th of
 17 November was even more than we'd asked for because if I can
 18 take you to JJJ25.2 and 25.3, we got not only 353 but we
 19 also got 348 and 349. So can we go to JJJ25.2 and 25.3?
 20 CHAIRPERSON: Of page?
 21 MR CHASKALSON SC: And that is page 102
 22 to 103.
 23 CHAIRPERSON: Of file 1?
 24 MR CHASKALSON SC: Of file 1.
 25 CHAIRPERSON: Thank you.

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1 MR CHASKALSON SC: The thumbnails and
 2 directories.
 3 CHAIRPERSON: Yes.
 4 MR CHASKALSON SC: So SAPS obligingly
 5 gave us not only the 353 that we had asked for and the
 6 explanation that 350 would be forthcoming in due course but
 7 also 348 and 349 about which we were at that stage
 8 ignorant. Do you recall that?
 9 COLONEL SCOTT: Not personally, no. As I
 10 say I wasn't working specifically with this.
 11 MR CHASKALSON SC: But all of this
 12 happened at a meeting at which you were present and there's
 13 nothing that I'm putting to you that is at odds with what
 14 you recall at that meeting. I wasn't present at that
 15 meeting.
 16 COLONEL SCOTT: Yes.
 17 MR CHASKALSON SC: So at that stage all
 18 that was missing was 350. The email records that there was
 19 some difficulty getting 350 off the phone but by 8 November
 20 SAPS apparently were able to get 350 off the phone and they
 21 gave us a copy of 350 on a memory stick. So we then had a
 22 full set that ran from 348 to 365 and that appears – well
 23 that can be JJJ25.4 and 25.5 at pages 100 to 101. And that
 24 then was what appeared to be the full set. Now can I ask
 25 you who at SAPS would have been responsible for getting 350

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1 off the iPhone of Captain Mohlatsi. I take it wasn't you.
 2 COLONEL SCOTT: No, it wasn't no.
 3 MR CHASKALSON SC: Who would have been
 4 responsible for that? Who would have obtained that video
 5 which was initially difficult to download and then able to
 6 be downloaded?
 7 COLONEL SCOTT: I think – well I would
 8 assume it would be between Colonel Visser and Brigadier
 9 Pretorius but more Colonel Visser who was working with the
 10 hard drive at this time.
 11 MR CHASKALSON SC: And do you know who
 12 was dealing with Captain Mohlatsi on behalf of SAPS in
 13 relation to these requests that we kept bombarding you
 14 with?
 15 COLONEL SCOTT: Again I can speculate, it
 16 would have been going through Brigadier Pretorius. There
 17 may have been call up instructions sent out to have him
 18 come in with his phone. I do recall at one stage that he
 19 was trying to send it either via mail or something to that
 20 effect. I know he tried to send it to Captain Ryland, I'm
 21 not sure that worked either. So he had to, as far as I
 22 know, come in to actually bring his phone in but it wasn't
 23 my dealing as I say. It would have been channelled through
 24 the structure which we have running which would have come
 25 in through Brigadier Pretorius and the necessary

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1 arrangements made that way.
 2 MR CHASKALSON SC: We may, in due course,
 3 have to take this further with Brigadier Pretorius but I
 4 wonder if the SAPS legal team can possibly find out who it
 5 was who received the video –
 6 CHAIRPERSON: - nods his head, it will be
 7 done.
 8 MR CHASKALSON SC: Thank you,
 9 Chairperson. Now if we can move to the properties view of
 10 this directory which is the previous page. So that is the
 11 properties view of the directory as it was complete by the
 12 8th of November and what immediately struck us when we
 13 looked at these properties is that SAPS hadn't – it
 14 appeared that SAPS hadn't been able to get the original
 15 metadata, if I can call it that, off the files which
 16 describes the original dates of when the shots were taken.
 17 So if one looks down that date column the dates are either
 18 on the 17th of October or in respect of the four files -
 19 three files that were provided at the meeting of the 7th,
 20 those dates were the 6th of November and the one that came
 21 on the 8th which is 350 has the date of the 8th. So these
 22 weren't original dates and times, so the utility of these
 23 files was reduced for the evidence leaders. And we then
 24 asked Captain Mohlatsi to come in with his cell phone
 25 because we thought that we would be able to get the

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1 original times off his cell phone. Now, I've actually got
 2 ahead of myself because what I really wanted to do was just
 3 describe the process. So let's go back to the POP's files
 4 because Sergeant Mohlatsi is a different story later on and
 5 I would like to know where that file 350 came from before
 6 we embark on that line of cross-examination. If we go to
 7 the POP's files the evidence leaders have a number of
 8 queries and concerns about the POP's videos that SAPS has
 9 made available to us and to the parties and the first one
 10 concerns what was put on the SAPS hard drive that was given
 11 to us and what wasn't. So if I can ask that JJJ17.1 be
 12 called up, that is a screenshot of the 40 series that we
 13 discussed yesterday that you confirmed that you downloaded.
 14 It's page 121, that you confirmed that you downloaded from
 15 the POPs operators on the 17th of August. JJJ17.1 and maybe
 16 if we can go to 17.3 which is the thumbnail view which is
 17 up on screen, that's at page 123 of file 1. Now I'm going
 18 to confine these questions to the files in the 40 series
 19 which are in the top row of this picture of thumbnails.
 20 Are you familiar with any of the videos that you see on
 21 those thumbnails from 42 MTS to 48 MTS?
 22 COLONEL SCOTT: I think 47 looks like Mr
 23 Mathunjwa if I'm not mistaken.
 24 MR CHASKALSON SC: Yes, if I can
 25 interject there, you'll find that that's the source file

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1 for your slide 162 of your presentation.
 2 COLONEL SCOTT: Yes, and I think he may
 3 be speaking to the SAPS there where he's requesting
 4 loudhailer.
 5 MR CHASKALSON SC: That's absolutely
 6 correct, yes. Do you recognise 42 because that's also in
 7 your presentation?
 8 COLONEL SCOTT: It's small but –
 9 MR CHASKALSON SC: Well if I can just put
 10 to you that that's the source file for your slide 157 of
 11 the presentation, the behaviour of the crowd at 10:45.
 12 COLONEL SCOTT: Okay.
 13 MR CHASKALSON SC: And 48 is also a
 14 source file for your presentation. That is the very
 15 lengthy address by the AMCU organisers at the meeting at
 16 the koppie around about you know sometime between midday
 17 and 1:30. We can get an exact time later. Do you
 18 recognise 46? It's not in your presentation.
 19 COLONEL SCOTT: No, but I would imagine
 20 that's Mr Mathunjwa's vehicle.
 21 MR CHASKALSON SC: Yes, that's footage of
 22 Mr Mathunjwa shortly after his arrival at the koppie on the
 23 16th. Would you agree with me that the videos that we see
 24 from 42 to 48 contain material, if one looks at the whole
 25 set form 42 to 48 that within there, there is some very

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1 relevant material for this Commission?
 2 COLONEL SCOTT: Yes.
 3 MR CHASKALSON SC: You see our concern
 4 in this regard is that these videos were not included on
 5 the SAPS that was made available to the parties, none of
 6 them. So can I give you a screenshot of the hard drive in
 7 the form that it was given to us and the parties when we
 8 received it? And that will be JJJ23.1 at page 181 to 182.
 9 CHAIRPERSON: [Inaudible, microphone not
 10 on].
 11 MR CHASKALSON SC: 181 to 182.
 12 CHAIRPERSON: File 1?
 13 MR CHASKALSON SC: File 1. Can we call
 14 up JJJ23.1? Now this is a screenshot that we'd taken from
 15 the SAPS hard drive in the form that it was given to the
 16 evidence leaders by SAPS and we have captured all of the
 17 POPs MTS files that were given to us relating to the 16th in
 18 this screenshot. 40 series wasn't there. Do you accept
 19 that?
 20 COLONEL SCOTT: Besides 44.
 21 MR CHASKALSON SC: 44 turned out to be
 22 not to be part of the 40 series. 44 turned out to be a
 23 file that dealt with Mr Noki on the 14th.
 24 COLONEL SCOTT: Well as you're showing me
 25 on screen it appears not to be there, yes.

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1 CHAIRPERSON: The question accurately
 2 formulated is that the 40 series except for 44 was not
 3 included.
 4 MR CHASKALSON SC: No, no, with respect
 5 not, Mr Chairperson, that 44 is not part of the 40 series
 6 that we have described as the 40 series. The 40 series is
 7 the series of videos that were taken on one of the POP's
 8 cameras on the 16th. This is another file called 44 MTS.
 9 Possibly if we can go back to see what –
 10 CHAIRPERSON: Probably nothing turns on
 11 it. If something does Mr Semenya will deal with it in re-
 12 examination. Let's not spend time on it unless it's
 13 important.
 14 MR CHASKALSON SC: It's not. Let's just
 15 go back to your testimony yesterday dealing with the
 16 passage of the POP's files from the POP's video operators
 17 all the way through to the parties at this Commission. You
 18 testified yesterday that you downloaded the 40 series onto
 19 your laptop on the 17th and that would have included – and
 20 that did, you testified included all of the 40 series files
 21 taken on the 16th.
 22 COLONEL SCOTT: And I'm speaking from
 23 recollecting as best I can from my memory, alright?
 24 MR CHASKALSON SC: But yesterday we went
 25 into this in some detail and we in fact distinguished

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1 between the two cards and you will recall that there were
2 two different cards from which you downloaded.
3 COLONEL SCOTT: I can recall there were
4 two cards. Specifically at what time is again open to
5 objective evidence because if I can be shown by properties
6 that's acceptable but to recall from my memory back to
7 times when we've gone through what we've gone through, we
8 weren't sleeping as much as we should have and to recall
9 exactly when and what they gave me is difficult. So to go
10 back to computer evidence to show objectively what was
11 given to me at that time I think would be relevant and
12 accurate for that matter.

13 MR CHASKALSON SC: Well, Colonel, we have
14 a couple of difficulties with that. I mean the only we can
15 go back to that is if you give us your laptop and we have
16 the laptop forensically examined to determine where or when
17 the 40 series first made its way onto your laptop. If
18 you're willing to do that we would welcome that
19 opportunity.

20 COLONEL SCOTT: Because I've done that
21 last night, I have gone into a file called OPS Platinum and
22 the modified - for instance 11:01:01 which I'm sure the
23 camera's timing must have been out -

24 MR CHASKALSON SC: Colonel, if you're
25 looking at a file that says 11:0:01 then you're looking at

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1 files that were taken by Warrant Officer Nong probably on
2 the 14th, maybe on the 15th which was before he reset the
3 time of the camera. But all of the files that were in the
4 40 series - if we can go back because we can show you the
5 properties of the 40 series, if we can go back to JJJ17 at
6 page 121. Can we call that up on the screen, JJJ17? We're
7 having difficulties getting JJJ17 up on the screen. And if
8 we can go to page 122 of the the Commissioner's bundle
9 which deals with the 40 series -

10 CHAIRPERSON: If you haven't got it I'll
11 lend you my page. That's 122.

12 MR CHASKALSON SC: This will be JJJ17.2
13 but we don't want to see the thumbnails, we want to see the
14 file properties.

15 CHAIRPERSON: The file properties appear
16 to be on 122, is that correct?

17 MR CHASKALSON SC: That is correct, on
18 122 but what's up on the screen is not the file properties.
19 Ah yes, now we're all on the same page. So, Colonel, these
20 are the file properties of 40 series and they start on 042
21 with a file that has the time 10:45 16 September 2012 and
22 you'll recall yesterday that we discussed the incorrect
23 September on all of these files and we agreed that it was a
24 mistaken month, it should be August. And I put to you that
25 this was the source file for your slide 157 and if we in

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1 fact go to slide 157 we'll see, and we don't need to have
2 it up on screen if it's going to take time, but you'll see
3 that the heading that you gave to slide 157 was The Crowd's
4 Behaviour at 10:45 which matches the time on the file. So
5 these are video files that were taken by the POP's
6 operators or one of the POP's operators on the morning of
7 the 16th at the koppie between 10:45 and the last one is
8 12:18, 048 if we're talking about the MTS series. Now I
9 would have imagined that those are par excellence the files
10 that you would have wanted to see the next morning when the
11 POPs - or the next afternoon I think it was when the POP's
12 video operators came to you to download their files.

13 COLONEL SCOTT: Well I wanted to see ja,
14 for the purposes of building the NASCOM's presentation at
15 that time it was what was relevant to that presentation but
16 whatever they would give obviously I took.

17 MR CHASKALSON SC: But we went through
18 the exercise yesterday with you and you confirmed that had
19 downloaded two separate cards and do you reconfirm that?

20 COLONEL SCOTT: From what I'm recalling,
21 yes but this is why I'm asking to maybe consider objective
22 evidence from my hard drive, from my computer that can
23 verify that accurately because I'm speaking from memory.
24 And it's over a year ago, at times we were tired and to
25 recall that accurately, I may be incorrect by I may be

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1 correct.

2 CHAIRPERSON: Colonel, sorry to interrupt
3 you. I was proposing to take the tea adjournment in five
4 minutes but if it would help so that we don't spend five
5 minutes on speculative cross-examination I can take the
6 adjournment now, you can look at your computer, see if you
7 can find the objective evidence. I take it, if necessary,
8 you can show it to Mr Chaskalson and when we resume at say,
9 quarter past 11, unless you need more time in which case
10 you can tell me, then we will hopefully know whether the
11 objective data to which you refer is available and you then
12 will be able to give us evidence that you are happier with,
13 than evidence based on reconstruction than memory. Would
14 that be acceptable?

15 [10:55] COLONEL SCOTT: Yes.

16 CHAIRPERSON: Are you happy with that, Mr
17 Chaskalson?

18 MR CHASKALSON SC: Absolutely, Chair.

19 CHAIRPERSON: We will take the tea
20 adjournment until quarter past 11.

21 [COMMISSION ADJOURNS COMMISSION RESUMES]

22 [11:24] CHAIRPERSON: The commission resumes. We
23 took a bit longer in coming back because we saw that the
24 witness and Mr Chaskalson were still in conversation. I
25 take it the problem that was being discussed is now being

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1 sorted out, is that correct? Mr Chaskalson?

2 MR CHASKALSON SC: Mr Chairperson, we

3 don't have a short term solution because from our

4 perspective the only way that we will be able to show

5 forensically whether those particular files were downloaded

6 onto Colonel Scott's laptop is to have Colonel Scott's

7 laptop hard drive forensically examined and that is a very

8 lengthy process, there's also sensitive documents on the

9 laptop so it will have to take place either in the presence

10 of Colonel Scott or under some other type of controlled

11 circumstances.

12 CHAIRPERSON: I take it that matter's

13 been addressed, we don't have to get resolution on the

14 matter now. You can continue with your cross-examination

15 can you?

16 MR CHASKALSON SC: Yes we can continue

17 with the cross-examination.

18 CHAIRPERSON: But before you do so, let

19 me remind the witness. You're still under oath, Colonel.

20 Yes, Mr Chaskalson.

21 MR CHASKALSON SC: Well, Colonel, we're

22 going to have to come back to this particular chain of

23 evidence as it were, at a later stage but let me put to you

24 what I see to be the possible breaks in the chain. The

25 first possible break in the chain would be if the POPS

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1 operator who downloaded, who took the footage in the 40

2 series didn't in fact come to you to download it as he was

3 supposed to be on the 17th, that's a possible break in the

4 chain.

5 COLONEL SCOTT: That's so.

6 MR CHASKALSON SC: In that event it would

7 never have got onto your laptop hard drive?

8 COLONEL SCOTT: Laptop, yes.

9 MR CHASKALSON SC: But at some stage

10 thereafter it did come into the custody of the SAPS because

11 videos from that series were then incorporated in the

12 presentation?

13 COLONEL SCOTT: That is so, yes.

14 MR CHASKALSON SC: That's correct, so if

15 that were the break in the chain we would have to explain,

16 well one we would have to establish that that was the break

17 and two we would have to establish how that break was

18 subsequently cured by SAPS so that they got custody of

19 these videos and then there would be the third question

20 which is why those videos were not put onto the hard drive

21 that was made available to the evidence leaders and the

22 parties. That's the first possibility. The second

23 possibility is that they were downloaded onto your laptop,

24 you copied them over to your external hard drive, the hard

25 drive that we were calling the Scott hard drive yesterday.

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1 Thereafter as you said, sorry Colonel you're nodding. I

2 think for the record you must actually speak.

3 COLONEL SCOTT: I'm just acknowledging

4 what you're saying, yes.

5 MR CHASKALSON SC: Yes, but if you can do

6 it out loud.

7 CHAIRPERSON: If nod means yes, you must

8 say yes because the transcribers won't see you. So they

9 won't be able to put on the transcript brackets witness

10 nods close brackets.

11 COLONEL SCOTT: Commissioner, it may be

12 just a habit that's taught in negotiations, it's positive

13 communication. You're listening when you nod.

14 CHAIRPERSON: The answer that normally is

15 given by witnesses who communicate that is I hear you.

16 MR CHASKALSON SC: Colonel, I hope the

17 negotiations succeed and we don't have to move to the

18 tactical phase. So we're dealing with the second

19 possibility which is that the POPS video operator be it

20 Warrant Officer Masinya or Warrant Officer Ndlovu who took

21 that footage, downloaded it onto your laptop on the 17th or

22 indeed possibly a bit later, you copied it over onto the

23 SAPS hard drive that you had in your custody up until the

24 week commencing the 27th you, you're with me thus far?

25 COLONEL SCOTT: Yes.

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1 MR CHASKALSON SC: You're -

2 COLONEL SCOTT: Yes.

3 MR CHASKALSON SC: You then deleted you,

4 at some stage in this process you deleted what you had

5 copied over because you wanted to free up space on your

6 laptop.

7 COLONEL SCOTT: Yes.

8 MR CHASKALSON SC: And the file may have

9 been lost somewhere between your hard drive and the

10 Brigadier Pretorius hard drive that became the SAPS archive

11 sometime in the week of the 27th of August.

12 COLONEL SCOTT: Ja that -

13 MR CHASKALSON SC: That's the second

14 possibility.

15 COLONEL SCOTT: That's the second

16 scenarios, that's also a possibility.

17 MR CHASKALSON SC: Now for that to have

18 happened it would have had to have been deleted one of two

19 things would have had to have happened. Either it would

20 have had to have been deleted off your external hard drive

21 before the transfer took place. Are you aware of any

22 deletions that you made of video material -

23 COLONEL SCOTT: No.

24 MR CHASKALSON SC: On the hard drive.

25 COLONEL SCOTT: No.

<p style="text-align: right;">Page 13926</p> <p>1 MR CHASKALSON SC: So we can discount 2 that.</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 MR CHASKALSON SC: The other possibility 5 is that you didn't copy everything over onto Brigadier 6 Pretorius's hard drive, is that a possibility?</p> <p>7 COLONEL SCOTT: Well looking at the range 8 of possibilities, it is a possibility, yes, but highly 9 unlikely.</p> <p>10 MR CHASKALSON SC: Well how did you do 11 the copying of your external Scott hard drive to the 12 Brigadier Pretorius hard drive?</p> <p>13 COLONEL SCOTT: You know you're asking me 14 to recall back then but I'm assuming it would have been the 15 same way I would do it now, and that would simply be by 16 taking everything I have and dragging it over.</p> <p>17 MR CHASKALSON SC: So it would be 18 unlikely that you would have missed files in that process?</p> <p>19 COLONEL SCOTT: Yes.</p> <p>20 CHAIRPERSON: He says highly unlikely.</p> <p>21 COLONEL SCOTT: Highly unlikely, yes.</p> <p>22 MR CHASKALSON SC: Highly unlikely. So 23 the third possibility, am I on three, the third possibility 24 would be it made its way onto the fourth, Brigadier 25 Pretorius's hard drive but was subsequently removed from</p>	<p style="text-align: right;">Page 13928</p> <p>1 everything that was on the hard drive when it was handed 2 over to the evidence leaders but plainly we didn't because 3 we didn't get the 40 series which SAPS had and was using 4 to, as source material for its presentation.</p> <p>5 COLONEL SCOTT: I hear what you're saying 6 and look I'm - not to try and find explanations for that 7 but it's possible that SAPS got that but Colonel Victor 8 Visser would have to testify to that. That they also got 9 it from the section 205, from the Lonmin footage, probably 10 the same place you got it from the Lonmin footage coming 11 in.</p> <p>12 MR CHASKALSON SC: Yes, but a whole lot 13 of other material that was obtained through the Lonmin 205 14 subpoena was put onto the SAPS hard drive that was given to 15 us. So all of those CCTV cameras for instance on seven 16 different days and many different cameras we did receive.</p> <p>17 COLONEL SCOTT: I know that I've got 18 certain Lonmin CCTV cameras that were given to me while I 19 was still at Marikana. So there were certain of that 20 footage which is outside of a 205.</p> <p>21 MR CHASKALSON SC: Alright, well, 22 Colonel, we will pursue this further and if needs be we can 23 make the arrangements for forensic examination of various 24 hard drives at a later stage. I want to move to a related 25 topic and I want to take you back to November last year</p>
<p style="text-align: right;">Page 13927</p> <p>1 that hard drive or least removed from the selection of 2 files on that hard drive that were copied over to the 3 evidence leaders and the parties. Now you can't speak to 4 that because you weren't in custody of that hard drive.</p> <p>5 COLONEL SCOTT: I can confirm it's a 6 possibility though.</p> <p>7 MR CHASKALSON SC: You can confirm it's a 8 possibility. Whichever the possibilities it is we know 9 that footage which was taken by SAPS, which was in SAPS 10 possession which continued to be used by SAPS and regarded 11 by SAPS as being relevant, wasn't made available to the 12 evidence leaders and the parties, you'll accept that?</p> <p>13 COLONEL SCOTT: Well I'll accept that, to 14 the best of my knowledge what was available on the SAPS 15 hard drive at that time when Colonel Victor handed it over 16 was handed, all of it was handed over.</p> <p>17 MR CHASKALSON SC: Sorry, Colonel, I 18 didn't follow that answer. To your knowledge?</p> <p>19 COLONEL SCOTT: The best of my knowledge 20 what was on the SAPS hard drive at the time of giving it 21 over to the evidence leaders is what was given over, 22 nothing was held back.</p> <p>23 MR CHASKALSON SC: So we ought –</p> <p>24 COLONEL SCOTT: To my knowledge.</p> <p>25 MR CHASKALSON SC: - to have received</p>	<p style="text-align: right;">Page 13929</p> <p>1 when you presented exhibit L to the commission and you may 2 recall that shortly after your presentation we raised a 3 concern with you about a misleading time sequence in slides 4 163 to 169 of exhibit L and I wonder if we can get 163 to 5 169 called up. Colonel, you'll recall that slides 163 to 6 168 are the speeches of the six protestors and if we can 7 link them to the POPS videos they are in fact videos 116 to 8 118 in the 100 MTS series and 120 to 122 in the same 9 series. So if we go back to the thumbnail of the 100 MTS 10 series which would be JJJ17 if I recall correctly. If we 11 can go to JJJ17. Can we call up JJJ17? Well its page 123 12 of the file 1 that the commissioners have but if we can 13 just look at –</p> <p>14 COLONEL SCOTT: I can see it on the 15 screen, Sir.</p> <p>16 MR CHASKALSON SC: Slide, it's now called 17 up. If one looks at slides 118, sorry 116 to 118 on the 18 screen, one will see the thumbnails of the videos that 19 appear in slides 163 to 165 and if one looks at 120 to 122 20 we will see the thumbnails of the videos that appear on 21 slides 167 to 169. Are you satisfied with that assessment.</p> <p>22 COLONEL SCOTT: Yes.</p> <p>23 MR CHASKALSON SC: And for the record, 24 Chairperson, the relevant videos are exhibit CC13 to CC18 25 already in the bundle and slide 169 on exhibit L is the</p>

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1 lengthy speech of the AMCU organisers and Mr Mathunjwa
 2 which is exhibit CC7 for which the source file is video 48
 3 on the MTS series up in front of you. Will you accept
 4 that?

5 COLONEL SCOTT: Yes.

6 MR CHASKALSON SC: Now it's been a long
 7 time since we saw these videos in the commission and it may
 8 be, I'd like to refresh everybody's memory of the sequence
 9 as it was presented by yourself in commission, by playing
 10 first slide 168 and then the ten seconds, the first ten
 11 seconds of slide 169. So can we do that now. Slide 168
 12 and the first ten seconds of 169 and if I might ask, we
 13 don't have volume, I wonder if we do have volume, if we
 14 could get volume and start again.

15 CHAIRPERSON: We have subtitles
 16 apparently.

17 [VIDEO SHOWN]

18 MR CHASKALSON SC: And just the first ten
 19 seconds of this video. This video is so – is the hyper
 20 linked video because it was so big and we seem to have
 21 difficulties playing it. It may not be necessary to play
 22 it because I can make my point without playing it. Can we
 23 just abandon video 169. Colonel, would it be fair to say
 24 that the, that what we saw in 168 was what I would describe
 25 as a short murderous speech by protestor 6 indicating that

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1 he wants policemen who do not want, who do not believe to
 2 kill, to be killed, to be finished off.

3 COLONEL SCOTT: I think that's, that's an
 4 interpretation yes.

5 MR CHASKALSON SC: Well if we were able
 6 to be play 169 what we would see is that the very first
 7 transcribed portion of the AMCU organiser who is speaking
 8 in 169 says that has to be respected, do you recall that?

9 COLONEL SCOTT: No.

10 MR CHASKALSON SC: Well then we may have
 11 to play 169 and find –

12 COLONEL SCOTT: I'll take your word for
 13 it, but I don't recall it no.

14 MR CHASKALSON SC: Well it is what it
 15 says.

16 COMMISSIONER HEMRAJ: Don't we have a
 17 transcript of this, Mr Chaskalson, can't we go there
 18 rather?

19 MR CHASKALSON SC: Colonel, take it from
 20 me that the first transcribed portion that we see in 169 is
 21 that that has to be respected. We will find, I'll find my
 22 copy of the video in the adjournment and if needs be we can
 23 play it after lunch.

24 CHAIRPERSON: It may be somewhere in the
 25 transcripts, when the video was shown there was an

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1 interpretation by Ms Mahlangu of what was said. It's an
 2 exhibit, it was handed in as far as I remember.

3 MR CHASKALSON SC: Mr Chairperson, my
 4 concern is that it may be that that particular translation
 5 starts only where Mr Mathunjwa's speech begins in the
 6 middle of this video.

7 CHAIRPERSON: Well –

8 MR CHASKALSON SC: But if it starts at
 9 the beginning what it will say is that has to be respected.
 10 Now exhibit L suggests that the AMCU organisers and Mr
 11 Mathunjwa followed immediately on from protestor 6, will
 12 you accept that?

13 COLONEL SCOTT: Its, it is shown that way
 14 in exhibit L. It's not maliciously shown that way.

15 MR CHASKALSON SC: Will it -

16 CHAIRPERSON: Concession I suppose that
 17 exhibit L creates, doesn't it, you've got the murderous
 18 speech and then you've got the AMCU organisers speaking
 19 then I think someone else and then Mr Mathunjwa. That's
 20 the sequence in which these videos are shown in exhibit L.

21 COLONEL SCOTT: It is so, Chairperson,
 22 but with respect this is the first time I've even been made
 23 aware that this is a, I've never viewed it this way.

24 MR CHASKALSON SC: Well, Colonel, can I
 25 take you back to what you told the commission when you were

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1 actually presenting these videos. That you'll find in the
 2 transcript of 9 November, page 1253 and if I might read
 3 what you said to the Commissioners, you said the following.
 4 "When the AMCU president went forward members of the
 5 protestor group were first allowed to address the group
 6 themselves," and what you'll see is blue stripes in your
 7 presentation but those will actually come across as
 8 subtitles as we had it interpreted and placed onto the
 9 video clip. So you informed the commission that the
 10 protestors speeches preceded the AMCU speeches.

11 COLONEL SCOTT: Yes, I know where you're
 12 going, in the sense that the objective evidence in the
 13 details of the videos will show otherwise but that's really
 14 how I understood it at that time.

15 MR CHASKALSON SC: We'll get there in due
 16 course.

17 COLONEL SCOTT: Okay.

18 MR CHASKALSON SC: But let's start at the
 19 end point. You accept that that sequence that is suggested
 20 by exhibit L and that you stated to the commission is an
 21 incorrect sequence.

22 COLONEL SCOTT: Yes, just, the thumbnails
 23 are all of the same camera. It wasn't two different
 24 cameras that were on screen when you showed the thumbnails.

25 [11:43] MR CHASKALSON SC: NO, you'll go back,

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1 there are two different cameras. If we can go back to
 2 JJJ17. One is from the 40 series and one is from the 100
 3 series, well not one is 100 series, several are from the
 4 100-series. So if we can go back, so the speech of Mr
 5 Mathunjwa is the last file in the 40-series, that's 48MTS.
 6 COLONEL SCOTT: Okay.
 7 MR CHASKALSON SC: The speeches of the
 8 protesters are 116 to 118MTS and 120 to 122MTS.
 9 COLONEL SCOTT: I see that, and I can
 10 only explain that possibly is why being two different
 11 series, that they weren't in sequence in that case there,
 12 and at the moment they're in name sequence and not time
 13 sequence, but I will take your word for it that it's
 14 possible that it is in a different time sequence.
 15 MR CHASKALSON SC: Well, let's look at
 16 the time properties, because we can put that to bed with
 17 the next page of this exhibit, JJJ17, I think it's 17.2.
 18 COLONEL SCOTT: I think the point I
 19 wanted to make was if it was of the same camera, I would
 20 have been more aware that it was running before the
 21 protesters. Being from a separate camera, it's not that
 22 evident to me. It's –
 23 MR CHASKALSON SC: We'll get there in due
 24 course, but let's take it one step at a time. If we, let's
 25 first clarify what the true facts are. The true facts are

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1 that the time of the AMCU speeches, as appears from O48MTS,
 2 was 12:18 on the 16th. Do you accept that?
 3 COLONEL SCOTT: Yes.
 4 MR CHASKALSON SC: And if we go to the
 5 next page, which shows the 100MTS-series, can we scroll
 6 down a page of the properties to the 100MTS at 17.3. So if
 7 we – 17.1, okay, we've got the right page up on screen. If
 8 we look at protester 1, that's 116MTS, and that speech
 9 starts at 12:56. You'll accept that's correct?
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: And protester 6, who
 12 gave the short murderous speech, that's 122MTS, and that
 13 speech started at 10 past 1.
 14 COLONEL SCOTT: I see so, yes.
 15 MR CHASKALSON SC: Now we know from the
 16 reconciliation table of times, JJJ37, that these two
 17 cameras are only 38 seconds apart, so it's not as though
 18 one of them has time that's radically out and the other one
 19 isn't. So these times are broadly equivalent with one
 20 another. They are in fact 38 seconds apart. You accept
 21 that?
 22 COLONEL SCOTT: Yes.
 23 MR CHASKALSON SC: So then would you
 24 accept that protester 6's speech, 122MTS, or exhibit CC18,
 25 was actually more than 50 minutes after the first AMCU

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1 organiser started his speech in exhibit CC7, which is
 2 48MTS?
 3 COLONEL SCOTT: Yes.
 4 MR CHASKALSON SC: And so not asking for
 5 explanations at this stage, just looking to establish the
 6 facts, would you accept then that the sequencing of exhibit
 7 L in this respect first of all was objectively wrong?
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: And second of all I
 10 want to put it to you that it was highly prejudicial to
 11 AMCU. Would you accept that?
 12 COLONEL SCOTT: Well, if you're asking my
 13 opinion on whether it was highly prejudicial to AMCU, as I
 14 say, I wasn't even aware of, that it ran from that guy to
 15 what somebody would interpret to just needs to be respected
 16 or something. That never crossed my line of thought.
 17 MR CHASKALSON SC: I'm asking not about
 18 your intentions, not about your subjective opinion in
 19 putting it together that way. I'm asking you about
 20 objectively, would you accept that objectively it is highly
 21 prejudicial, that sequence was highly prejudicial to AMCU?
 22 COLONEL SCOTT: Objectively, I haven't
 23 got an option but to say yes.
 24 MR CHASKALSON SC: Right, now one of the
 25 things that struck me as odd in relation to your mis-

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1 sequencing of these slides in exhibit L is that one of the
 2 hallmarks of exhibit L is an attempt to be precise in
 3 relation to times.
 4 COLONEL SCOTT: Yes –
 5 MR CHASKALSON SC: Would you accept
 6 that's correct?
 7 COLONEL SCOTT: We tried as best as we
 8 could, yes.
 9 MR CHASKALSON SC: And most of the slides
 10 with photographs in the slides had times in their titles.
 11 Would you accept that?
 12 COLONEL SCOTT: And that's the point, the
 13 photographs do, yes.
 14 MR CHASKALSON SC: Well, it's not just
 15 videos. If we go to, and we've already been there, I think
 16 it was slide 157 for which the source file was 42 of the
 17 MTS-series, that's a video file which is headed "The
 18 crowd's behaviour at 10:45."
 19 COLONEL SCOTT: Yes.
 20 MR CHASKALSON SC: And when we go to the
 21 properties of the source file, which is 42MTS, we see it is
 22 indeed a file taken at 10:45. Now when you were putting
 23 together exhibit L, you were aware of the time properties
 24 of photo and video files, were you not?
 25 COLONEL SCOTT: I was, yes.

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1 MR CHASKALSON SC: And in your statement
 2 at paragraph 102, paragraph 32.4, you say that in the
 3 division of labour between yourself and Colonel Fischer in
 4 relation to the presentation, you were specifically
 5 responsible for sequencing in the film and photographic
 6 evidence.
 7 COLONEL SCOTT: Yes.
 8 MR CHASKALSON SC: You recall that? And
 9 you reconfirm that?
 10 COLONEL SCOTT: Yes.
 11 MR CHASKALSON SC: Now I want to put to
 12 you that it's not possible to sequence photographic and
 13 video files without looking at the file properties. Would
 14 you accept that?
 15 COLONEL SCOTT: I accept that, and maybe
 16 I'm just stumped at the fact, because there was no intent
 17 to do this or there was no – I know that also those files -
 18 and I'm not, I'm just wondering whether that could have had
 19 an impact on it - once they were sent for translation were
 20 returned to us, and whether that wasn't the sequencing on
 21 the file we received them in translation. I'm not sure.
 22 MR CHASKALSON SC: Sorry, can you just
 23 clarify that? Just repeat that answer – or let me tell you
 24 what I understood you to say. You sent, those files you
 25 sent for translation and you think that you may have been

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1 confused because when you got them back from the
 2 translators they may have been in that sequence?
 3 COLONEL SCOTT: If I can establish this;
 4 I concede that they are in the wrong sequence. What I'm
 5 saying is that it was not maliciously done by me, and I'm
 6 trying to provide a plausible answer as to why the
 7 sequencing is in that way.
 8 MR CHASKALSON SC: Well, you earlier
 9 suggested that a plausible answer may be that they weren't
 10 part of the same sequence.
 11 COLONEL SCOTT: The same camera.
 12 MR CHASKALSON SC: The same camera.
 13 COLONEL SCOTT: Yes.
 14 MR CHASKALSON SC: Different cameras.
 15 But presumably if you're checking file properties you will
 16 see what the file properties are and what the times are,
 17 whichever cameras they're on.
 18 COLONEL SCOTT: Presumably so, yes. But
 19 like I'm saying, if I had checked and made myself aware of
 20 those file properties, I would surely have sequenced them
 21 the other way. Again it's very possibly an oversight on my
 22 part.
 23 MR CHASKALSON SC: Well, it seems to be a
 24 bigger oversight, or there's more to the oversight, let me
 25 put it that way, because if you'd looked through other

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1 files in the 100-series, that sequence would have been
 2 clear to you. Take 103 and 104MTS, if we can call up 103
 3 and 104MTS. They're 17.103 and 17.104 in the JJJ-series.
 4 What these videos in the 100-series will show is footage
 5 taken during the first AMCU organiser's speech, and in
 6 particular footage of the notorious "Kill the NUM" song
 7 that we also hear on 048MTS. Possibly if we can play 103?
 8 Before we do so, possibly before we play it, will – oh, if
 9 we can play it? But we do need sound.
 10 [VIDEO RECORDING PLAYED]
 11 Sorry, we seem – are we still in the same video,
 12 or are we jumping ahead here? Sorry, my mistake; this is
 13 the same video.
 14 [VIDEO RECORDING PLAYED]
 15 Maybe if we can stop at this point? Do you
 16 recall the "We will kill NUM" song?
 17 COLONEL SCOTT: Somewhere I've – yes,
 18 somebody's testified or spoken about that those were the
 19 words being used, yes.
 20 MR CHASKALSON SC: Well, you'll find them
 21 transcribed in the file of 048MTS, which made its way into
 22 exhibit 169. The –
 23 CHAIRPERSON: You mean slide 169?
 24 MR CHASKALSON SC: Slide 169.
 25 CHAIRPERSON: Exhibit or slide 169?

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1 MR CHASKALSON SC: Slide 169, the NUM
 2 organisers and Mr Mathunjwa's speech. Did you see the clip
 3 in the middle of that video of a man in a black jacket –
 4 CHAIRPERSON: Sorry, you said the NUM
 5 organisers. I think you meant the AMCU organisers.
 6 MR CHASKALSON SC: I beg your pardon, it
 7 was the AMCU organisers. Did you see the man in the black
 8 jacket in the middle of that clip?
 9 COLONEL SCOTT: Are you talking about
 10 where it broke for a moment?
 11 MR CHASKALSON SC: Indeed, where it broke
 12 for a moment.
 13 COLONEL SCOTT: Yes.
 14 MR CHASKALSON SC: Did you recognise him
 15 as one of the AMCU speakers?
 16 COLONEL SCOTT: No.
 17 MR CHASKALSON SC: You'll find that he
 18 does appear as an AMCU speaker in slide 169, file 48.MTS.
 19 Let's go to 104.MTS.
 20 [VIDEO RECORDING PLAYED]
 21 You can just stop at that point. Can we stop the
 22 video? Did you see the man in the black jacket again?
 23 COLONEL SCOTT: I think you need to pre-
 24 warn me. I'm looking at a lot of people as we're going.
 25 MR CHASKALSON SC: The speaker in the

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1 black jacket.

2 COLONEL SCOTT: I'll take your word that

3 he was there.

4 MR CHASKALSON SC: Let's look at a more,

5 possibly a more obvious clip, which is 108.MTS.

6 COLONEL SCOTT: Looking for the man in

7 the black jacket?

8 MR CHASKALSON SC: No, now we're looking

9 for Mr Mathunjwa. It's a very short clip. It's one

10 second, two seconds, but the identity of the speaker is

11 unmistakable. 108.MTS, CC8. You can just stop; we don't

12 need to play it. Do you recognise that man?

13 COLONEL SCOTT: Yes.

14 MR CHASKALSON SC: Who is he?

15 COLONEL SCOTT: That's, if I'm not

16 mistaken, Mr Mathunjwa.

17 MR CHASKALSON SC: Right, now that is Mr

18 Mathunjwa giving his speech at the koppie on the 16th.

19 The –

20 CHAIRPERSON: I take it, he's giving his

21 first speech?

22 MR CHASKALSON SC: His speech at

23 lunchtime. If we go to the file properties of 108.MTS,

24 which would be 17.2, and we can see there that that clip

25 from Mr Mathunjwa's speech took place at 12:27, 108.MTS.

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1 COLONEL SCOTT: I see that, yes.

2 MR CHASKALSON SC: So it's not an issue

3 of two separate sources of footage; in fact on the one

4 source of footage we can see Mr Mathunjwa making a speech

5 at 12:27, which is approximately more than 40 minutes

6 before protester 6's speech at 122MTS at 1:10. You accept

7 that?

8 COLONEL SCOTT: Yes.

9 MR CHASKALSON SC: So I've taken you to

10 103MTS, 104MTS, and 108MTS, to suggest that there was

11 another way that you could have seen that the sequencing in

12 exhibit L was incorrect.

13 COLONEL SCOTT: Considering I was looking

14 at the properties of the time sequencing.

15 MR CHASKALSON SC: But we earlier

16 discussed how one does time sequencing and you conceded

17 that without looking at the properties one cannot do time

18 sequencing.

19 COLONEL SCOTT: We spoke about the

20 earlier where it showed the crowd behaviour at 10:45, and I

21 say that that is according to the time of the video. I'm

22 not saying that I specifically looked at the times of these

23 videos, because what you're referring to, or what you're

24 saying which is going to prejudice the AMCU side, is the

25 fact that, is I think the words, we must respond to?

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1 MR CHASKALSON SC: We must respect that.

2 COLONEL SCOTT: We must respect that, but

3 if maybe one can go to a version of the presentation which

4 had the slides inserted before the interpretation was even

5 there, which would have been done then by myself, I would

6 have even known what was being said in those slides at that

7 time until the interpretations were actually provided.

8 MR CHASKALSON SC: But how would you have

9 sequenced them?

10 COLONEL SCOTT: Well, at that time that

11 was to me one meeting that was taking place at the sort of

12 12 o'clock to 1 o'clock meeting time.

13 MR CHASKALSON SC: But that isn't what

14 you told the Commission. You specifically told the

15 Commission that when the AMCU president went forward,

16 members of the protester group were first allowed to

17 address the group themselves.

18 COLONEL SCOTT: That's my understanding

19 at that time when I presented this, and as I say, I don't

20 change from that now; that is what I understood at that

21 time when I presented that and when I made the

22 presentation, for that matter.

23 MR CHASKALSON SC: But you accept now

24 that's incorrect?

25 COLONEL SCOTT: I do accept that's it

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1 incorrect now, yes.

2 MR CHASKALSON SC: On what basis had you

3 reached that conclusion when you made the presentation and

4 made the statement to the Commission?

5 COLONEL SCOTT: Now that I think I've

6 gone through some of the footage which you go through in

7 the evidence leaders' package, as well as what you say now,

8 I can see that that's, the sequencing is not right.

9 CHAIRPERSON: The question is your

10 understanding, you said you understood something different,

11 and that's why it appears, that's why you told the

12 Commission what you did, the passage that was read. The

13 question is what was your understanding based on?

14 COLONEL SCOTT: At that time?

15 CHAIRPERSON: Yes.

16 COLONEL SCOTT: It simply was, it was to

17 try and reflect the meeting that took place there at that

18 time. The sequencing specifically of who spoke where, I

19 can't recall that that was important to me. It was simply

20 a fact of this was a gathering which Mr Mathunjwa had come

21 to; certain speakers were allowed to speak. He also gave a

22 speech and it was placed there. I can't recall that I was

23 concentrating over that, those specific areas there on who

24 would be saying what, when, in what sequence. And as I say

25 now, exhibit L, presentation of the police, was simply

<p style="text-align: right;">Page 13946</p> <p>1 something the police put together to assist the Commission 2 to better understand from the police's point of view what 3 happened. There are going to be inaccuracies in our 4 presentation. We didn't have the liberty of speaking to 5 people outside of the police for that matter, maybe other 6 than watching certain Lonmin footage and on so on, but as I 7 say, it was never designed as a document - it was tried to 8 be as accurate as possible, but it was not designed to be 9 scrutinised in the sense that it had to be 100% because it 10 was going to be evidence. It was simply a presentation on 11 our part, and that's why some of the videos that you'll 12 find in exhibit L are actually composites of certain, are 13 put together just to show, to give a background as to what 14 was going on at the time. 15 [12:03] So as I say the accuracy of timings and so on we 16 did as best as we could. I concede there are oversights in 17 it. We didn't think it that important that it would matter 18 as much as it seems to be now. 19 CHAIRPERSON: You did the best that you 20 could, wouldn't you have looked at the properties? 21 COLONEL SCOTT: Well as I say, 22 Chairperson, it's, this obviously was an oversight because 23 I didn't think that was important there. I was, the 24 properties I truly was concentrating on was those of 25 photographs to try and sequence photographs, to put them</p>	<p style="text-align: right;">Page 13948</p> <p>1 video the other POPs operator was taking little clips, 2 either of the speakers or of the crowd. 3 COLONEL SCOTT: But the Mathunjwa one, 4 which is in exhibit L is which one, is? 5 MR CHASKALSON SC: Is 048 MTS. 6 COLONEL SCOTT: 048, but as I say that 7 can be, the only explanation I have is that they were in 8 two separate, you know not seeing in the time sequencing 9 because of the different cameras. 10 MR CHASKALSON SC: Yes, but what I'm 11 putting to you in response to that is that even if one just 12 looks at the single camera of the 100 series one will see a 13 clip of Mr Mathunjwa speaking before one gets to protestors 14 1 to 6. 15 COLONEL SCOTT: But is that – 16 MR CHASKALSON SC: That's 108 MTS. 17 COLONEL SCOTT: Is that in exhibit L? 18 MR CHASKALSON SC: No, it's not in 19 exhibit L. 20 COLONEL SCOTT: So it's a different 21 camera. 22 MR CHASKALSON SC: No, it's the same 23 camera – 24 COLONEL SCOTT: But it's a different 25 camera from -</p>
<p style="text-align: right;">Page 13947</p> <p>1 into orders and so on. I'm not saying I didn't look at, 2 obviously properties of videos. But I'm trying to recall, 3 I even think that video of that crowd behaviour as I say 4 was put in at a later stage and there are different 5 versions of this presentation that one can go back to, to 6 actually look at. 7 MR CHASKALSON SC: Colonel, I put to you 8 that even if you hadn't looked at properties, if you had 9 looked at slides 103 MTS 104 MTS and 108 MTS in particular, 10 the one of Mr Mathunjwa you would have realised they came 11 before 122 MTS, would you accept that? 12 COLONEL SCOTT: Yes, but just to put me 13 in the picture, the Mathunjwa slide talking, is that a 14 composition of two videos put together or is it a single – 15 MR CHASKALSON SC: No 108 MTS is a very 16 brief, I mean it's a couple of seconds of Mr Mathunjwa 17 speaking. 18 COLONEL SCOTT: No, but the one in the 19 actual presentation. 20 MR CHASKALSON SC: No, the one in, 21 remember, Colonel, there were two POPs video operators 22 present at the koppie. So what happened was one of the 23 POPs video operators took the 048 MTS which is the 30 24 minute file of the AMCU speakers and the Mr Mathunjwa, it's 25 a very long file. While that POPs operator was taking that</p>	<p style="text-align: right;">Page 13949</p> <p>1 MR CHASKALSON SC: It's a different clip. 2 COLONEL SCOTT: Exhibit L's clip. 3 MR CHASKALSON SC: Well it's not a 4 different camera from the clips of exhibit L on slides 162 5 to 168. It's the same camera. 6 COLONEL SCOTT: Ja, but what I'm saying 7 it's not the clip that we used in exhibit L, it's not from 8 the same camera as the strikers that were speaking. 9 MR CHASKALSON SC: No, it is from, it is 10 from the camera as the strikers who were speaking, 11 protestor 1, protestor 2, protestor 3, protestor 4, 12 protestor 5, protestor 6. We've been through this before, 13 you'll recall that 116 to 118 are protestors 1 to 3 and I 14 think it's 120 to 122 of protestors 4 to 6. 15 COLONEL SCOTT: Yes. 16 MR CHASKALSON SC: And Mr Mathunjwa is 17 108. 18 COLONEL SCOTT: But I'm asking you is Mr 19 Mathunjwa's 108 is that the file in exhibit L? 20 MR CHASKALSON SC: No, it's not the file 21 in exhibit L. 22 COLONEL SCOTT: That's why I'm saying the 23 file in exhibit L, the movie in exhibit L is from a 24 different camera. 25 MR CHASKALSON SC: That's from 48.</p>

<p style="text-align: right;">Page 13950</p> <p>1 COLONEL SCOTT: Yes, and I can only give 2 that as a possibility why they were not sequenced in the 3 correct order. 4 MR CHASKALSON SC: But my response to 5 that is twofold. The first is if you look at the file 6 properties whether they've from one camera or two 7 properties it becomes - cameras it becomes irrelevant 8 because the times speak for themselves, will you accept 9 that? 10 COLONEL SCOTT: They do, but that's 11 considering that I was looking at that at the time. As I 12 say, I don't know where or what we're trying to, where 13 we're trying to move towards but I concede that the time 14 sequencing is wrong. It was not done maliciously and the 15 only oversight I can think is because it was from a 16 separate camera that we utilised to put it there. 17 MR CHASKALSON SC: Well let's look at 18 that separate camera for a moment. The 100 MTS series. I 19 understood you earlier now to have some doubts as to 20 whether or not you downloaded the 40 MTS series on the 17th, 21 you definitely downloaded something from POPs operators on 22 the 17th, you'll accept that? 23 COLONEL SCOTT: 17th, 18th around that. 24 MR CHASKALSON SC: 17th, 18th but onto 25 your hard drive -</p>	<p style="text-align: right;">Page 13952</p> <p>1 COLONEL SCOTT: Yes. 2 MR CHASKALSON SC: Now when I questioned 3 you yesterday in relation to these videos, you accept that 4 this footage of the 16th was what was downloaded onto your 5 hard drive on the 17th? 6 COLONEL SCOTT: I can recall that the 7 POPs downloaded videos onto my computer, the POP members. 8 To recall exactly what it was is difficult through memory. 9 I know that I've worked on many a POPs videos over the time 10 leading up till the exhibit L was presented but this is the 11 objective evidence taken from the hard drive of what they 12 actually did give me at that time. 13 MR CHASKALSON SC: But what you're saying 14 today is that there is a possibility that in fact none of 15 the POPs video footage of the 16th was downloaded onto your 16 hard drive on the 17th or 18th. 17 COLONEL SCOTT: Well I'm not sure, we can 18 check these if you would like. 19 CHAIRPERSON: You mean check them against 20 your computer? Perhaps you can do that - 21 COLONEL SCOTT: These are - 22 CHAIRPERSON: Perhaps you can do that in 23 the lunch hour. 24 COLONEL SCOTT: Yes, Commissioner. 25 CHAIRPERSON: Ja. The point is as I</p>
<p style="text-align: right;">Page 13951</p> <p>1 COLONEL SCOTT: Yes. 2 MR CHASKALSON SC: You're now expressing 3 some doubts as to whether the 40 MTS series was part of 4 what you downloaded? 5 COLONEL SCOTT: Yes. 6 MR CHASKALSON SC: Do you have any doubts 7 that the 100 MTS series was downloaded on the 17th and 18th, 8 or 18th? 9 COLONEL SCOTT: I have a version which 10 starts at 001 MTS and it runs through to, I'll tell you 11 now, 067, no, no that's, 066 MTS, that was given to me 12 within the first two days of the incident. 13 MR CHASKALSON SC: So you're saying that 14 it's possible that the POPs operators 100 MTS series was 15 also not downloaded onto your computer? 16 COLONEL SCOTT: It's not the file names I 17 have, I don't know if file names would be changed as they 18 are downloaded onto other devices or from other devices. 19 But I have from 001 MTS to as I say 066 MTS and this one's 20 067 MTS. 21 MR CHASKALSON SC: Now, Colonel, we've 22 looked at the 40 MTS series and the 100 MTS series and 23 we've satisfied ourselves that between the two of them they 24 comprise everything that the POPs video operators took on 25 the 16th. You accept that that's correct?</p>	<p style="text-align: right;">Page 13953</p> <p>1 understand it and I may have it wrong that's why I'm 2 putting it to you so that I can be correct if I'm wrong. 3 There were two POPs video operators and they took obviously 4 separate videos. The question is whether the miners 5 speeches, including the murderous one were before or after 6 Mr Mathunjwa's speech. Is that correct, is that the point? 7 MR CHASKALSON SC: We seem to be on, to 8 be ad idem - 9 CHAIRPERSON: Yes. 10 MR CHASKALSON SC: On that score. 11 CHAIRPERSON: Its now conceded that the 12 murderous speech was after , something like 50 minutes or 13 so after the Mathunjwa speech. 14 COLONEL SCOTT: Yes. 15 CHAIRPERSON: Now the video on which 16 Mathunjwa's speech was recorded goes on to deal with, is 17 that correct, with some photographs as it were of the 18 protestors, the miners speech, is that right? 19 MR CHASKALSON SC: No, Chairperson, the 20 long video of Mr Mathunjwa in fact starts with AMCU 21 organisers speaking at 48 and runs through to the end of Mr 22 Mathunjwa. That video focuses almost exclusively on the 23 speakers. 24 CHAIRPERSON: When did that video come to 25 an end?</p>

<p style="text-align: right;">Page 13954</p> <p>1 MR CHASKALSON SC: That video comes to an 2 end, we can look at its properties it starts at 12:18 and 3 it ends, it runs for 30 minutes and 36 seconds. So it will 4 end at 12:48:36. 5 CHAIRPERSON: Okay. Let's call that 6 video A. 7 MR CHASKALSON SC: Indeed. 8 CHAIRPERSON: Now video B was taken by 9 the other video operator? 10 MR CHASKALSON SC: But it wasn't video B, 11 it was videos B, 107 to 122 as it were. 12 CHAIRPERSON: Alright. But with one 13 camera. 14 MR CHASKALSON SC: With one camera. 15 CHAIRPERSON: Alright. Now that video 16 operator when did his video start or his videos start, when 17 do his videos start? 18 MR CHASKALSON SC: Well if we look at 102 19 it starts at 12:20. 20 CHAIRPERSON: So it starts in other words 21 with the AMCU speeches? 22 MR CHASKALSON SC: Indeed, before Mr 23 Mathunjwa. 24 CHAIRPERSON: And it runs through, with 25 interruptions I take it, it runs through to the miners</p>	<p style="text-align: right;">Page 13956</p> <p>1 Chairperson. 2 CHAIRPERSON: The question is how obvious 3 or unobvious that was at the time, is that correct? 4 MR CHASKALSON SC: Yes, Chairperson. 5 CHAIRPERSON: Okay, you've heard my 6 exchange with the evidence, with Mr Chaskalson. 7 COLONEL SCOTT: Yes, Sir. 8 CHAIRPERSON: That's the point you've got 9 to meet, isn't it. 10 COLONEL SCOTT: Yes. 11 CHAIRPERSON: If you looked at camera B 12 it would have been apparent to you without looking at 13 properties or anything of that kind, it would have been 14 apparent to you that the AMCU speeches were before the 15 miners murderous speech. 16 COLONEL SCOTT: Chairperson, these – 17 CHAIRPERSON: Is that right? 18 COLONEL SCOTT: Yes. Where I can recall 19 these videos for the first time being shown to me or seeing 20 them, I mean there, I could possibly have seen them before 21 this time. But they didn't mean much to me, I didn't know 22 what was being said. They were translated to us, I think 23 it was in early October, somewhere around that time and the 24 translations that were done were done by the video 25 operators of the police, that actually took them. I think</p>
<p style="text-align: right;">Page 13955</p> <p>1 murderous speech? 2 MR CHASKALSON SC: Indeed, Mr 3 Chairperson. 4 CHAIRPERSON: So if you look at that 5 video or that series of videos from that one camera if we, 6 instead of talking of video A and video B we talk about 7 camera A and camera B. If you look at camera B it appears 8 that the AMCU speeches were before the miners murderous 9 speech. 10 MR CHASKALSON SC: Indeed, Chairperson. 11 CHAIRPERSON: So all you'll have to do is 12 to look at camera B to see the correct sequence. 13 MR CHASKALSON SC: That is correct, 14 Chairperson. 15 CHAIRPERSON: Is that right? 16 MR CHASKALSON SC: That is correct. 17 CHAIRPERSON: Now that sequence is not 18 the sequence which we see on exhibit L, is that right? 19 MR CHASKALSON SC: That is correct, 20 Chairperson. 21 CHAIRPERSON: So therefore its clear, 22 simply by looking at the sequence of the videos on camera B 23 that those who prepared this section of exhibit L got it 24 badly wrong? 25 MR CHASKALSON SC: That is correct,</p>	<p style="text-align: right;">Page 13957</p> <p>1 one of them understood Fanagalo to some degree and those 2 were the ones that he had actually pointed out. So I 3 didn't chose to even look at the rest, I couldn't 4 understand what they were saying in the first place. Those 5 that he had chosen a decision was taken, not by myself, but 6 to have them translated thus for the commission. None of 7 the images that had been utilised there I could understand, 8 but what I did do was take them, if I can recall correctly 9 and place them so long into the presentation in their 10 places before the actual translated versions came back. So 11 I was not fully aware of exactly what was being said there 12 because even the translator was, as it was sort of going, 13 trying to keep up and sort of say and I don't even think 14 his translation was as, as accurate as what we're seeing 15 there for that matter. 16 CHAIRPERSON: I don't understand how the 17 translation's relevant. If we're simply trying to get the 18 right sequence, with or without translation, if you look 19 the videos taken on camera B it's quite clear what the 20 correct sequence is, isn't that so? 21 COLONEL SCOTT: But I didn't watch them, 22 Chairperson, for that matter. I would be looking for 23 something different when I was watching videos. Something 24 that would be applicable for the presentation and I think 25 initially those videos weren't even included. It was until</p>

<p style="text-align: right;">Page 13958</p> <p>1 the translations were –</p> <p>2 CHAIRPERSON: I understand that but the</p> <p>3 sequencing was important. Your job was sequencing amongst</p> <p>4 other things wasn't it?</p> <p>5 COLONEL SCOTT: Yes, it was.</p> <p>6 CHAIRPERSON: So if you had used, without</p> <p>7 even looking at properties, you had simply looked at one</p> <p>8 video taken on one camera, the sequencing would have looked</p> <p>9 after itself.</p> <p>10 COLONEL SCOTT: Well like I say I didn't</p> <p>11 understand what was being said –</p> <p>12 CHAIRPERSON: Do you have to?</p> <p>13 COLONEL SCOTT: No, but I didn't look, I</p> <p>14 didn't look at all the videos. I watched those which were</p> <p>15 shown to me during that translation time.</p> <p>16 MR CHASKALSON SC: Well, Colonel, just to</p> <p>17 follow up from that exchange with the Chairperson. You say</p> <p>18 you didn't understand what was being said on these videos.</p> <p>19 COLONEL SCOTT: Yes, at the time. But</p> <p>20 they were given in their, the language that they were</p> <p>21 spoken in, yes.</p> <p>22 MR CHASKALSON SC: How could you select a</p> <p>23 video for inclusion in exhibit L if you didn't understand</p> <p>24 what was being said on it?</p> <p>25 COLONEL SCOTT: They were the videos that</p>	<p style="text-align: right;">Page 13960</p> <p>1 Mathunjwa at the koppie on the morning of the 16th or around</p> <p>2 noon time on the 16th was a very, very important event would</p> <p>3 you not agree?</p> <p>4 COLONEL SCOTT: Yes.</p> <p>5 MR CHASKALSON SC: And I think that's</p> <p>6 possibly why it was placed in there.</p> <p>7 COLONEL SCOTT: Ja.</p> <p>8 MR CHASKALSON SC: If there was an</p> <p>9 attempt to represent that which was relevant then that was</p> <p>10 one of the most relevant events of the day. But I want to</p> <p>11 go back to something that the Chairperson put to you. The</p> <p>12 Chairperson put to you that just looking at the one camera,</p> <p>13 at the 100 series it would have been clear that the AMCU</p> <p>14 and Mr Mathunjwa's videos came before the protestors video,</p> <p>15 the protestors speech and would you accept that?</p> <p>16 COLONEL SCOTT: I would accept that if,</p> <p>17 as I say if I had watched all the videos personally keeping</p> <p>18 that in mind, that that is what we were going to do. But</p> <p>19 as I say, Chairperson, I, if I can maybe try and make it</p> <p>20 clearer. Those videos that are in the presentation were</p> <p>21 chosen by the POPs video operators because they understood</p> <p>22 what they were saying. Those were presented. I had never</p> <p>23 taken the time to go through all of that because what they</p> <p>24 were saying I could not, and there was no relevance to me</p> <p>25 with regard to the visuals I was seeing to need to be in</p>
<p style="text-align: right;">Page 13959</p> <p>1 the police video operators themselves came to explain to us</p> <p>2 at a meeting to say these videos, this is what these</p> <p>3 strikers are saying and because of that those were the</p> <p>4 videos that were selected to then go forward to the</p> <p>5 presentation. They didn't show the rest of, they didn't go</p> <p>6 through all of them. Those video operators showed us only</p> <p>7 those that they said were relevant there.</p> <p>8 CHAIRPERSON: Did they translate slide</p> <p>9 169, the video which we see on slide 169?</p> <p>10 COLONEL SCOTT: Is that the Mathunjwa</p> <p>11 one, no they didn't. I'm not sure why or how that came to</p> <p>12 be put in. But I think it was deemed necessary, as I say,</p> <p>13 Chairperson, this wasn't an exclusive Visser Scott</p> <p>14 presentation. We would build the presentation and present</p> <p>15 it and it would go through inputs from senior members of</p> <p>16 the police etcetera, approvals etcetera before it would go</p> <p>17 forward. So it's not all just a Scott Visser, we were</p> <p>18 responsible for the building of it. The inputs were given</p> <p>19 by people, certain slides are included at the discretion of</p> <p>20 others and I can't truly, I don't place blame but I recall</p> <p>21 that meeting in Rustenburg where those specific videos of</p> <p>22 the protestors speaking were shown to us and explained and</p> <p>23 thus they were placed in. The one with Mr Mathunjwa</p> <p>24 addressing I'm not sure why that was placed in.</p> <p>25 MR CHASKALSON SC: Well the address of Mr</p>	<p style="text-align: right;">Page 13961</p> <p>1 the presentation. It was only once the translation was</p> <p>2 made to us that those were determined to be in there. I</p> <p>3 don't know recall how the Mathunjwa video got there. I</p> <p>4 know it was a decision taken that it was needed to be put</p> <p>5 in and again I reiterate there was no malicious intent to</p> <p>6 place it beyond the strikers or before them, I concede that</p> <p>7 that is out of sequence.</p> <p>8 MR CHASKALSON SC: Well, Colonel, when</p> <p>9 the Chairperson said to you it would have been obvious by</p> <p>10 looking at the 100 series, the one camera what was the</p> <p>11 sequence was the three specific files to which I referred</p> <p>12 you in that regard which would make the sequence clear were</p> <p>13 103 MTS, 104 MTS and 108 MTS, you'll recall?</p> <p>14 COLONEL SCOTT: I recall, yes.</p> <p>15 MR CHASKALSON SC: Now there's a very</p> <p>16 funny thing about those three files which are the only</p> <p>17 three files which make the sequence clear. The funny thing</p> <p>18 is that they to were not put onto the version of the SAPS</p> <p>19 hard drive that was circulated to the parties and the</p> <p>20 evidence leaders. Can I ask you to go back to exhibit JJJ</p> <p>21 17 and the thumbnails this time. Its 17.3. Let's look at</p> <p>22 what was culled from the 100 series for circulation to the</p> <p>23 evidence leaders, it goes 102, no, no sorry, I've sent you</p> <p>24 back to the wrong exhibit. This is what we got from</p> <p>25 Lonmin. It's 23.1 and 23.2.</p>

<p style="text-align: right;">Page 13962</p> <p>1 COLONEL SCOTT: Is this not what the SAPS 2 provided what you have on screen now? 3 MR CHASKALSON SC: No, no this is what 4 came from Lonmin. You see if one looks at the top it says 5 Lonmin hard drive original. Let's go back to what SAPS 6 gave which is exhibit JJJ23. 7 CHAIRPERSON: That can be shown to us. 8 MR CHASKALSON SC: Can we see JJJ23? So 9 let's look at what came from the 100 MTS series to the 10 parties. Well there's these strange 44 and 80 MTS videos 11 that we can't really explain. Then it starts at 102. Then 12 I said 103 and 104 would have told the sequence but they 13 weren't given to us. 14 [12:23] It then jumps to 105, 6 and 7, none of which 15 shows the sequence. 108 would have been Mr Mathunjwa but 16 it too was left out. I don't 109, I can't recall what 109 17 says but then it picks up 110, 111, 112, 113, 114 and 116, 18 117, 118, 120, 121, 122, 123. So the three files that 19 would have enabled us as evidence leaders to identify the 20 sequence without recourse to file properties were not put 21 on the SAPS hard drive that was given to us. 22 COLONEL SCOTT: Just recall the numbers 23 again, the numerical sequence of those three. 24 MR CHASKALSON SC: 103, 104 and 108. 25 CHAIRPERSON: If you look at what's on</p>	<p style="text-align: right;">Page 13964</p> <p>1 thumbnails or whether those files change names when they 2 get transferred or resaved, I'm unsure but again I can only 3 say to what we had in our possession when we got to work. 4 MR CHASKALSON SC: Well, Colonel, I want 5 to take us back a step because what you're putting to us is 6 quite a startling proposition. Major-General Annandale 7 issued an instruction to everybody on the evening of the 8 16th as I understand it, that all video footage of the event 9 had to be brought to you as a nodal point. Is that 10 correct? 11 COLONEL SCOTT: This is correct and in 12 the context of helping to build a presentation for the 13 National Commissioner the next day. 14 MR CHASKALSON SC: Yes, but you and 15 Major-General Annandale then repeated that instruction 16 several times over the next few days after that 17 presentation had been presented. 18 COLONEL SCOTT: Yes. 19 MR CHASKALSON SC: That's correct. So 20 you were the nodal point where video footage of the 16th had 21 to be brought. 22 COLONEL SCOTT: Yes. 23 MR CHASKALSON SC: And in particular of 24 the 16th because that was the event. 25 COLONEL SCOTT: Yes.</p>
<p style="text-align: right;">Page 13963</p> <p>1 the screen you'll see those are missing. 2 COLONEL SCOTT: Yes. 3 CHAIRPERSON: And the one we saw 4 previously was obtained from Lonmin where the whole 5 sequence was given. 6 COLONEL SCOTT: Chairperson, we worked 7 with what we were given, that's all I can say. What we had 8 is what we used and if they're not there it's very possible 9 that they weren't given to us. 10 MR CHASKALSON SC: Well let's interrogate 11 that proposition. I put to you before that the 40 MTS 12 series and the 100 MTS series comprise the total sum of 13 POP's video footage taken on the 16th and you accept that? 14 COLONEL SCOTT: Yes. 15 MR CHASKALSON SC: Now are you suggesting 16 to us that if we don't see the 40 MTS series on the SAPS 17 hard drive and we don't see a complete 100 MTS series on 18 the SAPS hard drive that somehow the POP's video footage of 19 the 16th didn't make it over either to your laptop or to 20 your hard drive or to the SAPS hard drive? 21 COLONEL SCOTT: Well what I can tell you 22 that directly after the photograph you're seeing there is 23 044 or the thumbnail 044 MTS that is in line with the ones 24 I have. We started at 001 MTS and ran to, as I say 066 25 MTS, so even how this is being put together whether those</p>	<p style="text-align: right;">Page 13965</p> <p>1 MR CHASKALSON SC: Now, you're suggesting 2 to us that it is possible that the total POP's video 3 footage of the 16th wasn't brought to you. 4 COLONEL SCOTT: Well I'm suggesting that 5 what I have here is what was brought to me within the next 6 two days. There could have been more delivered to me after 7 those two days when I had the external hard drive because 8 the printouts I have here is what I transferred from my 9 computer to that external hard drive. 10 MR CHASKALSON SC: Colonel, I want to 11 take a step back. You testified yesterday that the way the 12 POP's video footage was brought to you was on camera cards. 13 Is that correct? 14 COLONEL SCOTT: From what I can recall, 15 yes. 16 MR CHASKALSON SC: Now the camera cards 17 would have recorded everything that the POP's video 18 operators took. That is how camera cards operate. Do you 19 accept that? 20 COLONEL SCOTT: Yes. 21 MR CHASKALSON SC: So the only way you 22 could have got a directory that looked like that from the 23 camera cards of the POP's video operators is if somebody 24 had gone onto the cards and very consciously removed 25 certain individual files from those cards. Will you accept</p>

<p style="text-align: right;">Page 13966</p> <p>1 that?</p> <p>2 COLONEL SCOTT: If there are files</p> <p>3 missing then, yes I accept that.</p> <p>4 CHAIRPERSON: There appears to have been,</p> <p>5 if one looks at it.</p> <p>6 COLONEL SCOTT: Yes, I see that,</p> <p>7 Chairperson.</p> <p>8 CHAIRPERSON: And then what was</p> <p>9 eventually handed over after the request of November which</p> <p>10 is at page 189 of file 3.1 and then the meeting of the 7th</p> <p>11 of November. What was then handed over?</p> <p>12 MR CHASKALSON SC: Well, Chairperson,</p> <p>13 we'll get to that in some detail a bit later but it's -</p> <p>14 Colonel, would you accept that if one goes to the various</p> <p>15 iterations of the SAPS hard drive today one will find a</p> <p>16 full set of the 40 MTS series and a full set of the 100 MTS</p> <p>17 series? First of all on that external hard drive that you</p> <p>18 gave us yesterday and secondly on the one that we copied</p> <p>19 from you in June, or in July which was the Brigadier</p> <p>20 Pretorius -</p> <p>21 COLONEL SCOTT: Yes, yes.</p> <p>22 MR CHASKALSON SC: So the full set is now</p> <p>23 on the SAPS hard drive?</p> <p>24 COLONEL SCOTT: Yes.</p> <p>25 MR CHASKALSON SC: So it got there</p>	<p style="text-align: right;">Page 13968</p> <p>1 their SD cards that I downloaded it. But beyond that I</p> <p>2 can't speak too much, that's why I'm asking for objective</p> <p>3 evidence to be viewed, so that we can get to the bottom of</p> <p>4 what exactly I had and what I'm being accused of having</p> <p>5 that I never had.</p> <p>6 MR CHASKALSON SC: We're not making</p> <p>7 accusations at this stage, Colonel Scott, and in terms of</p> <p>8 objective evidence of what you had we know that there are</p> <p>9 very limited ways of establishing that now because on your</p> <p>10 own version and I don't want to cast any doubts as to that</p> <p>11 version. You perfectly, reasonably after you transferred</p> <p>12 the original archive that was on your hard drive, your</p> <p>13 internal laptop hard drive onto the external hard drive,</p> <p>14 you perfectly, reasonably wiped out those directories on</p> <p>15 your laptop to make up space. That is a perfectly</p> <p>16 reasonable course of action because the archive was not</p> <p>17 external but what that means is that we cannot now go to</p> <p>18 your laptop to see what was on and what wasn't on because</p> <p>19 what was on has now been removed. Do you accept that?</p> <p>20 COLONEL SCOTT: I accept that I did</p> <p>21 remove them and when I placed them to clear up space but as</p> <p>22 we know there are ways and means that one can go into a</p> <p>23 laptop.</p> <p>24 MR CHASKALSON SC: Well we may have to</p> <p>25 ask our forensic expert to look at the hard drive of your</p>
<p style="text-align: right;">Page 13967</p> <p>1 sometime between the 16th of August last year and now.</p> <p>2 COLONEL SCOTT: Yes.</p> <p>3 MR CHASKALSON SC: And POP's video</p> <p>4 operators came to you with their cards on the 17th or the</p> <p>5 18th and downloaded what was on the cards onto your</p> <p>6 computers, onto your laptop.</p> <p>7 COLONEL SCOTT: At some stage they were</p> <p>8 at me yes and I downloaded some footage.</p> <p>9 MR CHASKALSON SC: And maybe we need to</p> <p>10 get a bit more detail about that process. I presume they'd</p> <p>11 have come to you, one video operator comes to you with one</p> <p>12 video card and says this is my footage and hands you the</p> <p>13 card.</p> <p>14 COLONEL SCOTT: You see I'm working, as</p> <p>15 I've said in my statement, to the best of my recollection.</p> <p>16 This is not a matter that we've had time to go and sit and</p> <p>17 to work this out. We had the Thursday itself which before</p> <p>18 it preceded a couple of days where it was hard work, long</p> <p>19 hours, trying to recall now on the Friday morning or</p> <p>20 whether it was the Saturday morning and I know that the</p> <p>21 POP's guys were with me at some stage then and I downloaded</p> <p>22 footage from them which is evident from what I have here.</p> <p>23 I'm also assuming that it was from SD card because that's</p> <p>24 how those cameras work. I don't think there is any other</p> <p>25 way they could work, thus the assumption that it was from</p>	<p style="text-align: right;">Page 13969</p> <p>1 laptop but it is a lengthy process and one that is unlikely</p> <p>2 to be capable of being completed in the next couple of</p> <p>3 days.</p> <p>4 COLONEL SCOTT: If that's going to solve</p> <p>5 where we're at then we need to do that.</p> <p>6 MR CHASKALSON SC: Well I thank you for</p> <p>7 the tender, we -</p> <p>8 CHAIRPERSON: Okay well I take it we'll</p> <p>9 have to take that up but it's going to inconvenience you a</p> <p>10 bit because I think you're going to have to be there while</p> <p>11 it's being done because it's private material and so on,</p> <p>12 confidential material but it won't be the concern of the</p> <p>13 forensic expert as I understand that. But what's puzzling</p> <p>14 me is that somebody, let's use a neutral word, omitted 103</p> <p>15 and 104 and 108 and 109 from the sequence. Now either you</p> <p>16 know, Mr Chaskalson put it to you, the possibilities, there</p> <p>17 are two questions that occur to me. One is why and the</p> <p>18 other one is who. I'm not so interested actually in who</p> <p>19 for the moment because as far as I can see it could only</p> <p>20 have been someone in the police. So responsibility lies</p> <p>21 somewhere in the police but I'm interested in why. What</p> <p>22 possible motive could the person or persons have had.</p> <p>23 Perhaps I shouldn't ask you that, I mean that's just</p> <p>24 something you can't answer perhaps but it's something</p> <p>25 that's puzzling me I'm afraid. Perhaps at some stage it</p>

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1 will be clarified.

2 MR CHASKALSON SC: Well in fairness to

3 Colonel Scott I want to run with that point a little

4 because – I don't need to put to you, you have accepted

5 that the object of the incorrect sequencing of slides 162

6 to 169 and in particular 169 at the end rather than the

7 beginning is a sequence which is calculated to prejudice –

8 which is not calculated in a deliberate sense –

9 CHAIRPERSON: It's calculated in an

10 objective sense –

11 MR CHASKALSON SC: Yes, calculated in an

12 objective sense –

13 CHAIRPERSON: It's like to –

14 MR CHASKALSON SC: It's likely to cause

15 prejudice to AMCU, you concede that. I don't want to

16 impute motive or anything like that but I do want you to

17 address this which is I'd like you to go to exhibit SS3 and

18 page 24 of SS3.

19 CHAIRPERSON: Sorry, SS3 page?

20 MR CHASKALSON SC: 24, Chair. SS3 is I

21 think the first generation of reverse engineered plans.

22 COLONEL SCOTT: Can I just clarify it's

23 page 24?

24 MR CHASKALSON SC: It's the 24th page in

25 the bundle of SS, it's that slide which I'm interested in

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1 which is up on the screen, the background slide. Rival

2 mine-worker unions. And, Colonel, do you have that slide

3 in front of you?

4 COLONEL SCOTT: I do.

5 MR CHASKALSON SC: And do you recognise

6 as a document which you yourself drafted?

7 COLONEL SCOTT: Yes, I think even come

8 from exhibit L.

9 MR CHASKALSON SC: It's - a reproduction

10 of it may appear in exhibit L but this particular slide was

11 given to us as the SAPS plan, SAPS power point presentation

12 of the plan on the 14th of August if I recall correctly.

13 But do you recall putting a slide of this nature into one

14 of your presentations at the time?

15 COLONEL SCOTT: It's not a slide that was

16 shown in the presentation to the audience, the commanders.

17 It's a slide that was I think taken out of the presentation

18 for the purposes of the Commission to be placed into this.

19 MR CHASKALSON SC: Sorry, Colonel, can I

20 understand you correctly? Are you saying that this is not

21 part of a contemporaneous document, that this slide was not

22 in any contemporaneous document?

23 COLONEL SCOTT: When I deal with a plan

24 in there is a situation there would be background but I

25 don't remember having the background as filled out as it is

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1 here, with as much information. And as I said when I was

2 asked to make a plan for each day and I made it very aware

3 that the plans that I was in December reverse engineering

4 were not the plans from the time but were simply there to

5 help to assist the Commission to try to understand better

6 what was said.

7 MR CHASKALSON SC: So, Colonel, this

8 slide you're saying is a reverse engineered slide from

9 around December which was designed to enable the Commission

10 better to understand what was said at the JOC as opposed to

11 what was physically shown on a PowerPoint presentation at

12 the JOC.

13 COLONEL SCOTT: That's correct.

14 MR CHASKALSON SC: So it would then I

15 suppose reflect two different things. The one is your

16 recollection in December of what was said in the JOC. Well

17 let's just put it that it reflects your recollection in

18 December of what was said in the JOC.

19 COLONEL SCOTT: Yes, it's possibly got

20 hindsight to it as well having worked on the presentation

21 and knowing what I knew but I was informed over time whilst

22 at the operation, specifically by Mr Sinclair of the

23 background of the violence that had been going on. And the

24 Monday the 13th, I'm seeing also possibly where you're going

25 with AMCU and SAPS clash, AMCU and Security clash.

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1 MR CHASKALSON SC: We will get there,

2 Colonel Scott, but maybe we should wait until we do. I'd

3 first like to clarify this status of this slide but I think

4 we have. You say it wasn't a slide that you prepared

5 contemporaneously –

6 COLONEL SCOTT: No.

7 MR CHASKALSON SC: And it was reverse

8 engineered in December to reflect what you recall as having

9 been said in the JOC, possibly with the benefit of

10 hindsight in also preparing a presentation. Is that

11 correct?

12 COLONEL SCOTT: It's to the best of my

13 recollection, yes.

14 MR CHASKALSON SC: We may, at a later

15 stage, come back to the status but let's just take that

16 status as given for present purposes and I want to ask you

17 to turn also to page 27 which is four slides down and if

18 you can read that slide as well. And then we'll come back

19 to discussing the content of the two.

20 COLONEL SCOTT: I see it, yes.

21 MR CHASKALSON SC: So in slide 24 you

22 describe the background as relating to rival mine-workers

23 union NUM and AMCU and a recent aggressive history and you

24 deal with the clash between unions, as you put it on

25 Saturday the 11th of August. Sunday 12th August AMCU and

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1 Security clash, two security officials killed. Monday 13th
 2 August AMCU and SAPS clash, two police officials dead, one
 3 critically wounded, three AMCU dead, five wounded. And
 4 then moving onto 27 AMCU possibly feeling defiant, possibly
 5 defiant, feeling the clash with SAPS resulted in their
 6 victory with killing of police officials and seizing police
 7 radios and weapons. Witch doctor providing muti to AMCU
 8 group creating mindset of invincibility. Well, when I read
 9 these slides what it suggests to me is that you didn't
 10 distinguish between AMCU and the strikers. Is that a fair
 11 inference to be drawn?

12 COLONEL SCOTT: I think it is a fair
 13 inference and I think remembering that I set these slides
 14 up in December and possibly again with very isolated
 15 hindsight on my own, it was obvious, I don't want to say
 16 it's obvious to everybody but it seemed to me with Mr
 17 Mathunjwa addressing the strikers and doing his part with
 18 them that it was more an AMCU grouping than it would be a
 19 non-grouping.

20 MR CHASKALSON SC: But my question was,
 21 what I put to you, that you didn't distinguish between AMCU
 22 and the protesters, you accepted that?

23 COLONEL SCOTT: Yes.

24 MR CHASKALSON SC: The second proposition
 25 I'm going to put to you is that you viewed AMCU as having

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1 clashed violently with both mine security and the SAPS,
 2 would you accept that?

3 COLONEL SCOTT: It's what's written
 4 there. At this time it's what I perceived and I perceived
 5 that – and even through the small amounts that I was
 6 picking up of information and so on that even though some
 7 of the protesters happened to still be NUM members that was
 8 only on paper as they were looking to move over to the AMCU
 9 Union which I believe has happened today as such because
 10 AMCU has become the dominant union at Lonmin.

11 MR CHASKALSON SC: My third proposition
 12 is that you held AMCU responsible for the deaths of the two
 13 mine security officials on the 11th. You can go back to
 14 page 24 "AMCU and security clash, two security officials
 15 killed."

16 COLONEL SCOTT: I think where this was
 17 aiming it was to look at giving the group of protesters a
 18 name because in general they are protesting for some reason
 19 and under some organisation. So it was simply not looking
 20 at the AMCU organisation as the greater organisation and
 21 implicating Mr Mathunjwa, it was simply the members in my
 22 opinion were mainly affiliated to AMCU or planning to
 23 become affiliated with AMCU.

24 CHAIRPERSON: I'm sorry to interrupt you
 25 for the moment, but I see from FFF2 which is the statement

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1 of the National Commissioner, she says that when she
 2 arrived at Marikana she received a briefing from people
 3 concerned and also from Lonmin. And in paragraph 17 of her
 4 statement, page 5 where she's dealing with the events of
 5 the 13th. She went to Marikana after the killing of people,
 6 the clash. She says in 17 "the mine management informed
 7 the SAPS delegation that there were ongoing clashes between
 8 the members of the two labour unions, AMCU and NUM and
 9 management further stated that clashes had already claimed
 10 the lives of nine people as we were briefed by the police
 11 etcetera." So it seems quite clear that the information
 12 which SAPS originally received from Lonmin categorised the
 13 group of strikers as being AMCU people and that appears to
 14 have been the view which was consistently held by SAPS
 15 based on the information that they had received. Although
 16 you were reverse engineering whatever the word is you used,
 17 this document in December you were, as I see it, correctly
 18 reflecting your understanding at the time in August.

19 [12:43] COLONEL SCOTT: Yes, Chairperson, I think
 20 its correct –

21 CHAIRPERSON: Would that be fair?

22 COLONEL SCOTT: What you're saying is my
 23 understanding. I don't want to speak on behalf of others.
 24 But there were many points that made myself and possibly
 25 others believe that it was more an AMCU affiliated group.

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1 CHAIRPERSON: Well we start for the fact
 2 that this is the information the police were given by
 3 Lonmin.

4 COLONEL SCOTT: Yes.

5 CHAIRPERSON: I take it you also got that
 6 information, whether directly from Lonmin or from those who
 7 got it from Lonmin, is that –

8 COLONEL SCOTT: Commissioner, at first I
 9 was also told that it's more a faceless, they're not to
 10 sure but I think that was more the, I don't want to say the
 11 official but the accurate again being objective that they
 12 couldn't exactly say that these were all AMCU members. But
 13 the feeling was and in discussing later with security
 14 personnel of Lonmin when I was starting to put together the
 15 initial plan was that, and this is where we got to kind of
 16 get the feeling that the Karee hostel was more an AMCU
 17 dominated hostel and most of the militant grouping was
 18 residing at that hostel and that the NUM hostel was a
 19 Wonderkop dominated hostel with the NUM offices around the
 20 corner. Thus the attempted approach of what we deemed was
 21 possibly more an AMCU grouping of people that were
 22 approaching that NUM office.

23 CHAIRPERSON: The point is that was your
 24 understanding?

25 COLONEL SCOTT: Yes, that was my

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1 understanding.

2 CHAIRPERSON: And it was, I would presume

3 primarily based, well not primarily is the wrong word, but

4 based, originally at least, on information received from

5 Lonmin which is the information which the National

6 Commissioner had also received.

7 COLONEL SCOTT: Yes.

8 CHAIRPERSON: And of course the view was

9 to some extent strengthened by the way the two presidents

10 were received?

11 COLONEL SCOTT: Exactly, yes.

12 CHAIRPERSON: Yes. There was of course

13 also a suggestion at one point that half the people on the,

14 I'm not quite sure the correct percentage but a substantial

15 number of people on the koppie were according to the books

16 of Lonmin were NUM members and there were deductions being

17 made in their salaries paid to NUM.

18 COLONEL SCOTT: Yes.

19 CHAIRPERSON: Another substantial number,

20 probably at that stage largely for Karee people were AMCU.

21 COLONEL SCOTT: Yes.

22 CHAIRPERSON: And then there was a

23 substantial number also of people who didn't have a union

24 affiliation.

25 COLONEL SCOTT: Yes.

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1 CHAIRPERSON: Ja. But certainly your

2 understanding initially was it was a clash, as stated here,

3 between the two unions. The people who attacked the NUM

4 office on the 12th whether there was a firing and so forth,

5 they were seen as being AMCU faction.

6 COLONEL SCOTT: Yes.

7 CHAIRPERSON: And then that belief if one

8 can call it that continued through the days thereafter, is

9 that right.

10 COLONEL SCOTT: That's correct, Mr

11 Chairperson.

12 MR CHASKALSON SC: So, Colonel, to recap

13 at the time and with hindsight in December when you reverse

14 engineered these slides you say you didn't distinguish

15 between AMCU and the protestors.

16 COLONEL SCOTT: No.

17 MR CHASKALSON SC: You viewed AMCU as

18 having clashed with both mine security and the SAPS?

19 COLONEL SCOTT: I was aware that, and I'm

20 not saying this because the Chairperson mentioned it, but I

21 was aware that possibly not everybody there would be

22 affiliated to AMCU but I believed that the thrust of that

23 movement and the beefs that they had, driving for more

24 money and so on, obviously was going to be more towards the

25 AMCU side. I didn't see a third option. I saw there was

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1 NUM which was rejected and there was AMCU which was being

2 accepted with the leadership being able to speak openly

3 with the people at the koppie. Thus the people at the

4 koppie being possibly not affiliated on paper but

5 definitely affiliated in heart towards looking at AMCU as

6 being their saviour in this situation.

7 MR CHASKALSON SC: But it goes a little

8 bit further then that because the slides that we're looking

9 at suggests that you regarded AMCU as being responsible for

10 the death of two mine security officials on the 11th and

11 also most importantly for the death of two police officials

12 on the 13th and the critical wounding of a third. I mean if

13 we got the slide on page 27 AMCU possibly defined feeding

14 the clash with SAPS resulted in their victory with killing

15 of police officials.

16 COLONEL SCOTT: As I can say if we go

17 back to the actual plans, the true documents that were

18 created before this, I'm not even sure it says AMCU.

19 MR CHASKALSON SC: Well maybe we should,

20 Colonel, because we don't have the plans on the 14th but

21 what we do have is we have an attempt at reverse

22 engineering immediately after the tragedy on the 16th which

23 is a file called OPS Platinum PPTX and you refer to it at a

24 time in your statement, it's the file which contains a

25 whole of operation Rhino slides. I wonder if we can go to

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1 that presentation now. It's JJJ 50. Its file 1 page 2.

2 The front page says operation Platinum Lonmin Mine Marikana

3 13 August 2012, it will be JJJ50, five zero and if we can

4 now call that file up, JJJ50 and while we're waiting for

5 that file to come up, Colonel, first of all do you

6 recognise this document as a document that you yourself

7 drafted?

8 COLONEL SCOTT: Yes, yes.

9 MR CHASKALSON SC: And the properties of

10 the file reflect that it was last saved at 6:13pm. on the

11 16th of August 2012.

12 COLONEL SCOTT: Yes.

13 MR CHASKALSON SC: Would you confirm that

14 as a correct reflection –

15 COLONEL SCOTT: Yes.

16 MR CHASKALSON SC: Of when you prepared

17 it. So that was prepared in the immediate aftermath of the

18 events of the 16th, 6:13pm.

19 COLONEL SCOTT: Yes.

20 MR CHASKALSON SC: And would have

21 reflected your contemporaneous thinking?

22 COLONEL SCOTT: At that time yes.

23 MR CHASKALSON SC: If we can then go to

24 the slides starting off on slide 3 and we see the same

25 slide that then resurfaced in SSS3, a background, arrival

<p style="text-align: right;">Page 13982</p> <p>1 mine workers –</p> <p>2 CHAIRPERSON: Sorry slide 3 that we've</p> <p>3 got says scope.</p> <p>4 COLONEL SCOTT: Slide 4.</p> <p>5 MR CHASKALSON SC: Its page 3 on slide,</p> <p>6 sorry –</p> <p>7 CHAIRPERSON: Slide 4, sorry page 4 is</p> <p>8 what we're now seeing and there I see that before we go</p> <p>9 further, I've spoken about the clash between the people who</p> <p>10 were thought to be AMCU at the NUM offices being on the</p> <p>11 12th, I was wrong, it was of course the 11th. But what I</p> <p>12 note here you say unions clash (two dead) now that was the,</p> <p>13 was the story that was put out by the strikers. Now, it</p> <p>14 noe turns out that two people weren't killed, two were</p> <p>15 wounded and taken to hospital, is that right?</p> <p>16 COLONEL SCOTT: That's right,</p> <p>17 Commissioner.</p> <p>18 CHAIRPERSON: So but does this reflect</p> <p>19 then the understanding of the police at the time this plan</p> <p>20 was drawn up?</p> <p>21 COLONEL SCOTT: I'm cautious to say the</p> <p>22 police, that would put everybody in that bracket,</p> <p>23 Commissioner, but it was definitely my understanding and</p> <p>24 it's even possible that I was presenting these in the days</p> <p>25 before, with the same understanding but what it came down</p>	<p style="text-align: right;">Page 13984</p> <p>1 had reason to feel animosity towards AMCU, would you accept</p> <p>2 that?</p> <p>3 MR SEMENYA SC: Well that's an argument</p> <p>4 we will challenge it, Chair.</p> <p>5 COLONEL SCOTT: With respect,</p> <p>6 Chairperson, professional police members and specifically</p> <p>7 those of us that were not involved on the 13th it was a</p> <p>8 professional duty still to be carried out. There was no,</p> <p>9 well thoughts or intentions of, if that's where you're</p> <p>10 going. of possible retaliation or to blemish the name of</p> <p>11 AMCU.</p> <p>12 MR CHASKALSON SC: Well I do want to put</p> <p>13 to you what our concern is. Our concern is there are</p> <p>14 slides which suggest that SAPS don't distinguish, didn't at</p> <p>15 the time distinguish between AMCU and protestors and you've</p> <p>16 confirmed in your testimony today that we're not just</p> <p>17 talking about at the time, we're also talking about</p> <p>18 December last year when you were doing the reverse</p> <p>19 engineering process. The slides suggest also that SAPS</p> <p>20 held AMCU responsible for the deaths of two police</p> <p>21 officers. It says AMCU possibly defiant, feeling the clash</p> <p>22 with SAPS resulted in their victory with killing of police</p> <p>23 officials.</p> <p>24 CHAIRPERSON: It's fair to say that SAPS</p> <p>25 regarded AMCU as responsible, isn't it fairer to say that</p>
<p style="text-align: right;">Page 13983</p> <p>1 to was there was a group and there was, that was sitting at</p> <p>2 the koppie and my understanding definitely was that that</p> <p>3 group was more affiliated towards or leaning towards the</p> <p>4 AMCU side. We were led to believe it was a union issue,</p> <p>5 there was obviously finance involved which we knew it was a</p> <p>6 labour dispute with Lonmin but obviously there was union</p> <p>7 issues with the issues that happened on the Saturday</p> <p>8 between the NUM office and so and so. AT the time and with</p> <p>9 the understanding I had would have put it in the bracket</p> <p>10 that this is the rival union AMCU and NUM that are at</p> <p>11 loggerhead to some degree.</p> <p>12 MR CHASKALSON SC: To begin with I just</p> <p>13 wanted to show you that both of these slides were prepared</p> <p>14 in the document you prepared on the 16th. If you can then</p> <p>15 go to slide 7 which is page 8 of that document and there we</p> <p>16 see the same slide that we refer to on page 27 starting,</p> <p>17 "AMCU possibly defiant feeding the clash with SAPS resulted</p> <p>18 in their victory with killing of police officials and</p> <p>19 seizing police radios and weapons."</p> <p>20 Now, I do want now to go where you've known where</p> <p>21 all of this is going all along because it is a concern that</p> <p>22 I have. Which is that we have a very curious coincidence</p> <p>23 here. We have a series of contemporaneous slides which on</p> <p>24 their face would give SAPS reason to feel a whole lot of</p> <p>25 animosity towards AMCU, on the face would reflect that SAPS</p>	<p style="text-align: right;">Page 13985</p> <p>1 the drafter of this slide held that view, it may well have</p> <p>2 been a view shared by his colleagues but you can't put it</p> <p>3 higher than that.</p> <p>4 MR CHASKALSON SC: I take the point. I</p> <p>5 possibly put it too –</p> <p>6 COLONEL SCOTT: Sir, Commissioner, I</p> <p>7 think it would be more accurate I'm quite aware of how the</p> <p>8 police officials died, I'm quite aware of there was a group</p> <p>9 of strikers. That group had to be given a name of sort.</p> <p>10 Its, there was no intent to go out to blemish an AMCU name</p> <p>11 or something, but they had to, and to us they seemed to be</p> <p>12 more the AMCU union affiliated members that were</p> <p>13 participating in this for the obvious reasons that we've</p> <p>14 said. So it's not that there was any intention to go out</p> <p>15 after an AMCU name, maybe the wording should have been</p> <p>16 saying the AMCU affiliated or thought to be AMCU affiliated</p> <p>17 members.</p> <p>18 CHAIRPERSON: But the point that the time</p> <p>19 the document was drafted or rather at the time when the</p> <p>20 thought processes set out in the document later existed.</p> <p>21 It was believed rightly or wrongly, reasonably or</p> <p>22 unreasonably that the violent faction if one can call it</p> <p>23 that was correctly described as being an AMCU faction.</p> <p>24 COLONEL SCOTT: Yes.</p> <p>25 MR SEMENYA SC: And for the record,</p>

<p style="text-align: right;">Page 13986</p> <p>1 Chair, AMCU is a juristic person, it can't kill anybody 2 except vicariously. So that word is used for sake of label 3 then anything. 4 CHAIRPERSON: I use the word an AMCU 5 faction indicating, a faction of people belonging to AMCU 6 but in any rate the question is not whether that was so, 7 not whether, even the belief that it was so was reasonable, 8 the question is whether that was the belief and the witness 9 has conceded that that was so. Mr Chaskalson, you reach a 10 suitable stage for that adjournment would you let me know. 11 MR CHASKALSON SC: I'm right at the end 12 of the end of the section of the cross-examination, Chair. 13 That's the one side of the coincidence. The other side of 14 the coincidence is there is this frankly inexplicable miss 15 sequencing of slides in exhibit L which objectively 16 prejudices AMCU. So I just want to put that problem to 17 you, because it was a problem we have and if there's 18 anything further you have in response to that then now is 19 the time give us the explanation. 20 MR SEMENYA SC: Chair, so that we are 21 not, Chair, so that we're not at cross purposes with the 22 evidence leaders, perhaps they may articulate in what way 23 was AMCU prejudiced by incorrect sequencing, I can't follow 24 that. 25 MR CHASKALSON SC: Well if I can set it</p>	<p style="text-align: right;">Page 13988</p> <p>1 examination can be substantially reduced but, and then also 2 of course explanation can then subsequently be obtained 3 from Brigadier Pretorius and Colonel Visser about these 4 matters. But if some kind of an agreement can be reached 5 on that it will I think save a lot of time. So at some 6 stage during lunch time I'm proposing to adjourn now till 7 quarter to 2, we would be grateful if we could see Mr 8 Semenya, yes I suggest we should we should do it now before 9 we have lunch, have a meeting then in chambers with Mr 10 Semenya and Mr Chaskalson to see whether this can't be 11 sorted out. We may well save a lot of valuable time if we 12 do that. We will now adjourn till quarter to 2. 13 [COMMISSION ADJOURNS COMMISSION RESUMES] 14 [13:53] CHAIRPERSON: The Commission resumes. 15 Colonel, you're still under oath. 16 DUNCAN GEORGE SCOTT: s.u.o. 17 CHAIRPERSON: Mr Chaskalson. 18 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.): 19 Colonel, I'm moving now to a different set of videos. 20 These are the POPs MTS-series that we've already touched on 21 in exhibit JJJ20. 22 CHAIRPERSON: Mr Semenya, you have your 23 light on; you want to say something? No. 24 MR CHASKALSON SC: And I wonder if we can 25 go back to JJJ20, to have it on screen so Colonel Scott can</p>
<p style="text-align: right;">Page 13987</p> <p>1 out. The incorrect sequencing is, in our submission, 2 calculated to cause prejudice to AMCU because what the 3 exhibit shows and what was again reinforced in the 4 presentation of the exhibit before the commission, what the 5 exhibit suggests is that we had protestor 6 giving what is 6 frankly a murderous speech, talking about killing homeland 7 policeman and finishing them off at the koppie and 8 immediately thereafter an AMCU person stood up and the 9 first words of his speech were that has to be respected. 10 CHAIRPERSON: I don't think we need to 11 debate the matter now. Is there anything further you want 12 to say or point you want to make before we take the 13 adjournment? 14 MR CHASKALSON SC: Not at this stage, 15 Chairperson. 16 CHAIRPERSON: Alright. I'd like to 17 suggest that the counsel for the police, referring to Mr 18 Semenya and Mr Chaskalson come and see us during the lunch 19 adjournment. We would like to explore with them whether 20 the laptop of the witness cannot be, imaged, I think is the 21 correct word, and that various other matters can be 22 discussed in that regard. We would hope that the end of 23 the process would be an agreed statement of incorrect 24 slides and time sequences in exhibit L, which can then be 25 put to the witness as common cause so that the cross-</p>	<p style="text-align: right;">Page 13989</p> <p>1 see it. 2 CHAIRPERSON: Can't they find it, or 3 what's the problem? Mr Wesley? 4 MR CHASKALSON SC: Here we go. It's 5 files numbered from 0 to 41MTS, which were given to the 6 evidence leaders as the set of POPs MTS-series files that 7 had been requested. Now Colonel, you may or may not recall 8 this, but in advance of this request the evidence leaders 9 had already communicated to SAPS that from the Lonmin hard 10 drive they had received 48MTS – sorry, 42MTS to 48MTS, and 11 so didn't need those duplicated. I don't know if you 12 recall that. 13 COLONEL SCOTT: No, not particularly, no. 14 MR CHASKALSON SC: It may explain why the 15 sequence stops at 41, because the evidence leaders already 16 had 42 to 48 from Lonmin. Are you aware of who from SAPS 17 put together this collection of files for the evidence 18 leaders in relation to the MTS-series that the evidence 19 leaders sought? 20 COLONEL SCOTT: I can, know that I have 21 dealt with files obviously that look like this. Who put 22 them together for you, I can only speculate. If they were 23 handed over to you it would have been through Colonel 24 Fikter, who was working with the police hard drive. 25 MR CHASKALSON SC: Colonel Visser or</p>

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1 Colonel Fikter?

2 COLONEL SCOTT: Ja, Victor Visser, sorry.

3 MR CHASKALSON SC: And Colonel, I just

4 want to clarify, you didn't put them together? You don't

5 recall putting them together onto a memory stick or an

6 external hard drive for copying over to the evidence

7 leaders?

8 COLONEL SCOTT: I could have, but I don't

9 recall it, as you say, no.

10 CHAIRPERSON: What date were they

11 received by the evidence leaders?

12 MR CHASKALSON SC: 7 November. It's in,

13 their receipt is reflected in the email of 8 November,

14 which is JJJ36.

15 COLONEL SCOTT: What I do recall,

16 Chairperson, there, while I was presenting evidence – or

17 not evidence, but exhibit L, it was during one of the lunch

18 breaks that myself and Colonel Visser went to the evidence

19 leaders' chambers in Rustenburg, and why I recall that is

20 the two SAPS POPs members, the video operators were there

21 as well, and I know that with my computer we were in there

22 and we downloaded something to the evidence leaders, and it

23 could be this. I'm not sure if it was, if this is what

24 we're speaking about. But I know that we downloaded

25 certain footage there to you guys that you mentioned that

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1 you didn't have.

2 MR CHASKALSON SC: Well, I may have to

3 come back to that when I speak to people who were present

4 there. I wasn't. But –

5 COLONEL SCOTT: I think you – sorry, but

6 just for that, just for the accuracy, I think you were

7 because I know the POPs members were still consulting with

8 you at that, I'm not talking about the meeting when you

9 were on your phone. I'm aware of that meeting as well.

10 This was a separate occasion. This was an unplanned, or an

11 uncalled, per email, uncalled meeting, and I recall that

12 too because when I walked out I walked into the

13 Commissioner outside who was on his way to - and we were

14 rushing to try and get out computer back in place in time.

15 MR CHASKALSON SC: There appear to have

16 been, I mean there must have been several meetings. The

17 one at which this set was given, was the meeting on the 7th

18 of November, as is reflected in that email.

19 COLONEL SCOTT: Okay.

20 MR CHASKALSON SC: You say that you may

21 have put together this collection of files, it may have

22 been Colonel Visser, you can't recall.

23 COLONEL SCOTT: No, I don't recall.

24 MR CHASKALSON SC: And given that the

25 evidence leaders were looking for a full set of MTS files,

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1 would you have satisfied yourself that this was a full set,

2 whether you prepared it or Colonel Visser prepared it,

3 before it was handed over to the evidence leaders?

4 COLONEL SCOTT: We're really, I'm talking

5 now from, as I, I don't even really recall handing this

6 over, but what I can say is that every time I have been

7 requested, and even on times when I wasn't requested, where

8 I have sat with the evidence leaders with our legal

9 representation there, I've always made my computer open and

10 available. So whatever I've given has always been

11 everything I have, so if I did give that to you, it would

12 have been what I had as a full set at the time, yes.

13 MR CHASKALSON SC: And if it was

14 something that Colonel Visser had assembled, would you have

15 checked to see that it was complete before it reached us?

16 COLONEL SCOTT: No, I wouldn't have

17 checked.

18 MR CHASKALSON SC: You were the expert on

19 videos from SAPS. I mean you were the primary –

20 COLONEL SCOTT: I was the person who was

21 asked –

22 MR CHASKALSON SC: - reference point for

23 videos for SAPS.

24 COLONEL SCOTT: - to put the videos and

25 photos to represent as best possible the police's case in

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1 exhibit L, in the presentation. So I would simply sort

2 through to see what was, I felt - and thereafter present it

3 to get approval on - what was applicable to go into exhibit

4 L to best present the police's case. I didn't go to check

5 the numerical sequences and that all was there, and that I

6 admit to you. That was not my aim, it was not my purpose.

7 I wasn't working, as I would say to you, with the nodal

8 point police hard drive, which has obviously got the

9 evidence on it. I was working on exhibit L, and what I

10 worked with obviously is what I had.

11 MR CHASKALSON SC: But Colonel, that's in

12 relation to exhibit L. This was in relation to something

13 slightly different, which was a specific request from the

14 evidence leaders to SAPS in relation to videos.

15 COLONEL SCOTT: That's why I understand

16 that, and this coming after the time when I was no longer

17 the nodal point, so if it was dealing with the evidence,

18 and in this case what you want to put into exhibits, it had

19 to come through the police's nodal point, which was the

20 police hard drive, and not from me.

21 MR CHASKALSON SC: Okay, so if Colonel

22 Visser had given us an incomplete set, you wouldn't have

23 picked that up?

24 COLONEL SCOTT: No.

25 MR CHASKALSON SC: Let's look at the set

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1 in a bit more detail. On its face it looked like a
 2 complete sequential set up to the 42MTS that we already
 3 had. We had 42 to 48. So you see it runs from 0 all the
 4 way through to 41, there are no breaks in it.
 5 COLONEL SCOTT: I see that, yes.
 6 MR CHASKALSON SC: But when we received
 7 it and looked at it a bit more closely, there were a number
 8 of concerns that we had. The first was that the file
 9 names, although they look the same, were actually a little
 10 bit different, because this directory has a triple zero in
 11 front of each file name. So if you, quadruple zero when
 12 you're talking about single digits, so 1 is 00001.MTS, but
 13 if one goes back to the 40MTS-series that we regard as the
 14 authentic 40MTS-series, there's only one zero in front of
 15 each file number. So what is 00001.MTS in this series, if
 16 it were to be numbered consistently with the 40MTS-series,
 17 would really be 001MTS, or if we go to a double-digit
 18 number, 00020MTS in this series, to be consistent with the
 19 file numbering that would have come out of the camera that
 20 produced the 40MTS-series, would actually have been 020MTS-
 21 series. Maybe, do you understand the point that I'm making
 22 in this regard, or would you like me to show you the
 23 thumbnails of the MTS-series?
 24 COLONEL SCOTT: No, no, I'm looking at my
 25 own thumbnails of what was originally downloaded to me, and

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1 I also have it as those below 10 had a double zero, but
 2 anything over 10 had a 029, 030.
 3 MR CHASKALSON SC: So the numbering of
 4 the files in the original set was a three-digit numbering
 5 with zeroes to fill up missing digits.
 6 COLONEL SCOTT: Yes.
 7 MR CHASKALSON SC: But the numbering in
 8 this set of files was actually a five-digit numbering.
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: Can you provide any
 11 explanation as to how that might have taken place?
 12 COLONEL SCOTT: No, I really don't know.
 13 MR CHASKALSON SC: We don't either. We
 14 have another concern, which is that when we looked closer,
 15 this wasn't a proper set of sequential files up to 41MTS,
 16 up to and including 41MTS, which would then pick up with
 17 our 42 to 48MTS, because it already included, or it
 18 included some of the files that already existed in the
 19 original 40MTS-series and the 100MTS-series, which came
 20 after 41. So if I can illustrate that to you; let's look
 21 at the file there, 20MTS. If we can just play 20MTS, which
 22 will be JJJ73. The video 00020MTS is going to be JJJ73,
 23 and if we can play it, possibly with sound.
 24 [VIDEO RECORDING PLAYED]
 25 Does this file look familiar to you, Colonel

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1 Scott? You can stop it. You can stop the file. Do you
 2 recall that it is the source file for slide 157 that we
 3 referred to earlier?
 4 COLONEL SCOTT: Is that the crowd
 5 behaviour?
 6 MR CHASKALSON SC: Crowd behaviour at
 7 10:45.
 8 COLONEL SCOTT: Yes.
 9 MR CHASKALSON SC: And you'll recall that
 10 when we looked at that source file earlier, we saw that in
 11 the original MTS-series it was 042MTS.
 12 COLONEL SCOTT: Okay, I'll take your word
 13 on that. I didn't make a mental point of it, but yes.
 14 MR CHASKALSON SC: That will be evident
 15 from JJJ17, but you can take my assurance for it. And when
 16 we went through this directory in more detail, we found a
 17 series of other examples like this, where files that were
 18 now numbered below 42 were in fact copies of files that had
 19 appeared in the original MTS-series with numbers above 42,
 20 or in some cases above 100. For example, the file that we
 21 see in this directory, 000006MTS, which will be JJJ75, if
 22 we can play JJJ75, or merely just the front, if we can just
 23 stop it there, because that should be sufficient for
 24 recognition purposes. Do you recall seeing that file
 25 earlier today?

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1 COLONEL SCOTT: Yes.
 2 MR CHASKALSON SC: That's the video of Mr
 3 Mathunjwa taken from the second POPs operator, which was
 4 108MTS when we looked at it earlier, and CC8 in the formal
 5 exhibit pack. Is that not correct?
 6 COLONEL SCOTT: Yes.
 7 MR CHASKALSON SC: So again I want to put
 8 this difficulty to you that we have; a camera doesn't
 9 itself save a file twice under the same name. Are you
 10 aware of that?
 11 COLONEL SCOTT: I would think so, yes.
 12 MR CHASKALSON SC: So we need to
 13 understand how the same files came to be saved under two
 14 different names in this case. We have the original set
 15 where files were saved either in the 40MTS-series or in the
 16 100MTS-series, and now they resurface as part of a package,
 17 well, part of a directory running from 0 to 41.
 18 CHAIRPERSON: I don't think we've seen
 19 that, have we? The slide we're looking at the moment, or
 20 clip we're looking at the moment, you tell us is also in
 21 the series up to 41, but I don't think we've seen that yet,
 22 have we?
 23 MR CHASKALSON SC: This is the file from
 24 up to 41. It's 0006.
 25 CHAIRPERSON: I see, and the one we saw –

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1 I understand. The one we saw this morning was the same
2 clip, but it was from a different series with a different
3 number?
4 MR CHASKALSON SC: Under the name 108.
5 MR SEMENYA SC: Chair, I had thought we
6 established during lunch that what may be of keener
7 interest to the Commission is why objective evidence was
8 altered, if it was, that we would obtain from the evidence
9 leaders those discrepancies that are calling for an answer,
10 because this witness is not going to be able to tell us why
11 those discrepancies exist. We might have to go and get
12 those witnesses who are able to speak to that point.
13 CHAIRPERSON: Mr Chaskalson, isn't Mr
14 Semenya right; isn't this one of the matters that can be
15 dealt with in what we discussed during the lunch hour,
16 would effectively, we hope, be an agreed statement of
17 discrepancies and so forth which call for explanation?
18 MR CHASKALSON SC: Well, my understanding
19 of the lunchtime agreement was really it related to exhibit
20 L, but I'm happy to extend it to video evidence more
21 generally, but there is evidence that is within this
22 witness's knowledge that may go to explaining at least some
23 of the discrepancies.
24 CHAIRPERSON: So the first point is that
25 the agreement at lunchtime, which relates primarily to L,

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1 will be extended generally to the video material. I think
2 that's what Mr Semenya said – he nods his head – and you
3 agree with that. Now the question is whether this
4 particular piece of evidence is one where you anticipate
5 that the witness may be able to give an answer of his own
6 knowledge.
7 MR CHASKALSON SC: Yes, I do anticipate
8 that the witness may be able to help us at least in part
9 understanding these discrepancies. But in order to do
10 this, I have to run through a little bit more laborious
11 cross-examination, and let me try and speed it up. So our
12 fourth concern was that the sequence looked artificial
13 because it didn't run chronologically, and to illustrate
14 that we printed out a view of the directory which is
15 ordered by date and not by name, and if I can ask for that
16 to be called up as exhibit JJJ76. That's 180 of file 1,
17 and we ordered this directory by date and if one runs down
18 the sequence, one sees immediately that the camera, or the
19 video clips in the sequence are not chronologically
20 ordered. So 15, 16, 17, 18, 19, and then we skip past 20
21 to 21 and then back to 20, and then forward to 24 and 25,
22 and back to 22 and 23, and then it resumes chronological
23 order again.
24 CHAIRPERSON: Do you see that, Colonel?
25 COLONEL SCOTT: I see that, yes.

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1 CHAIRPERSON: Now you see the problem.
2 Are you able to throw light upon how it may have come
3 about?
4 COLONEL SCOTT: No.
5 MR CHASKALSON SC: Well, maybe you may be
6 when I take you to our line of reasoning further. We tried
7 to reverse engineer this set from what we find on what is
8 certainly on the Pretorius hard drive, and to the best of
9 our knowledge also on the Scott hard drive. I'll come back
10 to you with specific details in relation to the Scott hard
11 drive, and let me –
12 COLONEL SCOTT: If we can just clarify
13 that though, is the, is it not the duplicate on the Scott
14 hard drive of the Pretorius hard drive that I have a date
15 and other time?
16 MR CHASKALSON SC: Well, it may well be.
17 I mean I can speak to the origin of files on the Scott hard
18 drive, but you can.
19 COLONEL SCOTT: That's what I was giving
20 evidence to yesterday, is that after I'd given everything
21 over, I would sporadically when I had time go back to the
22 police's master and try to update what I had. So I can't
23 speak to the specifics of that; it's been a while back
24 since I last did that, but –
25 [14:13] MR CHASKALSON SC: Let me take you to the

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1 directories in question and you can tell us whether you're
2 familiar with them. There is a directory which we will
3 call JJJ77, which is a directory\videos\16CI and I wonder
4 if we can call that up, it is at page 178 to 179? I wonder
5 if we can just hand you a printed copy which may be
6 quicker. We called them up now, you see three files there?
7 COLONEL SCOTT: Yes, I do.
8 MR CHASKALSON SC: And if we can go to
9 their properties we'll see that they're all saved on the
10 22nd of August 2012.
11 COLONEL SCOTT: I see that.
12 MR CHASKALSON SC: Now did you recall
13 when I showed you the directory, or firstly, does this
14 directory mean anything to you?
15 COLONEL SCOTT: No, I don't think I have
16 any POPS videos where there are only three videos in the
17 sequence that I have.
18 MR CHASKALSON SC: We may have to come
19 back to that but for present purposes I want to take you
20 back to when I showed you the directory of 41 files that
21 was given to us and we identified a series of files that
22 were out of sequence when we put them in chronological
23 order. That was JJJ76, can we go back to JJJ76, and if we
24 identify the files that are out of chronological sequence
25 we see the first one is 20 MTS and it was saved on the 22nd

<p style="text-align: right;">Page 14002</p> <p>1 of August. The second one out of chronological sequence is 2 24 and it too was saved on the 22nd of August and the third 3 was 25 and it too was saved on the 22nd of August. The 4 three files that are out of chronological sequence in fact 5 in that directory are the only three files in that 6 directory, everything else is in chronological sequence. 7 CHAIRPERSON: Also all saved at 8:30am 8 apparently? 9 MR CHASKALSON SC: Yes, Chairperson. 10 Colonel, would you agree that that would reflect that this 11 is not when the files were taken, when the actual videos 12 were taken but rather when they were saved under a new 13 name? 14 COLONEL SCOTT: Well, obviously it can't 15 be when they were taken, so it must be when they were 16 saved, yes. 17 MR CHASKALSON SC: Now perhaps we can now 18 go to a directory which I think you will recognise. 19 CHAIRPERSON: Before you move on, what we 20 saw a moment ago had the letters CI on it. Now I would 21 have thought, you can see the previous one that we saw, the 22 three videos, we saw immediately prior seeing this one, can 23 we see that again, please? 24 MR CHASKALSON SC: Very well. 25 CHAIRPERSON: You see the letters CI, do</p>	<p style="text-align: right;">Page 14004</p> <p>1 what you are saying but these were taken by Crime 2 Intelligence for those specific means. 3 CHAIRPERSON: If prima facie, if there is 4 some connection with Crime Intelligence, so that's all it 5 occurs to be. 6 COLONEL SCOTT: Yes. 7 CHAIRPERSON: I don't know whether the 8 individual files are the kinds of files that they would 9 have wanted which would show clear pictures of people who 10 were, it was considered it might be appropriate to rest but 11 I don't know whether – 12 COLONEL SCOTT: It is possible that their 13 own video operator took the camera from one of the POPS 14 video operators to try and get some footage of sort. Again 15 I'm speculating but – 16 CHAIRPERSON: Who would be the person who 17 would know about that crime, would it be Brigadier 18 Engelbrecht or Colonel Isaacs? 19 COLONEL SCOTT: We'll have to enquire, 20 Chairperson. 21 MR CHASKALSON SC: Well, maybe we should 22 go back and look at the thumbnails because at least one of 23 these files he will recognise. Can we go to the 24 thumbnails, that File 25 MTS we've seen previously, have we 25 not?</p>
<p style="text-align: right;">Page 14003</p> <p>1 they mean anything? 2 COLONEL SCOTT: It is Crime Intelligence. 3 CHAIRPERSON: Ja, we thought so. So it 4 looks prima facie, but it is a guess, it may cause more 5 trouble than it is worth to raise the point, but it looks 6 as if Criminal Intelligence or Crime Intelligence wanted 7 those three files for some reason and presumably they got 8 them or saved them at 08:30 on the 22nd, and then, but I 9 don't understand why they also saved this at the same time 10 on the same date on the other document we saw a moment ago. 11 COLONEL SCOTT: Chairperson, this is one 12 of the reasons I remember, I recall the meeting with 13 Advocate Chaskalson in the Chambers while I was presenting 14 because the POPS video operators were there and when I 15 walked in they almost immediately accused me and said, we 16 gave our files daily to Colonel Scott and I thought, that's 17 not so, but I think they were mistaken. They were giving 18 their files daily but from what I understood from 19 instruction on what was supposed to be going on anyway is 20 that the Intelligence Services were seeking the material in 21 order to start the process of identifying individuals and 22 to try and see where suspects were, etcetera, as it was 23 going to eventually lead to phase 5 or stage 5 amongst 24 others with the interviewing of arrestees' information, of 25 where to go to, to look to arrest people, so it could be</p>	<p style="text-align: right;">Page 14005</p> <p>1 COLONEL SCOTT: Yes, is that Mr Mathunjwa 2 at the Nyala speaking to Brigadier Calitz? 3 MR CHASKALSON SC: That's correct, let's 4 go to 20 MTS, we've discussed that a few moments ago. 5 COLONEL SCOTT: Yes. 6 MR CHASKALSON SC: What's that? 7 COLONEL SCOTT: That was the crowd 8 behaviour. 9 MR CHASKALSON SC: Alright, and 24 MTS, 10 is that image big enough for you to identify, it is the one 11 we've discussed previously as well? 12 COLONEL SCOTT: Mr Mathunjwa's vehicle I 13 think at the front, at the protestors. 14 CHAIRPERSON: Well, it doesn't look as if 15 either 24 or 25 would help to identify people who could be 16 considered for arrest. It might be different in the case 17 of 20. 18 COLONEL SCOTT: Well, considering too, 19 Chairperson, that if it was taken by Crime Intelligence 20 personnel, they probably couldn't go up to the protestors. 21 I know that the two that I am aware that were there were 22 both white males and possibly didn't want to put themselves 23 in a position of being identified. 24 MR CHASKALSON SC: Colonel, if we can go 25 even a step further back, you will find in fact that all</p>

<p style="text-align: right;">Page 14006</p> <p>1 three of these files appeared in the original 40 MTS series 2 that were taken by the undercover POPS operators. We did 3 in fact traverse it earlier today when we were talking 4 about the relevance of the 40 MGS series, that wasn't 5 included on the SAPS hard drive, do you recall that? 6 COLONEL SCOTT: Yes. 7 MR CHASKALSON SC: So concerned about 8 Crime Intelligence taking videos from a distance wouldn't 9 have entered into this and, well, you accept that? 10 COLONEL SCOTT: Well, as I say I don't 11 know who the authors are and again one would need to speak 12 to the different parties involved who handled these 13 cameras, to establish why, what they did with their footage 14 afterwards. 15 MR CHASKALSON SC: But, Colonel, I 16 thought we had gone past this point to a certain degree. 17 We accepted that the 40 MTS series from which the original 18 sources of these files are drawn, was footage taken by a 19 POPS operator on the 16th. We'd agreed that the only 20 footage taken by POPS operators on the 16th was the footage 21 in the 40 MTS series and the 100 MTS series. Do you still, 22 do you want to retreat from that agreement? 23 COLONEL SCOTT: No, no, I'm just saying 24 that, I mean the option is open whether the POPS man is 25 standing right next to this gentleman, but I don't want to</p>	<p style="text-align: right;">Page 14008</p> <p>1 with this directory? 2 COLONEL SCOTT: Yes. 3 MR CHASKALSON SC: And do you recall when 4 you first downloaded materials into this directory? 5 COLONEL SCOTT: No, not specifically, I 6 would have to rely on objective evidence to be accurate on 7 that. 8 MR CHASKALSON SC: And what do you mean 9 by objective evidence? 10 COLONEL SCOTT: Well, if we can get, I 11 think it is called "The image of my computer," or hard 12 drives that can show. 13 MR CHASKALSON SC: But you said earlier 14 that you thought that this was either footage from POPS 15 operators that you downloaded onto your computer or 16 footages from one of the Lonmin cameras that you downloaded 17 onto your computer. 18 COLONEL SCOTT: There are different, it 19 seems there are different versions of POPS footage. I mean 20 you're bouncing between the different thumbnails on all of 21 these and to commit to knowing something I have what I have 22 downloaded from myself here that I had at the time, I think 23 at least two days after the incident. I would have had 24 this at some stage, it would have either been given to me 25 by the POPS members or if it was obtained through Colonel</p>
<p style="text-align: right;">Page 14007</p> <p>1 get into an argument about that, I think it is speculation. 2 Those members themselves can actually attest to it and I 3 accepted this as being POPS video footage, yes. 4 MR CHASKALSON SC: Yes. Well, let's look 5 at another directory with which I think you should be 6 familiar. It is a directory called videos\16 camera 457 7 POP, does that ring a bell to you, camera 457 POP? 8 COLONEL SCOTT: It does, yes. 9 MR CHASKALSON SC: And can you explain to 10 the Commission what you understand that directory to be? 11 COLONEL SCOTT: As best as I can recall, 12 at some stage I downloaded, now it is either the Lonmin 13 video cameras that are named specifically after the camera 14 numbers or it was the POPS, the video cameras I received 15 from POPS where I gave the files the actual names, I think 16 of the camera possibly, the serial number on the camera if 17 I'm not mistaken. 18 MR CHASKALSON SC: In fairness to you I 19 think we should actually call that that directory up for 20 you, it is JJJ78, pages 172 to 174 of the Commission's 21 bundle, and you'll see that this too is a directory that 22 has files running from 0 to 41 and has five digits in each 23 file name. 24 COLONEL SCOTT: Yes. 25 MR CHASKALSON SC: And you're familiar</p>	<p style="text-align: right;">Page 14009</p> <p>1 Victor receiving the footage through the Lonmin Section 2 205, I may have received it that way – 3 CHAIRPERSON: It is not Colonel Victor, 4 do you mean Colonel Visser? 5 COLONEL SCOTT: Ag, Colonel Visser, I'm 6 sorry, I'm calling him on his first name, Colonel Visser, I 7 may have received it that way, but I have definitely viewed 8 these and had them in my possession at some stage. 9 MR CHASKALSON SC: So you have definitely 10 had them in your possession, you have definitely viewed 11 them, you cannot tell us with certainty at which point they 12 were downloaded? 13 COLONEL SCOTT: Yes. 14 MR CHASKALSON SC: Well, let's move to a 15 third directory which I'm hoping will be of a similar 16 nature and that's a directory called camera 407 POP in 17 \videos\16, it is JJJ79, pages 175 and 177. Those are the 18 properties or the first half of the properties because 19 there are 47 files in this directory. I wonder if we can 20 go back to the thumbnails. 21 COLONEL SCOTT: I do stand to be 22 corrected because I'm pretty sure it was me who created the 23 457 POP camera number, I think so, and I almost recall that 24 I would have done that at the time that they were given to 25 me which would have been some time after the 16th, close by.</p>

<p style="text-align: right;">Page 14010</p> <p>1 MR CHASKALSON SC: It would be camera 457</p> <p>2 POP?</p> <p>3 COLONEL SCOTT: Both of those numbers –</p> <p>4 MR CHASKALSON SC: And 407 POP?</p> <p>5 COLONEL SCOTT: Yes, but –</p> <p>6 MR CHASKALSON SC: And when you say, when</p> <p>7 they were given to me, are you referring to the memory</p> <p>8 cards inside the cameras that were 457 and 407?</p> <p>9 COLONEL SCOTT: I'm assuming so, I mean I</p> <p>10 don't know of any other way I would have downloaded that</p> <p>11 video other than from a memory card.</p> <p>12 MR CHASKALSON SC: I don't want you to be</p> <p>13 under any misapprehensions here because what's up on the</p> <p>14 screen is still camera 457 POP and we want 407 POP, just so</p> <p>15 that you can clarify that.</p> <p>16 COLONEL SCOTT: Yes.</p> <p>17 MR CHASKALSON SC: This is 407 POP, I beg</p> <p>18 your pardon, I've been taking you, what I said in relation</p> <p>19 to 457 was first in relation to 407, 407 is the 41</p> <p>20 thumbnail file. Can we see 457 now which is JJJ78? JJJ78,</p> <p>21 - sorry, JJJ79, I beg your pardon, and the thumbnails on</p> <p>22 JJJ79. Colonel, I must apologise but you're familiar with,</p> <p>23 there are 47 thumbnails on 407, we can give you a hardcopy</p> <p>24 if you would like to look at it. Would you like to look at</p> <p>25 the hardcopy?</p>	<p style="text-align: right;">Page 14012</p> <p>1 COLONEL SCOTT: She is the custodian –</p> <p>2 CHAIRPERSON: She is the custodian, ja.</p> <p>3 COLONEL SCOTT: Yes.</p> <p>4 MR CHASKALSON SC: So we'll call that the</p> <p>5 SAPS master hard drive. In that directory on the SAPS</p> <p>6 master hard drive you will find the three out of sequence</p> <p>7 files, we've already traversed that, can we go to the next</p> <p>8 page? Now we're back, now we're showing the 47 files that</p> <p>9 are on the camera 457 POPS directory which is in this</p> <p>10 instance taken from the SAPS master hard drive but which</p> <p>11 you have confirmed is a directory with which you're</p> <p>12 familiar and you've said it is one which you recall as</p> <p>13 probably having been downloaded from the video operators.</p> <p>14 COLONEL SCOTT: Yes.</p> <p>15 MR CHASKALSON SC: We've ringed the first</p> <p>16 21 files in that directory circling file number 20, because</p> <p>17 that's one of the out of sequence files on the other, so</p> <p>18 files 1 to 19 and 21 of the set that was given to us came</p> <p>19 from this directory. If we can go to the next slide, then</p> <p>20 we've looked at camera 407 POPS directory, again we've</p> <p>21 ringed 24 and 25 because those were the out of sequence</p> <p>22 ones on the directory that was given to us, but the balance</p> <p>23 running up to 41, - 22, 23, 26, 27, 28, 29, all the way</p> <p>24 through to 41 came from this directory. So it looks like</p> <p>25 someone assembled a set from 1 to 41 by taking pieces from</p>
<p style="text-align: right;">Page 14011</p> <p>1 COLONEL SCOTT: No, it is fine.</p> <p>2 MR CHASKALSON SC: Well, thank you for</p> <p>3 that, I mean if there is a need to look at the hardcopy at</p> <p>4 any stage please ask for it. Now we looked at those three</p> <p>5 directories and we reverse engineered the set that was</p> <p>6 given to us, so the starting point of the reverse</p> <p>7 engineering and maybe we should hand up a document which</p> <p>8 illustrates it visually which is easier to, for explanatory</p> <p>9 purposes. Can we put up JJJ80 which will be pages 80 to</p> <p>10 84, and if we can go to the next page where it starts? Now</p> <p>11 the first slide that you see is the selection of files that</p> <p>12 was given to us, the 41 files that were given to us and</p> <p>13 we've ringed the ones that are out of date sequence. Okay,</p> <p>14 if we can go to the next slide? Those three that are out</p> <p>15 of date sequence and it shouldn't say Colonel Scott hard</p> <p>16 drive because the slide was made at the time when we called</p> <p>17 it the Pretorius hard drive was the Scott hard drive, this</p> <p>18 is the Pretorius hard drive and if I can ask that reference</p> <p>19 to be corrected. Those –</p> <p>20 COLONEL SCOTT: Sorry, if I can also just</p> <p>21 ask, it is actually the SAPS master hard drive, I think she</p> <p>22 is actually sweating on the other side, she is only the</p> <p>23 nodal point.</p> <p>24 MR CHASKALSON SC: Okay, -</p> <p>25 CHAIRPERSON: The custodian, I think, -</p>	<p style="text-align: right;">Page 14013</p> <p>1 one directory, from another directory and then from a third</p> <p>2 directory, would that be a fair inference to draw from what</p> <p>3 we see?</p> <p>4 COLONEL SCOTT: Through the line of</p> <p>5 evidence you're leading it would be fair to assume that,</p> <p>6 yes.</p> <p>7 [14:33] MR CHASKALSON SC: Now when we saw that,</p> <p>8 we immediately started to be a bit suspicious because it</p> <p>9 looked like what we got was a reverse engineered set, and</p> <p>10 fortunately we've got the original Lonmin MTS-series as a</p> <p>11 control, so we weren't worried that there were missing POPs</p> <p>12 40 or 100MTS files dealing with the 16th of August, which I</p> <p>13 must confess would otherwise have been a suspicion that we</p> <p>14 may have entertained. But the POPs video operators also</p> <p>15 filmed after the 16th of August. Are you aware of anything</p> <p>16 that the POPs video operators may have filmed after the 16th</p> <p>17 of August that hasn't been shown to the Commission, and</p> <p>18 that may be of relevance to the Commission and may be</p> <p>19 something that someone with misguided loyalty to SAPS may</p> <p>20 not have wanted the Commission to see?</p> <p>21 COLONEL SCOTT: Well, all I can say is in</p> <p>22 the building of the presentation, police presentation, my</p> <p>23 concentration was up till the 16th of August. I didn't have</p> <p>24 interest in any videos or photographs for that matter that</p> <p>25 took place after that. There was no need for that, and I</p>

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1 didn't take the time to go through any of this.

2 CHAIRPERSON: Do you know what's been

3 shown to the Commission, or do you merely know what's been

4 provided to the Commission? Because I don't think I've

5 seen you here all the time.

6 COLONEL SCOTT: No, I –

7 CHAIRPERSON: In fact most of the time I

8 haven't seen you. So you might know what's been provided

9 to us, but I don't think you know what's been shown to us,

10 but the real point of the question I suspect is what's been

11 provided to us.

12 MR CHASKALSON SC: Indeed, Chairperson.

13 The question should go to what's been provided, not what's

14 been shown.

15 COLONEL SCOTT: Well, I've always been of

16 the opinion that everything that we've had, has been

17 provided to you, and I know that at times where gaps have

18 been identified, where we've even had to call people back

19 in, members of the police, to come and fill in those gaps;

20 even those gaps were filled and provided or else statements

21 given, and I think the majority of that was done in

22 November. So I've always stood of the opinion that

23 whatever was outstanding, was provided to the full degree.

24 MR CHASKALSON SC: When we looked harder,

25 we looked at the bottom half of this diagram and we saw a

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1 whole lot of files from the 18th of August. All of those

2 files from 22MTS onwards we inspected and we established,

3 with the exception of the, possibly of the out-of-sequence

4 ringed files, were from the 18th and 19th of August, and so

5 we then went to look on the Lonmin hard drive of what was

6 there on the 18th of August on the Lonmin hard drive, and

7 you recall that I took you to those files yesterday as

8 JJJ18, so can we call up JJJ18?

9 CHAIRPERSON: It's a long time at coming,

10 but presumably it's on the way.

11 COLONEL SCOTT: Maybe it's just the

12 thought that, I hear, Chairperson, where what's been said

13 many a time, but a question I have to ask you, if I may,

14 whether these cameras and cards and so on have been in the

15 police's possession from the time that they were given to

16 the police, because obviously they couldn't have been if

17 Lonmin also has a full copy of some sorts of whatever was

18 on the cameras and the cards.

19 MR CHASKALSON SC: It should be JJJ19, I

20 apologise, not JJJ18. I hope we don't have to double the

21 delay. JJJ18 is of the 17th.

22 CHAIRPERSON: Yes, you hear the question

23 the witness asked though? He says – well, repeat your

24 question. I don't think Mr Chaskalson heard it.

25 COLONEL SCOTT: I'm just trying to myself

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1 get to understand, because I did confer with Colonel Visser

2 now in the break and he says that he received the full SAPS

3 POPs videos from the evidence leaders, who had received it

4 from Lonmin, that he didn't even have the full set. So,

5 and this was somewhere in November, and the question I was

6 just posing is I've always been of the opinion that SAPS

7 had those cameras in their possession from the time that

8 they were taken on, I think the 14th, till now, but

9 obviously that can't be the case if Lonmin has a full set

10 of the videos as well.

11 MR CHASKALSON SC: Colonel, where this

12 line of cross-examination started was with a set of files

13 that were provided to us by SAPS on the 7th of November.

14 Are you or Colonel Visser suggesting that we gave SAPS

15 files that we had obtained from Lonmin some time between

16 the 1st and the 7th of November, and then when we asked for

17 the missing files, SAPS gave back to us something that we

18 had already obtained from Lonmin?

19 COLONEL SCOTT: No, no, I'm just, I'm

20 reflecting what he said, that it's after we'd gone through

21 the process of giving you everything we had, he'd still had

22 a shortage of files, which he then managed to download from

23 the evidence leaders.

24 MR CHASKALSON SC: I see. So his set has

25 not been complete –

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1 COLONEL SCOTT: Yes.

2 MR CHASKALSON SC: - was not always

3 complete. But presumably the files with which we are

4 concerned now fall outside the class of files which was

5 incomplete when he or somebody else from SAPS produced the

6 directory that was given to the evidence leaders on the 7th

7 of November.

8 COLONEL SCOTT: I'm losing you, I'm

9 sorry.

10 MR CHASKALSON SC: It was a fairly

11 convoluted –

12 COLONEL SCOTT: Ja.

13 MR CHASKALSON SC: - question, but where

14 this line of cross-examination started was with the series

15 of files that were given to the evidence leaders on the 7th

16 of November by SAPS.

17 COLONEL SCOTT: Correct.

18 MR CHASKALSON SC: Now SAPS must have had

19 those files in their possession prior to the 7th of November

20 to give them to the evidence leaders on that day.

21 COLONEL SCOTT: SAPS being Colonel Visser

22 and the nodal point, yes.

23 MR CHASKALSON SC: Well, let's stick with

24 SAPS at this stage rather than Colonel Visser, because

25 Brigadier Pretorius is getting anxious that we're referring

Page 14018

1 to –

2 COLONEL SCOTT: No, I'm just, I'm

3 clarifying because Colonel Visser, as myself, only had what

4 we were given. If there were still files in the possession

5 of the video operators, obviously that was not something we

6 were aware of or knew.

7 MR CHASKALSON SC: Yes, but a set of

8 files was given to us. Those were clearly in your

9 possession.

10 COLONEL SCOTT: Yes.

11 MR CHASKALSON SC: Now we compared the

12 bottom half of that set with what we see in the original

13 40MTS-series as it runs through on to the 18th of August,

14 where it picks up at 49MTS. You'll recall that the last

15 video made on the 16th was 48MTS?

16 COLONEL SCOTT: Yes.

17 MR CHASKALSON SC: And what we noticed

18 was that there were only three files in the batch that you

19 gave us, or three files in this, shall I call it the

20 original 40MTS-series for the 18th of August, that were not

21 included in the bottom half of the batch that you gave us

22 on the 7th of November, and the three were 49MTS, 52MTS, and

23 53MTS. We then went to look on the SAPS hard drive and we

24 could find none of these files either, and 49MTS

25 particularly interested us because if we go back to the

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1 camera 407 directory, JJJ79, or even if we go to it as

2 exhibited in JJJ80 – let's look at it in JJJ80, which will

3 be easier. Can we have JJJ80? So there's the 407

4 directory as exhibited on JJJ80, where the yellow line

5 demarcates what was given to us, and anything outside the

6 yellow line wasn't given to us, and we see that 21 is just

7 outside the line of what was given to us, and 21 turns out

8 to be file 49 of the original 40MTS-series that we found on

9 the Lonmin hard drive. So one of the three files, one of

10 the only three files that wasn't given to us turns out to

11 be one that just missed the cut, as it were.

12 COMMISSIONER HEMRAJ: 21 and 22 are the

13 same briefing, are they, Mr Chaskalson?

14 MR CHASKALSON SC: They are in fact at

15 the same briefing, but they record different aspects of the

16 same briefing. 22, Commissioner Hemraj, you'll recall is a

17 file that has been exhibited already. I forget its exhibit

18 number, but we mentioned it in Commission yesterday.

19 GGG30. Can I ask you to look at the thumbnail of 21, and

20 maybe if we can zoom in on it, because it may help you to

21 recognise that video. Can we just try to zoom this picture

22 so that that thumbnail of 21, which is on the left-hand

23 corner of the yellow line, becomes more visible? Is that

24 big enough for you to recognise – it's getting bigger – the

25 man at the left-hand side of that thumbnail?

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1 COLONEL SCOTT: In the blue clothing?

2 MR CHASKALSON SC: In the blue clothing,

3 yes.

4 COLONEL SCOTT: Well, if I look at the

5 next movie, or video piece, that would be Brigadier Calitz.

6 MR CHASKALSON SC: Yes, it is in fact

7 Brigadier Calitz. Do you recognise the venue?

8 COLONEL SCOTT: Well, if they're on

9 parade, it would need to be at the rear staging area around

10 the JOC.

11 MR CHASKALSON SC: Yes, it is in fact,

12 and if we go to the properties, you can accept it from me

13 that 21 is a video that ran for 13 minutes 54 seconds and

14 ended at 10:14 on the 18th of August. Now at paragraph 99

15 of your statement – sorry, page 99, paragraph 28, you

16 mention the visit of Julius Malema on the 18th of August.

17 COLONEL SCOTT: That's correct.

18 MR CHASKALSON SC: And it seems almost

19 that you mention it only to say that you had nothing to do

20 with SAPS deployment for the day because you were busy

21 preparing a presentation for the President. Do you recall

22 that?

23 COLONEL SCOTT: If this is the Friday the

24 17th, then it would be, yes. I was –

25 CHAIRPERSON: Isn't it the 18th, which is

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1 the Saturday?

2 COLONEL SCOTT: Ja, or the planning for

3 this, for the Julius Malema deployment, I wouldn't have had

4 anything to do with the planning, no.

5 MR CHASKALSON SC: And you say that in

6 paragraph 28. In fact your only mention of the Julius

7 Malema visit is to say you had nothing to do with the

8 planning for it.

9 COLONEL SCOTT: Ja.

10 MR CHASKALSON SC: Can I ask you why you

11 thought it was important to address in your statement that

12 Mr Malema had come on the 18th, only to say that you had

13 nothing to do with the planning for this visit?

14 COLONEL SCOTT: I think firstly just to

15 give a breakdown of where I was on the days after the

16 incident, to show my activities, but in stating, I

17 specifically had nothing to do with the planning of that

18 because I had to do with the planning after that event

19 again of maintaining the order in the Marikana area, as

20 well as assisting with the plan which built in the memorial

21 service which was to come as well. So this was the only

22 event that I didn't in fact have an input into.

23 MR CHASKALSON SC: And you say you didn't

24 have an input into the planning. Were you present at any

25 stage of the police operation on the 18th of August, at the

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1 parade on the 18th of August?

2 COLONEL SCOTT: I don't think so.

3 MR CHASKALSON SC: What we see in that

4 video 21, which is also 49MTS, is Brigadier Calitz

5 addressing the SAPS members on parade. Do you recall

6 seeing a video of that nature?

7 COLONEL SCOTT: No.

8 MR CHASKALSON SC: Maybe we should play

9 it for you and just ask you thereafter to reflect on

10 whether you had seen it before. Can I ask that the video,

11 which is 49MTS, be played, and it be given the exhibit

12 number JJJ81? Video 49MTS, taken on 18 August 2012 at

13 10:14 with duration 13:54.

14 CHAIRPERSON: 13:54.

15 MR CHASKALSON SC: And for this video it

16 is quite important that we hear the sound because it's the

17 sound that's noteworthy, not the images.

18 [VIDEO SHOWN]

19 [14:52] COMMISSIONER HEMRAJ: Mr Chaskalson,

20 you've provided us with a transcript of this in your file

21 1, 74 to 77.

22 MR CHASKALSON SC: Commissioner, that is

23 not an agreed transcript. We will circulate that

24 transcript. I think we do need an agreed transcript but I

25 can give that SAPS at this point and if they have problems

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1 with it they will come back to us.

2 CHAIRPERSON: Is that the end of the

3 video?

4 MR CHASKALSON SC: That is the end of the

5 video, Mr Chairperson. I see that its now 3 o'clock.

6 CHAIRPERSON: Yes I was going to ask you

7 whether you want any questions about it before or after

8 tea. I would prefer after tea but if it's convenient, if

9 you prefer to do it before tea I will obviously fall within

10 with what you want.

11 MR CHASKALSON SC: No, Chairperson, I –

12 CHAIRPERSON: We'll now take the tea

13 adjournment.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [15:25]

16 CHAIRPERSON: The Commission resumes.

17 Colonel, you're still under oath.

18 DUNCAN GEORGE SCOTT: s.u.o.

19 CHAIRPERSON: Mr Chaskalson.

20 CROSS-EXAMINATION BY MR CHASKALSON (CONTD.):

21 Colonel, you've now seen and heard that video. Does that

22 help you to remember whether or not you'd seen it

23 previously?

24 COLONEL SCOTT: I don't recall seeing it

25 previously, no. I've heard of it spoken of. I've not

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1 viewed it myself that I'm aware of.

2 MR CHASKALSON SC: By whom have you heard

3 of it spoken?

4 COLONEL SCOTT: By Brigadier Calitz.

5 MR CHASKALSON SC: By Brigadier Calitz

6 himself. So he's spoken to you about the video of his

7 briefing on the 18th?

8 COLONEL SCOTT: I wouldn't say directly

9 to me, but in conversation where I've been around

10 informally, let's put it that way.

11 MR CHASKALSON SC: And what did he say

12 about, first of all about the briefing?

13 COLONEL SCOTT: No, he didn't go into

14 detail. He just mentioned that there was a parade where he

15 had told the members that they'd done nothing wrong.

16 MR CHASKALSON SC: And what did he say

17 about the video?

18 COLONEL SCOTT: Nothing that I can

19 recall, no.

20 MR CHASKALSON SC: But he did convey to

21 you that there was a video of this parade?

22 COLONEL SCOTT: Yes, I've been aware that

23 there have been parades that have been shown and amongst –

24 I don't know if this has been shown, but I know that, I

25 think there was something about the National Commissioner's

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1 parade as well at some stage. As I say, these are just

2 things that you pick up when you're sitting around the

3 police office, but as I say, I'm aware that, through

4 Brigadier Calitz in informal chats, has mentioned that

5 there was a video of him speaking on parade.

6 MR CHASKALSON SC: Yes.

7 CHAIRPERSON: A relatively recent

8 conversation, or was that some months ago?

9 COLONEL SCOTT: No, Commissioner, I think

10 it's some months, well, some time ago.

11 MR CHASKALSON SC: Now Colonel, earlier

12 in this cross-examination I took you to that directory

13 camera 407 POP. Do you recall that directory?

14 COLONEL SCOTT: Yes.

15 MR CHASKALSON SC: And your response to

16 my questioning in relation to camera 407 was that you

17 thought that you had probably downloaded the files in

18 camera 407 from the cards of the video operators, if I

19 recall correctly.

20 COLONEL SCOTT: What I recall is creating

21 something that had a name to it that was a reference to a

22 serial number, and I'm not sure if that would be the Lonmin

23 cameras or if it would be the POPs ones. That's what I can

24 recall. I don't want to commit myself to saying it was the

25 POPs cameras.

<p style="text-align: right;">Page 14026</p> <p>1 MR CHASKALSON SC: But Colonel, on the 2 SAPS master hard drive and on the Scott hard drive, to the 3 best of our knowledge there are only two directories which 4 have directory names which reflect what may be serial 5 numbers of cameras. It's the 407 POP directory and the 457 6 POP directory. Are you aware of any other directories of 7 that nature? 8 COLONEL SCOTT: Well, when I was looking 9 last night on my original footage I'd seen that there were 10 three cameras from Lonmin, which was I think those that I 11 was referring to earlier in the day which were difficult 12 files, difficult to open, the video footage files of those, 13 and I see those are also referenced by, it seems the number 14 of the camera. 15 MR CHASKALSON SC: Colonel, we might be 16 at cross purposes here. Are you referring in this case to 17 close circuit – 18 COLONEL SCOTT: TV, yes. 19 MR CHASKALSON SC: - TV footage? 20 COLONEL SCOTT: Yes. 21 MR CHASKALSON SC: Now that footage is of 22 a different order to the footage that one gets inside a 23 handheld video camera. Is that not so? 24 COLONEL SCOTT: I know it's on my hard 25 drive. I can't remember how I downloaded it. I could be</p>	<p style="text-align: right;">Page 14028</p> <p>1 COLONEL SCOTT: Yes. 2 MR CHASKALSON SC: And you do recall 3 doing that. 4 COLONEL SCOTT: Yes. 5 MR CHASKALSON SC: And you spoke of three 6 Lonmin cameras. 7 COLONEL SCOTT: That's what I discovered 8 last night, yes. 9 MR CHASKALSON SC: And I just want to 10 clarify; we're aware only of two Lonmin handheld cameras. 11 Are you aware of a third? 12 COLONEL SCOTT: No, I'm talking about the 13 CCTV. 14 MR CHASKALSON SC: I see. Well, there 15 are way more than three CCTV Lonmin cameras. 16 COLONEL SCOTT: That's what was given to 17 me, yes. 18 MR CHASKALSON SC: So you're only 19 familiar with two Lonmin handheld cameras. 20 COLONEL SCOTT: Yes. 21 MR CHASKALSON SC: And to the best of 22 your recollection, those are the two handheld cameras that 23 were used by the various POPs video operatives during the 24 course of the operation? 25 COLONEL SCOTT: That's correct. I'm</p>
<p style="text-align: right;">Page 14027</p> <p>1 mistaking that for that matter for something different, how 2 it was downloaded to me. 3 MR CHASKALSON SC: But footage of that 4 nature cannot be downloaded on a little SD-card. Are you 5 aware of that? 6 COLONEL SCOTT: I'm aware now, yes. 7 MR CHASKALSON SC: And when I asked you 8 earlier in relation to the 407 POP directory and the 457 9 POP directory, your recollection was, or you inferred that 10 you would have downloaded the contents of those directories 11 from a camera or an SD-card in a camera. 12 COLONEL SCOTT: From what I can 13 recollect, yes. As I say, I'm speaking like this, and I 14 don't mean to be vague. It's just at the time people are 15 bringing you memory sticks, they're bringing you possibly 16 CDs, they're bringing you SD-cards. I think some of the 17 video – not the videos, the still cameras themselves have 18 got SD-cards as well, so I could be mixing up who's got 19 what. This is why I'm saying I'm not trying to be vague, 20 but to put an exact, that it was definitely a POPs camera 21 or it was definitely a still camera from Mere(?), or – it 22 would be difficult now to recall that. 23 MR CHASKALSON SC: But Colonel, you do 24 say in your statement that you downloaded files from POPs 25 video operators.</p>	<p style="text-align: right;">Page 14029</p> <p>1 aware of the, of a police video camera. This was made, I 2 was aware of that recently, within the last two, three 3 weeks, that was used, I think on the 13th, possibly on the 4 Friday the 10th and on the 13th. 5 MR CHASKALSON SC: Are you talking then 6 of the handheld analogue camera – 7 COLONEL SCOTT: Yes. 8 MR CHASKALSON SC: - that was used by the 9 POPs operatives before Lonmin gave them – 10 COLONEL SCOTT: Yes. 11 MR CHASKALSON SC: - the digital cameras? 12 COLONEL SCOTT: Yes. 13 MR CHASKALSON SC: And I think you'd 14 probably also be aware, if you, or you would probably also 15 recall that there were crime intelligence operatives like 16 Captain Nel for instance who were – 17 COLONEL SCOTT: Yes. 18 MR CHASKALSON SC: - producing videos and 19 I think there was Colonel Botha as well, but for the 20 purposes of this questioning I want us to confine ourselves 21 to handheld cameras that were made available to POPs 22 operatives by Lonmin. 23 COLONEL SCOTT: Okay. 24 MR CHASKALSON SC: And you're aware only 25 of two such cameras?</p>

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1 COLONEL SCOTT: Yes.

2 MR CHASKALSON SC: Now you state in your

3 statement that you downloaded material from the POPs

4 operatives onto your notebook in fact, is what it says in

5 your statement, in the immediate aftermath of the events.

6 COLONEL SCOTT: Ja, but as I'm saying in

7 the conclusion of the statement, this is to the best of my

8 recollection. I'm trying, yes.

9 MR CHASKALSON SC: I accept that. We're

10 talking now about events that took place over a year ago.

11 You see, we've been through the directories both of the

12 SAPS master hard drive and of the Scott hard drive, and in

13 both of those directories there are directories called

14 \16th\Camera407POP, and \16th\Camera457POP. You're familiar

15 with those directories?

16 COLONEL SCOTT: Yes.

17 MR CHASKALSON SC: And to the best of

18 your recall, the contents of those directories are files

19 which you downloaded from POPs operatives. Is that not so?

20 COLONEL SCOTT: I don't want to commit to

21 it, but to the best of my recall, yes.

22 MR CHASKALSON SC: Who else would have

23 been able to download files into those directories, and in

24 particular the directory on the Scott hard drive?

25 COLONEL SCOTT: Well, I think we need to

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1 go back into perspective. As I've said, the Scott hard

2 drive is simply a copy, a shadow copy again of the police

3 hard drive. So to be referring to it as standing alone

4 before the police hard drive, it's been upgraded and

5 updated of what was on the police, and I'm sure with expert

6 IT evidence these things will come to light. But I'm aware

7 that POP footage – and I've just been recollecting while we

8 were speaking earlier about the sequence of videos, and I'm

9 pretty sure that the videos that are dealing with the

10 strikers that were speaking to the crowd were only provided

11 to us by those POPs video members when they came to the

12 consultation, when they interpreted it to us, because I

13 don't recall having those before then. So in other words

14 what I'm saying is that there were certain POPs video

15 footage given, but there seems to have come through in

16 batches, if one would, to the nodal point of the police.

17 MR CHASKALSON SC: But Colonel, I have a

18 difficulty with that answer because what it implies is that

19 the POPs video footage that was taken on the 16th was

20 provided to you as the police nodal point - or maybe not

21 even to you, to the police nodal point, whether it was you

22 or Brigadier Pretorius or Colonel Visser - long after the

23 16th, because you wouldn't have been working on the

24 presentation until at least Roots, which was the 27th of

25 August.

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1 COLONEL SCOTT: I can recall working on

2 the media briefing, which ultimately became the President's

3 briefing as well, and I know in that we had photograph – if

4 I'm not mistaken, we had photograph footage, which was

5 provided by SAPS, but we had to eventually, I don't even

6 think there was video footage other than that which spoke

7 to General Mpmembe's incident on Thursday – sorry, on the

8 Monday, the 13th, and only after that did we start

9 sporadically getting police video footage in which we could

10 start looking at, and seeing how to place it.

11 MR CHASKALSON SC: Well, let's go to page

12 128 of your statement, paragraph 45.3. "The first video

13 footage to be brought to me was on Friday, 17th August, from

14 police POP video operators. I downloaded from both their

15 cameras' memory cards onto my computer that Friday

16 afternoon." Now that's said without any apparent

17 qualification in 45.3.

18 COLONEL SCOTT: Ja, and as I'm saying, I

19 had something here to show what seems to be, have been

20 given to me. I can recall POPs video operators bringing me

21 their footage. I can't say that it was definitely 407,

22 457, but from the files I have that I've made thumbnail

23 printout, it's definitely an MTS001 to 066 that I have from

24 that time, and I've mentioned that I'm trying to rely on

25 the objective evidence which is coming from details like

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1 this from properties of files to better accurately portray

2 what was given to me.

3 CHAIRPERSON: You've got a document in

4 your hand. What is it? Or two documents in your hand.

5 What are they?

6 COLONEL SCOTT: Chairperson, I was

7 requested to make a directory printout or something of my

8 computer's hard drive. I did that. In doing that I was

9 also, saw that – well, not saw, but there's, I got a photo,

10 a file there called "Foto's," in Afrikaans the word

11 "foto's," so it wouldn't have been made by me, but it was

12 obviously downloaded onto my computer. But I have a

13 private hard drive as well, which is not official, it's not

14 State, where I've backed up my own stuff onto, and I went

15 to that and I found a file called "Operation Platinum" and

16 inside that file it speaks to a lot of the very original

17 stuff that I got in the first couple of days. I'm of that

18 opinion because the dates there are reflecting, the

19 modified date being the time that the video or the photo

20 was taken, and then I think the detail, or the other date

21 is reflecting to when it was saved, and those dates are the

22 18th, the 20th, those timeframes.

23 CHAIRPERSON: [Microphone off,

24 inaudible].

25 COLONEL SCOTT: Yes, and I've got one –

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1 CHAIRPERSON: Sorry, I'm getting into
 2 trouble. My microphone wasn't on. Those document to which
 3 you are referring are the two documents you have in your
 4 hand. Is that correct?
 5 COLONEL SCOTT: That's correct,
 6 Chairperson, and –
 7 CHAIRPERSON: Well, let me ask this; Mr
 8 Chaskalson, do you want them to be handed in as exhibits?
 9 MR CHASKALSON SC: I'm happy for them to
 10 be handed in as exhibits. I haven't yet seen them or
 11 studied them, because – but if the Colonel wants to speak
 12 to them, it would make sense for them to be handed in as
 13 exhibits.
 14 CHAIRPERSON: Yes, yes. Well, do you
 15 want him to hand them in now, or perhaps copies could be
 16 made. I presume he needs to keep his set because he may
 17 use it further in his evidence. Is that right? So perhaps
 18 you could arrange overnight to have copies made and first
 19 business tomorrow morning we can hand them in, and in the
 20 meanwhile Ms Pillay will work out what the exhibit number
 21 should be.
 22 COLONEL SCOTT: Thank you, Chairperson,
 23 and I'll be making all of this available after 4 to the IT
 24 expert that's coming in. Yes, but I –
 25 CHAIRPERSON: You can understand my job

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1 is to make sure that all the exhibits are properly marked.
 2 COLONEL SCOTT: Understood. Understood,
 3 Chair.
 4 MR CHASKALSON SC: Colonel, I'll need to
 5 see what files are and aren't on that list and how one can
 6 identify them, but you speak of POPs police video operators
 7 downloading from their cards on the 17th of August. That's
 8 after the shootings.
 9 COLONEL SCOTT: Yes.
 10 MR CHASKALSON SC: And presumably it
 11 would have been very important for you to obtain footage of
 12 the 16th because that was the primary purpose of your being
 13 designated as the nodal point.
 14 COLONEL SCOTT: Much of what I did when I
 15 tried to reconstruct the statement to say who gave me what
 16 when, was by either trying to go back to the presentations
 17 to see on the presentations date what I had at that time,
 18 which would help me to know what was given to me obviously
 19 before I'd put it into the presentation, namely to the
 20 media, to the President, and to the inter-ministerial
 21 committee thereafter. But I do know as well that, I'm
 22 assuming that on that Friday on that afternoon, because it
 23 would have been the only time I had because that morning I
 24 was working extensively on the National Commissioner's
 25 media statement, I had a short break between that and the

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1 time that I had to go to brief the President, and that was
 2 the only time that I was back at the actual Lonmin JOC, and
 3 assuming that they gave me their footage on the 17th – and I
 4 think somewhere I may have referenced it in another
 5 presentation, being the reason why I'm saying I may have
 6 had it by then, and obviously what I've got here is showing
 7 that I did have something by the 18th.
 8 MR CHASKALSON SC: Yes, Colonel, but my
 9 concern is that you were looking at that stage, I would
 10 imagine, for footage of the 16th.
 11 COLONEL SCOTT: I was waiting for any
 12 footage that was to be brought to me.
 13 MR CHASKALSON SC: But footage of the 16th
 14 would be footage which would be of particular interest to
 15 you.
 16 COLONEL SCOTT: Marikana was an extended
 17 event. Obviously the 16th was important, but as were the
 18 days prior to that.
 19 MR CHASKALSON SC: You see, if the POPs
 20 video operators had downloaded material from their cards at
 21 any time after the 16th, it would have had to have included
 22 their footage of the 16th. You'll accept that, will you
 23 not?
 24 COLONEL SCOTT: That would be so, yes.
 25 MR CHASKALSON SC: And if the POPs video

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1 operatives had not downloaded from their cards to you after
 2 the 16th, would that not have been an issue that would have
 3 caused you to take some action?
 4 COLONEL SCOTT: Remember, you're assuming
 5 that I knew what it looked like on the 16th at the scene and
 6 what was going on, on ground. What I was given were videos
 7 that I still had to work through. So I didn't know at that
 8 time – we started seeing through the media footage what
 9 actually had occurred, and obviously later finding out that
 10 our own members were not even there, videos would have
 11 looked like videos because it would have been videos of the
 12 crowd.
 13 MR CHASKALSON SC: No, no, my question is
 14 slightly different. You knew that you had POPs video
 15 operatives in position, did you not?
 16 COLONEL SCOTT: On the 16th?
 17 MR CHASKALSON SC: On the 16th.
 18 COLONEL SCOTT: Yes. We assumed so, yes.
 19 MR CHASKALSON SC: Well, would you not
 20 have wanted to get from those POPs video operatives what
 21 they had taken on the 16th?
 22 COLONEL SCOTT: I'm relying on the
 23 commanders who were sitting in the JOCCOM with us, who get
 24 the instruction to go to their members, to inform their
 25 members to bring us whatever footage they have. It wasn't

<p style="text-align: right;">Page 14038</p> <p>1 my place to leave the JOC and start running around to find 2 members. And they were, they started bringing in on memory 3 sticks, as I mentioned. I was at a nodal point, waiting 4 for it, not going out to find it.</p> <p>5 MR CHASKALSON SC: But what you are 6 suggesting to us is that it's possible that for more than a 7 week after the 16th, well over a week after the 16th, no 8 video footage of the 16th taken by POPS operatives was 9 brought to the SAPS nodal point?</p> <p>10 COLONEL SCOTT: Ja, as I say I can't – at 11 some stage we did become aware that they were not there 12 that afternoon, so I never followed up on why, where. I 13 just received what I'd received, and what I'd received from 14 POPS is what's reflected here.</p> <p>15 [15:45</p> <p>16 So I didn't follow up to see what was the footage 17 that I was supposed to have had from them.</p> <p>18 MR CHASKALSON SC: So you took notes, 19 what you're saying is, you took notes to ensure that you 20 had from POPS the video footage that they had taken on the 21 16th?</p> <p>22 COLONEL SCOTT: No, and I think one must 23 remember as well that I wasn't sitting and looking at 24 properties of documents at that time either, I was as best 25 as possible trying to sequence what people were giving me</p>	<p style="text-align: right;">Page 14040</p> <p>1 possibility that I did download those videos beforehand, 2 possibly even looking at them but not being able to 3 understand anything, simply looking at the crowd to see 4 what was necessary to be put in and then moving on because 5 I saw no, well, relevance in them at that stage for me to 6 continue dealing with them, and I'm speculating now but I'm 7 trying to put myself back in a position of what I would 8 have been thinking at the time.</p> <p>9 MR CHASKALSON SC: And if we move away 10 from the videos taken by the POPS operatives on the 16th to 11 the POPS operatives on the 18th we see a similar picture. 12 These videos appear both on the SAPS master hard drive and 13 on the Scott hard drive in a range of different 14 directories, in particular this video with which we are 15 concerned. The video of Brigadier Calitz' briefing on the 16 18th is in several different places, both on your hard drive 17 and on the SAPS hard drive, in one of those places is a 18 directory on both of the hard drives called 19 \video's\16th\camera 407 POPS directory.</p> <p>20 COLONEL SCOTT: I hear you but I don't 21 recall every watching that video until now in the 22 Commission.</p> <p>23 CHAIRPERSON: Well, you would have 24 remembered it if you'd seen it before?</p> <p>25 COLONEL SCOTT: Yes.</p>
<p style="text-align: right;">Page 14039</p> <p>1 in putting, and it shows in the hard drive that you'll get 2 the thumbnails of, that I created the odd day, and it is 3 just something I must point out, I see I did create a file 4 called, I think it is "post event," where I was also 5 putting footage into.</p> <p>6 MR CHASKALSON SC: I see, so you created 7 the file, the director "post event?"</p> <p>8 COLONEL SCOTT: Ja, well, it is on that 9 file that we mentioned, yes.</p> <p>10 MR CHASKALSON SC: You see, Colonel, when 11 we go to the SAPS hard drive, when we go to the Scott hard 12 drive we see the POPS operative's videos in a range of 13 different places and we see the particular, well, we see 14 the particular videos with which we have been concerned 15 with in three or four different directories, including in 16 this case the directory video's\16th\camera 407 POPS 17 directory. Can you explain how they would have got there 18 if not through you?</p> <p>19 COLONEL SCOTT: They probably would have 20 come through me, as I'm saying. There were certain photos 21 and videos that I would take more notice of, but we were 22 concentrating a lot also on media footage because those 23 were there, those were applicable to the event on the 16th. 24 There was even media footage before the event on the 16th 25 which is applicable to us. As I say there is the</p>	<p style="text-align: right;">Page 14041</p> <p>1 MR CHASKALSON SC: So it is a directory 2 that is on the Scott hard drive in several places, not just 3 once, but it is not a directory that you've ever, - sorry, 4 it is a video that is on the Scott's hard drive in several 5 places but it is not a video that you say you'd ever seen 6 before today?</p> <p>7 COLONEL SCOTT: I think I've said before, 8 my concentration was on Exhibit L, Exhibit L concentrated, 9 I think from the 10th to the 16th.</p> <p>10 CHAIRPERSON: Exhibit L effectively ends 11 on the 16th.</p> <p>12 COLONEL SCOTT: Yes.</p> <p>13 CHAIRPERSON: There is summary material 14 at the end, but the narrative, the slides that go with the 15 narrative terminates on the 16th.</p> <p>16 COLONEL SCOTT: That's correct, 17 Chairperson, and this is why I say I had no reason to go 18 plundering through all the footage thereafter because there 19 is footage, as I mentioned before, that we didn't even get 20 to see from the open source media because it was just too 21 much.</p> <p>22 MR CHASKALSON SC: But, Colonel, you have 23 said now that you created a directory called "post event."</p> <p>24 COLONEL SCOTT: Yes.</p> <p>25 MR CHASKALSON SC: And if we go to the</p>

<p style="text-align: right;">Page 14042</p> <p>1 Post Event directory that was given to the evidence leaders 2 on the SAPS hard drive, if I can just take you to that 3 exhibit in a moment, we referred to it briefly yesterday. 4 It is JJJ24, I wonder if we can call that up? 5 CHAIRPERSON: And that's page? 6 MR CHASKALSON SC: 171. 7 CHAIRPERSON: Of File 1? 8 MR CHASKALSON SC: I think it is File 1, 9 Chairperson. Can we call up the Post Event directory? 10 Well, let me put to you my concern about the Post Event 11 directory. The Post Event directory contains a series of 12 files taken from after the event. If we look at them, they 13 appear to be slightly different formats of the original 14 POPS files, because these are saved as files with the 15 suffix IVI and the original POPS files were saved with the 16 suffix MTS. 17 COLONEL SCOTT: Maybe I can just give 18 clarity, I see it is here, but my Post Event file, the 19 properties on that, the date modified is 2013/02/27. This 20 is a file obviously created in 2013/02/27 which means it 21 was possibly created by somebody else, or myself at a later 22 stage. 23 MR CHASKALSON SC: Sorry, Colonel, we may 24 be speaking in cross purposes now, I understood you to be 25 giving me the properties of the directory on your, - well,</p>	<p style="text-align: right;">Page 14044</p> <p>1 page 172 of our File 1, is that a list of the files, post 2 event files? 3 MR CHASKALSON SC: Chairperson, no, page 4 172 is in fact a list of the files in the camera 457 5 directory, that's at the – 6 CHAIRPERSON: Oh, I see. 7 MR CHASKALSON SC: To identify the 8 directory on all of these printouts one looks right up at 9 the top of the page, the Post Event files, the thumbnails 10 of all of the Post Event files are at page 171. 11 CHAIRPERSON: Yes, but that's going to be 12 my next question. If 171 is accurate we see 00022 followed 13 by 0035, followed by 0036, 00040, 00041, 00045 and 00046, 14 what's going on there? 15 MR CHASKALSON SC: Well, it is another 16 incomplete directory that was provided on the SAPS hard 17 drive that was given to the parties and the evidence 18 leaders. This is the Post Event directory that was given 19 to the parties and the evidence leaders. Of significance 20 for present purposes is whoever put this directory together 21 thought that Brigadier Calitz' briefing that followed the 22 video that we described was sufficiently important to 23 circulate to the parties, but the video which we have just 24 seen was not sufficiently important to circulate to the 25 parties.</p>
<p style="text-align: right;">Page 14043</p> <p>1 is that on the Scott hard drive, on the Scott notebook or 2 possibly on the Scott private hard drive? Maybe you can 3 enlighten me? 4 COLONEL SCOTT: This is on my Scott 5 private hard drive, it is Marikana, it is Marikana Master, 6 so this is not in the Operation Platinum file, that's a 7 standalone file which deals with the two, three days after 8 the events. On that Scott private hard drive there is a 9 Marikana Master which is also reflecting files which I've 10 drawn over from the police hard drive and it is in that one 11 where there is a "post event." I stand mistaken, I thought 12 I created it in my actual, call it the two day after OPS 13 Platinum file. 14 MR CHASKALSON SC: Oh, I see, I think 15 we're probably going to have to go through the same 16 Forensic exercise in respect of those Scott private hard 17 drives as we will in respect of the Scott notebook, would 18 you be happy for us to do that? 19 COLONEL SCOTT: Absolutely. 20 MR CHASKALSON SC: It may involve your 21 staying a little bit longer because – 22 COLONEL SCOTT: That's fine – 23 MR CHASKALSON SC: - there is going to be 24 double imaging time required later today. 25 CHAIRPERSON: May I ask a question? Is</p>	<p style="text-align: right;">Page 14045</p> <p>1 CHAIRPERSON: That's one inference, there 2 is another inference that it was thought that it was 3 sufficiently embarrassing not to circulate it to the 4 parties. 5 MR CHASKALSON SC: Well, Chairperson, you 6 said it, I didn't. It does seem to me that that is a very 7 possible inference and indeed a more likely inference to 8 draw, would you accept that's a more likely inference to 9 draw? 10 COLONEL SCOTT: I can only give you my – 11 CHAIRPERSON: I'm sure you're embarrassed 12 by having to answer this. 13 COLONEL SCOTT: Well, I could only give 14 you my opinion and I hear where he is coming from, I know 15 what he is saying but if you take in depth the explanation 16 to try to justify what he is getting to, I think it is best 17 left to him to speak to that. 18 CHAIRPERSON: Okay. 19 COLONEL SCOTT: Yes. 20 MR CHASKALSON SC: And – 21 MR SEMENYA SC: And for the record, the 22 inferences that are capable to be drawn in law have a 23 formula to respect. 24 CHAIRPERSON: Sorry, I didn't hear you? 25 MR SEMENYA SC: I'm saying, Chair, for</p>

<p style="text-align: right;">Page 14046</p> <p>1 the record, inferences capable in law to be drawn have to 2 abide with a particular formula, that's not just to be 3 drawn randomly. 4 CHAIRPERSON: Yes, that's correct. 5 MR CHASKALSON SC: Well, this is probably 6 not a debate that we should have through Colonel Scott, it 7 wouldn't be fair to him but what I do want to ask in this 8 regard is really with whom should we be having this debate 9 other, apart from Brigadier Calitz because you've testified 10 to us that you never seen this video before. You've 11 testified, sorry, can you confirm that? 12 COLONEL SCOTT: Yes, yes. 13 MR CHASKALSON SC: You've testified to us 14 that the, - well, let me clarify this. You've seen the 15 selection of the videos in the Post Event directory that 16 was handed to the evidence leaders. 17 COLONEL SCOTT: Yes. 18 MR CHASKALSON SC: Is that a selection 19 with which you had anything to do with or to do? 20 COLONEL SCOTT: No. 21 MR CHASKALSON SC: No, so somebody else 22 put together that selection? 23 COLONEL SCOTT: Yes. 24 MR CHASKALSON SC: Now the question which 25 we need to answer is, who is that person?</p>	<p style="text-align: right;">Page 14048</p> <p>1 that question, there are really two questions that we need 2 answered. The first is who put together the selection of 3 files in the Post Event directory and the second is, who 4 put together the selection of files that was given to the 5 evidence leaders on the 7th of November as the MTS series, 6 because that's a selection – 7 CHAIRPERSON: You can send that question 8 to them overnight and it may take them some time to find 9 the answer but I'm sure as soon as they have it they'll 10 send it to you. They have been very cooperative and acted 11 very properly up to now and there is no reason to think 12 that they would cease behaving in that fashion. 13 MR CHASKALSON SC: Well, Chairperson, we 14 will address that enquiry to SAPS overnight and I think on 15 that note it may be a convenient time to adjourn. 16 CHAIRPERSON: Yes, perhaps, it is 17 suggested to me that I should say, to modify what I said 18 earlier, it might have been considered to be potentially 19 embarrassing, it is inappropriate to put any stronger than 20 that at this stage. We will adjourn until tomorrow morning 21 at nine o'clock. 22 [COMMISSION ADJOURNED] 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 14047</p> <p>1 COLONEL SCOTT: I can't tell you, I don't 2 know, but what I'm trying to speculate is also, if the two 3 warrant officers admitted to downloading their video 4 evidence daily and which they initially said it was to me, 5 is it not possible that that was to Crime Intelligence 6 daily? You mentioned yourself that an SD card falls out 7 quite rapidly and it is possible that once they're 8 downloaded it they formatted the card so that they would 9 have space for the following days' video taking and it is 10 possible that these videos found their way back into the 11 JOC even so through the POPS members themselves or for that 12 matter the Crime Intelligence members, being brought back 13 to us. Maybe that's why there is even a Crime Intelligence 14 file that's – 15 CHAIRPERSON: Yes, in all possibility 16 because I would have thought the simple way of dealing with 17 it is for the query to be addressed to the SAPS team and 18 ask – 19 COLONEL SCOTT: Yes – 20 CHAIRPERSON: They have been very helpful 21 in giving information up to now, there is no reason to 22 think the cooperativeness will cease at this point. I'm 23 sure a question addressed to them will elicit a helpful 24 answer. 25 MR CHASKALSON SC: Well, we will address</p>	

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